



Land Act 1994

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

Land Act 1994

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Land Act 1994

[as amended by all amendments that commenced on or before 18 July 2008]

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

1 Short title

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

3 Dictionary

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

Part 2 Objects

4 Object of this Act

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 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

5 Land to which Act applies

- (1) This Act applies to all land, including land below high-water mark.¹
- (2) Layers and strata above and below the surface of land may be dealt with under this Act.²

6 Act binds all persons

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

7 Relationship with Native Title Act

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

Part 4 Land near high-water mark

8 Definitions for pt 4

In this part—

1 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 However, see section 14(3).

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.

9 Land below high-water mark owned by the State

- (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.

10 Accretions owned by the State

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.³

11 Local government for new land

- (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.

12 Inundated land

- (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—

³ Reclaimed land is dealt with under section 127.

registered owner of inundated land includes a lessee of the land.

13 Power to deal with land below high-water mark

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

14 Governor in Council may grant land

- (1) The Governor in Council may grant, in fee simple, unallocated State land, an operational reserve or rail 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.
- (4) A grant of rail land under subsection (1) may be made only to the State.

15 Leasing land

- (1) The Governor in Council may issue a freeholding lease following an application to convert a lease made under section 166(1).
- (2) The Minister 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.

- (3) However, a lease in perpetuity of unallocated State land may be granted only if—
- (a) under a provision of an Act, other than this Act, a perpetual lease must be issued over the unallocated State land; or
Example of a provision of an Act for paragraph (a)—
Transport Infrastructure Act 1994, section 105J(4) and (5)
 - (b) under a provision of this Act, the Minister may issue a perpetual lease; or
Example of a provision of this Act for paragraph (b)—
section 17(2)
 - (c) the Minister considers the lease is in the interests of the State.
- (4) 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.
- (5) A lease for land below high-water mark is not an approval to reclaim the land.
- (6) A lease may state the purpose for which the land must be used.

16 Deciding appropriate tenure

- (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.

- (2A) Also, to the extent the land is in an urban development area, the evaluation must take account of, and give primary consideration to, any development scheme or interim land use plan under the *Urban Land Development Authority Act 2007* that applies to the land.
- (3) For Cape York agreement land, the evaluation may also take account of commitments and undertakings—
- (a) having effect in relation to tenure; and
 - (b) given by persons under, or arising from, a Cape York agreement.
- (4) Subsection (3) applies for 10 years after it commences.
- (5) This section does not apply to a grant of rail land in fee simple to the State.
- (6) In this section—
- Cape York agreement*** means—
- (a) the Cape York Peninsula Land Use Heads of Agreement made on 5 February 1996; or
 - (b) the agreement made on 17 September 2001, headed ‘Deed of Endorsement Cape York Land Use Heads of Agreement’.
- Cape York agreement land*** means unallocated State land to which a Cape York agreement applies.

17 Granting land to the State

- (1) The Governor in Council may grant unallocated State land, an operational reserve or rail land in fee simple to the State.
- (2) The Minister may lease unallocated State land to the State for either a term of years or in perpetuity.

18 Exchanging land

- (1) The Governor in Council, by agreement with a registered owner, may grant unallocated State land in exchange for all or part of the freehold land.

Note—

A deed of grant issued because of an exchange of land is issued under section 358.

- (2) The Governor in Council, by agreement with a lessee of a freeholding lease, may grant a freeholding lease over unallocated State land in exchange for all or part of the freeholding lease.

Note—

A freeholding lease amended because of an exchange of land is amended under section 360(1)(f).

- (3) The Minister, by agreement with a lessee of a term lease, other than a State lease, or a perpetual lease, may lease unallocated State land for a term of years or in perpetuity in exchange for all or part of the lease.

Note—

A term or perpetual lease amended because of an exchange of land is amended under section 360A(3)(c).

- (4) A power under this section may be exercised only if the State's equity in land would not be reduced.

18A Grant or lease of unallocated State land in consideration of surrender of native title interest

- (1) This section applies if, under an ILUA, all native title in relation to an area is extinguished by surrender to the State.
- (2) The designated person may grant or lease unallocated State land to a grantee entity.
- (3) The unallocated State land being granted or leased need not be land the subject of a surrender under the ILUA.
- (4) If there are 2 or more surrender areas, the grant or lease may be made to 2 or more grantee entities jointly.
- (5) In this section—

designated person, until the commencement of the *Land and Other Legislation Amendment Act 2007*, section 16, means the Governor in Council.

