

A guide to Land Tenure

Under the *Land Act 1994*

This publication has been compiled by State Land Administration of State Land Asset Management, Operational Support, Department of Natural Resources and Mines.

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Introduction

This publication sets out the manner by which current tenures administered under the *Land Act 1994* (the Land Act) came into existence, their respective characteristics and the various provisions of the *Land Act 1994* which apply to each tenure. Strictly speaking, the word 'tenure' refers only to a lease or freehold which conveys possession of land to a person. For convenience, in this publication the term is also used to embrace other forms of occupation such as licences, permits to occupy and State reserves.

The Land Act is administered by the Minister for the Department of Natural Resources and Mines (DNRM), who has delegated the Minister's power under the Act to officers and employees of the DNRM, to enable efficient administration of State-controlled lands. To assist these delegates in the decision-making process, a series of policies which accord with the objects and provisions of the Act and detail specific issues which the decision-maker must consider. These policies are available on the department's website <https://www.dnrm.qld.gov.au/>.

The object of the Land Act requires land administered under the Act to be managed for the benefit of the people of Queensland by having regard to seven principles. These principles are sustainability, evaluation, development, community purpose, protection, consultation and administration.

This publication is a guide only and readers should consult the Land Act or their legal representative for more detailed information on the laws applying to State lands in Queensland.

The occupation of land in Queensland may be defined under two broad tenure headings—freehold and non-freehold.

Freehold land is the most complete form available for land alienation from the State. It is purchased from the State. Ownership by the titleholder is not absolute however, as the State is empowered to withhold certain rights, such as the right to any minerals or petroleum. In addition, use of the land may be controlled by legislation (e.g. the *Local Government Act 2009*).

Non-freehold land is land under the control of the State of Queensland but which may be subject to a lease, licence or permit, reserved for a community purpose, dedicated as a road or subject to no tenure at all.

The provisions of the Commonwealth and State Native Title Acts—that is, the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993*—must be satisfied before any dealings under the Land Act can be undertaken in relation to non-freehold land. In addition, the provisions of other relevant legislation that may apply to an administrative decision under the Land Act must be considered (e.g. *Local Government Act 2009*, *Nature Conservation Act 1992*, and *Contaminated Land Act 1991*).

The Land Act outlines the processes to be undertaken when dealing with State land, which includes any restrictions which may apply to an occupier of such land. The development of State land follows a sequence of allocation, regulation and management, as follows:

1. The State allocates land to a potential user for specified uses.
2. State departments, local government or some other public authority regulate activities in accordance with their own specific powers (e.g. the power to grant development approvals).
3. The land-holder manages the allocated land in accordance with the conditions of the lease which covers the land.

The State deals with land in much the same way as a freehold owner. For example, a corporation which has freehold ownership of a number of lots may decide to sell, lease or subdivide its interests in land in what it believes are the best interests of its shareholders.

Similarly, when the State makes decisions for dealing with land it does so in what it believes are the best interests of its' share-holders'—the people of Queensland. Accordingly, the State may deal with unallocated State land in several ways. Depending on the circumstances, it may:

- lease land for a term of years or in perpetuity, or, in the case of a temporarily closed road, issue a licence allowing the land to be used in specified ways
- issue a permit allowing a person to occupy the land on a short-term basis
- sell the land as freehold
- reserve the land for community, forest or conservation purpose (e.g. to be used as a park, State forest or national park, or for sport and recreation)
- dedicate the land as a road
- retain the land as unallocated State land.

This publication outlines:

- the method of making land available either as leasehold or freehold
- the various types of leasehold tenure
- the provisions applying to leasehold tenures
- the allocation of land as a reserve or road.

Leasing unallocated State land

Unallocated State land may be made available for lease by auction, tender, ballot or in priority. This means that, unless specific criteria listed in the Act are met, unallocated State land must be put to auction, tender or ballot; 'priority' means without going to competition to obtain the lease.

