# Alcoa (Portland Aluminium Smelter) Act 1980

## Version No. 013

**No. 9434 of 1980**

Version incorporating amendments as at 8 February 2008

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Alcoa (Portland Aluminium Smelter) Act 1980
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Version incorporating amendments as at 8 February 2008

An Act to ratify validate approve and otherwise give Effect to an Agreement between the Premier for and on behalf of the State of Victoria and Alcoa of Australia Limited with respect to the establishment of an aluminium smelter at Portland in the State of Victoria and for the Granting of certain other Rights incidental to establishing and carrying on such a smelter and for other purposes.

Preamble
WHEREAS Alcoa of Australia Limited a company incorporated in the State of Victoria is desirous of establishing an aluminium smelter on certain lands at Portland:

AND WHEREAS an Agreement to facilitate the establishment of the said aluminium smelter has been entered into between the Premier of the State of Victoria and the company:

AND WHEREAS the said Agreement is expressed to be subject to ratification by the Parliament of Victoria:

AND WHEREAS it is expedient in the public interest to ratify validate approve and give the effect of law to the said Agreement and to make other provision as hereinafter enacted:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):
1 Short title and commencement

(1) This Act may be cited as the Alcoa (Portland Aluminium Smelter) Act 1980.

(2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

2 Definition

(1) In this Act unless inconsistent with the context or subject-matter—

*The Agreement* means the Agreement a copy of which is set out in the Schedule and includes the Agreement as varied from time to time.

(2) Expressions used in this Act and which are also used in the Agreement shall have the meanings respectively assigned to them in the Agreement.

3 Act to bind Crown

This Act shall bind the Crown.

4 Ratification of Agreement

(1) The Agreement is hereby ratified validated and approved and given the force of law and shall take effect as though its provisions had been expressly enacted in this Act.

(2) The following provisions shall be read as in aid of and not in derogation from the provisions of the last preceding subsection—

(a) the Premier and all other Ministers of the State of Victoria and all public statutory corporations and all officers concerned are hereby empowered to carry out the Agreement and to enter into such agreements and to give such approvals as are provided for by it; and
(b) the provisions of the Agreement relating to the extinguishment and removal of easements and the sale of land referred to in clause 5(b) and clause 5(c) of the Agreement shall take effect, by force of this Act and without any further authority.

4A Variation of Agreement

(1) The Agreement may be varied by agreement between the Premier of Victoria and the Company with the approval of the Governor in Council by Order in Council containing particulars of the variation published in the Government Gazette.

(2) Unless and until each House of Parliament passes a resolution in accordance with subsection (6) disallowing an Order in Council varying the Agreement, the provisions of the agreement making the variation shall have the force of law on and after the date on which the Order was published in the Government Gazette as though the provisions of the agreement were expressly enacted in this Act.

(3) An Order in Council made pursuant to subsection (1) shall, upon publication in the Government Gazette, be judicially noticed and that publication shall be conclusive evidence of the variation to the Agreement set out in the Order.

(4) A copy of each Order in Council made pursuant to subsection (1) shall be laid before both Houses of Parliament on or before the sixth sitting day after the publication of the Order in the Government Gazette.

(5) An Order in Council made pursuant to subsection (1) shall be disallowed if each House of Parliament passes a resolution in accordance with subsection (6).
(6) A resolution to disallow an Order in Council made pursuant to subsection (1) is passed in accordance with this subsection where—

(a) notice of the resolution is given in each House of the Parliament on or before the 18th day upon which that House sits after the Order in Council is laid before that House; and

(b) the resolution is passed on or before the 12th day upon which that House sits after the notice of resolution has been given in that House.

(7) The power of each House to pass a resolution disallowing an Order in Council under this section is not affected by the prorogation or dissolution of the Parliament or of either House of the Parliament and, where there is such a prorogation or dissolution, the calculation of days upon which a House has sat shall be made as if there had been no such prorogation or dissolution.

(8) Notice of a resolution to disallow an Order in Council may be expressed to apply to all or any part of the particulars of the variation contained in the Order in Council and a resolution to disallow all or any part of those particulars shall take effect according to its tenor.

(9) Where a resolution is passed disallowing part only of the particulars of the variation contained in an Order in Council, the particulars not disallowed shall be of no effect unless and until each of the Premier of Victoria and the Company gives notice to the other expressing an intention to be bound by the particulars not disallowed, or by part of those particulars, and, where notice is so given, the particulars, or part of the particulars, take effect accordingly.
(10) Where an Order in Council is disallowed by Parliament in accordance with subsection (6), the disallowance shall have the like effect to the repeal of an enactment.

(11) This section is in addition to and not in derogation from the power conferred by the Agreement for the Premier of Victoria and the Company to enter agreements or arrangements for better giving effect to the provisions of the Agreement.

5 Governor in Council shall grant lease etc.

Notwithstanding anything to the contrary in any other Act or in any lease licence proclamation reservation declaration or dedication of or with respect to any unalienated Crown land which may prohibit or restrict the grant of any lease easement or licence of any unalienated Crown land the Governor in Council shall grant to the company any lease easement licence or other authority necessary or expedient to enable the company to develop the company land for use as an aluminium smelter and associated purposes and without limiting the generality of the foregoing to enable the company—

(a) to construct the conveyor over, on or under any Crown land;

(b) to operate inspect maintain and repair any part of the conveyor for the purposes of and associated with the smelter for as long as the company occupies the company land or any part thereof or for a period of 99 years from the production date (whichever is the shorter period);
(c) to supply electricity from the company land to the conveyor and over, on or under the land over, on or under which the conveyor is constructed to the berth.

