



Queensland

Aboriginal and Torres Strait Islander Land Amendment Act 2008

Act No. 29 of 2008



Queensland

Aboriginal and Torres Strait Islander Land Amendment Act 2008

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Queensland

Aboriginal and Torres Strait Islander Land Amendment Act 2008

Act No. 29 of 2008

An Act to amend the *Aboriginal Land Act 1991*, the *Land Act 1994*, the *Land Court Act 2000*, the *Local Government (Aboriginal Lands) Act 1978*, the *Native Title (Queensland) Act 1993* and the *Torres Strait Islander Land Act 1991*, for particular purposes

[Assented to 21 May 2008]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Aboriginal and Torres Strait Islander Land Amendment Act 2008*.

2 Commencement

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

Part 2 Amendment of Aboriginal Land Act 1991

3 Act amended in pt 2 and schedule

This part and the schedule amend the *Aboriginal Land Act 1991*.

4 Amendment of s 3 (Definitions)

- (1) Section 3, ‘In this Act—’—

omit, insert—

‘The dictionary in the schedule defines particular words used in this Act.’

- (2) Section 3, definitions *available Crown land, coast, Crown, Mornington Island Shire lease land, native title interests, quarry material, stock route, Torres Strait Islanders, township land and watercourse—*

omit.

(3) Section 3—

insert—

‘Aboriginal trust land see section 83R.

Acquisition Act means the *Acquisition of Land Act 1967*.

appropriate register means—

- (a) for freehold land—the freehold land register; or
- (b) for other land—the appropriate register for the land under the Land Act.

approved form means a form approved under section 137B.

available State land means land that is available State land under section 19, including under a regulation made under section 19(2).

Commonwealth Native Title Act means the *Native Title Act 1993* (Cwlth).

constructing authority means a constructing authority under the Acquisition Act.

expression of interest see section 26C(1).

general meeting, of a land trust, means an annual general meeting or special general meeting of the trust.

improvements see the Land Act, schedule 6.

Land Act means the *Land Act 1994*.

Land Title Act means the *Land Title Act 1994*.

lease does not include a residential tenancy agreement.

lease land, for a provision about a lease or proposed lease, means the land subject to the lease or proposed lease.

maximum amount—

- (a) for part 3, division 2, subdivision 4—see section 40T; and
- (b) for part 5, division 2, subdivision 4—see section 77T.

[s 4]

Mornington Shire lease land means land that is Mornington Shire lease land under section 16.

National Native Title Register means the National Native Title Register established and maintained under the Commonwealth Native Title Act, part 8.

native title holder, in relation to land held, or to be held, by a registered native title body corporate, means—

- (a) if the registered native title body corporate holds the native title in relation to the land, or part of the land, on trust—the persons on whose behalf the registered native title body corporate holds the native title; or
- (b) otherwise—the persons who hold the native title in relation to the land or part of the land.

public infrastructure means infrastructure that is operated for the general public.

quarry material see the *Forestry Act 1959*, schedule 3.

registered means registered under the Land Act or the Land Title Act.

registered native title body corporate means a prescribed body corporate under the Commonwealth Native Title Act whose name and address are registered on the National Native Title Register under section 193(2)(e) or (4) of that Act.

registrar means—

- (a) for freehold land—the registrar of titles under the Land Title Act; or
- (b) for other land—the chief executive of the department in which the Land Act is administered.

relevant land, for part 2, division 3A, see section 16A.

residential tenancy agreement means a residential tenancy agreement under the *Residential Tenancies Act 1994*.

stock route see the Land Act, schedule 6.

Torres Strait Islander see the *Torres Strait Islander Land Act 1991*, section 7.

township land means land declared under section 23 to be township land.

transferee—

- (a) for part 3, division 2, subdivision 6—see section 40ZC(1); and
- (b) for part 5, division 2, subdivision 6—see section 77ZB(1).

transferor—

- (a) for part 3, division 2, subdivision 6—see section 40ZC(1); and
- (b) for part 5, division 2, subdivision 6—see section 77ZB(1).

trustee—

- (a) for a provision about Aboriginal land—means the land trust or other entity that holds the land under this Act; and
- (b) of Aboriginal trust land—for part 5F, see section 83R.

trustee (Aboriginal) lease, for part 5F, see section 83R.

unallocated State land means unallocated State land under the Land Act.

watercourse means a watercourse under the *Water Act 2000*.

- (4) Section 3, definition *associated reserve*, paragraph (a), ‘*Land Act 1994*’—

omit, insert—

‘Land Act’.

- (5) Section 3, definition *bed and banks*, ‘has the same meaning given by’—

omit, insert—

‘see’.

- (6) Section 3, definition *registrar of titles*, ‘*Land Act 1994*’—

[s 5]

omit, insert—

‘Land Act’.

(7) Section 3, definition *special mining Act*, paragraph (f)—

omit.

(8) Section 3, definition *special mining Act*, paragraphs (g) and (h)—

renumber as paragraphs (f) and (g).

(9) Section 3, definition *Torres Strait area*, ‘has the same meaning as in’—

omit, insert—

‘means the Torres Strait area under’.

(10) Section 3, ‘has the meaning given by’—

omit, insert—

‘see’.

(11) Section 3, definitions, as amended—

relocate to the schedule as inserted by this Act.

5 Omission of s 5 (Meaning of *native title interests*)

Section 5—

omit.

6 Replacement of s 6 (Crown bound)

Section 6—

omit, insert—

‘6 Act binds all persons

‘This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.’.

7 Amendment of s 10 (Meaning of Aboriginal land)

Section 10(1)(a), ‘for the benefit of Aboriginal people’—
omit.

8 Amendment of s 11 (Meaning of transferable and transferred land)

Section 11, ‘for the benefit of Aboriginal people’—
omit.

9 Amendment of s 12 (Lands that are transferable lands)

(1) Section 12(d), ‘Island’—
omit.

(2) Section 12(e), ‘Crown’—
omit, insert—
‘State’.

(3) Section 12—
insert—

‘(g) land that becomes transferable land under section 114A.’.

(4) Section 12—
insert—

‘(2) However, land mentioned in subsection (1)—

(a) ceases to be transferable land if it is taken, under the Acquisition Act, by a constructing authority; and

(b) if the land is Aboriginal trust land—is not transferable land if it is subject to a lease for more than 30 years granted under this Act for a commercial purpose; and

(c) is not transferable land if it is the subject of a declaration in force under section 16B.’.

[s 10]

10 Amendment of s 13 (DOGIT land)

(1) Section 13(b)(ii), ‘Crown land’—

omit, insert—

‘unallocated State land’.

(2) Section 13(b)(iii) and (iv), ‘by the Crown’—

omit.

(3) Section 13—

insert—

‘(2) DOGIT land does not include land within the external boundaries of land mentioned in subsection (1)(a) if the land—

(a) is a road that became a road after the enactment day and before the commencement of this subsection; or

(b) becomes a road after the commencement.’.

11 Amendment of s 15 (Aurukun Shire lease land)

Section 15—

insert—

‘(2) Aurukun Shire lease land does not include land within the external boundaries of land mentioned in subsection (1)(a) if the land—

(a) is a road that became a road after the enactment day and before the commencement of this subsection; or

(b) becomes a road after the commencement.’.

12 Amendment of s 16 (Mornington Island Shire lease land)

(1) Section 16, ‘Island’—

omit.

(2) Section 16—

insert—

- ‘(2) Mornington Shire lease land does not include land within the external boundaries of land mentioned in subsection (1)(a) if the land—
- (a) is a road that became a road after the enactment day and before the commencement of this subsection; or
 - (b) becomes a road after the commencement.’.

13 Insertion of new pt 2, div 3A

Part 2, after section 16—

insert—

‘Division 3A Declarations about particular transferable land

‘16A Definition for div 3A

‘In this division—

relevant land means the following land, or a part of the land—

- (a) DOGIT land;
- (b) Aboriginal reserve land, other than land declared under a regulation for section 14;
- (c) Aurukun Shire lease land;
- (d) Mornington Shire lease land.

‘16B Particular land may be declared to be not transferable land

- ‘(1) The Minister may, by gazette notice, make a declaration under this division that relevant land is not transferable land if the Minister is satisfied that—
- (a) housing or essential or other infrastructure is situated on the land; or

[s 13]

- (b) the land is being used as a town site or part of a town site by the Aboriginal people on the land; or
 - (c) the land is being used as if it were a road; or
 - (d) having regard to the nature or use of the land, it is not appropriate or practicable in the circumstances for the land to be granted in fee simple under this Act.
- ‘(2) In considering whether to make a declaration under subsection (1)(d), the Minister may have regard to matters relating to the nature or use of the relevant land the Minister considers appropriate, including, for example—
- (a) whether the land is likely to be used as a town site or part of a town site by the Aboriginal people on the land; and
 - (b) whether the land is in a condition suitable to be granted under this Act.
- ‘(3) The Minister must not make a declaration under subsection (1)(d) before—
- (a) if no appeal is made under this division against the decision to make the declaration—the period for making an appeal ends; or
 - (b) if an appeal is made under this division against the decision to make the declaration—the day the appeal is finally decided.

‘16C Notice of intention to make declaration

- ‘(1) If the Minister intends to make a declaration under section 16B, the Minister must—
- (a) give written notice of the Minister’s intention to make the declaration to the trustee of the relevant land; and
 - (b) within 10 business days after giving the notice under paragraph (a), publish notice of the Minister’s intention to make the declaration in a newspaper or other publication circulating generally in the area where the relevant land is situated; and

-
- (c) consider all representations made under subsection (4).
- ‘(2) The notice must—
- (a) include a description of the relevant land; and
 - (b) state the following—
 - (i) the reasons for the proposed declaration;
 - (ii) that a person may make written representations to the Minister about the proposed declaration;
 - (iii) the place where the representations may be made;
 - (iv) the period in which the representations must be made.
- ‘(3) The stated period must end at least 28 days after the notice is published.
- ‘(4) A person may make written representations about the proposed declaration to the Minister within the stated period.

‘16D Minister to consider representations and give notice of decision

- ‘(1) After considering all representations made under section 16C(4) about the proposed declaration, the Minister must—
- (a) decide whether to make the declaration; and
 - (b) give written notice of the decision to—
 - (i) each person who made the representations; and
 - (ii) the trustee of the relevant land, if the trustee did not make any representations.
- ‘(2) If the Minister decides to make the declaration, the notice must state—
- (a) the provision under which the declaration is to be made; and
 - (b) the reasons for the decision; and

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- (c) if the Minister is to make the declaration under section 16B(1)(d)—that the person may appeal against the decision to the Land Court and how to appeal.

‘16E Appeal against particular decision

- ‘(1) If the Minister proposes to make the declaration under section 16B(1)(d), a person who made representations to the Minister under this division about the proposed declaration may appeal to the Land Court against the decision.
- ‘(2) An appeal is started by filing written notice of appeal with the registrar of the Land Court.
- ‘(3) The notice of appeal must be filed within 28 days after the person receives notice of the decision.
- ‘(4) However, the Land Court may, at any time within the 28 days, extend the period for making the appeal.
- ‘(5) The appeal is by way of rehearing, unaffected by the decision, on the material before the Minister and any further evidence allowed by the Land Court.

‘16F Powers of Land Court on appeal

- ‘(1) In deciding the appeal, the Land Court has the same powers as the Minister.
- ‘(2) The Land Court may—
 - (a) confirm the decision; or
 - (b) set aside the decision and substitute another decision; or
 - (c) set aside the decision and return the issue to the Minister with directions the court considers appropriate.
- ‘(3) If the Land Court substitutes another decision, the substituted decision is, other than for the purpose of an appeal under this division, taken to be the decision of the Minister.

‘16G Notice about declarations—trustee

‘As soon as practicable after a declaration that relevant land is not transferable land is made, the chief executive must give the trustee of the land written notice of the declaration.

‘16H Notice about declarations—registrar

- ‘(1) As soon as practicable after a declaration that relevant land is not transferable land is made, the chief executive must give the registrar written notice of the declaration.
- ‘(2) The notice must include particulars of the land the subject of the declaration.
- ‘(3) The registrar must keep records that show the land is not transferable land.
- ‘(4) The registrar must keep the records in a way that a search of the appropriate register kept by the registrar will show the land is not transferable land.
- ‘(5) As soon as practicable after a declaration is repealed—
 - (a) the chief executive must give the registrar written notice of the fact; and
 - (b) the registrar must amend the registrar’s records to show the land the subject of the repealed declaration is transferable land.

‘16I Requirements about plans of subdivision for declarations under s 16B

- ‘(1) This section applies if—
 - (a) under section 16B, the Minister declares land is not transferable land; and
 - (b) a plan of subdivision is lodged for the land under the Land Title Act or Land Act for the purpose of identifying the land; and
 - (c) the plan of subdivision has been consented to by the Minister.

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- ‘(2) The registrar must register the plan of subdivision without the consent of anyone whose consent would otherwise have been required under the relevant section if the plan otherwise complies with the relevant section.
- ‘(3) In this section—
relevant section means—
- (a) for freehold land—the Land Title Act, section 50; or
 - (b) for other land—the Land Act, section 290J.’.

14 Amendment of s 19 (Lands that are available Crown land—general)

- (1) Section 19, heading, ‘Crown’—
omit, insert—
‘State’.
- (2) Section 19(1), ‘available Crown’—
omit, insert—
‘available State’.
- (3) Section 19(1), ‘the Crown’—
omit, insert—
‘the State’.
- (4) Section 19(1)(c), ‘*Land Act 1994*’—
omit, insert—
‘Land Act’.
- (5) Section 19(1)(h), ‘Crown land’—
omit, insert—
‘unallocated State land’.
- (6) Section 19(2), ‘Crown’—
omit, insert—
‘State’.

(7) Section 19(3), definition *interest*, ‘interests or a mining interest’—

omit, insert—

‘, a mining interest or an easement’.

15 Insertion of new pt 2A

After section 26—

insert—

‘Part 2A Formal expression of interest about land

‘26A Purpose of pt 2A

‘The purpose of this part is to provide for a process under which Aboriginal people may formally express an interest to the chief executive in having particular land made transferable land.

‘26B Land to which pt 2A applies

‘This part applies to the following land—

- (a) available State land;
- (b) land dedicated as a reserve under the Land Act;
- (c) a stock route;
- (d) land subject to an occupation licence;
- (e) land held under a lease under the Land Act by or for Aboriginal people.

‘26C Expression of interest in having land made transferable land

‘(1) Aboriginal people particularly concerned with land mentioned in section 26B may, by notice given to the chief executive (an

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expression of interest), express an interest in having the land made transferable land.

- ‘(2) The expression of interest must—
- (a) be in the approved form; and
 - (b) include the details required in the approved form to enable the chief executive to properly consider the expression of interest.

‘26D Chief executive to consider expression of interest

- ‘(1) The chief executive must consider each expression of interest.
- ‘(2) Without limiting subsection (1), the chief executive may consider an expression of interest by evaluating the land to which it relates under the Land Act, section 16.

‘26E Consideration of expression of interest does not impose obligation on State

‘The chief executive’s consideration of an expression of interest does not impose an obligation on the State under this Act to make the land to which it relates transferable land.’

16 Amendment of s 27 (Deeds of grant to be prepared)

- (1) Section 27(1), ‘registrar of titles’—
omit, insert—
‘chief executive’.
- (2) Section 27(2), from ‘directs,’—
omit, insert—
‘directs.’.
- (3) Section 27(3) and (4)—
omit, insert—
- ‘(3) The deed of grant must show that the land is held by the grantees—

-
- (a) if the grantee is a registered native title body corporate—for the native title holders of the land; or
 - (b) otherwise—for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants.
- ‘(4) If the grantee is a registered native title body corporate, the deed of grant also must include information to identify the native title holders of the land.’

17 Insertion of new s 27A

After section 27—

insert—

‘27A Appointment of registered native title body corporate as grantee

- ‘(1) This section applies to transferable land if—
- (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
 - (b) there is a registered native title body corporate for the determination.
- ‘(2) The Minister may, with the consent of the registered native title body corporate, appoint the body corporate to be the grantee of the land under a deed of grant prepared under section 27.
- ‘(3) If the Minister appoints the registered native title body corporate to be the grantee of the land, the body corporate holds the land for the native title holders of the land the subject of the determination mentioned in subsection (1)(a).
- ‘(4) In considering whether to appoint a registered native title body corporate under this section, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example—
- (a) whether the making of the proposed appointment was a matter relevant to the native title claim under the

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Commonwealth Native Title Act that resulted in the determination that native title existed in relation to all or a part of the land; and

- (b) whether any Aboriginal persons particularly concerned with the land, other than the native title holders of the land, may be adversely affected by the proposed appointment; and
 - (c) if the Minister is satisfied Aboriginal persons particularly concerned with the land will be adversely affected by the proposed appointment—any action the registered native title body corporate intends to take to address the concerns of the Aboriginal people.
- ‘(5) If land is granted to a registered native title body corporate, a provision of this Act about the incorporation of grantees as a land trust on the grant of land does not apply in relation to the registered native title body corporate.’

18 Amendment of s 28 (Minister to appoint trustees)

- (1) Section 28, heading, ‘trustees’—
omit, insert—
‘particular trustees’.
- (2) Section 28, before subsection (1)—
insert—
‘(1A) This section applies if the Minister does not appoint, under section 27A, a registered native title body corporate as the grantee of land the subject of a deed of grant prepared under section 27.’
- (3) Section 28(1), ‘the subject of each deed of grant prepared under section 27’—
omit.
- (4) Section 28(6)—
omit.

19 Insertion of new ss 28A and 28B

After section 28—

insert—

‘28A Procedure for appointing grantees

- ‘(1) Before appointing grantees under this part, the Minister must—
- (a) publish notice of the Minister’s intention to appoint the grantees in a newspaper or other publication circulating generally in the area in which the land the subject of the deed of grant is situated; and
 - (b) consider all representations made to the Minister under subsection (4).
- ‘(2) The notice must—
- (a) include a description of the land; and
 - (b) state the following—
 - (i) the name of each proposed grantee;
 - (ii) that an Aboriginal person particularly concerned with the land may make written representations to the Minister about the proposed appointment;
 - (iii) the place where the representations may be made;
 - (iv) the period in which the representations must be made.
- ‘(3) The stated period must end at least 28 days after the notice is published.
- ‘(4) An Aboriginal person particularly concerned with the land may make written representations about the proposed appointment to the Minister within the stated period.

‘28B Application of Trusts Act 1973

- ‘(1) The *Trusts Act 1973* applies to trusts created for the purposes of this part, and to the trustees of the trusts, only to the extent prescribed under a regulation.

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- ‘(2) To the extent that the *Trusts Act 1973* does apply under a regulation for subsection (1), it applies with the changes prescribed under the regulation.
- ‘(3) A provision of a regulation for subsection (1) does not apply to a grantee that is a registered native title body corporate unless the provision expressly states that it applies to a trustee that is a registered native title body corporate.’

20 Amendment of s 29 (Minister to act as soon as possible)

Section 29(2), ‘section 28’—

omit, insert—

‘section 27A or 28’.

21 Amendment of s 31 (Inclusion of additional areas in deed of grant)

Section 31—

insert—

- ‘(2) Despite subsection (1), an additional area of transferable land may not be included in a deed of grant for Aboriginal land held by a registered native title body corporate.’

22 Amendment of s 33 (Existing interests)

- (1) Section 33(1)—

omit, insert—

- ‘(1) If transferrable land was, immediately before becoming Aboriginal land under this division, subject to an interest or benefited by an easement, the interest continues in force or the land continues to be benefited by the easement.’
- (2) Section 33(2)(a), ‘by the Crown’—
omit.
- (3) Section 33(2)(b) and (3), ‘*Land Act 1994*’—

omit, insert—

‘Land Act’.

