



# ACIL Tasman

Economics Policy

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Dr Kathleen Dermody  
Committee Secretary  
Senate Economics Legislation Committee  
Room SG.64  
Parliament House  
CANBERRA ACT 2600

**GOVERNMENT RELATIONS CONSULTANT**  
**George Brownbill**

**ACIL House**  
103-105 Northbourne Avenue  
Turner ACT 2612  
GPO Box 1322  
Canberra ACT 2601  
TELEPHONE +61 2 6249 8055  
FACSIMILE +61 2 6249 7455  
+61 2 6257 4170  
canberra@aciltasman.com.au  
www.aciltasman.com.au

**ACIL TASMAN PTY LTD**  
ABN 68 102 652 148  
Incorporated in Victoria

Dear Dr Dermody

Thank you for your letter of 7 March in relation to your Committee's inquiry regarding the *Energy Grants (Credits) Scheme Bill 2003*.

I act for Alcan and its Australian subsidiary Alcan South Pacific Pty Ltd. On Alcan's behalf, I wish to lodge the attached submission in relation to the Committee's inquiry.

Not all the submission is in electronic form but those parts which are are being lodged with you in that form as well.

With regard to the Committee's hearings in relation to the legislation, I will be representing Alcan at the meeting scheduled for 4.30 p.m this afternoon.

Yours sincerely

George Brownbill  
Government Relations Consultant  
Email g.brownbill@aciltasman.com.au

Encl.

**MELBOURNE OFFICE**  
Level 6, 224-236 Queen Street  
Melbourne VIC 3000  
TELEPHONE +61 3 9600 3144  
FACSIMILE +61 3 9600 3155

**BRISBANE OFFICE**  
Level 15, 127 Creek Street  
Brisbane QLD 4000  
TELEPHONE +61 7 3236 3966  
FACSIMILE +61 7 3236 3499

**PERTH OFFICE**  
Level 29, 221 St Georges Terrace  
Perth WA 6000  
TELEPHONE +61 8 9480 3762  
FACSIMILE +61 8 9481 3177

**SYDNEY OFFICE**  
PO Box 170  
Northbridge NSW 1560  
TELEPHONE +61 2 9958 6644  
FACSIMILE +61 2 8080 8142

**Submission to the Senate Economics Legislation  
Committee**

In relation to the

*Energy Grants (Credits) Scheme Bill 2003*

and the

*Energy Grants (Credits) Scheme (Consequential Amendments)  
Bill 2003*

By

**Alcan South Pacific Pty Ltd**



March 2003

## **Introduction**

This submission to the Senate Economics Committee is made by Alcan South Pacific Pty Ltd (Alspac).

Alspac is the main operating subsidiary in Australia of Alcan Inc, the second largest aluminium producer in the world. With headquarters located in Montreal, Canada, Alcan operates alumina refineries and aluminium smelters in many parts of the world.

In 2000, Alcan and Alusuisse merged and, in consequence, Alusuisse's Australian assets passed to Alcan. These included, relevantly for the purposes of this submission, the Gove alumina refinery located at Gove in Arnhem Land in the Northern Territory.

The Gove refinery has been in operation under the name of "Nabalco" for more than 30 years and has earned many millions of dollars in export income for Australia. In July 2002 the operations name was changed to Alcan Gove Pty Ltd to be consistent with other Alcan operations around the world. The original arrangements between the Commonwealth and Alusuisse were recorded in the "Gove Agreement", which was given the force of law by successive legislative provisions of the NT.

For purposes of this submission, the issue of significance in the Gove Agreement is clause 12. This clause provides that the Gove operation should not be subject to discriminatory taxation.

The alumina refinery at Gove imports large amounts of fuel oil. It is used as the principal source of energy in the conversion of bauxite to alumina. It is also used in the process of calcination — the final stage of the refinery operation.

## **Fuel Taxation Inquiry**

In 2001, the Government appointed Mr David Trebeck to examine the whole issue of Fuel Taxation. Nabalco made a detailed submission to the Inquiry and this is attached (Attachment 1). This submission gives the complete background to this complex matter and identifies why Alspac continues to have a vital interest in the bills under examination by this Committee.

The Submission to the FTI traces the history of this matter to the point where the DAFGS and DFRS schemes were in operation, both schemes having been extended until 30 June 2003 by legislation passed late in 2001.

## **Developments since the Trebeck report**

The Committee will be aware that the Government did not accept the Trebeck Committee's recommendations. In relation to diesel fuel taxation, a commitment was made to bring in legislation which would extend, in respect of the period from 1 July 2003, no less favourable treatment to fuel users than that available under the DAFGS and the DFRS.

Alcan submits that the legislation before the Committee does meet that commitment by the Government. **Therefore, and subject to the points made below, Alcan supports the legislation and asks the Committee to recommend its passage into law well before 30 June 2003.**

## **Gas supply to Gove**

At pp. 5-6 of Attachment 1, Nabalco offered some responses to the question — when will gas be available at Gove? As noted in that submission, the availability of gas at a commercially realistic price will enable the refinery to switch to the fuel used by every other alumina producer in Australia.

At p. 5 of our submission, we provided a map showing a possible route for a spur pipeline to supply gas to Gove from the main north-south line. Negotiations with the operator of the north-south line are continuing.

Two other options are also under consideration. These options are for:

- ∨ supply of gas from the Blacktip field, some 500 km west of Mataranka. The pipeline route would run across the full width of the Top End and cost somewhere like \$A500 million to construct;
- ∨ supply of gas from a spur line running west from the proposed PNG line across the Gulf of Carpentaria. Total cost of such a pipeline would be considerably more than the land spur option referred to at p.5 of Attachment 1.

Alcan is in active discussion with all parties and we hope to be in a position to announce a decision in the next few months.

## **Alcan's expansion plans**

Alcan has recently announced (Attachment 2) that a feasibility study has begun into a very significant expansion of the Gove refinery's capacity. Total new investment would be of the order of \$A1.5bn and capacity of the plant would rise from around 2.0 million t/a to 3.5 million t/a. On current export prices for alumina, annual export income would rise from \$A600 million to \$A1200 million.

There are many issues to be considered within the feasibility study but clearly an important one must be the cost of fuel. Already, Gove pays about \$A100 million a year for fuel oil and without the existing diesel fuel rebate arrangements, we would pay another \$A40 million in taxation and proportionately more, should the expansion proceed.

