Queensland

Land Regulation 2009

Regulatory Impact Statement for SL 2009 No. 282

made under the

Land Act 1994

Introduction

Purpose of a regulatory impact statement

Under the *Statutory Instruments Act 1992*, if a proposed Regulation is likely to impose appreciable costs on the community or part of the community, a regulatory impact statement (RIS) must be prepared, before the Regulation is made.

A RIS is designed to determine whether or not a proposed Regulation is the most efficient and effective way of achieving desired policy objectives. It does this by providing a mechanism by which the government's policy deliberations are clearly documented and subject to public scrutiny.

The purpose of this document is therefore to explain the need for the proposed subordinate Regulation and to present an evaluation of the likely costs and benefits that would flow from its adoption in comparison with other options explored.

All members of the community are invited to comment on the information presented in this RIS.

How to respond to this RIS

The closing date for commenting on this RIS is midnight 9 May 2008.

Written submissions should be sent to:

Mail: Manager, State Land Legislation & Management
State Land Asset Management
Land Management and Use
Department of Natural Resources and Water
GPO Box 2454
Brisbane QLD 4001

Fax: (07) 3405 5522

Email: <LandReg.RIS@nrw.qld.gov.au>.

Public access to submissions

Please be aware that submissions may be accessible under the *Freedom of Information Act 1992*. If a submission, or part of a submission, needs to be treated as 'commercial in confidence', please ensure that it is clearly identified as such. Similarly, if a submission contains details about a person's personal affairs (his or her experiences relevant to a matter covered in this document), and it is in the public interest to protect that person's privacy, the 'personal' information in that submission would not be accessible under freedom of information.

Consideration of issues raised on the RIS

After the public comment period closes, the government will consider issues raised by members of the community.

Further consultation may occur to address any concerns raised by the community before the government develops a final position.

Further enquiries

For further information, call Craig Sanderson on 3405 5512 or Damien Kennedy on 3224 7550 at the Department of Natural Resources and Water (NRW).

Background

The regime for rental of the state's leasehold land is established under the *Land Act 1994* and the Land Regulation 1995. Sections 1 and 2 of the Land Regulation 1995 (the Regulation) commenced on 9 June 1995 and the remaining provisions commenced on 1 July 1995. The Regulation has been extended to allow adequate time to review the key elements of the Regulation affecting rental arrangements (the 'rent review') and make any necessary amendments to the *Land Act 1994*, due to the coupling of large valuation increases with the extended drought conditions experienced by rural lessees. Under section 54(1) of the *Statutory Instruments Act 1992*, the present Regulation will expire on 1 September 2008.

The proposed legislation is a remake of the Regulation and includes a number of amendments to existing provisions. The objective of amending and remaking this Regulation is to continue to provide the necessary machinery to allow for contemporary and effective administration of the *Land Act 1994*. The Regulation also requires amendments as a consequence of amendments to the *Land Act 1994* by the passing of the *Land and Other Legislation Amendment Act 2007*.

A review of the state leasehold rental arrangements commenced in April 2005 as part of the review of the Regulation required under the *Statutory Instruments Act 1992*.

Existing rental arrangements

All leasehold land is subject to either a set rent, or a rent calculated by applying the percentage rate prescribed in the Regulation to the land valuation for rental purposes. A 'minimum' rent is levied in cases where the calculated rent is less than the prescribed minimum for the category or tenure type. Accordingly, rental revenue is drawn from three 'streams': set rents, calculated rents and minimum rents. Of these, only calculated rents are affected by land values and percentage rates.

The different purposes for which leased land is used are reflected in a number of different categories of land specified under the Regulation. Each category has varied rental arrangements applied to the lessees of the land. As at January 2008, there were over 23 000 leases, licences and permits

held over 113 million hectares of State land with an unimproved value of $5.97 billion.

In July 2007, the Queensland Government implemented long-term rental arrangements for grazing and agricultural tenures to address matters associated with the prolonged drought, applicable from the 2007–08 billing period. In addition, short-term changes were made to arrangements for charities and clubs pending finalisation of the regulatory review. The *Land Act 1994* and the Land Regulation 1995 were amended to establish rental arrangements for these classes of leases, licences and permits, and the effect of these amendments will be continued in the remade Regulation.

The review of state leasehold rental arrangements that began in 2005 identified a range of improvements, which are outlined in more detail in this document. The current rental arrangements, definition of categories, applicable rental rates, and the revenue derived per category of land use are detailed in Appendix 1.

The remaining aspects of the Regulation review were finalised in December 2007, with proposals recommended for:

1. rental arrangements
2. application fees
3. penalty interest rates
4. other interest rates and fees.

Proposed rental arrangements

The rental arrangements proposed are:

- the rationalisation of rental categories and alignment of rental percentage rates for like uses
- the application of three-year averaging to moderate large rental increases flowing from large increases in land valuation (five-year averaging for agribusiness)
- appropriate rental arrangements for charitable, sports and recreation, business and government, residential and telecommunications uses
- an increase to minimum rent levels to cover the cost of administration (private benefit lessees)

- provision of a divestment category for land which derives little or no benefit to the state.

Further, it is proposed that rate changes and averaging arrangements commence from 2008, with all other changes commencing from 2009.

Application fees

When the Land Regulation 1995 commenced in July 1995, a fee was charged for 12 application dealing types. These related to dealings to obtain the use of State land, or to change lessees' interests in land. For these dealings, different amounts would be charged based on whether the application related to an allocation of an interest, or the further dealing with an existing interest, or whether the land was 'suburban', 'town', or 'country'—this latter distinction a legacy of the *Land Act 1962*.

