

BUSINESS MANAGEMENT FACT SHEET

SOUTHERN REGION

PREPARING A LEASE AGREEMENT

Documenting a lease agreement provides an opportunity for the lessor and lessee to discuss, clarify and agree on factors to avoid misunderstandings or incorrect assumptions.



KEY POINTS

- ▶ Use this checklist to prepare a brief for your solicitor to check and then draw up the lease agreement.
- ▶ Ensure that future or existing lease arrangements are formalised with a clear, concise, written lease agreement signed by both parties.

Leasing land is an integral and effective part of many farming operations, and is often a valid strategy to expand farm scale. Leasing land can enable business growth and machinery investment for new and emerging businesses, or improve efficiency for those with high debt but surplus labour and machinery. Leasing arrangements are also used as a path to transition farm operations or ownership to the next generation.

This fact sheet provides guidance for both the lessee (farmer) and lessor (land owner) by providing a checklist approach to documenting a robust, equitable and fit-for-purpose lease agreement.

A lease agreement is a document that clearly lays out the expectations and arrangements of the land lease, and the responsibilities of both the lessee and lessor. It is important that both the lessor and lessee understand the critical components and have confidence that the agreement provides certainty and clarity for their particular situation.

The details of a lease will vary with individual situations, however there are some key issues and subjects that should be discussed, agreed and documented. The details are open to negotiation between the parties. A professional independent adviser or legal representative can assist in negotiating and confirming the details.

Elements to consider and agree on for inclusion in a lease agreement

The parties to the lease agreement

Checklist:

- Lessor and lessee details: name, trading name, ABN, key person, address and contact details.

Note:

- If dealing with an individual, record their drivers licence number as a means of identification.

continued over page

Details of land and improvements subject to lease

Checklist:

- ✓ A comprehensive land description, such as title details or crown allotments, is essential.
- ✓ GPS co-ordinates, a map or sketched 'mud map' including particular roads or landmarks.
- ✓ Assets included or excluded.
- ✓ Identification of any unusual encumbrances.
- ✓ List lessor's and lessee's fixtures and fittings.

Note:

- ! Confirm inclusion or exclusion of assets such as silos, static water supplies, irrigation water, pumps, stockyards, sheds.
- ! Include details of incumbencies, e.g. caveats, easements, right of ways or unused roads, where their use is excluded under the terms of the lease.



Dated photos of starting condition of key improvements can be useful if attached in the schedule.

Term of lease

Checklist:

- ✓ Specify exact date of start and conclusion.
- ✓ Requirement for the lessee to obtain written consent from lessor before doing the following with the leased land: assign, transfer, sub-let, share farm, contract crop.
- ✓ A lease option period, if applicable.
- ✓ Notice periods for terminating the lease.

Note:

- ! Three years is typically considered reasonable security for both parties, but a longer or shorter lease can be negotiated.
- ! Commonly a lease will be for three years with a further three year option period. The option period or termination of the lease is usually required to be confirmed with the tenant 3 to 6 months prior to end of the first lease period.

Lease rate and associated costs

Checklist:

- ✓ Specify lease rate in dollars per hectare per annum.
- ✓ Specify the bond to be paid, if applicable.
- ✓ Confirm responsibility for payment of property rates, utilities and public liability insurance.

Note:

- ! The lease rate can be fixed for the term of lease or reviewed at specified intervals.
- ! An annual consumer price index (CPI) increase commonly applies. Specify CPI source and when it is applied.
- ! At the commencement of an option period, if applicable, the parties will often agree to adjust the lease rate if it has become under or over-valued.
- ! Rates, utilities and public liability insurance are commonly the lessor's responsibility.

Payment terms

Checklist:

- ✓ Annual lease dollar amount.
- ✓ Payment timing/frequency, e.g. quarterly, six-monthly, annually.
- ✓ Whether payment is to be made in advance or in arrears.
- ✓ Check and clarify applicability of GST on payments.
- ✓ Method of payment, e.g. electronic funds transfer (EFT), cheque, cash.
- ✓ Interest rate on overdue lease payments.



Tip: To make it clear include a lease payment plan that summarises the instalment payments and timing as part of the schedule attached to the lease document.

