

LAND BILL 1994

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The Bill provides for the consolidation and reform of the law relating to the administration and management of non-freehold land and deeds of grant in trust, and the creation of freehold land, and for other related purposes.

The Reasons for the Bill

Since 1859 a large number of Acts and amendments to Acts have been introduced in Queensland to meet the particular land management needs and land policy directions of the times. Over the years, this has created an extremely complex collection of laws governing the management of Queensland's land and the tenure types able to be issued. It has been over thirty years since the *Land Act 1962* was fully overhauled.

In 1990 the Government established a committee to examine and report on land policy and administration in Queensland. The recommendations of that committee have been gradually implemented where appropriate, through amendments to the *Land Act 1962* in 1991, 1992 and 1993. This Bill finalises the implementation of the recommendations of that report by streamlining the tenure system of Queensland and at the same time re-writing the Land Act into a clear, understandable statute.

Estimated Cost for Government Implementation

There will be no significant costs incurred by the Government in introducing this legislation, as it does not introduce any new regulatory regimes, but streamlines and consolidates existing processes.

Consultation

The Review of Land Policy and Administration in Queensland (the Wolfe Report) was the result of wide community consultation. In 1992 the Government released a White Paper on amendments to land policy. This White Paper was widely circulated and discussed publicly. Comment on implementation issues associated with the policy established in the White Paper was requested and considered in preparing the legislation.

The further refinement of the legislation was the subject of detailed consultation with a committee of representatives from industry and community bodies.

The Litigation Reform Commission has considered the Bill and has raised no concerns.

NOTES ON PROVISIONS

CHAPTER 1—PRELIMINARY

This chapter sets out the principles and application of the Bill, and the application to interests in land below high-water mark.

PART 1—INTRODUCTION

Clause 1 Contains the short title.

Clause 2 Parts of the Bill will commence on specific dates, and other parts will commence on a date or dates to be fixed by Proclamation.

Clause 3 References the dictionary in Schedule 6.

PART 2—OBJECTS

Clause 4 A set of principles for the management of land under the Bill are provided. This will set the framework for decision making under the Bill.

PART 3—APPLICATION OF ACT

Clause 5 Action under the Bill relates to Queensland land above and below high-water mark and in strata (for example a road may be closed in strata (above or below the actual bitumen surface) and a lease issued in strata for the air space above a road).

Clause 6 States who the Bill binds.

Clause 7 Ensures that it is clear that the Bill does not affect the operation of the *Native Title (Queensland) Act 1993*. The streamlining of tenures under this Bill is not intended to alter any native title interest that may exist.

PART 4—LAND NEAR HIGH-WATER MARK

Clause 8 Provides definitions required in this Part.

Clause 9 This brings into lands legislation ownership and tenure issues for land below high-water mark, originally dealt with in the *Harbours Act 1955*. A registered interest in land (for example a freehold interest registered in the freehold land register) may be or have been permitted under another specific statute (such as the *Sanctuary Cove Resort Act 1985*).

Clause 10 As for clause 9.

Clause 11 Reclamation “creates” new land above high-water mark, and should there be any doubt into which local government area that land falls, this clause allows for clarification.

Clause 12 Marinas, for example, are sometimes created by digging out a part of a freehold block of land and letting the tidal waters in. This clause makes it clear that such inundation does not affect the registered owner's interest in the land inundated.

Clause 13 This clause makes it clear that land below high-water mark, other than inundated land as specified in clause 12, may only be dealt with under the authority of an Act (for example; this Bill, the *Canals Act 1958*, and the *Sanctuary Cove Resort Act 1985* all set out specific provisions for dealing with land below high-water mark).

CHAPTER 2—LAND ALLOCATION

This chapter provides for the general power to issue deeds of grant and leases, as well as establishing the types of reservations to the State that those deeds and leases may contain.

The chapter also clarifies the interaction of the Bill and the *Native Title Act 1993 (Commonwealth)* and *The Native Title (Queensland) Act 1993*.

PART 1—ALLOCATION POWERS

Clause 14 This provides the power for the Governor in Council to grant land in fee simple and to grant land in fee simple in trust (see Chapter 3). However, issuing a deed of grant under this Bill below high-water mark, or a deed of grant in strata, is specifically not allowed (for example a deed of grant above a stretch of road).

Clause 15 This provides the power for the Governor in Council to grant leases, in perpetuity or for a term of years. In issuing a lease below high-water mark, coastal and marine planning and safety issues must be taken into account. This clause also allows for leases to specify a purpose, which could be very general or specific as required in the particular circumstances.

Clause 16 This clause provides for planned and appropriate tenure allocation.

Clause 17 This clause allows the State to hold freehold land and leased land in the name of the State. Once a deed of grant is issued to the State under this clause, the land is dealt with under the *Land Title Act 1994*. Where land is leased to the State, it is not intended that the doctrine of merger apply to the interest.

Clause 18 When land is required for some public or other purpose this clause gives the State the ability to exchange land for the required land (as an alternative to resumption or purchase). Section 21 of the *Native Title Act 1993 (Commonwealth)* provides that exchange of native title interests may also occur.

Exchange should be able to take place even if the market values of the exchanged lands are not equivalent, so long as State equity is not reduced. For example, an exchange should be able to take place even though the dollar values of the two parcels of land being exchanged are not the same, where the land being sought by the State may have a small market value, but because of location or other special features it is of particularly high value to the State.

Clause 19 As for clause 18, when the State requires land, the State should be able to purchase land on the open market. This clause allows this to occur (this is quite distinct from the provisions for compulsory acquisition under Chapter 5 of this Bill, and under the *Acquisition of Land Act 1967*). There are also times when the State may wish to purchase a lease (for example for future transfer under a property build-up scheme).

Clause 20 The existence of a mining interest does not stop land being able to be dealt with under the Bill; however, the potential effect of a dealing including a resumption needs to be considered and taken into account by the Minister and Governor in Council.

PART 2—RESERVATIONS

Clause 21 Freehold titles reserve certain rights to the State, in particular, minerals. This clause allows for such reservations. Such reservations are reservations in the title or lease and are quite different to reserves under Chapter 3, Part 1.

Clause 22 Reserving quarry materials to the State in a deed of grant was introduced in the *Lands Legislation Amendment Act 1991*; however, there exist some leases issued under repealed Acts, where the lessee's rights specifically included possession of quarry materials. If such leases are ever converted to freehold title the lessee's rights to the quarry materials continue under this clause.

Clause 23 In the past, reservations for public purposes (in particular roads) were often placed in deeds and leases. Though rarely used now, there may be situations where a reservation is appropriate. Such a reservation allows the State to retrieve the land (when required) at considerably less cost than if no reservation had existed, but with the advantage that until the land is required, the land may be used as a part of the deed or lease.

Clause 24 When reservations (see clause 23) are no longer required (due, for instance, to greater planning certainty over an area), a method of disposing of them is available under this clause.

Clause 25 Sale to the owner of the land containing the reservation is the first disposal option.

Clause 26 If possession of the reservation is retrieved through resumption, when the owner does not wish to purchase the land, the boundaries of the reservation may need to be determined. This clause allows for such a determination.

PART 3—NATIVE TITLE

Clause 27 Explains the object of the Part.

Clause 28 The *Native Title Act 1993* (Commonwealth) and the *Native Title (Queensland) Act 1993* (the 'Native Title Acts') establish a scheme that land dealings which affect native title must comply with in future. This clause recognises that requirement, and provides a non-exhaustive list of those land dealings which may affect native title with respect to the provisions of the Bill. Subsection (2) ensures that dealings such as low impact future acts under the Native Title Acts or dealings which take place after a non-claimant application for land becomes unopposed, and before a court or tribunal makes a decision about the existence of native title, can proceed, in accordance with the Native Title Acts.

Clause 29 This clause recognises Aboriginal tradition and Torres Strait Islander custom as factors that need to be taken into consideration when exercising rights of entry to land under Chapter 7.

CHAPTER 3—RESERVES, DEEDS OF GRANT IN TRUST AND ROADS

PART 1—RESERVES AND DEEDS OF GRANT IN TRUST

There are certain parcels of land which, in the public interest, it is desirable to reserve from sale or disposal. The public interest reasons, or community purposes, for which such land should be able to be reserved are numerous and varied (for example the local community need for a recreation area, or watering places for travelling stock). Such land is designated as a “reserve”.

Some specific types of purposes, such as National Parks, Conservation Parks and State Forests, etc. are governed by separate legislation (*Nature Conservation Act 1992* and *Forestry Act 1959*). Other types of reserves are dealt with under this Bill.

A greater security of title may be provided in certain circumstances for such land by issuing a deed of grant in trust, for a specific community purpose. This is freehold land, but it is held in trust, rather than owned by the trustees and is subject to the Bill for actions relating to the management and disposal of the land.

Such reserves and deeds of grant in trust may be managed by people or organisations “in trust”, that is as trustees, for the benefit of the community. Trustees are generally local governments, Government agencies, or incorporated bodies such as sporting groups, and the like.

Division 1—General

Clause 30 Explains the object of the Part.

Division 2—Reserves

Clause 31 Enables land to be set aside (“dedicated”) as a reserve for a community purpose (for example “park and recreation”). The clause also allows for alterations to the reserve.

Clause 32 This clause allows the Governor in Council to issue a lease over a reserve, where the lease would be consistent with the purpose of the reserve, or, in certain circumstances that do not adversely affect the reserve, for an inconsistent purpose. If a reserve has trustees, the trustees must be consulted before such a lease is issued.

Clause 33 At times, reserves must be revoked so that the land can be used for another purpose or so other more pressing community needs can be met.

Clause 34 When a reserve is revoked, the land should not be encumbered by leases and permits issued by trustees of the reserve. This provision is a condition of entering into a lease or permit over a reserve, and maintains a current provision.

Division 3—Deeds of grant in trust

Clause 35 This clause ensures that land granted in trust is used for the community purpose for which it was granted.

Clause 36 This clause enables adjoining deeds of grant in trust to be amalgamated into one title.

Clause 37 As a deed of grant in trust provides a greater security for the community purpose, the method of taking land back involves greater scrutiny. However the trustees do not own the land, therefore it would be inappropriate to compensate them for any land taken back. Compensation is for improvements (e.g. buildings) and development works only.

Clause 38 There are times when a deed of grant in trust will need to be cancelled. This clause sets out how this occurs.

Division 4—Deeds of grant in trust for Aboriginals and Torres Strait Islanders

Approximately 30 deeds of grant in trust for the benefit of Aboriginal or Torres Strait Islander people were created in the early 1980's. The provisions of the *Land Act 1962* for deeds of grant in trust were used, with a number of additional special provisions. These deeds of grant in trust for the benefit of Aboriginal and Torres Strait Islander people are available for transfer as inalienable freehold under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. While these deeds of grant in trust remain, the Bill must continue to provide for them.

