

IS A HANDSHAKE AGREEMENT OK? NO!

THE IMPORTANCE OF A FORMAL LEASE AGREEMENT

Lease agreements are written documents that outline the key details of the arrangement and the expectations and responsibilities of each party.

Leasing agreements in the past were typically informal or handshake agreements and it is still common for people to rush and draft an insufficient lease. This factsheet outlines why it is important a formal agreement is in place, when to involve advisors in the process, and explains the essential elements of an agreement.

Isn't a handshake good enough?

Once agreed upon and signed, a lease agreement might never be looked at again. However, if problems do arise they are a crucial document to assist in resolving issues. Relying on a handshake or informal notes can give rise to misunderstandings, conflict, and unfortunately, costly legal disputes.

In many cases a simple lease with the bare essential terms may be sufficient until something goes wrong, or a dispute arises. Then it can become awkward to work out a resolution while each party deals with the issue from their own perspective and tries to cover their own best interest.

When do you bring in the experts?

It is highly recommended you have a Solicitor prepare the legal lease agreement.

Legal advisers are generally engaged once the parties have met, inspected the property and come to an agreement on some of the essential terms such as the lease or agistment rate and payment of outgoings (e.g. council rates and the area of land to be used).

It is worthwhile sourcing a professional who understands the issues commonly found in farm leases and who understands the land to be leased and the farm business that is going to operate on the property so that they can deal with the matter competently.



Why is a formal agreement recommended?

Lease agreements are important for two main reasons:



A lease creates a right for a specified tenant to have complete control and possession of the land and they may exclude everyone else (including the landlord).



The agreement provides a record of the terms of the arrangement so that the parties know how to deal with matters such as the payment of rent, use of the land and the obligations of the landlord and the tenant.



It is common for people to rush and draft an insufficient lease, which later has its deficiencies exposed. In many cases problems arise because one party breaches an essential term of the lease and the lease does not sufficiently detail how to deal with such an issue in the lease properly (e.g. non payment of rent or not using the land as agreed).

The work the parties do in preparation for the lease can overcome a lot of issues and save time and legal costs. The parties should meet well before the proposed date of commencement to:

- inspect the property to confirm the land to be leased and the and record the condition of land and infrastructure
- agree on the lease terms in as much detail as possible.

The parties must then allow time for the lease drafted and reviewed by the parties with their professional advisers.



What are common elements of an lease agreement?

- **Land:** The description of the land being leased (including title details, address). This is crucial to ensure security of the tenant's leasehold interest.
- **Definitions:** so the parties have agreed on certain words or phrases for ease of reading and certainty.
- **The Term and Option terms:** in this respect 'the Term' means how long the lease will run for and is usually accompanied by the details of how further options to lease may be carried out.
- **The Rent:** setting how much is payable, when it is payable, when and how it may be increased over time.
- **Outgoings and consumables:** setting out who is responsible to pay land rates, local land services rates, water rates, fixed irrigation water charges, power and insurance.
- **Use of the property:** this is usually something that can be breezed over but can have huge ramifications for both parties.
- **Maintenance and repair:** setting out who is responsible to maintain and repair buildings and infrastructure.
- **Alterations and capital improvements:** this clause deals with how the tenant may alter and improve the land and the infrastructure on the land.
- **Insurance:** informing the tenant of the type and form of insurance policies they are required to obtain.
- **Releases and indemnity:** setting out who shall bear the risk for the farm land and the extent of the landlord's exposure to risk associated with the tenant using the land.
- **Assignment and subletting:** this clause describes how a tenant transfer its lease or sublease to another party.
- **Damage and destruction:** this sets out what will happen if the land or infrastructure is damaged or destroyed by weather etc. and how the parties will deal with repair of infrastructure and the future rent and use of the property;
- **Default:** this clause outlines the ways either party may cause a breach of the lease and how that breach will be dealt with including termination of the lease.
- **Costs:** relating the payment or sharing of legal costs and expenses.
- **Security:** relating to how the tenants' payments and obligations are secured for the landlord (e.g. bank guarantee, security deposit and/or personal guarantee from company directors).

What is the NSW Tenancies regulation?

The [Agricultural Tenancies Act 1990 \(NSW\)](#) applies to all agricultural tenancies in New South Wales. The Act regulates aspects of the rights between agricultural landowners and their tenants and sharefarmers. The key parts of the act are:

- General rights of tenants and owners
- Compensation
- Dispute resolution and remedies
- Improvements that a tenant may make as of right.

The Act is not overly difficult to understand and we recommend reading it before entering into a lease agreement.

Do I have a sustainability responsibility?

The [Agricultural Tenancies Act 1990 \(NSW\)](#) defines sustainability in the leasing setting in order to encourage both landowners and tenants to prevent degradation of the environment and to maintain sustainable agriculture production practices. The Act states sustainable production complies with the following criteria:

- responsiveness to consumer needs for food and fibre products that are healthy and of high quality
- taking into account of the cost of production, including environmental costs, and pricing that reflects those costs
- protection and restoration of the natural resource base on which agricultural depends
- prevention of adverse on-site and off-site impacts on the environment and any sector of the community
- flexible in order to accommodate regional differences and changing economic, environmental and social circumstances such as drought or terms of trade
- financial viability.



- [Video with Patrick Barrett of Walsh & Blair Lawyers](#)
- [Sample Lease Agreement](#)