6 Powers of public statutory corporations re leases etc.

Notwithstanding anything to the contrary in any other Act or in any lease licence proclamation reservation, declaration, or dedication of or with respect to any land vested in or under the care and management of any public statutory corporation, (including but without limiting the generality of the foregoing the Port of Portland Authority), any public statutory corporation may upon such conditions as are agreed upon by the respective public statutory corporation and the company, and shall if the Governor in Council so determines and upon such conditions as the Governor in Council determines, grant to the company any lease easement licence or other authority of the kind referred to in the last preceding section of or over—

(a) any land vested in the relevant public statutory corporation; or

(b) any land under the care and management of the relevant public statutory corporation and without limiting the generality of the foregoing to enable the company to construct any part of the conveyor over, on or under any such land, to supply electricity over, on or under the land over, on or under which the conveyor is constructed to the berth and to operate, inspect, maintain and repair any part of the conveyor or the electricity supply.
7 Port of Portland Authority lease or licence empowered

(1) Notwithstanding anything to the contrary in any other Act or in any lease licence proclamation reservation declaration or dedication of or with respect to any land including any berths of the Port of Portland Authority and without limiting the operation of sections 5 and 6 the Governor in Council shall upon such conditions as he thinks fit direct the Port of Portland Authority to grant to the company a lease or licence over any land including any berths vested in the Port of Portland Authority for a term of not more than 99 years to enable the company to construct any part of the conveyor over on or under such land to supply electricity over on or under such land and to operate inspect maintain and replace any part of the conveyor or the said electricity supply.

(2) The right title property and possession in or over all improvements fixtures attachments structures of whatever nature or kind in over or under or connected with the conveyor or the said electricity supply shall remain with the company notwithstanding the determination cessation or termination of the lease or licence referred to in the preceding subsection and the same shall be removed by the company at any time during or within twelve months after termination of the said lease or licence unless alternative arrangements satisfactory to the lessor are made.

(3) Where the Company determines or terminates the lease or licence or the lease or licence ceases the Company shall take all steps to restore the area concerned to a condition satisfactory to the lessor unless alternative arrangements are made pursuant to subsection (2).
8 Power to terminate existing lease

(1) The Governor in Council may terminate any lease of or with respect to land which is unalienated Crown land or is vested in any public statutory corporation (including but without limiting the generality of the foregoing the Port of Portland Authority) prior to the grant to the company of any lease easement licence or other authority of or with respect to such land in accordance with the provisions of this Act and may pay an amount by way of compensation in respect of such termination.

(2) In determining whether any or what amount is to be paid by way of compensation in respect of any termination of lease under subsection (1) the Governor in Council shall in each case have regard to and is hereby empowered and directed to determine the compensation payable as the Governor in Council thinks just to award in the particular circumstances of the case having regard to the principles set out in Part 4 of the Land Acquisition and Compensation Act 1986.

9 Public statutory corporation may enter into agreements

Where any public statutory corporation has power to construct pipelines water mains sewerage works gas mains powerlines wharf facilities or other similar structures and to purchase or acquire land compulsorily for that purpose or to enter into contracts for the supply of goods or services any such corporation may enter into an agreement with the company or any company managing or operating the smelter which provides for the cooperation between the public statutory corporation and any such company in the construction of pipelines water mains sewerage works gas mains powerlines wharf facilities or other similar
structures required for their respective purposes or for the supply of goods or services and the parties to any such agreement are hereby authorized to do all things necessary or expedient to carry out any such agreement and to give or receive indemnities in any such agreement.

10 Company to comply with practice etc.

The company in constructing and operating the smelter and all associated works on the company land, the berth, and the conveyor shall—

(a) comply with accepted modern practices for the construction and operation of such a smelter and works of a like nature; and

(b) comply with any Act applicable to the construction and operation of the smelter and associated works.

11 Direction to Registrar of Titles

(1) The Registrar of Titles must make any recordings in the Register that are necessary or expedient because of this Act and the holder of any relevant certificate of title must if requested to do so deliver it to the Registrar of Titles.

S. 11 inserted by No. 10115 s. 13.

S. 11(1) substituted by No. 18/1989 s. 13(Sch. 2 item 4).

S. 11(2) repealed by No. 85/1998 s. 24(Sch. item 3).
12 Restriction on use of land adjoining smelter site

(1) Notwithstanding anything contained in the Planning and Environment Act 1987 or any planning scheme under that Act or in any other Act, the land described in the third annexure to the Agreement shall not be used or developed for any purpose which will adversely affect or be incompatible with the operation of the smelter and the disposal of aluminium and waste products produced in the smelter.

(2) Nothing in subsection (1) affects any right to use the land described in the third annexure to the Agreement for the purposes of recreational shooting or for surfing subject to any planning scheme applying to that land.

13 Exemption from Aboriginal Heritage Act 2006

The Aboriginal Heritage Act 2006 does not apply—

(a) to the smelter site except the five sites being the sites or land to which the Order of His Honour Mr Justice Southwell made on 24 February 1982 in the Supreme Court action entitled No. 9450 of 1980 applies;

(b) to the land occupied or used for the purposes of the conveyor; or

(c) to any act done or activity carried on—

(i) upon or in relation to the smelter site or land occupied or used for the purposes of the conveyor; or

(ii) in the course of or in relation to the construction or operation of the smelter or the conveyor.
14 Application of certain Acts to trustee

(1) A reference in the Treasury Corporation of Victoria Act 1992 to a participating authority includes a reference to—

(a) Perpetual Executors Nominees Limited as trustee for the time being for the Portland Smelter Unit Trust;

(b) any other trustee for the time being for the Portland Smelter Unit Trust; and

(c) a trustee appointed for the purposes of a deed approved under Division 6 of Part IV of the Companies (Victoria) Code or Division 5 of Part 7.12 of the Corporations Law of Victoria relating to the establishment and operation of the aluminium smelter at Portland—

which has given notice in writing to the Treasury Corporation of Victoria and has been accepted by that Corporation as a participating authority.