Clause 39 The clauses of this Division only apply to Aboriginal and Torres Strait Islander deeds of grant in trust.

Clause 40 This clause allows for the exclusion of improvements and land in a deed of grant in trust.

Clause 41 Many Aboriginal or Torres Strait Islander deeds of grant in trust are in isolated places where the cost of survey would be very high; however, over time new technology may be able to provide greater certainty in description, and when this occurs the more accurate description is able to be substituted for the current description.

Clause 42 This allows for minor alterations to boundaries or roads where the holders of the deed of grant in trust are not disadvantaged.

Clause 43 Because of the special circumstances of their creation, only an Act of Parliament is able to end, or delete land from, an existing Aboriginal or Torres Strait Islander deed of grant in trust. The *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Acts 1991* are two such Acts.

Division 5—Appointments, functions and removal of trustees

Clause 44 This clause enables the Minister to place reserves and deeds of grant in trust under the control of an organisation or group of people who

will manage the day to day use of the land. The relevant local government is the most commonly appointed trustee.

Clause 45 Changes of address must be notified so that notices and the like can be properly received by trustees. If a trustee that is an incorporated body stops being an incorporated body, the Minister will need to be notified so that action may be taken to ensure that the trust land does not suffer.

Clause 46 Outlines the functions of trustees.

Clause 47 Trustees are accountable, as they are managing the land in trust for the people of the State.

Clause 48 As for Clause 47.

Clause 49 This clause would allow audits to occur where, for instance, a trustee has been provided with grant money, and the people who are responsible for the grants and their administration need to audit the accounts.

Clause 50 Provision has to be made for alterations to trustees, both through voluntary resignation and other reasons.

Clause 51 Provision has to be made for removal of trustees who are not acting in the public interest with respect to the trust land.

Division 6—Powers of trustee

Clause 52 Provides a general power for trustees to manage the trust land and also allows the Minister to appoint trustees under specific conditions of appointment.

Clause 53 The most common type of trustee of reserves and deeds of grant in trust will be the relevant local government. There will also be other statutory bodies who are trustees, such as port authorities. This clause makes it clear that, though a statutory body may be governed by other legislation, the provisions of the Bill in relation to their actions as trustees and over trust land, are primary.

Clause 54 A trustee only holds the land *in trust* for the community purpose. They do not own the land and therefore cannot sell it or give it away.

Clause 55 Trustees of deeds of grant in trust may surrender part or all of the trust land.

Clause 56 This clause allows the Governor in Council by regulation to make model by-laws. Trustees may adopt any of the model by-laws as by-laws to apply to the trust land. As most trustees are local governments, local government local laws will usually regulate the use of the land rather than by-laws made under the Bill; however, such local laws for trust land must be consistent with the Bill.

Division 7—Trustee leases and trustee permits

Clause 57 In some instances, leases over reserves and deeds of grant in trust can enhance the community purpose for which the land has been set aside. This clause allows such trustee leasing, however the approval of the Minister is required.

Clause 58 Normal dealings with trustee leases may be able to be undertaken, with the Minister's approval.

Clause 59 This clause sets out when the Minister's approval may be given. Generally, a trustee lease must be consistent with the purpose for which the land has been set aside; however, there are times when a reserve may not be required for its community use, or where another use can co-exist with the community purpose.

Clause 60 A permit is a short term or part time occupation that does not grant an interest in the land but allows the holder to occupy the land within the terms of the permit. Trustees are able to issue such permits so long as they are within the prescribed guidelines.

Clause 61 This clause helps to ensure that the community purpose of the land is not being restricted by the trustee lease or permit. Community uses and needs change over time and the reserves system must be left flexible enough to meet those changes.

Clause 62 This clause allows a group of reserves to be managed together, so that rent from trustee leases or permits on one can benefit others which may not have such leases or permits. This will be particularly relevant to local government trustees, and is a new concept.

Clause 63 This clause establishes that trustees may obtain rent for trustee leases and permits over the land, but that the rent must go toward the maintenance or enhancement of the trust land. "...having regard to the use

and the community benefit and purpose” allows a low rent to be set when the lessee is the likes of a charity or charitable cause (e.g. Meals on Wheels) or non-profit community organisation (e.g. the Scout Association).

Clause 64 There are some trustees who, for instance, by their past actions with trust land, have demonstrated that they can manage reserves in the public interest without the need for Ministerial interaction, or who have specific and controlled leasing requirements. To streamline their management of reserves they are able to apply for, and, if the Minister considers it appropriate, receive, an exemption of the need for Ministerial approval.

Clause 65 There are two circumstances when a permit or a lease issued by trustees over a reserve or deed of grant in trust is able to be cancelled: where there has been a breach of the terms of the lease or permit, or where changing community circumstances mean that the land is required for some other use.

Clause 66 This clause sets out the entitlements regarding improvements upon cancellation of a trustee lease or trustee permit.

Division 8—Mortgaging trust land

Clause 67 Under the repealed Act, trustees of deeds of grant in trust were able to mortgage the land. Default of mortgage could result in the loss of that land to the community; however, because this ability was available in the repealed Act and many deeds of grant in trust are mortgaged, it would be inappropriate to take this ability away from those trusts.

Nevertheless, because of the chance that the community could lose the land under a mortgagor default, this ability is not to be available to deeds of grant in trust set aside after this Act commences. If a capacity to mortgage is required then a different tenure should be considered (e.g. lease).

Clause 68 Enables the mortgagee of a deed of grant in trust to take action for default; however, as the trustee has not paid for the land, the unimproved value of the land needs to be paid to the State by the mortgagee before the land can be sold free of the trust.

Clause 69 Sets out the process for determining the unimproved value mentioned in clause 68.

Clause 70 To ensure that the community is aware of what is happening and has a chance to take some action, the intention to act by a mortgagee must be notified and the land must first be auctioned.

Clause 71 Once the land is sold the trust ends and the Minister requires the power to wind up the affairs of the trust.

Clause 72 States how the money raised from the sale is to be distributed.

Division 9—Winding-up trusts of trust land

Clause 73 Self explanatory.

Clause 74 When a reserve or deed of grant in trust is revoked, cancelled or sold, the affairs of the trust may need to be formally wound up. The Minister may appoint a person to do this (a “liquidator”).

Clause 75 The liquidator requires the power to wind up the trust.

Clause 76 This clause allows for the sale of trust assets and distribution of the money raised by the sale.

Clause 77 Trustees must assist the winding-up process.

Clause 78 In some cases the reserve may have been revoked and trustee appointments cancelled, and the land would be unallocated State land, before the winding-up of trust affairs is completed; this should not hold up or stop the winding-up process.

Division 10—Cemeteries

Most cemeteries are under the control of a local government, and this Bill does not affect them. The *Cemetery Act 1865* only deals with non-local government public cemeteries. As the *Cemetery Act 1865* is being repealed, special provisions relating to cemeteries that are still relevant, need to be included in the Bill.

Clause 79 This makes provision for registers of burials.

Clause 80 In general, cemetery trustees would not be expected to interfere with structures, monuments and tombstones unless in agreement

with some relevant person; however, this clause allows them to do so where there are health and safety reasons.

Clause 81 Allows for a cemetery to be closed to further interments. Such a closure does not cancel or revoke the deed of grant in trust or reserve—it is still a cemetery. The *Cemetery Act 1865* allowed cemeteries to be closed, but did not allow for re-opening.

Clause 82 This clause ensures that there are no barriers to a group of trustees being able to transfer trusteeship of a cemetery to the relevant local government. Local governments have local laws covering cemeteries under their control, and are the more common trustees of cemeteries.

Clause 83 This clause is required as a result of the repeal of the *Cemetery Act 1865* which allowed for permission to exhume bodies from a cemetery to be issued by the Minister for Lands. In most instances, the local government will have a local law which provides for such exhumation; however, where no such local law exists, the Bill makes provision. These exhumations tend to be for family reasons, and are quite different to exhumations for police purposes which are allowed for under other legislation.

Division 11—Other grants for public purposes

In years past, land may have been set aside for a public purpose under, say, the terms of a will or some long repealed Act. Though rarely required, this Division allows such land to be dealt with, with due concern for the public interest in the land.

Clause 84 This clause allows the surrender of a parcel of land by the trustees or the local community, where there is doubt as to the trusts' origin and status, and a more standard form of tenure is desired.

Clause 85 As for clause 84, this clause also allows for land to be surrendered and dealt with, when the status of the land cannot be ascertained.

Clause 86 This ensures that action under clauses 84 and 85 is informed action.

Clause 87 Outlines the effect of surrender.

Clause 88 Where land that is surrendered under this Division has been

used as a cemetery, even if its tenure status is unclear, it must be set aside as a cemetery.

Division 12—Miscellaneous

Clause 89 Where, for instance, a group of potential trustees request that a parcel of land be set aside for a community purpose, and where survey is required or appropriate, the Minister may require the land to be surveyed at the cost of the incoming trustees.

Clause 90 The *Trusts Act 1973* and the *Financial Administration and Audit Act 1977* provide for certain rights and obligations on trustees and statutory bodies. Trustees under the Bill are subject to the particular requirements of the Bill and are of a different nature to trustees under the *Trusts Act 1973*. Accountability of actions is adequately covered under the Bill without the additional requirements of the *Financial Administration and Audit Act 1977*.

Clause 91 Self explanatory.

Clause 92 This provides some protection for trustees who are unable to pay for public liability insurance from trust funds (where the trust does not generate enough revenue to cover the cost of such insurance), and who are not protected or required to have such insurance under some other statute.

PART 2—ROADS

The strategic management of the State's road network is the responsibility of the Department of Transport, and the day to day management of roads is the responsibility of the local government or the Department of Transport (for State controlled roads). However, setting aside ("dedicating") land as a road, and dealing with land when it ceases to be needed as road, are responsibilities under the Bill.

The term "road" refers not only to the formed or bitumen surface, but to the entire strip or parcel of land which has been dedicated as road.

Roads are opened when required, and closed (either temporarily or

permanently) when not required. The terms “open” and “closed” when used here, do not refer to whether or not an agency has restricted the use of a road (for instance where flooding makes a road susceptible to major damage, a local government may close a road to traffic), they are the terms used when a piece of land has been designated as a road, and when that road ceases to be designated as a road and becomes, once again, a piece of unallocated State land. An open road in this sense is not necessarily formed or even passable.

Division 1—Dedicating and opening roads

Clause 93 Defines “road”.

