

Queensland



LAND ACT 1994

**Reprinted as in force on 3 October 1997
(includes amendments up to Act No. 41 of 1997)**

Reprint No. 2

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Information about this reprint

This Act is reprinted as at 3 October 1997. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use different spelling consistent with current drafting practice (s 26(2))
- use standard punctuation consistent with current drafting practice (s 27)
- reorder definitions consistent with current drafting practice (s 30)
- use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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LAND ACT 1994

[as amended by all amendments that commenced on or before 3 October 1997]

An Act to consolidate and amend 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 related purposes

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Short title

1. This Act may be cited as the *Land Act 1994*.

Commencement

- 2.(1) Section 525 and schedule 3 commence on the date of assent.
- (2) The amendment of the *Land Title Act 1994* in schedule 3 is taken to have commenced on 24 April 1994.
- (3) The following provisions commence on 1 January 1995—
 - section 3 (Dictionary) and schedule 6
 - section 393 (Delegation by chief executive)
 - section 444 (Chief executive may approve forms)
 - section 448 (Regulations)

- chapter 8, part 7, division 2
- section 505 (Changing tenures of harbour land)
- section 522 (Transitional regulations)
- section 523 (Repeals on 1 January 1995).

(4) The remaining provisions commence on a day to be fixed by proclamation.

Dictionary

3. The dictionary in schedule 6 defines particular words used in this Act.¹

PART 2—OBJECTS

Object of this Act

4. In the administration of this Act, land to which this Act applies must be managed for the benefit of the people of Queensland by having regard to the following principles—

Sustainability

- Sustainable resource use and development to ensure existing needs are met and the State's resources are conserved for the benefit of future generations

Evaluation

- Land evaluation based on the appraisal of land capability and the consideration and balancing of the different economic, environmental, cultural and social opportunities and values of the land

Development

- Allocating land for development in the context of the State's

¹ In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—see *Acts Interpretation Act 1954*, section 14.

planning framework, and applying contemporary best practice in design and land management

- When land is made available, allocation to persons who will facilitate its most appropriate use that supports the economic, social and physical wellbeing of the people of Queensland

Community purpose

- If land is needed for community purposes, the retention of the land for the community in a way that protects and facilitates the community purpose

Protection

- Protection of environmentally and culturally valuable and sensitive areas and features

Consultation

- Consultation with community groups, industry associations and authorities is an important part of the decision making process

Administration

- Consistent and impartial dealings
- Efficient, open and accountable administration
- A market approach in land dealings, adjusted when appropriate for community benefits arising from the dealing.

PART 3—APPLICATION OF ACT

Land to which Act applies

5.(1) This Act applies to all land, including land below high-water mark.²

² Although this Act generally applies to non-freehold land, most freehold land contains a reservation to the State for minerals. To that extent, this Act applies to all land.

(2) Layers and strata above and below the surface of land may be dealt with under this Act.³

Act binds all persons

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

Relationship with Native Title Act

7. This Act does not affect the operation of the *Native Title (Queensland) Act 1993*.

PART 4—LAND NEAR HIGH-WATER MARK

Definitions

8. In this part—

“**navigable river**” includes as far up a river, creek or stream, connecting to the sea, whether in the natural state or otherwise, as—

- (a) the spring tides ordinarily flow and reflow; and
- (b) a ship ordinarily used to transport goods can be navigated.

“**ship**” has the same meaning as in the *Transport Operations (Marine Safety) Act 1994*.

“**tidal navigable river**” means a river navigable as far up as the spring tide ordinarily flows and reflows.

“**tidal water**” means any part of the sea or of a port (including any tidal navigable river) ordinarily within the ebb and flow of the tide at spring tides.

³ But, the Governor in Council cannot grant, in fee simple, layers and strata above and below the surface of land—see section 14(3).

Land below high-water mark owned by the State

9.(1) All land below high-water mark, including the beds and banks of tidal navigable rivers—

- (a) is the property of the State, unless the land is inundated land or a registered interest in the land is held by someone else; and
- (b) may be dealt with as unallocated State land.

(2) To remove any doubt, it is declared that if a tidal navigable river forms the boundary of a parcel of land or a person owns land on both sides of a tidal navigable river—

- (a) the land below high-water mark is and always has been the property of the State; and
- (b) if the line of the high-water mark shifts over time by gradual and imperceptible degrees—the boundaries of the parcel shift with the high-water mark.

(3) No act to occupy, use, build works or remove material or product, with or without lawful authority, divests the State of its ownership of land below high-water mark.

Accretions owned by the State

10. Land that becomes raised above high-water mark, whether gradually and imperceptibly or otherwise, because of the carrying out of works, belongs to the State and may be dealt with as unallocated State land.⁴

Local government for new land

11.(1) Land that becomes raised above high-water mark is land within the local government area of land adjoining the raised land.

(2) If the raised land adjoins land in more than 1 local government area, the Minister must decide the local government for the land.

⁴ Reclaimed land is dealt with under section 127.

Inundated land

12.(1) If inundated land adjoins the limits of a port, the land forms part of the port for an Act applying to tidal water in the port.

(2) If inundated land is outside the limits of a port, the land forms part of the tidal water for an Act applying to tidal water.

(3) The registered owner of inundated land may suitably indicate where the boundaries of the land are across the surface of the water.

(4) If the registered owner of inundated land has suitably indicated where the boundaries of the land are, the registered owner may regulate or prohibit the use or movement of ships in or over the water above the inundated land.

(5) To remove any doubt, it is declared that an interest in freehold land immediately before the land becomes inundated land is not affected by the inundation and neither the State nor a port authority is authorised to deal with or give an interest in the land unless the State or port authority is the registered owner of the land.

(6) In this section—

“**registered owner**” of inundated land includes a lessee of the land.

Power to deal with land below high-water mark

13. Land below high-water mark, other than inundated land, may be leased, granted, occupied, sold or transferred only under the authority of an Act.

CHAPTER 2—LAND ALLOCATION**PART 1—ALLOCATION POWERS****Governor in Council may grant land**

14.(1) The Governor in Council may grant, in fee simple, unallocated State land.

(2) The Governor in Council may also grant, in fee simple in trust, unallocated State land for use for a community purpose.

(3) A grant under subsection (1) or (2) may not be made for land below high-water mark.

Governor in Council may lease land

15.(1) The Governor in Council may—

- (a) lease unallocated State land for either a term of years or in perpetuity; and
- (b) lease land in a reserve for a term of years only.

(2) A lease below high-water mark may be granted only if—

- (a) it will not unduly affect safe navigation and sound development of the State's waterways and ports; and
- (b) the impact on marine infrastructure has been considered; and
- (c) it would not have a detrimental effect on coastal management; and
- (d) it is consistent with the intent of any relevant State management plan.

(3) A lease for land below high-water mark is not an approval to reclaim the land.

(4) A lease may state the purpose for which the land must be used.

Deciding appropriate tenure

16.(1) Before land is allocated under this Act, the chief executive must evaluate the land to assess the most appropriate tenure and use for the land.

(2) The evaluation must take account of State, regional and local planning strategies and policies and the object of this Act.

Granting land to the State

17. The Governor in Council may—

- (a) grant unallocated State land in fee simple to the State; and
- (b) lease unallocated State land to the State.

Governor in Council may exchange land

18.(1) The Governor in Council, by agreement with a registered owner, a lessee or the holder of a native title interest in land, may grant or lease unallocated State land in exchange for freehold land, a lease or a native title interest in land.⁵

(2) A power under subsection (1) may be exercised only if the State's equity in land would not be reduced.

Minister may buy land

19. The Minister, for the State, may buy land leased under this Act or freehold land.

Dealing with mining interests

20.(1) Even if there is a mining interest over unallocated State land, the land is still unallocated State land for dealing with it under this Act.

(2) However, the dealing cannot affect—

- (a) the rights of the holder of the mining interest or the successors of the holder; or
- (b) an agreement made, or anything else done, under the *Mineral Resources Act 1989* or *Petroleum Act 1923*.

(3) In this section—

“mining interest” means a permit, claim, licence, lease or other authority

⁵ A deed of grant amended because of an exchange of land is issued under section 358. A lease amended because of an exchange of land is amended under section 360.

held under the *Mineral Resources Act 1989* or the *Petroleum Act 1923*.

PART 2—RESERVATIONS

Reservation of minerals, petroleum etc.

21. Each deed of grant, deed of grant in trust or lease issued under this Act is subject to the reservations and conditions authorised or required under this or another Act.⁶

Reservation of quarry materials

22.(1) A deed of grant or deed of grant in trust issued for land containing quarry material owned by the State must contain a reservation of the quarry material, other than topsoil, to the State.

(2) Subsection (1) applies to a deed of grant or deed of grant in trust issued under section 358⁷ only if the land being surrendered is already subject to the reservation mentioned in subsection (1).

Reservation for public purposes

23.(1) A deed of grant, deed of grant in trust or lease issued under this Act may be issued containing a reservation for a public purpose.

(2) Each reservation must be for a stated area, in size, but the grant or lease need not identify the particular land reserved.

⁶ The *Mineral Resources Act 1989*, section 8 and the *Petroleum Act 1923*, section 10 provide that each grant and lease issued under this Act is subject to the reservation of the minerals and petroleum mentioned in the sections.

⁷ Section 358 is about getting a new deed of grant because of a surrender.

Disposal of reservations no longer needed

24.(1) If a reservation for a public purpose in a deed of grant is no longer needed for the purpose, the Governor in Council may sell all or part of the land in the reservation to the registered owner of the deed of grant.⁸

(2) Alternatively, if the reservation is adequate in size to be used by a person other than the registered owner and the registered owner does not buy the land—

- (a) possession of all or part of the land reserved may be resumed; and
- (b) the land resumed may be dealt with as unallocated State land.

Disposal of reservations by sale

25.(1) If land is sold under section 24(1), the sale price for the land is the unimproved value of the land decided by the Minister.

(2) The registered owner may appeal against the unimproved value.

(3) The unimproved value is the value—

- (a) if the registered owner applied to buy the land—on the day the application was received by the Minister; or
- (b) if the Minister made an offer to sell the land before the registered owner applied to buy the land—on the day the offer was made.

Minister may decide boundaries of reservations

26.(1) If the Governor in Council resumes possession of all or part of a reservation and the boundaries of the reservation are not stated in the deed of grant or deed of grant in trust, the Minister may decide the boundaries of the reservation.⁹

(2) In deciding the boundaries of the land being resumed, the Minister must consider the following matters unless the registered owner or trustee

⁸ A deed of grant issued because of the disposal of a reservation is issued under section 358.

⁹ Resumptions are dealt with in chapter 5, part 3, division 3.

of the land otherwise agrees with the Minister—

- (a) 1 of the boundaries should adjoin, or be, an existing road;
- (b) the registered owner or trustee should not be deprived of access to the land;
- (c) the land to be resumed should be, as near as practicable, of the average qualities and capabilities of all the land in the deed of grant or deed of grant in trust.

(3) Written notice of the Minister's decision on the boundaries and the reasons for the decision must be given to the registered owner or trustee.

(4) The registered owner or trustee may appeal against the Minister's decision on the boundaries.

PART 3—NATIVE TITLE

Object

27. The object of this part is to emphasise that land administered under this Act must be dealt with in a way not inconsistent with the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993*.

Interaction with native title legislation

28.(1) Any action taken under this Act must be taken in a way not inconsistent with the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993*.

(2) To remove any doubt, it is declared that if native title exists over land, the land may still be dealt with under this Act.

(3) However, subsection (2) is subject to subsection (1).

Example—

The issue of a permit under this Act, with appropriate conditions, could be a low impact future act under the *Native Title Act 1993* (Cwlth).

(4) In subsection (1)—

“**action**” includes any of the following—

- (a) reserving land;
- (b) dedicating land as a road;
- (c) granting land;
- (d) issuing a lease, permit or licence over unallocated State land, reserve, road, national park, conservation park, State forest or timber reserve;
- (e) including a reservation in a deed of grant, deed of grant in trust or lease;
- (f) disposing of a reservation no longer needed;
- (g) renewing a lease;
- (h) converting a lease to another form of tenure;
- (i) including land in a lease or deed;
- (j) approving a trustee lease or trustee permit;
- (k) changing the purpose of a lease, licence, permit or reserve;
- (l) issuing a tree clearing permit;
- (m) actions above and below high-water mark and in layers or strata;
- (n) offering or agreeing to carry out an action.

Taking into consideration Aboriginal tradition and Islander custom

29.(1) If land is entered under chapter 7, part 1, division 3,¹⁰ and the land is registered in a native title register or has been transferred or granted under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*, the entry must, to the extent possible, take Aboriginal traditions and Islander customs into consideration.

(2) In this section—

“**native title register**” means—

¹⁰ Chapter 7, part 1, division 3 deals with the power of an authorised person to enter and inspect land.

- (a) the National Native Title Register under the *Native Title Act 1993* (Cwlth); and
- (b) the part of the Queensland Native Title Register under the *Native Title (Queensland) Act 1993* about approved native title decisions.

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

PART 1—RESERVES AND DEEDS OF GRANT IN TRUST

Division 1—General

Object

30. The object of this part is to—

- (a) enable unallocated State land to be dedicated as a reserve or granted in fee simple in trust for community purposes; and
- (b) ensure that reserves and land granted in trust are properly and effectively managed—
 - (i) by persons (the “**trustees**”) who have some particular association or expertise with the reserve or land and its purpose or with the local community; and
 - (ii) in a way that is consistent with the purpose for which the reserve was dedicated or the land was granted in trust; and
- (c) ensure that the community purpose for which the reserve was dedicated or the land was granted in trust is not diminished by granting inappropriate interests over the reserve or land granted in trust.

Division 2—Reserves**Dedication and adjustment of reserves**

31.(1) The Minister, by gazette notice, may dedicate unallocated State land to be a reserve for community purposes.

(2) The Minister, by gazette notice, may change the—

- (a) boundaries of, or the area contained in, a reserve; and
- (b) purpose for which a reserve was dedicated.

State leases over reserves

32.(1) The Governor in Council must not grant a lease over a reserve for more than 30 years.

(2) A lease over a reserve must not contain a covenant, agreement or condition—

- (a) to renew the lease; or
- (b) to convert to another form of tenure (including freehold); or
- (c) to buy the land.

(3) A lease over a reserve may be granted only if the lease—

- (a) would be consistent with the purpose for which the land was reserved; or
- (b) would facilitate or enhance the purpose for which the land was reserved.

(4) Despite subsection (3), a lease may be granted over a reserve for a purpose inconsistent with the purpose for which the reserve was dedicated if—

- (a) the lease would not diminish the purpose; and
- (b) no more improvements, other than improvements approved by the Minister, are built or placed by the lessee on the leased part of the reserve.

(5) If there is a trustee of the reserve, the trustee must be consulted before the lease is granted.

Revocation of reserves

33.(1) The Minister, by gazette notice, may revoke all or part of a reserve if—

- (a) it is no longer needed for a community purpose; or
- (b) it is needed, in the public interest, for a different use.

(2) If the Governor in Council has issued a lease over a reserve, the lease must be surrendered or resumed before the reserve is revoked.

(3) If a reserve is revoked, the land becomes unallocated State land.

(4) If a reserve for cemetery purposes has been used for the purpose, it may be revoked only by regulation.

Revocation of reserve cancels appointments, leases and permits

34.(1) If a reserve is revoked, all appointments of trustees, trustee leases, permits and trustee permits over the reserve are cancelled from the day the revocation is notified in the gazette.

(2) If there is a cancellation under subsection (1), the trustees and each person who has a registered interest over the reserve must be—

- (a) given a copy of the gazette notice; and
- (b) if the Minister has allowed improvements to be removed—advised of the time by which the trustee or person must remove the improvements.

(3) If the improvements are not removed within the stated time, they become the property of the State.

(4) Every cancellation of a trustee lease, permit or trustee permit over a reserve must be registered in the appropriate register.

(5) No person has a right to claim compensation, for a cancellation under subsection (1).

Division 3—Deeds of grant in trust

Granting land in trust to be used for community purpose

35. Land granted in trust by the Governor in Council must be used in a way consistent with the community purpose for which it was granted.

Amalgamating land with common purposes

36.(1) If land to be granted in trust adjoins land contained in a deed of grant in trust for the same purpose, both areas of land may be included in a single deed of grant in trust.¹¹

(2) In this section—

“**adjoining land**” includes land separated by a road or watercourse.

Removing area from deed of grant in trust

37.(1) If the Minister is satisfied the area of a deed of grant in trust is more than the area reasonably needed for the trust, the Minister may refer the matter to the Court for a decision on whether the land is more than the area reasonably needed, and if so, the part not needed.

(2) If the Court decides part of the land is surplus to the needs of the trust, the Governor in Council may resume the surplus land under the *Acquisition of Land Act 1967*.

(3) If land is resumed, compensation is payable only for improvements and development work lawfully carried out by the trustee, or with the trustees approval, on the resumed land.

Cancelling a deed of grant in trust

38.(1) The Governor in Council, by gazette notice, may cancel a deed of grant in trust if—

(a) the trust stops operating; or

¹¹ A deed of grant issued because of amalgamation is issued under section 358.

- (b) the affairs of the trust are not properly managed in the public interest; or
- (c) the land is used in a way inconsistent with the purpose of the trust; or
- (d) the Governor in Council considers it appropriate in the public interest.

(2) Before cancelling a deed of grant in trust, the Governor in Council may ask the Court for a decision on a matter mentioned in subsection (1)(a) to (c).

(3) If the deed of grant in trust is cancelled, then, from the day of publication of the gazette notice—

- (a) the land is released from the trust and all encumbrances and interests; and
- (b) the land may be dealt with as unallocated State land; and
- (c) the trust is at an end; and
- (d) all appointments of trustees and trustee leases and trustee permits over the deed of grant in trust are cancelled.

(4) Every cancellation of trustees, a trustee lease or trustee permit over a reserve must be registered in the appropriate register.

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

Application of division

39. This division applies only to deeds of grant in trust granted for the benefit of Aboriginal and Islander inhabitants or for Aboriginal and Islander purposes.

Improvements and land may be excluded

40.(1) The following things may be excluded from a deed of grant in trust when it is granted—

- (a) improvements owned by the State, other than buildings built for

the residence of Aboriginal or Islander inhabitants authorised to live within the boundaries of the land granted, together with—

- (i) the land on which the improvements are located; and
 - (ii) a reasonable area of land surrounding the improvements; and
 - (iii) adequate access to the improvements; and
- (b) land consisting of aerodromes, landing strips, ports, roads, stock routes, bridges and railways.

(2) An exclusion may be by description rather than survey.

Survey not needed

41.(1) A deed of grant in trust may be issued even if it has not been surveyed.

(2) If the deed of grant is not surveyed before it is issued, the land must be described in a way approved by the Minister.

(3) If a more accurate description of the land, including exclusions, becomes available, the registrar of titles must substitute the description for the previous description in the freehold land register.

Change of boundaries or roads

42.(1) A regulation may change the location of the boundaries of a deed of grant in trust or a road in or other thing excluded under section 40 from the deed of grant in trust.¹²

(2) The regulation must not decrease the area of land granted in trust.

¹² A deed of grant issued because of a change of boundary or road is issued under section 358.

Section 40 lists the things that may be excluded from a deed of grant in trust to which this division applies.

Only Parliament may delete land from or cancel an existing deed of grant in trust

43.(1) Only an Act may—

- (a) delete land from an existing deed of grant in trust; or
- (b) cancel an existing deed of grant in trust.

(2) This section has effect despite sections 37 and 38.¹³

Division 5—Appointments, functions and removal of trustees**Appointing trustees**

44.(1) The Minister, by gazette notice, may appoint trustees of trust land.

(2) A trustee may be—

- (a) a statutory body; or
- (b) an incorporated body; or
- (c) a group of individuals functioning under an official name ('Trustees of . . .') approved by the Minister; or
- (d) a named individual; or
- (e) the holder of a named position.

(3) The Minister may appoint a trustee subject to conditions.

Details of trustees

45.(1) The names and addresses of all trustees appointed under this Act must be recorded in the appropriate register.

(2) A trustee must advise the chief executive if the trustee changes its address.

(3) If an incorporated body is a trustee and it loses its incorporated status, it must immediately advise the chief executive.

¹³ Section 37 is about removing an area from a deed of grant in trust and section 38 is about cancelling a deed of grant in trust.

Trustee's administrative functions

46.(1) A trustee's functions are to—

- (a) manage the trust land consistent with achieving the purpose of the trust; and
- (b) fulfil the trust within their conditions of appointment (if any); and
- (c) control noxious plants on the trust land; and
- (d) keep records required by the Minister or required under this and other Acts.

(2) A trustee has the responsibility for a duty of care for the trust land.

(3) Unless the Minister otherwise decides, a trustee's functions include protecting and maintaining, so far as is reasonable, all improvements on the trust land.

(4) The Minister may direct a trustee to erect signs on trust land indicating the land has been granted in trust or dedicated as a reserve.

(5) The trustee must comply with the Minister's direction.

Trustee's accounting functions

47.(1) The trustee of trust land must keep proper books of account and have the books annually audited by a—

- (a) member of the Institute of Chartered Accountants; or
- (b) member of the Australian Society of Certified Practising Accountants; or
- (c) person approved by the chief executive.

(2) The trustee must give a copy of the audited financial statement to the chief executive within 28 days after it has been finished.

(3) Subsections (1) and (2) apply only to trusts receiving yearly income from the trust land greater than an amount prescribed under the regulations.

(4) If subsections (1) and (2) do not apply to a trust, the Minister may ask the trustees to give the Minister a report of the financial activities of the trust.

Trustees to give information and allow inspection of records

48. The trustee of trust land must, if asked by the Minister—

- (a) prepare and give to the Minister a management plan for the trust land; and
- (b) at all reasonable times, make all trust records available for inspection by the Minister and allow copies and notes of the records to be made.

External audits

49. The trustee of trust land must, if asked by the Minister or required under an Act—

- (a) allow the Auditor-General, or a person authorised by the chief executive of a department, to audit the trust's financial accounts; and
- (b) help the conduct of the audit, including the disclosure of financial institution accounts necessary for the audit.

Vacation of office by trustee

50.(1) A trustee of trust land is taken to have vacated office if—

- (a) the trustee dies, resigns by signed notice of resignation given to the Minister, becomes incapable of acting or cannot be located; or
- (b) if the trustee is an incorporated body—the incorporated body ceases to exist.

(2) The Minister may appoint a new trustee to fill the vacated office.

Removal of trustees

51.(1) The Minister may remove a trustee from office if the Minister is satisfied—

- (a) the trustee has breached the conditions of the trust, the conditions of appointment or this Act; or
- (b) the removal is in the public interest.

(2) The Minister may appoint a new trustee in the place of the trustee removed.

Division 6—Powers of trustee

General powers of trustee

52.(1) The trustee of trust land may take all action necessary for the maintenance and management of the land.

(2) However, the action must be consistent with—

- (a) the purpose for which the reserve was dedicated or the land was granted in trust; and
- (b) this Act; and
- (c) their conditions of appointment (if any).

Declaration that trustee is statutory body

52A.(1) The trustee of trust land, in the capacity as trustee, is a statutory body for the *Statutory Bodies Financial Arrangements Act 1982*.

(2) Subsection (1) applies despite the *Statutory Bodies Financial Arrangements Act 1982*, section 6(1).¹⁴

(3) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the powers of the trustee under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

Statutory body trustee powers

53. If a statutory body is the trustee of trust land, the body may only exercise, for the trust land, its powers that are not inconsistent with this Act.

¹⁴ Under the *Statutory Bodies Financial Arrangements Act 1982*, section 6(1) various entities are not statutory bodies, including, for example, a company incorporated under the Corporations Law and a GOC.

No power to sell trust land

54. The trustees of trust land are not authorised to dispose of the trust land.

Power to surrender

55.(1) The trustees of a deed of grant in trust, with the Minister's written approval, may surrender all or part of the land.

(2) If part of the land is surrendered, the deed of grant in trust remains in force for the land not surrendered and the registrar of titles must make an appropriate recording in the freehold land register.

Model by-laws

56.(1) The Governor in Council, by regulation, may make model by-laws for trust land.

(2) Without limiting subsection (1), a model by-law may be made about the following matters—

- (a) the protection and use of trust land, including buildings on trust land;
- (b) regulating the business and management of trusts;
- (c) penalties, not more than 100 penalty units, for the contravention of a model by-law.

(3) A model by-law may state that all or part of trust land is a public place within the meaning of an Act—

- (a) conferring or imposing on police officers powers or duties about public places; or
- (b) providing for the punishment of offences committed in public places.

(4) If a local government is the trustee it may—

- (a) make local laws for the trust land under the *Local Government Act 1993* or the *City of Brisbane Act 1924*; and
- (b) adopt a model by-law.

(5) If a local government adopts a model by-law, it must follow the procedure under the *Local Government Act 1994* for adopting a model local law when it adopts the model by-law.

(6) A local law made under subsection (4)(a) must not be inconsistent with this Act.

(7) A trustee other than a local government, in the way prescribed under the regulations, may adopt as its by-laws all or any of the model by-laws.

(8) A model by-law has no effect unless it is adopted in the prescribed way.

(9) In a proceeding, a copy of a public notice about the adoption of a model by-law is—

- (a) evidence of the information in the notice; and
- (b) evidence that the model by-law had been properly adopted.

Division 7—Trustee leases and trustee permits

Trustee leases

57.(1) A trustee may lease all or part of the trust land if the trustee first obtains the Minister's written 'in principle' approval to the lease.

(2) The Minister's approval may include conditions.

(3) Each trustee lease must be endorsed with the Minister's approval before it is registered in the appropriate register.

Other transactions a trustee may allow

58.(1) A trustee lessee may transfer, mortgage or sublease a trustee lease if the trustee lessee first obtains—

- (a) the trustee's written approval to the transaction; and
- (b) if the trustee does not have a written authority under

section 64¹⁵—the Minister’s written approval to the transaction.

(2) The Minister and the trustee’s written approvals may include conditions.

(3) If the Minister refuses to approve the transfer, mortgage or sublease, written notice of the Minister’s decision and the reasons for the decision must be given to the trustee lessee.

(4) A trustee lessee may appeal against the Minister’s decision.

(5) Each transaction must be registered in the appropriate register.

Basis of Ministerial approval

59.(1) The Minister may approve a trustee lease or transaction under sections 57 and 58 only if the trustee lease or transaction—

- (a) would be consistent with the purpose for which the land was reserved or granted in trust; and
- (b) would facilitate or enhance the purpose for which the land was reserved or granted in trust.

(2) Despite subsection (1), the Minister may approve a trustee lease or a sublease for a purpose inconsistent with the purpose for which the trust land was dedicated or granted only if—

- (a) the lease or sublease would not diminish the purpose; and
- (b) all further improvement built or placed by the lessee on the part of the trust land that is leased or subleased are first approved by the Minister.

Trustee permits

60.(1) A trustee may issue a trustee permit for the use of all or part of trust land.

(2) A trustee permit must not be inconsistent with the community purpose of the trust land and the guidelines prescribed under the regulations.

¹⁵ Under section 64, the Minister may give a trustee a ‘standing authority’ to sublease.

(3) If a trustee permit is for more than 3 months, the trustee must lodge a copy of the permit for registration in the appropriate register.

Conditions on trustee leases and trustee permits

61.(1) A trustee lease or sublease must not be for more than 30 years.

(2) A trustee lease or sublease must not contain a covenant, agreement or condition—

- (a) to renew the lease; or
- (b) to convert to another form of tenure (including freehold); or
- (c) to buy the land.

(3) It is a condition of every trustee lease, sublease and trustee permit that the lessee, sublessee or permittee holds the lease, sublease or permit so that the land may be used for the community purpose for which it was reserved or granted in trust without undue interruption or obstruction.

(4) The condition mentioned in subsection (3) does not apply to a building permitted to be built on the land.

Grouping trust land

62.(1) The chief executive, if asked by a trustee, may approve the grouping of trust land, with the same or complementary purposes, under the control of the trustee.

(2) A grouping may be approved only if the chief executive is satisfied the grouping will enhance the financial and general management of the trust land sought to be grouped.

(3) The chief executive may cancel an approval to group trust land.

(4) If an approval is cancelled, the trust lands are no longer grouped.

Rent to be charged

63.(1) A trustee may keep the rent paid under a trustee lease or trustee permit.

(2) The rent must be the highest rent that can reasonably be obtained,

having regard to the use and the community benefit and purpose of the trustee lease or trustee permit.

(3) Unless the Minister first gives written approval, rent received from a trustee lease or trustee permit over trust land must be spent on the maintenance or enhancement of the trust land or grouped trust land.

(4) Subsection (3) does not apply if the trustee is a—

- (a) department; or
- (b) statutory body prescribed under the regulations.

Minister may dispense with approval

64.(1) If the Minister considers it appropriate, the Minister may give a trustee a written authority dispensing with the need to obtain the Minister's approval for trustee leases.

(2) If the Minister gives an authority, a trustee lease must be consistent with the purpose of the trust land and the guidelines prescribed under the regulations.

(3) The Minister, by written notice, may withdraw the authority.

(4) A trustee may apply for approval to lease trust land even if an authority is in force.

Cancellation of a trustee lease or trustee permit

65.(1) A trustee may cancel a trustee lease or trustee permit if the lessee or permittee does not comply with the conditions of the lease or permit.

(2) The Minister may also cancel a trustee lease or trustee permit if—

- (a) the lessee or permittee does not comply with the conditions of the lease or permit; or
- (b) the Minister is satisfied cancellation would be in the public interest.

(3) If a trustee lease or trustee permit is cancelled, no person has a right to a claim for compensation.

(4) Every cancellation of a trustee lease or trustee permit must be registered in the appropriate register.

Right to remove improvements on cancellation

66.(1) If a trustee lease or trustee permit is cancelled by the trustee, the trustee may allow the trustee lessee or trustee permittee to remove the trustee lessee's or trustee permittee's improvements on the land within a reasonable time stated by the trustee.

(2) If a trustee lease or trustee permit is cancelled by the Minister, the Minister may allow the trustee lessee or trustee permittee to remove the trustee lessee's or trustee permittee's improvements on the land within a reasonable time stated by the Minister.

(3) If the improvements are not removed within the stated time, they become the property of the trustee.

Division 8—Mortgaging trust land

Power to mortgage trust land

67.(1) A trustee of a reserve must not mortgage the reserve.

(2) A trustee of a deed of grant in trust, issued before the commencement of this Act, may mortgage the deed of grant in trust.

(3) A trustee may also mortgage a deed of grant in trust issued after the commencement if the deed—

- (a) was issued because of a surrender under section 358¹⁶ and the deed being surrendered was issued before the commencement; or
- (b) was issued under section 493.¹⁷

(4) Despite subsections (2) and (3), a trustee may mortgage a deed of grant in trust only if the Minister has approved the mortgage.

¹⁶ Section 358 allows a registered owner or trustee to surrender land in certain circumstances in exchange for a new deed.

¹⁷ Section 493 deals with the automatic issue of new tenures under this Act.

(5) The Minister's approval may be subject to conditions.

(6) Amounts raised by mortgaging trust land must be used on the trust land and for the purpose for which the trust was granted.

Mortgagee in possession

68.(1) If a trustee defaults under a mortgage over a deed of grant in trust, the mortgagee must give the Minister 28 days notice of the mortgagee's intention to exercise its powers under the mortgage.

Maximum penalty—5 penalty units.

(2) A mortgagee must not sell a deed of grant in trust until payment has been made to the State of the amount of the unimproved value of the land on the day the notice was given under subsection (1).

(3) However, the Minister may allow a sale of the deed of grant in trust to proceed before payment of the amount of the unimproved value of the land is made, if the mortgagee gives the Minister security or an undertaking, to the Minister's satisfaction, that payment of the amount will be made on completion of the sale.

What is the unimproved value

69.(1) The Minister must decide the unimproved value.

(2) The unimproved value must be calculated as if the land were not restricted by the trust.

(3) The mortgagee may appeal against the Minister's decision.

Sale by mortgagee in possession

70.(1) If a mortgagee complies with section 68, the mortgagee may sell the deed of grant in trust.¹⁸

(2) The mortgagee must first offer the deed of grant in trust for sale by public auction.

