Thynne Macartney

Newsletter

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Leasehold Land Reforms

The most significant changes to the laws governing Queensland's State land in a generation took effect on 1 July 2014. The amendments to the Land Act have improved leasehold tenure security, removed obstacles to investment, reduced rents and opened new paths to freeholding.

Historical background

About two thirds of Queensland's total land area is leasehold and the bulk of that area comprises leases issued for pastoral, grazing or agricultural purposes.

Tenure security for rural leaseholders, particularly of term leases, has long been a contentious issue. In 1959, Sir William Payne's report to the State Government maintained that "it is all to the good if Crown tenants on terminable leaseholds use and consider the land as their very own".

By 2007, the former Labor Government had introduced the "Delbessie Agreement", which offered incremental advances in tenure security in exchange for additional burdens that included "land management agreements" and the threat of excision of "future conservation areas".

In June 2012, the newly-elected Newman Government established a Parliamentary inquiry into Government land tenure. By November of that year, the Minister for Natural Resources and Mines, Andrew Cripps had changed departmental policy to simplify land management agreements and rule out clawing back land for conservation when leases came up for renewal.

The recent reforms, flagged by the Government as just the first phase of a multiple-stage review, address several issues identified by the Parliamentary inquiry.

Simpler, less expensive freeholding

Historically, the cost to convert a State lease to freehold has been based on the unimproved value of the land.

"the amendments have opened new paths to freeholding"

From 1 July, for leases to which the reforms apply, the freeholding purchase price represents the pre-payment, adjusted to net present value, of all future rental payments. The Land Act Regulation contains a formula for working out the net present value, which when added to the value of any commercial timber on the property of the State, becomes the freeholding purchase price.

For conversions in the 2014-15 financial year, the application of the current formula results in a purchase price equal to 19.66% of unimproved value for perpetual leases (for which the annual rent is calculated at 1.5% of unimproved value) and 9.83% of unimproved value for term leases (for which the annual rent has been reduced to 0.75% of unimproved value).

For example, for a perpetual lease with an unimproved value of $500,000, the current rent (subject to any applicable cap on increases) will be $7,500 and the freeholding purchase price will be $98,323.62.

The freeholding provisions of the Land Act do not apply to leases over reserves, licences or permits, or if the conditions of a lease or the Act do not allow an application for conversion to be made.

The advantage in converting to freehold is that lessees will no longer be subject to the requirement to pay ongoing rental payments. It is seen by many as a once-in-a-lifetime opportunity given the prospect of further changes to the Land Act over time.

However, the introduction of the concept of "rolling leases" and the resulting increased security may render conversion to freehold less appealing.

Further, the changes for freeholding have limited application

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for term leases at this stage given the requirement to address native title. This is despite the removal of the requirement to convert a term lease first to a perpetual lease before freeholding. In most instances, conversion will require the leaseholder to convince the native title holders (or potential native title claimants) to surrender native title. There are many reasons why native title holders or claimants might refuse to do so or demand in exchange the payment of significant costs and compensation.

"the changes for freeholding have limited application for term leases at this stage given the requirement to address native title"

The Government has flagged further reforms to introduce incentives to encourage agreement in native title negotiations. However, no details have been released at this stage.

In summary then, particularly for Grazing Homestead Perpetual Leases, providing the lessee has surplus funds available, the current opportunity to freehold may be "too good to refuse".

Rolling leases

A concept of "rolling leases" has been introduced, allowing a simpler renewal process for most pastoral holdings, pastoral development holdings and term leases used for primary production where the area is over 100 hectares.

The concept does not apply to leases of reserves, including camping and water reserves.

Where the concept applies and an extension application is made at any time in the last 20 years of the term (or earlier if special circumstances exist), the Minister must automatically grant an extension (subject to limited exclusions) for a period in most cases equal to the original term of the lease. There will be no limit to the number of times a lease may be "rolled over".

Under the "rolling lease" concept, land management agreements are no longer required. Existing land management agreements can be cancelled with the approval of the Minister. Land management agreements can still be required where the lease is at risk of degradation or the lessee is not complying with the lessee's duty of care.

Since 1 July 2014, the Department of Natural Resources and Mines has been writing to holders of leases converted to "rolling leases" and, in certain circumstances, offering them the opportunity to accept an immediate extension of their lease. Lessees should consider the conditions of any offer carefully. Having seen many of these offers in recent months, your advisors in Thynne + Macartney's Agribusiness team are well placed to assist you.