Clause 94 The Minister may officially designate a parcel of unallocated State land as road for public use (this is referred to as “dedication”).

Clause 95 The land comprised in a road dedicated under this Bill or under the *Land Title Act 1994* exists belongs to the State (even though management of that road may be undertaken by local government).

Clause 96 This clause clarifies the status of roads shown on past lease documents but not necessarily gazetted.

Clause 97 Where the status of a piece of land as road is unclear, the Court may be asked to determine the matter.

Division 2—Closing roads

Clause 98 When a road is no longer required as a public thoroughfare, either temporarily or permanently, the Minister is able to signify this by “closing” the road.

Clause 99 An adjoining owner may apply for a road to be closed. When considering such an application the Minister must first consider the current and future needs of the State, and the costs and benefits involved in processing the application and/or possibly having to purchase land for road some time in the future if the existing road is closed. Then, if there is not immediate reason for refusal, the Minister may proceed with assessment of the application.

Clause 100 This clause ensures that the public have an opportunity to comment on an adjoining owner's request to close a road. Enquires could reveal that the road is in fact still required for public use and that there is no satisfactory alternative road. The Minister may undertake the public notice and inquiries or may accept an applicant's public notice and inquiries if the Minister considers that they meet the criteria outlined in the clause.

Clause 101 The Minister must consider the results of the public notice and inquiries before approving or refusing an application.

Clause 102 An applicant does not have to re-apply due to some minor aspect of the application; this clause allows the Minister to approve the closure in a manner other than that set out in the application.

Division 3—Temporarily closed roads

Clause 103 The clause allows an adjoining owner to obtain a licence to use the land in the road, when it has been found to be not required as road in the short term (i.e. temporarily closed). The concept of a temporary closure is to enable the land to be used when not needed as road, but to be able to be retrieved quickly and at minimum expense when required again as road.

Clause 104 This clause ensures that the road will be able to be retrieved, with a minimum of disruption, when it is again required as road. It also allows the Minister to make the use of the land subject to conditions that can make allowances for particular features or attributes of the land.

Clause 105 The clause allows further action with the land to occur with a minimum of disruption or cost, when, for example, a existing licence ends.

Clause 106 A licence must be able to be cancelled or surrendered. This clause establishes when this can occur.

Clause 107 Allows for a temporarily closed road to be re-opened.

Division 4—Permanently closed roads

Clause 108 When a road is permanently closed it is once again unallocated State land. This clause allows for further dealing to occur, but also enables recognition of the priority expectations of adjoining land

holders in certain circumstances.

Division 5—Road repositioning

Clause 109 This clause allows for streamlined opening and closure of road when the land is in a single ownership. Conditions of the action allow for financial arrangements to be specified, as well as any other required conditions.

Division 6—Building of roads in State developments

Clause 110 When developing unallocated State land for subdivision and the like, the power to construct roads may be required. Construction is to be to no less than the relevant local government standard.

Clause 111 This clause allows for the road to be managed by local government, once completed.

CHAPTER 4—LAND HOLDINGS

PART 1—MAKING LAND AVAILABLE

Land can be made available in a competitive manner or without competition (land issued “without competition” is where an applicant for land is treated exclusively). Land could be made available with competition through a number of different procedures; auction, tender or ballot.

Division 1—Interests in land available by competition

Clause 112 This clause allows interests in unallocated State land and reserves to be made available through an auction, tender or ballot process,

as appropriate to the circumstances.

Clause 113 This clause ensures that the public are informed of an auction, tender or ballot.

Clause 114 This ensures the necessary information is made known to potential land holders.

Clause 115 This clause explains the conditions under which an auction will operate.

Clause 116 This clause indicates how land will be dealt with if it is not sold at an auction. It provides for a more commercial approach to such sales of land.

Clause 117 This allows for flexibility of operations and changing circumstances.

Clause 118 This clause allows all appeals against exclusion from a ballot or tender to be properly dealt with before the ballot or tender assessment takes place.

Clause 119 The way in which the ballot is to be conducted will be set out in the Regulations.

Clause 120 The winner of a ballot or tender must be offered the interest, as stated in the Gazette notice advertising the ballot or tender. If for some reason the applicant does not take up the offer then the Minister is able to either deal with the land under the Bill, or, in effect, take another “name out of the hat” or the next acceptable tender, without having to undertake the whole ballot and tender process again from the start.

Division 2—Interests in land available without competition

Clause 121 This clause specifies when a lease may be granted to a person without competition.

Clause 122 This clause specifies when a deed of grant may be granted to a person without competition.

Clause 123 Parts of clauses 121 and 122 refer to “priority criteria”. This clause sets what these priority criteria are, in those clauses. These priority criteria are not the only criteria in the clauses.

Clause 124 This clause sets out further provisions for issuing land without competition, specific to national parks and State forests.

Clause 125 This clause clarifies that deeds of grant in trust and leases over reserves may be granted by the Governor in Council without competition.

Clause 126 This clause sets out further provisions for issuing land without competition, specific to strategic port lands.

Clause 127 This clause sets out further provisions for issuing land without competition, specific to legally reclaimed land.

Clause 128 This clause defines a “significant development”, required in clauses following.

Clause 129 This requires an independent assessment of capability of a potential lessee to be carried out before a lease for a significant development can be issued.

Clause 130 Where an assessment of capability is required before issue of a lease, it is appropriate that the transfer of that lease also be subject to a satisfactory assessment of capability of the incoming lessee, if the lease is still in the development phase.

Clause 131 Self-explanatory.

Division 3—Availability of additional areas

This Division is included to provide a way of enabling additional areas to be added to grazing or agriculture properties to assist in property build-up. It is a way of issuing land without competition.

Clause 132 This restricts the provision of the Division to land used for grazing or agriculture or both.

Clause 133 There are restrictions placed on who can receive such additional areas.

Clause 134 Sets out the matters the Minister must consider before offering an additional area.

Clause 135 Some of the qualifications of clause 134 are very subjective and the Minister needs to be able to request the advice of a group of people

from the grazing and agriculture industry, and other relevant fields, to assist in making such determinations.

Clause 136 As additional areas will be focused on property build-up it would be inappropriate to enable the land to be sold separately at a later date. In addition, an additional area may have improvements on it and this clause allows for payment for those improvements.

Division 4—Miscellaneous

Clause 137 Sets out when the right to occupy a lease or deed commences.

Clause 138 Sets out when default in obtaining land occurs.

Clause 139 Where land is to be leased or purchased and the land has improvements on it, the owner of those improvements is able to obtain payment from the incoming lessee or purchaser. For small amounts it is sufficient for the Department to value the improvements and state a declared value. Where the value is substantial, the clause allows the Department to set a provisional value and then provides the ability for the previous lessee and the incoming lessee or purchaser to agree to a value above or below the provisional value.

Clause 140 Where the negotiations of clause 139 occur, the negotiated figure becomes the improvements value and any difference between what has been paid and what has been negotiated must be paid or refunded.

Clause 141 In some instances a survey fee should be able to be obtained, where the State has or will survey the land.

PART 2—ELIGIBILITY TO HOLD LAND

Division 1—General eligibility restrictions

Clause 142 Self explanatory.

Clause 143 A departmental officer requires the Minister’s approval to obtain land in an auction, ballot, tender or without competition.

Division 2—Corporation and aggregation restrictions

Clause 144 The restriction in this Division only apply to perpetual and freeholding leases for grazing and agriculture.

Clause 145 Restricts ownership of such leases to individuals.

Clause 146 Restricts the total aggregate of leases that can be held by an individual to less than “substantially in excess of two living areas”. A living area is measured in terms of the number of beasts land can sustainably carry, and thus varies across the State depending on factors such as the condition and location of the land. This limitation does not restrict property build-up to sustainable sizes.

Clause 147 This clause explains how the amount of land holding is to be calculated.

Clause 148 This explains how excess holdings are dealt with.

Clause 149 This ensures that the provisions of the Division are not avoided by one person holding land in trust for another.

Clause 150 Defines “family arrangement”, used in clause 147 and 149.

Clause 151 This ensures that where ineligibility to hold land occurs through devolution of law, the holder is not penalised.

Clause 152 The State may need to temporarily hold land to which this Division applies, for example, as part of a property build-up scheme or rural reconstruction scheme.

PART 3—LEASES

Currently, approximately 20% of the State of Queensland is held in either fee simple (that is, freehold title, which is, essentially, exclusive private ownership) or as a freeholding lease (that is, a term purchase of land which

will result in a deed of grant being issued). About 70% is leased by the State to companies or individuals (leasehold land), with approximately 10% being roads, reserves or unallocated State land.

Over certain types of land and in certain regions there may be particular reasons for freehold title being considered inappropriate, or for freehold title never having been issued. These can include where the land is in a strategic location, has special characteristics (such as islands), has a high community interest or value, is sparsely utilised or is marginal, is particularly sensitive to environmental changes, is required for known future uses, or where it is desirable to be able to direct land utilisation patterns.

In such circumstances it may be appropriate to make the land available under a lease from the State. The Bill establishes two major types of State leases: the perpetual lease (not 99 years but in perpetuity) and the term lease (for a term of years—which could be, for instance, as low as 10 years, or 50 years, or even up to 100 years in certain circumstances). For many of these leases, lessees may apply to convert their lease to a freehold title, or if a term lease, to a perpetual lease, and there are criteria that the Minister must consider before recommending to the Governor in Council that such a conversion proceed.

Division 1—Preliminary

Clause 153 Leases are generally issued for a purpose, (e.g. for grazing and agriculture purposes, commercial purposes or residential purposes). The purpose could be very general or specific as appropriate to the circumstances.

Clause 154 This clause allows for the addition or subtraction of purposes. Fewer purposes may be desired by a lessee to obtain a lower rent (through a different rental category). Additional purposes may be desirable to allow, for instance, for additional sources of income to a lessee. Additional purposes must be complementary to and not interfere with the purpose for which the lease was issued. The purpose of the lease is integral to the terms and conditions of the leases, therefore if a totally different purpose is required, then a new lease would need to be applied for, and Chapter 4 Part 1 would apply.

Clause 155 Term leases may be issued for a maximum of 50 years. The

actual term will depend on many factors such as use, land attributes and condition, future needs etc.. There are, however, circumstances where a 50 year term is considered too short. For example where the lease involves major expenditure such as for tourist condominiums, or for timber plantation where there is a long development phase before a return can be obtained. “Significant development” is defined in clause 128.

Clause 156 This clause makes it clear that the *Dividing Fences Act 1953* applies to leases and licences.

Division 2—Expiry and renewal

Clause 157 Clarifies rights on expiry of a lease.

Clause 158 Allows for a lessee to apply for renewal of a lease.