The *Land Act 1994* does not differentiate between urban or rural land, but the Regulation has not been amended in the past to reflect this. Moreover, the quantum of both fees fails to adequately reflect the true cost to the department of processing the applications.

Applications made under the *Land Act 1994* fall into two distinct application categories:

- those for an allocation of land, such as a grant of a lease or deed, grant of an easement, further dealing with existing leases and road opening and closures. Applications under this category generally require significant investigations and an evaluation that takes account of state, regional and local planning strategies and policies
- those primarily relating to changing or amending existing interests in land, which generally require a less intensive investigation. These application types would include transfer of a lease/licence, amendment of the conditions of a lease/licence/permit, removal of a covenant and subleasing.

In the 2006–07 financial year, the department received 2240 applications across the 12 application types listed in the Regulation, each attracting a fee of either $98.60 or $197.20.

In the same period, an additional 2380 applications were made, for which no fee is prescribed under the Land Regulation 1995. There is no apparent logic for this, other than to suggest that reviews of the Land Regulation

1995 since its commencement did not consider the application types that should be incorporated in this subordinate legislation. More than half of these applications related to the allocation of land and each application, if approved, will produce outcomes for private benefit and also require some form of evaluation by the department. These applications can also be divided in the categories relating to (a) an allocation of land and (b) changing or amending existing interests in land, as previously discussed.

The *Land and Other Legislation Amendment Act 2007* makes it clear that applications made under the *Land Act 1994* need to be made on approved forms and must be accompanied by the prescribed fee. To support this, 30 new application forms have been released encompassing the existing 12 application types listed under the Land Regulation 1995 and those other similar applications referred to above. Each of these applications falls within one of the categories mentioned above. Of the 30 application types, 26 are clearly for private benefit, whereas only four will provide outcomes that are for the benefit of the community. There is no intention to apply a fee for these four application types.

The fees presently charged are generally well below the amounts charged for similar applications in other states (e.g. NSW, SA), which have fees of over $300. Current fees do not reflect the varying complexity between application types and the resources required to progress the application. It is also noted that in some instances the other states have an additional, more substantial fee for detailed assessments of some applications.

The preferred option for an appropriate application fee for Land Act dealings is to maintain the existing two-tier fee structure of CPI adjusted $102.40 and $204.80, which reflects the distinction between the two categories of applications, and to apply these fees to the 26 private benefit application types. It is not unreasonable to apply an appropriate fee for the level of investigations required for these applications.

Penalty interest rates

The present prescribed penalty interest rate of 8.5% has not changed since it was introduced in 1995. It is substantially less than the rate prescribed in the Water Regulation 2002, which is set at 2% above the Suncorp Metway Ltd business variable lending rate. It has been found that some lessees delay their rental payments each year (apparently for cash management

purposes), preferring to incur the penalty interest charge. This indicates that the present rate is too low to serve its intended purpose as a disincentive for failing to pay the rent on time. If the penalty rate is aligned with other similar rates such as those in the Water Regulation, then a better incentive to pay rents on time may be provided. Also, if the rate is tagged to a market rate rather than having a set rate, it will remain current without needing to be regularly reviewed.

Other interest rates and instalments

A post-Wolfe freeholding lease is subject to instalments which pay out the purchase price of the land. These instalments attract the rate of interest prescribed in the Regulation. The current interest rate is 6%, which is much less than is currently charged by any financial institution. This rate for instalments of any post-Wolfe freeholding lease under s 32(d) of the Regulation has not been changed since the Regulation commenced.

The Suncorp Metway Ltd business banking variable lending base rate as at January 2008 is 10.4%. By setting the interest rate to the Suncorp Metway rate, the rate will increase or decrease in line with changes set by the bank, avoiding the need to regularly review and amend the Regulation.

The current Regulation provides for minimum instalments for freeholding leases. These amounts have not been increased over the life of the Regulation. At present, they are set at $200 for residential leases, $500 for all other leases, and $500 for instalments that pay out the purchase price of commercial timber on the land. If these amounts had been increased by the CPI, the amounts would be $275 and $675 respectively. The Regulation should be amended to take into consideration the CPI increases.

Identification of affected stakeholders

The stakeholders affected by the proposal to remake the Regulation have been categorised into five broad groups:

- private-benefit lessees, licencees and permittees—tenure holders whose primary interest in holding land granted under the *Land Act 1994* is commercial or business related, including rural production,

tourism, telecommunications, government-owned corporations, residential and industry

- community-benefit lessees, licencees and permittees—tenure holders whose primary interest in holding land granted under the *Land Act 1994* is for uses which benefit the community, e.g. sport and recreation clubs, surf lifesaving clubs, emergency services providers, charities, and community service organisations
- State government—regulator of the land tenure system
- local government—responsible in trust for the management of reserves and administration of activities on public roads
- the general community—on behalf of whom the government administers non-freehold land and deeds of grant in trust in terms of the *Land Act 1994*.

Authorising law

The *Land Act 1994*

The key authorising provision is as follows—

- Section 448(1) of the Act provides the head of power for making the Regulation.

Policy objectives

The primary objective(s) of the proposed legislation are to ensure the proper administration of State land, including allocating land to its most appropriate use and most appropriate tenure and ensuring that the community receives a fair and appropriate return on its land asset. The principal Act provides for a market approach to dealings, adjusted where appropriate for community benefits arising from dealings.

