

Introduction to Sample Lease

Using this Sample Lease Template:

- The following sample lease schedule and sample annexure to the lease are examples only. They do not include sufficient detail or information pertinent to your circumstances, so they are not to be used as a replacement for your own lease agreement. It is not to be reproduced as it will not provide the level of security you need.
- Each document has been provided only for the purposes of informing members of the Young Farmer Business Program about the common terms and items included in a rural lease in a NSW context.
- You may use the sample document as a reference; however, it is highly recommended you have a Solicitor draft a lease in the correct form and 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 rent 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.
- Notes are provided throughout the sample for you in **red**: These will guide you as to what sort of information you need to be collecting before meeting with your own solicitor.

Before you start:

- **Insert the NSW-specific registrable lease form here at the beginning of your agreement or the lease will not be able to be registered at the land registry office. This will affect security of tenure and leasehold interest. Learn more at [NSW Land Registry Services](#).**



Department of
Primary Industries



LEASE SCHEDULE

**LESSOR:
ADDRESS:**

**LESSEE:
ADDRESS:**

- Item 1. LAND:
Title Description:
Address:
Area/Paddocks to be Leased:
- Item 2. RENT
A Type of Instalment:
B Rent and period paid \$
C Fixed Rent: \$
D CPI Review
E Market Review
F Review Frequency:
- Item 3. OUTGOINGS
A Share:
B Outgoings:
a) Local Council rates and charges;
b) Local Land Services rates if levied on the lessor;
c) Water fees and charges;
d) Fees for enclosure permits, occupation licences, irrigation and other licenses;
e) Insurance;
f) Other:
- Item 4. USE OF THE PROPERTY:
- Item 5. AMOUNT OF REQUIRED PUBLIC LIABILITY INSURANCE: \$
- Item 6. OPTION TO RENEW
A Further period of from to
B Further period of from to
C Maximum period permitted under this lease and any renewal(s):
- Item 7. RIGHTS RESERVED TO THE LESSOR:
- Item 8. AMOUNT OF BANK GUARANTEE OR BOND: \$
- Item 9. FENCING TASKS:
- Item 10. VERMIN AND WEED CONTROL TASKS:
- Item 11. PLANS:

Fertiliser –

Cropping –

Farm Management Plan –
- Item 12. INTEREST RATE:
- Item 13. GUARANTOR (*if corporate Lessee*):
- Item 14. ADDITIONAL CONDITIONS:

ANNEXURE TO THE LEASE

LESSOR:

LESSEE:

1. DEFINITIONS & INTERPRETATION

1.1 In this Lease:

- 1.1.1 *lessor* means the lessor, its successors and assigns or in the case of a person the lessor, his executors, administrators and assigns and the servants and agents of the lessor;
- 1.1.2 *lessee* means, where only one lessee is a party, the lessee, his executors, administrators and permitted assigns and, in the case of a company, the lessee and its successors and permitted assigns and the servants and agents of the lessee;
- 1.1.3 *Property* means the Property leased together with Buildings and improvements and includes all fixtures, fittings, furnishings, plant, machinery and equipment, if any, now or in the future installed by the lessor; *(It is common to amend this definition depending upon whether the lessor is retaining any right to use parts of the Property. This definition may also need to be amended to include references to water licences)*
- 1.1.4 *Buildings and improvements* means the buildings, structures, yards, drains, bores, bore drains, wells, ground tanks, reservoirs, dams, levee banks, fences, gates, grids, ramps, roads, private telephone lines, private power lines, water pumps, wiring, water pipes, gas pipes, sheds, dips, mailboxes, huts, cottages, homesteads, outbuildings, swimming pools, tennis courts and plant and equipment on the Property; *(It is common to amend this definition depending upon whether the lessor is retaining any right to use Buildings and improvements such as the residence or sheds situated on the Property.)*

- 1.2 This Lease is a deed even if it is not registered. *(This clause has serious ramifications as to the binding nature of this Lease for both parties. Care should be taken to ensure that the Lease is executed correctly and that the parties intend for it to be a deed.)*

2. RENT AND RENT REVIEW

- 2.1 The lessee covenants to pay rent to the lessor during the term of this Lease free of all deductions at the rate reserved as stated at Item *(insert relevant item number)*.

