

Release and Indemnity, and Public Liability Insurance-Secondary interests under the Land Act 1994 PUX/952/081

SLM/2013/414

Version 4.02

Last reviewed 17/06/2016



This publication has been compiled by Operations Support – Land, Department of Natural Resources and Mines.

© State of Queensland, 2016

The Queensland Government supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 3.0 Australia (CC BY) licence.

Under this licence you are free, without having to seek our permission, to use this publication in accordance with the licence terms.



You must keep intact the copyright notice and attribute the State of Queensland as the source of the publication.

Note: Some content in this publication may have different licence terms as indicated.

For more information on this licence, visit <http://creativecommons.org/licenses/by/3.0/au/deed.en>

The information contained herein is subject to change without notice. The Queensland Government shall not be liable for technical or other errors or omissions contained herein. The reader/user accepts all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using this information.

Version History

Version	Date	Description/Comments
2	27/08/2004	Endorsed
2.1	30/06/2005	Conversion Project - New WORD/XML template
3	19/11/2008	Updated and reviewed
3.1	11/02/2009	Amended status of Notification from "NRW only" to "Public access"
3.2	09/02/2011	Minor updates to reflect departmental name change to DERM
3.3	13/03/2012	Minor amendment
4	02/11/2012	Amendment to clarify department's requirements for public liability insurance and updates to DNRM
4.01	28/03/2014	New DNRM template
4.02	17/06/2016	Minor amendment to review and insert text on new template

Approval

Position	Name	Date
Acting Director, Operations Support - Land	Amanda Kearnan	17/06/2016



Table of contents

Procedure	1
Responsibilities.....	4
Definitions.....	4
Legislation	4



Procedure

Background

With the Minister's approval under the *Land Act 1994* (Land Act), secondary interests e.g. a trustee lease, trustee sublease or trustee permit over trust land (note that a trustee permit does not need the Minister's approval if the term is for 3 months or less), a sublease (including a sub-sublease) of a Land Act lease, or an easement over non-freehold land or a deed of grant in trust, may be a granted/created over the respective land.

To protect the State's interest, for third parties to occupy land administered under the Land Act under a secondary interest, the Department of Natural Resources and Mines (DNRM) requires, in addition to a number of other clauses, the secondary interest document contain clauses that provide for a release and indemnity and public liability insurance.

DNRM has developed standard release and indemnity and public liability insurance clauses that must be included in all secondary interest documents under the Land Act.

In relation to trustee leases, DNRM has a registered Mandatory Standard Terms Document (dealing No: 711932933) under sections 318 and 318A of the Land Act. Under section 320A of that Act, if there is a conflict between the Mandatory Standard Terms Document and the terms of another document for a trustee lease, the Mandatory Standard Terms Document prevails.

Generally, the approval for a trustee lease will be that the trustee lease will be subject to the Mandatory Standard Terms Document.

Further information on the Mandatory Standard Terms Document and trustee leases may be located on the website of DNRM at

http://www.dnrm.qld.gov.au/_data/assets/pdf_file/0018/104805/guide-trustee-lease.pdf
http://www.dnrm.qld.gov.au/_data/assets/pdf_file/0007/103786/state-land-form-la27.pdf

The standard release and indemnity clause (with necessary modifications required for the relevant interest) is listed below and is the clause in the DNRM's registered Mandatory Standard Terms Document (dealing No: 711932933) for trustee leases.

The standard public liability insurance clause (with necessary modifications required for the relevant interest) is also listed below and is generally the clause in the Mandatory Standard Terms Document for trustee leases, although the public liability insurance clause for trustee leases includes an additional requirement for the trustee to monitor and keep the Minister informed of the trustee lessee's compliance.

Note: In some instances the Minister may give a written authority (section 64 for some trustee leases) or general authority (section 333 for a sublease of a Land Act lease) not to seek the Minister's approval. Any authority given will be on the basis that the release and indemnity and public liability insurance clauses are included in any trustee lease or sublease.

Further, leases of an Aboriginal or Torres Strait Island deed of grant in trust will not generally require the Minister's approval under the Land Act, but DNRM recommends that the release and indemnity and public liability insurance clauses be included.

It is also a requirement that as a trustee is taken to be the owner of the trust land for legal proceedings (see section 91 of the Land Act), trustees of trust land under the Land Act must maintain adequate public liability insurance at all times - refer to [Creation of Trust Land Policy PUX/901/207](#).

Requirements

Authorised Insurers

All State government departments are insured with the Queensland Government Insurance Fund (QGIF). A statutory authority with the Treasurer's approval may be insured with QGIF. Government-owned Corporations cannot be insured with QGIF.

Commonwealth government agencies may be insured through Comcover.

Other than agencies covered by QGIF or Comcover, all public liability insurance policies must be taken out with an insurer authorised under the *Insurance Act 1973* (Commonwealth), unless the Minister (delegate) approves otherwise.

Such approval (e.g. for a person who may have self or global insurance) needs to be through the Director, State Land Asset Management by sending an e-mail to Stateland@dnrm.qld.gov.au, as consultation with QGIF may be required to determine whether the proposed insurance is satisfactory.

The following link is to the Australian Prudential Regulation Authority website and lists all insurers who are authorised to provide new or renewal insurance in Australia.

<http://www.apra.gov.au/GI/Pages/general-insurers.aspx>

A list of current Government-owned Corporations (GOC's) can be obtained from the website of the Department of Premier and Cabinet.

<http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/welcome-aboard/gov-owned-corps.aspx>

Compliance

Secondary interest holders under the Land Act are required to ensure that they have the required public liability insurance cover which is up to date and that the Minister/trustee/lessee is advised of the status of that cover.