The reason for pursuing these objective(s) through the proposed subordinate legislation is to provide the detailed machinery to the Act covering:

- requirements for the issue of trustee permits in respect of trust land
- provisions for statutory bodies to be exempt from the requirement that money received from trustee leases only be spent on enhancement of the trust land
- requirements for trustee leases entered into in accordance with section 64 of the Act
- model by-laws for trust land
- provisions for the conduct of ballots when making land available by competition
- identification of categories of leases, licences and permits for rent assessment
- procedures for registration of dealings
- discounts, instalments and interest rates applicable to freeholding leases
- interest rates and other amounts prescribed for other matters under the Act
- applications for the allocation of State land or to deal with existing interests in State land.

The review of rental provisions in the Land Regulation resulted in proposals to streamline and improve the administration of rent charged by the State for leasehold land.

Remaking the Regulation will ensure the effective implementation of reforms to rental arrangements consistent with these principles. The particular reforms are:

- the rationalisation of rental categories and alignment of rental percentage rates for like uses
- the application of three-year averaging to moderate–large rental increases flowing from large increases in land valuation (five year averaging for agribusiness)
- appropriate rental arrangements for uses such as charitable, sports and recreation and telecommunications uses
- an increase to minimum rent levels to cover the cost of administration (private benefit lessees)

- the divestment, from the state leasehold portfolio, of land which derives little or no benefit to the state
- the application of consistency to the level of fees for applications made under the Act
- an increase to the level of penalty interest charges for late payment of rents.

The State administers in trust the leasehold estate on behalf of the community. The community is entitled to a fair return on its land asset.

Failure to remake the Regulation by 1 July 2008 will result in the State not being able to collect rent on behalf of the community for its land asset.

Legislative intent

The government's policy objectives will be achieved by remaking the necessary sections, which will support the fundamental purpose of the land legislation. The Regulation seeks the provision of a detailed operational framework for administration of:

- the categorisation and allocation of percentage rates to leases, licences and permits for the purposes of assessing rents
- the identification of appropriate interest and instalment rates, charges and fees for land tenures and dealings
- trust land through trustee permits, trustee leases and model by-laws for trust land.

Regulation of this nature is an accepted way of achieving policy objectives in respect of land administration. The effective administration of the authorising legislation is dependent upon the clear prescription of rental categories within a Regulation, including dates when rents are set, percentage rates, minimum rents, interest rates, instalments, and fees and charges.

The proposed subordinate legislation is considered reasonable and appropriate because without it, lessees, licensees and permittees would not have clearly articulated provisions for operating on state leasehold land, nor the assurance of a fair and transparent system for determining rents, interest rates, instalments, fees and charges.

Not remaking the Regulation would leave the administrative requirements of the land administration system only partly described in the principal Act, limiting the effectiveness with which the legislation can be implemented.

Therefore, while the principal Act is in place, it is impractical to adopt any other approach than to remake the necessary parts of the Regulation.

Consistency with the authorising law

As stated in the previous section, the policy objective of the Land Act is to ensure the proper administration of State land in Queensland.

The remaking of the Regulation is consistent with the objectives of the principal Act, particularly with those provisions that establish the categories and applicable rental percentage rates for the purposes of charging rents, determine appropriate interest rates, instalments, fees and charges to apply to tenures and dealings, establish model by-laws for trust land and set requirements for trustee leases and permits.

Consistency with other legislation

The Regulation does not affect other legislation. The principal Act links closely with the *Land Title Act 1994*, the *Valuation of Land Act 1944*, the *Local Government Act 1993* and the *Land Protection (Pest and Stock Route Management) Act 2002*.

Options and alternatives

Consideration has been given to the following options for achieving the desired policy objectives:

- Option 1—No Regulation

- Option 2—Remake the sections of the Regulation (with appropriate amendments)
- Option 3—Remake the Regulation with no amendments.

Options 1 and 3 have been eliminated in favour of Option 2, as this option has been considered to be the most appropriate and effective means of achieving the desired policy objectives.

Option 1—No Regulation

This is the 'do nothing' option, allowing the current Regulation to expire without adopting other measures. It would mean that:

- Requirements for trustee permits, trustee leases and a process for making model by-laws for trust land would not be prescribed.
- Statutory bodies would no longer be exempt from the provisions of section 63 of the principal Act concerning rent to be charged for trust land.
- A process for conducting ballots when making land available would no longer be prescribed.
- The categories and percentage rates applicable to rental categories, minimum rents, and time by which rent must be paid, and the place where rent and instalments must be paid would not be defined.
- A register for Harbours Corporation land would be discontinued.
- A register for easements over state forests and timber reserves would not be established as required under the *Electricity Act 1994*.
- The persons who may witness execution of a document in terms of the principal Act would no longer be defined.
- Time periods for the filing of a notice of appeal for particular decisions under the principal Act would no longer be defined.
- For continued rights and tenures, discounts, minimum instalments, interest rates and thresholds for instalment payments determining when a lease may not be subdivided, would no longer be prescribed.

- Fees for various transactions, and other miscellaneous provisions, including prescribed interest rates and prescribed amounts for various sections of the principal Act would no longer be defined.

Effects on stakeholders of the 'no-Regulation' regulatory option are:

State Government

Under Option 1, the State's ability to ensure an appropriate and fair return on its land assets would be curtailed with limited options, other than increasing other direct or indirect taxes on the users of State land. The cost of administering land tenures in Queensland would be unsustainable. Alternative powers would need to be identified for the State to be able to levy rents, instalments, penalties and charges in respect of State land. Failure by the State Government to levy rental charges for leasehold land would result in significant interference with property values, affecting investment in the property market.

