

ALUMINIUM INDUSTRY.

No. 81 of 1960.

An Act to approve an Agreement relating to the Sale of the Undertaking carried on by the Australian Aluminium Production Commission at Bell Bay in the State of Tasmania, and for purposes connected therewith.

[Assented to 13th December, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.

1. This Act may be cited as the *Aluminium Industry Act 1960*.

2.—(1.) Sections five, seven, eight and nine of this Act shall come into operation on a date to be fixed by Proclamation. Commence-
ment.

(2.) Section ten of this Act shall come into operation on a date to be fixed by Proclamation.

(3.) The remaining provisions of this Act shall come into operation on the day on which this Act receives the Royal Assent.

3. In this Act, unless the contrary intention appears—

Definitions.

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

“ the Commission ” means the Australian Aluminium Production Commission established under the *Aluminium Industry Act 1944–1956*, and includes that Commission constituted as provided by section eight of this Act;

“ the Company ” means Aluminium Production Corporation Limited, being the party of the fifth part to the Agreement;

“ the Provident Account ” means the Provident Account established under the *Superannuation Act 1922–1959*;

“ the Superannuation Board ” means the Superannuation Board constituted by the *Superannuation Act 1922–1959*;

“ the Superannuation Fund ” means the Superannuation Fund established under the *Superannuation Act 1922–1959*;

“ transferred employee ” means a person who was employed by the Commission under the *Aluminium Industry Act 1944–1956* immediately before the third day of January, One thousand nine hundred and sixty-one, and became employed by the Company as from that date in pursuance of clause twenty-three of the Agreement.

4.—(1.) The Agreement is approved.

Approval of
Agreement.

(2.) Nothing in section nine of the *Aluminium Industry Act 1944–1956* affects the validity of the Agreement, which shall be deemed to be, and to have been, as valid as if that section had not been enacted.

5.—(1.) The Commonwealth shall pay to the State of Tasmania and to the Company the amounts respectively required to be paid to them by the Commonwealth under the Agreement. Payment of
amounts under
Agreement.

(2.) The Superannuation Board shall, as soon as practicable after the Commonwealth has paid to the Company an amount in pursuance of clause twenty-four of the Agreement, pay to the Commonwealth, from the Superannuation Fund, such amount as the Commonwealth Actuary certifies to be the portion of the amount so paid that ought properly to be borne by that Fund, having regard to all the relevant circumstances and to actuarial principles and practice.

Minister may direct that employees of Commission be deemed employees for purposes of Superannuation Act.

6.—(1.) Notwithstanding sub-section (6.) of section four of the *Superannuation Act 1922–1959*, the Minister may, on the recommendation of the Commission, at any time before the third day of January, One thousand nine hundred and sixty-one, direct that a person employed by the Commission who is required by the terms of his employment to give the whole of his time to the duties of his office be deemed to be an employee for the purposes of that Act and that person shall be deemed to be such an employee as from the date of the direction.

(2.) For the purposes of sub-section (1.) of section nineteen of the *Superannuation Act 1922–1959*, the prescribed date, in relation to a person in respect of whom a direction has been given under the last preceding sub-section, is the date of the direction or, if that date is not a pay-day, the next succeeding pay-day after that date.

Transferred employees not to be entitled to any payment under Superannuation Act or to furlough, &c.

7.—(1.) A transferred employee who was, immediately before the third day of January, One thousand nine hundred and sixty-one, a contributor to the Superannuation Fund or the Provident Account and had elected, under clause twenty-three of the Agreement, to have the provisions of clause twenty-four of the Agreement applied with respect to him is not entitled to be paid any amount under the *Superannuation Act 1922–1959*, whether by way of pension, lump sum, refund of contributions or otherwise, other than any amount payable under section thirty-two of that Act in respect of reserve units of pension.

(2.) A transferred employee is not entitled—

- (a) to be granted or receive any leave of absence or payment in lieu of leave of absence under the *Commonwealth Employees' Furlough Act 1943–1958* or under section seventy-three or seventy-four of the *Public Service Act 1922–1960*; or
- (b) to be granted by, or receive from, the Commission or the Commonwealth any recreation leave or annual leave or payment in lieu of or in respect of recreation leave or annual leave.

Constitution of Commission on and after 1st February, 1961.

8. Notwithstanding section six of the *Aluminium Industry Act 1944–1956*, on and after the first day of February, One thousand nine hundred and sixty-one, the Commission shall be constituted by the person for the time being holding, or performing the duties of, the office of Secretary to the Department of National Development.

Powers, &c., of Commission on and after 3rd January, 1961.

9. On and after the third day of January, One thousand nine hundred and sixty-one—

- (a) section seven, sub-section (1.) of section fourteen, sub-section (1.) of section fourteen A and section fourteen C of the *Aluminium Industry Act 1944–1956* shall not apply in relation to the Commission;

- (b) the Commission shall have such powers (including power to borrow money as provided by section twelve of the *Aluminium Industry Act 1944-1956*) as are necessary for the purpose of carrying out or giving effect to the Agreement and of winding up its affairs but shall not have any other powers; and
- (c) the Commission shall keep such accounts as are appropriate having regard to the preceding paragraphs of this section.

10.—(1.) The following Acts are repealed:—

Aluminium Industry Act 1944;
Aluminium Industry Act 1952;
Aluminium Industry Act 1954;
Aluminium Industry Act 1956.

Repeal of
 Aluminium
 Industry
 Acts.

(2.) All property and rights that, immediately before the commencement of this section, were vested in the Commission are, by force of this section, vested in the Commonwealth.

(3.) All liabilities and obligations to which the Commission was subject immediately before the commencement of this section shall, by force of this section, be deemed to be liabilities and obligations of the Commonwealth.

(4.) Where the Commission was a party to a contract, agreement or instrument subsisting immediately before the commencement of this section (not being a contract, agreement or instrument the benefit of or under which has been purchased by the Company under the Agreement), the contract, agreement or instrument shall continue in full force and effect but, in its operation after the commencement of this section, shall have effect as if—

- (a) the Commonwealth were substituted for the Commission as a party to the contract, agreement or instrument; and
- (b) any reference in the contract, agreement or instrument to the Commission were a reference to the Commonwealth.

(5.) Any legal proceedings instituted by or against the Commission and pending or incomplete immediately before the commencement of this section may be continued or completed by or against the Commonwealth, and the Commonwealth shall be deemed to be substituted for the Commission as a party to those proceedings.

11. The Consolidated Revenue Fund is appropriated to the extent necessary for the purpose of the making by the Commonwealth of payments required to be made by section five of this Act and any payments that the Commonwealth is liable to make by reason of the operation of the last preceding section. Appropriation.

THE SCHEDULE.

Section 3.

AN AGREEMENT made this twenty-fifth day of November, 1960, BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this agreement called "the Commonwealth") of the first part, THE STATE OF TASMANIA (in this agreement called "the State") of the second part, CONSOLIDATED ZINC PROPRIETARY LIMITED a company incorporated under the laws of the State of Victoria and having its registered office at 53 Flemington Road, North Melbourne in that State (in this agreement called "Consolidated Zinc") of the third part, the AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION a body corporate constituted under the *Aluminium Industry Act 1944-1956* of the Commonwealth (in this agreement called "the Commission") of the fourth part, and ALUMINIUM PRODUCTION CORPORATION LIMITED a company incorporated under the laws of the State and having its registered office at 22 Murray Street, Hobart in the State (in this agreement called "the Company") of the fifth part.

