

# Land Amendment Regulation (No. 1) 2016

Explanatory notes for SL 2016 No. 112

made under the

*Land Act 1994*

## General Outline

### Short title

*Land Amendment Regulation (No. 1) 2016.*

### Authorising law

Section 448 of the *Land Act 1994*

### Policy objectives and the reasons for them

The objectives of the *Land Amendment Regulation (No. 1) 2016* are to amend the *Land Regulation 2009* by:

1. capping increases in State land rentals for certain rental categories;
2. ensuring that when determining the purchase price of State land that is either an area of road that is to be closed or unallocated State land that is to be amalgamated into either adjoining freehold land where this land does not contain a reservation of quarry material to the State, or into a freeholding lease where the State does not own the quarry material in that lease that the commercial value of quarry material will form part of the purchase price; and
3. making several minor amendments which give greater clarity to certain other provisions.

### Continuation of Certain Capping

The *Land Regulation 2009* introduced a range of rental increases for most state leasehold land (leases, licences or permits to occupy) granted under the *Land Act 1994*. In conjunction with those rent increases, capping provisions for various categories were introduced to provide for the orderly transition of rents to reflect the

market based rentals and to achieve consistent, impartial and accountable administration of the state land portfolio.

When capping provisions were introduced, sunset dates for each category were applied with the intention to provide a limited transitional period so that all rents within the stated category would reach the prescribed rental percentage eventually creating equity between leases within each category.

The current financial year (2015/16) is the final year that capping applies for two categories – residential (has had a 100% cap) and tourism (has had a 10% cap).

With the scheduled cessation of capping at the end of 2015/16 there will still be eighteen leases in the tourism category that would have experienced substantial increases over the next two financial years. Eight residential tenures would also have experienced substantial increases. The residential category would have had a greater number of impacted leases except that a total of thirty three tenures are in receipt of residential hardship support which limits their exposure to uncapped rental increases (while the current lessee's financial hardship eligibility persists).

Government approved that for tourism leases the existing 10 per cent cap would be replaced with a 100 per cent cap which would continue until 30 June 2018 and that the existing 100 per cent cap for the residential leases also be extended for 2016-17. All tourism and residential transition to full market based rents prior to or by 1 July 2018.

## **Quarry Material**

The *Land and Other Legislation Amendment Act 2014* amended the *Land Act 1994* by removing the land rent and purchase price provisions from the *Land Act 1994* and placed these provisions in the *Land Regulation 2009*.

Unfortunately with the drafting of the new provisions in the *Land Regulation 2009* the wording would appear to have adversely impacted on the State's ability to recover the market value of State owned quarry material in certain *Land Act 1994* dealings. Specifically, this situation occurs when either an area of road is to be closed or unallocated State land is to be amalgamated into either adjoining freehold land where this land does not contain a reservation of quarry material to the State, or into a freeholding lease under the *Land Act 1994* where the state does not own the quarry material in that lease.

Prior to these 2014 amendments, the *Land Act 1994* allowed the Minister administering the *Land Act 1994* to determine in such circumstances whether the value of any State owned quarry material on road or unallocated State land could be included in the total price of the land. This was always still the intention when the purchase price provisions were removed from the land act and placed in the *Land Regulation 2009*.

Now, under sections 109C (4) and 122(3) of the *Land Act 1994*, the purchase price for a closed road or unallocated State land is determined under the amended *Land*

*Regulation 2009*. The *Land Regulation 2009* now prescribes the purchase price as the value of the land plus the market value of any commercial timber.

However, the amended *Land Regulation 2009* makes no explicit reference to including the market value of commercial quarry material in the purchase price of the affected land.

The value of any commercial State owned quarry material within a road or unallocated State land is determined by the Department of Agriculture and Fisheries given its responsibility for State owned quarry material under the *Forestry Act 1959*. Whilst the valuation of commercial quarry material associated with road closures or the sale of unallocated State land is infrequent, it is important that the State recognises these commercial interests in the State owned quarry material and is able to obtain an appropriate market value for the transfer of ownership of the subject quarry material.

## **Achievement of policy objectives**

The objective of the *Land Amendment Regulation (No. 1) 2016* is to continue to provide the necessary machinery to allow the effective administration of the *Land Act 1994*. One of the objectives of the *Land Act 1994* is to take a market approach in land dealings, adjusted when appropriate for community benefits arising from the dealing.

One of the main components to the *Land Regulation 2009* relates to financial matters including rentals for leases over state land. Capping of rental increases mitigates against tourism and residential lessees suffering hardship due to high rental increases.

Tourism leases have had a comparatively low capping rate of 10 per cent compared to the other categories. That low 10 per cent cap was established to assist the tourism sector at a time when the industry faced the threat of the global financial crisis and reduced inbound tourism. These leases are of a commercial nature and the low 10 per cent cap has minimised the financial impact of rent increases for those benefitting lessees during the transition period. However continuing capping at 10 per cent would not result in the majority of the remaining leases transitioning to the prescribed rental rate.

Whilst there are existing hardship provisions under the *Land Regulation 2009* which can assist these lessees, additional mitigation measures are still needed to ameliorate the impacts of rent increases on these State land lease categories.

The *Land Amendment Regulation (No. 1) 2016* will achieve its objectives by lessening the burden of steep rental increases by capping increases to less than would normally apply to but still allowing for a transition to full market rental for those leases on or prior to 1 July 2018.

## **Quarry Material**

The *Land Amendment Regulation (No. 1) 2016* will achieve its objective by reinstating the previous ability of the State to include the commercial value of quarry material in the purchase price in certain *Land Act 1994* dealings.

## **Consistency with policy objectives of authorising law**

The *Land Amendment Regulation (No. 1) 2016* is consistent with part 2 of the *Land Act 1994* which requires land to be managed for the benefit of the people of Queensland.

## **Inconsistency with policy objectives of other legislation**

Not applicable.

## **Benefits and costs of implementation**

Implementation will be done within current departmental budgets. Many lessees on State owned land will benefit from curtailed increases in rentals.

During the duration of the continuation of the rental capping provisions the State will forego approximately \$66 000 in rental.

## **Consistency with fundamental legislative principles**

The *Land Amendment Regulation (No. 1) 2016* is consistent with fundamental legislative principles.

## **Consultation**

Consultation has been undertaken with the Department of Tourism, Major Events, Small Business and the Commonwealth games in relation to the rental capping for tourism leases.

As the extension of rental capping will benefit industry and business sectors no other consultation was undertaken with external stakeholders.

Consultation has also been undertaken with the Department of Agriculture and Fisheries in relation to the amendments required to clarify that the State can include the commercial value of quarry material in the purchase price for certain State land dealings.

All consulted parties agree with the proposed amendments.

The Office of Best Practice Regulation within the Queensland Productivity Commission was consulted in relation to the need for a Regulatory Impact Statement and advised that a Regulatory Impact Statement was not considered necessary.

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