

# Guideline

SLM/2013/414  
Formerly PUX/952/081  
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## Release and indemnity, and public liability insurance-secondary interests under the *Land Act 1994*

### Purpose

To provide guidance on the Department of Natural Resources, Mines and Energy's (the department) standard release and indemnity and public liability insurance requirements for secondary interests granted/created over land administered under the *Land Act 1994* (Land Act).

### Rationale

With the Minister's approval, secondary interests may be granted/created over land administered under the Land Act. Secondary interests include:

- a trustee lease or a trustee sublease over trust land (note that a trustee permit does not need the Minister's approval)
- a sublease (including a sub-sublease) of a Land Act lease
- an easement over non-freehold land
- a deed of grant in trust.

To protect the state's interest, for third parties to occupy land administered under the Land Act under a secondary interest, the department, requires, in addition to a number of other clauses, the secondary interest document to contain clauses that provide for a release and indemnity and public liability insurance.

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

A prescribed terms framework applies to trustee leases, trustee lease subleases and subleases (including a sub-sublease) of a Land Act lease and are prescribed by the Land Regulation 2020 (regulation).

The regulation prescribes terms for these secondary interests, for example, requiring appropriate insurance indemnity to be held in relation to the use of the land under the interest. Other prescribed terms relate to the use and development of the land; vacating land at the expiry of the interest; and the interest holder's duty of care in relation to the land

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 the department 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 s. 91 of the Land Act), trustees of trust land under the Land Act must maintain adequate public liability insurance at all times. Refer to the [Creation of Trust Land Policy SLM/2013/479 = PUX/901/207](#).

## Guideline

### 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 (COG) 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 (or their delegate) approves otherwise.

Prior to the Minister's delegate considering approval to an alternative insurer, Land and Native Title Services will consult with the Queensland Government Insurance Fund (QGIF) to determine whether an alternative insurer (for example, a person who may have self or global 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.

<https://www.apra.gov.au/register-general-insurance>

A list of current GOC's can be obtained from the website of the Queensland Treasury.

<https://www.treasury.qld.gov.au/queenslands-economy/government-owned-corporations/>

### Public liability insurance requirements

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.

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.

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, the department 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, the department regional officers must make enquiries with the trustee in the first instance.

## Required clauses for secondary interest documents

**[With necessary modifications required for the relevant interest, including clause numbers and reference to the interest e.g. easement over trust land or unallocated state land]**

The department'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]**.

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

RELEASE AND INDEMNITY FOR THE GRANT OF AN EASEMENT [regulated clause in the prescribed terms for trustee leases and sub leases].

### Indemnity

(1) The **[Grantee]** of the **[easement]** indemnifies and agrees to keep indemnified the State, the Minister, the **[trustee]** and their representatives (all the *indemnified parties*) against all liability, costs, loss, charges and expenses including claims in negligence (including any actions, claims, proceedings or demands brought by any third party, and any legal fees, costs and disbursements on an indemnity basis) arising from, or incurred in connection with—

(a) the granting of the **[easement]** to the **[Grantee]**; or  
(b) the **[Grantee's]** use and occupation of the **[easement area]**; or  
(c) personal injury (including sickness and death), or property damage or loss, in connection with the following—

(i) the performance of the **[easement]** by the **[Grantee]**;  
(ii) the attempted or purported performance of the **[easement]** by the **[Grantee]**;  
(iii) the non-performance of the **[easement]** by the **[Grantee]**;  
(iv) a breach of the **[easement]** by the **[Grantee]**.

(2) The **[Grantee]** releases and discharges, to the maximum extent permitted by law, the indemnified parties—

(a) from all actions, claims, proceedings or demands; and  
(b) in respect of any loss, death, injury, illness or damage arising out of the use and occupation of the **[easement area]**, whether or not—

(i) the damage is personal or property damage; or  
(ii) the loss is consequential loss.