15 Valuation of land under clause 5(c) of the Agreement

The reference in clause 5(c) of the Agreement to a valuation to be determined by the Valuer-General is a reference to the valuation determined by the Valuer-General as at 27 July 1984.
SCHEDULE

AGREEMENT

This Agreement is made the Second day of September One thousand nine hundred and eighty between the Honorable Rupert James Hamer in his capacity as the Premier for the time being of the State of Victoria for and on behalf of the said State of the one part and Alcoa of Australia Limited a company incorporated in the State the registered office of which is situated at 535 Bourke Street, Melbourne in the State of the other part—

Recitals

Whereas—

I. The Company is desirous of establishing an aluminium smelter at Portland in the State.

II. The parties acknowledge that this Agreement is predicated on the basis of the development by stages of a smelter capable of production of 530 000 tonnes of aluminium per annum and that the Environment Effects Statement exhibited during the year 1980 pursuant to the Environment Effects Act 1978 involved an assessment of the smelter to that production capacity.

III. The State for the purpose of encouraging the economic development of the State and the promotion and establishment of new industries desires to assist the Company in establishing the smelter.

IV. Before the Company incurs the expenses involved in the establishment of the smelter it requires certain rights and powers incidental to the establishment and carrying on of the smelter being assured to it.

V. In order to effect the establishment and carrying on of the smelter the parties hereto are desirous of entering into the Agreement following so that upon its ratification validation and approval by the Parliament of the State the Agreement will have full force and effect of law and will become binding on the State and the Company in manner hereinafter appearing.

VI. The parties to the Agreement acknowledge that the lands described in the Schedule are to be used for the purposes set out in the Agreement.

Now it is hereby agreed as follows:
PART 1

PRELIMINARY

1. Definitions

(a) In this Agreement unless inconsistent with the context or subject-matter—

"The Act" means the Act of Parliament of Victoria to be passed to ratify validate approve give the force of law and otherwise give effect to this Agreement;

"Alumina" means the refined product of bauxite or aluminium oxide;

"Aluminium" means the reduced metallic product of alumina or other aluminium bearing substances;

"Apparatus and works" for the purposes of clause 5(d) has the same meaning as in the Pipelines Act 1967 (as amended);

"Approve" "approval" "notify" "request" or "require" means approve, approval, notify, request, or require in writing as the case may be;

"Associated company" means—

(i) any company, which establishes manufacturing operations on or adjacent to the smelter site and whose business is or operations are substantially dependent on the products or services of the Company and in which the Company holds directly or indirectly not less than 20 per centum of the issued capital and of which the Company gives notice in writing to the State;

(ii) any company of which the Company is a subsidiary within the meaning of the Companies (Victoria) Code;

(iii) any company which is a Subsidiary company of the Company; or

(iv) any person or company with which the Company carries on any business relating to the smelter in partnership or in joint venture;
"Berth" means the berth or berths to be constructed and set aside for the exclusive use of the Company for unloading bulk cargo in Portland harbor and includes that area of the land adjoining the berth to the existing breakwater and equipment ancillary thereto;

"Bulk cargo" means any quantity of alumina or other bulk materials used in an aluminium industry including alumina and any other materials for use by the Company or by any Subsidiary Company or by any Associated company in connexion with its operations in that industry which is unloaded in bulk from any vessel by means of a pipeline conveyor or grab or other usual means of handling bulk cargo;

"Commencement date" means the date on which this Agreement comes into operation being the day on which the Agreement is executed by the parties hereto;

"Company" means Alcoa of Australia Limited, its successors and permitted assigns and any one or more Associated companies and any partnership comprising Alcoa of Australia Limited and any one or more Associated companies and any joint venture comprising Alcoa of Australia Limited and any one or more Associated companies;

"Company land" means all that land described in the second annexure hereto and any other land which the Company purchases hereafter for use including buffer purposes for or in conjunction with the smelter;

"Conveyor" means the mechanical structure and machinery constructed for the purpose of conveying or carrying materials to the smelter site over, on or under the land shown as the route marked on the Drawings Nos 4496 and 4510 drawn for the Portland Harbor Trust Commissioners on 28 February 1980 and Drawings Nos B1-002920-PV, B1-002921-PV and B1-002922-PV drawn for Alcoa of Australia Limited on 28 June 1982 or on such other drawings as may be agreed between the Port of Portland Authority and the Company in substitution therefor;

"Governor in Council" has the same meaning as in the Acts Interpretation Act 1958 (as amended);

"Hydrocarbon" has the same meaning as in the Pipelines Act 1967 (as amended);
"Month" means calendar month;

"Person" or "persons" includes bodies corporate;

"Pipeline" has the same meaning as in the Pipelines Act 1967 (as amended);

"Portland Harbor" means the bed, soil and shores of the waters and the lands vested in the Port of Portland Authority;

"Port of Portland Authority" means the Authority under the Port of Portland Authority Act 1958 (as amended);

"Potline" means a series of electrolytic cells connected electrically for the purpose of smelting alumina or other aluminium bearing mineral to aluminium;

"Production date" means the date upon which the Company after the erection and establishment of the smelter commences continuous production in commercial quantities of aluminium therefrom being a date to be notified to the State by the Company within one month of the commencement;

"Public statutory corporation" means any body corporate established by or pursuant to any Act for any public purpose and, without affecting the generality of the foregoing, includes a municipality;

"Smelter" means the electrolytic reduction plant for the conversion of alumina or other aluminium bearing mineral to aluminium and such other plant ancillary to the electrolytic reduction and metal casting to be erected on the smelter site and includes all expansion of and additions thereto from time to time;
"Smelter site" means such area of land in the Parish of Portland being four hundred and sixty hectares more or less within the boundaries described in the first annexure hereto and any other company land which the Company in its sole discretion uses for or in conjunction with the smelter;

"The State" means the State of Victoria;

"Subsidiary company" means a subsidiary within the meaning of the Companies (Victoria) Code.