Before the land may be allocated, the land must be evaluated to assess its most appropriate tenure and use. The evaluation must take account of State, regional and local government planning strategies and policies, as well as the object of the Land Act.

Leases are granted for a purpose, for example business, grazing, tourism, residential development and pastoral activities. It should be noted that leases granted for pastoral purposes may be used only for grazing or agriculture.

Although a lease is issued for a primary purpose (such as those listed above), the Minister has the power to approve the conduct of additional or fewer uses on the subject land for the term of the lease, provided any amendments complement the original purpose. The Minister may make a lease subject to conditions considered appropriate.

A lessee has statutory obligations of a duty of care for the land, which includes keeping noxious plants under control.

Types of leasehold tenure

The Land Act consolidated the previous tenures into the following five types of leasehold tenures:

- term lease—granted for 1–100 years
- perpetual lease—held by the leaseholder in perpetuity (not for 99 years as commonly believed)
- freeholding lease—where freehold title has been approved but the leaseholder is paying off the purchase price by annual instalments. The freehold title will not be issued until this is fully paid
- road licence—when a road has been temporarily closed, this tenure allows the licensee to use the land until such time as the licence is surrendered or cancelled
- permit to occupy—for short-term occupation of State controlled land. This tenure cannot be sold, sub-let or mortgaged.

The *Land Act of 1962*, which replaced various Acts dealing with leasehold land throughout the State, had provided for a considerable number of tenure types under each of these categories.

The most common of these were the agricultural farm lease; grazing homestead perpetual lease; grazing homestead freeholding lease; perpetual town, suburban or country lease; special lease; pastoral holding; auction purchase freehold; special purchase freehold; and road licence. The primary focus of the 1962 Act was the development of the State and the different tenures were utilised to indicate the term of the lease, whether it was freeholding or non-freeholding or, in some instances, the type of activity permitted on the land.

Term leases

A term lease is a tenure issued for a specific purpose (e.g. agricultural or commercial) for a term of years over State land in accordance with the Land Act. Term leases must only be used for the purpose for which the lease is issued.

These leases 'expire' at the end of the last day of the lease term, whereby the landholder loses possession of the land. Unless otherwise stated in the conditions of the lease, any improvements on the land become the property of the State on expiry of the lease.

The maximum term of the term lease is 50 years, except for:

- State leases over reserves, which have a maximum term of 30 years
- a lease for a significant development or timber plantation, which may be granted for 100 years.

The following tenure types, issued under the *Land Act 1962*, have been continued as term leases under the provisions of the *Land Act 1994*:

- the pastoral holding
- the pastoral development holding
- the preferential pastoral holding
- the stud holding
- the special lease
- the development lease.

The pastoral holding, pastoral development holding, preferential pastoral holding and the stud holding have all been continued as term leases for pastoral purposes.

These leases contain the following covenant: if the land is to be further leased at the expiry of the existing lease, the existing lessee will be offered a new term lease for pastoral purposes, with a maximum living area allowed (living area is the area on which a land-holder can make a living). Term leases for pastoral purposes issued under the provisions of the *Land Act 1994* do not contain this covenant.

They have maximum terms of 50 years (upgraded from the original 30 years) and were made available by ballot, unless the renewal of an existing lease was involved. The current Land Act requires the land to be used for grazing and/or agricultural purposes. The term was changed in 1987, when legislation automatically increased the term of some 30 year leases by 20 years. If the particular lease did not meet the set criteria which permitted this, then the lessee could apply for an extension of the term. The Land Act was again changed in 2014 to allow for rolling term lease extensions where lessees can apply in certain circumstances to extend their leases by the term of the original lease.

The 1962 Act's requirements that a stud holding be used for stud purposes has been removed, although the lease must still be used for grazing or agricultural purposes. The lessee of a stud holding may apply to have conditions relating to the operation of a stud removed from the lease.

Lessees can apply to purchase the land covered by a pastoral lease. Applications may be made to convert the lease to perpetual lease or freehold.

