

Western Australia

**Nickel Refinery (BHP Billiton Nickel West  
Pty Ltd) (Termination of Agreements)  
Agreement Act 2008**

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As at 28 Jun 2008

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Extract from [www.slp.wa.gov.au](http://www.slp.wa.gov.au), see that website for further information



Western Australia

**Nickel Refinery (BHP Billiton Nickel West  
Pty Ltd) (Termination of Agreements)  
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Western Australia

**Nickel Refinery (BHP Billiton Nickel West  
Pty Ltd) (Termination of Agreements)  
Agreement Act 2008**

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No. 36 of 2008

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**An Act —**

- **to ratify an agreement, as varied by a subsequent agreement, between the State and BHP Billiton Nickel West Pty Ltd that provides for the termination of an agreement made on 19 January 1968 and subsequently varied, and an agreement made on 4 November 1970 and subsequently varied, between the State and BHP Billiton Nickel West Pty Ltd (under its former name, Western Mining Corporation Limited); and**
- **to validate the renewal of certain mineral leases.**

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Nickel Refinery (BHP Billiton Nickel West Pty Ltd) (Termination of Agreements) Agreement Act 2008*.

**2. Commencement**

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**3. Terms used in this Act**

In this Act —

*scheduled agreement* means the agreement of which a copy is set out in Schedule 1;

*termination agreement* means the scheduled agreement as varied by the variation agreement;

*variation agreement* means the agreement of which a copy is set out in Schedule 2.

**4. Ratification and operation of termination agreement**

- (1) The termination agreement is ratified.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the termination agreement operates and takes effect despite any other enactment or other law.

**5. Validation of renewal of special mineral leases**

- (1) In this section —  
*Minister for Mines* means the Minister referred to in clause 5A of the principal agreement;

**principal agreement** has the meaning “the Agreement” is given in the *Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968* section 2;

**special mineral leases** means mineral leases 15/149, 15/150 and 15/151, as listed in the schedule to the scheduled agreement.

- (2) Any power exercised or purportedly exercised —
- (a) by the Minister under clause 16 of the principal agreement for the purposes of extending the period within which the Minister for Mines may exercise power under clause 5A(1)(b) of the principal agreement in relation to the special mineral leases; or
  - (b) by the Minister for Mines under clause 5A(1)(b) of the principal agreement for the purposes of granting a second renewal of each of the special mineral leases for a term that expires on 31 December 2028,

is declared to have been validly exercised for those purposes.

**Schedule 1 — Termination agreement**

[s. 3]

**2007**

**THE HONOURABLE ALAN JOHN CARPENTER  
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

**AND**

**BHP BILLITON NICKEL WEST PTY LTD  
ACN 004 184 598**

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**NICKEL REFINERY (WESTERN MINING CORPORATION LIMITED)  
AGREEMENT 1968**

**NICKEL REFINERY (WESTERN MINING CORPORATION LIMITED)  
AGREEMENT 1970**

**TERMINATION AGREEMENT**

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[Solicitor's details]



## **Agreement**

**Date 27 November 2007**

## **Parties**

**THE HONOURABLE ALAN JOHN CARPENTER**, MLA., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (**the State**)

and

**BHP BILLITON NICKEL WEST PTY LTD** ACN 004 184 598 of 152-158 St Georges Terrace, Perth, Western Australia (**the Company**).

## **Recitals**

- A. The State and the Company are the parties to the agreement dated 19 January 1968, which agreement was approved by the *Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968*, and has been varied by the following agreements:
- (a) the agreement dated 4 November 1970 approved by the *Nickel Refinery (Western Mining Corporation Limited) Agreement Act Amendment Act 1970*;
  - (b) the agreement dated 29 March 1974 approved by the *Nickel Refinery (Western Mining Corporation Limited) Agreement Act Amendment Act 1974*;
  - (c) an agreement dated 15 May 1995;

(d) an agreement dated 27 November 2001; and

(e) an agreement dated 7 May 2002,

and as so varied is hereinafter called “**the Principal Agreement**”.

The agreement dated 4 November 1970 referred to in paragraph (a) above has been varied by the agreements referred to in paragraphs (b), (c), (d) and (e) above and an agreement dated 31 December 1976 and as so varied is hereinafter called “**the Supplemental Agreement**”.

B. The State and the Company wish to terminate the Principal Agreement and the Supplemental Agreement in the manner and on the terms and conditions set out in this Agreement.

