



Queensland

Natural Resources and Other Legislation Amendment Act 2005

Act No. 68 of 2005



Queensland

Natural Resources and Other Legislation Amendment Act 2005

Contents

		Page
Part 1	Preliminary	
1	Short title	10
2	Commencement	10
Part 2	Amendment of Coal Mining Safety and Health Act 1999	
3	Act amended in pt 2	10
4	Amendment of s 126 (Qualifications for appointment as inspector)	10
5	Amendment of s 129 (Further functions of inspectors)	10
6	Amendment of s 160 (Additional powers of chief inspector)	11
7	Amendment of s 255 (Proceedings for offences)	11
8	Amendment of s 256 (Recommendation to prosecute)	11
9	Amendment of s 276 (Protection from liability)	11
Part 3	Amendment of Land Act 1994	
10	Act amended in pt 3	12
11	Omission of s 2 (Commencement)	12
12	Amendment of s 275 (Registers comprising land registry)	12
13	Amendment of s 276 (Registers to be kept by chief executive)	12
14	Amendment of s 281 (Other information may be kept)	13
15	Replacement of s 282 (Distinguishing reference for each document)	13
	282 Chief executive's procedures on lodgment and registration of document	13
16	Amendment of s 284 (Entitlement to search a register)	14
17	Insertion of new s 285A	15
	285A Supply of statistical data	15
18	Insertion of new ss 286A and 286B	16
	286A Land practice manual	16

*Natural Resources and Other Legislation Amendment No. 68, 2005
Act 2005*

	286B	Requiring plan of survey to be lodged	17
19		Amendment of s 287 (Registered documents must be in the appropriate form)	18
20		Insertion of new ss 288A–288C	18
	288A	Original mortgagee to confirm identity of mortgagor	18
	288B	Mortgage transferee to confirm identity of mortgagor	20
	288C	Effect of registration of mortgage under Land Title Act 1994	21
21		Amendment of s 290D (Explanatory format plan)	22
22		Amendment of s 290J (Requirements for registration of plan of subdivision)	22
23		Insertion of new s 291A	22
	291A	Correction for omitted easement	22
24		Amendment of s 294B (Building management statement may be registered)	23
25		Insertion of new s 294BA	24
	294BA	Single area for lots to which building management statement applies	24
26		Amendment of s 294C (Circumstances under which building management statement may be registered)	24
27		Amendment of s 294D (Content of building management statement)	24
28		Amendment of s 294I (Extinguishing a building management statement)	25
29		Amendment of s 295 (Right to have interest registered)	25
30		Amendment of s 296 (Tenure document to be returned to land registry)	26
31		Amendment of s 302 (Effect of registration on interest)	26
32		Amendment of s 304 (Correcting unregistered documents)	26
33		Amendment of s 305 (Requisitions)	27
34		Amendment of s 314 (Dispensing with production of document)	27
35		Insertion of new s 317A	27
	317A	References to registered standard terms document	27
36		Amendment of s 321 (Withdrawal or cancellation of standard terms document)	28
37		Insertion of new ss 358A and 358B	28
	358A	Amendment of leasehold land register or freehold land register for omitted acquired easement	28

*Natural Resources and Other Legislation Amendment No. 68, 2005
Act 2005*

	358B	Compensation not payable to any person for action under s 358A	29
38		Amendment of s 361 (Definitions)	30
39		Amendment of s 362 (Easements may be created only by registration)	30
40		Amendment of s 366 (Rights and liabilities created on registration of document)	30
41		Amendment of s 369 (Public utility easements)	30
42		Amendment of s 371 (Surrendering an easement)	32
43		Amendment of s 372 (End and continuation of easements)	32
44		Amendment of s 373A (Covenant by registration)	32
45		Insertion of new s 373AA	35
	373AA	Compliance with s 373A	35
46		Amendment of s 377 (Registering personal representative)	35
47		Amendment of s 379 (Registering beneficiary)	36
48		Insertion of new ch 7, pt 3B	36
	Part 3B	Tidal boundary plans of subdivision	
	431NA	Definitions for pt 3B	36
	431NB	Application of pt 3B	36
	431NC	Prohibition on registration of relevant tidal boundary plan of subdivision	37
	431ND	Approval of Minister in circumstances of accretion or erosion	37
	431NE	Approval of Minister in other limited circumstances	38
	431NF	Limit on application of s 358 (Changing deeds of grant—change in description or boundary of land)	38
	431NG	No compensation for operation of this part	38
49		Amendment of sch 6 (Dictionary)	39
Part 4	Amendment of Land Title Act 1994		
50		Act amended in pt 4	40
51		Insertion of new s 9A	40
	9A	Land title practice manual	40
52		Amendment of s 10 (Form of instruments)	41
53		Insertion of new ss 11A and 11B	41
	11A	Original mortgagee to confirm identity of mortgagor	42
	11B	Mortgage transferee to confirm identity of mortgagor	43
54		Amendment of s 15 (Registrar may correct registers)	44

*Natural Resources and Other Legislation Amendment No. 68, 2005
Act 2005*

55	Amendment of s 17 (Registrar may prepare and register caveat)	45
56	Amendment of s 19 (Registrar may decide to hold inquiry)	45
57	Amendment of s 23 (Notice to witness)	46
58	Amendment of s 26 (Other referrals by the registrar to the Supreme Court)	46
59	Amendment of s 30 (Registrar must register instruments)	47
60	Replacement of s 32 (Registrar must give distinguishing reference to each instrument)	47
	32 Registrar's procedures on lodgment and registration of instrument	47
61	Amendment of s 34 (Other information not part of the freehold land register)	48
62	Amendment of s 35 (Entitlement to search register)	48
63	Amendment of s 48E (Explanatory format plan)	49
64	Amendment of s 49C (Building format plan of subdivision)	50
65	Amendment of s 50 (Requirements for registration of plan of subdivision)	50
66	Amendment of s 51 (Dedication of public use land in plan)	50
67	Insertion of new s 51A	50
	51A Access for public use land	50
68	Amendment of s 54A (Building management statement may be registered)	51
69	Insertion of new s 54AA	51
	54AA Single area for lots to which building management statement applies	51
70	Amendment of s 54B (Circumstances under which building management statement may be registered)	52
71	Amendment of s 54C (Content of building management statement)	52
72	Amendment of s 54H (Extinguishing a building management statement)	52
73	Amendment of s 54I (Lots constituted by community titles scheme)	53
74	Amendment of s 72 (Mortgaging lot etc. by registration)	54
75	Amendment of s 81A (Definitions for div 4)	54
76	Amendment of s 85B (Rights and liabilities created on registration of instrument)	54
77	Amendment of s 89 (Easements for public utility providers)	54
78	Amendment of s 90 (Surrendering an easement)	56

*Natural Resources and Other Legislation Amendment No. 68, 2005
Act 2005*

79	Amendment of s 97A (Covenant by registration)	56
80	Insertion of new s 97AA	58
	97AA Compliance with s 97A.	58
81	Replacement of s 98 (Application may not be made about encroachment)	59
	98 Application may not be made about particular matters	59
82	Amendment of s 99 (Application for registration)	60
83	Amendment of s 105 (Lapsing of caveat)	60
84	Replacement of s 106 (Reviving or replacing caveat)	60
	106 Further caveat	60
85	Amendment of s 107 (Refusing or compromising application)	61
86	Amendment of s 108 (Registering adverse possessor as owner)	61
87	Insertion of new ss 108A and 108B	61
	108A Requirements for part of a lot.	61
	108B Consequences of registration.	62
88	Amendment of s 111 (Registering personal representative)	63
89	Amendment of s 112 (Registering beneficiary)	63
90	Amendment of s 115K (Recording community management statements)	63
91	Amendment of s 121 (Requirements of caveats)	64
92	Replacement of s 129 (Further caveat)	64
	129 Further caveat	64
93	Replacement of s 137 (Acts for minors and by attorneys etc.)	64
	136 Act for a minor	64
	137 Act for other person lacking capacity	65
94	Replacement of s 146 (No further settlement notice for same transaction).	65
	146 Further settlement notice	65
95	Amendment of s 154 (Lodging certificate of title)	66
96	Amendment of s 155 (Correcting unregistered instruments)	66
97	Amendment of s 156 (Requisitions)	67
98	Amendment of s 166 (Destroying instrument in certain circumstances)	67
99	Insertion of new s 168A	68
	168A References to registered standard terms document	68

*Natural Resources and Other Legislation Amendment No. 68, 2005
Act 2005*

100	Amendment of s 172 (Withdrawal or cancellation of standard terms document)	68
101	Amendment of s 185 (Exceptions to s 184)	68
102	Amendment of s 187 (Orders by Supreme Court about fraud and competing interests)	69
103	Amendment of pt 9, div 2, sdiv C, hdg	70
104	Insertion of new s 188AA	70
	188AA Compensation for which claim may not be made.	70
105	Amendment of s 188B (Order by Supreme Court about deprivation, loss or damage)	70
106	Insertion of new ss 188C and 188D	70
	188C Time limit for claim	71
	188D No right of subrogation for insurers	71
107	Amendment of s 189 (Matters for which there is no entitlement to compensation)	71
108	Insertion of new s 189A	72
	189A Payment to compensated mortgagee.	72
109	Amendment of s 190 (State's right of subrogation)	74
110	Insertion of new pt 10A	74
	Part 10A Tidal boundary plans of subdivision	
	191A Definitions for pt 10A	74
	191B Application of pt 10A	75
	191C Prohibition on registration of relevant tidal boundary plan of subdivision	76
	191D Approval of Minister in circumstances of accretion or erosion	76
	191E Approval of Minister in other limited circumstances	77
	191F No compensation for operation of this part	77
111	Insertion of new s 198A	77
	198A Supply of statistical data.	78
112	Amendment of sch 2 (Dictionary)	79
Part 5	Amendment of Integrated Resort Development Act 1987	
113	Act amended in pt 5	79
114	Amendment of s 79D (Registration of replacement schedule)	79
Part 6	Amendment of Local Government Act 1993	
115	Act amended in pt 6	80
116	Insertion of new ch 13, pt 2A	80
	Part 2A Public thoroughfare easements	

*Natural Resources and Other Legislation Amendment No. 68, 2005
Act 2005*

	921A Public thoroughfare easements	80
117	Amendment of schedule (Dictionary)	82
Part 7	Amendment of Mining and Quarrying Safety and Health Act 1999	
118	Act amended in pt 7	82
119	Amendment of s 123 (Qualifications for appointment as inspector)	82
120	Amendment of s 126 (Further functions of inspectors)	83
121	Amendment of s 157 (Additional powers of chief inspector)	83
122	Amendment of s 234 (Proceedings for offences)	83
123	Amendment of s 235 (Recommendation to prosecute)	83
124	Amendment of s 256 (Protection from liability)	83
Part 8	Amendment of Property Law Act 1974	
125	Act amended in pt 8	84
126	Amendment of s 61 (Conditions of sale of land)	84
Part 9	Amendment of Transport Infrastructure Act 1994	
127	Act amended in pt 9	85
128	Insertion of new ch 6, pt 9	85
	Part 9 Public thoroughfare easements	
	105ZP Public thoroughfare easements	85
129	Amendment of schedule 6 (Dictionary)	86
Part 10	Amendment of Valuers Registration Act 1992	
130	Act amended in pt 10	87
131	Amendment of s 3 (Definitions)	87
132	Amendment of s 18 (Meetings of board)	87
133	Amendment of s 27 (Inspection of register)	88
134	Amendment of s 28 (Publication of names of registered valuers)	88
135	Amendment of s 29 (Applications for registration)	88
136	Replacement of s 31 (Attendance before board of applicant)	89
	31 Investigations about suitability of applicants	89
	31A Consideration of suitability of applicants	90
	31B Criminal history is confidential document	90
137	Amendment of s 36B (Renewal of registration—statement or certificate about CPD)	90
138	Amendment of s 39 (Cancellation of registration)	91
139	Amendment of s 42FA (Renewal of recording of registered valuer on list of specialist retail valuers)	91

*Natural Resources and Other Legislation Amendment No. 68, 2005
Act 2005*

140	Amendment of s 44 (Board may authorise investigation)	91
141	Amendment of s 50 (Disciplinary charge may be laid)	91
142	Amendment of s 54 (Representation)	92
143	Amendment of s 57 (Offences—proceedings)	92
144	Amendment of s 59 (Committee may order cancellation of registration, etc.)	92
145	Amendment of s 61 (Appeals)	93
146	Replacement of pt 6, hdg (Transitional provisions for Valuers Registration Act 1992)	93
147	Replacement of pt 7, hdg (Transitional provisions for Valuers Registration Amendment Act 2001)	94
148	Replacement of s 72 (Definitions for pt 7)	94
	72 Definition for div 2.	94
149	Insertion of new pt 6, div 3	94
	Division 3 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2005	
	75 Definition for div 3.	94
	76 Renewal of registration.	95
	77 Renewal of recording on list of specialist retail valuers	95
Part 11	Minor amendments	
150	Acts amended in schedule	95
Schedule	Minor amendments	96
	Geothermal Exploration Act 2004	96
	Land Protection (Pest and Stock Route Management) Act 2002	96
	Mineral Resources Act 1989	96
	Petroleum Act 1923	97
	Petroleum and Gas (Production and Safety) Act 2004	97
	Survey and Mapping Infrastructure Act 2003	100
	Surveyors Act 2003	100
	Valuation of Land Act 1944	100
	Water Act 2000	100



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Natural Resources and Other Legislation Amendment Act 2005

Act No. 68 of 2005

**An Act to amend legislation about natural resources, and for
other purposes**

[Assented to 8 December 2005]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Natural Resources and Other Legislation Amendment Act 2005*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Coal Mining Safety and Health Act 1999

3 Act amended in pt 2

This part amends the *Coal Mining Safety and Health Act 1999*.