(b) Where in this Agreement the context requires or admits the plural number includes the singular and vice versa.

(c) The headings, and side-notes shall not affect the interpretation of the Agreement.

(d) In this Agreement, a reference to a company includes a reference to a corporation wheresoever incorporated or domiciled.

2. Agreement to be ratified by Act of Parliament

Divisions A, B and C of Part II of this Agreement shall be of no force or effect neither shall either party have any claim against the other in respect of any matter arising out of or in connexion with these Divisions of Part II until—

(a) the agreement has been ratified validated approved and given the force of law by an Act of Parliament of Victoria; and

(b) clause 3 is complied with in full.
3. Agreement subject conditions precedent

(a) Notwithstanding that this Agreement comes into operation on the Commencement date Division A, B and C of Part II of this Agreement shall not come into operation until the first day of the month following the date upon which the last of the following events occurs—

(i) the coming into operation of the Act referred to in clause 2 hereof;

(ii) the construction and operation of the Smelter and all associated works is a permissible land use under the law relating to town and country planning;

(iii) the proposed site of the aerodrome is zoned to permit the construction of an aerodrome and all associated works under the law relating to town and country planning;

(iv) agreements have been executed and come into operation between the Company and the relevant authorities in relation to—

(aa) municipal rates and charges;

(bb) water rates and charges;

(cc) sewerage rates and charges;

(dd) wharfage rates and charges;

(v) agreements have been executed and come into force between the Company and the State Electricity Commission of Victoria in relation to the supply of electricity and the tariffs and charges for the supply of such electricity to the Company at the Smelter site;

(vi) an order by the Governor in Council authorizing the construction by the State Electricity Commission of Victoria of a 500kv powerline from Sydenham to the Smelter site at Portland has been published in the Government Gazette.

(b) A certificate of the responsible Minister as to the date upon which the events referred to in paragraphs (i), (ii) and (iii) of sub-clause (a) have occurred and a certificate by the secretary of the Company that the events referred to in paragraphs (iv) and (v) of sub-clause (a) have occurred shall be conclusive and binding upon the parties.
(c) Where any of the events mentioned in sub-clause (a) other than the event mentioned in sub-paragraph (iii) does not occur prior to the 31st day of December One thousand nine hundred and eighty or where the event mentioned in sub-paragraph (iii) does not occur prior to the 1st day of September One thousand nine hundred and eighty then either party may determine this Agreement at any time thereafter before all of such events shall have occurred by giving to the other notice in writing to that effect and thereupon this Agreement shall be at an end and neither party shall have any claim against the other in respect of any matter arising out of or in connection herewith.

PART II

DIVISION A—OBLIGATIONS OF THE COMPANY

4. Obligations of the Company

Subject to the performance by the State from time to time of the obligations imposed on it by this Agreement the Company shall—

(a) after the Commencement date and without undue delay commence and complete construction of a Smelter with an initial production capacity of not less than 120 000 tonnes of aluminium per annum and thereafter maintain operate and use the Smelter and all additions and alterations thereto during the operational life of the Smelter;

(b) use its best endeavours to commence continuous production in commercial quantities of aluminium by the 1st day of November one thousand nine hundred and eighty-six;

(c) endeavour to procure the provision of houses for the employees required to operate the smelter.
DIVISION B—OBLIGATIONS OF THE STATE

5. Obligations of the State

The State shall—

(a) facilitate and assist in deciding with the relevant authorities as to the date of closure of the Portland Aerodrome existing at the Commencement date and as to a site for a new aerodrome in lieu thereof by the 1st day of September One thousand nine hundred and eighty;

(b) facilitate the granting to the Company of an industrial development lease pursuant to section 137A of the Land Act 1958 (as amended) of such Crown land (including any land surrendered to the Crown by the Port of Portland Authority) in the Parish of Portland within the boundaries described in the First Annexure hereto as the Company requires to lease under an industrial development lease for the purposes of the Smelter and ancillary works including buffer purposes and further when the Company has commenced the development of the said leased land pursuant to the aforementioned industrial development lease for the purposes of the Smelter or associated works then the State shall sell at a fair and reasonable valuation to be determined by the Governor in Council the said leased land to the Company in fee simple;

(c) sell to the Company in fee simple at a fair and reasonable valuation to be determined by the Valuer-General such land in the Parish of Portland within the boundaries described in the First Annexure hereto as the Company requires for the purposes of the Smelter and ancillary works including buffer purposes and further that should such land be vested in the Port of Portland Authority at or before the Commencement date then the State shall ensure that the Authority will divest themselves of such land by surrendering all such land to the Crown pursuant to section 19(4) of the Port of Portland Authority Act 1958 (as amended) or pursuant to any corresponding statutory enactment and that such surrender of land shall enable the Governor in Council to sell the land to the Company subject to such covenants, conditions, exceptions and reservations as he thinks fit;
(d) in accordance with the **Pipelines Act 1967** (as amended) ensure that any permits and licenses are granted as soon as the Company or any Associated company and any company that enters into a joint venture agreement with the Company or any Associated company, have complied with the requirements of the **Pipelines Act 1967** (as amended) for the purposes of—

