

1999

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**LAND (PLANNING AND ENVIRONMENT) (AMENDMENT)
BILL (NO 3) 1999**

EXPLANATORY MEMORANDUM

**Circulated by authority of
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Minister for Urban Services**

Land (Planning and Environment) (Amendment) Bill (No 3) 1999

Outline

This is an amending Bill. It amends the *Land (Planning and Environment) Act 1991* (the Land Act). The amendments implement elements of the Government Response to the Rural Policy Taskforce Report "*Toward a Sustainable Future*", which was released in December 1997.

The amending Bill gives effect to three key elements of the Government Response to the 30 recommendations that were made by the Taskforce. The first element of the legislative amendments makes it possible for some rural lessees to pay out their land rent. This option will be available to rural lessees in the 99 year lease term area, as specified by the Rural Lease Term Map, and in accordance with any disallowable instrument made under section 171A. Amendments to section 171A of the Land Act, in accordance with the Government Response, include a restriction on the availability of this option to a period of 18 months from the commencement of these amendments.

The amending Bill also makes some minor adjustments to section 171A of the Land Act, providing flexibility for the setting of fees for the grant of a further rural lease, and the terminology contained in lease purpose clauses.

The second element is the restriction on transfer of rural leases in certain circumstances. New sections in the Land Act will place conditions on the transfer, assignment, subletting or parting with possession of all or part of a rural lease. The consent of the Executive must be sought for any of these actions on the lease. The Executive may consent if the transfer, assignment, subletting or parting with possession is to a child or partner of the lessee, and in all other circumstances, may consent once a discharge amount has been paid in accordance with the specified formula.

The third element is the requirement for rural lessees to have an approved land management agreement. The agreement is designed to ensure there is a clear understanding of the sustainable management required for a lease, recognising that each lease has its own special characteristics. Where a rural lessee fails to manage in accordance with an approved agreement, they are subject to the orders regime under Part VI of the Land Act.

Revenue/Cost Implications

The Bill has no revenue or cost implications. However, amendments to Schedule 5 of the Land Act adds a penalty for failure to manage a rural lease in accordance with an approved land management agreement.

CLAUSE NOTES

Formal Clauses

Clauses 1, 2, and 3 are formal clauses that deal with the short title of the Bill, its commencement, and identifies the *Land (Planning and Environment) Act 1991* (the Land Act) as the Act being amended.

Interpretation

Clause 4 amends section 4 of the Land Act to include the definition “land management agreement” as an agreement that is required under section 186B. The definition also covers any variation of the land management agreement.

Insertion

Clause 5 inserts into Part 5 of Division 2, a new section 160A, to make the operation of the Division subject to new provisions relating to restrictions on rural leases.

Grant of further rural leases

Clause 6 amends section 171A of the Land Act to remove the words “for the same purposes”. This will enable the grant of a further rural lease with a “modernised” purpose clause, while still restricting the range of purposes to rural/agricultural activity on the same scale as the existing purpose clause. Paragraph (1)(c) is omitted and substituted with two new paragraphs (1)(c) and (1)(ca), that require the lessee to pay all rent due under the existing lease, and pay the determined fee. The current provision requires the fees to be set in the disallowable instrument, which is impractical given that fees are subject to constant change. This amendment enables the fee to be determined using the powers of the Minister to set fees under section 287 of the Land Act, which avoids the need to amend the disallowable instrument every time the fee changes.

A new subsection (2A) allows for a determination under subsection (2), which is a disallowable instrument, to include a condition that requires a lessee to pay an amount of money stated or calculated in accordance with the determination. This is required because the amount payable for the land and any improvements are part of the grant of further lease process.

New subsections (2B), (2C) and (2D) place a time limit on the rights of rural lessees to pay out their land rent commitments, where that requirement is specified in a determination under subsection 171A(2) of the Land Act. Rural lessees are currently unable to pay out their land rent commitments. The determination will require lessees who are in the 99 year lease term areas specified in the Rural Lease Term Map, and apply for a grant of a further lease, to pay out their land rent and purchase any Territory owned improvements. The formulae that specify how the amounts are calculated will be contained in the determination under subsection 171A(2).

Subsection (2B) specifies that the right to reduce the rent payable to a nominal rent in accordance with a determination, lapses 18 months after the subsection commences. Subsection (2C) applies the provisions in subsection (2B) to any determination made before or within 18 months after, the commencement of the subsection. Subsection (2D) ceases the operation of subsections (2B) and (2C) 18 months after their commencement.

Insertion

Clause 7 inserts into Part 5 of Division 3, a new section 183A, to make the operation of the Division subject to new provisions relating to restrictions on rural leases.

Insertion

Clause 8 inserts a new Division 3AA – Restrictions on Rural Leases into Part 5 of the Land Act.

186B Definitions

Section 186B defines the words *dealing*, *discharge amount*, *holding period*, *long lease*, and *short lease* where the words are used in Division 3AA – Restrictions on rural leases.

