



Western Lands Leases Tenures and Conditions

April 2014

The Western Division makes up 42% of the area of New South Wales. The vast majority of the Western Division is Crown land, administered under various Crown Lands Acts, in particular the Western Lands Act 1901, by the Department of Lands (Lands).

The Western Division lies west of a line from the Queensland border at Mungindi to Balranald near the Victorian border. It covers some 32.5 million hectares. The boundaries are defined by borders with Queensland, South Australia and Victoria in the north, west and south respectively. The eastern boundary follows the Barwon River, Marra Creek, a line south to Euabalong and then the Lachlan and Murrumbidgee Rivers.

Leases

Most leases are perpetual (ongoing) and most are granted for the purpose of grazing and agriculture. There are also leases granted for residence and for business and these are general located in the towns.

Western Lands leases are subject to the conditions contained in the Western Lands Act 1901 (the Act) and any other conditions imposed by the Minister at the time of granting.

New conditions may be added to an existing lease, with the lessee's approval.

The leases are granted for, and can only be used for, a designated purpose. If additional or different uses are sought then an application must be made to change the lease purpose. This requires a fee and a review of environmental factors to ensure that the proposed use is compatible with land capability.

The Crown retains ownership of minerals, sand, gravel, timber and commercial fisheries, and can authorise use of these resources by other parties. Provision also exists for the Minister to withdraw land from leases for public purposes on payment of compensation.

Some of the lease conditions that must be complied with require:

- no overgrazing
- approval to cultivate (on grazing leases)
- notification of sub-lease arrangements
- approval to transfer ('sell') the lease to someone else (rural leases only)
- approval to subdivide a lease
- approval to change lease purpose or conditions
- payment of annual rent.

Penalties exist for contravention of the conditions of a lease.

There are no longer rules relating to maximum or minimum areas that can be held, or price control. Public companies can hold leases but foreign entities must obtain the approval of the Foreign Investment Board.

The Act does not allow grazing leases to be converted to freehold tenure however, holders of leases for agriculture, residence or business may apply to convert their leases to freehold.



Some Western Lands Leases have been granted for a specific term of years, ranging from five to 40 years. Application can be made, before the lease expires, to extend the term for a further period of years or to perpetuity.

Rent

Unlike leasing a flat or house, Western Lands Leases are bought and sold in the same way as freehold land is bought and sold. When people 'buy' leases they are really buying the right to lease, plus the improvements constructed by previous lessees.

The Crown charges an annual rent for leases. In accordance with the Act, grazing and agriculture lease rents are based on the total area of the property. Additional charges apply to areas where agriculture is permitted and rebates apply to areas where there is managed rehabilitation (conditions apply).

- Rent is no longer based on sheep areas and carrying capacity.
- Rent for Urban (General) and Urban (Business) leases is 3% and 6% respectively of the land value.
- Rent on all leases is subject to review every year. The minimum rent is currently \$100.00 per annum. Rent is due on 1 July each year.
- Interest is charged for late payment of rent.

Wild dog destruction rates

Wild Dog Destruction Board rates are payable on holdings within the Western Division of more than 1,000 hectares (including freehold lands) at a rate set annually by the board. Rates are due on 1 January of each year and are payable within 28 days.

Interest for late payment is charged if the rates are not paid within 12 months of falling due.

The department acts as a billing and debt management agent for the Wild Dog Destruction Board.

Transfer of leases

The Minister (or his delegate in the department) must consent to the transfer of a rural lease before the transaction can be completed and the new holder registered with the department.

Leases held for residential, business and community purposes which have an area less than 4,050m² are generally exempt from the requirement for Minister's consent to transfer.

The department is often not aware of sales until well after contracts have been exchanged and parties to the sale seek consent in a very short time. This is not always possible, since each case needs to be investigated and often a field inspection is required.

Vendors or their agents can help speed up this process by advising their local Lands Rangelands Management Officer when a property is likely to be sold and investigations can start earlier.

