

Queensland



ANNO TRICESIMO PRIMO

ELIZABETHAE SECUNDAE REGINAE

No. 17 of 1982

An Act to amend the Land Act 1962–1981 in certain particulars and to amend the Forestry Act 1959–1979 in a certain particular and for other purposes

[ASSENTED TO 23RD APRIL, 1982]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982*.

2. Commencement. (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as is provided for by subsection (1), this Act shall commence on a date appointed by Proclamation.

3. Arrangement. This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1–3);

PART II—AMENDMENT OF LAND ACT (ss. 4–15);

PART III—AMENDMENT OF FORESTRY ACT (ss. 16–17);

PART IV—MISCELLANEOUS PROVISIONS (ss. 18–22).

PART II—AMENDMENT OF LAND ACT

4. Citation. (1) In this Part the *Land Act 1962–1981* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Land Act 1962–1982*.

5. Amendment of s. 5. Interpretation of terms. Section 5 of the Principal Act is amended by—

(a) inserting after the definition “Deed of grant” the following definition:—

““Deed of grant in trust”—The deed of grant evidencing title to land granted in trust under Part XI for a public purpose;”;

(b) in the definition “Public purposes”, inserting above the word “Bridges” the words “Benefit of Aboriginal and Islander inhabitants”.

6. Amendment of s. 334. Grants and reservations for public purposes. Section 334 of the Principal Act is amended by, in subsection (2), inserting after the word “cemetery” the words “or where the Minister otherwise determines”.

7. New ss. 334C, 334D and 334E. The Principal Act is amended by inserting after section 334B the following sections:—

“**334C. Exclusions from grants in trust.** There may be excluded from a grant in trust, upon the making of the grant—

(a) improvements the property of the Crown, other than buildings or structures provided for the residence of Aboriginal or

Islander inhabitants authorised to reside within the boundaries of the land, the subject of the grant together with—

- (i) the land on which the improvements so excluded stand;
 - (ii) a reasonable area of land being the immediate environs of the improvements so excluded; and
 - (iii) adequate means of ingress to and egress from the improvements so excluded;
- (b) land comprising aerodromes, landing strips, ports, roads, stock routes, bridges or railways.

334D. Reservations from grants in trust. In addition to all other reservations that the Governor in Council may think fit to make in relation to a grant of land in trust, there may be reserved from the grant a specified area, with or without describing so as to identify it the part or parts of the land comprising that area, for public purposes, with or without specifying the particular purpose or purposes.

334E. Description of land granted in trust, excluded or reserved.

- (1) Notwithstanding any other Act, rule of law or practice—
- (a) the Minister may direct that particular land to be granted in trust shall not be surveyed but shall be described in the grant in such manner as he thereupon determines;
 - (b) the Minister may direct that land excluded or reserved from a grant in trust shall not be surveyed but shall be described in the grant in such manner as he thereupon determines.
- (2) Where the Minister has given a direction referred to in subsection (1) and has made the necessary associated determination—
- (a) the land in question shall not be surveyed for the purposes of the grant in trust but may be described in the Deed of Grant that evidences the grant in trust in accordance with the Minister's determination; and
 - (b) the Registrar of Titles shall enrol and issue the Deed of Grant that evidences the grant in trust containing the description of land (whether land granted or land excluded or reserved) specified in accordance with the Minister's determination.
- (3) If at anytime after a Deed of Grant has been issued in accordance with subsection (2) a survey is made of the land granted in trust or the land excluded or reserved from the grant the Registrar of Titles—
- (a) shall amend the copy of the Deed of Grant entered in the register book kept by him and the duplicate copy thereof (if that duplicate copy is at any time produced to him); or
 - (b) if in his opinion the case requires it, shall cancel the Deed of Grant and issue in its stead a Certificate of Title,
- in either case to take account of the survey made.”

8. New s. 338A. The Principal Act is amended by inserting after section 338 the following section:—

“**338A. Duty to preserve trust property.** Unless the Minister otherwise determines, it is the duty of the trustees of land granted in trust to preserve and protect so far as is reasonably possible all improvements existing on the land granted in trust at the time when the grant is made.”.

