



Queensland

# **Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014**

**Act No. 45 of 2014**





Queensland

# Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014

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## Queensland

### **Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014**

#### **Act No. 45 of 2014**

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**An Act to amend the Aboriginal Land Act 1991, the Aboriginal Land Regulation 2011, the Land Act 1994, the Land Valuation Act 2010, the Torres Strait Islander Land Act 1991 and the Torres Strait Islander Land Regulation 2011 for particular purposes, to repeal the Aurukun and Mornington Shire Leases Act 1978, and to make minor and consequential amendments of other legislation as stated in schedule 1**

**[Assented to 5 September 2014]**

**The Parliament of Queensland enacts—**

## **Chapter 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014*.

### **2 Commencement**

- (1) Chapter 2, other than part 6, and schedule 1, part 1, commence on 1 January 2015.
- (2) Chapter 2, part 6, and schedule 1, part 2, commence on a day to be fixed by proclamation.
- (3) Also, sections 60A and 61D commence on a day to be fixed by proclamation.

## **Chapter 2 Aboriginal and Torres Strait Islander Land amendments**

### **Part 1 Amendment of Aboriginal Land Act 1991**

#### **3 Act amended**

This part amends the *Aboriginal Land Act 1991*.

*Note—*

See also the amendments in schedule 1, parts 1 and 2.



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#### **4 Amendment of s 10 (Lands that are transferable lands)**

Section 10(2)—

*omit, insert—*

- (2) However, land mentioned in subsection (1) ceases to be transferable land to the extent either of the following applies—
  - (a) it is taken, under the Acquisition Act, by a constructing authority;
  - (b) it is available land approved for a grant in fee simple by the chief executive under section 32C.
- (3) Also, land mentioned in subsection (1) is not transferable land to the extent it is the subject of any of the following—
  - (a) a declaration in force under section 16;
  - (b) an offer to allocate available land under section 32T, while the offer is in force;
  - (c) an allocation process for available land under part 2A, division 6, until the process ends.

#### **5 Insertion of new pt 2A**

After part 2—

*insert—*

### **Part 2A Providing freehold**

#### **Division 1 Preliminary**

##### **32A Overview**

This part—

- (a) allows available land to be granted in freehold under the Land Act to an eligible person for the available land; and
- (b) requires—
  - (i) the trustee of freehold option land to consult on and make a freehold instrument; and
  - (ii) the local government for the area in which the land is situated to attach the freehold instrument to its planning scheme; and
- (c) sets out how, and to whom, the trustee may allocate available land depending on whether the person is an eligible person for the land.

## **Division 2      Basic concepts**

### **32B Definitions for pt 2A**

In this part—

*allocation method*, for available land, means—

- (a) the auction, ballot or tender to be used to allocate the available land; and
- (b) the conditions of the auction, ballot or tender.

*allocation notice* see section 32Z(1)(a).

*allocation process*, for available land, means—

- (a) if there is an interest holder for the available land—the process stated in division 5; or
- (b) otherwise—the process stated in division 6.

***appeal period***, for available land, means the period starting on the day a person receives an information notice in relation to the available land and ending—

- (a) if no notice of appeal is filed in relation to the available land—on the last day for making an appeal; or
- (b) if a notice of appeal is filed in relation to the available land—when the appeal is finally decided.

***available land*** see section 32D(3).

***closing day***, for division 6, see section 32ZA(1)(d).

***eligibility criteria*** see section 32D(6)(a).

***eligible person***, for available land, means a person who meets the eligibility criteria for the land and is—

- (a) an Aboriginal person or Torres Strait Islander; or
- (b) the spouse or former spouse of—
  - (i) a person mentioned in paragraph (a); or
  - (ii) an Aboriginal person or Torres Strait Islander who is deceased.

***freehold instrument*** means a freehold schedule and the freehold policy for the freehold schedule.

***freehold option land*** means land in the Aurukun Shire Council's area, the Mornington Shire Council's area or an indigenous local government's area if—

- (a) any of the following entities are the trustee of the land—
  - (i) the Aurukun Shire Council;

- (ii) the Mornington Shire Council;
- (iii) an indigenous local government;
- (iv) a land trust;
- (v) another entity holding the land under this Act; and

(b) the land is in an urban area.

***freehold policy***, for a freehold schedule, see section 32D(5).

***freehold schedule***—

- (a) means a schedule made as mentioned in section 32D(1) by the trustee of freehold option land; and
- (b) includes a model freehold schedule.

***indigenous local government*** see the *Local Government Act 2009*, schedule 4.

***interest holder***, for available land, means a person who holds any of the following interests in the land—

- (a) a registered lease granted under this Act or the Land Act, other than a townsite lease;
- (b) a lease entitlement under the new Land Holding Act;
- (c) a 1985 Act granted lease or a new Act granted lease under the new Land Holding Act;
- (d) a registered sublease, including a registered lease of a townsite lease;
- (e) a residential tenancy agreement for a social housing dwelling situated on the available land;

(f) a right to occupy or use the available land under section 199.

*model freehold instrument*, for division 4, subdivision 2, see section 32F.

*model freehold schedule* see section 32D(4).

*native title holder* has the same meaning as it has in the Commonwealth Native Title Act.

*offer* means an offer to an eligible person by a trustee to allocate available land to the person under section 32T.

*planning scheme* see the *Sustainable Planning Act 2009*, section 79.

*probity advisor* see section 32ZB(1).

*urban area* means an area identified as an area intended for either urban purposes or future urban purposes on a map in a planning scheme used to show zones.

*urban purposes* means purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes.

## **Division 3            Approval for grant of                                  available land**

### **32C Approval for grant of available land**

- (1) The trustee of freehold option land may apply to the chief executive, in the approved form, for available land to be granted in fee simple under the Land Act to the eligible person who has been allocated the available land under this part.
- (2) The trustee may make the application only if—

- (a) there is a freehold instrument for the available land; and
  - (b) the trustee has followed the allocation process for the available land.
- (3) Information in the application must, if the approved form requires, be verified by a statutory declaration.
- (4) In deciding the application, the chief executive—
  - (a) must be reasonably satisfied—
    - (i) agreements or arrangements appropriate to granting the available land as freehold have been entered into or are in place, including, for example, in relation to the following—
      - (A) native title;
      - (B) any social housing dwelling on the available land;
      - (C) road access to the available land; and
    - (ii) there is a lot on plan description for the available land; and
    - (iii) if the available land is allocated under section 32ZF—a probity advisor has certified the probity of the allocation process for the available land; and
  - (b) may consider any other matter the chief executive reasonably considers relevant.
- (5) If the chief executive approves the application, the Governor in Council may grant the land in fee simple under the Land Act.

*Note—*

See the Land Act, section 14.

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## Division 4      Freehold instruments

### Subdivision 1    Trustee may make freehold instrument

#### 32D Trustee may make freehold instrument

- (1) The trustee of freehold option land may, by resolution, make a schedule identifying the freehold option land available to be granted in freehold.
- (2) The freehold schedule must identify the freehold option land so the boundaries of the land are capable of being decided.
- (3) Freehold option land identified in a freehold schedule is *available land*.
- (4) A freehold schedule that only identifies freehold option land of a type prescribed by regulation for this subsection is a *model freehold schedule*.
- (5) If the trustee makes a freehold schedule, the trustee must, by resolution, make a policy (a *freehold policy*) at the same time to help the trustee in implementing the freehold schedule.
- (6) The freehold policy must be in the approved form and state—
  - (a) the criteria (the *eligibility criteria*) for participating in the allocation process for available land; and
  - (b) if there is no interest holder for available land—the allocation method for available land; and
  - (c) the sale price of available land and the costs to be recovered from the sale price; and

- (d) how the community will be consulted about the allocation process for available land; and
- (e) how the trustee will deal with interests in, or in relation to, available land, before it is allocated; and
- (f) the social and financial implications for the community in providing freehold; and
- (g) the social and financial implications for any eligible person who is granted freehold; and
- (h) the potential to attract investment and new members into the community; and
- (i) any other matter prescribed by regulation.

### **32E Trustee may have only 1 freehold instrument**

- (1) The trustee of freehold option land may have only 1 freehold instrument for the land.
- (2) However, if the trustee is an indigenous regional council, the trustee may have more than 1 freehold instrument only if the freehold instruments do not overlap in relation to available land.
- (3) In this section—  
*indigenous regional council* see the *Local Government Act 2009*, schedule 4.

## **Subdivision 2 Making, amending or repealing freehold instruments**

### **32F Definition for sdiv 2**

In this subdivision—



*model freehold instrument* means a model freehold schedule and the freehold policy for the model freehold schedule.

### **32G Application of sdiv 2**

This subdivision states how a freehold instrument may be made, amended or repealed.

### **32H Minister to make and publish guideline**

- (1) The Minister must make, and publish on the department's website, a guideline about the process for—
  - (a) attaching a freehold instrument to a local government's planning scheme; and
  - (b) amending or repealing a freehold instrument.
- (2) The guideline must make provision for a local government to do all of the following things before attaching a freehold instrument to its planning scheme—
  - (a) publish a notice about the freehold instrument in a newspaper or other publication circulating generally in the local government's area at least once;
  - (b) carry out public consultation about the freehold instrument;
  - (c) give the Minister a notice summarising the matters raised during the public consultation and stating how the local government or the trustee dealt with the matters.

### **32I Trustee to consult**

- (1) Before the trustee of freehold option land starts the process for making a freehold instrument in relation to freehold option land, the trustee must decide on the way (the *decided way*) in which the trustee will consult about the making of the freehold instrument.

*Note—*

See section 179.

- (2) The purpose of the consultation is to enable the trustee to be reasonably satisfied it is appropriate for the freehold option land to be granted in freehold.
- (3) The decided way must—
  - (a) require the trustee to consult with the native title holders for the freehold option land proposed to be included in the freehold schedule; and
  - (b) include how the trustee will notify the community about the freehold instrument; and
  - (c) allow a suitable and sufficient opportunity for each person the trustee consults to express their views about the freehold instrument.
- (4) The trustee must—
  - (a) consult on the freehold instrument in the decided way; and
  - (b) keep records about the consultation showing the consultation was consistent with the decided way.

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### **32J Trustee to give freehold instrument to Minister or local government**

- (1) This section applies if, after consulting on a proposed freehold instrument, the trustee decides to continue to make a freehold instrument.
- (2) The trustee must—
  - (a) for a model freehold instrument—give the model freehold instrument to the Minister for approval; or
  - (b) otherwise—ask, by notice, the local government for the area in which the proposed freehold option land is situated to attach the freehold instrument to the local government’s planning scheme.
- (3) In this section—

*proposed freehold option land* means freehold option land proposed to be included in a freehold schedule.

### **32K Local government to follow process in guideline**

- (1) This section applies if a local government receives a notice under section 32J(2)(b) in relation to a freehold instrument.
- (2) The local government must follow the process stated in the guideline made by the Minister under section 32H.
- (3) After the process is completed, the local government must give the freehold instrument to the Minister for approval.

### **32L Minister may approve**

- (1) If the Minister is given a freehold instrument for approval, the Minister may—
  - (a) approve the freehold instrument; or
  - (b) approve the freehold instrument on the condition the local government or trustee for the available land amends the freehold instrument in the way the Minister directs; or
  - (c) refuse to approve the freehold instrument.
- (2) In making a decision under subsection (1) about a freehold instrument, other than a model freehold instrument, the Minister must have regard to information given to the Minister by the local government for the freehold instrument after the local government has completed the process under section 32K.
- (3) The Minister may approve a freehold instrument if reasonably satisfied—
  - (a) for a model freehold instrument—the model freehold schedule only includes freehold option land of a type prescribed by regulation for section 32D(4); and
  - (b) the trustee has consulted with the native title holders for the freehold option land proposed to be included in the freehold schedule; and
  - (c) the consultation was consistent with the way decided by the trustee under section 32I.
- (4) The Minister must give notice of the decision under subsection (1) to the local government and the trustee for the freehold instrument.
- (5) If the Minister approves a freehold instrument, the local government must—

- (a) attach the freehold instrument to its planning scheme; and
- (b) publish, in a newspaper or other publication circulating generally in the local government's area at least once, a notice stating the freehold instrument is approved and attached to its planning scheme.

### **32M Amending or repealing freehold instrument**

A freehold instrument attached to a local government's planning scheme may be amended or repealed by a trustee only by following the process stated in the guideline made by the Minister under section 32H.

## **Subdivision 3 Other provisions about freehold instruments**

### **32N Effect of freehold instrument**

A freehold instrument has effect on and after the day the local government for the area in which the available land is situated attaches the freehold instrument to the local government's planning scheme.

### **32O Relationship with planning scheme**

- (1) Attaching a freehold instrument to a planning scheme is not an amendment of the planning scheme.
- (2) A freehold instrument attached to a planning scheme—
  - (a) does not form part of the planning scheme; and

- (b) is the responsibility of the trustee for the available land; and
- (c) if the planning scheme is amended or repealed and remade (with or without modification)—may be attached without amendment by the local government to the amended or remade planning scheme.

## **Division 5            Allocation process for available land—interest holder**

### **32P Application of div 5**

This division states the allocation process for available land if there is an interest holder for the available land.

### **32Q Application for available land**

A person who is an eligible person and an interest holder for available land may apply, in the approved form, to the trustee of the land for the land to be granted to the person.

### **32R Dwelling on available land**

- (1) This section applies if a dwelling is situated on available land the subject of the application.
- (2) The trustee must give notice about the application to the housing chief executive.
- (3) Within 28 days after receiving the notice, the housing chief executive must give the trustee a notice (a *dwelling notice*) stating whether—
  - (a) the dwelling is a social housing dwelling;  
and

- (b) if the dwelling is a social housing dwelling—the housing chief executive consents to the applicant making the application.
- (4) In deciding whether to consent to the applicant making the application, the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be social housing.
- (5) If the dwelling notice states the housing chief executive consents to the applicant making the application, the trustee must decide the value of the dwelling by using the valuation methodology agreed between the trustee and the housing chief executive.
- (6) The housing chief executive must, if asked, give a person a copy of the valuation methodology.

### **32S Decision on application**

- (1) The trustee must consider the application and decide to approve or refuse the application.
- (2) However, if a dwelling is situated on the available land the subject of the application, the trustee—
  - (a) must not decide the application until the trustee receives a notice from the housing chief executive under section 32R(3); and
  - (b) must refuse the application if the notice states the dwelling is a social housing dwelling and the housing chief executive does not consent to the applicant making the application.
- (3) The trustee may approve the application only if the trustee is reasonably satisfied—

- (a) the applicant is an eligible person for the available land the subject of the application; and
  - (b) if there is more than 1 interest holder for the available land, either—
    - (i) all interest holders for the available land have made the application; or
    - (ii) all interest holders for the available land have consented to the applicant making the application; and
  - (c) if there is a mortgage over the available land—the mortgagee has consented to the applicant making the application.
- (4) If the trustee is reasonably satisfied of the matters mentioned in subsection (3), the trustee must approve the application.
- (5) If the trustee decides to refuse the application, the trustee must give the applicant an information notice for the decision.

### **32T Offer to allocate available land**

- (1) If the trustee approves the eligible person's application, the trustee must offer, in writing, to allocate the available land to the eligible person.
- (2) However, the trustee may make the offer only after the appeal period for the available land.
- (3) If there is a social housing dwelling on the available land, the trustee must make the offer subject to a condition that the eligible person must purchase the dwelling at the value decided under section 32R(5).



- (4) The trustee may make the offer subject to any other conditions the trustee reasonably considers necessary.
- (5) In deciding whether to impose conditions on the offer under subsection (4), the trustee must have regard to the freehold instrument.
- (6) If the trustee decides to impose conditions on the offer, other than a condition mentioned in subsection (3), the trustee must give the eligible person an information notice for the decision.
- (7) The trustee must give notice to the chief executive in the approved form about the offer.

### **32U Acceptance and refusal of offer**

- (1) On receipt of the trustee's offer, the eligible person may accept or refuse the offer by notice given to the trustee.
- (2) However, if the eligible person does not give notice to the trustee within 45 days after the eligible person receives the offer, the eligible person is taken to have refused the offer.
- (3) If the eligible person refuses the offer, the trustee must give notice about the refusal to the chief executive.