Lessees, licencees and permittees

Lessees, licencees and permittees, by not being subject to a Regulation providing for the levying of rents, instalments, penalties and charges in respect of State land, would unfairly benefit through unearned increments from not having to pay rental when already subsidised by relatively low rental rates.

General community

Without appropriate revenue collection by the State in respect of leases, licences or permits, and other dealings under the principal Act, the general public would not get a return on its land assets.

Failure by the State Government to levy rental charges for leasehold land would have an undue effect on land valuations and land prices.

For these reasons, Option 1 is not considered viable.

Option 3—Remake the Regulation (with no amendments)

If the State was to adopt this option, then the Regulation would:

- not allow for the merging of the present rental categories to allow for a more streamlined approach to the administration of rents charged by the State for leasehold land, as recommended by the rent review
- not allow for averaging of the rental valuations that would temper the effects of steep land valuations on increases on rents
- not deter late payments of rents
- not allow for quarterly billing of rents to assist lessees to better manage their finances
- not allow for the introduction of a fair and reasonable basis for fees charged that correlates with the associated administrative costs
- not cover recent amendments to the *Land Act 1994*
- lead to the accusation that the government is acting in an anti-competitive manner.

Under these circumstances, the State's ability to properly administer its land assets and to ensure an appropriate and fair return on these assets would be curtailed with limited options. This option is deemed not to be a viable option.

Options 1 and 3 have been eliminated in favour of Option 2, as this option is considered by the department to be the most appropriate and effective means of achieving the policy objectives.

Cost–benefit assessment

The direct and indirect benefits and costs of the preferred option, Option 2—Remake the sections of the Regulation (with appropriate amendments), are outlined in the following sections. These benefits and costs are considered in both qualitative and quantitative terms.

As previously stated, rationalisation of the rental categories will maintain distinctions between the rents charged for different lease types, ensuring that lessees undertaking similar land uses receive the same treatment.

Many rents for leasehold land are calculated as a prescribed percentage of the rental valuation, so large land value increases may result in unpredictable and steep rental increases. This occurs particularly when the land valuation for rental purposes reaches the threshold at which rents are calculated instead of being set at a 'minimum', or when the rental valuation is already at or above the threshold but increases dramatically. The state's booming economic conditions have resulted in most categories experiencing large valuation increases over the past five years. Repeated requests to moderate the effects on rents have been received from lessees across the portfolio, in particular from residential leaseholders in mining towns, commercial leaseholders on the Southport Spit, clubs and charities, and the grazing industry.

Changes made to the *Land Act 1994* in 2007 widened the definition of the valuation for rental purposes on which annual state leasehold rent is based (s.183), foreshadowing the possibility of introducing valuation averaging for leasehold rental purposes. It is proposed to introduce three-year averaging to address lessees' current criticisms about rental 'uncertainty' due to 'unpredictable' increases. Averaging will smooth out the effects of both short-term and long-term fluctuations in land values, and is a well understood and accepted practice already used by the State for land tax assessments and by local governments for determining rates.

Three-year averaging of rental valuations would apply to tenures in all categories (excluding the recommended divestment category where averaging will not apply and agribusiness, where five-year averaging is proposed to apply) with rents assessed by applying the applicable percentage rate for the category to a rental valuation.

To further mitigate the effects of large rent increases on lessees, it is proposed that quarterly billing for annual rents of $2000 or more be introduced.

The proposed legislation will redefine the minimum rent categories to differentiate between private benefit and community benefit uses, with the minimum rent for private benefit uses increased to cost recovery ($370 per annum) over two per-annum increments, and the minimum rent for community benefit uses set at $100 per annum. Further, all minimum rents are proposed to be annually adjusted by the CPI.

The proposed rental arrangements, definitions of categories, applicable rental rates and projected revenue derived per category of use are detailed in Appendix 2.

Likely appreciable costs associated with the proposals to amend the rental provisions of the Regulation are:

Lessees, licencees and permittees

Rents Part 4 Land Regulation

Agribusiness (grazing and agriculture, intensive primary production)

The proposed legislation provides for the merger of categories 1 and 2 into a single agribusiness category, with rents as currently prescribed for Category 1—Grazing and agriculture (i.e. 1.5% of the rental valuation, with a 20% cap on rental increases). Category 1 lessees on calculated rents above the proposed new minimum rent threshold of $370 are largely unaffected by the proposed legislation. They will continue to benefit from previous amendments to the Regulation that provide this group with five-year valuation averaging and a 20% cap on annual rental increases until 2017. The special arrangements for Category 1 leaseholders were implemented in 2007 following extensive negotiation with rural industry stakeholders and recognise the vulnerability of rural lessees to the combined effects of prolonged drought and large valuation increases.

Overall, lessees in existing Category 2 will benefit from the reduced rental rate, the effects of five-year valuation averaging and the 20% cap on annual rent increase to 2017.

Of the 15 135 Category 1 and 2 tenures, projections indicate that 8625 (57%) will be liable to pay the proposed new minimum rent of $370 per annum, representing the cost of administering these tenures. The impact on these lessees will be an increase in annual rent of between $220 and $295 per annum, to be phased in over two years.

Residential leases

Rentals for residential leases will increase from the current subsidised rate of 3% to the market rate of 6% phased in over a 3 year period commencing from the 2008/09 billing period. While these lessees on average pay $17.75 per week in rent at present, it is proposed to moderate the impact of the increase to $25.08 per week through a phased 1% increase each year for three years. The impact on the 3822 lessees in this group will be further mitigated by the introduction of three-year averaging of valuations, and access to quarterly billing for rents of $2000 or greater per annum. Lessees who experience hardship may also access the hardship provisions.