It is essential for Gove to retain its competitive position and thereby ensure its long-term viability, whether operating at its present or enhanced capacity, that fuel inputs not be taxed. The present legislation will do this through the energy grants credit scheme mechanism. That mechanism in effect works in the same way as the DAFGS has done.

## **Rate of credit**

Alcan notes that the intention of the Government is that the rate of credit should be the same as that applying under the earlier scheme rebates. However, it is left to the regulations to prescribe the rate — see clause 57, and particularly sub-cl. 57(2). **Alcan submits that the Committee should seek an assurance from the Government that the rate of credit to be prescribed for fuel oil will be the same as for diesel and the same as the present rebate.**

In addition, as explained at pp 1-2 of Attachment 1, a rebate or remission of duty under Customs regulation 126 (1)(v) is payable in respect of Customs duty on fuel oil used as a

chemical reductant in the calcination process. This rebate has been subsumed into the DAFGS and DFRS processes and, under cl. 53(5)(b) of the Bill would likewise be subsumed into the new EGCS. However, Alcan requests that the Committee ensure that after passage of the present legislation eligibility for the credit rate to be prescribed under cl. 57 be no less than that rebate.

### **“Like fuel”**

The benefits of the DAFGS and the DFRS extend to fuel oil because that oil is deemed to be a “like fuel” to diesel (see p. 4 and footnote 8 in Attachment 1). The same mechanism is proposed in the Bill before the Committee. Clause 4 says that “off-road diesel fuel” includes any “like fuel” that is specified in the regulations.

The effect of this approach would be that Alcan will be uncertain whether the new scheme applies to fuel oil until:

- ∨ the Bill has been enacted and assented to; and
- ∨ regulations have been made under the new Act.

There is already precedent for fuel oil to be considered a like fuel to diesel. Also, it is the Government’s clear intention that existing entitlements be carried over into the new legislation. With these thoughts in mind, **Alcan requests that the Committee recommend that the Bill itself be amended so that its clear and express intent is that the new Scheme apply to fuel oil.** That is, Alcan would prefer fuel oil to be mentioned specifically as a “like fuel” within the Bill itself. This could be achieved by expanding the definition of “off road diesel fuel” so that fuel oil is included at clause 4 of the Bill.

**A1. Submission to the Fuel Taxation Inquiry by Nabalco Pty Ltd in relation to “The Nabalco Tax”**

**Nabalco Pty. Limited** Inc. in N.S.W.  
A.C.N. 000 453 663



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Manager, Gove Joint Venture

PO Box 21  
Nhulunbuy N.T. 0881  
AUSTRALIA

Telephone: (08) 8987 5211  
Facsimile: (08) 8987 5360

# **Fuel Taxation Inquiry**

Submission by

**Nabalco Pty Ltd**

in relation to

**“The Nabalco Tax”**

September 2001

## Executive Summary

- This submission is made by Nabalco Pty Ltd, which operates the alumina refinery at Gove NT. Nabalco has become a fully-owned part of Alcan's global operations, following the Alcan-Alusuisse merger early in 2001.
- The "Gove Agreement" of 1968, between the Commonwealth and Nabalco, provided that the Commonwealth would not impose any discriminatory taxes on the refinery operation.
- For several years, Customs duty was levied on fuel oil used at Gove in refining bauxite into alumina.
- While other Australian refineries also used fuel oil, this taxation was not discriminatory. Now, however, all others have access to natural gas, which is not taxed.
- The "Nabalco tax" is thus discriminatory and if re-instated, would seriously affect Nabalco's competitive position.
- This situation was partly alleviated in 1995 and more completely with the commencement of A New Tax System.
- Fuel oil is now defined as a "like fuel" to diesel under the Diesel Fuel taxation arrangements. The exemptions and rebates applicable to diesel used in mining and manufacturing thus extend to the fuel oil used at Gove.
- Nabalco is actively seeking a supply of natural gas to Gove. These activities build on the endeavours Nabalco has made over some considerable time to secure such a supply. We are hopeful of a favourable outcome to the Timor Sea negotiations, and/or a clarification of Shell/Woodside's intentions regarding Sunrise, so that plans for a supply line to Gove can be progressed.
- Although we hope gas will soon become available at Gove, that will not happen before 1 July 2003, the date to which the present legislation has been extended.
- **Nabalco submits that the current taxation regime applying to fuel oil used at Gove should be continued beyond 1 July 2003, until gas is readily available there.**



## **“The Nabalco Tax”**

### **Introduction**

This submission is made to the Fuel Taxation Inquiry by Nabalco Pty Ltd (“Nabalco”). It relates to the taxation over recent years of fuel oil used at the Gove alumina refinery in the NT, known as “the Nabalco tax”.

The Gove refinery is operated on behalf of the Gove Joint Venture participants by Nabalco Pty Limited (“Nabalco”). The Gove Joint Venture was owned 70% by Swiss Aluminium Australia Limited (“SAAL”) and 30% by Gove Aluminium Limited (“GAL”) when Alcan merged with Alusuisse Group Limited of Switzerland late in 2000. GAL was acquired by Alcan earlier this year when Alcan exercised its pre-emptive rights over the CSR-AMP sale of their interests in GAL. Alcan now has 100% ownership of the Gove refinery.

As this submission will show, Nabalco has made representations to successive Commonwealth Governments in relation to the taxation of fuel oil used at Gove. Only recently have these representations resulted in a taxation regime which is considered to be fair to the Gove refinery relative to other Australian alumina operations. Before then, the Nabalco Tax was plainly discriminatory and therefore in breach of Clause 12 of the Gove Agreement (see below).

Alumina refineries are highly energy intensive and, while natural gas is ideal, fuel oil has been the only viable energy source for the Gove refinery. Currently, every other Australian alumina refinery has access to a natural gas supply on commercially acceptable terms. Since Gove was developed in the late 1960s, Nabalco has constantly researched both the availability and viability of alternative energy sources to fuel oil, particularly natural gas.

In fact, over the last several years, Nabalco has held many discussions with a variety of potential suppliers of gas but, until recently, without success. The likely development of Timor Sea reserves presents a realisable opportunity to supply gas to Gove. Nabalco is in active discussions with potential suppliers and we expect a satisfactory outcome.<sup>1</sup>

### **History of the Nabalco tax**

In the 1993-94 Budget, the then Government announced a very significant increase in the Customs and Excise duty on fuel oil. The net effect was to increase the duty payable by about 96%.