### **32V Cooling-off period to apply to acceptance**

- (1) A *cooling-off period*, for accepting an offer, is a period of 5 business days—
  - (a) starting on the day the eligible person gives notice about accepting the offer to the trustee; and
  - (b) ending at 5p.m. on the fifth business day after the day mentioned in paragraph (a).

- (2) An eligible person who accepts, or proposes to accept, an offer may give written notice to the trustee—
  - (a) waiving the cooling-off period for accepting the offer; or
  - (b) shortening the cooling-off period for accepting the offer.
- (3) An eligible person who has not waived the cooling-off period for accepting an offer may rescind or revoke the acceptance by giving a signed notice of rescission or revocation to the trustee at any time during—
  - (a) the cooling-off period; or
  - (b) if the period has been shortened under subsection (2)(b), the shortened period.
- (4) If the acceptance is rescinded or revoked under subsection (3), the trustee must, within 14 days, refund any deposit paid under the acceptance to the eligible person.
- (5) An amount payable to the eligible person under subsection (4) is recoverable from the trustee as a debt.

### **32W When offer ends**

An offer ends when the first of the following happens—

- (a) the eligible person refuses the offer under section 32U;
- (b) the eligible person gives notice of rescission or revocation of acceptance to the trustee under section 32V;
- (c) the eligible person dies;

- (d) the eligible person is no longer an interest holder for the available land;
- (e) if the offer includes a condition about when the offer ends—the day the offer ends under the condition.

### **32X Allocation of available land to eligible person**

- (1) After complying with all conditions of the offer, the eligible person must give notice to the trustee.
- (2) If, after receiving the notice, the trustee is reasonably satisfied the eligible person has complied with all conditions of the offer, the trustee must allocate the available land to the eligible person.

*Note—*

Available land may be granted in freehold to an eligible person who is allocated the available land. See section 32C.

## **Division 6                      Allocation process for available land if no interest holder**

### **32Y Application of div 6**

This division states the allocation process for available land if there is no interest holder for the available land.

*Note—*

A freehold instrument states the allocation method for available land. See section 32D(6).

### **32Z Public notice of intention to allocate available land**

- (1) Before allocating available land, the trustee of the available land must publish notice of the trustee's intention to allocate the available land—
  - (a) by gazette notice (the *allocation notice*); and
  - (b) in a newspaper or other publication circulating generally in the area in which the land is situated at least once.
- (2) The trustee may act under subsection (1) only if—
  - (a) there is a lot on plan description for the available land; and
  - (b) there is dedicated access to the available land; and
  - (c) native title over the available land has been, or will be, surrendered or extinguished; and
  - (d) the trustee has given notice to the chief executive about the trustee's intention to allocate the available land.

### **32ZA Information to be included in allocation notice**

- (1) The allocation notice must include the following information for the available land—
  - (a) the eligibility criteria;
  - (b) the allocation method;
  - (c) the conditions applying to an offer of the available land;
  - (d) the day (the *closing day*) applications to participate in the allocation process close;

- (e) the time and place for making applications;
- (f) the reserve or purchase price;
- (g) the deposit, if any, to be paid to participate in the allocation process and the proposed date, time and place for payment of the deposit;
- (h) the proposed date, time and place where the available land will be allocated;

*Note—*

After the appeal period for the available land, the trustee must give notice of the date, time and place where the available land will be allocated. See section 32ZD.

- (i) the name and contact details of the probity advisor appointed.
- (2) The closing day must be at least 30 days after the allocation notice is gazetted.

### **32ZB Probity advisor**

- (1) The trustee must appoint an appropriately qualified and independent person (a ***probity advisor***) to ensure the probity of the allocation process for the available land.
- (2) The probity advisor must—
  - (a) monitor the allocation process for the available land; and
  - (b) advise the trustee on matters relating to the probity of the allocation process; and
  - (c) prepare and give to the trustee a report about the probity of the allocation process and, if reasonably satisfied the allocation process was undertaken correctly, certify that fact.

### **32ZC Decision on application to participate in allocation process**

- (1) As soon as practicable after the closing day, the trustee must decide whether each applicant is an eligible person for the available land and give each applicant a notice about the decision.
- (2) If the trustee decides an applicant is an eligible person for the available land, the trustee must allow the applicant to participate in the allocation process for the available land.
- (3) If the trustee decides the applicant is not an eligible person for the available land, the trustee—
  - (a) must give the applicant an information notice for the decision; and
  - (b) must not allow the applicant to participate in the allocation process for the available land.

### **32ZD Notice of allocation of available land**

- (1) After the appeal period for the available land, the trustee must give each applicant who is able to participate in the allocation process for the available land a notice stating—
  - (a) the date, time and place where the available land will be allocated (the *allocation date*); and
  - (b) if the allocation notice requires a deposit to be paid—the date by which the deposit must be paid; and
  - (c) the applicant must give notice to the trustee before the allocation date if the applicant no longer wishes to participate in the allocation process.

- (2) The date mentioned in subsection (1)(b) must be—
  - (a) at least 30 days after the notice under this section is given; and
  - (b) before the allocation date.
- (3) If the applicant does not pay the deposit by the date mentioned in subsection (1)(b), the applicant must not participate in the allocation process.

### **32ZE How and when trustee may allocate**

The trustee may allocate the available land only—

- (a) after the end of the appeal period; and
- (b) by using the allocation method consistent with all of the following for the available land—
  - (i) the freehold instrument;
  - (ii) the allocation notice;
  - (iii) the probity advisor's advice.

### **32ZF Allocation of available land**

The trustee must allocate the available land to the eligible person who is the winner under the allocation method used to allocate the available land.

*Note—*

Available land may be granted in freehold to an eligible person who is allocated the available land. See section 32C.

### **32ZG Deposits**

The trustee must refund the deposit of each unsuccessful applicant after the trustee allocates the available land.

## **Division 7            Miscellaneous**

### **32ZH Continuation of mortgages and easements**

A deed of grant for available land approved to be granted in fee simple under section 32C is subject to all registered mortgages and easements to which the available land was subject immediately before it was granted, and in the same priorities.

### **32ZI Cancellation of deeds of grant in trust, reserves etc.**

- (1) This section applies if—
  - (a) available land is subject to any of the following (each an *old tenure*) when the trustee for the land applies for the land to be granted in fee simple under section 32C—
    - (i) a deed of grant in trust;
    - (ii) a reserve dedicated under the Land Act;
    - (iii) a townsite lease;
    - (iv) a lease granted to the Aurukun Shire Council or the Mornington Shire Council under the *Aurukun and Mornington Shire Leases Act 1978*;
    - (v) an interest mentioned in section 32B, definition *interest holder*; and



(b) a deed of grant in fee simple (a *new tenure*)  
for the available land is registered.

(2) The old tenure is cancelled to the extent of the  
new tenure.

**6 Amendment of s 81 (Resource reservations under other Acts)**

Section 81, ‘and an Aboriginal lease’—  
*omit.*

**7 Amendment of s 97 (Power to deal with Aboriginal land)**

(1) Section 97, from ‘Subject’ to ‘part 10, the’—  
*omit, insert—*

(2) The

(2) Section 97—

(1) This section applies subject to this part and parts  
2A and 10.

(3) The lessee of a townsite lease may grant a licence  
for the use of all or a part of the lease land.

**8 Amendment of pt 9, div 1, hdg (Trustee’s power to deal with Aboriginal land and Ministerial consent)**

Part 9, division 1, heading, ‘and Ministerial consent’—  
*omit.*

**9 Omission of ss 98 and 99**

Sections 98 and 99—  
*omit.*

**10 Omission of pt 9, div 3 (Grant of licences)**

Part 9, division 3—

*omit.*

**11 Amendment of s 116 (Particular dealings in Aboriginal land void)**

(1) Section 116(1), ‘part 10’—

*omit, insert—*

part 2A or 10

(2) Section 116(1), note—

*omit.*

**12 Replacement of pt 10 (Leasing of Aboriginal Land)**

Part 10—

*omit, insert—*

**Part 10 Leasing of Aboriginal  
land**

**Division 1 Definitions**

**119 Definitions for pt 10**

In this part—

*home ownership lease* see sections 120(2) and 121(2).

*lessee* means—

(a) for a part 10 lease granted under a townsite lease—the sublessee under the townsite lease; or

- (b) for another part 10 lease—the lessee under the lease.

*lessor* means—

- (a) for a part 10 lease granted under a townsite lease—the lessee of the townsite lease; or
- (b) for another part 10 lease—the trustee of the lease land.

*part 10 lease* means a lease granted under this part.

*townsite lease* see section 120(3).

## **Division 2            Grant of leases for                                   Aboriginal land**

### **120 Grant of lease by trustee of Aboriginal land**

- (1) The trustee of Aboriginal land may grant a lease over all or a part of the land for not more than 99 years.
- (2) Without limiting subsection (1), the trustee of Aboriginal land may grant a lease (a *home ownership lease*) over all or a part of the land for 99 years to any of the following for residential use—
  - (a) an Aboriginal person;
  - (b) a person who is not an Aboriginal person if—
    - (i) the person is the spouse or former spouse of—
      - (A) a person mentioned in paragraph (a); or

- (B) a person mentioned in paragraph (a) who is deceased; or
  - (ii) the lease supports another part 10 lease granted to the person.
- (3) The trustee of Aboriginal land may grant a perpetual lease (a *townsite lease*) over all or a part of the land if—
  - (a) the land or part is township land; and
  - (b) the lease is granted to a local government.

### **121 Grant of lease by lessee of townsite lease**

- (1) The lessee of a townsite lease may grant a lease for not more than 99 years over all or a part of the lease land.
- (2) Without limiting subsection (1), the lessee of a townsite lease may grant a lease (also a *home ownership lease*) over all or a part of the lease land for 99 years to any of the following for residential use—
  - (a) an Aboriginal person;
  - (b) a person who is not an Aboriginal person if—
    - (i) the person is the spouse or former spouse of—
      - (A) a person mentioned in paragraph (a); or
      - (B) a person mentioned in paragraph (a) who is deceased; or
    - (ii) the lease supports another part 10 lease granted to the person.

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## **Division 3            Common provisions for part 10 leases**

### **122 General conditions of particular leases**

- (1) A part 10 lease, other than a townsite lease, may include any of the following conditions—
  - (a) a stated standard terms document under the Land Title Act forms part of the lease;
  - (b) the lease must not be transferred without the lessor's prior written consent;
  - (c) an interest under the lease, other than a mortgage of the lease, must not be created without the lessor's prior written consent.
- (2) If a part 10 lease includes a condition mentioned in subsection (1)(b) or (c), the lessor must not unreasonably withhold consent to the transfer or the creation of an interest under the lease.
- (3) A part 10 lease may be mortgaged without the consent of the lessor.
- (4) Subject to subsection (3), this section does not limit the conditions that may be imposed on a part 10 lease.

### **123 Option to renew particular lease**

- (1) A part 10 lease granted under section 120(1) or 121(1) may include an option to renew the lease.
- (2) The term of the renewed lease must not be more than the initial term of the lease.

## **124 Transfer of lease**

A part 10 lease must not be transferred to a person who, under this Act, would not be entitled to a grant of the lease.

## **125 Lease etc. to be registered**

- (1) The lessee of a part 10 lease must register the lease and an amendment, surrender or transfer of the lease.
- (2) Despite the Land Title Act, section 65(2), an instrument of lease for Aboriginal land must include a plan of survey identifying the lease land.
- (3) Subsection (2) does not apply to a lease entered into only in relation to an area completely within a building.

## **Division 4 Home ownership leases**

### **Subdivision 1 Conditions and requirements**

#### **126 General conditions and requirements**

- (1) A home ownership lease is subject to all of the following conditions—
  - (a) the annual rental under the lease is the amount, of not more than \$1, decided by the lessor;
  - (b) 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 lessor using at least 1 of the following—
- (i) a valuation methodology decided by the chief executive;
  - (ii) the benchmark purchase price, as prescribed by regulation, for land in the part of the State in which the lease land is situated;
- (c) the lease land must be used primarily for residential use;
- (d) if a dwelling for residential use is not situated on the lease land when the lease is granted—the lessee must ensure a dwelling for residential use is built on the land within 8 years after the lease is granted.
- (2) A lessor may grant a home ownership lease only if the amount equal to the value of the lease land decided under subsection (1)(b) has been paid to the lessor.
- (3) The chief executive—
- (a) must, if asked, give a person a copy of the valuation methodology mentioned in subsection (1)(b)(i); and
  - (b) may make the valuation methodology available for inspection on the department's website.
- (4) However, the value of the lease land under subsection (1)(b) must be taken to be nil if—
- (a) the lessee is the recipient of a hardship certificate under the new Land Holding Act; and
  - (b) the certificate has not previously been used under this section, whether or not the land

identified in the certificate is the same as the lease land.

### **127 Additional requirement if dwelling situated on land**

- (1) This section applies if—
  - (a) a lessor proposes to grant a home ownership lease; and
  - (b) a dwelling is situated on the lease land.
- (2) The lessor must give the housing chief executive notice of the lessor's intention to grant the lease.
- (3) Within 28 days after receiving the notice, the housing chief executive must give the lessor a notice stating whether or not the dwelling is a social housing dwelling.
- (4) The lessor must not grant the lease before receiving the notice under subsection (3).
- (5) This section and section 128 do not limit section 126.

### **128 Additional conditions and requirements for social housing dwelling**

- (1) This section applies if the notice under section 127(3) states the dwelling is a social housing dwelling.
- (2) Before the lease is granted, the lessor must decide the value of the dwelling by using a valuation methodology agreed between the lessor and the housing chief executive.
- (3) 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 (2).



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- (4) The lessor may grant the lease only if—
- (a) the housing chief executive has given written approval that the grant may include the sale of the dwelling; and
  - (b) the amount equal to the value of the dwelling decided under subsection (2) has been paid to the lessor.
- (5) In considering whether to give the approval mentioned in subsection (4)(a), the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be social housing.
- (6) If the lessor grants the lease, and within 28 days after the lease is registered, the lessor must give the housing chief executive—
- (a) a notice stating—
    - (i) the day the lease was registered; and
    - (ii) the names of the parties to the lease; and
  - (b) evidence showing the consideration for the lease under subsection (3) and section 126(1)(b) has been paid to the lessor.

*Note—*

An amount paid under subsection (3) for the value of a dwelling must be used by the lessor as required under section 288.

## **Subdivision 2 Forfeiture**

### **129 Grounds for forfeiture**

A home ownership lease may be forfeited only if—

- (a) the lessee breaches either of the following conditions and fails to remedy the breach within 6 months after receiving notice of the breach from the lessor—
  - (i) a condition of the lease mentioned in section 126(1)(d);
  - (ii) another condition if the lessor reasonably considers a breach of the condition is of a serious nature and warrants forfeiture of the lease; or
- (b) the lessee acquired the lease by fraud.

### **130 Referral to Land Court for forfeiture**

- (1) Before a home ownership lease is forfeited, the lessor must refer the proposed forfeiture to the Land Court to decide whether the lease may be forfeited.
- (2) At least 28 days before the lessor refers the proposed forfeiture to the Land Court, the lessor must give notice of the proposed referral to the lessee and any mortgagee of the lease.
- (3) The notice must state the grounds on which the lessor reasonably considers the lease may be forfeited.
- (4) If the lessor refers the proposed forfeiture to the Land Court, the lessor must file a copy of the notice in the court.
- (5) In deciding whether the lease may be forfeited, the Land Court must have regard to—
  - (a) the grounds stated in the notice under subsection (3); and
  - (b) if the proposed forfeiture is 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.

- (6) A decision by the Land Court that the lease may be forfeited may be subject to conditions.

### **131 Lessor's options if Land Court decides lease may be forfeited**

- (1) If the Land Court decides a home ownership lease may be forfeited, the lessor may—
  - (a) if the proposed forfeiture is subject to conditions decided by the court—forfeit the lease under this subdivision if the conditions of forfeiture are satisfied; or
  - (b) otherwise—forfeit the lease under this subdivision.
- (2) If the proposed forfeiture is because of a breach of a lease condition, the lessor may decide not to forfeit the lease and instead allow the lease to continue subject to the lease being amended to include conditions agreed between the lessor and the lessee.