- 2.2 The rent will be paid in advance by equal instalments of the type stated in Item *(insert relevant item number)*. The first instalment shall be paid on the commencing date of the term. If there is any part of the term that is not a full year then a proportional part of the annual rent will be paid for that part.

2.3 Fixed Rent

If an amount is stated at Item *(insert relevant item number)* then the rent to be paid will be that amount per annum payable in advance by equal instalments of the type stated in Item *(insert relevant item number)*.

2.4 Rent subject to CPI adjustment

If the Schedule indicates that the rent will be reviewed by CPI review then:

- 2.4.1 The rent will be reviewed on the date of review set out in the Schedule. The rent payable by the lessee for the year following each date of review will be determined:

2.4.1.1 in the case of the first review, by increasing the rent payable on the Commencing date of the term by a percentage equal to the Price Index applicable on the date of review; and

2.4.1.2 in the case of each and every review subsequent to the first review by increasing the rent payable for the year immediately prior to the date of review by the percentage equal to the Price Index applicable on the immediately preceding date of review.

In this clause *Price Index* means the *(insert all groups consumer price index applicable to the capital city of the state (i.e. Sydney, NSW) the Property is situated)* kept by the Commonwealth Statistician and in the event of such Price Index being discontinued or abolished then such Price Index as the Commonwealth Statistician substitutes for it and if no Price Index is substituted for it by the Commonwealth Statistician, then any Price Index kept by the Commonwealth Statistician as the lessor may in its absolute discretion select.

2.5 Rent review by reference to market rent

If the Schedule indicates that the rent will be reviewed by market rent review then:

2.5.1 The lessee will pay to the lessor a rent stated at Item *(insert relevant item number)* payable in advance by the instalments of the type stated at Item *(insert relevant item number)*.

2.5.2 The commencing rent payable will be reviewed at the commencement of each succeeding period stated at Item *(insert relevant item number)* during the remainder of the term or any extension or renewal thereof provided that such reviewed rent will not be less than that payable at the commencement of the term or payable at the expiration of the preceding period of review as the case may be. Such reviewed rent will be either that rent agreed to by the parties or in the event of the parties being unable to agree then such reviewed rent will be the market rent as determined by a qualified valuer nominated by the parties or failing such nomination then by the President for the time being of the NSW Division of the Australian Institute (Inc) or a qualified valuer nominated by him for that purpose. In making such determination the following provisions will apply:

2.5.2.1 the valuer will act as an expert and not as an arbitrator;

2.5.2.2 the fees and costs of the valuer will be borne by the parties as determined by the valuer;

2.5.2.3 the lessee will continue to pay the current instalments of annual rent due until the reviewed rent has been determined; and

2.5.2.4 upon determination of the reviewed rent the lessee will pay the additional amount, if any, due for the reviewed rent from the commencement of the last year of the term to the date when the next monthly instalment of annual rent is payable on the date for payment of annual rent next succeeding the expiration of one month after the date when the rent for the last year has been determined.

3 GST

3.1 If the lessor incurs a liability to pay Goods and Services Tax (GST) in connection with a supply to the lessee pursuant to this Lease, the consideration that the lessee will pay to the lessor for that supply is increased by an amount equal to the GST liability the lessor incurs in making the supply and the amount of that GST liability is payable at the same time as the consideration is payable in respect of the supply.

3.2 The lessor and lessee agree to do all things, including providing invoices or other documentation containing information that may be required, necessary or desirable to enable or assist the other to claim any credit, set off, rebate or refund in relation to any GST included in any payment made pursuant to this Lease.

4 OUTGOINGS

- 4.1 The lessee will pay to the lessor the share stated at Item *(insert relevant item number)* of those outgoings stated at Item *(insert relevant item number)*.
- 4.2 For the purpose of this clause all calculations will be made on the basis that such outgoings accrue from day to day and will be apportioned in respect of time accordingly.
- 4.3 The lessee will pay to the proper authorities all charges for NSW Local Land Services, utility services and other services connected to the Property (if separately metered) and should the lessee default in payment of such charges the lessor may pay the same and immediately recover the amount paid as if it were rent in arrears payable by the lessee.

