

Western Australia

## **Dampier Solar Salt Industry Agreement Act 1967**

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**THE TEXT OF THE LEGISLATION FOLLOWS**



Western Australia

# **Dampier Solar Salt Industry Agreement Act 1967**

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## **Dampier Solar Salt Industry Agreement Act 1967**

**An Act to approve an agreement between the State of Western Australia and Dampier Salt Limited relating to the establishment and carrying on at and in the vicinity of Dampier of a solar salt industry and certain other industries and for incidental and other purposes.**

**1. Short title**

This Act may be cited as the *Dampier Solar Salt Industry Agreement Act 1967*<sup>1</sup>.

**2. Definition**

In this Act,

**“the Agreement”** means the agreement a copy of which is set out in the First Schedule and, if the Agreement is varied in accordance with its provisions, includes the Agreement as so varied;

**“the variation agreement”** means the agreement a copy of which is set forth in the Second Schedule.

*[Section 2 amended by No. 50 of 1974 s. 2.]*

**3. Approval and ratification of agreement**

- (1) The Agreement is approved and ratified.

**s. 3A**

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- (2) Notwithstanding any other Act or law, the Agreement shall be carried out and take effect, as though its provisions had been expressly enacted in this Act.

**3A. Approval and ratification of variation agreement**

- (1) The variation agreement is approved and ratified.
- (2) Notwithstanding any other Act or law, the variation agreement shall be carried out and take effect, as though its provisions had been expressly enacted in this Act.

*[Section 3A inserted by No. 50 of 1974 s. 3.]*

**4. By-laws**

The Governor may make, alter or repeal by-laws in accordance with and for the purposes of, clause 7 of the Agreement, and the by-laws —

- (a) shall be published in the *Gazette*;
- (b) shall take effect and have the force of law from the date they are so published, or from a later date fixed by the order making the by-laws;
- (c) may prescribe penalties not exceeding \$100 for a breach of any of the by-laws;
- (d) are not subject to section 36 of the *Interpretation Act 1918*<sup>2</sup>, but shall be laid before each House of Parliament within 6 sitting days of such House next following the publication of the by-laws in the *Gazette*.

## The Schedules First Schedule

[Section 2]

[Heading amended by No. 50 of 1974 s. 4.]

AN AGREEMENT under seal made the 21st day of November One thousand nine hundred and sixtyseven BETWEEN THE HONOURABLE DAVID BRAND, M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter referred to as “the State”) of the one part AND DAMPIER SALT LIMITED a company incorporated under the provisions of the statutes of Western Australia and having its registered office in the State of Western Australia at Perth (hereinafter called “the Company” which term shall include the successors and assigns of the Company including where the context so admits the assignees and appointees of the Company under Clause 23 hereof) of the other part.

WHEREAS the parties hereto desire to enter into this Agreement with the object of the establishment and carrying on at and in the vicinity of Dampier of a solar salt industry and such other allied mining and ancillary industries as may conveniently be carried on in conjunction therewith and to do all acts matters and things to attain and to facilitate the abovementioned object.

NOW THIS AGREEMENT WITNESSETH and the parties hereto COVENANT AND AGREE with one another as follows: —

### Definitions<sup>3</sup>

1. In this Agreement subject to the context —

“Director of Engineering” means the Director of Engineering for the time being in the Public Works Department of the State of Western Australia or the officer for the time being discharging the duties of that office;

“Land Act” means the *Land Act 1933*;

“Mining Act” means the *Mining Act 1904*;

“Minister” means the Minister of the Crown to whose administration the ratifying Act is for the time being committed or if there is no such committal the Minister for Industrial Development;

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“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“production site” means any land leased to and held by the Company pursuant to the provisions of Clause 3 hereof;

“ratifying Act” means the Act referred to in subclause (1) of Clause 2 hereof;

“shipped” includes removal from the work sites by ship or any other means;

“stockpile site” means the land for the time being leased from the State pursuant to subclause 3 of Clause 4 or held by the Company under any other tenure for the purpose of being used for stockpiling salt;

“this Agreement” “hereof” and “hereunder” refer to this Agreement whether in its original form or as from time to time added to varied or amended;

“ton” means a ton of two thousand two hundred and forty (2 240) lbs. net dry weight;

“work sites” includes the production site, stockpile site whether or not leased from the State) and the land comprised in or the subject of any lease license or easement granted or given hereunder other than any grant or lease under Clause 13 hereof;

“year” means a year commencing on the 1st day of July;

reference in this Agreement to an Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;

marginal notes shall not affect the interpretation or the construction of this Agreement<sup>3</sup>.

**Ratifying Act<sup>3</sup>**

2. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement before the 15th day of December,

1967, or such later day as the parties hereto may agree upon. If the Bill is not so passed as an Act before the 31st day of December, 1967 (or such later day as the parties hereto may agree upon) this Agreement shall be of no force or effect and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.