Clause 159 This clause sets out the matters that the Minister must consider in determining whether a lease should be renewed, and whether all or part only should be renewed.

Clause 160 The Minister must give the lessee written notice of the Minister’s decision to offer a new lease or to refuse the application. The offer may be subject to conditions such as the payment of outstanding rent.

Clause 161 Until the conditions of the offer are fulfilled, any acceptance is not effective.

Clause 162 A renewal is for a new lease, subject to new terms and conditions; it is not an extension of an existing lease. Therefore this clause allows the existing lessee to obtain the lease without competition.

Clause 163 Self explanatory.

Clause 164 In some circumstances the Minister requires some time to consider the issues raised at clause 159. During this time the lease may expire, so this clause allows it to continue for a short period.

Division 3—Conversion of tenure

Clause 165 This clause specifies that certain interests cannot be converted to a more secure tenure.

Clause 166 This clause indicates what tenures can apply for conversion. Subsection (2) maintains the current restriction on lessees of leases for pastoral purposes from applying for conversion to freehold (they can, however, apply for a perpetual lease). This clause also stops the State from having to process frivolous or vexatious applications, or applications where there is no change from a previous application that would make a difference to the Minister's deliberations.

Clause 167 This clause sets out the matters the Minister must consider in assessing a conversion application. Subsection (1)(m) allows, among other things, for conversion of a term lease to perpetual lease to be refused if freehold is the Government's desired tenure for, say, an industrial estate. Subsection (2) makes allowance for leases for development, that are specifically designed for conversion on fulfilment of conditions and payment of the required money.

Clause 168 The Minister must give notice of the refusal or offer of a new tenure. In addition, rather than refuse an application, an offer could be made for a different tenure or size of parcel than that applied for. An offer may also be subject to conditions such as a survey being undertaken.

Clause 169 An offer of a deed of grant under this section may be subject to conditions, these may include agreements, regarding timber or nature conservation.

Clause 170 This clause specifies the payment required for the issue of a deed of grant converted under this Part.

Clause 171 Specifies when an offer is accepted. Conditions of offer could include, for instance, payment of the purchase price.

Clause 172 This clause sets out the mechanics of issuing the new tenure.

Clause 173 Any land not being offered becomes unallocated State land, it may then be, for instance, set aside as a national park, or a road, or made available for property build-up, or whatever further action is desirable given the reason for which that part of the land was not included in the offer.

Clause 174 This clause continues the provision of the *Land Act 1962* which enables the Governor in Council to monitor and control corporate ownership of large parcels of land that were perpetual grazing leases that have been freeholded.

Clause 175 This clause provides for the terms of use of forest entitlement areas ("FEAs"). It also allows for the disposal of FEAs that are

no longer required. Further provisions regarding FEAs are specified in the *Forestry Act 1959*.

Clause 176 This clarifies the resumption rights for FEAs.

PART 4—PERMITS

Clause 177 Allows the chief executive to issue a permit to occupy land. It may be over unallocated State land, reserve or road.

Clause 178 If a permit is to be considered below high-water mark, matters of coastal and marine planning and safety must be considered before the decision to issue the permit is made.

Clause 179 Where the issue of a permit would entail the permittee using an adjoining owner's fence, the permittee must have an agreement to use the fence.

Clause 180 Allows the chief executive to cancel the permit and allows the permittee to surrender the permit.

CHAPTER 5—MATTERS AFFECTING LAND HOLDINGS

PART 1—RENTS

Division 1—Rents

Clause 181 Allows for annual rent periods.

Clause 182 Allows leases, licences and permits to be categorised, and rent calculated according to the category.

Clause 183 Establishes how rent is calculated.

Clause 184 Allows for changes in rent due to: new valuations that are the result of some change (eg. including an area of land); an appeal or objection on an annual valuation for rental purposes that has been successful, and the rent has consequently changed; a change in area, when the rent is a whole of term rent. It also allows for any alteration to rent to be paid or credited to the lessee, except where the amount is so small that the additional billing or refund would probably cost more than the amount required to be paid or credited. In such circumstances the amount is simply credited or debited to the lessees next account.

Division 2—Concessional rents

Clause 185 Allows the Minister to provide a rent incentive for the development phase of a lease.

Clause 186 Allows the Minister to provide a rent concession for charities and similar organisations.

Clause 187 Allows the Minister to provide a rent concession for lessees using a lease for their own residential use, who are suffering hardship.

Clause 188 Allows the Minister to set a rental rate that would not disadvantage a lessee, where a lessee has participated in a property build-up scheme and would have been disadvantaged by the participation in the scheme was this clause not available.

Clause 189 Allows the Minister to use a 3 year average valuation instead of the year's valuation for calculating rent where there has been a steep change in a particular year.

Division 3—Rent and instalment payments

Clause 190 Provides for the times and places where rent is due.

Clause 191 Allows the Minister to deal with overpayment of rent or instalments.

Clause 192 Allows the Minister to defer rent and instalments in cases of hardship.

Clause 193 Allows the Governor in Council to forgive deferred rent (i.e.

allows the debt to be cancelled).

Clause 194 Allows the Minister to alter or cease a rent concession when circumstances no longer warrant its continued existence.

Division 4—Action for non-payment of rent and instalments

Clause 195 Allows for a penalty interest to apply where there is late payment of rent or instalments.

Clause 196 Allows the Minister to take action when rent or instalments are not paid, to recover the money and/or land.

Clause 197 Allows for a lessee, licensee or permittee to receive notice before action to recover rent or instalments and or cancel the licence or permit is taken. Notice relating to forfeiture is covered under Part 4 dealing with forfeiture.

Clause 198 Allows the Minister to reinstate a licence or permit if owed money is paid, and the Minister believes that there was a good reason for the non-payment, even though the permit or licence has been cancelled. A similar clause is provided for leases in Part 4 of this Chapter.

PART 2—CONDITIONS

Division 1—General conditions

Clause 199 All lessees, licensees and permittees have a responsibility for a duty of care for the land. This duty could entail carrying out the enterprise under the tenure in accordance with good land management practices, and the prevention, where possible, of degradation and other damage to the land caused by the action or inaction of the holder.

Clause 200 A specific condition is that the lessee, licensee or permittee control noxious plants in accordance with the requirements of the *Rural Lands Protection Act 1985* declarations.

Clause 201 Self explanatory.

Clause 202 It would be an unnecessary waste for a lessee to spend money on improvements close to the expiry of a lease if the improvements are to be destroyed or useless at the end (e.g. if the land was going to be dedicated as road). Therefore the approval of the Minister to make improvements is required.

Division 2—Other conditions

Clause 203 A lease is issued subject to conditions. The conditions could relate to the care of the land, the development of the land and surrounding infrastructure, future activities over the land and other issues relating to the use and management of the land.

Clause 204 Allows a lease to be issued subject to a condition that a survey takes place. There are many instances where survey will be required. Survey ensures that buildings and structures are built on the correct land and may save future expensive rectification. Survey is particularly necessary in built-up and urban areas.

Clause 205 This introduces the ability to tie a lease to a “parent” parcel of land so that lease must be transferred with the parent parcel. Transfer without the parent parcel does not adversely affect the parent parcel, but becomes a breach of the Bill and hence the tied lease becomes liable to forfeiture. The offer of such a lease would be accepted subject to such a tie. In appropriate circumstances, a tie can be lifted under clause 210 as a change of condition of a lease.

Clause 206 When land is offered at ballot, and in some other circumstances, it seems unreasonable and contrary to the aim of having a ballot, to then let the land be sub-let or worked by someone other than the ballot winner. Hence a personal residence condition may be placed on the lease.

Clause 207 There are circumstances beyond the control of the lessee which are recognised as exemptions to a condition of personal residence.

Clause 208 Some land is known to have a particular future use or there is a good potential for a change of use to be required in the short term. However, rather than not use the land, this clause enables the land to be

leased with a resumption condition. Then, when the land is needed for the other use, it may be resumed under the condition without incurring the expense of “normal” resumption of a lease. Such a condition is generally used for leases over reserves.

Clause 209 This clause ensures that the State is unlikely to be left to pay for the cost of a failed development or developer, or for the removal of things left on land at the end of an occupancy.

Division 3—Changing conditions

Clause 210 This clause allows for changes to conditions if the Minister and lessee, permittee or licensee agree. The land, the available technical knowledge and the project can all change through the lease, licence or permit and so long as the purpose and term of the lease is not changed, the conditions should be able to be responsive to change.

Clause 211 This clause is new to the legislation and only applies to leases issued after the Bill commences. It requires the Minister to examine leases every 10-15 years to determine whether a review of conditions is necessary, and if it is, to review the conditions in consultation with the lessee.

Clause 212 Under one of these 10-15 year reviews, in agreement between the Minister and the lessee (subject to clause 210) the conditions of the lease can be amended; however, new conditions relating to land protection and sustainability can be added even if the lessee does not agree. A lessee has an opportunity to appeal such conditions.

Division 4—Compliance with conditions

Clause 213 A lessee, licensee and permittee must perform the lease, licence or permit conditions or else the lease, may be forfeited or the licence or permit cancelled.

Clause 214 This clause allows the Minister to require a lessee to take remedial action where the land is not being cared for and is, for example, severely degraded. Such required action becomes a condition of the lease or licence, therefore it can be removed on agreement (see clause 210). An avenue of appeal is available to the lessee or licensee.

PART 3—RESUMPTION AND COMPENSATION

Division 1—Resumption of a lease or easement

Clause 215 Sets out application of the Division.

Clause 216 Allows a lease or part of a lease to be resumed or, if an easement will suffice, an easement to be acquired.

Clause 217 Allows an easement over a reserve or unallocated Stand land to be cancelled.

Clause 218 The purposes for which constructing authorities may resume are set out in the *Acquisition of Land Act 1967*. This clause allows the State to act for a constructing authority.

Clause 219 This clause make clear the effect of the resumption and the compensation able to be claimed. When resuming on behalf of a constructing authority procedure will allow for the land to be set aside for the purpose for which it was resumed.

Clause 220 This clause ensures that the lessee and others with a registered interest are notified.

Clause 221 This clause allows the lessee to go to the Court for a determination of compensation, if agreement with the resuming body cannot be reached. Subsection (4) continues an existing provision that ensures that the lessee of a freeholding lease is not disadvantaged compared to a situation where the resumption had taken place before the conversion.

Clause 222 This clause allows a resumption to be discontinued part-way through, and compensation to be paid for costs incurred before it was discontinued.

Division 2—Resumption of a lease under a condition of the lease

Clause 223 Sets out the application of the Division.

Clause 224 Some leases are issued with a condition allowing resumption (see clause 208). This clause outlines how this resumption may occur.

