

# Operational policy

SLM/2013/415  
Formerly PUX/901/521  
Version 6.03  
17/07/2023

## Transfer of leases, licences and subleases

### Purpose

This policy provides guidance on considering applications to transfer a lease, licence or sublease under the *Land Act 1994* (Land Act).

### Rationale

### Transfers

Leases, licences and subleases may be transferred when a right or interest in the lease, licence or sublease is assigned to another person by sale or gift.

A transfer includes:

1. if a lease, licence or sublease is held as tenants in common, a transfer by one or more of the tenants in common of all or part of their interest to someone else;
2. if a joint tenant (the severing party), unilaterally severs the joint tenancy. **Note:** The transfer need only be executed by the severing party who becomes entitled as a tenant in common with the other joint tenants immediately before the transfer.

A lease, licence or sublease may not be transferred if a provision of the Land Act or a condition of the lease, licence or sublease prohibits the transfer.

If a lease, licence or sublease is transferred, the transfer must be registered. Unless registered, no legal interest is created.

**Note:** A permit to occupy cannot be transferred.

### Approval to transfer

Under section 322 of the Land Act, the chief executive's approval is required to transfer a lease, licence or sublease, other than as set out under the heading **When approval to transfer is not required** immediately below.

The chief executive's approval to transfer may be given on conditions, including that all rent and charges owing to the state on the lease or licence are paid before the transfer is lodged.

The approval lapses unless the transfer is lodged in the land registry within 6 months (or a later date if approved) after the chief executive's approval.

## When approval to transfer is not required

The chief executive's approval is not required to transfer in the following circumstances:

### 1. leases

- If the lessee is exempt under section 322AA of the Land Act by written notice from the requirements to obtain chief executive approval to transfer a lease or sublease.

The exemption applies to all lessees of:

- primary production leases in rental category 11
- residential leases in rental category 12
- business and government core business leases in rental category 13

**except** where the lease:

- was issued for a significant development that may require a financial and managerial capability assessment
- is subject to a performance guarantee bond
- is subject to a deed of indemnity
- is subject to mortgagee in possession
- is subject to a sale by a mortgagee exercising a power of sale or
- has an appointed receiver/manager.

Refer to Guideline [Exemption for land lease transfers SLM/2019/5165](#)

### 2. road licences

- If the licence is tied by covenant to adjoining freehold or leasehold land and the requirements relating to road licences over temporarily closed roads in section 322(2) of the Land Act are satisfied.

### 3. subleases

- If the sublessee is exempt by written notice from the requirements to obtain chief executive approval to transfer the sublease (see 1 above)
- if the lessee has a general authority (section 333 of the Land Act) to sublease/transfer or
- for defence land or transport related land (section 390A of the Land Act).

The chief executive's approval is not required to transfer a mortgage.

## Policy

### Eligibility

The transfer of a lease, licence or sublease must be to a person (including those acting as a trustee) who is eligible to hold the lease, licence or sublease under the Land Act, and is appropriate to hold the land. See operational policy – [Eligibility to hold land \(SLM/2013/584 = PUX/952/120\)](#).

### Commercial timber

On conversion of tenure to freehold, commercial timber is owned by the lessee, unless subject to a forest entitlement area or an agreement with the Minister administering the [Forestry Act 1959](#).

While a lessee may have elected to pay for the commercial timber on terms over a period of years, there is no

- restriction (subject to any necessary vegetation clearing requirements/approvals) as to when the timber may be harvested and sold; and
- obligation for the state to provide an incoming lessee with similar terms.

Accordingly, it is not unreasonable that a condition of approval to transfer is the balance outstanding should be paid.

Where the value of commercial timber on a freeholding lease is being paid over a term of years, the outstanding balance of the timber purchase price must be paid to the state as a condition of the approval to the transfer prior to the registration of a transfer, unless the transfer is to a member or members of the transferor's family.

### Existing action

If there is a renewal, conversion, subdivision or amalgamation action for the lease, the incoming lessee on registration of the transfer will be able to proceed with that action ONLY if an offer has been made prior to transfer.

Where an existing approved offer for a conversion/renewal/subdivision/amalgamation action has been issued and a transfer of the lease has registered, the effect of Section 325 of the Land Act must be considered for any existing approved offer. As incoming lessee, the lessee has all the rights, powers, privileges and liabilities of the old lessee.

#### Offer issued prior to transfer

Following registration of the transfer of a lease, the renewal, conversion, subdivision or amalgamation may only be continued with the new lessee if the original lessee received an offer before the transfer was registered. The new lessee (transferee) will have the rights associated with that offer and may accept the offer by meeting the conditions of the offer. The new lessee must also advise the department that they wish to continue with the conversion/renewal/subdivision/amalgamation action.

## **No offer issued prior to registration of the transfer**

1) For subdivision/amalgamation:

If the application is still being investigated and no offer has been made when the lease transfers, a new application and application fee is required from the new lessee.