(2) If the Bill to ratify this Agreement is passed as an Act before the 31st day of December, 1967 (or such later day as aforesaid) the following provisions of this clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect namely: —

- (a) the State may by Agreement acquire or compulsorily take or resume as for a public work within the meaning of the *Public Works Act 1902* any land or any estate or interest in land which in the opinion of the State is reasonably required for the objects of this Agreement and may thereafter dispose or deal with the same in accordance with or for the purposes of this Agreement apart from the provisions of that Act or any other Act AND when any land is to be so compulsorily taken or resumed under the powers conferred by this paragraph the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of the *Public Works Act 1902* shall not apply to or in respect of the land or to the taking thereof except that notice of intention to take or resume the land shall be given in accordance with the provisions of paragraph (b) of subclause 2 of the said Act;
- (b) all land the subject of any lease hereunder shall for the purposes of the *Mining Act 1904* be deemed to be “Private Land” for the purposes of that Act.

### **Production Site**<sup>3</sup>

3. (1) As soon as conveniently may be after the coming into operation of the ratifying Act the State shall on the written application of the Company cause all that land edged in red in the Plan initialled on behalf of the parties hereto for the purpose of identification and comprising approximately 28,600 acres or so much of it as the Company in that application specifies to be leased to the Company under the provisions of the *Mining Act 1904* which shall be deemed to be so amended varied and modified as to enable the lease to be granted on the following terms and conditions namely: —

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- (a) for a term of twenty-one (21) years commencing from a day to be agreed upon by the parties hereto;
- (b) at a rental computed at the rate of \$4 per one hundred (100) acres per annum;
- (c) subject to the payment by the Company of the royalties hereinafter mentioned and to the due and punctual performance by the Company of its obligations hereunder;
- (d) that the Company shall be entitled (provided the right of re-entry contained in the lease or the renewal thereof (as the case may be) has not been exercised) to the options to renew the lease for a further term of twenty-one (21) years and on the expiry thereof to further renew the lease for a further term of twenty-one (21) years on the same terms and conditions as are contained in paragraphs (b) (c) (f) and (g) of this subclause;
- (e) that the cost of any survey required by the State be paid by the Company;
- (f) subject to the reservations required in Crown Leases pursuant to the *Petroleum Act 1936* or required for the purpose of preserving rights that have been or may be granted under the *Petroleum (Submerged Lands) Act 1967*;
- (g) otherwise on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement; and
- (h) that the State without compensation to the Company may at any time excise from the lease such area adjacent or near to the existing railway as shall be sufficient to permit the construction of another railway or road, or both, across the leased area.

The Company on demand shall pay to the State a sum sufficient to reimburse the State for the cost of resuming or taking any land required for the production site.

(2) Until the 31st day of December, 1977, subject to the provisions of subclauses (4) and (5) of this Clause the Company shall have options exercisable at any time and from time to time on notice to the State to have added to the area leased pursuant to subclause (1) of this clause the whole or such part of the area edged in blue in the Plan referred to in subclause (1) of this

Clause (hereinafter referred to as “the optioned areas”) as the Company specifies in any such notice.

(3) If at any time before the 31st day of December, 1977, the Company gives notice to the State that it desires an option over the whole or any specified part of the area edged in green on the plan referred to in subclause (1) of this clause then providing that it is satisfied that the area nominated by the Company is not important for the breeding or development of prawns the State shall extend to the said area the option referred to in subclause (2) of this clause. Any reference in this Agreement to “the optioned areas” shall include any such area to which the option is extended pursuant to the provisions of this subclause.

(4) If the State should ever require any part of the optioned areas either for its own use or for any other public purpose or for lease to any other business enterprise then it may notify the Company accordingly and thereafter in respect of the area notified the date by which the Company may exercise the options granted in subclause (2) of this clause will be two years from the date of the State’s notice if the State’s notice be given within five years of the date of the production site lease or otherwise one year.

(5) The Company may not exercise any option given pursuant to this clause in respect of any land leased by Hamersley Iron Pty. Ltd. without its prior written consent.

(6) The Company may not exercise any option pursuant to this clause without first giving not less than 3 months’ notice to the Director of Engineering of its wish to exercise the option in respect of the land described in such notice and thereafter the Company shall not exercise an option in respect of so much of that land as the Director of Engineering informs the Company will in his opinion be reasonably required for public or private road or rail purposes.

#### **Lease for Shiploading Facilities**<sup>3</sup>

4. (1) If the Company notifies the Minister that it wishes to construct a jetty with berthing and loading facilities in the vicinity of Dampier harbour then the State shall grant the Company an appropriate lease at a nominal rental of the area reasonably necessary for the Company’s requirements and a licence therefor under the provisions of the *Jetties Act 1926* and the Company may thereupon construct such jetty and berthing and loading facilities provided that the Minister has approved of the specifications therefor and is satisfied that ships using the same would not be likely to unduly interfere with the traffic of ships to and from the service wharf and any other wharf constructed by

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Hamersley Iron Pty. Ltd. under the *Iron Ore (Hamersley Range) Agreement Act 1963*.

