

## WHAT DO I INCLUDE IN AN AGISTMENT CONTRACT?

# DEVELOPING A FORMAL AGISTMENT AGREEMENT

**A**gistment agreements are the first step in ensuring a successful collaborative working relationship between the landowner and stockowner.

This factsheet provides key information to consider when drawing up a lease agreement. Be sure to visit our [Leasing and Agistment Toolkit](#) to access our Sample Agistment Agreement to help guide you on your way!



### Why is a formal agreement recommended?

An agistment agreement is a verbal or written agreement between a landowner and an owner of livestock that sets out the terms whereby the livestock can be grazed on the landowner's land.

1

Similar to a lease agreement, an agistment agreement creates a right for the livestock owner to use the land and sets out the terms of such use. However, it is generally not a right to use the land exclusively and not registered on the title.

2

Secondly, an agistment agreement can also set out the rights of each party to the livestock. For example, if the livestock owner does not pay the agistment fee the landowner may have the ability to deal with the livestock to recoup any unpaid money. Alternatively, the agreement can also create the right for a livestock owner to protect their interest in their stock if the landowner has its land seized due to insolvency.

*"When the Personal Property Securities Act (PPSA) commenced in 2012, it introduced a new risk for the owners of stock on agistment: the potential loss of ownership of those stock if the landowner goes into bankruptcy, liquidation, administration or the like.*

*In effect, the PPSA requires agistment arrangements to be documented and registered in order to protect the stockowner's ownership of the livestock."*

- [Thynne + Macartney](#)



### Isn't a handshake good enough?

In many cases people enter into short term arrangements based on a verbal agreement, but in most cases where the arrangement relates to a large amount of stock and/or a long-term agreement then the agreement will be in writing.

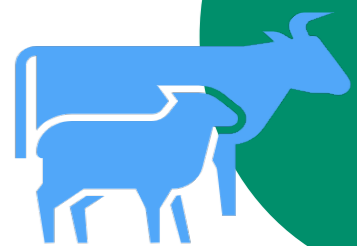
Once agreed upon and signed, an agistment agreement might never be looked at again. However, if problems do arise they are a crucial document to assist in resolving issues. Relying on a handshake or informal notes can give rise to misunderstandings, conflict, and unfortunately, expensive legal disputes.

### What is the process for developing an agreement?

The parties should meet well before the proposed date of commencement to:

- inspect the property and record the condition of land and infrastructure
- discuss the species and sex of livestock to be grazed on the land
- agree on the terms of the agistment agreement in as much detail as possible.

The parties should then draft and sign the agistment agreement. However, it is likely to be more efficient and cost effective in the long term to have the agreement drafted and reviewed by professional advisers who can modify a ready-made agreement to suit the arrangement between the parties.



## What should be in an agistment agreement?

- **Description of the land:** including the land title details, property name and address. If for only part of the property a specific paddock description including mapped location is also required.
- **Landowner's name:** this should be checked by a search of the land title.
- **Livestock owner's name:** note this must be the correct trading entity and not just the ABN.
- **Date:** of agistment agreement.
- **Period:** of the agistment arrangement.
- **A licence:** to use and access infrastructure.
- **Obligations of each party:** for the care and management of the livestock including notice periods in the case of sick animals, review feed quality/quantity, livestock movements, husbandry obligations and livestock loss obligations.
- **Due diligence:** required before delivering the livestock to the land for e.g. a health certificate to ensure that neither the land or the livestock are carry disease.
- **Description of the livestock:** including species, sex, ear tag numbers, number of animals and body condition of livestock.
- **Property maintenance terms:** including pasture supply and maintenance of infrastructure.
- **Agistment fee:** whether on a per head per time period rate or a c/\$ per kg live weight gain basis.
- **Method of payment:** and interest rate applicable for late payment.
- **The rights available:** upon a default or breach by either party.
- **Dispute resolution clause.**
- **Insurance requirements.**
- **The parties' rights to a stock lien and/or PPSA security interest:** whether land owner has a right to stock if fees are unpaid, or interest under the [Personal Properties Securities Act 2009](#).



## Do agistment issues really make it to court?

Yes. Here are some examples provided by [Thynne + Macartney](#):

- **Hornery v McDonald & Anor [2006]:** the owners of cows and calves agisted on a property at Blackall sued the landowners claiming that insufficient feed was provided for the stock, resulting in the failure of a subsequent artificial insemination program.
- **Queensland courts in Fearnley v Finlay [2014]:** there was no written agistment agreement and the landowner sought to rely on an oral agreement to recover \$225,000 in unpaid agistment fees relating to a period of agistment in excess of three years. The landowner claimed a lien over the cattle under the Storage Liens Act, which would have allowed the landowner to sell the agisted stock and retain the unpaid agistment fees from the proceeds.
- **Tocchini & Anor v Paroz [2011]:** a property at Mt Mort had been sold by statutory trustees for sale as a result of a dispute between family co-owners. Following the sale, one of the former owners entered into a written agistment agreement with the new owner for the continued agistment of the former owner's livestock. However, he never paid the agreed agistment fees, destroyed a section of fencing to give his cattle better access to water and ultimately ignored the landowner's demands to remove his cattle from the property. The landowner successfully sued to recover close to \$48,000 in unpaid agistment fees and the cost of fence repairs, and obtained an order requiring the stockowner to remove his stock.



- [Video with Patrick Barrett of Walsh & Blair Lawyers](#)
- [Sample Agistment Agreement](#)
- [Legally speaking: Don't lose your interests in livestock, crops and plant \(McCullough Robertson | Beef Central\)](#)
- [Smooth grazing - trouble-free agistment \(Thynne + Macartney\)](#)