(i) the conveying and using of hydrocarbon substances including the construction of pipelines; and

(ii) constructing, operating and maintaining apparatus and works in connexion with the conveying and using of hydrocarbon substances—

in connexion with the purposes and operating of the Smelter;

(e) upon the Company becoming registered as the proprietor of the whole or part of the Company land including the land referred to in sub-clauses 5(b) and 5(c) and upon application by the Company pursuant to the provisions of the **Local Government Act 1958** (as amended) or the **Land Act 1958** (as amended) shall cause such roads as adjoin the said land and are the subject of any such application to be closed and all rights thereon extinguished and shall sell the same to the Company at fair and reasonable valuation to be determined by the Valuer-General for an unencumbered estate in fee simple;

(f) take all necessary steps to extinguish all drainage reserves on the land more particularly described in Certificates of Title Volume 8895 Folio 969 and Volume 8924 Folio 518;

(g) ensure the grant on reasonable terms by all relevant authorities in favour of the Company of all necessary licences and permits to enable the Company to erect maintain and use at all times the Conveyor to convey alumina and other bulk cargo from the Berth to the Smelter site;
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(h) assist the Port of Portland Authority in arranging for the construction of the Berth in the existing Portland Harbor for exclusive use by the Company for the handling of bulk cargo;

(i) ensure that adequate navigational aids and other normal harbor services are established and maintained in good order and condition for both day and night operation including without limiting the foregoing the provision of an adequate pilotage service at rates not exceeding those charged for such services to any vessels not associated with the Company;

(j) cause a licence to be granted on reasonable terms to the Company over the berth for the purpose of handling bulk cargo and cause the licence so granted to be maintained in full force and effect subject to compliance by the Company with its terms;

(k) facilitate through the State Electricity Commission of Victoria the provision to the Company and to each of the Associated companies that are operating on the site at such a point or points within the site as may be agreed between the Commission and the Company and the Associated companies a supply of electricity up to 520 megawatts as may be required from time to time for construction operational and related purposes of the Company and the Associated companies at the time and under the terms and conditions as are agreed between the Commission and the Company and the Associated companies for a minimum of 30 years from the Production date.

(l) facilitate the provision by the Portland Water Board and its successors to the Company at the Smelter site of an adequate supply of water for construction and operational purposes at rates to be agreed between the Portland Water Board and its successors and the Company which rates shall not adversely discriminate against the Company and further the Company land may be excluded from the area designated as an urban district pursuant to section 233 of the Water Act 1958 (as amended) so that the Governor in Council is specifically empowered to make an order pursuant to section 163 of the Water Act 1958 (as amended) to enable a special rate to be levied with respect to the Company land;
(m) facilitate the granting of any licences and permits to allow the Company to sink bores on the Company land in accordance with the *Groundwater Act 1969* (as amended);

(n) permit the Company to carry out such works and construction to enable the storage of water and the erection of associated waterworks operations for the purposes of providing water to the Smelter and associated works;

(o) ensure that the public roads leading from the Smelter site and the Company land to the main trunk roads at or through Portland are maintained in a condition adequate for the transport requirements of the Company during the construction and operation of the Smelter and there shall be no claim against the Company for direct contribution towards the cost of that maintenance;

(p) endeavour to ensure that all relevant ministers and authorities will—

(i) grant and issue to the Company (and suppliers to or contractors with the Company and sub-contractors of such contractors) any licence if required, subject to usual licensing conditions including safety restrictions to transport by road goods and materials required for the construction repair operation or maintenance of the Smelter on the Smelter site as the Company in its sole discretion may require to transport;

(ii) ensure that the appropriate fee charged to the Company (and suppliers to or contractors with the Company and sub-contractors of such contractors) for any licences if required with respect to road transport will not be such as to adversely discriminate against the Company its said suppliers or contractors or sub-contractors of such contractors;

(q) liaise with the Commonwealth Department of Aviation and support the issue if necessary of approvals or consents to the construction of an airstrip or helicopter pads for the exclusive use of the Company should the Company in its sole discretion require such facilities;
(r) facilitate the adequate provision of sewerage works and facilities for the purposes of the Company and the Associated companies through the Portland Water Board and its successors the Portland Town Council and all other relevant public statutory corporations;

(s) assist the Company and its employees in obtaining finance from the State financing bodies for or towards the construction, purchase or provision of housing of employees;

(t) assist authorities responsible for the provision of infrastructure and services required in and around the town of Portland (including items such as education, sewerage and water facilities) as the town expands subsequent to the construction of the Smelter.

(u) not impose nor take nor (insofar as it is competent to do so) permit nor authorize any of its agencies or instrumentalities or any local or other authority or Minister of the Crown or public statutory corporation of the State to take or cause to occur any action or combination of actions, including, without limitation, the imposition of any taxes, rates or charges of any nature whatsoever, which—

(i) has the effect of modifying or subtracting from the Company's or the Smelter manager's rights or adding to any of their obligations or modifying or subtracting from the obligations or adding to the rights of the State or any participant in a joint venture related to the Smelter in which the State has an interest, in each case under the Agreement or any other agreement relating to the Smelter or any partnership or joint venture relating to the Smelter;

(ii) is discriminatory to, or has a discriminatory effect on, or is directed at the Smelter or the Company or any partnership or joint venture related to the Smelter or any participant in such a partnership or joint venture; or
(iii) discriminates adversely between the Company and other industrial or commercial enterprises in the State or between Alcoa of Australia Limited and any Associated company in respect of the income, titles, property or other assets, products, materials or services used or produced by or through the operation of the Smelter and the disposal of aluminium and waste products produced in the Smelter or is discriminatory to the aluminium industry or is directed at the aluminium industry;

