



Queensland

# Land Regulation 2009

## Explanatory Notes for SL 2009 No. 282

made under the  
*Land Act 1994*

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### Short title

Land Regulation 2009

### Authorising law

Section 448 of the *Land Act 1994*

### Policy objectives of the legislation

The objective of the Regulation is to continue to provide the necessary machinery to allow the effective administration of the *Land Act 1994*. There are two main components to the Regulation. The first are general provisions to support the primary legislation, such as setting out the requirements that a trustee of trust land must adhere to when entering into trustee leases or trustee permits and providing model by-laws for the management of trust land including cemeteries, crematoriums and mortuaries. The Regulation also sets out the processes for making land available by ballot. Most provisions were part of the previous regulation and have been continued. Others have been amended in accordance with changes introduced by the *Land and Other Legislation Amendment Act 2007* which resulted in amongst other things simplification of the reserve trustee lease arrangements. The second component relates to financial matters including rentals for leases over state land, fees and interest rates. The new rental provisions will provide for a simpler, fairer and more

flexible arrangement which is better suited to today's contemporary needs. The changes to the rental arrangements, application fees and interest rates were all addressed in a Regulatory Impact Statement.

### **Consistency with authorising law**

The regulation is consistent with part 2 of the Act which requires land to be managed for the benefit of the people of Queensland.

### **Consistency with fundamental legislative principles**

The regulation is consistent with fundamental legislative principles.

## **Consultation**

### **Community and industry stakeholders**

A Regulatory Impact Statement (RIS) was released for public comment on 11 April 2008 with the closing date 18 July 2008. Ten submissions were received in relation to the RIS.

### **Government**

The former Department of Natural Resources and Water has consulted with all other government agencies.

## **Results of consultation**

Suggestions and comments from stakeholders have been incorporated in the regulation where appropriate.

### **Community and industry stakeholders**

The submissions supported the rationalisation of rental categories and the concept of valuation averaging applying to the calculation of annual rents.

### **Government**

Government agencies are supportive of the regulation.

## **Notes on provisions**

### **Part 1 Preliminary**

#### **Short title**

Clause 1 provides that the short title of the regulation is the Land Regulation 2009.

#### **Commencement**

Clause 2 sets out when the regulation commences.

#### **Definitions**

Clause 3 The dictionary in schedule 12 defines particular words used in the regulation.

### **Part 2 Reserves and deeds of grant in trust**

#### **Division 1 Powers of trustee-model by-laws**

##### **Subdivision 1 Model by-laws**

Clause 4 Section 56 of the *Land Act 1994* allows for the Governor in Council, by regulation to make model by-laws for the good management of reserves and deeds of grant in trust. This clause advises that the model by-laws are set out in schedules 1 to 5 of the regulation.

## **Subdivision 2 Way of adopting**

### **Purpose of subdivision**

Clause 5 This subdivision prescribes the way a trustee, other than a local government, adopts as it's by-laws all or any of the model-by-laws.

### **Step 1—propose to adopt a model by-law**

Clause 6 This provision sets out how a trustee must decide to propose to adopt a model by-law.

### **Step 2—consult with public about proposed adoption**

Clause 7 sets out that if a trustee wishes to adopt a model by-law that the trustee must first consult with the public about the proposal. This section sets out the time of the consultation period which must be at least 21 days and what is required to be shown in the notice about the proposed adoption of the model by-laws.

### **Step 3—give public access to model by-law proposed to be adopted**

Clause 8 provides that the public must have access to a copy of the model by-law proposed to be adopted and that this access must be available for the whole of the consultation period.

### **Step 4—consider all written submissions**

Clause 9 states that a trustee must consider every properly made submission about the proposal to adopt a model by-law and what constitutes a properly made submission.

### **Step 5—decide whether to proceed with adopting model by-law**

Clause 10 provides that after considering every properly made submission the trustee must decide whether to proceed with the adoption of the model by-law and if so who that decision is recorded.