The principal consumers of fuel oil in Australia are Nabalco’s Gove refinery and coastal shipping (about 50% each). Both interests made strenuous representations to the Government.

In the 1994-95 Budget, the Government significantly reduced (by 2c/L) the rate of increase but the duty payable was still much greater than before the 1993 Budget. Consequently,

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<sup>1</sup> A general account of Alusuisse’s and Alcan’s past and continuing negotiations can be provided to the Inquiry on a commercial-in-confidence basis, if desired.

Nabalco explored new ways of securing a reduction or mitigation of the Customs duty payable on fuel oil used at Gove.

Two options were considered:

- ∨ representations (leading, if need be, to litigation) on the basis that the original Gove Agreement<sup>2</sup> committed the Commonwealth not to impose any form of discriminatory taxation; and
- ∨ representations to secure exemption for that proportion of fuel oil used in the calcination process in the refining of bauxite into alumina (based on an analogous rebate decision in respect of fuel oil used in the processing of nickel at the Greenvale refinery at Townsville).

In the end, the former Government accepted the second option, but only after litigation was close to commencement. Nabalco had received detailed and extensive advice from Senior Counsel in relation to this matter, and were confident that the Nabalco Tax was discriminatory and thus contrary to clause 12 of the Gove Agreement.

### **The 1995 Regulations**

To give effect to the Government's decision, on 28 December 1995, Regulations were made under the Customs Act. The relevant Regulation is Reg. 126 — "Circumstances under which refunds, rebates and remissions are made" — and a new sub-Reg 126 (v) to provide for a rebate where:

"(v) duty is payable on fuel oil that:

- (i) is delivered for home consumption in accordance with a permission given under section 69 of the Act; and
- (ii) is for use at a place:
  - (A) that is not supplied by natural gas; or
  - (B) at which natural gas is not readily available; and
- (iii) is for use as a chemical reactant in the calcination part of the Bayer process for refining bauxite into alumina".<sup>3</sup>

It should be noted that this rebate is available to any producer of alumina using the Bayer process where a supply of natural gas "is not readily available", not only to Nabalco, and not only at Gove. Thus it is our view that the rebate does not discriminate in a way which might be considered to be contrary to the Constitution.

### **A New Tax System**

In August 1998, when the Government began the development of A New Tax System, Nabalco noted that the proposal appeared to encompass elimination of the Nabalco tax.

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<sup>2</sup> The Gove Agreement of 1968 was concluded between the Commonwealth and Nabalco Pty Ltd and was approved by the *Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968* (now Act). Clause 12 of the Agreement relates to discriminator taxation and is reproduced at Attachment 1.

<sup>3</sup> SR 424/1995 (reproduced at Attachment 2).

After the 1998 election, which the Government accepted as a mandate to proceed with A New Tax System, legislation was introduced. That legislation was then the subject of extensive Senate Committee enquiries, then amended in light of a deal, announced jointly by the Prime Minister and Leader of the Democrats, on 22 May 1999. The deal said, in relation to “Off-Road Diesel and Like Fuels”:

“The extension to the off-road concession for diesel and like fuels will be limited to providing full credits for marine use, bush nursing homes, hospitals, nursing homes, aged persons homes and private residences, but not for construction, power generation, manufacturing or forestry. The proposed full credit for mining currently accessing the DRFS [sic] will be maintained”.<sup>4</sup>

Because this passage referred to fuel tax for marine use but did not refer specifically to fuel oil as used at Gove, Nabalco made representations to the Government, seeking to ensure the concession was extended to fuel used at Gove. As noted below, this objective was achieved just before ANTS came into force on 1 July 2000.

The general principle of the GST applies in the case of fuel oil. Goods and Services tax is payable at 10% and is an input tax credit, refundable after each BAS has been lodged. In this respect, the Nabalco refinery is in no different position from any other business operating in Australia.

### **Diesel and Alternative Fuels Grants Scheme (DAFGS)**

The deal with the Democrats referred to above involved removal from the ANTS Bill of proposed Div. 123 — Diesel Fuel Credits. Instead, new legislation — the *Diesel and Alternative Fuels Grants Scheme Act 1999* — replaced Division 123 and was eventually assented to on 8 July 1999.

Its entry into force was conditional on passage of the *Diesel and Alternative Fuels Grants Scheme (Administration and Compliance) Bill 1999*. The latter Bill was eventually passed, and assented to on 23 December 1999.

The third element in the Scheme was amendments to the Customs Act and the Excise Act.<sup>5</sup>

Among the amendments to the Customs Act—

- ∨ “diesel fuel” was to be defined to include “any other like fuel of a kind that is prescribed”<sup>6</sup>;
- ∨ the DFRS was to continue until 1 July 2002<sup>7</sup>, after which the DAFGS would be the only scheme left to operate.

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<sup>4</sup> Diesel Fuel Rebate Scheme (DFRS).

<sup>5</sup> *Customs and Excise Amendment (Diesel Fuel Rebate Scheme) Bill 1999* — assented to as Act No. 87/1999.

<sup>6</sup> *Ibid*, Schedule 1, item 1.

<sup>7</sup> *Ibid*, Schedule 1, item 2.

The DAFGS Act, in its turn, contained a provision to the effect that it too is to be replaced by an Energy Grants (Credits) Scheme — further discussed below.

Because the Customs Act amendments also widened the definition of mining operations, all diesel, or any other like fuel (ie, fuel oil) used at Gove became eligible for rebate.

### **The “like fuel” regulations**

If the expanded DFRS arrangements were to be applied to the fuel oil used at Gove, it was necessary to extend the definition of “like fuels” to include it. This was finally achieved on 21 June 2000 by the *Customs (Amendment) Regulations 2000 (No. 4)*.<sup>8</sup>

### **Extension of DAFGS and DFRS**

The Parliament has very recently passed the *Fuel Legislation Amendment (Grant and Rebate Schemes) Act 2001*. In the words of the Explanatory Memorandum to the Bill:

“This bill amends the Customs Act, the DAFGSA 1999 and the Excise Act to:

- extend the expiry dates of the DAFGS and DFRS from 30 June 2002 to 30 June 2003 ...”.

Nabalco welcomes this extension of the schemes, as they apply to the use of fuel oil at Gove, until 30 June 2003.

