

Assessment of an Individual's Land Holding Notification No. PUX/952/044 Version 4

SLM/2006/2801 – Version 4

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Version history

Version	Date	Comment
3	27/08/2004	Endorsed
3.1	06/09/2006	Conversion Project - New WORD/XML template
4	21/11/2008	Updated and reviewed
4.1	04/02/2009	Amended status of Notification from "NRW only" to "Public access"
4.2	09/02/2011	Updated to DERM

Rationale

In accordance with section 145 of the *Land Act 1994* (Land Act), only an individual (not a corporation) may hold (as specified under section 144 of the Land Act)

- perpetual leases issued for grazing or agricultural purposes;
- grazing homestead perpetual leases;
- grazing homestead freeholding leases; and
- subleases of the above leases.

An individual also is not able to hold one of the above leases and/or subleases on trust unless section 149(2) of the Land Act applies - also see Policy Eligibility to Hold Land PUX/901/324
<http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100464&topic_id=19> .

Further, there are aggregation restrictions on the area of land an individual is able to hold for these leases and/or under sublease of these leases. Sections 146 and 147 of the Land Act refer.

Section 146 states that

- an individual is not eligible to hold 2 or more leases/subleases as listed above at the same time if the aggregation would be substantially more than 2 living areas.
- however, land given to an individual as a beneficiary under the estate of a deceased lessee is not included in calculating an aggregation.

Section 147 provides for the calculation of a person's interest and includes

1. the trustee of a family arrangement is taken to be the lessee/sublessee; and
2. each beneficiary of a family arrangement is also taken to be the lessee/sublessee of a living area in proportion to their interest in the arrangement.

Section 150 of the Land Act gives the meaning of a family arrangement.

If an individual acquires more land than permitted under the Land Act, the lease acquired in excess of the eligible holding, may be forfeited - section 148 of the Land Act.

Procedure

With respect to the tenure types specified in Section 144 of the Land Act above, the aggregation restrictions need to be assessed when considering applications for:

- Minister's approval to the transfer of a lease or sublease (section 322 of the Land Act);
- Minister's approval to sublease a lease (section 332 of the Land Act) - note that a sublease includes a sub-sublease; or
- an additional area (section 132 of the Land Act).

Information on an individual's land holdings as either lessee, trustee of a family arrangement, beneficiary of a family arrangement or sublessee of a sublease are recorded in the Leasehold Land Register within ATS.

ATS provides for "on-line" name searches for interests in land of an individual who is a registered owner (lessee) of a lease.

To obtain details of the sublease or family arrangement interests of an individual to whom the aggregation restrictions might apply, a request needs to be made via e-mail to ATS Support to arrange a specific query of the ATS database.

When assessing an application for one of the above Land Act dealings to determine the interests in land held by an individual for the purpose of identifying possible aggregation restrictions which may affect an individual's ability to hold land under a lease or a sublease of the leases specified in section 144 of the Land Act, the following title searches are to be performed:

- i. Use Current Registered Proprietors name search facility within ATS to identify any leases in which the individual (including trustee of a family arrangement or trustee for a partnership or corporation under section 149(2)(b) of the Land Act) has an interest as a registered lessee; and
- ii. Request ATS Support to perform a search of ATS to determine whether the individual holds any interest in a sublease/sub-sublease over the whole or part of one or more leases; and
- iii. Request ATS Support to perform a search of ATS to determine whether the individual holds any interest as a beneficiary of a family arrangement in one or more leases/subleases/sub-subleases.

Responsibilities

Implementation by all operational staff dealing with:

- Minister's approval to the transfer of a lease or sublease;
- Minister's approval to sublease a lease;
- Additional area actions; or
- forfeiture action due to excess holdings

Definitions

ATS - Automated Titles System

Legislation

Sections 132 - 134, 142 - 152, 322 and 332 of the *Land Act 1994*