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

grantee entity means—

- (a) if there is, under the Commonwealth Native Title Act, a registered native title body corporate for a surrender area—the registered native title body corporate for the surrender area; or
- (b) for any other surrender area—
 - (i) a body corporate whose membership is restricted to persons in the surrender group; or
 - (ii) a person as trustee for a trust whose beneficiaries are restricted to persons in the surrender group.

ILUA means an indigenous land use agreement.

surrender area means—

- (a) an area in relation to which native title is surrendered under the ILUA and in relation to which there is a registered native title body corporate; or
- (b) an area in relation to which native title is surrendered under the ILUA on behalf of a surrender group.

surrender group means the persons identified in the ILUA as persons on whose behalf native title is surrendered.

19 Minister may buy land

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

20 Dealing with mining interests

- (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 can not 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*, the *Petroleum Act 1923* or

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

(3) In this section—

mining interest means a permit, claim, licence, lease or other authority held under the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*.

Part 2 Reservations

21 Reservation of minerals, petroleum etc.

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.⁴

22 Reservation of quarry materials

- (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 358⁵ only if the land being surrendered is already subject to the reservation mentioned in subsection (1).

23 Reservation for public purposes

- (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.

4 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.

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

- (2) Each reservation must be for a stated area, in size, but the grant or lease need not identify the particular land reserved.
- (3) Despite subsections (1) and (2), a reservation for a future conservation area—
 - (a) may only be contained in a lease; and
 - (b) must identify the particular land reserved.
- (4) A reservation for a future conservation area may be made only if the NCA department has given the Minister—
 - (a) a map showing the required particulars for a map of the area; or
 - (b) a description of the boundary of the area by reference to Map Grid of Australia 1994 coordinates and zone references for the area.

23A Floating reservation on plan of subdivision

- (1) A person seeking to have a plan of subdivision registered in relation to the land contained in a deed of grant, deed of grant in trust or lease may apply to the Minister for the allocation of a floating reservation to some or all of the lots created by the plan.
- (2) In making a decision for subsection (1), the Minister—
 - (a) must have regard to the purpose of the reservation, the likely future use of the land and where the reservation is most likely to be needed; and

Example—

If the reservation is for road purposes, the Minister will have regard to where the road is most likely to be needed.

- (b) may have regard to information and advice obtained in the way the Minister considers appropriate.

Example—

If the reservation is for road purposes, the Minister might decide to seek advice from the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered.

- (3) If the reservation is contained in a deed of grant or freeholding lease, and the Minister is satisfied that all or part of the

reservation is no longer needed, the reservation, to the extent it is no longer needed, may be dealt with under section 24.

- (4) If the reservation is contained in a deed of grant in trust, or in a lease other than a freeholding lease, and the Minister is satisfied that all or part of the reservation is no longer needed, the reservation, to the extent it is no longer needed, may be dealt with under section 26A.
- (5) Written notice of the Minister's decision for subsection (1) and the reasons for the decision must be given to the applicant.
- (6) The applicant may appeal against the Minister's decision.

24 Disposal of reservations no longer needed

- (1) If a reservation for a public purpose in a deed of grant or freeholding lease 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 or the lessee of the lease.⁶
- (2) Alternatively, if the reservation is adequate in size to be used by a person other than the registered owner or lessee and the registered owner or lessee 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.
- (3) Land in a reservation may be sold under subsection (1) only if the registered owner or lessee has applied to the Minister to buy the land, and the Minister is satisfied the reservation is no longer needed.
- (4) In making a decision under subsection (3), the Minister—
 - (a) must have regard to the purpose of the reservation and the likely future use of the land; and

⁶ A deed of grant issued because of the disposal of a reservation is issued under section 358.

Example—

If the reservation is for road purposes, the Minister will have regard to whether the road is likely to be needed.

- (b) may have regard to information and advice obtained in the way the Minister considers appropriate.

Example—

If the reservation is for road purposes, the Minister might decide to seek advice from the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered.

25 Disposal of reservations by sale

- (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 or lessee may appeal against the unimproved value.
- (3) The unimproved value is the value—
 - (a) if the registered owner or lessee 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 or lessee applied to buy the land—on the day the offer was made.