WHEREAS—

- (a) by an agreement between the Commonwealth and the State made the eighteenth day of April, 1944, and approved by the *Aluminium Industry Act 1944* of the Commonwealth and the *Aluminium Industry Agreement Act 1944* of the State, as amended by an agreement supplemental thereto made the twenty-sixth day of April, 1952, and approved by the *Aluminium Industry Act 1952* of the Commonwealth and the *Aluminium Industry Agreement Act 1952* of the State, provision was made for the production in the State of aluminium and for the co-operation of the Commonwealth and the State in the establishment of an industry for that purpose;
- (b) the Commission was constituted as aforesaid for the purpose of giving effect to the said agreement and, in the exercise of its powers and functions, has established and is conducting an undertaking at Bell Bay in the State consisting of a plant for the production of aluminium;
- (c) in pursuance of the said agreement the Commonwealth has contributed for the purposes of the Commission an amount of Nine million seven hundred thousand pounds (£9,700,000) and the State has contributed an amount of One million five hundred thousand pounds (£1,500,000);
- (d) the State has made further contributions for the purposes of the Commission in relation to the expansion of the designed smelting capacity of the plant from 12,000 to 16,000 long tons of aluminium per annum;
- (e) the Commonwealth, the State and Consolidated Zinc have, subject to this agreement being entered into and approved by the Parliament of the Commonwealth and the Parliament of the State, agreed that the undertaking will be sold to a company formed for the purpose;
- (f) the State and Consolidated Zinc having reached agreement concerning the formation and management of a company for the purpose of purchasing and conducting the undertaking and expanding the plant, the Company has been incorporated accordingly;
- (g) one of the objectives of the Company will be to increase the designed smelting capacity of the plant to 28,000 long tons of aluminium per annum and, if and when it is economically practicable so to do, to a designed smelting capacity in excess of 40,000 long tons of aluminium per annum; and
- (h) it is the intention of the parties to this agreement that the undertaking will be conducted by the Company as a distinct and separate enterprise under its own management;

NOW IT IS HEREBY AGREED as follows:

1. In this agreement, unless the contrary intention appears—

"contributor" means a person who is employed by the Commission and is a contributor to the Superannuation Fund established under the Superannuation Act for units of pension or to the Provident Account established under that Act;

"financial year" means a year commencing on the first day of January;

"superannuation benefits" means payments to or in relation to a contributor for which provision is made by the Superannuation Act, whether by way of pension, lump sum, refund of contributions, payment of interest or otherwise, and includes payments to a widow, a child or children or personal representatives;

THE SCHEDULE—*continued.*

- “ the aluminium agreement ” means the said agreement between the Commonwealth and the State made the eighteenth day of April, 1944, as amended by the said agreement made the twenty-sixth day of April, 1952;
- “ the date of completion ” means the third day of January, 1961;
- “ the fund ” means the fund referred to in sub-clause (1.) of clause 24 of this agreement;
- “ the interest formula ” means the provisions of the third schedule to this agreement relating to the payment of interest by the Company and, if those provisions are at any time varied in pursuance of clause 35 of this agreement, means those provisions as so varied;
- “ the Minister ” means the Minister for National Development of the Commonwealth and includes a member of the Federal Executive Council for the time being acting for and on behalf of that Minister;
- “ the plant ” means the plant established as aforesaid by the Commission at Bell Bay as modified, improved or extended from time to time;
- “ the purchase price ” means the purchase price specified in sub-clause (1.) of clause 8 of this agreement;
- “ the sale ” means the sale of the undertaking under this agreement;
- “ the Superannuation Act ” means the *Superannuation Act 1922* as amended and in force immediately prior to the date of completion;
- “ the undertaking ” means the business as a producer of alumina and aluminium for the time being being conducted at or in connexion with the plant;
- “ transferred contributor ” means a transferred employee who was, immediately prior to the date of completion, a contributor who had, as provided in clause 23 of this agreement, elected to have the provisions of clause 24 of this agreement applied with respect to him;
- “ transferred employee ” means a person who is immediately prior to the date of completion employed by the Commission and who, as from the date of completion, has been continuously employed by the Company in pursuance of an offer made under clause 23 of this agreement;
- “ unit of pension ” means a unit of pension under the Superannuation Act and includes a fraction of a unit of pension, but does not include a reserve unit of pension;

words importing the masculine gender include females; and references to this agreement are to be read as including references to the schedules to this agreement.

2. This agreement, other than the next succeeding clause, shall have no force or effect and shall not be binding upon any party unless and until it is approved by the Parliament of the Commonwealth and the Parliament of the State.

3. The Commonwealth and the State will take appropriate action to have submitted to the respective Parliaments of the Commonwealth and of the State at the earliest practicable date a Bill for an Act—

- (a) to approve this agreement;
- (b) to make such legislative provision as is necessary to give effect for their respective parts to the provisions of this agreement; and
- (c) in the case of the State, to make such further legislative provision as will confer on each person in relation to whom any of the provisions of clause 28, clause 29 or clause 31 of this agreement apply rights as against the Company to the performance by the Company in relation to him of those provisions.

4. The Commonwealth and the State will ensure that their respective representatives on the Commission exercise their functions in accordance with the performance by the Commission of its obligations under this agreement.

5. The State and Consolidated Zinc will ensure that their respective nominees on the Board of Directors of the Company exercise their functions in accordance with the performance by the Company of its obligations under this agreement.

6.—(1.) The State and Consolidated Zinc will ensure that, from time to time as is appropriate, the Company will be provided with sufficient capital, by way of share capital or loans, to enable it to carry out its obligations under this agreement.

THE SCHEDULE—*continued.*

(2.) The State will seek appropriation by the Parliament of the State of such moneys as are, according to the arrangements for the time being in force between the State and Consolidated Zinc, to be paid by the State for the performance on the part of the State of the provisions of this clause and the obligations of the State in relation to that performance will be subject to the appropriation being made.

7.—(1.) Upon and subject to the provisions of this agreement, the Commission will sell and the Company will purchase the undertaking at the date of completion.

(2.) For the purpose of this clause, the undertaking means the whole of the business assets property and undertaking of the Commission including—

- (a) the freehold land, particulars whereof are set out in the first schedule to this agreement (hereinafter called “ the said land ”);
- (b) all the plant, machinery, equipment, office furniture, fixtures, fittings, motor vehicles, ships and stock in trade of the Commission in or about the said land or used in connexion with the business of the production of alumina and aluminium carried on by the Commission on the said land;
- (c) all the book and other debts due to the Commission in connexion with the said business and the full benefit of all securities for such debts;
- (d) the benefit of the following agreements:—
 - (i) the deed dated the twenty-eighth day of November, 1958, between Commonwealth Aluminium Corporation Pty. Limited, the Commonwealth and the Commission in relation to the supply of bauxite and alumina from Gove in the Northern Territory; and
 - (ii) the agreement dated the thirteenth day of July, 1960, between the Commission and Aluminium Industrie Aktien Gesellschaft in relation to the provision of technical advice and assistance for the expansion of the plant;
- (e) the full benefit that is capable of assignment of all pending contracts, engagements or orders in connexion with the said business, including contracts entered into by the Commonwealth relating to the said land;
- (f) all cash in hand and at the bank and all bills and notes of the Commission in connexion with the said business;
- (g) all other property rights or interests to which the Commission is entitled in connexion with the said business or the said land and which it may assign; and
- (h) all appropriate records maintained by the Commission in relation to the said business,

but excluding—

- (i) the rights of the Commission if any in respect of bauxite deposits at Marchinbar Island in the Northern Territory and elsewhere outside Tasmania in respect of which prospecting operations have been carried out by the Commission; and
- (j) the rights of the Commission to the occupancy of office premises at Chancery House Melbourne in the State of Victoria.

