

Extension of term of a Western Lands Lease

October 2015

Most Western Lands Leases have a term in perpetuity. This means that the lease continues indefinitely. However, there are some Western Lands Leases that have been granted for a term of years. These leases may be for any purpose or be located in any area.

General

Where a lease is held for a term of years and is due to expire, the lessee may be invited to lodge an application to further authorize the occupation of the land. This application will either be for an extension of the term of years of the existing lease or for a new lease. Provision exists under s.18E and s.28B of the *Western Lands Act 1901* to extend the term of a lease.

Where the lease has been granted for a term of years and the original term including any subsequent extensions has not exceeded 40 years, an application may be processed to either:

- extend it in perpetuity
- to extend it for a further term of years (but not to exceed a cumulative term of 40 years).

Where the expiring lease has been in existence for 40 years, an extension of term is not legally possible under the *Western Lands Act 1901*, however a new term or perpetual lease may be offered and granted and under s.28A of the Act.

Applications

Applications made in these circumstances must be lodged by the registered lessee/s on the approved form, accompanied by the prescribed fee.

Every application is fully investigated and assessed on its merits. Approval cannot be assumed or guaranteed. An application to extend the term can be made at any time before the lease expires. If an application to extend the term is not received prior to the expiry of the lease, a new lease application must be lodged for consideration to enable future tenure.

Native title considerations

Native title is considered to be extinguished on term leases for residence, business and agriculture, so does not need to be considered in the extension process.

Where a term lease for grazing or pastoral purposes is due to expire, the provisions of the *Commonwealth Native Title Act 1993* do impact on the Department of Primary Industries – Lands' (the Department) ability to deal with the land. If there are no prior tenures that can be considered to have extinguished native title, then the options for the continuation of a Western Lands Lease on that land are limited to the extension of the term of the lease to the maximum 40 years, or if that maximum has been reached, the grant of a new lease subject to the same or less term and the same conditions as the original holding.

Title

If an application to extend the term of the lease is approved, the leasehold title to the land(s) is amended to reflect this change. If the extension is to perpetuity, a parchment title will issue from the Department to the lessee or the entitled mortgagee.

Cost

The application fee for an extension of term is currently \$186.00 and is payable on lodgement. If the application is approved, other costs may be payable for field inspection and reporting and for dealing lodgement at the Land and Property Information NSW .

More information

For more information, please contact the Department:

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