### **Present taxation regime for fuel oil used at Gove**

The history of this matter, as outlined above, has yielded the following result:

- (1) Fuel oil used at Gove<sup>9</sup> is subject to Customs duty
  - which is rebatable under DFRS because it is a “like fuel” to diesel
  - but only until 30 June 2003.
- (2) *In the absence of any new legislative arrangements after 30 June 2003*, fuel oil used for calcination of alumina will be rebatable, but not oil used for other purposes.
- (3) The arrangements in (2) operate for so long as gas is not readily available at Gove.

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<sup>8</sup> Reproduced in full at Attachment 3. It will be seen that Reg. 1B(1)(c) requires the fuel oil to have “the characteristics set out in sub-section 3 (4) of the Excise Tariff Act 1921. That sub-s. reads:

“The physical characteristics of fuel oil are:

- (a) a density equal to or greater than 920.0 kg/cubic metre at 15 degrees Celsius as determined by either ASTM D1298 or ASTM D4052; and
- (b) a carbon residue, on the whole sample, of at least 2.0 percent mass as determined by ASTM D189 (Conradson Carbon Residue) or by ASTM D4530 (Carbon Residue-Micro Method); and
- (c) a minimum kinematic viscosity of 10 centistokes (millimetres squared per second) at 50 degrees Celsius as determined by ASTM D445.”

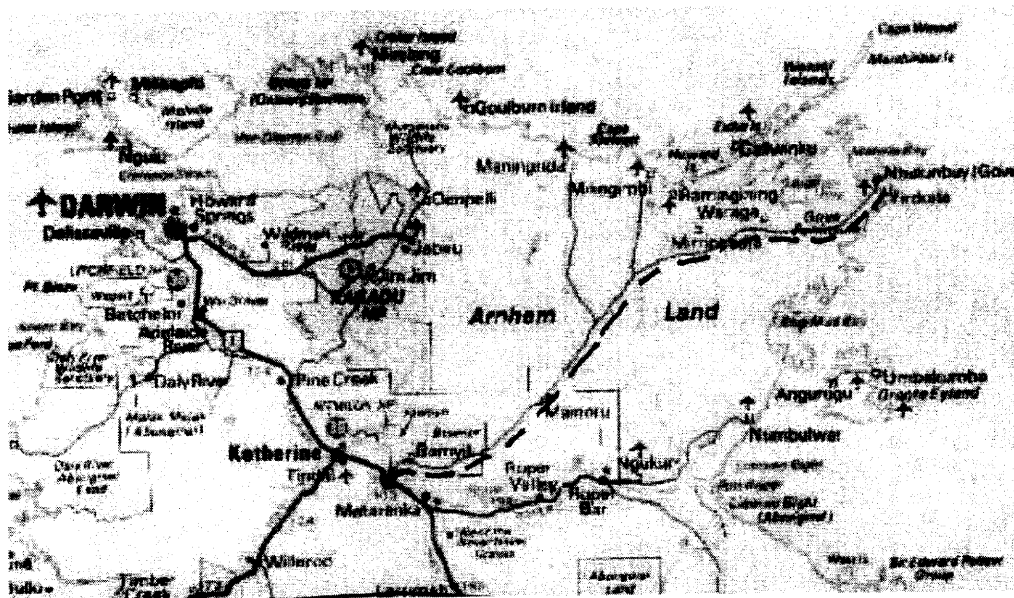
For the sake of certainty, Nabalco has checked that the fuel oil currently imported meets the Excise Tariff definition.

<sup>9</sup> Except for fuel oil used to generate electricity for supply to Nhulunbuy Town. That fuel oil is subject to Customs duty. However, GST is rebatable as an input tax credit.

### When will gas be available at Gove?

Over many years, Nabalco has actively sought a reliable supply of natural gas to Gove. These options would require an approximately 600km spur line from a main north-south gas pipeline, leaving at a point near Mataranka NT. The following map gives a schematic representation of one possible route. Construction costs are estimated at \$200m.

## The Top End NORTHERN TERRITORY



- - - - Possible route of proposed Mataranka-Nhulunbuy gas spur line.

Clearly, a significant investment in pipeline infrastructure would be required. Nabalco understands that any such investment, by any proponent, will require thorough evaluation. Nabalco has always stood ready to discuss the possible supply of gas under realistic commercial conditions. Realistic, that is, from the viewpoints of the supplier and the consumer of the gas.

The prospect of gas from the Timor Sea has given Nabalco reason to hope that gas could be delivered to the Gove factory gate by 2005. Negotiations are continuing, but it is certainly our desire to see gas at Gove as soon as possible. We are therefore concerned that Phillips' negotiations with East Timor appear to have reached an impasse. We trust that the Australian Government will do all in its power to achieve an acceptable outcome, sufficient to enable Phillips to take up its original plan. Should that not occur, we will renew our efforts to find another acceptable source of gas for Gove.

It is also noted that Shell and Woodside have announced plans for an offshore LNG platform, which could mean that very little gas would be delivered onshore. At present, though, there is some uncertainty about these matters. Nabalco is actively seeking clarification of these companies' intentions.

In the words used in the Customs Regulation, however, gas will not be “readily available” at Gove until several years after 1 July 2003, when the “like fuel” rebate will have ceased to operate.

### **Energy Grants (Credits) Scheme**

According to s. 4 of the *Diesel and Alternative Fuels Grants Scheme Act 1999*:

#### “4 The Energy Grants (Credits) Scheme

- (1) The Parliament acknowledges that the Commonwealth intends to replace:
  - (a) grants under this Act; and
  - (b) the Diesel Fuel Rebate Scheme under the Customs Act 1901 and the Excise Act 1901;with an Energy Grants (Credits) Scheme to start on 1 July 2002 or earlier.
- (2) The purpose of the Energy Grants (Credits) Scheme will be to provide active encouragement for the move to the use of cleaner fuels by measures additional to those under this Act, while at the same time maintaining entitlements that are equivalent to those under this Act and the Diesel Fuel Rebate Scheme, including for use of alternative fuels.
- (3) In the case of diesel fuel, the Commonwealth intends to restrict entitlements available under the Energy Grants (Credits) Scheme to ultra low sulphur diesel from 1 January 2006 when a mandatory standard of 50 parts per million of sulphur will come into effect.”

These provisions in the Act, although law, represent little more than current Government intentions. However, this section of the Act cannot bind future Parliaments or future Governments. They do not constitute taxation measures.