**NOW THIS AGREEMENT WITNESSES:**

**Definitions**

1. In this Agreement subject to the context:

“**Agreement Mineral Leases**” means the mineral leases listed in the first column of the schedule, each having a corresponding original date of grant and current renewed term expiry date as specified in the second and third columns, respectively, of the schedule;

“**Concentrator**” means nickel concentrator and associated facilities located at Durkin Road, Kambalda, Western Australia constructed pursuant to the Principal Agreement on the land comprised in mineral leases 15/140, 15/141, 15/149, 15/150, mining leases 26/317 and 26/491 and certificate of title volume 2611 folio 582 being lot 13 on deposited plan 48932;

“**Excluded Mineral Leases**” means the mineral leases defined as such by, and set out in the schedule to, the Principal Agreement and known to the parties as the St Ives mineral leases;

“**EP Act**” means the *Environmental Protection Act 1986*;

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

“**Refinery**” means the nickel refinery and associated facilities located at 270 Patterson Road, Kwinana, Western Australia constructed pursuant to clause 4 of the Principal Agreement on the land comprised in

certificate of title volume 2210 folio 520 being lot 5 on deposited plan 18088 and certificate of title volume 2210 folio 520;

“**Reserve**” means reserve no. 33948 being land adjacent to the Smelter and which is reserved under Part 4 of the *Land Administration Act 1997* for the purpose of government requirements;

“**Secondly Excluded Mineral Leases**” means the mineral leases defined as such by the Principal Agreement being mineral leases 15/158, 15/159 and 15/160, each having an original date of grant of 1 January 1967 and a current renewed term expiry date of 31 December 2008 and known to the parties as the Long/Victor mineral leases;

“**Smelter**” means the nickel smelter plant and associated facilities located at Smelterman Road, Kalgoorlie, Western Australia constructed pursuant to clause 6 of the Supplemental Agreement on the land comprised in certificate of title volume 1670 folio 313 being lot 100 on deposited plan 212288 and portion of Hampton Location 100 marked ROW on certificate of title volume 1670 folio 311; and

“**State Agreements**” means the Principal Agreement and the Supplemental Agreement.

### **Interpretation**

2. (1) In this Agreement:
  - (a) clause headings do not affect interpretation or construction;
  - (b) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
  - (c) one gender includes the other genders;
  - (d) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution or in lieu of that Act and the regulations for the time being in force thereunder;

- (e) reference to any other document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties;
  - (f) reference to a clause or schedule is a reference to a clause or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to a subclause of the or paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made; and
  - (g) “including” means “including, but not limited to”.
- (2) Nothing in this Agreement shall be construed to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any law relating to native title or any lawful obligation or requirement imposed on the State or the Company as the case may be pursuant to any law relating to native title.
- (3) Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to their activities under this Agreement that may be made by or under the EP Act.

#### **Ratification and Operation**

3. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 30 June 2008 or such later date as the parties may agree.
- (2) The provisions of this Agreement, other than this clause and clauses 1 and 2, shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (3) On the said Bill coming into operation as an Act (“**the Operative Date**”) all the provisions of this Agreement will operate and take effect despite any enactment or other law.

**Termination of the State Agreements**

4.      (1)      The State Agreements (including the State's option to purchase under clause 11(b)(iii) of the Principal Agreement) are hereby terminated with effect on and from the Operative Date.
- (2)      Notwithstanding subclause (1):
- (a)      the Company shall remain liable for any antecedent breach or default under the State Agreements; and
- (b)      the provisions of clauses 5B and 5C of the Principal Agreement shall be deemed to subsist in their applications to or in relation to the Excluded Mineral Leases and to the Secondly Excluded Mineral Leases.
- (3)      (a)      The Agreement Mineral Leases shall continue in force only under and, except as provided in paragraph (b), subject to the provisions of the Mining Act and, for the avoidance of doubt, shall cease to have the benefit of the rights and privileges conferred by the State Agreements.
- (b)      For the period from and including the Operative Date up to and including the anniversary of the date of grant of each lease immediately subsequent to the date of this Agreement, the holder of the Agreement Mineral Leases shall not be required to comply with expenditure obligations imposed by or under the Mining Act in relation to the Agreement Mineral Leases.
- (c)      On application to the mining registrar under the Mining Act made within 3 months after the Operative Date by the holder of the Agreement Mineral Leases, the State shall cause an endorsement to be made in the register maintained under section 103F of the Mining Act for, and on and in respect of, each of the Agreement Mineral Leases that the provisions of this subclause apply to the lease, that the date of expiry of the current renewed term of the lease is as set out in the schedule and that section 78(2) of the Mining Act applies to the lease so that the holder may make an application under

that subsection for a renewal of the lease on the expiry of the current renewed term.