4 Amendment of s 126 (Qualifications for appointment as inspector)

Section 126, from ‘has’—

omit, insert—

‘has appropriate competencies and adequate experience to effectively perform an inspector’s functions under this Act.’.

5 Amendment of s 129 (Further functions of inspectors)

Section 129(b), ‘inspector’—

omit, insert—

‘executive’.

6 Amendment of s 160 (Additional powers of chief inspector)

(1) Section 160(a)—

omit.

(2) Section 160(b) and (c)—

renumber as section 160(a) and (b).

7 Amendment of s 255 (Proceedings for offences)

(1) Section 255(5), from ‘inspector’—

omit, insert—

‘executive.’.

(2) Section 255(6), definition *person dissatisfied with a decision*, paragraph (c)—

omit.

8 Amendment of s 256 (Recommendation to prosecute)

(1) Section 256(1), ‘chief inspector’—

omit, insert—

‘chief executive’.

(2) Section 256(2), ‘inspector’s’—

omit, insert—

‘executive’s’.

9 Amendment of s 276 (Protection from liability)

(1) Section 276(3), definition *official*, paragraphs (b) to (h)—

renumber as paragraphs (c) to (i).

(2) Section 276(3), definition *official*—

- ‘(g) registers about land required or permitted by an Act to be kept by the chief executive;
- ‘(h) other registers about land required or permitted by an Act to be included in the land registry.’.

14 Amendment of s 281 (Other information may be kept)

Section 281—

insert—

- ‘(2) The information may include information given to the chief executive by another entity.
- ‘(3) A relevant entity is not civilly liable for an act done, or omission made, honestly and without negligence in relation to the giving or keeping of information under this section.
- ‘(4) Without limiting subsection (3), a relevant entity other than the chief executive is not civilly liable in relation to the giving or keeping of inaccurate information under this section if the relevant entity did not give the information to the chief executive for keeping under this section.
- ‘(5) In this section—
relevant entity means—
 - (a) the chief executive; or
 - (b) the Minister; or
 - (c) the State.’.

15 Replacement of s 282 (Distinguishing reference for each document)

Section 282—

omit, insert—

‘282 Chief executive’s procedures on lodgment and registration of document

- ‘(1) When a document is lodged in the land registry, the chief executive must note on the document—
 - (a) the date and time of lodgment; and

(b) an identifying reference.

‘(2) When the document is registered, the chief executive must record the information mentioned in subsection (1)(a) and (b) in the appropriate register.’.

16 Amendment of s 284 (Entitlement to search a register)

(1) Section 284(1), from ‘When’ to ‘may’—

omit, insert—

‘A person may, on payment of the fee prescribed under a regulation’.

(2) Section 284—

insert—

‘(3) A search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, an office of the land registry during office hours on a day the land registry is open for business.

‘(4) Also, a search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, the website of an entity engaged by the chief executive for the purpose of allowing persons to search the land registry or obtain copies of particulars, documents or other information kept in the registry.

‘(5) The chief executive may allow a person to carry out a search under subsection (1)(a) for—

(a) only part of the particulars recorded about a lease, licence, permit or reserve; or

(b) only part of a document lodged or deposited in the land registry; or

(c) only part of the information about a document lodged or deposited in the land registry.

‘(6) The chief executive may enter into an agreement with another department allowing the department to carry out a search, or obtain a copy, under this section without payment of the fee mentioned in subsection (1).

- ‘(7) However, the chief executive may enter into an agreement under subsection (6) only if the chief executive is reasonably satisfied the information obtained from the search or the copy will not be—
- (a) used for a commercial purpose, including, for example, the marketing or sale of the information or other information; or
 - (b) included in another database of information, in any form, other than with approval from the chief executive.’.

17 Insertion of new s 285A

Chapter 6, part 1, division 2, after section 285—

insert—

‘285A Supply of statistical data

- ‘(1) The chief executive may enter into an agreement to supply statistical data derived from documents or information kept in the land registry.
- ‘(2) If the chief executive supplies statistical data under subsection (1)—
- (a) the fees and charges applying for the supply of the data are the fees and charges agreed to in the agreement; and
 - (b) without limiting paragraph (a), the agreement may also state—
 - (i) how the fees and charges are to be calculated; and
 - (ii) how payment of the fees and charges is to be made.
- ‘(3) Without limiting subsection (1), an agreement for the supply of statistical data may limit the use to which the data supplied may be put.
- ‘(4) An agreement for the supply of statistical data must include—
- (a) a provision allowing the chief executive to exclude particulars from data supplied under the agreement, if the chief executive is satisfied, on reasonable grounds,

that inclusion of the particulars may result in the particulars being inappropriately disclosed or used; and

- (b) a provision allowing the chief executive to prohibit disclosure, or limit distribution or use, of data supplied under the agreement.

- ‘(5) An agreement under this section must not provide for the obtaining of information or anything else that may be obtained under a search under section 284, other than section 284(1)(a)(iv).
- ‘(6) The chief executive must exclude land particulars and personal information from data supplied under the agreement.
- ‘(7) Subsection (6) applies despite anything in the agreement.
- ‘(8) In this section—

land particulars means particulars from any instrument or information kept by the chief executive that may allow a person to identify land to which the instrument or information relates.

personal information means a particular from any instrument or information kept by the chief executive that may allow a person to identify a person to whom the instrument or information relates.’.

18 Insertion of new ss 286A and 286B

After section 286—

insert—

‘286A Land practice manual

- ‘(1) The chief executive may keep a manual of land practice (by whatever name called) in the way the chief executive considers appropriate, for the information and guidance of land registry staff and persons dealing with the land registry.
- ‘(2) The manual may include—
- (a) directions given by the chief executive under section 287(1)(b); and

- (b) directions given by the registrar under the *Land Title Act 1994*, section 10(1)(b); and
 - (c) practices developed in the land registry, before or after the commencement of this section, for the depositing and lodging of documents, including practices directed at ensuring—
 - (i) there is consistency and efficiency in land registry processes; and
 - (ii) each register under this Act is an accurate, comprehensive and useable record; and
 - (iii) the integrity of the registers included in the land registry is supported and maintained to the greatest practicable extent.
- ‘(3) The manual may include statements about additional information a person may be required to produce, or additional documents a person may be required to deposit, under section 305.¹
- ‘(4) The chief executive must make the manual available to the public in the way the chief executive considers appropriate.
- ‘(5) Without limiting subsection (4), the chief executive must ensure an up-to-date copy of the manual is available to be read free of charge at each office of the land registry.

‘286B Requiring plan of survey to be lodged

- ‘(1) The chief executive may—
 - (a) require a trustee of trust land who proposes to lease or otherwise deal with all or part of the land to lodge a plan of survey of the land; or
 - (b) require a lessee who proposes to sublease or otherwise deal with the lease or part of the lease to lodge a plan of survey of the land the subject of the lease.
- ‘(2) The plan of survey must comply with the *Survey and Mapping Infrastructure Act 2003* and must be certified as accurate by a

¹ Section 305 (Requisitions)

cadastral surveyor within the meaning of the *Surveyors Act 2003*.’.

19 Amendment of s 287 (Registered documents must be in the appropriate form)

- (1) Section 287, heading, from ‘be’—
omit, insert—
‘comply with particular requirements’.
- (2) Section 287(1)(b)—
renumber as section 287(1)(c).
- (3) Section 287(1)—
insert—
‘(b) the document complies with the directions of the chief executive about—
 - (i) how the appropriate form must be filled in; or
 - (ii) how information to be included in or given with the document must be included or given; and’.
- (4) Section 287—
insert—
‘(3) Also, a document that does not comply with a direction mentioned in subsection (1)(b) may be registered if the chief executive is satisfied it is reasonable to not require the compliance.’.

20 Insertion of new ss 288A–288C

After section 288—

insert—

‘288A Original mortgagee to confirm identity of mortgagor

- ‘(1) This section applies to the mortgaging of a lease or a sublease.
- ‘(2) Before the mortgage is lodged for registration, the mortgagee under the mortgage (the *original mortgagee*) must take

reasonable steps to ensure the person who executed the mortgage as mortgagor is identical with the person who is, or who is about to become, the lessee of the lease or sublessee of the sublease.

- ‘(3) Without limiting subsection (2), the original mortgagee takes reasonable steps under the subsection if the original mortgagee complies with practices included in the manual of land title practice under section 286A(2)(c) for the verification of identification of mortgagors.
- ‘(4) The original mortgagee must, for 7 years after the mortgage is registered, and whether or not there is registered a transfer of the mortgage—
 - (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
 - (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the original mortgagee in complying with subsection (2).

Maximum penalty—20 penalty units.

- ‘(5) The chief executive may, whether before or after the registration of the mortgage, and whether or not there has been registered a transfer of the mortgage, ask the original mortgagee—
 - (a) to advise the chief executive about the steps taken by the original mortgagee under subsection (2); and
 - (b) to produce for the chief executive’s inspection the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).

- ‘(6) The original mortgagee must comply with a request under subsection (5) unless the original mortgagee has a reasonable excuse.

Maximum penalty—20 penalty units.

- ‘(7) This section applies to a mortgage only if it is executed after the commencement of this section.

‘288B Mortgage transferee to confirm identity of mortgagor

- ‘(1) This section applies to the transfer of the mortgage of a lease or a sublease.
- ‘(2) Before the transfer is lodged for registration, the transferee under the transfer (the *mortgage transferee*) must take reasonable steps to ensure that the person who executed the mortgage as mortgagor was identical with the person who, when the mortgage was executed, was, or was about to become, the lessee of the lease or sublessee of the sublease.
- ‘(3) Without limiting subsection (2), the mortgage transferee takes reasonable steps under the subsection if the mortgage transferee complies with practices included in the manual of land title practice under section 286A(2)(c) for the verification of identification of mortgagors.
- ‘(4) The mortgagee transferee must, for 7 years after the transfer of the mortgage is registered, and whether or not there is registered a further transfer of the mortgage—
- (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
 - (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the mortgage transferee in complying with subsection (2).
- Maximum penalty—20 penalty units.
- ‘(5) The chief executive may, whether before or after the registration of the transfer of the mortgage, and whether or not there has been registered a further transfer of the mortgage, ask the mortgage transferee—
- (a) to advise the chief executive about the steps taken by the mortgage transferee under subsection (2); and
 - (b) to produce for the chief executive’s inspection the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).
- ‘(6) The mortgage transferee must comply with a request under subsection (5) unless the mortgage transferee has a reasonable excuse.

Maximum penalty—20 penalty units.

- ‘(7) This section applies to a transfer of a mortgage only if the transfer is executed after the commencement of this section.
- ‘(8) However, this section applies in relation to a mortgage whenever executed.

‘288C Effect of registration of mortgage under Land Title Act 1994

- ‘(1) This section applies if a mortgage (the *relevant mortgage*) to which section 288A(2) applied, or that was the subject of a transfer to which section 288B(2) applied, becomes registered under the *Land Title Act 1994* on the issue of a deed of grant under this Act.

Example—

Under section 458(2), a deed of grant is issued subject to a mortgage to which section 288A(2) applied.

- ‘(2) Sections 288A and 288B continue to have effect in relation to the mortgage or transfer as if the mortgage were still registered under this Act.
- ‘(3) However, the *Land Title Act 1994*, sections 185(1A) and 189(1)(ab) have effect in relation to the mortgage.
- ‘(4) For applying subsection (3)—
 - (a) the references in the *Land Title Act 1994*, section 185(1A)(a) and (b) to the instrument of mortgage are taken to be references to the relevant mortgage; and
 - (b) the references in the *Land Title Act 1994*, sections 185(1A)(a) and 189(1)(ab) to sections 11A(2) and 11B(2) of that Act are taken to be references to sections 288A(2) and 288B(2) respectively of this Act; and
 - (c) the reference in the *Land Title Act 1994*, section 185(1A)(b) to the registered proprietor of the lot or the interest in a lot is taken to be a reference to the lessee of the lease or the sublessee of the sublease.’.

21 Amendment of s 290D (Explanatory format plan)

(1) Section 290D(2) and (3)—

omit.

(2) Section 290D(4)—

renumber as section 290D(2).

22 Amendment of s 290J (Requirements for registration of plan of subdivision)

(1) Section 290J(1)(d)—

omit.

(2) Section 290J(1)(e) to (i)—

renumber as section 290J(1)(d) to (h).

(3) Section 290J(2)(a), ‘subsection (1)(g), (h) and (i)’—

omit, insert—

‘subsection (1)(f), (g) and (h)’.

23 Insertion of new s 291A

After section 291—

insert—

‘291A Correction for omitted easement

‘(1) Despite section 291(1)(b), the chief executive may otherwise act under section 291 to correct the leasehold land register to include the particulars of an easement (*easement particulars*) that have been omitted from the register in relation to a lease.