¹⁸ Section 68 is about the notice a mortgagee in possession must give before exercising powers under the mortgage.

(3) The deed of grant must not be offered for sale by public auction until at least 28 days after the mortgagee has published a notice, in the newspaper that has the largest circulation in the locality of the land, that the land is for sale.

(4) The mortgagee is authorised to sign a surrender of the deed of grant in trust.

Effect of sale

71. When the land is sold—

- (a) the trust is at an end; and
- (b) all appointments of trustees are cancelled from the day the land is sold; and
- (c) the buyer is entitled to have a new deed of grant issued in the buyer's name and released from the trust but subject to other registered encumbrances that have not been released; and
- (d) the Minister may appoint a person under section 74 to sell other property or assets of the trust.¹⁹

Disposal of sale price

72. Anything remaining after the following amounts have been paid must be paid to the State—

- (a) the amount of the unimproved value of the deed of grant in trust;
- (b) the amount of the mortgage debt;
- (c) the expenses incurred in selling the land;
- (d) all other reasonable deductions.

¹⁹ Section 74 is about how the Minister appoints a liquidator to wind-up the affairs of a trust.

Division 9—Winding-up trusts of trust land**Application of division**

73. This division applies to trusts of trust land.

Minister may start winding-up

74.(1) The Minister, by gazette notice (the “**liquidation notice**”), may appoint a person (the “**liquidator**”) to wind-up the affairs of a trust if a—

- (a) reserve is revoked; or
- (b) deed of grant in trust is cancelled; or
- (c) deed of grant in trust is sold by a mortgagee in possession.

(2) The Minister must—

- (a) give a copy of the liquidation notice to every person who has a registered interest in the trust land; and
- (b) advise every trustee lessee and trustee permittee of the trust land of their rights to remove their improvements from the trust land.

Property vests in liquidator

75.(1) All the property of the trust and all the trustee’s powers and obligations that, immediately before the day the liquidation notice was published, were vested in the trustee, or someone else for the trustee, vest in the liquidator.

(2) However, a trustee lessee or trustee permittee may remove their improvements from the land if—

- (a) the trustee lease or trustee permit gave the trustee lessee or trustee permittee the right to remove the improvements at the expiry of the lease; and
- (b) the trustee lessee or trustee permittee removes the improvements within 28 days after the liquidation notice was published.

(3) To remove any doubt, it is declared that trust land is not part of the property of a trust.

Sale of trust assets

76.(1) The liquidator must sell all the trust property and apply the proceeds of the sale towards payment of—

- (a) firstly, the costs and expenses of the winding-up; and
- (b) secondly, the amount owing to any mortgagee (other than a mortgagee under section 70) or, if more than 1 mortgagee, according to their priorities; and²⁰
- (c) thirdly, the debts and obligations of the trust.

(2) If an amount remains, the liquidator must pay the amount to the State for disposal as the Minister considers appropriate.

Trustees to help in winding-up

77. The trustees of the trust, and anyone else materially affected by the winding-up, must do all things necessary to help the winding-up.

Maximum penalty—5 penalty units.

Winding-up may continue after revocation, cancellation or sale

78. The liquidator may continue to wind-up the trust even if the—

- (a) reserve has been revoked; or
- (b) deed of grant in trust has been cancelled; or
- (c) trust land has been sold by the mortgagee in possession.

Division 10—Cemeteries**Cemetery registers**

79.(1) The trustee of trust land for cemetery purposes must keep a register of all burials in the cemetery.

²⁰ Section 70 is about how a mortgagee in possession can sell a deed of grant in trust.

(2) The trustees must make the register available for public inspection at all reasonable times.

(3) If a trust for cemetery purposes is wound up, the register must be sent to the State Archivist and held for public access.

Trustee may remove structures

80.(1) A trustee may repair or remove structures, monuments or tombstones from a cemetery if the repair or removal is necessary for public health and safety.

(2) Subsection (1) is subject to the *Queensland Heritage Act 1992*.

Application to close or re-open cemetery

81.(1) The trustee of trust land for cemetery purposes may ask that a cemetery be closed to further burials.

(2) If the Minister is satisfied the cemetery should be closed, the Minister may close the cemetery by gazette notice.

(3) Subsection (2) does not affect a right to be buried in the cemetery if the right existed at the time of the closure.

(4) If asked by the trustees, the Minister, by gazette notice, may re-open the cemetery for burials.

(5) A cemetery that was closed under an Act that has been repealed may be re-opened under this Act.

Trustees may transfer trust to local government

82. The trustees of a cemetery may transfer their trusteeship to a local government—

- (a) if the Minister, the trustee and the local government agree; and
- (b) under the conditions agreed to between the parties.

Exhumations

83.(1) If a local government has not made a local law about authorising the exhumation of human remains from trust land for cemetery purposes, the Minister, on the written application of a person, may give written approval to the exhumation of the human remains.

(2) A person improperly deals with human remains under the Criminal Code, section 236 if the person exhumes human remains from trust land for cemetery purposes other than under—

- (a) an approval of the Minister; or
- (b) a local law or another Act.

Division 11—Other grants for public purposes**Surrender of land still needed for a public purpose**

84.(1) The trustees of land granted for an estate in fee simple for some community, public or similar purpose may apply to the Minister to surrender the land to the State, and for the issue of a deed of grant in trust under this Act for a community or public purpose, if—

- (a) the land has been used for a public, community or similar purpose; but
- (b) it is not known under what authority the trust was created over the land.

(2) If the Minister is satisfied that the trustees are deceased, untraceable, unknown or incapable of acting, a person in the community concerned may make the application.

Surrender of land no longer needed for a public purpose

85.(1) The Minister is authorised to sign a surrender of land, if the Minister is satisfied—

- (a) the land was granted for an estate in fee simple for some community, public or similar purpose; and
- (b) the land has been used for the purpose; and

- (c) the trustees of the land are deceased, untraceable, unknown or incapable of acting; and
 - (d) the land is no longer needed for a public, community or similar purpose.
- (2) The surrendered land may be dealt with as unallocated State land.

Public notice of proposed surrender

86. The Minister may accept the surrender of, or may sign a surrender of, land mentioned in this division if the Minister is satisfied—

- (a) the land is not subject to an encumbrance that would prevent the land from being surrendered or, if the land is encumbered, the encumbrancee has given written approval to the surrender; and
- (b) the interests of any occupiers have been taken into consideration; and
- (c) notice of the intention to surrender has been adequately advertised in a newspaper the Minister considers appropriate and the gazette.

Effect of surrender

87. On the surrender of land under this division—

- (a) the trust is at an end; and
- (b) the land is released from the trust; and
- (c) all appointments of trustees are cancelled; and
- (d) all encumbrances are discharged.

Dealing with land used as a cemetery

88. If land mentioned in this division was granted for cemetery purposes and the land has been used for burials or memorials, the Minister must dedicate the part of the land that has been used for cemetery purposes as a reserve for cemetery purposes.

Division 12—Miscellaneous**Survey of trust land**

89. The Minister may require trust land to be surveyed, at the cost of the persons who are to be the trustees, before the land is dedicated or granted.

Application of Acts to trustees

90. The *Trusts Act 1973* and the *Financial Administration and Audit Act 1977* do not and are taken never to have applied to trustees and trusts under this part.

Trustees taken to be owners for legal proceedings

91. A trustee under this part is taken, for legal proceedings, to be the owner of the trust land.

Protection from liability

92.(1) A trustee appointed by the Minister under this part does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the trustee, the liability attaches instead to the State.

(3) Subsection (1) does not apply to a statutory or incorporated body.

PART 2—ROADS***Division 1—Dedicating and opening roads*****Meaning of “road”**

93.(1) A “road” means an area of land, whether surveyed or

unsurveyed—

- (a) dedicated, notified or declared to be a road for public use; or
- (b) taken under an Act, for the purpose of a road for public use.

(2) The term includes—

- (a) a street, esplanade, reserve for esplanade, highway, pathway, thoroughfare, track or stock route; and
- (b) a bridge, causeway, culvert or other works in, on, over or under a road; and
- (c) any part of a road.

Dedication of road by gazette notice

94.(1) The Minister, by gazette notice, may dedicate unallocated State land as a road for public use.

(2) The land is open as a road for public use on the day the notice is gazetted.

Roads vest in the State

95. The land in all roads dedicated and opened for public use under the following Acts vests in, or remains vested in, the State—

- (a) this Act, or an Act repealed by this Act or repealed by the repealed Act;
- (b) the *Land Title Act 1994*.

Roads in existing leases are dedicated

96.(1) If a road is shown on an existing lease or an existing lease mentions a plan and the plan shows a road is excluded from the lease, the road is taken to have been always dedicated as a road and open for public use.

(2) If the width of the road is not shown on the lease or plan, the width is taken to be 60 m.

(3) If a better description of the location of a road becomes available, the

Minister, by gazette notice, may declare the location of the road is amended by the description stated in the notice.

Clarification of road status

97. If there is doubt about whether or not land has been dedicated and opened for public use as a road, the Minister may refer the issue to the Court for a decision.

Division 2—Closing roads

Closure of road by gazette notice

98.(1) If, after inquiry and notice the Minister considers appropriate, the Minister is satisfied a road is not needed, the Minister may, by gazette notice, permanently or temporarily close the road.

(2) The Minister may close the road without receiving an application by an adjoining owner.

(3) The road is closed from the day the gazette notice is published.

Application to close by adjoining owner

99.(1) The registered owner, lessee or trustee of land adjoining a road may apply (a “**road closure application**”) to the Minister for the temporary or permanent closure of the road and the issue of a road licence or inclusion of the road permanently closed with the land of the applicant.

(2) The Minister may refuse a road closure application if the Minister is satisfied—

- (a) the application is vexatious or frivolous; or
- (b) the closure is not needed as an integral part of a substantial development; or
- (c) no real economical benefit to the State is likely because of the closure; or
- (d) the closure would be of no particular benefit to the local community.

Public notice of closure

100.(1) If the Minister is satisfied a road closure application should proceed, the Minister must—

- (a) give appropriate public notice of the application; and
- (b) make appropriate enquiries about the effect the closure would have.

(2) Alternatively, the Minister may accept appropriate public notice of the application and appropriate enquiries about the closure, that have been carried out by the applicant.

(3) The public notice must include the following information—

- (a) that a person may object to the application;
- (b) the closing day for objections;
- (c) where the objection must be lodged.

(4) In this section—

“appropriate enquiries” includes notifying each registered owner and lessee whose land adjoins the road.

“appropriate public notice” includes—

- (a) notification in the gazette; and
- (b) placing and keeping a notice in a conspicuous place on or near the road.

Minister to consider objections

101.(1) The Minister must consider all objections properly made to the proposed road closure.

(2) The Minister may approve or refuse the road closure application.

(3) However, the Minister must refuse the road closure application if the Minister is satisfied the road is still needed.

Changing application

102. In deciding an application, the Minister may change a road closure application in the way the Minister considers appropriate.

Division 3—Temporarily closed roads**Issue of road licence**

103.(1) The Minister may issue a road licence over a temporarily closed road only to an adjoining owner.

(2) However, the Minister need not issue the road licence only to the adjoining owner who applied for the road closure.

Conditions of issuing road licence

104. A road licence is subject to the following conditions—

- (a) it must not contain a covenant, agreement or condition to renew the road licence, or to convert it to another form of tenure, or to buy the land;
- (b) no more structural improvements, other than boundary fences, are permitted on the road temporarily closed;
- (c) if the person holding the licence transfers or sells the land adjoining the road licence—the person must—
 - (i) also transfer the road licence to the new registered owner or lessee of the adjoining land; or
 - (ii) surrender the road licence at the time the sale is settled;
- (d) any other conditions the Minister considers appropriate.

Temporarily closed road still dedicated land

105. If a road is temporarily closed, the land comprising the road is still land that is dedicated as a road for public use even though the public cannot use the road as a road until it is reopened.

Cancellation or surrender of road licence

106.(1) The Minister may cancel a road licence, after giving reasonable notice to the licensee, if—

- (a) the Minister is satisfied the road is again needed for public use as an open road; or
- (b) the licensee breaches the conditions of the licence; or
- (c) the licensee contravenes this Act.²¹

(2) No compensation is payable for the cancellation of a road licence.

(3) A licensee, with the Minister's written approval, may surrender a road licence.

(4) If a road licence is surrendered or cancelled, the road remains temporarily closed.

Reopening a temporarily closed road

107. The Minister, by gazette notice, may reopen a temporarily closed road.

Division 4—Permanently closed roads**Dealing with permanently closed road**

108.(1) If the Minister is satisfied land in a permanently closed road is of adequate area, having regard to the location of the land and the use made of adjoining land, to be used as a separate parcel of land, the land may be dealt with as unallocated State land.

(2) If the Minister is not satisfied land in a permanently closed road is of adequate area, having regard to the location of the land and the use made of adjoining land, to be used as a separate parcel of land, the land may be—

- (a) sold to 1 or more adjoining registered owners or lessees who have a freeholding lease; and

²¹ A road licence may also be cancelled for non-payment of rent. See chapter 5, part 1, division 4.

(b) with or without the payment of a cash premium as the Minister considers appropriate—leased to 1 or more adjoining lessees.

(3) If the land is sold or leased under subsection (2), it is a condition of the sale or lease that the land be amalgamated with the existing title of the buyer or lessee.²²

(4) The buyer or lessee may also apply for the land in the closed road to be amalgamated into a single title with land owned or leased by the buyer or lessee.

(5) The Minister must decide the purchase price or the cash premium.

Division 5—Road repositioning

Simultaneous opening and closing of road

109.(1) This section applies if—

- (a) a road is being opened in a deed of grant; and
- (b) in an adjoining deed of grant a road closure is happening at the same time in or adjoining the deed of grant; and
- (c) the road to be opened is in substitution for the road being closed; and
- (d) both the land in which the road is being opened, and the land in or adjoining the road to be closed, are owned by the same registered owner.

(2) If asked by the registered owner, the Minister may include, in the deed of grant containing the road to be closed—

- (a) any severance of land created by the road opening; and
- (b) the land in the road being closed.²³

²² A deed of grant issued because of including permanently closed road is issued under section 358. A lease amended because of including permanently closed road is amended under section 360.

²³ A deed of grant issued because of simultaneously opening and closing a road is issued under section 358.

(3) The Minister's approval may be subject to conditions.

(4) The *Land Title Act 1994*, section 50 and the *Local Government (Planning and Environment) Act 1990*, part 5 do not apply to the repositioning of a road under this section.²⁴

(5) In this section—

“**adjoining**” includes deeds of grant separated only by a road.

Division 6—Building of roads in State developments

Minister may build roads

110.(1) The Minister may authorise the building and maintenance of a road serving land made or to be made available under this or another Act.

(2) The Minister, and a person acting under the Minister's authority, has the same liability, and the same duties, as a local government for a matter under this division.

(3) If the Minister authorises a road to be built, it must be built to at least the standard applying to similar roads in the local government area.

When road comes under local government control

111.(1) After a road, authorised by the Minister, has been built, the Minister may fix a day from which the *Local Government Act 1993* applies to the road.

(2) From the day fixed—

- (a) a regulation made for a purpose relating to the building of the road stops applying to the road; and
- (b) the *Local Government Act 1993* applies to the road as if it had been built by the relevant local government.

²⁴ The *Land Title Act 1994*, section 50 and the *Local Government (Planning and Environment) Act 1990*, part 5 are about requirements for the registration of plans of subdivision.

CHAPTER 4—LAND HOLDINGS

PART 1—MAKING LAND AVAILABLE

Division 1—Interests in land available by competition

Interests in land available by auction, tender or ballot

112. The following interests in land may be made available by public auction, tender or ballot—

- (a) an estate in fee simple, a lease or a permit of, or over, unallocated State land;
- (b) a term lease of a reserve.

Public notice of availability to be given

113.(1) The Minister must advertise the intention to make an interest in land available by auction, tender or ballot.

(2) The advertisement must be—

- (a) before the auction, tender or ballot takes place; and
- (b) in the gazette (the “**sale notice**”) and in a newspaper the Minister considers appropriate.

Information to be included in sale notice

114.(1) The sale notice must include the following information—

- (a) the conditions of the auction, tender or ballot;
- (b) the conditions attaching to the interest being made available;
- (c) any restrictions on eligibility to bid, tender or take part in the ballot;
- (d) the time and place where the auction will be held;
- (e) other appropriate information about the auction, tender, ballot or

interest.

(2) If the sale notice is for a ballot or a sale by tender, it must also include the following information—

- (a) the closing day for applications;
- (b) the time and place for lodging applications.

Conditions of sale

115.(1) The following conditions apply to a sale by public auction—

- (a) the highest bid at auction that is at least the reserve price or the reserve cash premium is the sale price;
- (b) the deposit and other fees or payments, for survey or improvements, must be paid within the time stated in the sale notice;
- (c) the buyer must be eligible to hold the interest under this Act and meet all other restrictions stated in the sale notice;
- (d) the appropriate forms must be completed and lodged within the time stated in the sale notice.

(2) If the interest sold is a lease or permit—

- (a) the amount bid at auction does not include the rent stated in the sale notice; and
- (b) the rent stated is payable in the usual way.

Interests in land may be sold after auction

116.(1) If an interest in land is not sold at public auction, the interest may be sold—

- (a) by accepting the best offer made after the auction that is at least the reserve price or reserve cash premium; or
- (b) by reducing the reserve, advertising the reduced reserve in the newspaper in which the auction was advertised and accepting the best offer that is at least the new reserve price or new reserve cash

premium.

(2) The conditions of sale stated in the sale notice also apply to the sale.

Interest may be withdrawn from auction, tender or ballot

117. Even if an interest in land has been advertised for ballot or sale by public auction or tender, the interest may be withdrawn from sale by the Minister—

- (a) before it is auctioned, before the closing day of tenders or before a ballot is conducted; or
- (b) if not sold—after the auction.

Appeal against exclusion from ballot or tender

118.(1) Before a ballot is conducted or a tender concluded, the Minister must give each applicant a notice advising whether or not they are to be included in the ballot or tender.

(2) If the Minister decides to exclude a person from a ballot or tender, the person must be given written notice of the decision and the reasons for the decision.

(3) An applicant who has been advised he or she is excluded from a ballot or tender may appeal against the decision to exclude the applicant.

(4) The ballot or tender may proceed—

- (a) if no appeal has been lodged—after the last day for lodging an appeal; or
- (b) if an appeal has been lodged—after the appeal has been decided.

Conduct of ballot

119. A ballot must be conducted in the way prescribed under the regulations.

Offer to winner of ballot or tender

120.(1) The winner of a ballot or tender must be made an offer on the terms stated in the sale notice.

(2) If the offer is refused—

- (a) the applicant's deposit is forfeited to the State; and
- (b) the Minister may—
 - (i) otherwise deal with the land under this Act; or
 - (ii) if the offer was made because of a ballot—re-ballot the land.

(3) Only the applicants included in the earlier ballot, other than the applicant who refused the offer, are to be included in the re-ballot.

(4) An applicant who is eligible to be included in the re-ballot, by written notice to the Minister, may withdraw from the re-ballot.

Division 2—Interests in land available without competition**Leases of unallocated State land**

121.(1) A lease of unallocated State land may be granted without competition if—

- (a) the land is needed for a public purpose; or
- (b) the Minister decides—
 - (i) the land is not needed for a public purpose; and
 - (ii) the intended use is the most appropriate use of the land; and
 - (iii) exposure to public competition is inappropriate or 1 or more of the priority criteria apply.²⁵

(2) To remove any doubt, it is declared that a lease may be granted to the State, without competition.

²⁵ The priority criteria is set out in section 123.

Deeds of grant of unallocated State land

122.(1) A deed of grant of unallocated State land may be granted without competition if the Minister decides—

- (a) the land is not needed for a public purpose; and
- (b) the intended use is the most appropriate use of the land; and
- (c) 1 or more of the priority criteria apply.

(2) The Minister must decide the purchase price for the land.

(3) To remove any doubt, it is declared that a deed of grant may be granted to the State, without competition.

Priority criteria

123. For sections 121 and 122—

“priority criteria” are—

- (a) the applicant is an adjoining registered owner or lessee, and selling or leasing to anyone else would be considered inequitable;
or
- (b) no other persons are likely to be interested in obtaining the land;
or
- (c) there is no dedicated access and the only practical access is through the applicant’s land.

Leases of State forests and national parks

124. If land has been surrendered by a person and has been reserved as State forest or dedicated as national park, the person may be granted, without competition, a lease over all or part of the forest or park.

Deeds of grant in trust and leases over reserves

125.(1) A deed of grant in trust may be granted without competition.

(2) A lease of a reserve may be granted without competition.

Strategic port land

126.(1) If land above high-water mark is needed as strategic port land for a port authority, the port authority may be given, without competition, either a lease or deed of grant.

(2) However, if land below high-water mark is needed as strategic port land for a port authority, the port authority may be given, without competition, only a lease.

Reclaimed land

127.(1) If a person has reclaimed land under the authority of an Act, the Governor in Council may issue to the person, without competition, a deed of grant or a lease over all or part of the land.

(2) When granting the reclaimed land, the Governor in Council may amalgamate the land granted with an adjoining tenure held by the person.

(3) If the reclaimed land is already held under lease, the lease must be surrendered before a new lease or deed of grant is issued.

(4) If a deed of grant or lease is issued over only part of the reclaimed land, the rest of the land must be dedicated as a reserve or a road.

(5) If the reclaimed land is dedicated as a reserve and the person who reclaimed the land wishes to be the trustee of the reserve, the Minister must appoint the person as the trustee.

(6) If a deed of grant is issued, the purchase price is—

- (a) the purchase price stated in the permission to reclaim the land or in the lease; or
- (b) if no purchase price is stated—the amount of the unimproved value of the land, on the day the permission to reclaim the land was given, decided by the Minister.

(7) The person may appeal against the Minister's decision on the amount of the unimproved value.

Meaning of “significant development”

128. A “significant development” is a development that will—

- (a) have a significant impact on the environment or the economic and social development of a locality, a region or the State; and
- (b) involve a high level of investment, a substantial development period and lease conditions requiring extensive development.

Lease for significant development

129.(1) If an application for a lease under this division is for a significant development, the Minister must obtain an independent assessment of the applicant's financial and managerial capabilities.

(2) The applicant must pay the cost of the assessment.

(3) The cost is not refundable.

(4) The Minister may include in the lease a purchase price, or formula for calculating the purchase price, if the land is converted to freehold land.

Transfer of lease for significant development

130.(1) If a lease issued for a significant development is to be transferred, the Minister may obtain an independent assessment of the transferee's financial and managerial capabilities before considering whether or not the transfer should be approved.

(2) The transferee must pay the cost of the assessment.

(3) The cost is not refundable.

Amalgamation may be a condition

131. A condition of an offer under this division may be that the land being offered must be amalgamated with or tied to other land already owned by the person to whom the land is offered.²⁶

²⁶ A deed of grant amended because of an allocation without competition is issued under section 358. A lease amended because of an allocation without competition is amended under section 360.

Division 3—Availability of additional areas**Granting additional areas**

132.(1) A registered owner or lessee may be granted, without competition, a perpetual or term lease (an “**additional area**”) of unallocated State land for agriculture or grazing if the registered owner or lessee’s land is being used for agriculture or grazing.

(2) Unallocated State land must not be made available as an additional area if the land is more than a living area.

Who is eligible for additional areas

133. A person is eligible for an additional area only if the person—

- (a) has demonstrated a duty of care in the management of their land; and
- (b) is financially capable of fulfilling the conditions of the lease of the additional area; and
- (c) is otherwise qualified under this Act to hold the additional area; and
- (d) needs the additional area for property build-up.

Issues the Minister must consider

134. The Minister must consider the following issues before making an offer of an additional area—

- (a) who is eligible for the additional area;
- (b) the appropriate size of the additional area;
- (c) any special conditions appropriate to the additional area;
- (d) if more than 1 person meets the criteria—the need for a ballot to decide who should be offered the additional area;
- (e) any related issues.

Committee of review to help Minister

135. The Minister may appoint a committee of review to help in making a decision to offer an additional area.

Conditions of offer and lease

136.(1) A condition of an offer of an additional area may be that the additional area must be amalgamated or tied with other land already owned by the person to whom the offer is made.

(2) If a condition of the offer is that the additional area must be tied to freehold land, a condition of the lease for the additional area is that the freehold land must continue to be used for agriculture or grazing.

(3) If there are improvements on the additional area, the Minister may require, as a condition of the offer, that the person must buy the improvements.

(4) If the person accepts the offer, the person must pay the value of the improvements under section 139.

Division 4—Miscellaneous**Right to occupy**

137.(1) If there are improvements the property of the State, or a previous lessee, on land leased or sold under this Act, the incoming lessee or buyer is not entitled to occupy or enter into possession of the land until—

- (a) the lessee or buyer has paid the amount of the value of the improvements; or
- (b) the Minister permits the lessee or buyer to do so.

(2) If there are no improvements, a lessee or buyer from the State is entitled to occupation and possession of the land from—

- (a) if a lease—the day the lease starts, or an earlier day allowed by the Minister; or
- (b) the day the sale is completed.

Default

138.(1) If land has been made available to a person, the person defaults if—

- (a) the appropriate forms are not completed and lodged within the required time; or
- (b) the amount to be paid for the interest in the land and the improvements is not paid within the time stated in the offer and in any written agreement under section 140.

(2) If a person defaults, the deed, lease, licence or permit must not be issued and any amount paid is forfeited.

(3) However, if the Minister is satisfied there was a reasonable excuse for the default, the Minister may refund the amount paid.

Improvements to be bought by incoming lessee or buyer

139.(1) If there are improvements, the property of the State or a previous lessee, on land to be leased or bought under this Act, the value of the improvements must be stated in the offer or in the sale notice.

(2) The value of the improvements is the value on the day the offer was made or the sale notice was published.

(3) The value of the improvements may be—

- (a) not negotiable; or
- (b) negotiable (the “**provisional value**”).

(4) The incoming buyer or lessee must pay the State the value of improvements within the time stated in the offer or the sale notice, whether or not a provisional value is to be negotiated.

Provisional value may be negotiated

140.(1) If a provisional value has been stated in an offer or sale notice, the value may be negotiated (the “**negotiated value**”) between the buyer and previous lessee.

(2) With the written agreement of the buyer and previous lessee, the negotiated value becomes the amount to be paid for the improvements.

(3) Any difference between the provisional value and the negotiated value must be paid or refunded within the time stated in the written agreement.

(4) If the buyer and previous lessee cannot agree on a negotiated value, either party may make application to the Court to decide the value.

(5) In deciding the value, the Court must assess the value of the improvements as their market value in a sale of a lease of the same term and tenure as the lease of the previous lessee.

(6) The value decided by the Court becomes the negotiated value.

Payment of survey fee

141. If a survey of land has been carried out by the State or will be carried out by the State to make or in making the land available, the State may require the buyer to pay the survey fee stated in the offer or sale notice or to pay the actual cost of survey.

PART 2—ELIGIBILITY TO HOLD LAND

Division 1—General eligibility restrictions

Minors not to hold land

142. A person is eligible to apply for, buy or hold land under this Act only if the person is an adult.

Departmental officers not to hold land without approval

143. An officer of the department is not eligible to acquire land under part 1 without the Minister's written approval.

Division 2—Corporation and aggregation restrictions**Division applies only to leases for grazing and agriculture**

144. This division applies only to—

- (a) perpetual leases issued for grazing or agriculture purposes; and
- (b) grazing homestead perpetual leases; and
- (c) grazing homestead freeholding leases; and
- (d) subleases of leases mentioned in paragraphs (a), (b) and (c).

Only individuals may hold leases

145.(1) Only individuals are eligible to hold a lease to which this division applies.

(2) An individual who is eligible to hold a lease to which this division applies may hold it as joint tenant or tenant in common if all the other joint tenants or tenants in common are also eligible to hold the lease.

Maximum individual holding

146.(1) An individual is not eligible to hold 2 or more leases to which this division applies at the same time if the aggregation would be substantially more than 2 living areas.

(2) However, land given to an individual as a beneficiary under the estate of a deceased lessee is not included in calculating an aggregation under subsection (1).

Calculating holdings

147.(1) The amount of living area held by an individual in a single lease to which this division applies is the total living area of the lease multiplied by the proportion of the interest in the lease held by the individual.

(2) If an individual holds an interest in 2 or more leases to which this division applies, the total number of living areas held by the individual is the aggregate of all amounts of living areas calculated under subsection (1).

- (3) In calculating the total number of living areas held by an individual—
- (a) the trustee of a family arrangement is taken to be the lessee; and
 - (b) each beneficiary of a family arrangement is also taken to be the lessee of a living area in proportion to their interest in the arrangement.

Excess holdings

148. If an individual acquires more land than an individual is permitted to hold under this Act,²⁷ the lease acquired in excess of the eligible holding may be forfeited under this Act.²⁸

Leases may not be held on trust

149.(1) A person must not hold a lease to which this division applies as trustee for another person.

- (2) Subsection (1) does not apply to—
- (a) a family arrangement; and
 - (b) a partnership or corporation consisting of persons who are lessees of the lease and who rank equally to share in the profits of the trust, partnership or corporation in the same proportions as they hold the lease.

Meaning of “family arrangement”

150.(1) An arrangement is a “**family arrangement**” if—

- (a) a person holds land as trustee for another person, partnership or corporation; and
- (b) the other person, partners, shareholders, beneficiaries or potential beneficiaries are only the person, the person’s spouse, their children, their children’s spouses, their grandchildren and like descendants of the person or any of them.

²⁷ See section 146.

²⁸ See chapter 5, part 4.

(2) If under an arrangement a person is the trustee for the children, grandchildren or like descendants of the trustee, the arrangement is a family arrangement only if all the children, grandchildren or like descendants are under 18 when the trust is created.

(3) In addition, an arrangement is a family arrangement only if—

- (a) the Minister has approved a transfer giving effect to the arrangement; and
- (b) the transfer has been lodged for registration in the land registry.

Eligibility not affected by devolution by law

151. A person or trustee (including a corporation) is not ineligible to hold land under this Act if the person or trustee is—

- (a) the trustee or personal representative of a deceased lessee; or
- (b) the trustee of a bankrupt lessee; or
- (c) holding the land for a mentally ill lessee; or
- (d) the Public Trustee under the authority of an Act.

Division does not apply to State

152. This division does not apply to the State or a State instrumentality.

PART 3—LEASES

Division 1—Preliminary

Leases must be used for purpose issued

153.(1) A lease must be used only for the purpose for which it was issued.

(2) A term lease for pastoral purposes must be used only for agricultural

or grazing purposes, or both.

(3) Subsections (1) and (2) are subject to section 154.

Minister may approve additional purposes

154.(1) The Minister may approve an application by a lessee that a lease be used for additional or fewer purposes.

(2) If the application is approved, the lessee must be given written notice of—

- (a) the approval; and
- (b) any change of rental category; and
- (c) whether or not there will be an increase or decrease in the rental for the remainder of the current rental period; and
- (d) if additional rent is payable—the time by which the additional rent must be paid.

(3) An additional purpose must be complementary to, and not interfere with, the purpose for which the lease was originally issued.

Length of term leases

155.(1) A term lease must not be issued for more than 50 years.

(2) However, a term lease may be issued for up to 100 years if it is for—

- (a) a significant development; or
- (b) a timber plantation; or
- (c) a development that involves existing improvements that in the opinion of the Minister have required a high level of investment.

Application of Dividing Fences Act

156.(1) The *Dividing Fences Act 1953* applies to all leases and licences issued under this Act or the repealed Act as if the lessees or licensees were the owners within the meaning of that Act.

(2) To remove any doubt, it is declared that the *Dividing Fences Act 1953*, section 4(3) still applies.

Division 2—Expiry and renewal

Expiry of lease

157.(1) Unless a lease is renewed before it expires, the right of the lessee to possession of the land ends on the day the lease expires.

(2) Subject to chapter 5, part 5 and the conditions of a lease, the improvements on the lease become the property of the State when the lease expires.²⁹

Application to renew lease

158.(1) The lessee of a term lease may apply to renew the lease (a “**renewal application**”) unless a condition of the lease or this Act prohibits its renewal.