(3.) The said land is sold subject to the encumbrances interests and liabilities and upon and subject to the conditions set out in the second schedule to this agreement.

8.—(1.) The consideration for the sale shall be—

- (a) the sum of Ten million nine hundred and eighty thousand pounds (£10,980,000), in this agreement called “ the purchase price ”; and
- (b) the shares to be issued in accordance with the next succeeding clause.

(2.) The Company will pay the purchase price as follows:—

- (a) an amount of Two million five hundred thousand pounds (£2,500,000) on the date of completion;
- (b) an instalment of Two hundred and fifty thousand pounds (£250,000) on the thirty-first day of December in each of the years 1961 to 1964, both inclusive;
- (c) an instalment of Six hundred and twenty-five thousand pounds (£625,000) on the thirty-first day of December in each of the years 1965 to 1975, both inclusive; and
- (d) a final instalment of Six hundred and five thousand pounds (£605,000) on the thirty-first day of December, 1976.

THE SCHEDULE—*continued.*

9. As part of the consideration for the sale, ordinary shares of One pound (£1) each in the capital of the Company, credited as fully paid up will be allotted to the State to an amount equivalent to the amount of One hundred and seventy-five thousand pounds (£175,000), being the amount by which the total of the amounts contributed by the State for the purposes of the Commission exceeds One million five hundred thousand pounds (£1,500,000).

10.—(1.) The Company will pay interest on the balance of the purchase price for the time being unpaid in accordance with the interest formula.

(2.) The interest payable in respect of a financial year will be paid as follows:—

- (a) within one month from the end of the financial year, the Company will make a provisional payment to the Commonwealth of an amount certified by the auditors for the Company to be a reasonable estimate of the amount of the interest; and
- (b) forthwith upon the amount of the interest being ascertained in accordance with the interest formula, the Company will pay to the Commonwealth or the Commonwealth will refund to the Company the amount by which the provisional payment falls short of or exceeds, as the case may be, the amount of the interest.

11.—(1.) The purchase price and interest thereon payable by the Company in accordance with the provisions of this agreement will be paid by the Company to the Commonwealth and, except as otherwise agreed between the Commonwealth and the Company, will be payable to the credit of the Commonwealth at the Reserve Bank of Australia, Launceston in the State.

(2.) A payment to the Commonwealth under this agreement will be a discharge of the Company for the payment under this agreement of the amount paid and the Company will not be under any obligation with respect to the application of the amount paid.

12. Except with the consent of the Company, the Commission will not, prior to the date of completion, enter into any contracts or sell or agree to sell or mortgage or otherwise encumber any of its property or assets otherwise than in the ordinary course of business.

13. The sale will be completed and the Company will be entitled to possession of the undertaking on the third day of January, 1961, upon payment to the Commonwealth of the amount of £2,500,000 referred to in paragraph (a) of sub-clause (2.) of clause 8 of this agreement and, subject to the provisions of the second schedule to this agreement, the Commission or the Commonwealth will thereupon execute and deliver to the Company such transfers, conveyances, assignments and assurances as are requisite to pass to the Company as aforesaid the undertaking in accordance with clause 7 of this agreement.

14.—(1.) The Company undertakes that, on and from completion of the sale, it will assume liability for, and will pay, satisfy, observe, perform and discharge all the debts, liabilities and obligations of the Commission with respect to the undertaking as defined in clause 7 of this agreement, whether subsisting at the date of completion or arising thereafter.

(2.) Without prejudice to the generality of operation of sub-clause (1.) of this clause, the Company agrees with the Commission and with the Commonwealth—

- (a) to offer to the persons with whom the Commission has contracts of service as General Manager and Business Manager contracts of service with the Company on terms not less favourable to them than the terms of their contracts with the Commission;
- (b) to be bound by the said agreement dated the thirteenth day of July, 1960, between the Commission and Aluminium Industrie Aktien Gesellschaft on and from the date of completion as assignee of the Commission in accordance with sub-clause (2.) of clause 19 of the agreement;
- (c) to enter, as assignee of the Commission, into a deed with the Commonwealth and with Commonwealth Aluminium Corporation Pty. Limited or The British Aluminium Company Limited, as the circumstances may require, in the terms, except as may be otherwise agreed, of the deed dated the twenty-eighth day of November, 1958, between Commonwealth Aluminium Corporation Pty. Limited, the Commonwealth and the Commission in relation to the supply of bauxite and alumina from Gove aforesaid; and
- (d) to enter into a deed with the Commonwealth and the Commonwealth Aluminium Corporation Pty. Limited on terms that have been agreed in relation to the supply of bauxite and alumina from Weipa.

THE SCHEDULE—*continued.*

15.—(1.) Where the benefit of the Commission under a contract, engagement or order in connexion with the undertaking pending at the date of completion is not capable of assignment except with the consent of the other party or parties thereto, the Commission will, at the request of the Company, seek consent to the assignment of the benefit as from the date of completion.

(2.) If the consent is not given, the Commission will at any time, at the request of the Company—

(a) exercise its rights to performance by the other party or parties; or

(b) exercise its best endeavours to negotiate and conclude, in accordance with any directions of the Company, a discharge by agreement,

of the contract, engagement or order.

(3.) The provisions of this clause and any action taken under this clause shall not derogate from the obligation of the Company under sub-clause (1.) of the last preceding clause in respect of the burden of the contract, and the Company will be liable to pay, and the liability of the Company under the indemnity provided in clause 17 of this agreement shall extend to, any costs or expenses of the action taken or any amount or amounts payable upon a discharge concluded in pursuance of the provisions of this clause.

16. After completion of the sale the Commonwealth will be entitled to and may vest in itself such property, assets and rights as remain in the Commission, including the benefit and rights of the Commission under and in pursuance of this agreement, and, subject to this agreement and without affecting the obligations of the Company under this agreement, may and, in the event of the Commission ceasing to exist, will assume the liabilities and obligations of the Commission, including the burden and obligations of the Commission under this agreement.

17. The Company agrees to indemnify and to keep indemnified the Commission and the Commonwealth, as successor of the Commission, from and against all actions, claims, demands, proceedings, suits, damages, expenses and costs that may be brought against or incurred by the Commission or the Commonwealth at any time for or in respect of any debt, liability or obligation for which the Company has under this agreement assumed liability or is under this agreement liable to pay, satisfy, observe, perform or discharge.

18.—(1.) The Company will forthwith upon conveyance and transfer of the said land and forthwith upon delivery of the other fixed assets of the undertaking and thereafter as may reasonably be required by the Commonwealth execute, complete, grant and deliver to the Commonwealth a legal first mortgage or mortgages over the said land and a first floating charge or charges over the other fixed assets of the undertaking from time to time, charging the said land and assets for the payment of, and being in such form and containing such terms, conditions, covenants, stipulations and provisos as are usual and appropriate for the purpose of securing to the Commonwealth payment by the Company of, the balance for the time being unpaid of the purchase price and interest thereon under this agreement.

(2.) The Commonwealth will give due consideration to any reasonable request by the Company for the reduction of the security provided under this clause.

19. The Company will as soon as practicable after the date of completion commence, carry on and complete works for the expansion of the plant that will increase the designed smelting capacity to not less than 28,000 long tons of aluminium per annum.