Business (commercial and industrial, public utilities, government-held tenures, tourism)

Under the Regulation, the existing highest rental percentage rate (5%) is intended for business-type land uses. This is significantly less than rates charged for comparable sites in the current, highly competitive rental marketplace. It is proposed to increase the applicable rental rate for Category, 4, 8.1, 8.2, 9.1 and 9.2 tenures to 6% (similar to the long-term bond rate), on the basis that it is offset by the introduction of three-year averaging that will provide the benefit of smoothing large valuation increases. These lessees will also have access to quarterly billing for rents of $2000 or greater per annum.

The proposed small change to the rate for existing Category 4—Commercial and industrial from 5% to 6% will affect 1775 lessees. Some lessees will see a slight overall decrease in total rent, due to the effect of introducing three-year averaging of valuations.

A total of 141 existing Category 8.1—Government-held public utilities lessees, licencees and permittees are proposed to be subject to a significant rental rate increase from 1% to 6%. There is no logical reason to subsidise government utility providers through subsidised rents.

However, three-year averaging of valuations and quarterly billing for rents exceeding $2000 per annum will have some mitigating effect on the size of increases in calculated rents.

A total of 45 existing Category 9.1—Tourism (mainland*)* lessees and permittees are proposed to be subject to a small increase in the applicable rental rate from 5% to 6%. However, with the introduction of three-year

averaging of valuations, existing lessees will see a slight reduction in their rent.

A total of 79 existing Category 9.2—Tourism (island) lessees, licencees and permittees are proposed to be subject to a moderate rental increase from 4% to 6%. Long-term three-year averaging will have a mitigation effect.

Communication sites

In the proposed legislation, rents for telecommunication sites would be set by schedule, according to three subcategories of use: community service use, set at the minimum rent ($100); non-community service use—rural ($10 000 per annum); and non-community service use—urban ($15,000 per annum). For the purposes of the Regulation, an 'urban' telecommunications site is proposed to be defined as any site within a local government area situated within the area covered by the South East Queensland (SEQ) Regional Plan, including Brisbane, the Gold Coast, the Sunshine Coast and Toowoomba. A 'rural' telecommunications site is proposed to be defined as any site situated in any other Queensland local government areas not included in the SEQ Regional Plan area.

The unimproved (rental) valuation method is problematic in the case of communication uses, because the sites have always been difficult to value. This is partly because of a lack of comparable sales evidence, but also because of the difficulty of accurately measuring 'value' with reference to land area. Location is the best indicator of value—i.e. coverage, not size is the major determinant. As a result (because of low or non-existent rental valuations), 88% of these tenures pay only a 'minimum' rent—$2500, $5000, or $100 per annum respectively for narrowband, broadband or community use. Market rents for telecommunication sites are significantly higher, as are rents charged by other government and semi-government agencies ($10 000–$15 000 per annum).

The practice of distinguishing between telecommunication uses on the basis of whether they are broadband or narrowband has also become problematic, partly because exponential growth in the telecommunications industry means that definitions based on technical configuration soon become obsolete. For this reason, it is proposed that telecommunication rents be set by schedule according to purpose and location. Sites leased for community benefit purposes would be distinguished from all other uses, paying a minimum rent of $100. Other rents would be benchmarked

against comparable market rents and annually adjusted by the CPI. It is considered that in the current market, appropriate fixed rents would be $10 000 per annum for rural uses and $15 000 per annum for urban uses. These rates are consistent with market rates and rates charged by other government departments for such sites.

For the remaining lessees, licencees and permittees in existing Category 7—Communication sites (emergency or essential services), the change involves the removal of the 5% rental rate (with a minimum of $100) to a set community benefit rent of $100. Fifty-six tenures will experience a significant drop in rental charges.

Divestment category

The introduction of a new category, Divestment, for land suitable for conversion to freehold, including the current Category 5—Industrial (DSDI) will see rents calculated at 7% of the annual rental valuation for 149 existing tenure holders. The proposed increase from 5% to 7% is conservative, to reduce the impact on affected lessees, but valuation averaging will not be applied to this category. The combination of these changes is likely to provide an effective incentive for lessees to apply to convert to freehold.

Charitable and non-commercial community service organisations and sporting and recreation

The proposed legislation will provide for the merger of categories 6 and 10 into a single charities and clubs category, with two subcategories: one comprising charitable, emergency service and all other sport and recreation uses, with rent set at the community benefit minimum ($100); and another comprising larger clubs (GST-registered, gaming and/or liquor licensed, or with special rental valuation) with rents calculated at 5% of the rental valuation for the clubhouse and amenities, and 1% for the remainder of the land area.

It is proposed that, under the newly revised categories, charitable and emergency service uses (including surf lifesaving) would be merged into a single subcategory with small (non GST-registered) clubs. All tenure holders in this new subcategory would only pay a ‘minimum’ rent of $100. A second subcategory would comprise large (GST-registered) clubs with liquor and gaming licences, including clubs with large playing fields such

as golf clubs. To moderate land value increases for clubs with large playing fields such as golf clubs, rent for the playing fields or greens would remain at a much lower rate than the land on which the clubhouse and associated facilities are situated.