‘(2) For subsection (1), easement particulars are taken to have been omitted from the leasehold land register in relation to a lease only if—

(a) the easement was in existence when the particulars of the lease were first registered, but the easement particulars have never been recorded in the leasehold land register against the lease; or

- (b) the easement particulars have previously been recorded in the leasehold land register, but the current particulars in the leasehold land register about the lease do not include the easement particulars, other than because the easement has been extinguished in relation to the lease; or
 - (c) the document providing for the easement was lodged for registration but, because of an error of the chief executive, has never been registered.
- ‘(3) Subsection (2) applies whether or not the lease has at any time been transferred or otherwise dealt with.
- ‘(4) In subsection (2)(b)—
extinguished includes surrendered.’.

24 Amendment of s 294B (Building management statement may be registered)

- (1) Section 294B(4)—
renumber as section 294B(6).
- (2) Section 294B(3)—
omit, insert—
- ‘(3) At least 1 of the lots to which a building management statement applies must be a lot entirely or partly contained in, or entirely or partly containing, 1 or more buildings.
- ‘(4) A building management statement complying with subsection (3) may also apply to a lot the subject of a building development approval.
- ‘(5) If a lot to which a building management statement applies is the subject of a plan of subdivision, the statement applies to each lot created by the registration of the plan.’.
- (3) Section 294B—
insert—
- ‘(7) In this section—

building development approval means a development approval, under the *Integrated Planning Act 1997*, for development relating to a proposed building or buildings.’.

25 Insertion of new s 294BA

After section 294B—

insert—

‘294BA Single area for lots to which building management statement applies

- ‘(1) The lots to which a building management statement applies must form a single, continuous area of land.
- ‘(2) A number of lots are taken to form a single, continuous area of land even if there is a road or watercourse within the external boundaries of the area comprising of the lots.
- ‘(3) Despite subsection (1), a building management statement may apply to lots that do not form a single, continuous area of land if the chief executive is satisfied, on reasonable grounds, that all the lots are located within an area that is sufficiently limited to ensure the effective and efficient application of the provisions of this division.’.

26 Amendment of s 294C (Circumstances under which building management statement may be registered)

Section 294C(1), from ‘registered’—

omit, insert—

‘registered only if the statement is signed by the lessees of all lots to which the statement applies.’.

27 Amendment of s 294D (Content of building management statement)

Section 294D(2)—

insert—

- ‘(i) proposed future development.’.

28 Amendment of s 294I (Extinguishing a building management statement)

(1) Section 294I—

insert—

‘(1A) A building management statement may be extinguished in part to remove a lot that is not contained in, or does not contain, a building or a part of a building, by registering an instrument of partial extinguishment of the building management statement.’.

(2) Section 294I(2), after ‘extinguishment’—

insert—

‘or partial extinguishment’.

(3) Section 294I(3), after ‘extinguished’—

insert—

‘or partially extinguished’.

(4) Section 294I(1A) to (3)—

renumber as section 294I(2) to (4).

29 Amendment of s 295 (Right to have interest registered)

(1) Section 295(1)—

insert—

‘(e) the document is not inconsistent with another Act or law; and

(f) if the document is a plan of survey—it is not inconsistent with another plan of survey.’.

(2) Section 295(2)—

renumber as section 295(3).

(3) Section 295—

insert—

‘(2) If the document is a plan of survey and it is inconsistent with another plan of survey, the chief executive may—

- (a) give a written notice to a person holding an interest in a lot that may be affected by registration of the plan of survey; or
- (b) require the person who lodged the document to give a written notice, in the way the registrar requires, to a person mentioned in paragraph (a).’.

30 Amendment of s 296 (Tenure document to be returned to land registry)

Section 296(2)—

insert—

- ‘(c) a request to record the vesting of land, or an interest in land, under an Act if the vesting is in favour of the State or another entity representing the State.’.

31 Amendment of s 302 (Effect of registration on interest)

Section 302—

insert—

- ‘(2) The person holds the interest subject to—
 - (a) all other interests in the land previously registered; and
 - (b) all rights and interests of the State in the land, other than interests subsequently registered.’.

32 Amendment of s 304 (Correcting unregistered documents)

Section 304(1), from ‘correction on’—

omit, insert—

‘correction—

- (a) on the document; or
- (b) if the document is in electronic form—in the appropriate register.’.

33 Amendment of s 305 (Requisitions)

- (1) Section 305(1), after ‘deposited a document’—
insert—
‘, or to another person who reasonably appears to the chief executive to be relevantly associated with the document’.
- (2) Section 305(1), ‘require the person’—
omit, insert—
‘require a person’.
- (3) Section 305(1)(b), ‘person’s’—
omit.
- (4) Section 305(5), ‘by a person’—
omit.
- (5) Section 305(5), ‘person complies with the requisition’—
omit, insert—
‘requisition is complied with’.

34 Amendment of s 314 (Dispensing with production of document)

- Section 314(2), ‘lessee or licensee’—
omit, insert—
‘lease or licence’.

35 Insertion of new s 317A

- After section 317—
insert—

‘317A References to registered standard terms document

- ‘In sections 319 and 320, a reference to a registered standard terms document includes a standard terms document that has been, or is taken to be, registered under the *Land Title Act 1994*.’

36 Amendment of s 321 (Withdrawal or cancellation of standard terms document)

Section 321(4), after ‘terms document’—

insert—

‘, under this section or the *Land Title Act 1994*.’.

37 Insertion of new ss 358A and 358B

After section 358—

insert—

‘358A Amendment of leasehold land register or freehold land register for omitted acquired easement

‘(1) This section applies if all of the following circumstances apply—

- (a) before the commencement of this section, action was taken under an acquisition Act to acquire an easement, over freehold or non-freehold land (the *relevant land*);
- (b) there is no outstanding issue of substance in relation to the payment of compensation under the acquisition Act for the acquisition;

Examples—

- 1 All compensation payable under the acquisition Act for the acquisition was paid to the person entitled to it.
 - 2 The issue of compensation payable under the acquisition Act for the acquisition was never pursued because any amount payable would have been negligible.
- (c) the particulars of the acquisition have never been recorded in the appropriate register for the relevant land;
 - (d) the rights acquired under the acquisition have never been extinguished;
 - (e) the entity currently entitled to the rights acquired under the acquisition is a public utility provider;
 - (f) the Minister is satisfied, to the greatest practicable extent on the basis of documentary evidence, that the matters mentioned in paragraphs (a) to (e) are true.

Example of documentary evidence—

a copy of a gazette notice under the acquisition Act declaring the easement to be taken

- ‘(2) The Governor in Council may, by gazette notice, direct the chief executive or registrar of titles to amend the current particulars about the relevant land in the leasehold or freehold land register to record the current particulars of the easement.
- ‘(3) The gazette notice is authority for the chief executive or registrar to make the amendment in the register.
- ‘(4) Without limiting subsections (2) and (3), the chief executive or registrar of titles must, in recording the particulars of the easement, record in the register copies of the following—
 - (a) the plan of survey used for identifying the easement when the easement was acquired, and any subsequent plan of survey relevant to identifying the easement;
 - (b) any gazette notice forming part of the acquisition process under the acquisition Act.
- ‘(5) For this section, it does not matter whether the relevant land was freehold land or leasehold land when the easement was created, or whether the relevant land is freehold land or leasehold land when the gazette notice mentioned in subsections (2) and (3) is published.
- ‘(6) An amendment of a register may not be made under this section if 10 years have elapsed after the commencement of this section.
- ‘(7) In this section—

acquisition Act means this Act, the repealed Act, the *Acquisition of Land Act 1967* or another Act providing for the compulsory acquisition of land.

extinguished includes surrendered.

‘358B Compensation not payable to any person for action under s 358A

‘A person is not entitled to compensation from the State under this Act, the *Land Title Act 1994* or the *Acquisition of Land*

Act 1967, or otherwise, for deprivation of an interest in land, or for loss or damage of any kind, arising out of the recording of the particulars of an easement under section 358A.’.

38 Amendment of s 361 (Definitions)

(1) Section 361—

insert—

‘***public thoroughfare easement*** means a public utility easement provided for under section 369(4).’.

(2) Section 361, definition ***public utility provider***, paragraphs (a) and (b)—

omit, insert—

‘(a) the State or another entity representing the State; or

(b) the Commonwealth or another entity representing the Commonwealth; or’.

39 Amendment of s 362 (Easements may be created only by registration)

Section 362(1), after ‘non-freehold land’—

insert—

‘(including any lease of non-freehold land or sublease of a lease of non-freehold land)’.

40 Amendment of s 366 (Rights and liabilities created on registration of document)

Section 366(2), after ‘public utility easement’—

insert—

‘and is not a public thoroughfare easement’.

41 Amendment of s 369 (Public utility easements)

Section 369—

insert—

- ‘(4) Further, a public utility easement may be registered for a right of way for the public only if—
- (a) the public utility provider under the easement is the State or a local government; and
 - (b) use of the easement is limited to the following—
 - (i) pedestrians;
 - (ii) vehicles reasonably necessary for the building and maintenance of the easement.
- ‘(5) A registered public thoroughfare easement is taken not to be registered under this Act to the extent it—
- (a) is inconsistent with the relevant provisions for the easement; or
 - (b) purports to provide other than for a public thoroughfare easement.
- ‘(6) Subsection (5) has effect only in relation to public utility easements registered after the commencement of this subsection.
- ‘(7) The chief executive may refuse to register a document purporting to create a public thoroughfare easement if the chief executive is satisfied it—
- (a) is to any extent inconsistent with the relevant provisions for the easement; or
 - (b) purports to any extent to provide other than for a public thoroughfare easement.
- ‘(8) In this section—
- pedestrian*** includes—
- (a) anyone who is a pedestrian within the meaning of the *Transport Operations (Road Use Management) Act 1995*; and
 - (b) anyone or anything else whose use of an area is commonly associated with pedestrian use of the area.

Example for paragraph (b)—

a child being pushed in a pram, an animal being taken on a leash

relevant provisions, for a public thoroughfare easement, means the provisions about public thoroughfare easements included in—

- (a) if the public utility provider under the easement is a local government—the *Local Government Act 1993*; or
- (b) if the public utility provider under the easement is the State—the *Transport Infrastructure Act 1994*.’.

42 Amendment of s 371 (Surrendering an easement)

- (1) Section 371(2)(a), after ‘benefited’—
insert—
‘by the easement’.
- (2) Section 371(6), definition *owner of the land*, after ‘licensee’—
insert—
‘, and also includes a mortgagee in possession’.

43 Amendment of s 372 (End and continuation of easements)

- (1) Section 372(3) to (5)—
renumber as section 372(4) to (6).
- (2) Section 372—
insert—
- ‘(3) An easement over a sublease ends when the sublease ends.’.

44 Amendment of s 373A (Covenant by registration)

- (1) Section 373A(2), from ‘is the State’—
omit, insert—
‘is the State or another entity representing the State, or a local government.’.
- (2) Section 373A(4)(b)—

omit, insert—

‘(b) be aimed directly at preserving—

- (i) a native animal or plant; or
- (ii) a natural or physical feature of the land that is of cultural or scientific significance.’.

(3) Section 373A(5)—

omit, insert—

‘(5) A covenant under this division—

- (a) may be a positive covenant or a negative covenant; and
- (b) is binding on the covenantor and the covenantor’s successors in title.’.

(4) Section 373A(7), definition *use*—

omit.

(5) Section 373A(7)—

renumber as section 373A(10).

(6) Section 373A—

insert—

‘(7) The covenant must not—

- (a) secure the payment of money or money’s worth payable under a condition of a development approval or an infrastructure agreement under the *Integrated Planning Act 1997*;² or
- (b) provide for anything capable of being the subject of a document creating an easement.

‘(8) For subsection (4)(a), the covenant relates to the use of the land, a part of the land, a building on the land or a building proposed to be built on the land, only if it provides for—

- (a) a purpose for which the land, the part or the building must be used; or

² See also, the *Integrated Planning Act 1997*, sections 2.1.25 and 3.5.37.

*Natural Resources and Other Legislation Amendment No. 68, 2005
Act 2005*

Examples of covenants for paragraph (a)—

- that a building on the land must be used for educational purposes
 - that the land must be used for noise attenuation purposes
- (b) a purpose that is the only purpose for which the land, the part or the building may be used; or

Examples of covenants for paragraph (b)—

- that a building on the land may be used only for residential purposes
 - that the land may be used only for organic farming
- (c) a purpose for which the land, the part or the building must not be used.

Examples of covenants for paragraph (c)—

- that a building on the land must not be used for a stated commercial purpose
 - that the land must not be used for industrial purposes
- ‘(9) For subsection (4)(a), the covenant does not relate to the use of the land, a part of the land, a building on the land or a building proposed to be built on the land, to the extent it provides for—
- (a) for a building or proposed building—an architectural, construction or landscaping standard for the building; or
- (b) a statement, acknowledgement or obligation relating to the use of other land; or

Examples—

- an acknowledgement that the land is in the vicinity of other land and that the other land is used for industrial purposes
 - a statement that the occupier of other land can not be made the subject of any proceedings relating to the occupier’s use of that land
- (c) a condition that must be complied with before the land can be used for a stated purpose or any purpose; or

Example—

a condition that a residence can not be built on the land until stated utility services are connected

- (d) regulation of the conduct of the owner of the land, if the conduct is unrelated to, or is ancillary to, use of the land.

