



## Pastoral lease transfer process

### Introduction

A pastoral lease grants the leaseholder the right to use the designated Crown land for pastoral purposes. The purchase of a pastoral lease does not transfer title to the land over which the pastoral lease extends. The lease, and hence the rights accorded by the lease, may be transferred only with the consent of the Minister for Lands (Minister), however the underlying land remains Crown land.

The consent of the Minister or the delegated Officers at the Department of Planning, Lands and Heritage (Department) is required before a pastoral lease may be transferred from one party to another. This is a legislative requirement under section 134 of the *Land Administration Act 1997* (LAA). The attached flowchart outlines the process for obtaining the required consent to the transfer. The flowchart is a guide to assist the business planning of both the selling lessee and the prospective purchaser.

All applications for consent to transfer pass through a three-stage process:

1. The current holder of the lease advises the Department of their intention to offer their pastoral lease for sale and provides consent for the Department to prepare and issue 'Conditions of Transfer' to the prospective purchaser.
2. The prospective purchaser submits an application to the Department's Land Use Management Division (LUM) at [Proposals@dplh.wa.gov.au](mailto:Proposals@dplh.wa.gov.au) seeking consent to the transfer of the lease. LUM ensures all required information has been supplied and undertakes the initial assessment of the application. Delegated officers of LUM may be able to grant consent in some instances but in others (see below) the application must be progressed to a higher level of approval.
3. If consent to the transfer is granted, the purchaser's settlement agent arranges for endorsement of the transfer document by the Department's delegated staff, assessment of stamp duty by RevenueWA and then subsequent registration of the transfer document at Landgate.

### Delegations

The Minister has delegated Officers of the Department to approve the transfer of a pastoral lease under section 134 of the LAA subject to the proposed transfer meeting certain criteria regarding aggregate pastoral lease area (hectares) held or controlled under Australian ownership:

Where the purchaser is an Australian person(s) or entity and their aggregate pastoral lease land owned or controlled will be less than 500 000 hectares following the transfer, delegated officers within the Department may grant approval to the transfer.

Where the purchaser is an Australian person(s) or entity and their aggregate pastoral lease land owned or controlled will be above 500 000 hectares following the transfer, the Minister must approve the transfer and the Department will refer the application to the Minister following an initial assessment.

In all cases where the transfer of more than 50% foreign ownership is proposed, the application is required to be referred to the State Cabinet of the Western Australian (WA) Government.

## Foreign Ownership

Since 1979, the WA Government has required that all applications for consent to purchase a pastoral lease from parties that are not at least 50% Australian must be referred to State Cabinet for decision.

If the prospective purchaser is a natural person(s), in order to be considered an Australian purchaser, more than 50% of the interest in the pastoral lease is to be transferred to a person with Australian citizenship or permanent resident status.

If the prospective purchaser is a company, that company must be registered in Australia and 50% of its ultimate ownership must be persons with Australian citizenship or permanent resident status if it is to be considered an Australian purchaser.

All cases that cannot demonstrate that the proposed purchaser is Australian according to the above definitions must be referred to State Cabinet for the ultimate decision. The initial assessment will be carried out by the Department and then referred to the Minister for consideration prior to his referral of the matter to State Cabinet for endorsement.

## Foreign Investment Review Board

The Commonwealth of Australia's Foreign Investment Review Board (FIRB) administers the national legislation governing foreign investment in Australia. Further information is available at <http://firb.gov.au/> Additional information specific to investment in agricultural land (which includes pastoral leases) is available at:

**Overview** - [https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/GN01\\_Overview.pdf](https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/GN01_Overview.pdf)

**Key Concepts** - [https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/GN02\\_Keyconcepts.pdf](https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/GN02_Keyconcepts.pdf)

**Agriculture** - [https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/GN03\\_Agriculture.pdf](https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/GN03_Agriculture.pdf)

Applications for Ministerial consent to purchase a pastoral lease received from persons or entities that cannot be considered to be Australian, as defined above, should submit details of their proposed purchase to the Foreign Investment Review Board (FIRB) prior to making an application to the Minister for consent to the transfer under section 134 of the LAA. The application for Ministerial consent must be accompanied by a statement from FIRB confirming that it has no objection to the proposed purchase, or that the proposal falls within the allowances or exemptions granted by FIRB.

## Register of Foreign Ownership

The Australian Taxation Office (ATO) requires that all acquisitions of interests in agricultural land (which includes pastoral leases) by foreign persons regardless of value must be notified to the [ATO Register of Foreign Ownership](https://www.ato.gov.au/general/Foreign-investment-in-Australia/agricultural-land-register/). Further information is available at <https://www.ato.gov.au/general/Foreign-investment-in-Australia/agricultural-land-register/>

Notification to the ATO is the responsibility of the purchaser of the pastoral lease once the transfer has been recorded on the Register of Titles at Landgate.

# Transfer of a Pastoral Lease