Section 186C Land management agreements

This section requires the lessee or proposed lessee (the relevant person) of a rural lease to enter into a land management agreement with the Territory. The Executive may only grant a rural lease, grant a further rural lease or vary a rural lease if the lessee or proposed lessee has entered into a land management agreement with the Territory. This condition also applies for Executive consent to the assignment or transfer of a rural lease.

The agreement must be in a form approved by the Minister and be signed by the relevant person and the Minister. The Minister may authorise someone else to sign the agreements. The new section also provides for an agreement to contain a provision that allows for its variation by means other than agreement with the relevant person. This allows for the agreement to be varied by the Minister even if the agreement is not reached on the variation. This is required to enable the Minister to take account of the circumstances where a variation to the agreement might be required as a result of new information, which impacts on the management requirements for the lease.

Section 186D Dealings with rural leases

This section applies to any rural lease that is granted under section 161 or 171A during the 18 month period referred to in the amendment to section 171A of the Land Act (Clause 6).

This new section stipulates that a lessee of a rural lease cannot assign, transfer, sublet, or part with possession of any of the land contained in the lease (which is defined as *dealing* in Section 186B), without the written consent of the Executive. This restriction applies for a *holding period*, which is defined in Section 186B as a period of ten years for a *long lease* (a lease term of at least 21 years), or one-third of the term of a *short lease* (a lease term of less than 21 years).

The Executive must consent to a dealing within the *holding period* if the dealing is to a partner or child, or if the *discharge* amount has been paid. *Child* and *partner* are defined in subsection (6). A *child* is a son or daughter or the lessee or the lessee's partner. *Partner* is the lessee's spouse or a person with whom the lessee has a de facto relationship. *De facto relationship* is defined as a relationship between two people of the same or different sex, who live in a relationship like the relationship between a married couple. Any dealing with a lease within the *holding period* that does not have the Executive's consent is not valid, unless the Executive, through its own error, has not made the restriction known before the dealing takes place.

Section 186E Discharge amount

Where a *dealing* under section 186D is not to a *partner* or *child*, then a *discharge amount* is required to be paid. The *discharge amount* is to be determined in accordance with the formula specified in this section.

The discharge amount formula is:

$$((\text{last amount} - (\text{first amount} \times \frac{\text{later index number}}{\text{earlier index number}})) \times 50\%) + \text{owed amount}$$

last amount is the sale price of the lease excluding any amount attributed to lessee owned improvements. If the sale price is considered to be less than market value, or the dealing is only for part of the land in the lease, then the **last amount** is the market value excluding any amount attributed to lessee owned improvements.

first amount. If the lease is a nominal rent lease, then the **first amount** is the amount that was paid for the lease when it was granted under section 161 or 171A. If the lease is a short lease then the **first amount** is the value of the lease that was determined when it was granted under section 161 or 171A. If the lease has a 30 year payment arrangement for the amount determined for the lease when the lease was granted under section 161 or 171A, then the **first amount** is any amount paid at the time the lease was granted, plus any amount that is to be paid under the lease. In all cases, the **first amount** does not include any amount that is attributed to lessee owned improvements.

index number is the All Groups Consumer Price Index (CPI), which is the weighted average of the eight capital cities as published by the Australian Statistician.

later index number is the last index number that was issued before the **last amount** is calculated.

earlier index number is last index number that was issued before the lease was granted under section 161 or 171A.

owed amount is any amount of the **first amount** value that has not been paid plus any unpaid amount for lessee owned improvements that were required to be purchased at the time of the grant of the further lease. For a *long lease* the amount is the amount to be paid as required in the lease. For a *short lease* the amount is any rent and additional rent payable under the lease.

The *discharge amount* is 50% of the difference between **last amount**, less **first amount** multiplied by the calculated CPI, plus any owed amount.

Section 186F No subdivision or consolidation

This section stipulates that the Executive does not have the power to consent to the consolidation or subdivision of a lease that is subject to section 186D, during the *holding period*.

Insertion

Clause 9 inserts a new section 187A into Part 5 Division 3A, to make the operation of the Division subject to new provisions relating to restrictions on rural leases.

Application to undertake development

Clause 10 inserts a new subsection (1A) into section 226 of the Land Act. The new subsection specifies that a person cannot apply to vary their rural lease to consolidate or subdivide, if the lease is subject to section 186D and the lease is within the *holding period*.

Application for Order

Clause 11 amends section 256 of the Land Act to include the failure to manage a rural lease in accordance with a relevant land management agreement as an activity for which a person may apply for an order. The failure to comply with an existing order can also be subject to an application for an order. This enables the Minister to consider the application, and if warranted make an order against the lessee to commence work or stop a particular activity to comply with the terms of the land management agreement. Failure to comply with an order under section 256, is an offence under section 255 of the Land Act.

Schedule 5

Clause 12 amends Schedule 5 of the Land Act to include a penalty provision where a lessee fails to manage their lease in accordance with a relevant land management agreement. The penalty for failing to comply is 50 penalty units.