Examples for paragraph (d)—

- an obligation not to start proceedings in relation to activities happening on other land
- an obligation not to use the land for residential purposes unless a rainwater tank is installed’.

45 Insertion of new s 373AA

After section 373A—

insert—

‘373AACompliance with s 373A

- ‘(1) A registered document of covenant is taken not to be registered under this Act to the extent it is inconsistent with section 373A.
- ‘(2) Subsection (1) has effect only in relation to documents of covenant registered after the commencement of this section.
- ‘(3) The chief executive may refuse to register a document creating or purporting to create a covenant if the chief executive is satisfied it is to any extent inconsistent with section 373A.’.

46 Amendment of s 377 (Registering personal representative)

- (1) Section 377(2)(b)(ii), ‘\$150000’—

omit, insert—

‘\$300000’.

- (2) Section 377(2)(c)—

omit, insert—

‘(c) if paragraph (a) does not apply and the lessee, sublessee or licensee died leaving a will—

- (i) the person is, or is entitled to be, the deceased’s personal representative; or

- (ii) the chief executive considers the person would succeed in an application for a grant of representation.’

47 Amendment of s 379 (Registering beneficiary)

Section 379(2)(a)—

omit, insert—

- ‘(a) the person who is, or is entitled to be, the deceased’s personal representative gives written approval; and’.

48 Insertion of new ch 7, pt 3B

After section 431N—

insert—

‘Part 3B Tidal boundary plans of subdivision

‘431NA Definitions for pt 3B

‘In this part—

tidal boundary means a boundary of land that—

- (a) is identified with reference to water, however described, that is subject to tidal influence; and

Example—

a boundary established by reference to the Pacific Ocean or to high water mark

- (b) having regard to how the boundary is identified, can not appropriately be represented on a plan of subdivision as a straight line boundary.

tidal boundary plan of subdivision means a plan of subdivision that includes a section of tidal boundary.

‘431NB Application of pt 3B

- ‘(1) This part applies if—

- (a) a tidal boundary plan of subdivision (the *new plan of subdivision*)—
 - (i) was lodged on or after 8 November 2005 but before the commencement of this section; or
 - (ii) is lodged after the commencement but before 8 November 2008; and
 - (b) the location of a section of tidal boundary (the *relevant section*), as represented on the new plan of subdivision, is inconsistent with its location as represented on the most recently registered previous plan of subdivision (the *earlier plan of subdivision*) to include some or all of the relevant section.
- ‘(2) The requirements of this part are in addition to, and are not in substitution for, any other provision of this Act that applies to a plan of subdivision.

‘431NC Prohibition on registration of relevant tidal boundary plan of subdivision

- ‘(1) The chief executive must not, without the approval of the Minister under this part, register the new plan of subdivision.
- ‘(2) The chief executive’s refusal, on or after 8 November 2005, and before the commencement of this section, to register a plan of subdivision is taken to have been a valid refusal under this part if, on the commencement of this section, this part commences to apply in relation to the plan of subdivision.

‘431ND Approval of Minister in circumstances of accretion or erosion

- ‘(1) This section applies if the location of the relevant section on the earlier plan of subdivision was consistent with directions and instructions applying to surveyors when the earlier plan of subdivision was prepared.
- ‘(2) The Minister may approve registration of the new plan of subdivision, but only if the Minister is satisfied—
 - (a) that the difference, as between the earlier plan of subdivision and the new plan of subdivision, in the

location of the relevant section can appropriately be attributed, in accordance with applicable law, to accretion or erosion; and

- (b) in relation to the location of the relevant section on the new plan of subdivision, that the registration of the new plan of subdivision, will not, in practical terms, be contrary to the public interest.

‘431NE Approval of Minister in other limited circumstances

‘(1) This section applies if—

- (a) the location of the relevant section on the earlier plan of subdivision was inconsistent with directions and instructions applying to surveyors when the earlier plan of subdivision was prepared; or
- (b) there were no relevant directions or instructions applying to surveyors when the earlier plan of subdivision was prepared.

‘(2) The Minister may approve registration of the new plan of subdivision, but only if the Minister is satisfied, in relation to the location of the relevant section on the new plan of subdivision, that the registration of the new plan of subdivision, will not, in practical terms, be contrary to the public interest.

‘431NF Limit on application of s 358 (Changing deeds of grant—change in description or boundary of land)

‘From 8 November 2005 until 7 November 2008, section 358(2)(b) does not apply to a tidal boundary.

‘431NG No compensation for operation of this part

‘A person is not entitled to compensation from the State under this Act, or otherwise, for deprivation of an interest in land, or for loss or damage of any kind, arising out of the operation of this part, including, in particular—

- (a) the Minister's refusal to approve, under this part, the registration of a plan of subdivision; or
- (b) the chief executive's refusal, under this part, to register a plan of subdivision; or
- (c) the non-application, under section 431NF, of section 358(2)(b) to tidal boundaries.'.

49 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definition *lopping*—

omit.

- (2) Schedule 6—

insert—

'**deposit** means file in the land registry other than for registration.

earlier plan of subdivision, for chapter 7, part 3B, see section 431NB.

lopping, a tree, means cutting or pruning branches of the tree, but does not include—

- (a) removing the trunk of the tree; or
- (b) cutting or pruning branches of the tree so severely that the tree is likely to die.

new plan of subdivision, for chapter 7, part 3B, see section 431NB.

relevant section, for chapter 7, part 3B, see section 431NB.

tidal boundary, for chapter 7, part 3B, see section 431NA.

tidal boundary plan of subdivision, for chapter 7, part 3B, see section 431NA.'.

Part 4 **Amendment of Land Title Act 1994**

50 **Act amended in pt 4**

This part amends the *Land Title Act 1994*.

51 **Insertion of new s 9A**

Part 2, division 1, after section 9—

insert—

‘9A Land title practice manual

- ‘(1) The registrar may keep a manual of land title practice (by whatever name called) in the way the registrar considers appropriate, for the information and guidance of land registry staff and persons dealing with the land registry.
- ‘(2) The manual may include—
- (a) directions given by the registrar under section 10(1)(b); and
 - (b) directions given by the chief executive under the *Land Act 1994*, section 287(1)(b); and
 - (c) practices developed in the land registry, before or after the commencement of this section, for the depositing and lodging of instruments, including practices directed at ensuring that—
 - (i) there is consistency and efficiency in land registry processes; and
 - (ii) each register under this Act is an accurate, comprehensive and useable record; and
 - (iii) the integrity of the registers included in the land registry is supported and maintained to the greatest practicable extent.
- ‘(3) The manual may include statements about additional information a person may be required to produce, or

additional instruments or documents a person may be required to deposit, under section 156.³

- ‘(4) The registrar must make the manual available to the public in the way the registrar considers appropriate.
- ‘(5) Without limiting subsection (4), the registrar must ensure an up-to-date copy of the manual is available to be read free of charge at each office of the land registry.’.

52 Amendment of s 10 (Form of instruments)

- (1) Section 10(1), from ‘must’—

omit, insert—

‘must—

- (a) be in the appropriate form; and
- (b) comply with the directions of the registrar about—
 - (i) how the appropriate form must be filled in; or
 - (ii) how information to be included in or given with the instrument must be included or given.’.

- (2) Section 10—

insert—

- ‘(4) Also, the registrar may register, or otherwise deal with, an instrument that does not comply with a direction mentioned in subsection (1)(b) if the registrar is satisfied it is reasonable to not require the compliance.’.

53 Insertion of new ss 11A and 11B

After section 11—

insert—

3 Section 156 (Requisitions)

‘11A Original mortgagee to confirm identity of mortgagor

- ‘(1) This section applies to the mortgaging of a lot or an interest in a lot.
- ‘(2) Before the instrument of mortgage is lodged for registration, the mortgagee under the instrument (the *original mortgagee*) must take reasonable steps to ensure the person who executed the instrument as mortgagor is identical with the person who is, or who is about to become, the registered proprietor of the lot or the interest in a lot.
- ‘(3) Without limiting subsection (2), the original mortgagee takes reasonable steps under the subsection if the original mortgagee complies with practices included in the manual of land title practice under section 9A(2)(c) for the verification of identification of mortgagors.
- ‘(4) The original mortgagee must, for 7 years after the instrument of mortgage is registered, and whether or not there is registered a transfer of the interest constituted by the mortgage—
 - (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
 - (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the original mortgagee in complying with subsection (2).Maximum penalty—20 penalty units.
- ‘(5) The registrar may, whether before or after the registration of the mortgage, and whether or not there has been registered a transfer of the interest constituted by the mortgage, ask the original mortgagee—
 - (a) to advise the registrar about the steps taken by the original mortgagee under subsection (2); and
 - (b) to produce for the registrar’s inspection the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).

- ‘(6) The original mortgagee must comply with a request under subsection (5) unless the original mortgagee has a reasonable excuse.

Maximum penalty—20 penalty units.

- ‘(7) This section applies to an instrument of mortgage only if it is executed after the commencement of this section.

‘11B Mortgage transferee to confirm identity of mortgagor

- ‘(1) This section applies to the transfer of the interest constituted by the mortgage of a lot or an interest in a lot.

- ‘(2) Before the instrument of transfer is lodged for registration, the transferee under the instrument of transfer (the *mortgage transferee*) must take reasonable steps to ensure the person who executed the instrument of mortgage as mortgagor was identical with the person who, when the instrument of mortgage was executed, was, or was about to become, the registered proprietor of the lot, or the interest in a lot.

- ‘(3) Without limiting subsection (2), the mortgage transferee takes reasonable steps under the subsection if the mortgage transferee complies with practices included in the manual of land title practice under section 9A(2)(c) for the verification of identification of mortgagors.

- ‘(4) The mortgage transferee must, for 7 years after the instrument of transfer of the mortgage is registered, and whether or not there is registered a further transfer of the interest constituted by the mortgage—

(a) keep, in the approved form, a written record of the steps taken under subsection (2); or

(b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the mortgage transferee in complying with subsection (2).

Maximum penalty—20 penalty units.

- ‘(5) The registrar may, whether before or after the registration of the instrument of transfer of the mortgage, and whether or not

there has been registered a further transfer of the interest constituted by the mortgage, ask the mortgage transferee—

- (a) to advise the registrar about the steps taken by the mortgage transferee under subsection (2); and
 - (b) to produce for the registrar's inspection the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).
- ‘(6) The mortgage transferee must comply with a request under subsection (5) unless the mortgage transferee has a reasonable excuse.

Maximum penalty—20 penalty units.

- ‘(7) This section applies to an instrument of transfer of a mortgage only if the instrument of transfer is executed after the commencement of this section.
- ‘(8) However, this section applies in relation to an instrument of mortgage whenever executed.’

54 Amendment of s 15 (Registrar may correct registers)

- (1) Section 15(2) to (5)—
renumber as section 15(5) to (8).
 - (2) Section 15—
insert—
- ‘(2) Without limiting subsection (1), the registrar may correct a register under the subsection if—
- (a) the register is incorrect because the registrar has incorrectly recorded a particular or registered an instrument; or
 - (b) the registrar has held an inquiry under division 4, and has decided that the register is incorrect, including for example, because there has been fraud affecting the register.
- ‘(3) The registrar may correct a register kept by the registrar, whether or not the correction will prejudice the rights of the holder of an interest recorded in the register, if—

- (a) the register to be corrected is the freehold land register, and the correction is to show, in relation to a lot, an easement the particulars of which have been omitted from, or misdescribed in, the register; or
 - (b) the Supreme Court has ordered the correction under section 26.
- ‘(4) Section 185(3), (4) and (6) applies for subsection (3)(a) in the same way it applies for section 185(1)(c).’.
- (3) Section 15(8), as renumbered, examples—
omit.

55 Amendment of s 17 (Registrar may prepare and register caveat)

- (1) Section 17(1), from ‘in favour of’—
omit, insert—
‘, or an interest in a lot, in favour of a person.’.
- (2) Section 17(2)(a), ‘the State’—
omit, insert—
‘a State’.
- (3) Section 17(2)(f)—
omit, insert—
 - ‘(f) a person to whom a notice has been given, or has been required to be given, under section 30(3); or
 - ‘(g) a person, other than a person mentioned in any of paragraphs (a) to (f), who has an interest in the lot.’.
- (4) Section 17(4), ‘Subsection (2)(f)’—
omit, insert—
‘Subsection (2)(g)’.

56 Amendment of s 19 (Registrar may decide to hold inquiry)

- (1) Section 19(c)—

renumber as section 19(e).

(2) Section 19—

insert—

- ‘(c) to consider whether a fraud affecting the land registry has otherwise been committed; or
- (d) to otherwise consider an issue arising from the lodgment or registration of an instrument in the land registry; or’.

57 Amendment of s 23 (Notice to witness)

(1) Section 23(2)—

renumber as section 23(3).

(2) Section 23—

insert—

- ‘(2) Without limiting subsection (1), any of the following persons may be required to attend the inquiry—
 - (a) a person who may have helped another person act fraudulently or wrongfully in a way mentioned in section 19(b);
 - (b) a person who is a party to a transaction that may have resulted in a fraud affecting the land registry;
 - (c) a person who may have contributed directly or indirectly to a fraud affecting the land registry.’.

58 Amendment of s 26 (Other referrals by the registrar to the Supreme Court)

Section 26—

insert—

- ‘(c) refer a finding of an inquiry to the Supreme Court, seeking—
 - (i) an order for the registrar or another person to take a stated action, including for example an order for the registrar to correct a register; or

- (ii) an order the court considers appropriate in the circumstances.’.