20.—(1.) During the period of four years commencing on the date of completion, the Commonwealth will provide tariff or other protection against imports to the production by the Company at the plant of aluminium, including aluminium alloys whose chief part by weight consists of aluminium, in the form of ingots, pigs, blocks, bars, billets or cast rods, to ensure to the Company in respect of the undertaking (for the whole of the Australian sales of its output) selling prices equal to the selling price of the Commission for each particular class or kind of product within the above general description as at the first day of November, 1960. It is agreed that in the case of standard grade ingot the selling price of the Commission at that date was £271 per long ton delivered at mainland ports.

THE SCHEDULE—*continued.*

(2.) If in the case of a particular class or kind of product aforesaid the Commission did not have a selling price as at the first day of November, 1960, the selling price for the class or kind of product for the purposes of the preceding sub-clause shall be based on the selling price of the Commission as at that date for the nearest comparable product for which the Commission had a selling price as at that date.

(3.) If and so long as—

- (a) the Commonwealth gives effect to all recommendations of the Tariff Board appointed under the *Tariff Board Act 1921–1960* as to the assistance that ought to be given to give effect to sub-clause (1.) of this clause; and
- (b) a request by the Company at any time after a recommendation has been made by the Tariff Board in pursuance of a reference for the purpose of sub-paragraph (a) of this sub-clause for a further reference to the Tariff Board for that purpose is complied with within a reasonable time after the request is made,

then the Commonwealth shall be deemed to have fulfilled its obligation under this clause.

21.—(1.) The Company acknowledges and undertakes that it will not be entitled to seek and will not seek tariff or other protection after the expiration of four years from the date of completion in respect of the products of the undertaking unless—

- (a) from factors beyond the control of the Company the finances of the undertaking are in a state in which the operating surplus as defined in the third schedule is less than the base figure as so defined and it is likely that that state of affairs will continue indefinitely; or
- (b) abnormal circumstances beyond the control of the Company significantly change the basis of competition with overseas suppliers of products equivalent to products of the undertaking.

(2.) The payment in respect of imports for use at the undertaking of any duty imposed on alumina or of duty at an increased rate on other process materials being imported by the Commission at the date of this agreement shall be regarded as abnormal circumstances for the purposes of the application of sub-paragraph (b) of sub-clause (1.) of this clause.

(3.) The provisions of this clause shall not operate so as to debar the Company from seeking protection in pursuance of the *Customs Tariff (Industries Preservation) Act 1921–1957* as amended from time to time.

22. The State undertakes with the Company that it will make such administrative arrangements in accordance with the laws for the time being of the State and take appropriate action to have submitted to the Parliament of the State a Bill or Bills for such legislation as may be necessary to ensure that the undertaking is not adversely affected by the operation of the *Town and Country Planning Act 1944* of the State, as amended from time to time, or of any planning scheme thereunder.

23.—(1.) The Company will offer to each person who is immediately prior to the date of completion employed by the Commission employment by the Company at or in connexion with the undertaking as from the date of completion at rates of salary or wages and payments in the nature of salary or wages, as the case may be, not less than the rates applicable to that person immediately prior to the date of completion in respect of his employment by the Commission.

(2.) The offer shall be made by the Company not later than the first day of December 1960, except that, in the case of a person whose employment with the Commission commences after that date, the offer will be made as soon as practicable after the commencement of the employment but before the date of completion.

(3.) The offer shall be subject to this agreement coming into force and to the person to whom it is made remaining in the employment of the Commission until the date of completion, and if the person to whom it is made is a contributor or is a person who the Commonwealth indicates may, prior to the date of completion, become a contributor to the Superannuation Fund established under the Superannuation Act for units of pension or to the Provident Account established under that Act—

- (a) shall require him to state, prior to the date of completion, either that he does not desire to have the provisions of the next succeeding clause applied with respect to him or that he elects to have those provisions, if capable of application, applied with respect to him in lieu (except in relation to reserve units of pension,

THE SCHEDULE—*continued.*

of the provisions of the Superannuation Act that would otherwise have been applicable to him upon the termination of his employment by the Commission; and

(b) may be made subject to the condition that he so elects, and shall include a statement setting out a general description of the provisions of this agreement relating to superannuation that will be applicable to the person to whom the offer is made.

24.—(1.) The Company shall establish a trust fund for the provision of superannuation benefits for transferred contributors and of benefits by way of superannuation for other employees of the Company selected by the Company.

(2.) The fund shall be so constituted as to include provision for—

- (a) the payment to the fund by the Company of the moneys to be paid to the fund by the Company under this clause;
- (b) the payment of contributions to the fund by, and of superannuation benefits from the fund to or in relation to, transferred contributors as provided in this clause;
- (c) the operation of the provisions of clause 25 of this agreement and application of a decision of the committee under that clause; and
- (d) fully securing the rights of transferred contributors to superannuation benefits.

(3.) The Commonwealth will as soon as practicable after the date of completion pay to the Company, for payment to the fund, an amount or amounts equivalent in total to the amount, as agreed between the Commonwealth Actuary and an actuary appointed by the Company, of the reserve values as at the date of completion of the benefits payable under the Superannuation Act in respect of—

- (a) units of pension for which transferred contributors were contributing immediately prior to the date of completion; and
- (b) contributions to the Provident Account made by transferred contributors prior to the date of completion,

and when paying an amount will also pay to the Company, for the like purposes, interest on the amount paid from the date of completion until the date of payment at the rate of 3½ per centum per annum.

(4.) The Company will—

- (a) pay to the fund the total amount and interest paid to the Company by the Commonwealth under the last preceding sub-clause;
- (b) arrange for the payment to the fund by each transferred contributor of contributions by him in accordance with this clause; and
- (c) ensure that the fund as a whole is conducted in accordance with sound actuarial practice.

(5.) If at any time moneys are not available from the fund for the payment of the superannuation benefits provided for in this clause, the Company will pay so much of the benefits as is not so paid and the terms on which the fund is constituted shall make provision for payment to be made by the Company accordingly.

(6.) Subject to this clause and to clauses 25 and 26 of this agreement, the terms on which the fund is constituted shall provide that, as from the date of completion—

- (a) each transferred contributor will be liable to pay to the fund fortnightly contributions of amounts not exceeding the amounts of the fortnightly contributions he was liable to pay under the Superannuation Act immediately prior to the date of completion; and
- (b) superannuation benefits according to the units of pension in respect of which each transferred contributor was liable to contribute under the Superannuation Act immediately prior to the date of completion or related to the aggregate of the contributions paid by each transferred contributor to the Provident Account and the contributions paid by him in accordance with sub-paragraph (a) of this sub-clause, as the case may be, shall be payable from the fund to or in relation to the transferred contributor,

as if the provisions of the Superannuation Act, *mutatis mutandis*, applied to and in relation to the transferred contributor in respect of his employment by the Company.

THE SCHEDULE—*continued.*

(7.) Part XI. of the Superannuation Act shall not be applied under the last preceding sub-clause in relation to a transferred contributor and any reference to the Board in the provisions so applied shall be read as a reference to the trustees for the time being of the fund.

(8.) For the purposes of section 39 or of section 87 of the Superannuation Act in its application under sub-clause (6.) of this clause, the period for which a transferred contributor had been an employee or had continuous service under the Superannuation Act as at the date of completion shall be deemed to be a period during which he was an employee of, or had continuous service with, the Company.

(9.) The terms referred to in sub-clause (6.) of this clause will not apply with respect to a transferred contributor who was, immediately prior to the date of completion, a contributor to the Provident Account if the transferred contributor and the Company arrange for the payment of contributions by, and the provision of benefits by way of superannuation in relation to, the transferred contributor in substitution for the contributions and benefits to be provided in accordance with that sub-clause.