Clause 225 The clause outlines the effect of the resumption.

Clause 226 As the resumption condition is a condition of the lessee holding the lease, compensation for resumption is limited to improvements only.

Clause 227 Development work is taken to be improvements in this Division.

Division 3—Resumption of a reservation for a public purpose

Clause 228 Sets out the application of the Division.

Clause 229 Clause 23 provides an ability to issue a deed of grant or lease with a reservation of land to the State, out of the deed or lease, for a public purpose (e.g. for a future road). This clause deals with resuming possession of that land when it is required for the public purpose.

Clause 230 This clause outlines the effect of the resumption.

Clause 231 This allows the resumption of possession to take place in line with the *Acquisition of Land Act 1967*, modified for the special aspect of the Division.

Clause 232 As the deed or lease was issued on the basis of the reservation, compensation is limited to improvements only.

Clause 233 Development work is taken to be improvements in this Division.

PART 4—FORFEITURE

Clause 234 This clause sets out when a lease may be forfeited.

Clause 235 This clause is specifically related to forfeiture for non-payment of rent and other money owed under the Bill. It allows the lessee a last chance to pay the outstanding money before forfeiture. It also alerts a mortgagee of an intention to forfeit. This allows a mortgagee to apply to sell the lease instead of the State undertaking forfeiture proceeding (see clause 244).

Clause 236 Clause 196 gives the Minister the option to sue for money owed; however, there may be circumstances where forfeiture is considered more appropriate.

Clause 237 If, after a lease has been forfeited for non-payment of rent, a lessee pays all money owed and the Minister is satisfied that there was a reasonable excuse for the non-payment, the Minister may re-instate the lease.

Clause 238 The Court determines whether or not forfeiture is warranted for cases other than non-payment of rent. The clause also gives the lessee and any mortgagee notice of intention to refer to the Court. This provides an opportunity for the lessee, if possible or desired, to rectify the problem, or for the mortgagee to apply to sell the lease in lieu of forfeiture proceeding if the Court finds that forfeiture may occur.

Clause 239 Once the Court determines forfeiture is warranted, the Governor in Council has a choice of actions to match the severity and effect of the breach.

Clause 240 Outlines when and how forfeiture takes effect.

Clause 241 Sets out the effect of forfeiture.

Clause 242 The lessee must give up possession on forfeiture, or else the lessee become a trespasser, liable for prosecution (see Chapter 7).

Clause 243 Improvements are forfeited to the State on forfeiture of a lease, though in certain circumstances they can be removed, and/or payment can be obtained for them.

Clause 244 A mortgagee may apply to sell the lease instead of the lease being forfeited. This clause sets out how this occurs.

Clause 245 Where a lessee has been issued a lease without competition for development, and the lease is forfeited, this clause allows the results of any feasibility studies and investigations that have been given to the chief executive in the course of the lease before it was forfeited, to become the property of the State free of charge. This will help to ensure that the land can be made saleable with the minimum financial burden on the State.

PART 5—PAYMENT FOR IMPROVEMENTS

Division 1—Payment for improvements by incoming lessee etc.

Clause 246 Sets out the application of the Division.

Clause 247 Allows for payment to a previous lessee for improvements, when such payment is obtained from an incoming lessee or purchaser.

Clause 248 There may be occasions when money due to a previous lessee is not collected. This allows the money to be dealt with after 6 years.

Division 2—Payment by the State for improvements

Clause 249 There are some instances where the State will make payment to a previous lessee for improvements. This continues an existing provision.

Division 3—General

Clause 250 If, for instance, a previous lessee owes rent to the State or has caused damage to the land that has to be rectified, then any money that becomes due to the previous lessee under this Part of the Bill first has the owed amount deducted.

Clause 251 If a previous lessee owes money on what was a registered mortgage of the lease (before the expiry, surrender or forfeiture), then any money that becomes due to the previous lessee under this Part may have the owed amount deducted and paid to the mortgagee before the remainder is paid to the previous lessee.

PART 6—TREE MANAGEMENT

Division 1—General

Clause 252 This outlines the principles to be observed in the management of trees under the Bill.

Clause 253 Sets out definitions required in this Part.

Clause 254 This Part only applies to trees owned by the State (as set out in the *Forestry Act 1959*), and on trust land. For example, the lessee of a freeholding lease purchases the timber when the lease is issued—hence they own the trees and this Part does not apply to them.

Division 2—Tree clearing permit

Clause 255 This clause sets out when a tree clearing permit is required and the offence and penalty for clearing without a permit or for clearing in contravention of a condition of tree clearing permit or an exemption under this Bill.

In addition, a lessee clearing trees in contravention of the Bill could be liable to forfeiture.

Clause 256 This clause provides for an offender to be liable for the value of trees or cost of remedial work if ordered by the Court in addition to the penalty for an offence for clearing without a permit or contrary to the conditions of a permit.

Clause 257 The clause lists persons who do not require a permit namely:—

- trustees of Aboriginal or Torres Strait Islander deeds of grant in trust;
- prescribed trustees;
- persons carrying out prescribed routine management or prescribed routine rural management clearing (see Division 3);
- persons permitted by another Act to clear (eg. under the *Forestry Act 1959* Section 45);

- persons clearing noxious or prescribed plants except for mechanical clearing in critical areas.

Clause 258 This clause makes it clear that a tree clearing permit is still required notwithstanding any conditions of lease that may require clearing or destruction of trees.

Clause 259 This clause lists the people who may apply for a tree clearing permit.

Clause 260 This sets out the requirements for an application for a tree clearing permit.

Clause 261 This identifies what a tree management plan is to contain.

Clause 262 This lists the matters to be considered by the chief executive in making a decision on a tree clearing application.

Clause 263 This clause provides the action that the chief executive may take upon consideration of a tree clearing application.

Clause 264 This clause provides for a tree clearing permit:—

- to be for a maximum term of 5 years;
- to state the purpose of clearing;
- to include, if applicable, the final approved tree management plan; and
- to state how the trees are to be cleared.

It also provides for extension of the terms of a permit to a maximum of 5 years.

Clause 265 This sets out the conditions that apply to a tree clearing permit.

Clause 266 This allows the chief executive to cancel a tree clearing permit in certain circumstances.

Clause 267 This clause allows transfer of a tree clearing permit with the transfer of a lease, but only if a tree management plan was approved and an intimation of awareness of, and agreement to, the conditions, is given by the transferee.

Division 3—Clearing for routine management and routine rural management purposes

Clause 268 This clause provides the power for persons to clear trees without a permit for certain prescribed routine management purposes (for example for specific safety reasons).

Clause 269 This clause provides the power for agricultural and grazing lessees (who are not lessees of State forests, timber reserves or a “prescribed area” within the meaning of the *Nature Conservation Act 1992*) to clear trees without a permit for certain prescribed routine rural management purposes.

Clause 270 This limits routine management and routine rural management clearing by excluding the clearing of trees without a permit:—

- where trees are to be removed from the lease;
- in a critical area;
- of prescribed species, except where notice is given, and procedures are followed as detailed.

Division 4—Broadscale tree clearing

Clause 271 This clause provides that the Governor in Council may approve a broadscale tree clearing policy document. It sets out the headings and description of the information local guidelines under clause 272 are to contain and how the document is to be made available to the public.

Clause 272 This clause gives the power for the Minister to approve local guidelines for broadscale tree clearing and describes how the guidelines are to be prepared and that public notice of draft guidelines must be given. It also limits the need for guidelines to where the likely volume of applications justifies having guidelines (for example in Brisbane, where most of the land is freehold land and these provisions would hardly ever be used).

Clause 273 This ensures the Minister must consider all proper submissions before finalising the guidelines.

Clause 274 This clause sets out how notice of approved guidelines must be given and how and where they are available to the public.

CHAPTER 6—REGISTRATION AND DEALINGS

Wherever possible or reasonable, this Chapter has been written to mirror the provisions of the *Land Title Act 1994* so that registration procedures for freehold and leasehold land are as similar as possible.

PART 1—LAND REGISTRY AND REGISTERS

Division 1—Land registry

Clause 275 This clause outlines the registers under the Bill that are part of the land registry.

Division 2—Registers

Clause 276 This specifies that the registers under the Bill are kept by the chief executive. The powers in this Chapter specifically relate to those registers specified as being kept by the chief executive.

Clause 277 This allows the registers to be kept in whatever form is appropriate.

Clause 278 The clause sets out the particulars that must be recorded in each of the registers.

Clause 279 Ensures that actions under the Bill are registered.

Clause 280 This clause sets out the particulars that may also be recorded to ensure the register is an accurate record.

Clause 281 This clause allows the chief executive to keep, separate from a register, other information necessary for the effective operation of the register (for example, administrative advices, which list references to such matters as contaminated land sites, heritage listings etc).

Clause 282 Allows for a distinguishing reference for each document

which is recorded in a register.

Clause 283 Provides for a document to form part of a register.

Clause 284 This provision sets out the entitlement of people to search the registers, and obtain copies of registered documents.

Clause 285 This clause details the status of a certified copy of part of the register obtained through search.

Division 3—General requirements for documents in registers

Clause 286 This clause specifies the form in which documents must be lodged.

Clause 287 This clause sets out where documents must not be registered and gives discretion to the chief executive to register a document that is not in the appropriate form.

Clause 288 Sets out who may sign a transfer or creation of an interest.

Clause 289 Provides for the form of consent. A consent must be either endorsed on the document or produced with the relevant document at the time of its lodgement.

Clause 290 Provides that a document must be lodged with the required number of executed copies otherwise it may not be registered.

Division 4—Powers of the chief executive

Clause 291 This clause allows the chief executive to correct patent errors in a register under this Bill.

Clause 292 Allows for simplification of description to a lot-on-plan description.

Clause 293 Allows the chief executive to authorise others to print and sell certain forms, with offences for non-authorised printing, selling and use of non-authorised forms.

Clause 294 Provides that the chief executive may require public notice to be given in the cases of a request to register a transmission of a registered

interest, issue substitute instruments and dispense with the production of an instrument. It also requires the applicant to satisfy the chief executive that public notice has been given as required.

PART 2—REGISTRATION AND ITS EFFECTS

Division 1—Registration of documents

Clause 295 This clause provides that a person to whom an interest is to be transferred or in whom the interest has been created has the right to have the interest registered, provided the instrument is executed and the person lodges any documents required to effect registration, and the person has complied with the Bill.

Clause 296 This clause ensures that documents can be registered only if the tenure document is returned, so that changes can be registered on both the copy held in the register and the copy held by the lessee, mortgagee, etc. as applicable.

Clause 297 This clause provides for the order of registration of documents, where a series of documents are lodged in relation to the one parcel of land.

