



Queensland

Land and Other Legislation Amendment Regulation (No. 1) 2011

Explanatory Notes for SL 2011 No. 131

made under the

Land Act 1994

Land Title Act 1994

Water Act 2000

General outline

Short title

Land and Other Legislation Amendment Regulation (No. 1) 2011.

Authorising law

Section 448 of the *Land Act 1994*

Section 199 of the *Land Title Act 1994*

Section 1014 of the *Water Act 2000*.

Policy Objectives and the reasons for them

The objective of the Regulation is to:

- Amend the *Land Regulation 2009* in relation to rental arrangements for certain State land leases to apply in 2011-12 only.
- Amend the *Land Regulation 2009* by creating a new rental subcategory for non-community service telecommunication services

where the lease land is used by (a) government radio/television broadcasters; and (b) local service providers that provide services in one regional area only.

- Amend a section of the Model by-laws for consistency with other provisions which restrict activities other than under the authority of the trustee.
- Amend the *Land Regulation 2009*, the *Land Title Regulation 2005* and the *Water Regulation 2002* to exempt the State from paying fees for the deposit or removal of administrative advices on land titles.

Following the introduction of site value in 2011 to value all non-rural land in Queensland combined with market movements since previous valuations many State land lease rents will increase substantially. These increases are coming at a time when many of the State's leasehold community are still suffering from the recent natural disasters that affected Queensland. The Tourism Industry which has many leases on State land has been the hardest hit by these natural disasters. Whilst there are hardship provisions under the Land Act which can assist these lessees, additional mitigation measures are needed to be considered for these leases.

Many small commercial lessees in the Telecommunication rental category have sought lower rents particularly for small facilities in remote areas. The amendment aims to assist these lessees by creating a lower rental regime than presently available.

The *Land Regulation 2009* provides guidelines and model by-laws to assist trustees in the management of trust land. The trustees of a reserve on State owned land at Wyaralong which has been developed to facilitate the effective management of an off-road motorcycling facility wish to adopt these model by-laws. However the model by-laws require a minor amendment to allow for the proposed use.

Achievement of policy objectives.

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 *Land Regulation 2009*. 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. The second component relates to financial matters including rentals for leases over state land.

An off-road motorcycling facility has been developed on State owned trust land at Wyaralong. The trustee of this facility wishes to adopt the model by-laws as prescribed under the *Land Regulation 2009* to allow for the effective management of this trust land. However Section 19 (b) of the model by-laws requires that motorcycles being ridden on the land must have both wheels on the ground at all times. This provision is not compatible with the intended use of the land, which is to provide an opportunity for off-road motorcyclists to pursue their activity in a well managed environment, alleviating community and environmental concerns where riding might otherwise be undertaken inappropriately. The proposed amendment will enable the trustee to authorize riding contrary to the current provision. This amendment is consistent with other provisions within the model by-law which allows the trustee to authorize an action.

By capping of rental increases for the next financial year the government will be mitigating against lessees suffering hardship due to high rental increases at a time when Queensland is still recovering from the recent natural disasters. The creation of a new sub category for the Telecommunication rental category will benefit several small telecommunication businesses by ensuring that their businesses are not affected by a rental that is more appropriate for large telecommunication businesses such as mobile telephone providers.

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.

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 a reduction of rentals.

Consistency with Fundamental Legislative Principles

The regulation is consistent with fundamental legislative principles.

Consultation

The Department of the Premier and Cabinet (DPC) and Queensland Treasury were consulted regarding the proposed amendments and were supportive.

The Tourism Industry was consulted in relation to rental issues and is supportive of the capping to tourism rentals. As the rental capping and reductions benefit stakeholders no other consultation was undertaken with external stakeholders that benefit from these amendments.

The Department of Communities and the Council of Mayors of South East Queensland were consulted on the changes to the Model By-law and are supportive of the change.

The Queensland Office for Regulatory Efficiency was consulted in relation to the need for a Regulatory Assessment Statement (RAS) and advised that a RAS was not considered necessary.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides the short title of the regulation.

Commencement

Clause 2 sets out when the regulation commences.

Regulation amended

Clause 3 Part 2 of this regulation amends provisions in the *Land Regulation 2009*.

Categories for rent assessment-Act, s 182

Clause 4 amends section 27 by including new sub categories for rentals for communication sites to allow a new rental to be applied for telecommunication leases used for limited commercial service activities.

Category 15 (Communication sites)

Clause 5 amends section 33 by including examples of the types of leases that fall within the new sub categories for limited commercial services activities. The new sub categories are category 15.2 and 15.3. The existing sub categories 15.2 and 15.3 have been renumbered as 15.4 and 15.5.

A lease in the new sub category 15.2 is a lease that may be used for, or it is being used for, the provision, relay or transmission of telephonic, television, radio or other electronic communication services for a limited commercial service activity in a rural area

Examples: ABC, SBS, small local radio stations; community TV such as Imparja, or other local service providers that are deemed small to medium businesses in a rural area.

A lease in the new sub category 15.3 is a lease that may be used for, or it is being used for, the provision, relay or transmission of telephonic, television, radio or other electronic communication services for a limited commercial service activity in an urban area

Examples: ABC, SBS, Local Taxi service; small local radio stations; community TV such as channel 31 and is in an urban area.

Matters for calculating rent -Act, s 183

Clause 6 amends section 37 (1) by setting the amounts that are prescribed for a category of lease and includes the new sub categories for telecommunication leases. This clause also adjusts these amounts by increases in the CPI of 3.6%.

Minimum rent -Act, s 183

Clause 7 amends section 38 by adjusting the minimum rental amounts by increases in the CPI of 3.6%.

Set rent for particular leases -Act, s 183A

Clause 8 amends section 38A(3) by extending the existing cap of 10 % on rental increases for leases held for tourism purposes until 30 June 2012.

Percentage for protection against undue rental increases-Act, s 183AA

Clause 9 amends section 39 by setting the percentage rate for protection against undue rental increases for category 12, 13 and 16 leases at 50%. This capping will expire on 30 June 2012.

Minimum instalments-Act, ss 457, 462 and 466

Clause 10 amends section 56 by adjusting the minimum instalments by the CPI of 3.6%.

Fees

Clause 11 amends section 62 by exempting the State from paying a fee for the deposit or removal of an administrative advice on a Land Title.

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

Section 19 Driving or operating motorcycle

Clause 12 amends section 19 (b) to allow the use of motorcycles in a manner authorised by the trustee.

Schedule 6A Lease title references

Clause 13 amends this schedule by deleting leases that are no longer in existence and includes leases that have new title references. These leases are leases used for tourism purposes and have their rents capped at 10%.

Land Title Regulation 2005

Regulation amended

Clause 14. Part 3 of this regulation amends provisions in the *Land Title Regulation 2005*.

Fees

Clause 15 amends section 4 by exempting the State from paying a fee for the deposit or removal of an administrative advice on a Land Title.

Water Regulation 2002

Regulation amended

Clause 16. Part 4 of this regulation amends provisions in the *Water Regulation 2002*.

Fees

Clause 17 amends section 63 by exempting the State from paying a fee for the deposit or removal of an administrative advice on a Land Title.

ENDNOTES

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