### **Step 6—adopting model by-law proposed to be adopted**

Clause 11. If after considering all submissions the trustee decides to proceed with the adoption of the model by-law then this sections sets out the steps that must be taken for the model by-law to be adopted.

### **Step 7—give public notice of adopted model by-law**

Clause 12. After the trustee has decided to adopt the model by-law and has given a copy of the model by-law to the Minister, the Minister must arrange for the adoption of the model by-law to be published in the government gazette.

## **Division 2 Trustee permits and trustee leases**

### **Subdivision 1 Requirements for trustee permits**

Clause 13 sets out the requirements with which a trustee permit must not be inconsistent with.

### **Subdivision 2 Rent to be charged**

#### **Statutory bodies to which rent expenditure limitation does not apply—Act, s 63(4)**

Clause 14 allows for a port authority to be exempt from s 63 of the Land Act 1994.

### **Subdivision 3 Requirements for trustee leases**

Clause 15 sets out the requirements for a trustee lease.

## **Part 3 Land holdings—making land available by competition**

### **Way ballot must be conducted—Act, s 119**

Clause 16 prescribes the way a ballot must be conducted.

### **Applications must be numbered**

Clause 17 sets out that all applications for inclusion in a ballot must be numbered consecutively in the order they are received.

### **Information to be sent to applicants and displayed**

Clause 18 ensures that all applicants are advised of their application number and when and where the ballot for leasehold land.

### **Chief executive must conduct ballot and appoint observer**

Clause 19 sets out that it is the chief executive who conducts the ballot and that he must also appoint an independent observer.

### **Chief executive must provide marbles and containers**

Clause 20 provides that the ballot is conducted by drawing marbles from containers. These separate containers contain marbles for units, tens, hundreds, thousands etc depending on the number of applicants received.

### **Requirements for marbles and containers**

Clause 21 requires that each container must contain the number of marbles numbered from 0 to 9, needed for the number of applicants received. It is also a requirement that before each draw the marbles and containers must be available for inspection by any person attending the ballot.

### **Drawing process**

Clause 22 sets out the drawing process whereby it is the chief executive that draws a number out of each container and announces the number as it is drawn. Each number drawn is required to be confirmed by the independent observer. This clause ensures that there will be a winner to the draw by ensuring that if the number drawn corresponds to an application number on the published list then the applicant for that application number is the winner. It also ensures that if the complete number drawn doesn't correspond to an application number on the list then the marbles must be replaced and drawn again until there is a winner.

### **Containers and marbles must be inspected immediately after each draw**

Clause 23 ensures that the draw is properly down by requiring that after each draw the chief executive and the independent observer must inspect the containers to confirm that the correct number of marbles remain.

### **Winners must be notified**

Clause 24 requires that the chief executive must notify the winner of the draw and to also ensure that the results of the ballot are published in a newspaper circulating in the locality of the draw.

### **Process where more than 1 parcel of land is to be made available by ballot**

Clause 25 sets out the requirements for conducting more than one draw.

## **Part 4 Matter affecting land holdings**

### **Division 1 Rents**

#### **Definitions for division 1**

Clause 26 gives the definitions for a relevant category for rentals and the definition of a relevant lease which includes a lease, licence or permit. For this provision a relevant category only refers to category 11, 12, 13 and 14.2 leases, licences and permits.

#### **Categories for rent assessment—Act, s182**

Clause 27 sets out the new categories and sub categories of leases, licences or permits allocated for rental purposes under the Land Act.

#### **Category 11 (primary production)**

Clause 28 lists the uses that may be considered as primary production.

#### **Category 12 (residential)**

Clause 29 lists examples of uses that are considered to be for residential and associated private purposes.

#### **Category 13 (business and government core business)**

Clause 30 sets out the types of uses that fall within this new category and gives examples of a government core business.