This approach is proposed because rents would decrease for smaller clubs that provide a community service but have a limited capacity to pay, while rents for larger licensed clubs with gaming machines would reflect their commercial turnover (of which GST registration is an effective indicator). A rental percentage rate of 5% (rather than the proposed highest rate of 6%) recognises that the latter group engage in commercial activities to raise revenue to support their primary (community) purpose.

The full benefits of these arrangements will not be available to lessees until 2009, due to operational constraints associated with introducing them all in time for the 2008 billing cycle. Accordingly, as a transitional measure, it is proposed to extend the 20% cap on rental increases for tenure holders in categories 6 and 10 for one further year until the 2009–10 billing run.

A total of 938 lessees, licencees and permittees, in existing Category 6.1—Charitable and non-commercial service organisations, Category 6.2—Charitable concession organisations, Category 10.2—Sporting and recreation (liquor licence, non-gaming) and Category 10.3—Sporting and recreation (non-gaming, non-liquor) will have their rent set at the minimum 'community benefit' level of $100. Total revenue collected for leases in these existing categories are projected to decrease from $784 267 to $85 400 per annum.

Twenty-seven lessees, licencees and permittees in existing Category 10.1—Sporting and recreation (gaming licence), consisting of larger clubs (GST-registered, with gaming and/or liquor licence, and special rental valuation) are proposed to be subject to rents calculated at 5% of the rental valuation for the clubhouse and amenities, and 1% for the remainder of the land area. Large clubs in this category would receive the benefit of three-year averaging and quarterly billing.

Minimum rents, averaging of rental valuations and quarterly billing

The proposed legislation will redefine the minimum rent categories to differentiate between private benefit and community benefit uses, with the minimum rent for private benefit uses increased to cost recovery ($370 per annum) over two per annum increments, and the minimum rent for

community benefit uses set at $100. Further, all minimum rents are proposed to be annually adjusted by the CPI. As stated above, the introduction of three-year averaging of rental valuations for tenures in all categories (excluding the recommended divestment category and agribusiness) that have rents that are assessed by applying the applicable percentage rate for the category to a rental valuation will benefit lessees in all categories to which this applies. While three-year averaging does not apply to the agribusiness category, this category already benefits from five-year averaging of rental valuations. The effect on rents of changes in land valuations will also be mitigated by the introduction of quarterly billing for annual rents of $2000 or more.

Miscellaneous Part 8 and schedule 4 of the Land Regulation—penalty interest on outstanding rent and instalments

Fixing of the prescribed penalty interest rate at 2% above the Suncorp Metway Ltd business variable lending base rate will affect lessees, licencees and permittees who are late with payment of rent and instalments. However, the introduction of quarterly billing might mitigate against lessees owing outstanding rentals. The proposed change will make the Regulation consistent with other similar provisions in the *Water Act 2000* and encourage tenure holders to make payments by the prescribed times.

Effects on government

Rents Part 4 Land Regulation

There are currently 10 prescribed categories of use and an additional eight subcategories, many with different rental percentage rates applied for similar uses. Over time, the distinctions between similar categories have become blurred—most notably between Categories 1 and 2—resulting in the inconsistent application to leases, licences and permits, and a consequent distortion of rental relativities.

The proposed legislation involves rationalising the existing categories (refer Appendix 1) forming the following land use categories, including subcategories, defined as:

- 1—Agribusiness
- 2—Residential (principal place of residence)
- 3—Business and government services (incorporating the existing commercial, industrial, tourism and government-held leases)
- 4—Telecommunications, with subcategories to distinguish between rural uses, urban uses, and community service uses, such as voluntary emergency services
- 5—Charities and clubs, with subcategories to distinguish between benevolent and emergency service users, small to medium-sized (non GST-registered) clubs, and large (GST-registered) clubs with liquor and gaming licences. Special treatment is also proposed for large sports clubs such as golf clubs that have extensive land areas that are put to multiple uses.
- 6—Divestment.

Rationalisation of the rental categories will maintain distinctions between the rents charged for different lease types, while ensuring that lessees undertaking similar land uses receive the same treatment. The subcategories provide the flexibility to address differences within the same general land use activity, e.g. charging for minimum rents for charities, while providing for higher rents being levied against large commercial clubs.

The review of rents also highlighted that the current system includes several incentives for lessees to retain leasehold title even when eligible to convert to freehold. The proposed new divestment category will therefore apply to land in the leasehold portfolio that is providing little or no benefit to the community by retention under leasehold terms. There are costs associated with the state continuing to administer leases that lessees are reluctant to convert to freehold. Land still currently held under leases for industrial (DSDI) uses has been identified as suitable for inclusion in a divestment category. These leases were previously offered as an incentive to the private sector to allow for industrial development. Now that these industrial sites are fully developed, there is no longer any need for the State to continue to monitor their development and to incur the expense of administering the land.

Under the current Regulation, the highest percentage rate of 5% applies to commercial, industrial and mainland tourism leases, some narrowband and broadband communication sites, clubs with gaming machine licences, and

some government-held tenures. The majority of these tenures give predominantly private benefits to the lessee. As 5% is marginally less than the government bond rate of 6%, and significantly less than rates charged for comparable sites in the current (highly competitive) rental marketplace, it is proposed to increase this rate to 6% for these commercial tenures, reducing the amount of government subsidisation of these private benefit uses.

Rents for government-held public utility services are calculated at the low rate of 1% (only 0.5% higher than rents for charities). This rate, which is 4% lower than that levied for other government-held tenures, is inconsistent with the National Competition Policy approach taken to other government-owned businesses and service providers (Subcategory 8.2). Moving the rate for public utility uses into alignment with the rate for other government-held tenures would redress this imbalance.