Generally, an application for renewal of a term lease may only be made by the current leaseholder after 80 per cent of the term of the lease has elapsed. The application must be made before the lease expires.

Rolling term leases

A rolling term lease is a lease issued either for tourism purposes for land on a declared island in the state leasehold land portfolio or agricultural, grazing or pastoral purposes, including leases on state forests, protected areas and timber reserves (for rural leases, the lease area is 100 hectares or more).

Landholders can apply to extend their rolling term lease and may apply at any time during the last 20 years of the term of the lease, unless there are special circumstances.

Special lease

The special lease is continued as a term lease for the purpose for which it was issued. A special lease usually has a term of 10, 20 or 30 years, and is granted for purposes such as manufacturing, industrial activities, residential development, business and grazing.

Generally, the State issued this type of tenure when it wished to retain supervision of the use or development of the land, or when the future use intended for the land had not been clarified at the time the lease was granted.

Development lease

The development lease is continued as a term lease for the particular use for which it was issued. A development lease was granted for a maximum term of 30 years for a significant development connected with manufacturing, business, industrial, residential, tourist or recreational purposes. The term of the lease could be extended to maximum or 75 years.

The conditions of the development lease stipulate the development to be undertaken and the purchase price of the lease, or the methodology to calculate the purchase price, which is paid to the State for the subject land, upon freehold title being granted.

Perpetual leases

A perpetual lease is an ongoing tenure issued for a specific purpose (e.g. agricultural or commercial) over state land in accordance with the Land Act.

Perpetual leases must only be used for the purpose for which the lease is issued.

Because perpetual leases do not expire, they have a level of security equivalent to that of freehold.

The following tenure types, issued under the *Land Act 1962*, have been continued as perpetual leases under the provisions of the *Land Act 1994*:

- grazing homestead perpetual lease
- perpetual town lease
- perpetual suburban lease
- perpetual country lease.

Grazing homestead perpetual lease

The grazing homestead perpetual lease is continued as a perpetual lease for grazing and/or agricultural purposes.

Perpetual town, suburban and country leases (non-competitive)

Each of these three lease types is continued as a perpetual lease issued for purposes such as residential, business, commercial and tourism activities.

All of these leases are non-competitive, which indicates that they were granted in priority (i.e. issued either following successful application to convert a special lease, or for the purpose of effecting substantial improvements in connection with a business or the provision of tourist facilities).

Freeholding leases

A freeholding lease is the tenure granted to a person who held a grazing homestead perpetual lease, special lease or a non competitive lease, and elected to pay the purchase price for their lease to be converted to freehold over a term of years. This is similar to paying a mortgage, with the unpaid balance attracting interest.

Where a grazing homestead perpetual lease was converted to freehold, the tenure of grazing homestead freeholding lease, rather than a freeholding lease, has been retained.

In addition to the above circumstances, the Land Act required that freeholding leases be issued to replace mining titles freeholding leases. Mining titles freeholding leases were granted under the repealed *Mining Titles Freeholding Act 1980*. The terms of the existing leases were not altered.

On receipt of the final freeholding instalment, a Deed of Grant will be issued, provided the landholder has complied with the statutory provisions, conditions of the lease and provided a plan of survey (if required).

The following tenure types, issued under the provisions of the *Land Act 1962*, have been continued as freeholding leases under the *Land Act 1994*:

- agricultural farm lease
- grazing homestead freeholding lease
- purchase lease
- perpetual lease selection
- perpetual town lease, perpetual suburban lease and perpetual country lease
- auction perpetual lease
- auction purchase freehold
- special lease purchase freehold.

However changes to the Land Act in 2014 removed provisions allowing for the issue of a freeholding lease. The only freeholding leases which may be issued are for conversion of a non-competitive lease (other than a lease for grazing or agricultural purposes) or a special lease (other than a lease for grazing or agricultural purposes). Where the lease category is not for primary production, both of these types of leases are issued under the (repealed) Land Act 1962 as a post-wolfe freeholding lease as a post-wolfe freeholding lease.

