

**ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT (TERMINATION)
BILL 2015
EXPLANATORY MEMORANDUM**

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Part 1 - Preliminary

Section 1 (Act amended)

Contains the short title of the Act.

Section 2 (Commencement)

(a) Provides for Part 1 (Sections 1 and 2) of the Act to come into operation on the day the Act receives the Royal Assent.

(b) Provides for the remainder of the Act to come into operation on the day after the day that the Act receives the Royal Assent.

Part 2 - Preliminary

Section 3 (Act amended)

Specifies that the Act amends the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971 (Principal Act)*.

Section 4 (Long title amended)

Provides that the long title of the Principal Act is amended by deleting “effect” and inserting “effect, to ratify a further agreement for the termination of the Agreement”.

Section 5 (Section 2 amended)

Provides that section 2 (Interpretation) of the Principal Act is amended by inserting the following new definitions:

“Mitchell Plateau area” – defined as having the meaning given in the Fifth Schedule clause 1.

“pending application” – defined as a tenement application made, but not determined, under the *Mining Act 1978*, before the day on which section 6 comes into operation (i.e. this Act is ratified).

“Temporary Reserve 5610H” – defined as the reserve of that designation created under the *Mining Act 1904* and continued under the *Mining Act 1978*.

“tenement application” – defined as an application for a mining tenement under the *Mining Act 1978*.

“termination agreement” – defined as the agreement a copy of which is set out in the Fourth Schedule.

**ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT (TERMINATION)
BILL 2015
EXPLANATORY MEMORANDUM**

Section 6 (Section 4 replaced)

Deletes section 4 (By-Laws) of the Principal Act and replaces it with a new **section 4 (Ratification and operation of termination agreement)**, which:

- (1) ratifies the termination agreement; and
- (2) provides for the termination agreement to operate despite any other Act or law, without limiting or affecting the operation of the *Government Agreements Act 1979*.

Inserts a new **section 5A (Cancellation of Temporary Reserve 5610H)**, which cancels the Temporary Reserve.

Inserts a new **section 5B (Termination of pending applications in respect of the Mitchell Plateau area)**, which:

- (1) terminates each pending application in respect of land wholly or partly within the Mitchell Plateau area; and
- (2) Prevents any action, claim or demand against the State, the Minister or any other person in respect of the termination of a pending application.

Inserts a new **section 5C (Temporary prohibition on tenement applications in respect of the Mitchell Plateau area)**, which:

- (1) defines the “relevant area” as the Mitchell Plateau area or the area modified to reflect any changes to the boundaries of the land resulting from any survey or cadastral information;
- (2) provides that despite anything in the *Mining Act 1978*, a tenement application cannot be made during the designated period in respect of land wholly or partly within the Mitchell Plateau area;
- (3) defines the designated period as the period:
 - (a) beginning on the day on which section 6 of the Act comes into operation; and
 - (b) ending on the day fixed by notice published in the *Gazette* by the Minister, such notice to be made when the Minister is satisfied the relevant area has been reserved under the *Land Administration Act 1997* for the purposes of a national park and classified as class A.
- (4) provides that when the Minister is satisfied that the relevant area has been reserved under the *Land Administration Act 1997* Part 4 for the purposes of a national park and classified as a class A reserve under that Part; and
- (5) provides that the day fixed must be the day after the day on which the notice is published in the *Gazette*.

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

Section 7 (Fourth and Fifth Schedules inserted)

Inserts as the Fourth Schedule to the Principal Act a copy of the termination agreement.

Inserts as Schedule 5 to the Principal Act a description of the Mitchell Plateau area.

**ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT (TERMINATION)
BILL 2015
EXPLANATORY MEMORANDUM**

FOURTH SCHEDULE

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

PARTIES

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (“**the State**”), Mitchell Plateau Bauxite Co. Pty Ltd and Alcoa of Australia Ltd (together “**the Company**”).

RECITALS

- A. Provides details of the State Agreement dated 17 November 1971 as originally ratified by the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971* (WA) and of past variations made to it. The State Agreement as so varied is called “**The Principal Agreement**”.
- B. Advises that the State and the Company wish to terminate the Principal Agreement in the manner and on the terms set out in the Termination Agreement.

OPERATIVE CLAUSES

Definitions

Clause 1

Provides the following definitions:

“**Agreement Act**” defined as the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971* (WA).

“**Cape Bougainville Mining Leases**” defined as mining leases 80/47 to 80/60, inclusive.

“**LAA**” defined as the *Land Administration Act 1997* (WA).

“**Mining Act**” defined as the *Mining Act 1978* (WA).

“**Operative Date**” has the meaning given in clause 3(2).

“**Right of Occupancy**” defined as the right of occupancy in respect of the Temporary Reserve referred to in, and renewed pursuant to, the Principal Agreement.

“**Temporary Reserve**” means Temporary Reserve 5610H.

“**this agreement**”, “**hereof**” and “**hereunder**” refers to this Agreement, whether in its original form or as from time to time added to, varied or amended.

**ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT (TERMINATION)
BILL 2015
EXPLANATORY MEMORANDUM**

Interpretation

Sets out principles for interpreting the Termination Agreement.

Ratification and operation

Clause 3(1)

Provides that the Termination Agreement (except clauses 1 to 3) does not come into operation except in accordance with clause 3(2).

Clause 3(2)

Provides that the Termination Agreement (except clauses 1 to 3) comes into operation on the day that it is ratified by an Act of Parliament (“**the Operative Date**”) unless it terminates prior to that day under clauses 3(4) or 3(5). Accordingly, by virtue of section 6 of the Act (the provision that ratifies the Termination Agreement) coming into operation the day after the Act receives Royal Assent (in accordance with section 2(b) of the Act), the Operative Date is the day after the Act receives Royal Assent.