#### **Category 14.1 (charities and clubs with fewer than 2000 members)**

This new category is an amalgamation of 2 previous categories. Clause 31 sets out the types of lessees that would fall under this category and what uses are appropriate for this category. To be eligible for this category the

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lessee is required to be a charitable organisation or non-commercial community service organisation and whose constitution does not permit its profits to be distributed to its members and the lease is being used for services that are charitable in nature or are services that are aimed at improving community welfare or safety. A lessee that is a sporting or recreational club with fewer than 2000 members and whose constitution doesn't permit its profits to be distributed to its members is also eligible for this category. Likewise if the State or Local Government is the lessee on behalf of a non-commercial community service organisation such as rural fire brigades and the land is being used to provide community services aimed at community welfare and safety, then the lease is suitable for this category.

### **Category 14.2 (charities and clubs with 2000 members or more)**

Clause 32 In line with how clubs are defined for the purposes of dealings under the *Liquor Act 1992*, this category covers leases that are issued for sporting and recreational purposes to clubs that have 2000 or more members and whose constitution does not permit its profits to be distributed to its members.

### **Category 15 (Communication sites)**

Clause 33 sets out the types of leases that can fall under this category. A lease that is being used for communication purposes and is being used solely for a community service activity is a category 15.1 lease. Examples would be a communication site used by emergency services such as Ambulance and fire brigades.

Leases that are being used for communication purposes for commercial services such as mobile phone coverage or for cable television fall within categories 15.2 and 15.3. This provision defines which leases are deemed to be within rural or urban areas.

### **Category 16 (divestment)**

Clause 34 sets out that leases that are in "DIP" industrial estates or leases which have been assessed by the chief executive as to have a more appropriate tenure as freehold should be in this category.

### **Amount and sub-periods for payment of rent—Act, s 181(4)**

Clause 35 This provision allows that for certain categories of leases, lessees will be eligible to have quarterly billing for rentals over \$2000.

### **Valuations for rental purposes—Act s 183(1)**

Clause 36 sets out which categories are able to have valuations for rental purposes averaged out over a number of years. Leases in category 11 will have five year averaging, whilst leases in categories 12, 13 or 14.2 will be eligible for 3 year averaging. This provision also sets out how a factor is calculated for those leases that have not been in existence for the required number of years needed to have the 3 or 5 year average applied to valuations. Averaging for rental periods has been introduced to reduce the size of any rental increase resulting from large annual increases in valuation. Five year averaging of valuation for the primary production category has been made in recognition of the vulnerability of rural leases to the combined effects of prolonged drought and large valuation increases. Averaging will smooth out the effects of both short-term and long-term fluctuations in land values, and is a well understood and accepted practice already used by the State for land tax purposes and by local governments for determining rates. Not all categories of leases will be eligible for valuation averaging.

### **Matters for calculating rent (rates)—Act, s 183(1)**

Clause 37 sets out the applicable percentage rate that is applied to a valuation for rental purposes for each category that is assessed by applying a percentage rate.

### **Minimum rent—Act, s 183(4)**

Clause 38 sets out the minimum rents to apply for certain categories of leases. Minimum rentals for category 11, 12, 13 and category 16 leases will be a minimum of \$370 and then be increased annually in line with CPI increases. The new minimum is a cost recovery amount to cover the cost of administering these leases. The new minimum for charities and sporting clubs has been set at the lesser amount of \$100 adjusted annually by CPI in recognition of the services they provide to the community. The rents for Category 15.2 and 15.3 have been set at minimums of \$10,000 and \$15,000

in recognition of the higher rentals charged in the private sector for similar usage.

### **Prescribed percentage for protection against undue rental increases—Act, s 183AA**

Clause 39 sets the percentage rate for protection against undue rental increases for category 11 leases at 20%.

## **Division 2 Concessional rents**

### **Criteria for residential hardship concession—Act, s 187**

Clause 40 sets the criteria for a lessee to be eligible for a residential hardship concession. The residential concession only applies to a lessee's principle place of residence and would not apply to a lessee's holiday residence if that residence is not the principle place of residence.

## **Division 3 Rent and instalment payments**

### **When rent is payable—Act, s190**

Clause 41 The majority of rents for leases issued under the *Land Act 1994* must be paid on or before 1 September of the financial year for which the rent is payable other than a development lease issued under part 9, division 1 of the repealed Act which must be paid on or before 1 January of the calendar year for which the rent is payable.