### **132 Notice and effect of forfeiture**

- (1) If the lessor forfeits a home ownership lease, the lessor must, within 60 days after the Land Court makes its decision about forfeiture of the lease, give notice that the lease is forfeited to—
  - (a) the lessee and any mortgagee of the lease; and
  - (b) the registrar of titles.
- (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.

### **133 Extension of term of lease if proposed forfeiture**

- (1) This section applies to a home ownership lease if—
  - (a) a proposed forfeiture of the lease has been referred to the Land Court; and
  - (b) after the referral but before the Land Court decides on the matter, the term of the lease would, but for subsection (2), end.
- (2) The term of the lease is taken to continue until—
  - (a) if the lease is forfeited—the forfeiture of the lease takes effect as mentioned in section 132(3); or
  - (b) otherwise—the end of 60 days after the Land Court makes its decision.
- (3) Subsection (2) applies to the lease despite the provisions of the lease and any other provision of this Act.

## **Subdivision 3 Renewal**

### **134 Application to renew lease**

- (1) The lessee under a home ownership lease may apply in writing to the lessor to renew the lease.
- (2) The application must—
  - (a) state the name of the lessee; and
  - (b) include information to identify the lease.

### **135 Notice of expiry of lease**

- (1) This section applies if the lessee under a home ownership lease has not, under section 134, applied for renewal of the lease at least 2 years before the term of the lease ends.
- (2) At least 1 year before the term of the lease ends, the lessor must give the lessee notice stating—
  - (a) the day the term of the lease ends; and
  - (b) that the lessee may apply under this subdivision for renewal of the lease; and
  - (c) how the lessee may apply.

### **136 Lessor to consider and decide application**

Within 6 months after an application is made under section 134, the lessor must consider the application and decide to renew or not to renew the home ownership lease.

### **137 Decision to renew lease**

- (1) If the lessor decides to renew the home ownership lease, the lessor must give the lessee—

- (a) notice of the decision; and
  - (b) a copy of the renewed lease.
- (2) The renewed lease—
- (a) has effect immediately after the lease it replaces (the *replaced lease*) ends; and
  - (b) is subject to all the conditions to which the replaced lease was subject immediately before it ended.
- (3) No amount is payable under section 126(1)(b) for the renewed lease.

### **138 Lessor may decide not to renew lease**

The lessor may decide not to renew the home ownership lease only if the lessor is reasonably satisfied—

- (a) the lease land is not being used primarily for residential use; or
- (b) the lessee acquired the lease by fraud.

### **139 Notice about decision not to renew lease**

If the lessor decides not to renew the home ownership lease, the lessor must give the lessee an information notice for the decision.

### **140 Extension of term of lease if application for renewal**

- (1) This section applies to a home ownership lease if—
- (a) the lessee has applied to renew the lease under section 134; and

- (b) before the lessor decides the application, the term of the lease would, but for subsection (2), end.
- (2) The term of the lease is taken to continue until notice of the lessor's decision is given to the lessee under this subdivision.
- (3) Subsection (2) applies to the lease despite the provisions of the lease and any other provision of this Act.

## **Subdivision 4 General matters about forfeiture or non-renewal of home ownership leases**

### **141 Right to remove improvements if lease forfeited or not renewed**

- (1) If the lessor forfeits or decides not to renew a home ownership lease, the lessor must allow the lessee to remove the lessee's improvements on the lease land within a reasonable period of at least 28 days decided by the lessor.
- (2) If the improvements are not removed within the period, they become the property of the lessor.

### **142 Payment by lessor if lease forfeited or not renewed**

- (1) If the lessor forfeits or decides not to renew a home ownership lease, the lessor must pay to the person who was the lessee the amount decided by the lessor under subsection (2) (the *required amount*).
- (2) The required amount is the amount equal to the combined value of the following (the *maximum*

*amount*) less any amounts deducted from the maximum amount under section 144—

- (a) the value of the lease land on the day the lease is forfeited or ends;
  - (b) the value of the lessee's improvements on the land that become the property of the lessor.
- (3) The value of the lease land must be the amount decided by the lessor using the valuation methodology mentioned in section 126(1)(b)(i).
  - (4) The value of any improvements on the lease land must be decided by the lessor based on the market value of the improvements in a sale of a lease of the same term and tenure as the forfeited or non-renewed lease.
  - (5) The lessor must decide the required amount as soon as practicable after giving the person notice that the lease is forfeited or not renewed.
  - (6) On deciding the required amount, the lessor must give the person an information notice for the decision.
  - (7) This section is subject to section 143.

### **143 Unclaimed amount**

If the lessor can not find the person entitled to receive the required amount, or the person does not collect the amount from the lessor within 9 years after the day the lease is forfeited or not renewed, the required amount is forfeited to the lessor.



### **144 Amount owing to lessor or mortgagee**

If the lessor forfeits or decides not to renew a home ownership lease, the lessor may deduct the following amounts from the maximum amount—

- (a) an amount in payment of all costs properly incurred by the lessor in forfeiting or not renewing the lease;
- (b) an amount in payment of expenses incurred by the lessor to rectify damage caused to the lease land by the person who was the lessee;
- (c) any amount owing to the lessor 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.

### **145 Payment of amount to mortgagee in discharge of mortgage**

- (1) This section applies if—
  - (a) the lessor forfeits or decides not to renew a home ownership lease; and
  - (b) 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 lessor must pay to the mortgagee—
  - (a) if the amount that may be deducted from the maximum amount under section 144(d) is less than the difference between the maximum amount and the amounts deducted under section 144(a), (b) and (c)—the amount that may be deducted from the maximum amount under section 144(d);  
or

- (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 144(a), (b) and (c).
- (3) The lessor must pay the amount payable under subsection (2) to the mortgagee—
  - (a) if no appeal is made to the Land Court about the required 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 to the Land Court about the required amount payable to the person who was the lessee—within 28 days after the appeal is finally decided.
- (4) If the lessor 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.

## **Subdivision 5 Miscellaneous**

### **146 Exemption from fees and charges**

- (1) This section applies to an instrument of lease for a home ownership lease.
- (2) No fee or charge is payable for—
  - (a) the lodgement and registration of the instrument in the land registry; or
  - (b) the provision by the registrar of titles of other services for the lodgement and registration of the instrument.

---

### **147 Beneficiary to home ownership lease**

- (1) A person who is beneficially entitled under a will to a home ownership lease may ask the lessor—
  - (a) to give the person a notice stating whether or not the person is entitled to a grant of the lease under this Act; and
  - (b) if, under a condition of the lease, the lease can not be transferred without the lessor's written consent—for the lessor's written consent to the transfer of the lease.

*Note—*

Under section 122, a home ownership lease may include a condition that it must not be transferred without the lessor's prior written consent.

- (2) The lessor must comply with a request under subsection (1) as soon as practicable after receiving the request.

## **Division 5      Townsite leases**

### **Subdivision 1    Restriction on grant**

#### **148 Minister's consent for grant of townsite lease**

- (1) A townsite lease may be granted only with the Minister's prior written consent.
- (2) The Minister may consent to the grant of a townsite lease only if—
  - (a) the lease is over an entire lot as shown in the appropriate register; and
  - (b) the Minister is reasonably satisfied that any existing interests in the proposed lease land are not inconsistent with the lease.

## **Subdivision 2 Requirements for Minister's consent**

### **149 General requirements for Minister's consent**

- (1) A person seeking the Minister's prior written consent to the grant of a townsite lease must give the Minister the information or documents reasonably required by the Minister to show—
  - (a) the purpose of the lease; and
  - (b) the grant of the lease is for the benefit of persons for whom the trustee holds the lease land; and
  - (c) the grant of the lease—
    - (i) will facilitate the continued operation of a township on the lease land; and
    - (ii) will not prevent residents of the township land from continuing to live on and access the land, or from obtaining tenure over the land under this Act.
- (2) In considering whether to give the consent, the Minister—
  - (a) must have regard to the information or documents given to the Minister under subsection (1); and
  - (b) may have regard to other information the Minister reasonably considers relevant to the proposed lease.
- (3) Also, before giving the consent, the Minister must be reasonably satisfied—
  - (a) the Aboriginal people particularly concerned with the lease land are generally in agreement with the grant of the lease; and

- (b) the grant of the lease—
  - (i) will facilitate the continued operation of a township on the lease land; and
  - (ii) will not prevent residents of the township land from continuing to live on and access the land, or from obtaining tenure over the land under this Act.

### **Subdivision 3 Provisions about dealing with townsite leases**

#### **150 Transfer or amendment of townsite lease**

- (1) A townsite lease must not be transferred or amended without—
  - (a) the agreement of both the trustee and the lessee of the lease land; and
  - (b) the Minister’s prior written consent.
- (2) A person seeking the Minister’s prior written consent to the transfer or amendment of a townsite lease 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 townsite lease, the Minister must consider whether the proposed transferee is capable of complying with the conditions of the lease.
- (4) The Minister may consent to the amendment of a townsite lease only if reasonably satisfied—
  - (a) the amendment does not significantly change the conditions of the townsite lease; and

- (b) the amendment will not diminish the purpose of the lease.
- (5) A townsite lease must not be transferred to a person who, under this Act, would not be entitled to a grant of the lease.

### **151 Surrender of townsite lease**

A townsite lease must not be surrendered without the Minister's prior written consent.

### **152 No forfeiture of townsite lease**

A townsite lease can not be forfeited.

## **Subdivision 4 Effect of townsite lease on existing interests**

### **153 Lessee of townsite lease taken to be lessor of existing leases**

- (1) Subsection (2) applies if a townsite lease is granted over Aboriginal land that is, immediately before the grant of the townsite lease, the subject of a following lease (each a *continued lease*)—
  - (a) a 1985 Act granted lease or a new Act granted lease under the new Land Holding Act;
  - (b) a lease under the Land Act;
  - (c) a trustee (Aboriginal) lease.
- (2) On the grant of the townsite lease—
  - (a) the continued lease continues in force and is taken to be—

- (i) if the continued lease is primarily for residential use—a home ownership lease for the same term for which the continued lease was granted; or
  - (ii) otherwise—a lease granted under section 121(1); and
- (b) the lessee of the townsite lease is substituted for the lessor as a party to the continued lease.

*Note—*

Under section 45(2), the trustee of the Aboriginal land is the lessor of the continued lease.

- (3) Subsection (4) applies if lease land for a townsite lease is the subject of a lease (also a ***continued lease***) in the form of a sublease granted under the *Aurukun and Mornington Shire Leases Act 1978*.
- (4) On the grant of the townsite lease—
- (a) a sublease mentioned in subsection (3) continues in force and is taken to be—
    - (i) if the sublease is primarily for residential use—a home ownership lease for the same term for which the sublease was granted; or
    - (ii) otherwise—a lease granted under section 121(1); and
  - (b) the lessee for the townsite lease is substituted for the lessor as a party to the lease mentioned in paragraph (a)(i) or (ii).
- (5) Section 45(3) applies to a continued lease as if the reference in that subsection to the trustee of the land were a reference to the lessee of the townsite lease.

**13 Amendment of s 179 (Decision-making by trustee)**

Section 179(1), from ‘about whether’—

*omit, insert—*

about any of the following—

- (a) the way in which the trustee will consult about the making of a freehold instrument for the land;
- (b) whether to grant an interest in the land;
- (c) whether to consent to the creation of a mining interest in the land;
- (d) whether to enter into an agreement about the land.

**14 Amendment of s 180 (Definitions for pt 14)**

(1) Section 180, definitions *lease* and *lessor*—

*omit.*

(2) Section 180—

*insert—*

*lease* means a part 10 lease, other than a townsite lease.

*lessor* means—

- (a) for a lease granted under a townsite lease—the lessee of the townsite lease; or
- (b) for another lease—the trustee of the lease land.

**15 Amendment of s 182 (Provision about entering into possession of, and selling, lease)**

Section 182(9), definition *lessee*, paragraphs (a) and (b)—

*omit, insert—*



- (a) for a lease granted under a townsite lease—the lessee under the lease; or
- (b) for another lease—the lessee under the lease.

## **16 Amendment of s 186 (Trustee (Aboriginal) leases)**

- (1) Section 186(2)—

*omit, insert—*

- (2) For subsection (1), part 10 applies in relation to the leasing of Aboriginal trust land—
  - (a) as if a reference in the part to Aboriginal land were a reference to Aboriginal trust land; and
  - (b) as if the reference in section 122(1)(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.

- (2) Section 186(3), (4) and (7)—

*omit.*

- (3) Section 186(6), ‘Subsection (5)’—

*omit, insert—*

Subsection (3)

- (4) Section 186(5) and (6)—

*renumber* as section 186(3) and (4).

## **17 Omission of pt 15, div 3 (Other matters)**

Part 15, division 3—

*omit.*

**18 Amendment of s 196 (Application of provisions for grant of land)**

- (1) Section 196(2)(c) and (f)—  
*omit.*
- (2) Section 196(2)(g), ‘section 127’—  
*omit, insert—*  
section 149
- (3) Section 196(2)(d) to (l)—  
*renumber* as section 196(2)(c) to (j).
- (4) Section 196(4) and (5)—  
*omit, insert—*
  - (4) The following provisions apply in relation to the land as if a reference in the provisions to an Aboriginal person includes a reference to a Torres Strait Islander—
    - (a) section 41;
    - (b) sections 120(2) and 121(2).
- (5) Section 196(6)—  
*renumber* as section 196(5).
- (6) Section 196(7)—  
*omit.*

**19 Amendment of s 198 (Application of particular provisions)**

- (1) Section 198, ‘Sections 119 and 141’—  
*omit, insert—*  
Sections 120 and 121
- (2) Section 198, ‘Aborigine’—

---

*omit, insert—*

Aboriginal person

**20 Amendment of s 199 (Use of Aboriginal land preserved)**

Section 199(5)(a)—

*omit, insert—*

(a) it is subject to a home ownership lease; or

**21 Amendment of s 277 (Who may appeal)**

(1) Section 277(2) and (3), ‘residential’—

*omit, insert—*

home ownership

(2) Section 277(2), ‘section 156’—

*omit, insert—*

section 136

(3) Section 277(3), ‘section 162’—

*omit, insert—*

section 142

(4) Section 277(2) to (4)—

*renumber* as section 277(3) to (5).

(5) Section 277—

*insert—*

(2) A person who is given, or is entitled to be given, an information notice for a decision under part 2A may appeal to the Land Court against the decision.

**22 Amendment of s 280 (Notice of appeal)**

- (1) Section 280(a), ‘or (3)’—

*omit, insert—*

, (3) or (4)

- (2) Section 280(b), ‘section 277(4)’—

*omit, insert—*

section 277(5)

**23 Amendment of s 288 (Dealing with particular trust property)**

- (1) Section 288(1) and (3), ‘section 143’—

*omit, insert—*

section 128

- (2) Section 288(5)—

*renumber* as section 288(7).

- (3) Section 288—

*insert—*

- (5) Subsection (6) applies to the trustee of available land if the trustee receives an amount for a social housing dwelling situated on the available land.

- (6) The trustee must ensure an amount equal to the amount received is used by the trustee for housing services for Aboriginal people concerned with the land held by the trustee.

**24 Omission of s 289 (Application of Residential Tenancies and Rooming Accommodation Act 2008)**

Section 289—

*omit.*

**25 Insertion of new pt 25, div 5**

Part 25—

*insert—*

**Division 5 Transitional provisions for  
Aboriginal and Torres  
Strait Islander Land  
(Providing Freehold) and  
Other Legislation  
Amendment Act 2014**

**307 Definitions for div 5**

In this division—

*commencement* means the commencement of this section.

*pre-amended Act* means this Act as in force before its amendment by the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014*, section 12.

**308 Provision for existing leases**

- (1) This section applies to a lease under the pre-amended Act in effect immediately before the commencement.
- (2) A standard lease under the pre-amended Act is taken to be a part 10 lease for the same term for which the standard lease was granted.
- (3) A townsite lease under the pre-amended Act is taken to be a townsite lease.
- (4) A lease for private residential purposes under the pre-amended Act is taken to be a home

ownership lease for the same term for which the lease for private residential purposes was granted.