Different rental percentage rates are also applied to the rental valuations of mainland and island tourism leases. At 4%, the rate for island tourism is 1% lower than that for mainland tourism. This has become problematic, because factors that formed the original argument for adjusting the rate, such as accessibility, higher operating costs, and restrictions on leases, are now taken into account by a special agreement that is in place regarding island valuations. By continuing to provide a discounted rental rate while providing a special valuation, government is addressing these 'special circumstances' twice. This anomaly will be removed if island tourism uses are aligned with mainland tourism rental rates.

Changes made to the *Land Act 1994* in 2007 widened the definition of the valuation for rental purposes on which annual state leasehold rent is based (s.183), foreshadowing the possibility of introducing valuation averaging for leasehold rental purposes. It is proposed to introduce three-year averaging to address lessees' current criticisms about rental 'uncertainty' due to 'unpredictable' increases. Averaging will smooth out the effects of both short- and long-term fluctuations in land values, and is a well understood and accepted practice already used by the state for land tax assessments and by local governments for determining rates.

Three-year averaging of rental valuations would apply to tenures in all categories (excluding the recommended divestment category and agribusiness, where five-year averaging is proposed to apply) that have rents that are assessed by applying the applicable percentage rate for the category to a rental valuation. The effect on State revenue of three-year

averaging will be to lower the amount of rental revenue that would be collected if a calculated rent was instead applied to the current valuation.

The proposed legislation will redefine the minimum rent categories to differentiate between private benefit and community benefit uses, with the minimum rent for private benefit uses increased to cost recovery ($370 per annum) over two per annum increments, and the minimum rent for community benefit uses set at $100 per annum. Further, all minimum rents are proposed to be annually adjusted by the CPI.

Current minimum rental amounts vary according to land use and tenure type. They were introduced in 1995 to cover the cost of administration, but were not indexed or subsequently reviewed. The rationale behind how each amount was determined and why it continues to apply now has become increasingly obscure, making these varying 'minimum' rent levels difficult for the State to justify.

The Department of Natural Resources and Water (NRW) assessed its administration costs at $370 per lease in 2007, so the existing (1995) 'minimum' rents are no longer indicative of that cost. With the exception of minimum rents currently applicable to telecommunications sites, the majority of minimum rents are either $75 or $150. Had the CPI been applied to these minimum rents since their introduction, they would have risen to $106 and $212 respectively, still well below the cost of administration ($370).

Rental revenue is drawn from three 'streams'—set rents, calculated rents and minimum rents. Of these, only calculated rents are affected by percentage rates, land values and averaging. The level at which the minimum rent is prescribed has a noticeable effect on overall revenue levels. It determines the number of tenures affected because of concomitant movements in the unimproved value threshold—that is, the land value at which a 'minimum' is no longer applied and the rent is calculated as a percentage of the rental valuation instead.

The estimated total revenue to the Queensland Government for calculated, set, pre-determined and whole-of-term rents for existing rental categories in 2007-08 was $57.4 million. Under the proposed changes, additional revenue of $9.7 million would have been generated if they had been applied in 2007–08. Telecommunications rents account for more than 60% of the overall increase. Many of the other proposed changes have only a minor effect on State revenue, except for valuation averaging. For example, if the proposed changes were to be introduced without the offsetting effect

caused by averaging, revenue would have increased by $15.5 million. Therefore, valuation averaging has an offsetting effect of $5.8 million.

This projected increase in revenue will stem mainly from the proposed rental rate increases affecting existing Categories 7.1 & 7.2—Telecommunications, with smaller increases from Category 3—Residential, Category 8—Government-held tenures, Category 9—Tourism and Category 5—Industrial (DSDI). However, the proposed legislation is projected to result in decreased rental revenue to the State for Category 4—Commercial and industrial, Category 6—Charitable and non-commercial service organisations, Category 7.3—Communications sites (emergency or essential services) and Categories 10.2 and 10.3—Sporting and recreation (small clubs, most without gaming or liquor licences).

Schedule 6 Land Regulation—fees

It is proposed that the existing two-tier application fee structure (adjusted annually by the CPI) be applied to application types not on the basis of whether the land is rural or urban, but on the basis of whether the dealing involves the allocation of land, which is more resource intensive for NRW, or changing or amending an existing interest, which is much less resource intensive. A fee of $197.20 would apply to an allocation of land and a fee of $98.60 to changing or amending an existing interest in land. These fees are adjusted annually by the CPI. This fee structure complements the recent legislative amendments to the *Land Act 1994* and would cover the 26 private benefit application types made under the *Land Act 1994*. The application of a two-tier application fee structure will simplify administration of applications for the State, but will have a largely neutral effect on revenue.

By setting the application fee for applications for the allocation of an interest in State land at $197.20, some applications will increase. Also, setting a fee of $98.60 for a further dealing with an existing interest in land will see some applicants being charged a fee that did not previously exist. However, applying for a further dealing in land is not something that tenure holders do on a regular basis. When compared with the fee for allocating an interest in land, there is no compelling argument as to why a fee shouldn't be charged for further dealing with an existing interest in land.

