

Land and Another Regulation Amendment Regulation (No. 1) 2015

Explanatory Notes for SL 2015 No. 52

made under the

Land Act 1994

Land Title Act 1994

General Outline

Short title

Land and Another Regulation Amendment Regulation (No. 1) 2015

Authorising law

Section 448 of the *Land Act 1994*

Section 199 of the *Land Title Act 1994*

Policy objectives and the reasons for them

The objective of the *Land and Another Regulation Amendment Regulation (No. 1) 2015* is to:-

- amend the *Land Regulation 2009* to continue the rental capping for certain State land leases until 30 June 2016; and
- amend the *Land Regulation 2009* and the *Land Title Regulation 2005* to clarify that a registration fee is not required when the State is the grantee of a profit a prendre over a forest consent area.

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 (2014/2015) 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 2014/2015 twenty-six leases in the tourism category would have experienced substantial increases over the next financial year. Ten 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 forty 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).

A one year extension of the tourism and residential caps in 2015/2016 will provide the opportunity for a submission to be developed to provide for an acceptable transition for all such leases to the prescribed rent percentage in the following years.

Registration Fee for Forest Consent Area

The *Land and Other Legislation Amendment Regulation (No. 1) 2014* also amended the *Land Act 1994* to allow (in certain circumstances) that an offer to convert a lease to freehold would be subject to the lessee entering into a forest consent agreement over a forest consent area within the land to be converted. That forest consent agreement must be registered as a profit a prendre on the subsequent title of the land converted.

A minor amendment is required to the *Land Regulation 2009* and the *Land Title Regulation 2005* to clarify that a registration fee is not required when the State is the grantee of the profit a prendre that is to be registered.

Achievement of policy objectives

The objective of the *Land and Another Regulation Amendment Regulation (No. 1) 2015* is to continue to provide the necessary machinery to allow the effective administration of the *Land Act 1994*.

Continuation of Certain Capping

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% compared to the other categories. That low 10% 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% cap has minimised the financial impact of rent increases for those benefitting lessees during the transition period. However, although it is apparent that continuing capping at 10% will not result in the majority of the remaining leases transitioning to the prescribed rate, termination of

the capping at this time could threaten the financial position of those tourism operators. Whilst there are hardship provisions under the *Land Act 1994* which can assist these lessees, additional mitigation measures are needed to ameliorate the impacts of rent increases on these State land lease categories.

On 1 June 2015 the Queensland Government approved that the tourism and residential caps be continued (at the respective percentages) for one year in order that a submission then be developed to provide for an acceptable transition for all such leases to the full prescribed rent percentage in the following years.

Registration Fee for Forest Consent Area

This minor amendment to the *Land Regulation 2009* and the *Land Title Regulation 2005* will clarify that a registration fee is not required for the registration of a profit a prendre for a forest consent agreement over a forest consent area.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with part 2 of the Act 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 cost of implementation

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

Consistency with fundamental legislative principles

The amendment regulation is consistent with fundamental legislative principles.

Consultation

The Department of the Premier and Cabinet and Queensland Treasury were consulted regarding the proposed amendments.

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 consequential amendment required in relation to the registration of a profit a prendre that is a forest consent agreement.

All consulted parties agree with the proposed amendments.

The Office of Best Practice Regulation within the Queensland Competition Authority was consulted regarding the Regulatory Impact Statement system and advised that the proposed amendments are unlikely to result in significant adverse impacts and that no further assessment is required under the Treasurer's Regulatory Impact Statement Guidelines.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides the short title of the regulation.

Part 2 Amendment of *Land Regulation 2009*

Regulation amended

Clause 2 of this regulation amends provisions in the *Land Regulation 2009*.

Amendment of s 25B (Purchase price)

Clause 3 is a minor amendment that amends this section so that there is a clear distinction between the methodology for determining the purchase price for different types of land tenure under the *Land Act 1994*.

Insertion of new ss 25BA and 25BB

Clause 4 is a consequence of the amendment to section 25B.

New section 25BA deals with how the purchase price is determined when an Operational reserve is converted to freehold.

Section 25BB deals with the purchase price of unallocated State land if the land is to be offered to MEDQ or a constructing authority.

Amendment of s 27 (Rental categories for rental assessment)

Clause 5 is a minor amendment that corrects a drafting error.

Amendment of s 37B (Rent for leases with particular references)

Clause 6 continues the rental capping arrangements for tourism leases until 30 June 2016

Amendment of s 38 (Protection against undue rental increases)

Clause 7 is similar to clause 6 in that it continues the rental capping arrangements for certain residential leases until 30 June 2016.

Amendment of s 62 (Fees)

Clause 8 exempts the State from a registration fee when registering a profit a prendre that is a forest consent agreement on a Title.

Replacement of sch 6A (Lease title references)

Clause 9 This amendment updates the title references for those leases issued for tourism purposes. The titles changes are due to either titles being deleted due to surrender of the leases or renewal of leases which create a new title reference or new leases that have been granted for tourism purposes.

Part 3 Amendment of *Land Title Regulation 2005*

Regulation amended

Clause 10 of this regulation amends provisions in the *Land Title Regulation 2009*

Amendment of s 4 (Fees)

Clause 11 exempts the State from a registration fee when registering a profit a prendre that is a forest consent agreement on a Title.