(2) If the Company makes all necessary arrangements with Hamersley Iron Pty. Ltd. for the construction of such a jetty and facilities as an extension to the northern end of the said service wharf then the Company may construct such jetty and facilities provided that the State has first approved of the specifications therefor and the State shall issue a license therefor under the provisions of the *Jetties Act 1926*.

**Lease for Stockpile Site**<sup>3</sup>

(3) If the Company notifies the Minister that it requires a stockpile site in the vicinity of a jetty used for the loading into ships of salt produced at the production site and if having regard for the general development of the vicinity with a view to the reasonable use thereof by others there is available to the State land sufficient for the Company's requirements (which are presently estimated would be 20 acres) then, the State shall grant to the Company a lease thereof subject to the same term and options of renewal as apply in respect of the production site lease and at a rental of Five Dollars (\$5) per acre per annum.

**Flood Protection**<sup>3</sup>

5. The State shall not unreasonably refuse applications by the Company for licenses to establish and maintain levees, channels or other like works on Crown lands adjacent to the production site for the purpose of diverting the flow of ground waters away from the Company's production facilities provided that the Company first obtains the written approval of any lessee of the lands and provided also that the Company submits to the Minister and receives his written approval of the plans and specifications of the works.

**Road Rail or Conveyor Transport**<sup>3</sup>

6. (1) If the Company notifies the Minister that it requests from the State appropriate rights to permit the Company to construct and operate between the production site and the stockpile site or jetty used by the Company for loading salt into ships, or, between the stockpile site and such jetty a railway, a private roadway or an apparatus for conveying salt by other mechanical means (including without limitation pumping in slurry or transferring by conveyor or aerial ropeway) and if the Company's notice —

- (a) gives a general description of a proposed route and of the intended railway, roadway or apparatus, and
- (b) bears the approval of Hamersley Iron Pty. Ltd. insofar as the proposed route traverses any lands owned or leased by that Company or to which it is entitled to a lease pursuant to the Iron Ore (Hamersley Range) Agreement Act of 1963;

then subject to subclause 4 of this Clause the State after consulting with Hamersley Iron Pty. Ltd. and the Company will cause to be surveyed at the cost of the Company the route which the State considers would be most practicable and convenient.

(2) As soon as practicable after the completion of that survey and subject to the payment by the Company of all incidental costs and expenses including the cost and expense of any necessary acquisition or resumption of lands over which the route passes the State shall cause to be granted to the Company a lease easement or license (whichever is most appropriate in the circumstances) over the surveyed route (exclusive of any part which is a public road), on such terms as are reasonably required to give effect to the objects and provisions of this Agreement and to ensure compliance with the conditions (if any) upon which Hamersley Iron Pty. Ltd. approved of the grant and thereafter the Company shall be entitled to construct and use the particular railway (with or without compliance with the requirements of section 96 of the *Public Works Act 1902*) roadway or apparatus in accordance with the terms of the said lease easement or license.

(3) The lease easement or license will continue for so long as the Company is the lessee of the production site and will enable the Company to use the surveyed route for the purposes only of constructing, operating, repairing renewing and, subject to Clause 19, removing the railway, private roadway or apparatus as the case may be.

(4) Notwithstanding anything hereinbefore contained the State shall have no obligations to cause a survey to be made or grant a lease, easement or license under this Clause insofar as to do so would be inconsistent with the obligations of the State and the rights of Hamersley Iron Pty. Ltd. pursuant to the Iron Ore (Hamersley Range) Agreement Act of 1963, or would unreasonably prejudice or interfere with the general requirements of the State in regard to the use of the area for public purposes or industrial development.

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**By-laws**<sup>3</sup>

7. At the reasonable request of the Company from time to time the Minister shall recommend to the Governor in Executive Council that he make alter or repeal as may be desirable by-laws in respect of the management or use of any of the Company's facilities that have been constructed pursuant to this Agreement.

8. (1) On application by the Company the State shall cause to be granted to the Company such machinery and tailings leases and such other leases, licenses, reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in subclause (2) of this Clause provided as the Company may reasonably require and request for its purposes under this Agreement on or near the production site. Without limiting the generality of the foregoing the State shall grant to the Company appropriate rights enabling the Company to take without royalty stone, gravel, sand, or earth, for the purpose of making improvements to the work sites.

(2) For the purposes of the preceding subclause the Land Act shall be deemed to be modified by —

(a) the substitution for subsection (2) of section 45A of the following subsection: —

(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;

(b) the deletion of the proviso to section 116;

(c) the deletion of section 135;

(d) the deletion of section 143;

(e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and

(f) the inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods and the terms and conditions and the forms referred to in the Act.

(3) The provisions of subclause (2) of this Clause shall not operate so as to prejudice the rights of the State to determine any lease, license or other right or title in accordance with the other provisions of this Agreement.