(2) A renewal application may be made only after 80% of the existing term of the lease has expired unless, in the Minister’s opinion, special circumstances exist.

(3) A renewal application may be rejected without being considered under section 159 if—

- (a) the applicant has made an earlier renewal application and the application was refused; and
- (b) there is no relevant change in circumstances from the earlier application.

Issues the Minister must consider

159. The Minister must consider the following issues before making a decision to offer to renew a lease—

²⁹ Chapter 5, part 5 is about payments that may be made to outgoing lessees for improvements on a lease.

- (a) the interest of the lessee;
- (b) whether part of the lease should be set apart and declared as State forest under the *Forestry Act 1959*;
- (c) whether the public interest could be adversely affected, other than for an issue mentioned in paragraph (b), if the lease were renewed;
- (d) whether part of the lease is needed for environmental or nature conservation purposes;
- (e) whether a substantial part of the lease is at serious risk from land degradation;
- (f) whether a substantial part of the lease suffers from serious land degradation;
- (g) whether the lessee has complied with, or to what extent the lessee has complied with, the conditions of the lease;
- (h) whether part of the lease has a more appropriate use from a land planning perspective;
- (i) whether part of the lease is on an island or its location, topography, geology, accessibility, heritage importance, aesthetic appeal or like issues make it special;
- (j) whether part of the lease is needed for a public purpose;
- (k) whether part of the lease is needed for property build-up purposes of other properties without reducing the remaining land to less than a living area;
- (l) whether the lease could be subdivided without reducing the remaining land to less than a living area.

Written notice of Minister's decision

160.(1) After considering the renewal application, the Minister must give the applicant written notice offering a new lease or refusing the application.

(2) If the Minister offers a new lease, the notice must state the conditions on which the offer is made and to which the lease will be subject.

(3) If the Minister decides to refuse the renewal application, the Minister

must give the applicant written notice of the reasons for the decision.

(4) The applicant may appeal against the Minister's decision to refuse the renewal application if the only reason for the refusal was that the applicant had not fulfilled the conditions of the lease.

When offer has been accepted

161. An offer has not been accepted until the lessee fulfils the conditions of the offer.

Acceptance of offer

162.(1) If the lessee accepts the offer—

- (a) the lessee must surrender the existing lease before the new lease is issued; and
- (b) the Governor in Council may issue, in priority, to the existing lessee, the offered lease.

(2) The lease must be issued for the same purpose as the existing lease but may be subject to other terms the Governor in Council considers appropriate.

(3) Additional unallocated State land may be included in the new lease, if chapter 4, part 1, division 2 is complied with.³⁰

(4) The new lease is issued subject to all the relevant encumbrances to which the old lease was subject and in the same priorities.

Land not included in the offer

163. If the offer is for only a part of the lease, the land not included in the offer, on surrender of the lease, becomes unallocated State land.

³⁰ Chapter 4, part 1, division 2 is about interests available in land without competition.

Short term extension

164. If it appears a lease would expire before a renewal application is finalised, the Minister may extend the term of the lease for periods of no longer than 1 year, until the application is finalised.

Division 3—Conversion of tenure**Application of division**

165. This division does not apply—

- (a) to a lease over a reserve; and
- (b) to a licence or permit; and
- (c) if the conditions of a lease or the conditions of a class of lease or this Act do not allow an application for conversion to be made or a particular type of conversion to be made.

Application to convert lease

166.(1) A lessee may apply to convert (the “**conversion application**”)—

- (a) a perpetual lease to freehold land; and
- (b) a term lease to a perpetual lease or to freehold land.

(2) The lessee of a term lease issued for pastoral purposes may only apply to convert the lease—

- (a) to a perpetual lease; and
- (b) after 80% of the existing term on the lease has expired, unless in the Minister’s opinion, special circumstances exist.

(3) A conversion application may be rejected without consideration under section 167 if—

- (a) the applicant has made an earlier conversion application and the application was refused; and
- (b) there is no relevant change in circumstances from the earlier application.

Issues the Minister must consider

167.(1) The Minister must consider the following issues before making a decision to offer to convert a lease—

- (a) whether part of the lease needs to be set apart and declared as State forest under the *Forestry Act 1959*;
- (b) whether part of the lease is better suited for long-term forest management for the production of indigenous timbers of commercial value than for all other forms of primary production;
- (c) whether the public interest could be adversely affected, other than about an issue mentioned in paragraph (a) or (b), if the lease were converted;
- (d) whether part of the lease is needed for environmental or nature conservation purposes;
- (e) whether a substantial part of the lease is at serious risk from land degradation;
- (f) whether a substantial part of the lease suffers from serious land degradation;
- (g) whether the lessee has complied with, or to what extent the lessee has complied with, the conditions of the lease;
- (h) whether part of the lease has a more appropriate use from a land planning perspective;
- (i) whether part of the lease is on an island or its location, topography, geology, accessibility, heritage importance, aesthetic appeal or like issues make it special;
- (j) whether part of the lease is needed for a public purpose;
- (k) whether part of the lease is needed for property build-up purposes of other properties without reducing the remaining land to less than a living area;
- (l) whether part of the lease could be subdivided without reducing the remaining land to less than a living area;
- (m) if the lease is used for residential or industrial purposes—the most appropriate tenure for the land.

(2) Subsection (1) does not apply if the conversion application relates to a lease for development purposes and the lease states that conversion of the lease will be considered on fulfilment of the conditions stated in the lease.

Written notice of Minister's decision

168.(1) After considering the conversion application, the Minister must give the applicant written notice—

- (a) offering a new lease or deed of grant; or
- (b) refusing the application.

(2) If the Minister offers a new lease or a deed of grant, the notice must state the conditions on which the offer is made.

(3) If the offer is for a lease, the offer must state the conditions to which the lease will be subject.

(4) The offer may be for a smaller size area of land or a different tenure to that applied for.

(5) If the Minister decides to refuse the conversion application, the Minister must give the applicant written notice of the reasons for the decision.

(6) The applicant may appeal against the Minister's decision to refuse the conversion application if the only reason for the refusal was that the applicant had not fulfilled the conditions of the lease.

Conditions of freehold offer

169. If an offer is for a deed of grant, including a freeholding lease, the offer may include 1 or both of the following conditions—

- (a) that the lessee enter into a conservation agreement under the *Nature Conservation Act 1992*;
- (b) that either—
 - (i) the lessee enter into an agreement with the Minister administering the *Forestry Act 1959* regarding commercial timber on the land; or

- (ii) the deed of grant or freeholding lease includes a forest entitlement area.

Purchase price if deed of grant offered

170.(1) Unless a price or formula has already been stated in the lease to be converted, the Minister decides the purchase price for the conversion of a lease to a deed of grant.

(2) The lessee may appeal against the Minister's decision on the purchase price.

(3) The purchase price is an amount equal to the total of—

- (a) the unimproved value of the land being offered, as if it were fee simple; and
- (b) the market value of any commercial timber that is the property of the State on the land.

(4) The unimproved value of the land is calculated at the day the Minister receives the conversion application.

(5) The market value of the commercial timber is calculated at—

- (a) if the value is not appealed—the day the conversion application was received; or
- (b) if the value is appealed—the day the appeal is decided.

When offer has been accepted

171. An offer has not been accepted until the lessee fulfils the conditions of the offer.

Acceptance of offer

172.(1) If the lessee accepts the offer—

- (a) the lessee must surrender the existing lease before the new tenure is issued; and
- (b) the Governor in Council may issue, in priority, to the existing lessee, the offered tenure.

(2) If the new tenure is a lease, the lease must be issued for the same purpose as the existing lease and is subject to the terms the Governor in Council considers appropriate.

(3) Additional unallocated State land may be included in the new tenure, if chapter 4, part 1, division 2 is complied with.³¹

(4) The new tenure is issued subject to all the relevant encumbrances to which the old lease was subject and in the same priorities.

Land not included in the offer

173. If the offer is for only a part of the lease, the land not included in the offer, on surrender of the lease, becomes unallocated State land.

Freeholded lease may not be transferred without approval

174.(1) If a perpetual lease for agricultural or grazing purposes is converted to a deed of grant, the deed of grant is issued subject to a covenant prohibiting the transfer of the land to a corporation, without the Governor in Council's approval.

(2) Subsection (1) applies only if the area of the deed is more than 2 500 ha.

(3) The registrar of titles may register the transfer of the land to a corporation only if the Governor in Council has approved the transfer.

(4) The registered owner of a deed of grant mentioned in subsection (1) may apply for the removal of the covenant from the land.

(5) The chief executive must give the applicant written notice of the Governor in Council's decision about the removal of the covenant.

Forest entitlement areas

175.(1) Subject to the terms of the reservation for a forest entitlement area, the lessee or registered owner may use and occupy the forest

³¹ Chapter 4, part 1, division 2 is about interests available in land without competition.

entitlement area.³²

(2) If the forest entitlement area is no longer needed by the State the lessee or registered owner may buy the forest entitlement area under sections 24 and 25.³³

(3) If the lessee or registered owner buys the forest entitlement area, the lessee or registered owner must also pay the value of the commercial timber on the forest entitlement area.

(4) When a payment, as a first instalment or in full, is made for the forest entitlement area and the value of the commercial timber—

- (a) the reservation is discharged and the area ceases to be a forest entitlement area; and
- (b) the commercial timber become the property of the person for whose benefit the reservation is discharged.

(5) If the lessee or registered owner does not want to buy the forest entitlement area, possession of the forest entitlement area may be resumed, subject to section 176, under section 24.³⁴

Effect of resumption of forest entitlement area

176. If a forest entitlement area is resumed under section 24, the reservation is discharged and compensation is payable only for³⁵—

- (a) improvements existing on the forest entitlement area before the reservation was made; and
- (b) if building of improvements on the forest entitlement area were authorised by the Minister and the authorisation has not specifically excluded the payment of compensation—the improvements authorised.

³² Forest entitlement areas are managed by the Primary Industries Corporation under the *Forestry Act 1959* (see sections 39A, 39B and 39C).

³³ Section 24 is about the disposal of reservations no longer needed and section 25 is about the disposal of reservations by sale.

³⁴ Section 176 is about the effect of resumptions on forest entitlement areas and section 24 is about resuming reservations no longer needed.

³⁵ Section 24 is about resuming reservations no longer needed.

PART 4—PERMITS

Chief executive may issue permit

177.(1) The chief executive may issue a permit to occupy unallocated State land, a reserve or a road.

(2) The permit may be issued for the purpose, and on the terms, the chief executive decides are appropriate to the land and the purpose of the permit.

(3) If there is a trustee of the reserve, the chief executive must consult the trustee before the permit is issued.

(4) If the purpose of the permit is inconsistent with the purpose of the reserve, no improvements, other than boundary fences, are to be built by the permittee.

(5) A permit may not be transferred, sublet or mortgaged.

Permits below high-water mark

178. A permit below high-water mark may be issued only if—

- (a) it would not unduly affect safe navigation and sound development of the State's waterways and ports; and
- (b) its impact on marine infrastructure has been considered; and
- (c) it would not have a detrimental effect on coastal management; and
- (d) it would not be inconsistent with the intent of any relevant State management plan.

Fencing

179.(1) If an existing fence of a property not owned by an applicant for a permit is to be used as a boundary fence for the permit, a written agreement on conditions about the maintenance of the fence must be given to the chief executive before the permit is issued.

(2) The agreement must be signed by the owner of the fence and the applicant for the permit.

Cancellation or surrender of permit

180.(1) The chief executive may cancel a permit after giving the permittee reasonable written notice.

(2) No compensation is payable for the cancellation of a permit.

(3) A permittee may surrender a permit with the chief executive's written approval.

(4) If a permit is surrendered or cancelled, the ownership of any improvements become the property of the State and no compensation is payable.

(5) However, the chief executive may allow the permittee to remove any improvements within a time stated in the cancellation notice.

CHAPTER 5—MATTERS AFFECTING LAND HOLDINGS

PART 1—RENTS

Division 1—Rents

Rent periods

181.(1) The rental periods for leases, licences and permits are annual.

(2) Each rental period starts on 1 July.

(3) However—

(a) if a lease, licence or permit starts in a rental period—the first rental period for the lease, licence or permit is from the start of the lease, licence or permit until the next 30 June; and

(b) if a lease, licence or permit ends in a rental period—the last rental period for the lease, licence or permit is from 1 July before the

lease, licence or permit ends until the lease, licence or permit ends.

Rent categories

182.(1) The categories into which a lease, licence or permit may be allocated for rent assessment are the categories prescribed under the regulations.

(2) A lessee, licensee or permittee must be given written notice of the reason for the inclusion of the lease, licence or permit in a particular category.

(3) A lessee, licensee or permittee may appeal against the inclusion of the lease, licence or permit in a particular category.

Rent payable generally

183.(1) The rent for a lease, licence or permit is the amount calculated by multiplying the amount of the most recently made valuation for rental purposes by the rate prescribed under the regulations.

(2) Subsection (1) does not apply to—

- (a) a freeholding lease; or
- (b) a lease, licence or permit for which the rent is set under section 183A.

(3) The rate may be a single rate applying to all leases, licences or permits, or a series of rates applying to different categories of leases, licences or permits prescribed under the regulations.

(4) The rent for a lease, licence or permit—

- (a) must not be less than the minimum prescribed under the regulations; and
- (b) must be calculated in whole dollars.

Rent payable in special cases

183A.(1) If the Minister considers the rent for a lease, licence or permit calculated using the most recently made valuation for rental purposes would

result in an undue increase in the rent for a rental period, the Minister may set the rent at an amount equal to the rent for the previous rental period.

(2) The Minister may set the rent under subsection (1) based on—

- (a) the category of the lease, licence or permit; or
- (b) the local government area in which the land covered by the lease, licence or permit is situated; or
- (c) the class of land use of the land covered by the lease, licence or permit; or
- (d) a combination of all or any of the matters mentioned in paragraphs (a) to (c).

(3) The Minister may also set the rent (a “**set rent**”) for the following—

- (a) a term lease for a significant development;
- (b) a licence or permit for which a valuation for rental purposes has not been made;
- (c) a lease, licence or permit given or issued to the State or a government owned corporation.

Rent adjustments

184.(1) If an application to change the purpose for which a lease, licence or permit is used is approved and the approval results in a change of rental category, the change in rental takes place from the first quarter day after the change is approved.

(2) If a new valuation for rental purposes is made in a rental period because of an action under this Act, the change in rental takes place from the first quarter day after the action was taken.

(3) If a valuation for rental purposes for a rental period is amended on appeal or objection under the *Valuation of Land Act 1944*, the rent payable for the rental period must be amended.

(4) Interest, at the rate prescribed under the regulations, on rent overpaid for the rental period because of an amendment under subsection (3) must be paid from the day the rent was paid to the day the overpayment is refunded.

(5) If on appeal, a lease, licence or permit is allocated to a new category,

the overpaid rent must be credited to the lessee, licensee or permittee, together with interest at the rate prescribed under the regulations, on the amount credited from the time of payment until the appeal is decided.

(6) If a lease, licence or permit has a set rent, and the area of land in the lease, licence or permit is changed, the rent must be adjusted—

- (a) in accordance with the offer or the conditions of approval; or
- (b) if a rent adjustment was not stated in the offer or approval—proportionally.

(7) If the rent for a lease, license or permit is adjusted and the adjustment is—

- (a) greater than the amount prescribed under the regulations—it must be paid to the department or credited to the lessee, licensee or permittee; or
- (b) less than the amount prescribed under the regulations—it must be credited or debited to the account of the lessee, licensee or permittee.

Division 2—Concessional rents

Development concessions

185.(1) If the Minister considers a lease needs investigation and development work by a lessee, the Minister may fix an annual rent, instead of the rent normally applying to a lease, while the lease is being investigated and developed.

(2) Subsection (1) may only apply for the first 5 years of a lease.

(3) This section does not apply to a lease if the lease has a set rent.

Charitable, recreational and sporting concessions

186.(1) The Minister may set a rent less than the rent normally applying to a lease, if the lessee is a charitable, sporting or recreational organisation.

(2) The Minister must not set a rent less than the minimum rent prescribed under the regulations.

Residential hardship concessions

187.(1) The Minister may reduce a rent to less than the rent normally applying to a lease, if—

- (a) the lease is used exclusively for the lessee's own residential use; and
- (b) the lessee is suffering hardship and meets the criteria prescribed under the regulations.

(2) If the Minister considers the financial circumstances of the lessee have changed to the extent that a concession should be amended or cancelled, the Minister may, for future rental periods, amend or cancel the amount of the concession.

(3) If a lease is transferred, a concession applying to the lease does not apply from the day of the transfer.

Property build-up concession

188. The Minister must set a rate for a lease that is at least the lowest rate prescribed under the regulations for the category of the lease if the lessee—

- (a) takes part in a property build-up scheme approved by the chief executive; and
- (b) would be disadvantaged by increased rent by taking part; and
- (c) applies for the concession.

Levelling concessions

189.(1) The Minister may calculate the rent using an average valuation, if the Minister considers the rent calculated using the most recently made valuation for rental purposes would result in an undue increase in the rent for a rental period—

- (a) on a category of lease or on a licence; or
- (b) on a class of land use within a category of a lease, licence or permit.

(2) In subsection (1)—

“**average valuation**” means the amount calculated by averaging the most recently made valuation for rental purposes with the valuation for rental purposes for the previous 2 years.

Division 3—Rent and instalment payments

When rent is owing

190.(1) All rent and instalments must be paid by the times and at the places prescribed under the regulations.

(2) Subsection (1) applies even if a lessee, licensee or permittee has objected to or appealed against a—

- (a) valuation for rental purposes of the lease, licence or permit; or
- (b) categorisation of the lease, licence or permit.

(3) Even if a lessee, licensee or permittee has made an application for a matter under this Act, the lessee, licensee or permittee must still pay rent and instalments when they are owing.

Overpayment of rent

191.(1) If a lessee, licensee or permittee overpays rent or instalments, and the excess rent or instalments is—

- (a) greater than the amount prescribed under the regulations—it must be refunded to the lessee, licensee or permittee; or
- (b) less than the amount prescribed under the regulations—it must be credited to the account of the lessee, licensee or permittee.

(2) To remove any doubt, it is declared that interest is payable on overpaid rent or instalments only if the overpayment is because of—

- (a) a change in valuation on objection or appeal under the *Valuation of Land Act 1944*; or
- (b) a change of category of a lease, licence or permit because of an appeal.

Deferral of rent and instalment payments for hardship

192.(1) The Minister may defer the payment of rent or instalments for a lease or licence if—

- (a) the Minister considers the lessee or licensee is suffering hardship because of—
 - (i) the effects of drought, flood, fire, disaster; or
 - (ii) economic recession; or
 - (iii) a severe downturn in the level of markets related to the purpose of the lease; and
- (b) the lessee or licensee applies for a deferral.

(2) The Minister may defer payment only if the lessee or licensee gives the Minister the returns and financial statements the Minister asks for to help in assessing the application.

(3) If the Minister approves an application, the Minister must state—

- (a) the time (or extended time) for which the deferral applies; and
- (b) the terms of repayment of the deferred rent or instalments.

(4) Interest (the “**deferred interest**”) is payable on deferred rent and instalments, other than deferred rent forgiven by the Governor in Council, at the rate prescribed under the regulations.³⁶

(5) However, if rent is or instalments are deferred, interest for late payment (the “**penalty interest**”) does not apply for the period of the deferral.

Forgiveness of deferred rent payments

193. The Governor in Council may forgive all or part of the deferred rent and any deferred interest payable on the deferred rent.

Change of circumstances

194.(1) If the Minister considers the financial circumstances of a lessee

³⁶ Section 193 deals with the forgiveness of deferred rent payments.

who has been granted a deferral of rent or instalment payments for hardship have changed to the extent that the deferral of payment of rent or instalments should no longer apply, the Minister may revoke the deferral for future rental periods or instalment payments.

(2) If a lease or licence is transferred, a deferral of rent or instalments applying to the lease or licence ceases to apply from the day of the settlement of the transfer.

(3) It is a condition of the approval to a transfer mentioned in subsection (2) that the deferred rent or instalments and deferred interest owing on the deferred rent or instalments must be paid to the State at settlement.

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

Penalty interest on outstanding rent and instalments

195.(1) If a lessee, licensee or permittee does not pay the rent or instalment within the time prescribed under the regulations, the lessee, licensee or permittee must pay, as well as the rent or instalment, penalty interest on the rent or instalment outstanding at the rate prescribed under the regulations until the day the rent or instalment is paid.

(2) The Minister may extend the time for the payment of rent or instalment.

(3) However, penalty interest still runs from the time payment was owing under the regulations.

(4) Penalty interest is not payable on the rent or instalment outstanding if the lessee, licensee or permittee had a reasonable excuse for not paying the rent or instalment.

Minister may take action for non-payment

196. If a lessee, licensee or permittee does not pay the rent, instalments, penalty interest or deferred interest within the time prescribed under the regulations, or the extended time allowed by the Minister, the Minister may—

- (a) take action in a court of competent jurisdiction to recover the rent or instalments and penalty interest owing; or
- (b) forfeit the lease under chapter 5, part 4; or³⁷
- (c) cancel the licence or permit.

Notice of intention to cancel

197.(1) The Minister must give notice to the lessee, licensee or permittee of the Minister's intention to take action to recover the rent, instalments, penalty interest or deferred interest or to cancel the licence or permit.³⁸

(2) The notice must state a reasonable time in which the Minister will not take action if the rent, instalments, penalty interest or deferred interest are paid.

(3) The notice must state the amount of rent, instalments and deferred interest payable by the lessee, licensee or permittee and the amount of penalty interest accruing each day.

(4) The time must not be less than 28 days from the day of the notice.

Minister may reinstate if payment made

198. If a licence or permit has been cancelled because the rent, penalty interest or deferred interest was not paid, the Minister may reinstate the licence or permit if—

- (a) the licensee or permittee makes payment of all amounts outstanding; and
- (b) the Minister is satisfied the licensee or permittee had a reasonable excuse for not complying with the payment requirements.

³⁷ Chapter 5, part 4 is about forfeiture.

³⁸ Notice of intention to forfeit a lease is dealt with in chapter 5, part 4.

PART 2—CONDITIONS

Division 1—General conditions

Duty of care condition

199. All leases, licences and permits are subject to the condition that the lessee has the responsibility for a duty of care for the land.

Noxious plants condition

200.(1) All leases, licences and permits are subject to the condition that the lessee, licensee or permittee must keep noxious plants on the land under control.

(2) If a person does not comply with subsection (1), the Minister may bring the noxious plants under control.

(3) The Minister's cost of bringing the noxious plants under control is a debt owing to the State and may be recovered from the person in a court of competent jurisdiction.

Information condition

201. All leases, licences and permits are subject to the condition that the lessee, licensee or permittee must give the Minister the information the Minister asks for about the lease, licence or permit.

Improvement condition

202. A term lease for pastoral purposes is subject to the condition that the lessee not make improvements or carry out development work on the lease within 2 years of the expiry of the lease, without the Minister's written approval.

Division 2—Other conditions**Typical conditions**

203. A lease may be subject to any of the following conditions—

- (a) about improvements or development on or to the land;
- (b) about the care, sustainability and protection of the land;
- (c) about the conversion or renewal of the lease;
- (d) about the provision of reasonable services, roads and infrastructure external to but servicing the land;
- (e) about timeframes and milestones for finishing conditions over the term of the lease;
- (f) other conditions the Minister considers appropriate.

Survey condition

204.(1) A lease, licence or permit may be subject to a condition (a “**survey condition**”) that the land must be surveyed under the *Surveyors Act 1977* by, and at the cost of, the lessee, licensee or permittee.

(2) A survey condition may set a time within which the survey plan must be lodged in the land registry.

(3) If the person is able to demonstrate a good reason for not fulfilling a survey condition within the time stated, the Minister may extend the time.

(4) If a person does not comply with subsection (2), the Minister may arrange for the survey to be carried out or finished and charge the person the cost of the survey.

Tied condition

205.(1) A lease may be subject to a condition (a “**tied condition**”) that it is tied to other land.

(2) Subsection (1) may apply even if both parcels of land are different tenures.

(3) It is a breach of condition of the lease if the lease or the other land are disposed of independent of each other.

Personal residence condition

206.(1) A lease may be subject to a condition (a “**personal residence condition**”) that the lessee personally lives on the lease for the first 7 years of its term.

(2) A personal residence condition applies to leases—

- (a) obtained at ballot; and
- (b) to which the Minister considers it should apply; and
- (c) if the lease was issued under the repealed Act and the lease or opening notification contained a personal residence condition.

(3) A personal residence condition does not apply for the first 3 months of a lease.

(4) A lessee must not transfer a lease still subject to a personal residence condition.

(5) A lessee may not sublease a lease during the first 3 years that the lease is subject to a personal residence condition.

(6) After the first 3 years, the lessee may sublease the lease only if the lessee continues with the personal residence condition.

(7) The Minister, by separate written notice, may cancel or temporarily suspend a personal residence condition.

Another person may complete personal residence condition

207.(1) If, while a personal residence condition still applies to a lease—

- (a) a lessee dies—the condition may be performed by a person beneficially interested in the lease, or by a person appointed by the executor of the estate of the lessee; or
- (b) a lessee becomes mentally ill—the condition may be performed by a family member or person appointed by the committee of the estate of the lessee; or

- (c) a lessee becomes bankrupt—the condition may be performed by a person appointed by the trustee in bankruptcy; or
- (d) the lease comes under the control of or is vested in the Public Trustee—the condition may be performed by a person appointed by the Public Trustee.

(2) A person fulfilling a personal residence condition must be eligible to be a lessee under this Act.

(3) If a lessee carrying out a personal residence condition is a joint tenant or holder of a joint interest in common, another of the joint tenants or holders of the joint interest in common may perform the condition.

Resumption condition

208.(1) A lease may be subject to a condition that—

- (a) all or part of the lease may be resumed by giving the lessee 6 months written notice; and
- (b) if all or part of the lease is resumed—compensation will be paid only for improvements on the part of the lease resumed.

(2) To remove any doubt, it is declared that no compensation is payable for the part of the lease resumed.

Performance security condition

209.(1) A lease, licence and permit may include a condition that the lessee, licensee or permittee give performance security for failure to comply with conditions under the lease, licence or permit.

(2) The Minister may approve a change of the amount of the performance security during the term of the lease, licence or permit.

Division 3—Changing conditions

Changing conditions

210.(1) The Minister may change the conditions of a lease or licence, with the agreement of the lessee or licensee.

(2) The Minister, with the agreement of the lessee or licensee, may extend the time within which any condition of a lease or licence must be performed.

(3) The chief executive may change the conditions of a permit, with the agreement of the permittee.

(4) The chief executive, with the agreement of the permittee, may extend the time within which any condition of a permit must be performed.

(5) If a lessee, licensee or permittee has agreed to a change of condition, the lessee, licensee or permittee must return the tenure document to the land registry for the change in condition to be recorded on the tenure document and in the appropriate register.

(6) A change of condition is binding from the day it is recorded.

(7) No fee is payable for recording a change in condition in the appropriate register.

(8) The term, or the purpose, of a lease may not be changed under this section.

Conditions must be reviewed

211.(1) The Minister must consider whether to carry out a review on the conditions of a lease once every 15 years after the issue of a lease.

(2) A review must not be made within 10 years of a lease issuing or the last review.

(3) A review must be performed in consultation with the lessee.

(4) This section applies only to leases issued on or after the commencement.

Minister may change conditions after review

212.(1) After reviewing a lease, the Minister may decide, with or without the lessee's agreement, to change a condition (a "**review change**") about the protection and sustainability of the land.

(2) The lessee must be given written notice of the decision and the reasons for the decision.

(3) The lessee may appeal against the decision if the lessee considers the change is not necessary to protect or help the sustainability of the land.

(4) If the appeal is dismissed or the lessee does not appeal, the lessee must return the tenure document to the land registry for the change in condition to be recorded on the tenure document and in the appropriate register.

(5) A change of condition is binding from the day it is recorded.

(6) No fee is payable for recording a change in condition in the appropriate register.

(7) No compensation is payable by the State for a review change.

Division 4—Compliance with conditions

Obligation to perform conditions

213.(1) A lessee, licensee or permittee must perform all of the conditions of their lease, licence or permit.

(2) If a lessee, licensee or permittee fails to perform all of the conditions of their lease, licence or permit, the lease may be forfeited or the licence or permit cancelled.

(3) If no action is taken on a breach of condition of a lease, licence or permit, it is not a waiver, authorisation of or excuse for the breach.

Land protection

214.(1) The Minister may give a lessee or licensee a written notice (a “**remedial action notice**”) to take remedial action, within a reasonable time, to protect a lease or licence if the Minister is of the opinion the lessee or licensee is using the lease or licence—

- (a) beyond its capability for sustainable production; and
- (b) in a way not fulfilling the lessee or licensee’s responsibility for a duty of care for the land; and
- (c) in a way likely to cause, or has caused, permanent or serious degradation to the land.

(2) The action to be taken under the remedial action notice is a condition of the lease or licence from the day the notice is given.

(3) The lessee or licensee must return the tenure document to the land registry for details of the remedial action notice to be recorded on the lease or licence and in the appropriate register.

(4) The lessee or licensee may appeal against the action to be taken under a remedial action notice if the lessee or licensee considers the action is not necessary to protect the land.

(5) If the appeal is upheld, the lessee or licensee must return the tenure document to the land registry for details of the remedial action notice to be removed from the lease or licence and the appropriate register.

(6) No fee is payable for recording or removing a remedial action notice from a register.

(7) If a lessee does not carry out the action within the time stated in the remedial action notice, the lease may be forfeited.

(8) If a licensee does not carry out the action within the time stated in the remedial action notice, the licence may be cancelled.

PART 3—RESUMPTION AND COMPENSATION

Division 1—Resumption of a lease or easement

Application of division

215.(1) This division applies to the resumption of a lease and the taking or cancellation of an easement.

(2) However, the division does not apply to—

- (a) the resumption of a lease under a condition of the lease; or³⁹

³⁹ See division 2.

- (b) the resumption of possession of part of a lease subject to a reservation.⁴⁰

Resumption of lease

216.(1) A lease or part of a lease may be resumed by order in council.

(2) If an easement over a lease is adequate for a purpose, an order in council may take an easement over the lease instead of resuming the lease.

(3) The taking of an easement is a resumption under this division.

(4) An order in council under this part is not subordinate legislation.

Resumption of an easement

217.(1) An easement over unallocated State land or a reserve may be cancelled by order in council.

(2) The cancellation of an easement is a resumption under this division.

Resumption for constructing authorities

218.(1) A resumption may be for a constructing authority other than the State.

(2) The costs incurred by the State for the resumption must be paid by the constructing authority.

(3) The costs incurred are payable even if the resumption is discontinued.

(4) Costs outstanding are a debt payable to the State and may be recovered by the State from the constructing authority in a court of competent jurisdiction.

(5) This section is subject to the *Acquisition of Land Act 1967*, section 5(3).⁴¹

⁴⁰ See division 3.

⁴¹ Under the *Acquisition of Land Act 1967*, section 5(3) the resumption must be for a purpose for which a constructing authority may take land.

Effect of resumption

219.(1) If a lease or part of a lease is resumed, the lease or part resumed becomes unallocated State land free of any interest or obligation, other than a native title interest.

(2) If an easement is taken, the rights in the easement vest—

- (a) in the State; or
- (b) if the resumption is made for a constructing authority—in the constructing authority.

(3) Every person who has a lawful interest in—

- (a) a resumed lease, or part of a resumed lease; or
- (b) part of a lease affected by the taking of an easement; or
- (c) an easement cancelled by order in council;

(a “**compensation claimant**”) has a right to claim compensation as prescribed by the *Acquisition of Land Act 1967*.

Service of order in council

220.(1) The Minister must serve a copy of the order in council on each person who has a registered interest in—

- (a) the lease affected by the resumption; or
- (b) the easement cancelled.

(2) The copy must be served immediately after notification of the order in council in the gazette.

(3) Failure to comply with subsections (1) or (2) does not affect the validity of the order in council.