5 USE OF PROPERTY

- 5.1 The lessee will not use the Property otherwise than for the purpose stated at Item *(insert relevant item number)*.
- 5.2 Should the use to which the Property is put by the lessee require the Licence consent or approval of any competent Authority then the lessee warrants that it has prior to entering into this Lease obtained such licence, consent or approval and the lessee will at its expense maintain such licence, consent or approval as valid and operative during its occupation of the Property. The lessee will comply with all conditions attaching to any such licence, consent or approval.
- 5.3 The lessee will not:
- 5.3.1 use or permit to be used for other than for their designed purposes any of the fixtures or fittings on the Property;
 - 5.3.2 store or use inflammable or dangerous substances upon the Property (except as may be necessary for the ordinary conduct of the permitted use of the Property);
 - 5.3.3 do or permit to be done on the Property anything which in the opinion of the lessor may become a nuisance or a disturbance, obstruction or cause of damage to the lessor or to adjoining or nearby owners or occupiers or use the Property in any noisy, noxious or offensive manner; or
 - 5.3.4 do anything by which the working or efficiency of any plant or other equipment servicing the Property may be affected.

6 MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

- 6.1 The lessee will keep the Property and all fixtures and fittings installed or provided by the lessor in good repair and at the expiration or sooner determination of the term of this Lease will yield up the Property and the fixtures and fittings of the lessor in good repair.
- 6.2 The obligations of the lessee stated in clause 6.1 do not include responsibility for fair wear and tear and for anything beyond the control of the lessee.
- 6.3 The lessee will keep any plant and/or machinery that forms part of the Property maintained, serviced and in good repair and will enter into and keep current at the lessee's expense such maintenance, service and repair contracts as are reasonably required by the lessor for that purpose with contractors approved by the lessor.
- 6.4 The lessee will at the lessee's expense:
- 6.4.1 keep the Property clean and ensure that all wastes and rubbish are promptly and properly removed;
 - 6.4.2 immediately make good any damage to any part of the Property or any part thereof caused by the lessee and persons under its control;
- 6.5 The lessee will immediately give notice to the lessor of:

6.5.1 any damage to and of any accident or defects in the Property or in any of the services or other facilities provided by the lessor in the Property; and

6.5.2 any circumstance likely to occasion any damage or injury occurring within the Property.

6.6 The lessee will not make any alterations or additions to the Buildings and improvements without the lessor's prior written approval.

7 INSURANCE RELEASES AND INDEMNITY

7.1 The lessee will keep current at all times during its occupation of the Property a policy of public risk insurance applicable to the Property and the business carried on for an amount not less than \$20,000,000.00 *(this is the common amount in 2021 but may be negotiated)*;

7.2 The lessee and persons under its control will not do or permit to be done anything upon the Property by which any insurance effected by the lessor or by the lessee may be rendered void or voidable or which will cause the premium payable on any such insurance to increase.

7.3 The lessee agrees to occupy and use the Property at the lessee's risk and releases to the fullest extent permitted by law the lessor from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or in or about the Property.

8 ASSIGNMENT AND SUB-LETTING

8.1 Subject to the following, the lessee will not assign or sub-let the Property.

8.2 The lessee will be entitled to assign or sub-let the Property with the prior written consent of the lessor if:

8.2.1 the lessee is not in default of this Lease; and

8.2.2 the lessee proposes to assign or transfer this Lease or sub-let the Property to a person who:

8.2.2.1 proves to the satisfaction of the lessor that it is a solvent person or company and is capable of adequately complying with the covenants and agreements of the lessee set out in this Lease;

8.2.2.2 enters into a covenant with the lessor in a form reasonably required by the lessor that it will perform the covenants and agreements of the lessee set out in this Lease.

9 HOLDING-OVER

9.1 Should the lessee with the consent of the lessor continue to occupy the Property beyond the expiration of the term of this Lease it will do so as a monthly lessee only. The rent payable shall be the same rent payable immediately prior to the expiration of the term of this Lease and payable monthly in advance.

9.2 Such tenancy will be subject to the terms and conditions of this Lease as far as they can be applied to a monthly tenancy and the tenancy so created will be determinable at any time by either party by giving one month's notice in writing to that effect to the other party.