- (4) Section 33(2), ‘grantees of the land are’—

omit, insert—

‘trustee of the land is’.

- (5) Section 33(2), ‘Crown as a party’—

omit, insert—

‘lessor as a party’.

- (6) Section 33(3), ‘grantees of the land were the Crown’—

omit, insert—

‘trustee of the land were the lessor’.

- (7) Section 33(4), definition *interest*—

omit, insert—

‘*interest* includes native title, but does not include an interest in favour of the State or Commonwealth that is not registered.’.

23 Amendment of s 35 (Cancellation of deed of grant in trust)

- (1) Section 35(1)(a), ‘*Land Act 1994*’—

omit, insert—

‘Land Act’.

- (2) Section 35(2) to (4)—

omit.

24 Replacement of ss 39 and 40

Sections 39 and 40—

omit, insert—

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‘Subdivision 1 General

‘39 Power to deal with transferred land

‘Subject to this division, the trustee of transferred land may—

- (a) grant, transfer or otherwise create an interest in the land in the way the trustee considers appropriate, including, for example, by—
 - (i) granting a lease or licence over all or a part of the land; or
 - (ii) consenting to the creation of a mining interest in the land; or
 - (iii) granting an easement over the land; or
 - (iv) entering into a conservation agreement under the *Nature Conservation Act 1992*, section 45, in relation to the land; or
 - (v) entering into an agreement with the State or the Commonwealth in relation to the getting and sale of forest products or quarry material above, on or below the land; or
- (b) dedicate a part of the land to public use by registering a plan of subdivision under the Land Title Act, part 4, division 3; or
- (c) surrender all or a part of the land to the State.

Note—

- For restrictions on dealing with particular land in the Cape York Peninsula Region, see section 40ZH.

‘40 Requirement for consultation

- ‘(1) The trustee of transferred land must not deal with the land unless—
- (a) the trustee has explained to the Aboriginal people particularly concerned with the land the nature, purpose and effect of the dealing; and

-
- (b) the Aboriginal people are given a suitable opportunity to express their views on, and are generally in agreement with, the dealing.
- ‘(2) Despite section 40ZJ, dealing with land in contravention of subsection (1) is not void under that section.
- ‘(3) In this section—
- deal*, with land, means—
- (a) grant a lease, other than under section 40D(1)(a) for private residential purposes, for more than 10 years over the land; or
 - (b) grant a licence for the use of the land for more than 10 years; or
 - (c) grant or otherwise create an interest in the land that is not a lease or a licence for the use of the land; or
 - (d) dedicate a part of the land to public use; or
 - (e) surrender any of the land to the State.
- trustee*, of transferred land, does not include a registered native title body corporate.

‘40A Provision about Minister’s consent

- ‘(1) This section applies if the Minister’s prior written consent is required for the grant of a lease or licence by the trustee of transferred land, or for the creation of an interest under a lease or licence.
- ‘(2) The Minister’s consent may be given for—
- (a) the grant of a particular lease or licence, or a particular type of lease or licence; or
 - (b) the creation of a particular interest under a lease or licence, or a particular type of interest; or
 - (c) if the Minister considers it appropriate—

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- (i) all leases or licences, or all leases or licences of a particular type, that may be granted by the trustee; or
- (ii) the creation of all interests, or all interests of a particular type, that may be created under a lease or licence.

‘40B Provision about particular leases

‘For the purposes of section 40 and subdivision 3, a lease granted for an initial term of not more than 10 years, or for at least 10 but not more than 30 years, is taken to be a lease for more than 10 years or more than 30 years if the lease includes an option to renew or extend the lease that, if exercised, would extend the term of the lease for more than 10 years or more than 30 years.

‘Subdivision 2 Sale or mortgage prohibited

‘40C Prohibition on sale or mortgage of transferred land

‘The trustee of transferred land must not sell or mortgage the land.

‘Subdivision 3 Grant of leases

‘40D Grant of lease for transferred land

- ‘(1) The trustee of transferred land may grant a lease over all or a part of the land only—
 - (a) to an Aborigine for not more than 99 years; or
 - (b) to the State for not more than 99 years; or
 - (c) to another person—
 - (i) for not more than 10 years; or

-
- (ii) with the Minister's prior written consent, for more than 10 years but not more than 99 years.
- '(2) Despite subsection (1)(a)—
- (a) a person who is not an Aborigine may be a party to a lease granted under the subsection if—
- (i) the lease is for private residential purposes; and
- (ii) the person is the spouse of an Aborigine; and
- (b) a lease may be granted under the subsection for private residential purposes to a person who is not an Aborigine if the person is the spouse, or former spouse, of an Aborigine or of an Aborigine who is deceased.
- '(3) Despite subsection (1)(c)(ii), a lease may be granted under the subsection without the Minister's consent if the lease is—
- (a) for a commercial purpose and for not more than 30 years; or
- (b) for a private residential purpose to support a lease for a commercial purpose.

'40E Particular restrictions on grant of leases

- '(1) A lease for more than 30 years may be granted under section 40D(1)(a) only—
- (a) for private residential purposes; or
- (b) with the Minister's prior written consent, for another purpose if, having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the trustee holds the land.
- Examples of another purpose for paragraph (b)—*
- a commercial purpose or providing public infrastructure
- '(2) A lease for more than 30 years may be granted under section 40D(1)(b) only—
- (a) for a following purpose—
- (i) a purpose under the *Housing Act 2003*;

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- (ii) providing public infrastructure;
- (iii) providing residential accommodation for public service employees; or
- (b) with the Minister's prior written consent, for another purpose if, having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the trustee holds the land.

Example of another purpose for paragraph (b)—

a commercial purpose

- '(3) A lease may be granted under section 40D(1)(c) for a private residential purpose only if the lease is to support a lease granted under that section for a commercial purpose.
- '(4) If the Minister's consent is required for the grant of a lease under section 40D(1)(c)(ii), the Minister may give consent only if the Minister is satisfied that, having regard to the nature of the lease, the grant of the lease is for the benefit of persons for whom the trustee holds the land.
- '(5) The Minister may consent to the grant of a lease for more than 30 years for a commercial purpose only if the lease is granted over an entire lot as shown in the appropriate register.

'40F Requirements for Minister's consent—general

- '(1) A person seeking the Minister's consent to the grant of a lease must give the Minister the information or documents reasonably required by the Minister to show—
 - (a) the purpose of the lease; and
 - (b) that the grant of the lease is for the benefit of persons for whom the trustee holds the land; and
 - (c) if the lease is for more than 30 years—that the grant of the lease for more than 30 years is appropriate in the circumstances.
- '(2) Also, a person seeking the Minister's consent to the grant of a lease for more than 30 years for a commercial purpose must give the Minister—

-
- (a) a business plan outlining the details of the commercial purpose of the lease, including, for example, financial details about any proposed development under the lease; and
 - (b) evidence to show that an appropriate return on the investment for the commercial purpose can not be obtained under a lease for not more than 30 years; and
 - (c) other information or documents reasonably required by the Minister to show the purpose of the lease.
- ‘(3) In considering whether to give consent to the grant of a lease, the Minister—
- (a) must have regard to the information or documents given to the Minister under subsection (1) or (2); and
 - (b) may have regard to other information the Minister considers relevant to the proposed lease.
- ‘(4) Before giving consent to the grant of a lease for more than 30 years, the Minister must be satisfied—
- (a) the trustee has complied with section 40(1)(a) in relation to the lease; and
 - (b) the Aboriginal people particularly concerned with the lease land are generally in agreement with the grant of the lease.

‘40G Particular requirement for Minister’s consent for lease for commercial purpose

- ‘(1) Before the Minister consents to the grant of a lease for more than 30 years for a commercial purpose, the Minister must—
- (a) obtain an independent assessment of—
 - (i) the business plan and evidence given to the Minister under section 40F(2)(a) and (b); and
 - (ii) the proposed lessee’s financial and managerial capabilities; and

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- (b) be satisfied, having regard to the independent assessment, that—
 - (i) any proposed development under the lease will be commercially viable; and
 - (ii) the evidence given under section 40F(2)(b) satisfactorily shows that an appropriate return on the investment for the purpose of the lease can not be obtained under a lease for not more than 30 years; and
 - (iii) the proposed lessee's financial and managerial capabilities are appropriate for carrying out any proposed development under the lease.
- '(2) The proposed lessee must pay the cost of the assessment.
- '(3) The cost is not refundable.

'40H Conditions of leases—general

- '(1) A lease granted under this subdivision is subject to a condition that an interest, other than a mortgage of the lease, for a term of more than 10 years may be created under the lease only with the Minister's prior written consent.
- '(2) Despite subsection (1)—
- (a) an interest under a lease granted under section 40D(1)(a) may be created without the Minister's prior written consent if the interest is in favour of—
 - (i) an Aborigine; or
 - (ii) another person who is not an Aborigine if the person is the spouse, or former spouse, of an Aborigine or of an Aborigine who is deceased; and
 - (b) an interest under another lease may be created without the Minister's prior written consent if under this subdivision the grant of the lease did not require the consent of the Minister.

-
- ‘(3) A lease granted under this subdivision may include a condition that—
- (a) a stated standard terms document under the Land Title Act forms part of the lease; or
 - (b) the lease must not be transferred without the trustee’s prior written consent; or
 - (c) an interest under the lease, other than a mortgage of the lease, must not be created without the trustee’s prior written consent.
- ‘(4) If a lease includes a condition mentioned in subsection (3)(b) or (c), the trustee must not unreasonably withhold consent to the transfer or creation of an interest under the lease.
- ‘(5) A lease granted under this subdivision may be mortgaged without the consent of the Minister or the trustee.
- ‘(6) Subject to subsection (5), this section does not limit the conditions that may be imposed on a lease.

‘401 Requirement for Minister’s consent for creation of interest under a lease

- ‘(1) This section applies if, under this subdivision, an interest under a lease may be created only with the Minister’s written consent.
- ‘(2) The Minister may consent to the creation of the interest only if—
- (a) having regard to the nature of the interest, the Minister is satisfied the creation of the interest is for the benefit of persons for whom the trustee holds the lease land; and
 - (b) if the lease is for more than 30 years—
 - (i) the interest is consistent with the purpose for which the lease was granted; or
 - (ii) the interest would not diminish the purpose for which the lease was granted.

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- ‘(3) A person seeking the Minister’s consent must give the Minister the information or documents relevant to the proposed interest reasonably required by the Minister, including, for example, information or documents to show that the creation of the interest is for the benefit of persons for whom the trustee holds the lease land.

‘40J Leases for private residential purposes—general conditions and requirements

- ‘(1) A lease granted under this subdivision for private residential purposes is subject to all of the following conditions—
- (a) if the lease is granted under section 40D(1)(a)—
 - (i) it must be for 99 years; and
 - (ii) the annual rental under the lease is the amount, of not more than \$1, decided by the trustee of the lease land; and
 - (iii) the consideration payable for the lease must include, as a lump sum payment, an amount equal to the value of the lease land as decided by the trustee using—
 - (A) a valuation methodology decided by the chief executive; and
 - (B) the benchmark purchase price, as prescribed under a regulation, for land in the part of the State in which the lease land is situated;
 - (b) if a private residential premises is not situated on the lease land—the lessee must ensure a private residential premises is built on the land within 8 years after the lease is granted;
 - (c) an interest may be created under the lease only if the interest is a residential tenancy agreement or a mortgage of the lease.

-
- ‘(2) A trustee may grant a lease for private residential purposes only if the amount mentioned in subsection (1)(a)(iii) has been paid to the trustee.
 - ‘(3) The chief executive—
 - (a) must, if requested, give a person a copy of the valuation methodology mentioned in subsection (1)(a)(iii); and
 - (b) may make the valuation methodology available for inspection on the department’s website.

‘40K Leases for private residential purposes—particular requirements if dwelling situated on land

- ‘(1) This section applies if—
 - (a) a trustee proposes to grant a lease for private residential purposes; and
 - (b) a dwelling is situated on the land the subject of the proposed lease.
- ‘(2) The trustee must give the housing chief executive written notice of the trustee’s intention to grant the lease.
- ‘(3) Within 28 days after receiving the notice, the housing chief executive must give the trustee a written notice stating whether the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
- ‘(4) The trustee must not grant the lease before receiving the housing chief executive’s notice under subsection (3).
- ‘(5) Subsections (6) to (10) apply if the notice states the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
- ‘(6) The trustee must, before the lease is granted, decide the value of the dwelling by using a valuation methodology agreed between the trustee and the housing chief executive.
- ‘(7) The consideration payable for the lease must include, as a lump sum payment, an amount equal to the value of the dwelling decided under subsection (6).

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- ‘(8) The trustee may grant the lease only—
- (a) with the written approval of the housing chief executive; and
 - (b) if the amount mentioned in subsection (7) has been paid to the trustee.
- ‘(9) In considering whether to give an approval, the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be used to provide subsidised housing for residential use.
- ‘(10) If the trustee grants the lease, the trustee must, within 28 days after the lease is registered, give the housing chief executive—
- (a) a written notice stating—
 - (i) the day the lease was registered; and
 - (ii) the names of the parties to the lease; and
 - (b) evidence showing the amount mentioned in subsection (7) for the dwelling was paid to the trustee; and
 - (c) evidence showing the amount decided by the trustee under section 40J(1)(a)(iii) for the lease land was paid to the trustee.

Note—

The amount mentioned in subsection (7) must be used by the trustee as required under section 136A.

- ‘(11) This section does not limit section 40J.
- ‘(12) In this section—
- housing chief executive* means the chief executive of the department in which the *Housing Act 2003* is administered.

‘40L **Renewal of lease or sublease**

- ‘(1) A lease or a sublease of a lease may include an option to renew the lease or sublease.
- ‘(2) The term of a renewed lease or sublease must not be more than the initial term of the lease or sublease.

‘40M Transfer or amendment of lease or sublease

- ‘(1) A lease or a sublease of a lease must not be transferred or amended without—
- (a) if, under a condition of the lease, the transfer or amendment of the lease or sublease requires the consent of the trustee of the lease land—the trustee’s prior written consent; and
 - (b) if, under this subdivision, the grant of the lease or sublease requires the consent of the Minister—the Minister’s prior written consent.
- ‘(2) A person seeking the Minister’s consent to the transfer or amendment of a lease or sublease must give the Minister the information or documents relevant to the proposed transfer or amendment reasonably required by the Minister.
- ‘(3) In considering whether to consent to the transfer of a lease or sublease, the Minister must consider whether the proposed transferee can comply with the conditions of the lease.
- ‘(4) The Minister may consent to the amendment of a lease or sublease only if the Minister is satisfied—
- (a) the amendment does not significantly change the conditions of the lease or sublease; and
 - (b) the amended lease or sublease is for the benefit of persons for whom the trustee holds the land.
- ‘(5) Before the Minister consents to the transfer of a lease for more than 30 years for a commercial purpose, the Minister must—
- (a) obtain an independent assessment of the proposed transferee’s financial and managerial capabilities; and
 - (b) be satisfied, having regard to the independent assessment, that the proposed transferee’s financial and managerial capabilities are appropriate for complying with the conditions of the lease.
- ‘(6) The proposed transferee must pay the cost of the assessment.
- ‘(7) The cost is not refundable.

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- ‘(8) A lease or sublease of a lease must not be transferred to a person who, under this Act, would not be entitled to a grant of the lease.

‘40N Lease, sublease and transfer, amendment or surrender of lease or sublease to be registered

- ‘(1) All leases, and any sublease of a lease or transfer, amendment or surrender of a lease or sublease, must be registered.
- ‘(2) Despite the Land Title Act, section 65(2) an instrument of lease for transferred land must include a plan of survey identifying the lease land.

‘Subdivision 4 Forfeiture of particular leases

‘40O Application of sdiv 4

‘This subdivision applies to a lease granted under section 40D(1)(a) for private residential purposes.

‘40P Grounds for forfeiture of lease

- ‘(1) The lease may be forfeited only if—
- (a) the lessee breaches a relevant condition of the lease and fails to remedy the breach within 6 months after receiving written notice of the breach from the trustee of the lease land; or
 - (b) the lessee acquired the lease by fraud.
- ‘(2) In this section—
- relevant condition***, of a lease, means—
- (a) a condition of the lease mentioned in section 40J(1)(b); or
 - (b) another condition, if the trustee reasonably considers a breach of the condition is of a serious nature and warrants forfeiture of the lease.

‘40Q Application to Land Court for forfeiture

- ‘(1) Before the lease is forfeited, the trustee must refer the matter to the Land Court to decide whether the lease may be forfeited.
- ‘(2) The trustee must give the lessee, and any mortgagee of the lease, at least 28 days written notice of the trustee’s intention to refer the matter to the Land Court.
- ‘(3) The notice must state the grounds on which the trustee considers the lease may be forfeited.
- ‘(4) In deciding whether the lease may be forfeited, the Land Court must have regard to—
 - (a) the stated grounds; and
 - (b) if the lease is proposed to be forfeited because of a breach of a condition of the lease—whether the court considers the breach is of a serious nature and warrants forfeiture of the lease.
- ‘(5) The trustee must file a copy of the notice in the Land Court at the same time as the trustee refers the matter to the court.

‘40R Trustee’s options if Land Court decides lease may be forfeited

‘If the Land Court decides the lease may be forfeited, the trustee may—

- (a) forfeit the lease under this subdivision; or
- (b) if the proposed forfeiture is because of a breach of a condition of the lease—decide not to forfeit the lease, but instead to allow the lease to continue subject to the lease being amended to include conditions agreed between the trustee and the lessee.

‘40S Notice and effect of forfeiture

- ‘(1) If the trustee forfeits the lease, the trustee must, within 60 days after receiving notice of the Land Court’s decision about

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forfeiture of the lease, give written notice that the lease is forfeited to—

- (a) the lessee and any mortgagee of the lease; and
 - (b) the registrar.
- ‘(2) On receiving the notice, the registrar must record the forfeiture of the lease in the appropriate register.
- ‘(3) The forfeiture of the lease takes effect on the day the registrar acts under subsection (2).
- ‘(4) On forfeiture of the lease—
- (a) the lease ends; and
 - (b) the lessee is divested of any interest in the lease; and
 - (c) any person occupying the lease land must immediately vacate the land.

‘40T Payment by trustee for forfeited lease

- ‘(1) If the trustee forfeits the lease, the trustee must pay to the person who was the lessee the amount equal to the value of the lease land, and any lawful improvements on the land, on the day the lease is forfeited (the *maximum amount*) less any amounts deducted from the maximum amount under section 40V.
- ‘(2) The value of the lease land is the amount as decided by the trustee using the valuation methodology mentioned in section 40J(1)(a)(iii).
- ‘(3) The value of any lawful improvements on the lease land must be assessed as the market value of the improvements in a sale of a lease, of the same term and tenure as the forfeited lease.
- ‘(4) Subject to subsections (2) and (3), the trustee must decide the amount payable to the person.
- ‘(5) The trustee must decide the amount payable to the person as soon as practicable after giving the person notice that the lease is forfeited.

-
- ‘(6) On deciding the amount payable, the trustee must give the person written notice of the decision.
- ‘(7) The notice must state—
- (a) the amount; and
 - (b) that the person may appeal against the decision and how the person may appeal.
- ‘(8) This section is subject to section 40U.

‘40U Unclaimed amounts

‘If the trustee can not find the person entitled to receive the amount payable under section 40T, or the person does not collect the amount from the trustee within 9 years after the day the lease is forfeited, the amount is forfeited to the trustee.