All the same, we note that the Parliament has acknowledged that the new Energy Grants (Credits) Scheme is intended to “maintain entitlements that are equivalent to those under this [DAFGS] Act and the Diesel Fuel Rebate Scheme”.<sup>10</sup> We note, also, that this Inquiry:

“will not impact upon the Government’s commitment that the Energy Credits Scheme will maintain benefits equivalent to those available under the DAFGS and the DFRS”.<sup>11</sup>

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<sup>10</sup> Sub-s. 4(2).

<sup>11</sup> Terms of reference, para 2.

## **Environmental issues**

The Inquiry will not need much persuading that, on environmental grounds alone, gas is to be preferred over fuel oil as an energy source for alumina production. Gas is cleaner, contains significantly less sulphur and produces less GHG emissions per unit of energy consumed.

The Greenhouse Office has recognised that GHG emissions from Gove can be reduced if the refinery changes to gas. Thus, the Office has approved a grant to assist Nabalco in the proposed change — see Attachment 4.

## **The cost of energy**

As the Light Metals Action Agenda makes clear, the cost of energy must be as low as possible if the alumina and related industries are to thrive and develop in Australia. The Agenda urges that “competitive electricity costs” be maintained and that the Government should “monitor the taxation regime as it affects the light metals sectors to ensure it supports an ongoing investment in Australia by these industries”.<sup>12</sup>

These concerns were summed up in a letter dated 30 August 2001 to the Industry Minister, Senator Minchin, from the Australian Aluminium Council, among others. The letter said:

“As a group of energy-intensive industries we are committed to working with governments on the range of energy supply and market issues. As export and import competing industries, we have considerable experience and expertise to bring to energy policy considerations.

Issues of particular concern are:

- Securing long-term, world competitive energy prices; ...”.

While the focus of this submission is on the Nabalco Tax, we put it forward on the basis that the Inquiry will be alert to the wider industry concerns recorded here. Nabalco shares these concerns and urges that the Inquiry should not contemplate new taxes on gas.

## **Recommendations**

- (1) Nabalco submits, therefore, that the Inquiry should recommend that the current arrangements for taxation of fuel oil used at Gove for mining and alumina refining operations should continue until gas is readily available and has been substituted for fuel oil in Nabalco’s operations.**
- (2) Nabalco further submits that the Inquiry should not recommend any new taxation on gas used for the operation of alumina refineries.**

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<sup>12</sup> *Light Metals Action Agenda, Aluminium Business Case.*

**Attachment 1**



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1968 *Mining (Gove Peninsula Nabalco Agreement)* No. 15

(c) amortising all assets over twenty years from the date of commencement of the production of alumina.

(3.) If as a result of it having been demonstrated by the Company to the satisfaction of the Minister in the feasibility study that the cost of alumina as defined in sub-clause (1.) of this clause read with sub-clause (2.) of this clause produced in the bauxite treatment plant will exceed the world market price of alumina an Australian company referred to in sub-clause (1) desires, after the 31st day of March, 1968, to dispose of the whole or a part of its shares in the Company, the Company will use its best endeavours to persuade one or more of the remaining Australian companies referred to in sub-clause (1.) of this clause to acquire the shares which the first-mentioned Australian Company desires to dispose of.

(4.) If the Company is unsuccessful in the endeavours referred to in the last preceding sub-clause, it will confer with the Minister and will, within a reasonable time, use its best endeavours to persuade another or other suitable Australian company or companies, not being a company or companies within the aluminium industry but being a company or companies approved by Swiss Aluminium Australia, to acquire those shares, it being agreed, so far as the Company is in any position to prevent the same, that Swiss Aluminium Australia and Swiss Aluminium Limited shall not increase their total share-holding in the Company beyond fifty per centum (50%) of the equity capital unless the Company, having used its best endeavours as aforesaid, has been unable within a reasonable time to persuade another or other suitable Australian company or companies to acquire the said shares.

(5.) Nothing contained in sub-clauses (1.), (3.) and (4.) of this clause shall be deemed to prevent individual members of the said group of Australian companies from disposing of their shares, after the said 31st day of March, 1968, to other Australian companies, not being companies within the aluminium industry but being approved by Swiss Aluminium Australia.

Sale of  
Alumina

10.—(1.) The Company will negotiate and enter into a contract with Swiss Aluminium Limited on terms whereby—

(a) Swiss Aluminium Limited will contract to purchase for export firm for a period of 20 years the whole output of the bauxite treatment plant;

(b) the price as determined under the price formula in the contract for that output will be subject to the Minister being satisfied that it is reasonable having regard to evidence to be advanced by the Company that the proposed price adjusted to a delivered basis—

- (i) is not below the cost of production and freight; and
- (ii) is reasonably comparable with the delivered prices for alumina that would be applicable to like quantities, quality and duration supplied under arms-length contracts from other world sources, not being contracts for alumina sold or offered for sale at distressed prices or at prices resulting from dumping or subsidising.

(2.) The Company will take all practicable steps necessary to ensure that the contract is continued in force and performed subject to the force majeure provisions (if any) in such contract.

(3.) The Company will not negotiate downwards the original price specified in the contract referred to in sub-clause (1.) of this clause during the life of that contract except with the approval of the Minister.

(4.) In the absence of an agreement between the Australian companies holding shares in the Company and Swiss Aluminium Limited to the contrary, the contract referred to in sub-clause (1.) of this clause will give to the Australian companies holding shares in the Company an option at any time and from time to time on giving reasonable notice to purchase at comparable prices, terms and conditions to those applying under the said contract up to fifty per centum (50%) of the total production of alumina for their own unrestricted use or sale.

Bond and  
Guarantee

11.—(1.) On the signing of this agreement, the Company will execute and deliver to the Minister a bond substantially in accordance with the form in the Third Schedule to this agreement bind the Company in the sum of Two million dollars (\$2,000,000) as security for compliance by the Company with certain conditions of this agreement, compliance with which is expressed in the said bond to make the bond void.

(2.) As soon as practicable after the date on which this agreement comes into force and in any event not later than one month after that date, the Company shall deliver to the Minister a guarantee or guarantees, in a form or forms approved by the Minister, by a guarantor or guarantors approved by the Minister guaranteeing the payment of any judgment, together with costs, obtained by the Commonwealth against the Company on the bond referred to in sub-clause (1) of this clause and in respect of interest payable on any such judgment.