**Company's Obligations**<sup>3</sup>

9. If the Company gives to the Minister the notice referred to in subclause 1 of Clause 34 then

- (a) the Company shall not later than the thirty-first day of December, 1968, commence and thereupon diligently proceed with the construction and establishment on the work sites of a solar salt plant designed to have the capacity to produce and to load into ships not less than 475,000 tons of salt per annum, and estimated with its equipment and staff housing to cost not less than \$5,000,000. The Company shall complete the construction and establishment of the plant not later than the thirty-first day of December, 1972.
- (b) the Company will be obliged subject to it obtaining satisfactory markets and finance to progressively increase the capacity of the plant to produce and load into ships not less than one million tons of salt per annum.

**Royalty**<sup>3</sup>

10. (1) Throughout the continuance of this Agreement the Company shall pay to the State a royalty on all salt produced at the work sites and shipped computed as set out hereunder: —

	Rate per ton
On the first 500,000 tons in any year	5 cents
On the second 500,000 tons in any year	6.25 cents
On all tonnages in excess of 1,000,000 tons in any year	7.5 cents

Tonnages shall be ascertained at Dampier in such manner as the parties hereto may from time to time agree upon.

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**Returns**<sup>3</sup>

(2) Within twenty-one days after the quarter days being the last days of March, June, September and December in each year commencing with the quarter day next following the first shipment of salt produced at the work sites the Company shall furnish to the Minister for Mines a return showing the quantity of all salt the subject of royalty hereunder shipped during the quarter ending on the respective quarter day and shall not later than one month after the date on which such return is due pay to the State the royalty in respect of all salt shipped during that quarter.

**Inspection of Records**<sup>3</sup>

(3) Throughout the continuance of this Agreement the Company shall permit a nominee of the Minister for Mines to inspect at all reasonable times the books of account and records of the Company relative to the production of salt on the work sites and any sale or shipment thereof and to take copies or extracts therefrom so far as is necessary for the purpose of determining the royalty payable in respect of salt shipped hereunder. The Company will take reasonable steps to satisfy the State either by the certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and will give due regard to any objection or representation made by the Minister for Mines or his nominee as to any particular weight of salt which may affect the amount of royalty payable hereunder.

**Other Charges**<sup>3</sup>

11. The State may make or cause to be made against vessels using any jetty erected by the Company the usual charges from time to time prevailing in respect of services rendered to vessels by the State or any agency instrumentality or other authority of the State and may charge vessels using any such jetty such conservancy and pilotage charge or dues as are payable from time to time pursuant to the provisions of any Act.

**Escalation**<sup>3</sup>

12. (1) Notwithstanding anything herein contained it is hereby agreed by and between the parties hereto in order to provide for the equitable performance of this contract that in the event of the price of salt (as hereinafter defined) on the 14th, 21st, 28th, 35th, 42nd, 49th or 56th anniversaries of the commencement date (being the day of the commencement of the term of the

lease of the production site) exceeding the price of salt on the 7th anniversary of the commencement date, then the percentage by which the price of salt on the relevant anniversary exceeds the price of salt on the 7th anniversary of the commencement date shall be calculated and the several amounts and payable by the Company to the State as —

- (a) rental under paragraph (b) of subclause (1) of Clause 3;
- (b) rental under subclause (3) of Clause 4;
- (c) royalty under subclause (1) of Clause 10;

shall be increased by the percentage so calculated and such increased amounts in respect of those items shall be payable by the Company to the State during the seven (7) years next following the relevant anniversary.

(2) For the purposes of this Clause the price of salt on the 7th anniversary of the commencement date and on each of the aforesaid anniversaries means the average price of salt shipped from the work sites during the previous year payable by the purchaser or purchasers thereof to the Company less all export duties taxes and fees payable to the Commonwealth on the export of salt and the costs and expenses properly incurred and payable by the Company in respect of that sale from the time it is shipped to the time it is delivered to and accepted by the purchaser or purchasers including —

- (a) ocean freight;
- (b) marine insurance;
- (c) port and handling charges at the port of discharge;
- (d) all costs properly incurred in delivering the salt from the port of discharge to the purchaser as evidenced by relevant invoices;
- (e) all weighing, sampling, analysis, inspection and representation costs;
- (f) all shipping agency charges after shipment; and
- (g) all import taxes imposed or levied by the country or the port of discharge.

(3) Throughout the continuance of this Agreement the Company shall use its best endeavours to obtain for the salt produced at the production site the

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best price possible having regard to market conditions from time to time prevailing.

**Housing**<sup>3</sup>

13. (1) Subject to the provisions of this Clause the state will on the written application made from time to time by the Company for land for housing or staff amenity purposes grant to the Company in such locality as land is available therefor a lease of such vacant lots as the Company requests on the following terms and conditions namely: —