### **When instalments are payable—Act, s 190**

Clause 42 sets out the various times when instalments are required to be paid for different types of leases.

### **Places for payment of rents and instalments—Act, s 190**

Clause 43 sets out where rents and instalments must be paid.

## **Part 5 Registrations and dealings**

### **Division 1 Land registry and registers**

#### **Subdivision 1 Registers**

##### **Land for which register to be kept—Act, s 276**

Clause 44 confirms that a register must also be kept for former Harbours corporation land which is now administered by the department.

#### **Subdivision 2 General requirements for documents in registers**

##### **Number of executed copies of documents to be lodged—Act, s 290**

Clause 45 For a document to be registered the required numbers of executed copies must be lodged. This provision sets out when more than one copy is required.

### **Division 2 Documents—general**

##### **Persons who may witness execution of a document—Act, s 310**

Clause 46 Section 310 of the Land Act requires that for a document to be properly executed by an individual it must be witnessed. This provisions sets out who can witness such document.

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## **Division 3 Dealings affecting land-subleases**

### **Requirements for subletting without Minister's approval—Act, s 333**

Clause 47 Section 333 of the *Land Act 1994* allows the Minister to waive the need for the lessee to obtain approval to sublease. Although the Minister's approval may not need to be obtained the sublease must comply with certain requirements before it can be registered. This provision sets out those requirements.

## **Part 6 General**

### **Required time for trespass notice—Act, s 406(4)**

Clause 48 Issuing a trespass notice to a person who is deemed to be unlawfully occupying non-freehold land trespass is an effective way to address forms of trespass. However certain types of trespass acts require a shorter time to comply with the notice than other actions. For example transient occupants of non-freehold should be given a shorter period to comply with a notice than if a permanent structure was unlawfully on the land. This provision sets out the times to comply with certain acts.

### **Different period for filing notice of appeal for particular decisions—Act, s 428**

Clause 49 sets out which dealings only require 14 days in lieu of the standard 42 days to lodge an appeal against a decision.

## **Part 7 Continued rights and tenures**

### **Division 1 Freeholding leases**

#### **Subdivision 1 Pre-Wolfe freeholding leases**

##### **Discount applying for pre-Wolfe freeholding lease—Act, s 457**

Clause 50 If a lessee of a pre-Wolfe freeholding lease applies to pay out a freeholding lease during the term of the lease they are entitled to a discount depending on the time remaining on the lease. This provision states that the discounts are shown on schedule 7 of the Land Regulation.

##### **Criteria for residential hardship concession—Act, s 459**

Clause 51 sets out the criteria prescribed for a lessee of a freeholding lease which is used as the lessee's principal place of residence to obtain a reduction of their rental instalment.

#### **Subdivision 2 Post-Wolfe freeholding leases**

##### **Rate of interest for instalments—Act, s 462**

Clause 52 introduces the Suncorp-Metway business banking variable lending base rate as the rate of interest payable for a post-Wolfe freeholding lease other than those leases on a fixed rate of interest. By introducing the Suncorp-Metway rate, the amount can be increased or decreased in line with changes set by the bank and will avoid the need to regularly review and amend the regulation.

#### **Subdivision 3 Grazing homestead freeholding leases**

##### **Definition for subdivision 3**

Clause 53 gives the definition of a grazing homestead freeholding lease.

### **Rate of interest for instalments—Act, s 466**

Clause 54 also sets the interest rate for an instalment under a grazing homestead freeholding lease to be the Suncorp-Metway business banking variable lending base rate.

### **Discount applying for grazing homestead freeholding lease—Act, s 466**

Clause 55 If a lessee of a grazing homestead freeholding lease applies to pay out a freeholding lease during the term of the lease they are entitled to a discount depending on the time remaining on the lease. This provision states that the discounts are shown on schedule 8 of the Land Regulation.

## **Subdivision 4 All freeholding leases**

### **Minimum instalments—Act, ss 457, 462 and 466**

Clause 56 sets the minimum instalments required for freeholding leases. These instalments will now be CPI indexed to ensure that the amounts are relevant.