2) For lease renewal or conversion where the previous lessee has submitted an application:

If the application is still being investigated and no offer has been made when the lease transfers, seek written advice from the new lessee confirming:

- they wish to proceed with the lease conversion or renewal; and
- if they have any objections to the department initiating investigation into the renewal or conversion of the lease (without an application).

3) Where investigations have commenced into an initiated lease renewal/conversion:

If the initiated lease renewal or conversion is still being investigated and no offer has been made when the lease transfers, write to the new lessee to confirm the department is commencing investigations into the renewal/conversion of the lease.

It should be noted however, that there is no power to amend an existing offer (unilaterally or by agreement). This means that if the new lessee requires the offer conditions to be amended, then the new lessee will have to make a fresh application to the department or for an initiated renewal/conversion action, approval to a new offer is required for the new lessee. In this case it would be reasonable to use the views and investigations from the previous case (as well as any additional information provided by the new lessee), provided that the timeframes and information are still relevant.

## **Covenants and 'tied' covenants (i.e. no separate transfers)**

A lease or licence may be 'tied' to other land by a covenant under section 373A of the Land Act and/or section 97A of the *Land Title Act 1994* to ensure there is no separate transfer of the land.

A lease or licence may also be 'tied' to other land under a condition of the lease or licence.

If a lease or licence to be transferred is 'tied' to other land (e.g. to a lease or freehold), then all the lands held together must be transferred, including for a transfer of a tenant in common or for severing a joint tenancy, unless it is agreed to accept a surrender of a road licence that is no longer needed.

Further, if a lease or licence is 'tied' by a condition, and the lease or licence is not subject to a covenant, then a condition of approval to a transfer is that the lessee or licensee is to enter into a covenant under section 373A of the Land Act and/or section 97A of the *Land Title Act 1994* to provide for no separate transfers for all the lands 'tied'.

## **Indigenous cultural interest**

Rural leasehold land may be subject to an indigenous cultural interest.

On transfer of rural leasehold land, the new lessee is a party to any indigenous cultural interest for the lease and accepts the rights and responsibilities of the previous lessee under that agreement.

The new lessee must also advise the native title group/parties to the agreement and the native title registrar of the transfer within 28 days.

Sections 202AA and 373ZK of the Land Act refer.

## **Land management agreement**

A lease may be subject to a land management agreement.

Existing land management agreements may be cancelled, with the lessee's agreement, if the Minister is satisfied the land management agreement is no longer required.

Under section 325 of the Land Act, if the lease is subject to a land management agreement, on transfer, the new lessee is a party to that agreement and accepts the rights and responsibilities of the lessee under that agreement.

## **Previous approvals**

Where a prior approval has been given to a transfer and that approval has not lapsed, a fresh application for a consent to transfer to a different party will be considered only if a Statutory Declaration is lodged by the vendor (lessee) detailing that the earlier sale is no longer proceeding.

## **Rent and instalment payments**

When a lease is transferred, any hardship concession applying to the outgoing lessee stops from the day the transfer is registered.

If an incoming lessee considers that they would meet the criteria to be eligible for residential hardship, the incoming lessee will need to apply for this concession.

Where a lease is subject to deferred rent, due to being declared as a hardship area (natural disaster or adverse economic conditions) at the time of transfer, the lease continues to be subject to the deferral for the period of the declaration.

## **Legislation**

*Forestry Act 1959*

*Land Act 1994*

Land Regulation 2020

*Land Title Act 1994*

## **Related documents**

Operational policy – [Eligibility to hold land \(SLM/2013/584 = PUX/952/120\)](#)

## Human Rights

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

## Approval

Position	Name	Effective Date
Director, Land Services, Land and Native Title Services	Anita Haenfler	26/11/2019

## Version history

Version	Date	Comments
2	15/07/2003	Updated
2.1	01/07/2005	Conversion Project - New WORD/XML template
3	13/12/2007	Updated to reflect Land Act amendments. Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
3.1	02/02/2011	Minor updates to reflect departmental name change to DERM
3.2	24/10/2012	Minor updates to reflect departmental name change to DNRM
3.03	14/03/2014	Updated to DNRM template
4.00	12/06/2014	Updated to include amendments due to LOLA 2014
4.01	1/08/2014	Minor amendment to correct wording
4.02	24/01/2017	Minor amendment to insert text on new template
5.00	28/07/2017	Amended to include LOLA 2017 changes to transfer of road licences
5.01	10/10/2019	Minor amendments to reflect Land Act
6.00	26/11/2019	Updated to reflect amendments to Land Act
6.01	20/06/2022	Updated template and department name to Department of Resources
6.02	01/03/2023	Updated to include amendments due to LOLA 2023
6.03	17/07/2023	Updated to include information about offers affected by transfers

## Further information

- Contact your nearest business centre ([https://www.resources.qld.gov.au/?contact=state\\_land](https://www.resources.qld.gov.au/?contact=state_land)), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

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