- (a) for a term of five years commencing from a day to be agreed upon by the parties hereto;
- (b) at a rental sufficient to reimburse a reasonable proportion of the costs (if any) incurred by the State in the preparation of the land for subdivision;
- (c) that the lessee will within eighteen months of the commencement of the term of each lease granted for housing purposes complete on the land the subject of that lease the erection of a building for the accommodation for a family or single persons at a cost of not less than \$15,000;
- (d) that on the expiration of the term of the lease and subject to the due and punctual observance and performance by the lessee of all the covenants agreements and conditions on the lessee's part therein contained, on the request of the lessee the State will grant to the lessee an estate in fee simple in the land the subject of the lease at a price not exceeding two hundred dollars (\$200) plus Crown Grant and survey fees;
- (e) that the Company will not sell transfer assign sub-let or mortgage charge or encumber any lease without the consent of the Minister first had and obtained PROVIDED THAT the consent of the Minister shall not be required to the transfer assignment or sub-lease to an employee of the Company of a lot leased for housing purposes nor to any mortgage of a lot in respect of which the Company has complied with paragraph (c) of this Clause in relation to that lot;
- (f) that the Company will pay to the relevant local authority (when requested by the local authority so to do) such amount as the local

authority reasonably requires at the time of the grant of the lease to enable it to supply or make available the usual services;

- (g) otherwise on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement.

(2) The State shall not be required to lease to the Company pursuant to this Clause more than one hundred lots. The request for each lot shall be made by the Company at least six months before the Company requires the lease of that lot to be granted to it. In the event of the Minister consenting under the provisions of paragraph (e) of subclause (1) of this Clause to a transfer assignment or subletting of the lot the State shall not be required to lease another lot in lieu of the lot so transferred assigned or sublet.

### **Road Transport**<sup>3</sup>

14. (1) Subject to the provisions of subclause (2) of this Clause it shall be lawful for the Company to use for the carriage of salt on any public road between the production site and the stockpile site prime movers each with two trailers the combined length of which shall not exceed eighty-five (85) feet notwithstanding any provision in any Act to the contrary.

(2) The right conferred by subclause (1) of this Clause shall operate until the tenth anniversary of the day of the first shipment of salt and thereafter until determined by not less than three years' notice in writing by the State. Such notice may be given to expire on the tenth anniversary of the day of the first shipment of salt or at any time thereafter.

### **Sea Water**<sup>3</sup>

15. The Company may without charge draw, take and use sea water for all or any one or more of its operations in respect of the mining extraction and production of salt on the work sites and the Company may store at such place within the work sites as may be convenient or discharge at or below high water mark at such points near to the work sites as are approved by the State residual brines resulting from those operations. If requested by the Company the State shall grant to the Company any necessary easement or licence for these purposes over Crown lands upon such terms and conditions as shall be reasonable having regard to the requirements of the Company under this Clause and the overall development and use by others of those Crown lands. Subject to the Company's compliance with the Mining Act and all other relevant statutes and regulations for the time being in force the Company if and when it becomes

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economical so to do shall have the right to the exclusion of any other person to mine and recover any other minerals, substances or chemicals in the said residual brines.

**Rights of Ingress and Egress**<sup>3</sup>

16. The State shall from time to time on the written application of the Company grant to the Company a license or licenses over Crown lands to permit the Company by its servants agents contractors invitees and customers the right of ingress to and egress from all or any one or more part or parts of the work sites on such terms and conditions as shall be reasonable having regard to the requirements of the Company in respect of the construction maintenance operation and inspection of the improvements from time to time constructed or installed on the work sites and to the overall development and use by others of those Crown lands.

**Export License**<sup>3</sup>

17. If at any time or times under Commonwealth law an export license is required by the Company for the export of salt then on written request by the Company the State shall make representations to the Government of the Commonwealth of Australia for the grant to the Company of a license or licenses under Commonwealth law for the export of salt in such quantities and at such rate or rates as shall be reasonable having regard to the tonnage of salt being produced by the Company at such time or times as a license is so required and to all contracts made or likely to be made by the Company for the export or supply of salt from the work sites.

**Limitation of Liability**<sup>3</sup>

18. Where the Company from time to time constructs a levee or other works on the production site for or incidental to the production of salt and thereafter a third party makes improvements to lands or becomes the owner of improvements so made on lands adjacent to the production site and subsequent to those improvements being made the Company removes (either wholly or partly) or fails to maintain or to repair that levee or other works and in consequence thereof the third party suffers sustains or incurs damage to those improvements or any part thereof then notwithstanding any Act or any rule of law or equity to the contrary, the Company shall not be liable for those damages to any person or persons whatsoever.

**Default**<sup>3</sup>

19. The parties hereto covenant and agree with each other as follows: —

- (a) that in any of the following events namely if the Company fails in any year after the 30th June, 1977 to ship at least 350,000 tons of salt and furthermore the average of the tonnage shipped in that year and in the previous three years is less than 350,000 tons a year or if the Company makes default in the due and punctual performance of any of the covenants agreements or obligations to the State herein or in any lease sub-lease easement license or other right or title granted under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given by the State to the Company and also to any Mortgagee approved pursuant to Clause 23 hereof if it has a registered office in Perth (or if the alleged default is contested by the Company and promptly, submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a bona fide dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company abandons or repudiates its operations under this Agreement or if the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice given to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted or demised hereunder or pursuant hereto PROVIDED HOWEVER that if the Company fails to remedy any default after notice is given to the Company specifying the default or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by its agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant, machinery, equipment and installations thereon) and the costs and expenses incurred by the State remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand made by the State;