Clause 3(3)

The State commits to introduce a Bill into State Parliament prior to 31 March 2015, or such later date as the parties may agree and must endeavour to secure its passage as an Act.

Clause 3(4)

Provides, unless the parties otherwise agree, for the termination of the Termination Agreement (and without any party having a claim against any other) if by 31 December 2015 the Bill has not been ratified by an Act of the Parliament.

Clause 3(5)

Specifies that if the Principal Agreement is determined on a day prior to the Operative Date, then the Termination Agreement will also terminate on and from that day, and without any party having a claim against any other.

Termination of Principal Agreement

Clause 4(1)

States, subject to the remainder of this clause, that the Principal Agreement is terminated on and from the Operative Date and without the State or the Company having any claim against the other except as otherwise provided in the Termination Agreement.

Clause 4(2)

Provides that, 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.

**ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT (TERMINATION)
BILL 2015
EXPLANATORY MEMORANDUM**

Clause 4(3)(a)

Provides that for the period on and from the Operative Date, notwithstanding subclause (1), the Cape Bougainville Mining Leases 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 Principal Agreement.

Clause 4(3)(b)

Provides that for each of the Cape Bougainville Mining Leases for the period from and including the Operative Date up to and including the earlier of:

- (i) the date of expiry of the current term of the mining lease; and
- (ii) the date on which the companies comprising the Company at the date of this Agreement cease to hold greater than a 30% interest in that mining lease (where such interest may be held individually by one of those companies or by both of them in the aggregate),

the holder of that mining lease shall not be required:

- (iii) to comply with the expenditure conditions prescribed by the Mining Act applicable to that mining lease; or
- (iv) to lodge a Form 5 (operations report-expenditure on mining tenement) in relation to that mining lease in compliance with the requirements of the Mining Act.

Clause 4(3)(c)

Provides that in relation to each of the Cape Bougainville Mining Leases, if exploration or mining expenditure has been incurred in the relevant reporting period in relation to that mining lease, then the holder of that mining lease must file, or cause to be filed, the mineral exploration report as required under section 115A of the Mining Act, at the times that would otherwise have been applicable if such exemption had not been granted.

Within three months after the Operative Date, the State shall cause an endorsement to be made in the register maintained under section 103F of the Mining Act that the provisions of this subclause apply to the Cape Bougainville Mining Leases.

Clause 4(4)

Provides that within 14 days after the Operative Date, the Company shall pay to the State an amount of \$760,000 to fund rehabilitation and other proposed on-ground activities of the State within the Temporary Reserve immediately before the Operative Date.

**ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT (TERMINATION)
BILL 2015
EXPLANATORY MEMORANDUM**

Clause 4(5)

Requires that subject to subclause (6), on and from the Operative Date the Company will indemnify and keep indemnified the State in respect of all actions, suits, claims etc of third parties arising out of or in connection with any work carried out by the Company or its assignees pursuant to the Principal Agreement or relating to their operations under the Principal Agreement.

The indemnity is to remain in force for a period of 20 years from the operative date.

Clause 4(6)(a)

Provides that the Company is not liable to indemnify the State and the State's employees, agents or contractors under subclause (5) or under the Principal Agreement to the extent that the relevant action, claim etc relates to activities carried out before the Operative Date by the State.

Clause 4(6)(b)

Provides that the Company is not liable to indemnify the State and the State's employees, agents or contractors to the extent that the relevant action, claim etc relates to rehabilitation or other on ground activities of the State undertaken after the Operative Date, as contemplated by subclause (4).

Clause 4(6)(c)

Provides that the Company is not liable to indemnify the State and the State's employees, agents or contractors to the extent that the relevant action, claim etc relates to earthworks or ground disturbances within the area of land comprised within the Temporary Reserve immediately before the Operative Date, relating to exploration activities conducted pursuant to the Principal Agreement.

Clause 4(6)(d)

Provides that the Company is not liable to indemnify the State and the State's employees, agents or contractors to the extent that the relevant action, claim etc relates to third party use after the Operative Date of works, services, plant or equipment constructed, operated or maintained by the Company within the Temporary Reserve immediately before the Operative Date (including the airstrip and the access road).

Clause 4(7)

States that, for the avoidance of doubt, a reference to matters or things in, under, pursuant to, conferred by or arising out of or in connection with the Principal Agreement for the purposes of this clause includes matters or things deemed to be so attributed to the Principal Agreement by section 6 of the Agreement Act.

Termination of Right of Occupancy

Clause 5(1)

States that the Right of the Occupancy shall be deemed to have been surrendered with effect on and from the Operative Date.

**ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT (TERMINATION)
BILL 2015
EXPLANATORY MEMORANDUM**

Clause 5(2)

States that the Company shall remain liable for any antecedent breach or default of the conditions of the Right of Occupancy.

Applicable Law

States that the Termination Agreement is to be interpreted in accordance with the laws of Western Australia.

**ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT (TERMINATION)
BILL 2015
EXPLANATORY MEMORANDUM**

FIFTH SCHEDULE

MITCHELL PLATEAU AREA

Division 1 – Description

Provides a description of the Mitchell Plateau area.

Division 2 – Map

Provides a map of the Mitchell Plateau area.

Division 3 – Coordinates

Provides a table of coordinates describing the Mitchell Plateau area.

**ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT (TERMINATION)
BILL 2015
EXPLANATORY MEMORANDUM**

Part 3 – Mining Act 1978 amended

Section 8 (Act Amended)

Provides that this Part amends the *Mining Act 1978*.

Section 9 (Section 6 amended)

Inserts a new subsection (4) into section 6 providing that the operation of the *Mining Act 1978* is subject to sections 5B and 5C of the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971*.