Therefore all tenures that have been issued under the Land Act (term or perpetual lease, including a grazing homestead perpetual lease), if conversion to freehold is approved, must pay the purchase price in full by way of a single payment and a deed of grant issued.

Agricultural farm lease

The agricultural farm lease is a freeholding tenure issued mostly as a consequence of a successful application to convert perpetual lease selections and settlement farm leases to freehold. In 1981 perpetual lease selections were placed on final rental periods and, consequently, conversion to an agricultural farm lease was not required. More details are contained in the below section of perpetual lease selections.

Agricultural farm leases were still available for the sale of land in the Burdekin Irrigation Area until 30 June 1998.

The term of the agricultural farm lease is generally 40 years, although leases issued after 31 December 1991 have a maximum term of 30 years.

Until 31 December 1991, repayments on agricultural farm leases were interest-free and a discount was available for cash payment of the purchase price. For leases issued since then, repayments have attracted interest and no discount is available for cash payment.

A deed of grant (a freehold title) is issued upon payment of the purchase price in full and compliance with any conditions attaching to the lease.

Grazing homestead freeholding lease

The grazing homestead freeholding lease tenure was granted following successful application to convert a grazing homestead perpetual lease to freehold, with the lessee electing to pay the purchase price of the land over a term of years.

Leases issued following an application received before 5 February 1990 may have a term of 40 years, interest-free repayments and a discount on cash payment of up to 57.1 per cent of the purchasing price.

For leases granted on an application received on or after 5 February 1990, a maximum term of 30 years was available. The discount for cash payment was a maximum of 25.36 per cent and a concessional interest charge (presently 6 per cent) applies.

A deed of grant (a freehold title) is issued once the purchase price has been paid in full and the lessee has complied with any conditions attached to the lease.

This tenure type no longer may be issued under the Land Act.

Purchase lease

The purchase lease was issued by ballot under the provisions of the *Brigalow and Other Lands Development Act 1962* (now repealed) for a term of 40 years. It was used for the development of the brigalow lands of central Queensland and was part of the brigalow scheme, a joint State and Commonwealth venture with funds being made available by the Commonwealth. Administration of the scheme was undertaken by the corporation of the Land Administration Commission, now the Brigalow Corporation. The scheme made loans available to property owners for development costs and to local governments for road construction.

A deed of grant (a freehold title) is issued once the purchase price and any loans have been paid off and the lessee has complied with any conditions attached to the lease.

As all the loans under the scheme have now been repaid, the Brigalow Corporation was abolished and the Land Act was amended in February 2009 to remove the provisions that related to it.

Perpetual lease selection

The perpetual lease selection was originally granted as a lease in perpetuity for intensive farming (e.g. small lots for wheat growing, small crops). It was used to promote the soldier settlement and closer settlement schemes.

In 1981, legislation placed this lease type on what was termed a final rental period. The period was determined using a formula based on the percentage of the unimproved value of the lease being paid as rent at that time. The annual rental for the lease was one-fortieth or one-sixtieth of the unimproved value current as at 31 December 1980. Therefore, 40-years terms were given for lessees paying 2.5 per cent and 60-year terms for lessees paying 1.5 per cent.

At the end of the term or when all rent for the rental period has been paid, the lessee could

elect to obtain freehold title or to maintain the lease with payment of a 'peppercorn' rent if the government demanded.

An amendment to the legislation in 1991 included a covenant in the lease to allow for the issue of freehold title once the lessee had paid the full rental value of the lease and had complied with any conditions attached to the lease.

Perpetual town, suburban and country leases (converted)

Each of these three lease types were issued following successful application to convert a perpetual town lease, perpetual suburban lease or perpetual country lease to freehold. These leases were issued mainly for business, residential, commercial and tourism activities.

The leases were originally issued for terms of 30 years for residential activities and 20 years for other uses. Since 1 January 1992, however, the maximum term of a lease has been 30 years for all purposes.