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**Effect of determination of Agreement**<sup>3</sup>

- (b) that on the cessation or determination of this Agreement:
- (i) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or any assignee of the Company or any mortgagee to in or under any lease license easement or right granted or demised hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement AND the Company shall without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any lease license easement or right granted or demised hereunder or pursuant hereto AND the Company hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of the Company to execute the transfer or surrenders aforesaid;
  - (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
  - (iii) save as aforesaid and as provided in paragraph (c) of this Clause neither of the parties hereto shall have any claim against the other with respect to any matter or thing in or arising out of this Agreement;
- (c) that on the cessation or determination of any lease license easement or right granted or demised hereunder or pursuant hereto by the State to the Company or (except as otherwise agreed by the Minister) to an assignee of the Company under Clause 23 hereof the improvements and things erected on the relevant land other than machinery equipment and removable buildings shall remain or become the absolute property of the Crown without compensation and freed and discharged from all mortgages and encumbrances and the Company will do such things and execute such documents (including surrenders) as the State may reasonably require to give effect to this provision AND the Company hereby irrevocably constitutes and appoints the Minister or such person as he may

from time to time nominate the true and lawful attorney of the Company to do those things and to execute those documents (including surrenders). In the event of the Company immediately prior to such expiration or determination or subsequent thereto deciding to remove its machinery equipment and removable buildings or any of them from the work sites the Company shall not do so without first notifying the State in writing of its decision and thereby granting to the State the right or option exercisable within three (3) months thereafter to purchase at valuation in situ the said machinery equipment and removable buildings or any of them. Such valuation will be mutually agreed or in default of agreement shall be made by such competent valuer as the parties hereto may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree;

- (d) the provisions of this Clause shall not apply to any land which at or prior to the date of cessation or termination of this Agreement had been the subject of a lease granted to the Company pursuant to Clause 13 and which at that date is held for an estate in fee simple by any person, or is held for an estate in leasehold by any person other than the Company, or is held for an estate in leasehold by the Company and in respect of which the Company has effected some improvements and has not failed to observe any obligation on its part under the lease.

20. Any hospital or educational facilities including staff accommodation which appear to be reasonably necessary to meet the needs of employees of the Company or contractors engaged by the Company and their families shall be supplied by the State subject to the Company bearing and paying the capital cost thereof and if the State and the Company are unable to agree upon the necessity for such facilities or the standard or cost thereof then the matter shall be determined by arbitration.

**Salt for use in Australia**<sup>3</sup>

21. The Company acknowledges the desire of the State to have available a constant and reliable source of supply of salt for use in Australia. To attain this object the Company, subject to the fulfilment of its overseas contracts will use its best endeavours to have such quantities of salt available at all times during

**First Schedule**

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the currency of this Agreement for sale for use in Australia as will meet reasonable demands therefor made on the Company from time to time at a price which is competitive in the Australian market provided that such price is not less than that which the Company is receiving or able to receive for similar quantities of salt sold on similar terms and conditions for use outside Australia.

**Restrictions on resumption**<sup>3</sup>

22. The State further covenants with the Company that the State —

- (a) having regard to the particular nature of the industry proposed to be established by the Company under this Agreement and subject to the performance by the Company of its obligations hereunder shall not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any portion of the work sites the resumption of which would unreasonably impede the Company's activities nor shall the State create grant or permit or suffer to be created or granted by an instrumentality or authority of the said State as aforesaid any road right of way or easement of any nature or kind whatsoever over or in respect of the work sites which may unduly prejudice or interfere with the Company's operations hereunder without the consent in writing of the Company first having been obtained which consent shall not be arbitrarily or unreasonably withheld; nothing in this paragraph shall prevent the State exercising any power given it pursuant to paragraph (h) of subclause (1) of Clause 3 of this Agreement;

**No discriminatory taxes or charges**<sup>3</sup>

- (b) except as provided in this Agreement shall not impose or permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company in the conduct of the Company's business hereunder nor shall the State take or permit to be taken by any such agency instrumentality or authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement;

**Upgrading of Roads**<sup>3</sup>

- (c) shall at the request and cost of the Company (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) widen upgrade or realign any public road over which the State has control subject to the prior approval of the said Commissioner to the proposed work;

**Rating**<sup>3</sup>

- (d) shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;

**Labour Conditions**<sup>3</sup>

- (e) 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 labour conditions imposed by or under any Act in regard to any lease of any land within the work sites.

**Assignment**<sup>3</sup>

23. (1) Subject to the provisions of this Clause and of paragraph (e) of subclause (1) of Clause 13 hereof the Company may at any time with the prior written consent of the Minister —

- (a) assign mortgage charge sublet or dispose of to any company or person the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder,  
and
- (b) appoint any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Company hereunder;

**First Schedule**

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subject however to the assignee or the appointee executing in favour of the State a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters so assigned or the subject of the appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Company unless the Minister otherwise agrees shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease license easement grant or other title the subject of an assignment under the said subclause (1).