- (4) On and from the Operative Date, the operations of the Concentrator, the Refinery and the Smelter shall cease to have the benefit of rights and privileges conferred by the State Agreements and, except as provided herein in relation to the Agreement Mineral Leases upon which the Concentrator is located, be governed by the laws from time to time in force in Western Australia.

**Additional land requirements for Smelter and associated operations**

5. (1) Subject to this clause, the State agrees that it will not sell or otherwise dispose of land contained within the Reserve (except to the Company pursuant to this clause) during a period of 10 years from the Operative Date without first giving the Company notice of its intention to do so.
- (2) The Company may from time to time and if and when it demonstrates to the State that it has a reasonable need therefor for the purpose of the Smelter purchase from the State an estate in fee simple (free from all encumbrances but subject to the usual reservations for Crown land) in such part of the Reserve as the parties may agree.
- (3) If and when the State gives to the Company notice of its intention to sell any part of the Reserve as mentioned in subclause (1) then:
- (a) if the Company within 14 days after the giving of the notice satisfies the State that it has an immediate need for the whole or any part of the land described in the notice the State will sell to the Company and the Company will purchase from the State an estate in fee simple (unencumbered but subject to the usual reservations for Crown land) in that part of the Reserve which the State is satisfied the Company has an immediate need for; or

- (b) if the Company within 14 days after the giving of the notice satisfies the State that it is reasonably likely that the Company will have a reasonable need for the whole or any part of the land mentioned in the notice within the period of 5 years next ensuing the State will not within that period sell that part of the Reserve otherwise than to the Company and in the meantime will hold that part subject to this clause.
- (4) The purchase price of each part of the Reserve (if any) which is purchased by the Company pursuant to this clause shall be at such price and on such terms and conditions as are reasonable and as the parties by mutual agreement shall determine and unless otherwise required by the State such purchase price shall be paid on vacant possession of the land being given by the State to the Company.
- (5) There shall be excepted and reserved to the State such part or parts (if any) of the Reserve as are or may from time to time be required by the State for road, rail or other public purposes and any reference to the Reserve in this clause 5 shall be read as subject to such exception and reservation.
- (6) The Company acknowledges:

  - (a) that the State has granted interests in land contained within the Reserve to third parties;
  - (b) subject to this clause, that the State may in future grant interests in land contained in the Reserve to third parties;
  - (c) that the Company shall not have any entitlement to purchase any land contained in the Reserve which is subject to an existing or future third party interest; and
  - (d) that this clause does not require the State to resume any land comprising part of the Reserve that is the subject of an estate or interest that has been granted prior to the date of this Agreement or in accordance with this clause.

**Indemnity**

6. (1) (a) For the avoidance of doubt and notwithstanding clause 4(1) the Company will indemnify and keep indemnified the State and its employees, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any work carried out by the Company pursuant to the State Agreements or relating to its operations under the State Agreements or arising out of or in connection with the construction, maintenance or use by the Company or its employees, agents, contractors or assignees of the Company's works or services the subject of the State Agreements or the plant, apparatus or equipment installed in connection with the State Agreements.
- (b) The indemnity in this subclause (1) remains in force for a period ending on the date that is 20 years from:
- (i) a date to be agreed between the parties;
- or
- (ii) if the parties fail to agree a date under paragraph (i), a date to be determined by the State,
- as being the date of cessation of all operations (including as expanded or otherwise modified) originally established under and pursuant to the State Agreements (including the Smelter, the Concentrator and the Refinery).
- (2) (a) The Company will indemnify and keep indemnified the State and its employees, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any works or activities of the Company or its employees, agents or contractors or its assignees on and subsequent to the Operative Date relating to operations (including as expanded or otherwise modified) that were originally established under or pursuant to the State Agreements



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(including the Smelter, the Concentrator and the Refinery).

- (b) The indemnity in this subclause (2) remains in force for a period ending on the same date as the indemnity in subclause (1).