Clause 298 The priority of registered documents is dealt with in this clause.

Clause 299 Specifies when a document is registered.

Division 2—Consequences of registration

Clause 300 This clause deals with the effect of registration by indicating that the Division applies whether or not valuable consideration has been given.

Clause 301 A document does not transfer or create an interest until it is registered.

Clause 302 The clause spells out the effect of registration on the interest by stating that on registration the interest is transferred or created in accordance with the document, is registered, and vests in the person identified in the document as the person entitled to the interest.

Clause 303 This clause deals with the evidentiary effect of recording particulars in a register.

PART 3—DOCUMENTS

Division 1—General

Clause 304 The clause deals with the correction of unregistered documents where there is patent or obvious error in the documents. The power under this clause may not be used unless the chief executive is satisfied that the correction will not prejudice the rights of a person.

Clause 305 This clause allows an incorrect document to be returned for correction.

Clause 306 If the correction is not made or not fulfilled according to specifications, the document may be rejected.

Clause 307 A document may be borrowed after lodgement and before registration. This does not affect its priority.

Clause 308 This clause deals with the withdrawing of lodged documents before registration.

Clause 309 This clause is self explanatory.

Clause 310 This clause defines when a document is validly executed.

Clause 311 This clause specifies the circumstances of witnessing documents.

Clause 312 This clause allows the chief executive to issue a substitute document, when satisfied that the original is lost or destroyed.

Clause 313 Allows for the collection of documents by clients from, for example, a central location.

Clause 314 Allows the chief executive to dispense with the production of a document where satisfied that the document has been lost or destroyed. It also requires the chief executive to record the fact that the document has been dispensed with and the date the production was dispensed with.

Clause 315 Allows the chief executive to destroy parts of the registers or documents held in the land registry in particular circumstances. Before its destruction the document must be copied in an appropriate manner determined by the chief executive. This clause also allows the chief executive to return a cancelled document for historical or personal reasons. It also requires the chief executive to exercise the power of destroying documents in the land registry strictly in accordance with the provisions of the *Libraries and Archives Act 1988*.

Clause 316 Imposes on the person who is transferring or creating an interest in land a duty to perform the obligation set out in the transfer or other instrument creating the interest.

Division 2—Documents forming part of standard documents

Clause 317 The concept of standard documents has been in the Land Title legislation for some time, but is new to the Land Act. It allows for standard documents to be lodged and referred to in other documents.

Clause 318 The clause allows the chief executive or any person to lodge a standard document or amend a standard document by lodging a further document. The document is given a distinguishing reference and registered.

Clause 319 Provides for the incorporation of the standard document into a document by reference.

Clause 320 Allows a document to include provisions other than those incorporated by reference to the standard document. Where there is a conflict between the standard document and the covenants and conditions in a document which incorporates the standard document, the provisions of the document prevail.

Clause 321 Allows the chief executive to withdraw a standard document registered under this clause if requested to do so, provided the chief executive advertises of the intention to do so. The clause also provides that the withdrawal or cancellation of a standard document does not affect a

document already in a register or one that is executed within seven days of the withdrawal or cancellation of the registered standard document.

PART 4—DEALINGS AFFECTING LAND

Division 1—Transfers

Clause 322 Sets out the requirements for the transfer of a lease or licence or sublease (permits may not be transferred). A transfer requires the Minister's approval.

Clause 323 A transfer must be registered.

Clause 324 Deals with who may sign a transfer of land sold in possession or under a writ of execution.

Clause 325 This clause deals with the effect of the registration of transfers.

Clause 326 This clause deals with the transfer of a mortgaged lease.

Division 2—Surrender

Clause 327 Sets out when and under what condition surrender of a lease and a deed may occur.

Clause 328 Provides for the surrendering of a sublease and the effect of the registration of the surrender document, as well as an exception to the provision.

Clause 329 One year's notice of an absolute surrender must be given, though the Minister may waive this notice or, in lieu of notice, 1 year's rent, when the circumstances warrant.

Clause 330 Sets out the requirements for a surrender to be effective.

Clause 331 Sets out what happens to mortgages, subleases etc., when a lease is surrendered.

Division 3—Subleases

Clause 332 Sets out the requirements for subleasing.

Clause 333 Allows the Minister to waive the need for a lessee to obtain approval to sublease, for all the lessee's leases or a specific lease. Subleasing under such a waiver must be in accordance with Regulations.

Clause 334 A lease may not be sublet where the Act or the lease itself forbids it.

Clause 335 Subleases must be registered.

Clause 336 Allows a registered sublease to be amended under certain circumstances.

Clause 337 This makes it clear that lessees are still liable for the conditions of the lease, even though it may be sublet.

Clause 338 This clause is self-explanatory.

Clause 339 This clause deals with re-entry by a sublessor.

Division 4—Mortgages

Clause 340 Sets out the requirements for mortgaging a lease or sublease.

Clause 341 This clause is self-explanatory.

Clause 342 The provision deals with the release or partial release of a registered mortgage.

Clause 343 Provides for the amending of a mortgage and details the aspects of the mortgage which may not be amended.

Clause 344 The clause allows changes in priority of registered mortgages where the mortgagees execute, between themselves, and register a document amending the order of priority.

Clause 345 A mortgagee must notify the Minister of entering into possession.

Clause 346 Sets out the requirements for a mortgagee who sells a lease under a mortgage.

Clause 347 A mortgagee must sell the lease within 2 years, though an extension can be applied for.

Clause 348 Sets out the way in which the proceeds of a mortgagee sale must be disbursed.

Clause 349 A mortgagee in possession is liable for the conditions of the lease or subleases while in possession.

Clause 350 This provision provides for the effect of a transfer, after sale by a mortgagee.

Division 5—Subdividing leases

Clause 351 This clause outlines when a lease may be subdivided.

Clause 352 This clause outlines the requirements for the registration of a plan of survey if required for a subdivision.

Clause 353 This clause provides for the issue of the new leases resulting from the subdivision.

Clause 354 This clause indicates the terms and conditions of the subdivided leases. If a subdivided lease is to be for a longer term than the original lease, it would need to have been considered under the same criteria as a renewal of a lease.

Division 6—Amalgamating leases

Clause 355 Sets out when two or more leases may be amalgamated.

Clause 356 Sets out the mechanics of amalgamation.

Clause 357 This clause indicates the terms and conditions of the amalgamated lease. If an amalgamated a lease is to be for a longer term than the original leases, it would need to have first been considered under the same criteria as a renewal of a lease.

Division 7—Correcting and changing deeds of grant and leases

Clause 358 Allows for changes to deeds of grant and deeds of grant in trust that are required due to an action under the Bill.

Clause 359 Allows for corrections to be made to deeds of grant and for deeds of grant to be cancelled if issued in error.

Clause 360 Allows for changes to leases that are required due to an action under the Bill.

Division 8—Easements

Clause 361 Provides definitions required in this Division.

Clause 362 Allows the creation of easements over land under the Bill.

Clause 363 Sets out the requirements for registration of an easement.

Clause 364 Sets out the requirements for a plan showing a proposed easement.

Clause 365 Allows for easements benefiting and burdening land in different registers (for example where a lease is benefited and freehold land is burdened).

Clause 366 The clause sets out the rights created on registration of the plan and the easement document. It also provides for the vesting of those benefits created by registration in the person entitled to them, on registration of the document.

Clause 367 This clause deals with an easement which both benefits and burdens land owned by the same person (for example the same lessee) or when the owner of an interest in land benefited by an easement acquires an interest in the land burdened.

Clause 368 This clause provides for the manner in which an easement may be extinguished when the same person is the lessee, licensee etc. of both the lot benefited and the lot burdened by the easement.

Clause 369 This clause allows for what are commonly termed “easements in gross” to be registered in favour of “public utility providers”.

Clause 370 This clause provides for the amendment of an easement.

Clause 371 The clause set out the method of surrendering an easement. The provision includes an allowance for the lessee, licensee or trustee of land benefited by the easement to unilaterally surrender the benefit of the easement.

Clause 372 This clause sets out what happens to an easement when a lease or licence ends or a reserve is revoked. It also sets out the circumstances in which an easement can continue after a new tenure is issued over unallocated State land, or when freehold land is surrendered.

Clause 373 This clause is self explanatory.

Division 9—Trusts, deceased estates and bankruptcy

Clause 374 This deals with when and how details of a trust are required (the trustees referred to are not trustees under Chapter 3).

Clause 375 An interest in a trust is to be registered through a transfer, and details of the trust must be provided.

Clause 376 Provides that a deed of grant or lease may issue in the name of a deceased person in certain circumstances.

Clause 377 Provides for an application to be made by a person to be registered as personal representative of a deceased person. This clause also prescribes the circumstances under which an application may be registered as well as dealing with aspects of the accountability of the personal representative.

Clause 378 Self explanatory.

Clause 379 The clause sets out the entitlement of a person beneficially entitled under a Will to lodge an application to be registered as a lessee with the personal representative's consent. The applicant must satisfy the chief executive of the applicant's entitlement.

Clause 380 Gives the Supreme Court jurisdiction in this Division in respect of claims made under trusts or in cases of interests in land held by deceased proprietors. In exercising its powers under this section the Court has the power to order a particular person to be registered as a lessee or licensee, or a person to be removed as a lessee or licensee, or a person to

advertise in a specified manner, or that costs be paid by any person. The clause also provides for the order which the Court may make, and provides that particulars of the order must be registered where requested and an office copy of the order is produced. An order does not vest an interest in land until the order is registered.

Clause 381 Provides for a transmission in bankruptcy.

Clause 382 The provisions of the clause apply not only where a person is bankrupt under the *Bankruptcy Act 1966* but also where a company liquidator disclaims under the Corporations Law.

Division 10—Powers of attorney and disabilities

Clause 383 This clause allows for the use of a single powers of attorney register for actions under the *Land Title Act 1994* and the Bill.

Clause 384 Allows the Supreme Court to authorise another person to act for a lessee or licensee under a disability in particular circumstances.

Clause 385 Deals with the acts done by attorneys and others.

Division 11—Writs of execution

Clause 386 The clause outlines the circumstances in which a writ of execution may be registered.

Clause 387 This clause deals with the effect of the registration of a writ of execution. Under the clause, a writ has no effect until registered and does not affect registered interests if it is not executed within 6 months of the date of its lodgement or within such extended time as allowed by the Court.

Clause 388 Provides for the cancellation of a registration of a writ.

Clause 389 This clause is self explanatory.

Division 12—Liens

Clause 390 This clause is a general statement that the vendor of a lease does not have an equitable lien of the lease because of the purchaser's failure to pay all or part of the transfer price of the lease.