10 DEFAULT

10.1 In the event that:

10.1.1 the rent or any other money payable by the lessee to the lessor remains unpaid for a period of 14 days *(this is the common timeframe in 2021 but may be negotiated)* after the date on which the same ought to have been paid;

10.1.2 the lessee commits any default in or breach of the provisions of this Lease and such default is continued for 14 days *(this is the common timeframe in 2021 but may be negotiated)* after the lessor serves on the lessee a notice specifying the breach without remedy the breach;

10.1.3 if the lessee is a company, an order is made or a resolution is passed for the winding up of the lessee or if the lessee goes into liquidation;

10.1.4 if the lessee being an individual, becomes bankrupt;

then in any one or more of such events the lessor will have the right at any time thereafter and without notice to or demand on the lessee to re-enter the Property but without prejudice to any action or other remedy which the lessor has or may have for arrears of rent or breach of this Lease.

10.3 If any rent or other money payable by the lessee under this Lease remains unpaid for 14 days after their due date then the lessee will pay to the lessor interest on that money at the annual percentage rate set out in the Schedule calculated from the due date to the date of payment until the amount is paid in full and the lessor will be entitled to recover that money and/or that interest as if the same were rent in arrears.

11 ESSENTIAL TERMS

11.1 It is expressly agreed notwithstanding anything else herein contained that each of the following covenants are essential terms of the Lease:

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(Essential terms would usually include the payment of rent, provision of insurance, use of the Property and the obligation to repair and maintain the Property)

11.2 The lessee covenants to compensate the lessor in respect of any breach of an essential term of this Lease and the lessor is entitled to recover damages from the lessee in respect of such breaches. The lessor's entitlement under this clause 11 is in addition to any other remedy or entitlement to which the lessor is entitled (including to terminate this Lease).

11.3 The lessor's entitlement to recover damages will not be affected or limited by any of the following:

11.3.1 if the lessee abandons or vacates the Property;

11.3.2 if the lessor elects to re-enter or to terminate the Lease;

11.3.3 if the lessor accepts the lessee's repudiation; or

11.3.4 if the parties' conduct constitutes a surrender by operation of law.

12 COSTS AND EXPENSES

The *lessee will pay/lessor will pay/parties will share equally* the lessor's legal costs and expenses *(the payment of the costs of drafting the lease is often negotiated between the parties)* of to the preparation of the Lease. The lessee will pay the costs and expenses of stamping, registration of the Lease (including any costs and disbursements involved in obtaining the consent of any mortgagee of the Property or the Property), any renewal of the Lease and any application for the consent of the lessor.

13 OPTION(S) TO RENEW

13.1 Should the lessee wish to take a further lease of the Property for a further term of years stated at Item *(insert relevant item number)* from the expiration of the term of this Lease and prior to the expiration of the term give to the lessor not less than 3 months' notice in writing then provided that the lessee:-

13.1.1 has paid the rent reserved by this Lease at the times appointed for payment; and

13.1.2 performs and observe the covenants on the part of the lessee contained in this Lease up to the expiration of the term;

the lessor will at the expense of the lessee renew the Lease of the Property for a further term of years stated at Item *(insert relevant item number)* at a rent to be agreed upon by the parties and if not agreed then as determined by a market rent review as set out in clause .

14 LESSOR'S COVENANTS

14.1 The lessor will pay all rates, taxes and assessments charged upon the Property except those which the lessee is obliged to pay.

14.2 The lessee paying the rent reserved and duly and punctually observing and performing the covenants, obligations and provisions in this Lease on the part of the lessee to be observed and performed will and may peaceably possess and enjoy the Property for the term granted without any interruption or disturbance from the lessor or any other person or persons lawfully claiming by from or under the lessor.

15 RIGHTS RESERVED BY THE LESSOR

15.1 The lessor reserves the rights stated in Item *(insert relevant item number)* and will have the right (but not the obligation) to come onto the Property at any time to:-

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-
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(Rights reserved by the lessor commonly include the right to use infrastructure such as the residence and curtilage situated on the Property. It is also common for the lessor to retain the right to use the Property for recreation, timber getting, sand/gravel and to undertake capital improvements)

16 BANK GUARANTEE OR BOND

The lessee will, if an amount is stated at Item *(insert relevant item number)*, on or before the signing of this Lease arrange for the issue of a Bank or other institution approved by the lessor of a guarantee in favour of the lessor for an amount stated at Item *(insert relevant item number)* and *(insert relevant item number)* containing such terms and conditions as are acceptable to the lessor and which the lessor may determine in its absolute discretion.