Discriminatory  
Taxes, &c

12.—(1.) The Commonwealth will use its best endeavours to ensure that no Act or Ordinance is passed that will impose, and that the Administration of the Territory and the agencies or instrumentalities of the Commonwealth and of the Territory and

1968 Mining (Gove Peninsula Nabalco Agreement) No. 15

11

any local or other authority are not permitted or authorized to impose, discriminatory rates, discriminatory taxes or discriminatory charges of any nature whatsoever on or respect of the titles, property or other assets, products, material or services used or produced by or through the operations of the Company or of any subsidiary or associated company of the Company in the conduct of business incidental to the Company's business under this agreement.

(2.) The Commonwealth will not take or permit to be taken any other discriminatory action that would deprive the Company or any subsidiary or associated company of full enjoyment of the rights granted or to be granted to the Company under this agreement.

13.—(1.) The Commonwealth will ensure that during the currency of the Special Mineral Lease no claim, lease or other mining tenement is registered or granted under the Ordinance or otherwise by which any person other than the Company would obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum) within the land comprised in the Special Mineral Lease or any other lease granted pursuant to this agreement if such claim, lease or other mining tenement would unduly prejudice the Company in relation to its operations under this agreement or under the relevant lease or would prejudicially interfere with such operations, assuming the taking by the Company of all reasonable steps to avoid the interference.

Grants of Mining Rights to Other Persons

(2.) Authority under the Ordinance to occupy or mine any part of the land coloured blue on the plan designated 'NABALCO/PLAN II' annexed to this agreement shall not be granted by the Administrator where the occupation or mining would unduly prejudice the Company in its reasonable requirements in relation to its expected operations under this agreement and before any such authority is granted reasonable written notice will be given to the Company of the intention to grant the authority.

14. The Commonwealth and the Company agree with each other that the land for the time being comprised in the Special Mineral Lease and the lands the subject of any lease, licence, easement or other title granted to the Company pursuant to this agreement shall be and remain zoned for use or otherwise protected during the currency of this agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the Commonwealth, the Administration of the Territory or any agency or instrumentality of either of them or any local or other authority of the Territory on the ground that such operations are contrary to any zoning by-law or regulation.

Zoning

15. Without affecting the liability of the Company under this agreement, the Company shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which the Company is authorized or obliged to carry out hereunder.

Third Parties

16. Subject to the provisions of this clause the Company may not transfer, assign or charge the whole or any part of the rights of the Company under this agreement (including its rights to or as the holder of any lease, licence, easement or other title) or part with possession of any land the subject of any such lease, licence, easement or other title (other than to a wholly owned subsidiary or to wholly owned subsidiaries of the Company) without the consent in writing of the Minister, which consent shall not be unreasonably withheld in the case of a mortgage or charge bona fide for financing the operations of the Company under this agreement.

Transfers, &c.

17.—(1.) If the Company incurs delay in the performance of any of its obligations under this agreement—

Permissible Delays

(a) from any cause arising without default or negligence on the part of and beyond the reasonable control of the Company; or

(b) without prejudice to the generality of the foregoing, by reason of fire, explosion, storm, flood, lightning, earthquake or other natural cause or accident, riot or civil commotion, strikes or lockouts, war (whether declared or not) or military or usurped power, act of government by way of restriction, embargo or prohibition arising without default or negligence on the part of the Company.

and if the Company furnishes evidence to the satisfaction of the Minister of the existence of the cause and of the fact that it was without default or negligence on the part of and beyond the reasonable control of the Company, then such obligation shall be suspended so far as it is so affected by such cause as aforesaid, but only during the continuance thereof.

(2.) Where an obligation that has been suspended under sub-clause (1) of this clause requires the Company to undertake or complete any act, matter or thing by any date or by the end of any period, the Minister shall, by notice in writing to the Company, extend the date or the period, as the case may be, by the addition of a period equal to the period during which the Company was delayed in the performance of the obligation.

18. Notwithstanding any provision of this agreement the Minister may, if he is satisfied that it is in the public interest, suspend or vary the operation of any provision of this agreement.

**Attachment 2**



Statutory Rules 1995 No. 424<sup>1</sup>

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## Customs Regulations<sup>2</sup> (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Customs Act 1901*.

Dated 20 December 1995.

BILL HAYDEN  
Governor-General

By His Excellency's Command,

C. SCHACHT  
Minister for Small Business, Customs and Construction

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### 1. Amendment

1.1 The Customs Regulations are amended as set out in these Regulations.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

## 2. Regulation 126 (Circumstances under which refunds, rebates and remissions are made)

### 2.1 Add at the end:

“(v) duty is payable on fuel oil that:

- (i) is delivered for home consumption in accordance with a permission given under section 69 of the Act; and
- (ii) is for use at a place:
  - (A) that is not supplied by natural gas; or
  - (B) at which natural gas is not readily available; and
- (iii) is for use as a chemical reactant in the calcination part of the Bayer process for refining bauxite into alumina.”.

## NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 28 December 1995.
2. Statutory Rules 1926 No. 203 as amended by 1927 Nos. 17, 95 and 121; 1928 Nos. 47, 57, 74 and 95; 1929 Nos. 25, 56 and 127; 1930 Nos. 91, 138 and 140; 1931 Nos. 16, 42 and 90; 1932 No. 90; 1933 Nos. 21, 105, 106 and 129; 1934 Nos. 109 and 127; 1935 Nos. 1, 41, 69 and 113; 1936 Nos. 49 and 163; 1938 No. 111; 1939 No. 157; 1940 Nos. 203 and 256; 1946 Nos. 127 and 161; 1947 Nos. 29, 83, 94 and 152; 1948 No. 156; 1949 Nos. 34, 78, 95 and 111; 1950 No. 17; 1951 Nos. 34, 38, 71, 99, 106, 109 and 159; 1952 No. 96; 1953 No. 102; 1954 No. 21; 1955 Nos. 15, 32 and 66; 1956 Nos. 71, 83, 91 and 127; 1957 Nos. 57 and 76; 1958 No. 86; 1959 No. 106; 1960 Nos. 29 and 70; 1961 Nos. 60 and 144; 1962 Nos. 102 and 103; 1963 No. 149; 1964 No. 141; 1965 Nos. 86, 121 and 194; 1966 Nos. 15 and 173; 1967: Nos. 9 and 179; 1968 No. 68; 1969 Nos. 69, 77, 133, 152 and 186; 1970 Nos. 104, 113 and 170; 1971 Nos. 9, 59 and 170; 1972 No. 96; 1973 Nos. 155, 251, 257 and 268; 1974 Nos. 29 and 112; 1976 Nos. 261 and 262; 1977 Nos. 68, 137 and 188; 1978 Nos. 32, 147, 180 and 195; 1979 Nos. 181, 275 and 277; 1980 Nos. 109, 255, 372 and 377; 1981 Nos. 162, 265 and 382; 1982 Nos. 140, 255, 311, 335 and 404 and Act No. 108, 1982; Statutory Rules 1983 Nos. 92, 93, 327, 328, 329 and 330 and Act No. 101, 1983; Statutory Rules 1984 Nos. 13, 18, 137, 319 and 462; 1985 Nos. 12, 71, 76, 126, 306 and 308; 1986 Nos. 77, 91, 94, 144, 174, 175, 176, 215, 248, 361, 363, 367 and 368; 1987 Nos. 72, 102, 103, 124, 140, 162, 244, 297 and 316; 1988 Nos. 111, 179, 207, 260 and 270; 1989 Nos. 100, 101, 159, 160, 161, 162, 163, 243, 260 and 409; 1990 Nos. 6, 8, 123, 147, 148, 189, 217, 220, 222, 248, 274 and 450; 1991 Nos. 30, 109, 129, 139, 140, 228, 290, 316 and 384; 1992 Nos. 72, 175, 277 (as amended by 1992 No. 326), 328, 343, 344, 447 and 464; 1993