(v) not, without the consent of the Company, resume nor (in so far as it is competent to do so) suffer nor permit to be resumed, other than for the purpose of a 'public project' as defined in the Public Lands and Works Act 1964 (as amended), any of the works installations plant equipment or other property for the time being belonging to the Company and the subject of or used for the purpose of this Agreement where to do so would unduly prejudice or interfere with the Company's operations hereunder; and

(w) make such representations as may be necessary to the Commonwealth with respect to, and use its good offices in relation to, the remedy or amelioration of or removal by the Commonwealth of any adverse effect on the progress or cost of the construction and operation of the Smelter or on the Smelter, the Company, any partnership or joint venture or any participant in such partnership or joint venture, any Smelter manager, this Agreement or any other agreement relating to the Smelter resulting from Commonwealth Government policies including, without limiting the generality of the foregoing, the imposition of import duties, as soon as practicable after the occurrence of such effect.

DIVISION C—FINANCIAL

6. State to facilitate negotiations

The State shall facilitate negotiations by the Company with—
(a) the Port of Portland Authority in accordance with section 27A(c) and section 45(1)(h) of the Port of Portland Authority Act 1958 (as amended) an agreement with the Company to fix the maximum wharfage charges including escalation on both inward bulk cargo and outward cargo for the whole period of the Smelter operation from the Commencement date.

(b) the Portland Water Board or its successors or the Portland Town Council for long term agreements with the Company with respect to the capital charges for the provision of sewerage facilities and for the disposal of trade waste throughout the operation of the Smelter from the date of the commencement of the construction of the Smelter and associated developments notwithstanding any provision in the Sewerage Districts Act 1958 (as amended) the Local Government Act 1958 (as amended) or any other statutory provision relating to charges or rates with respect to the provision of sewerage facilities;

(c) the Portland Town Council for a long term agreement with the Company regarding the rating of the Company land under section 811BA of the Local Government Act 1958 (as amended) for a period of years from the Commencement date.

7. Undertaking by State

The State shall—

(a) assist the Company and the Portland Town Council to reach agreement prior to the re-commencement of construction of the Smelter to amend or replace the agreement dated 24 December 1980 (as amended by supplemental agreements dated 16 June 1981, 14 January 1982, 26 March 1982 and 18 June 1984) relating to municipal rating to—

(i) provide for any increase in the base level of rates to be limited to no more than the percentage increase applicable to other rate-payers in the town of Portland;

(ii) provide for the recognition of payments made by the Company prior to production date;

(iii) provide for the level of rates and other infrastructure payments payable to be reasonably determined having regard to relevant criteria including comparability with
the level of rates and other infrastructure payments payable in relation to other aluminium Smelters in Australia;

(iv) provide for the adjustment of rates if the construction of the Smelter is deferred or the Smelter is not operational for any extended period; and

(v) provide for the construction village to be included in and assessed for rates in accordance with the agreements until the completion of construction of the second potline to the Smelter;

(b) assist the Company and the Portland Water Board to reach agreement to amend the agreement dated 26 March 1982 relating to water supply to—

(i) provide for the construction village to be included in and assessed for rates in accordance with the agreement until the completion of construction of the second potline of the Smelter;

(ii) provide for the recognition of water rates paid since the deferment of the Smelter project; and

(iii) amend the definitions in and terms of the agreement to reflect the current status of the Smelter;

(c) assist the Company and the Portland Water Board to reach agreement to amend the agreement dated 26 March 1982 relating to sewerage to—

(i) provide for the construction village to be included in and assessed for rates in accordance with the agreement until the completion of construction of the second potline of the Smelter;

(ii) provide for the recognition of sewerage rates paid since the deferment of the Smelter project; and

(iii) provide for a review of the charges to be paid for termination of the agreement if the Company installs its own sewerage treatment plant; and
(iv) amend the definitions in and terms of the agreement to reflect the current status of the Smelter; and

(d) assist the Company and the Port of Portland Authority to reach agreement to amend the agreement dated 9 February 1981 relating to Portland Harbor to—

(i) provide for the assignment or novation of the agreement by the Company to the Company and any persons entering into partnership or joint ventures with it;

(ii) provide for consultation with the Company prior to development works or proposals proceeding on the land described in the third annexure to this Agreement;

(iii) provide for the new Quarry Road to become a public road as soon as possible;

(iv) amend the definitions in and terms of the agreement to reflect the current status of the Smelter; and

(v) clarify the clauses relating to the supply of electricity and the respective rights of the Company and the Port of Portland Authority with respect to the conveyor.

DIVISION D—GENERAL

8. Force majeure

(a) This Agreement is made subject to any delay in the performance of any obligation or obligations under this Agreement which may be occasioned by or arise from any circumstances whatsoever beyond the power and control of the party responsible for the performances of such obligation, including but without limiting the generality of the foregoing delay caused by or arising from act of God, act of war, force majeure, act of public enemies, industrial disputes, lock-outs (except of the company's own employees), restraint of labour, or other similar acts, whether partial or general, shortage of essential materials from the usual source of supply, reasonable failure to secure or delays of contractors, riots, civil commotion, earthquake, flood, storm, tempest, washway, fire (unless caused by the fault of the party responsible for
such performance), breakage in electricity wires to the Smelter or berth and inability or delay in obtaining any Government or local authority approval, permit or licence and a failure by either party to perform its obligations for any such reason shall not be deemed a breach of this Agreement and such obligation shall be performed within a reasonable period following the cessation of the circumstances which so delayed it.

