

# POSEIDON NICKEL AGREEMENT.

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No. 17 of 1985.

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**AN ACT to amend the Poseidon Nickel Agreement  
Act 1971.**

*[Assented to 12 April 1985.]*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Poseidon Nickel Agreement Amendment Act 1985*. Short title and principal Act.

(2) In this Act the Poseidon Nickel Agreement Act 1971 is referred to as the principal Act. Act No. 59 of 1971

Commence-  
ment.

2. This Act shall come into operation on the day on which it is assented to by the Governor.

Section 2  
amended.

3. Section 2 of the principal Act is amended—

(a) in the definition of “the Agreement”, by inserting after “Schedule” the following—

“ 1 ”;

(b) by deleting the full-stop after the definition of “the Company” and substituting a semi-colon; and

(c) by inserting after the definition of “the Company” the following definition—

“ “the variation agreement” means the agreement a copy of which is set out in Schedule 2 to this Act. ”.

Section 3A  
inserted.

4. The principal Act is amended by inserting after section 3 the following section—

Variation  
Agreement  
approved  
and ratified.

“ 3A. (1) The variation agreement is approved and ratified and the implementation of the variation agreement is authorized.

(2) Without limiting or otherwise affecting the application of the Government Agreements Act 1979, the variation agreement shall operate and take effect notwithstanding any other Act or law. ”.

5. The heading to the Schedule to the principal Act is deleted and the following substituted—

Heading to  
Schedule  
amended.

“ THE SCHEDULES.  
SCHEDULE 1. ”.

6. The principal Act is amended by adding the following Schedule—

Second  
Schedule  
added.

“ SCHEDULE 2.

THIS AGREEMENT made the 8th day of March, 1985 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and WESTERN MINING CORPORATION LIMITED a company incorporated in the State of Victoria and having its registered office in such State at 360 Collins Street, Melbourne (hereinafter with its successors permitted assigns and appointees called “the Company”) of the other part.

WHEREAS:

- (a) Poseidon Limited a company incorporated under the Companies Act of the State of South Australia and registered in the State of Western Australia as a foreign company (hereinafter called “Poseidon”) was a party to the Agreement defined in section 2 of the Poseidon Nickel Agreement Act 1971;
- (b) the said Agreement was varied by agreement dated the 9th day of April, 1973 (the said Agreement as varied being hereinafter referred to as “the principal Agreement”);
- (c) Poseidon Limited by deed of assignment dated the 9th day of April, 1973 assigned a one half share of its right title interest claim and demand in the principal Agreement to the Company;

- (d) Poseidon Limited by deed of assignment dated the 4th day of February, 1974 assigned its remaining one half share of its right title interest claim and demand in the principal Agreement to Windarra Nickel Mines Pty. Ltd.;
- (e) Windarra Nickel Mines Pty. Ltd. by deed of assignment dated the 13th day of July, 1978 assigned all its right title interest claim and demand in the principal Agreement to the Shell Company of Australia Limited;
- (f) The Shell Company of Australia Limited by deed of assignment dated the 3rd day of April, 1984 assigned all its right title interest claim and demand in the principal Agreement to the Company;
- (g) the Company and the State are now the parties to the principal Agreement; and
- (h) the parties desire to vary the provisions of the principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.

2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.

3. The principal Agreement is hereby varied as follows—

(1) Clause 1—

(a) by deleting the definition of "Mining Act" and inserting the following definitions—

“ “Mining Act 1904” means the Mining Act 1904 and the amendments thereto and the regulations made thereunder as in force on the 31st day of December, 1981;

“Mining Act 1978” means the Mining Act 1978; ”;

- (b) by inserting after the definition of "mining areas" the following definition—

" "Mining Lease" means the mining lease referred to in subclause (1) of Clause 12A and includes any renewal thereof and according to the requirements of the context shall describe the land leased as well as the instrument by which it is leased; ";

- (c) by deleting the definition of "Minister for Mines" and inserting the following definition—

" "Minister for Minerals and Energy" means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the Mining Act 1904 and the Mining Act 1978; ";

- (d) by inserting, in the paragraph commencing "Reference in this Agreement to an Act", after "Act", where it first occurs, the following—

" other than the Mining Act 1904 ".