26 Minister may decide boundaries of reservations

- (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 lease, deed of grant or deed of grant in trust, the Minister may decide the boundaries of the reservation.⁷
- (2) In deciding the boundaries of the land being resumed, the Minister must consider the following matters unless the lessee, registered owner or trustee of the land otherwise agrees with the Minister—
 - (a) 1 of the boundaries should adjoin, or be, an existing road;

⁷ Resumptions are dealt with in chapter 5, part 3, division 3.

- (b) the lessee, 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 lease, 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 lessee, registered owner or trustee.
 - (4) The lessee, registered owner or trustee may appeal against the Minister's decision on the boundaries.

26A Disposal of redundant reservation

- (1) If a reservation for a public purpose in a deed of grant in trust, a term lease or a perpetual lease is no longer needed for the purpose, the Minister may dispose of the reservation under this section.
- (2) The Minister disposes of the reservation by approving the lodgement of a plan of subdivision that cancels the reservation and incorporates the land the subject of the reservation as land contained in the grant or lease.
- (3) If the reservation is in a deed of grant in trust, the disposal must happen in conjunction with a surrender, under section 358(1), of the land contained in the deed of grant in trust.
- (4) If the reservation is in a term lease or a perpetual lease, section 184(6) applies in relation to any increase in the area of land in the lease.
- (5) In this section—
reservation includes part of a reservation.

26B Forest entitlement areas

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

- (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 25.⁸
- (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 26C, under section 24.⁹
- (6) For subsection (3), the value of the commercial timber on a forest entitlement area is decided by the Minister.
- (7) The value of the commercial timber decided by the Minister must be its value on the day—
 - (a) if the lessee or registered owner applies to buy the forest entitlement area—the application was received by the Minister; or
 - (b) if the Minister made an offer to sell the forest entitlement area before the lessee or registered owner applied to buy the forest entitlement area—the offer was made.

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

9 Section 26C is about the effect of resumptions on forest entitlement areas.

- (8) The lessee or registered owner may appeal against the value decided by the Minister for the commercial timber.¹⁰
- (9) However, if the lessee or registered owner appeals against the value decided by the Minister under subsections (6) and (7), the value of the timber decided by the court must be the value of the timber on the day the appeal is decided.
- (10) Subsection (9) has effect despite anything in chapter 7, part 3, division 3.¹¹

26C Effect of resumption of forest entitlement area

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

- (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.

Part 3 Native title

27 Object

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*.

10 Under section 421 (Notice of right of appeal to be given), a person who has a right to appeal against a decision must be given written notice of the person's right to appeal.

11 Chapter 7 (General), part 3 (Review of decisions and appeals), division 3 (Appeals)

28 Interaction with native title legislation

- (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;
- (m) actions above and below high-water mark and in layers or strata;
- (n) offering or agreeing to carry out an action.

29 Taking into consideration Aboriginal tradition and Islander custom

(1) If land is entered under chapter 7, part 1, division 3,¹² and the land is registered in the 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 the National Native Title Register under the *Native Title Act 1993* (Cwlth).

Chapter 3 Reserves, deeds of grant in trust and roads

Part 1 Reserves and deeds of grant in trust

Division 1 General

30 Object

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—

¹² Chapter 7, part 1, division 3 deals with the power of an authorised person to enter and inspect land.

- (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; and
- (d) enable a deed of grant to be issued over an operational reserve.

Division 2 Reserves

Subdivision 1 Reserves generally

31 Dedication of reserve

- (1) The Minister may dedicate unallocated State land as a reserve for 1 or more community purposes.
- (2) However, the Minister may dedicate unallocated State land as a reserve for a community purpose that is the provision of services beneficial to Aboriginal people particularly concerned with land or Torres Strait Islanders particularly concerned with land only if the unallocated State land is transferrable land.
- (3) The Minister may dedicate land under this section without receiving an application under section 31C.
- (4) Land is dedicated as a reserve by registering a dedication notice or plan of subdivision for the reserve.
- (5) The dedication notice or plan of subdivision must state the community purpose for which the land is dedicated as a reserve.
- (6) The dedication notice must also state the description of the land dedicated as a reserve.

- (7) The dedication of a reserve takes effect on the day the dedication notice or plan of subdivision for the dedication of the reserve is registered.