NOTES—continued

Nos. 66, 158 and 339; 1994 Nos. 53, 82, 183, 311, 312, 351, 366, 367, 391 and 435; 1995 Nos. 99, 136, 244, 313, 321, 352 and 423.

**Attachment 3**



# Customs Amendment Regulations 2000 (No. 4)

Statutory Rules 2000 No. 141

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Customs Act 1901*.

Dated 21 June 2000

WILLIAM DEANE  
Governor-General

By His Excellency's Command

AMANDA VANSTONE  
Minister for Justice and Customs





# Customs Amendment Regulations 2000 (No. 4)<sup>1</sup>

Statutory Rules 2000 No. 141<sup>2</sup>

made under the

Customs Act 1901

## Contents

	Page
1 Name of Regulations	2
2 Commencement	2
3 Amendment of <i>Customs Regulations 1926</i>	2
Schedule 1 Amendments	3

Regulation 1

1 **Name of Regulations**

These Regulations are the *Customs Amendment Regulations 2000 (No. 4)*.

2 **Commencement**

These Regulations commence on 1 July 2000.

3 **Amendment of *Customs Regulations 1926***

Schedule 1 amends the *Customs Regulations 1926*.

## Schedule 1 Amendments

(regulation 3)

[1] After regulation 1A

*insert*

1B Diesel fuel (Act s 4)

(1) For the definition of *diesel fuel* in subsection 4 (1) of the Act, the following fuels are prescribed:

(a) a product:

(i) on which customs duty has been paid at the rate that applies to diesel fuel at the time of the payment; and

(ii) that is capable of being used as fuel in a diesel engine;

(b) a petroleum product:

(i) that has the characteristics set out in subregulation 50(4A) of the *Excise Regulations 1925*; and

(ii) that is capable of being used as a fuel otherwise than in an internal combustion engine;

(c) a fuel oil that has the characteristics set out in subsection 3(4) of the *Excise Tariff Act 1921*.

(2) However, each of the following fuels is not a *diesel fuel*:

(a) gasoline and other petroleum or shale spirit having a flash point of less than 23 degrees Celsius when tested in an Abel Pensky (closed test) apparatus;

(b) coal tar and coke oven distillates;

- (c) aromatic hydrocarbons and light oils consisting principally of aromatic hydrocarbons (not being petroleum or shale products), suitable for use as gasoline substitutes and having a flash point of less than 23 degrees Celsius when tested in an Abel Pensky (closed test) apparatus.

[2] After subregulation 128D (2)

*insert*

- (2A) However, an individual (including a member of a partnership) may rely on a current notice, mentioned in subsection 11 (3) of the *A New Tax System (Australian Business Number) Act 1999*, that relates to the individual.

[3] Paragraph 128D (3) (h)

*omit*

insolvency.

*insert*

insolvency;

[4] After paragraph 128D (3) (h)

*insert*

- (i) a current notice, mentioned in subsection 11 (3) of the *A New Tax System (Australian Business Number) Act 1999*, that relates to the company.

[5] Paragraph 128D (4) (f)

*omit*

property.

*insert*

property;

## [6] After paragraph 128D (4) (f)

*insert*

- (g) a current notice, mentioned in subsection 11 (3) of the *A New Tax System (Australian Business Number) Act 1999*, that relates to the organisation