9. Amendment of s. 344. Provisions applicable to leases. Section 344 of the Principal Act is amended by, in paragraph (b), inserting after the word “and” the words “, unless the Minister otherwise determines,”.

10. Amendment of s. 346. Application of rents. Section 346 of the Principal Act is amended by inserting after the word “shall” the words “, unless the Minister otherwise determines,”.

11. New s. 347A. The Principal Act is amended by inserting after section 347 the following section:—

“**347A. Trustee’s termination of certain leases subject to review.** Where a trustee of land granted in trust for the benefit of Aboriginal or Islander inhabitants, purporting to exercise a right conferred on the lessor by the covenant referred to in paragraph (d) of section 344, has terminated a lease on the ground specified in that paragraph, the person who was lessee under that lease may, within 21 days from the day on which he receives notice of such termination, apply in writing to the Minister to cancel the termination of the lease.

If the Minister is satisfied that the trustee was not entitled to terminate the lease in the circumstances he may, within 21 days from the day on which he receives the application, rescind the trustee’s cancellation whereupon the lease shall be deemed not to have been terminated and its term shall be deemed to have continued to run.”.

12. Amendments of s. 350. Occupation or use contrary to trust. Section 350 of the Principal Act is amended by—

(a) numbering the existing provisions as subsection (1);

(b) adding at the end of the section the following subsection:—

“(2) The expression “any person” in paragraph (b) of subsection (1) does not include—

(a) a person who at the commencement of the *Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982* was occupying, any improvement on land that subsequently to that commencement has been granted in trust for the benefit of Aboriginal or Islander inhabitants;

(b) a person who, at any time after land has been granted in trust for the benefit of Aboriginal or Islander inhabitants, occupies for a bona fide residential or business purpose any improvement on that land under a tenancy arrangement with the trustee or,

in the case of a residential occupancy, any member of that person’s household.”.

13. Amendment of s. 353. Power of Governor in Council to determine trust. Section 353 of the Principal Act is amended by—

(a) in subsection (2), omitting the words “the issue” and substituting the words “the taking effect”;

(b) adding at the end of the section the following subsection:—

“(3) Every Order in Council made under this section shall—

(a) be conclusive evidence of the matters contained therein;

(b) take effect from the date of its publication in the Gazette or from such later date as is specified therein;

(c) be laid before the Legislative Assembly within 14 sitting days after its publication in the Gazette.

If the Legislative Assembly passed a resolution of which notice has been given at any time within 18 sitting days after the Order in Council has been laid before it disallowing the order, the order shall thereupon cease to have effect but without prejudice to the validity of anything done in the meantime or to the making of a further Order in Council.”.

14. Amendment of s. 358. Resumption of reservations for public purposes. Section 358 of the Principal Act is amended by—

(a) in subsection (4), omitting the words “*The Public Works Land Resumption Acts, 1906 to 1955*” and substituting the words “*the Acquisition of Land Act 1967–1977*”;

(b) adding at the end of the section the following subsection:—

“(5) In the application of this section to the resumption of possession of land by reason of a reservation made in a grant in trust for the benefit of Aboriginal or Islander inhabitants the provisions of subsection (2) shall be construed as varied so as to provide—

(a) that where a survey has not been made of the land granted in trust it shall not be necessary to cause an authorised surveyor to make a survey and prepare a plan as referred to in subsection (2) but the Minister shall cause a plan to be prepared by some competent person and signed by that person as evidence of the accuracy thereof showing the land possession of which is being resumed; and

(b) that the notice required by subsection (2) to be served shall specify the public purpose or public purposes for which possession of the land is being resumed.”.

15. New s. 361A. The Principal Act is amended by inserting after section 361 the following section:—

“**361A. Ownership of improvement not affected by grant.** (1) If it is shown to the satisfaction of the Minister and the trustees of land granted in trust that at the date of issue of the Deed of Grant evidencing the grant any improvement on the land was owned by any person, that ownership shall not be prejudiced by the grant.