(2) Clause 6—

- (a) by inserting after "the said proposals" the following—

" or should the Company desire to mine minerals other than ore ";

- (b) by deleting "*mutatis mutandis.*" and substituting the following—

" *mutatis mutandis* PROVIDED that in the event of arbitration the award on arbitration shall be final and shall be accepted and given effect to by the parties and the provisions of Clause 5 dealing with cessation and determination of this Agreement shall not apply. The Company shall implement the decision of the Minister or an award on arbitration as the case may be in accordance with the terms thereof. ".

(3) Clause 11—

(a) in subclause (5)—by inserting after “subclause (4)” the following—

“ or subclause (7) ”;

(b) in subclause (6)—by deleting “the licence” and substituting the following—

“ a licence ”;

(c) in subclause (7)—

(i) by deleting “the State”, where it last occurs in the first sentence, and substituting the following—

“ the parties hereto ”;

(ii) by deleting the last sentence and substituting the following—

“ The State shall grant to the Company a licence to develop and draw from such sources sufficient water (subject to continued availability) to meet that portion of the Company’s daily water requirements not obtainable from sources developed pursuant to subclause (4) of this Clause on such terms and conditions as the Minister may approve. ”;

(d) by deleting subclause (8).

(4) By inserting after Clause 12 the following clause—

Mining  
Lease.

“ 12A. (1) The State shall upon the surrender by the Company of its right title and interest in mineral leases numbered 38/27 to 38/89 (both inclusive) granted pursuant to the provisions of Clause 12 (in this clause called “the surrendered mineral leases”) cause to be granted to the Company at rentals specified from time to time in the Mining Act 1978 a Mining Lease of the land comprised in the surrendered mineral leases (notwithstanding that the survey in respect thereof has not

been completed but subject to such corrections to accord with the survey when completed) such Mining Lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act 1978 but in the form of the Third Schedule hereto and in respect of all minerals and subject to such of the conditions of the surrendered mineral leases as the Minister for Minerals and Energy determines.

(2) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act 1978 and notwithstanding any provisions of the Mining Act 1978 to the contrary, the term of the Mining Lease shall be for a period of 21 years commencing from the date of the grant thereof with the right during the currency of this Agreement to take successive renewals of the said term each for a period of 21 years upon the same terms and conditions subject to the sooner determination of the said term upon the cessation or determination of this Agreement such right to be exercisable by the Company making written application for any such renewal not later than 1 month before the expiration of the current term of the Mining Lease. Term.

(3) The Minister for Minerals and Energy shall make such apportionments of rents as may be necessary in respect of the surrendered mineral leases. Apportionment of rent.

(4) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the Mining Act 1978 in regard to the Mining Lease. Expenditure. ”.

(5) Clause 16—

(a) subclause (1)—

(i) by inserting after “mineral leases” the following—

“ or the Mining Lease ”;

(ii) by deleting "Mining Act." and substituting the following—

" Mining Act 1904 or the Mining Act 1978 as the case may be. ";

(b) subclause (2)—by deleting "Mining Act" and substituting the following—

" Mining Act 1904 ".

(6) Clause 18—by deleting paragraph (a) and the marginal note thereto.

(7) Clause 20—by inserting after "mineral leases" the following—

" or the Mining Lease ".

(8) By deleting Clause 22 and the marginal note thereto.

(9) Clause 32—by inserting after "mineral leases" the following—

" or the Mining Lease ".

(10) Clause 36 subclause (3)—

(a) by deleting "section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of" and substituting the following—

" section 82 of the Mining Act 1904 and regulations 192 and 193 made thereunder, regulations 77 and 110 made under the Mining Act 1978 and ";

(b) by deleting "the Mining Act." and substituting the following—

" the Mining Act 1904 or the Mining Act 1978. ".



In this lease—

- “Lessee” includes the successors and permitted assigns of the Lessee and if the Lessee be more than one the respective successors and permitted assigns of each Lessee.
- If the Lessee be more than one the liability of the Lessee hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act and to any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.

#### FIRST SCHEDULE

WESTERN MINING CORPORATION LIMITED  
a company incorporated in the State of Victoria  
and having its registered office in such State  
at 360 Collins Street, Melbourne.

#### SECOND SCHEDULE

The Agreement ratified by the Poseidon Nickel Agreement Act 1971 including any amendments to that Agreement.

#### THIRD SCHEDULE

(Description of land)

Section 1 :

Section 2 :

Locality :

Mineral Field: Area, etc.:

Being the land delineated on Original Plan  
No. and recorded in the Department of  
Mines, Perth.

#### FOURTH SCHEDULE

All petroleum as defined in the Petroleum Act 1967 on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