(3) To the maximum extent permitted by law, the State, the Minister, the **[trustee]** and their representatives are not liable to the **[Grantee]** for any consequential loss arising out of the use and occupation of the **[easement area]**.

(4) In this section—

**consequential loss** means the following—

(a) loss of revenue;  
(b) loss of profit;  
(c) loss of anticipated savings or business;  
(d) loss of opportunity (including opportunity to enter into or complete arrangements with third parties);  
(e) loss of data or goodwill;  
(f) loss of reputation;  
(g) any special, indirect or consequential loss whether arising in contract, tort (including negligence) or otherwise.

**representative**, of a party, means an employee, agent, officer, director, contractor, subcontractor or other authorised representative of the party.

PUBLIC LIABILITY INSURANCE FOR THE GRANT OF AN EASEMENT [ regulated clause in the prescribed terms for trustee leases and subleases]

### **Insurance**

- (1) The **[Grantee]** of the **[easement]** must take out a public liability insurance policy (the **insurance policy**), complying with subsection (2), with—
- (a) a general insurer authorised under the *Insurance Act 1973* (Cwlth); or
  - (b) another insurer approved by the Minister.
- (2) The insurance policy must—
- (a) name the **[Grantee]** as the person insured under the policy; and
  - (b) insure the **[Grantee]** against—
    - (i) legal liability for any loss of, or damage to, any property, and for injury (including death) to any person, arising out of anything done or omitted to be done on or about the **[easement]** land or any improvements on the **[easement]** land; and
    - (ii) all actions, claims, demands, proceedings, costs, charges and expenses, including claims in negligence; and
  - (c) insure the **[Grantee]** for at least \$20m, or a higher amount reasonably required by the Minister, for each event; and
  - (d) insure the **[Grantee]** on a 'claims occurring' basis; and
  - (e) be maintained by the **[Grantee]** at all times during the currency of the **[easement]**.
- (3) If an event occurs that the **[Grantee]** considers is likely to give rise to a claim under the insurance policy, the **[Grantee]** must—
- (a) give the Minister written notice of the event as soon as practicable after the event occurs; and
  - (b) ensure the **[trustee]** and the Minister are kept fully informed of subsequent actions and developments concerning the claim.
- (4) The **[Grantee]** must—
- (a) renew the insurance policy, at the **[Grantee's]** expense, each year during the term of the **[easement]**; and
  - (b) if the **[Grantee]** receives a notice of cancellation in relation to the policy—immediately take out another public liability insurance policy complying with subsection (2).
- (5) This section does not apply if the **[Grantee]** —
- (a) is the State, or a statutory authority eligible for insurance from the Queensland Government Insurance Fund; and
  - (b) is insured, and continues to be insured, by the Queensland Government Insurance Fund.
- (6) Also, this section does not apply if the **[Grantee]** is—
- (a) the Commonwealth, or a statutory authority eligible for insurance from Comcover; and
  - (b) is insured, and continues to be insured, by Comcover.

### **Legislation**

section 64 of Land Act 1994 – Minister may dispense with approval.

section 65 of Land Act 1994 – Cancellation of a trustee lease or trustee permit.

section 91 of Land Act 1994 – Trustees taken to be owners for legal proceedings.

section 318 of Land Act 1994 – Standard terms document may be registered.

section 333 of Land Act 1994 – General authority to lessee for particular dealings.

*Insurance Act 1973 (Cth)*

### **Human rights**

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human

rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

## Related documents

Operational Policy – Creation of trust land (SLM/2013/479 = PUX/901/207)

## Approval

Position	Name	Date
Director, Land Services, Land and Native Title Services	Anita Haenfler	14 July 2020

## Version history

Version	Effective Date	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
5.00	14/07/2020	Updated content to reflect amendments to the Land Act and the Land Regulation, introduction of prescribed terms and on new template.

## Further information

- Contact your nearest business centre ([https://www.dnrme.qld.gov.au/?contact=state\\_land](https://www.dnrme.qld.gov.au/?contact=state_land)), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

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