Application of Acquisition of Land Act 1967

221.(1) The *Acquisition of Land Act 1967*, part 4 applies to a claim for compensation for a resumption under this division with the following

changes⁴²—

- (a) a reference to a constructing authority is a reference to the State;
- (b) a reference to the owner of land is a reference to the lessee of the lease affected by the resumption;
- (c) the compensation claimant refers the claim for compensation to the Court by filing in the office of the registrar of the Court—
 - (i) copies of the claim given by the claimant to the State; and
 - (ii) a copy of the order in council that effected the resumption;
- (d) all other necessary changes and any changes prescribed under the regulations.

(4) If a resumption is made of a freeholding lease that has been converted from a perpetual lease, the compensation payable must not be less than the compensation that would have been payable had the conversion not happened.

Revoking a resumption

222.(1) A resumption may be revoked by repealing the order in council effecting the resumption.

(2) The revocation may be made only before compensation has been paid or decided by the Court.

(3) On repeal of the order in council, the resumption is taken not to have happened.

(4) However, a compensation claimant is entitled to claim compensation only for loss, reasonable costs and expenses incurred by the claimant in relation to the resumption before it was revoked.

(5) The Minister must decide the amount of the loss, costs and expenses.

(6) The compensation claimant may appeal against the Minister's decision.

⁴² The *Acquisition of Land Act 1967*, part 4 is about the assessment and payment of compensation.

Division 2—Resumption of a lease under a condition of the lease**Application of division**

223. This division applies to a lease containing a condition that all or part of the lease may be resumed.

Resumption of lease

224.(1) A lease or part of a lease may be resumed by the Minister.

(2) However, the resumption must be in accordance with the condition in the lease allowing the resumption.

Effect of resumption

225.(1) If a lease or part of a lease is resumed under this division, the lease or part of the lease becomes unallocated State land free of any interest or obligation.

(2) The owner of lawful improvements on the lease has the right to claim the compensation allowed under this division.

(3) To remove any doubt, it is declared that the lessee is the owner of improvements made to the lease by the State only if the lessee has paid for the improvements.

Compensation limited to improvements

226.(1) Compensation for a resumption under this division is payable only for lawful improvements on the lease or part of the lease resumed.

(2) The compensation is the value of the improvements on the day the resumption takes effect.

(3) The Minister must decide the compensation payable.

(4) The value of the improvements must be assessed as their market value in a sale of the lease if the lease had not been resumed.

(5) The lessee may appeal against the Minister's decision.

Development work an improvement

227. For this division, development work is taken to be an improvement.

Division 3—Resumption of a reservation for a public purpose**Application of division**

228. This division applies to a lease, a deed of grant or a deed of grant in trust, containing a reservation for a public purpose and states the area of land reserved.

Resumption of reservation

229.(1) Possession of the area or part of the area of a lease, deed of grant or deed of grant in trust reserved for a public purpose may be resumed by order in council.

(2) If the reservation area is identified by description, the resumption may apply only to the land described.

(3) If the reservation area is not identified by description, possession of any part of the lease, deed of grant or deed of grant in trust, up to the total area of the reservation, may be resumed.

Effect of resumption of possession

230.(1) If possession of all or part of the reservation is resumed, the resumed area becomes unallocated State land free of any interest or obligation.

(2) An owner of lawful improvements on the resumed area has a right to claim the compensation allowed under this division.

(3) To remove any doubt, it is declared that the lessee, trustee or registered owner is the owner of improvements made by the State on the resumed area only if the lessee, trustee or registered owner has paid for the improvements.

Application of Acquisition of Land Act 1967

231.(1) The *Acquisition of Land Act 1967*, part 4 applies to a claim for compensation for a resumption of possession under this division with the following changes⁴³—

- (a) a reference to a constructing authority is a reference to the State;
- (b) a reference to the owner of land is a reference to the owner of improvements affected by the resumption;
- (c) the owner of improvements refers the claim for compensation to the Court by filing in the office of the registrar of the Court—
 - (i) copies of the claim given by the owner of improvements to the State; and
 - (ii) a copy of the order in council effecting the resumption;
- (d) all other necessary changes and any changes prescribed by the regulations.

Compensation limited to improvements

232.(1) Compensation for a resumption of possession under this division is payable only for lawful improvements on the resumed area.

(2) The compensation is the value of the improvements on the day the resumption takes effect.

(3) The Minister must decide the compensation payable.

(4) The value of the improvements must be assessed as their market value in a sale of the land if possession of the land had not been resumed.

(5) The owner of the improvements may appeal against the Minister's decision.

Development work an improvement

233. For this division, development work is taken to be an improvement.

⁴³ The *Acquisition of Land Act 1967*, part 4 is about the assessment and payment of compensation.

PART 4—FORFEITURE

When lease may be forfeited

234. A lease may be forfeited—

- (a) if the lessee defaults in the payment of an amount payable to the State under this Act for the lease; or ⁴⁴
- (b) if the lessee breaches a condition of the lease; or
- (c) if the lessee contravenes a provision of this Act in relation to the lease; or
- (d) if the lessee acquired the lease by fraud.

Notice of forfeiture for outstanding amounts

235.(1) Before a lease is forfeited because of non-payment of an amount payable to the State under this Act for the lease, the Minister must give the lessee and any mortgagee at least 28 days notice of the Minister's intention to forfeit the lease.

(2) The notice must state the amount outstanding and the amount of any interest accruing each day.

Minister's options if amount unpaid

236. If the amount outstanding, and any interest, is not paid at the expiry of the notice, the Minister may forfeit the lease or allow the mortgagee to sell the lease under this part.

Minister may reinstate lease if payment made

237. If a lease is forfeited because of the non-payment of an amount payable to the State under this Act for the lease, the Minister may reinstate the lease if—

- (a) the lessee makes payment of all amounts owing; and

⁴⁴ The Minister may take action for non-payment. See section 196.

- (b) the Minister is satisfied the lessee had a reasonable excuse for not complying with the payment requirements.

Application to the Court for forfeiture

238.(1) Before a lease is forfeited other than for non-payment of an amount payable to the State under this Act for the lease, the Minister must refer the matter to the Court to decide whether the lease may be forfeited.

(2) The Minister must give the lessee and any mortgagee at least 28 days notice of the Minister's intention to refer the matter to the Court.

(3) The notice must state the grounds on which the Minister considers the lease may be forfeited.

(4) A copy of the notice must be filed in the Court at the same time as the Minister refers the matter to Court.

Governor in Council's options if Court decides on forfeiture

239. If the Court decides that the lease may be forfeited, the Governor in Council may—

- (a) forfeit the lease; or
- (b) decide not to forfeit the lease, but instead to—
 - (i) allow the lease to continue but subject to the additional conditions the Governor in Council considers appropriate; or
 - (ii) allow the lessee to convert the lease to a lease of a lesser tenure, for the same or a lesser area, and subject to the conditions the Governor in Council considers appropriate; or
 - (iii) allow the lessee to sell the lease within a time decided by the Governor in Council; or
 - (iv) allow the mortgagee to sell the lease under this part.

Publication of notice of forfeiture

240.(1) If the Governor in Council forfeits a lease, notice of forfeiture must be—

- (a) given, in writing, to the lessee; and
 - (b) published in the gazette.
- (2) The forfeiture takes effect on the day the notice is gazetted.
- (3) Notice of the forfeiture must be registered in the appropriate register.

Effect of forfeiture

241. On forfeiture of a lease—

- (a) the lease ends; and
- (b) the lessee is divested of any interest in the lease; and
- (c) the land the subject of the lease becomes unallocated State land free of any encumbrance.

Lessee to give up possession on forfeiture

242.(1) On forfeiture of a lease, any person occupying the lease must immediately vacate the land.

(2) A person who fails to give up possession under subsection (1) is taken to be a person who is unlawfully occupying unallocated State land.⁴⁵

Improvements on forfeited lease

243.(1) The lessee of a forfeited lease may remove the lessee's improvements on the lease only with the written approval of, and within a time stated by, the Minister.

- (2) The improvements are forfeited to the State if—
- (a) the Minister has not given written approval for their removal; or
 - (b) the Minister has given written approval for their removal but the improvements have not been removed within the time stated by the Minister.
- (3) The lessee has a right to payment for the improvements under part 5

⁴⁵ Action for trespassing may be taken under chapter 7, part 2.

unless the improvements become the property of the State for a lease forfeited because the—

- (a) lessee acquired the lease by fraud; or
- (b) lessee was not eligible to acquire or hold the lease.

Sale by mortgagee instead of forfeiture

244.(1) After receiving a notice under section 235 or 238, a mortgagee of a lease may make written application for permission to sell the lease.⁴⁶

(2) The application must be sent to the chief executive.

(3) If the Governor in Council approves the sale of the lease by the mortgagee, the chief executive must give written notice of the Governor in Council's approval to the mortgagee and the lessee.

(4) After receiving the notice approving the sale, the mortgagee must sell the lease as a mortgagee in possession under chapter 6, part 4, division 4.⁴⁷

Effect of forfeiture of lease issued without competition for development purposes

245. If a lease issued without competition for development purposes is forfeited, all project plans, feasibility studies and the results of investigations for the lease that have been given to the chief executive by the lessee become the property of the State.

⁴⁶ Section 235 is about forfeiture of a lease for outstanding amounts. Section 238 is about applying to the Court for forfeiture.

⁴⁷ Chapter 6, part 4, division 4 is about registering dealings about mortgages.

PART 5—PAYMENT FOR IMPROVEMENTS

Division 1—Payment for improvements by incoming lessee etc.

Application of division

246. This division applies to land—

- (a) that has been the subject of a lease—
 - (i) that has been forfeited; or
 - (ii) all or part of which has been surrendered absolutely; or
 - (iii) that has expired; or
- (b) that has been the subject of an occupation licence that—
 - (i) has been cancelled; or
 - (ii) has been surrendered absolutely; or
- (c) that has been set aside as a reserve if—
 - (i) the reserve has been revoked; and
 - (ii) the improvements on the reserve have been made by the trustee of the reserve, or by a person with the trustee's authority.

Application of payment for improvements by incoming lessee or buyer

247.(1) If the State receives payment from an incoming lessee or buyer for the improvements and development work on land to which this division applies, the State must pay the amount to—

- (a) for a lease—the previous lessee; or
- (b) for an occupation licence—the previous licensee; or
- (c) for a reserve—the person who owned the improvements on the reserve.

(2) However, no amount is payable by the State to the person who was the registered lessee of the lease, if the lease was forfeited because the lessee acquired the lease by fraud or was not eligible to acquire or hold the lease.

Unclaimed improvement amounts

248. If the chief executive cannot find the person entitled to receive payment for the improvements or the person does not collect the amount from the State within 6 years from the day the State received the amount, the amount is forfeited to the State.

Division 2—Payment by the State for improvements**Payment by the State for improvements**

249.(1) If a term lease for pastoral purposes expires or is surrendered absolutely, or a perpetual lease for grazing or agricultural purposes is surrendered, and the State—

- (a) sets aside any land, that was a part of the lease, as a reserve for a community purpose; or
- (b) dedicates any land, that was a part of the lease, as a road;

the State must pay, to the person who was the lessee, the value of any lawful improvements on the part of the land set aside or dedicated.

(2) The value is the value of the improvements on the day of the expiry or surrender.

(3) The Minister must decide the amount payable.

(4) The value of the improvements must be assessed as their market value in a sale of a lease of the same term and tenure as the expired or surrendered lease.

(5) The lessee may appeal against the Minister's decision.

(6) To remove any doubt, it is declared that the lessee is the owner of improvements made to a lease by the State only if the lessee has paid for the improvements.

(7) In this section—

“development work” means an improvement.

Division 3—General**Amounts owing to the State to be deducted**

250. If a lessee or other person is entitled to payment under this part, the State may deduct the following amounts from the amount payable to the lessee or other person—

- (a) an amount in payment of expenses incurred by the State to rectify damage caused to the land by the lessee;
- (b) any amount owing to the State under this Act.

Payment to mortgagee

251. If a lease was subject to a registered mortgage and payment is later made for improvements on the land, the Minister may deduct from the amount of the payment and pay to the mortgagee all or part of any amount owing to the mortgagee by the lessee under the mortgage on the day the lease ended.

PART 6—TREE MANAGEMENT***Division 1—General******Object of part***

252. *The object of this part is to manage trees on unallocated State land and on reserves, deeds of grant in trust, roads, licences, permits and leases on which the State owns the trees, consistent with the following principles—*

- (a) *to maintain the productivity of the land;*
- (b) *to allow the development of the land;*
- (c) *to prevent degradation of the land;*
- (d) *to maintain biodiversity;*

- (e) *to maintain the environmental and amenity values of the landscape;*
- (f) *to maintain the scientific, recreation and tourism values of the land;*
- (g) *to ensure public safety.*⁴⁸

Definitions

253. *In this part—*

“critical area” means—

- (a) *land declared under the regulations to be—*
 - (i) *highly vulnerable to land degradation; or*
 - (ii) *of high nature conservation value; or*
- (b) *a critical habitat, or an area of major interest, identified in a conservation plan under the Nature Conservation Act 1992; or*
- (c) *land that is—*
 - (i) *a protected area under the Nature Conservation Act 1992, part 4;*⁴⁹ *or*
 - (ii) *the subject of a proposal under the Nature Conservation Act 1992, part 4 for the declaration of a protected area.*⁵⁰

“destroy” *a tree* means *felling, ringbarking, pushing over, poisoning, or destroying trees in other ways.*

“environmentally sensitive area” means—

- (a) *a critical area; or*
- (b) *buffer areas to critical areas; or*

⁴⁸ This provision had not commenced on or before the reprint date.

⁴⁹ Part 4 lists the classes of protected areas to which the *Nature Conservation Act 1992* applies.

⁵⁰ The *Nature Conservation Act 1992*, part 4 is about setting aside and managing protected areas e.g. National Parks, Conservation Parks, Wilderness Areas etc.

- (c) *areas identified by local guidelines⁵¹ as environmentally sensitive; or*
- (d) *areas declared under a regulation to be moderately vulnerable to degradation; or*
- (e) *areas declared under a regulation to be of nature conservation value.*

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

- (a) *removing the trunk of the tree; or*
- (b) *cutting or pruning branches of the tree so severely that the tree is likely to die.⁵²*

Application of part

254. *This part applies only to—*

- (a) *land on which trees are owned by the State; and⁵³*
- (b) *to remove any doubt—trust land.⁵⁴*

Division 2—Tree clearing permit

Tree clearing permit needed

255. *A person must not—*

- (a) *clear a tree or allow a tree to be cleared on land other than under a tree clearing permit or under an exemption under division 3; or*

⁵¹ See section 272.

⁵² This provision had not commenced on or before the reprint date.

⁵³ The *Forestry Act 1959*, section 45 is about the ownership of forest products.

⁵⁴ This provision had not commenced on or before the reprint date.

(b) *contravene a condition of a tree clearing permit or exemption.*

*Maximum penalty—400 penalty units.*⁵⁵

Recovery of rehabilitation costs

256.(1) *On conviction of a person under section 255, the Court may order the person to pay to the State, within a stated time, an amount that is the total of—*

- (a) *the cost of any remedial work or rehabilitation necessary or desirable because of the offence; and*
- (b) *the value of every tree cleared or destroyed, which is the price ordinarily obtainable for the sale of the tree.*

(2) *The amount mentioned in subsection (1) is a debt owing to the State and may be recovered from the person in a court of competent jurisdiction.*

(3) *This section does not limit the court's powers under the Penalties and Sentences Act 1992 or any other law.*

(4) *In this section—*

*“conviction” includes a finding of guilt, and the acceptance of a plea of guilt, by a court.*⁵⁶

When tree clearing permit is not needed

257. *A tree clearing permit is not needed by—*

- (a) *a trustee of an existing deed of grant in trust for Aboriginal or Islander inhabitants to clear trees on the deed of grant in trust; or*
- (b) *a trustee prescribed under the regulations, to clear trees on the land for which the person is trustee; or*
- (c) *a person clearing trees for routine management purposes prescribed under the regulations or routine rural management purposes prescribed under the regulations and in accordance*

⁵⁵ This provision had not commenced on or before the reprint date.

⁵⁶ This provision had not commenced on or before the reprint date.

with division 3; or

- (d) *a person permitted by another Act to clear trees; or*
- (e) *a person clearing noxious plants or plants prescribed under the regulations as plants for which a tree clearing permit is not needed, unless the clearing is by mechanical means in a critical area; or*
- (f) *if existing rail corridor land, new rail corridor land, non-rail corridor land or commercial corridor land (within the meaning of the Transport Infrastructure Act 1994) is not subject to a commercial lease—a person to clear trees from the land for routine transport corridor management and safety purposes.⁵⁷*

Tree clearing permit needed despite condition in lease

258. *Even if a condition of a lease requires clearing or destruction of trees, the lessee must still obtain a tree clearing permit before complying with the condition.⁵⁸*

Who may apply for tree clearing permit

259. *The following persons may apply for a tree clearing permit—*

- (a) *any person for unallocated State land or roads;*
- (b) *a lessee for the lessee's lease;*
- (c) *a trustee for the land for which the person is trustee;*
- (d) *a licensee for the licensee's licence;*
- (e) *a permittee for the permittee's permit.⁵⁹*

How application for tree clearing permit made

260.(1) *An application for a tree clearing permit must—*

⁵⁷ This provision had not commenced on or before the reprint date.

⁵⁸ This provision had not commenced on or before the reprint date.

⁵⁹ This provision had not commenced on or before the reprint date.

- (a) *be made in the approved form; and*
 - (b) *be accompanied by the documents prescribed under the regulations; and*
 - (c) *be lodged at an office of the department for the relevant district.*
- (2) *The chief executive may ask the applicant for—*
- (a) *a tree management plan; or*
 - (b) *a map clearly delineating the area to be cleared.*⁶⁰

Tree management plan

261. *A tree management plan must identify the following—*

- (a) *the main features of the land, including natural features and improvements;*
- (b) *major vegetation types;*
- (c) *environmentally sensitive areas;*
- (d) *stands of commercial timber;*
- (e) *the area of the land currently cleared;*
- (f) *the area proposed to be cleared;*
- (g) *the proposed land use after the initial clearing of the trees;*
- (h) *the way the trees are to be cleared;*
- (i) *the likely follow-up operations to control regrowth;*
- (j) *any planned revegetation or rehabilitation;*
- (k) *other information prescribed under the regulations.*⁶¹

Issues chief executive must consider

262.(1) *In deciding whether to issue a tree clearing permit, and in deciding on any conditions to be imposed, the chief executive must consider*

⁶⁰ This provision had not commenced on or before the reprint date.

⁶¹ This provision had not commenced on or before the reprint date.

the following issues having regard to the object of this part—

- (a) the protection of restricted vegetation types and areas of high nature conservation value, particularly riparian lands and areas of heritage values;*
- (b) the existence of any native title;*
- (c) the protection of lands vulnerable to degradation;*
- (d) the protection of important tree resources;*
- (e) the protection of water catchments;*
- (f) the protection of scenic, visual and landscape values;*
- (g) the economic and social benefits in the development of the land to increase or maintain livestock or agricultural production;*
- (h) the economic and social benefits in clearing trees to accommodate buildings, development works and utilities;*
- (i) the economic and social benefits in harvesting timber for structural improvements in developing land where the timber is situated;*
- (j) public safety and fire management.*

(2) The chief executive must also consider the following issues in evaluating an application—

- (a) the purpose and conditions of the lease, licence, permit or reserve;*
- (b) the species or types of trees proposed to be cleared;*
- (c) the existence and extent of commercial timber on the land proposed to be cleared;*
- (d) the existence and extent of environmentally sensitive areas on the land proposed to be cleared;*
- (e) the extent of the proposed tree clearing and the proportion of the land already cleared;*
- (f) the extent of clearing in a catchment and the likely impact of clearing and follow-up operations on land in a catchment;*
- (g) the proposed land use after the initial clearing of the trees;*

- (h) *the way the trees are to be cleared;*
- (i) *the likely follow-up operations in the control of regrowth;*
- (j) *the value for beekeeping purposes of the trees on the land proposed to be cleared;*
- (k) *the heritage or cultural value of the trees on the land proposed to be cleared;*
- (l) *the information contained in any tree management plan lodged;*
- (m) *any relevant local guidelines for broadscale tree clearing;*
- (n) *if there are no relevant local guidelines for broadscale tree clearing—the contents of any broadscale tree clearing policy document;*
- (o) *other issues the chief executive considers relevant.*⁶²

Chief executive may issue tree clearing permit

263.(1) *The chief executive may—*

- (a) *issue a tree clearing permit with or without conditions; or*
- (b) *refuse to issue a tree clearing permit.*

(2) *A condition may limit the area to be cleared to a smaller area than the area proposed in the application.*

(3) *The chief executive may issue a tree clearing permit inconsistent with guidelines for broadscale tree clearing only if the chief executive is satisfied special circumstances exist.*

(4) *If the chief executive refuses to issue a tree clearing permit, the chief executive must give written notice to the applicant of the refusal.*

(5) *To remove any doubt, it is declared that no compensation is payable if a tree clearing permit is refused.*⁶³

⁶² This provision had not commenced on or before the reprint date.

⁶³ This provision had not commenced on or before the reprint date.

Terms of tree clearing permit

264.(1) *A tree clearing permit—*

- (a) must not be for a term longer than 5 years; and*
- (b) must state the purpose for which the trees are to be cleared; and*
- (c) if a tree management plan accompanied the application—must include the final form of the plan as approved by the chief executive; and*
- (d) may state the way the trees must be cleared.*

(2) *If the term of a tree clearing permit is less than 5 years, the chief executive may extend the term, but the total term of the permit must not be longer than 5 years.⁶⁴*

Conditions of tree clearing permit

265.(1) *A tree clearing permit is subject to the following conditions—*

- (a) the person must not cause or allow a tree on the land (other than a tree to which the permit applies) to be destroyed, damaged or otherwise interfered with;*
- (b) if the permit states the way trees are to be cleared—the person must not cause or allow them to be cleared in another way;*
- (c) if the permit included a tree management plan—the person must comply with the plan;*
- (d) conditions prescribed under the regulations;*
- (e) conditions imposed by the chief executive and included in the permit.*

(2) *A permit issued to a lessee to clear trees so the timber from the trees may be used in improving the lease from which the trees were cleared, may not be subject to a condition requiring the lessee to pay any amount by way of royalty.*

⁶⁴ This provision had not commenced on or before the reprint date.

(3) Subsection (2) does not apply to a lease consisting of all or part of a State forest or timber reserve.⁶⁵

Cancellation of tree clearing permit

266.(1) *The chief executive may cancel a tree clearing permit if the chief executive is satisfied—*

- (a) the permit was issued on the basis of false or misleading material contained in or accompanying the application; or*
- (b) a person has contravened a condition of the permit; or*
- (c) the clearing of trees has been carried out in a way—*
 - (i) not likely to be complete or effective; or*
 - (ii) likely to be harmful or injurious to the land or adjoining land; or*
- (d) there has been a substantial change in circumstances since the issue of the permit and the permit would not now be issued.*

(2) *A tree clearing permit may be cancelled whether or not a prosecution has been started for an offence against this part.⁶⁶*

Tree clearing permit may continue on transfer

267. *A tree clearing permit continues in force for the benefit of a transferee of a lease if—*

- (a) a tree management plan was approved for the permit; and*
- (b) before the transfer is registered, the transferee gives written notice to the chief executive that the transferee is aware of, and agrees to, the conditions of the permit.⁶⁷*

⁶⁵ This provision had not commenced on or before the reprint date.

⁶⁶ This provision had not commenced on or before the reprint date.

⁶⁷ This provision had not commenced on or before the reprint date.

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

Routine management

268.(1) *A person who would normally be able to apply for a tree clearing permit over land does not have to obtain a tree clearing permit if the person is clearing trees on the land for routine management purposes prescribed under the regulations.*

(2) However, the person must comply with section 270.

(3) Subsection (1) does not apply to a lessee of a lease used for agriculture or grazing.⁶⁸

Routine rural management

269. *A lessee may clear trees for routine rural management purposes prescribed under the regulations without obtaining a tree clearing permit if—*

(a) the lease is—

(i) used for agriculture or grazing; and

(ii) not a lease over a State forest or timber reserve; and

(iii) not a lease over a protected area within the meaning given by the Nature Conservation Act 1992; and

(b) the lessee complies with section 270.⁶⁹

Conditions of clearing

270.(1) *A person mentioned in section 268 or a lessee mentioned in section 269 must not—*

(a) remove the trees cleared from the lease; or

(b) clear trees in a critical area; or

⁶⁸ This provision had not commenced on or before the reprint date.

⁶⁹ This provision had not commenced on or before the reprint date.

(c) *clear trees prescribed under the regulations.*

(2) *However, a person or lessee may clear trees prescribed under the regulations if the following conditions are satisfied—*

(a) *the lessee or trustee must give the chief executive written notice of the following—*

(i) *the species of the trees intended to be cleared;*

(ii) *the quantity of the trees intended to be cleared;*

(iii) *the routine management or routine rural management purposes for which the trees are intended to be cleared;*

(b) *the notice must be accompanied by a map clearly showing the area to be cleared;*

(c) *the person or lessee must have received written acknowledgment from the chief executive that the chief executive has received the notice;*

(d) *28 days must have elapsed since the person or lessee received the written acknowledgment;*

(e) *in the 28 day period, the person or lessee is not given written notice that the chief executive objects to the tree clearing.*

(3) *However, if within the 28 day period the chief executive gives the person or lessee written notice stating conditions that must be complied with in the tree clearing, the person or lessee may clear the trees without obtaining a permit under this section only if the conditions are complied with.⁷⁰*

Division 4—Broadscale tree clearing

Approval of broadscale tree clearing policy

271.(1) *The Governor in Council may approve a broadscale tree clearing policy document.*

(2) *The document must include the issues to be covered in local*

⁷⁰ This provision had not commenced on or before the reprint date.

guidelines, including the following—

- (a) zones for tree clearing guidelines;*
- (b) native vegetation communities;*
- (c) maximum slope limitations;*
- (d) watercourse buffers;*
- (e) size and configuration of clumps or strips of trees to be maintained;*
- (f) the proportion of vegetation type that should be kept.*

(3) If the Governor in Council approves the document, the chief executive must—

- (a) notify the approval by gazette notice stating the places where a copy of the document is available for inspection; and*
- (b) keep a copy of the approved document available for inspection, at all regional and district offices of the department, at all times when the offices are open for the transaction of public business.*

(4) On payment by a person of the reasonable fee decided by the chief executive, the chief executive must give a copy of the document to the person.

(5) A policy document under this section is not subordinate legislation.⁷¹

Local guidelines for broadscale tree clearing

272.(1) The Minister must approve guidelines for broadscale tree clearing applying to areas of the State.

(2) Before approving guidelines for an area, the Minister must, with appropriate public input, prepare draft guidelines and must give notice of the draft guidelines.

(3) The notice must—

- (a) be published in a newspaper the Minister considers appropriate; and*
- (b) state the places where copies of the draft guidelines—*

⁷¹ This provision had not commenced on or before the reprint date.

- (i) *may be inspected; or*
- (ii) *bought on payment of the reasonable fee decided by the chief executive; and*
- (c) *invite submissions on the draft guidelines; and*
- (d) *state a day by which submissions may be made on the contents of the draft guidelines.*

(4) *Guidelines are needed only if the Minister is of the opinion that the likely volume of applications for broadscale tree clearing justifies the preparation of the guidelines.⁷²*

Finalising the guidelines

273.(1) *When finalising the guidelines for an area, the Minister must consider all submissions properly made to the Minister.*

(2) *The guidelines must not be inconsistent with the broadscale tree clearing policy document.⁷³*

Publication of guidelines

274. *On approval of the guidelines for an area, the chief executive must—*

- (a) *publish notice of the guidelines in a newspaper the chief executive considers appropriate; and*
- (b) *keep the guidelines available for inspection, at the regional and district offices of the department that the chief executive considers appropriate, at all times when the offices are open for transaction of public business; and*
- (c) *on payment by a person of the reasonable fee decided by the chief executive, give a copy of the guidelines to the person.⁷⁴*

⁷² This provision had not commenced on or before the reprint date.

⁷³ This provision had not commenced on or before the reprint date.

⁷⁴ This provision had not commenced on or before the reprint date.

CHAPTER 6—REGISTRATION AND DEALINGS

PART 1—LAND REGISTRY AND REGISTERS

Division 1—Land registry

Registers comprising land registry

275. The land registry includes the following registers—

- (a) the leasehold land register;
- (b) a register of reserves and trustees of trust land;
- (c) a register of licences and permits;
- (d) a register of easements over unallocated State land;
- (e) a register of State housing leases.

Division 2—Registers

Registers to be kept by chief executive

276. The chief executive must keep the following registers—

- (a) the leasehold land register;
- (b) a register of reserves and trustees of trust land;
- (c) a register of licences and permits;
- (d) a register of easements over unallocated State land;
- (e) a register of State housing leases;
- (f) registers about land prescribed under the regulations.

Form of registers

277.(1) A register kept by the chief executive may be kept in the form (whether or not in a documentary form) the chief executive considers

appropriate.

(2) Without limiting subsection (1), the chief executive may change the form in which a register or part of a register is kept.

Particulars that must be recorded

278. The chief executive must record in each register the particulars necessary to identify—

- (a) every interest recorded in the register; and
- (b) the name of the person who holds, and the name of each person who has held, the registered interest; and
- (c) all documents registered in the register and when they were lodged and registered; and
- (d) anything else needed to be recorded under this or another Act.

Recording issue and end of tenures

279.(1) When a lease, licence or permit is issued or a reserve is dedicated under this Act, the chief executive must—

- (a) record the particulars of the issue or dedication in the appropriate register; and
- (b) give a tenure document for the lease, licence or permit to the person entitled to possession of the document.

(2) When a lease is forfeited or surrendered, a licence or permit cancelled or surrendered or a reserve revoked—

- (a) the chief executive must record particulars of the forfeiture, surrender, cancellation or revocation in the appropriate register; and
- (b) the person who has possession of the tenure document must return it to the chief executive.

Particulars that may be recorded

280. The chief executive may record in a register anything the chief

executive considers should be recorded to ensure the register is an accurate, comprehensive and useable record of the relevant land and dealings.

Other information may be kept

281. The chief executive may keep separately from a register information the chief executive considers necessary or desirable for the effective or efficient operation of the register.

Distinguishing reference for each document

282. In registering a document, the chief executive must give the document a distinguishing reference and record the reference in the particulars in the relevant register.

Documents form part of a register

283.(1) A registered document is part of the register to which it relates.

(2) A registered document forms part of the register from when it is lodged.

Entitlement to search a register

284.(1) When an office of the land registry is open for business and on payment of the fee prescribed under the regulations, a person may—

- (a) search and obtain a copy of—
 - (i) the particulars recorded about a lease, licence, permit or reserve; or
 - (ii) a registered document; or
 - (iii) a document that has been lodged but is not registered (whether or not it has been cancelled); or
 - (iv) information kept under section 281; and
- (b) obtain a copy of the particulars recorded about a lease, licence, permit or reserve, or a registered document, certified by the chief executive to be an accurate copy.

(2) Subsection (1)(a)(iii) does not apply to a document destroyed by the chief executive.

Evidentiary effect of certified copies of documents

285.(1) A document purporting to be a certified copy of the particulars recorded about a lease, licence, permit or reserve obtained under section 284(1)(b) is evidence of the particulars recorded.

(2) A document purporting to be a certified copy of a registered document obtained under section 284(1)(b) is evidence of the registered document.

Division 3—General requirements for documents in registers

Form of documents

286.(1) A document lodged by a person or issued by the chief executive must be in the appropriate form.

(2) A document required or permitted to be executed must be in the appropriate form when it is executed.

(3) In this Act, a reference to a particular type of document is a reference to the document completed in the appropriate form.

Registered documents must be in the appropriate form

287.(1) A document may be registered only if—

- (a) the document is in the appropriate form and correctly executed; and
- (b) if the Minister's approval is needed—the Minister has given written approval to the transaction to which the document relates.

(2) However, if a document is not in the appropriate form, it may be registered if the chief executive is satisfied it is not reasonable to require the document to have been executed in the appropriate form.

