

Information Sheet

Model Lease Agreement for Dairy Property



What do the Lease Clauses Mean?

The Date of the Lease

The date of the Lease must be written in **Item 1** of **Schedule 1**.

The date of the Lease may be different from the commencement date.

The commencement date must be written in **Item 6** of **Schedule 1**.

The Lessor

The Lessor is the person who owns the land.

The name of the Lessor and ABN must be written in **Item 2** of **Schedule 1**.

Contact details including telephone numbers/address/fax number and email address should also be written in **Item 2** of **Schedule 1**.

Each party has an obligation to make sure the other party has their current address.

The Lessee

The Lessee is the person who is leasing the land from the Lessor.

The name of the Lessee and ABN must be written in **Item 3** of **Schedule 1**.

Contact details including telephone numbers/address/fax number and email address should also be written in **Item 3** of **Schedule 1**.

Each party has an obligation to make sure the other party has their current address.

The Guarantor

If the Lessee is a company the names of the directors and their contact details should be written in **Item 3(a)** of **Schedule 1**.

This is important because **Clause 15** specifies that the directors of the Lessee company agree to be liable for the rental payments and other obligations under the lease.

Each party has an obligation to make sure the other party has their current address.

The Recitals.

Clauses A and B explain the background to the Agreement.

Clause 1 - Interpretation

This clause provides specific definitions of terms as they apply in the Lease.

Note that all of the definitions require further detail to be written into the Schedules at the end of the Lease.

Clause 2 – Lease

This clause states that the terms and conditions in the lease document apply to the lease of the property.

See also **Clause 30** which states that the Lease contains everything that the parties have agreed about.

Previous negotiations or correspondence are not a part of the Lease.

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It is therefore important that everything that you want to be included in the Lease is written in the Schedules.

Clause 3 – Commencement date.

The commencement date must be written in **Item 6 of Schedule 1**.

Note that the commencement date may be different to the date of the Lease.

Clause 4 – The Term

This clause states the number of weeks, months or years of the Lease and when the Lease ends.

The termination date must be written in **Item 7 of Schedule 1**.

Clause 5 – Exclusions

This clause provides for land buildings, structures, fixtures, assets and improvements to be specifically excluded from the Lease if the parties agree.

Any exclusions must be written in **Item 5 of Schedule 1**.

Clauses 6 & 7 – The Rental

The rental must be determined before the Lease is entered into and written in **Item 10 of Schedule 1**.

The time and manner of payment (eg deduction from the milk cheque) of the rental must be written in **Item 11 of Schedule 1**.

Clause 7 also provides for review and adjustment of the rental at times agreed to by the parties. This must be agreed before the Lease is entered into.

Item 12 of Schedule 1 provides for the parties to agree on a process for the review and adjustment of rental.

Item 13 of Schedule 1 provides the date for the review of the rental.

Clauses 8 & 9 - Condition and maintenance of the Property

These clauses require the parties to agree upon the condition of the land, buildings, structures, fixtures, assets and improvements and their maintenance before the Lease is entered into.

A good record along with clear photographs can prevent disputes down the track.

As assessment should be made of all land, buildings, structures, fixtures, assets and improvements and comprehensive details should be written in **Schedules 4 and 5**.

The Major Asset Register (See the **Checklist for arranging a lease for dairy property: Tool C**) should also be included.

Clauses 10, 11 & 12 – Insurance and Indemnity

These clauses require the Lessor and the Lessee to insure their own interests in the Lease as well as insuring for public risk.

The Lessee's policy should note the interest of the Lessor in the policy.

The amount of public risk insurance must be entered at **Item 14 of Schedule 1**.

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Note that **Clause 12** requires the parties to provide evidence to each other that the insurances have been taken out.

Clause 13 - Lessor's Obligations

This clause specifies the Lessor's obligations which apply generally to the Lease.

'Quiet enjoyment' means that the Lessor will allow the Lessee to get on with running the farm without disturbance by the Lessor except in particular circumstances which are detailed in **Clause 16**.

Responsibility to pay local authority and water rates must be decided before the Lease is entered into and the person responsible written in **Items 8 and 9** of **Schedule 1**.

Clause 14 – Lessee's Obligations

This clause specifies the Lessee's obligations which apply generally to the Lease.

Clause 15 – Guarantee

This clause provides that if the Lessee is a company, the directors agree to be liable for the rental payments and to ensure that the Lessee meets the other obligations under the lease.

Clauses 16 & 17 – Entry by the Lessor

These clauses specify particular circumstances when the Lessor is permitted to come onto the leased land to inspect the property or carry out repairs.

The Lessor must give the Lessee notice in writing 2 days before coming onto the land unless there is an emergency.

These clauses permit the Lessor to notify to Lessee in writing if repairs are necessary.

The Major Asset Register (See the **Checklist - Leasing Farm Tool C**) will be a useful tool in such circumstances.

Clause 18 – Termination by the Lessee

This clause provides for termination by the Lessee before the end of the Lease.

This can only occur in the particular circumstances laid down in this clause.

Note that the Lessee has to give the Lessor 30 days to rectify any breach.