‘40V Amounts owing to trustee or mortgagee to be deducted

‘If the trustee forfeits the lease, the trustee may deduct the following amounts from the maximum amount—

- (a) an amount in payment of all costs properly incurred by the trustee in forfeiting the lease;
- (b) an amount in payment of expenses incurred by the trustee to rectify damage caused to the lease land by the person who was the lessee;
- (c) any amount owing to the trustee by the person under the lease;
- (d) any amount owing to a mortgagee of the lease by the person under a mortgage of the lease.

‘40W Payment of amount to mortgagee in discharge of mortgage

- ‘(1) This section applies if the trustee forfeits the lease and, under a mortgage of the lease, an amount is owing to a mortgagee of the lease by the person who was the lessee.

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- ‘(2) The trustee must pay to the mortgagee—
 - (a) if the amount that may be deducted from the maximum amount under section 40V(d) is less than the difference between the maximum amount and the amounts deducted under section 40V(a), (b) or (c)—the amount that may be deducted from the maximum amount under section 40V(d); or
 - (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 40V(a), (b) or (c).
- ‘(3) The trustee must pay the amount payable under subsection (2) to the mortgagee—
 - (a) if no appeal is made under this subdivision against the decision under section 40T about the amount payable to the person who was the lessee—within 28 days after the time for making an appeal ends; or
 - (b) if an appeal is made under this subdivision against the decision mentioned in paragraph (a)—within 28 days after the appeal is finally decided.
- ‘(4) If the trustee pays an amount to the mortgagee in relation to a mortgage of the lease, the mortgagee must use the amount in discharge of the mortgage.

‘40X Appeal against decision under s 40T

- ‘(1) A person the subject of a decision under section 40T about an amount payable to the person may appeal to the Land Court against the decision.
- ‘(2) An appeal is started by filing written notice of appeal with the registrar of the Land Court.
- ‘(3) The person must give a copy of the notice of appeal to the trustee of the lease land to which the decision relates.
- ‘(4) The notice of appeal must be filed within 28 days after the person receives notice of the decision.

-
- ‘(5) However, the Land Court may, at any time within the 28 days, extend the period for making the appeal.
 - ‘(6) The appeal is by way of rehearing, unaffected by the decision, on the material before the trustee and any further evidence allowed by the Land Court.

‘40Y Powers of Land Court on appeal

- ‘(1) In deciding the appeal, the Land Court has the same powers as the trustee of the lease land.
- ‘(2) The Land Court may—
 - (a) confirm the decision; or
 - (b) set aside the decision and substitute another decision; or
 - (c) set aside the decision and return the issue to the trustee with directions the court considers appropriate.
- ‘(3) If the Land Court substitutes another decision, the substituted decision is, other than for the purpose of an appeal under this subdivision, taken to be the decision of the trustee of the lease land.

‘Subdivision 5 Grant of licences

‘40Z Grant of licence for transferred land

‘The trustee of transferred land may grant a licence for the use of all or a part of the land only—

- (a) to an Aborigine for not more than 30 years; or
- (b) to the State for not more than 30 years; or
- (c) to another person—
 - (i) for not more than 10 years; or
 - (ii) with the Minister’s prior written consent, for more than 10 years but not more than 30 years.

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‘40ZA Conditions of licences

- ‘(1) A licence granted under section 40Z(a) is subject to the condition that an interest may be created under the licence in favour of a person who is not an Aborigine only if—
- (a) the interest is in favour of the spouse, or former spouse, of an Aborigine or of an Aborigine who is deceased; or
 - (b) the interest is—
 - (i) for a term of not more than 10 years; or
 - (ii) created with the Minister’s prior written consent.
- ‘(2) A licence granted under section 40Z(b) or (c) is subject to the condition that an interest can not be created under the licence.
- ‘(3) A licence for the use of all or a part of transferred land can not be renewed or transferred.

‘Subdivision 6 Transfer of land held by land trust

‘40ZB Application of sdiv 6

‘This subdivision does not apply to transferred land held by a registered native title body corporate.

‘40ZC Transfer of transferred land held by land trust

- ‘(1) The trustee of transferred land (the *transferor*) may transfer all or a part of the land only—
- (a) with the Minister’s written approval; and
 - (b) to a land trust (the *transferee*).
- ‘(2) If a trustee transfers land under this subdivision—
- (a) all improvements on the land must be transferred with the land; and
 - (b) the transferee holds the land as trustee for the benefit of the Aboriginal people particularly concerned with the land, and their ancestors and descendants; and

-
- (c) if all the Aboriginal land held by the trustee is transferred to the transferee—
 - (i) the land trust for the land that is transferred is dissolved; and
 - (ii) all the assets and liabilities of the trustee become the assets and liabilities of the transferee; and
 - (d) if paragraph (c) does not apply—the assets and liabilities of the trustee as mentioned in section 40ZE(1)(a)(ii) become the assets and liabilities of the transferee.

‘40ZD Application for approval to transfer

- ‘(1) The trustee of transferred land may apply to the Minister for an approval to transfer all or a part of the land.
- ‘(2) The application must—
 - (a) be in the approved form; and
 - (b) be accompanied by evidence satisfactory to the Minister of the matters mentioned in section 40ZE(1)(a) in relation to the transfer.

‘40ZE Minister’s approval to transfer

- ‘(1) The Minister may give an approval to transfer the land only if satisfied—
 - (a) at least 75% of the transferor’s members present at a general meeting of the transferor, and at least 75% of the transferee’s members present at a general meeting of the transferee, agree to the transfer of—
 - (i) the land; and
 - (ii) the assets and liabilities of the transferor that will become the assets and liabilities of the transferee; and
 - (b) it is appropriate in the circumstances to transfer the land.

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- ‘(2) If the Minister gives an approval to transfer the land, the chief executive must notify the approval by gazette notice.
- ‘(3) The gazette notice must—
- (a) include all of the following—
 - (i) the name of the transferor;
 - (ii) a description of the land being transferred;
 - (iii) details of each registered interest in the land being transferred;
 - (iv) a description of all Aboriginal land, if any, held by the transferor after the transfer;
 - (v) the name of the transferee;
 - (vi) a description of all Aboriginal land held by the transferee after the transfer; and
 - (b) if the transferor is a land trust that is dissolved under section 40ZC(2)(c)(i) because of the transfer—state the land trust is dissolved.

‘(4) In this section—

description, in relation to land, means the description of the land as shown in the freehold land register.

registered interest means an interest registered under the Land Title Act.

‘40ZF Effect of gazette notice about transfer

‘On publication of the gazette notice the Aboriginal land proposed to be transferred may be transferred to the transferee.

‘Subdivision 7 Transfer of land held by registered native title body corporate

‘40ZG Transfer of transferred land held by registered native title body corporate

- ‘(1) This section applies to transferred land held by a registered native title body corporate (the *original body corporate*).
- ‘(2) The land may be transferred only—
 - (a) with the Minister’s prior written approval; and
 - (b) to a registered native title body corporate that, under the Commonwealth Native Title Act, has replaced the original body corporate.’.

‘Subdivision 8 Land in Cape York Peninsula Region

‘40ZH Dealing with particular transferred land in Cape York Peninsula Region

- ‘(1) Subsection (2) applies to transferred land in the Cape York Peninsula Region if the State and the trustee of the land agree the land or a part of the land is to become a national park (Cape York Peninsula Aboriginal land).
- ‘(2) The trustee must, before the land or part becomes a national park (Cape York Peninsula Aboriginal land), enter into an indigenous management agreement with the State about the management of the land or part.
- ‘(3) The trustee of land that is a national park (Cape York Peninsula Aboriginal land)—
 - (a) may surrender all or any part of the land to the State; and
 - (b) must not, other than under the *Nature Conservation Act 1992*, sections 42AD and 42AE, transfer, grant or otherwise create, or consent to the creation of, any other interest in the land.
- ‘(4) Subsection (3)(b) applies despite any other provision of this division or another Act.

[s 25]

‘Subdivision 9 Other matters

‘40ZI Trustee to advise chief executive of change to description of land

‘If a trustee deals with transferred land held by the trustee in a way that changes the description of the land as shown in the freehold land register, the trustee must as soon as practicable after the dealing happens give the chief executive written notice of the change.

‘40ZJ Particular dealings in transferred land void

- ‘(1) A grant, transfer or other creation of an interest in transferred land in contravention of this division is void.
- ‘(2) Subsection (1) does not apply to a registered interest.’.

25 Amendment of s 41 (No resumption of transferred land etc.)

- (1) Section 41, heading, ‘No’—
omit, insert—
‘Provision about’.
- (2) Section 41(1), from ‘except by’—
omit, insert—
‘other than under the Acquisition Act by a constructing authority.’.
- (3) Section 41(2)—
renumber as section 41(4).
- (4) Section 41—
insert—
‘(2) However, an interest in transferred land may be taken under the Acquisition Act only for a relevant purpose.

‘(3) To remove any doubt, it is declared that, for taking an interest in transferred land under the Acquisition Act, the transferred land is land as defined in that Act.’.

(5) Section 41—

insert—

‘(5) In this section—

relevant purpose means any purpose for which land may be taken under the Acquisition Act by a constructing authority, other than a purpose under—

(a) the *State Development and Public Works Organisation Act 1971*; or

(b) the *Petroleum and Gas (Production and Safety) Act 2004*.’.

26 Amendment of s 43 (Reservations of forest products and quarry material etc.)

(1) Section 43(2)(b), ‘Crown’—

omit, insert—

‘State’.

(2) Section 43(3), ‘grantees of the land are’—

omit, insert—

‘trustee of the land is’.

(3) Section 43(3), ‘grantees or’—

omit, insert—

‘trustee or’.

27 Amendment of s 48 (Time limit for making of claims)

Section 48—

insert—

[s 28]

Note—

The time for making a claim ended on 22 December 2006.’.

28 Amendment of s 63 (Deeds of grant to be prepared)

(1) Section 63(1), ‘registrar of titles’—

omit, insert—

‘chief executive’.

(2) Section 63(2), from ‘directs,’—

omit, insert—

‘directs.’.

29 Amendment of s 64 (Leases to be prepared)

(1) Section 64(1)(c), ‘registrar of titles’—

omit, insert—

‘chief executive’.

(2) Section 64(1)(d), from ‘registrar of titles’ to ‘*Land Act 1994*’—

omit, insert—

‘chief executive to prepare the lease under the Land Act’.

(3) Section 64(3)(b), from ‘appropriate register’—

omit, insert—

‘appropriate register.’.

30 Amendment of s 71 (Existing interests)

(1) Section 71(1)—

omit, insert—

‘(1) If granted land was, immediately before becoming Aboriginal land under this division, subject to an interest or benefited by

an easement, the interest continues in force or the land continues to be benefited by the easement.’.

- (2) Section 71(2), definition *interest*—

omit, insert—

‘*interest* includes native title, but does not include an interest in favour of the State or Commonwealth that is not registered.’.

31 Omission of s 72 (Interests to be endorsed on deed)

Section 72—

omit.

32 Amendment of s 73 (Cancellation of existing deed of grant)

- (1) Section 73(3) and (4), ‘grantees of’—

omit, insert—

‘trustee that holds’.

- (2) Section 73(4), ‘*Land Act 1994*’—

omit, insert—

‘Land Act’.

33 Replacement of ss 76 and 77

Sections 76 and 77—

omit, insert—

‘Subdivision 1 General

‘76 Power to deal with granted land

- ‘(1) Subject to this division, the trustee of granted land held under a deed of grant in fee simple may—

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- (a) grant, transfer or otherwise create an interest in the land in the way the trustee considers appropriate, including, for example, by—
 - (i) granting a lease or licence over all or a part of the land; or
 - (ii) consenting to the creation of a mining interest in the land; or
 - (iii) granting an easement over the land; or
 - (iv) entering into a conservation agreement under the *Nature Conservation Act 1992*, section 45, in relation to the land; or
 - (v) entering into an agreement with the State or the Commonwealth in relation to the getting and sale of forest products or quarry material above, on or below the land; or
 - (b) dedicate a part of the land to public use by registering a plan of subdivision under the Land Title Act, part 4, division 3; or
 - (c) surrender all or a part of the land to the State.
- ‘(2) Subject to this division, the trustee of granted land held under an Aboriginal lease may—
- (a) sublease or mortgage the trustee’s interest in the granted land only with the Minister’s prior written consent and on the terms approved by the Minister in writing; or
 - (b) surrender all or a part of the trustee’s interest in the granted land to the State.

Note—

- For restrictions on dealing with particular land in the Cape York Peninsula Region, see section 77ZF.

‘77 Requirement for consultation

- ‘(1) The trustee of granted land must not deal with the land unless—

-
- (a) the trustee has explained to the Aboriginal people particularly concerned with the land the nature, purpose and effect of the dealing; and
 - (b) the Aboriginal people are given a suitable opportunity to express their views on, and are generally in agreement with, the dealing.
- ‘(2) Despite section 77ZH, dealing with land in contravention of subsection (1) is not void under that section.
- ‘(3) In this section—
- deal*, with land, means—
- (a) grant a lease, other than under section 77D(1)(a) for private residential purposes, for more than 10 years over the land; or
 - (b) grant a licence for the use of the land for more than 10 years; or
 - (c) grant or otherwise create an interest in the land that is not a lease or a licence for the use of the land; or
 - (d) dedicate a part of the land to public use; or
 - (e) surrender any of the land to the State.

‘77A Provision about Minister’s consent

- ‘(1) This section applies if the Minister’s prior written consent is required for the grant of a lease or licence by the trustee of granted land, or for the creation of an interest under a lease or licence.
- ‘(2) The Minister’s consent may be given for—
- (a) the grant of a particular lease or licence, or a particular type of lease or licence; or
 - (b) the creation of a particular interest under a lease or licence, or a particular type of interest; or
 - (c) if the Minister considers it appropriate—

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- (i) all leases or licences, or all leases or licences of a particular type, that may be granted by the trustee; or
- (ii) the creation of all interests, or all interests of a particular type, that may be created under a lease or licence.

‘77B Provision about particular leases

‘For the purposes of section 77 and subdivision 3, a lease granted for an initial term of not more than 10 years, or for at least 10 but not more than 30 years, is taken to be a lease for more than 10 years or more than 30 years if the lease includes an option to renew or extend the lease that, if exercised, would extend the term of the lease for more than 10 years or more than 30 years.

‘Subdivision 2 Sale or mortgage prohibited

‘77C Prohibition on sale or mortgage of granted land and sale of Aboriginal lease

- ‘(1) The trustee of granted land held under a deed of grant in fee simple must not sell or mortgage the land.
- ‘(2) The trustee of granted land held under an Aboriginal lease must not sell the lease.

‘Subdivision 3 Grant of leases

‘77D Grant of lease for granted land

- ‘(1) The trustee of granted land held under a deed of grant in fee simple may grant a lease over all or a part of the land only—
 - (a) to an Aborigine for not more than 99 years; or
 - (b) to the State for not more than 99 years; or

-
- (c) to another person—
 - (i) for not more than 10 years; or
 - (ii) with the Minister’s prior written consent, for more than 10 years but not more than 99 years.
 - ‘(2) Despite subsection (1)(a)—
 - (a) a person who is not an Aborigine may be a party to a lease granted under the subsection if—
 - (i) the lease is for private residential purposes; and
 - (ii) the person is the spouse of an Aborigine; and
 - (b) a lease may be granted under the subsection for private residential purposes to a person who is not an Aborigine if the person is the spouse, or former spouse, of an Aborigine or of an Aborigine who is deceased.
 - ‘(3) Despite subsection (1)(c)(ii), a lease may be granted under the subsection without the Minister’s consent if the lease is—
 - (a) for a commercial purpose and for not more than 30 years; or
 - (b) for a private residential purpose to support a lease for a commercial purpose.

‘77E Particular restrictions on grant of leases

- ‘(1) A lease for more than 30 years may be granted under section 77D(1)(a) only—
 - (a) for private residential purposes; or
 - (b) with the Minister’s prior written consent, for another purpose if, having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the trustee holds the land.

Examples of another purpose for paragraph (b)—

a commercial purpose or providing public infrastructure

- ‘(2) A lease for more than 30 years may be granted under section 77D(1)(b) only—

[s 33]

- (a) for a following purpose—
 - (i) a purpose under the *Housing Act 2003*;
 - (ii) providing public infrastructure;
 - (iii) providing residential accommodation for public service employees; or
- (b) with the Minister’s prior written consent, for another purpose if, having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the trustee holds the land.

Example of another purpose for paragraph (b)—

a commercial purpose

- ‘(3) A lease may be granted under section 77D(1)(c) for a private residential purpose only if the lease is to support a lease granted under that section for a commercial purpose.
- ‘(4) If the Minister’s consent is required for the grant of a lease under section 77D(1)(c)(ii), the Minister may give consent only if the Minister is satisfied that, having regard to the nature of the lease, the grant of the lease is for the benefit of persons for whom the trustee holds the land.
- ‘(5) The Minister may consent to the grant of a lease for more than 30 years for a commercial purpose only if the lease is granted over an entire lot as shown in the appropriate register.

‘77F Requirements for Minister’s consent—general

- ‘(1) A person seeking the Minister’s consent to the grant of a lease must give the Minister the information or documents reasonably required by the Minister to show—
 - (a) the purpose of the lease; and
 - (b) that the grant of the lease is for the benefit of persons for whom the trustee holds the land; and
 - (c) if the lease is for more than 30 years—that the grant of the lease for more than 30 years is appropriate in the circumstances.

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- ‘(2) Also, a person seeking the Minister’s consent to the grant of a lease for more than 30 years for a commercial purpose must give the Minister—
- (a) a business plan outlining the details of the commercial purpose of the lease, including, for example, financial details about any development under the lease; and
 - (b) evidence to show that an appropriate return on the investment for the commercial purpose can not be obtained under a lease for not more than 30 years; and
 - (c) other information or documents reasonably required by the Minister to show the purpose of the lease.
- ‘(3) In considering whether to give consent to the grant of a lease, the Minister—
- (a) must have regard to the information or documents given to the Minister under subsection (1) or (2); and
 - (b) may have regard to other information the Minister considers relevant to the proposed lease.
- ‘(4) Before giving consent to the grant of a lease for more than 30 years, the Minister must be satisfied—
- (a) the trustee has complied with section 77(1)(a) in relation to the lease; and
 - (b) the Aboriginal people particularly concerned with the lease land are generally in agreement with the grant of the lease.

‘77G Particular requirement for Minister’s consent for lease for commercial purpose

- ‘(1) Before the Minister consents to the grant of a lease for more than 30 years for a commercial purpose, the Minister must—
- (a) obtain an independent assessment of—
 - (i) the business plan and evidence given to the Minister under section 77F(2)(a) and (b); and

[s 33]

- (ii) the proposed lessee's financial and managerial capabilities; and
 - (b) be satisfied, having regard to the independent assessment, that—
 - (i) any proposed development under the lease will be commercially viable; and
 - (ii) the evidence given under section 77F(2)(b) satisfactorily shows that an appropriate return on the investment for the purpose of the lease can not be obtained under a lease for not more than 30 years; and
 - (iii) the proposed lessee's financial and managerial capabilities are appropriate for carrying out any proposed development under the lease.
- '(2) The proposed lessee must pay the cost of the assessment.
- '(3) The cost is not refundable.

'77H Conditions of leases—general

- '(1) A lease granted under this subdivision is subject to a condition that an interest, other than a mortgage of the lease, for a term of more than 10 years may be created under the lease only with the Minister's prior written consent.
- '(2) Despite subsection (1)—
- (a) an interest under a lease granted under section 77D(1)(a) may be created without the Minister's prior written consent if the interest is in favour of—
 - (i) an Aborigine; or
 - (ii) another person who is not an Aborigine if the person is the spouse, or former spouse, of an Aborigine or of an Aborigine who is deceased; and
 - (b) an interest under another lease may be created without the Minister's prior written consent if under this

subdivision the grant of the lease did not require the consent of the Minister.