Until 31 December 1991, repayments were interest-free and attracted a discount of a maximum of 57.1 per cent for initial cash payment for the whole amount owed. A lesser percentage applied if the balance of the purchase price was paid off over the term of the lease.

Leases commencing on or after 1 January 1992 attract an interest charge on repayments, with no discount being available for cash payment.

A deed of grant (a freehold title) is issued once the lessee has paid the purchase price in full and has complied with any lease conditions.

Auction perpetual lease

The auction perpetual lease was originally a lease granted in perpetuity, made available by auction as a perpetual town, perpetual suburban or perpetual country lease. No further leases of this type can be made available.

From 1 January 1981, the rent payable on auction perpetual leases for the next 30 years was reserved at the amount applicable for the rental period current at 31 December 1980. Thereafter the rent was a 'peppercorn' rent if demanded by the government.

Up to the end of the rental period, the lessee could elect to pay off the rental commitment and apply for the issue of freehold title. No interest charge applied and a discount of up to 57.1 per cent was available for early payment of the rental commitment.

An amendment to legislation in 1991 included a covenant for the issue of freehold title upon payment of the full rental value and compliance with any conditions of lease.

Auction purchase freehold

The auction purchase freehold, which is no longer available, was issued for a number of purposes, but mainly for residential developments. It was used to dispose of unallocated State land at public auction when the repayment of the purchase price was to be made over a term of years.

The term was usually 10 years for the repayment of the purchase price, with interest being charged on the outstanding balance. No discount was available for cash payment.

If the purchase price has been paid in full at the time of auction, but the finalisation of the sale was subject to the purchaser undertaking specified improvements, then the term was the time in which such improvements were to be undertaken.

A deed of grant was issued after the full payment of the purchase price and compliance with any conditions.

Special lease purchase freehold

The special lease purchase freehold tenure is granted when a lessee successfully applies to buy the land covered by a special lease

The term of the lease is a maximum of 30 years, with the annual instalment of the purchase price attracting an interest charge. No discount is available for early repayment of the purchase price. The option of paying by instalment only applies to special leases other than a lease for grazing or agricultural purposes.

A deed of grant is issued after payment of the full purchase price and compliance with any conditions.

General provisions which apply to leases

The Land Act contains a number of provisions for the landholder, which apply to all leases. The landholder:

- may not sell or sub-lease a lease without the prior consent of the Minister
- must not subdivide or amalgamate leases without the prior consent of the Minister
- must comply with the conditions of the lease
- must pay an annual rent to the department (payable by 1 September each year) or for rent over \$2,000. The rent may be paid quarterly.
- must obtain a tree clearing permit to destroy trees on land lease under arrangements other than freeholding unless the clearing is for the routine management purposes which are prescribed in the Act
- may apply to convert the lease to freehold unless the lease is over a reserve; or the conditions of the lease do not allow an application to be made.

If the State considers the conditions of the lease have not been complied with, the matter may be referred to the Land Court for determination.

The Land Court decides whether the lease is liable to be forfeited because the conditions have not been complied with.

Rental provisions

The common rental provisions for term and perpetual leases are as follows:

- All term and perpetual leases have a primary purpose, which determines that the lease is to be granted under one of the categories as determined by the current Land Regulation < <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LandR09.pdf>
- For most leases a valuation for rental purposes is determined under the Land Valuation Act 2010. Leases for Telecommunication purposes have a prescribed rent.
- The annual rent for most leases is determined by multiplying the prescribed percentage rate by the valuation for rental purposes. Leases for Telecommunication purposes have a prescribed rent.
- Concessions are available for charitable, recreational and sporting leases and for leases used exclusively for the lessee's own residential use.
- A range of minimum rents apply.
- The annual rental is due and payable on or before 1 September each year unless the lessee is eligible to pay their rent quarterly.