Removal of corporate and aggregation restrictions

Restrictions on corporations holding a particular class of freehold land perpetual leases, grazing homestead perpetual leases, grazing homestead freeholding leases and subleases of any of those leases have been removed.

Similarly, the requirement restricting an individual from holding two or more of those leases if the aggregation would be "substantially more than two living areas" has also been removed.

The State Government took the view that the previous restrictions, which were in place for decades and designed to protect "family farms", were "outdated, inflexible, anti competitive and a financial impost for both lessees and governments".

This is one of the more radical reforms with long ranging implications for agribusiness in Queensland.

Revised rents on term leases

The Government has reduced rents for certain tenures by 50% and lowered the annual cap on rental increases.

Reversing a change made by the former Labor Government in 2008, rents for primary production term leases, licences and permits will be halved from 1.5% to 0.75% of unimproved value. Purportedly to reflect their relatively superior security and conditions, rents for perpetual leases will remain at 1.5% of unimproved value.

The cap that limits increases in annual rent to 20% (put in place in 2008 when the rents on rural leases were doubled from 0.75% to 1.5% of unimproved value and unimproved values were at record highs) will be lowered to 10% per cent. The change will not only cushion the effect of any future increases in unimproved values but also provide prolonged relief to those lessees whose rents are still to catch up (under the present cap) to 0.75% of unimproved value.

Please direct any queries to your advisor in the Agribusiness team.

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Wider Scope for Transfer Duty Savings

The State Government has long encouraged succession planning in primary production businesses by granting relief from transfer duty where primary production land and business assets are transferred by way of gift from one generation to the next.

Until 1 July 2014, to qualify for the concession the transfer had to be from an ancestor to a direct descendant (or the descendant's spouse). Now, the concession can apply to transfers between a broader range of family members including spouses, de-facto partners, grandparents, parents, aunts, uncles, children, grandchildren, nieces, nephews and spouses of those family members.

The changes mean greater flexibility for families implementing a succession plan during the current owner's lifetime.

However, the concession still operates such that transfer duty will only be avoided to the extent that no "consideration" is received for the transfer. Consideration includes any value which a transferor receives from a recipient and includes not only any cash or other property received by the transferor, but also the amount of any debt assumed by the recipient in connection with the transfer.

Given many primary production enterprises carry at least some debt, it is common for succession plans to involve the transfer of debt in conjunction with the transfer of assets. In these circumstances, the duty concession can be of limited value. It is disappointing that the Government did not go further in its changes to the duties legislation to provide duty relief where arguably it is needed most, being those instances where the debts assumed by the new owners are significant.

Your advisors in the Agribusiness team have extensive experience in dealing with family business restructures and succession planning and can assist you to take advantage of the concession.

Western Visits Calendar

	Roma	Emerald	Longreach	Charleville	Rockhampton	Blackall
2014	Thursday & Friday	Wednesday / Friday	Wednesday & Thursday	Thursday & Friday	Friday	Wednesday & Thursday
September					12	
October		31		1 / 2		
November	20 / 21					5 / 6
December					5	
2015	Thursday & Friday	Friday	Wednesday & Thursday	Thursday & Friday	Friday	
February	12 / 13	6	25 / 26			
March				26 / 27	13	

Appointments can be made by telephoning Thynne + Macartney on (07) 3231 8818

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Overhaul of Property Sale Laws

Since 2000, the complex Property Agents and Motor Dealers Act 2000 has governed the sale and purchase of real estate in Queensland. New laws are set to replace the current cumbersome regime, simplify relationships with real estate agents and reduce the scope for technicalities to threaten the validity of contracts.

While the new laws haven't yet come into effect, they are expected to do so in the coming months and are significant in that they:

- remove the need for "Warning Statements" and certain disclosure documents to be attached to Contracts for Sale of residential property before they are signed;
- allow buyers to waive cooling off periods without the need to consult a solicitor;
- simplify the appointment process and licensing arrangements for real estate agents; and
- deregulate the maximum amount of commission (currently 2.5% of the sale price plus GST) that real estate agents can charge sellers.

While the purchase and sale of rural property remains exempt from most aspects of the new laws, all real estate agents and residential property transactions in Queensland will be affected by the new regime. If you would like to find out more about the changes, please contact your advisor in Thynne + Macartney's Agribusiness team.

"new laws will reduce the scope for technicalities to threaten the validity of contracts"

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