(2) The person shown to own such improvement shall be entitled to the grant by the trustees of a lease that accords with the provisions of this Division of—

- (a) the land on which the improvement stands; and
- (b) where the improvement is a building or structure used as a residence or for business or in connexion with educational or religious purposes, a reasonable area of land being the immediate environs of the improvement.

(3) Where in a case to which subsections (1) and (2) apply application is made to the Minister for his approval of the lease pursuant to section 343 it is not competent to the Minister to refuse the application.

PART III—AMENDMENT OF FORESTRY ACT

16. Citation. (1) In this Part the *Forestry Act 1959–1971* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Forestry Act 1959–1982*.

17. Amendment of s. 45. Forest products, etc., which are the property of the Crown. Section 45 of the Principal Act is amended by, in paragraph (ii), inserting after the words “all lands” the words “granted in trust or”.

PART IV—MISCELLANEOUS PROVISIONS

18. Interpretation. Where a term that is defined by the *Land Act 1962–1981* is used in this Part it shall have the meaning assigned to it by that Act.

19. Registration of encumbrances affecting land granted in trust. (1) If at any time when land is granted in trust for the benefit of Aboriginal or Islander inhabitants any part of the land is subject to a special lease granted pursuant to *The Land Act of 1962* or that Act as amended, the secretary of the Commission shall furnish to the Registrar of Titles—

- (a) the original or an office copy of the instrument of special lease and every sub-lease of the whole or any part of the holding together with a copy thereof certified by him as a correct copy; and
- (b) the original or an office copy of any memorandum of mortgage or charge registered in the Department in respect of the special lease or any sub-lease of the whole or any part of the holding.

(2) Before he issues the Deed of Grant evidencing the grant in trust the Registrar of Titles shall endorse on the deed a memorial of each

instrument furnished to him under subsection (1) in order of priority according to the dates on which those instruments were registered in the Department and thereupon—

- (a) each lease so endorsed shall take effect as a lease registered on the deed under the *Real Property Act 1861–1981*; and
- (b) each memorandum of mortgage or charge so endorsed shall take effect as a bill of mortgage or a memorandum of transfer and charge registered on the deed under the *Real Property Act 1861–1981*,

and the provisions of that Act and of the *Real Property Act 1877–1981* shall apply in relation to those instruments.

(3) In this section the term “sub-lease” includes every sub-lease however remote from the head lease.

20. Registration of easements. (1) If at any time when land is granted in trust for the benefit of Aboriginal or Islander inhabitants any part of the land is subject to an encumbrance easement or has annexed to it a benefit easement the secretary of the Commission shall furnish to the Registrar of Titles the original of the instrument by which the easement was created together with a copy thereof certified by him as a correct copy.

(2) Before he issues the Deed of Grant evidencing the grant in trust the Registrar of Titles shall endorse on the deed a memorial of each instrument furnished to him under subsection (1) so as to preserve the priority had by them in the hands of the Commission and thereupon each easement so endorsed shall take effect as an easement registered on the deed under the *Real Property Act 1861–1981* and the provisions of that Act and of the *Real Property Act 1877–1981* shall apply in relation to those instruments.

21. Residence of authorised residents preserved. Any person who, at the time when land is granted in trust for the benefit of Aboriginal or Islander inhabitants, occupies any building or structure as his residence, as an authorized resident on the land, shall, notwithstanding the grant in trust, be entitled to continue his occupation of the building or structure upon the same terms and conditions as he occupied it at the time of the grant until—

- (a) the trustee of the land determines otherwise and terminates his right to occupy the building or structure; or
- (b) the trustee of the land and that person agree to new terms and conditions for his occupation of the building or structure.

22. Mining rights excluded unless approved. (1) No mining tenement within the meaning of the *Mining Act 1968–1980* shall exist and no authority to prospect within the meaning of that Act shall be granted or, being granted, be of any force or effect in respect of land granted in trust for the benefit of Aboriginal or Islander inhabitants unless the approval of the Governor in Council thereto has first been obtained.

(2) In considering whether or not to approve a mining tenement or an authority to prospect in respect of land referred to in subsection (1) the Governor in Council shall have regard to the views of and any recommendation made by the trustee of the land in question.