## **Division 2 Perpetual leases—grazing homestead perpetual leases**

### **Discount for payment of purchase price on conversion of lease—Act, s 469**

Clause 57 If a lessee of a grazing homestead perpetual lease who has applied for conversion of the lease elects to pay the purchase price by a single payment they are entitled to a discount depending on the offered term. This provision states that the discounts are shown on schedule 8 of the Land Regulation.

## **Division 3 Continued leases generally**

### **Freeholding lease may not be subdivided if less than prescribed amount owing—Act, s 489**

Clause 58 If a lessee has less than the amount owing on a freeholding lease as stated in this provision they will not be eligible to subdivide the lease whilst it is held under the Land Act. Lessees will be encouraged to payout the lease prior to subdivision.

## **Part 8 Miscellaneous**

### **Amount prescribed—Act, ss 47, 184, 191 and 499**

Clause 59 provides that the amounts prescribed for certain sections of the Act are stated in schedule 9. For s 499 (2) the special purchase price only relates to a miner's homestead lease (MHL) and not to former miner's homestead perpetual leases, business areas (BA), market garden areas (MGA) and residence areas (RA).

### **Interest rate prescribed—Act, ss 184, 192, 500 and 503I**

Clause 60 This provision provides that the interest rate for certain sections are shown in schedule 10.

### **Penalty interest on rent and instalments prescribed—Act, s 195**

Clause 61 For consistency this provision is in line with the penalty interest rate prescribed in the *Water Regulation 2002*. By aligning the penalty rate with a market rate rather than having a set rate, it will remain current without needing to be regularly reviewed. This provision is intended to act as an incentive to lessees to ensure that their rentals are paid within the prescribed time.

## **Fees**

Clause 62 provides that all fees payable under the Act are shown in schedule 11. This provision also advises that if a document that has been requisitioned is lodged and rejected then the fee is forfeited. If the requisition is complied with and the document re-lodged then the re-lodgement fee is half the normal lodgement fee. This provision also clarifies that there is no lodgement fee and registration fee if land is being transferred to or acquired by the State or for a covenant or release of a covenant when the covenantee is the State.

## **Part 9 Repeal**

Clause 63 As the *Land Regulation 1995* is being remade by this regulation the *Land Regulation 1995* is repealed.

## **Part 10 Transitional provisions**

### **Division 1 Model by-laws**

Clause 64 ensures that a model by-law that was previously adopted under the *Land Regulation 1995* is taken to be a model by-law under this new regulation.

### **Division 2 Matters affecting land holdings**

#### **Matters for calculating rent (rates) for 1 July 2010 to 30 June 2011 for category 12 lease**

Clause 65 is a transitional provision for leases in the residential category. Leases in this category were to have the rate for calculating rents increased from 3% to 6% in 3 stages from 1 July 2009 however as the Regulation was

delayed until 2010 the % rate will now commence at 5% for 1 year from 1 July 2010 and then from 1 July 2011 will be 6%.

### **Penalty interest on outstanding rent and instalments immediately before the commencement—Act, s 195**

Clause 66 ensures that any penalty interest on outstanding rentals or instalments immediately prior to the commencement of this section is the penalty interest prescribed under section 37 of the *Land Regulation 1995* for that period until the new regulation takes effect.

## **Schedule 1 Model by-law about protection and use of trust land**

### **Trust Land Protection and Use Model By-law 2009**

This schedule sets out the Model By-law that a trustee of trust land may adopt. The purpose of this by-law is to protect the trust land including any buildings on the trust land and allows the trustee to regulate the use of the trust land.

## **Schedule 2 Model by-law about cemeteries, crematoriums and mortuaries**

### **Trust Land Cemeteries, Crematoriums and Mortuaries Model By-law 2009**

This schedule sets out the Model By-law that a trustee of trust land that is a cemetery, crematorium or mortuary may adopt. The purpose of this by-law is to protect the trust land including any buildings on the trust land and allows the trustee to regulate the use of the trust land as a cemetery, crematorium or mortuary.