(10.) A reference in this clause to a unit of pension for which a transferred contributor was contributing or was liable to contribute under the Superannuation Act immediately prior to the date of completion shall be read so as to include a reference to a unit of pension in respect of which he had completed his contributions or which had been credited to him as a fully paid unit of pension prior to that date.

25.—(1.) For the purposes of the last preceding clause there shall be a committee consisting of—

- (a) the Chairman of the Public Service Tribunal of the State or, in the absence of or failing such Chairman, a person agreed upon by the Commonwealth and the State;
- (b) a person nominated by the Company; and
- (c) a person nominated by the State to represent transferred contributors.

(2.) The member of the committee appointed in pursuance of sub-paragraph (a) of sub-clause (1.) of this clause will be chairman of the committee.

(3.) Any termination of the employment of a transferred contributor shall, if the transferred contributor so requests, be referred to the committee which may, in its absolute discretion, decide the manner in which the termination is to be treated for the purposes of the payment of superannuation benefits.

(4.) If at any time a question arises in relation to the application or operation of the terms referred to in sub-clause (6.) of the last preceding clause in accordance with the provisions of that sub-clause, the question shall be referred to the committee.

(5.) The committee may examine a matter or question referred to it in such manner as the committee deems fit and the decision of the committee on the matter or question shall be conclusive for the purposes of the application or operation of the terms referred to in sub-clause (6.) of the last preceding clause.

(6.) The decision of any two members of the committee shall be a decision of the committee for the purpose of this clause.

(7.) The Commonwealth and the Company will furnish to the committee such assistance, including the production of records and papers, in connexion with a matter or question referred to the committee as the committee may require, and will, each for its part, take such action as may be necessary to give effect to a decision of the committee.

26.—(1.) In this clause—

- “ additional salary ” means, in relation to a transferred contributor, the excess, if any, from time to time of his rate of salary over his rate of salary immediately prior to the date of completion;
- “ additional superannuation benefits ” means, in relation to a transferred contributor, the benefits by way of superannuation to be provided by the Company under this clause;
- “ prior service ” means, in relation to a transferred contributor, the period for which he was at the date of completion an employee for the purposes of the Superannuation Act, as certified by the Commonwealth;
- “ rate of salary ” means, in relation to a transferred contributor, his rate of salary or wages (including payments in the nature of salary or wages) that would, under the rules of the fund, be taken into account for superannuation purposes if he were a contributor to the fund other than a transferred contributor at the relevant time.

THE SCHEDULE—*continued.*

(2.) The Company will provide for each transferred contributor additional superannuation benefits in relation to his additional salary on a basis consistent with the basis on which benefits by way of superannuation are from time to time provided by the Company for its employees other than transferred contributors.

(3.) As soon as practicable after the date of completion the Company will notify each transferred contributor whose period of service will be material for the purposes of his additional superannuation benefits that he may elect, within three months from the date of notification, to have his prior service taken into account for that purpose.

(4.) A transferred contributor who does not make an election in accordance with the last preceding sub-clause shall—

(a) be entitled to additional superannuation benefits only in respect of his period of employment with the Company as from the date of completion; and

(b) make contributions to the fund in relation to his additional salary on a basis consistent with the basis on which contributions are from time to time made by contributors to the fund other than transferred contributors.

(5.) A transferred contributor who makes an election in accordance with sub-clause (3.) of this clause shall for the purposes of additional superannuation benefits—

(a) be deemed, as at the date of completion, to have completed a period of service with the Company equal to the period of his prior service; and

(b) make to the fund in relation to his additional salary—

(i) contributions on the basis referred to in paragraph (b) of the last preceding sub-clause; and

(ii) additional contributions in respect of his prior service.

(6.) The additional contributions referred to in sub-paragraph (b) (ii) of the last preceding sub-clause shall be determined in the following manner:—

(a) the total rate of contribution to be made to the fund in respect of the prior service of the transferred contributor shall be a rate determined in accordance with sound actuarial practice; and

(b) the additional contributions to be paid to the fund by the transferred contributor shall be at the rate that bears to the total rate of contribution so determined the same proportion as the total of contributions to the fund by contributors to the fund other than transferred contributors bears from time to time to the sum of that total and the total of the corresponding contributions to be made by the Company.

27. The Company may, at any time after the fund has been established and is in operation in relation to transferred contributors and employees other than transferred contributors, establish a scheme for the provision of further or other benefits by way of superannuation for transferred contributors and for employees other than transferred contributors notwithstanding that the scheme, in respect of transferred contributors, departs from the provisions of clauses 24, 25 and 26 of this agreement, provided that—

(a) the Commonwealth is satisfied that the treatment of transferred contributors under the scheme is reasonable in relation to the treatment of employees other than transferred contributors; and

(b) each transferred contributor is given the right to elect whether he will come under the scheme.

28.—(1.) The Company will, in relation to transferred employees who were employees of the Commission to whom the industrial agreement made in 1959 between the Amalgamated Engineering Union and Others of the one part and the Commission of the other part applied, observe and comply with the provisions of that agreement as if the agreement continued in force with the Company a party thereto in place of the Commission and the service of those transferred employees with the Commission had been service with the Company.

(2.) The obligation of the Company under this clause in relation to a transferred employee will have effect subject to the provisions of the said industrial agreement and of any agreement entered into between the Company and the relevant Union in respect of employment at the undertaking and to any laws or any awards which by force of law are paramount to the said industrial agreement in relation to the employment of the transferred employee.

THE SCHEDULE—*continued.*

29. The Company will grant to or with respect to each transferred employee, not being a transferred employee to whom the last preceding clause applies, leave, or pay in lieu of leave, for recreation and sickness to the same extent and subject to the same conditions as the same are granted to employees of the Company, not being transferred employees, of equivalent status to the transferred employee, but so that—

- (a) the service of the transferred employee with the Commission will be regarded as prior employment by the Company with which the employment of the transferred employee by the Company is continuous; and
- (b) the amount of leave for recreation and sickness accrued in respect of the service of the transferred employee with the Commission will be the respective amounts stated in the certificate provided under the next succeeding clause.

30. In respect of each transferred employee, the Commonwealth will furnish to the Company a certificate stating particulars with respect to the recreation leave and sick leave to which the transferred employee was entitled in connexion with his service with the Commission and stating, in relation to a transferred employee to whom the last preceding clause applies, the respective periods of leave (including a portion of the period of leave that would accrue in respect of a completed year of service) to which he was entitled as at the date of completion.

31.—(1.) In this clause—

“prior service” means, in relation to a transferred employee, the period of service that, as at the date of completion, would be taken into account with respect to the transferred employee for the purposes of the Commonwealth Act, as certified under sub-clause (2.) of this clause;

“the employment date” means, in relation to a transferred employee, the date that precedes the date of completion by the period of his prior service;

“the Commonwealth Act” means, in relation to a transferred employee—

(a) the *Commonwealth Employees' Furlough Act 1943* as amended and in force at the date of completion; or

(b) the *Commonwealth Public Service Act 1922* as amended and in force at the date of completion; and

“the State Act” means the *Long Service Leave Act 1956* of the State, as amended from time to time, and if an Act is substituted for that Act means the Act so substituted, as amended from time to time.

