

# Conveyancing and Crown land tenures

## Background

In 2012, the NSW Government began the first [major review of Crown land](#) in 25 years, prompting a comprehensive consultation process with community and other interested parties about the future management of Crown land.

This exhaustive review process culminated in the NSW Parliament passing the new [Crown Land Management Act](#) (the Act) in November 2016 and the [Crown Land Legislation Amendment Act](#) in May 2017. This new legislation will ensure the Crown estate is managed efficiently and effectively and continues to support and generate social, environmental and cultural benefits for the people of NSW. In NSW, Crown land is managed by the NSW Department of Industry—Lands & Water (the department).

Previous Crown land legislation was complex and included eight different pieces of legislation.

The Act will:

- reduce red tape and duplication in managing Crown land
- improve certainty and clarity about legal requirements
- support greater community involvement in local decisions made about Crown land
- formalise opportunities and processes for community involvement and engagement
- recognise and support Aboriginal involvement in the management of Crown land.

Provisions in the new and consolidated legislation will introduce changes to Crown land tenures, such as licences, leases and incomplete purchases that need to be considered in the conveyancing process.

The Act will commence on 1 July 2018. Accordingly, it is important that customers understand the impacts of the Act on conveyancing and tenures.

## Conveyancing searches

During the conveyancing process for the transfer of land, it is recommended that a conveyancing agent undertakes a search with the department. Conveyancing searches provide information on any Crown land tenure that is associated with a property and will give a conveyancing agent:

- a listing of all tenures associated with a property
- the financial status of the tenures
- a diagram of the tenures.

From the commencement of the Act, our conveyancing search results will be updated to include all the information that conveyancing agents need when dealing with a property associated with a Crown land tenure.

## Leases

On commencement of the Act, the holder of a lease (including perpetual and Western Land leases) may not transfer their lease if there is any debt owing to the department. **Any debt must be paid to the department, in full, prior to settlement.**

If there is no debt to the Crown, the lease may be transferred to the new owner, who then becomes responsible for payment of the rent. In most cases, the consent of the department will still be required to transfer a lease.

Conveyancing search results will continue to include a copy of the financial statement so that adjustments can be made at settlement. An application form will also be included if the consent of the Minister for Lands and Forestry is required for the transfer of the lease.

## Waiver of ministerial consent requirements for the transfer of leasehold land

There are new waiver provisions under the Act that apply to leases that require the consent of the minister to transfer—particularly leases that had restrictions on dealings under the former *Crown Land (Continued Tenures) Act 1989*, the *Western Lands Act 1901*, the *Hay Irrigation Act 1902* and the *Wentworth Irrigation Act 1890*.

The new waiver provisions allow eligible lease holder/s to seek approval for the transfer of the leased land prior to putting the lease on the market and before details of the purchaser are known.

If the waiver application is successful, the landholder will be issued with a waiver letter that can be submitted with a transfer form to NSW Land Registry Services. The waiver will be issued for a maximum of 12 months. After obtaining the waiver, the landholder can then find a purchaser, exchange contracts and hold settlement quickly.

For landholders not eligible for a waiver, they will need to go through the usual process of requiring the minister's consent to the lease transfer prior to the settlement of a contract of sale.

Before seeking the waiver, the landholder should ensure:

- that all debt to the Crown for the holding/lease is paid in full
- the lease conditions are being complied with (a field inspection may be undertaken).

An application form for the *Waiver of Ministerial Consent* requirements will be available on the department's website. Please note that an application fee applies.

## Incomplete purchases

An incomplete purchase is a holding for Crown land that is in the process of being purchased.

On commencement of the Act, the holder of an incomplete purchase may not transfer their incomplete purchase if the annual instalments are in arrears. Any debt must be paid to the department, in full, prior to settlement.

The balance of any purchase monies is still to be paid in full within three months from the date of settlement.

[Schedule 4 Division 3 Section 24\(5\)](#) of the Act notes the exceptions to the requirement for the payment of the purchase monies upon transfer.

Conveyancing search results will continue to include a copy of the financial statement for incomplete purchases.

## Automatically transferable licences

Some licences will automatically transfer when the Act commences. Licences that provide a benefit to associated freehold or leasehold land will be automatically transferred from the date of transfer of the associated land. The determination of eligible freehold and leasehold land is at the discretion of the department.

Licences considered to provide a benefit to freehold or leasehold land include but are not limited to:

- some domestic waterfront facilities
- water supply and access facilities
- access tracks or encroachments.

The purchaser of freehold or leasehold land (the transferee) will become liable for any rent, fees, or other amounts related to the licence, including any arrears, from the date of transfer. Conveyancing agents must undertake adjustments at settlement for licences that automatically transfer.

The transferee will be required to notify the department no later than 28 days from the date of the transfer. This notification is to be provided by submitting an *Automatic Transfer: Notification of Transfer* and accompanying fee to the department.

If the current licence holder does not wish for the transfer to occur, a request to terminate must be approved by the department prior to the transfer of associated freehold or leasehold land. This requirement should be a consideration of the conveyancing process and should also be discussed with both parties before settlement.

To request termination, the licence holder is required to submit a completed *Licence: Termination Statutory Declaration* form in a timely manner. This request must be finalised by the department before settlement.

Conveyancing search results will outline whether a licence will or will not automatically transfer and also include the financial details of a licence if it automatically transfers.

## Licences (non-transferrable)

Licences that do not provide a benefit to freehold or leasehold land will **not** automatically transfer under the new Act and an application for revocation of the existing licence and issue of a new licence to the purchaser/s must be submitted to the department. All applications will be considered on their individual merits and no guarantees can be given that an application will be successful.

Adjustments do not need to be made at settlement for licences that do not automatically transfer.

## Enclosure permits

Enclosure permits will continue to automatically transfer when the new Act commences. Conveyancing agents must still undertake adjustments at settlement for enclosure permits.

Conveyancing search results will continue to include a copy of the financial statement for the enclosure permit.

## Application fees

From commencement of the Act, the department will be updating all application fees. The updated applications will be published on the department's website close to the commencement of the Act.

## Further information

Email: [enquiries@crowland.nsw.gov.au](mailto:enquiries@crowland.nsw.gov.au)

Web: [industry.nsw.gov.au/lands](http://industry.nsw.gov.au/lands)

Phone: 1300 886 235

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This publication provides a general summary of some of the provisions under the *Crown Land Management Act 2016* as interpreted by the Department of Industry at the time of writing (June 2018). Compliance with the Act is a legal requirement. This publication does not provide or purport to provide legal advice. Users are reminded of the need to ensure that the information upon which they rely is up to date by checking the currency of the information at the Department of Industry website or with the user's independent legal adviser.