- ‘(3) A lease granted under this subdivision may include a condition that—
 - (a) a stated standard terms document under the Land Title Act forms part of the lease; or
 - (b) the lease must not be transferred without the trustee’s prior written consent; or
 - (c) an interest under the lease, other than a mortgage of the lease, must not be created without the trustee’s prior written consent.
- ‘(4) If a lease includes a condition mentioned in subsection (3)(b) or (c), the trustee must not unreasonably withhold consent to the transfer or creation of an interest under the lease.
- ‘(5) A lease granted under this subdivision may be mortgaged without the consent of the Minister or the trustee.
- ‘(6) Subject to subsection (5), this section does not limit the conditions that may be imposed on a lease.

‘771 Requirement for Minister’s consent for creation of interest under a lease

- ‘(1) This section applies if, under this subdivision, an interest under a lease may be created only with the Minister’s written consent.
- ‘(2) The Minister may consent to the creation of the interest only if—
 - (a) having regard to the nature of the interest, the Minister is satisfied the creation of the interest is for the benefit of persons for whom the trustee holds the lease land; and
 - (b) if the lease is for more than 30 years—
 - (i) the interest is consistent with the purpose for which the lease was granted; or

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- (ii) the interest would not diminish the purpose for which the lease was granted.
- ‘(3) A person seeking the Minister’s consent must give the Minister the information or documents relevant to the proposed interest reasonably required by the Minister, including, for example, information or documents to show that the creation of the interest is for the benefit of persons for whom the trustee holds the lease land.

‘77J Leases for private residential purposes—general conditions and requirements

- ‘(1) A lease granted under this subdivision for private residential purposes is subject to all of the following conditions—
- (a) if the lease is granted under section 77D(1)(a)—
 - (i) it must be for 99 years; and
 - (ii) the annual rental under the lease is the amount, of not more than \$1, decided by the trustee of the lease land; and
 - (iii) the consideration payable for the lease must include, as a lump sum payment, an amount equal to the value of the lease land as decided by the trustee using—
 - (A) a valuation methodology decided by the chief executive; and
 - (B) the benchmark purchase price, as prescribed under a regulation, for land in the part of the State in which the lease land is situated;
 - (b) if a private residential premises is not situated on the lease land—the lessee must ensure a private residential premises is built on the land within 8 years after the lease is granted;
 - (c) an interest may be created under the lease only if the interest is a residential tenancy agreement or a mortgage of the lease.

-
- ‘(2) A trustee may grant a lease for private residential purposes only if the amount mentioned in subsection (1)(a)(iii) has been paid to the trustee.
 - ‘(3) The chief executive—
 - (a) must, if requested, give a person a copy of the valuation methodology mentioned in subsection (1)(a)(iii); and
 - (b) may make the valuation methodology available for inspection on the department’s website.

‘77K Leases for private residential purposes—particular requirements if dwelling situated on land

- ‘(1) This section applies if—
 - (a) a trustee proposes to grant a lease for private residential purposes; and
 - (b) a dwelling is situated on the land the subject of the proposed lease.
- ‘(2) The trustee must give the housing chief executive written notice of the trustee’s intention to grant the lease.
- ‘(3) Within 28 days after receiving the notice, the housing chief executive must give the trustee a written notice stating whether the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
- ‘(4) The trustee must not grant the lease before receiving the housing chief executive’s notice under subsection (3).
- ‘(5) Subsections (6) to (10) apply if the notice states the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
- ‘(6) The trustee must, before the lease is granted, decide the value of the dwelling by using a valuation methodology agreed between the trustee and the housing chief executive.
- ‘(7) The consideration payable for the lease must include, as a lump sum payment, an amount equal to the value of the dwelling decided under subsection (6).

[s 33]

- ‘(8) The trustee may grant the lease only—
- (a) with the written approval of the housing chief executive; and
 - (b) if the amount mentioned in subsection (7) has been paid to the trustee.
- ‘(9) In considering whether to give an approval, the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be used to provide subsidised housing for residential use.
- ‘(10) If the trustee grants the lease, the trustee must, within 28 days after the lease is registered, give the housing chief executive—
- (a) a written notice stating—
 - (i) the day the lease was registered; and
 - (ii) the names of the parties to the lease; and
 - (b) evidence showing the amount mentioned in subsection (7) for the dwelling was paid to the trustee; and
 - (c) evidence showing the amount decided by the trustee under section 77J(1)(a)(iii) for the lease land was paid to the trustee.

Note—

The amount mentioned in subsection (7) must be used by the trustee as required under section 136A.

- ‘(11) This section does not limit section 77J.
- ‘(12) In this section—
- housing chief executive* means the chief executive of the department in which the *Housing Act 2003* is administered.

‘77L Renewal of lease or sublease

- ‘(1) A lease or a sublease of a lease may include an option to renew the lease or sublease.
- ‘(2) The term of a renewed lease or sublease must not be more than the initial term of the lease or sublease.

‘77M Transfer or amendment of lease or sublease

- ‘(1) A lease or a sublease of a lease must not be transferred or amended without—
- (a) if, under a condition of the lease, the transfer or amendment of the lease or sublease requires the consent of the trustee of the lease land—the trustee’s prior written consent; and
 - (b) if, under this subdivision, the grant of the lease or sublease requires the consent of the Minister—the Minister’s prior written consent.
- ‘(2) A person seeking the Minister’s consent to the transfer or amendment of a lease or sublease must give the Minister the information or documents relevant to the proposed transfer or amendment reasonably required by the Minister.
- ‘(3) In considering whether to consent to the transfer of a lease or sublease, the Minister must consider whether the proposed transferee can comply with the conditions of the lease.
- ‘(4) The Minister may consent to the amendment of a lease or sublease only if the Minister is satisfied—
- (a) the amendment does not significantly change the conditions of the lease or sublease; and
 - (b) the amended lease or sublease is for the benefit of persons for whom the trustee holds the land.
- ‘(5) Before the Minister consents to the transfer of a lease for more than 30 years for a commercial purpose, the Minister must—
- (a) obtain an independent assessment of the proposed transferee’s financial and managerial capabilities; and
 - (b) be satisfied, having regard to the independent assessment, that the proposed transferee’s financial and managerial capabilities are appropriate for complying with the conditions of the lease.
- ‘(6) The proposed transferee must pay the cost of the assessment.
- ‘(7) The cost is not refundable.

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- ‘(8) A lease or sublease of a lease must not be transferred to a person who, under this Act, would not be entitled to a grant of the lease.

‘77N Lease, sublease and transfer, amendment or surrender of lease or sublease to be registered

- ‘(1) All leases, and any sublease of a lease or transfer, amendment or surrender of a lease or sublease, must be registered.
- ‘(2) Despite the Land Title Act, section 65(2) an instrument of lease for granted land must include a plan of survey identifying the lease land.

‘Subdivision 4 Forfeiture of particular leases

‘77O Application of sdiv 4

‘This subdivision applies to a lease granted under section 77D(1)(a) for private residential purposes.

‘77P Grounds for forfeiture of lease

- ‘(1) The lease may be forfeited only if—
- (a) the lessee breaches a relevant condition of the lease and fails to remedy the breach within 6 months after receiving written notice of the breach from the trustee of the lease land; or
 - (b) the lessee acquired the lease by fraud.
- ‘(2) In this section—
- relevant condition***, of a lease, means—
- (a) a condition of the lease mentioned in section 77J(1)(b); or
 - (b) another condition, if the trustee reasonably considers a breach of the condition is of a serious nature and warrants forfeiture of the lease.

‘77Q Application to Land Court for forfeiture

- ‘(1) Before the lease is forfeited, the trustee must refer the matter to the Land Court to decide whether the lease may be forfeited.
- ‘(2) The trustee must give the lessee, and any mortgagee of the lease, at least 28 days written notice of the trustee’s intention to refer the matter to the Land Court.
- ‘(3) The notice must state the grounds on which the trustee considers the lease may be forfeited.
- ‘(4) In deciding whether the lease may be forfeited, the Land Court must have regard to—
 - (a) the stated grounds; and
 - (b) if the lease is proposed to be forfeited because of a breach of a condition of the lease—whether the court considers the breach is of a serious nature and warrants forfeiture of the lease.
- ‘(5) The trustee must file a copy of the notice in the Land Court at the same time as the trustee refers the matter to the court.

‘77R Trustee’s options if Land Court decides lease may be forfeited

‘If the Land Court decides the lease may be forfeited, the trustee may—

- (a) forfeit the lease under this subdivision; or
- (b) if the proposed forfeiture is because of a breach of a condition of the lease—decide not to forfeit the lease, but instead to allow the lease to continue subject to the lease being amended to include conditions agreed between the trustee and the lessee.

‘77S Notice and effect of forfeiture

- ‘(1) If the trustee forfeits the lease, the trustee must, within 60 days after receiving notice of the Land Court’s decision about

[s 33]

forfeiture of the lease, give written notice that the lease is forfeited to—

- (a) the lessee and any mortgagee of the lease; and
 - (b) the registrar.
- ‘(2) On receiving the notice, the registrar must record the forfeiture of the lease in the appropriate register.
- ‘(3) The forfeiture of the lease takes effect on the day the registrar acts under subsection (2).
- ‘(4) On forfeiture of the lease—
- (a) the lease ends; and
 - (b) the lessee is divested of any interest in the lease; and
 - (c) any person occupying the lease land must immediately vacate the land.

‘77T Payment by trustee for forfeited lease

- ‘(1) If the trustee forfeits the lease, the trustee must pay to the person who was the lessee the amount equal to the value of the lease land, and any lawful improvements on the land, on the day the lease is forfeited (the *maximum amount*) less any amounts deducted from the maximum amount under section 77V.
- ‘(2) The value of the lease land is the amount as decided by the trustee using a valuation methodology mentioned in section 77J(1)(a)(iii).
- ‘(3) The value of any lawful improvements on the lease land must be assessed as the market value of the improvements in a sale of a lease, of the same term and tenure as the forfeited lease.
- ‘(4) Subject to subsections (2) and (3), the trustee must decide the amount payable to the person.
- ‘(5) The trustee must decide the amount payable to the person as soon as practicable after giving the person notice that the lease is forfeited.

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- ‘(6) On deciding the amount payable, the trustee must give the person written notice of the decision.
- ‘(7) The notice must state—
- (a) the amount; and
 - (b) that the person may appeal against the decision and how the person may appeal.
- ‘(8) This section is subject to section 77U.

‘77U Unclaimed amounts

‘If the trustee can not find the person entitled to receive the amount payable under section 77T, or the person does not collect the amount from the trustee within 9 years after the day the lease is forfeited, the amount is forfeited to the trustee.

‘77V Amounts owing to trustee or mortgagee to be deducted

‘If the trustee forfeits the lease, the trustee may deduct the following amounts from the maximum amount—

- (a) an amount in payment of all costs properly incurred by the trustee in forfeiting the lease;
- (b) an amount in payment of expenses incurred by the trustee to rectify damage caused to the lease land by the person who was the lessee;
- (c) any amount owing to the trustee by the person under the lease;
- (d) any amount owing to a mortgagee of the lease by the person under a mortgage of the lease.

‘77W Payment of amount to mortgagee in discharge of mortgage

- ‘(1) This section applies if the trustee forfeits the lease and, under a mortgage of the lease, an amount is owing to a mortgagee of the lease by the person who was the lessee.

[s 33]

- ‘(2) The trustee must pay to the mortgagee—
 - (a) if the amount that may be deducted from the maximum amount under section 77V(d) is less than the difference between the maximum amount and the amounts deducted under section 77V(a), (b) or (c)—the amount that may be deducted from the maximum amount under section 77V(d); or
 - (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 77V(a), (b) or (c).
- ‘(3) The trustee must pay the amount payable under subsection (2) to the mortgagee—
 - (a) if no appeal is made under this subdivision against the decision under section 77T about the amount payable to the person who was the lessee—within 28 days after the time for making an appeal ends; or
 - (b) if an appeal is made under this subdivision against the decision mentioned in paragraph (a)—within 28 days after the appeal is finally decided.
- ‘(4) If the trustee pays an amount to the mortgagee in relation to a mortgage of the lease, the mortgagee must use the amount in discharge of the mortgage.

‘77X Appeal against decision under s 77T

- ‘(1) A person the subject of a decision under section 77T about an amount payable to the person may appeal to the Land Court against the decision.
- ‘(2) An appeal is started by filing written notice of appeal with the registrar of the Land Court.
- ‘(3) The person must give a copy of the notice of appeal to the trustee of the lease land to which the decision relates.
- ‘(4) The notice of appeal must be filed within 28 days after the person receives notice of the decision.

-
- ‘(5) However the Land Court may, at any time within the 28 days, extend the period for making the appeal.
 - ‘(6) The appeal is by way of rehearing, unaffected by the decision, on the material before the trustee and any further evidence allowed by the Land Court.

‘77Y Powers of Land Court on appeal

- ‘(1) In deciding the appeal, the Land Court has the same powers as the trustee of the lease land.
- ‘(2) The Land Court may—
 - (a) confirm the decision; or
 - (b) set aside the decision and substitute another decision; or
 - (c) set aside the decision and return the issue to the trustee with directions the court considers appropriate.
- ‘(3) If the Land Court substitutes another decision, the substituted decision is, other than for the purpose of an appeal under this subdivision, taken to be the decision of the trustee of the lease land.

‘Subdivision 5 Grant of licences

‘77Z Grant of licence for granted land

‘The trustee of granted land held under a deed of grant in fee simple may grant a licence for the use of all or a part of the land only—

- (a) to an Aborigine for not more than 30 years; or
- (b) to the State for not more than 30 years; or
- (c) to another person—
 - (i) for not more than 10 years; or
 - (ii) with the Minister’s prior written consent, for more than 10 years but not more than 30 years.

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‘77ZA Conditions of licences

- ‘(1) A licence granted under section 77Z(a) is subject to the condition that an interest may be created under the licence in favour of a person who is not an Aborigine only if—
 - (a) the interest is in favour of the spouse, or former spouse, of an Aborigine or of an Aborigine who is deceased; or
 - (b) the interest is—
 - (i) for a term of not more than 10 years; or
 - (ii) created with the Minister’s prior written consent.
- ‘(2) A licence granted under section 77Z(b) or (c) is subject to the condition that an interest can not be created under the licence.
- ‘(3) A licence for the use of all or a part of granted land can not be renewed or transferred.

‘Subdivision 6 Transfer of land

‘77ZB Transfer of granted land

- ‘(1) The trustee of granted land held under a deed of grant in fee simple (the *transferor*) may transfer all or a part of the land only—
 - (a) with the Minister’s written approval; and
 - (b) to a land trust (the *transferee*).
- ‘(2) If a trustee transfers land under this subdivision—
 - (a) all improvements on the land must be transferred with the land; and
 - (b) the transferee holds the land as trustee for the benefit of the group of Aboriginal people concerned with the land, and their ancestors and descendants; and
 - (c) if all the Aboriginal land held by the trustee is transferred to the transferee—

-
- (i) the land trust for the land that is transferred is dissolved; and
 - (ii) all the assets and liabilities of the trustee become the assets and liabilities of the transferee; and
 - (d) if paragraph (c) does not apply—the assets and liabilities of the trustee as mentioned in section 77ZD(1)(a)(ii) become the assets and liabilities of the transferee.

‘77ZC Application for approval to transfer

- ‘(1) The trustee of granted land may apply to the Minister for an approval to transfer all or a part of the land.
- ‘(2) The application must—
 - (a) be in the approved form; and
 - (b) be accompanied by evidence satisfactory to the Minister of the matters mentioned in section 77ZD(1)(a) in relation to the transfer.

‘77ZD Minister’s approval to transfer

- ‘(1) The Minister may give an approval to transfer the land only if satisfied—
 - (a) at least 75% of the transferor’s members present at a general meeting of the transferor, and at least 75% of the transferee’s members present at a general meeting of the transferee, agree to the transfer of—
 - (i) the land; and
 - (ii) the assets and liabilities of the transferor that will become the assets and liabilities of the transferee; and
 - (b) it is appropriate in the circumstances to transfer the land.
- ‘(2) If the Minister gives an approval to transfer the land, the chief executive must notify the approval by gazette notice.

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- ‘(3) The gazette notice must—
- (a) include all of the following—
 - (i) the name of the transferor;
 - (ii) a description of the land being transferred;
 - (iii) details of each registered interest in the land being transferred;
 - (iv) a description of all Aboriginal land, if any, held by the transferor after the transfer;
 - (v) the name of the transferee;
 - (vi) a description of all Aboriginal land held by the transferee after the transfer; and
 - (b) if the transferor is a land trust that is dissolved under section 77ZB(2)(c)(i) because of the transfer—state the land trust is dissolved.

‘(4) In this section—

description, in relation to land, means the description of the land as shown in the freehold land register.

registered interest means an interest registered under the Land Title Act.

‘77ZE Effect of gazette notice about transfer

‘On publication of the gazette notice the Aboriginal land proposed to be transferred may be transferred to the transferee.

‘Subdivision 7 Land in Cape York Peninsula Region

‘77ZF Dealing with particular granted land in Cape York Peninsula Region

- ‘(1) Subsection (2) applies to granted land in the Cape York Peninsula Region if the State and the trustee of the land agree the land or a part of the land is to become a national park (Cape York Peninsula Aboriginal land).
- ‘(2) The trustee must, before the land or part becomes a national park (Cape York Peninsula Aboriginal land), enter into an indigenous management agreement with the State about the management of the land or part.
- ‘(3) The trustee of land that is a national park (Cape York Peninsula Aboriginal land)—
 - (a) may surrender all or any part of the land to the State; and
 - (b) must not, other than under the *Nature Conservation Act 1992*, sections 42AD and 42AE, transfer, grant or otherwise create, or consent to the creation of, any other interest in the land.
- ‘(4) Subsection (3)(b) applies despite any other provision of this division or another Act.

‘Subdivision 8 Other matters

‘77ZG Trustee to advise chief executive of change to description of land

‘If a trustee deals with granted land held by the trustee in a way that changes the description of the land as shown in the freehold land register, the trustee must as soon as practicable after the dealing happens give the chief executive written notice of the change.

‘77ZH Particular dealings in granted land void

- ‘(1) A grant, transfer or other creation of an interest in granted

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land in contravention of this division is void.

‘(2) Subsection (1) does not apply to a registered interest.’.

34 Amendment of s 78 (No resumption of granted land etc.)

(1) Section 78, heading, ‘No’—

omit, insert—

‘Provision about’.

(2) Section 78(1), from ‘except by’—

omit, insert—

‘other than under the Acquisition Act by a constructing authority.’.

(3) Section 78(2)—

renumber as section 78(4).

(4) Section 78—

insert—

‘(2) However, an interest in granted land may be taken under the Acquisition Act only for a relevant purpose.

‘(3) To remove any doubt, it is declared that, for taking an interest in granted land under the Acquisition Act, the granted land is land as defined in that Act.’.

(5) Section 78—

insert—

‘(5) In this section—

relevant purpose means any purpose for which land may be taken under the Acquisition Act by a constructing authority, other than a purpose under—

(a) the *State Development and Public Works Organisation Act 1971*; or

(b) the *Petroleum and Gas (Production and Safety) Act 2004*.’.