Freeholding provisions

The freeholding provisions for perpetual leases and term leases, are as follows:

- A lessee may apply to convert their lease to freehold unless the lease is over a reserve, state forest or national park or leases with conditions that restrict conversion.
- The Minister considers a number of issues, including whether the land is needed as a State forest or for environmental or conservation purposes, whether the lessee has complied with the conditions of the lease and whether public interest could be adversely affected before making a decision on the application.
- The Minister determines the purchase price of approved applications with the purchase price being the total of the unimproved value of the land being offered, as if it were fee simply (freehold), on the day the Minister receives the application or, for Category 11 tenures, the net present value of the land plus the market value of any commercial timber on the land that is the property of the State..
- If the lessee is entitled to pay the purchase price off over a term of years, the number of annual instalments is determined according to the total price.
- The maximum term available for repayment is 30 years.

A rental payment or other repayment instalment may be deferred for lessees suffering hardship.

A lease may be forfeited if rent or repayments are not made. Any unpaid amounts remain a debt to the State even if the lease has been forfeited. This means the lessee (or former lessee) is still liable to make the payment.

Occupation rights to State land

The State has other ways of granting occupation rights, it may issue a permit to occupy or it may temporarily close a road and issue a road licence to allow the occupation of the closed area. This section discusses permits to occupy and road and occupation licences.

Permit to occupy

A permit to occupy is a permission to occupy or use a specified parcel of unallocated state land, reserve or road (including a stock route). It cannot be issued over freehold or leasehold land.

A permit to occupy is not an interest in the land (such as a lease) as it does not allow for exclusive possession of the land and cannot be transferred, sublet or mortgaged. If the permit is granted, the right to occupy applies only to the permit holder.

A short term permit is a permit to occupy issued for not more than twelve months.

A permit to occupy is issued for a specific purpose for minor or temporary matters including:

- grazing
- pump sites
- apiary sites
- an entrance ramp to a building site during construction
- advertising signs on roads
- investigation work on unallocated state land.

As a permit to occupy is for uses of a minor nature, no major structural improvements, other than boundary fencing, are allowed. In addition, the reason for occupation must be one that can co-exist with the purpose for which the land has been set aside (e.g. use as a road, stock route or reserve).

If a permit is granted over a part of a road, the area remains open for use as a road. If the permit is over a reserve, the land remains available for the particular community purpose it was reserved for. If a permit is sought over a reserve with a trustee, DNRM will consult with the trustee before deciding to issue a permit.

A permit can be issued for areas that are below highwater mark if:

- it would not unduly affect safe navigation and sound development of the state's waterways and ports
- its impact on marine infrastructure has been considered
- it would not have a detrimental effect on coastal management
- it would be consistent with the intent of any relevant state management plan.

The person, to whom a permit has been issued, may surrender a permit, and DNRM can cancel a permit. If a permit is cancelled or surrendered, any improvements to the area become the property of the State and no compensation is payable. However, the person to whom the permit was issued may be allowed to remove improvements.

General provisions which apply to permits

The general provisions which apply to a permit to occupy are:

- The permittee must obtain a tree clearing permit to destroy any trees on land covered by the permit to occupy.
- The annual rental is determined in the same manner as that of a lease.
- The Minister may set a rent of the permit area has not been valued.
- The annual rent is due and payable on or before 1 September each year unless the rent is over \$2,000 in which case the permittee may elect to pay the rental quarterly.

For more information on a permit to occupy refer to Application for a permit to occupy on the DNRM website at. <http://www.qld.gov.au/environment/land/state/leases/permits/>.

Road Licence

A road licence is the tenure granted for the use of a road which has been temporarily closed.

A road licence provides a right to exclusive occupation of the road within the conditions of the licence but only while the rent continues to be paid. DNRM may however, after giving reasonable notice to the licensee, cancel the licence at any time with no compensation.

The Minister may issue a road licence over a temporarily closed road to an adjoining owner. However a road licence can be issued to another person, if the road license is only to allow the licensee to make structural improvements to:

- pipes for irrigation purposes that cross the road beneath its surface
- water channels for irrigation purposes that cross the road.

