

Eligibility to Hold Land PUX/901/324 Version 2

SLM/901/324 – Version 2

Endorsed 24/12/2007
by Scott Spencer, Director-General, Director-General's office

Table of Contents

<i>Version history</i>	1
<i>Purpose / Scope</i>	2
<i>Rationale</i>	3
<i>Policy</i>	4
<i>Legislation</i>	7

Version history

Version	Date	Comment
1	24/12/1997	Endorsed
1.1	01/07/2005	Conversion Project - New WORD/XML template
2	02/01/2008	Updated to reflect Land Act amendments
2.1	14/10/2008	Updated to include additional missing text
2.2	14/07/2010	Updated to include Land Regulation 2009 amendments

Purpose | Scope

This policy provides guidance on eligibility to acquire and hold land under the *Land Act 1994* (Land Act).

This policy does not address eligibility for

- a trustee of trust land - please refer to Creation of Trust Land Policy PUX/901/207 <http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100444&topic_id=11> ; and
- a public utility provider for a public utility easement - see Easement Policy PUX/901/527 <http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100456&topic_id=11>

The Land Act is administered subject to the object of that Act; section 4.

Further, under Chapter 4 Land Holdings Part A, a person is eligible to apply for, buy or hold land under the Land Act only if the person is an adult. (i.e. a person 18 years and older) - see section 142 of that Act.

The Land Act also has corporation and aggregation restrictions for perpetual leases issued for grazing or agriculture purposes; grazing homestead perpetual leases; and grazing homestead freeholding leases; and subleases of these leases - sections 144 to 152 of the Land Act.

A lease, licence or sublease may only be transferred to a person who is eligible to hold the lease, licence or sublease - see section 322 of the Land Act.

A further restriction is a covenant on a freeholded lease in excess of 2500 hectares under section 174 of the Land Act (and section 147A of the repealed *Land Act 1962*).

Under section 143 of the Land Act, an officer of the Department administering the *Land Act 1994* is only eligible to acquire land under part 1 (i.e. Chapter 4 Land holdings Part 1 Making land available of the Land Act) with the Minister's approval.

Rationale

APPROPRIATE PERSONS TO HOLD LAND

The object of the Land Act includes

1. allocation of land to persons who will facilitate its most appropriate use that supports the economic, social and physical wellbeing of the people of Queensland; and
2. a market approach in land dealings, adjusted when appropriate for community benefits arising from the dealing

Accordingly, a person should be appropriate to acquire or hold land.

ASSOCIATIONS

Land under the Land Act may only be held by a person.

A person includes an incorporated body, whereas an unincorporated Association is not a person.

CORPORATION RESTRICTIONS

Under the corporation restrictions (sections 149 and 150 of the Land Act), a person as trustee for a

1. family arrangement or
2. partnership or corporation consisting of persons who are lessees of the lease and who rank equally to share in the profits of the trust, partnership or corporation in the same proportions as they hold the lease

may hold a perpetual lease issued for grazing or agriculture purposes; a grazing homestead perpetual leases; or grazing homestead freeholding lease; or a sublease of these leases.

SECTION 174 COVENANT

Although a recommendation is not made to the Governor in Council for a transfer of land subject to a covenant under section 174, or for removal of the covenant, guidelines are required as to the information to be submitted for the consideration of the Governor in Council.

OFFICERS OF THE DEPARTMENT ADMINISTERING THE LAND ACT 1994

If an officer has involvement in setting the reserve price or reserve cash premium; or in the process for the sale or lease of unallocated State land, a potential or apparent conflict of interest could occur.

"Involvement" would be defined as circumstances where the official duties of any officer of the Department administering the *Land Act 1994* had direct influence on the reserve price or reserve cash premium, or the sale or lease process.

Policy

APPROPRIATE PERSONS TO HOLD LAND

In addition to the specific provisions of eligibility, a person should also be appropriate to acquire or hold land under the Land Act, particularly for the purpose for which the land is used, Some community benefit may have also been afforded to the person.

Examples of a person who would be appropriate to acquire or hold land, whether through allocation (grant) or transfer, include

- a lease for telecommunication purposes to provide for a commercial telecommunications network should be held by a carrier e.g. Telstra, Optus, or a person authorised to undertake property management for the telecommunications carrier e.g. Crown Castle - a carrier needs to be licensed under Commonwealth legislation to provide these services; or
- a lease to a sporting club or charity should be held by the particular club or charity - such leases should not be held by an individual, or another body, as the leases have been issued for the specific use and benefit of the club or charity who may also be afforded the community benefits of the "concessional" rent provisions of the Land Act and the *Land Regulation 2009* for sporting and charitable organisations; or
- an Aboriginal person or the Department of Housing would be suitable to hold a trustee lease for housing on a deed of grant in trust for the benefit of Aboriginal inhabitants.

