

Agreement Synopsis, Context and Review

Sector:	Water
Name of Agreement:	Section 137AA(4) Land Act 1958 Special Lease
Type of Agreement:	Lease
Year of Agreement/ Draft:	N/A (unsigned)
Principal Author(s) Reviewed by:	N/A Victoria Rigby Delmon, LEGPS, World Bank; Luiz Alcoforado, LEGPS, World Bank
Purpose and Context:	This “Land Act 1958 Special Lease” was developed in order to grant the Project Company (<i>Project Co.</i>) access to and use of the Crown land where the Intake and Outlet Structures ¹ of the Victoria Desalination Project were constructed. The Lease was granted upon satisfaction of the Minister for Environment and Climate Change (<i>the Minister</i>) that it would not interfere with the exercise of rights by the registered proprietor, lessee or licensee of other land. The Minister agreed to lease the premises to the tenant (Project Co.) pursuant to the Land Act of 1958 and subject to the conditions, covenants, restrictions, reservations and exceptions and at the rent set out in this Lease.
Circumstances where this contract may be appropriate:	This Special Lease was developed to govern the rights and obligations of the Parties (the State, represented by the Minister for Environment and Climate Change, and the Tenant (Project Co.)) in relation to the land object of this leased and where the Intake and Outlet Structures of the Victoria Desalination Project were constructed, and subject to the Land Act of 1958. This Lease is governed by Victorian Law.
Drafted for common law/ civil law jurisdiction:	Common Law
Main Features:	<p>This standard Special Lease under the Land Act of 1958 was drafted by Victoria Rigby Delmon, to be entered by and between the State (Minister for Environment and Climate Change) and the Tenant (Project Co.). The governing law is that applicable in the State of Victoria.</p> <ul style="list-style-type: none">• Minister leases premises to the Tenant for the Term (clause 3.1)• The Minister reserves the following rights: (clauses 3.2 and 3.3)<ul style="list-style-type: none">○ To carry out any works that may required to comply with any applicable Law or Requirement○ To enter the Premises for the purposes set out in this clause○ The reservation to Her Majesty of all gold and minerals and petroleum (“reserved minerals”);

¹ The Intake and Outlet Structures means the seawater intake and concentrate outlet pipes for the Desalination Plant located in sub-strata below the Plant site and the Coastal Reserve and within the seabed; and the risers and other associated marine structures that connect to the seawater intake and concentrate outlet pipes.

- The reservation to Her Majesty of the rights of access for the purpose of searching for and obtaining the reserved minerals in any part of the Leased Areas;
 - The reservation to Her Majesty of the rights of access for any pipeline works and other purposes necessary for obtaining and conveying on and from the Leased Area any of the reserved minerals obtained in any part of the Leased Area;
 - The right of the State to resume the Premises for mining purposes
- Any improvements and modifications to the land vest in the Crown (clause 3.5)
- Tenant must pay Rent to the Minister upon written demand (clause 4)
- Tenant must pay any due rates and taxes and produce receipts (clause 5)
- If any Goods and Services Tax (**GST**) is due on any supply, the party receiving the supply must pay the party making the supply a sum equal to any GST payable by the supplier (clause 5.4)
- Tenant must not use the premises for any purpose other than the “Permitted Use”; must not do anything which adversely affects the stability of the Premises or pollutes adjoining land or water; must not do anything which in the reasonable opinion of the Minister causes nuisance, damage, etc. Tenant must at all times carry out the Permitted Use in a business-like and reputable manner; and obtain, maintain and comply with all necessary consents and approvals from all the Authorities, among other covenants (clause 7)
- Minister gives no warranty that the Premises are fit for the Permitted Use; Tenant acknowledges any prohibitions or restrictions contained in any law or requirement on how Premises must be used (clause 7.3)
- Tenant must comply with all laws and requirements relating to the premises and the Permitted Use. Failure to do so gives the Minister the right to comply with such law or requirement and demand reimbursement from Tenant (clause 8)
- Tenant must keep Premises in good repair and condition (clause 9)
- Tenant must not, without prior consent of the Minister: assign, transfer, sublet, grant any license, mortgage, encumber, charge or part with or share the possession of or otherwise dispose of the Tenant’s estate or interest in the premises; and declare itself trustee of the premises (clause 10)
 - Tenant may, however, mortgage, encumber or charge its estate or interest under this Lease in accordance with the Project Deed (10.1(b))
- There is a deemed assignment if Tenant is a corporation and there is any change in the effective control of the Tenant (clause 10.2)
- Other clauses:
 - Tenant must maintain a standard public liability insurance policy (11.1)
 - Exclusion of Minister’s liability for any claim that Tenant or its employees may incur or make or any which arises from any fault in the construction or state of repair of the premises; or from the collapse of the premises, irrespective of the cause (11.4(a))
 - Exclusion of Minister’s liability for any claim relating to any property of the Tenant of any other person in or on the premises or any part of it; and from any death, damage or

injury to any person or property suffered as a direct consequence of the construction, operation, presence or maintenance of the Premises (11.4(b))

- Minister's Covenant of Quiet Enjoyment of the premises by the Tenant if Rent is paid and the covenants and conditions of the Lease are observed and performed in a timely fashion (12)
- The Lease will terminate automatically if the Project Deed is terminated; but it may not be unilaterally terminated by either party (clause 14)

Possible additional provisions that it might be appropriate to include:

N/A

Provisions that may not be advisable to replicate/ may need further thought:

This Special Lease was developed to govern the rights and obligations of the Parties (the State, represented by the Minister for Environment and Climate Change, and the Tenant (Project Co.)) in relation to the land object of this leased and where the Intake and Outlet Structures of the Victoria Desalination Project were constructed, and subject to the Land Act of 1958. This Lease is governed by Victorian Law.

Provisions of wider general use:

N/A

Experience Since Coming Into Force (including any amendments)/ if draft form, whether it has been applied:

Tracking Number:

Ref#: Section 137AA(4) Land Act 1958 Special Lease (date unknown)