**SCHEDULE**

**Agreement Mineral Leases**

<b>Mineral Lease</b>	<b>Original Grant Date</b>	<b>Current Expiry Date</b>
15/131	1/1/1967	31/12/2008
15/140	1/1/1967	31/12/2008
15/141	1/1/1967	31/12/2008
15/142	1/1/1967	31/12/2008
15/149	1/1/1966	31/12/2007
15/150	1/1/1966	31/12/2007
15/151	1/1/1966	31/12/2007
15/346	1/1/1973	31/12/2014
15/347	1/1/1973	31/12/2014
15/367	1/1/1976	31/12/2017
15/368	1/1/1976	31/12/2017
15/369	1/1/1976	31/12/2017
15/370	1/1/1976	31/12/2017
15/371	1/1/1976	31/12/2017
15/372	1/1/1976	31/12/2017
15/375	1/1/1976	31/12/2017
15/376	1/1/1976	31/12/2017
15/377	1/1/1976	31/12/2017
15/378	1/1/1976	31/12/2017
15/379	1/1/1976	31/12/2017

**Nickel Refinery (BHP Billiton Nickel West Pty Ltd) (Termination of Agreements) Agreement Act 2008**

**Schedule 1** Termination agreement

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<b>Mineral Lease</b>	<b>Original Grant Date</b>	<b>Current Expiry Date</b>
15/380	1/1/1976	31/12/2017
15/381	1/1/1976	31/12/2017
15/382	1/1/1976	31/12/2017
15/383	1/1/1976	31/12/2017
15/384	1/1/1976	31/12/2017
15/385	1/1/1976	31/12/2017
15/386	1/1/1976	31/12/2017
15/387	1/1/1976	31/12/2017
15/388	1/1/1976	31/12/2017
15/389	1/1/1976	31/12/2017
15/482	1/1/1976	31/12/2017
15/483	1/1/1976	31/12/2017
15/484	1/1/1976	31/12/2017
15/485	1/1/1976	31/12/2017
15/486	1/1/1976	31/12/2017
15/487	1/1/1976	31/12/2017
15/488	1/1/1976	31/12/2017
15/489	1/1/1976	31/12/2017
15/490	1/1/1976	31/12/2017
15/491	1/1/1976	31/12/2017
15/492	1/1/1976	31/12/2017
15/493	1/1/1976	31/12/2017
15/494	1/1/1976	31/12/2017
15/495	1/1/1976	31/12/2017
15/498	1/1/1976	31/12/2017
15/499	1/1/1976	31/12/2017
15/500	1/1/1976	31/12/2017
15/501	1/1/1976	31/12/2017
15/502	1/1/1976	31/12/2017

**Nickel Refinery (BHP Billiton Nickel West Pty Ltd) (Termination of Agreements) Agreement Act 2008**

**Termination agreement Schedule 1**

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<b>Mineral Lease</b>	<b>Original Grant Date</b>	<b>Current Expiry Date</b>
15/504	1/1/1976	31/12/2017
15/506	1/1/1976	31/12/2017
15/507	1/1/1976	31/12/2017
15/508	1/1/1976	31/12/2017
15/509	1/1/1976	31/12/2017
15/510	1/1/1976	31/12/2017
15/511	1/1/1976	31/12/2017
15/512	1/1/1976	31/12/2017
15/513	1/1/1976	31/12/2017
15/514	1/1/1976	31/12/2017
15/515	1/1/1976	31/12/2017
15/516	1/1/1976	31/12/2017
15/517	1/1/1976	31/12/2017
15/518	1/1/1976	31/12/2017
15/519	1/1/1976	31/12/2017
15/520	1/1/1976	31/12/2017
15/521	1/1/1976	31/12/2017
15/522	1/1/1977	31/12/2017
15/523	1/1/1976	31/12/2017
15/524	1/1/1976	31/12/2017
15/525	1/1/1976	31/12/2017
15/526	1/1/1976	31/12/2017
15/527	1/1/1976	31/12/2017
15/528	1/1/1976	31/12/2017
15/529	1/1/1976	31/12/2017
15/530	1/1/1976	31/12/2017
15/531	1/1/1976	31/12/2017
15/532	1/1/1976	31/12/2017
15/533	1/1/1976	31/12/2017

**Nickel Refinery (BHP Billiton Nickel West Pty Ltd) (Termination of Agreements) Agreement Act 2008**

**Schedule 1** Termination agreement

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<b>Mineral Lease</b>	<b>Original Grant Date</b>	<b>Current Expiry Date</b>
15/534	1/1/1976	31/12/2017
15/535	1/1/1976	31/12/2017

**EXECUTED** as a deed.

**SIGNED** by **THE HONOURABLE** ) [Signature]  
**ALAN JOHN CARPENTER** )  
in the presence of: )

[Signature]

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Name: RUTH YOUNG

**THE COMMON SEAL** of ) [C.S.]  
**BHP BILLITON NICKEL WEST** )  
**PTY LTD ACN 004 184 598** was )  
hereunto affixed in accordance with its )  
constitution in the presence of: )

[Signature]

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Director  
Name: IAN C EDNEY

[Signature]

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Director/Secretary  
Name: FIONA SMITH

**Schedule 2 — Variation agreement**

[s. 3]