35 Amendment of s 79 (Devolution of granted land)

- (1) Section 79(2) and (3)—
renumber as section 79(5) and (6).
- (2) Section 79(1)—
omit, insert—
- ‘(1) This section applies if—
- (a) a trustee holds granted land for the benefit of a single group of Aboriginal people; and
- (b) the last surviving member of the group dies without leaving a descendant.
- ‘(2) The trustee holds the land for the benefit of Aboriginal people particularly concerned with the land unless the Minister decides, in writing, that the trustee holds the land for a specified group of Aboriginal people.
- ‘(3) The chief executive must give written notice to the registrar of titles about how the land is vested in the trustee.
- ‘(4) On receiving the notice, the registrar of titles must record in the freehold land register how the land is vested in the trustee.’.
- (3) Section 79(5), as renumbered, ‘determination under subsection (1)’—
omit, insert—
‘decision under subsection (2)’.
- (4) Section 79(6), as renumbered, ‘Subsection (1)’—
omit, insert—
‘Subsection (2)’.

36 Amendment of s 81 (Reservations of forest products and quarry material etc.)

- (1) Section 81(2), ‘Crown’—
omit, insert—

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‘State’.

- (2) Section 81(5), ‘grantees of the land are’—

omit, insert—

‘trustee of the land is’.

- (3) Section 81(5), ‘grantees or’—

omit, insert—

‘trustee or’.

37 Amendment of s 82 (Rights of access preserved)

Section 82—

insert—

- ‘(2) In this section—

coast means all land, including the bed and banks of any river, stream, watercourse, lake or other body of water, that is—

- (a) above the highest astronomical tide mark and within 400m, measured by the shortest distance, of that mark;
or
(b) below the highest astronomical tide mark.

highest astronomical tide means the highest level of the tides that can be predicted to occur under average meteorological conditions and under any combination of astronomical conditions.’.

38 Amendment, relocation and renumbering of s 83 (National park subject to lease to State etc.)

- (1) Section 83(1) and (9), before ‘granted land’—

insert—

‘transferred land or’.

- (2) Section 83(4), after ‘management’—

insert—

‘if the land is granted other than to a registered native title body corporate’.

(3) Section 83—

insert—

‘(4A) If the national park land is granted to a registered native title body corporate, the registered native title body corporate is to be represented on the board of management.’.

(4) Section 83(7)(a), before ‘consult’—

insert—

‘if the national park land is granted other than to a registered native title body corporate—’.

(5) Section 83(9)(b), ‘section 63’—

omit, insert—

‘section 27 or 63’.

(6) Section 83(10), before ‘claimable land’—

insert—

‘transferable land or’.

(7) Section 83, as amended—

relocate and renumber in part 9 as section 132A.

39 Amendment, relocation and renumbering of s 83E (Land trust to enter into indigenous management agreement)

(1) Section 83E, heading, ‘Land trust to enter’—

omit, insert—

‘Entering’.

(2) Section 83E, ‘land trust’—

omit, insert—

‘land trust or registered native title body corporate’.

[s 40]

- (3) Section 83E, as amended—
relocate and *renumber* in part 5B, division 1 as section 83FA.

40 Amendment of s 83G (Requirements for indigenous management agreement)

Section 83G(3), ‘land trust’—
omit, insert—
‘trustee, or proposed trustee, for the land’.

41 Amendment of s 83H (Amending indigenous management agreement)

Section 83H, ‘land trust’—
omit, insert—
‘trustee, or proposed trustee,’.

42 Amendment of s 83I (Recording of indigenous management agreement)

Section 83I(6)(a), ‘the land trust’—
omit, insert—
‘a trustee’.

43 Amendment of s 83J (Requirements about grant of national parks in Cape York Peninsula Region)

Section 83J(2), ‘land trust’—
omit, insert—
‘trustee, or proposed trustee,’.

44 Insertion of new pts 5D–5F

After section 83L—
insert—

‘Part 5D Decision making process

‘83M When agreement of Aboriginal people is given

‘If this Act provides that Aboriginal people be generally in agreement with a grant, consent or agreement about Aboriginal land, the agreement of the Aboriginal people is taken to have been given when—

- (a) if there is a particular process of decision making that, under the Aboriginal tradition of the Aboriginal people, must be complied with for decisions of that kind—the decision was made under the process; or
- (b) otherwise—the decision was made under the process of decision making agreed to and adopted by the Aboriginal people for the decision or for decisions of that kind.

‘83N Decision making by trustee

‘(1) This section applies if this Act provides that the trustee of Aboriginal land is required to make a decision about the land, including, for example, a decision about whether to grant an interest in the land, consent to the creation of a mining interest in the land or enter into an agreement about the land.

‘(2) The trustee must—

- (a) as far as practicable, act in a way that is consistent with any Aboriginal tradition, for decisions of that kind, of the Aboriginal people for whom the trustee holds the land; or
- (b) if there is no relevant Aboriginal tradition—make the decision under a process of decision making agreed to and adopted by the trustee for the decision or for decisions of that kind.

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- ‘(7) The mortgagee or trustee may sell the lease only to a person who, under this Act, would be entitled to be granted the lease.
- ‘(8) The trustee must not sell the lease for less than—
- (a) the amount owing to the mortgagee by the lessee under the mortgage on the day the lease is sold; or
 - (b) if the trustee and the mortgagee agree the lease may be sold for an amount less than the amount mentioned in paragraph (a)—the agreed amount.

‘83Q How trustee deals with proceeds of sale

- ‘(1) This section applies if, under section 83P, a trustee sells a mortgaged lease.
- ‘(2) The trustee must apply the proceeds of the sale, under the *Property Law Act 1974*, as if the lease were sold by the mortgagee and the amount of the sale were received by the mortgagee.
- ‘(3) However, in applying the proceeds of the sale, the trustee must firstly apply the proceeds to the payment of all costs, charges and expenses properly incurred by the trustee for the sale or any attempted sale.

‘Part 5F Leasing of Aboriginal trust land

‘Division 1 Preliminary

‘83R Definitions for pt 5F

‘In this part—

Aboriginal trust land means—

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- (a) land subject to a deed of grant in trust granted for the benefit of Aboriginal inhabitants or for the purpose of an Aboriginal reserve under the repealed *Land Act 1962*; or
- (b) land reserved and set apart under the repealed *Land Act 1962* for an Aboriginal reserve or for the benefit of Aboriginal inhabitants; or
- (c) land subject to a deed of grant in trust granted for the benefit of Aboriginal inhabitants under the Land Act; or
- (d) land dedicated under the Land Act as a reserve for the provision of services beneficial to Aboriginal people particularly concerned with the land.

trustee, of Aboriginal trust land, means the trustee of the land under the Land Act.

trustee (Aboriginal) lease means a lease of Aboriginal trust land granted under part 3, division 2, subdivision 3 as applied under section 83T(2).

‘83S Relationship with Land Act

- ‘(1) The following provisions of the Land Act, chapter 3, part 1, division 7 do not apply to Aboriginal trust land—
 - (a) sections 57 to 59;
 - (b) section 61, to the extent it relates to a lease or sublease of the land;
 - (c) section 63, to the extent it relates to a lease of the land;
 - (d) section 64;
 - (e) sections 65 and 66, to the extent the provisions relate to a lease of the land.
- ‘(2) For the purposes of the Land Act, other than the provisions mentioned in subsection (1), a trustee (Aboriginal) lease is taken to be a trustee lease under that Act.

‘Division 2 Leases

‘83T Trustee (Aboriginal) leases

- ‘(1) A trustee of Aboriginal trust land may lease all or a part of the land under part 3, division 2, subdivision 3.
- ‘(2) For subsection (1), the relevant provisions apply in relation to the leasing of Aboriginal trust land—
- (a) as if a reference in the provisions to transferred land were a reference to Aboriginal trust land; and
 - (b) as if a reference in the provisions to the Minister were a reference to—
 - (i) if the Aboriginal trust land is transferable land—the Minister administering this Act; and
 - (ii) if the Aboriginal trust land is not transferable land—the Minister administering the Land Act; and
 - (c) as if the reference in section 40F(4)(a) to section 40(1)(a) were a reference to section 83T(4)(a); and
 - (d) as if the reference in section 40H(3)(a) to a stated standard terms document under the Land Title Act were a reference to a stated mandatory standard terms document under the Land Act; and
 - (e) as if the reference in section 40N(2) to the Land Title Act, section 65(2) were a reference to the Land Act, section 57(5).
- ‘(3) If the consent of the Minister is required in relation to a lease of Aboriginal trust land that is transferable land, the Minister must not give the consent unless satisfied the lease is for the benefit of Aboriginal people particularly concerned with the land.
- ‘(4) The trustee of Aboriginal trust land that is transferable land must not grant a lease over the land for more than 30 years unless—
- (a) the trustee has explained to the Aboriginal people particularly concerned with the land the nature, purpose and effect of the lease; and

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- (b) the Aboriginal people are given a suitable opportunity to express their views on, and are generally in agreement with, the grant of the lease.
- ‘(5) The grant of a lease over Aboriginal trust land in contravention of part 3, division 2, subdivision 3 is void, unless the lease is registered.
- ‘(6) Subsection (5) applies despite any other Act.
- ‘(7) In this section—
relevant provisions means section 40A and part 3, division 2, subdivisions 3 and 4.

‘83U Amending trustee (Aboriginal) lease

- ‘(1) A document of amendment of a registered trustee (Aboriginal) lease must not—
 - (a) increase or decrease the area leased; or
 - (b) add or remove a party to the lease; or
 - (c) be lodged after the lease’s term has ended.
- ‘(2) In this section—
term, of a trustee (Aboriginal) lease, includes a period of possession under the lease because of—
 - (a) the exercise of an option to renew the lease; or
 - (b) a registered document of amendment extending the term of the lease.

‘83V Mortgage of trustee (Aboriginal) lease

- ‘(1) Subject to subsection (2), a lessee of Aboriginal trust land may, under the Land Act, chapter 6, part 4, division 4, mortgage a trustee (Aboriginal) lease.
- ‘(2) For mortgaging a trustee (Aboriginal) lease—
 - (a) the Land Act, chapter 6, part 4, division 4, applies—

-
- (i) as if the reference in section 345(2) to the Minister were a reference to the trustee; and
 - (ii) as if section 346(1) provided that the mortgagee may offer the lease for sale by public auction or may sell the lease by private contract; and
 - (iii) as if the reference in section 346(3) to a person qualified under the Land Act to hold the lease were a reference to a person entitled under this Act to a grant of the lease; and
 - (iv) as if section 347 were omitted; and
- (b) section 83P applies as if the reference in section 83P(1) to Aboriginal land were a reference to Aboriginal trust land.

‘83W Surrender of trustee (Aboriginal) lease

‘All or part of a trustee (Aboriginal) lease or a sublease of a trustee (Aboriginal) lease may be surrendered only if each registered mortgagee and registered sublessee of the interest being surrendered has given written agreement to the surrender.

‘Division 3 Other matters

‘83X Trustee to advise about ending of particular lease for commercial purpose

- ‘(1) This section applies if a trustee (Aboriginal) lease granted by a trustee over transferable land for more than 30 years for a commercial purpose ends.
- ‘(2) The trustee must give the registrar written notice of the ending.
- ‘(3) The notice must include particulars of the land that was the subject of the trustee (Aboriginal) lease.

[s 45]

‘83Y Recording information about land

- ‘(1) If a trustee (Aboriginal) lease for more than 30 years for a commercial purpose on transferable land is registered, the registrar must keep records that show the land is not transferable land.
- ‘(2) The registrar must keep the records in a way that a search of the appropriate register kept by the registrar will show the land is not transferable land.
- ‘(3) If a trustee gives the registrar a notice under section 83X(2) about particular land, the registrar must keep records that show the land is transferable land.
- ‘(4) The registrar must keep the records in a way that a search of the appropriate register kept by the registrar will show the land is transferable land.’.

45 Amendment of s 84 (Crown’s use of Aboriginal land preserved)

- (1) Section 84, heading, ‘Crown’s use’—
omit, insert—
‘Use’.
- (2) Section 84(1), ‘the Crown in right of’—
omit.
- (3) Section 84(1), ‘Crown is entitled’—
omit, insert—
‘State or Commonwealth is entitled’.
- (4) Section 84(1), ‘required by the Crown’—
omit, insert—
‘required by the State or Commonwealth’.
- (5) Section 84(2), ‘Crown’—
omit, insert—
‘State or Commonwealth’.

-
- (6) Section 84(3), ‘Crown under section 39 or 76’—
omit, insert—
‘State or Commonwealth, or a person for a private residential purpose, under part 3, division 2 or part 5, division 2’.

46 Amendment of s 85 (No rent payable by Crown)

- (1) Section 85, heading, ‘by Crown’—
omit.
- (2) Section 85, ‘The Crown’—
omit, insert—
‘The State or Commonwealth’.

47 Amendment of s 86 (Access to land used by Crown)

- (1) Section 86, heading, ‘used by Crown’—
omit.
- (2) Section 86(1), ‘Crown is entitled’—
omit, insert—
‘State or Commonwealth is entitled’.
- (3) Section 86(1), ‘Crown and its’—
omit, insert—
‘State or Commonwealth and their’.
- (4) Section 86(3), from ‘The grantees’ to ‘subsection (2)’—
omit, insert—
‘The trustee of Aboriginal land, other than a registered native title body corporate, must not agree on a route for subsection (2)(b)’.
- (5) Section 86(2)(b), ‘Crown’—
omit, insert—
‘State or Commonwealth’.

[s 48]

- (6) Section 86(3)(a), ‘they have’—
omit, insert—
‘the trustee has’.
- (7) Section 86(3)(c)—
omit.
- (8) Section 86(4), ‘subsection (2)’—
omit, insert—
‘subsection (2)(b)’.

48 Amendment of s 87 (Application of Mineral Resources Act)

- (1) Section 87(2), from ‘grantees’ to ‘were the owners’—
omit, insert—
‘trustee of the land were the owner’.
- (2) Section 87, ‘Crown’—
omit, insert—
‘State’.
- (3) Section 87(4)(b), from ‘grantees’ to ‘owners’—
omit, insert—
‘trustee of the land were the owner’.
- (4) Section 87(7)—
renumber as section 87(8).
- (5) Section 87—
insert—
- ‘(7) Subsection (6) applies in relation to Aboriginal land held by a registered native title body corporate as if the reference in the subsection to Aboriginal people particularly concerned with the land were a reference to the registered native title body corporate that holds the land.’.

49 Amendment of s 88 (Royalties in relation to mining on Aboriginal land)

- (1) Section 88(2), ‘grantees of the land are entitled’—
omit, insert—
‘trustee of the land is entitled’.
- (2) Section 88(2), ‘are to apply’—
omit, insert—
‘must apply’.
- (3) Section 88(2), ‘they hold’—
omit, insert—
‘the trustee holds’.
- (4) Section 88(3)—
omit.

50 Insertion of new s 114A

After section 114—
insert—

‘114A Tribunal may order that particular claimable land is transferable land

- ‘(1) This section applies if, before the Land Tribunal makes a decision about whether or not a claim under this Act for claimable land, other than transferred land, is established—
 - (a) each party to the proceeding that made a claim agrees in writing that the claimable land become transferable land; and
 - (b) the tribunal is given written notice of the agreement.
- ‘(2) If the Land Tribunal is satisfied it is appropriate in the circumstances that the land become transferable land, the tribunal may make an order that it is transferable land.
- ‘(3) Before the Land Tribunal makes an order under subsection (2), the tribunal must have regard to the interests of any other

[s 51]

party to the proceeding and how the interests are likely to be affected by the order.

- ‘(4) If the Land Tribunal makes an order under subsection (2)—
- (a) the land becomes transferable land when the order is made; and
 - (b) all claims for the land are taken to have been dismissed by the tribunal.’.

51 Amendment of s 131 (Creation of interests in transferable and claimable land)

- (1) Section 131(1)(b)—

omit, insert—

- ‘(b) the interest is a residential tenancy agreement; or
- (c) the interest is a lease or permit granted in relation to transferable land that is Aboriginal trust land; or
- (d) the interest is the transfer, mortgage or sublease of a trustee (Aboriginal) lease; or
- (e) for another interest— the Minister, subject to subsection (2), consents to the creation of the interest.’.

- (2) Section 131(2), ‘subsection (1)(b)’—

omit, insert—

‘subsection (1)(e)’.

- (3) Section 131(3) to (6)—

renumber as section 131(4) to (7).

- (4) Section 131—

insert—

- ‘(3) The Minister may give a relevant entity a written authority dispensing with the need to obtain the Minister’s consent to the creation of a particular type of interest in transferable land if the Minister considers it is appropriate in all the circumstances to give the authority.’.

-
- (5) Section 131(4)(b), as renumbered—
omit, insert—
‘(b) for another interest—the Minister, subject to subsection (5), consents to the creation of the interest.’.
- (6) Section 131(5), as renumbered, ‘subsection (3)(b)’—
omit, insert—
‘subsection (4)(b)’.
- (7) Section 131(6), as renumbered, ‘or claimable land’—
omit.
- (8) Section 131—
insert—
- ‘(8) In this section—
relevant entity means—
- (a) a trustee, under the Land Act, of Aboriginal trust land;
or
- (b) the Council of the Shire of Aurukun or the Council of the Shire of Mornington.’.

52 Amendment of s 132 (Rights of access to interests preserved)

- (1) Section 132(2), ‘grantees’—
omit, insert—
‘trustee’.
- (2) Section 132(3), from ‘The grantees’ to ‘subsection (2)’—
omit, insert—
‘The trustee of Aboriginal land, other than a registered native title body corporate, must not agree on a route for the purposes of subsection (2)(a)’.
- (3) Section 132(3)(a), ‘they have’—

[s 53]

omit, insert—

‘the trustee has’.

- (4) Section 132(3)(c)—

omit.

- (5) Section 132(4), ‘subsection (2)’—

omit, insert—

‘subsection (2)(a)’.

53 Amendment of s 134 (Delegation by Minister)

Section 134, ‘section 27,’—

omit, insert—

‘section 16B, 27, 27A,’.

54 Amendment of s 136 (Amendment of description of land)

- (1) Section 136(1), from ‘the grantees’ to ‘Crown their’—

omit, insert—

‘the trustee must, on receipt of a written notice to do so by the chief executive, surrender to the State the’.

- (2) Section 136(2), ‘grantee’s’—

omit.

- (3) Section 136(2), ‘grantees’—

omit, insert—

‘trustee’.

- (4) Section 136(4), after ‘registrar’—

insert—

‘of titles’.

55 Insertion of new ss 136A and 136B

After section 136—

insert—

‘136A Dealing with particular trust property

- ‘(1) This section applies to a trustee, other than the State, if the trustee receives an amount (the *lease amount*) paid under section 40K or 77K for the value of a dwelling.
- ‘(2) The trustee must ensure an amount equal to the lease amount is used by the trustee for housing services for Aboriginal people concerned with the land held by the trustee.
- ‘(3) In this section—

housing service means—

- (a) providing housing to an individual for residential use; or
- (b) any of the following kinds of service—
- (i) tenant advisory services;
 - (ii) tenant advocacy services;
 - (iii) home maintenance services;
 - (iv) home modification services;
 - (v) housing-related referral and information services.

trustee includes a trustee, under the Land Act, of Aboriginal trust land.

‘136B Application of Residential Tenancies Act 1994

‘The *Residential Tenancies Act 1994* does not apply to a lease granted under this Act for private residential purposes.’.

56 Amendment of s 137A (Application of Financial Administration and Audit Act 1977)

Section 137A(2)(a), ‘land claims registrar’—

[s 57]

omit, insert—

‘chief executive’.

57 Amendment of s 138 (Regulation-making power)

(1) Section 138(2)(c), after ‘grantees’—

insert—

‘, and any other trustees,’.