### **309 Provision for existing applications**

- (1) This section applies to an application under the pre-amended Act that, before the commencement, had not been granted or refused.
- (2) An application for a lease under the pre-amended Act is taken to be—
  - (a) if the application is for a lease for private residential purposes under the pre-amended Act—an application for a home ownership lease; or
  - (b) otherwise—an application for a part 10 lease for the same term and purpose as the term and purpose for which the application was made.
- (3) An application to renew a lease under the pre-amended Act is taken to be an application to renew a part 10 lease.

## **26 Amendment of sch 1 (Dictionary)**

- (1) Schedule 1, definitions *decision-maker*, *lease*, *lessee*, *lessor*, *native title holder*, *residential lease*, *standard lease*, *townsite sublease* and *trustee*—  
*omit.*
- (2) Schedule 1—  
*insert*—

***allocation method***, for available land, for part 2A, see section 32B.

***allocation notice***, for part 2A, see section 32Z(1)(a).

**allocation process**, for available land, for part 2A, see section 32B.

**appeal period**, for available land, for part 2A, see section 32B.

**available land** see section 32D(3).

**closing day**, for part 2A, division 6, see section 32ZA(1)(d).

**decision-maker**, for part 22, means—

- (a) for a decision mentioned in section 277(1) or (5)—the Minister; or
- (b) for a decision mentioned in section 277(2)—the trustee of the available land to which the decision relates; or
- (c) for a decision mentioned in section 277(3) or (4) about forfeiture or non-renewal of a lease—the lessor of the lease land.

**eligibility criteria**, for part 2A, see section 32D(6)(a).

**eligible person**, for available land, for part 2A, see section 32B.

**freehold instrument** see section 32B.

**freehold option land** see section 32B.

**freehold policy**, for a freehold schedule, for part 2A, see section 32D(5).

**freehold schedule**, for part 2A, see section 32B.

**home ownership lease** see sections 120(2) and 121(2).

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

***indigenous local government***, for part 2A, see section 32B.

***interest holder***, for available land, for part 2A, see section 32B.

***lease***—

- (a) generally, does not include a residential tenancy agreement; and
- (b) for part 14, see section 180.

***lessee***, for part 10, see section 119.

***lessor***—

- (a) for part 10, see section 119; or
- (b) for part 14, see section 180.

***model freehold instrument***, for part 2A, division 4, subdivision 2, see section 32F.

***model freehold schedule***, for part 2A, see section 32D(4).

***native title holder***—

- (a) for part 2A, see section 32B; or
- (b) otherwise—in relation to land held, or to be held, by a registered native title body corporate, means—
  - (i) 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
  - (ii) if subparagraph (i) does not apply—the persons who hold the native title in relation to the land or part of the land.

***offer***, for part 2A, see section 32B.



**part 10 lease** see section 119.

**planning scheme**, for part 2A, see section 32B.

**probity advisor**, for part 2A, see section 32ZB(1).

**reasonably considers** means considers on grounds that are reasonable in the circumstances.

**reasonably satisfied** means satisfied on grounds that are reasonable in the circumstances.

**social housing** means housing that—

- (a) is being used to provide subsidised housing for residential use; or
- (b) has been used to provide subsidised housing for residential use and for which an amount, payable under either of the following sections for the value of the dwelling, has not been paid to the trustee—
  - (i) section 128;
  - (ii) section 143 as in force before the commencement of the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014*, section 12.

**social housing dwelling** means a dwelling the housing chief executive reasonably considers to be social housing.

**trustee**, in relation to land, is the entity that—

- (a) holds, as trustee, the land under this Act; or
- (b) is the trustee of the land under the Land Act.

**urban area**, for part 2A, see section 32B.

**urban purposes**, for part 2A, see section 32B.

- (3) Schedule 1, definition *maximum amount*, ‘section 162(2)’—

*omit, insert—*

section 142(2)

- (4) Schedule 1, definition *required amount*, ‘section 162(1)’—

*omit, insert—*

section 142(1)

- (5) Schedule 1, definition *townsite lease*, ‘section 119(3)’—

*omit, insert—*

section 120(3)

## **Part 2    Amendment of Aboriginal Land Regulation 2011**

### **27            Regulation amended**

This part amends the *Aboriginal Land Regulation 2011*.

### **28            Omission of pt 3 (Code of conduct about mining leases)**

Part 3—

*omit.*

### **29            Amendment of s 50 (Application of provisions for particular land)**

- (1) Section 50(2), ‘, 22 and 36’—

*omit, insert—*

and 22

- (2) Section 50(2)(c) and (d)—

*omit.*

### 30 Insertion of new s 50B

Part 7—

*insert*—

#### 50B Land for model freehold schedule

For section 32D(4) of the Act, freehold option land for which there is an interest holder on the commencement of this section is prescribed as a type of freehold option land.

## Part 3 Amendment of Land Act 1994

### 31 Act amended

This part amends the *Land Act 1994*.

*Note*—

See also the amendments in chapter 3 and schedule 1, part 1.

### 32 Amendment of s 14 (Governor in Council may grant land)

(1) Section 14(1), ‘or rail land’—

*omit, insert*—

, rail land or approved land

(2) Section 14—

*insert*—

(6) A grant of approved land under subsection (1) may be made only to the person the subject of the application.

(7) In this section—

***approved land*** means land the subject of an application approved by the chief executive under

the *Aboriginal Land Act 1991*, section 32C or the *Torres Strait Islander Land Act 1991*, section 28C.

## Part 4 **Amendment of Torres Strait Islander Land Act 1991**

### **33 Act amended**

This part amends the *Torres Strait Islander Land Act 1991*.

*Note—*

See also the amendments in schedule 1, part 1.

### **34 Amendment of s 9 (Lands that are transferable lands)**

Section 9(2)—

*omit, insert—*

- (2) However, land mentioned in subsection (1) ceases to be transferable land to the extent either of the following applies—
  - (a) it is taken, under the Acquisition Act, by a constructing authority;
  - (b) it is available land approved for a grant in fee simple by the chief executive under section 28C.
- (3) Also, land mentioned in subsection (1) is not transferable land to the extent it is the subject of any of the following—
  - (a) a declaration in force under section 13;
  - (b) an offer to allocate available land under section 28T, while the offer is in force;

- (c) an allocation process for available land under part 2A, division 6, until the process ends.

### **35 Insertion of new pt 2A**

After part 2—

*insert—*

## **Part 2A Providing freehold**

### **Division 1 Preliminary**

#### **28A Overview**

This part—

- (a) allows available land to be granted in freehold under the Land Act to an eligible person for the available land; and
- (b) requires—
  - (i) the trustee of freehold option land to consult on and make a freehold instrument; and
  - (ii) the local government for the area in which the land is situated to attach the freehold instrument to its planning scheme; and
- (c) sets out how, and to whom, the trustee may allocate available land depending on whether the person is an eligible person.

## Division 2      Basic concepts

### 28B Definitions for pt 2A

In this part—

*allocation method*, for available land, means—

- (a) the auction, ballot or tender to be used to allocate the available land; and
- (b) the conditions of the auction, ballot or tender.

*allocation notice* see section 28Z(1)(a).

*allocation process*, for available land, means—

- (a) if there is an interest holder for the available land—the process stated in division 5; or
- (b) otherwise—the process stated in division 6.

*appeal period*, for available land, means the period starting on the day a person receives an information notice in relation to the available land and ending—

- (a) if no notice of appeal is filed in relation to the available land—on the last day for making an appeal; or
- (b) if a notice of appeal is filed in relation to the available land—when the appeal is finally decided.

*available land* see section 28D(3).

*closing day*, for division 6, see section 28ZA(1)(d).

*eligibility criteria* see section 28D(6)(a).

*eligible person*, for available land, means a person who meets the eligibility criteria for the land and is—

- (a) a Torres Strait Islander or Aboriginal person; or
- (b) the spouse or former spouse of—
  - (i) a person mentioned in paragraph (a); or
  - (ii) a Torres Strait Islander or Aboriginal person who is deceased.

***freehold instrument*** means a freehold schedule and the freehold policy for the freehold schedule.

***freehold option land*** means land in an indigenous local government's area if—

- (a) any of the following entities are the trustee of the land—
  - (i) an indigenous local government;
  - (ii) a land trust;
  - (iii) another entity holding the land under this Act; and
- (b) the land is in an urban area.

***freehold policy***, for a freehold schedule, see section 28D(5).

***freehold schedule***—

- (a) means a schedule made as mentioned in section 28D(1) by the trustee of freehold option land; and
- (b) includes a model freehold schedule.

***indigenous local government*** see the *Local Government Act 2009*, schedule 4.

***interest holder***, for available land, means a person who holds any of the following interests in the land—

- (a) a registered lease granted under this Act or the Land Act, other than a townsite lease;

- (b) a lease entitlement under the new Land Holding Act;
- (c) a 1985 Act granted lease or a new Act granted lease under the new Land Holding Act;
- (d) a registered sublease, including a registered lease of a townsite lease;
- (e) a residential tenancy agreement for a social housing dwelling situated on the available land;
- (f) a right to occupy or use the available land under section 148.

***model freehold instrument***, for division 4, subdivision 2, see section 28F.

***model freehold schedule*** see section 28D(4).

***native title holder*** has the same meaning as it has in the Commonwealth Native Title Act.

***offer*** means an offer to an eligible person by a trustee to allocate available land to the person under section 28T.

***planning scheme*** see the *Sustainable Planning Act 2009*, section 79.

***probity advisor*** see section 28ZB(1).

***urban area*** means an area identified as an area intended for either urban purposes or future urban purposes on a map in a planning scheme used to show zones.

***urban purposes*** means purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes.



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## **Division 3            Approval for grant of                                  available land**

### **28C Approval for grant of available land**

- (1) The trustee of freehold option land may apply to the chief executive, in the approved form, for available land to be granted in fee simple under the Land Act to the eligible person who has been allocated the available land under this part.
- (2) The trustee may make the application only if—
  - (a) there is a freehold instrument for the available land; and
  - (b) the trustee has followed the allocation process for the available land.
- (3) Information in the application must, if the approved form requires, be verified by a statutory declaration.
- (4) In deciding the application, the chief executive—
  - (a) must be reasonably satisfied—
    - (i) agreements or arrangements appropriate to granting the available land as freehold have been entered into or are in place, including, for example, in relation to the following—
      - (A) native title;
      - (B) any social housing dwelling on the available land;
      - (C) road access to the available land; and
    - (ii) there is a lot on plan description for the available land; and

- (iii) if the available land is allocated under section 28ZF—a probity advisor has certified the probity of the allocation process for the available land; and
  - (b) may consider any other matter the chief executive reasonably considers relevant.
- (5) If the chief executive approves the application, the Governor in Council may grant the land in fee simple under the Land Act.

*Note—*

See the Land Act, section 14.

## **Division 4      Freehold instruments**

### **Subdivision 1    Trustee may make freehold instrument**

#### **28D Trustee may make freehold instrument**

- (1) The trustee of freehold option land may, by resolution, make a schedule identifying the freehold option land available to be granted in freehold.
- (2) The freehold schedule must identify the freehold option land so the boundaries of the land are capable of being decided.
- (3) Freehold option land identified in a freehold schedule is *available land*.
- (4) A freehold schedule that only identifies freehold option land of a type prescribed by regulation for this subsection is a *model freehold schedule*.
- (5) If the trustee makes a freehold schedule, the trustee must, by resolution, make a policy (a

*freehold policy*) at the same time to help the trustee in implementing the freehold schedule.

- (6) The freehold policy must be in the approved form and state—
- (a) the criteria (the *eligibility criteria*) for participating in the allocation process for available land; and
  - (b) if there is no interest holder for available land—the allocation method for available land; and
  - (c) the sale price of available land and the costs to be recovered from the sale price; and
  - (d) how the community will be consulted about the allocation process for available land; and
  - (e) how the trustee will deal with interests in, or in relation to, available land, before it is allocated; and
  - (f) the social and financial implications for the community in providing freehold; and
  - (g) the social and financial implications for any eligible person who is granted freehold; and
  - (h) the potential to attract investment and new members into the community; and
  - (i) any other matter prescribed by regulation.

### **28E Trustee may have only 1 freehold instrument**

- (1) The trustee of freehold option land may have only 1 freehold instrument for the land.
- (2) However, if the trustee is an indigenous regional council, the trustee may have more than 1 freehold instrument only if the freehold instruments do not overlap in relation to available land.

(3) In this section—

*indigenous regional council* see the *Local Government Act 2009*, schedule 4.

## **Subdivision 2 Making, amending or repealing freehold instruments**

### **28F Definition for sdiv 2**

In this subdivision—

*model freehold instrument* means a model freehold schedule and the freehold policy for the model freehold schedule.

### **28G Application of sdiv 2**

This subdivision states how a freehold instrument may be made, amended or repealed.

### **28H Minister to make and publish guideline**

- (1) The Minister must make, and publish on the department's website, a guideline about the process for—
  - (a) attaching a freehold instrument to a local government's planning scheme; and
  - (b) amending or repealing a freehold instrument.
- (2) The guideline must make provision for the local government to do all of the following things before attaching a freehold instrument to its planning scheme—

- (a) publish a notice about the freehold instrument in a newspaper or other publication circulating generally in the local government's area at least once;
- (b) carry out public consultation about the freehold instrument;
- (c) give the Minister a notice summarising the matters raised during the public consultation and stating how the local government or the trustee dealt with the matters.

## **28I Trustee to consult**

- (1) Before the trustee of freehold option land starts the process for making a freehold instrument in relation to freehold option land, the trustee must decide on the way (the *decided way*) in which the trustee will consult about the making of the freehold instrument.

*Note—*

See section 135.

- (2) The purpose of the consultation is to enable the trustee to be reasonably satisfied it is appropriate for the freehold option land to be granted in freehold.
- (3) The decided way must—
  - (a) require the trustee to consult with the native title holders for the freehold option land proposed to be included in the freehold schedule; and
  - (b) include how the trustee will notify the community about the freehold instrument; and
  - (c) allow a suitable and sufficient opportunity for each person the trustee consults to

express their views about the freehold instrument.

- (4) The trustee must—
  - (a) consult on the freehold instrument in the decided way; and
  - (b) keep records about the consultation showing the consultation was consistent with the decided way.

### **28J Trustee to give freehold instrument to Minister or local government**

- (1) This section applies if, after consulting on a proposed freehold instrument, the trustee decides to continue to make a freehold instrument.
- (2) The trustee must—
  - (a) for a model freehold instrument—give the model freehold instrument to the Minister for approval; or
  - (b) otherwise—ask, by notice, the local government for the area in which the proposed freehold option land is situated to attach the freehold instrument to the local government’s planning scheme.
- (3) In this section—

*proposed freehold option land* means freehold option land proposed to be included in a freehold schedule.

### **28K Local government to follow process in guideline**

- (1) This section applies if a local government receives a notice under section 28J(2)(b) in relation to a freehold instrument.

- (2) The local government must follow the process stated in the guideline made by the Minister under section 28H.
- (3) After the process is completed, the local government must give the freehold instrument to the Minister for approval.

### **28L Minister may approve**

- (1) If the Minister is given a freehold instrument for approval, the Minister may—
  - (a) approve the freehold instrument; or
  - (b) approve the freehold instrument on the condition the trustee or local government for the available land amends the freehold instrument in the way the Minister directs; or
  - (c) refuse to approve the freehold instrument.
- (2) In making a decision under subsection (1) about a freehold instrument, other than a model freehold instrument, the Minister must have regard to information given to the Minister by the local government for the freehold instrument after the local government has completed the process under section 28K.
- (3) The Minister may approve a freehold instrument if reasonably satisfied—
  - (a) for a model freehold instrument—the model freehold schedule only includes freehold option land of a type prescribed by regulation for section 28D(4); and
  - (b) the trustee has consulted with the native title holders for the freehold option land proposed to be included in the freehold schedule; and

- (c) the consultation was consistent with the way decided by the trustee under section 28I.
- (4) The Minister must give notice of the decision under subsection (1) to the trustee and the local government for the freehold instrument.
- (5) If the Minister approves a freehold instrument, the local government must—
  - (a) attach the freehold instrument to its planning scheme; and
  - (b) publish, in a newspaper or other publication circulating generally in the local government's area at least once, a notice stating the freehold instrument is approved and attached to its planning scheme.