59 Amendment of s 30 (Registrar must register instruments)

- (1) Section 30(1)(b)—

omit, insert—

- ‘(b) the instrument is not inconsistent with another Act or law; and
- (c) if the instrument is a plan of survey—it is not inconsistent with another plan of survey.’.

- (2) Section 30—

insert—

- ‘(3) If the instrument is a plan of survey and it is inconsistent with another plan of survey, the registrar may—
- (a) give a written notice to a registered proprietor of a lot that may be affected by registration of the plan of survey; or
- (b) require the person who lodged the instrument to give a written notice, in the way the registrar requires, to a person mentioned in paragraph (a).’.

60 Replacement of s 32 (Registrar must give distinguishing reference to each instrument)

Section 32—

omit, insert—

‘32 Registrar’s procedures on lodgment and registration of instrument

- ‘(1) When an instrument is lodged in the land registry, the registrar must note on the instrument—
- (a) the date and time of lodgment; and
- (b) an identifying reference.

- ‘(2) When the instrument is registered, the registrar must record the information mentioned in subsection (1)(a) and (b) in the appropriate register.’.

61 Amendment of s 34 (Other information not part of the freehold land register)

Section 34—

insert—

- ‘(2) The information may include information given to the registrar by another entity.
- ‘(3) A relevant entity is not civilly liable for an act done, or omission made, honestly and without negligence in relation to the giving or keeping of information under this section.
- ‘(4) Without limiting subsection (3), a relevant entity other than the registrar is not civilly liable in relation to the giving or keeping of inaccurate information under this section if the relevant entity did not give the information to the registrar for keeping under this section.
- ‘(5) In this section—
- relevant entity*** means—
- (a) the registrar; or
 - (b) the chief executive; or
 - (c) the Minister; or
 - (d) the State.’.

62 Amendment of s 35 (Entitlement to search register)

- (1) Section 35(1), from ‘At’ to ‘may’—

omit, insert—

‘A person may, on payment of the fee prescribed under a regulation’.

- (2) Section 35—

insert—

- ‘(3) A search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, an office of the land registry during office hours on a day the land registry is open for business.
- ‘(4) Also, a search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, the website of an entity engaged by the chief executive for allowing persons to search the land registry or obtain copies of indefeasible titles, registered or other instruments, or information, kept in the registry.
- ‘(5) The registrar may allow a person to carry out a search under subsection (1)(a) for—
 - (a) only part of an indefeasible title for a lot; or
 - (b) only part of an instrument; or
 - (c) only part of the information about an instrument.
- ‘(6) The registrar may enter into an arrangement with another department allowing the department to carry out a search, or obtain a copy, under this section without payment of the fee mentioned in subsection (1).
- ‘(7) However, the registrar may enter into an arrangement under subsection (6) only if the registrar is reasonably satisfied the information obtained from the search or the copy will not be—
 - (a) used for a commercial purpose, including, for example, the marketing or sale of the information or other information; or
 - (b) included in another database of information, in any form, other than with approval from the registrar.’.

63 Amendment of s 48E (Explanatory format plan)

- (1) Section 48E(2) and (3)—
omit.
- (2) Section 48E(4)—
renumber as section 48E(2).

64 Amendment of s 49C (Building format plan of subdivision)

Section 49C(4), from ‘directions’ to ‘subdivision,’—

omit, insert—

‘a direction given by the registrar under section 10(1)(b),’.

65 Amendment of s 50 (Requirements for registration of plan of subdivision)

(1) Section 50(i)—

omit.

(2) Section 50(ca) to (h)—

renumber as section 50(d) to (i).

66 Amendment of s 51 (Dedication of public use land in plan)

Section 51—

insert—

‘(4) Subsection (5) applies to an easement over a lot if—

(a) the easement is an easement for providing access or a right of way, including a public thoroughfare easement; and

(b) the lot or a part of the lot is dedicated for a road under subsection (2).

‘(5) The easement is extinguished to the extent it is over the lot or the part of the lot dedicated for the road.’.

67 Insertion of new s 51A

After section 51—

insert—

‘51A Access for public use land

‘A plan of subdivision providing for the dedication of a lot to public use, other than as a road, may be registered only if—

- (a) on registration, access to the lot will be available through a road or a public thoroughfare easement; or
- (b) the Minister administering the *Land Act 1994* has approved that the plan of subdivision may be registered without access to the lot being available.’.

68 Amendment of s 54A (Building management statement may be registered)

Section 54A(3)—

omit, insert—

- ‘(3) At least 1 of the lots to which a building management statement applies must be a lot entirely or partly contained in, or entirely or partly containing, 1 or more buildings.
- ‘(4) A building management statement complying with subsection (3) may also apply to a lot the subject of a building development approval.
- ‘(5) If a lot to which a building management statement applies is the subject of a plan of subdivision, the statement applies to each lot created by the registration of the plan.
- ‘(6) In this section—
building development approval means a development approval, under the *Integrated Planning Act 1997*, for development relating to a proposed building or buildings.’.

69 Insertion of new s 54AA

After section 54A—

insert—

‘54AA Single area for lots to which building management statement applies

- ‘(1) The lots to which a building management statement applies must form a single, continuous area of land.
- ‘(2) A number of lots are taken to form a single, continuous area of land even if there is a road or watercourse within the external boundaries of the area comprising of the lots.

‘(3) Despite subsection (1), a building management statement may apply to lots that do not form a single, continuous area of land if the registrar is satisfied, on reasonable grounds, that all the lots are located within an area that is sufficiently limited to ensure the effective and efficient application of the provisions of this division.’.

70 Amendment of s 54B (Circumstances under which building management statement may be registered)

Section 54B(1), from ‘registered’—

omit, insert—

‘registered only if it is signed by the registered owners of all lots to which the statement applies.’.

71 Amendment of s 54C (Content of building management statement)

Section 54C(2)—

insert—

‘(i) proposed future development.’.

72 Amendment of s 54H (Extinguishing a building management statement)

(1) Section 54H—

insert—

‘(1A) A building management statement may be extinguished in part to remove a lot that is not contained in, or does not contain, a building or a part of a building, by registering an instrument of partial extinguishment of the building management statement.’.

(2) Section 54H(2), after ‘extinguishment’—

insert—

‘or partial extinguishment’.

(3) Section 54H(3), after ‘extinguished’—

insert—

‘or partially extinguished’.

- (4) Section 54H(1A) to (3)—

renumber as section 54H(2) to (4).

73 Amendment of s 54I (Lots constituted by community titles scheme)

- (1) Section 54I(a), from ‘(other’ to ‘scheme)’—

omit.

- (2) Section 54I(b)—

omit, insert—

‘(b) for the signing of the statement, or an amendment, extinguishment or partial extinguishment of the statement, by the registered owner of the lot, the body corporate for the scheme is taken to be the registered owner.’.

- (3) Section 54I—

insert—

‘(2) To remove any doubt, it is declared that if a building management statement applies to scheme land for a community titles scheme, the building management statement is binding on the community titles scheme.

‘(3) Also, if the building management statement provides for the establishment and operation of a management group, a decision made by the management group under the building management statement is binding on the community titles scheme.

‘(4) Subsections (2) and (3) have effect despite section 97⁴ of the BCCM Act.

‘(5) To remove any doubt, it is declared that if a building management statement applies to scheme land for a community titles scheme, registration of the building

4 Section 97 (No delegation of body corporate’s powers) of the BCCM Act

management statement does not, and can not, give the body corporate of the community titles scheme an interest in any particular lot included in the scheme.’.

74 Amendment of s 72 (Mortgaging lot etc. by registration)

Section 72—

insert—

- ‘(2) However, a mortgage is not an interest in a lot that can be mortgaged.’.

75 Amendment of s 81A (Definitions for div 4)

- (1) Section 81A—

insert—

‘*public thoroughfare easement* means a public utility easement provided for under section 89(3).’.

- (2) Section 81A, definition *public utility provider*, paragraphs (a) and (b)—

omit, insert—

- ‘(a) the State or another entity representing the State; or
(b) the Commonwealth or another entity representing the Commonwealth; or’.

76 Amendment of s 85B (Rights and liabilities created on registration of instrument)

Section 85B(2), after ‘in favour of a public utility provider’—

insert—

‘and is not a public thoroughfare easement’.

77 Amendment of s 89 (Easements for public utility providers)

Section 89—

insert—

- ‘(3) Further, a public utility easement mentioned in subsection (1) may be registered for a right of way for the public only if—
- (a) the public utility provider under the easement is the State or a local government; and
 - (b) use of the easement is limited to the following—
 - (i) pedestrians;
 - (ii) vehicles reasonably necessary for the building and maintenance of the easement.
- ‘(4) A registered public thoroughfare easement is taken not to be registered under this Act to the extent it—
- (a) is inconsistent with the relevant provisions for the easement; or
 - (b) purports to provide other than for a public thoroughfare easement.
- ‘(5) Subsection (4) has effect only in relation to public utility easements registered after the commencement of this subsection.
- ‘(6) The registrar may refuse to register an instrument of easement purporting to be a public thoroughfare easement if the registrar is satisfied it—
- (a) is to any extent inconsistent with the relevant provisions for the easement; or
 - (b) purports to any extent to provide other than for a public thoroughfare easement.
- ‘(7) In this section—

pedestrian includes—

- (a) anyone who is a pedestrian within the meaning of the *Transport Operations (Road Use Management) Act 1995*; and
- (b) anyone or anything else whose use of an area is commonly associated with pedestrian use of the area.

Example for paragraph (b)—

a child being pushed in a pram, an animal being taken on a leash

relevant provisions, for a public thoroughfare easement, means the provisions about public thoroughfare easements included in—

- (a) if the public utility provider under the easement is a local government—the *Local Government Act 1993*; or
- (b) if the public utility provider under the easement is the State—the *Transport Infrastructure Act 1994*.’.

78 Amendment of s 90 (Surrendering an easement)

- (1) Section 90(2)(a)—

omit, insert—

‘(a) the owner of the lot burdened by the easement and the owner of the lot benefited by the easement; or’.

- (2) Section 90(2)(b), ‘registered’—

omit.

- (3) Section 90—

insert—

- ‘(5) In this section—

owner, of a lot, means—

- (a) the registered owner of the lot; or
- (b) if the mortgagee of the registered owner is in possession—the mortgagee in possession.’.

79 Amendment of s 97A (Covenant by registration)

- (1) Section 97A(2), from ‘is the State’—

omit, insert—

‘is the State or another entity representing the State, or a local government.’.

- (2) Section 97A(3)(b)—

omit, insert—

‘(b) be aimed directly at preserving—

- (i) a native animal or plant; or
 - (ii) a natural or physical feature of the lot that is of cultural or scientific significance; or’.
- (3) Section 97A(6)—
omit, insert—
- ‘(6) The covenant must not—
- (a) secure the payment of money or money’s worth payable under a condition of a development approval or an infrastructure agreement under the *Integrated Planning Act 1997*;⁵ or
 - (b) provide for anything capable of being the subject of an instrument of easement.
- ‘(7) For subsection (3)(a), the covenant relates to the use of the lot, a part of the lot, a building on the lot or a building proposed to be built on the lot, only if it provides for—
- (a) a purpose for which the lot, the part or the building must be used; or
Examples of covenants for paragraph (a)—
 - that a building on the lot must be used for educational purposes
 - that the lot must be used for noise attenuation purposes
 - (b) a purpose that is the only purpose for which the lot, the part or the building may be used; or
Examples of covenants for paragraph (b)—
 - that a building on the lot may be used only for residential purposes
 - that the lot may be used only for organic farming
 - (c) a purpose for which the lot, the part or the building must not be used.
Examples of covenants for paragraph (c)—
 - that a building on the lot must not be used for a stated commercial purpose

⁵ See also, the *Integrated Planning Act 1997*, sections 2.1.25 and 3.5.37.

- that the lot must not be used for industrial purposes
- ‘(8) For subsection (3)(a), the covenant does not relate to the use of the lot, a part of the lot, a building on the lot or a building proposed to be built on the lot, to the extent it provides for—
- (a) for a building or proposed building—an architectural, construction or landscaping standard for the building; or
 - (b) a statement, acknowledgement or obligation relating to the use of land other than the lot; or

Examples—

- an acknowledgement that the lot is in the vicinity of other land and that the other land is used for industrial purposes
 - a statement that the occupier of other land can not be made the subject of any proceedings relating to the occupier’s use of that land
- (c) a condition that must be complied with before the lot can be used for a stated purpose or any purpose; or

Example—

a condition that a residence can not be built on the lot until stated utility services are connected

- (d) regulation of the conduct of the owner of the lot, if the conduct is unrelated to, or is ancillary to, use of the lot.

Examples for paragraph (d)—

- an obligation not to start proceedings in relation to activities happening on land other than the lot
- an obligation not to use the lot for residential purposes unless a rainwater tank is installed’.

80 Insertion of new s 97AA

After section 97A—

insert—

‘97AA Compliance with s 97A

- ‘(1) A registered instrument of covenant is taken not to be registered under this Act to the extent it is inconsistent with section 97A.

- ‘(2) Subsection (1) has effect only in relation to instruments of covenant registered after the commencement of this section.
- ‘(3) The registrar may refuse to register an instrument purporting to be an instrument of covenant if the registrar is satisfied it is to any extent inconsistent with section 97A.’