Prospective purchasers and their agents should be aware that if they wish to use a lease for a purpose other than that for which it has been granted, then a change of purpose will be necessary. The outcome of such an application cannot be confidently predicted until the proposal has been properly assessed on its merits.

The Western Lands Commissioner has the power to impose notices on lessees to destock areas, to refrain from certain activities or to rehabilitate damaged or degraded areas. These notices may still be in place when a lease is offered for transfer and if so will impose restrictions on the use of some or all of the land for some period into the future.

It is a requirement that properties be enclosed by stockproof fences, and this, along with compliance with other lease conditions, will be a pre-requisite for Consent to Transfer. Agents and solicitors should refer prospective purchasers to the department for clarification of rules, lease details, need for development approval and to obtain an update on change in legislation.

Key features of legislation and administration

Land management legislation - *Western Lands Act 1901, Crown Lands (Continued Tenures) Act 1989* and the *Crown Lands Act 1989*

Primary administrator - Western Lands Commissioner under the direction of the Minister for Crown Lands

Lease purpose - Western Lands Commissioner under the direction of the Minister for Crown Lands

Lease term and length - Generally perpetual and term (maximum of 40 years), extensions may be granted under *s.28A of the Western Lands Act 1901*

Rent - The annual rent for a grazing lease is calculated by a formula based on the area of the property (one or more leases), the area authorised for agriculture and intensive agriculture and the area within rehabilitation reserves

Duty of care - Land management conditions set out the responsibilities of the lessee to not overstock the land, to maintain boundary fences and to take measures to protect the land (including measures to prevent soil erosion or other damage to the land)

Clearing native vegetation - Any native vegetation on land the subject of the lease, must not be cleared except in accordance with the *Native Vegetation Conservation Act 1997* or *Native Vegetation Act 2003*

Cultivation - The lessee shall not cultivate any part of the land leased unless the Commissioner has consented in writing, the consent is in force and any condition of consent is complied with.

Changing lease conditions - Any covenant, condition, purpose or provision of a lease granted or brought under this Act, may, with the consent of the lessee, be varied, modified, revoked or added to by the Minister to such extent and on such terms (including terms relating to the rent or other money payable under the lease) as the Minister may deem desirable. **Lease transfer** - Subject to conditions, the Minister may approve the transfer of a lease.

Lease forfeiture - A lease may be forfeited if the Minister determines that the land in the lease is not being used in good faith for the purpose granted or that a condition of the lease has not been complied with.

Conversion to freehold - Grazing leases may not be converted to freehold.

Other powers - The Minister, the Commissioner or any person authorised by the Minister or the Commissioner, may at any time enter upon any Crown lands within the Western Division for the purpose of giving effect to the provisions of this Act or the *Crown Lands Act 1989*.

The Commissioner may serve a notice upon a lessee to comply with a lease condition and to take such measures to rectify a contravention of any lease condition.

Licence over a lease - The Minister may grant a licence for any purpose over land the subject of a lease but only with the consent of the lessee.

Native title - Native title is deemed to have been extinguished on grazing leases granted in perpetuity prior to 23 December 1996. If native title in the land has not been extinguished then any proposed land use that is not consistent with the purpose of the lease must satisfy the future act provisions of the *Commonwealth Native Title Act 1993* * Unless otherwise stated, all sections of legislation referred to in this table are from the *Western Lands Act 1901*.

Other legislation

Apart from the *Western Lands Act 1901*, a variety of other legislation must be considered which may impose on Western Lands Leases. For example, native title issues must be taken into account in some transactions including:

- creation of new leases over vacant Crown land
- development of some areas that have not been subject to any act that would extinguish native title. Applications for these types of transactions are carefully assessed on their merits. Other transactions are not affected (including lease transfer, fencing, and buildings).

Diversification

The department encourages diversification into alternative land uses (e.g. aquaculture, farm tourism, recreational hunting, filmmaking and feedlots). Lessees and prospective buyers should consult with the department about any authorisation and/or change of lease purpose they may require.

More information

For more information, please contact the department:

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