

Western Australia

Special Lease (Lake Clifton) Act 1916

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Western Australia

Special Lease (Lake Clifton) Act 1916

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Special Lease (Lake Clifton) Act 1916

An Act to enable a Special Lease to be granted under the *Land Act 1898*, of Lake Clifton and Reserve in the South-West Division of the State, and to authorize the construction of a Railway from Waroona to the said Reserve ↑998

[Assented to 5 December 1916.]

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

1. Short title

This Act may be cited as the *Special Lease (Lake Clifton) Act 1916*.

2. Power to grant lease

Notwithstanding anything contained in the Land Act to the contrary, the Governor may, pursuant to the agreement set out in the First Schedule hereto, in the name and on behalf of His Majesty, grant to John Henry Johnson a special lease of the bed and banks of Lake Clifton, in the South-Western Division of Western Australia, and of Reserve ↑998 containing about fifty acres, adjacent thereto, for the term, at the rent, and subject to the conditions and provisos stated in the draft lease set out in the First Schedule hereto: Provided that any variation in the form of the said draft lease, not being a matter of substance, shall not affect the validity of the lease.

Provided also that the words “run traffic over the said railway to the satisfaction of our said Minister, and” shall be inserted in condition (9) after the word “lease.”

Notwithstanding anything contained in the First Schedule and the Special Lease, the intended lessee shall, provided rails can be secured, start the construction of the railway line within 12 calendar months from March, 1917, and complete same within two years of the same date, and shall then proceed to supply lime, as provided in Clause 13 of the Conditions of the Special Lease, always provided that the screened lime shall be pulverised finely enough to pass through a 20-inch mesh, or such mesh as the expert of the Department of Agriculture² may determine after tests, and also provided that the lime produced and sold, both screened and unscreened, shall not contain less than 80 per cent. carbonate.

3. Authority to construct railway

It shall be lawful for the lessee under the said lease, or his transferee, to construct and maintain the railway referred to in the said draft lease, with all necessary, proper, and usual works and conveniences in connection therewith, along the line described in the Second Schedule to this Act.

4. Land may be reserved and acquired for railway

The Minister for Lands may set apart and reserve such portions of unalienated Crown lands as may be required for the construction of the said railway, and may, under and subject to the provisions of the Public Works Act compulsorily acquire any alienated land that may be required for such purpose.

5. Power to run traffic on railway

It shall be lawful for the lessee and his transferees, under and subject to the provisions of the said lease, to use on the said railway locomotive engines consuming any kind of fuel, subject

to the approval of the Minister for Lands, and to draw or propel thereby wagons, trucks, carriages, and other vehicles thereon.

6. By-laws

The Minister for Lands may make by-laws for the regulation of traffic on the said railway, and may impose penalties not exceeding twenty pounds for the breach thereof.

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AN AGREEMENT made the sixth day of April, One thousand nine hundred and sixteen, between the Honourable William Dartnell Johnson, Minister for Lands (hereinafter with his successors in office referred to as “the Minister”), acting on behalf of the Government of Western Australia, of the one part, and John Henry Johnson, of Cottesloe, Western Australia, Mining Engineer (hereinafter referred to as “the intended lessee”), of the other part, as follows: —

1. Subject to the approval of Parliament being obtained, the Government of Western Australia shall grant and the intended lessee shall accept a lease in the terms of the annexed draft, with such modifications (if any) as Parliament may require.
2. A Bill to authorize the said intended lease will be submitted to Parliament forthwith after the commencement of the next session.
3. The term of the lease shall commence twelve calendar months from the Declaration of Peace, or at such earlier date as may be agreed upon between the Minister and the intended lessee, but the intended lessee shall in the meantime pay to the Minister rent at the rate stated in the said draft lease, from the date of the approval by Parliament, by equal half yearly payments in advance.