81 Replacement of s 98 (Application may not be made about encroachment)

Section 98—

omit, insert—

‘98 Application may not be made about particular matters

- ‘(1) An application may not be made under this division if the application—
 - (a) relates to only a part of a lot; or
 - (b) is for a lot that may be created in the future by the registration of a plan of subdivision; or
 - (c) is for a lot the registered owner of which is—
 - (i) the State or another entity representing the State; or
 - (ii) a local government; or
 - (d) relates to possession arising out of an encroachment.
- ‘(2) In this section—

encroachment means—

 - (a) an encroachment within the meaning of the *Property Law Act 1974*, part 11, division 1; or
 - (b) the enclosure of a part of a lot with another lot, if—
 - (i) the enclosure is established by the use of a wall, fence, hedge, ditch, garden bed or other way of marking the boundary between the lots; and
 - (ii) the wall, fence, hedge, ditch, garden bed or other way of marking the boundary is not on the true boundary between the lots as shown on a registered plan of subdivision.’

82 Amendment of s 99 (Application for registration)

Section 99(2)(b)—

omit, insert—

‘(b) the names and addresses, for service of notices, of all registered proprietors and occupiers of lots adjoining the lot.’.

83 Amendment of s 105 (Lapsing of caveat)

(1) Section 105(1), ‘is not satisfied’—

omit.

(2) Section 105(1)(a), before ‘that’—

insert—

‘is not satisfied’.

(3) Section 105(1)(b), before ‘that’—

insert—

‘is satisfied’.

(4) Section 105(1)(b), ‘not’—

omit.

84 Replacement of s 106 (Reviving or replacing caveat)

Section 106—

omit, insert—

‘106 Further caveat

‘While the applicant’s application as adverse possessor is still current, a further caveat of the caveator can never be lodged in relation to the interest claimed on the same, or substantially the same, grounds unless the leave of the Supreme Court to lodge the further caveat has been granted.’.

85 Amendment of s 107 (Refusing or compromising application)

(1) Section 107(1)(a), ‘; or’—

omit, insert—

‘; and’.

(2) Section 107(1)(b), ‘if the caveator agrees,’—

omit.

(3) Section 107(3), ‘proprietor’—

omit, insert—

‘holder’.

(4) Section 107—

insert—

‘(3A) Also, the caveator must, within the 1 month mentioned in subsection (3), give written notice to the registrar that the proceeding has started.’.

86 Amendment of s 108 (Registering adverse possessor as owner)

(1) Section 108(1)(b)(ii)—

omit, insert—

‘(ii) a further caveat has not been lodged under section 106.’.

(2) Section 108(2)—

omit.

87 Insertion of new ss 108A and 108B

Part 6, division 5, after section 108—

insert—

‘108A Requirements for part of a lot

‘(1) If, under section 108, the registrar proposes to register the applicant as owner of only a part (the *relevant part*) of the lot

(the *relevant lot*), the registrar may require the applicant to lodge a plan of subdivision for the relevant lot, subdividing the relevant lot into the following lots—

- (a) a lot made up of the relevant part;
 - (b) a lot made up of the remainder of the relevant lot.
- ‘(2) The applicant may sign the plan of subdivision as if the applicant were the registered owner of the relevant lot.
- ‘(3) However—
- (a) the plan of subdivision must comply with section 50; and
 - (b) despite the outcome of the applicant’s application as an adverse possessor, the registrar can not proceed under section 108 to register the applicant as owner of the relevant part if section 50 can not be complied with.
- ‘(4) The registrar may require that the giving of public notice under section 18(3) and the giving of written notice under section 103(1) be delayed until the applicant satisfies the registrar that the applicant will be able to lodge a plan of subdivision complying with section 50.

‘108B Consequences of registration

‘If, under section 108, the registrar registers the applicant as owner of the lot or a part of the lot, the registrar must—

- (a) cancel the registration of the person previously registered as the owner of the lot or the part of the lot; and
- (b) create in the applicant’s name an indefeasible title free from all other interests in the lot or the part, other than the following—
 - (i) any estate, interest, claim, encumbrance or notice registered in favour of an entity that is a public utility provider under division 4;
 - (ii) any easement or profit a prendre registered over the lot when the application was made under section 99;

- (iii) any covenant that, under division 4A, was registered over the lot when the application was made under section 99.’.

88 Amendment of s 111 (Registering personal representative)

- (1) Section 111(2)(b)(ii), ‘\$150000’

omit, insert—

‘\$300000’.

- (2) Section 111(2)(c)—

omit, insert—

‘(c) if paragraph (a) does not apply and the registered proprietor died leaving a will—

- (i) the person is or is entitled to be the deceased’s personal representative; or
- (ii) the registrar considers the person would succeed in an application for a grant of representation.’.

89 Amendment of s 112 (Registering beneficiary)

Section 112(2)(a)(i)—

omit, insert—

- ‘(i) the person who is or is entitled to be the deceased’s personal representative; or’.

90 Amendment of s 115K (Recording community management statements)

- (1) Section 115K(1)(c)—

omit.

- (2) Section 115K(1)(d), ‘otherwise’—

omit.

- (3) Section 115K(1)(d) and (e)—

renumber as section 115K(1)(c) and (d).

91 Amendment of s 121 (Requirements of caveats)

Section 121(3), after ‘Act’—

insert—

‘other than a caveat prepared and registered by the registrar under section 17’.

92 Replacement of s 129 (Further caveat)

Section 129—

omit, insert—

‘129 Further caveat

- ‘(1) This section applies if a caveat (the *original caveat*) is lodged in relation to an interest.
- ‘(2) A further caveat with the same caveator can never be lodged in relation to the interest on the same, or substantially the same, grounds as the grounds stated in the original caveat unless the leave of a court of competent jurisdiction to lodge the further caveat has been granted.’.

93 Replacement of s 137 (Acts for minors and by attorneys etc.)

Section 137—

omit, insert—

‘136 Act for a minor

- ‘(1) This section applies if—
- (a) this Act requires or permits an act to be done by or in relation to a person (the *relevant person*); and
 - (b) the relevant person is a minor; and
 - (c) no person has authority under this or another Act to act for the relevant person for the act.
- ‘(2) A person suitably authorised by a court of competent jurisdiction may act for the relevant person for the act.

‘137 Act for other person lacking capacity

- ‘(1) This section applies if—
- (a) this Act requires or permits an act to be done by or in relation to a person (the *relevant person*); and
 - (b) the relevant person is not a minor; and
 - (c) the relevant person does not have capacity for the act.
- ‘(2) Subject to the operation of the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*, a qualified person may act for the relevant person for the act.
- ‘(3) In this section—
- capacity*, for the relevant person for the act, means the relevant person is capable of—
- (a) understanding the nature and effect of decisions about the act; and
 - (b) freely and voluntarily making decisions about the act; and
 - (c) communicating the decisions in some way.
- qualified person* means—
- (a) an administrator for the relevant person appointed under the *Guardianship and Administration Act 2000*; or
 - (b) a person suitably authorised by the relevant person under an enduring power of attorney under the *Powers of Attorney Act 1998*.’.

94 Replacement of s 146 (No further settlement notice for same transaction)

Section 146—

omit, insert—

‘146 Further settlement notice

- ‘(1) This section applies if, under section 140, a settlement notice is deposited by or for a transferee in relation to a transaction.
- ‘(2) A further settlement notice can never be deposited in relation to the same transaction unless the leave of a court of

competent jurisdiction to deposit the further settlement notice has been granted.’.

95 Amendment of s 154 (Lodging certificate of title)

(1) Section 154(2)(c)—

omit, insert—

‘(c) any caveat;’.

(2) Section 154(2)(f)—

renumber as section 154(2)(h).

(3) Section 154(2)—

insert—

‘(f) a request to register an instrument of amendment, extinguishment or partial extinguishment of a building management statement, if the request is accompanied by the evidence the registrar reasonably requires to allow the registration of the instrument;

Example of evidence the registrar might require—

a certified copy of the notice of a meeting and a certified copy of the minutes of the meeting, including a record of a resolution agreed to at the meeting

‘(g) a request to record the vesting of a lot, or of an interest in a lot, if the vesting is in favour of the State or another entity representing the State;’.

96 Amendment of s 155 (Correcting unregistered instruments)

Section 155(2), from ‘correction on’—

omit, insert—

‘correction—

(a) on the instrument; or

(b) if the instrument is in electronic form—in the appropriate register.’.

97 Amendment of s 156 (Requisitions)

- (1) Section 156(1), after ‘other document’—
insert—
‘, or to another person who reasonably appears to the registrar to be relevantly associated with the instrument or other document’.
- (2) Section 156(1), ‘require the person’—
omit, insert—
‘require a person’.
- (3) Section 156(1)(b), ‘person’s’—
omit.
- (4) Section 156(5), ‘by the person’—
omit.
- (5) Section 156(5), ‘person complies with the requisition’—
omit, insert—
‘requisition is complied with’.

98 Amendment of s 166 (Destroying instrument in certain circumstances)

- (1) Section 166(6)—
renumber as section 166(8).
- (2) Section 166(5)—
omit, insert—
‘(5) Subsection (3) does not apply to a certificate of title issued on or after 24 April 1994.
- ‘(6) The registrar may give a cancelled deed of grant or certificate of title to a person if—
 - (a) the person asks for it; and
 - (b) the registrar is reasonably satisfied it is appropriate for it to be given to the person.

- ‘(7) However, a cancelled deed of grant or certificate of title may be destroyed under subsection (1) if it has not been given to a person under subsection (6) within 1 year after its cancellation.’.

99 Insertion of new s 168A

After section 168—

insert—

‘168A References to registered standard terms document

‘In sections 170 and 171, a reference to a registered standard terms document includes a standard terms document that has been, or is taken to be, registered under the *Land Act 1994*.’.

100 Amendment of s 172 (Withdrawal or cancellation of standard terms document)

Section 172(4), after ‘terms document’—

insert—

‘, under this section or the *Land Act 1994*.’.

101 Amendment of s 185 (Exceptions to s 184)

- (1) Section 185—

insert—

- ‘(1A) A registered proprietor of a lot (the *relevant mortgagee*) who is recorded in the freehold land register as a mortgagee of the lot or an interest in the lot does not obtain the benefit of section 184 for the relevant mortgagee’s interest as mortgagee if—

- (a) the relevant mortgagee—
- (i) in relation to the instrument of mortgage, failed to comply with section 11A(2); or
 - (ii) in relation to a transfer of the instrument of mortgage, failed to comply with section 11B(2); and

- (b) the instrument of mortgage was executed other than by the person who was, or who was about to become, the registered proprietor of the lot or the interest in a lot for which the instrument was registered.’.
- (2) Section 185(3)—
omit, insert—
- ‘(3) For subsection (1)(c), the particulars of an easement (the *easement particulars*) are taken to have been omitted from the freehold land register only if—
- (a) the easement was in existence when the lot burdened by it was first registered, but the easement particulars have never been recorded in the freehold land register against the lot; or
- (b) the easement particulars have previously been recorded in the freehold land register, but the current particulars in the freehold land register about the lot do not include the easement particulars, other than because the easement has been extinguished in relation to the lot; or
- (c) the instrument providing for the easement was lodged for registration but, because of an error of the registrar, has never been registered.
- ‘(4) Subsection (3) applies whether or not the lot has at any time been transferred or otherwise dealt with.
- ‘(5) If an issue arises in a proceeding as to whether a person registered as a mortgagee does not obtain the benefit of section 184 because of subsection (1A), proof that the person complied with section 11A(2) or 11B(2) rests on the person.
- ‘(6) In subsection (3)(b)—
extinguished includes surrendered.’.

102 Amendment of s 187 (Orders by Supreme Court about fraud and competing interests)

Section 187(1), ‘section 185(1)(c) to (g)’—

omit, insert—

‘section 185(1)(c), (d), (e), (f) or (g) or (1A)’.

103 Amendment of pt 9, div 2, sdiv C, hdg

Part 9, division 2, subdivision C, heading, ‘for loss of title’—
omit.

104 Insertion of new s 188AA

After section 188A—

insert—

‘188AACompensation for which claim may not be made

‘(1) The compensation to which a claimant is entitled under section 188 or 188A does not include compensation for personal injury.

‘(2) In subsection (1)—

personal injury includes loss of income, including loss of income claimed to arise from personal injury, and psychological and psychiatric injury.’.

105 Amendment of s 188B (Order by Supreme Court about deprivation, loss or damage)

(1) Section 188B(1)(a), ‘about the amount of’—

omit, insert—

‘for’.

(2) Section 188B—

insert—

‘(4) The court may join any other person it considers appropriate in a proceeding under this section.’.

106 Insertion of new ss 188C and 188D

After section 188B—

insert—

‘188C Time limit for claim

‘A person applying to the Supreme Court under section 188B for compensation under section 188 or 188A must make the application—

- (a) within 12 years after the person becomes aware, or ought reasonably to have become aware, of the circumstances giving rise to the entitlement to compensation; or
- (b) within a longer period the court considers just.’.

‘188D No right of subrogation for insurers

‘(1) An insurer can not be subrogated to another person in relation to the other person’s entitlement to claim compensation under section 188 or 188A.

‘(2) In this section—

insurer means a person who carries on an insurance business within the meaning of the *Insurance Act 1973* (Cwlth).’.