**Notes**

1. These Regulations amend Statutory Rules 1926 No. 203, as amended by 1927 Nos. 17, 95 and 121; 1928 Nos. 47, 57, 74 and 95; 1929 Nos. 25, 56 and 127; 1930 Nos. 91, 138 and 140; 1931 Nos. 16, 42 and 90; 1932 No. 90; 1933 Nos. 21, 105, 106 and 129; 1934 Nos. 109 and 127; 1935 Nos. 1, 41, 69 and 113; 1936 Nos. 49 and 163; 1938 No. 111; 1939 No. 157; 1940 Nos. 203 and 256; 1946 Nos. 127 and 161; 1947 Nos. 29, 83, 94 and 152; 1948 No. 156; 1949 Nos. 34, 78, 95 and 111; 1950 No. 17; 1951 Nos. 34, 38, 71, 99, 106, 109 and 159; 1952 No. 96; 1953 No. 102; 1954 No. 21; 1955 Nos. 15, 32 and 66; 1956 Nos. 71, 83, 91 and 127; 1957 Nos. 57 and 76; 1958 No. 86; 1959 No. 106; 1960 Nos. 29 and 70; 1961 Nos. 60 and 144; 1962 Nos. 102 and 103; 1963 No. 149; 1964 No. 141; 1965 Nos. 86, 121 and 194; 1966 Nos. 15 and 173; 1967 Nos. 9 and 179; 1968 No. 68; 1969 Nos. 69, 77, 133, 152 and 186; 1970 Nos. 104, 113 and 170; 1971 Nos. 9, 59 and 170; 1972 No. 96; 1973 Nos. 155, 251, 257 and 268; 1974 Nos. 29 and 112; 1976 Nos. 261 and 262; 1977 Nos. 68, 137 and 188; 1978 Nos. 32, 147, 180 and 195; 1979 Nos. 181, 275 and 277; 1980 Nos. 109, 255, 372 and 377; 1981 Nos. 162, 265 and 382; 1982 Nos. 140, 255, 311, 335 and 404 and Act No. 108, 1982; Statutory Rules 1983 Nos. 92, 93, 327, 328, 329 and 330 and Act No. 101, 1983; Statutory Rules 1984 Nos. 13, 18, 137, 319 and 462; 1985 Nos. 12, 71, 76, 126, 306 and 308; 1986 Nos. 77, 91, 94, 144, 174, 175, 176, 215, 248, 361, 363, 367 and 368; 1987 Nos. 72, 102, 103, 124, 140, 162, 244, 297 and 316; 1988 Nos. 111, 179, 207, 260 and 270; 1989 Nos. 100, 101, 159, 160, 161, 162, 163, 243, 260 and 409; 1990 Nos. 6, 8, 123, 147, 148, 189, 217, 220, 222, 248, 274 and 450; 1991 Nos. 30, 109, 129, 139, 140, 228, 290, 316 and 384; 1992 Nos. 72, 175, 277 (as amended by 1992 No. 326), 328, 343, 344, 447 and 464; 1993 Nos. 66, 158 and 339; 1994 Nos. 53, 82, 183, 311, 312, 351, 366, 367, 391 and 435; 1995 Nos. 99, 136, 244, 313, 321, 352, 423 and 424; 1996 Nos. 42, 43, 134, 326 and 327; 1997 Nos. 52, 70, 79, 89, 128, 131, 255, 284, 378, 379 and 422; 1998 Nos. 38, 101, 212, 229, 276 and 278; 1999 Nos. 35, 131, 149, 270, 323 and 330; 2000 Nos. 13, 74 and 93.
2. Made by the Governor-General on 21 June 2000, and notified in the *Commonwealth of Australia Gazette* on 28 June 2000.

Printed by Authority by the Commonwealth Government Printer

**Attachment 4**

# **SENATOR NICK MINCHIN**

## **JOINT STATEMENT WITH SENATOR GRANT TAMBLING**

17 May 2001

### **ALUMINA REFINERY RECEIVES GOVERNMENT FUNDS TO CONVERT TO NATURAL GAS**

An alumina refinery in the Northern Territory will receive up to \$7 million funding through the Commonwealth Government's Greenhouse Gas Abatement Program for a project expected to reduce greenhouse emissions by 1.2 million tonnes over five years.

The Minister for Industry, Science and Resources, Senator Nick Minchin, and Northern Territory Senator Grant Tambling today announced that Nabalco Pty Ltd had been successful in securing government assistance for their \$48 million fuel conversion project that will reduce carbon dioxide emissions from their Gove refinery by per cent. The level of funding will be reviewed closer to the time when the gas pipeline will be constructed, as the project economics are strongly influenced by exchange rates and energy prices.

"Projects like this, that replace one kind of fuel with gas that has a lower greenhouse impact, will make a significant contribution to Australia's efforts to meet the challenge of global climate change," Senator Minchin said.

The Nabalco project will convert equipment that currently uses imported oil at the Gove refinery, to natural gas. The success of the project is contingent on the construction of a natural gas pipeline from the Timor Sea fields to Townsville, with a 700km branch to Gove.

Senator Tambling welcomed the decision, saying it was great news for the Northern Territory.

"It will not only reduce greenhouse emissions but it will promote the wider oil and gas projects under development in the Northern Territory", said Senator Tambling.

"As a significant onshore consumer of natural gas, the Nabalco conversion will contribute to making the pipeline project a viable prospect for the developers.

"The delivery of gas from the Timor Sea to the eastern states will increase competition and has the potential to restrain gas prices."

The project is also likely to benefit the Australian aluminium industry overseas by improving its competitive position in markets, such as Japan, with 'green metal policies' -- policies designed to favour trade in metals produced using energy efficient practices.

The project is one of 25 that were short listed for funding under Round 1 of the \$400 million Greenhouse Gas Abatement Program.

The Program, which commenced last July, received 107 submissions from business, local government, industry and community organisations across Australia.

All projects were subjected to a rigorous selection process where the key criteria were large-scale, cost-effective and sustained abatement of greenhouse emissions, particularly in the Kyoto commitment period between 2008 and 2012.

"Priority has been given to projects that could demonstrate abatement of more than 250,000 tonnes of greenhouse emissions a year, which is similar to the annual emissions from 60,000 cars or 36,000 households," Senator Minchin said.

"This program is demonstrating that greenhouse gas abatement can be achieved at a low cost while generating innovation, wealth and new jobs."

Contacts:

Minister's Minchin's office: Jen Eddy 02 6277 7580

Senator Tambling's office: Melissa Balwyn 0412 316 362

Nabalco enquiries: David Sutherland 08 8987 5215

CMR266-01



**A2. Press clipping: "By Gove, Alcan's boosting its bauxite",  
*The Australian* 14/2/2003**

# By Gove, Alcan's boosting its bauxite

*Handwritten:*  
12/02/03.

**Nicholas Rothwell**  
• Darwin

**CANADIAN-based miner Alcan yesterday unveiled \$1.5 billion expansion plans to almost double the output of its bauxite mine and alumina refinery at Gove peninsula in the Northern Territory.**

**Alcan will launch a feasibility study and seek environmental approval from the Territory Government for the expansion, which would boost plant production capacity from 2 million to 3.5 million tonnes, and provide an additional 1000 jobs in the construction phase.**

**Alcan becomes the second mining major to announce large-scale expansion plans in the Territory this week, after MIM revealed an ambitious \$1 billion project to make zinc metal on the site of its McArthur River mine.**

**The energy-hungry ventures**

**sharply strengthen the case for the development of the Timor Sea gas fields.**

**Alcan projects and technology director Dave Sutherland said the proposed Gove expansion would stretch the mine-site's life to at least 25 years, and would employ new technology giving a 10 per cent gain in bauxite-use efficiency.**

**But he stressed that Alcan would prefer to use gas as its power source, and that the company was committed to reaching a heads of agreement understanding with a gas supplier by the end of next month.**

**He said the project would still go ahead without an agreement — using fuel oil for the alumina refinery.**

**Northern Territory Chief Minister Clare Martin said the plan was a "major vote of confidence in the long-term future" of the Territory.**