The applicant is required to have public liability insurance in place because:-

- it will benefit an injured party by providing access to compensation, and
- it will benefit the applicant because without insurance they will expose their assets if they are sued.

When the department requires an applicant to obtain public liability insurance, it is suggested that the applicant contact their current Insurer to obtain insurance advice as to whether their insurance policy covers the requirements of the State or alternatively whether their existing insurance can be extended.

If coverage is not available under their existing insurance policy the applicant might like to consider using the services of an insurance broker who will have access to local and global insurance markets and in turn should be able to arrange policy coverage.

In respect of a trustee lease, in the event of failure to notify the Minister and the trustee that

a public liability insurance policy has been renewed, or a failure to take out appropriate insurance, DNRM will consider whether there are grounds for the trustee lease to be cancelled in terms of section 65 of the Land Act. Prior to forming a view on possible cancellation of a trustee lease on this basis, DNRM Regional officers must make enquiries with the trustee in the first instance.

Clauses

[with necessary modifications required for the relevant interest, including clause numbers and reference to the interest e.g. sublease instead of trustee lease]

DNRM's standard release and indemnity and public liability insurance clauses as listed below are required to be included in every secondary interest document under the Land Act.

The release and indemnity clause may not be varied in any way, other than the necessary changes for the relevant document in **[bold brackets]**.

Any approval to the public liability insurance clause (e.g. for a person who may have self or global insurance) needs to be through the Director, State Land Asset Management as mentioned above.

Note: Reference to the Minister must be to the Minister administering the *Land Act 1994* whether in the specific clauses, or in the definitions of the secondary interest document.

RELEASE AND INDEMNITY [already part of the registered Mandatory Standard Terms Document (dealing No: 711932933) for trustee leases]

[1.1]. The **[Trustee Lessee]** indemnifies and agrees to keep indemnified the Minister the State of Queensland, **[and the Trustee]** ("the Indemnified parties") against all actions, suits, proceedings, claims, demands, costs, losses, damages and expenses ("Claim") arising out of or in any way connected to or resulting from the granting of this **[Trustee Lease]** to the **[Trustee Lessee]** or which is connected to or resulting from the **[Trustee Lessee's]** use and occupation of the **[Premises]** (all of which are referred to as "the indemnified acts or omissions") save to the extent that the Claim arises as a result of any negligent act or omission of the Indemnified parties, however, any negligent act or omission of one of the Indemnified parties does not negate the indemnity to any of the other Indemnified parties.

[1.2]. The **[Trustee Lessee]** hereby releases and discharges the Indemnified parties from any Claim relating to the indemnified acts or omissions which may be made against the Indemnified parties, save to the extent that the Claim arises as a result of any negligent act or omission of the Indemnified parties, however, any negligent act or omission of one of the Indemnified parties does not negate the release and discharge in favour of any of the other Indemnified parties.

[1.3]. To remove doubt, the **[Trustee Lessee]** specifically agrees that the indemnity and release provided by the **[Trustee Lessee]** in this Clause **[1]** extends to any Claim (as defined by this Clause **[1]**) arising from the use of any other area of the **[Trust Land]** by the **[Trustee Lessee]** .

PUBLIC LIABILITY INSURANCE [again, already covered in the registered Mandatory Standard Terms Document (dealing No 711932933) for trustee leases]

[2.1]. The **[Trustee Lessee]** must effect a public liability insurance policy with an insurer

authorised under the Insurance Act 1973 (Commonwealth) or, in any other case, to the satisfaction of the Minister, naming the **[Trustee Lessee]** as the insured covering legal liability for any loss of or damage to any property and for the injury (including death) to any person arising out of anything done or omitted on or about the **[Premises]** and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof subject to the terms and conditions of the insurance policy.

Such policy must:

- a. be for an amount of not less than twenty million dollars (\$20,000,000.00) in respect of all claims arising out of a single event or such higher amounts as the Minister may reasonably require; and
- b. be effected on a "claims occurring" basis so that any claim made by the **[Trustee Lessee]** under the policy after the expiration of the period of policy cover but relating to an event occurring during the currency of the policy will be covered by the policy subject to the claim meeting the policy's other terms and conditions; and
- c. be maintained at all times during the currency of this **[Trustee Lease]** , and upon receipt of any Notice of Cancellation, the **[Trustee Lessee]** must immediately effect another public liability insurance policy in accordance with the terms and conditions of this **[Trustee Lease]** .

[2.2] The **[Trustee Lessee]** must forward a certificate of currency to the **[Trustee]** within 10 business days of the commencement of each respective renewal period.

[2.3]. Clauses **[2.1]** and **[2.2]** will be satisfied if the **[Trustee Lessee]** is the State of Queensland or a statutory authority eligible for cover under the Queensland Government Insurance Fund and is insured and continues to be insured by the Queensland Government Insurance Fund.

[2.4]. Clauses **[2.1]** and **[2.2]** will be satisfied if the **[Trustee Lessee]** is the Commonwealth of Australia or a statutory authority eligible for cover under the Comcover Insurance Fund and is insured and continues to be insured by Comcover.

[2.5]. The **[Trustee Lessee]** must, as soon as practicable, inform the Minister **[and Trustee]** , in writing, of the occurrence of any event that the **[Trustee Lessee]** considers is likely to give rise to a claim under the policy of insurance effected and must ensure that the Minister **[and Trustee]** are kept fully informed of subsequent actions and developments concerning the claim.

[2.6]. To remove doubt, the requirements of this Clause **[2]** apply to any other area of the **[Trust Land]** used by the **[Trustee Lessee]**.

Responsibilities

Implementation by all relevant officers of State Land Asset Management

Definitions

Public Liability Insurance

Authorised Insurer

Queensland Government Insurance Fund (QGIF)

Legislation

Land Act 1994