107 Amendment of s 189 (Matters for which there is no entitlement to compensation)

(1) Section 189(1)—

insert—

‘(ab) if the deprivation, loss or damage can fairly be attributed to the person’s failure, as original mortgagee under section 11A, or as mortgage transferee under section 11B, to take the steps required under section 11A(2) or 11B(2); or’.

(2) Section 189(1)—

insert—

‘(j) because the particulars of an easement over a lot have been omitted from the freehold land register; or

(k) because of the misdescription of the particulars of an easement in the freehold land register; or

- (l) because of the recording or keeping of information or anything else under section 28(2), 29 or 34,⁶ if—
 - (i) the information or thing, as recorded or kept, is incorrect; and
 - (ii) the information or thing was given to the registrar for recording or keeping by another entity; and
 - (iii) the incorrectness was not because of an error of the registrar in the recording or keeping.’.
- (3) Section 189—
insert—
- ‘(1B) Section 185(3), (4) and (6) applies for subsection (1)(j) in the same way it applies for section 185(1)(c).’.

108 Insertion of new s 189A

After section 189—

insert—

‘189A Payment to compensated mortgagee

- ‘(1) This section applies if—
 - (a) a person (the *mortgagee*) is recorded in the freehold land register as a mortgagee of a lot, or an interest in a lot, under an instrument of mortgage; and
 - (b) the execution of the instrument of mortgage involved, or was associated with, fraud against a person (the *defrauded person*) who is or was a registered proprietor of the lot; and

Examples—

- 1 A person engages in fraud by executing the instrument of mortgage, pretending to be the registered proprietor.
- 2 A person executes the instrument of mortgage as registered proprietor, having first engaged in fraud by executing an

⁶ Section 28 (Particulars the registrar must record), 29 (Particulars the registrar may record) or 34 (Other information not part of the freehold land register)

*Natural Resources and Other Legislation Amendment No. 68, 2005
Act 2005*

instrument of transfer, pretending to be the registered proprietor.

- (c) the mortgagee is entitled to exercise power of sale over the lot or interest on the basis of the registered mortgage; and
 - (d) if the position of the defrauded person in relation to the lot or interest is not otherwise rectified, the defrauded person will be entitled to compensation under section 188 for deprivation of the lot or interest.
- ‘(2) If the mortgagee exercises the power of sale, subsections (3) and (4)—
- (a) apply to limit the interest and costs components of the proceeds of sale that the mortgagee is entitled to retain; and
 - (b) apply despite anything to the contrary in the instrument of mortgage (including any associated document).
- ‘(3) The rate of interest to be applied for calculating the interest component for any particular day for which the instrument of mortgage was in effect must not exceed—
- (a) if the rate of interest provided for under the instrument of mortgage for the day is less than or equal to the official cash rate for the day plus 2%—the rate of interest provided for under the instrument; or
 - (b) if the rate of interest provided for under the instrument of mortgage for the day is greater than the official cash rate for the day plus 2%—the total of the following—
 - (i) the official cash rate for the day;
 - (ii) 2%.
- ‘(4) The costs component must be limited to the costs incurred by the mortgagee in directly protecting the mortgagee’s interest as mortgagee of the lot or the interest in a lot, to the extent the costs were reasonably incurred.

Examples of costs incurred in directly protecting the mortgagee’s interest—

insurance premiums, rates, land taxes

Examples of costs not incurred in directly protecting the mortgagee's interest—

costs of entry into possession, costs of exercising power of sale

‘(5) In this section—

costs component means costs incurred by the mortgagee in relation to the mortgage.

official cash rate, for a day, means the Reserve Bank of Australia's official cash rate for the day.⁷.

109 Amendment of s 190 (State's right of subrogation)

Section 190(1), ‘the person responsible for’—

omit, insert—

‘any other person, in relation to’.

110 Insertion of new pt 10A

After section 191—

insert—

‘Part 10A Tidal boundary plans of subdivision

‘191A Definitions for pt 10A

‘In this part—

public interest includes the cultural, environmental, heritage, land protection, planning, recreational, social and strategic interests of the public.

tidal boundary means a boundary of land that—

- (a) is identified with reference to water, however described, that is subject to tidal influence; and

⁷ The Reserve Bank of Australia's official cash rate is published on the bank's website at <<http://www.rba.gov.au>>.

Example—

a boundary established by reference to the Pacific Ocean or to high water mark

- (b) having regard to how the boundary is identified, can not appropriately be represented on a plan of subdivision as a straight line boundary.

tidal boundary plan of subdivision means a plan of subdivision that includes a section of tidal boundary.

‘191B Application of pt 10A

‘(1) This part applies if—

- (a) a tidal boundary plan of subdivision (the ***new plan of subdivision***)—
 - (i) was lodged on or after 8 November 2005 but before the commencement of this section; or
 - (ii) is lodged after the commencement but before 8 November 2008; and
- (b) the location of a section of tidal boundary (the ***relevant section***), as represented on the new plan of subdivision, is inconsistent with its location as represented on the most recently registered previous plan of subdivision (the ***earlier plan of subdivision***) to include some or all of the relevant section.

‘(2) However, this part does not apply to a tidal boundary plan of subdivision if—

- (a) the *Integrated Planning Act 1997*, section 3.7.6⁸ applies to the plan of subdivision; and
- (b) the approval mentioned in the section was given before 8 November 2005; and
- (c) the plan was or is lodged in compliance with the section.

⁸ *Integrated Planning Act 1997*, section 3.7.6 (When approved plan to be lodged for registration)

- ‘(3) The requirements of this part are in addition to, and are not in substitution for, any other provision of this Act that applies to a plan of subdivision.

‘191C Prohibition on registration of relevant tidal boundary plan of subdivision

- ‘(1) The registrar must not, without the approval of the Minister under this part, register the new plan of subdivision.
- ‘(2) The registrar’s refusal, on or after 8 November 2005, and before the commencement of this section, to register a plan of subdivision is taken to have been a valid refusal under this part if, on the commencement of this section, this part commences to apply in relation to the plan of subdivision.

‘191D Approval of Minister in circumstances of accretion or erosion

- ‘(1) This section applies if the location of the relevant section on the earlier plan of subdivision was consistent with directions and instructions applying to surveyors when the earlier plan of subdivision was prepared.
- ‘(2) The Minister may approve registration of the new plan of subdivision, but only if the Minister is satisfied—
- (a) that the difference, as between the earlier plan of subdivision and the new plan of subdivision, in the location of the relevant section can appropriately be attributed, in accordance with applicable law, to accretion or erosion; and
 - (b) in relation to the location of the relevant section on the new plan of subdivision, that—
 - (i) the registration of the new plan of subdivision, will not, in practical terms, be contrary to the public interest; or
 - (ii) despite registration of the new plan of subdivision, a development condition under the *Integrated Planning Act 1997* will operate to give adequate protection to the public interest.

‘191E Approval of Minister in other limited circumstances

- ‘(1) This section applies if—
- (a) the location of the relevant section on the earlier plan of subdivision was inconsistent with directions and instructions applying to surveyors when the earlier plan of subdivision was prepared; or
 - (b) there were no relevant directions or instructions applying to surveyors when the earlier plan of subdivision was prepared.
- ‘(2) The Minister may approve registration of the new plan of subdivision, but only if the Minister is satisfied, in relation to the location of the relevant section on the new plan of subdivision, that—
- (a) the registration of the new plan of subdivision, will not, in practical terms, be contrary to the public interest; or
 - (b) despite registration of the new plan of subdivision, a development condition under the *Integrated Planning Act 1997* will operate to give adequate protection to the public interest.

‘191F No compensation for operation of this part

‘A person is not entitled to compensation from the State under this Act, or otherwise, for deprivation of an interest in a lot, or for loss or damage of any kind, arising out of the operation of this part, including, in particular—

- (a) the Minister’s refusal to approve, under this part, the registration of a plan of subdivision; or
- (b) the registrar’s refusal, under this part, to register a plan of subdivision.’.

111 Insertion of new s 198A

After section 198—

insert—

‘198A Supply of statistical data

- ‘(1) The registrar may enter into an agreement to supply statistical data derived from instruments or information kept in the land registry.
- ‘(2) If the registrar supplies statistical data under subsection (1)—
 - (a) the fees and charges applying for the supply of the data are the fees and charges agreed to in the agreement; and
 - (b) without limiting paragraph (a), the agreement may also state—
 - (i) how the fees and charges are to be calculated; and
 - (ii) how payment of the fees and charges is to be made.
- ‘(3) Without limiting subsection (1), an agreement for the supply of statistical data may limit the use to which the data supplied may be put.
- ‘(4) An agreement for the supply of statistical data must include—
 - (a) a provision allowing the registrar to exclude particulars from data supplied under the agreement, if the registrar is satisfied, on reasonable grounds, that inclusion of the particulars may result in the particulars being inappropriately disclosed or used; and
 - (b) a provision allowing the registrar to prohibit disclosure, or to limit distribution or use, of data supplied under the agreement.
- ‘(5) An agreement under this section must not provide for the obtaining of information or anything else that may be obtained under a search under section 35, other than section 35(1)(a)(iv).
- ‘(6) The registrar must exclude land particulars and personal information from data supplied under the agreement.
- ‘(7) Subsection (6) applies despite anything in the agreement.
- ‘(8) In this section—

land particulars means particulars from any instrument or information kept by the registrar that may allow a person to identify a lot to which the instrument or information relates.

personal information means a particular from any instrument or information kept by the registrar that may allow a person to identify a person to whom the instrument or information relates.’.

112 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

‘***earlier plan of subdivision***, for part 10A, see section 191B.

new plan of subdivision, for part 10A, see section 191B.

public interest, for part 10A, see section 191A.

public thoroughfare easement see section 81A.

relevant section, for part 10A, see section 191B.

tidal boundary, for part 10A, see section 191A.

tidal boundary plan of subdivision, for part 10A, see section 191A.’.

Part 5 Amendment of Integrated Resort Development Act 1987

113 Act amended in pt 5

This part amends the *Integrated Resort Development Act 1987*.

114 Amendment of s 79D (Registration of replacement schedule)

(1) Section 79D, heading, ‘Registration’—

omit, insert—

‘Recording’.

(2) Section 79D(1), ‘register’—

- (b) for deciding the respective rights and liabilities that attach to a relevant entity for anything that happens arising out of the use of the easement land, the easement land must be taken to be a road under the control of the local government.
- ‘(5) The owner of the relevant land, as the grantor of the easement, or as a successor in title of the grantor of the easement—
- (a) is not required, and can not be required, to maintain, or to contribute to the maintenance of, any part of the easement land; and
 - (b) is not, and can not be made, civilly liable for an act done, or omission made, honestly and without negligence, in relation to the easement land.

‘(6) In this section—

easement land means any part of the relevant land that is affected by the public thoroughfare easement.

owner, of the relevant land, means—

- (a) if the relevant land is land granted in trust under the *Land Act 1994*—the trustee of the land; or
- (b) if the relevant land is non-freehold land under the *Land Act 1994*—the lessee or licensee of the land; or
- (c) if the relevant land is a lot under the *Land Title Act 1994*—the registered owner of the lot.

relevant entity means any of following—

- (a) the owner of the relevant land;
- (b) the local government;
- (c) any member of the public generally.

relevant land means—

- (a) land granted in trust, or non-freehold land, under the *Land Act 1994*; or
- (b) a lot under the *Land Title Act 1994*.’

117 Amendment of schedule (Dictionary)

(1) Schedule—

insert—

‘public thoroughfare easement means a public thoroughfare easement under either of the following provisions, if the easement is in favour of a local government—

- (a) the *Land Act 1994*, chapter 6, part 4, division 8;⁹
- (b) the *Land Title Act 1994*, part 6, division 4.¹⁰.

(2) Schedule, definition *road*, ‘1994’—

omit, insert—

‘1994, or a public thoroughfare easement’.

Part 7 Amendment of Mining and Quarrying Safety and Health Act 1999

118 Act amended in pt 7

This part amends the *Mining and Quarrying Safety and Health Act 1999*.

119 Amendment of s 123 (Qualifications for appointment as inspector)

Section 123, from ‘has’—

omit, insert—

‘has appropriate competencies and adequate experience to effectively perform an inspector’s functions under this Act.’.

⁹ *Land Act 1994*, chapter 6 (Registration and dealings), part 4 (Dealings affecting land), division 8 (Easements)

¹⁰ *Land Title Act 1994*, part 6 (Dealings directly affecting lots), division 4 (Easements)

120 Amendment of s 126 (Further functions of inspectors)

Section 126(b), ‘inspector’—

omit, insert—

‘executive’.

121 Amendment of s 157 (Additional powers of chief inspector)

(1) Section 157(a)—

omit.

(2) Section 157(b) and (c)—

renumber as section 157(a) and (b).

122 Amendment of s 234 (Proceedings for offences)

(1) Section 234(5), from ‘inspector’—

omit, insert—

‘executive.’.

(2) Section 234(6), definition *person dissatisfied with a decision*, paragraph (c)—

omit.

123 Amendment of s 235 (Recommendation to prosecute)

(1) Section 235(1), ‘chief inspector’—

omit, insert—

‘chief executive’.

(2) Section 235(2), ‘inspector’s’—

omit, insert—

‘executive’s’.