Certain documents must be signed

288.(1) A document transferring a lease, sublease or licence or creating an interest in a lease or sublease must be signed by—

- (a) the transferor or the person creating the interest; and
- (b) the transferee or the person in whose favour the interest is to be created or a lawyer authorised by the transferee or person.

(2) A total or partial discharge or release of mortgage need only be signed by the mortgagee.

Consent to be written on document etc.

289. If the consent of a person, other than the Minister, is necessary for the sale or other dealing with a lease, sublease or licence, the consent must be—

- (a) written on the relevant document; or
- (b) if the chief executive considers it appropriate—deposited with the relevant document.

Required number of executed copies to be lodged

290. The chief executive may refuse to register a document if the number of executed copies of the document prescribed under the regulations are not lodged.

*Division 4—Powers of the chief executive***Chief executive may correct registers**

291.(1) The chief executive may correct a register mentioned in section 276 if the chief executive is satisfied⁷⁵—

- (a) the register is incorrect; and
- (b) the correction will not prejudice the rights of the holder of an

⁷⁵ Section 276 lists the registers to be kept by the chief executive.

interest in the relevant lease, licence, permit or reserve.

(2) The chief executive's power to correct a register includes power to correct a particular in the register or a document forming part of the register.

(3) If a register is corrected, the chief executive must record in the register—

- (a) the state of the register before the correction; and
- (b) the time, day and circumstances of the correction.

(4) A register corrected by the chief executive under this section has the same effect as if the incorrect recording had not been made.

Lot-on-plan description

292. The chief executive may simplify the description of land registered in a register by amending the existing description to a lot-on-plan description.

Chief executive may authorise printing and sale of forms

293.(1) The chief executive, on reasonable terms, may authorise a person to sell the appropriate form for a document other than a tenure document.

(2) A form for a document purporting to be authorised by the chief executive is the appropriate form for the document unless the contrary is proved.

(3) If there is an appropriate form for a document, a person must not sell a form for the document (whether or not it is the appropriate form) unless the person is authorised under subsection (1) to sell the appropriate form for the document.

Maximum penalty—50 penalty units.

(4) If there is an appropriate form for a document, a person must not knowingly use a form for the document that is not the appropriate form.

Maximum penalty—20 penalty units.

(5) If there is an appropriate form for a document, a person must not knowingly use a form for the document (whether or not it is the appropriate form) that has been sold by a person who has not been authorised under

subsection (1) to sell the appropriate form for the document.

Maximum penalty—20 penalty units.

Chief executive may require public notice to be given of certain proposed action

294.(1) This section applies if a person (the “**applicant**”) asks the chief executive to do any of the following things—

- (a) register a transmission of a registered interest;
- (b) issue a substitute tenure document or other registered document;
- (c) dispense with production of a document.

(2) The chief executive, by written notice, may require the applicant to give public notice of the request.

(3) The chief executive may specify in the notice to the applicant—

- (a) what must be included in the public notice; and
- (b) how many times the public notice must be published; and
- (c) how and when the public notice must be published.

(4) The applicant must satisfy the chief executive that the public notice has been given as required by the chief executive.

PART 2—REGISTRATION AND ITS EFFECT

Division 1—Registration of documents

Right to have interest registered

295.(1) If a person lodges a document transferring or creating an interest in land under this Act, the chief executive must register the document if—

- (a) the document has been correctly executed; and
- (b) the person lodges the document and all other documents needed

- by the chief executive to effect registration of the document; and
- (c) the document appears on its face to be capable of registration; and
 - (d) the person has otherwise complied with this Act for the registration of the document.

(2) However, subsection (1) does not prevent the person from withdrawing the document before it is registered.

Tenure document needed for registration

296.(1) A document may be registered only if the tenure document for the land is returned for registration of the dealing.

(2) However, a tenure document need not be returned for registration of the dealing with any of the following—

- (a) a request to register a writ of execution;
- (b) a document for which the chief executive has dispensed with production of the tenure document.

Order of registration of documents

297.(1) Documents about a single parcel of land must be registered in the order they are lodged.

(2) Subsection (1) is subject to section 308.⁷⁶

Priority of registered documents

298.(1) Registered documents have priority according to when each of them was lodged and not according to when each of them was executed.

(2) A document is taken to be lodged on the day and at the time endorsed on the document by the chief executive as the day and time of the lodgment unless the contrary is proved.

(3) Subsection (1) is not affected by actual, implied or constructive notice.

⁷⁶ Section 308 is about withdrawing lodged documents before they are registered.

When a document is registered

299. A document is registered when the particulars about the document are recorded in the relevant register.

Division 2—Consequences of registration**Benefits of registration**

300. The benefits of this division apply to a document whether or not valuable consideration has been given.

Interest in land not transferred or created until registration

301. A document does not transfer a lease or licence or create a legal interest in a lease until it is registered.

Effect of registration on interest

302. On registration of a document expressed to transfer or create an interest in land, the interest—

- (a) is transferred or created in accordance with the document; and
- (b) is registered; and
- (c) vests in the person identified in the document as the person entitled to the interest.

Evidentiary effect of recording particulars in the register

303. In all proceedings, the particulars of a registered document recorded in the register are conclusive evidence of—

- (a) the registration of the document; and
- (b) the contents of the document; and
- (c) all things stated or implied in it by this or another Act; and
- (d) when the document was lodged and registered.

PART 3—DOCUMENTS

Division 1—General

Correcting unregistered documents

304.(1) The chief executive may correct an obvious error in a lodged document by noting the correction on the document.

(2) The chief executive may correct an obvious error in a lodged document only if the chief executive is satisfied the document is incorrect and the correction will not prejudice the rights of a person.

(3) A document corrected by the chief executive under this section has the same effect as if the relevant error had not been made.

Requisitions

305.(1) The chief executive, by written notice (the “**requisition**”) given to a person who has lodged or deposited a document, may require the person to—

- (a) re-execute, complete or correct the document if it appears to the chief executive to be wrong, incomplete or defective; or
- (b) produce to the chief executive stated information, or deposit a stated document, in support of the person’s application to register a document.

(2) The chief executive may require the document or information to be verified by statutory declaration or affidavit.

(3) A requisition may state when, and the place where, it must be complied with.

(4) The chief executive may extend the time for complying with a requisition.

(5) The chief executive may refuse to deal with a document lodged or deposited by a person (and any document depending on it for registration) until the person complies with the requisition.

Rejecting document for failure to comply with requisition

306.(1) If a requisition is not complied with by a person within the time stated or extended by the chief executive, the chief executive may reject the document to which the requisition relates and any document depending on it for registration.

(2) A rejected document loses its priority under section 298 and must be returned by the chief executive to the person who lodged it.⁷⁷

(3) A memorandum recording the rejection of a document may be endorsed on the rejected document or in a separate record kept in the relevant register.

(4) This section does not prevent re-lodgment of a rejected document after the requisition has been complied with.

Borrowing lodged document before registration

307.(1) The chief executive may permit the following persons to borrow a lodged document before it is registered—

- (a) the person who lodged or deposited the document; or
- (b) the person for whom the document was lodged or deposited; or
- (c) the agent of a person mentioned in subsection (1)(a) or (b).

(2) The person must return the document within the time stated or extended by the chief executive, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—50 penalty units.

Withdrawing lodged document before registration

308.(1) If the chief executive is satisfied the order in which a document has been lodged in relation to other documents is such that the document will not give effect to the intention expressed in it or a related document, or is a document that should not have been lodged, the chief executive may—

- (a) withdraw the document; or

⁷⁷ Under section 298, registered documents have priority according to when they are lodged.

(b) permit the document to be withdrawn.

(2) A document withdrawn by the chief executive under subsection (1)(a) remains in the land registry, unless the document is a document that should not have been lodged.

(3) The chief executive may re-lodge a document that has been withdrawn by the chief executive.

(4) On receiving a written application, the chief executive may permit the applicant to re-lodge a document that the chief executive has permitted to be withdrawn.

(5) A document withdrawn under subsection (1) loses its priority and is taken to have been lodged on the day and at the time endorsed on it by the chief executive on its re-lodgment.

Chief executive may call in document for correction or cancellation

309. The chief executive, by written notice, may require a person to deposit a document for correction or cancellation.

Execution of documents

310.(1) For a corporation, a document is validly executed if—

- (a) it is executed in a way permitted by law; or
- (b) the document is sealed with the corporation's seal in accordance with the *Property Law Act 1974*, section 46.⁷⁸

(2) For an individual, a document is validly executed if—

- (a) it is executed in a way permitted by law; and
- (b) the execution is witnessed by a person prescribed under the regulations.

(3) However, the chief executive may, in exceptional circumstances, register a document executed by an individual even though the execution was not witnessed or was not witnessed by a person prescribed under the

⁷⁸ The *Property Law Act 1974*, section 46 is about the execution of instruments by or for corporations.

regulations.

(4) The witnessing of a document may be proved in any way permitted by law.

(5) This section does not apply to a plan of survey.

Witnessing documents for individuals

311. A person who witnesses a document signed by an individual must—

- (a) first be satisfied the individual is the person entitled to sign the document; and
- (b) have the individual sign the document in the presence of the person; and
- (c) not be a party to the document.

Substitute document

312.(1) If the chief executive is satisfied a tenure document or other registered document cannot be further endorsed or has been lost or destroyed, the chief executive may issue a substitute document.

(2) The chief executive may endorse on the substitute document—

- (a) that the document is a substitute replacing a lost or destroyed document; and
- (b) the day the substitute document was issued; and
- (c) that the substitute must be used in place of the original document; and
- (d) the location of the original document as far as it is known; and
- (e) other known circumstances of the loss or destruction.

(3) On the issue of the substitute document under subsection (1)—

- (a) the substitute document becomes the registered document instead of the original document; and
- (b) the substitute document has the priority to which the original document was entitled.

(4) The chief executive must record in the register that the substitute document has been issued and the day it was issued.

Delivery of documents

313. If the chief executive is required or permitted to return a document to a person who has deposited or lodged it in the land registry, the chief executive may return it by leaving it at a place designated for the purpose in the land registry.

Dispensing with production of document

314.(1) The chief executive may dispense with the production of a document.

(2) Before the chief executive dispenses with the production of a document, the chief executive may require evidence that a person seeking to deal with a lease or licence is entitled to deal with the lessee or licensee, and that the document that cannot be produced—

- (a) has been lost or no longer exists; and
- (b) is not deposited as security or for safe custody.

(3) The chief executive must record in the register that production of the document has been dispensed with and the day production of it was dispensed with.

Destroying document in certain circumstances

315.(1) The chief executive may destroy part of a register or a document held in the office of the land registry if the part or the document—

- (a) is not evidence of an existing interest; or
- (b) is evidence of an existing interest for which there is accurate evidence in another part of the register; or
- (c) will not be needed for registering the effect of a transaction.

(2) Before destroying part of a register or a document under subsection (1), the chief executive must copy it in whatever way the chief executive considers appropriate.

(3) However, the chief executive must not destroy an original will.

(4) The chief executive may return a suitably perforated cancelled tenure document to the person who, immediately before its cancellation, was entitled to it.

(5) The chief executive's power under subsection (1) is subject to the *Libraries and Archives Act 1988*.

Transferor must do everything necessary

316. A person who, for valuable consideration, signs a document to transfer or create an interest in a lease must do everything necessary to give effect to the matters stated in the document or implied by this or another Act.

Division 2—Documents forming part of standard terms documents

Meaning of “standard terms document” in division

317. In this division—

“**standard terms document**” means a document containing provisions treated as terms of a further document to which it must apply or applies.

Standard terms document may be registered

318. The chief executive or anyone else may lodge a standard terms document and may amend the standard terms document by lodging a further document.

Standard terms document part of a further document

319. All or part of a registered standard terms document, or an amended registered standard terms document, forms part of a document if the document—

- (a) says it forms part of the document; and

- (b) belongs to a class identified in the standard terms document as a document to which the standard terms document applies.

Document not limited to that contained in standard terms document

320.(1) As well as the provisions in a registered standard terms document, a document may include a provision incorporating other terms into the document.

(2) If there is a conflict between the standard terms document and terms included in another document, the other document prevails.

Withdrawal or cancellation of standard terms document

321.(1) The chief executive may withdraw a registered standard terms document if asked to withdraw it by the person who lodged it.

(2) The chief executive may cancel a registered standard terms document lodged by the chief executive after giving 1 months notice in the gazette.

(3) The chief executive must keep and, if asked, produce for inspection a copy of a standard terms document cancelled or withdrawn under this section.

(4) Withdrawal or cancellation of a standard terms document does not affect a document already registered or executed within 7 days after its withdrawal or cancellation.

PART 4—DEALINGS AFFECTING LAND

Division 1—Transfers

Requirements for transfers

322.(1) A lease, licence or sublease may be transferred—

- (a) to a person only if the person is eligible to hold the lease, licence or sublease under this Act; and

(b) only if the Minister has given written approval to the transfer.

(2) The Minister's approval lapses unless the transfer is lodged in the land registry within 6 months after the Minister's approval.

(3) The Minister may extend the time mentioned in subsection (2).

(4) The Minister's approval may be given on the conditions the Minister states, including—

(a) that all rent and charges owing to the State on the lease or licence are paid before the transfer is lodged; and

(b) that the lodgment of the transfer must be accompanied by a statutory declaration signed by the incoming lessee or licensee stating the incoming lessee or licensee is aware of—

(i) the condition of the land; and

(ii) the level of compliance with the conditions of the lease or licence; and

(iii) any current tree management plans affecting the lease or licence; and

(iv) any current agreements under an Act affecting the lease or licence.

(5) If the Minister decides not to approve a transfer, the transferor must be given written notice of the decision and the reasons for the decision.

(6) The transferor may appeal against the Minister's decision.

(7) The Minister's approval is not necessary for the transfer of—

(a) a mortgage; and

(b) if the lessee has a general authority to sublease—a sublease.

Transfers must be registered

323.(1) If a lease, licence, sublease or a mortgage is transferred, the transfer must be registered.

(2) An interest in a mortgage may not be transferred.

Transfer of lands sold in possession or in execution

324. If a lease or sublease is sold under a power of sale or a registered writ of execution—

- (a) the mortgagee in possession; or
- (b) the sheriff, registrar or clerk of the court of the relevant court;

must sign a transfer to a buyer eligible to hold the lease or sublease under this Act.

Effect of registration of transfer

325. On registration of a transfer—

- (a) all the rights, powers, privileges and liabilities of the transferor vest in the transferee; and
- (b) the transferee holds the interest in the land subject to the registered interests affecting the interest.

Transferee to indemnify

326. If a lease or a sublease, subject to a registered mortgage, is transferred, the transferee is liable to indemnify the transferor against liability under the mortgage and under this or another Act.

Division 2—Surrender**Surrender of lease or deed of grant**

327.(1) A lessee, on the terms agreed to between the Minister and the lessee, may surrender a lease, or part of a lease, for—

- (a) the absolute surrender of the lease; or
- (b) a subsequent action for the lease.

(2) A registered owner, with the Minister's approval, may surrender the registered owner's deed of grant.⁷⁹

Surrender of subleases

328.(1) If a sublease is surrendered, the surrender must be registered.

(2) However, a surrender of a sublease may be registered only if each registered mortgagee and registered sub-sublessee has given written agreement to the surrender.

(3) On registration of a surrender of a registered sublease, the interest of the sublessee vests in the sublessor.

(4) Subsection (2) does not apply to a surrender or disclaimer under a law about bankruptcy.

Notice of surrender needed

329.(1) If a lessee is absolutely surrendering a lease under section 327(1)(a), the lessee must give 1 years notice of the intention to surrender or pay 1 years rent in advance at the time of surrender.

(2) However, the Minister may waive the giving of 1 years notice or paying 1 years rent in appropriate circumstances.

Requirements for effective surrender

330. A surrender of a lease may be registered only if—

- (a) the Minister gives written approval to the surrender; and
- (b) if the lease is subject to a mortgage or sublease—the mortgagee or sublessee gives written approval to the surrender; and
- (c) any subsequent action by the department to carry out a requirement of the approval has been finished.

⁷⁹ For the surrender of a road licence, occupation licence or permit, see chapter 3, part 2, division 3; chapter 8, part 5, division 1 and chapter 4, part 4.

Effect of surrender on existing interests

331.(1) If a lease or part of a lease is surrendered, other than absolutely, all interests in the lease or part of the lease at the time of surrender continue in the new lease or deed of grant.

(2) If a lease or deed of grant is absolutely surrendered, all interests are extinguished from the day the surrender is registered.⁸⁰

Division 3—Subleases**Subleases require Minister's approval**

332.(1) A lease issued under this Act may be subleased only—

- (a) if the Minister has given written approval to the sublease or the lessee holds a general authority to sublease; and
- (b) to a person who is eligible to hold the sublease under this Act.

(2) A copy of the proposed sublease must accompany the application seeking the Minister's approval.

(3) The Minister may—

- (a) refuse to approve a sublease; or
- (b) approve the sublease on the conditions the Minister considers appropriate; or
- (c) approve the sublease unconditionally.

(4) The Minister's approval lapses unless the sublease is lodged in the land registry within 6 months after the Minister's approval.

(5) The Minister may extend the time mentioned in subsection (4).

(6) If the Minister decides not to approve a sublease, the sublessor must be given written notice of the decision and the reasons for the decision.

(7) The sublessor may appeal against the Minister's decision.

⁸⁰ But public utility easements may still continue after absolute surrender—see section 372.

General authority to sublease

333.(1) If the Minister considers it appropriate, the Minister may issue to a lessee an authority to sublease without seeking the Minister's approval.

(2) If subsection (1) applies, the lessee may sublease the lease under the guidelines prescribed under the regulations.

(3) An authority given under subsection (1) may be withdrawn.

(4) A lessee may still seek the Minister's approval to sublease even though an authority under subsection (1) is in force.

(5) If a lease is transferred, an authority given under subsection (1) is cancelled from the day the transfer is registered.

When subleasing is totally prohibited

334. A lessee may not sublease a lease if this Act forbids subletting, or the lease contains a condition specifically forbidding subletting.

Subleases must be registered

335.(1) If a lease issued under this Act is subleased, the sublease must be registered.

(2) If the sublease is for part of a lease, the appropriate form for the sublease must also include—

- (a)** a sketch plan identifying the land being subleased, drawn to a standard to the chief executive's satisfaction; or
- (b)** if required by the chief executive—a plan of survey identifying the land being subleased.

(3) However, the chief executive may allow the land being subleased to be identified by a description alone if the chief executive is satisfied the land is adequately identified by the description in the document.

Amending a sublease

336.(1) A registered sublease may be amended by registering an amendment of the sublease.

- (2) However, the document of amendment must not—
- (a) increase or decrease the area subleased; and
 - (b) add or remove a party to the sublease; and
 - (c) increase the term of the sublease.

Lessee continues to be responsible for primary obligations

337. The lessee of a lease that is sublet, in whole or in part, continues to be liable for all the conditions to which the lease is subject.

Validity of sublease or amendment of sublease against mortgagee

338. A sublease or amendment of a sublease executed after the registration of a mortgage is valid against the mortgagee only if the mortgagee agreed to the sublease or amendment before its registration.

Re-entry by sublessor

339.(1) If a sublessor under a registered sublease lawfully re-enters and takes possession under the sublease, the sublessor may lodge a request for the chief executive to register the re-entry.

(2) The interest of the sublessee ends on the registration of the request for the re-entry.

Division 4—Mortgages

Registering a mortgage

340.(1) A lease or a sublease may be mortgaged by registering a mortgage.

(2) If the mortgagor is registered as a trustee, a document stating the details of the trust, or the document creating the trust, must be deposited with the mortgage, unless—

- (a) a document has already been produced for the trust under

section 374(2)⁸¹ or deposited under section 375(2)⁸² with a transfer; and

- (b) the details of the trust have not since changed.

Effect of a mortgage

341. A registered mortgage of a lease or sublease operates only as a charge on the lease or sublease for the debt or liability secured by the mortgage.

Releasing a mortgage

342.(1) If a release of mortgage is lodged, the chief executive may register the release to the extent shown in the release.

(2) The release of mortgage may release the debt or liability secured for—

- (a) all or part of the mortgage; or
- (b) 1 or more of the mortgagors.

(3) On registration of a release of mortgage, the mortgage is discharged, and the lease is released from the mortgage, to the extent shown in the release.

Amending a mortgage

343.(1) A registered mortgage may be amended only by registering an amendment of the mortgage.

(2) However, the document of amendment must not add or remove a party to the mortgage.

Amending priority of mortgages

344.(1) The priority of registered mortgages may be amended by

⁸¹ Section 374 (Details of trust must be given)

⁸² Section 375 (Document of transfer to trustee)

registering a document amending priority.

(2) The document amending priority must—

- (a) state the order of priority of all affected registered mortgages; and
- (b) be executed by all mortgagees affected by the amendment.

(3) On registration of the document amending priority, the mortgages have priority in the order stated in the document.

Mortgagee in possession may sell

345.(1) A mortgagee is entitled to sell a lease if—

- (a) the lessee defaults under a mortgage; and
- (b) the mortgagee has entered into possession of the mortgaged lease or is exercising a power of sale under the mortgage; and
- (c) the mortgagee complies with this division.

(2) The mortgagee must notify the Minister within 28 days of entering into possession of the mortgaged lease.

Maximum penalty—5 penalty units.

Sale of mortgaged lease

346.(1) The mortgagee must first offer the lease for sale by public auction or with the Minister's written approval may sell the lease by private contract.

(2) The lease must not be offered for sale by public auction or a contract of sale entered into until at least 28 days after the mortgagee has published a notice, in the newspaper that has the largest circulation in the locality of the lease, that the lease is for sale.

(3) A sale by a mortgagee must be to a person qualified under this Act to hold the lease.

(4) The lodgment of the transfer must be accompanied by a statutory declaration signed by the incoming lessee stating the incoming lessee is aware of—

- (a) the condition of the land; and

- (b) the level of compliance with the conditions of the lease; and
- (c) any current tree management plan affecting the lease; and
- (d) any current agreement under an Act affecting the lease.

Land to be sold within 2 years

347.(1) The mortgagee must arrange to sell the lease within 2 years of entering into possession of the lease.

(2) The mortgagee may apply to the Minister to extend the 2 years.

(3) The application under subsection (2) must be made within the 2 year period.

(4) If the Minister decides not to extend the time, the mortgagee must be given written notice of the decision and the reasons for the decision.

(5) The mortgagee may appeal against the Minister's decision.

(6) If the mortgagee does not sell the lease within 2 years of entering into possession of the lease or an appeal to extend the time is unsuccessful, the chief executive may sell the mortgaged lease.

Disposal of proceeds of sale

348. The mortgagee must apply the proceeds of sale as follows—

- (a) firstly, to the payment of all costs, charges and expenses properly incurred by the mortgagee for the sale or any attempted sale;
- (b) secondly, to payment of charges on the lease, including any rent, instalments or penalty interest, owing to the State;
- (c) thirdly, to payment of any amount owing to a mortgagee or, if more than 1 mortgagee, according to their priorities;
- (d) fourthly, if the mortgagee is selling in possession under section 244, to payment of expenses incurred by the State to rectify any damage caused to the land by the lessee;⁸³
- (e) lastly, to the lessee.

⁸³ Section 244 is about how a mortgagee obtains approval to sell a lease.

Liability of mortgagee in possession

349. A mortgagee who enters into possession under a lease or sublease (whether by taking the rents or profits or in another way) is liable under the lease or sublease to the same extent as the lessee or sublessee was liable under the lease or sublease before the mortgagee entered into possession.

Effect of transfer after sale by mortgagee

350. If a transfer executed by a registered mortgagee after the exercise of the power of sale under the mortgage is registered, registration of the document vests the mortgagor's interest that is transferred in the transferee, free from liability under the mortgage and any other mortgage registered after it.

*Division 5—Subdividing leases***Minister's approval required for subdivision**

351.(1) A lease may be subdivided only if the Minister has given written approval to the subdivision.

(2) The Minister's approval may be given on the conditions the Minister states in the approval.

(3) A condition may be that a plan of survey approved by the Minister and capable of registration be lodged in the land registry.

Plan of survey must be registered if needed

352.(1) If the Minister approves of the subdivision of a lease on the condition that a plan of survey capable of registration be lodged in the land registry—

- (a) the plan must be lodged within 6 months after the Minister's approval; and
- (b) the plan and the surrender of the existing lease must be registered before separate leases can be issued for the lease being subdivided.

- (2) The Minister may extend the time mentioned in subsection (1)(a).
- (3) The chief executive may register a plan only if—
- (a) the plan is in the appropriate form and correctly executed; and
 - (b) the Minister has given written approval to the plan; and
 - (c) the plan is accompanied by a statement—
 - (i) by the lessee agreeing to the plan and surrendering to the State any land to be used for a public use; and
 - (ii) by any encumbrancee affected by the subdivision, agreeing to the subdivision; and
 - (d) the plan complies with the *Surveyors Act 1977* and has been certified as accurate by a licensed surveyor.

Issue of new leases

353.(1) On fulfilment of the conditions stated by the Minister, the registration of the plan and the surrender of the lease to be subdivided, the lessee is entitled to have new leases issued.

- (2) The new leases start on the next quarter day after the surrender.

Conditions of new leases

354.(1) The conditions of a new lease are the conditions agreed between the Minister and the lessee.

(2) If the subdivided lease was a term lease, the term of each new lease is the term agreed between the Minister and the lessee.

(3) However, if the term of a new lease is longer than the remaining term of the subdivided lease, the Minister must still consider the issues in chapter 4, part 3, division 2 before the new lease is issued.⁸⁴

⁸⁴ Chapter 4, part 3, division 2 is about the expiry and renewal of leases.

Division 6—Amalgamating leases

Amalgamation only by agreement

355.(1) Two or more adjoining leases of the same tenure and held by the same lessee may be amalgamated into 1 lease only if the Minister has given written approval to the amalgamation.

(2) The Minister's approval may be given on the conditions the Minister states in the approval.

(3) In this section—

“**adjoining**” includes leases separated only by a road or watercourse.

Issue of new lease

356.(1) On fulfilment of the conditions stated by the Minister and the surrender of the leases to be amalgamated, the lessee is entitled to have a new lease issued.

(2) Any required plan of survey and surrender of leases must be registered before the new lease is issued.

(3) The new lease starts on the next quarter day after the surrender.

Conditions of amalgamated lease

357.(1) The conditions of an amalgamated lease are the conditions agreed between the Minister and lessee.

(2) If amalgamation has been initiated by the Minister, the Minister may waive any fees and charges associated with the surrender, amalgamation and issue of the amalgamated lease.

(3) If the leases amalgamated are term leases, the term of the amalgamated lease is the term agreed between the Minister and the lessee.

(4) However, if the term of the new lease is longer than the remaining term of either of the leases amalgamated, the Minister must still consider the issues in chapter 4, part 3, division 2 before the new lease is issued.⁸⁵

⁸⁵ Chapter 4, part 3, division 2 is about the expiry and renewal of leases.

*Division 7—Correcting and changing deeds of grant and leases***Changing deeds of grant**

358.(1) A registered owner or trustee may surrender the land contained in the registered owner's deed of grant or trustee's deed of grant in trust if the description of the land is no longer correct because of—

- (a) an exchange of land under chapter 2, part 1; or
- (b) a sale of all or part of a reservation under chapter 2, part 2; or
- (c) the addition of land under chapter 3, part 1, division 3; or
- (d) a boundary correction or amendment under chapter 3, part 1, division 4; or
- (e) the opening or closing of a road, through or adjoining any land held in fee simple, under chapter 3, part 2, divisions 4 and 5; or
- (f) a sale without competition under chapter 4, part 1, division 2.

(2) A registered owner or trustee, with the Minister's written approval, may surrender the land contained in the registered owner's deed of grant or trustee's deed of grant in trust if—

- (a) on resurvey of the land, the boundaries of the land do not agree with the boundaries described in the existing deed or appropriate plan, and no doubt exists about the boundaries of the land; or
- (b) the boundaries of the land have significantly changed because of erosion or by gradual and imperceptible degrees.

(3) On the surrender of the land, a new deed or deeds must be issued containing the land to which the registered owner or trustee is entitled.

(4) When issuing any new deed under this section, the Governor in Council may amend or change the description of the land.

(5) The registrar of titles must register the new deed and must record on the deed all mortgages, leases, easements or other transactions that were recorded on the deed surrendered.

(6) If action is taken under this section to issue a new deed, no fee is payable by the registered owner or trustee.

Correcting deeds of grant

359.(1) A notice of intention to correct, or cancel, a deed of grant must be published in the gazette and in a newspaper the Minister considers appropriate, if it appears that the deed of grant—

- (a) is incorrect because of an error in issuing it; or
- (b) should not have been issued;

(2) If the Minister considers it appropriate, the Minister may—

- (a) apply to the Supreme Court for directions; or
- (b) state a case for decision by the Supreme Court.

(3) If the Governor in Council is satisfied the deed of grant is incorrect or should not have been issued, the Governor in Council may publish a gazette notice correcting the error or cancelling the deed of grant.

(4) On the publication of the notice, the registrar of titles must record the correction or cancellation in the appropriate register.

(5) The corrected deed of grant operates as if it had been originally issued that way.

(6) The cancelled deed of grant is taken never to have been issued.

(7) In this section—

“deed of grant” includes a deed of grant in trust.

Changing leases

360.(1) The Governor in Council may amend the description or anything else in a lease if—

- (a) the boundaries of the land contained in the lease are not stated in the lease with adequate certainty or do not agree with the boundaries shown on the relevant plan; or
- (b) the lease is defective because of an error or omission in its preparation; or
- (c) a survey of the land gives more accurate knowledge of the lease; or
- (d) the Court has made a decision under section 435, on a dispute

about the boundaries; or⁸⁶

- (e) the Governor in Council has approved of the mutual exchange, after agreement by the lessees of adjoining leases, of areas adjoining a common boundary between the leases; or
- (f) the Governor in Council has approved that an area of unallocated State land or trust land be included in the lease; or
- (g) the Governor in Council considers it necessary for another reason to correct the lease.

(2) The chief executive must record particulars of the amendment in the appropriate register.

(3) An amended lease operates as if it had been originally issued or executed as amended.

Division 8—Easements

Definitions

361. In this division—

“public utility easement” means an easement in favour of a public utility provider.

“public utility provider” means—

- (a) the State or a State authority or instrumentality; and
- (b) the Commonwealth or a Commonwealth authority or instrumentality; and
- (c) a local government; and
- (d) a person authorised by law to provide a public utility service; and
- (e) a person approved by the Minister as suitable to provide a particular public utility service.

⁸⁶ Section 435 allows the Minister to refer matters to the Court.

Easements may be created only by registration

362.(1) With the Minister's written approval, an easement may be created over non-freehold land, other than a road, by registering the document creating the easement in the appropriate register.

(2) The document must state—

- (a) the nature of the easement and its terms; and
- (b) the land to be benefited, and the land to be burdened, by the easement.

(3) However, it is not necessary to state the land benefited in a public utility easement that is not attached to, or used or enjoyed with, other land.

(4) An easement may be limited wholly or partly in height or depth.

Registration of easement

363.(1) A document creating an easement may be registered only if—

- (a) a plan of survey designating the proposed easement is also registered; and
- (b) it is signed by—
 - (i) the owner of the land to be burdened; and
 - (ii) the owner of the land to be benefited by the easement or the public utility provider; and
- (c) the Minister has given written approval to the easement.

(2) A plan of survey is not necessary if the chief executive considers it is unnecessary because of exceptional circumstances.

(3) Subsections (1)(b) and (c) do not apply to an easement compulsory acquired by the State.

(4) In this section, the State is taken to be the owner of unallocated State land and reserves.

(5) In subsection (1)—

“owner of the land” includes a registered owner, lessee, licensee and permittee.

Registration of plan showing proposed easement

364.(1) A plan designating a proposed easement may be registered only if the designation includes the words ‘proposed easement’.

(2) Registration of the plan does not create an easement.

Particulars to be registered

365.(1) When an easement is registered, the following particulars must be recorded in the appropriate registers—

- (a) the land burdened by the easement;
- (b) any land benefited by the easement;
- (c) any registered sublease (or, if the land is freehold land, registered lease) benefited or burdened by the easement.

