



LORD HOWE ISLAND BOARD

PLAIN LANGUAGE GUIDE TO THE LORD HOWE ISLAND ACT

Information Sheet 3: Owning and Inheriting Land on Lord Howe Island

The ownership and transfer of land on Lord Howe Island is unique and is controlled by the Lord Howe Island Act 1953.

How is land held on Lord Howe Island?

The *Lord Howe Island Act 1953* provides that all the land on the Island belongs to the Crown. The law does not allow freehold private ownership. Instead, the Act provides for two kinds of leases to be granted to Islanders by the NSW Minister for the Environment - Perpetual Leases for residential purposes and Special Leases for other purposes.

Is the transfer of leases restricted?

Yes. An Islander may transfer a lease but generally only to other Islanders, unless there is no Islander who is willing and able to take it up. For information on the meaning of the term "Islander", see the fact sheet entitled "Who is an Islander?"

All transfers require the approval of the Minister on the recommendation of the Board. The Governor's approval is also required in the case of a transfer to a non-Islander.

The Act imposes restrictions on who can inherit and take over a lease after the holder dies. This is explained in more detail below. The restrictions were imposed at the request of Islanders to ensure that land would be available for people who have made the Island their home.

The Lord Howe Island Board keeps a register containing particulars of leases granted under the Act. It may be inspected by the public at the Island office of the Board.

Application to transfer a lease is made on the prescribed form, which is available at the Board's office. If the application is to transfer a lease to a non-Islander, the Board's policy regarding the transfer of leases would apply. A copy of this policy is available from the Board.

How is a new lease created?

Perpetual Leases are issued for the purpose of residential use. The creation of new Perpetual Leases is therefore strictly constrained by the *Lord Howe Island Local Environmental Plan 2010*.

The plan also limits the total number of future dwellings on the Island to 25 during the 20 year period up to 2025.

The creation of any new lease is controlled by the Act, which sets out criteria which Islanders must meet to apply for a lease.

The Minister can grant Special Leases for periods up to 10 years for agricultural and other purposes. These leases may only be granted to a person who holds a Perpetual Lease. They can be extended with the Minister's approval on the recommendation of the Board.

Are there restrictions on Islanders acquiring existing leases?

Islanders can purchase, sub-lease or inherit existing Perpetual Leases. However, a transfer must first be approved by the Minister on the recommendation of the Board.

Can a non-Islander acquire a lease?

Yes, but only in very limited circumstances. In general, the Minister cannot grant a Perpetual Lease to a person who is not an Islander and may not grant a Special Lease to a person who is not a Perpetual Lease holder.

However, the Act does allow Perpetual Leases to be transferred to, or sublet by, a non-Islander if no Islander is willing and able to take it up.

Before recommending a lease transfer or the subletting of a lease to a non-Islander, the Board must satisfy itself that no Islander is willing and able to take up the lease. The Board advertises proposed transfers to non-Islanders in accordance with its “Transfer of Perpetual Lease Policy”.

The policy sets out the process for the transfer of perpetual leases on the Island in accordance with the requirements of the *Lord Howe Island Act 1953*. The policy also establishes a framework to guide the Board’s consideration of the requirements in section 23(4) of the Act relating to applications to transfer perpetual leases to a person other than an Islander (non-Islander).

Can Perpetual Leases be inherited by Islanders and their direct descendants?

A Perpetual Lease may be inherited and taken up by an Islander or by a non-Islander who is a lineal

descendant of the deceased holder of the lease. A lineal descendant is a child, grandchild, great grandchild, (and so on), of the deceased. A Perpetual Lease cannot be inherited and taken up by the deceased’s brothers, sisters, uncles or aunts.

If a Perpetual Lease is inherited by an Islander who already holds a Perpetual Lease, the Minister, on the recommendation of the Board, may suspend the residency requirement on the inherited lease and approve the transfer of the inherited lease to a child of the Islander, even if the child is not an Islander. The Minister may impose conditions on the transfer to the child in these circumstances.

Can Perpetual Leases be inherited by non-Islanders?

If a Perpetual Lease is inherited by a person who is not an Islander or a lineal descendant of an Islander, the person cannot take up the lease. Instead, the lease may be offered for sale to an Islander in accordance with the Act and the person may inherit the proceeds of the sale. If no Islander is willing and able to buy the lease, the person may seek approval to take up the lease.

The Act allows for the executor or administrator of the estate to hold the property until the estate is transferred to the beneficiaries.

Other legal fact sheets forming part of this series include the following titles:

- Information Sheet 1: History of the Lord Howe Island Act 1953
- Information Sheet 2: NSW and Commonwealth Laws on Lord Howe Island
- Information Sheet 4: Who is a Lord Howe Islander?
- Information Sheet 5: Perpetual Leases on Lord Howe Island
- Information Sheet 6: Special Leases on Lord Howe Island
- Information Sheet 7: Permissive Occupancies on Lord Howe Island