(2.) The Commonwealth will furnish to the Company a certificate setting out, in respect of each transferred employee—

(a) the period of service that, as at the date of completion, would be taken into account as the period of service of the transferred employee for the purposes of the Commonwealth Act; and

(b) any period of leave for long service which the transferred employee has been granted, or in lieu of which he has been paid, under the Commonwealth Act.

(3.) Except as otherwise provided in this clause, each transferred employee shall be entitled to, and the Company will grant or pay to or in relation to each transferred employee, long service leave or pay in respect of a period of long service leave not taken, in accordance with the State Act, but the transferred employee shall not be entitled to leave or pay in respect of leave not taken in respect of the same period of employment both by virtue of the State Act and otherwise as provided in this clause.

(4.) For the purposes of this clause, the continuous employment with the Company of a transferred employee shall be deemed to have commenced on the employment date.

(5.) A transferred employee shall become entitled to long service leave on the completion by him of 15 years continuous employment with the Company commencing as aforesaid.

THE SCHEDULE—*continued.*

(6.) The period of the leave to which the transferred employee shall become entitled under the last preceding sub-clause shall be—

- (a) in respect of his prior service, a period of three-tenths of one month on full salary, or, if the Company and the transferred employee so agree, three-fifths of one month on half salary, in respect of each completed year and a proportionate period in respect of an uncompleted portion of a year, less the period of any leave already taken as certified under sub-clause (2.) of this clause; and
- (b) in respect of his service with the Company as from the date of completion, a period calculated in accordance with the State Act.

(7.) If a transferred employee ceases or is about to cease to be employed by the Company or dies or is presumed to have died while in the employment of the Company and if in the relevant circumstances the approving authority or the Public Service Board would have been empowered under the Commonwealth Act to grant leave of absence to him or to authorise payment equivalent to the salary therefor or in lieu thereof if the Commonwealth Act had continued to apply with respect to his service with the Company as from the date of completion as a continuance of his prior service, the transferred employee shall become entitled to long service leave or there shall be payable to or in relation to him pay in respect of a period of long service leave not taken.

(8.) The period of the leave for the purposes of the last preceding sub-clause shall be—

- (a) in respect of the prior service of the transferred employee—
 - (i) if the approving authority or the Public Service Board was, at the date of completion, empowered to grant leave to him under the Commonwealth Act otherwise than by reason of the termination of his employment with the Commission—the period of that leave plus a proportionate period in respect of an uncompleted portion of a year; or
 - (ii) in any other case—the period which bears to the period of leave that the approving authority or the Public Service Board would have been empowered to grant to him under the Commonwealth Act if it had continued to apply as aforesaid the same proportion as the prior service of the transferred employee bears to his continuous employment with the Company commencing as aforesaid; and
- (b) in respect of the service of the transferred employee with the Company as from the date of completion, a period calculated in accordance with the State Act.

(9.) The powers in relation to the presumption of death of a transferred employee which could have been exercised by the approving authority or the Public Service Board, as the case may be, under the Commonwealth Act if it had continued to apply as aforesaid may be exercised by a person from time to time nominated by the Company.

(10.) For the purposes of this clause, a period of leave calculated in accordance with the State Act shall be calculated having regard to the continuous employment of the transferred employee with the Company commencing as aforesaid, and—

- (a) where there is thereby applicable under the State Act a specified period of leave based on a specified period of continuous employment, by taking the period which bears to that specified period of leave the same proportion as the period of service of the transferred employee with the Company which is included in that specified period of continuous employment bears to that specified period of continuous employment;
- (b) where a rate is thereby applicable under the State Act, by the application of the rate to the period of service of the transferred employee with the Company as from the date from which the rate is so applicable; and
- (c) in any other case, by the application of the rate at which from time to time leave is calculated for the purposes of the State Act to the continuous period of service of the transferred employee with the Company.

(11.) A dispute with respect to the calculation under this clause of a period of leave shall be referred to, and heard and determined by the same person and process as it is provided by the State Act that a dispute thereunder may be referred, heard and determined in the first place, but the decision or determination of that person shall be final.

THE SCHEDULE—*continued.*

(12.) The person referred to in the last preceding sub-clause may exercise any powers, other than powers in relation to which provision is made by this clause or by the State Act in its application in accordance with this clause, that the approving authority or the Public Service Board, as the case may be, could have exercised under the Commonwealth Act if it had continued to apply as aforesaid.

32. The Commonwealth and the State agree that—

- (a) the Commission will not be, and is deemed not to have been, liable to debit its accounts with interest on the amounts from time to time contributed by the Commonwealth and the State under the aluminium agreement for the purposes of the Commission;
- (b) clause 3A of the aluminium agreement has no application to the sale; and
- (c) upon completion of the sale, the aluminium agreement will terminate and will cease to have any force or effect.

33.—(1.) The Commonwealth and the State will be entitled to the amount of a payment by the Company of the purchase price or of interest in the proportions of 97 parts for the Commonwealth and 15 parts for the State.

(2.) The Commonwealth will as soon as practicable after the receipt of the payment from the Company pay to the State the proportion of the payment to which the State is entitled and will retain the proportion to which the Commonwealth is entitled.

(3.) In the event of the Commonwealth refunding to the Company under sub-clause (2.) of clause 10 of this agreement the amount by which the provisional payment of interest by the Company exceeds the interest ascertained in accordance with this agreement, the State will, on being so required by the Commonwealth, pay to the Commonwealth fifteen one hundred and twelfth parts ($15/112$) of the amount refunded.

(4.) As between the State and the Commonwealth the State will accept the amount paid by the Company to the Commonwealth as interest in respect of a financial year as the amount of interest that the Commonwealth is liable to apply in accordance with this clause.

34.—(1.) Until the whole of the purchase price and all interest payable by the Company under this agreement have been paid, the Company will not, except with the consent in writing of the Minister, sell or part with its business as a producer of alumina and aluminium at or in the vicinity of Bell Bay or any substantial part thereof.

(2.) If the Company commits a breach of sub-clause (1.) of this clause then, without prejudice to other remedies of the Commonwealth arising from the default or breach, the whole of the purchase price remaining unpaid and interest accrued under this agreement shall forthwith become due and payable by the Company upon notice given by the Commonwealth to the Company to that effect and the Commonwealth may without further notice enforce as and when it deems fit any remedies it may have in respect of the same including the exercise of any powers of sale that may be vested in it.

35.—(1.) If at any time the Company proposes to carry on, whether by itself or by a subsidiary company, any business or operations at the plant or elsewhere other than the business of, or operations for, the production of alumina or aluminium or matters incidental thereto the Company will give due notice to the Commonwealth of its proposal.

(2.) The Commonwealth and the Company will, at the request of either, consult for the purpose of making arrangements for the application and operation of the interest formula having regard to the circumstances that will exist when the proposed business or operations referred to in the preceding sub-clause are carried on by the Company or to any other circumstances that affect the application or operation of the interest formula, including, without prejudice to the generality of the foregoing any change in the principles upon which rates of tax are determined or the introduction of taxes differing in the nature of their application from the taxes operative at the date of this agreement.

(3.) The interest formula will be subject to such variation as from time to time is agreed between the Commonwealth and the Company in consultation in accordance with this clause.

36. A notice, consent or other communication to be given under this agreement shall be deemed to have been duly given if it is in writing, signed, in the case of the Commonwealth or the Minister, by or on behalf of the Minister and, in the case of the Company, on behalf of the Company and is served upon, or sent by prepaid post addressed to, in the case of the Commonwealth, the Secretary, Department of National Development, Canberra, A.C.T., or, in the case of the Company, the Company at its registered office in the State, and the date upon which it is served or the date upon which it is received by the addressee shall be deemed to be the date upon which it is given, irrespective of any date appearing therein.