(2) To remove any doubt, it is declared that subsection (1) applies even if the appropriate registers are for both freehold and non-freehold land.

(3) Further dealings affecting the easement must also be registered in the appropriate registers.

Rights and liabilities created on registration of document

366.(1) On the registration of the document creating the easement, the proposed easement shown on the plan is created and, without anything further, vests in the person entitled to the benefit of it.

(2) If the easement is a public utility easement, the lessee of the land burdened by the easement may recover from the public utility provider a reasonable contribution towards the cost of keeping the part of the land affected by the easement in a condition appropriate for enjoyment of the easement.

(3) The liability under subsection (2) may be amended or excluded by agreement.

Easement benefiting and burdening land of same person

367. An easement may be registered even if—

- (a) the land benefited and the land burdened by the easement are owned by the same person; or
- (b) the owner of the land benefited by the easement holds an interest in the land burdened by the easement.

Same person becoming lessee, licensee or permittee of benefited and burdened lands

368.(1) An easement is not extinguished merely because the lessee, licensee or permittee the land benefited by the easement acquires an interest, or a greater interest, in the land burdened by the easement.

(2) If the same person becomes the lessee, licensee or permittee of the land benefited and the land burdened by an easement, the easement is extinguished only if—

- (a) the lessee, licensee or permittee asks the chief executive to extinguish the easement; or
- (b) the land benefited and the land burdened are amalgamated.

Public utility easements

369.(1) A public utility easement may be registered even though it is not attached to, or used or enjoyed with, other land.

(2) A public utility easement may be registered only for the following—

- (a) a right of way;
- (b) drainage or sewerage;
- (c) the supply of water, gas, electricity, telecommunication facilities or another public utility service.

(3) Also, a public utility easement may be registered in favour of a person mentioned in section 361, definition “public utility provider” paragraph (e), only if the easement is for the public utility service mentioned in the paragraph.

Transfer of public utility easements

369A.(1) With the Minister's written approval, a public utility easement may be transferred to another public utility provider.

(2) The transfer must be recorded in the appropriate register.

Amending an easement

370.(1) A registered easement may be amended by registering a document amending the easement.

(2) However, the document of amendment must not—

- (a) change the location of the easement; or
- (b) increase or decrease the area of land affected by the easement; or
- (c) change a party to the easement.

(3) Section 363 applies to this section.⁸⁷

Surrendering an easement

371.(1) An easement may be surrendered (wholly or partly) only if a document surrendering the easement is registered in the appropriate registers for the land benefited and burdened.

(2) The document of surrender may be signed by the—

- (a) owner of the land benefited and the owner of the land burdened by the easement; or
- (b) owner of the land benefited by the easement; or
- (c) public utility provider in whose favour the easement is registered.

(3) A document surrendering an easement may be registered only if all persons who have a registered interest in the land benefited by the easement agree to the surrender.

(4) Subsection (3) does not apply to a sublessee or lessee who does not receive a benefit from the easement.

⁸⁷ Section 363 is about how an easement may be registered.

(5) In this section, the State is taken to be the owner of unallocated State land and reserves.

(6) In subsection (2)—

“**owner of the land**” includes a registered owner, lessee, licensee and permittee.

End and continuation of easements

372.(1) An easement over a lease, licence or reserve ends when the lease or licence ends or the reserve is revoked.

(2) However, with the Minister’s written approval, a public utility easement may continue over unallocated State land when the lease or licence ends or the reserve is revoked.

(3) If freehold land is subject to a public utility easement and the land is surrendered, the easement may continue, with the Minister’s written approval, over the resulting unallocated State land.

(4) If a public utility easement continues over unallocated State land, the continuation must be recorded in the appropriate register.

(5) If unallocated State land, over which there is a public utility easement, is dealt with under this Act—

- (a) the Minister may approve the easement continue; and
- (b) if approved—the continuation of the easement must be recorded in the appropriate register.

Court may modify or extinguish an easement

373. The *Property Law Act 1974*, section 181 applies to an easement under this Act.⁸⁸

⁸⁸ The *Property Law Act 1974*, section 181 is about modifying and extinguishing easements and restrictive covenants.

Division 8A—Covenants**Covenant by registration**

373A.(1) With the Minister's written approval, non-freehold land (other than a road) may be made the subject of a covenant by the registration of the document creating the covenant in the appropriate register.

(2) A document creating a covenant may be registered under this division only if the covenantee under the document is the State or a local government.

(3) A covenant to which non-freehold land is subject must be only for ensuring that the land may be transferred to a person only if there is also transferred to the person—

- (a) other non-freehold land that is also the subject of the covenant; or
- (b) a lot that, under the *Land Title Act 1994*, is the subject of the covenant; or
- (c) non-freehold land mentioned in paragraph (a) together with a lot mentioned in paragraph (b).

Requirements of document creating covenant

373B.(1) A document creating a covenant may be registered only if—

- (a) it is validly executed; and
- (b) it includes a description adequate to identify the land to be the subject of the covenant; and
- (c) it includes a description of the covenant; and
- (d) the Minister has given written approval to the covenant.

(2) Subsection (1) does not limit the matters that the appropriate form for a document creating a covenant may require to be included in the form.

Amending document creating covenant

373C.(1) A covenant may be amended by registering a document amending the covenant.

(2) However, the amending document must not—

- (a) increase or decrease the area of land the subject of the covenant; or
- (b) add or remove a party to the covenant.

(3) The amending document may be registered only if the Minister has given written approval to the amendment.

Releasing a covenant

373D.(1) On lodgment of a document releasing a covenant to which non-freehold land is subject, the registrar may register the release to the extent shown in the document of release.

(2) On registration of the document of release, the covenant is discharged, and the non-freehold land is released from the covenant, to the extent shown in the document of release.

Division 9—Trusts, deceased estates and bankruptcy

Details of trust must be given

374.(1) The Governor in Council may issue a deed of grant or a lease to a person as trustee only if—

- (a) the deed of grant or lease may be issued to a trustee under this Act; and
- (b) a document stating details of the trust, or a document creating the trust, has been given to the chief executive.

(2) The document stating details of the trust must be produced, for a deed of grant, to the registrar of titles when the deed of grant is registered.

(3) The document stating details of the trust does not form part of the register.

(4) The chief executive or the registrar of titles must keep a certified copy of the document and return the original to the person who deposited it.

(5) To remove any doubt, it is declared that this section does not apply to deeds of grant in trust.

Interests held in trust must be registered

374A. Unless a lease is issued to a person as trustee under section 374, a person may hold an interest in a lease or sublease in trust only if there is registered—

- (a) a transfer of the interest to the person as trustee; or
- (b) a request to vest the interest in the person as trustee.

Document of transfer to trustee

375.(1) A transfer of an interest to be held in trust may be registered only if—

- (a) the transferee is eligible, under this Act, to hold the land on trust; and
- (b) a document stating details of the trust, or the document creating the trust, is deposited with the transfer.

(2) The document deposited with the transfer does not form part of the register.

(3) The chief executive must keep a certified copy of the document and return the original to the person who deposited it.

Document to vest in trustee

375A.(1) A request to vest an interest in a person as trustee may be registered only if—

- (a) the person is eligible, under this Act, to hold the land on trust; and
- (b) the request to vest gives effect to an order (the “**vesting order**”) made under the *Trusts Act 1973* or another Act.

(2) The vesting order, and all other documents (the “**other documents**”) stating details of the trust subject to which the interest is vested in the trustee, must be deposited with the request to vest.

(3) The other documents do not form part of the register.

(4) The registrar must keep certified copies of the other documents and return the originals to the person who deposited them.

Deed of grant or lease may issue in name of deceased person

376.(1) The Governor in Council may issue a deed of grant or lease in the name of a deceased person—

- (a) if the person was entitled to its issue on the day of the person's death; or
- (b) on the happening of an event after the person's death that would otherwise entitle the person to its issue.

(2) The deed of grant or lease issued—

- (a) is as valid as it would have been if the person had been alive when it was issued; and
- (b) has the same effect, as between the persons entitled to the land contained in the deed of grant or lease, as if the person had died immediately after its issue.

Registering personal representative

377.(1) A person may lodge an application to be registered as personal representative of a deceased lessee, sublessee, licensee or mortgagee.

(2) The chief executive may register the person as personal representative only if—

- (a) if the person has obtained a grant of representation, or the resealing of a grant of representation, in Queensland—the grant or resealing, or an office copy of the grant or resealing issued by the Supreme Court, is deposited; or
- (b) if paragraph (a) does not apply and the lessee, sublessee, licensee or mortgagee died without a will—
 - (i) letters of administration of the deceased person's estate have not been granted in Queensland within 6 months after the death; and
 - (ii) the gross value of the deceased person's Queensland estate at the day of death was no more than the amount prescribed under the regulations or, if no amount is prescribed, \$150 000; and
 - (iii) the chief executive is of the opinion the person would

succeed in an application for a grant of representation; or

- (c) if paragraph (a) does not apply and the lessee, sublessee or licensee died leaving a will—the chief executive is of the opinion the person would succeed in an application for a grant of representation.

(3) A person registered as personal representative without a grant of representation has the same rights, powers and liabilities as if a grant of representation had been made to the person.

(4) The validity of an act done or payment made in good faith by a person registered as personal representative is not affected by a later grant of representation.

(5) If the grantee of a grant of representation is different from the person registered as personal representative, the person must—

- (a) account to the grantee for all property of the deceased person controlled by the person before the grant; and
- (b) take all action necessary to divest from the person and vest in the grantee all property of the deceased person remaining under the person's control.

References in documents to a person with an interest in land includes personal representatives etc.

378.(1) In a document made or executed under this Act, a reference to a person as registered owner, transferor, transferee, mortgagor, mortgagee, lessor, lessee, trustee or as having an interest in land includes a reference to the person's personal representatives, successors and assigns.

(2) The application of this section may be displaced, wholly or partly, by a contrary intention appearing in the document.

Registering beneficiary

379.(1) A person who is beneficially entitled under a will to a lease, sublease or licence of a deceased lessee, sublessee or licensee may apply to the chief executive to be registered as lessee, sublessee or licensee.

(2) However, the chief executive may register the person only if—

- (a) the written approval of the deceased's personal representative is given; and
- (b) the person satisfies the chief executive the person is beneficially entitled to the lease, sublease or licence.

Applying for Supreme Court order

380.(1) This section applies to—

- (a) the Attorney-General; or
- (b) a trustee or beneficiary under a trust; or
- (c) a personal representative, a beneficiary or anyone else interested in—
 - (i) a lease, sublease or licence of a deceased person; or
 - (ii) a trust involving a lease, sublease or licence of a deceased person.

(2) A person to whom this section applies may apply to the Supreme Court for an order that a named person be registered as lessee, sublessee or licensee.

(3) The Supreme Court may make 1 or more of the following orders—

- (a) that a person be registered as lessee, sublessee or licensee;
- (b) that a person be removed from the appropriate register as lessee, sublessee or licensee;
- (c) that a person advertise in a particular way;
- (d) that costs be paid by any person or out of any property.

(4) The chief executive must register particulars of an order if a request to register the order is lodged and an office copy of the order is deposited.

(5) An order does not vest an interest in the lease, sublease or licence until it is registered.

Transmission on bankruptcy

381. The chief executive may register a transmission of an interest in a

lease, sublease or licence under a law about bankruptcy only if a request to register the transmission is lodged.

Disclaimer in bankruptcy

382. The chief executive may register a disclaimer of an interest in land under this Act under a law about bankruptcy only if notice of the disclaimer and a request to register the disclaimer is lodged.

Division 10—Powers of attorney and disabilities

Power of attorney

383.(1) A power of attorney that allows dealings with land under this Act must be registered in the powers of attorney register under the *Land Title Act 1994*.

(2) A power of attorney registered under the *Land Title Act 1994*—

- (a) is taken to be a power of attorney registered for this Act; and
- (b) authorises the donee to deal with any interest in land that may be dealt with by the donor under the power of attorney and this Act.

Persons under a disability

384. The Supreme Court may authorise a person to act for a lessee or licensee who appears to the court to be incapable of managing the person's own affairs because, for example, of age or mental illness.

Acts by attorneys

385. An act may be done by a person who is responsible by law for the management and care of someone else's interests if—

- (a) the act is required or permitted to be done by or for the other person under this Act; and
- (b) the person has a mental illness or is incapable of managing their own affairs.

Division 11—Writs of execution**Registering a writ of execution**

386. The chief executive may register a request to record a writ of execution only if an office copy of the writ is lodged with the request.

Effect of registering a writ of execution

387. For buyers, sublessees, mortgagees and creditors, until a writ of execution is registered—

- (a) it does not bind or affect a lease, whether or not there is actual or constructive notice of the writ; and
- (b) binds or affects a lease only if the writ is executed and put in force within—
 - (i) 6 months of its lodgment; or
 - (ii) the extended time allowed by the court where the writ is filed and notified to the chief executive.

Cancellation of registration of a writ of execution

388. Registration of a writ of execution may be cancelled if a request to cancel it is lodged and the chief executive is satisfied the time, or extended time, for executing and putting the writ into force has ended.

Discharging or satisfying writ of execution

389. Discharge or satisfaction of a writ of execution may be registered if a request to register it is lodged and the chief executive is satisfied the writ has been discharged or satisfied.

Division 12—Liens**Vendor does not have equitable lien**

390. A vendor of a lease or licence does not have an equitable lien on the lease or licence because of the buyer's failure to pay all or part of the purchase price for the lease or licence.

CHAPTER 7—GENERAL**PART 1—ADMINISTRATION*****Division 1—Ministerial administration*****Administration of Act**

391. This Act is to be administered by the Minister and, subject to the Minister, by the chief executive.

Delegation by Minister

392.(1) The Minister may delegate the Minister's powers under this Act or another Act administered by the Minister to the chief executive or to an officer or employee of the department.

(2) The Minister may delegate the Minister's powers about matters connected with the public business of the State administered by the Minister (whether the powers arise under an Act or otherwise) to—

- (a) another Minister; or
- (b) the chief executive or the chief executive of another department;
or
- (c) an officer or employee of the public service.

(3) The Minister may delegate the Minister's powers under this Act

about roads and trust land to a local government.

(4) However, the following powers of the Minister must not be delegated—

- (a) dedicating a reserve or revoking all of a reserve;
- (b) dispensing with the need to obtain the Minister's approval for trustee leases;
- (c) extending the term of a lease for a year.
- (d) setting the rent of a lease, licence or permit under section 183A(1).⁸⁹

Delegation by chief executive

393.(1) The chief executive may delegate the chief executive's powers under this Act or another Act administered by the Minister to an officer or employee of the department.

(2) The chief executive may delegate the chief executive's powers about matters connected with the public business of the State administered by the Minister (whether the powers arise under an Act or otherwise) to an officer or employee of the public service.

(3) The chief executive may delegate the chief executive's powers under this Act about roads and trust land to a local government.

(4) The chief executive may delegate to a port authority the chief executive's powers to issue a permit to occupy land—

- (a) below high-water mark within the limits of a port; and
- (b) above high-water mark, if the land adjoins the limits of a port and is needed as strategic port land.

(5) If the chief executive delegates powers about the land registry to the registrar of titles, the registrar may subdelegate the powers to an officer or employee of the department under the control of the registrar.

(6) A person acting under a subdelegation given under subsection (5) may act under the title 'registrar of titles'.

⁸⁹ Section 183A (Rent payable in special cases)

Committee of review

394. The Minister may establish a committee of review to help the Minister under chapter 4, part 1.

Division 2—Appointment of authorised persons and other matters**Appointment of authorised persons**

395.(1) The chief executive may appoint any of the following persons as authorised persons—

- (a) officers and employees of the public service;
- (b) other persons prescribed under the regulations.

(2) The chief executive may appoint a person as an authorised person only if—

- (a) the chief executive considers the person has the necessary expertise or experience to be an authorised person; or
- (b) the person has satisfactorily finished training approved by the chief executive.

Authorised person's appointment conditions

396.(1) An authorised person holds office on the conditions stated in the instrument of appointment.

(2) An authorised person—

- (a) if the instrument is for a term—ceases to hold office at the end of the term; and
- (b) may resign by signed notice of resignation given to the chief executive; and
- (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) However, an authorised person may not resign from the office of authorised person (the “**secondary office**”) under subsection (2)(b) if a

term of the authorised person's employment to the main office requires the authorised person to hold the secondary office.

Authorised person's identity card

397.(1) The chief executive must give each authorised person an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person under this Act; and
- (d) include an expiry date.

(3) A person who ceases to be an authorised person must return the person's identity card to the chief executive within 21 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for other Acts or purposes.

(5) If a police officer is appointed as an authorised person, the police officer's existing identification card or badge is taken to be an identity card for this part.

Production of identity card

398.(1) An authorised person may exercise a power in relation to someone else (the "**other person**") only if the authorised person—

- (a) first produces his or her identity card for the other person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the

other person's inspection at the first reasonable opportunity.

(3) This section does not apply to a police officer who is in uniform.

Protection from liability

399.(1) An authorised person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to a authorised person, the liability attaches instead to the State.

Division 3—Inspection powers

Power to enter land

400.(1) An authorised person may, with or without assistants, and only for a purpose of this Act—

- (a) enter on land at any reasonable time; and
- (b) inspect the land and the uses made of the land; and
- (c) photograph or film anything on the land; or
- (d) take samples of or from anything on the land; or
- (e) do anything reasonable and necessary to exercise a power under paragraphs (a) to (d).

(2) The authorised person must enter freehold land only with the agreement of the occupier or, if there is no occupier, the registered owner.

(3) Before entering non-freehold land, the authorised person must—

- (a) obtain the agreement of the occupier or, if there is no occupier, the lessee, licensee, permittee or trustee; or
- (b) give at least 14 days notice to the person mentioned in paragraph (a) of—
 - (i) the authorised person's intention to enter on the land; and
 - (ii) the proposed purpose in entering on the land; and
 - (iii) the day and time when the person proposes to enter the land.

(4) Subsections (2) and (3) do not apply if—

- (a) the land is trust land, land in a lease, licence or permit or freehold land containing a reservation for a public purpose; and
- (b) the authorised person believes, on reasonable grounds, that the terms or conditions of the trust, lease, reservation, permit or licence applying to the land or this Act are not being complied with.

(5) In exercising a power under subsection (1), an authorised person must take all reasonable steps to ensure the person causes as little inconvenience, and does as little damage, as is practicable.

(6) To remove any doubt, it is declared that this section does not authorise the entry of a building or other structure used for residential purposes.

(7) In this section—

“**occupier**” of a place includes a person who reasonably appears to be the occupier, or in charge, of the place.

“**non-freehold land**” includes freehold land containing a reservation for a public purpose or a deed of grant in trust.

Authorised person to give notice of damage

401.(1) This section applies if an authorised person, or a person assisting an authorised person, damages anything in the exercise of a power under this part.

(2) The authorised person must promptly give written notice of the particulars of the damage to the person who appears to be the thing’s owner.

(3) However, if for any reason it is not practicable to comply with subsection (2), the authorised person must leave the notice, in a reasonably secure way and in a conspicuous position, at the place where the damage happened.

(4) In this section—

“**owner**” of a thing includes the person in possession or control of the thing.

(5) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the authorised person's control, the authorised person may state this in the notice.

(6) This section does not apply to damage the authorised person believes, on reasonable grounds, is trivial.

Compensation

402.(1) A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under this division.

(2) Compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

Impersonation of authorised person

403. A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

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

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

No trespassing

404.(1) A person must not unlawfully, do any of the following things (a “**trespass related act**”) in relation to non-freehold or trust land—

- (a) occupy or live on it;
- (b) enclose it;
- (c) build, place or maintain any structure, improvement, work or thing on it;
- (d) clear, dig up or cultivate it;
- (e) depasture stock or cause stock to be depastured on it.

Maximum penalty—400 penalty units.

(2) If a person is found guilty by a Magistrates Court of an offence against subsection (1), the court may make any further order the court may make in a proceeding by the chief executive under division 2.

(3) Subsection (2) does not limit the court’s powers under the *Penalties and Sentences Act 1992* or any other Act.

Division 2—Action to deal with unlawful occupation

Application of division

405. This division applies to unallocated State land, trust land and roads.

Notice to person to leave land, remove structures etc.

406.(1) If the chief executive is satisfied a person is unlawfully occupying land or has unlawfully done a trespass related act on land, the chief executive may give the person a written notice (a “**trespass notice**”).

(2) The trespass notice may require the person—

- (a) to leave the land; or
- (b) to remove from the land, improvements, goods (including stock) or anything else; or
- (c) not to remove from the land, improvements, goods (including stock) or anything else; or
- (d) to remove anything enclosing the land; or
- (e) to do anything necessary to restore the land to its state before the person occupied the land or did anything to the land.

(3) The trespass notice must state—

- (a) a time (the “**required time**”) to comply with the notice; and
- (b) that failure to comply with the notice—
 - (i) is an offence; and
 - (ii) may result in proceedings in the Magistrates Court being started against the person.

(4) The required time must be at least 28 days after the day the trespass notice is given to the person.

Person must comply with notice

407. A person who is given a trespass notice must comply with the notice, unless the person starts a proceeding under this division or has a reasonable excuse.

Maximum penalty—400 penalty units.

Improvements etc. forfeited

408. If a person to whom a trespass notice is given does not, either comply with the notice or start a proceeding under this division, then, at the end of the required time, the improvements, goods (including stock) or anything else belonging to the person that is on the land, the subject of the notice, is forfeited to the State.

Person may start proceeding in Magistrates Court

409.(1) A person who receives a trespass notice may start a proceeding in the Magistrates Court nearest to the land the subject of the notice.

(2) The proceeding must be started by the person within the required time.

(3) The person starts the proceeding by—

- (a) filing a written notice (a “**proceeding notice**”) with the registrar of the Magistrates Court stating the orders sought in relation to the trespass notice; and
- (b) filing a copy of the trespass notice; and
- (c) giving to the chief executive a copy of the proceeding notice.

(4) The proceeding notice must state the grounds on which the orders of the court are sought.

Chief executive may start proceeding

410.(1) If the chief executive is satisfied a person is unlawfully occupying land, or has unlawfully done a trespass related act on land, the chief executive may start a proceeding in the Magistrates Court.

(2) The chief executive may start a proceeding whether or not a trespass notice has been given to a person.

(3) The proceeding must be started in the Magistrates Court nearest to the land the subject of the proceeding.

(4) The chief executive starts the proceeding by—

- (a) filing a written notice (a “**proceeding notice**”) with the registrar of the Magistrates Court stating the orders sought by the chief executive; and
- (b) giving a copy of the proceeding notice to the person mentioned in subsection (1).

(5) The proceeding notice must state the grounds on which the orders of the court are sought.

(6) However, if a trespass notice has been given to a person, a proceeding may be started by the chief executive only if—

- (a) the required time has expired and the person has not started a proceeding under this division about the trespass notice; or
- (b) the person has started, but has discontinued or not continued a proceeding under this division about the trespass notice.

Defence may be filed

411.(1) A person who receives a proceeding notice may defend the proceeding by filing a written notice (a “**defence notice**”) with the registrar of the Magistrates Court within 14 days of receiving the proceeding notice.

(2) The defence notice must state—

- (a) the grounds on which the proceeding is defended; and
- (b) the orders sought by the chief executive or the person.

State may carry out work

412.(1) If a person does not comply with a trespass order, within a reasonable time, the State may carry out work stated in the order.

(2) If the State carries out work stated in a trespass order, the cost of the work is a debt owing by the person to the State.

Powers of officers and employees of the department

413. Officers and employees of the department may exercise the powers and force reasonable and necessary to enforce a trespass order.

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

Application of division

414. This division applies to a lease, licence, permit and trust land.

Lessee, licensee, permittee or trustee may start proceeding

415.(1) A trustee of trust land and a lessee, licensee or permittee may

start a proceeding in the Magistrates Court if the trustee, lessee, licensee or permittee believes, on reasonable grounds, another person is unlawfully occupying the trust land, lease, licence or permit or has unlawfully done a trespass related act on the trust land, lease, licence or permit.

(2) The proceeding must be started in the Magistrates Court nearest to the trust land, lease, licence or permit.

(3) A trustee, lessee, licensee or permittee may start a proceeding by—

- (a) filing a written notice (a “**proceeding notice**”) with the registrar of the Magistrates Court stating the orders sought by the trustee, lessee, licensee or permittee; and
- (b) giving a copy of the proceeding notice to the other person mentioned in subsection (1) and the chief executive.

(4) The proceeding notice must state the grounds on which the orders of the court are sought.

Defence may be filed

416.(1) A person who receives a proceeding notice may defend the proceeding by filing a written notice (a “**defence notice**”) with the registrar of the Magistrates Court within 14 days of receiving the proceeding notice.

(2) The defence notice must state—

- (a) the grounds on which the proceeding is defended; and
- (b) the orders sought by the person.

Division 4—Court matters

Hearing procedures

417. In a proceeding in a Magistrates Court under this part, the court—

- (a) is not bound by the rules of evidence; and
- (b) must observe natural justice; and
- (c) may hear the proceeding in court or chambers.

Discretion of Magistrates Court about orders

418.(1) In a proceeding under this part, the Magistrates Court may make any order (a “**trespass order**”) it considers appropriate.

(2) Without limiting subsection (1), the court may order that—

- (a) a person leave the land and not return; or
- (b) a person remove from the land improvements, goods (including stock) or anything else; or
- (c) a person not remove from the land improvements, goods (including stock) or anything else; or
- (d) a person remove anything enclosing the land; or
- (e) improvements, goods (including stock) or anything else be forfeited to the State or someone else; or
- (f) work be performed on the land by a person to rectify damage to the land by the person; or
- (g) the cost of the work to be performed on the land be a debt owing by the person to the State or someone else.

Order of the Magistrates Court must be complied with

419. A person must comply with a trespass order.

Maximum penalty—400 penalty units.

Appeal to District Court on questions of law only

420. A party dissatisfied with a trespass order may appeal to the District Court, but only on a question of law.

PART 3—REVIEW OF DECISIONS AND APPEALS

Division 1—Right of appeal

Notice of right of appeal to be given

421.(1) A person who has a right to appeal against a decision under this Act must be given written notice of the person's right to appeal against the decision.

(2) The notice must be given when notice of the decision and the reasons for the decision are given to the person.

Division 2—Internal review of decisions

Appeal process starts with internal review

422. Every appeal against a decision (an “**original decision**”) under this Act must be, in the first instance, by way of an application for internal review.

Who may apply for review etc.

423. A person who has a right to appeal against a decision mentioned in schedule 2 may apply to the Minister for a review of the decision.

Applying for review

424.(1) An application by a person for review of a decision must be made within 28 days after notice of the decision was given to the person.

(2) The Minister may extend the period for making an application for review.

(3) An application for review must be written and state in detail the grounds on which the applicant seeks review of the decision.

Stay of operation of decision etc.

425.(1) If an application is made under this part for review of a decision, the applicant may immediately apply for a stay of the decision to the Court.

(2) The Court may stay the decision to secure the effectiveness of the review and any later appeal to the Court.

(3) A stay—

- (a) may be given on conditions; and
- (b) operates for the period stated by the Court; and
- (c) may be revoked or amended by the Court.

(4) The period of a stay under this section must not extend past the time when the Minister reviews the decision and any later period the Court allows the applicant to enable the applicant to appeal against the decision.

(5) The making of an application under this part for review of a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

Decision on reconsideration

426.(1) After reviewing the original decision, the Minister must make a further decision (the “**review decision**”) to confirm the original decision, amend the original decision or substitute a new decision.

(2) The chief executive must immediately give the applicant written notice of the decision.

(3) If the review decision is not the decision sought by the applicant, the notice must state—

- (a) the reasons for the decision; and
- (b) that the applicant may appeal against the decision to the Court within 28 days.

Division 3—Appeals

Who may appeal

427. A person who has applied for the review of a decision under division 2 and is dissatisfied with the review decision, may appeal to the Court against the decision.

Procedure for an appeal to the Court

428.(1) An appeal to the Court is started by filing written notice of appeal with the registrar of the Court.

(2) A copy of the notice must be served on the chief executive.

(3) The notice of appeal must be filed within 28 days after the day the applicant receives notice of the review decision or the decision is taken to have been made.

(4) However, a regulation may provide a different period for particular decisions.

(5) The Court may extend the period for filing the notice of appeal by a further 28 days.

(6) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

Powers of Court on appeal

429.(1) In deciding an appeal, the Court—

- (a) has the same powers as the decision maker; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in court or in chambers.

(2) An appeal is by way of rehearing.

(3) The Court may—

- (a) confirm the review decision; or

- (b) set aside the review decision and substitute another decision; or
- (c) set aside the review decision and return the issue to the Minister with directions the Court considers appropriate.

Effect of decision of Court on appeal

430. If the Court substitutes another decision, the substituted decision is, for the relevant provision of this Act, taken to be the decision maker's decision.

Jurisdiction of the Court

431. The Court has jurisdiction to hear and decide—

- (a) matters referred to the Court by the Minister; and
- (b) appeals to the Court under this or another Act; and
- (c) matters for which jurisdiction is conferred on the Court by this or another Act.

PART 4—MISCELLANEOUS

Pasturage rights for travelling stock

432.(1) Stock being driven on foot along a stock route through a term lease for pastoral purposes or occupation licence, from which the stock route is not fenced out, must not be depastured on land further than 800 m from the centre line of the stock route.

(2) However, if there is a fence or stock proof barrier on 1 side of the road within 800 m of the centre line of a stock route, stock must not be depastured on land on the other side of the stock route further than 1.6 km from the fence.

(3) Despite subsections (1) and (2), stock must not be depastured—

- (a) within an enclosed garden or paddock under cultivation; or

- (b) within 1.6 km of a principal homestead or head station; or
- (c) on land lawfully separated from the stock route by a fence or stock proof barrier.

(4) A person in charge of stock being driven on foot along a stock route must not contravene this section.

Maximum penalty for subsection (4)—100 penalty units.

Rate of travel of stock

433.(1) A person in charge of stock being driven on foot along a stock route or across a reserve must ensure the stock travel towards their destination at a rate averaging at least 10 km each 24 hours.

Maximum penalty—100 penalty units.

(2) The rate is calculated between inspections authorised by the chief executive.

(3) Inspections must be at least 24 hours apart.

(4) In calculating the rate of travel of stock the following periods are not to be included—

- (a) a period when stock are prevented from travelling by rain, flood or other unavoidable cause;
- (b) a period when stock are lawfully detained or depastured elsewhere.

(5) However, stock lawfully depastured on a lease or occupation licence under section 432 are taken to be lawfully depastured elsewhere for subsection (4)(b) only if the stock are depastured with the permission of the lessee or licensee of the relevant land.

(6) A proceeding for an offence under subsection (1) must be started within 14 days from the day the commission of the offence ended.

Meaning of “unimproved value”

434.(1) In this Act, the “**unimproved value**” of land is the amount an estate in fee simple in the land in an unimproved state would be worth if there were an exchange between a willing buyer and a willing seller in an

arms-length transaction after proper marketing, if the parties had acted knowledgeably, prudently and without compulsion.

(2) The unimproved value must be decided without regard to the commercial value of the timber.

(3) To remove any doubt, it is declared that the *Valuation of Land Act 1944* does not apply to the meaning of unimproved value in this section.

(4) In this section—

“**unimproved state**” includes, if the value of improvements and development work to the land has not been paid to the State, the improvements and development work finished before the lease started or the deed of grant was issued.

“**paid to the State**” does not include rent paid to the State.

Minister may refer matters to the Court

435.(1) The Minister may refer a matter about the administration of this Act to the Court for inquiry and report.

(2) The Minister may refer a dispute about the boundary of a term lease for pastoral purposes to the Court for decision, even if the Minister is not a party to the dispute.

Auctioneer’s licence not necessary

436. A person authorised by the chief executive may auction land for this or another Act administered by the Minister without being the holder of an auctioneer’s licence.

Changing county or parish boundaries

437.(1) The Governor in Council may change a county or parish boundary if the Governor in Council considers it appropriate because of something done under this Act.

(2) Any change to a boundary must be notified in the gazette.