If the breach is rectified within this timeframe then the Lessee cannot proceed to terminate the lease.

Any termination notice must be in writing and be delivered to the Lessor at one of the addresses listed in **Item 2** of **Schedule 1**.

See also **Clause 35** which specifies how notices should be delivered.

If the Lease is terminated before the due date there may be consequences for instance if crops have been sown, fodder conserved or water purchased (see **Clause 22**).

These possible consequences should have been considered by the parties before the Lease was entered into and written in **Schedule 6**.

Clause 19 - Termination by Lessor

This clause provides for termination by the Lessor before the end of the Lease.

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This can only occur in certain circumstances laid down in the clause.

Note that the Lessor has to give the Lessee 30 days to rectify any breach.

If the breach is rectified within this timeframe then the Lessor cannot proceed to terminate the lease. Any termination notice must be in writing and be delivered to the Lessee at one of the addresses listed in **Item 3 of Schedule 1**.

See also **Clause 35** which specifies how notices should be delivered.

If the Lease is terminated before the due date there may be consequences for instance if crops have been sown, fodder conserved or water purchased. (see **Clause 22**)

These possible consequences should have been considered by the parties before the Lease was entered into and written in **Schedule 6**.

Clauses 20 & 21 – Renewal of the Lease

These clauses provide for renewal of the Lease.

Note that the lease provides that the new lease will be on the same terms and conditions as the initial lease unless the parties agree otherwise and the rental is to be agreed to by the parties.

Any potential renewal should be considered before the parties enter into the Lease and a procedure adopted to enable a smooth transition.

There is a suggested clause in the **Checklist** (Leasing Farm Tool C).

Clause 22 – Consequences of breach

If the Lease is terminated before the termination date under **Clause 18** or **Clause 19** there may be consequences for instance if crops have been sown, fodder conserved or water purchased.

These possible consequences should have been considered by the parties before the Lease was entered into and written in **Schedule 6**.

Clause 23 – Improvements

This clause provides that a separate written agreement will be entered into for all improvements and capital works.

Lessors and Lessees in NSW should be aware that the Agricultural Tenancies Act 1990 provides specifically for improvements made both with and without consent. For further information, visit www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Agricultural_tenancy.page?

Clause 24 – Dispute Resolution

This clause provides a detailed dispute resolution procedure involving mediation or if that fails arbitration.

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The main purpose of this clause is to encourage the parties to resolve disputes as they arise as quickly as possible in an informal manner.

If the land is in New South Wales, the Agricultural Tenancies Act 1990 allows for the parties to bring proceedings in the NSW Civil and Administrative Tribunal. For further information and relevant documents, visit www.dpi.nsw.gov.au/aboutus/about/legislation-acts/agricultural-tenancies/help

Clause 25 – Assignment

Assignment is when a party transfers their rights and responsibilities under a contract to another party.

This Lease does not allow the Lessee to transfer the Lease unless the Lessor agrees.

The law in Queensland provides that the Lessor cannot *unreasonably* prevent an assignment of the Lease.

Clause 26 – Additional Terms and Conditions

Because this agreement is a template agreement there may be specific matters which the parties want to add to the Lease.

This clause allows them to do so provided the terms and conditions are written in **Schedule 7**.

Clauses 27, 28 & 29- Costs of the preparation of this Lease

Each party is responsible for their own legal costs.

The parties need to decide who will pay any stamp duty and registration fees which may apply.

See the attached table: *Registration Requirements and Stamp Duty* for a state by state breakdown of registration and stamp duty requirements.

Note: the table only provides an **indication** of stamp duty payable on a standard lease agreement such as this template agreement.

Stamp duty may be payable if there is a premium (an additional amount on top of the rental) paid for the lease or in some cases the transfer of the lease. If any additional amounts are payable such as an amount paid for an option to purchase duty may also be payable.

Registration fees change so it is suggested that you approach your local land titles registration office for this information. See Table (below in this document) for contact details.

Clause 30 – Whole Agreement

This clause means that the Lease contains everything that the parties have agreed about.

Previous negotiations or correspondence are not a part of the Lease.

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For this reason it is very important that all documents which have been created such as the **Checklist for arranging a lease for dairy property: Tool C** and the Major Assets Register are included in the Schedules to this Agreement and signed by the parties and dated at the bottom of each page.

Clause 31 – Variation

This clause confirms that the Lease cannot be changed unless all parties agree and put this agreement in writing.

Clause 32 - GST

This clause provides for the law about GST to apply.

Note that the rental is GST EXCLUSIVE.

Clause 33 – Severability

This clause means that if a clause in this Lease is found not to be valid or enforceable it can be taken out of the Lease leaving the remainder of the Lease intact and still applicable.

Clause 34 - Applicable Law

It is recommended that the law of the state where the property is located is the law which applies. The state should be written in **Item 16** of **Schedule 1**.

Clause 35 - Notices

The purpose of this clause is to avoid disputes about whether a notice has in fact been given to the other party.

If a notice, such as a notice about a breach of the Lease, has to be given to the other party it must be in writing and be delivered in one of the ways laid down in this clause.