As witness the hands of the parties hereto —

Signed by the said William
Dartnell Johnson, in the
presence of —

L.E. SHAPCOTT

} W. D. JOHNSON

Signed by the said John
Henry Johnson, the
presence of —

L.E. SHAPCOTT

} J. H. JOHNSON

WESTERN AUSTRALIA
Special Lease

Lease No. 1515/152.

Division No.

GEORGE THE FIFTH, by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India; TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

Know ye that we of Our especial Grace and in consideration of the rent hereinafter reserved and to be paid by John Henry Johnson, of Cottesloe, Western Australia, Mining Engineer, his executors, administrators, and assigns (hereinafter called and referred to as “the lessee”), and of the conditions hereinafter expressed and to be observed and performed by the lessee, do by these presents demise and lease to the lessee all that land being the bed and banks of Lake Clifton situated in the South-West Division of our said State, and containing approximately four thousand two hundred acres, as the same is delineated in the plan drawn hereon and coloured blue, and also all that adjacent piece or parcel of land known as Reserve ↑998 containing about fifty acres, also delineated in the said plan and coloured red, with the appurtenances: To have and to hold the premises hereby demised subject to the powers, reservations, and conditions herein and in the *Land Act 1898*, and its amendments contained: And with all the rights, powers, and privileges conferred by the said Act as are applicable hereto unto the lessee for the term of forty-two years, to be computed from the day of _____, one thousand nine hundred and _____, for the special purpose of working the lime deposits on the demised premises, and as to the land known as Reserve for treatment works: Yielding and paying during the said term unto Us, our Heirs and Successors, the yearly rent of Two hundred pounds sterling by equal payments half-yearly in advance on the first day of March and the first day of September in every year, such rent to be paid to the Minister for Lands of our said State.

And it is hereby declared that this Lease is granted subject to the following conditions: —

- (1) That the lessee duly pays the rent hereby reserved at the times and in the manner aforesaid.
- (2) That the lessee works the land continuously and *bona fide* for the purpose for which it is demised.
- (3) That the lessee will within two years from the commencement of this lease, or within such extended time as under existing war conditions or other special circumstances Our Minister for Lands may deem reasonable, construct a railway from Waroona to the demised premises, along such line as may be approved by Our Minister for Lands, with all necessary and sufficient level

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crossings, cattle stops, watercourses, drains, culverts, and other works.

- (4) The lessee shall survey, lay out, and construct the Railway under the supervision and to the satisfaction of the Engineer-in-Chief or such other Officer of the Department of Public Works as may be acting under him.
- (5) That so far as the Railway extends over unalienated Crown Lands, such land if not less than one chain in width will be reserved, and so far as it extends over alienated or demised land the same to the extent of not less than one chain in width will be acquired by the Government, subject to the payment by the lessee of the cost of acquisition and such compensation (if any) as may be payable to the owner or lessee.
- (6) That the land so reserved or acquired for the purposes of the Railway will be demised to the lessee for the term of this lease without the reservation of any additional rent.
- (7) That the whole of the cost of surveying, laying out, constructing, and maintaining the Railway including labour and materials shall be borne by the lessee, and that the lessee shall at all times during the term of this lease keep the Railway in good and substantial repair.
- (8) That connection of the said Railway with the Government Railway at Waroona shall be subject to the conditions of the usual siding agreement as required by the By-laws of the Commissioner of Railways in force for the time being.
- (9) That notwithstanding that the Railway is intended primarily for the carriage of the product of the lessee's works, the lessee will, if so required by Our Minister for Lands, during the term of this lease carry goods and passengers over the said Railway, at freights to be approved by Our Minister for Railways (not being less per mile than the freight in force on the Government Railways) and subject to such reasonable conditions as such Minister may from time to time prescribe, and if any question shall arise as to whether any such conditions are reasonable or otherwise such question shall be referred to arbitration as hereinafter provided.
- (10) That if and when Our Minister for Lands shall receive information to the effect that any portion of the Railway or any engine, car, or carriage used or for use on the Railway is dangerous to the public using the same from erroneous construction or want of repair or