THE SCHEDULE—*continued.*

THE SCHEDULES.

FIRST SCHEDULE.

Clause 7.

PARTICULARS OF FREEHOLD LAND.

1. All that piece of land in the Parishes of Fordington and Cranbourn County of Dorset in the State acquired by the Commonwealth for the purposes of the Commission by Notification of the Acquisition of land dated 20th October, 1949, and published in the Commonwealth of Australia Gazette No. 78 dated 27th October, 1949, at page 3069, but excluding therefrom the land described in—

- (a) conveyance dated 2nd July, 1952, from the Commonwealth to E. H. Little No. 26/6118;
- (b) conveyance dated 3rd August, 1953, from the Commonwealth to I. K. and E. R. Kidd No. 27/3288; and
- (c) Certificates of Title Volume 653 Folio 11, Volume 732 Folio 79, Volume 890 Folio 56, Volume 890 Folio 57.

2. All those pieces of land being—

- (a) the land at George Town in the State described in—
 - (i) conveyances Nos. 26/3472 and 26/5127;
 - (ii) Certificates of Title Volume CLVIII Folio 10, Volume 476 Folio 136 and Volume 691 Folio 100;
- (b) the land at Rocherlea in the State described in Certificate of Title Volume 795 Folio 27;
- (c) the land at St. Leonards in the State described in Certificate of Title Volume 762 Folio 38;
- (d) the land at Ouse in the State described in Certificate of Title Volume 705 Folio 69; and
- (e) the land at Beaconsfield in the State comprising 13 acres 3 roods and $18\frac{6}{10}$ perches or thereabouts in the Parish of Winkleigh County of Devon described in memorandum of transfer from H. S. Barnett and R. M. Clarke to the Commission dated 1st August, 1958, and being part of the land described in Certificate of Title Volume 708 Folio 3.

SECOND SCHEDULE.

Clause 7.

CONDITIONS, ETC., OF SALE OF FREEHOLD LAND.

1. The land described in the first schedule is sold subject to—

- (a) the existing tenancies and all rights of tenants by contract, custom, statute or otherwise and to all public rights of way, easements and quasi-easements, licences granted or agreed to be granted for grazing rights, rights of way or other purposes, liabilities and charges for rates or supply of services or payments in lieu thereof and liabilities to maintain fences, repair streets and the like to which the same may be subject;
- (b) in the case of the land described in paragraph 1 of the first schedule—
 - (i) the rights of the Marine Board of Launceston under the contract with the Commonwealth on behalf of the Commission for the purchase of 67 acres 1 rood $36\frac{1}{10}$ perches or thereabouts (excluding a road) adjoining the land of the Board;
 - (ii) the rights of Tasmanian Electro Metallurgical Co. Pty. Ltd. under a contract with the Commonwealth on behalf of the Commission for the purchase of 279 acres 2 roods $8\frac{8}{10}$ perches or thereabouts (excluding a road) adjoining the land referred to in sub-paragraph (i);
 - (iii) arrangements made for the dedication of a road in place of the existing road running generally south and west from the Bell Bay Road;
 - (iv) the rights of the Public Works Department of the State in respect of 84 acres 2 roods $14\frac{8}{10}$ perches or thereabouts for the new East Tamar Highway running generally easterly from the George Town-Launceston road;

THE SCHEDULE—*continued.*

- (v) the rights of the Hydro-electric Commission of the State under contracts entered into or agreed to be entered into for way leave easements over, and a sub-station or sub-stations on, the land; and
 - (vi) such rights as affect the land in respect of the pipe line and reservoir constructed for the purposes of the North Esk Regional Developmental Scheme and access from the reservoir to the East Tamar Highway;
 - (c) the encumbrances, interests, reservations, exceptions, provisos, covenants and rights of any kind to which the land is subject as set out in the respective Crown Grants, Certificates of Titles or conveyances on which title to the land is based.
2. In relation to the land referred to in paragraph 1 of the first schedule—
- (a) the Commission will not be bound to furnish to the Company title thereto under the Real Property Act of the State until such title is obtained by the Commonwealth pursuant to the acquisition of the land for the purposes of the Commission; and
 - (b) the Company will accept title to the land as aforesaid in accordance with the survey of the land in the course of being carried out and shall not be entitled to compensation in respect of any adjustment of the boundaries of the land (including the boundaries with the land described in sub-paragraphs (i), (ii) and (iii) of paragraph 1 (b) of this schedule) made in accordance with the survey.
3. The said land is believed and shall be taken to be correctly described. No error, omission or mis-description and no discrepancy between the area and position and measurements on the ground and the description of the land shall invalidate the sale of any portion of the land nor be the subject of compensation by either party.
4. As regards so much of the said land as is described in sub-paragraph (a) (i) and sub-paragraph (e) of paragraph 2 of the first schedule the Company will accept such title as the Commission has.
5. The land referred to in paragraph 1 of the first schedule and the land described in Certificate of Title Volume 795 Folio 27 are sold subject to the following reservations:—
- FIRSTLY so much of the said piece of land as lies below the depth of fifty feet from the surface thereof saving as to wells and springs and SECONDLY in respect of the whole of the said piece of land—
- (1) the property in all gold silver copper tin and other metals ore minerals and other substances containing metals And in all coal and mineral oil And in all gems and precious stones in or on the said piece of land;
 - (2) the right at all times of making and constructing in or on the said piece of land such and so many drains sewers and waterways for sanitary or other purposes as may be deemed expedient And also the right of altering amending cleansing or repairing such drains sewers and waterways; and
 - (3) the right always to resume such portions of the said piece of land as may be required for any roads railways tramways water-races or other public utilities.

THIRD SCHEDULE.

Clauses 1, 10 and 35.

THE INTEREST FORMULA.

1. In this schedule, unless the contrary intention appears—

“associated company” means Consolidated Zinc, Commonwealth Aluminium Corporation Pty. Limited and any other company or enterprise that the Minister, after consultation with the Company, from time to time declares to be an associated company by reason of its direct or indirect association with the Company arising from their respective share holdings;

base figure” means, in respect of a financial year, the amount ascertained by dividing by one minus the rate of tax an amount equal to 6½ per centum of the average over the financial year of the issued share capital of the Company at the end of each month of the financial year;