All licences are subject to the following conditions:

- There is no covenant, agreement or condition to renew the licence, convert it to another form of tenure or to sell the land.
- No more structural improvements other than fencing, pipes or channels across the road are permitted.
- If adjoining land held by the licensee is sold, the licence must also be sold or surrendered.
- A road licence can not be mortgaged, subleased or subdivided, but with the consent of DNRM may be transferred.

For more information on a road licence refer to Road Licence on the DNRM website at <http://www.qld.gov.au/environment/land/state/roads/licence/>

Occupation Licence

An occupation licence is a licence to occupy unallocated State land. Although the *Land Act 1994* makes no provision for the issue of an occupation licence, previously existing licences continue under this Act.

No term applies to the licence, which the Minister may cancel in whole or part on giving three months notice. No compensation is payable for the cancellation. The Minister must approve all improvement or development work the licensee wishes to undertake.

General provisions which apply to licences

The Land Act contains various provisions which apply to licences. They include the following:

- The annual rental is due and payable on or before 1 September each year unless the rent is over \$2,000 in which case the permittee may elect to pay the rental quarterly. .
- A licensee may not sell a licence without the prior consent of the Minister.
- A licence may not be sub-leased or subdivided.
- A licensee must comply with the conditions of the licence.
- A tree clearing permit is required to destroy trees on land covered by the licence.
- The annual rental is determined in the same manner as for a lease; however, if the land has not been valued, the Minister may set the rent.

Sale of unallocated State land

Unallocated State land becomes freehold when the land is sold and the buyer issued with a deed of grant for the area. However, even when land is freehold, any mineral and petroleum products found on the land are reserved to the State.

In some instances the freehold may contain a reservation of an area for a public purpose (e.g. road) or for forest products by the inclusion of a forest entitlement area. A forest entitlement area is a State reservation of commercial timber and the land in which it stands. No charge is made for the land covered by a forest entitlement area and the owner may use the area as desired, subject to entering into an agreement under the *Forestry Act 1959*. As a general rule, quarry material has been reserved to the State since 1 January 1992.

Freehold

Freehold title to land is obtained by the issue of a deed of grant by the Governor in Council following either a decision to sell unallocated State land, or a lessee's successful application to purchase from the State the land contained in a lease. The following matters have an impact on the issue of freehold title:

- A deed of grant may not be issued for land below the high water mark.
- For all deeds of grant, the State reserves minerals and petroleum products.
- The State reserves quarry materials in the following instances:
 - for leases made freehold as a consequence of a conversion-of-tenure application received on or after 5 February 1990 (or 31 October 1991 for leases granted under the *Industrial Development Act*)
 - for a lease containing an entitlement to a deed of grant granted after 31 December 1991
 - for freehold granted over unallocated State land after 31 December 1991.
- A deed of grant may issue containing a reservation for a public purpose.
- A deed of grant may be subject to a forest entitlement area
- A deed of grant may also issue over an operational reserve or an area of closed road.
- The Registrar of Titles may subsequently issue a Certificate of Title which contains the indefeasible title.
- Upon issue, the deed of grant is registered in the freehold land register.
- The Registrar of Titles creates an indefeasible title recording the particulars of the grant in the freehold land register.

Deeds of grant in trust

Deeds of grant in trust have the following characteristics:

- A deed of grant may be issued on the condition that it is held in trust for a community purpose (known as a deed of grant in trust).
- A deed of grant in trust issued before the *Land Act 1994* commenced may be mortgaged.
- A deed of grant in trust issued under the provisions of the *Land Act 1994* may not be mortgaged.
- The Minister must give consent to any leasing of the land and the lease must be endorsed with the Minister's approval, prior to its registration in the Land Registry.

Reserved land

The Minister may dedicate unallocated State land as a reserve for a community purpose. The following community purposes are listed in the Land Act.