124 Amendment of s 256 (Protection from liability)

(1) Section 256(3), definition *official*, paragraphs (b) to (g)—

- (a) is not required, and can not be required, to maintain, or to contribute to the maintenance of, any part of the easement land; and
- (b) is not, and can not be made, civilly liable for an act done, or omission made, honestly and without negligence, in relation to the easement land.

‘(6) In this section—

easement land means any part of the relevant land that is affected by the public thoroughfare easement.

owner, of the relevant land, means—

- (a) if the relevant land is land granted in trust under the *Land Act 1994*—the trustee of the land; or
- (b) if the relevant land is non-freehold land under the *Land Act 1994*—the lessee or licensee of the land; or
- (c) if the relevant land is a lot under the *Land Title Act 1994*—the registered owner of the lot.

relevant entity means any of following—

- (a) the owner of the relevant land;
- (b) the State;
- (c) any member of the public.

relevant land means—

- (a) land granted in trust, or non-freehold land, under the *Land Act 1994*; or
- (b) a lot under the *Land Title Act 1994*.’

129 Amendment of schedule 6 (Dictionary)

(1) Schedule 6—

insert—

‘***public thoroughfare easement*** means a public thoroughfare easement under either of the following provisions, if the easement is in favour of the State—

- (a) the *Land Act 1994*, chapter 6, part 4, division 8;¹¹
 - (b) the *Land Title Act 1994*, part 6, division 4.¹².
- (2) Schedule 6, definition *road*—
insert—
'(ca) does not include a public thoroughfare easement; and'.

Part 10 Amendment of Valuers Registration Act 1992

130 Act amended in pt 10

This part amends the *Valuers Registration Act 1992*.

131 Amendment of s 3 (Definitions)

Section 3—

insert—

'*officer*, of the board, includes a person authorised under section 44 to carry out an investigation.'

132 Amendment of s 18 (Meetings of board)

Section 18(6), 'members'—

omit, insert—

'chairperson'.

11 *Land Act 1994*, chapter 6 (Registration and dealings), part 4 (Dealings affecting land), division 8 (Easements)

12 *Land Title Act 1994*, part 6 (Dealings directly affecting lots), division 4 (Easements)

133 Amendment of s 27 (Inspection of register)

Section 27, ‘, on payment of the prescribed fee,’—
omit.

134 Amendment of s 28 (Publication of names of registered valuers)

Section 28, after ‘gazette’—
insert—
‘and on the board’s website’.

135 Amendment of s 29 (Applications for registration)

Section 29(2) to (5)—
omit, insert—

- ‘(2) The board may, by written notice given to the applicant, require the applicant to do either or both of the following—
- (a) give further information or a document the board reasonably requires to decide the application;
 - (b) attend before the board, on the date stated in the notice, to give any further information the board reasonably requires to decide the application.
- ‘(3) A notice under subsection (2)(a) must state a reasonable period of at least 14 days after it is given within which the information or document must be given.
- ‘(4) The board may require the information or document to be verified by statutory declaration.
- ‘(5) The applicant is taken to have withdrawn the application if the applicant—
- (a) does not comply with a requirement under subsection (2)(a) within the period stated in the notice; or
 - (b) does not attend before the board on the date stated in the notice.

- ‘(6) However, if the board is satisfied with the applicant’s reasons for not complying with a notice under subsection (2), the board may—
- (a) extend the time for complying with subsection (2)(a); or
 - (b) require the applicant to attend before the board on a later date.
- ‘(7) The board must consider the application and decide to grant, or refuse to grant, the application.
- ‘(8) The board must not refuse to grant the application until the board has—
- (a) given the applicant a written notice that—
 - (i) sets out the reasons for the proposed refusal; and
 - (ii) gives the applicant 30 days in which to make oral or written submissions to the board about the reasons; and
 - (b) considered any submissions made.’.

136 Replacement of s 31 (Attendance before board of applicant)

Section 31—

omit, insert—

‘31 Investigations about suitability of applicants

- ‘(1) The board may make investigations about an applicant for registration or renewal of registration as a valuer to help the board decide whether the applicant is a suitable person to be registered as a valuer.
- ‘(2) Without limiting subsection (1), the board may ask the commissioner of the police service for a written report about the applicant’s criminal history.
- ‘(3) The commissioner must give the report to the board.
- ‘(4) However, the report is required to contain only criminal history in the commissioner’s possession or to which the commissioner has access.

‘31A Consideration of suitability of applicants

- ‘(1) The board may have regard to the commissioner’s report about an applicant’s criminal history in deciding whether the applicant is a suitable person to be registered as a valuer.
- ‘(2) In having regard to the report, the board must consider the nature of any offence mentioned in the report and the relevance of the offence to the applicant’s suitability to be registered as a valuer.

‘31B Criminal history is confidential document

- ‘(1) An officer, employee or agent of the board must not, directly or indirectly, disclose to anyone else a report, or information contained in a report, given under section 31.

Maximum penalty—100 penalty units.

- ‘(2) However, the officer, employee or agent does not contravene subsection (1) if—
 - (a) disclosure of the report or information to someone else is authorised by the board to the extent necessary to perform a function under or in relation to this Act; or
 - (b) the disclosure is otherwise required or permitted by law.
- ‘(3) The board must destroy the report as soon as practicable after considering the applicant’s suitability for registration as a valuer.’.

137 Amendment of s 36B (Renewal of registration—statement or certificate about CPD)

- (1) Section 36B(1)(a)—

omit, insert—

- ‘(a) a statement about, including details of and documents to support, the CPD prescribed under a regulation that the valuer has undertaken during the previous 12 months; or’.

- (2) Section 36B(1)(c), after ‘a statement about’—

insert—

‘, including details of, and documents to support.’.

138 Amendment of s 39 (Cancellation of registration)

Section 39—

insert—

- ‘(4) If the board cancels a valuer’s registration under this section, the board must—
- (a) remove the name and other particulars of the valuer from the register; and
 - (b) publish notice of the removal in a newspaper circulating throughout the State and on the board’s website.’.

139 Amendment of s 42FA (Renewal of recording of registered valuer on list of specialist retail valuers)

Section 42FA(b)—

omit, insert—

- ‘(b) give the board a statement about, including details of and documents to support, the CPD relating to retail rental valuation prescribed under a regulation that the valuer has undertaken during the previous 12 months.’.

140 Amendment of s 44 (Board may authorise investigation)

Section 44—

insert—

- ‘(4) The board may authorise an investigator to continue to carry out an investigation of the conduct of a registered valuer even if the complaint, on which the investigation was authorised, is withdrawn.’.

141 Amendment of s 50 (Disciplinary charge may be laid)

Section 50(6)(a)(ii)—

omit, insert—

‘(ii) notify the person charged—

(A) of the time, day and place of the proceeding;
and

(B) that the person must attend the proceeding;
or’.

142 Amendment of s 54 (Representation)

(1) Section 54, ‘either’ to ‘solicitor’—

omit.

(2) Section 54—

insert—

‘(2) The valuer may be accompanied by a lawyer or agent and is entitled to be represented by the lawyer or agent.’.

143 Amendment of s 57 (Offences—proceedings)

‘Section 57(2)(b), ‘the chairperson’—

omit, insert—

‘a member of the committee’.

144 Amendment of s 59 (Committee may order cancellation of registration, etc.)

(1) Section 59(1), after ‘committee may’—

insert—

‘do 1 or more of the following’.

(2) Section 59(1)(a) to (d), ‘; or’—

omit, insert—

‘;’.

(3) Section 59(2)—

omit.

- (4) Section 59(4), ‘(3)’—
omit, insert—
‘(2)’.
- (5) Section 59(3) to (5)—
renumber as section 59(2) to (4).
- (6) Section 59—
insert—
- ‘(5) If the committee makes an order under subsection (1)(e), or the valuer’s registration is cancelled under subsection (4), the board must—
- (a) remove the name and other particulars of the valuer from the register; and
 - (b) publish notice of the removal in a newspaper circulating throughout the State and on the board’s website.
- ‘(6) The board may also publish, in the newspaper or on the website, notice of any action taken under subsection (1)(a) to (d) or any suspension of a valuer’s registration under subsection (4).’.

145 Amendment of s 61 (Appeals)

- (1) Section 61(1)—
insert—
‘(g) an order under section 39 that a valuer’s registration be cancelled.’.
- (2) Section 61(3)(c)(ii), ‘(3) or (4)’—
omit, insert—
‘(2) or (3)’.

146 Replacement of pt 6, hdg (Transitional provisions for Valuers Registration Act 1992)

- Part 6, heading—
omit, insert—

‘Part 6 Transitional provisions

‘Division 1 Transitional provisions for Valuers Registration Act 1992’.

147 Replacement of pt 7, hdg (Transitional provisions for Valuers Registration Amendment Act 2001)

Part 7, heading—

omit, insert—

‘Division 2 Transitional provisions for Valuers Registration Amendment Act 2001’.

148 Replacement of s 72 (Definitions for pt 7)

Section 72—

omit, insert—

‘72 Definition for div 2

‘In this division—

amending Act means the *Valuers Registration Amendment Act 2001*.’.

149 Insertion of new pt 6, div 3

After section 74—

insert—

‘Division 3 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2005

‘75 Definition for div 3

‘In this division—

amending Act means the *Natural Resources and Other Legislation Amendment Act 2005*.

'76 Renewal of registration

'Despite the amendment of section 36B by the amending Act, that section, as in force immediately before the commencement of this section, applies to the renewal of a valuer's registration for the financial year beginning on 1 July 2006.'

'77 Renewal of recording on list of specialist retail valuers

'Despite the amendment of section 42FA by the amending Act, that section, as in force immediately before the commencement of this section, applies to the renewal of a valuer's recording as a specialist retail valuer for the financial year beginning on 1 July 2006.'

Part 11 Minor amendments

150 Acts amended in schedule

The schedule amends the Acts it mentions.

Schedule Minor amendments

section 150

Geothermal Exploration Act 2004

- 1 **Schedule, definition, *tribunal* first mention—**
omit.

Land Protection (Pest and Stock Route Management) Act 2002

- 1 **Schedule 1, sixth entry, '(79(3)(b))'—**
omit, insert—
'(section 79(3)(b))'.
- 2 **Schedule 3, definition *notifiable disease*, 'section 4'—**
omit, insert—
'schedule 2'.

Mineral Resources Act 1989

- 1 **Section 658(4), 'section 657(b)'—**
omit, insert—
'section 657(1)(b)'.
- 2 **Schedule, definition *consultation start day*—**
omit.

Schedule (continued)

Petroleum Act 1923

1 Section 25M(1)(h), from ‘sections 80J and 80K’ to ‘must’—

omit, insert—

‘sections 25O and 25R,¹³ must’.

2 Section 77ZB, heading, ‘exploration’—

omit, insert—

‘mining’.

3 Part 6J, heading, ‘tenure or’—

omit, insert—

‘tenure, a 2004 Act petroleum authority or’.

4 Section 80J(6), ‘authority’—

omit, insert—

‘tenure’.

Petroleum and Gas (Production and Safety) Act 2004

1 Section 37(b)(iii) ‘;’—

omit, insert—

‘; and’.

¹³ Sections 25O (Deciding application) and 25R (Criteria for decisions)

Schedule (continued)

- 2 Section 59(2)(d)(ii) ‘; and’—**
omit, insert—
‘;’.
- 3 Section 78A(3) ‘section 80T(1)(b)’—**
omit, insert—
‘section 790(1)(b)’.
- 4 Section 79(2)(a)(i) ‘;’—**
omit, insert—
‘; or’.
- 5 Section 116(2)(a) ‘section 114(1)’—**
omit, insert—
‘section 114’.
- 6 Chapter 2, part 2, division 7, subdivision 1, heading, ‘and term’—**
omit.
- 7 Section 246(2)(b) ‘2004 Act’—**
omit.
- 8 Section 327(c), from ‘authority’ to ‘section 313’—**
omit, insert—
‘tenement holder has not lodged any submission under section 314’.

Schedule (continued)

- 9 Section 386(2), ‘plan.’—**
omit, insert—
‘plant.’.
- 10 Section 675(3), ‘subsection (1)(d)’—**
omit, insert—
‘subsection (1)(e)’.
- 11 Section 678(1)(b), ‘; or’—**
omit, insert—
‘;’.
- 12 Section 679(2)(b)(ii)(A), ‘;’—**
omit, insert—
‘; or’.
- 13 Section 705A(3), ‘subsection (2)(b)(ii)’—**
omit, insert—
‘subsection (1)(b)(ii)’.
- 14 Schedule 2—**
insert—
‘**2004 Act start day** means 31 December 2004.’.

Schedule (continued)

Survey and Mapping Infrastructure Act 2003

- 1 **Section 38(1), from ‘section 26’ to ‘exercise’—**
omit, insert—
‘section 28,¹⁴ exercise’.

Surveyors Act 2003

- 1 **Part 13, heading, ‘and amendments’—**
omit.

Valuation of Land Act 1944

- 1 **Section 2, definition *SunWater*—**
omit, insert—
‘*SunWater* means the entity continued in existence under the *Government Owned Corporations Regulation 2004*, section 34.’.

Water Act 2000

- 1 **Section 1122—**
insert—
‘(5) In this section—

14 *Transport Infrastructure Act 1994*, section 28 (Chief executive to have power of a local government for State-controlled roads)

Schedule (continued)

SunWater means the entity continued in existence under the *Government Owned Corporations Regulation 2004*, section 34.’.