CHAPTER 7—GENERAL

PART 1—ADMINISTRATION

Division 1—Ministerial administration

Clause 391 Self explanatory.

Clause 392 This clause allows for the delegation of the Minister powers under the Bill and other Acts where the Minister for Lands is specified. It also provides for the Minister to delegate powers connected with the public business of the State under an Act or otherwise. This clause also allows for delegations to local government for matters about roads or trust land.

Clause 393 This clause allows for the delegation of the chief executive's powers under this Act and other Acts where chief executive (lands) is specified. It also provides for the chief executive to delegate powers connected with the public business of the State under an Act or otherwise. A special delegation power is included to allow the chief executive to delegate the issuing of permits to occupy to a port authority for lands above and below high-water mark within port limits, within prescribed guidelines. This clause also allows for delegations to local government for matters about roads or trust land.

Clause 394 This clause allows for the Minister to appoint people to form a Committee of Review to assist the Minister in making decisions under the Bill. It is highly likely that such a committee would consist of relevant industry and community representatives as well as Departmental representatives.

Division 2—Appointment of authorised persons and other matters

Clause 395 The clause allows for the appointment of authorised persons. They are required under Division 3.

Clause 396 Allows for conditions on the appointment of authorised persons.

Clause 397 Allows for the provision of identity cards for authorised persons.

Clause 398 Requires the production of the identity card.

Clause 399 This clause provides protection for honest and without negligence actions of officers.

Division 3—Inspection powers

Clause 400 Provides for powers relating to entry to land, which is required when undertaking duties related to the purposes of the Bill. Also provides for notice of the intention to enter. It is made clear that this power does not relate to entering dwellings.

Clause 401 This clause requires an authorised person to notify an owner if damage has been caused.

Clause 402 This clause allows for compensation for damages caused because of the exercise of a power under the Division.

Clause 403 This clause makes it an offence to impersonate an authorised person.

PART 2—UNLAWFUL OCCUPATION OF NON-FREEHOLD AND TRUST LAND

Division 1—Unlawful occupation of non-freehold and trust land

Clause 404 Sets out when the offence of trespass occurs, and the penalty.

Division 2—Action to deal with unlawful occupation

Clause 405 Sets out the application of the Division.

Clause 406 Allows the first approach to deal with trespassers to be a

chief executive's notice, when considered appropriate.

Clause 407 Makes it an offence not to comply with a notice.

Clause 408 Makes it clear that anything built, etc., or brought onto land by a trespasser is forfeited to the State.

Clause 409 This clause allows a person who receives a notice to start proceedings.

Clause 410 This clause allows the chief executive to go to Court for a Court order for removal of trespassers and their things, where the situation makes it appropriate. The chief executive may do this after a notice under clause 406 or without a notice first being issued.

Clause 411 Allows for a defence to such a proceeding.

Clause 412 Allows for the State to undertake work under an order, and for the cost to be a debt due to the State.

Clause 413 Allows the Department to take action. The police may be used to ensure the peace is kept.

Division 3—Action by lessee, licensee, permittee or trustee

Clause 414 Sets out the application of the Division.

Clause 415 Allows a lessee, licensee, permittee or trustee to start proceedings against a trespasser.

Clause 416 Allows for a defence to such a proceeding.

Division 4—Court matters

Clause 417 Sets out the hearing procedures.

Clause 418 Sets out the type or orders the Court may make.

Clause 419 Makes it an offence not to comply with an order of the Court.

Clause 420 Allows for appeal in certain circumstances.

PART 3—REVIEW OF DECISIONS AND APPEALS

Division 1—Right of appeal

Clause 421 A person is to be notified of their appeal rights.

Division 2—Internal review of decisions

Clause 422 An appeal is initially by way of an internal review.

Clause 423 Sets out who may apply for a review.

Clause 424 Sets out the procedure for applying for an internal review.

Clause 425 Allows for a stay of operation of a decision.

Clause 426 The Minister may confirm, alter or substitute an original decision after a review. The review could take any of a number of forms, including mediation, consultation and the like.

Division 3—Appeals

Clause 427 Sets out who may appeal.

Clause 428 Sets out the procedure for appeals to the Court, if after an internal review a person wishes to take a matter further.

Clause 429 Describes the powers of the Court on appeals.

Clause 430 The Court's decision on appeal becomes the decision.

Clause 431 Explains the jurisdiction of the Court to hear matters.

PART 4—MISCELLANEOUS

Clause 432 Sets out the rights of lessees and licensees and stock route users, when the stock route is unfenced.

Clause 433 Ensures that the travelling stock are not abusing the rights in clause 432 or using the stock route for other than travelling stock.

Clause 434 Provides a definition of “unimproved value” required in a number of places in the Bill. The definition has been worded to reflect the standard definition of market value adopted by the International Assets Valuation Standards Committee, modified for the specific purposes of the Bill. This is a definition of “unimproved value” used in establishing the price of parcels of land and is not the same as the determination of unimproved capital value under the *Valuation of Land Act 1944* used in calculating rents.

Clause 435 Provides for the Minister to be able to refer matters to the Court.

Clause 436 Allows auctions under the Bill to be held with minimum cost.

Clause 437 This clause allows for alterations to parish or county boundaries that are required as a result of an action under the Bill (for example, an amalgamation of leases).

Clause 438 Self explanatory.

Clause 439 The clause provides for words and expressions used in documents under this Bill to have the same meanings in the document as in the Bill. It also provides for the displacement of that meaning by contrary intention appearing in the document.

Clause 440 This clause makes it an offence to obstruct a person from carrying out his or her duties under the Bill.

Clause 441 This clause protects employees from honest, without negligence actions under the Bill.

Clause 442 Any offer under the Bill (for example, an offer of a lease, permit, deed, conversion, renewal, etc.) has a “life”, after which it is of no effect.

Clause 443 The appropriate fees must be paid before a deed is issued.

Clause 444 This clause allows the chief executive to approve forms for use under this Bill (see also the *Acts Interpretation Act 1954* section 47).

Clause 445 This ensures that prosecution of offences are dealt with by the appropriate Court.

Clause 446 This limits the time within which a proceeding for an offence must have commenced.

Clause 447 This clause sets out evidentiary provisions.

Clause 448 Allows for regulations to be made under the Bill.

CHAPTER 8—CONTINUED RIGHTS AND TENURES

This Chapter outlines how existing tenures will fit into the new tenure system. In general, an existing tenure continues as that tenure under the Bill; however, some will have specific requirements that are not covered in the new system, and have to be covered in this Chapter.

PART 1—RESERVES, DEEDS OF GRANT IN TRUST AND ROADS

Division 1—Reserves

Clause 449 Ensures that existing reserves continue as reserves under the Bill.

Clause 450 Ensures that existing trustees continue as trustees under the Bill.

Division 2—Deeds of grant in trust

Clause 451 Ensures that existing deeds of grant in trust continue as deeds of grant in trust under the Bill.

Clause 452 Ensures that existing trustees continue as trustees under the Bill.

Division 3—Existing trustee leases

Clause 453 Ensures that existing trustee leases and trustee permits continue.

Division 4—Roads

Clause 454 Makes it clear that roads dedicated under the repealed Act are roads under the Bill.

Clause 455 Ensures that existing road licences continue as road licences under the Bill.

PART 2—FREEHOLDING LEASES

Freeholding leases are, essentially, a terms purchase of a deed of grant from the State. They may also carry conditions that need to be fulfilled before a deed is issued. These types of leases are being gradually phased out and new ones will only be issued to successful applicants who convert an existing lease.

The terms “pre-Wolfe” and “post-Wolfe” are used, as it was as a result of the 1990 report into land policy and administration in Queensland (commonly referred to as the Wolfe Report after chairperson Ms Patsy Wolfe) that the terms for freeholding were altered, as reflected in the division of the these two groups of freeholding leases.

Division 1—Pre-Wolfe freeholding leases

Clause 456 Ensures that freeholding leases defined as “pre-Wolfe freeholding leases” are leases under the Bill and hence subject to the parts of the Bill that use the generic term “leases” (for example, transfer provisions, mortgage provisions, compliance with conditions, etc.).

Clause 457 Continues the current terms and conditions of the leases defined as “pre-Wolfe freeholding leases”.

Clause 458 Provides for the deed of grant to issue.

Clause 459 Allows for a concession on instalments, for hardship for residential lessees.

Division 2—Post-Wolfe freeholding leases

Clause 460 Ensures that freeholding leases defined as “post-Wolfe freeholding leases” are leases under the Bill and hence subject to the parts of the Bill that use the generic term “leases” (for example, transfer provisions, mortgage provisions, compliance with conditions, etc.).

Clause 461 Continues the current terms and conditions of the leases defined as “existing post-Wolfe freeholding leases”.

Clause 462 Provides for the terms and conditions of existing and new post-Wolfe freeholding leases.

Clause 463 Provides for the deed of grant to issue.

Division 3—Grazing homestead freeholding leases

Clause 464 Ensures that grazing homestead freeholding leases (GHFL) existing at the commencement of the Bill are leases under the Bill and hence subject to the parts of the Bill that use the generic term “lease” (for example, transfer provisions, mortgage provisions, compliance with conditions, etc.).

Clause 465 Continues the current terms and conditions of existing GHFLs.

Clause 466 Provides for the terms and conditions of existing and new GHFLs.

Clause 467 Provides for the deed of grant to issue.

PART 3—PERPETUAL LEASES

Division 1—Grazing homestead perpetual leases

Clause 468 Ensures that grazing homestead perpetual leases (GHPL) are perpetual leases for grazing or agriculture (or both) under the Bill and hence subject to any provision to which a lease of that type is subject under the Bill.

Clause 469 Ensures that lessees of existing GHPLs are able to obtain a GHFL, if freehold is approved.

Division 2—Non-competitive leases

Clause 470 Ensures that leases defined as non-competitive leases (NCL) are perpetual leases under the Bill and hence subject to any provision to which a lease of that type is subject under the Bill.

Clause 471 Ensures that lessees of existing NCLs are able to obtain a freeholding lease, if freehold is approved.

PART 4—TERM LEASES

Division 1—Pastoral, preferential pastoral, pastoral development and stud holdings

Clause 472 Ensures that pastoral holdings, preferential pastoral holdings, pastoral development holdings and stud holdings are term leases for pastoral purposes under the Bill and hence subject to any provision to which a lease of that type is subject under the Bill.

Clause 473 Pastoral leases are currently subject to a covenant for an offer of a new lease on expiry. This is maintained, except that it is a covenant for a lease under the Bill.

Clause 474 Removes the restriction on stud leases and allows them, like pastoral holdings, to be used for grazing or agriculture or both.