from any other cause or whenever circumstances may arise which in his opinion render it expedient, he may cause an inspection or examination of the Railway or the works connected therewith or the engine and other rolling stock in use thereon to be made, and upon such inspection may condemn the Railway or any portion thereof or any of the rolling stock or other appliances used thereon and may require any change or alteration therein or in any part thereof or the substitution of any material, engines, or rolling stock for the Railway, and thereupon the lessee shall, after notice thereof in writing, signed by Our Minister for Lands, proceed to make good or remedy the defects, or shall make such change, alteration, or substitution hereinbefore referred to as has been required in the manner aforesaid.

- (11) That if at any time in the opinion of Our Minister for Lands it is dangerous for traffic to pass over the Railway or any portion thereof until alterations, substitutions, or repairs have been made thereon or that any particular car, carriage, or locomotive should be run or used Our Minister for Lands may forthwith forbid the running of any train or vehicle over the Railway or portion of Railway or the running or using of any such car, carriage, or locomotive by delivering or causing to be delivered to the lessee a notice in writing to that effect, with his reasons therefor, in which he shall distinctly point out the defects or the nature of the danger to be apprehended.
- (12) That Our Minister for Lands or any person appointed by him to inspect the Railway or works may at all reasonable times enter upon and examine the Railway and the stations, fences, or gates, roads, crossings, cattle guards, works and buildings, and the engines, cars, and carriages belonging thereto.
- (13) That the lessee will as soon as the said Railway is completed and thereafter at all times during the term of this lease supply lime to the public, so far as there may be a demand for the same, to the extent of the output for the time being of the demised premises, which shall not be less than fifty tons per day, in a dry condition and finely crushed so as to pass through a twenty-inch mesh sieve, or unscreened, as the purchaser may require, and in either case containing on analysis not less than eighty per cent. carbonate, and being the product of the demised premises, at a price not to exceed twelve shillings per ton screened, or ten shillings per ton unscreened, delivered at Waroona.

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Provided that at any time during the currency of this lease it shall be lawful for Us, Our Heirs and Successors, to purchase the said Railway at a sum equal to the cost of construction less depreciation as determined by the actual condition of the line. For the purposes of this provision the cost of construction and such depreciation shall be fixed by the Engineer-in-Chief or such other Officer as for the time being shall be in charge of the construction of Government Railways. In the event of our purchasing the Railway provision shall be made for the carriage thereon of lime and cement for the lessee at rates not to exceed the current rates for the time being on Government Railways, and facilities of transit equal to those existing at the date of such acquisition shall be continued: Provided also, that if the said lessee shall during the term hereby created at any time make default in payment of the rent hereby reserved, or shall fail to duly observe the conditions under which this lease is granted or any of them, this lease and the lease of the said Railway shall be liable to forfeiture, and it shall thereupon be lawful for Us, Our Heirs and Successors, into and upon the said demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, re-possess, and enjoy, as if this deed poll had never been executed, and the provisions of Section 15 of the *Land Act Amendment Act 1900*, whereby a notice in the *Government Gazette* is equivalent to re-entry shall apply: Provided further, that before any action is taken with the view to the forfeiture of this lease for alleged breach of conditions, notice in writing of such alleged breach and of intention to forfeit shall be given to the lessee, and if the lessee disputes the alleged breach of conditions he may within one month of the service of such notice require the question to be referred to an arbitrator to be mutually agreed upon, or to two arbitrators (one to be nominated by Our Minister for Lands and the other to be nominated by the lessee) and an umpire, and the provisions of the *Arbitration Act 1895*, or any Act in force for the time being in substitution for the same shall apply, and the award of the Arbitrator or Arbitrators or their umpire shall be final on the question whether a breach of conditions sufficient to justify the forfeiture of this lease has been committed by the lessee: Provided further, that if by reason of strikes, civil commotions, or any industrial struggle or upheaval or other cause not attributable to the lessee the lessee shall be unable to carry out the conditions hereof or any of them on his part to be observed and performed, the right to forfeit this lease shall be