### **28M Amending or repealing freehold instrument**

A freehold instrument attached to a local government's planning scheme may be amended or repealed by a trustee only by following the process stated in the guideline made by the Minister under section 28H.

## **Subdivision 3 Other provisions about freehold instruments**

### **28N Effect of freehold instrument**

A freehold instrument has effect on and after the day the local government for the area in which the available land is situated attaches the freehold instrument to the local government's planning scheme.



## **28O Relationship with planning scheme**

- (1) Attaching a freehold instrument to a planning scheme is not an amendment of the planning scheme.
- (2) A freehold instrument attached to a planning scheme—
  - (a) does not form part of the planning scheme; and
  - (b) is the responsibility of the trustee for the available land; and
  - (c) if the planning scheme is amended or repealed and remade (with or without modification)—may be attached without amendment by the local government to the amended or remade planning scheme.

## **Division 5            Allocation process for available land—interest holder**

### **28P Application of div 5**

This division states the allocation process for available land if there is an interest holder for the available land.

### **28Q Application for available land**

A person who is an eligible person and an interest holder for available land may apply, in the approved form, to the trustee of the land for the land to be granted to the person.

### **28R Dwelling on available land**

- (1) This section applies if a dwelling is situated on available land the subject of the application.
- (2) The trustee must give notice about the application to the housing chief executive.
- (3) Within 28 days after receiving the notice, the housing chief executive must give the trustee a notice (a *dwelling notice*) stating whether—
  - (a) the dwelling is a social housing dwelling; and
  - (b) if the dwelling is a social housing dwelling—the housing chief executive consents to the applicant making the application.
- (4) In deciding whether to consent to the applicant making the application, the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be social housing.
- (5) If the dwelling notice states the housing chief executive consents to the applicant making the application, the trustee must decide the value of the dwelling by using the valuation methodology agreed between the trustee and the housing chief executive.
- (6) The housing chief executive must, if asked, give a person a copy of the valuation methodology.

### **28S Decision on application**

- (1) The trustee must consider the application and decide to approve or refuse the application.
- (2) However, if a dwelling is situated on the available land the subject of the application, the trustee—

- (a) must not decide the application until the trustee receives a notice from the housing chief executive under section 28R(3); and
  - (b) must refuse the application if the notice states the dwelling is a social housing dwelling and the housing chief executive does not consent to the applicant making the application.
- (3) The trustee may approve the application only if the trustee is reasonably satisfied—
- (a) the applicant is an eligible person for the available land the subject of the application; and
  - (b) if there is more than 1 interest holder for the available land and all interest holders are eligible persons, either—
    - (i) all interest holders for the available land have made the application; or
    - (ii) all interest holders for the available land have consented to the applicant making the application; and
  - (c) if there is more than 1 interest holder for the available land and paragraph (b) does not apply—all interest holders for the available land have consented to the applicant making the application; and
  - (d) if there is a mortgage over the available land—the mortgagee has consented to the applicant making the application.
- (4) If the trustee is reasonably satisfied of the matters mentioned in subsection (3), the trustee must approve the application.

- (5) If the trustee decides to refuse the application, the trustee must give the applicant an information notice for the decision.

### **28T Offer to allocate available land**

- (1) If the trustee approves the eligible person's application, the trustee must offer, in writing, to allocate the available land to the eligible person.
- (2) However, the trustee may make the offer only after the appeal period for the available land.
- (3) If there is a social housing dwelling on the available land, the trustee must make the offer subject to a condition that the eligible person must purchase the dwelling at the value decided under section 28R(5).
- (4) The trustee may make the offer subject to any other conditions the trustee reasonably considers necessary.
- (5) In deciding whether to impose conditions on the offer under subsection (4), the trustee must have regard to the freehold instrument.
- (6) If the trustee decides to impose conditions on the offer, other than a condition mentioned in subsection (3), the trustee must give the eligible person an information notice for the decision.
- (7) The trustee must give notice to the chief executive in the approved form about the offer.

### **28U Acceptance and refusal of offer**

- (1) On receipt of the trustee's offer, the eligible person may accept or refuse the offer by notice given to the trustee.

- (2) However, if the eligible person does not give notice to the trustee within 45 days after the eligible person receives the offer, the eligible person is taken to have refused the offer.
- (3) If the eligible person refuses the offer, the trustee must give notice about the refusal to the chief executive.

### **28V Cooling-off period to apply to acceptance**

- (1) A *cooling-off period*, for accepting an offer, is a period of 5 business days—
  - (a) starting on the day the eligible person gives notice about accepting the offer to the trustee; and
  - (b) ending at 5p.m. on the fifth business day after the day mentioned in paragraph (a).
- (2) An eligible person who accepts, or proposes to accept, an offer may give written notice to the trustee—
  - (a) waiving the cooling-off period for accepting the offer; or
  - (b) shortening the cooling-off period for accepting the offer.
- (3) An eligible person who has not waived the cooling-off period for accepting an offer may rescind or revoke the acceptance by giving a signed notice of rescission or revocation to the trustee at any time during—
  - (a) the cooling-off period; or
  - (b) if the period has been shortened under subsection (2)(b), the shortened period.
- (4) If the acceptance is rescinded or revoked under subsection (3), the trustee must, within 14 days,

refund any deposit paid under the acceptance to the eligible person.

- (5) An amount payable to the eligible person under subsection (4) is recoverable from the trustee as a debt.

### **28W When offer ends**

An offer ends when the first of the following happens—

- (a) the eligible person refuses the offer under section 28U;
- (b) the eligible person gives notice of rescission or revocation of acceptance to the trustee under section 28V;
- (c) the eligible person dies;
- (d) the eligible person is no longer an interest holder for the available land;
- (e) if the offer includes a condition about when the offer ends—the day the offer ends under the condition.

### **28X Allocation of available land to eligible person**

- (1) After complying with all conditions of the offer, the eligible person must give notice to the trustee.
- (2) If, after receiving the notice, the trustee is reasonably satisfied the eligible person has complied with all conditions of the offer, the trustee must allocate the available land to the eligible person.

*Note—*

Available land may be granted in freehold to an eligible person who is allocated the available land. See section 28C.

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## **Division 6                      Allocation process for available land if no interest holder**

### **28Y Application of div 6**

This division states the allocation process for available land if there is no interest holder for the available land.

*Note—*

A freehold instrument states the allocation method for available land. See section 28D(6).

### **28Z Public notice of intention to allocate available land**

- (1) Before allocating available land, the trustee of the available land must publish notice of the trustee's intention to allocate the available land—
  - (a) by gazette notice (the *allocation notice*); and
  - (b) in a newspaper or other publication circulating generally in the area in which the land is situated at least once.
- (2) The trustee may act under subsection (1) only if—
  - (a) there is a lot on plan description for the available land; and
  - (b) there is dedicated access to the available land; and
  - (c) native title over the available land has been, or will be, surrendered or extinguished; and
  - (d) the trustee has given notice to the chief executive about the trustee's intention to allocate the available land.

### **28ZA Information to be included in allocation notice**

- (1) The allocation notice must include the following information for the available land—
  - (a) the eligibility criteria;
  - (b) the allocation method;
  - (c) the conditions applying to an offer of the available land;
  - (d) the day (the *closing day*) applications to participate in the allocation process close;
  - (e) the time and place for making applications;
  - (f) the reserve or purchase price;
  - (g) the deposit, if any, to be paid to participate in the allocation process and the proposed date, time and place for payment of the deposit;
  - (h) the proposed date, time and place where the available land will be allocated;

*Note—*

After the appeal period for the available land, the trustee must give notice of the date, time and place where the available land will be allocated. See section 28ZD.

- (i) the name and contact details of the probity advisor appointed.
- (2) The closing day must be at least 30 days after the allocation notice is gazetted.

### **28ZB Probity advisor**

- (1) The trustee must appoint an appropriately qualified and independent person (a *probity advisor*) to ensure the probity of the allocation process for the available land.



- (2) The probity advisor must—
  - (a) monitor the allocation process for the available land; and
  - (b) advise the trustee on matters relating to the probity of the allocation process; and
  - (c) prepare and give to the trustee a report about the probity of the allocation process and, if reasonably satisfied the allocation process was undertaken correctly, certify that fact.

### **28ZC Decision on application to participate in allocation process**

- (1) As soon as practicable after the closing day, the trustee must decide whether each applicant is an eligible person for the available land and give each applicant a notice about the decision.
- (2) If the trustee decides an applicant is an eligible person for the available land, the trustee must allow the applicant to participate in the allocation process for the available land.
- (3) If the trustee decides an applicant is not an eligible person for the available land, the trustee—
  - (a) must give the applicant an information notice for the decision; and
  - (b) must not allow the applicant to participate in the allocation process for the available land.

### **28ZD Notice of allocation of available land**

- (1) After the appeal period for the available land, the trustee must give each applicant who is able to participate in the allocation process for the available land a notice stating—

- (a) the date, time and place where the available land will be allocated (the *allocation date*); and
  - (b) if the allocation notice requires a deposit to be paid—the date by which the deposit must be paid; and
  - (c) the applicant must give notice to the trustee before the allocation date if the applicant no longer wishes to participate in the allocation process.
- (2) The date mentioned in subsection (1)(b) must be—
- (a) at least 30 days after the notice under this section is given; and
  - (b) before the allocation date.
- (3) If the applicant does not pay the deposit by the date mentioned in subsection (1)(b), the applicant must not participate in the allocation process.

### **28ZE How and when trustee may allocate**

The trustee may allocate the available land only—

- (a) after the end of the appeal period; and
- (b) by using the allocation method consistent with all of the following for the available land—
  - (i) the freehold instrument;
  - (ii) the allocation notice;
  - (iii) the probity advisor's advice.

### **28ZF Allocation of available land**

The trustee must allocate the available land to the eligible person who is the winner under the allocation method used to allocate the available land.

*Note—*

Available land may be granted in freehold to an eligible person who is allocated the available land. See section 28C.

### **28ZG Deposits**

The trustee must refund the deposit of each unsuccessful applicant after the trustee allocates the available land.

## **Division 7            Miscellaneous**

### **28ZH Continuation of mortgages and easements**

A deed of grant for available land approved to be granted in fee simple under section 28C is subject to all registered mortgages and easements to which the available land was subject immediately before it was granted, and in the same priorities.

### **28ZI Cancellation of deeds of grant in trust, reserves etc.**

- (1) This section applies if—
  - (a) available land is subject to any of the following (each an *old tenure*) when the trustee for the land applies for the land to be granted in fee simple under section 28C—
    - (i) a deed of grant in trust;

- (ii) a reserve dedicated under the Land Act;
  - (iii) a townsite lease;
  - (iv) a lease granted to the Aurukun Shire Council or the Mornington Shire Council under the *Aurukun and Mornington Shire Leases Act 1978*;
  - (v) an interest mentioned in section 28B, definition *interest holder*; and
- (b) a deed of grant in fee simple (a *new tenure*) for the available land is registered.
- (2) The old tenure is cancelled to the extent of the new tenure.

**36 Amendment of s 64 (Power to deal with Torres Strait Islander land)**

- (1) Section 64, from ‘Subject’ to ‘part 8, the’—

*omit, insert—*

- (2) The

- (2) Section 64—

*insert—*

- (1) This section applies subject to this part and parts 2A and 8.
- (3) The lessee of a townsite lease may grant a licence for the use of all or a part of the lease land.

**37 Replacement of pt 7, div 1, hdg (Trustees power to deal with Torres Strait Islander land and Ministerial consent)**

Part 7, division 1, heading—

*omit, insert—*

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**Division 1**      **Trustee's power to deal  
with Torres Strait Islander  
land**

**38**      **Omission of ss 65 and 66**

Sections 65 and 66—

*omit.*

**39**      **Omission of pt 7, div 3 (Grant of licences)**

Part 7, division 3—

*omit.*

**40**      **Amendment of s 82 (Particular dealings in Torres Strait  
Islander land void)**

Section 82(1), 'this division'—

*omit, insert—*

    this part or part 2A or 8

**41**      **Replacement of pt 8 (Leasing of Torres Strait Islander  
land)**

Part 8—

*omit, insert—*

## **Part 8                      Leasing of Torres Strait Islander land**

### **Division 1              Definitions**

#### **84 Definitions for pt 8**

In this part—

*home ownership lease* see sections 85(2) and 86(2).

*lessee* means—

- (a) for a part 8 lease granted under a townsite lease—the sublessee under the townsite lease; or
- (b) for another part 8 lease—the lessee under the lease.

*lessor* means—

- (a) for a part 8 lease granted under a townsite lease—the lessee of the townsite lease; or
- (b) for another part 8 lease—the trustee of the lease land.

*part 8 lease* means a lease granted under this part.

*townsite lease* see section 85(3).

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## Division 2      Grant of leases for Torres Strait Islander land

### 85 Grant of lease by trustee of Torres Strait Islander land

- (1) The trustee of Torres Strait Islander land may grant a lease over all or a part of the land for not more than 99 years.
- (2) Without limiting subsection (1), the trustee of Torres Strait Islander land may grant a lease (a *home ownership lease*) over all or a part of the land for 99 years to any of the following for residential use—
  - (a) a Torres Strait Islander;
  - (b) a person who is not a Torres Strait Islander if—
    - (i) the person is the spouse or former spouse of—
      - (A) a person mentioned in paragraph (a); or
      - (B) a person mentioned in paragraph (a) who is deceased; or
    - (ii) the lease supports another part 8 lease granted to the person.
- (3) The trustee of Torres Strait Islander land may grant a perpetual lease (a *townsite lease*) over all or a part of the land if—
  - (a) the land or part is township land; and
  - (b) the lease is granted to a local government.

## **86 Grant of lease by lessee of townsite lease**

- (1) The lessee of a townsite lease may grant a lease for not more than 99 years over all or a part of the lease land.
- (2) Without limiting subsection (1), the lessee of a townsite lease may grant a lease (also a *home ownership lease*) over all or a part of the lease land for 99 years to any of the following for residential use—
  - (a) a Torres Strait Islander;
  - (b) a person who is not a Torres Strait Islander if—
    - (i) the person is the spouse or former spouse of—
      - (A) a person mentioned in paragraph (a); or
      - (B) a person mentioned in paragraph (a) who is deceased; or
    - (ii) the lease supports another part 8 lease granted to the person.

## **Division 3 Common provisions for part 8 leases**

### **87 General conditions of particular leases**

- (1) A part 8 lease, other than a townsite lease, may include any of the following conditions—
  - (a) a stated standard terms document under the Land Title Act forms part of the lease;
  - (b) the lease must not be transferred without the lessor's prior written consent;



- (c) an interest under the lease, other than a mortgage of the lease, must not be created without the lessor's prior written consent.
- (2) If a part 8 lease includes a condition mentioned in subsection (1)(b) or (c), the lessor must not unreasonably withhold consent to the transfer or creation of an interest under the lease.
- (3) A part 8 lease may be mortgaged without the consent of the lessor.
- (4) Subject to subsection (3), this section does not limit the conditions that may be imposed on a part 8 lease.

### **88 Option to renew particular lease**

- (1) A part 8 lease granted under section 85(1) or 86(1) may include an option to renew the lease.
- (2) The term of the renewed lease must not be more than the initial term of the lease.

### **89 Transfer of lease**

A part 8 lease must not be transferred to a person who, under this Act, would not be entitled to a grant of the lease.

### **90 Lease etc. to be registered**

- (1) The lessee of a part 8 lease must register the lease and an amendment, surrender or transfer of the lease.
- (2) Despite the Land Title Act, section 65(2), an instrument of lease for Torres Strait Islander land must include a plan of survey identifying the lease land.

- (3) Subsection (2) does not apply to a lease entered into only in relation to an area completely within a building.