Miscellaneous Part 8 and schedule 4 of the Land Regulation—penalty interest on outstanding rent and instalments

The proposed legislation will fix the prescribed penalty interest rate at 2% above the Suncorp Metway Ltd business variable lending base rate. The present prescribed penalty interest rate of 8.5% for late payment of rent has not been changed since it was introduced in 1995. It is substantially less than the rate prescribed under the Water Regulation 2002, which is set at 2% above the Suncorp Metway Ltd business variable lending base rate. It is considered appropriate to align the Land Regulation rate with that prescribed in the Water Regulation, to provide a more effective incentive for rents to be paid when due. Linking penalty interest to market movements rather than setting a rate also allows the rate to remain current to economic circumstances without the need for regular ministerial review. It is proposed that the penalty rate is identified on an annual basis and that the penalty interest compounds monthly.

Fundamental legislative principles (FLPs)

The *Legislative Standards Act 1992* requires that legislation has sufficient regard to rights and liberties of individuals and the institutions of parliament.

The remaking of the Regulation will be consistent with fundamental legislative principles.

Conclusion

The amendments to the existing Regulation are needed to continue to provide the necessary machinery to allow for contemporary and effective administration of the *Land Act 1994*.

Appendix 1—Existing rental arrangements

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Category	Sub category	Description	Rate (%)	Minimum Rent ($)	Total no. of tenures	No of tenures (by type)			Revenue ($)
						Permits (PO)	Licences (RL)(OL)	Leases (TL)(GHPL)(NCL)(PH)(SL)(PPL)	
1		Grazing and agriculture	1.5	75/150	12 147	2 456	2 144	7 547	11 859 200
2		Intensive (non-broadhectare) primary production	3.0	75/150	2 988	318	2 317	353	742 461
3	1	Residential and rural residential	3.0	75/150	2 800	307	43	2 450	2 954 562
	2	Private (non-commercial) uses	3.0	75/150	1 022	684	254	84	575 122
4		Commercial and industrial	5.0	100	1 775	500	134	1 141	20 091 261
5		Industrial (DSDI)	5.0	75/150	149	1	0	148	10 108 270
6	1	Charitable and non-commercial service organisations	0.5	75	362	35	8	319	212 174
	2	Charitable concession organisations	Set	75	98	7	2	89	42 231
7	1	Communication sites (narrowband)	5.0	2500	454	14	1	439	1 303 013
	2	Communication sites (broadband)	5.0	5000	206	10	0	196	1 147 925
	3	Communication sites (emergency or essential services)	5.0	100	56	3	0	53	30 770
8	1	Public utilities	1.0	75/150	141	62	7	72	169 790
	2	Government-held tenures	5.0	75/150	265	42	10	213	425 462
9	1	Tourism (mainland)	5.0	75/150	45	13	0	32	3 950 900
	2	Tourism (island)	4.0	75/150	79	14	2	63	2 078 211
10	1	Sporting and recreation (gaming licence)	5.0	75/150	27	2	2	23	932 509
	2	Sporting and recreation (liquor licence, but non-gaming)	3.0	75/150	56	5	1	50	168 941
	3	Sporting and recreation (non-gaming, non-liquor)	1.0	75	338	72	12	254	360 921
	4	*Sporting and recreation*	*Set*	*75*	*84*	*6*	*0*	*78*	*245 487*

Appendix 2—Projected rental revenue

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Existing category	Existing sub category	Existing category description	Proposed category	Proposed rate (%)	Proposed minimum rent ($)	Total no. of tenures	Current revenue 2007–08 $	Projected revenue (full phase-in 2009–10) $
1		Grazing and agriculture	1—Agribusiness	1.5	370	12 147	11 859 200	12 787 063
2		Intensive (non-broadhectare) primary production	1—Agribusiness	1.5	370	2 988	742 461	1 155 710
3	1	Residential and rural residential	2—Residential	6.0	370	2 800	2 954 562	4 059 443
	2	Private (non-commercial) uses	2—Residential	6.0	370	1 022	575 122	925 730
4		Commercial and industrial	3—Business and government services	6.0	370	1 775	20 091 261	19 248 139
5		Industrial (DSDI)	6—Divestment	7.0	370	149	10 108 000	14 149 446
6	1	Charitable and non-commercial service organisations	5—Charities and clubs	Set $100	n/a	362	212 174	35 600
	2	Charitable concession organisations	5—Charities and clubs	Set $100	n/a	98	42 231	42 281
7	1	Communication sites (narrowband)	4—Telecommunications	Set $10,000 (Rural)* Set $15,000 (Urban)*	n/a	454	1 303 013	5 140 000
	2	Communication sites (broadband)	4—Telecommunications		n/a	206	1 147 925	2 190 000
	3	Communication sites (emergency or essential services)	4—Telecommunications	Set $100	n/a	56	31 130	31 130
8	1	Public utilities	3—Business and government services	6.0	370	141	167 740	761 401
	2	Government-held tenures	3—Business and government services	6.0	370	265	425 462	467 663
9	1	Tourism (mainland)	3—Business and government services	6.0	370	45	3 950 900	3 627 317
	2	Tourism (island)	3—Business and government services	6.0	370	79	2 078 211	2 702 410
10	1	Sporting and recreation (gaming licence)	5—Charities and clubs	5.0	370	27	932 509	832 765
	2	Sporting and recreation (liquor licence, but no gaming)	5—Charities and clubs	Set $100	n/a	56	168 941	5 975
	3	Sporting and recreation (non-gaming, non-liquor)	5—Charities and clubs	Set $100	n/a	338	360 921	281 487
	4	*Sporting & Recreation (other)*	*5 – Charities & clubs*	*5.0*	*370*	*84*	*245,487*	*245,487*

* includes tenures currently in existing categories 7.1 and 7.2

ENDNOTES

1 Laid before the Legislative Assembly on . . .

2 The administering agency is the Department of Environment and Resource Management.