**Arbitration**<sup>3</sup>

24. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895*.

**Variation**<sup>3</sup>

25. The parties hereto may from time to time by mutual agreement in writing add to, vary or cancel all or any of the provisions of the Agreement or any lease license easement or right granted or demised hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

26. During the period of this Agreement the State shall not authorise the construction of any works which could reasonably be considered as having the possible effect of stopping the from of sea water around the northern or southern ends of West Intercourse Island to or from the production site or so diminishing such flow as to result in the drawing of sea water by the Company from the western side of the production site being either impracticable or only practicable with the expenditure by the Company of additional money for capital or in operating costs.

***Force Majeure***<sup>3</sup>

27. This agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder and to relief from forfeiture for failure to produce the annual and average tonnages referred to in paragraph (a) of Clause 19 which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension or failure as aforesaid caused by or arising from Act of God *force majeure* floods storms tempests washaways abnormal tides and waves fire (unless caused by the actual fault or privity of the Company) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the salt export industry) to profitably sell salt or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

**Continuance of Agreement**<sup>3</sup>

28. (1) If the Company is desirous of a further continuance of this Agreement (whether in the same or any varied or modified form) and if the parties hereto have not at least fifteen (15) months prior to the expiration of the second term of renewal of the lease of the production site (hereinafter referred to as “the expiration of the second renewal”) agreed upon the terms and conditions in respect of a further agreement for the production at and shipment of salt from the work sites then the State shall at least fourteen (14) months prior to the expiration of the second renewal make the Company such written offer (hereinafter called “the offer”) of the terms and conditions of the further agreement as it deems reasonable and unless the Company has —

- (i) within the month next following the receipt of the offer accepted it (either in the form so offered or as modified or varied by negotiation between the parties hereto), or
- (ii) within the fourteen days next following the receipt of the offer referred that offer or the part or parts thereof which the Company considers unreasonable to arbitration as provided in subclause (2) of this Clause;

**First Schedule**

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the State may at the expiration of that month proceed as in manner set out in subclause 3 of this Clause.

(2) Within the fourteen (14) days next following the receipt of the offer the Company may elect by notice to the State to refer to arbitration any dispute concerning the reasonableness of the State's offer or any part or parts thereof and will within fourteen (14) days next following such election refer to arbitration that dispute. Unless the Company within the fourteen (14) days next following the receipt by it of the award on arbitration by notice to the State accepts the offer as valid or modified by the award on arbitration the State may proceed as in manner set out in subclause (3) of this Clause.

(3) If the Company has not accepted the offer or the offer as varied or modified by the award on arbitration subject to and in accordance with the provisions set out in subclause (1) or (2) respectively of this clause then the State may enter into an agreement for the production and shipment of salt from the sites previously leased to the Company with any other person on terms and conditions more favourable on the whole than the offer made by the State or in the event of the offer having been submitted to arbitration the offer as varied or modified by the award on arbitration provided the State has first offered to the Company the right of first refusal of such terms and conditions and such offer is not accepted by the Company within a reasonable time.

**Indemnity**<sup>3</sup>

29. The Company will indemnify and keep indemnified the State and its servants agents (including all Ministers of the Crown in right of the State of Western Australia and contractors in respect of all actions suits claims demands or costs arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's solar salt plant, jetty, berthing or loading facilities, roads, railways or other works or services the subject of this Agreement or any plant apparatus or equipment associated therewith.

**Compliance With Laws**<sup>3</sup>

30. Subject to this Agreement the Company in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by it shall comply with and observe the laws for the time being in force in the State of Western Australia.

**Notices**<sup>3</sup>

31. Any notice consent request or other writing authorised or required by this Agreement to be given shall be deemed to have been duly given by the State or the Minister if signed by the Minister or by any senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by pre-paid registered post to the Company or an approved mortgagee or assignee as the case may require at its registered office for the time being in the said State and by the Company if signed on its behalf by any person or persons for the time being appointed by it for the purposes of this Clause and forwarded by pre-paid registered post to the Minister at his office in Perth AND any such notice consent or writing shall be deemed to have been duly given on the day on which it would be delivered in the ordinary course of post.

**Relevant Law**<sup>3</sup>

32. (1) This Agreement shall be interpreted according to the law for the time being in force in the said State.

(2) All payments made or to be made under this Agreement shall be made in the State of Western Australia in Australian currency unless otherwise agreed. All sums mentioned herein are in Australian currency.

**Expiration of Agreement**<sup>3</sup>

33. This Agreement shall expire on the expiration or sooner determination of the lease of the production site (including the respective renewals thereof) but without prejudice to the right of action of either party hereto in respect of any breach of the covenants agreements and conditions herein contained.

**Conditions**<sup>3</sup>

34. (1) This Agreement is conditional upon the Company at any time prior to the 31st day of December, 1968, giving notice to the Minister that —

- (a) the Company has entered into or intends to enter into contracts or arrangements satisfactory to the Company for the sale by the Company of salt; and
- (b) the Company has made or is about to make arrangements satisfactory to the Company for financing the works referred to in Clause 9 hereof and that the Company proposes to proceed with such works.