suspended until the expiration of one month after the date of the termination of any such strike, civil commotion, industrial struggle, or upheaval or other cause aforesaid: Provided further, that it shall at all times be lawful for Us, Our Heirs and Successors, or for any person or persons acting in that behalf by Our or their authority, to resume and enter upon possession of any part of the said land which it may at any time by Us, Our Heirs and Successors, be deemed necessary to resume for any other works or purposes of public use, utility or convenience, and for the purposes of exercising the power to search for minerals hereinafter reserved, and such land so resumed to hold to Us, Our Heirs and Successors, as of our or their former estate without making to the lessee any compensation in respect thereof; so, nevertheless, that the lands so to be resumed shall not exceed one-twentieth part of the whole of the lands aforesaid without compensation, and that no such resumption be made of any part of the said lands upon which any buildings may have been erected or which may be enclosed for the more convenient occupation of any such buildings without compensation: Provided also, that it shall be lawful at all times for Us, Our Heirs and Successors, or for any person or persons acting in that behalf by Our or their authority, to cut and take away any such indigenous timber, and to search and dig for and carry away any stones or other materials which may be required for making or keeping in repair any roads, tramways, railways, railway stations, bridges, canals, towing paths, harbour works, breakwaters, river improvements, drainage or irrigation work, and generally for any other works or purposes of public use, utility, or convenience, without making to the lessee any compensation in respect thereof: And we do hereby save and reserve to Us, Our Heirs and Successors, all mines of gold, silver, copper, tin, or other metals, ore, and mineral, or other substances containing metals, and all gems and precious stones, and coal or mineral oil in and under the said land, with full liberty at all times to search and dig for and carry away the same; and for that purpose enter upon the said land or any part thereof: Provided further, that as security for the due performance by the lessee of his obligations hereunder he shall deposit with Our Minister for Lands the bond of a surety to be approved by Our Minister for Lands in a form to be likewise approved but limited to the sum of One thousand pounds or he shall deposit with Our Minister for Lands the sum of One thousand

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pounds, but if in lieu of a bond the sum of One thousand pounds is deposited, such sum will be returned to the lessee so soon as it is proved to the satisfaction of Our Minister for Lands that the lessee has duly constructed the said Railway: Provided further, that if the lessee shall be of opinion that Our Minister for Lands or the Engineer-in-Chief or other Officer for the time being in charge of the construction of Government Railways shall have used any powers hereby conferred upon him in an arbitrary manner, or if any dispute, difference, or question shall arise with reference to the exercise of any of such powers or otherwise as to the construction, meaning, or effect of this agreement or any clause or condition herein contained, or if the lessee shall be dissatisfied with the sum fixed for the purchase of the Railway under the proviso next following condition (13) hereof, then and in such case the difference or question between the parties, if so required by the lessee, by notice in writing given to Our Minister for Lands within one calendar month after the cause of complaint or dispute shall have arisen, shall be referred to arbitration, and the provisions relating to arbitration as set out in the third proviso following clause 13 hereof shall apply thereto.

In witness, etc.

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Description of Line of Railway

Commencing at a point approximately 69 miles 30 chains from Perth, at the north end of the Waroona Station Yard; proceeding thence generally Westerly to the Harvey River; thence North-Westerly to the terminus in Government

Reserve ↑998 as more particularly delineated on a map No. $\frac{4383}{15}$

deposited as provided by 2 Edw. VII., No. 47: total length about 15 miles.

Notes

- ^{1.} This is a compilation of the *Special Lease (Lake Clifton) Act 1916* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Special Lease (Lake Clifton) Act 1916</i>	17 of 1916	5 December 1916	5 December 1916

- ² Now known as Agriculture Western Australia.