Lease Schedule	Lease	GST	Payment
Date Due	\$	\$	\$
Lease Starts	01-Mar-15		
01-Mar-15	34,000	3,400	37,400
01-Mar-16	34,000	3,400	37,400
01-Mar-17	34,000	3,400	37,400
Lease End	28-Feb-18		

Include a lease payment plan that summarises the instalment payments and timing as part of the schedule attached to the lease document.

Maintenance and repairs

Checklist:

- Lessee's responsibilities.
- Lessor's responsibilities.

Land stewardship expectations

Checklist:

- Lessee's responsibilities.
- Other potential requirements: land to be sown to pasture at end of lease term; protecting existing trees from damage during any burning off; specified tillage/stubble-management practices, burning, fertiliser inputs.
- Lessor's responsibilities.

Note:

- Lessee examples include complying with laws and regulations relating to vermin control, problem/noxious weeds, water and/or soil conservation measures, disposal of chemical containers and waste.
- Lessor examples include maintenance dressings of gypsum or lime.
- Agree on starting condition of soils, pastures, weeds and improvements prior to commencement of lease.
- Agree on finishing conditions, e.g. crop rotation, summer weed control.

 **Tip: Dated photos of starting condition of key improvements can be useful if attached to the schedule.**

Other specific restrictions or requirements

Checklist:

- Types of crop, livestock and chemicals.
- Construction of buildings, placement of silos and so on.
- Type of vehicle and time of day accessing the land.
- Fire management including duty of care in lighting and control of fire.
- Felling, cutting, ringbarking or spraying trees. Removing sand, soil, gravel or firewood. Removal of fences.

Note:

- The lessor may request indemnity for any claims, damages or fines resulting from damage caused by fire lit by the lessee.

Property access and inspection

Checklist:

- Permission for the lessor to come onto the land at all reasonable times to inspect or perform maintenance.
- Right of way across the land for the lessor to access land that is not part of the leased property.

Insurance

Checklist:

- Public liability and other required insurance.

Note:

- Insurance arrangements for the leased property for the term of the lease are commonly required to be held by the lessee.
- Certificate(s) of insurance can be provided to the lessor on request.




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Lease agreement checklist


- Parties to lease
- Details of land and improvements
- Lease terms
- Rate and costs
- Payment terms
- Maintenance and repairs
- Stewardship expectations
- Restrictions
- Property access and inspection
- Insurance
- Dispute resolution
- Signatures and dates
- Schedule items

Dispute resolution

Checklist:


-  Specify the arrangement for breach of the lease agreement.
-  Document the process where a dispute cannot be resolved, such as nomination of an independent third party for final say.
-  Specify who determines revaluation of the lease, fair wear and tear on improvements and the value of improvements made by the lessee.

Note:

-  Typically the lessor provides written notice that the breach be rectified within 14 days. If the lessee does not rectify the breach within that time, the lessor can document actions that will be taken and any compensation payments.


Signatures

Checklist:

-  Document is signed and dated by lessee and lessor and witnessed.

Schedule

Note:

-  The schedule is a formal way of summarising the key components of the lease agreement for example:

Item 1: Condition of lessor's improvements and fittings, including dated photos.

Item 2: Lease payment plan/schedule.

Item 3: Copies of relevant and current insurance policies.

USEFUL RESOURCES

Farming the business, sowing for your future

www.grdc.com.au/Resources/Publications/2015/01/Farming-the-Business-Manual

Leasing and share-farming land Fact Sheet

www.grdc.com.au/FBM-LeasingShareFarmingLand

MORE INFORMATION

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FREQUENTLY ASKED QUESTIONS

What happens if the property is sold during the term of the lease?

Often the lessee negotiates the first right of refusal on making an offer on the leased land. If the land is sold from under the lessee, the lease agreement would stand for the specified term.

What if the lease is terminated early?

Provision should be made to value any improvements such as lime or fertiliser application where, due to the shortened lease duration, the lessee has not had sufficient time to recoup the full value of the expenditure on the improvement.

PROJECT CODE

ORM00011

This Fact Sheet is produced as part of the GRDC's Farm Business Management initiative.

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