(2) Section 138(2)(d) and (e), after ‘the grantees’—

insert—

‘or a land trust’.

(3) Section 138(2)(f) and (h), ‘land claims registrar’—

omit, insert—

‘chief executive’.

(4) Section 138(2)—

insert—

‘(i) the minimum annual rental amount payable by the State under a lease granted to the State under this Act.’.

58 Insertion of new s 139A

Part 10—

insert—

‘139A Existing interest in transferable land

‘(1) This section applies to an interest in transferable land that is a residential tenancy agreement if, on the commencement—

(a) the agreement is in force; and

(b) the Minister had not consented to the creation of the interest under section 131.

‘(2) On the commencement, the Minister is taken to have consented to the creation of the interest under section 131 as in force before the commencement.

‘(3) In this section—
commencement means the day this section commences.’

59 Insertion of new pt 11, div 2

After section 140—

insert—

‘Division 2 Transitional provisions for Aboriginal and Torres Strait Islander Land Amendment Act 2008

‘Subdivision 1 Preliminary

‘141 Definition for div 2

‘In this division—

commencement means the day on which the provision in which the term is used commences.

‘Subdivision 2 Transitional provisions

‘142 Transferred land—change to beneficiaries

‘(1) This section applies to transferred land granted before the commencement.

‘(2) On the commencement, the trustee of the land is taken to hold it for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants.

[s 60]

- ‘(3) As soon as practicable after the commencement, the chief executive must give written notice to the registrar of titles that the land vests in the trustee as mentioned in subsection (2).
- ‘(4) On receiving the notice, the registrar of titles must record in the freehold land register that the land is vested as mentioned in subsection (2).

‘143 Interests in Aboriginal land continue

‘If Aboriginal land was, immediately before the commencement, subject to an interest granted or otherwise created under section 39 or 76 as in force before the commencement, the interest continues in force.’

Part 3 Amendment of Land Act 1994

60 Act amended in pt 3

This part amends the *Land Act 1994*.

61 Insertion of new s 34P

Chapter 3, part 1, division 3, before section 35—
insert—

‘34P Requirement about covenant for DOGIT land

- ‘(1) A plan of subdivision for DOGIT land lodged for registration in the freehold land register must be accompanied by an instrument of covenant ensuring the lots created by the plan, other than any exempt lot, are held by the same person.
- ‘(2) The covenantee under the instrument creating the covenant must be the State.
- ‘(3) In this section—

DOGIT land means land contained in a deed of grant in trust.

exempt lot means—

- (a) land dedicated to public use under the plan; or
- (b) land resumed, taken or otherwise compulsorily acquired under an Act; or
- (c) land surrendered under section 55.’.

62 Amendment of s 43 (Only Parliament may delete land from or cancel an existing deed of grant in trust)

Section 43—

insert—

- ‘(4) For subsection (1), an interest in land in an existing deed of grant in trust may be taken under the Acquisition Act by a constructing authority.
- ‘(5) However, an interest in land in an existing deed of grant in trust may be taken under the Acquisition Act only for a relevant purpose.
- ‘(6) To remove any doubt, it is declared that, for taking an interest in land in an existing deed of grant in trust under the Acquisition Act, the land is land as defined in that Act.
- ‘(7) Subsection (1) does not apply to a deletion of land from an existing deed of grant in trust, or the cancellation of an existing deed of grant in trust, as a result of the taking of the land under the Acquisition Act.
- ‘(8) In this section—

Acquisition Act means the *Acquisition of Land Act 1967*.

relevant purpose means any purpose for which land may be taken under the Acquisition Act by a constructing authority, other than a purpose under—

- (a) the *State Development and Public Works Organisation Act 1971*; or
- (b) the *Petroleum and Gas (Production and Safety) Act 2004*.’.

[s 63]

63 Amendment of s 57 (Trustee leases)

Section 57(6)—

insert—

Note—

This section and other provisions of this division do not apply in relation to leasing Aboriginal trust land as defined under the *Aboriginal Land Act 1991* or Torres Strait Islander trust land as defined under the *Torres Strait Islander Land Act 1991*. See the *Aboriginal Land Act 1991*, part 5F and the *Torres Strait Islander Land Act 1991*, part 5B.’.

64 Insertion of new ch 9, pt 1E

Chapter 9—

insert—

‘Part 1E Transitional provision for Aboriginal and Torres Strait Islander Land Amendment Act 2008

‘521P Trustee leases

‘(1) This section applies to a trustee lease in force on the commencement of this section and given in relation to trust land that, immediately after the commencement, is indigenous trust land.

‘(2) The trustee lease continues in force in relation to the trust land.

‘(3) In this section—

indigenous trust land means Aboriginal trust land as defined under the *Aboriginal Land Act 1991* or Torres Strait Islander trust land as defined under the *Torres Strait Islander Land Act 1991*.’.

‘33B Resumption of lease

- ‘(1) A lease or part of a lease may be resumed by order in council.
- ‘(2) However, a lease or part of a lease may be resumed only for a relevant purpose.
- ‘(3) The resumption may be for any constructing authority.
- ‘(4) An order in council under subsection (1) is not subordinate legislation.
- ‘(5) In this section—

relevant purpose means any purpose for which land may be taken under the Acquisition Act by a constructing authority, other than a purpose under—

- (a) the *State Development and Public Works Organisation Act 1971*; or
- (b) the *Petroleum and Gas (Production and Safety) Act 2004*.

‘33C Effect of resumption

‘If a lease or part of a lease is resumed under this part, the land the subject of the interest comprising the lease or the part of the lease becomes unallocated State land and is free of any interest or obligation arising under the lease.

‘33D Service of order in council

- ‘(1) The Minister must, immediately after the order in council is gazetted, serve a copy of it on each person who has a registered interest in the lease affected by the resumption.
- ‘(2) However, failure to comply with subsection (1) does not affect the validity of the order in council.

‘33E Compensation under Acquisition Act

- ‘(1) Each person who has a lawful interest in the lease or the part of the lease that is resumed (a *compensation claimant*) has a

[s 70]

right to claim compensation, under the Acquisition Act, section 12(5), (5A) and (5B) and part 4, as if the interest had been taken under that Act.

- ‘(2) For subsection (1), the Acquisition Act applies with the following changes—
- (a) a reference to a constructing authority is a reference to the State;
 - (b) a reference to the owner of land is a reference to the lessee of the lease affected by the resumption;
 - (c) for section 24(2A) of the Act, a compensation claimant refers the claim for compensation to the Land Court by filing in the office of the registrar of the court—
 - (i) a copy of the claim given by the claimant to the State; and
 - (ii) a copy of the order in council that effected the resumption;
 - (d) the reference in section 24(5) of the Act to the date of the gazette containing the gazette resumption notice taking the land is taken to be a reference to the date the order in council was gazetted;
 - (e) any other necessary changes.
- ‘(3) This section does not apply to a compensation claimant entitled to claim compensation under section 33G.

‘33F Revoking a resumption

- ‘(1) The resumption may be revoked by repealing the order in council effecting the resumption.
- ‘(2) The revocation may be made only before compensation has been paid or decided by the Land Court under the Acquisition Act as applied under section 33E.
- ‘(3) On repeal of the order in council, the resumption is taken not to have happened.

‘33G Compensation by Minister if resumption is revoked

- ‘(1) If the resumption is revoked—
- (a) a compensation claimant is entitled to apply to the Minister for compensation only for the loss, reasonable costs and expenses incurred by the claimant in relation to the resumption before it was revoked; and
 - (b) the amount of compensation payable to the compensation claimant is the amount decided by the Minister that the Minister considers just and reasonable.
- ‘(2) The Minister must give notice of the decision about payment of compensation under this section to the compensation claimant.
- ‘(3) If the Minister has not decided an application for compensation under this section within 28 days after receiving the application, the Minister is taken to have decided to refuse to pay any compensation.
- ‘(4) If the Minister refuses to pay compensation or decides an amount of compensation less than the amount sought by the compensation claimant, the notice of the decision must state—
- (a) the reasons for the decision; and
 - (b) that the compensation claimant may appeal to the Land Court against the decision within 28 days of receiving the notice; and
 - (c) how to appeal.

‘33H Appeal against decision under s 33G

- ‘(1) A person the subject of a decision under section 33G about an amount payable to the person may appeal to the Land Court against the decision.
- ‘(2) An appeal is started by filing written notice of appeal with the registrar of the Land Court.
- ‘(3) The person must give a copy of the notice of appeal to the chief executive.

[s 74]

insert—

‘Acquisition Act means the *Acquisition of Land Act 1967*.

appropriate register means—

- (a) for freehold land—the freehold land register; or
- (b) for other land—the appropriate register for the land under the Land Act.

Commonwealth Native Title Act means the *Native Title Act 1993* (Cwlth).

constructing authority means a constructing authority under the Acquisition Act.

improvements see the Land Act, schedule 6.

Land Act means the *Land Act 1994*.

Land Title Act means the *Land Title Act 1994*.

lease does not include a residential tenancy agreement.

lease land, for a provision about a lease or proposed lease, means the land subject to the lease or proposed lease.

maximum amount see section 37T.

National Native Title Register means the National Native Title Register established and maintained under the Commonwealth Native Title Act, part 8.

native title holder, in relation to land held, or to be held, by a registered native title body corporate, means—

- (a) if a registered native title body corporate holds the native title in relation to the land, or part of the land, on trust—the persons on whose behalf the registered native title body corporate holds the native title; or
- (b) otherwise—the persons who hold the native title in relation to the land or part of the land.

public infrastructure means infrastructure that is operated for the general public.

registered means registered under the Land Act or the Land Title Act.

registered native title body corporate means a prescribed body corporate under the Commonwealth Native Title Act whose name and address are registered on the National Native Title Register under section 193(2)(e) or (4) of that Act.

registrar means—

- (a) for freehold land—the registrar of titles under the Land Title Act; or
- (b) for other land—the chief executive of the department in which the Land Act is administered.

relevant land, for part 2, division 3A, see section 13A.

residential tenancy agreement means a residential tenancy agreement under the *Residential Tenancies Act 1994*.

Torres Strait Islander trust land see section 80D.

trustee, of Torres Strait Islander trust land, see section 80D.

trustee (Torres Strait Islander) lease, for part 5B, see section 80D.’.

- (2) Section 3, definition *registrar of titles*, ‘*Land Act 1994*’—
omit, insert—
‘Land Act’.

75 Amendment of s 9 (Meaning of Torres Strait Islander land)

Section 9(1)(a), ‘for the benefit of Torres Strait Islanders’—
omit.

76 Amendment of s 10 (Meaning of transferable and transferred land)

Section 10, ‘for the benefit of Torres Strait Islanders’—
omit.

[s 77]

77 Amendment of s 11 (Lands that are transferable lands)

Section 11—

insert—

- ‘(2) However, land mentioned in subsection (1)—
- (a) ceases to be transferable land if it is taken under the Acquisition Act by a constructing authority; and
 - (b) if the land is Torres Strait Islander trust land—is not transferable land if it is subject to a lease for more than 30 years granted under this Act for a commercial purpose; and
 - (c) is not transferable land if it is the subject of a declaration in force under section 13B.’.

78 Insertion of new pt 2, div 3A

Part 2, after section 13—

insert—

‘Division 3A Declarations about particular transferable land

‘13A Definition for div 3A

In this division—

‘*relevant land* means the following land, or a part of the land—

- (a) DOGIT land;
- (b) Torres Strait Islander reserve land, other than land declared under a regulation for section 13.

‘13B Particular land may be declared to be not transferable land

- ‘(1) The Minister may, by gazette notice, make a declaration under this division that relevant land is not transferable land if the Minister is satisfied that—
- (a) housing or essential or other infrastructure is situated on the land; or
 - (b) the land is being used as a town site or part of a town site by Torres Strait Islanders on the land; or
 - (c) the land is being used as if it were a road; or
 - (d) having regard to the nature or use of the land, it is not appropriate or practicable in the circumstances for the land to be granted in fee simple under this Act.
- ‘(2) In considering whether to make a declaration under subsection (1)(d), the Minister may have regard to matters relating to the nature or use of the relevant land the Minister considers appropriate, including, for example—
- (a) whether the land is likely to be used as a town site or part of a town site by Torres Strait Islanders on the land; and
 - (b) whether the land is in a condition suitable to be granted under this Act.
- ‘(3) The Minister must not make a declaration under subsection (1)(d) before—
- (a) if no appeal is made under this division against the decision to make the declaration—the period for making an appeal ends; or
 - (b) if an appeal is made under this division against the decision to make the declaration—the day the appeal is finally decided.

‘13C Notice of intention to make declaration

- ‘(1) If the Minister intends to make a declaration under section 13B, the Minister must—

[s 78]

- (a) give written notice of the Minister's intention to make the declaration to the trustee of the relevant land; and
 - (b) within 10 business days after giving the notice under paragraph (a), publish notice of the Minister's intention to make the declaration in a newspaper or other publication circulating generally in the area where the relevant land is situated; and
 - (c) consider all representations made under subsection (4).
- ‘(2) The notice must—
- (a) include a description of the relevant land; and
 - (b) state the following—
 - (i) the reasons for the proposed declaration;
 - (ii) that a person may make written representations to the Minister about the proposed declaration;
 - (iii) the place where the representations may be made;
 - (iv) the period in which the representations must be made.
- ‘(3) The stated period must end at least 28 days after the notice is published.
- ‘(4) A person may make written representations about the proposed declaration to the Minister within the stated period.

‘13D Minister to consider representations and give notice of decision

- ‘(1) After considering all representations made under section 13C(4) about the proposed declaration, the Minister must—
- (a) decide whether to make the declaration; and
 - (b) give written notice of the decision to—
 - (i) each person who made the representations; and
 - (ii) the trustee of the relevant land, if the trustee did not make any representations.

-
- ‘(2) If the Minister decides to make the declaration, the notice must state—
- (a) the provision under which the declaration is to be made; and
 - (b) the reasons for the decision; and
 - (c) if the Minister is to make the declaration under section 13B(1)(d)—that the person may appeal against the decision to the Land Court and how to appeal.

‘13E Appeal against particular decision

- ‘(1) If the Minister proposes to make the declaration under section 13B(1)(d), a person who made representations to the Minister under this division about the proposed declaration may appeal to the Land Court against the decision.
- ‘(2) An appeal is started by filing written notice of appeal with the registrar of the Land Court.
- ‘(3) The notice of appeal must be filed within 28 days after the person receives notice of the decision.
- ‘(4) However, the Land Court may, at any time within the 28 days, extend the period for making the appeal.
- ‘(5) The appeal is by way of rehearing, unaffected by the decision, on the material before the Minister and any further evidence allowed by the Land Court.

‘13F Powers of Land Court on appeal

- ‘(1) In deciding the appeal, the Land Court has the same powers as the Minister.
- ‘(2) The Land Court may—
- (a) confirm the decision; or
 - (b) set aside the decision and substitute another decision; or
 - (c) set aside the decision and return the issue to the Minister with directions the court considers appropriate.

[s 78]

- ‘(3) If the Land Court substitutes another decision, the substituted decision is, other than for the purpose of an appeal under this division, taken to be the decision of the Minister.

‘13G Notice about declarations—trustee

‘As soon as practicable after a declaration that relevant land is not transferable land is made, the chief executive must give the trustee of the land written notice of the declaration.

‘13H Notice about declarations—registrar

- ‘(1) As soon as practicable after a declaration that relevant land is not transferable land is made, the chief executive must give the registrar written notice of the declaration.
- ‘(2) The notice must include particulars of the land the subject of the declaration.
- ‘(3) The registrar must keep records that show the land is not transferable land.
- ‘(4) The registrar must keep the records in a way that a search of the appropriate register kept by the registrar will show the land is not transferable land.
- ‘(5) As soon as practicable after a declaration is repealed—
- (a) the chief executive must give the registrar written notice of the fact; and
 - (b) the registrar must amend the registrar’s records to show the land the subject of the repealed declaration is transferable land.

‘13I Requirements about plans of subdivision for declarations under s 13B

- ‘(1) This section applies if—
- (a) under section 13B, the Minister declares land is not transferable land; and

-
- (b) a plan of subdivision is lodged for the land under the Land Title Act or Land Act for the purpose of identifying the land; and
 - (c) the plan of subdivision has been consented to by the Minister.
- ‘(2) The registrar must register the plan of subdivision without the consent of anyone whose consent would otherwise have been required under the relevant section if the plan otherwise complies with the relevant section.
- ‘(3) In this section—
- relevant section* means—
- (a) for freehold land—the Land Title Act, section 50; or
 - (b) for other land—the Land Act, section 290J.’.

79 Amendment of s 25 (Deeds of grant to be prepared)

- (1) Section 25(3)—
- omit, insert—*
- ‘(3) The deed of grant must show that the land is held by the grantees—
- (a) if the grantee is a registered native title body corporate—for the native title holders of the land; or
 - (b) otherwise—for the benefit of Torres Strait Islanders and their ancestors and descendants.
- ‘(3A) If the grantee is a registered native title body corporate, the deed of grant also must include information to identify the native title holders of the land.’.
- (2) Section 25(5), ‘(3) and (4)’—
- omit, insert—*
- ‘(3), (3A) and (4)’.

[s 80]

80 Insertion of new s 25A

After section 25—

insert—

‘25A Appointment of registered native title body corporate as grantee

- ‘(1) This section applies to transferable land if—
- (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
 - (b) there is a registered native title body corporate for the determination.
- ‘(2) The Minister may, with the consent of the registered native title body corporate, appoint the body corporate to be the grantee of the land under a deed of grant prepared under section 25.
- ‘(3) If the Minister appoints the registered native title body corporate to be the grantee of the land, the body corporate holds the land for the native title holders of the land the subject of the determination mentioned in subsection (1)(a).
- ‘(4) In considering whether to appoint a registered native title body corporate under this section, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example—
- (a) whether the making of the proposed appointment was a matter relevant to the native title claim under the Commonwealth Native Title Act that resulted in the determination that native title existed in relation to all or a part of the land; and
 - (b) whether any Torres Strait Islanders particularly concerned with the land, other than the native title holders of the land, may be adversely affected by the proposed appointment; and
 - (c) if the Minister is satisfied Torres Strait Islanders particularly concerned with the land will be adversely affected by the proposed appointment—any action the

registered native title body corporate intends to take to address the concerns of the Torres Strait Islanders.

- ‘(5) If land is granted to a registered native title body corporate, a provision of this Act about the incorporation of grantees as a land trust on the grant of land does not apply in relation to the registered native title body corporate.’

81 Amendment of s 26 (Minister to appoint trustees)

- (1) Section 26, heading, ‘trustees’—

omit, insert—

‘particular trustees’.

- (2) Section 26, before subsection (1)—

insert—

- ‘(1A) This section applies if the Minister does not appoint, under section 25A, a registered native title body corporate as the grantee of land the subject of a deed of grant prepared under section 25.’

- (3) Section 26(1), ‘the subject of each deed of grant prepared under section 25’—

omit.

- (4) Section 26(6)—

omit.

82 Insertion of new s 26A

After section 26—

insert—

‘26A Application of Trusts Act 1973

- ‘(1) The *Trusts Act 1973* applies to trusts created for the purposes of this division, and to the trustees of the trusts, only to the extent prescribed under a regulation.

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- ‘(2) To the extent that the *Trusts Act 1973* does apply under a regulation for subsection (1), it applies with the changes prescribed under the regulation.
- ‘(3) A provision of a regulation for subsection (1) does not apply to a grantee that is a registered native title body corporate unless the provision expressly states that it applies to a trustee that is a registered native title body corporate.’.