Clause 475 The *Land Act 1962* restrictions on corporations holding preferential pastoral holdings no longer apply to any preferential pastoral holding.

Division 2—Special and development leases

Clause 476 Ensures that development leases (DL) and special leases (SL) are term leases under the Bill and hence subject to any provision to which a lease of that type is subject under the Bill.

Clause 477 This maintains a current ability for existing SLs.

Clause 478 Ensures that lessees of existing SLs are able to obtain a freeholding lease, if freehold is approved.

Clause 479 This maintains a current restriction. In future leases, where required, such a condition shall be included in the lease itself.

PART 5—LICENCES AND PERMITS

Division 1—Occupation licences and permits

Clause 480 Occupation licences continue and the generic provisions relating to licences under the Bill apply to occupation licences (for example, transfer provisions, compliance with conditions).

Clause 481 Provides for the cancellation and surrender of an occupation licence.

Clause 482 Maintains the current requirement to obtain approval for improvements.

Clause 483 Existing permits to occupy issued under the repealed Act continue as permits to occupy under this Bill.

Division 2—Fencing use licences

Clause 484 Provides for existing fencing use licences under s.113 of *Land Act 1962*. Such licences are no longer able to be obtained under the Bill, but existing ones continue. Subsection (2) makes it clear that these were only ever licences to use the fence and are not occupancy licences; a permit is still required to use the land comprised in the road enclosed.

Clause 485 Enables the Minister to cancel such a licence for breach of conditions of the fencing use licence.

PART 6—CONTINUED TENURES GENERALLY

Clause 486 Ensures that existing conditions etc. continue until and unless modified under the Bill.

Clause 487 Ensures that existing rent and hardship concessions continue until changed within the provisions of this Bill.

Clause 488 Some leases are subject to fencing conditions through the *Land Act 1962* rather than through lease conditions. In future, fencing will be dealt with in lease conditions; however, for leases issued before the Bill, it needs to be continued in the Bill.

Clause 489 Ensures that an existing lessee is not at any disadvantage if the lease is subdivided or amalgamated. This is important for amalgamation where there should be no potential or perceived disadvantage to property build-up; however, certain leases may not be subdivided. These are freeholding leases where the amount to pay off the freehold is generally minimal.

PART 7—TENURES UNDER OTHER ACTS

Division 1—Sale to Local Authorities Land Act 1882

Clause 490 Provides for the interim continuation of deeds issued under the *Sale to Local Authorities Land Act 1882*.

Clause 491 As for Clause 490. The conditions are essentially those that currently apply to conditional deeds.

Clause 492 Allows for a conditional deed to be “swapped” for a standard tenure under the Bill.

Clause 493 Five years after the commencement of this clause, all conditional deeds will automatically become deeds of grant in trust under the Bill. This will increase the flexibility of dealing with and using the land for the trustees.

Division 2—Miners homesteads

Clause 494 This Division allows for the transfer of miners homesteads to the *Land Act 1962*.

Clause 495 Provides definitions required in this Division.

Clause 496 Where an application to freehold a miners homestead is current at the commencement of the Bill, the processing of the application is to continue under the *Miners’ Homestead Leases Act 1913* and *Mining Titles Freeholding Act 1980*. A current application is one which has been lodged by the applicant before 1 January 1995, but not yet processed, rejected, lapsed or accepted.

Clause 497 This clause allows for the transfer of miners homesteads to the *Land Act 1962*, when a current application is refused, or an offer to freehold has lapsed.

Clause 498 This clause places an expiry date on offers already made and on offers made after the Division commences.

Clause 499 This clause transfers miners homesteads to a perpetual lease under the *Land Act 1962*. It maintains the miners homestead’s existing conditions and encumbrances.

Clause 500 This clause allows rent paid after an application was lodged to be credited toward the purchase price if conversion to freehold is approved.

Clause 501 Current miners homestead documents are of a style that cannot readily be integrated into the tenure administration system of the *Land Act 1962*. This clause allows the old documents to be replaced.

Clause 502 As for clause 501, current mining titles freeholding lease documents are of a style that cannot readily be integrated into the tenure administration system of the *Land Act 1962*. This clause allows the old documents to be replaced.

Clause 503 This clause makes it quite clear that the transfer to the *Land Act 1962* does not invalidate an approval to do something that has already been given (for example, subdivide or transfer).

Division 3—Port and harbour lands

Clause 504 If required, this clause can be used for re-arranging tenures of strategic port lands to tenures under the Bill, without disturbing the overlying leases, licences etc. The actual configuration (for example, a combination of freehold, leasehold and reserve) would be different for each port, and subject to consultation with the relevant Port Authority and the Department of Transport, and subject to Government policy. This complements initiatives for strategic land use plans for port authorities and the corporatisation of Port Authorities under the *Transport Infrastructure Act 1994*.

Clause 505 This clause allows for boat harbours to be transferred, primarily to local governments, without disturbing the overlying leases, licences etc..

Division 4—Cemetery Act 1865

Clause 506 To remove any doubt, reserves for cemetery purposes and deeds of grant in trust for cemetery purposes under the *Cemetery Act 1865* are reserves for cemetery purposes and deeds of grant in trust for cemetery purposes under the Bill, and subject to the provisions of the Bill.

PART 8—GENERAL

Clause 507 This clause allows for transitional regulations to be made for 2 years after commencement, to assist in the transition of tenures from the *Land Act 1962* to the Bill.

CHAPTER 9—TRANSITIONAL AND SAVINGS PROVISIONS, REPEALS AND AMENDMENTS

PART 1—SAVINGS AND TRANSITIONAL

Clause 508 Ensures the continuation of existing interests and documents issued under the repealed Act.

Clause 509 Ensures lodgements made are registered in accordance with the legislation as it was when the document was lodged.

Clause 510 Where an offer for a certain type of lease has been made, the commencement of this Bill does not alter the person's ability to obtain what was offered.

Clause 511 This clause picks up old terms, no longer valid, and ensures the current equivalent term is substituted.

Clause 512 This clause is self-explanatory.

Clause 513 This clause ensures that the agreements under the three Casino Acts (the *Brisbane Casino Agreement Act 1992*, the *Cairns Casino Agreement Act 1993* and the *Breakwater Island Casino Agreement Act 1984*) are not unable to be fulfilled because of the Land Bill. For instance, if those agreements allow for term leases over reserves of 75 years, and the Bill only allows for a maximum of 30 years, the 75 year leases may still be issued. In addition, those Acts may specify certain provisions for rent, termination, subleasing or transfer of leases. These prevail even though they may be inconsistent with the Bill.

Clause 514 This clause eliminates a statutory trust fund and instead maintains the fund as a part of the Consolidated Fund. Under this clause, the Brigalow Fund would still be administered and accounted for separately, but would no longer be a *statutory* fund. This change will not alter repayments from the Fund or payments into the Fund.

Clause 515 Allows for new freeholding leases to be issued within the Burdekin Irrigation Area for the next three years.

Clause 516 Continues existing trustee by-laws until they can adopt appropriate model by-laws under the Bill.

Clause 517 Tree clearing local guidelines already made or started, when complete, can be ratified as guidelines under the Bill, if they were made using the same procedure as will be required of future guidelines under the Bill.

Clause 518 This clause ensures that powers of attorney already registered under the *Land Act 1962* continue, and do not have to be re-registered under the slightly different way of dealing with powers of attorney under the Bill.

Clause 519 Ensures that things done under the repealed Act are still valid.

Clause 520 Continues two sections of the *Land Act 1962*.

Clause 521 This clause provides for the continuation of the Land Court and Land Appeal Court as they exist in the *Land Act 1962*. The omitted sections (39-40) are covered in Chapter 7 of the Bill.

Clause 522 This clause allows for transitional regulations to be made during the year after commencement, to assist in the transition from the *Land Act 1962* to the Bill.

PART 2—REPEALS AND CONSEQUENTIAL AMENDMENTS

Clause 523 Lists the Acts to be repealed on 1 January 1995.

Clause 524 Lists the Acts to be repealed on a date to be proclaimed.

Clause 525 Allows for minor and consequential amendments to Acts required as a result of this Bill, and which are to commence on Assent of the Bill. The amendments are to be found in Schedule 3.

Clause 526 Allows for amendments to the *Land Title Act* which are to commence on a day to be proclaimed. The amendments are to be found in Schedule 4.

Clause 527 Allows for consequential amendments to Acts required as a result of this Bill, and which are to commence on a day to be proclaimed. The amendments are to be found in Schedule 5.

Schedule 1

Lists community purposes.

Schedule 2

Lists decisions which can be appealed.

Schedule 3

See clause 525. There is a clause within this schedule, relating to amendments to the *Land Title Act 1994*, which requires explanation:

Clause 1 (Amendment to the *Land Title Act 1994*)

This clause will ensure that the validity of contracts of sale, executed prior to 26 April 1994, that required the production of a certificate of title on settlement, will not be invalidated on that ground, in circumstances where a certificate of title could not be produced because of the requirements of the *Land Title Act 1994*.

Schedule 4

See clause 526. Two clauses within this schedule, relating to amendments to the *Land Title Act 1994*, require explanation:

Amendments to the Land Title Act 1994

Clause 1 This clause allows for pre-examination of survey plans and related documents, before the plan is sealed by a local government.

Clause 2 Insertion of a new Part 7A

- 137A Gives the definitions for the Part. The transactions referred to in “transferee” include transfer of fee simple, mortgage and lease interests, transfers by way of gift, or property settlements arising out of Family Court disputes.
- 137B Sets out the requirements of the notice.
- 137C Deals with the depositing of the notice and its recording.
- 137D Provides for the notice to prevent registration of instruments lodged after the notice, until the notice lapses or is withdrawn etc.. The exceptions are provided for in subsection (2).
- 137E Self explanatory.
- 137F Provides that the notice lapses 2 months after it is deposited or when all the instruments related to the transaction and specified in the notice have been lodged.
- 137G Self explanatory.
- 137H Provides for the circumstances in which the settlement notice may be cancelled.
- 137I Eliminates a renewal or extension of the notice.
- 137J Allows the Courts to give compensation to a person who suffers loss or damage resulting from an improper notice.
- 137K Self explanatory.
- 137L Provides the Registrar of Titles with the power to withdraw and re-enter lodged instruments (section 144) which have been prevented from registering by the settlement notice.
- 137M Protects the order of priority of lodged instruments which are prevented from registering by the settlement notice. This clause is read with clause 137L.
- 137N Continues the right of a person to caveat even if a settlement notice has been deposited.

137O Allows the Registrar of Titles to make minor corrections to the settlement notice.

Schedule 5

See clause 527.

Schedule 6

The dictionary.