## **Division 4 Home ownership leases**

### **Subdivision 1 Conditions and requirements**

#### **91 General conditions and requirements**

- (1) A home ownership lease is subject to all of the following conditions—
- (a) the annual rental under the lease is the amount, of not more than \$1, decided by the lessor;
  - (b) 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 lessor using at least 1 of the following—
    - (i) a valuation methodology decided by the chief executive;
    - (ii) the benchmark purchase price, as prescribed by regulation, for land in the part of the State in which the lease land is situated;
  - (c) the lease land must be used primarily for residential use;
  - (d) if a dwelling for residential use is not situated on the lease land when the lease is granted—the lessee must ensure a dwelling for residential use is built on the land within 8 years after the lease is granted.

- (2) A lessor may grant a home ownership lease only if the amount equal to the value of the lease land decided under subsection (1)(b) has been paid to the lessor.
- (3) The chief executive—
  - (a) must, if asked, give a person a copy of the valuation methodology mentioned in subsection (1)(b)(i); and
  - (b) may make the valuation methodology available for inspection on the department's website.
- (4) However, the value of the lease land under subsection (1)(b) must be taken to be nil if—
  - (a) the lessee is the recipient of a hardship certificate under the new Land Holding Act; and
  - (b) the certificate has not previously been used under this section, whether or not the land identified in the certificate is the same as the lease land.

## **92 Additional requirement if dwelling situated on land**

- (1) This section applies if—
  - (a) a lessor proposes to grant a home ownership lease; and
  - (b) a dwelling is situated on the lease land.
- (2) The lessor must give the housing chief executive notice of the lessor's intention to grant the lease.
- (3) Within 28 days after receiving the notice, the housing chief executive must give the lessor a notice stating whether or not the dwelling is a social housing dwelling.

- (4) The lessor must not grant the lease before receiving the notice under subsection (3).
- (5) This section and section 93 do not limit section 91.

### **93 Additional conditions and requirements for social housing dwelling**

- (1) This section applies if the notice under section 92(3) states the dwelling is a social housing dwelling.
- (2) Before the lease is granted, the lessor must decide the value of the dwelling by using a valuation methodology agreed between the lessor and the housing chief executive.
- (3) 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 (2).
- (4) The lessor may grant the lease only if—
  - (a) the housing chief executive has given written approval that the grant may include the sale of the dwelling; and
  - (b) the amount equal to the value of the dwelling decided under subsection (2) has been paid to the lessor.
- (5) In considering whether to give the approval mentioned in subsection (4)(a), the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be social housing.
- (6) If the lessor grants the lease, and within 28 days after the lease is registered, the lessor must give the housing chief executive—
  - (a) a notice stating—

- (i) the day the lease was registered; and
  - (ii) the names of the parties to the lease;  
and
- (b) evidence showing the consideration for the lease under subsection (3) and section 91(1)(b) has been paid to the lessor.

*Note—*

An amount paid under subsection (3) for the value of a dwelling must be used by the lessor as required under section 192.

## **Subdivision 2 Forfeiture**

### **94 Grounds for forfeiture**

A home ownership lease may be forfeited only if—

- (a) the lessee breaches either of the following conditions and fails to remedy the breach within 6 months after receiving notice of the breach from the lessor—
  - (i) a condition of the lease mentioned in section 91(1)(d);
  - (ii) another condition if the lessor reasonably considers a breach of the condition is of a serious nature and warrants forfeiture of the lease; or
- (b) the lessee acquired the lease by fraud.

### **95 Referral to Land Court for forfeiture**

- (1) Before a home ownership lease is forfeited, the lessor must refer the proposed forfeiture to the Land Court to decide whether the lease may be forfeited.

- (2) At least 28 days before the lessor refers the proposed forfeiture to the Land Court, the lessor must give notice of the proposed referral to the lessee and any mortgagee of the lease.
- (3) The notice must state the grounds on which the lessor considers the lease may be forfeited.
- (4) If the lessor refers the proposed forfeiture to the Land Court, the lessor must file a copy of the notice in the court.
- (5) In deciding whether the lease may be forfeited, the Land Court must have regard to—
  - (a) the grounds stated in the notice under subsection (3); and
  - (b) if the proposed forfeiture is 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.
- (6) A decision by the Land Court that the lease may be forfeited may be subject to conditions.

#### **96 Lessor's options if Land Court decides lease may be forfeited**

- (1) If the Land Court decides a home ownership lease may be forfeited, the lessor may—
  - (a) if the proposed forfeiture is subject to conditions decided by the court—forfeit the lease under this subdivision if the conditions of forfeiture are satisfied; or
  - (b) otherwise—forfeit the lease under this subdivision.
- (2) If the proposed forfeiture is because of a breach of a lease condition, the lessor may decide not to forfeit the lease and instead allow the lease to continue subject to the lease being amended to

include conditions agreed between the lessor and the lessee.

## **97 Notice and effect of forfeiture**

- (1) If the lessor forfeits a home ownership lease, the lessor must, within 60 days after the Land Court makes its decision about forfeiture of the lease, give notice that the lease is forfeited to—
  - (a) the lessee and any mortgagee of the lease; and
  - (b) the registrar of titles.
- (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.

## **98 Extension of term of lease if proposed forfeiture**

- (1) This section applies to a home ownership lease if—
  - (a) a proposed forfeiture of the lease has been referred to the Land Court; and
  - (b) after the referral but before the Land Court decides on the matter, the term of the lease would, but for subsection (2), end.

- (2) The term of the lease is taken to continue until—
  - (a) if the lease is forfeited—the forfeiture of the lease takes effect as mentioned in section 97(3); or
  - (b) otherwise—the end of 60 days after the Land Court makes its decision.
- (3) Subsection (2) applies to the lease despite the provisions of the lease and any other provision of this Act.

### **Subdivision 3 Renewal**

#### **99 Application to renew lease**

- (1) The lessee under a home ownership lease may apply in writing to the lessor to renew the lease.
- (2) The application must—
  - (a) state the name of the lessee; and
  - (b) include information to identify the lease.

#### **100 Notice of expiry of lease**

- (1) This section applies if the lessee under a home ownership lease has not, under section 99, applied for renewal of the lease at least 2 years before the term of the lease ends.
- (2) At least 1 year before the term of the lease ends, the lessor must give the lessee notice stating—
  - (a) the day the term of the lease ends; and
  - (b) that the lessee may apply under this subdivision for renewal of the lease; and
  - (c) how the lessee may apply.



### **101 Lessor to consider and decide application**

Within 6 months after an application is made under section 99, the lessor must consider the application and decide to renew or not to renew the home ownership lease.

### **102 Decision to renew lease**

- (1) If the lessor decides to renew the home ownership lease, the lessor must give the lessee—
  - (a) notice of the decision; and
  - (b) a copy of the renewed lease.
- (2) The renewed lease—
  - (a) has effect immediately after the lease it replaces (the *replaced lease*) ends; and
  - (b) is subject to all the conditions to which the replaced lease was subject immediately before it ended.
- (3) No amount is payable under section 91(1)(b) for the renewed lease.

### **103 Lessor may decide not to renew lease**

The lessor may decide not to renew the home ownership lease only if the lessor is reasonably satisfied—

- (a) the lease land is not being used primarily for residential use; or
- (b) the lessee acquired the lease by fraud.

### **104 Notice about decision not to renew lease**

If the lessor decides not to renew the home ownership lease, the lessor must give the lessee an information notice for the decision.

### **105 Extension of term of lease if application for renewal**

- (1) This section applies to a home ownership lease if—
  - (a) the lessee has applied to renew the lease under section 99; and
  - (b) before the lessor decides the application, the term of the lease would, but for subsection (2), end.
- (2) The term of the lease is taken to continue until notice of the lessor's decision is given to the lessee under this subdivision.
- (3) Subsection (2) applies to the lease despite the provisions of the lease and any other provision of this Act.

## **Subdivision 4 General matters about forfeiture or non-renewal of home ownership leases**

### **106 Right to remove improvements if lease forfeited or not renewed**

- (1) If the lessor forfeits or decides not to renew a home ownership lease, the lessor must allow the lessee to remove the lessee's improvements on the lease land within a reasonable period of at least 28 days decided by the lessor.

- (2) If the improvements are not removed within the period, they become the property of the lessor.

### **107 Payment by lessor if lease forfeited or not renewed**

- (1) If the lessor forfeits or decides not to renew a home ownership lease, the lessor must pay to the person who was the lessee the amount decided by the lessor under subsection (2) (the *required amount*).
- (2) The required amount is the amount equal to the combined value of the following (the *maximum amount*) less any amounts deducted from the maximum amount under section 109—
  - (a) the value of the lease land on the day the lease is forfeited or ends;
  - (b) the value of the lessee's improvements on the land that become the property of the lessor.
- (3) The value of the lease land must be the amount decided by the lessor using the valuation methodology mentioned in section 91(1)(b)(i).
- (4) The value of any improvements on the lease land must be decided by the lessor based on the market value of the improvements in a sale of a lease of the same term and tenure as the forfeited or non-renewed lease.
- (5) The lessor must decide the required amount as soon as practicable after giving the person notice that the lease is forfeited or not renewed.
- (6) On deciding the required amount, the lessor must give the person an information notice for the decision.
- (7) This section is subject to section 108.

### **108 Unclaimed amount**

If the lessor can not find the person entitled to receive the required amount, or the person does not collect the amount from the lessor within 9 years after the day the lease is forfeited or not renewed, the required amount is forfeited to the lessor.

### **109 Amount owing to lessor or mortgagee**

If the lessor forfeits or decides not to renew a home ownership lease, the lessor may deduct the following amounts from the maximum amount—

- (a) an amount in payment of all costs properly incurred by the lessor in forfeiting or not renewing the lease;
- (b) an amount in payment of expenses incurred by the lessor to rectify damage caused to the lease land by the person who was the lessee;
- (c) any amount owing to the lessor 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.

### **110 Payment of amount to mortgagee in discharge of mortgage**

- (1) This section applies if—
  - (a) the lessor forfeits or decides not to renew a home ownership lease; and
  - (b) 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 lessor must pay to the mortgagee—

- (a) if the amount that may be deducted from the maximum amount under section 109(d) is less than the difference between the maximum amount and the amounts deducted under section 109(a), (b) and (c)—the amount that may be deducted from the maximum amount under section 109(d); or
  - (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 109(a), (b) and (c).
- (3) The lessor must pay the amount payable under subsection (2) to the mortgagee—
- (a) if no appeal is made to the Land Court about the required 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 to the Land Court about the required amount payable to the person who was the lessee—within 28 days after the appeal is finally decided.
- (4) If the lessor 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.

## **Subdivision 5 Miscellaneous**

### **111 Exemption from fees and charges**

- (1) This section applies to an instrument of lease for a home ownership lease.
- (2) No fee or charge is payable for—

- (a) the lodgement and registration of the instrument in the land registry; or
- (b) the provision by the registrar of titles of other services for the lodgement and registration of the instrument.

### **112 Beneficiary to home ownership lease**

- (1) A person who is beneficially entitled under a will to a home ownership lease may ask the lessor—
  - (a) to give the person a notice stating whether or not the person is entitled to a grant of the lease under this Act; and
  - (b) if, under a condition of the lease, the lease can not be transferred without the lessor's written consent—for the lessor's written consent to the transfer of the lease.

*Note—*

Under section 87, a home ownership lease may include a condition that it must not be transferred without the lessor's prior written consent.

- (2) The lessor must comply with a request under subsection (1) as soon as practicable after receiving the request.

## **Division 5      Townsite leases**

### **Subdivision 1    Restriction on grant**

#### **113 Minister's consent for grant of townsite lease**

- (1) A townsite lease may be granted only with the Minister's prior written consent.

- (2) The Minister may consent to the grant of a townsite lease only if—
  - (a) the lease is over an entire lot as shown in the appropriate register; and
  - (b) the Minister is reasonably satisfied that any existing interests in the proposed lease land are not inconsistent with the lease.

## **Subdivision 2 Requirements for Minister's consent**

### **114 General requirements for Minister's consent**

- (1) A person seeking the Minister's prior written consent to the grant of a townsite lease must give the Minister the information or documents reasonably required by the Minister to show—
  - (a) the purpose of the lease; and
  - (b) the grant of the lease is for the benefit of persons for whom the trustee holds the lease land; and
  - (c) the grant of the lease—
    - (i) will facilitate the continued operation of a township on the lease land; and
    - (ii) will not prevent residents of the township land from continuing to live on and access the land, or from obtaining tenure over the land under this Act.
- (2) In considering whether to give the consent, the Minister—

- (a) must have regard to the information or documents given to the Minister under subsection (1); and
  - (b) may have regard to other information the Minister reasonably considers relevant to the proposed lease.
- (3) Also, before giving the consent, the Minister must be reasonably satisfied—
- (a) the Torres Strait Islanders particularly concerned with the lease land are generally in agreement with the grant of the lease; and
  - (b) the grant of the lease—
    - (i) will facilitate the continued operation of a township on the lease land; and
    - (ii) will not prevent residents of the township land from continuing to live on and access the land, or from obtaining tenure over the land under this Act.

### **Subdivision 3 Provisions about dealing with townsite leases**

#### **115 Transfer or amendment of townsite lease**

- (1) A townsite lease must not be transferred or amended without—
  - (a) the agreement of both the trustee and the lessee of the lease land; and
  - (b) the Minister's prior written consent.
- (2) A person seeking the Minister's prior written consent to the transfer or amendment of a townsite lease 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 townsite lease, the Minister must consider whether the proposed transferee is capable of complying with the conditions of the lease.
- (4) The Minister may consent to the amendment of a townsite lease only if reasonably satisfied—
  - (a) the amendment does not significantly change the conditions of the townsite lease; and
  - (b) the amendment will not diminish the purpose of the lease.
- (5) A townsite lease must not be transferred to a person who, under this Act, would not be entitled to a grant of the lease.

### **116 Surrender of townsite lease**

A townsite lease must not be surrendered without the Minister's prior written consent.

### **117 No forfeiture of townsite lease**

A townsite lease can not be forfeited.

## **Subdivision 4 Effect of townsite lease on existing interests**

### **118 Lessee of townsite lease taken to be lessor of existing leases**

- (1) Subsection (2) applies if a townsite lease is granted over Torres Strait Islander land that is,

immediately before the grant of the townsite lease, the subject of a following lease (each a *continued lease*)—

- (a) a 1985 Act granted lease or a new Act granted lease under the new Land Holding Act;
  - (b) a lease under the Land Act;
  - (c) a trustee (Torres Strait Islander) lease.
- (2) On the grant of the townsite lease—
- (a) the continued lease continues in force and is taken to be—
    - (i) if the continued lease is primarily for residential use—a home ownership lease for the same term for which the continued lease was granted; or
    - (ii) otherwise—a lease granted under section 86(1); and
  - (b) the lessee of the townsite lease is substituted for the lessor as a party to the continued lease.

*Note—*

Under section 41(2), the trustee of the Torres Strait Islander land is the lessor of the continued lease.

- (3) Section 41(3) applies to the continued lease as if the reference in that subsection to the trustee of the land were a reference to the lessee of the townsite lease.

## **42 Amendment of s 135 (Decision-making by trustee)**

Section 135(1), from ‘about whether’—

*omit, insert—*

about any of the following—

- (a) the way in which the trustee will consult about the making of a freehold instrument for the land;
- (b) whether to grant an interest in the land;
- (c) whether to consent to the creation of a mining interest in the land;
- (d) whether to enter into an agreement about the land.

#### **43 Amendment of s 136 (Definitions for pt 10)**

- (1) Section 136, definitions *lease* and *lessor*—

*omit.*

- (2) Section 136—

*insert—*

*lease* means a part 8 lease, other than a townsite lease.

*lessor* means—

- (a) for a lease granted under a townsite lease—the lessee of the townsite lease; or
- (b) for another lease—the trustee of the lease land.

#### **44 Amendment of s 138 (Provisions about entering into possession, and selling, lease)**

Section 138(9), definition *lessee*, paragraphs (a) and (b)—

*omit, insert—*

- (a) for a lease granted under a townsite lease—the lessee under the lease; or
- (b) for another lease—the lessee under the lease.