17. LESSEE OBLIGATIONS

The lessee must:-

17.1 maintain all boundary and sub divisional fencing in the same stock proof condition as they are at the commencement of the term;

17.2 carry out the fencing tasks stated at Item *(insert relevant item number)*;

17.3 take all reasonable steps to control rabbits, foxes and other vermin, and noxious weeds so that the Property is maintained to the standard existing at the commencement of the term and will comply with all statutes relating to them;

17.4 maintain on the Property at all times firefighting equipment for the fighting of bushfires. The firefighting equipment will always be ready for instant use;

17.5 maintain the fire breaks on the Property at the date of this lease, and such additional fire breaks as may be necessary, to prevent the spread of fire;

17.6 carry out any cultivation on the Property in accordance with good farming practices adopted in the district where the Property is situated as determined by the government authority charged with regulating such practices;

- 17.7 not destroy any growing timber on the Property except for the purposes of the provisions of this lease which relate to fencing and cultivation;
- 17.8 do all things reasonably necessary to ensure that any quota, licence or permit used at the date of this lease, or subsequently in respect of the Property is preserved;
- 17.9 not plant any crop (other than a fodder crop for stock) on the Property, which in the ordinary course it would not be able to complete harvesting before the expiration of the term of this Lease;
- 17.10 manage the Property at all times in accordance with the good practices of animal husbandry and farm management prevailing in the district where the Property is situated so as not to impoverish or waste the Property; and
- 17.11 observe the terms of any fertiliser program, cropping program or other farm management plan prepared at the commencement of this Lease and identified at Item *(insert relevant item number)* or *(insert relevant item number)* prepared at any time during the term of this lease and to which the lessee has consented to by executing a copy of that plan which has also been signed by the lessor.

18. AGRICULTURAL TENANCIES LEGISLATION

This Lease is entered into by the parties on the basis that the benefits hereunder conferred by the parties on one another are calculated to provide adequate compensation for any increased or diminished value of the Property and which comprise “the tenancy” within the meaning of the *(insert agricultural tenancy legislation for NSW – Agricultural Tenancies Act 1990)* and that neither of the parties hereto shall claim any compensation except as expressly agreed to in this Lease.

19. GUARANTEE

- 19.1 This clause applies if a guarantor of the lessee is named in Item *(insert relevant item number)* and has signed or executed this lease or, if this lease is a renewal of an earlier lease, the earlier lease.
- 19.2 The guarantor guarantees to the lessor the performance by the lessee of all the lessee's obligations (including any obligation to pay rent, outgoings or damages) under this lease, under every extension of it or under any renewal of it or under any tenancy and including obligations that are later changed or created.
- 19.3 If the lessee does not pay any money due under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor will pay that money to the lessor on demand even if the lessor has not tried to recover payment from the lessee.
- 19.4 If the lessee does not perform any of the lessee's obligations under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor will compensate the lessor even if the lessor has not tried to recover compensation from the lessee.

20. ADDITIONAL CONDITIONS

The parties will observe the conditions stated at Item *(insert relevant item number)* as follows:-

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(Additional conditions usually include any miscellaneous terms that the parties have negotiated that may not come under the common lease terms)

EXECUTION PAGE

We certify this Lease to be correct for the purposes of the Real Property Act 1900.

LESSOR (INDIVIUAL)

Signed in my presence by the lessor who is personally known to me.

.....
Signature of Witness

.....
Signature of lessor

.....
Name of Witness (BLOCK LETTERS)

LESSEE (INDIVIUAL)

Signed in my presence by the lessee who is personally known to me.

.....
Signature of Witness

.....
Signature of lessee

.....
Name of Witness (BLOCK LETTERS)

LESSEE/LESSOR (COMPANY)

EXECUTED by

pursuant to Section 127 of the
Corporations Act, 2001:-

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)
)
)

.....
Director

.....
Secretary

.....
Print Name

.....
Print Name

GUARANTOR(S)

SIGNED SEALED AND DELIVERED

by the Guarantors
in the presence of:-

)
)
)

.....
Signature of Witness

.....
Name of Witness (BLOCK LETTERS)

ANNEXURE TO LEASE

MAP OF LAND/PADDOCKS TO BE LEASED

Sample