(ab) The party whose performance of any obligation is delayed by a circumstance referred to in sub-clause (a) shall keep the other party or, where by virtue of the operation of clause 8A the parties are more than two, the other parties, promptly informed of each event alleged to constitute such circumstance, of the likely duration of such delay as a consequence thereof and of the cessation of such circumstance and shall use its best endeavours to minimize the effect of such circumstance as soon as practicable after the occurrence thereof, provided that a party shall not be required to settle any industrial dispute on terms which in its opinion are not satisfactory.

(b) The Premier and the Company may from time to time enter into agreements or arrangements for better giving effect to the provisions of this Agreement.

(c) If the Company—

(i) enters into liquidation (other than a voluntary liquidation for the purpose of reconstruction); or

(ii) delays the commencement of the construction of the Smelter beyond the period of two years from the Commencement date for any cause other than those specified in paragraph (a) of this clause; or

(iii) abandons or repudiates this Agreement—

the State may by notice in writing determine this Agreement but such determination shall not affect the enforcement of any right, obligation or liability theretofore acquired accrued or incurred.

(d) Without affecting the liability of the parties to each other under this Agreement either party shall have the right from time to time to entrust to other persons the performance of such portion or portions of its
obligations and operations authorized under this Agreement as it may consider expedient.

(e) Except as provided under this clause the Company shall not assign or otherwise deal with this Agreement or any part of this Agreement—

(i) the Company may assign the whole or any part of this Agreement to any Associated company or to a corporation which within the meaning of section 7(5) of the Companies (Victoria) Code (as amended) is deemed to be related to the Company.

(ii) the Company may assign this Agreement or any part of this Agreement otherwise than is provided in sub-clause (i) with the consent in writing of the Premier which consent shall not be unreasonably withheld and subject to such reasonable conditions as the Premier thinks fit.

(g) Any notice consent or other writing authorized or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Premier or other Minister of the Crown acting on his behalf and forwarded by prepaid post to the Company at its registered office in the State and by the Company if signed by a director or the secretary of the Company in the State, and forwarded by prepaid post to the Premier and any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of the post.

(h) Notwithstanding any provision hereof the State may at the request of the Company from time to time extend any period or date referred to in this Agreement for such period or to such later date as the State and the Company agree and the extended period or later date when confirmed in writing shall be deemed for all purposes hereof substituted for the period or date so referred to herein.
8A. Entering of partnership or joint venture

(1) If Alcoa of Australia Limited enters into partnership or joint venture with any person for the purpose of carrying on either or both of the establishment and operation of the Smelter then on and from the date upon which that partnership or joint venture as the case may be is established or upon any person becoming an additional party to such partnership or joint venture as the case may be and notice of the establishment of or addition to the partnership or joint venture as the case may be and the names of the partners or joint venturers or additional partners or joint venturers as the case may be have been given to the State that person or those persons shall become a party to this Agreement and shall assume severally from Alcoa of Australia Limited the obligations of the Company under this Agreement and shall be severally with Alcoa of Australia Limited entitled to the benefits to which the Company is entitled under this Agreement in each case in proportion and to the extent of that person's interest or those persons interests in the Smelter from time to time as determined in accordance with the agreement establishing or governing such partnership or joint venture provided that any limitation on the liability of a person contained in such an agreement shall apply equally to the liability of the person under this Agreement.

(2) Where—

(a) by reason of the operation of sub-clause (1), a person becomes, or, for any reason, Alcoa of Australia Limited substitutes an Associated company as a party to this Agreement; and

(b) the Smelter site is, within the period of five years after the date on which the Alcoa (Portland Aluminium Smelter) (Amendment) Act 1984 comes into operation, transferred by the Company to the Company or the Associated company and the person who so becomes a party—

stamp duty is not payable in respect of the transfer.

(3) Stamp duty is not payable in respect of an agreement entered into on 31 July 1984 in relation to the establishment of a partnership or joint venture referred to in sub-clause (1) of this clause.
9. **Sanction to construct Smelter etc.**

The State hereby acknowledges that the Company is to construct the Smelter under the sanction given by this Agreement and accordingly the State will use its best endeavours to ensure that the rights of the Company under this Agreement are protected for the duration of the Agreement.

10. **Interpretation of Agreement**

This Agreement shall be governed by and interpreted according to the laws applying in the State of Victoria.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first hereinbefore written.

SIGNED SEALED AND DELIVERED by the said RUPERT JAMES HAMER in the presence of:

R. J. HAMER
(L.S.)

MICHAEL McDONALD

THE COMMON SEAL of ALCOA OF AUSTRALIA LIMITED was hereunto affixed in the presence of:

GEORGE T. HAYMAKER Jr. Director

P. SPRY-BAILEY Secretary
(L.S.)
FIRST ANNEXURE

Commencing at the north-eastern angle of allotment 84, section 13, Parish of Portland; thence westerly and southerly by the northern and western boundaries of that allotment to the south-eastern angle of allotment 19; thence westerly by the southern boundary of that allotment and a line in continuation of that boundary to the eastern boundary of allotment 18; thence northerly by that boundary, westerly by the southern alignment of Rebecca Road and northerly by the eastern boundary of allotment 81 to the southern boundary of allotment 78; thence westerly by that boundary to the south-eastern angle of the land contained in Certificate of Title Volume 8719 Folio 884; thence northerly and westerly by the eastern and northern boundaries of that land and further westerly by a line in continuation of the northern boundary of that land to the western alignment of Wellington Road; thence north-easterly by that alignment to the northern boundary of the land contained in Certificate of Title Volume 9439 Folio 352; thence westerly, southerly and westerly by that boundary and southerly and easterly by the western and southern boundaries of the said Certificate of Title and further easterly by a line in continuation of the southern boundary thereof to the eastern alignment of Wellington Road; thence southerly by that alignment and easterly by the northern alignment of Orana Drive to a point in line with the eastern alignment of Thistle Road; thence southerly by a line and further southerly and south-easterly by the eastern and north-eastern alignments of Thistle Road and the land proclaimed as road by the Governor in Council on 19 October 1982 to the south-western boundary of allotment 86; thence easterly by a line bearing 97°52' 56.11 metres to the south-eastern boundary of the said allotment; thence north-easterly by that boundary, a line and the south-eastern boundary of allotment 24 to the south-eastern angle of the latter allotment; thence northerly by the eastern boundary of that allotment to the south-eastern angle of allotment 88A; thence north-westerly by a line bearing 349°06' 883.4 metres, westerly by a line bearing 277°13' 347.40 metres; north-westerly by lines bearing 340°03' 550.8 metres and 349°00' 405.97 metres; and thence westerly by a line bearing 277°18'30'' 63.53 metres to the point of commencement.

SECOND ANNEXURE

1. Certificate of Title Volume 9366 Folio 530.
2. Certificate of Title Volume 9363 Folio 963.
3. Certificate of Title Volume 9366 Folio 529.
5. Certificate of Title Volume 9366 Folio 528.
THIRD ANNEXURE

The land within the boundaries commencing at the south-eastern angle of allotment 24, section 13, Parish of Portland; thence northerly by the eastern boundary of that allotment to the south-eastern angle of allotment 88A; thence north-westerly by a line bearing 34906 883-4 metres, westerly by a line bearing 27713 347-40 metres; north-westerly by lines bearing 34003 550-8 metres and 349 00 405-97 metres to a point in line with the northern boundary of allotment 84; thence easterly by a line bearing 971830 to the sea coast; thence generally south-easterly, generally westerly, generally south-easterly and generally north-westerly by the sea-coast to a point in line with the south-eastern boundary of the balance of the land temporarily reserved as a site for Public Recreation by Order in Council of 20 October 1884; thence north-easterly by a line bearing 5649 676 metres, north-westerly by a line bearing 34432 405-1 metres and westerly by a line bearing 27752 151-58 metres to a point in line with the south-eastern boundary of allotment 86; and thence north-easterly by a line, the south-eastern boundary of allotment 86, a line and the south-eastern boundary of allotment 24 to the point of commencement.
ENDNOTES

1. General Information

The Alcoa (Portland Aluminium Smelter) Act 1980 was assented to on 11 November 1980 and came into operation on 26 November 1980:
Government Gazette 26 November 1980 page 4053.
2. Table of Amendments

This Version incorporates amendments made to the Alcoa (Portland Aluminium Smelter) Act 1980 by Acts and subordinate instruments.

<table>
<thead>
<tr>
<th>Act Title</th>
<th>Assent Date</th>
<th>Commencement Date</th>
<th>Current State</th>
</tr>
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<tbody>
<tr>
<td>Alcoa (Portland Aluminium Smelter) (Amendment) Act 1984, No. 10115/1984</td>
<td>30.10.84</td>
<td>S. 15 on 30.7.84; s. 2(2); rest of Act on 30.10.84; s. 2(1)</td>
<td>All of Act in operation</td>
</tr>
<tr>
<td>Planning and Environment Act 1987, No. 45/1987</td>
<td>27.5.87</td>
<td>S. 205(Sch. item 3(a)(b)) on 16.2.88: Government Gazette 10.2.88 p. 218</td>
<td>This information relates only to the provision/s amending the Alcoa (Portland Aluminium Smelter) Act 1980</td>
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<td>Transfer of Land (Computer Register) Act 1989, No. 18/1989</td>
<td>16.5.89</td>
<td>3.2.92: Government Gazette 18.12.91 p. 3488</td>
<td>All of Act in operation</td>
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<tr>
<td>Financial Management Act 1994, No. 18/1994</td>
<td>10.5.94</td>
<td>Pt 1 (ss 1–8), ss 60, 61 on 10.5.94; s. 2(1); rest of Act on 1.7.94; s. 2(2)</td>
<td>All of Act in operation</td>
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<tr>
<td>Transfer of Land (Single Register) Act 1998, No. 85/1998</td>
<td>17.11.98</td>
<td>S. 24(Sch. item 3) on 1.1.99; s. 2(3)</td>
<td>This information relates only to the provision/s amending the Alcoa (Portland Aluminium Smelter) Act 1980</td>
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### Endnotes

**Aboriginal Heritage Act 2006, No. 16/2006**

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<tr>
<th><strong>Assent Date:</strong></th>
<th>9.5.06</th>
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<td><strong>Commencement Date:</strong></td>
<td>S. 198(Sch. 2 item 1) on 28.5.07: Government Gazette 24.5.07 p. 921</td>
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<td><strong>Current State:</strong></td>
<td>This information relates only to the provision's amending the <strong>Alcoa (Portland Aluminium Smelter) Act 1980</strong></td>
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3. Explanatory Details

1 S. 4: Section 14 of the Alcoa (Portland Aluminium Smelter) (Amendment) Act 1984, No. 10115/1984 reads as follows:

14 Exempt documents under Freedom of Information Act 1982

(1) A document relating to the establishment, operation or carrying on of the smelter or affecting or relating to the smelter site or anything done or to be done on or in relation to the smelter site is an exempt document for the purposes of the Freedom of Information Act 1982.

(2) In subsection (1)—

Smelter means the smelter within the meaning of the Principal Act or the smelter at Point Henry;

Smelter site means the smelter site within the meaning of the Principal Act or the site of the smelter at Point Henry.