What are debts owing to the State

438. All rents, instalments, penalties, interest and fees that have become payable under this Act are debts owing to the State.

Words and expressions used in documents under Act

439.(1) Words and expressions used in this Act and in documents made or executed under this Act have the same respective meanings in the documents as they have in this Act.

(2) Subsection (1) may be wholly or partly displaced if a contrary intention appears in the document.

Obstruction of officers etc.

440. A person must not obstruct an authorised person, an officer of the department, or a person helping an authorised person or an officer of the department, in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—400 penalty units.

Protection from liability

441.(1) An officer or employee of the department does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an officer or employee, the liability attaches instead to the State.

Lapse of offer

442.(1) If an offer has been made under this Act, the offer is valid for the length of time stated in the offer or, if no time is stated, for 3 months.

(2) A offer must be accepted in writing.

(3) If an offer is not accepted or rejected in writing within the stated time, the offer lapses.

(4) The Minister, before or after the offer lapses, may extend the time stated in the offer.

No deed of grant until fees paid

443. The appropriate fees prescribed under the *Land Title Act 1994* for the issue of a deed of grant must be paid before a deed of grant is issued.

Chief executive may approve forms

444. The chief executive may approve forms for use under this Act.

Offences are summary offences

445. An offence against this Act is a summary offence.

Limitation on time for starting offence proceedings

446. A proceeding for an offence against this Act must start within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

Evidentiary provisions

447.(1) This section applies to a proceeding under or in relation to this Act.

(2) The appointment or power of the chief executive or authorised person must be presumed unless a party, by reasonable notice, requires proof of—

- (a) the appointment; or
- (b) the power to do anything under this Act.

(3) A signature purporting to be the signature of the Minister, the chief executive or an authorised person is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by the Minister stating any of the

following matters is evidence of the matter—

- (a) that land is or was, at a time or day mentioned in the complaint, a deed of grant in trust or non-freehold land;
- (b) that, for a deed of grant in trust or non-freehold land, a person, at a time or day mentioned in the certificate—
 - (i) occupied or lived on it; or
 - (ii) enclosed it; or
 - (iii) built, placed or maintained any structure, improvement, work or thing on it; or
 - (iv) cleared, dug up or cultivated it; or
 - (v) depastured stock or caused stock to be depastured on it.

(5) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

Regulations

448.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about the following matters—

- (a) the lodgment and registration of forms and other documents;
- (b) fees payable under this Act;
- (c) how fees are to be paid and may be recovered, including the provision of credit facilities to persons approved by the chief executive;
- (d) additional information to be supplied with a form or other document;
- (e) transitional arrangements if a new form is approved;
- (f) the execution of documents;
- (g) anything else about a form or document;
- (h) the payment and collection of rent and instalments under this Act;
- (i) exempting a document or transaction relating to something done

under this Act from stamp duty under the *Stamp Act 1894*;

- (j) the closure of roads;
- (k) the building and maintenance of roads under chapter 3, part 2, division 6.

(3) A regulation may create offences and prescribe penalties of not more than 100 penalty units for the offences.

CHAPTER 8—CONTINUED RIGHTS AND TENURES

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

Division 1—Reserves

Existing reserves and purposes continue

449.(1) All existing reserves are taken to be reserves under this Act for the purpose for which they were reserved.

(2) Subsection (1) applies even if the purpose for which the land was reserved is not a community purpose under this Act.

Trustees continue

450. An existing trustee of a reserve is taken to be a trustee of the reserve under this Act.

Division 2—Deeds of grant in trust**Existing deeds of grant in trust and purposes continue**

451.(1) All existing deeds of grant in trust are taken to be deeds of grant in trust under this Act for the purpose for which they were granted.

(2) Subsection (1) applies even if the purpose for which the land was granted is not a community purpose under this Act.

Trustees continue

452. An existing trustee of a deed of grant in trust is taken to be a trustee of the deed of grant in trust under this Act.

Land granted for Aboriginal or Islander inhabitants

452A.(1) Any person who, at the time when land was granted in trust under the repealed Act for the benefit of Aboriginal or Islander inhabitants, occupies any building or structure as his residence, as an authorised resident on the land, shall, notwithstanding the grant in trust, be entitled to continue his occupation of the building or structure upon the same terms and conditions as he occupied it at the time of the grant until—

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

(2) No permit, claim, licence or lease under the *Mineral Resources Act 1989* is to be granted or exist in respect of land granted in trust under the repealed Act for the benefit of Aboriginal or Islander inhabitants unless the approval of the Governor in Council thereto has first been obtained.

(3) In considering whether or not to approve a permit, claim, licence or lease in respect of land referred to in subsection (1) the Governor in Council shall have regard to the views of and any recommendation made by the trustee of the land in question.

Division 3—Existing trustee leases**Existing trustee leases and licences continue**

453.(1) All existing trustee leases are taken to be trustee leases under this Act, even if the terms of the lease would not be approved under this Act.

(2) All existing licences issued under section 350 of the repealed Act are taken to be trustee permits under this Act, even if the terms of the licence would not be approved under this Act.

Division 4—Roads**Existing roads continue**

454. All roads dedicated and set apart under the repealed Act are taken to be dedicated roads under this Act.

Existing road licences continue

455. All existing road licences are taken to be road licences under this Act.

PART 2—FREEHOLDING LEASES***Division 1—Pre-Wolfe freeholding leases*****Existing leases continue**

456. A pre-Wolfe freeholding lease is taken to be a lease under this Act.

Terms of pre-Wolfe freeholding leases

457.(1) The following provisions also apply to pre-Wolfe freeholding leases—

- (a) the length of the term of the lease and purchase price (including commercial timber) for which a pre-Wolfe freeholding lease was issued continue to apply;
- (b) lease payments are instalments that pay out the purchase price of the land;
- (c) instalments do not attract interest;
- (d) if the remaining purchase price is paid in cash during a lease, a discount, prescribed under the regulations, applies;
- (e) regulations may prescribe minimum instalments for all but the final payment;
- (f) the length of the term of a lease may increase or decrease because of changes to minimum instalments or hardship concessions or deferrals;
- (g) the land must be surveyed, at the lessee's expense, for inclusion in the freehold land register;
- (h) the Minister may require the preparation of a compiled plan before the deed of grant is issued;
- (i) the final payment must include the appropriate fees prescribed under the *Land Title Act 1994* for the issue of a deed of grant.

(2) To remove any doubt, it is declared that a hardship deferral under chapter 5, part 1, division 3 does not reduce the purchase price of a pre-Wolfe freeholding lease.

Deed of grant to issue

458.(1) A deed of grant must be issued for land contained in a pre-Wolfe freeholding lease when—

- (a) the conditions of the lease have been fulfilled; and
- (b) the purchase price and all relevant fees have been paid; and
- (c) if needed—a survey plan has been lodged in the land registry.

(2) The deed of grant is issued subject to all the encumbrances to which the lease was subject and in the same priorities.

Residential hardship concessions

459.(1) The Minister may reduce an instalment to less than the instalment normally applying to a pre-Wolfe freeholding lease, if—

- (a) the lease is used exclusively for the lessee's own residential use; and
- (b) the lessee is suffering hardship and meets the criteria prescribed under the regulations.

(2) If the Minister considers the lessee's financial circumstances have changed to the extent that a concession should be amended or cancelled, the Minister may, for future instalments, amend or cancel the amount of the concession.

(3) If a lease is transferred, a concession applying to the lease does not apply from the day of the transfer.

(4) To remove any doubt, it is declared that a hardship concession does not reduce the purchase price of a pre-Wolfe freeholding lease.

Division 2—Post-Wolfe freeholding leases**Existing leases continue**

460. A post-Wolfe freeholding lease is taken to be a lease under this Act.

Terms of existing post-Wolfe freeholding leases continue

461. The length of the term of the lease and purchase price (including commercial timber) for which an existing post-Wolfe freeholding lease was issued continue to apply.

Terms of post-Wolfe freeholding leases

462.(1) The following provisions apply to post-Wolfe freeholding leases⁹⁰—

⁹⁰ These terms apply to both *existing* post-Wolfe freeholding leases and post-Wolfe freeholding lease issued under this Act.

- (a) lease payments are instalments that pay out the purchase price of the land;
- (b) instalments attract a rate of interest prescribed under the regulations;
- (c) if the remaining purchase price is paid in cash during a lease, no discount applies;
- (d) regulations may prescribe minimum instalments for all but the final payment;
- (e) the length of the term of a lease may increase or decrease because of changes to minimum instalments or hardship deferral;
- (f) if the lease is at an establishment stage, the Minister may allow the lessee to capitalise the first instalment over the duration of the lease;
- (g) the land must be surveyed, at the lessee's expense, for inclusion in the freehold land register;
- (h) the Minister may require the preparation of a compiled plan before the deed of grant is issued;
- (i) the final payment must include the appropriate fees prescribed under the *Land Title Act 1994* for the issue of a deed of grant.

(2) To remove any doubt, it is declared that a hardship deferral under chapter 5, part 1, division 3 does not reduce the purchase price.

Deed of grant to issue

463.(1) A deed of grant must be issued for land contained in a post-Wolfe freeholding lease when—

- (a) the conditions of the lease have been fulfilled; and
- (b) the purchase price and all relevant fees have been paid; and
- (c) if needed—a survey plan has been lodged in the land registry.

(2) The deed of grant is issued subject to all the encumbrances to which the lease was subject and in the same priorities.

Division 3—Grazing homestead freeholding leases**Existing leases continue**

464. A grazing homestead freeholding lease is taken to be a lease under this Act.

Terms of existing grazing homestead freeholding leases continue

465. The length of the term of the lease and purchase price (including commercial timber) for which an existing grazing homestead freeholding lease was issued continue to apply.

Terms of grazing homestead freeholding leases

466.(1) The following provisions apply to grazing homestead freeholding leases⁹¹—

- (a) lease payments are instalments that pay out the purchase price of the land;
- (b) instalments attract a rate of interest prescribed under the regulations;
- (c) if the remaining purchase price is paid in cash at any stage during a lease, and the lease is used for grazing or agricultural purposes, a discount, prescribed under the regulations, applies;
- (d) regulations may prescribe a minimum instalment for all but the final payment;
- (e) the length of the term of a lease may increase or decrease because of changes to minimum instalments or hardship deferral;
- (f) the land must be surveyed, at the lessee's expense, for inclusion in the freehold land register;
- (g) the Minister may require the preparation of a compiled plan before the deed of grant is issued;

⁹¹ These terms apply to both *existing* grazing homestead freeholding leases and grazing homestead freeholding leases issued under this Act.

(h) the final payment must include the appropriate fees prescribed under the *Land Title Act 1994* for the issue of a deed of grant.

(2) To remove any doubt, it is declared that a hardship deferral under chapter 5, part 1, division 5 does not reduce the purchase price.

Deed of grant to issue

467.(1) A deed of grant must be issued for land contained in a grazing homestead freeholding lease when—

- (a) the conditions of the lease have been fulfilled; and
- (b) the purchase price and all relevant fees have been paid; and
- (c) if needed—a survey plan has been lodged in the land registry.

(2) The deed of grant is issued subject to all the encumbrances to which the lease was subject and in the same priorities.

PART 3—PERPETUAL LEASES

Division 1—Grazing homestead perpetual leases

Existing leases continue

468. A grazing homestead perpetual lease is taken to be a perpetual lease for grazing or agricultural purposes issued under this Act.

Right to a grazing homestead freeholding lease

469.(1) The lessee of a grazing homestead perpetual lease who has an application for conversion to freehold approved under section 168 may elect in writing to pay the purchase price by a single payment or by instalments.⁹²

⁹² Under section 168, the Minister must give written notice of the Minister's decision on a conversion application.

(2) If a lessee elects to pay the purchase price by a single payment, the lessee is entitled to the discount prescribed under the regulations.

(3) If a lessee elects to pay the purchase price by instalments—

- (a) the Governor in Council may issue a grazing homestead freeholding lease for a maximum term of 30 years; and
- (b) the lessee may pay the market value of the commercial timber by instalments on terms stated by the Minister; and
- (c) the conditions, purpose and encumbrances of the existing grazing homestead perpetual lease transfer to the grazing homestead freeholding lease.

Division 2—Non-competitive leases

Existing leases continue

470. A non-competitive lease is taken to be a perpetual lease issued under this Act for the purpose for which it was issued.

Right to a post-Wolfe freeholding lease

471.(1) The lessee of a non-competitive lease who has an application for conversion to freehold approved under section 168 may elect in writing to pay the purchase price by instalments.⁹³

(2) If a lessee elects to pay the purchase price by instalments—

- (a) the Governor in Council may issue a post-Wolfe freeholding lease for a maximum term of 30 years; and
- (b) the lessee may pay the market value of the commercial timber by instalments on terms stated by the Minister; and
- (c) the conditions, purpose and encumbrances of the non-competitive lease transfer to the post-Wolfe freeholding lease.

⁹³ Under section 168, the Minister must give written notice of the Minister's decision on a conversion application.

PART 4—TERM LEASES

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

Existing leases continue

472.(1) A pastoral lease is taken to be a term lease for pastoral purposes issued under this Act.

(2) In this division—

“**pastoral lease**” means a pastoral holding, preferential pastoral holding, pastoral development holding or stud holding issued under the repealed Act, part 3, division 1 or 2.

Covenant for a new term lease

473. An existing covenant in a pastoral lease, under the repealed Act, part 6, division 2, for a new lease at the expiry of the existing lease is taken to be a covenant to offer a new term lease for pastoral purposes, of a maximum of a living area, on the conditions that could be imposed on a term lease under this Act.

Uses of stud holdings

474. A stud holding is not limited to stud purposes but must be used for grazing or agricultural purposes.

Restrictions on ownership of preferential pastoral holdings

475.(1) To remove any doubt, it is declared that restrictions under the repealed Act about the ownership of preferential pastoral holdings do not apply under this Act.

(2) However, any restrictions under this Act about the ownership of term leases for pastoral purposes apply to a preferential pastoral holding.

Division 2—Special and development leases**Existing leases continue**

476.(1) A development lease or a special lease is taken to be a term lease issued under this Act for the purpose (if any) for which it was issued.

(2) In this division—

“development lease” means an existing development lease issued under the repealed Act, part 9, division 1.

“special lease” means an existing special lease issued under the repealed Act, part 8, division 1.

Change of purpose for special lease

477. Despite section 154(3), the lessee of a special lease may apply to change the purpose of the lease.⁹⁴

Right to a post-Wolfe freeholding lease

478.(1) The lessee of a special lease who has an application for conversion to freehold approved under section 168 may elect in writing to pay the purchase price by instalments.⁹⁵

(2) If a lessee elects to pay the purchase price by instalments—

- (a)** the Governor in Council may issue a post-Wolfe freeholding lease for a maximum term of 30 years; and
- (b)** the lessee may pay the market value of the commercial timber by instalments on terms stated by the Minister; and
- (c)** the conditions, purpose and encumbrances of the special lease transfer to the post-Wolfe freeholding lease.

⁹⁴ Section 154(3) requires the purpose of a lease to be complementary to, and not interfere with, the purpose for which a lease was originally issued.

⁹⁵ Under section 168, the Minister must give written notice of the Minister's decision on a conversion application.

Development leases not to be sublet

479. The lessee of a development lease must not sublease all or part of the lease.

PART 5—LICENCES AND PERMITS*Division 1—Occupation licences and permits***Occupation licences continue**

480. An occupation licence is taken to be a licence issued under this Act.

Cancellation or surrender of occupation licence

481.(1) The Minister may cancel an occupation licence by giving the licensee 3 months notice of the intention to cancel.

(2) No compensation is payable for the cancellation of an occupation licence.

(3) A licensee may surrender an occupation licence with the Minister's written approval.

(4) If an occupation licence is surrendered or cancelled, the ownership of any improvements become the property of the State and no compensation is payable.

(5) However, the Minister may allow the licensee to remove any improvements within a time stated in the cancellation notice.

Approval needed for improvement and development work

482. The licensee of an occupation licence may carry out improvements or development work on the licence only with the Minister's written approval.

Existing permits continue

483. An existing permit issued under the repealed Act, part 13, division 1 is taken to be a permit issued under this Act.

Division 2—Fencing use licences**Existing fencing use licences continue**

484.(1) An existing licence (a “**fence licence**”) issued under the repealed Act, section 113 continues to apply.

(2) A fence licence does not give the licensee a right to use the land comprising the road enclosed.

Minister may cancel licence for breach of condition

485. The Minister, by written notice to the holder of a fence licence, may cancel the licence if the licensee breaches a condition of the licence.

PART 6—CONTINUED TENURES GENERALLY**Existing conditions continue**

486. To remove any doubt, it is declared that all existing conditions contained in a lease, licence or permit document, schedule to a lease, licence or permit document or a sale notification for a lease, licence or permit issued under an Act repealed by this Act continue to apply and the lessee, licensee and permittee must comply with the conditions.

Existing concessions continue

487.(1) A lessee who was entitled to a concessional rent or instalment under the repealed Act is entitled to the same benefits under this Act.

(2) Subsection (1) has effect subject to—

- section 187(2) (Residential hardship concessions)
- section 194 (Change of circumstances).

Fencing conditions and exemptions

488.(1) The conditions mentioned in subsection (2) continue to apply to—

- (a) pre-Wolfe freeholding leases applied for before 5 February 1990 and issued under the repealed Act, part 4, division 5; and
- (b) grazing homestead freeholding leases; and
- (c) grazing homestead perpetual leases.

(2) The lessee must—

- (a) within 3 years after the lease starts, enclose the land with a good and substantial fence of the standard stated in the opening notification or imposed by the Minister or have an existing and substantial fence in good repair; and
- (b) keep the land fenced in the way mentioned in paragraph (a).

(3) If the lessee is the owner of adjoining land, the lessee need not enclose the lease if the lease and the adjoining land are wholly enclosed with a good and substantial fence.

(4) The Minister may exempt a lessee who applies for exemption from fencing conditions of a lease.

(5) The exemption may be for a stated time and may be conditional.

(6) An exemption granted under subsection (5) may be withdrawn after giving reasonable notice of the intention to withdraw the exemption.

Amalgamating or subdividing existing leases

489.(1) If 2 leases of the same type issued under the repealed Act are amalgamated, the new lease is taken to be an existing lease of the same type unless otherwise agreed by the lessee and the Minister.

(2) If a lease issued under the repealed Act is subdivided, the new lease is taken to be an existing lease of the same type unless otherwise agreed by the

lessee and the Minister.

(3) The following leases cannot be subdivided—

- (a) an auction perpetual lease that is a perpetual country, suburban or town lease issued under the repealed Act, part 7, division 2;
- (b) a perpetual lease selection issued under the repealed Act, part 4, division 2;
- (c) an agricultural farm issued before 31 December 1991 under the repealed Act, part 4, division 1;
- (d) a freeholding lease that has less than the amount prescribed under the regulations to be paid before the deed of grant may issue.

PART 7—TENURES UNDER OTHER ACTS

Division 1—Sale to Local Authorities Land Act 1882

Existing deeds of grant continue

490. The conditions and reservations on which a deed of grant was issued under the *Sale to Local Authorities Land Act 1882* (a “**conditional deed**”) continue to apply to the deed of grant.

Conditions and reservations still applying

491. An existing conditional deed continues to be subject to the following provisions—

- (a) the land must continue to be used for the public purpose for which it was granted;
- (b) the land must not be leased, mortgaged or sold without the Governor in Council’s approval;
- (c) the term of a lease must not be longer than 14 years with a covenant for renewal for up to a further 7 years;

- (d) the lease must be consistent with the purpose for which it was granted.

Application for new tenure under this Act

492.(1) If land contained in a conditional deed is still needed for the public purpose, the local government may apply to exchange the conditional deed for a reserve or deed of grant in trust with the local government as trustee or a lease issued under this Act.

(2) If land contained in a conditional deed is exchanged for a reserve or deed of grant in trust, the public purpose for which the conditional deed was issued may be changed to another public purpose.

(3) An exchange of tenure under this section is subject to all the encumbrances to which the existing conditional deed was subject and in the same priorities, unless the parties involved agree otherwise.

Automatic issue of new tenure under this Act

493.(1) A conditional deed becomes a deed of grant in trust under this Act for the same public purpose for which it was granted, with the local government as trustee, if within 5 years of the commencement—

- (a) the local government does not apply to exchange the conditional deed; or
- (b) an application by the local government has been refused and no other application has been made.

(2) If the land contained in a conditional deed was subject to a lease, the lease becomes a trustee lease on the terms originally granted.

(3) A deed of grant in trust mentioned in subsection (1) is subject to all the encumbrances to which the conditional deed was subject and in the same priorities.

Division 2—Miners homesteads**Objective**

494. The object of this division is to transfer miners homesteads to tenures under the *Land Act 1962*.

Definitions

495. In this division—

“current miners homestead application” is an application to freehold a miners homestead that—

- (a) was lodged before 1 January 1995; and
- (b) has not been rejected; and
- (c) for which a notice of approval to freehold has not lapsed or been accepted.

“miners homestead” means any of the following held under the *Miners’ Homestead Leases Act 1913*—

- (a) miner’s homestead lease;
- (b) miner’s homestead perpetual lease;
- (c) business area;
- (d) market garden area;
- (e) residence area;

and, to remove any doubt, it is declared that it includes a special perpetual mining purposes lease issued under the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*, the *Alcan Queensland Pty. Limited Agreement Act 1965* or the *Aurukun Associates Agreement Act 1975*.

“offer” means a notice of approval to freehold under the repealed miners homestead Acts.

“repealed miners homestead Acts” means the repealed *Miners’ Homestead Leases Act 1913* and the repealed *Mining Titles Freeholding Act 1980*.

Current applications

496.(1) All current miners homestead applications and all dealings with a miners homestead, the subject of a current miners homestead application, must be dealt with as if the repealed miners homestead Acts had not been repealed.

(2) If a miners homestead is transferred while it is the subject of a current miners homestead application, the application continues and is taken to have been made by the transferee.

(3) A current miners homestead application ceases to be a current miners homestead application on the day it is rejected, or on the day the offer lapses.

Refusal or lapsing of current miners homestead application

497.(1) If a current miners homestead application is refused on or after 1 January 1995, it is taken that no current miners homestead application was made and section 499 applies from the day of the refusal.

(2) If a current miners homestead application results in an offer being made, or if an offer has already been made, and the offer lapses under section 498, it is taken that no current miners homestead application was made and section 499 applies from the day the offer lapses.

Time in which offer must be accepted

498.(1) An offer made before 1 January 1995 lapses on 31 March 1995.

(2) An offer made on or after 1 January 1995 lapses 90 days after it is made.

(3) The Minister may extend the time during which an offer may be accepted.

Automatic issue of new tenure

499.(1) If there is no current miners homestead application for a miners homestead, the miners homestead becomes a perpetual town lease (non-competitive lease) under the *Land Act 1962*, section 210.

(2) A lease under subsection (1) is also subject to the following provisions—

- (a) all the conditions and encumbrances of the miners homestead that existed on 31 December 1994 continue to apply to the lease with the same priority;
- (b) the first rental period for the lease is from 1 January 1995 to 30 June 1995 and annual rental periods apply after that;
- (c) subsection (1) applies despite the *Land Act 1962*, section 210(1);
- (d) the lease is not subject to the conditions of the *Land Act 1962*, section 210(2);
- (e) if the miners homestead was a miner's homestead lease on 31 December 1994—the lease is subject to a special condition that, if freeholding of the lease is ever approved, the purchase price is an amount prescribed under the regulations;
- (f) trees and quarry materials continue to belong to the lessee;
- (g) arrears of rent on a miners homestead become arrears of rent on the lease.

Application of pre-paid rent

500.(1) If a current miners homestead application is approved, rent paid for the period after the application was lodged, is credited to the cost of freeholding, or, if the rent paid is more than the cost, the overpaid amount must be refunded to the lessee together with interest at the rate prescribed under the regulations.

(2) The interest is payable from the day the excess rent was received to the day the amount of the excess is refunded.

Replacement miners homestead documents

501.(1) This section applies to miners homesteads that become leases under section 499(1).

(2) As soon as practicable after the commencement, the chief executive must issue a new lease document to replace each existing miners homestead document.

(3) The new lease is subject to all the encumbrances to which the existing miners homestead was subject and in the same priorities.

(4) When the new lease is issued, the replaced document is no longer valid.

(5) The new lease must be sent to the person who is entitled to possession of the document being replaced.

(6) The replaced document must be returned to the chief executive for cancellation when the new lease is issued.

(7) A lessee may ask for the return of the replaced document suitably marked as cancelled.

Replacement mining titles freeholding leases

502.(1) As soon as practicable after the commencement, the chief executive must issue a new lease document to replace each existing mining titles freeholding lease document.

(2) The new lease is subject to all the encumbrances to which the existing lease was subject and in the same priorities.

(3) When the new lease is issued, the old lease is no longer valid.

(4) The new lease must be sent to the person who is entitled to the possession of the old lease.

(5) The old lease must be returned to the chief executive for cancellation when the new lease is issued.

(6) A lessee may ask for the return of the old lease suitably marked as cancelled.

(7) This section also applies if there is an entitlement to a mining titles freeholding lease but the lease has not been issued.

Approvals continue

503. An approval given under the repealed miners homestead Acts to deal with an existing miners homestead is taken to be an approval for the same purpose under the *Land Act 1962*.

Division 2A—Further opportunity to convert certain perpetual town leases, that were previously miners homesteads, to freehold

Objective

503A. The object of this division is to give an opportunity to lessees of certain perpetual town leases (non-competitive leases), to convert their tenures to freehold.

Definitions

503B. In this division—

“miners homestead” has the meaning given in division 2 but does not include a special perpetual mining purposes lease that commenced on or after 1 January 1995.

“repealed miners homestead Acts” has the meaning given in division 2.

“special perpetual mining purposes lease” means a special perpetual mining purposes lease issued under the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*, the *Alcan Queensland Pty. Limited Agreement Act 1965* or the *Aurukun Associates Agreement Act 1975*.

Who may apply under this division

503C.(1) This section applies to a perpetual town lease (non-competitive lease) that was previously a miners homestead.

(2) The lessee may apply to convert the lease to freehold.

Time within which application must be made

503D. The application must be given to the chief executive before 1 February 1998.

How application is dealt with

503E.(1) The application must be dealt with as if—

- (a) the repealed miners homestead Acts had not been repealed; and
- (b) the application were made under the *Mining Titles Freeholding Act 1980*; and
- (c) the lease were a miners homestead.

(2) However, if a mining titles freeholding lease would have issued under the repealed miners homestead Acts a pre-Wolfe freeholding lease is to be issued instead.

(3) A perpetual town lease (non-competitive lease) that was previously a miners homestead is to be treated as a miners homestead for the purposes only of an application under subsection (1).

Lapse of offer

503F.(1) An offer to convert the lease to freehold is valid for 3 months.

(2) An offer must be accepted in writing.

(3) If an offer is not accepted or rejected in writing within the stated time, the offer lapses.

(4) The Minister, before or after the offer lapses, may extend the time stated in the offer.

Surrender of existing lease

503G. If a lessee accepts an offer to convert to freehold, the lessee must surrender the existing lease before the new tenure is issued.

Existing encumbrances

503H. The new tenure is subject to all encumbrances to which the existing lease was subject and in the same priorities.

Credit for rent paid

503I.(1) If an application to convert to freehold is approved, the following amounts are credited to the cost of freeholding—

- (a) rent paid on the perpetual town lease (non-competitive lease) in

excess of the amount that would have been payable if the lease had remained a miners homestead; and

(b) rent paid for the period after the application was lodged.

(2) If the rent paid is more than the cost of freeholding, the overpaid amount must be refunded to the lessee together with interest at the rate prescribed under a regulation.

(3) The interest is payable from the date the excess rent was received to the day the amount of the excess is refunded.

Division 3—Port and harbour lands

Changing tenures of port lands

504.(1) The Governor in Council, by order in council, may approve that all or part of land owned, vested in, leased or managed by a port authority and surrendered to the State be dedicated or reallocated, without competition, to the port authority in the way stated in the order in council.

(2) The port authority and the State must take all necessary action to fulfil the changes approved in the order in council.

(3) All interests over the land at the time of the surrender continue until the interest ends and are not affected by the change of tenure, even though the interests may not be interests that would be granted or issued under this Act.

(4) Stamp duty and registration fees are not payable for a change of tenure under this section.

(5) An order in council under this section is not subordinate legislation.

Changing tenures of harbour land

505.(1) The Governor in Council, by order in council, may approve that land that became an asset of the State because of the *Transport Infrastructure Act 1994*, section 231(1) be dedicated or allocated, without competition, to a local government or another body in the way stated in the order in council.

(2) Before land can be dedicated or allocated, the local government or other body must agree to the dedication or allocation.

(3) If land is allocated or dedicated to a local government or other body, the local government or body takes the place of the State as a party to an interest in the land held by someone else.

(4) An interest in the land is not affected by the allocation or dedication, even though the interest may not be an interest that would be granted or issued under this Act.

(5) Stamp duty and registration fees are not payable for an allocation or dedication mentioned in this section.

(6) An order in council under this section is not subordinate legislation.

Division 4—Cemetery Act 1865

Existing cemeteries continue

506. To remove any doubt, it is declared that all reserves and deeds of grant in trust for cemetery purposes under the *Cemetery Act 1865* are reserves and deeds of grant in trust for cemetery purposes under this Act.

PART 7A—BRIGALOW AND OTHER LANDS DEVELOPMENT PROVISIONS

Meaning of terms

506A. In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say:—

“**agreement**” means the agreement that was set out in the *Brigalow and Other Lands Development Act 1962*, schedule.

“**Corporation**” means the Brigalow Corporation.

“**Fund**” means the Consolidated Fund.

“**Land Act**” means the *Land Act 1994*.

Corporation

506B.(1) The Corporation of the Land Administration Commission is continued in existence, as a corporation sole, under the name of the Brigalow Corporation.

(2) The Brigalow Corporation—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

(3) The chief executive constitutes the Brigalow Corporation.

(4) A reference to the Corporation of the Land Administration Commission in any Act or in any document is taken to be a reference to the Brigalow Corporation.

(5) Judicial notice must be taken of the imprint of the Brigalow Corporation's seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.

Corporation represents the Crown

506C.(1) The Corporation represents the Crown.

(2) Without limiting subsection (1), the Corporation has all the privileges and immunities of the Crown.

(3) Without limiting subsection (1), the Corporation is an exempt public authority for the purposes of the Corporations Law.

Functions and powers

506D. The Corporation has the functions and powers conferred on it by this part.

Undertaking by successful applicant

506E. Subject to the issue to him of the lease, a successful applicant shall perform in compliance in every respect with the terms thereof, any undertaking given by him to the chief executive under this section, and any

failure by him to do so shall be a breach of a condition of the lease wherefor the lease shall be liable to be forfeited.

Area limitations under this Act

506F. For the purpose of the provisions of this Act relating to the maximum area or maximum aggregated area which may be held by any one person under any tenure or tenures under this Act, a purchase lease shall be deemed to be a grazing homestead freeholding lease.

Transfer

506G.(1) Chapter 6 of this Act applies to the transfer of—

- (a) a purchase lease; or
- (b) an interest in a purchase lease.

(2) The Minister may approve the transfer subject to conditions, including a condition that a specified amount of any amount outstanding be paid before the transfer is registered.

When fee-simple of lease may be acquired

506H.(1) Upon and subject to—

- (a) satisfying the Minister that he has performed all the developmental or improvement conditions, of the lease; and
- (b) in the case of a purchase lease, payment to the Corporation of all moneys payable to it in respect of an advance made by the Corporation pursuant to paragraph (a) of section 23 (1);
- (c) payment of all moneys payable by the lessee to the Crown on any account whatever;

the lessee of a lease (whether a purchase lease or a grazing homestead freeholding lease) shall be entitled to a grant in fee-simple of the land comprised in the lease.

(2) The deed of grant to be issued to the lessee shall be issued subject to the condition prescribed by section 174 and the provisions of that section

shall with and subject to all necessary adaptations and modifications apply accordingly.