**45 Amendment of s 142 (Trustee (Torres Strait Islander leases))**

(1) Section 142(2) to (5)—

*omit, insert—*

(2) For subsection (1), part 8 applies in relation to the leasing of Torres Strait Islander trust land—

(a) as if a reference in the part to Torres Strait Islander land were a reference to Torres Strait Islander trust land; and

(b) as if the reference in section 87(1)(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.

(3) Also, for subsection (1), sections 85(2) and 86(2) apply in relation to the leasing of Torres Strait Islander trust land that is prescribed DOGIT land as if a reference in those sections to a Torres Strait Islander includes a reference to an Aboriginal person.

(2) Section 142(7), ‘Subsection (6)’—

*omit, insert—*

Subsection (4)

(3) Section 142(8)—

*omit.*

(4) Section 142(6) and (7)—

*renumber* as section 142(4) and (5).

**46 Omission of pt 11, div 3 (Other matters)**

Part 11, division 3—

*omit.*

**47 Amendment of s 148 (Use of Torres Strait Islander land preserved)**

Section 148(5)(a)—

*omit, insert—*

- (a) it is subject to a home ownership lease; or

**48 Amendment of s 182 (Who may appeal)**

- (1) Section 182(2) and (3), ‘residential’—

*omit, insert—*

home ownership

- (2) Section 182(2), ‘section 121’—

*omit, insert—*

section 101

- (3) Section 182(3), ‘section 127’—

*omit, insert—*

section 107

- (4) Section 182(2) to (4)—

*renumber* as section 182(3) to (5).

- (5) Section 182—

*insert—*

- (2) A person who is given, or is entitled to be given, an information notice for a decision under part 2A may appeal to the Land Court against the decision.

**49 Amendment of s 185 (Notice of appeal)**

- (1) Section 185(a), ‘or (3)’—

*omit, insert—*

, (3) or (4)

(2) Section 185(b), ‘section 182(4)’—

*omit, insert—*

section 182(5)

**50 Amendment of s 192 (Dealing with particular trust property)**

(1) Section 192(1) and (3), ‘section 108’—

*omit, insert—*

section 93(3)

(2) Section 192(5)—

*renumber* as section 192(7).

(3) Section 192—

*insert—*

(5) Subsection (6) applies to the trustee of available land if the trustee receives an amount for a social housing dwelling situated on the available land.

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

**51 Omission of s 193 (Application of Residential Tenancies and Rooming Accommodation Act 2008)**

Section 193—

*omit.*

**52 Insertion of new pt 19, div 4**

Part 19—

*insert—*

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**Division 4**      **Transitional provisions for  
Aboriginal and Torres  
Strait Islander Land  
(Providing Freehold) and  
Other Legislation  
Amendment Act 2014**

**205 Definitions for div 4**

In this division—

*commencement* means the commencement of this section.

*pre-amended Act* means this Act as in force before its amendment by the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014*, section 41.

**206 Provision for existing leases**

- (1) This section applies to a lease under the pre-amended Act in effect immediately before the commencement.
- (2) A standard lease under the pre-amended Act is taken to be a part 8 lease for the same term for which the standard lease was granted.
- (3) A townsite lease under the pre-amended Act is taken to be a townsite lease.
- (4) A lease for private residential purposes under the pre-amended Act is taken to be a home ownership lease for the same term for which the lease for private residential purposes was granted.

## 207 Provision for existing applications

- (1) This section applies to an application under the pre-amended Act that, before the commencement, had not been granted or refused.
- (2) An application for a lease under the pre-amended Act is taken to be—
  - (a) if the application is for a lease for private residential purposes under the pre-amended Act—an application for a home ownership lease; or
  - (b) otherwise—an application for a part 8 lease for the same term and purpose as the term and purpose for which the application was made.
- (3) An application to renew a lease under the pre-amended Act is taken to be an application to renew a part 8 lease.

## 53 Amendment of sch 1 (Dictionary)

- (1) Schedule 1, definitions *decision-maker*, *lease*, *lessee*, *lessor*, *management plan*, *native title holder*, *residential lease*, *standard lease*, *townsite sublease* and *trustee*—

*omit.*

- (2) Schedule 1—

*insert—*

***allocation method***, for available land, for part 2A, see section 28B.

***allocation notice***, for part 2A, see section 28Z(1)(a).

***allocation process***, for available land, for part 2A, see section 28B.

***appeal period***, for part 2A, see section 28B.



**available land** see section 28D(3).

**closing day**, for part 2A, division 6, see section 28ZA(1)(d).

**decision-maker**, for part 16, means—

- (a) for a decision mentioned in section 182(1) or (5)—the Minister; or
- (b) for a decision mentioned in section 182(2)—the trustee of the available land to which the decision relates; or
- (c) for a decision mentioned in section 182(3) or (4) about forfeiture or non-renewal of a lease—the lessor of the lease land.

**eligibility criteria**, for part 2A, see section 28D(6)(a).

**eligible person**, for available land, for part 2A, see section 28B.

**freehold instrument** see section 28B.

**freehold option land** see section 28B.

**freehold policy**, for a freehold schedule, for part 2A, see section 28D(5).

**freehold schedule**, for part 2A, see section 28B.

**home ownership lease** see sections 85(2) and 86(2).

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

**indigenous local government**, for part 2A, see section 28B.

**interest holder**, for available land, for part 2A, see section 28B.

***lease***—

- (a) generally, does not include a residential tenancy agreement; and
- (b) for part 10, see section 136.

***lessee***, for part 8, see section 84.

***lessor***—

- (a) for part 8, see section 84; or
- (b) for part 10, see section 136.

***model freehold instrument***, for part 2A, division 4, subdivision 2, see section 28F.

***model freehold schedule***, for part 2A, see section 28D(4).

***native title holder***—

- (a) for part 2A, see section 28B; or
- (b) otherwise—in relation to land held, or to be held, by a registered native title body corporate, means—
  - (i) 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
  - (ii) if subparagraph (i) does not apply—the persons who hold the native title in relation to the land or part of the land.

***offer***, for part 2A, see section 28B.

***part 8 lease*** see section 84.

***planning scheme***, for part 2A, section 28B.

***probity advisor***, for part 2A, see section 28ZB(1).

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***reasonably considers*** means considers on grounds that are reasonable in the circumstances.

***reasonably satisfied*** means satisfied on grounds that are reasonable in the circumstances.

***social housing*** means housing that—

- (a) is being used to provide subsidised housing for residential use; or
- (b) has been used to provide subsidised housing for residential use and for which an amount, payable under either of the following sections for the value of the dwelling, has not been paid to the trustee—
  - (i) section 93;
  - (ii) section 108 as in force before the commencement of the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014*, section 41.

***social housing dwelling*** means a dwelling the housing chief executive reasonably considers to be social housing.

***trustee***, in relation to land, is the entity that—

- (a) holds, as trustee, the land under this Act; or
- (b) is the trustee of the land under the Land Act.

***urban area***, for part 2A, see section 28B.

***urban purposes***, for part 2A, see section 28B.

- (3) Schedule 1, definition *maximum amount*, ‘section 127(2)’—  
*omit, insert—*  
section 107(2)
- (4) Schedule 1, definition *required amount*, ‘section 127(1)’—

*omit, insert—*

section 107(1)

- (5) Schedule 1, definition *townsite lease*, ‘section 84(3)’—

*omit, insert—*

section 85(3)

## Part 5 Amendment of Torres Strait Islander Land Regulation 2011

### 54 Regulation amended

This part amends the *Torres Strait Islander Land Regulation 2011*.

### 55 Omission of pt 3 (Code of conduct about mining leases)

Part 3—

*omit.*

### 56 Insertion of new pt 4B

After part 4A—

*insert—*

## Part 4B Miscellaneous

### 35B Land for model freehold schedule

For section 28D(4) of the Act, freehold option land for which there is an interest holder on the commencement of this section is prescribed as a type of freehold option land.

## **Part 6                      Repeal**

### **57      Repeal**

The Aurukun and Mornington Shire Leases Act 1978, No. 6 is repealed.

## **Part 7                      Minor and consequential amendments**

### **58      Legislation amended**

Schedule 1 amends the legislation it mentions.

## **Chapter 3                  Amendment of Land Act 1994**

### **59      Act amended**

This chapter amends the *Land Act 1994*.

### **60      Amendment of s 13B (Power to declare and deal with former watercourse land)**

Section 13B(11), definition *ambulatory boundary principles*—  
*omit*.

**60A Amendment of s 170 (Purchase price if deed of grant offered)**

Section 170(2)—  
*omit.*

**61 Insertion of new ch 7, pt 3B**

Chapter 7—  
*insert—*

**Part 3B Making land available  
for public use as beach**

**431O Definitions**

In this part—

*declared beach area* means an area of a lot declared by regulation to be a declared beach area.

*foreshore* means land between the high-water mark and low-water mark.

*lot* includes a lot under the *Land Title Act 1994*.

*manager*, of a declared beach area, means the State or a local government, as provided for in this part.

*owner*, of a lot, means—

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

*public use* includes public enjoyment.

**registrar** means the Registrar of Titles or the chief executive, as may be appropriate.

**seashore** means—

- (a) any land that is foreshore; and
- (b) any land that is—
  - (i) above the high-water mark; and
  - (ii) ordinarily covered only by sand or shingle; and
- (c) any land that is below the low-water mark.

**use conditions** see section 431T.

#### **431P References to a lot**

For a reference in this part to a lot, it does not matter whether the lot has 1 or more tidal boundaries or has right line boundaries for all its boundaries.

#### **431Q Regulation may declare area of seashore to be a declared beach area**

- (1) A regulation may declare a part of a lot to be a declared beach area.
- (2) The part of the lot declared under subsection (1) must essentially be seashore and must, if practicable, extend to include a natural feature that is—
  - (a) suitable for physically delineating the extent of the declared beach area; and
  - (b) capable of being regarded as being ambulatory in nature.

*Examples of a natural feature—*

- the top of a bank
- the toe of a dune

- (3) The declared beach area must be shown, in the way the registrar requires, on a plan of survey identified in the regulation.
- (4) Until the plan of survey is registered as provided for under this section, a copy of the plan of survey must be held by the chief executive and be available for inspection.
- (5) The declaration of a part of a lot as a declared beach area does not affect the rights or obligations of any person in relation to the part until, on a request from the chief executive in the approved form, the following are registered for the lot in the appropriate register for the lot—
  - (a) the declaration;
  - (b) the plan of survey.
- (6) The plan of survey may be registered without the consent of anyone whose consent would otherwise have been required under this Act or the *Land Title Act 1994* if the plan otherwise complies with this Act or the *Land Title Act 1994* and has been endorsed with the consent of the chief executive or the Minister.
- (7) If the declaration of a part of a lot as a declared beach area is repealed—
  - (a) the part ceases to be a declared beach area; and
  - (b) the registrar, on a request from the chief executive in the approved form, must cancel the registration of the declaration.
- (8) No fee is payable in relation to the lodgement or registration of a request or other document under subsection (5) or (7).



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### **431R Declared beach area and lot boundaries**

- (1) If a natural feature chosen to delineate the extent of a declared beach area is capable of being regarded as being ambulatory in nature, it must be shown on the plan of survey as ambulatory.
- (2) It is the intention of this part that the ambulatory boundary principles are to be taken to apply to a natural feature shown as being ambulatory to the greatest practicable extent.
- (3) The declaration of a part of a lot as a declared beach area does not affect the location at law of any external boundary of the lot, whether a right line boundary or a tidal boundary.

### **431S Compensation not payable for declared beach area**

A person is not entitled to relief or compensation from the State or anyone else under this Act, the Land Title Act compensation provisions, the Property Law Act relief provisions, the provisions of any other Act or otherwise for deprivation of an interest of any type in land, or for loss or damage of any kind, arising out of a part of a lot becoming a declared beach area.

### **431T Management of declared beach area and conditions of use**

- (1) A regulation may state whether the manager of a declared beach area is the State or the local government in whose local government area the declared beach area is located.
- (2) If no manager is stated, the State is the manager.
- (3) A regulation may state conditions of use (*use conditions*) to apply to—
  - (a) a particular declared beach area; or

- (b) some or all declared beach areas generally.
- (4) Use conditions may apply to a declared beach area whether or not the State is the manager of the area.
- (5) A regulation may include a penalty for contravention of a use condition stated in the regulation.

*Note—*

Under section 448, a regulation may prescribe a penalty of not more than 100 penalty units for an offence created under the regulation.

- (6) A local government may make a local law that states conditions of use (also *use conditions*) to apply to—
  - (a) a particular declared beach area for which it is the manager; or
  - (b) some or all declared beach areas generally for which it is the manager.
- (7) A local law mentioned in subsection (6) may include a penalty for contravention of a use condition stated in the local law, but the penalty must not be more than 100 penalty units.
- (8) Use conditions for a declared beach area as stated in a local law apply subject to use conditions applying to the declared beach area as stated in a regulation.
- (9) Without limiting subsection (3) or (6), use conditions may include conditions about any of the following—
  - (a) limiting access to the declared beach area to particular times, including, for example, by limiting access to daylight hours or to particular hours according to the season;
  - (b) whether vehicles are permitted on the declared beach area;

- (c) whether any activities are prohibited on the declared beach area, including, for example, whether camping is prohibited;
  - (d) whether dogs or other animals are permitted on the declared beach area;
  - (e) whether fires may be lit on the declared beach area;
  - (f) the nature and legal effect of signs erected on the declared beach area by the manager of the area.
- (10) Without limiting the issues that may be considered, the Minister or a local government may, in devising use conditions, consider the following issues—
- (a) safety of the public;
  - (b) the particular circumstances of the owner of the lot of which the declared beach area forms a part;
  - (c) particular issues raised by members of the public, including, for example, whether the use of a vehicle on the declared beach area may be necessary for accessing another area;
  - (d) environmental issues, including, for example, turtle-breeding habitat requirements;
  - (e) the location of relevant existing infrastructure.

#### **431U Notice to owner before making of regulation**

- (1) The Minister may recommend to the Governor in Council the making of a regulation declaring a part of a lot to be a declared beach area only if the

Minister is reasonably satisfied notice has been given as required under this section.

- (2) The Minister must give the owner of the lot a written notice stating the intention to declare a part of the lot a declared beach area.
- (3) The notice must include a reasonably approximate indication of the boundaries of the proposed declared beach area.

#### **431V Consultation before registration of declaration and plan of survey**

- (1) The Minister may proceed to the registration under this part of a declaration or plan of survey only if the Minister is reasonably satisfied consultation has been undertaken as required under this section.
- (2) The Minister must consult with the local government in whose local government area the declared beach area is located about whether it wishes to be the manager of the declared beach area.
- (3) If the local government wishes to be the manager, it must take reasonable steps to consult with the owner of the lot and the public generally about the use conditions that are to apply to the declared beach area under a local law.
- (4) If the local government does not wish to be the manager, the Minister must take reasonable steps to consult with the owner of the lot and the public generally about the use conditions that are to apply to the declared beach area under a regulation.

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### **431W Status of declared beach area**

- (1) Subject to this part and to use conditions for a declared beach area, the area is open to public use.
- (2) The manager of a declared beach area—
  - (a) has control of the area subject to this part and any regulation under this Act relating to the area; and
  - (b) is responsible for taking reasonable and practical measures to maintain the area in a safe condition.

*Example of a reasonable and practical measure for paragraph (b)—*

It may be a reasonable and practical measure to restrict public access to a part of a declared beach area that has significantly eroded rather than carry out extensive restoration work for the part.

*Note—*

See the *Civil Liability Act 2003*, chapter 2, part 3, division 1, for civil liability principles that apply to public and other authorities, including local governments.

- (3) Control under subsection (2)(a) includes the right to take necessary steps for maintaining the declared beach area as mentioned in subsection (2)(b).
- (4) The owner of a lot of which a declared beach area forms a part, and any other person having an interest in the lot—
  - (a) is not required, and can not be required, to maintain, or to contribute to the maintenance of, any part of the declared beach area; and
  - (b) is not, and can not be made, civilly liable for an act or omission of the person in relation to the declared beach area unless—

- (i) the act or omission creates a risk in relation to which the person would, other than for this section, be civilly liable; and
  - (ii) the person intends to create the risk or is reckless as to whether the risk is created.
- (5) If subsection (4)(b) prevents civil liability attaching to a person, the liability attaches instead to the State.
- (6) Despite this Act or the *Local Government Act 2009*, an officer or employee of the manager of a declared beach area may enter the area at any time without notice to any other person if the entry—
  - (a) is authorised by the manager, whether generally or otherwise; and
  - (b) the entry relates to the enforcement of the use conditions for the area or to fulfilling the manager’s responsibilities as the entity in control of the area.

