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ROLLING LEASES

From 1 July 2014, the new rolling term lease provisions are scheduled to commence application to the following term leases in Queensland:

- leases for tourism purposes for land on regulated islands; and
- rural leasehold land used for agriculture, grazing or pastoral purposes where the land is 100 ha or more, or is less than 100 ha but the Minister has approved the lease as being a rolling term lease.

A State lease (that is a lease issued over a reserve) is not a rolling term lease if the lease land is used for agriculture, grazing or pastoral purposes.

All rolling term leases have been updated on the land title registry and can usually be readily identified through conducting a current title search.

If a lessee makes an application for extension of a rolling term lease, the Minister must grant the extension of the term of the lease unless the lessee has already entered into an agreement with the Minister to surrender the whole of the lease.

An application to extend a rolling term lease may be made:

- at any time in the last 20 years of the term of the lease; and
- at an earlier time approved by the Minister if the Minister is satisfied that special circumstances exist.

Generally, a rolling term lease will be extended for a period of time equal to the original term of the lease. The original term of the lease may be significantly shorter than the current term of the lease due to changes in government policies and the granting of earlier extensions to the term of the lease.

A rolling term lease that is extended under the rolling term lease provisions continues in force for the term of the extension with the term of the extension commencing immediately after the lease would otherwise have expired.

In most circumstances, the conditions, purpose and rental of the rolling term lease continue unchanged for the period of the extension. The lease as extended is subject to the same registered interests, advices and notings on the land registry and all acts and omissions in relation to the lease continue to be relevant.

There is no limit to the number of times a rolling term lease can be extended under the new provisions.

The existing renewal provisions do not apply to rolling term leases.

A lessee may request to have any existing land management agreement removed as they are no longer required.

ELIGIBILITY TO HOLD LAND

The restrictions on who can be registered as lessee of perpetual leases for grazing or agriculture purposes, GHPLs, GHFLs and subleases of these types of leases, have been removed from the *Land Act 1994*.

As a result, both corporations and trusts can now be registered as lessee of these types of leases.

Previously, there were restrictions on how many of these types of leases lessees were eligible to hold based on the number of “living areas.” These restrictions have also been removed.

CONVERSION OF TERM LEASES

From 1 July 2014, a lessee may now convert:

- (a) a perpetual lease to freehold land;
- (b) a term lease to freehold land; and

- (c) a term lease to a perpetual lease, but only if the term lease is for pastoral purposes or a lease for tourism purposes for land on a regulated island.

No longer are term leases issued for pastoral purposes required to be converted to a perpetual lease prior to seeking conversion to freehold land.

No longer are lessees under term leases issued for pastoral purposes required to wait until 80% of the exiting term has expired to apply for conversion.

The Minister still considers the same issues when making a determination on whether or not to convert a lease as were considered under the old legislation.

FREEHOLDING COSTS

Unless a price or formula has been set out in the lease being converted, the purchase price for the conversion of a lease is the amount decided in the way prescribed by regulation. These changes are intended to ensure a fairer, more realistic price for lessees.

Regulations set the purchase price of land as being an amount equal to the total of the value of the land and the market value of any commercial timber on the land.

The value of the land is the net present value of the land for a category 11.1 lease or a category 11.2 lease. In all other cases, the value of the land is the unimproved value of the land, as if it were fee simple.

A category 11.1 lease is a perpetual lease that is or may be used primarily for grazing or primary production.

A category 11.2 lease is a term lease, licence or permit to occupy that is or may be used primarily for grazing or primary production.

The net present value is worked out using the following formula:

$$A \times \left[\frac{1 - (1/(1+i)^{30})}{i} \right] + A \times \left[\frac{(1+g)/(i-g)}{(1+i)^{30}} \right]$$

Where:

A = the annual rent for the lease worked out by multiplying the unimproved value of the lease by 1.5% for a category 11.1 lease or 0.75% for a category 11.2 lease.

i = 0.08

g = 0.025

This new methodology is intended to replace the old formula with a new "net present value of revenue" approach.

For the 2014-15 financial year, the net present value cost of conversion to freehold title will equate to approximately 14 times the lessees' prescribed annual rent payable (that is, the rent a landholder would be paying if there was no capping, rebates or deferral arrangements).

Lessees may still appeal against any purchase price determination.

For more information contact CBC Lawyers team of rural specialists:

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Disclaimer

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