**First Schedule**

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**Determination by Company**<sup>3</sup>

(2) Notwithstanding anything herein contained the Company may at any time give notice to the State that matters have arisen which make the completion or continuance of the works impracticable or uneconomic and desires to determine this Agreement whereupon this Agreement will then cease and determine and the State may enforce all or any one or more of its rights remedies or powers set out in Clause 19 hereof.

**Right of Surrender**<sup>3</sup>

(3) The Company shall have the right at any time and from time to time to surrender to the Crown in right of the State any reasonably substantial part of the work sites which is no longer required by the Company.

**Power to extend periods**<sup>3</sup>

35. Notwithstanding any provision hereof the Minister may at the request of the Company from time to time extend any period or alter any date referred to in this Agreement for such period or to such other date as the Minister thinks fit and the extended period or other date when advised to the Company by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so extended or altered.

Provided that where any such extension of period or alteration of date would have the effect either directly or indirectly of extending the term of any lease license temporary reserve or other concession granted under the Mining Act the consent of the Minister shall not operate until the Company has also obtained the like consent of the Minister for Mines.

36. The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any lease license easement or right granted or demised hereunder or pursuant hereto:

PROVIDED THAT this clause shall not apply to any instrument or other document executed or made more than seven years from the date hereof.

IN WITNESS whereof this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED SEALED AND DELIVERED  
by THE HONOURABLE DAVID  
BRAND, M.L.A. in the presence  
of — } DAVID BRAND.  
[L.S.]

C. W. COURT,  
Minister for Industrial  
Development.

THE COMMON SEAL OF DAMPIER  
SALT LIMITED WAS HEREUNTO  
AFFIXED BY AUTHORITY OF  
THE DIRECTORS, in the presence  
of — } [L.S.]

S. CHRISTIE,  
Director.

NEIL R. CAFFIN,  
Secretary.

**Second Schedule**

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**Second Schedule**

[s. 2]

AN AGREEMENT made the 18th day of October 1974

BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter referred to as “the State”) of the one part AND DAMPIER SALT LIMITED a company incorporated under the provisions of the statutes of Western Australia and having its registered office in the State of Western Australia at Perth (hereinafter called “the Company”) of the other part.

WHEREAS:

- (a) The parties are the parties to the agreement between them defined in section 2 of the *Dampier Solar Salt Industry Agreement Act 1967* (which agreement in the form printed in that Act is hereinafter referred to as “the principal agreement”).
- (b) The parties desire to add to and amend the principal agreement as hereinafter provided.

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 purposes of the principal agreement.
- 2. The provisions of this agreement shall not come into operation unless and 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 amended as follows —
  - (1) Clause 3 is amended —
    - (a) as to subclause (1) by substituting for the passage  
“Plan initialled on behalf of the parties hereto for the purpose of identification and comprising approximately 28,600 acres” in lines four five and six, the passage “Plan marked “A” initialled on behalf of the parties hereto for

the purpose of identification and comprising approximately 36,362 acres”;

(b) as to subclause (2) by substituting for the word “Plan” in line six, the passage “Plan marked “A” ”;

and

(c) as to subclause (3) by substituting for the word “plan” in line four, the passage “Plan marked “A” ”;

(2) Clause 27 is amended by adding after the word “shall” in line twenty three, the words “promptly give notice to the other party of the event or events and shall”;

and

(3) by adding after Clause 30 a new clause 30A as follows —

**Environmental Protection**<sup>3</sup>

30A. 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 the operations of the Company hereunder that may be made by the State or any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act for the time being in force.

IN WITNESS whereof this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by THE HONOURABLE SIR  
CHARLES WALTER MICHAEL  
COURT, O.B.E., M.L.A., in the  
presence of —

}

CHARLES COURT

ANDREW MENSAROS,  
Minister for Industrial Development

**Second Schedule**

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The Common Seal of DAMPIER SALT LIMITED was hereunto affixed by authority of the Directors in the presence of — } (C.S.)

I. BORRIE,  
Director.

N. R. CAFFIN,  
Secretary.

*[Second Schedule inserted by No. 50 of 1974 s. 5.]*

**Notes**

- <sup>1</sup> This is a compilation of the *Dampier Solar Salt Industry Agreement Act 1967* and includes the amendments made by the other written laws referred to in the following table.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Dampier Solar Salt Industry Agreement Act 1967</i>	76 of 1967	11 Dec 1967	11 Dec 1967
<i>Dampier Solar Salt Industry Agreement Act Amendment Act 1974</i>	50 of 1974	26 Nov 1974	26 Nov 1974
<b>Reprint of the <i>Dampier Solar Salt Industry Agreement Act 1967</i> as at 6 Dec 2002</b> (includes amendment listed above)			

- <sup>2</sup> Repealed by the *Interpretation Act 1984*.
- <sup>3</sup> Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.