83 Amendment of s 27 (Minister to act as soon as possible)

Section 27(2), ‘section 26’—

omit, insert—

‘section 25A or 26’.

84 Amendment of s 29 (Inclusion of additional areas in deed of grant)

Section 29—

insert—

- ‘(2) Despite subsection (1), an additional area of transferable land may not be included in a deed of grant for Torres Strait Islander land held by a registered native title body corporate.’.

85 Replacement of ss 36 and 37

Sections 36 and 37—

omit, insert—

‘Subdivision 1 General

‘36 Power to deal with transferred land

‘Subject to this division, the grantees of transferred land may—

-
- (a) grant, transfer or otherwise create an interest in the land in the way the grantees consider appropriate, including, for example, by—
 - (i) granting a lease or licence over all or a part of the land; or
 - (ii) consenting to the creation of a mining interest in the land; or
 - (iii) granting an easement over the land; or
 - (iv) entering into a conservation agreement under the *Nature Conservation Act 1992*, section 45, in relation to the land; or
 - (v) entering into an agreement with the State or the Commonwealth in relation to the getting and sale of forest products or quarry material above, on or below the land; or
 - (b) dedicate a part of the land to public use by registering a plan of subdivision under the Land Title Act, part 4, division 3; or
 - (c) surrender all or a part of the land to the State.

‘37 Requirement for consultation

- ‘(1) The grantees of transferred land must not deal with the land unless—
 - (a) the grantees have explained to the Torres Strait Islanders particularly concerned with the land the nature, purpose and effect of the dealing; and
 - (b) the Torres Strait Islanders are given a suitable opportunity to express their views on, and are generally in agreement with, the dealing.
- ‘(2) Despite section 37ZD, dealing with land in contravention of subsection (1) is not void under that section.
- ‘(3) In this section—
deal, with land, means—

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- (a) grant a lease, other than under section 37D(1)(a) for private residential purposes, for more than 10 years over the land; or
- (b) grant a licence for the use of the land for more than 10 years; or
- (c) grant or otherwise create an interest in the land that is not a lease or a licence for the use of the land; or
- (d) dedicate a part of the land to public use; or
- (e) surrender any of the land to the State.

grantee, of transferred land, does not include a registered native title body corporate.

‘37A Provision about Minister’s consent

- ‘(1) This section applies if the Minister’s prior written consent is required for the grant of a lease or licence by the grantees of transferred land, or for the creation of an interest under a lease or licence.
- ‘(2) The Minister’s consent may be given for—
 - (a) the grant of a particular lease or licence, or a particular type of lease or licence; or
 - (b) the creation of a particular interest under a lease or licence, or a particular type of interest; or
 - (c) if the Minister considers it appropriate—
 - (i) all leases or licences, or all leases or licences of a particular type, that may be granted by the trustee; or
 - (ii) the creation of all interests, or all interests of a particular type, that may be created under a lease or licence.

‘37B Provision about particular leases

‘For the purposes of section 37 and subdivision 3, a lease granted for an initial term of not more than 10 years, or for at least 10 but not more than 30 years, is taken to be a lease for more than 10 years or more than 30 years if the lease includes an option to renew or extend the lease that, if exercised, would extend the term of the lease for more than 10 years or more than 30 years.

‘Subdivision 2 Sale or mortgage prohibited

‘37C Prohibition on sale or mortgage of transferred land

‘The grantees of transferred land must not sell or mortgage the land.

‘Subdivision 3 Grant of leases

‘37D Grant of lease for transferred land

- ‘(1) The grantees of transferred land may grant a lease over all or a part of the land only—
- (a) to a Torres Strait Islander for not more than 99 years; or
 - (b) to the State for not more than 99 years; or
 - (c) to another person—
 - (i) for not more than 10 years; or
 - (ii) with the Minister’s prior written consent, for more than 10 years but not more than 99 years.
- ‘(2) Despite subsection (1)(a)—
- (a) a person who is not a Torres Strait Islander may be a party to a lease granted under the subsection if—
 - (i) the lease is for private residential purposes; and

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- (ii) the person is the spouse of a Torres Strait Islander;
and
 - (b) a lease may be granted under the subsection for private residential purposes to a person who is not a Torres Strait Islander if the person is the spouse, or former spouse, of a Torres Strait Islander or of a Torres Strait Islander who is deceased.
- ‘(3) Despite subsection (1)(c)(ii), a lease may be granted under the subsection without the Minister’s consent if the lease is—
- (a) for a commercial purpose and for not more than 30 years; or
 - (b) for a private residential purpose to support a lease for a commercial purpose.

‘37E Particular restrictions on grant of leases

- ‘(1) A lease for more than 30 years may be granted under section 37D(1)(a) only—
- (a) for private residential purposes; or
 - (b) with the Minister’s prior written consent, for another purpose if, having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the grantees hold the land.

Examples of another purpose for paragraph (b)—

a commercial purpose or providing public infrastructure

- ‘(2) A lease for more than 30 years may be granted under section 37D(1)(b) only—
- (a) for a following purpose—
 - (i) a purpose under the *Housing Act 2003*;
 - (ii) providing public infrastructure;
 - (iii) providing residential accommodation for public service employees; or

-
- (b) with the Minister's prior written consent, for another purpose if, having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the grantees hold the land.

Example of another purpose for paragraph (b)—

a commercial purpose

- '(3) A lease may be granted under section 37D(1)(c) for a private residential purpose only if the lease is to support a lease granted under that section for a commercial purpose.
- '(4) If the Minister's consent is required for the grant of a lease under section 37D(1)(c)(ii), the Minister may give consent only if the Minister is satisfied that, having regard to the nature of the lease, the grant of the lease is for the benefit of persons for whom the grantees hold the land.
- '(5) The Minister may consent to the grant of a lease for more than 30 years for a commercial purpose only if the lease is granted over an entire lot as shown in the appropriate register.

'37F Requirements for Minister's consent—general

- '(1) A person seeking the Minister's consent to the grant of a lease must give the Minister the information or documents reasonably required by the Minister to show—
- (a) the purpose of the lease; and
 - (b) that the grant of the lease is for the benefit of persons for whom the grantees hold the land; and
 - (c) if the lease is for more than 30 years—that the grant of the lease for more than 30 years is appropriate in the circumstances.
- '(2) Also, a person seeking the Minister's consent to the grant of a lease for more than 30 years for a commercial purpose must give the Minister—
- (a) a business plan outlining the details of the commercial purpose of the lease, including, for example, financial

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- details about any proposed development under the lease;
and
 - (b) evidence to show that an appropriate return on the investment for the commercial purpose can not be obtained under a lease for not more than 30 years; and
 - (c) other information or documents reasonably required by the Minister to show the purpose of the lease.
- ‘(3) In considering whether to give consent to the grant of a lease, the Minister—
- (a) must have regard to the information or documents given to the Minister under subsection (1) or (2); and
 - (b) may have regard to other information the Minister considers relevant to the proposed lease.
- ‘(4) Before giving consent to the grant of a lease for more than 30 years, the Minister must be satisfied—
- (a) the grantees have complied with section 37(1)(a) in relation to the lease; and
 - (b) the Torres Strait Islanders particularly concerned with the lease land are generally in agreement with the grant of the lease.

‘37G Particular requirement for Minister’s consent for lease for commercial purpose

- ‘(1) Before the Minister consents to the grant of a lease for more than 30 years for a commercial purpose, the Minister must—
- (a) obtain an independent assessment of—
 - (i) the business plan and evidence given to the Minister under section 37F(2)(a) and (b); and
 - (ii) the proposed lessee’s financial and managerial capabilities; and
 - (b) be satisfied, having regard to the independent assessment, that—

-
- (i) any proposed development will be commercially viable; and
 - (ii) the evidence given under section 37F(2)(b) satisfactorily shows that an appropriate return on the investment for the purpose of the lease can not be obtained under a lease for not more than 30 years; and
 - (iii) the proposed lessee's financial and managerial capabilities are appropriate for carrying out any proposed development under the lease.
- '(2) The proposed lessee must pay the cost of the assessment.
- '(3) The cost is not refundable.

'37H Conditions of leases—general

- '(1) A lease granted under this subdivision is subject to a condition that an interest, other than a mortgage of the lease, for a term of more than 10 years may be created under the lease only with the Minister's prior written consent.
- '(2) Despite subsection (1)—
- (a) an interest under a lease granted under section 37D(1)(a) may be created without the Minister's prior written consent if the interest is in favour of—
 - (i) a Torres Strait Islander; or
 - (ii) another person who is not a Torres Strait Islander if the person is the spouse, or former spouse, of a Torres Strait Islander or of a Torres Strait Islander who is deceased; and
 - (b) an interest under another lease may be created without the Minister's prior written consent if under this subdivision the grant of the lease did not require the consent of the Minister.
- '(3) A lease granted under this subdivision may include a condition that—

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- (a) a stated standard terms document under the Land Title Act forms part of the lease; or
 - (b) the lease must not be transferred without the grantees' prior written consent; or
 - (c) an interest under the lease, other than a mortgage of the lease, must not be created without the grantees' prior written consent.
- '(4) If a lease includes a condition mentioned in subsection (3)(b) or (c), the grantees must not unreasonably withhold consent to the transfer or creation of an interest under the lease.
- '(5) A lease granted under this subdivision may be mortgaged without the consent of the Minister or the grantees.
- '(6) Subject to subsection (5), this section does not limit the conditions that may be imposed on a lease.

'371 Requirement for Minister's consent for creation of interest under a lease

- '(1) This section applies if, under this subdivision, an interest under a lease may be created only with the Minister's written consent.
- '(2) The Minister may consent to the creation of the interest only if—
- (a) having regard to the nature of the interest, the Minister is satisfied the creation of the interest is for the benefit of persons for whom the grantees hold the lease land; and
 - (b) if the lease is for more than 30 years—
 - (i) the interest is consistent with the purpose for which the lease was granted; or
 - (ii) the interest would not diminish the purpose for which the lease was granted.
- '(3) A person seeking the Minister's consent must give the Minister the information or documents relevant to the proposed interest reasonably required by the Minister, including, for example, information or documents to show

that the creation of the interest is for the benefit of persons for whom the grantees hold the lease land.

‘37J Leases for private residential purposes—general conditions and requirements

- ‘(1) A lease granted under this subdivision for private residential purposes is subject to all of the following conditions—
- (a) if the lease is granted under section 37D(1)(a)—
 - (i) it must be for 99 years; and
 - (ii) the annual rental under the lease is the amount, of not more than \$1, decided by the grantees of the lease land; and
 - (iii) the consideration payable for the lease must include, as a lump sum payment, an amount equal to the value of the lease land as decided by the grantees using—
 - (A) a valuation methodology decided by the chief executive; and
 - (B) the benchmark purchase price, as prescribed under a regulation, for land in the part of the State in which the lease land is situated;
 - (b) if a private residential premises is not situated on the lease land—the lessee must ensure a private residential premises is built on the land within 8 years after the lease is granted;
 - (c) an interest may be created under the lease only if the interest is a residential tenancy agreement or a mortgage of the lease.
- ‘(2) The grantees may grant a lease for private residential purposes only if the amount mentioned in subsection (1)(a)(iii) has been paid to the grantees.
- ‘(3) The chief executive—
- (a) must, if requested, give a person a copy of the valuation methodology mentioned in subsection (1)(a)(iii); and

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- (b) may make the valuation methodology available for inspection on the department's website.

'37K Leases for private residential purposes—particular requirements if dwelling situated on land

- '(1) This section applies if—
 - (a) the grantees propose to grant a lease for private residential purposes; and
 - (b) a dwelling is situated on the land the subject of the proposed lease.
- '(2) The grantees must give the housing chief executive written notice of the grantees' intention to grant the lease.
- '(3) Within 28 days after receiving the notice, the housing chief executive must give the grantees a written notice stating whether the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
- '(4) The grantees must not grant the lease before receiving the housing chief executive's notice under subsection (3).
- '(5) Subsections (6) to (10) apply if the notice states the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
- '(6) The grantees must, before the lease is granted, decide the value of the dwelling by using a valuation methodology agreed between the grantees and the housing chief executive.
- '(7) The consideration payable for the lease must include, as a lump sum payment, an amount equal to the value of the dwelling decided under subsection (6).
- '(8) The grantees may grant the lease only—
 - (a) with the written approval of the housing chief executive; and
 - (b) if the amount mentioned in subsection (7) has been paid to the grantees.

-
- ‘(9) In considering whether to give an approval, the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be used to provide subsidised housing for residential use.
- ‘(10) If the grantees grant the lease, the grantees must, within 28 days after the lease is registered, give the housing chief executive—
- (a) a written notice stating—
 - (i) the day the lease was registered; and
 - (ii) the names of the parties to the lease; and
 - (b) evidence showing the amount mentioned in subsection (7) for the dwelling was paid to the grantees; and
 - (c) evidence showing the amount decided by the grantees under section 37J(1)(a)(iii) for the lease land was paid to the trustee.

Note—

The amount mentioned in subsection (7) must be used by the grantees as required under section 133A.

‘(11) This section does not limit section 37J.

‘(12) In this section—

housing chief executive means the chief executive of the department in which the *Housing Act 2003* is administered.

‘37L Renewal of lease or sublease

- ‘(1) A lease or a sublease of a lease may include an option to renew the lease or sublease.
- ‘(2) The term of a renewed lease or sublease must not be more than the initial term of the lease or sublease.

‘37M Transfer or amendment of lease or sublease

- ‘(1) A lease or a sublease of a lease must not be transferred or amended without—

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- (a) if, under a condition of the lease, the transfer or amendment of the lease or sublease requires the consent of the grantees of the lease land—the grantees' prior written consent; and
 - (b) if, under this subdivision, the grant of the lease or sublease requires the consent of the Minister—the Minister's prior written consent.
- '(2) A person seeking the Minister's consent to the transfer or amendment of a lease or sublease must give the Minister the information or documents relevant to the proposed transfer or amendment reasonably required by the Minister.
- '(3) In considering whether to consent to the transfer of a lease or sublease, the Minister must consider whether the proposed transferee can comply with the conditions of the lease.
- '(4) The Minister may consent to the amendment of a lease or sublease only if the Minister is satisfied—
- (a) the amendment does not significantly change the conditions of the lease or sublease; and
 - (b) the amended lease or sublease is for the benefit of persons for whom the grantees hold the land.
- '(5) Before the Minister consents to the transfer of a lease for more than 30 years for a commercial purpose, the Minister must—
- (a) obtain an independent assessment of the proposed transferee's financial and managerial capabilities; and
 - (b) be satisfied, having regard to the independent assessment, that the proposed transferee's financial and managerial capabilities are appropriate for complying with the conditions of the lease.
- '(6) The proposed transferee must pay the cost of the assessment.
- '(7) The cost is not refundable.
- '(8) A lease or sublease of a lease must not be transferred to a person who, under this Act, would not be entitled to a grant of the lease.

‘37N Lease, sublease and transfer, amendment or surrender of lease or sublease to be registered

- ‘(1) All leases, and any sublease of a lease or transfer, amendment or surrender of a lease or sublease, must be registered.
- ‘(2) Despite the Land Title Act, section 65(2) an instrument of lease for transferred land must include a plan of survey identifying the lease land.

‘Subdivision 4 Forfeiture of particular leases

‘37O Application of sdiv 4

‘This subdivision applies to a lease granted under section 37D(1)(a) for private residential purposes.

‘37P Grounds for forfeiture of lease

- ‘(1) The lease may be forfeited only if—
 - (a) the lessee breaches a relevant condition of the lease and fails to remedy the breach within 6 months after receiving written notice of the breach from the grantees of the lease land; or
 - (b) the lessee acquired the lease by fraud.
- ‘(2) In this section—

relevant condition, of a lease, means—

 - (a) a condition of the lease mentioned in section 37J(1)(b); or
 - (b) another condition, if the grantees reasonably consider a breach of the condition is of a serious nature and warrants forfeiture of the lease.

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‘37Q Application to Land Court for forfeiture

- ‘(1) Before the lease is forfeited, the grantees must refer the matter to the Land Court to decide whether the lease may be forfeited.
- ‘(2) The grantees must give the lessee, and any mortgagee of the lease, at least 28 days written notice of the grantee’s intention to refer the matter to the Land Court.
- ‘(3) The notice must state the grounds on which the grantees consider the lease may be forfeited.
- ‘(4) In deciding whether the lease may be forfeited, the Land Court must have regard to—
 - (a) the stated grounds; and
 - (b) if the lease is proposed to be forfeited because of a breach of a condition of the lease—whether the court considers the breach is of a serious nature and warrants forfeiture of the lease.
- ‘(5) The grantees must file a copy of the notice in the Land Court at the same time as the grantees refer the matter to the court.

‘37R Grantees’ options if Land Court decides lease may be forfeited

‘If the Land Court decides the lease may be forfeited, the grantees may—

- (a) forfeit the lease under this subdivision; or
- (b) if the proposed forfeiture is because of a breach of a condition of the lease—decide not to forfeit the lease, but instead to allow the lease to continue subject to the lease being amended to include conditions agreed between the grantees and the lessee.

‘37S Notice and effect of forfeiture

- ‘(1) If the grantees forfeit the lease, the grantees must, within 60 days after receiving notice of the Land Court’s decision about

forfeiture of the lease, give written notice that the lease is forfeited to—

- (a) the lessee and any mortgagee of the lease; and
 - (b) the registrar.
- ‘(2) On receiving the notice, the registrar must record the forfeiture of the lease in the appropriate register.
- ‘(3) The forfeiture of the lease takes effect on the day the registrar acts under subsection (2).
- ‘(4) On forfeiture of the lease—
- (a) the lease ends; and
 - (b) the lessee is divested of any interest in the lease; and
 - (c) any person occupying the lease land must immediately vacate the land.

‘37T Payment by grantees for forfeited lease

- ‘(1) If the grantees forfeit the lease, the grantees must pay to the person who was the lessee the amount equal to the value of the lease land, and any lawful improvements on the land, on the day the lease is forfeited (the *maximum amount*) less any amounts deducted from the maximum amount under section 37V.
- ‘(2) The value of the lease land is the amount as decided by the grantees using a valuation methodology mentioned in section 37J(1)(a)(iii).
- ‘(3) The value of any lawful improvements on the lease land must be assessed as the market value of the improvements in a sale of a lease, of the same term and tenure as the forfeited lease.
- ‘(4) Subject to subsections (2) and (3), the grantees must decide the amount payable to the person.
- ‘(5) The grantees must decide the amount payable as soon as practicable after giving the person notice that the lease is forfeited.

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- ‘(6) On deciding the amount payable, the grantees must give the person written notice of the decision.
- ‘(7) The notice must state—
 - (a) the amount; and
 - (b) that the person may appeal against the decision and how the person may appeal.
- ‘(8) This section is subject to section 37U.

‘37U Unclaimed amounts

‘If the grantees can not find the person entitled to receive the amount payable under section 37T, or the person does not collect the amount from the grantees within 9 years after the day the lease is forfeited, the amount is forfeited to the grantees.

‘37V Amounts owing to grantees or mortgagee to be deducted

‘If the grantees forfeit the lease, the grantees may deduct the following amounts from the maximum amount—

- (a) an amount in payment of all costs properly incurred by the grantees in forfeiting the lease;
- (b) an amount in payment of expenses incurred by the grantees to rectify damage caused to the lease land by the person who was the lessee;
- (c) any amount owing to the grantees by the person under the lease;
- (d) any amount owing to a mortgagee of the lease by the person under a mortgage of the lease.