Each party has an obligation to make sure the other party has their current address if this changes from the addresses listed in **Items 2, 3** and **3(a)** of **Schedule 1**.

If notices are sent by email or fax a hard copy of the email or fax and the transmission receipt or notification should be kept.

Clause 36 – General

These are general interpretation clauses which apply to all leases.

Signing Clauses

It is important that all parties sign the Lease and if applicable that any company seals are attached.

In addition, each party should sign and date at the bottom of every page including all of the Schedules and any attachments to the Schedules so that it is clear that these are included in the Lease.

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Schedules

The Lease is designed to be a template agreement which applies generically.

Information and particulars which are specific to the individual leasing arrangement must be therefore be written into the relevant Schedules which are at the end of the Lease.

The **Checklist for arranging a lease for dairy property: Tool C** cross references each Schedule in the right hand column.

Information written in the **Checklist for arranging a lease for dairy property: Tool C** should be copied into the relevant Schedule.

REGISTRATION REQUIREMENTS AND STAMP DUTY TABLE

Registration of the lease with the state titles registration office provides the Lessor with ‘indefeasibility’ which means a guarantee that the lease is a recognised interest in the land.

In practice, this means that if the land is sold the Lessee will be able to continue leasing the land until the termination date.

State	Registration	Stamp duty payable ¹
Queensland	<p>Leases for more than 3 years can be registered and if they are the Lessor will achieve indefeasibility. The manual contains the relevant form and is available at www.business.qld.gov.au/industry/titles-property-construction/titles-property/practice-manual</p> <p>Contact details: Queensland Titles Registry Phone: 1300 255 750 Fax: (07) 3225 1739 Online enquiry form on web page</p> <p>Mailing Address Brisbane Titles Registry Office GPO Box 1401, Brisbane QLD 4001 Office hours: 8:30 to 4:30 Monday to Friday</p>	No

¹ Note: This only refers to a stamp duty payable on a standard lease arrangement. Stamp duty may be payable if there is a premium (an additional amount on top of the rental) paid for the lease or in some cases transfer of the lease. If any additional amounts are payable such as an amount paid for an option to purchase, duty may also be payable.

State	Registration	Stamp duty payable ¹
NSW	<p>Leases for more than 3 years (including leases with an option to renew a lease for a shorter period which amounts to 3 years or more) are required to be registered. There is a formal document and checklist at: www.lpi.nsw.gov.au/land_titles/dealing_forms/land_title_dealing_forms</p> <p>Contact details NSW Land and Property Information 1 Prince Albert Road Queens Square, Sydney NSW 2000 Phone 1300 052 637 Email: GeneralEnquiry@lpi.nsw.gov.au Office hours: 8:30 am to 4:30 pm business days.</p>	No
Victoria	<p>Leases for less than 3 years cannot be registered. The Land Titles Act provides indefeasibility even if the lease is not registered Leases for more than 3 years and one day can be registered visit: www.dtpli.vic.gov.au/property-and-land-titles/land-titles Customer Service Information Bulletin with references to the relevant documents.</p> <p>Contact details Land Registration Service Level 27, 570 Bourke Street Melbourne VIC 3000 Phone: (03) 8636 2010 Fax: (03) 8636 2999 Office hours: 8:30 to 4:00 Monday to Friday</p>	No

State	Registration	Stamp duty payable ¹
Tasmania	<p>Leases for less than 3 years cannot be registered. Leases for more than 3 years can be registered. Visit www.thelist.tas.gov.au/told/faces/jsp/contents.jsp</p> <p>Contact details Land Titles Office Level 1, 134 Macquarie Street, Hobart TAS 7000 Phone: 03 6165 4444 Fax: 03 6223 8089 Email: Titles.Enquiries@dpipwe.tas.gov.au</p>	No
South Australia	<p>Leases for more than 1 year must be registered to achieve indefeasibility. Online forms can be downloaded from www.sa.gov.au/topics/housing-property-and-land/land-services-industry/online-services/lto-forms-online#title0</p> <p>Contact Details Land Titles Office Ground Floor, 101 Grenfell Street, Adelaide Mailing Address: GPO Box 1354, Adelaide SA 5001 Phone: 08 8226 3983 (country callers 1800 648 176) Fax: 08 8226 3998 Email: LSCustomerSupport@sa.gov.au Office hours: 9.00 am to 5.00 pm Monday to Friday</p>	No

State	Registration	Stamp duty payable ¹
Western Australia	<p>Leases for less than 3 years cannot be registered. Leases more than 3 years should be registered to obtain indefeasibility. List of forms can be downloaded at www0.landgate.wa.gov.au/titles-and-surveys/forms-and-fees/land-titling-forms and www0.landgate.wa.gov.au/docvault.nsf/web/PS_PM/\$file/LTPM.pdf (Manual)</p> <p>Contact details Landgate 1 Midland Square, MIDLAND WA 6056 Phone: (08) 9273 7373 Fax: (08) 9250 3187 Email: customerservice@landgate.wa.gov.au Office hours: 8:30 to 5:00 Monday to Friday. Document lodgement: 8:30 to 4:30 Monday to Friday</p>	No