#### **431X Exemption from contravention of use condition**

- (1) A person is taken not to contravene a use condition for a declared beach area if the person is—
  - (a) a police officer acting in the performance of the police officer’s functions or powers; or
  - (b) a person acting in the performance of functions or powers—
    - (i) under an Act; or
    - (ii) as authorised or directed by the manager of the declared beach area.

- 
- (2) Subsection (1) does not limit the extent to which a use condition may provide for circumstances under which a person may be taken not to contravene the condition.

### **431Y Obstruction of use or enjoyment**

A person must not obstruct another person—

- (a) in the other person's exercise of the right of public use of a declared beach area; or
- (b) in the other person's performance of functions or powers in a declared beach area.

Maximum penalty—50 penalty units.

### **431Z Other Acts not affected**

- (1) This part does not affect the operation of any other provision of this Act, or any provision of another Act, in relation to a declared beach area.
- (2) Without limiting subsection (1), a person's exercise of a right of public use of a declared beach area under this part, including under use conditions applying to the declared beach area, is subject to the operation any other provision of this Act, or any provision of another Act, applying to the area.

### **61A Omission of s 469**

Section 469—

*omit.*

### **61B Amendment of s 471 (Right to a post-Wolfe freeholding lease)**

Section 471(1), after 'non-competitive lease'—

*insert—*

, other than a lease for grazing or agricultural purposes,

**61C Amendment of s 478 (Right to a post-Wolfe freeholding lease)**

Section 478(1), after ‘special lease’—

*insert—*

, other than a lease for grazing or agricultural purposes,

**61D Amendment of sch 2 (Original decisions)**

Schedule 2, entry for section 170(2)—

*omit.*

**62 Amendment of sch 6 (Dictionary)**

(1) Schedule 6, definitions *owner* and *right line boundary*—

*omit.*

(2) Schedule 6—

*insert—*

*ambulatory boundary principles* see the *Survey and Mapping Infrastructure Act 2003*, part 7.

*declared beach area*, for chapter 7, part 3B, see section 431O.

*foreshore*, for chapter 7, part 3B, see section 431O.

*Land Title Act compensation provisions* means the *Land Title Act 1994*, sections 188 and 188A.

*low-water mark* means the ordinary low-water mark at spring tides.



**manager**, for chapter 7, part 3B, see section 431O.

**owner**—

(a) for chapter 6, part 4, division 8C, see section 373R; or

(b) for chapter 7, part 3B, see section 431O.

**Property Law Act relief provisions** means the *Property Law Act 1974*, part 11.

**public use**, for chapter 7, part 3B, see section 431O.

**registrar**, for chapter 7, part 3B, see section 431O.

**right line boundary** see section 8.

**seashore**, for chapter 7, part 3B, see section 431O.

**use conditions**, for chapter 7, part 3B, see section 431T.

(3) Schedule 6, definition *lot*, after ‘subdivision’—

*insert*—

and for chapter 7, part 3B, see section 431O

## Chapter 4      Amendment of Land Valuation Act 2010

### 63      Act amended

This chapter amends the *Land Valuation Act 2010*.

## 64 Insertion of new s 262

Chapter 9, part 6—

*insert—*

### **262 Limited application of Act to particular land**

- (1) This Act does not apply to an indigenous local government area until 30 June 2016.
- (2) Despite subsection (1), on or before 30 June 2016, the valuer-general may do all things necessary or convenient to be done for the purposes of—
  - (a) applying this Act to an indigenous local government area on and after 30 June 2016; and
  - (b) complying with a requirement of the Act that takes effect on and after 30 June 2016.
- (3) In this section—

*indigenous local government area* means land in the area of an indigenous local government under the *Local Government Act 2009*.

## 65 Amendment of schedule (Dictionary)

Schedule, definition *local government area*—

*omit, insert—*

*local government area*, for a provision about land, means the local government area in which the land is located.

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## **Schedule 1      Minor and consequential amendments**

section 58

### **Part 1                      Amendments commencing on 1 January 2015**

#### **Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984**

- 1      Section 27, definition *tenant*, paragraph (b), ‘private residential purposes’—**

*omit, insert—*

residential use

- 2      Section 28(7)(b)(i), ‘private residential purposes’—**

*omit, insert—*

residential use

#### **Aboriginal and Torres Strait Islander Land Holding Act 2013**

- 1      Section 26(2), note, ‘section 142(4) and TSILA, section 107(4)’—**

*omit, insert—*

section 126(4) and TSILA, section 91(4)

**2 Section 62(3)(a), 'section 143(6) or TSILA, section 108(6)'—**

*omit, insert—*

section 128(2) or TSILA, section 93(2)

**3 Section 69(2)—**

*omit, insert—*

(2) Before the term of the lease has expired, the holder of the lease may apply to the following person to be granted a lease under ALA over the lease land for the 1985 Act granted lease or new Act granted lease—

(a) if subsection (1)(a) or (b) applies—the trustee of the trust area;

(b) if subsection (1)(c) applies—the lessee of the townsite lease.

**4 Section 69(3) and (6), 'or townsite sublease'—**

*omit.*

**5 Section 69(5)—**

*omit, insert—*

(5) Before the term of the lease has expired, the holder of the lease may apply to the following person to be granted a lease under TSILA over the lease land for the 1985 Act granted lease or new Act granted lease—

(a) if subsection (4)(a) or (b) applies—the trustee of the trust area;

(b) if subsection (4)(c) applies—the lessee of the townsite lease.

**6 Section 72—**

*omit.*

**7 Section 73, heading, from ‘div 6’**

*omit, insert—*

**div 4 (Home ownership leases)**

**8 Section 73(1)—**

*omit, insert—*

- (1) ALA, part 10, division 4, subdivisions 2 and 4 apply to a lease to which this division applies as if the lease were a home ownership lease under ALA.

**9 Section 73(2), ‘residential purposes’—**

*omit, insert—*

residential use

**10 Section 73(3), ‘section 149’—**

*omit, insert—*

section 129

**11 Section 73(4), ‘sections 150(2) and 152(1)(a)’—**

*omit, insert—*

sections 130(2) and 132(1)(a)

**12 Section 73(5) and (6), ‘division 6’—**

*omit, insert—*

division 4

**13 Section 73(7), ‘section 162(3)’—**

*omit, insert—*

section 142(3)

**14 Section 74(2)(a) and (b)—**

*omit, insert—*

- (a) if the lease is granted for residential use—a home ownership lease under ALA; or
- (b) otherwise—a lease granted under ALA, section 120(1) or 121(1).

**15 Section 79—**

*omit.*

**16 Section 80, heading, from ‘div 6’—**

*omit, insert—*

**div 4 (Home ownership leases)**

**17 Section 80(1)—**

*omit, insert—*

- (1) TSILA, part 8, division 4, subdivisions 2 and 4 apply to a lease to which this division applies as if the lease were a home ownership lease under TSILA.

**18 Section 80(2), ‘residential purposes’—**

*omit, insert—*

residential use

**19 Section 80(3), ‘section 114’—**

*omit, insert—*

section 94

**20 Section 80(4), ‘sections 115(2) and 117(1)(a)’—**

*omit, insert—*

sections 95(2) and 97(1)(a)

**21 Section 80(5) and (6), ‘division 6’—**

*omit, insert—*

division 4

**22 Section 80(7), ‘section 127(3)’—**

*omit, insert—*

section 107(3)

**23 Section 81(2)(a) and (b)—**

*omit, insert—*

- (a) if the lease is granted for residential use—a home ownership lease under TSILA; or
- (b) otherwise—a lease granted under TSILA, section 85(1) or 86(1).

## **Aboriginal Land Act 1991**

**1 Section 184, definition *trustee*—**

*omit.*

## **Building Boost Grant Act 2011**

**1 Section 9(1)(g)(i), ‘section 119(1)(a)’—**

*omit, insert—*

section 120(1) or (2)

**2 Section 9(1)(g)(ii), ‘section 84(1)(a)’—**

*omit, insert—*

section 85(1) or (2)

## **Cape York Peninsula Heritage Act 2007**

**1 Schedule, definition *Aboriginal land*, ‘section 10’—**

*omit, insert—*

section 8

**2 Schedule, definition *Aurukun Shire lease land*, ‘section 15’—**

*omit, insert—*

section 13

**3 Schedule, definition *DOGIT land*, ‘section 13’—**

*omit, insert—*

section 11



## **Duties Act 2001**

**1 Section 131(b)—**

*omit, insert—*

- (b) the issue of a lease prepared for the *Aboriginal Land Act 1991*, section 287 or the *Torres Strait Islander Land Act 1991*, section 191;

**2 Section 131(d), ‘section 84’—**

*omit, insert—*

section 199

**3 Section 131(d), ‘section 81’—**

*omit, insert—*

section 148

## **Land Act 1994**

**1 Section 57(11), note, from ‘part 5F’—**

*omit, insert—*

part 15 and the *Torres Strait Islander Land Act 1991*, part 11.

## Land Court Act 2000

- 1 **Section 17(1)(a), ‘each land tribunal’—**  
*omit, insert—*  
the land tribunal
  
- 2 **Sections 17(1)(b), (2) and (3), 59(1) and 60(1), ‘a land tribunal’—**  
*omit, insert—*  
the land tribunal
  
- 3 **Sections 59, heading and 60, heading, ‘a land tribunal’—**  
*omit, insert—*  
land tribunal
  
- 4 **Section 60(4), definition *presiding member*, from ‘of a land tribunal’—**  
*omit, insert—*  
of the land tribunal, see the *Aboriginal Land Act 1991*,  
schedule 1.
  
- 5 **Schedule 2, definition *land tribunal*, ‘or the Torres Strait Islander Land Act 1991’—**  
*omit.*

## **Nature Conservation Act 1992**

- 1**      **Schedule, definition *Torres Strait Islander land*, ‘section 9’—**

*omit, insert—*

section 7

## **Nature Conservation (Protected Areas Management) Regulation 2006**

- 1**      **Schedule 9, definitions *Aboriginal people particularly concerned with land* and *Torres Strait Islanders particularly concerned with land*, ‘section 4’—**

*omit, insert—*

section 3

## **Nature Conservation (Wildlife Management) Regulation 2006**

- 1**      **Schedule 5, definitions *Aboriginal people particularly concerned with the land* and *Torres Strait Islanders particularly concerned with land*, ‘section 4’—**

*omit, insert—*

section 3

## Public Service Act 2008

### 1 Schedule 1, entry for Land Tribunal under *Torres Strait Islander Land Act 1991*—

*omit.*

## Sustainable Planning Regulation 2009

### 1 Schedule 26, definition *residential lease*—

*omit, insert—*

*residential lease* means—

- (a) a lease granted under the *Aboriginal Land Act 1991* to an Aboriginal person for residential use; or
- (b) a lease granted under the *Torres Strait Islander Land Act 1991* to a Torres Strait Islander for residential use.

### 2 Schedule 26, definition *social housing lease*, paragraph (a)—

*omit, insert—*

- (a) a lease granted to the State under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991* for the purpose of providing subsidised housing for residential use; or

## Torres Strait Islander Land Act 1991

- 1 Section 140, definition *trustee*—**  
*omit.*

## Part 2 Amendments commencing by proclamation

### Aboriginal Land Act 1991

- 1 Section 10(1)(c) and (d)—**  
*omit.*
- 2 Sections 13 and 14—**  
*omit.*
- 3 Section 15, definition *relevant land*, paragraphs (c) and (d)—**  
*omit.*
- 4 Section 32ZI(1)(a)(iv)—**  
*omit.*
- 5 Section 32ZI(1)(a)(v)—**  
*renumber* as section 32ZI(1)(a)(iv).

- 6 Section 40(2)(c) and (d)—**  
*omit.*
- 7 Section 40(9)—**  
*omit.*
- 8 Section 45(2)(d)—**  
*omit.*
- 9 Section 45(3), ‘, section 46’—**  
*omit.*
- 10 Section 45(7), definitions *Aurukun Shire lease* and *Mornington Shire lease*—**  
*omit.*
- 11 Sections 46 and 48—**  
*omit.*
- 12 Section 153(3) and (4)—**  
*omit.*
- 13 Section 153(5)—**  
*renumber* as section 153(4).
- 14 Schedule 1, definitions *Aurukun Shire lease land* and *Mornington Shire lease land*—**  
*omit.*

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## Animal Care and Protection Act 2001

- 1 **Section 41A(1)(b)(iv)**—  
*omit.*

## Auditor-General Act 2009

- 1 **Schedule, definition *appropriate Minister*, paragraph (e)**—  
*omit.*
- 2 **Schedule, definition *appropriate Minister*, paragraph (f),  
'for another'**—  
*omit, insert*—  
for a
- 3 **Schedule, definition *appropriate Minister*, paragraphs (f)  
to (i)**—  
*renumber* as paragraphs (e) to (h).

## Cape York Peninsula Heritage Act 2007

- 1 **Section 14(1) and 18(1)(a), 'Aurukun Shire lease land'**—  
*omit.*
- 2 **Section 26(2), definition *relevant land*, paragraph (b)**—  
*omit.*

- 3      **Section 26(2), definition *relevant land*, paragraph (c)—**  
*renumber* as paragraph (b).
  
- 4      **Schedule, definition *Aurukun Shire lease land*—**  
*omit*.
  
- 5      **Schedule, definition *landholder for the land*, paragraph (b)—**  
*omit*.
  
- 6      **Schedule, definition *landholder for the land*, paragraph (c)—**  
*renumber* as paragraph (b).

## **Environmental Protection Act 1994**

- 1      **Section 38(2)(h)—**  
*omit*.
  
- 2      **Section 579(6), definition *owner*, paragraph (b)—**  
*omit*.

## **Fire and Rescue Service Regulation 2011**

- 1      **Section 7A(2), definition *indigenous land*, paragraph (c)—**  
*omit*.



- 2 Section 7A(2), definition *indigenous land*, paragraphs (d) and (e)—**  
*renumber* as paragraphs (c) and (d).

## **Geothermal Energy Act 2010**

- 1 Schedule 2, definition *owner*, item 1(j)—**  
*omit.*

## **Greenhouse Gas Storage Act 2009**

- 1 Schedule 2, definition *owner*, item 1(j)—**  
*omit.*

## **Information Privacy Act 2009**

- 1 Section 126(3), definition *responsible Minister*, paragraph (c)—**  
*omit.*
- 2 Section 126(3), definition *responsible Minister*, paragraph (d), ‘to another’—**  
*omit, insert—*  
to a

- 3 Section 126(3), definition *responsible Minister*, paragraphs (d) to (h)—**  
*renumber* as paragraphs (c) to (g).

## **Mineral Resources Act 1989**

- 1 Schedule 2, definition *owner*, paragraph (a)(iv)—**  
*omit.*
- 2 Schedule 2, definition *reserve*, paragraph (b)—**  
*omit.*
- 3 Schedule 2, definition *reserve*, paragraph (c)—**  
*renumber* as paragraph (b).

## **Petroleum Act 1923**

- 1 Section 2, definition *owner*, item 1(j)—**  
*omit.*

## **Petroleum and Gas (Production and Safety) Act 2004**

- 1 Schedule 2, definition *owner*, item 1(j)—**  
*omit.*

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## Survey and Mapping Infrastructure Act 2003

**1 Section 62, definition *indigenous land*, paragraph (b)—**  
*omit, insert—*

- (b) land that is the subject of a deed of grant in trust under the *Land Act 1994*, granted for the benefit of Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes; or

## Vegetation Management Act 1999

**1 Schedule, definition *indigenous land*, paragraph (a)—**  
*omit.*

**2 Schedule, definition *indigenous land*, paragraphs (b) to (d)—**  
*renumber* as paragraphs (a) to (c).