ASSOCIATIONS

An association which desires to hold a lease, licence or permit to occupy, or a sublease, trustee lease or other secondary interest in land, e.g. an easement, must be incorporated. A certified copy of the Certificate of Incorporation must be lodged with the Department administering the *Land Act 1994*.

CORPORATION RESTRICTIONS

Although a person includes a corporation, section 145 provides that only individuals may hold perpetual leases issued for grazing or agriculture purposes; grazing homestead perpetual leases; and grazing homestead freeholding leases; and subleases of these leases.

Therefore a corporation (as trustee or otherwise) **cannot** hold the above leases, or sublease of these leases.

Further, a person cannot hold land on trust for themselves i.e. A as trustee for A.

However, A and B may hold as trustee for A and B i.e. A is trustee for A and B (together) and B is trustee for A and B (together).

Trustees hold as joint tenants under the *Trusts Act 1973*, and generally only up to four may act as trustee.

In relation to section 149(2)(b) the following may assist in explaining the provision -

If A and B (**individuals only, not a corporation as per section 145**) as trustee holds for

- AB Family Trust, A and B must be the only beneficiaries receiving equal (half and half) benefit
- A and B as a partnership, A and B again must have equal (half and half) interests. As a partnership agreement is not able to be registered in the land registry, the Department administering the *Land Act 1994* will need to be satisfied that A and B are holding as a partnership and in equal interests.
- AB Pty Ltd, A and B must have equal (half and half) shares in the company.

Similarly, A, B and C as trustee must share in a third and A, B, C and D in a quarter in the above examples.

Regarding a family arrangement (re sections 149(2)(a) and 150,

- **only** an individual (not a corporation) may hold as trustee for another person, partnership or corporation, and
- the other person, partners, shareholders, beneficiaries or potential beneficiaries are only the person, the person's spouse, and their immediate descendants (not "upwards" eg grandparents or "sideways" eg uncle), and the children, grandchildren or like descendants must be under 18 at the time when the trust is created.

The corporation restrictions though do not apply

1. to the State or a State instrumentality (section 152 of the Land Act); or
2. if a person or trustee (including a corporation) is
 - a. the trustee or personal representative of a deceased lessee; or
 - b. the trustee of a bankrupt lessee; or
 - c. an administrator under the Guardianship and Administration Act 2000 for a lessee; or
 - d. the public trustee under the authority of an Act - see section 151.

SECTION 174 COVENANT

An application for a transfer to a corporation of freeholded land from a perpetual lease for agricultural or grazing purposes, or a grazing homestead freeholding lease subject to a covenant under section 174 (or section 147A of the repealed *Land Act 1962*) will need to include the following

- A copy of a Company Search and
- A copy of the Contract of Sale and
- A statutory declaration by a director of the purchasing company setting out:
 1. property description
 2. previous Tenure Prior to freehold
 3. full name of the purchasing company
 4. company's registered office
 5. where company is incorporated
 6. the directors of the company and addresses
 7. shareholders of the company
 8. number of shares issued
 9. whether the directors and shareholders are Australian citizens, if not what is your nationality
 10. proposed interest of the Company in the property
 11. whether the company holds any other freehold or leasehold land in Queensland.
 12. total area proposed to be held after the acquisition
 13. why the company seeks to acquire the land
 14. details of any change in land usage since it was leasehold

An application for removal of the covenant will only be considered if the freeholded land is now less than 2500 hectares (following a reconfiguration of the lot), or there is a significant change in land use e.g. from grazing to coal mining.

OFFICERS OF THE DEPARTMENT ADMINISTERING THE LAND ACT 1994

Approval for an officer to acquire land may be given (by another officer with the required delegation) except where the officer

- has/had responsibility for the setting of conditions of sale, auction, or lease or otherwise for disposal of the subject land; and
- is/was in a position of influence over the outcome of the process of disposal; or
- otherwise breaches the Code of Conduct of the Department administering the *Land Act 1994* in relation to the disposal.

Legislation

Land Act 1994, particularly section 4, the object of that Act, and sections 142 to 151 regarding eligibility to hold land.

Land Regulation 2009

Public Sector Ethics Act 1994