Fund

506I.(2) There shall be paid into the Fund—

- (a) every amount paid or advanced to the State by the Commonwealth pursuant to the Agreement;
- (b) the purchasing price of every purchase lease of land within the area (herein called “the First Schedule Area”) described in the First Schedule to the Agreement;
- (c) the purchasing price of all land within the First Schedule Area sold by auction under this part for an estate in fee-simple;
- (d) all repayments of capital and payments of interest made to or recovered by the Corporation in respect of advances under this part made by it from the Fund;
- (f) all moneys realised from the disposal of surplus plant, machinery, equipment, materials or things the cost of the acquisition whereof was defrayed from the Fund;
- (g) any moneys appropriated by Parliament.

(3) There may be paid out of the Fund which is hereby appropriated accordingly—

- (a) all expenditure referred to in or necessary for the purposes of clause three of the Agreement, including the planning and administrative expenses referred to in subclause (2) of that clause;
- (b) all payments to be made (or which may be made) by the State to the Treasurer of the Commonwealth under and in accordance with the Agreement in respect of the repayment of the capital of and interest upon amounts paid or advanced to the State by the Commonwealth pursuant to the Agreement (including interest capitalised pursuant to the Agreement).

Further advances

506J.(1) If a lessee to whom an advance has been made under section 23

is in arrears in the repayment of the advance or payment of interest on the advance the Corporation may, notwithstanding the provisions of that section, make a further advance to the lessee to enable him to pay to the Corporation such amount of those arrears as is agreed upon between the lessee and the Corporation.

The term of such advance shall be for such number of years as is determined by the Corporation.

Interest shall be payable on such advance at such rate as is determined by the Corporation.

Subject to this subsection, an advance made under this section shall be made upon such terms and conditions with respect to the repayment thereof and the payment of interest thereon as are agreed upon between the Corporation and the lessee concerned.

The provisions of section 23(2) shall apply to an advance made under this section.

(2) Where an advance is made under this section and there is in existence a mortgage or other security in respect of the advance made under section 23 to which the firstmentioned advance relates, the default provisions of that mortgage or security shall, in respect of the arrears in respect of which the advance is made under this section, on and from the date the advance is made under this section cease to have force or effect.

Construction of instruments

506K. Where the Corporation has granted an extension and variation pursuant to section 24A or a suspension of liability pursuant to section 24B every agreement, mortgage or other security concerning the advance to which the extension and variation or suspension relates shall be read and construed subject to the terms and conditions of the extension and variation or, as the case may be, suspension and, in the case of a suspension of liability, subject to the provisions of section 24B.

Powers of Corporation

506L. Subject to this part the Corporation—

- (a) is hereby empowered to take and do all such steps and things as

in its opinion are necessary or convenient for carrying out the function of making advances under this part;

- (b) without prejudice to any other power, authority, right or remedy conferred or imposed upon it by this part, may exercise, in respect of any advance under this part, any power, authority, right or remedy agreed between it and the lessee in question.

Restricted application of 4 Eliz. II. No. 16

506M. The provisions of “*The Bills of Sale and Other Instruments Act of 1955*” relating to the registration and renewal of registration of instruments shall not apply to any mortgage or other security executed under this part or affect the validity or operation of such mortgage or security in respect of any chattels comprised therein.

No stamp duty

506N. No mortgage or other security executed to secure an advance under this part or any release of any such mortgage or security or any document or instrument executed for the purpose of this part shall be liable to stamp duty, any enactment to the contrary notwithstanding.

Accounts and annual report

506O. There shall be kept in the department separate and complete accounts of all moneys expended as provided in this part and of all moneys received by the Corporation on account of the repayment or recovery of the capital of advances made under this part and on other accounts respectively, and of all moneys paid or recovered in respect of interest on such advances or other accounts respectively.

Application of Act to purchase leases

506P.(1) The provisions of this Act applying to a grazing homestead freeholding lease apply, with all necessary changes and any changes prescribed under a regulation, to purchase leases issued under the *Brigalow and Other Lands Development Act 1962*.

(2) To remove any doubt, the relocation of the sections in this part does not affect the amount or time of a repayment or the interest or penalty interest rates applying to purchase leases issued under the *Brigalow and Other Lands Development Act 1962*.

PART 8—GENERAL

CHAPTER 9—TRANSITIONAL AND SAVINGS PROVISIONS, REPEALS AND AMENDMENTS

PART 1—SAVINGS AND TRANSITIONALS

Interests under repealed Act continue

508.(1) On the commencement—

- (a) each interest in land held by a person immediately before the commencement, and recorded under an Act repealed by this Act, is taken to be an interest held by the person, under this Act, in the land registry; and
- (b) each document or duplicate document issued under an Act repealed by this Act before the commencement is taken to be a document issued under this Act.

(2) The chief executive must do everything necessary or desirable to ensure that the particulars of each interest mentioned in subsection (1) are fully and accurately recorded in the land registry.

(3) To remove any doubt, it is declared that all reservations in existing deeds of grant, deeds of grant in trust and leases continue.

Registration of documents lodged before commencement

509.(1) The chief executive may register a document after the commencement, if—

- (a) the document was lodged, but not registered, before the commencement; and
- (b) the registrar of titles had power to register the document when it was lodged.

(2) In registering a document under subsection (1), the chief executive must exercise the powers the registrar of titles had when the document was lodged.

Offers made before commencement

510. If an offer was made under the repealed Act and had not lapsed before the commencement, but is accepted on or after the commencement—

- (a) the offer must be dealt with as if the repealed Act had not been repealed; and
- (b) the tenure issued is taken to be an existing tenure.

References in Acts and documents

511. A reference in an Act or document to—

- (a) the Land Administration Commission, the chief commissioner of lands or the secretary, Land Administration Commission may, if the context permits, be taken to be a reference to the chief executive; and
- (b) a land commissioner, assistant land commissioner, deputy land commissioner, land agent or land inspector may, if the context permits, be taken to be a reference to an officer of the department; and
- (c) Crown land and State land as defined in the repealed Act may, if the context permits, be taken to be a reference to unallocated State land; and
- (d) a holding within the meaning of, or as defined in, the repealed Act may, if the context permits, be taken to be a reference to a lease under this Act; and
- (e) a reservation for irrigation works or purposes may, if the context

- permits, be taken to be a reference to a reservation for a public purpose under this Act; and
- (f) the registrar of titles may, if the reference is about a register or the registration of a document under this Act and the context otherwise permits, be taken to be a reference to the chief executive; and
 - (g) a stud advisory committee in an existing tenure document may, if the context permits, be taken to be a reference to the Minister; and
 - (h) a licensee under a particular type of licence under the repealed Act may, if the context permits, be taken to be a reference to a licensee under this Act; and
 - (i) a permission to occupy under the repealed Act may, if the context permits, be taken to be a reference to a permit to occupy under this Act; and
 - (j) the repealed Act, or the *Land Act 1897*, the *Land Act 1902* or the *Land Act 1910*, may, if the context permits, be taken to be a reference to this Act; and
 - (k) a section of the repealed Act, or the *Land Act 1897*, the *Land Act 1902* or the *Land Act 1910*, may, if the context permits, be taken to be a reference to the corresponding section in this Act.

Harbour matters

512. If a lease is transferred to the Minister under the *Transport Infrastructure Act 1994*, section 231(2), a reference in the lease to the Harbours Corporation is taken to be a reference to the Minister.

Casino matters

513.(1) If the *Breakwater Island Casino Agreement Act 1984*, the *Brisbane Casino Agreement Act 1992* or the *Cairns Casino Agreement Act 1993* (the “**Casino Act**”) requires or permits the State or a person to do a thing to fulfil its or the person’s obligations under the Casino Act, and to fulfil the obligation, it is necessary to take action allowed under the repealed Act, the action may be taken under this Act whether or not the action would be allowed under this Act.

(2) If there is any inconsistency between this Act and any Casino Act, the Casino Act prevails to the extent of the inconsistency.

Examples—

1. If under a Casino Act it was agreed that the State would arrange for a lease over a reserve of 75 years duration (the maximum allowable under the repealed Act), a lease for 75 years may be issued under this Act even though the maximum allowable under this Act is 30 years.

2. If a Casino Act has particular rent, termination, subleasing and transfer provisions, the provisions override this Act in that respect.

Closure of Brigalow Fund

514.(1) All amounts in the Fitzroy Brigalow Land Development Trust Fund, established under the *Brigalow and Other Lands Development Act 1962*, immediately before the commencement is transferred to and becomes part of the Consolidated Fund.

(2) On and from the commencement, all amounts to be paid to or from the Fitzroy Brigalow Land Development Trust Fund must be paid to or from the Consolidated Fund.

Burdekin Irrigation Area freeholding leases

515.(1) The Governor in Council may grant a post-Wolfe freeholding lease for a term of up to 30 years for land made available in the Burdekin Irrigation Area.

(2) To remove any doubt, it is declared that a lease granted under subsection (1) is granted on the same terms as a post-Wolfe freeholding lease granted under chapter 8, part 2, Division 2.

(3) This section expires 3 years after it commences.

Existing by-laws

516. All existing by-laws made by trustees under the repealed Act continue for a period of 3 years from the commencement.

Existing local guidelines for broadscale tree clearing

517.(1) *Existing local guidelines for broadscale tree clearing are taken to be guidelines under this Act if, in the Minister’s opinion, they were made using the procedure stated in chapter 5, part 6, Division 4.*

(2) *Subsection (1) applies even if a broadscale tree clearing policy document did not exist when the guidelines were made.⁹⁶*

Existing powers of attorney

518. A power of attorney forms part of the power of attorney register under the *Land Title Act 1994* if it was—

- (a) registered under the repealed Act; or
- (b) lodged before the commencement and was capable of registration under the repealed Act.

Things done under repealed Acts

519.(1) In this section—

“**done**” includes issued, recorded, entered, kept, granted, declared, registered, lodged, deposited, produced, transferred, created, served, given, acquired, required, executed, removed, noted, sealed, imprinted, witnessed, advertised and anything else prescribed under the regulations for this definition.

(2) Everything done under an Act repealed by this Act,⁹⁷ is as effective as if it had been done for the same purpose under this Act.

(3) An approval given under an Act repealed by this Act for a matter is taken to be an approval for the same purpose under this Act.

⁹⁶ This provision had not commenced on or before the reprint date.

⁹⁷ The Acts repealed by this Act included the following—

- Irrigation Areas (Land Settlement) Act 1962
- Land Act 1962
- Miners’ Homestead Leases Act 1913
- Mining Titles Freeholding Act 1980
- Sale to Local Authorities Land Act 1882.

Effect of repeal by this Act

520. The repeal of the following sections of the repealed Act is limited in the following way—

- (a) section 334F (Certain grants not to include land in actual use by the Crown) continues to apply to deeds of grant in trust granted for the benefit of Aboriginal or Islander inhabitants before this Act commenced;
- (b) section 361A (Ownership of improvement not affected by grant) continues to apply to deeds of grant in trust granted before this Act commenced.

Continuation of certain provisions of repealed Act about Land Court and Land Appeal Court

521.(1) Part 2, divisions 5 to 7 of the repealed Act (other than section 39), section 383 of the repealed Act and any definitions relevant to the provisions continue to have effect.

(2) For the purpose of the continuing effect of section 30(2) of the repealed Act, the designation of a member of the Land Court as president of the court may be expressed to have effect for a stated period.

(3) This section has effect despite the repeal of the repealed Act.

PART 2—REPEALS AND CONSEQUENTIAL AMENDMENTS***Repeals on commencement***

524. *The following Acts are repealed—*

*Land Act 1962 No. 42.*⁹⁸

⁹⁸ This provision so far as it relates to s 383A, a provision about tree clearing (a “tree clearing provision”), and any definition, administrative, offence or other provision of the repealed Act to the extent it is relevant to the operation of s 383A or a tree clearing provision had not commenced on or before the reprint date.

SCHEDULE 1

COMMUNITY PURPOSES

section 4

Aboriginal purposes
Beach protection and coastal management
Cemeteries, crematoriums and mortuaries
Drainage
Environmental purposes
Heritage, historical and cultural purposes
Natural resource management
Navigational purposes
Open space and buffer zones
Parks and gardens
Public boat ramps, jetties and landing places
Public halls
Public toilet facilities
Roads
Scenic purposes
Scientific purposes
Showgrounds
Sport and recreation
Strategic land management
Torres Strait Islander purposes
Travelling stock requirements
Watering-places

SCHEDULE 2

ORIGINAL DECISIONS

section 423

Section	Description of decision
25(2)	about the unimproved value of a reservation
26(3)	about the boundaries of the land being resumed
58(3)	refusing a transfer
69(3)	about the unimproved value of land to be sold by a mortgagee in possession
118(2)	excluding an applicant from a ballot or tender
127(7)	about the unimproved value of reclaimed land
160(4)	about whether the conditions of a lease have been fulfilled
168(6)	about whether the conditions of a lease have been fulfilled
170(3)	about the unimproved value or the timber value for the conversion to a deed of grant
182(2)	about the category of a lease
212(3)	about a review change
214(2)	giving a remedial action notice
222(6)	about compensation when a resumption is stopped
226(5)	about the value of improvements
232(5)	about the value of improvements
249(5)	about the value of improvements
322(6)	refusing a transfer

SCHEDULE 2 (continued)

- 332(6) refusing a sublease
- 347(4) refusing an extension of time

SCHEDULE 6

DICTIONARY

section 3

“additional area” see section 132.

“appeal” means an appeal under chapter 7, part 3.⁹⁹

“appropriate form”, for the completion of a document, means the completion of—

- (a) the approved form for the document; or
- (b) if a form is approved or prescribed for the document under another Act—that form.

“appropriate register” means—

- (a) for leases and matters relating to leases—the leasehold land register;
- (b) for freehold land and matters relating to freehold land—the freehold land register;
- (c) for powers of attorney and matters relating to powers of attorney—the power of attorney register;
- (d) for reserves and trustees of trust land and matters relating to reserves and trustees—the register of reserves and trustees of trust land;
- (e) for licences and permits and matters relating to licences and permits—the register of licences and permits;
- (f) for easements over unallocated State land and matters relating to easements over unallocated State land—the register of easements over unallocated State land.

⁹⁹ Chapter 7, part 3 is about the appeal process available under this Act.

SCHEDULE 6 (continued)

“approved form” means a form approved by the chief executive under section 444.

“authorised person” means a person who is appointed as an authorised person.

“bankruptcy” includes a proceeding under a law about bankruptcy, insolvency or the liquidation of corporations.

“broadscale tree clearing” means tree clearing that is not tree clearing declared under the regulations to be for—

- (a) routine management or routine rural management purposes; or
- (b) other stated purposes.

“clear” a tree includes clear by blading, burning, cutting, dozing, felling, poisoning, pulling, ringbarking and sawing, but does not include lopping or the destruction of standing vegetation by stock.

“community purpose” means a purpose in schedule 1.

“compensation claimant” see section 219(3).

“conservation park” has the same meaning as in the *Nature Conservation Act 1992*.

“constructing authority” has the meaning given by the *Acquisition of Land Act 1967*.

“conversion application” see section 166(1).

“correct” includes correct by addition, omission or substitution.

“Court” means the Land Court established under the repealed Act.

“critical area” see section 253.

“cultivation” means planting seeds for a crop or improved pasture species, whether or not the soil has been broken to prepare a seed bed, but does not include the breaking of the soil for the natural regeneration of indigenous grasses.

“current miners homestead application” see section 495.

SCHEDULE 6 (continued)

“deed of grant” means—

- (a) land granted in fee simple by the State; or
- (b) the document evidencing the grant, including an indefeasible title under the *Land Title Act 1994*.

“deed of grant in trust” means—

- (a) land granted in fee simple in trust by the State; or
- (b) the document evidencing the grant, including an indefeasible title under the *Land Title Act 1994*.

“deferred interest” see section 192(4).

“destroy” see section 253.

“development lease” see section 476.

“development work” for land means—

- (a) if clearing of trees enhances the productivity of the land—the clearing of trees; and
- (b) work performed for the rehabilitation and sustainability of the land; and
- (c) filling, reclamation or any other works making the land suitable for use or the building or erection of a building or structure on the land.

“end” includes end by cancellation, expiry, forfeiture and surrender.

“environmentally sensitive area” see section 253.

“error” includes an error by omission.

“existing” means existing immediately before section 524 commenced.

“existing grazing homestead freeholding lease” means a grazing homestead freeholding lease issued under the repealed Act, part 4, division 5 because of an application received on or after 5 February 1990.

SCHEDULE 6 (continued)

“existing post-Wolfe freeholding lease” means—

- (a) an existing perpetual country, suburban or town lease that was taken to be, under the repealed Act, part 7, division 3 a lease for a term of years subject to a covenant entitling the lessee to the issue of a deed of grant if an application was received—
 - (i) on or after 5 February 1990; or
 - (ii) for leases issued for an industrial lease under the *Industrial Development Act 1963*—on or after 3 October 1991; or
- (b) an existing agricultural farm issued on or after 31 December 1991 under the repealed Act, part 4, division 1; or
- (c) an existing special lease purchase freehold issued under the repealed Act, part 8, division 2; or
- (d) an existing auction purchase freehold issued under the repealed Act, part 7, division 1.

“family arrangement” see section 150.

“fee” includes tax.

“forest entitlement area” means a reservation of commercial timber, and the land on which it stands, to the State in a deed of grant or freeholding lease.

“freeholding lease” means a pre-Wolfe freeholding lease, a post-Wolfe freeholding lease or a grazing homestead freeholding lease.

“grazing homestead freeholding lease” means an existing grazing homestead freeholding lease or a grazing homestead freeholding lease issued under this Act.

“grazing homestead perpetual lease” means a grazing homestead perpetual lease issued under the following divisions of the repealed Act—

- part 4, division 1
- part 6, division 1
- part 10, division 6.

SCHEDULE 6 (continued)

“high-water mark” means the ordinary high-water mark at spring tides.

“improvements” means any—

- (a) building, fence or yard; and
- (b) artificial watercourse or watering-place, bore, reservoir, well or apparatus for raising, holding or conveying water; and
- (c) cultivation, garden, orchard or plantation; and
- (d) building, structure or appliance that is a fixture for the working or management of land or stock pastured on the land or for maintaining, protecting or increasing the natural capabilities of the land;

but does not include development work.

“instalment” includes any interest that is a component of the instalment.

“inundated land” means freehold land that, through the excavation of the land or other land, has become inundated by water subject to tidal influence, but does not include a canal, or part of a canal, within the meaning of the *Canals Act 1958*.

“lease” means—

- (a) the interest in land comprising a lease held under this Act; or
- (b) the document evidencing the interest.

“lessee” means the person registered in the land registry as the holder of a lease from the State under this Act or the repealed Act.

“licence” means—

- (a) the occupation rights comprising a licence held under this Act; or
- (b) the document evidencing the rights.

“licensee” means the person registered in the land registry as the holder of a licence from the State under this Act or the repealed Act.

“liquidation notice” see section 74.

“liquidator” see section 74.

SCHEDULE 6 (continued)

“living area” means the area of grazing or agricultural land that will be adequate to enable a competent person to derive from the working of the land, according to the use for which the land is suited, an income adequate to ensure a reasonable standard of living for the person, the person’s spouse and dependant children, as well as provide a reserve to meet adverse seasons and the cost of developing and maintaining the land at a sustainable rate of production throughout average seasons, having regard to—

- (a) the locality of the land; and
- (b) the nature of the land; and
- (c) the potential of the land for sustainable development; and
- (d) the distance of the land from transport facilities and markets.

“lodge” means file for registration in the land registry.

“lopping” see section 253.

“miners homestead” see section 495.

“mining interest” see section 20.

“mining titles freeholding lease” means a mining titles freeholding lease issued under the *Mining Titles Freeholding Act 1980*, and includes a replacement document issued under section 502.¹⁰⁰

“national park” means any type of national park within the meaning of the *Nature Conservation Act 1992*.

“navigable river” see section 8.

“non-competitive lease” means an existing perpetual country, suburban or town lease issued under the repealed Act, part 8, division 2 or 3.

“non-freehold land” means all land that is not freehold land.

“noxious plant” means a declared plant under the *Rural Lands Protection Act 1985*.

¹⁰⁰ Section 502 (Replacement mining titles freeholding leases)

SCHEDULE 6 (continued)

“occupation licence” means an existing occupation licence issued under the repealed Act, part 3, division 3.

“original decision” means a decision mentioned in schedule 2.

“penalty interest” see section 192(5).

“permit” means—

- (a) the occupation rights comprising a permit held under this Act; or
- (b) the document evidencing the rights.

“permittee” means the person registered in the land registry as the holder of a permit from the State under this Act or the repealed Act.

“personally lives” means continuous living on a lease by a lessee or 1 or more of the lessees of a joint interest or interest in common, or within a distance of the lease, stated in the lease, sale notice or prescribed under the regulations.

“personal residence condition” see section 206.

“port” has the same meaning as in the *Transport Infrastructure Act 1994*.

“port authority” means a port authority under the *Transport Infrastructure Act 1994*.

“post-Wolfe freeholding lease” means an existing post-Wolfe freeholding lease or a freeholding lease issued under chapter 8, part 2, division 2.

“pre-Wolfe freeholding lease” means—

- (a) an existing auction perpetual lease that is a perpetual country, suburban or town lease issued under the repealed Act, part 7, division 2; or
- (b) an existing perpetual country, suburban or town lease that was taken to be, under the repealed Act, part 7, division 3 a lease for a term of years subject to a covenant entitling the lessee to the issue of a deed of grant if an application was received—
 - (i) before 5 February 1990; or
 - (ii) for leases issued for an industrial lease under the *Industrial*

SCHEDULE 6 (continued)

Development Act 1963—before 3 October 1991; or

- (c) an existing perpetual lease selection issued under the repealed Act, part 4, division 2; or
- (d) an existing agricultural farm issued before 31 December 1991 under the repealed Act, part 4, division 1; or
- (e) an existing grazing homestead freeholding lease issued under the repealed Act, part 4, division 5 because of an application received before 5 February 1990; or
- (f) a mining titles freeholding lease.

“provisional value” see section 139(3).

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

“public purpose” means a purpose for which land may be taken under the *Acquisition of Land Act 1967* or a community purpose.

“public utility easement” see section 361.

“public utility provider” see section 361.

“quarry material” has the same meaning as in the *Forestry Act 1959*.

“quarter day” means 1 January, 1 April, 1 July, and 1 October.

“register” a document, an interest, land or something else, means to record the particulars of the thing in the appropriate register in the land registry.

“registered owner” has the same meaning as in the *Land Title Act 1994*.

“remedial action notice” see section 214.

“renewal application” see section 158(1).

“rent” means the amount payable by a lessee, licensee or permittee for a rental period, but does not include rent for a trustee lease or trustee permit.

“repealed Act” means the *Land Act 1962*.

SCHEDULE 6 (continued)

- “repealed miners homestead Acts”** see section 495.
- “required time”** see section 406(3).
- “requisition”** see section 305.
- “reserve”** includes land dedicated as a reserve under this Act, or reserved and set apart under the repealed Act.
- “review change”** see section 212.
- “road”** see section 93.
- “road closure application”** see section 99.
- “sale notice”** see section 113(2)(b).
- “set rent”** see section 183A(3).
- “ship”** see section 8.
- “significant development”** see section 128.
- “special lease”** see section 476.
- “standard document”** see section 317.
- “State forest”** has the same meaning as in the *Forestry Act 1959*.
- “State housing lease”** means a lease under the *State Housing Act 1945*.
- “statutory body”** means a government entity within the meaning of the *Government Owned Corporations Act 1993*, a local government and a port authority.
- “stock route”** means a road or route ordinarily used for travelling stock or declared under an Act to be a stock route.
- “strategic port land”** means strategic port land under the *Transport Infrastructure Act 1994*.
- “sublease”** includes a sub-sublease.
- “tenure document”** means the document evidencing the interest or rights in land held under this Act.
- “terms”** includes covenants and conditions.

SCHEDULE 6 (continued)

“**tidal navigable river**” see section 8.

“**tidal water**” see section 8.

“**tied condition**” see section 205.

“**timber reserve**” has the same meaning as in the *Forestry Act 1959*.

“**topsoil**” has the same meaning as in the *Forestry Act 1959*.

“**tree**” has the same meaning as in the *Forestry Act 1959*.

“**trespass notice**” see section 406(1).

“**trespass order**” see section 418.

“**trespass related act**” see section 404.

“**trustee**” see section 30.

“**trustee lease**” means a lease given by the trustee of trust land.

“**trustee permit**” means a permit given by a trustee of trust land.

“**trust land**” means the land comprising a reserve or deed of grant in trust.

“**unallocated State land**” means all land that is not—

- (a) freehold land, or land contracted to be granted in fee simple by the State; or
- (b) a road or reserve, including a national park, conservation park, State forest or timber reserve; or
- (c) subject to a lease, licence or permit issued by the State.

“**unimproved value**” see section 434.

“**valuation for rental purposes**” has the same meaning as in the *Valuation of Land Act 1944*.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 3 October 1997. Future amendments of the Land Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R	=	Reprint No.
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 32 of 1995	7 July 1995
1A	to Act No. 7 of 1996	26 July 1996

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1

6 List of legislation

Land Act 1994 No. 81

date of assent 1 December 1994

ss 1–2, 525 sch 3 commenced on date of assent (see s 2(1))

ss 17(b), 121(2), s 526 sch 4 amdts 1 and 3 of the Land Title Act 1994 commenced 25 April 1995 (1995 SL No. 107)

ss 393, 444, 448, ch 8 pt 7 div 2 (ss 494–503), 505, 522, 523, 3 sch 6 commenced 1 January 1995 (see s 2(3))

s 525 sch 3 amdts of the Land Title Act 1994 commenced 24 April 1994 (see s 2(2))

s 526 sch 4 amdts of the Land Title Act 1994 (other than amdts 1 and 3) commenced 6 February 1995 (1995 SL No. 19)

ch 5, pt 6 (ss 252–274), s 517 and 524 (so far as it relates to—s 383A, a provision about tree clearing (a “tree clearing provision”), and any definition, administrative, offence or other provision of the repealed Act to the extent it is relevant to the operation of s 383A or a tree clearing provision) not yet proclaimed into force

remaining provisions commenced 1 July 1995 (1995 SL No. 185)

Note— This Act contains provisions that were relocated from the Brigalow and Other Lands Development Act 1962 and the Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982 No. 17.

A list of legislation for each of the relocated Acts appears below.

as amended by—

Water Resources Amendment Act 1995 No. 10 ss 1–2, s 37

date of assent 5 April 1995
 commenced on date of assent

Transport Infrastructure Amendment (Rail) Act 1995 No. 32 ss 1–2, 23 sch

date of assent 14 June 1995
 commenced on date of assent (see s 2(1))

Statute Law (Minor Amendments) Act (No. 2) 1995 No. 51 ss 1, 4 sch

date of assent 22 November 1995
 commenced on date of assent

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1

date of assent 28 November 1995
 s 4 sch 1 amdts 21 and 22 commenced 1 July 1995 (see s 2(1) sch 1)
 remaining provisions commenced on date of assent

list of legislation to Brigalow and Other Lands Development Act 1962—before relocation to Land Act 1994**Brigalow and Other Lands Development Act 1962 No. 44**

date of assent 28 December 1962
 commenced on date of assent

as amended by—

Brigalow and Other Lands Development Act Amendment Act 1965 No. 62

date of assent 23 December 1965
 commenced on date of assent

Brigalow and Other Lands Development Acts Amendment Act 1967 No. 47

date of assent 22 December 1967
 commenced on date of assent

Acquisition of Land Act 1967 No. 48 s 3(2) sch 1

date of assent 22 December 1967
 commenced 23 March 1968 (proc pubd gaz 23 March 1968 p 1206)

Age of Majority Act 1974 No. 57 s 8 sch

date of assent 27 September 1974
 commenced 1 March 1975 (proc pubd gaz 16 November 1974 p 1083)

Brigalow and Other Lands Development Act Amendment Act 1978 No. 4

date of assent 5 May 1978
 commenced on date of assent

Lands Legislation Amendment Act 1992 No. 64 ss 1–2, chap 2 pt 1, s 3 sch 1

date of assent 7 December 1992
 ss 1–2 commenced on date of assent
 remaining provisions commenced 31 January 1993 (1992 SL No. 448)

Land Act 1994 No. 81 ss 1–2, 527 sch 5

date of assent 1 December 1994

ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 1995 (1995 SL No. 185)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1

date of assent 28 November 1995
commenced on date of assent

list of legislation to Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982—before relocation of ss 21 and 22 to Land Act 1994

Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982 No. 17

date of assent 23 April 1982
ss 1–2 commenced on date of assent
remaining provisions commenced 15 June 1985 (proc pubd gaz 15 June 1985
p 1247)

as amended by—

**Land Act (Aboriginal and Islander Land Grants) Amendment Act 1984 No. 30
pts 1, 3**

date of assent 5 April 1984
commenced on date of assent

Aborigines and Torres Strait Islanders (Land Holding) Act 1985 No. 41 pts 1, 6

date of assent 24 April 1985
commenced on date of assent

Real Property Acts and Other Acts Amendment Act 1986 No. 26 s 4 sch

date of assent 8 April 1986
commenced on date of assent

**amending legislation to Land Act 1994—after relocation of Brigalow and Other
Lands Development Act 1962 and Land Act (Aboriginal and Islander
Land Grants) Amendment Act 1982**

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 2

date of assent 28 November 1995
commenced on date of assent

Land Amendment Act 1996 No. 7

date of assent 9 May 1996
commenced on date of assent

**Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9
sch**

date of assent 20 November 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 1 June 1997 (1997 SL No. 128)

**Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997
No. 17 ss 1–2, 74 sch**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

Natural Resources Legislation Amendment Act 1997 No. 41 pts 1–2

date of assent 25 August 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 19 September 1997 (1997 SL No. 305)

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s 2 om R2 (see RA s 37)

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s 52A ins 1996 No. 54 s 9 sch

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s 98 amd 1995 No. 32 s 23 sch

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s 155 amd 1997 No. 41 s 4

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s 156 amd 1995 No. 57 s 4 sch 1

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s 158 amd 1995 No. 57 s 4 sch 1

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s 175 amd 1995 No. 57 s 4 sch 1

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s 176 amd 1995 No. 57 s 4 sch 1

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s 183 amd 1995 No. 32 s 23 sch; 1996 No. 7 s 3(2)–(3)

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s 183A ins 1996 No. 7 s 4

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s 210 amd 1995 No. 57 s 4 sch 1

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s 257 amd 1995 No. 32 s 23 sch

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CHAPTER 6—REGISTRATION AND DEALINGS**PART 3—DOCUMENTS****Division 2—Documents forming part of standard terms documents**

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s 321 amd 1997 No. 28 s 295 sch 3

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s 415 amd 1995 No. 57 s 4 sch 1

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- s 506E** (prev 1962 No. 44 s 9) amd 1992 No. 64 s 3 sch 1; 1994 No. 81 s 527
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- s 506G** (prev 1962 No. 44 s 16) sub 1967 No. 47 s 6; 1992 No. 64 s 3 sch 1
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- s 506H** (prev 1962 No. 44 s 18) amd 1965 No. 62 s 5; 1967 No. 47 s 8; 1978 No. 4
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- s 506J** (prev 1962 No. 44 s 24C) ins 1978 No. 4 s 3
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- s 506K** (prev 1962 No. 44 s 25) amd 1995 No. 57 s 4 sch 1
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- s 506L** (prev 1962 No. 44 s 26) amd 1967 No. 47 s 12; 1995 No. 57 s 4 sch 1
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- s 506M** (prev 1962 No. 44 s 27) amd 1995 No. 57 s 4 sch 1
reloc 1995 No. 57 s 4 sch 1

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- s 506N** (prev 1962 No. 44 s 29) amd 1967 No. 47 s 13; 1992 No. 64 s 3 sch 1;
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- s 506O** (prev 1962 No. 44 s 30) amd 1994 No. 81 s 527 sch 5
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- s 507** exp 1 July 1997 (see s 507(5))

References in Acts and documents

- s 511** amd 1995 No. 57 s 4 sch 1

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- s 521** amd 1995 No. 32 s 23 sch; 1995 No. 51 s 4 sch; 1996 No. 7 s 3

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- s 525** om R1 (see RA s 40)

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