‘37W Payment of amount to mortgagee in discharge of mortgage

- ‘(1) This section applies if the grantees forfeit the lease and, under a mortgage of the lease, an amount is owing to a mortgagee of the lease by the person who was the lessee.
- ‘(2) The grantees must pay to the mortgagee—
 - (a) if the amount that may be deducted from the maximum amount under section 37V(d) is less than the difference between the maximum amount and the amounts deducted under section 37V(a), (b) or (c)—the amount that may be deducted from the maximum amount under section 37V(d); or
 - (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 37V(a), (b) or (c).
- ‘(3) The grantees must pay the amount payable under subsection (2) to the mortgagee—
 - (a) if no appeal is made under this subdivision against the decision under section 37T about the amount payable to the person who was the lessee—within 28 days after the time for making an appeal ends; or
 - (b) if an appeal is made under this subdivision against the decision mentioned in paragraph (a)—within 28 days after the appeal is finally decided.
- ‘(4) If the grantees pay an amount to the mortgagee in relation to a mortgage of the lease, the mortgagee must use the amount in discharge of the mortgage.

‘37X Appeal against decision under s 37T

- ‘(1) A person the subject of a decision under section 37T about an amount payable to the person may appeal to the Land Court against the decision.
- ‘(2) An appeal is started by filing written notice of appeal with the registrar of the Land Court.

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- ‘(3) The person must give a copy of the notice of appeal to the grantees of the lease land to which the decision relates.
- ‘(4) The notice of appeal must be filed within 28 days after the person receives notice of the decision.
- ‘(5) However, the Land Court may, at any time within the 28 days, extend the period for making the appeal.
- ‘(6) The appeal is by way of rehearing, unaffected by the decision, on the material before the grantees and any further evidence allowed by the Land Court.

‘37Y Powers of Land Court on appeal

- ‘(1) In deciding the appeal, the Land Court has the same powers as the grantees of the lease land.
- ‘(2) The Land Court may—
 - (a) confirm the decision; or
 - (b) set aside the decision and substitute another decision; or
 - (c) set aside the decision and return the issue to the grantees with directions the court considers appropriate.
- ‘(3) If the Land Court substitutes another decision, the substituted decision is, other than for the purpose of an appeal under this subdivision, taken to be the decision of the grantees of the lease land.

‘Subdivision 5 Grant of licences

‘37Z Grant of licence for transferred land

‘The grantees of transferred land may grant a licence for the use of all or a part of the land only—

- (a) to a Torres Strait Islander for not more than 30 years; or
- (b) to the State for not more than 30 years; or
- (c) to another person—

- (i) for not more than 10 years; or
- (ii) with the Minister's prior written consent, for more than 10 years but not more than 30 years.

'37ZA Conditions of licences

- '(1) A licence granted under section 37Z(a) is subject to the condition that an interest may be created under the licence in favour of a person who is not a Torres Strait Islander only if—
 - (a) the interest is in favour of the spouse, or former spouse, of a Torres Strait Islander or of a Torres Strait Islander who is deceased; or
 - (b) the interest is—
 - (i) for a term of not more than 10 years; or
 - (ii) created with the Minister's prior written consent.
- '(2) A licence granted under section 37Z(b) or (c) is subject to the condition that an interest can not be created under the licence.
- '(3) A licence for the use of all or a part of transferred land can not be renewed or transferred.

'Subdivision 6 Transfer of land held by registered native title body corporate

'37ZB Transfer of transferred land held by registered native title body corporate

- '(1) This section applies to transferred land held by a registered native title body corporate (the *original body corporate*).
- '(2) The land may be transferred only—
 - (a) with the Minister's prior written approval; and
 - (b) to a registered native title body corporate that, under the Commonwealth Native Title Act, has replaced the original body corporate.'

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‘Subdivision 7 Other matters

‘37ZC Grantees to advise chief executive of change to description of land

‘If grantees deal with transferred land held by the grantees in a way that changes the description of the land as shown in the freehold land register, the grantees must as soon as practicable after the dealing happens give the chief executive written notice of the change.

‘37ZD Particular dealings in transferred land void

- ‘(1) A grant, transfer or other creation of an interest in transferred land in contravention of this division is void.
- ‘(2) Subsection (1) does not apply to a registered interest.’.

86 Amendment of s 38 (No resumption of transferred land etc.)

- (1) Section 38, heading, ‘No’—
omit, insert—
‘Provision about’.
- (2) Section 38(1), from ‘except by’—
omit, insert—
‘other than under the Acquisition Act by a constructing authority.’.
- (3) Section 38(2)—
renumber as section 38(4).
- (4) Section 38—
insert—
‘(2) However, an interest in transferred land may be taken under the Acquisition Act only for a relevant purpose.

‘(3) To remove any doubt, it is declared that, for taking an interest in transferred land under the Acquisition Act, the transferred land is land as defined in that Act.’.

(5) Section 38—

insert—

‘(5) In this section—

relevant purpose means any purpose for which land may be taken under the Acquisition Act by a constructing authority, other than a purpose under—

(a) the *State Development and Public Works Organisation Act 1971*; or

(b) the *Petroleum and Gas (Production and Safety) Act 2004*.’.

87 Insertion of new pts 5A and 5B

Before part 6—

insert—

‘Part 5A Provisions about mortgages of leases over Torres Strait Islander land

‘80A Application of pt 5A

‘If, in relation to the mortgaging of a lease over Torres Strait Islander land, there is an inconsistency between a provision of this part and the Land Title Act, part 6, division 3, or the *Property Law Act 1974*, the provision of this part prevails to the extent of the inconsistency.

‘80B Provisions about entering into possession of, and selling, lease

‘(1) This section applies if a mortgagee enters into possession of a lease granted over Torres Strait Islander land.

[s 87]

- ‘(2) The mortgagee must give the grantees of the land written notice of the fact within 28 days after entering into possession.
- ‘(3) The mortgagee must arrange to sell the lease within the later of the following periods to end (the *applicable period*)—
 - (a) 4 years after entering into possession of the lease;
 - (b) the longer period agreed in writing between the mortgagee and the grantees.
- ‘(4) For subsection (3)(b)—
 - (a) the period mentioned in subsection (3)(a) may be extended or further extended for not more than 2 years at a time; and
 - (b) an extension or further extension of the period must be agreed in writing before the period or further extended period would otherwise have ended.
- ‘(5) In considering whether to agree to an extension or further extension, the grantees must have regard to the measures the mortgagee has already taken to sell the lease.
- ‘(6) If the mortgagee does not sell the lease within the applicable period, the grantees may sell the lease.
- ‘(7) The mortgagee or grantees may sell the lease only to a person who, under this Act, would be entitled to be granted the lease.
- ‘(8) The grantees must not sell the lease for less than—
 - (a) the amount owing to the mortgagee by the lessee under the mortgage on the day the lease is sold; or
 - (b) if the grantees and the mortgagee agree the lease may be sold for an amount less than the amount mentioned in paragraph (a)—the agreed amount.

‘80C How grantees deal with proceeds of sale

- ‘(1) This section applies if, under section 80B, the grantees sell a mortgaged lease.

-
- ‘(2) The grantees must apply the proceeds of the sale, under the *Property Law Act 1974*, as if the lease were sold by the mortgagee and the amount of the sale were received by the mortgagee.
- ‘(3) However, in applying the proceeds of the sale, the grantees must firstly apply the proceeds to the payment of all costs, charges and expenses properly incurred by the grantees for the sale or any attempted sale.

‘Part 5B Leasing of Torres Strait Islander trust land

‘Division 1 Preliminary

‘80D Definitions for pt 5B

‘In this part—

Torres Strait Islander trust land means—

- (a) land subject to a deed of grant in trust granted for the benefit of Torres Strait Islanders or for the purpose of a Torres Strait Islander reserve under the repealed *Land Act 1962*; or
- (b) land reserved and set apart under the repealed *Land Act 1962* for a Torres Strait Islander reserve or for the benefit of Torres Strait Islanders; or
- (c) land subject to a deed of grant in trust granted for the benefit of Torres Strait Islanders under the Land Act; or
- (d) land dedicated under the Land Act as a reserve for the provision of services beneficial to Torres Strait Islanders particularly concerned with the land.

trustee, of Torres Strait Islander trust land, means the trustee of the land under the Land Act.

[s 87]

trustee (Torres Strait Islander) lease means a lease of Torres Strait Islander trust land granted under part 3, division 2, subdivision 3 as applied under section 80F(2).

‘80E Relationship with Land Act

- ‘(1) The following provisions of the Land Act, chapter 3, part 1, division 7 do not apply to Torres Strait Islander trust land—
- (a) sections 57 to 59;
 - (b) section 61, to the extent it relates to a lease or sublease of the land;
 - (c) section 63, to the extent it relates to a lease of the land;
 - (d) section 64;
 - (e) sections 65 and 66, to the extent they relate to a lease of the land.
- ‘(2) For the purposes of the Land Act, other than the provisions mentioned in subsection (1), a trustee (Torres Strait Islander) lease is taken to be a trustee lease under that Act.

‘Division 2 Leases

‘80F Trustee (Torres Strait Islander) leases

- ‘(1) A trustee of Torres Strait Islander trust land may lease all or a part of the land under part 3, division 2, subdivision 3.
- ‘(2) For subsection (1), the relevant provisions apply in relation to the leasing of Torres Strait Islander trust land—
- (a) as if a reference in the provisions to transferred land were a reference to Torres Strait Islander trust land; and
 - (b) as if a reference in the provisions to the Minister were a reference to—
 - (i) if the Torres Strait Islander trust land is transferable land—the Minister administering this Act; and

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- (ii) if the Torres Strait Islander trust land is not transferable land—the Minister administering the Land Act; and
 - (c) as if the reference in section 37F(4)(a) to section 37(1)(a) were a reference to section 80F(4)(a); and
 - (d) as if a reference in the provisions to the grantees were a reference to a trustee; and
 - (e) as if the reference in section 37H(3)(a) to a stated standard terms document under the Land Title Act were a reference to a stated mandatory standard terms document under the Land Act; and
 - (f) as if the reference in section 37N(2) to the Land Title Act, section 65(2) were a reference to the Land Act, section 57(5).
- ‘(3) If the consent of the Minister is required in relation to a lease of Torres Strait Islander trust land that is transferable land, the Minister must not give the consent unless satisfied the lease is for the benefit of Torres Strait Islanders particularly concerned with the land.
- ‘(4) The trustee of Torres Strait Islander trust land that is transferable land must not grant a lease over the land for more than 30 years unless—
- (a) the trustee has explained to the Torres Strait Islanders particularly concerned with the land the nature, purpose and effect of the lease; and
 - (b) the Torres Strait Islanders are given a suitable opportunity to express their views on, and are generally in agreement with, the grant of the lease.
- ‘(5) The grant of a lease over Torres Strait Islander trust land in contravention of part 3, division 2, subdivision 3 is void, unless the lease is registered.
- ‘(6) Subsection (5) applies despite any other Act.
- ‘(7) In this section—

[s 87]

relevant provisions means section 37A and part 3, division 2, subdivisions 3 and 4.

‘80G Amending trustee (Torres Strait Islander) lease

- ‘(1) A document of amendment of a registered trustee (Torres Strait Islander) lease must not—
- (a) increase or decrease the area leased; or
 - (b) add or remove a party to the lease; or
 - (c) be lodged after the lease’s term has ended.
- ‘(2) In this section—
- term*, of a trustee (Torres Strait Islander) lease, includes a period of possession under the lease because of—
- (a) the exercise of an option to renew the lease; or
 - (b) a registered document of amendment extending the term of the lease.

‘80H Mortgage of trustee (Torres Strait Islander) lease

- ‘(1) Subject to subsection (2), a lessee of Torres Strait Islander trust land may, under the Land Act, chapter 6, part 4, division 4, mortgage a trustee (Torres Strait Islander) lease.
- ‘(2) For mortgaging a trustee (Torres Strait Islander) lease—
- (a) the Land Act, chapter 6, part 4, division 4, applies—
 - (i) as if the reference in section 345(2) to the Minister were a reference to the trustee; and
 - (ii) as if section 346(1) provided that the mortgagee may offer the lease for sale by public auction or may sell the lease by private contract; and
 - (iii) as if the reference in section 346(3) to a person qualified under the Land Act to hold the lease were a reference to a person entitled under this Act to a grant of the lease; and

-
- (iv) as if section 347 were omitted; and
- (b) section 80B applies as if the reference in section 80B(1) to Torres Strait Islander land were a reference to Torres Strait Islander trust land.

‘80I Surrender of trustee (Torres Strait Islander) lease

‘All or part of a trustee (Torres Strait Islander) lease or a sublease of a trustee (Torres Strait Islander) lease may be surrendered only if each registered mortgagee and registered sublessee of the interest being surrendered has given written agreement to the surrender.

‘Division 3 Other matters

‘80J Trustee to advise about ending of particular lease for commercial purpose

- ‘(1) This section applies if a trustee (Torres Strait Islander) lease for more than 30 years granted by a trustee over transferable land for a commercial purpose ends.
- ‘(2) The trustee must give the registrar written notice of the ending.
- ‘(3) The notice must include particulars of the land that was the subject of the trustee (Torres Strait Islander) lease.

‘80K Recording information about land

- ‘(1) If a lease for more than 30 years for a commercial purpose on transferable land is registered, the registrar must keep records that show the land is no longer transferable land.
- ‘(2) The registrar must keep the records in a way that a search of the appropriate register kept by the registrar will show the land is not transferable land

[s 88]

- ‘(3) If a trustee gives the registrar a notice under section 80J(2) about particular land, the registrar must keep records that show the land is transferable land.
- ‘(4) The registrar must keep the records in a way that a search of the appropriate register kept by the registrar will show the land is transferable land.’.

88 Amendment of s 81 (Crown’s use of Islander land preserved)

Section 81(3), ‘under section 36 or 73’—

omit, insert—

‘, or a person for a private residential purpose, under part 3, division 2’.

89 Amendment of s 83 (Access to land used by Crown)

- (1) Section 83(3), from ‘The grantees’ to ‘subsection (2)’—

omit, insert—

‘The grantees of Torres Strait Islander land, other than a registered native title body corporate, must not agree on a route for subsection (2)(b)’.

- (2) Section 83(4), ‘subsection (2)’—

omit, insert—

‘subsection (2)(b)’.

90 Amendment of s 84 (Application of Mineral Resources Act)

- (1) Section 84(7)—

renumber as section 84(8).

- (2) Section 84—

insert—

‘(7) Subsection (6) applies in relation to Torres Strait Islander land held by a registered native title body corporate as if the reference in the subsection to Torres Strait Islanders particularly concerned with the land were a reference to the registered native title body corporate that holds the land.’

91 Amendment of s 129 (Rights of access to interests preserved)

(1) Section 129(3), from ‘The grantees’ to ‘subsection (2)’—

omit, insert—

‘The grantees of Torres Strait Islander land, other than a registered native title body corporate, must not agree on a route for subsection (2)(a)’.

(2) Section 129(4), ‘subsection (2)’—

omit, insert—

‘subsection (2)(a)’.

92 Amendment of s 131 (Delegation by Minister)

Section 131, ‘section 25,’—

omit, insert—

‘section 13B, 25, 25A,’.

93 Insertion of new ss 133A and 133B

After section 133—

insert—

‘133A Dealing with particular trust property

‘(1) This section applies to a trustee, other than the State, if the trustee receives an amount (the *lease amount*) paid under section 37K for the value of a dwelling.

‘(2) The trustee must ensure an amount equal to the lease amount is used by the trustee for housing services for Torres Strait Islanders concerned with the land held by the trustee.

[s 94]

‘(3) In this section—

housing service means—

- (a) providing housing to an individual for residential use; or
- (b) any of the following kinds of service—
 - (i) tenant advisory services;
 - (ii) tenant advocacy services;
 - (iii) home maintenance services;
 - (iv) home modification services;
 - (v) housing-related referral and information services.

trustee means—

- (a) the grantees of Torres Strait Islander land; or
- (b) a trustee, under the Land Act, of Torres Strait Islander trust land.

‘133B Application of Residential Tenancies Act 1994

‘The *Residential Tenancies Act 1994* does not apply to a lease granted under this Act for private residential purposes.’.

94 Amendment of s 135 (Regulation-making power)

Section 135(2)—

insert—

- ‘(i) the minimum annual rental amount payable by the State under a lease granted to the State under this Act.’.

95 Insertion of new pt 10, div 2

After section 136—

insert—

**‘Division 2 Transitional provision for Aboriginal
and Torres Strait Islander Land
Amendment Act 2008**

‘137 Interests in Torres Strait Islander land continue

‘If Torres Strait Islander land was, immediately before the commencement of this section, subject to an interest granted or otherwise created under section 36 or 73 as in force before the commencement, the interest continues in force.’

**Part 8 Minor and consequential
amendments**

96 Acts amended in schedule

- (1) The schedule amends the Acts it mentions.
- (2) However, subsection (1) does not apply in relation to a particular Act if another provision of this Act states that the schedule amends the particular Act.

Schedule **Minor and consequential amendments**

sections 3, 73 and 96

Aboriginal Land Act 1991

1 **Section 14(b), ‘by the Crown’—**

omit.

2 **Sections 18(1)(a) and (2), 20, 21(1), 24, 25, 42 and 80, ‘Crown’—**

omit, insert—

‘State’.

3 **Before section 19—**

insert—

‘Division 4A Available State land’.

4 **Part 2, divisions 4A and 5—**

renumber as part 2, divisions 5 and 6.

5 **Sections 25(d), (e) and (f), 30, 34(2)(a)(ii), 60(6), 61(3), 62(3), 66, 109(5), 116(4) and 117(9), ‘Land Act 1994’—**

omit, insert—

‘Land Act’.

6 **Section 34(1), ‘Crown’—**

omit, insert—

‘State or Commonwealth that is not registered’.

-
- 7 Section 34(3), ‘Land Title Act 1994’—**
omit, insert—
‘Land Title Act’.
- 8 Section 36, ‘Island’—**
omit.
- 9 Section 46(3), ‘Island’—**
omit.
- 10 Part 5, division 5, heading—**
omit.
- 11 Sections 83F and 83FA—**
renumber as sections 83E and 83F.
- 12 Part 6, heading—**
omit, insert—
- ‘Part 6 Occupation and use of
Aboriginal land by the State or
Commonwealth’.**
- 13 Section 133, heading, ‘Crown’—**
omit, insert—
‘State or Commonwealth’.
- 14 Section 133, ‘the Crown in right of’—**
omit.

Schedule

15 Section 137(2)(b), ‘section 83’—

omit, insert—

‘section 132A’.

16 Part 10, heading ‘provision’—

omit, insert—

‘provisions’.

17 Section 139(1), from ‘the commencement’—

omit, insert—

‘18 March 2005.’.

18 Part 11, heading—

omit, insert—

‘Part 11 Transitional provisions

**‘Division 1 Transitional provision for Audit
Legislation Amendment Act 2006’.**

19 After section 143, as inserted by this Act—

insert—

‘Schedule Dictionary

section 3’.

Torres Strait Islander Land Act 1991

- 1** Sections 16(1)(c), 22(c), 28, 31(2)(b) and (3), 32(1)(b), 33(1)(a) and (2), 57(6), 58(3), 59(3), 61(1)(d), 63, 70(4), 106(5), 113(4) and 114(9), '*Land Act 1994*'—

omit, insert—

'Land Act'.

- 2** Section 32(3), '*Land Title Act 1994*'—

omit, insert—

'Land Title Act'.

- 3** Section 61(3)(b), from 'appropriate register'—

omit, insert—

'appropriate register.'

- 4** Part 10, heading—

omit, insert—

'Part 10 Transitional provisions

'Division 1 Transitional provision for Audit Legislation Amendment Act 2006'.

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