- Aboriginal purposes
- beach protection and coastal management
- cemeteries, crematoriums and mortuaries
- drainage
- environmental purposes
- heritage, historical and cultural purposes
- natural resource management
- navigational purposes
- open space and buffer zones
- parks and gardens
- public boat ramps, jetties and landing places
- public halls
- public toilet facilities
- roads
- scenic purposes
- scientific purposes
- showgrounds
- sport and recreation
- strategic land management
- Torres Strait Islander purposes
- travelling stock requirements
- watering places.

Trustees may be appointed to run the reserves and, while the State retains ownership of the land, trustees are required to manage it in a manner that achieves the purpose of the trust. Trustees are considered to be the owners of the land only for the purpose of legal proceedings. Because of this, incorporated bodies are the preferred entity for appointment as trustees.

Subject to the Minister's consent, trustees may lease or issue a permit over the reserve, provided the lease or permit is consistent with the purpose of the trust and would facilitate or enhance the purpose of the trust. The Minister may allow a trustee to issue a lease or permit inconsistent with the purpose of the trust provided the lease does not diminish the purpose of the trust and all further improvements are first approved by the Minister.

State Roads

The *Land Act* gives the meaning of road as, an area of land, whether surveyed or unsurveyed:

- dedicated or notified or declared to be a road for public use or
- taken under an Act for the purpose of a road for public use—an example of this is a road taken under the *Acquisition of Land Act 1967 (Qld)* and *Transport Infrastructure Act 1994 (Qld)*.

The term 'road' includes:

- a street, esplanade, reserve for esplanade, highway, pathway, thoroughfare, track or stock route
- a bridge, causeway, culvert or other works in, on, over or under a road
- any part of a road.

Note that while all stock routes are roads, not all roads are stock routes. The land in all roads dedicated and opened for public use is owned by the State. A road does not have to have been constructed as a pre-requisite to dedication to public use.

A road is not only the area covered by the actual road formation (carriageway) but encompasses the entire area of land set apart for road purposes, from property boundary to property boundary. Indeed, a constructed carriageway may not even exist.

While the ownership of the road rests with the State, the management, control and regulation of most roads lies with the relevant local government in terms of the *Local Government Act 2009*.

However, if a road is a declared road under the *Transport Infrastructure Act 1994 (Qld)*, its management and control rest with the Department of Transport and Main Roads.

An activity may not be undertaken on a road if it substantially interferes with the purpose for which the land was dedicated, unless this has been authorised under an Act.

If the State grants tenure other than a permit to occupy over a road, the road must first be closed—temporarily for the issue of a road licence, or permanently if it is intended to grant a lease or freehold title.

For more information on roads refer to Roads on the DNRM website at <http://www.qld.gov.au/environment/land/state/roads/>

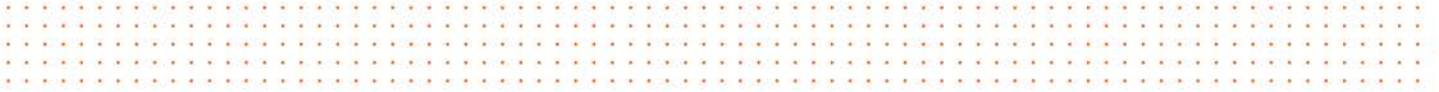
Trespass

The Land Act contains provisions designed to protect against trespassers. On land that is covered by non-freehold or deed of grant in trust tenures, a person must not unlawfully:

- occupy or live on the land
- enclose the land
- build, place or maintain any structure, improvement work or thing on the land
- clear, dig up or cultivate the land
- depasture stock on the land.

In most circumstances, the authority to undertake one of the above activities will emanate from the Land Act, although other legislation may apply in certain circumstances (e.g. the *Transport Infrastructure Act 1994*, the *Electricity Act 1994*, the *Mineral Resources Act 1989*).

Severe penalties (currently a maximum of approximately \$47,000) apply if a person is convicted of an offence against the trespass provisions of the Act.



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Visit: www.dnrm.qld.gov.au