**2008**

**THE HONOURABLE ALAN JOHN CARPENTER  
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

**AND**

**BHP BILLITON NICKEL WEST PTY LTD  
ACN 004 184 598**

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**NICKEL REFINERY (WESTERN MINING CORPORATION LIMITED)  
AGREEMENT 1968**

**NICKEL REFINERY (WESTERN MINING CORPORATION LIMITED)  
AGREEMENT 1970**

**VARIATION OF TERMINATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 12 day of May 2008

**BETWEEN**

**THE HONOURABLE ALAN JOHN CARPENTER**, MLA., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (**the State**)

and

**BHP BILLITON NICKEL WEST PTY LTD** ACN 004 184 598 of 152-158 St Georges Terrace, Perth, Western Australia (**the Company**).

**RECITALS**

**A.** The State and the Company are the parties to the agreement dated 27 November 2007 (“**the Termination Agreement**”) and in respect of which the State is obliged to introduce and sponsor a Bill in the Parliament of Western Australia to ratify its terms in accordance with clause 3(1) of the Termination Agreement.

**B.** Subsequent to the execution of the Termination Agreement, the Minister for Mines as referred to in clause 5A(1)(b) of the Principal Agreement granted pursuant to that clause a second renewal of each of the terms of:

- (1) mineral leases 15/149, 15/150 and 15/151 for a further period of 21 years commencing on 1 January 2008;  
and
- (2) mineral leases 15/131, 15/140, 15/141 and 15/142 for a further period of 21 years commencing on 1 January 2009,

(these 7 mineral leases are referred to herein as “**the Renewed Mineral Leases**”).

- C.      The State and the Company wish to vary the Termination Agreement in the manner and on the terms and conditions set out in this Agreement to clarify the application of clause 4(3) of the Termination Agreement to the Renewed Mineral Leases.

**NOW THIS AGREEMENT WITNESSES:**

1.      In this Agreement, subject to the context, words or phrases to which meanings are given in the Termination Agreement shall have the same respective meanings in this Agreement as are given to them in the Termination Agreement.
  2.      The Termination Agreement is hereby varied as follows:
    - (1)      in clause 1 by:
      - (a)      inserting before the definition of “Agreement Mineral Leases” the following new definition:

*Agreement* means this Agreement as varied by the agreement made on or about 6 May 2008 between the State and the Company;
      - (b)      inserting before the definition of “Reserve” the following new definition:

*Renewed Mineral Leases* means mineral leases 15/131, 15/140, 15/141, 15/142, 15/149, 15/150 and 15/151;
    - (2)      in clause 4(3)(c) by deleting the words “date of expiry of the current renewed term of the lease is as set out in the schedule and” and substituting the following:

“current expiry date of the lease is as set out in the schedule and, except in respect of the Renewed Mineral Leases,”
- and

- (3) in the schedule by:
- (a) deleting “31/12/2008” as the current expiry date for each of mineral leases 15/131, 15/140, 15/141 and 15/142 and substituting “31/12/2029”; and
  - (b) deleting “31/12/2007” as the current expiry date for each of mineral leases 15/149, 15/150 and 15/151 and substituting “31/12/2028”.

**EXECUTED** as a deed.

**SIGNED** by **THE HONOURABLE** ) [Signature]  
**ALAN JOHN CARPENTER** )  
in the presence of: )

[Signature]

---

Name: BARBARA LEBER

**THE COMMON SEAL** of ) [C.S.]  
**BHP BILLITON NICKEL WEST** )  
**PTY LTD** ACN 004 184 598 was )  
hereunto affixed in accordance with its )  
constitution in the presence of: )

[Signature]

---

Director  
Name: CHRIS CAMPBELL

[Signature]

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Director/~~Secretary~~  
Name: STEPHEN GEORGE HOOPER



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**Notes**

- <sup>1</sup> This is a compilation of the *Nickel Refinery (BHP Billiton Nickel West Pty Ltd) (Termination of Agreements) Agreement Act 2008*. The following table contains information about those regulations.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Nickel Refinery (BHP Billiton Nickel West Pty Ltd) (Termination of Agreements) Agreement Act 2008</i>	36 of 2008	27 Jun 2008	s. 1 and 2: 27 Jun 2008 (see s. 2(a)) Section other than s. 1 and 2: 28 Jun 2008 (see s. 2(b))

**Defined Terms**

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
Minister for Mines .....	5(1)
principal agreement.....	5(1)
scheduled agreement.....	3
special mineral leases.....	5(1)
termination agreement .....	3
variation agreement.....	3