## **Schedule 3 Model by-law about consumption of liquor**

### **Trust Land Liquor Consumption Model By-law 2009**

This schedule sets out the Model By-law that a trustee of trust land may adopt, to allow the trustee to regulate the use of the trust land for the consumption of liquor.

## **Schedule 4 Model by-law about business and management of trust land**

### **Trust Land Business and Management Model By-law 2009**

This schedule sets out the model by-law that a trustee of trust land may adopt to allow the trustee to regulate the business and management of the trust and to provide for the manner in which officers are appointed and to state the duties of those officers.

## **Schedule 5 Model by-law about financial management of trust land**

### **Trust Land Financial management Model By-law 2009**

This schedule sets out the model by-law that a trustee of trust land may adopt to provide for the prudent financial management of the business of the trust.

## **Schedule 6 Averaged unimproved value**

This schedule sets out the formula for arriving at the averaged unimproved value of land for a rental period for a category of lease. If a lease is in category 11 the averaged unimproved value for rental purposes is calculated on the average of the valuation for the current rental period and the valuation for the previous 4 years. If the lease is in category 12,13 or 14.2, then the averaged unimproved value for rental purposes is calculated using the valuation for the current rental period and the 2 previous valuations.

Schedule 6 also sets out the formula for obtaining a valuation of a lease where no valuation previously existed. In these instances an averaging factor is applied to obtain the valuation. The averaging factor is only used when there is no unimproved value for the land for any financial years preceding the current financial year and is determined by multiplying the most recent valuation by the averaging factor.

The averaging factor is determined by the change of the unimproved value decided for all land in the State allocated to a particular category from one year to the next. For example if the total unimproved value for all land in a particular category is \$10M and the total unimproved value of all land in that category for the preceding year was \$8M, the preceding year's value is 80% of the following year shown as a averaging factor of(0.8).

Therefore if the most recent value of the land for a lease in that category was \$96,000 and there was no value for the preceding year, you would obtain that value by multiplying \$96,000 by 0.8 (the averaging factory for that category for that year) to arrive at \$76,800 for the preceding year. If the averaging factor for the previous year to that year was (0.9) then the value of the leased land for that year would be \$69120.

## **Schedule 7 Discount applying to pre-Wolfe freeholding lease**

As catered for in clause 50 this schedule sets out the discount applying if a lessee of a pre-Wolfe freeholding lease applies to pay out a freeholding lease during the term of the lease. The discount the lessee is entitled to if

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they elect to pay out the lease is the amount opposite the balance of the term.

## **Schedule 8 Discount applying to a grazing homestead freeholding lease**

As catered for in clauses 55 and 57 this schedule sets out the discount applying if a lessee of a grazing homestead freeholding lease applies to pay out the a freeholding lease during the term of the lease. The discount the lessee is entitled to if they elect to pay out the lease is the amount opposite the balance of the term. Also if a lessee of a grazing homestead perpetual lease who has applied for conversion of the lease elects to pay the purchase price by a single payment they are entitled to a discount depending on the offered term.

## **Schedule 9 Amounts prescribed**

This schedule sets out the amounts prescribed for when a trustee must have their accounts annually audited and for such financial statement sent to the chief executive (s47(3)); for when adjusted rent must be credited or debited to a lessees account or returned to the lessee(s184(7)); for when overpayment of rent must be refunded or credited to a lessees account (s191(1)). This schedule also sets the purchase price for a current or former miner's homestead lease that is now a NCL under the Land Act.

## **Schedule 10 Interest rate prescribed**

This schedule sets out the interest rates prescribed for deferred rentals or overpayments of rents.

## **Schedule 11 Fees**

This schedule sets out the fees required for Land Act dealings, and also include several new application fees that were subject to a regulatory impact statement. The application fees can be placed into two distinct application categories, applications for an allocation of land and applications that change or amend existing interests in land.

## **Schedule 12 Dictionary**

The dictionary sets out definitions for terms used in the Regulation.

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### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Environment and Resource Management.

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