THE SCHEDULE—*continued.*

- “commercial prices” means the respective prices at which, in the circumstances of the particular contract, the products could reasonably be expected to be purchased or the supplies could reasonably be expected to be sold by an independent purchaser or seller, as the case may be, willing to do business on a commercial basis;
- “gross operating surplus” means, in respect of a financial year, the amount remaining after deducting from income that would constitute assessable income of the Company in respect of the Company’s undertaking for the financial year under the Act all amounts that would properly be allowable as deductions therefrom for the purposes of ascertaining the taxable income of the Company in respect of the Company’s undertaking for the financial year under the Act, but with the following qualifications—
- (a) interest payable by the Company under this agreement will not be deducted;
 - (b) interest payable on money borrowed by the Company for the conduct of the Company’s undertaking will not be deducted;
 - (c) if any of the products of the Company’s undertaking are sold by the Company below commercial prices, the receipts will be calculated as if the products had been sold at commercial prices;
 - (d) if supplies of bauxite or alumina obtained for use in the Company’s undertaking have been purchased at other than commercial prices the deduction therefor will be on the basis of commercial prices; and
 - (e) deductions for depreciation will be calculated on a straight line basis;
- provided that, if in any financial year after the Company has undertaken works to expand the smelting capacity of the Company’s undertaking beyond a designed smelting capacity of 28,000 long tons of aluminium per annum the production of the Company’s undertaking in the financial year exceeds 28,000 long tons of aluminium, the gross operating surplus means the amount that bears to the amount remaining as aforesaid the same proportion as 28,000 long tons bears to the installed designed smelting capacity of the Company’s undertaking at the commencement of the financial year;
- “issued share capital” means share capital paid up in cash or issued for value in respect of the Company’s undertaking and does not include—
- (a) uncalled issued capital;
 - (b) capital issued from reserves (other than reserves wholly provided out of funds that could have been distributed as dividends) or from revaluation of assets; and
 - (c) capital obtained for the purpose of increasing the designed smelting capacity of the Company’s undertaking beyond 28,000 long tons of aluminium per annum;
- “operating surplus” means, in respect of a financial year, the amount remaining after deducting from the gross operating surplus for that financial year the sum of—
- (a) all interest payable in respect of that financial year on money borrowed by the Company for the conduct of the Company’s undertaking except that—
 - (i) interest on money borrowed for the purpose of increasing the designed smelting capacity of the Company’s undertaking beyond 28,000 long tons of aluminium per annum will not be deducted; and
 - (ii) in the case of money borrowed from a shareholder of the Company or from an associated Company, the interest will be deducted at the rate of 6½ per centum per annum or at the rate of interest at which the money is borrowed by the Company, whichever is the less; and
 - (b) the amount (if any) obtained by applying to any outgoing, consisting of interest deductible under sub paragraph (a) of this definition, incurred by the Company in the financial year which would not be an allowable deduction under the Act, the ratio which the rate of tax bears to one minus the rate of tax;
- “rate of tax” means, in respect of a financial year, the rate of income tax and social services contribution, expressed as a fraction, that would be payable by the

THE SCHEDULE—*continued.*

Company in respect of any taxable income that it might derive in the financial year over and above any specified amount or amounts of taxable income in respect of which a lower rate is payable;

“the Act” means the *Income Tax and Social Services Contribution Assessment Act 1936–1960* and if that Act is amended means that Act as amended from time to time;

“the Company’s undertaking” means the Company’s business as a producer of alumina and aluminium and includes such other business of the Company as the Commonwealth and the Company may from time to time agree shall be included therein for the purposes of this schedule;

“the deficiency” means the amount at any time of the difference between the total of the amounts by which the yearly interest has been reduced from time to time under sub-clause (1.) of clause 4 of this schedule and the total of the amounts that are from time to time paid under sub-clause (1.) of clause 5 of this schedule; and

“yearly interest” means, in respect of a financial year, the amount of interest in respect of the financial year calculated in accordance with clauses 2 and 3 of this schedule.

2. Interest at the rate of 5 per centum per annum will, upon and subject to the provisions of this schedule, be payable by the Company at the end of each financial year on the amount of the purchase price for the time being unpaid.

3. The interest will be calculated in respect of the whole of a financial year on the amount of the purchase price remaining unpaid at the beginning of the financial year, except that in respect of the financial year 1961 interest will be calculated on the purchase price less the amount paid on the date of completion.

4.—(1.) If in respect of a financial year the operating surplus does not exceed the base figure by an amount equal to or greater than the yearly interest, the amount of interest payable by the Company at the end of the financial year will be reduced from the yearly interest to the amount by which the operating surplus exceeds the base figure.

(2.) An amount by which the amount of interest payable by the Company at the end of a financial year is reduced under this clause will not thereby cease to be interest on the purchase price payable by the Company under this agreement but will be included in the deficiency and will be payable by the Company as provided in the next succeeding clause and not otherwise.

5.—(1.) If in respect of a financial year the operating surplus exceeds the base figure by an amount greater than the yearly interest, the amount of interest payable by the Company at the end of the financial year will be increased by an amount equal to one half of the amount by which the excess is greater than the yearly interest or to the deficiency, whichever is the less.

(2.) The payment by the Company in accordance with this schedule of an amount by which the amount of interest payable at the end of a financial year is increased under this clause will, to the extent of the payment, constitute payment of interest under this agreement and will reduce the deficiency accordingly.

6. Interest represented by the deficiency, if any, after the application of the preceding provisions of this schedule in respect of the financial year in which the purchase price is fully paid (in this clause called “the final year”) will cease to be payable by the Company, provided that for each financial year from 1965 to the final year (inclusive) in which the Company, by reason of disruption of its business caused by expansion or diversification of the Company’s undertaking, has incurred a loss of production exceeding one-fourteenth of the installed designed smelting capacity of the Company’s undertaking, the obligation of the Company to pay interest represented by the deficiency in accordance with the provisions of clause 5 of this schedule shall continue for one additional financial year after the final year or after any financial year or years for which the obligation has already been continued under this clause.

7. The Company will keep the Commonwealth informed as requested by the Commonwealth of the prices at which the Company from time to time sells its products and purchases bauxite and alumina.

8.—(1.) The Commonwealth may appoint auditors, who may be the auditors for the Company, to examine the books and accounts of the Company in respect of each financial year for the purpose of—

(a) investigating any charges for supplies (other than supplies of bauxite and alumina) provided by or services rendered to the Company by an associated company; and

THE SCHEDULE—*continued.*

(b) checking the calculation of interest payable by the Company in accordance with this schedule, and furnishing to the Commonwealth certificates in relation to the reasonableness of the charges and to the calculation of interest.

(2.) If in a certificate the auditors state that a charge for supplies or services is not reasonable, they will specify a charge that is, in their opinion, reasonable, and the charge specified will be the charge to be taken into account in calculating the operating surplus.

(3.) If the auditors are not able to certify that the calculation of interest is in accordance with the interest formula, they will inform the Commonwealth of the reasons for being unable to do so.

(4.) The Company will permit the auditors to carry out the examination of the books and accounts and will furnish to them all reasonable assistance in relation to the examination.

9. In the event of a disagreement between the Commonwealth and the Company in relation to the prices to be taken into account as commercial prices in calculating the gross operating surplus, the question will be referred to the arbitration of a single arbitrator, in case the parties can agree upon one, otherwise to two arbitrators or their umpire pursuant to the laws for the time being in force in the State of Tasmania relating to arbitration.

IN WITNESS WHEREOF this agreement has been executed by the parties the day and year first above written.

SIGNED for and on behalf of the COMMONWEALTH OF AUSTRALIA by the Honourable WILLIAM HENRY SPOONER, Minister of State for National Development, in the presence of—

ELIZABETH HUTCHISON

W. H. SPOONER

SIGNED for and on behalf of THE STATE OF TASMANIA by the Honourable ERIC ELLIOTT REECE, Premier of the State of Tasmania in the presence of—

F. J. CARTER

ERIC REECE

THE COMMON SEAL OF CONSOLIDATED ZINC PROPRIETARY LIMITED was hereunto affixed by authority of a resolution of the Board in the presence of—

M. MAWBY Director
PETER FITZGERALD Secretary

(L.S.)

THE COMMON SEAL of the AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION was hereunto affixed in the presence of—

NOEL K. S. BRODRIBB
Chairman
Australian Aluminium Production
Commission.

R. T. KNIGHT
Secretary
Australian Aluminium Production
Commission.

(L.S.)

THE COMMON SEAL of ALUMINIUM PRODUCTION CORPORATION LIMITED was hereunto affixed by authority of a resolution of the Board in the presence of—

S. CHRISTIE Director
H. C. WARREN Secretary

(L.S.)