31A Changing boundaries of reserve

- (1) The Minister may change the boundaries of a reserve other than a reserve dedicated for a community purpose mentioned in section 31(2).
- (2) The Minister may change the boundaries of a reserve under this section without receiving an application under section 31C(a).
- (3) The boundaries of a reserve are changed by registering an adjustment notice or plan of subdivision.
- (4) The adjustment notice must state—
 - (a) the reason for the change of the boundaries of the reserve; and
 - (b) the amended description of the land dedicated as the reserve.
- (5) The change of the boundaries of a reserve takes effect on the day the adjustment notice or plan of subdivision for the change is registered.

31B Changing community purpose

- (1) The Minister may change the community purpose for which a reserve is dedicated.
- (2) However, the Minister may change the community purpose for which a reserve is dedicated to a purpose mentioned in section 31(2) only if the reserve is transferable land.
- (3) Also, the Minister may change the community purpose of a reserve dedicated for a purpose mentioned in section 31(2) only to Aboriginal purposes or Torres Strait Islander purposes.
- (4) The Minister may change the community purpose for which a reserve is dedicated under this section without receiving an application under section 31C(b).

- (5) The community purpose for which a reserve is dedicated is changed by registering an adjustment notice.
- (6) The adjustment notice must state—
 - (a) the reason for the change of community purpose of the reserve; and
 - (b) the changed community purpose for which the reserve is dedicated.
- (7) The change of community purpose for which a reserve is dedicated takes effect on the day the adjustment notice for the change is registered.

31C Applying for dedication or adjustment of reserve

A person may apply to the Minister for the dedication of a reserve and the trustee of a reserve may apply—

- (a) to change the boundaries of the reserve; or
- (b) to change the purpose for which the reserve is dedicated.

31D Notice of proposal to dedicate or adjust reserve

- (1) If the Minister proposes to dedicate unallocated State land as a reserve, written notice of the proposal must be given to the following—
 - (a) the proposed trustee of the reserve;
 - (b) a person who made an application under section 31C, other than the proposed trustee;
 - (c) each person with a registered interest in the unallocated State land over which the reserve is proposed to be dedicated;
 - (d) another person the Minister considers should be given the notice.
- (2) If the Minister proposes to change the boundaries of a reserve, written notice of the proposal must be given to the following—
 - (a) the trustee of the reserve;

- (b) a person who made an application under section 31C, other than the trustee;
 - (c) each person with a registered interest in the reserve;
 - (d) another person the Minister considers should be given the notice.
- (3) If the Minister proposes to change the purpose for which a reserve is dedicated, written notice of the proposal must be given to the following—
- (a) the trustee of the reserve;
 - (b) a person who made an application under section 31C, other than the trustee;
 - (c) each person with a registered interest in the reserve;
 - (d) another person the Minister considers should be given the notice.
- (4) The notice must—
- (a) be in the approved form; and
 - (b) state the following—
 - (i) the reason for the proposal;
 - (ii) that the person given the notice may make a submission against the proposal to the Minister;
 - (iii) that the submission must be made in the approved form;
 - (iv) the closing day for the submission;
 - (v) the place where or the way the submission must be lodged.

31E Submissions

- (1) A person given notice of a proposal under section 31D, other than a person who applied for the dedication or adjustment of the reserve, may make a submission against the proposal to the Minister.
- (2) The submission must—
- (a) be made in the approved form; and

- (b) be received by the closing day for the submission in the notice under section 31D(4)(b)(iv); and
 - (c) be lodged at the place or in the way stated in the notice under section 31D(4)(b)(v).
- (3) The Minister must consider all submissions received under this section before dedicating, changing the boundaries of, or changing the purpose for, the reserve.

31F Notice of registration of action in relation to reserve

- (1) Written notice of the registration of an action in relation to a reserve must be given to each person given notice under section 31D about the proposed action.
- (2) The notice must include the date of registration of the action.
- (3) If an action is not registered, written notice of the fact must be given to each person given notice under section 31D about the proposed action.
- (4) In this section—
action, in relation to a reserve, means—
 - (a) the dedication of the reserve under section 31; or
 - (b) the change of the boundaries of the reserve under section 31A; or
 - (c) the change of community purpose for which the reserve is dedicated under section 31B.

32 State leases over reserves

- (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.

33 Revocation of reserves

- (1) The Minister, may revoke the dedication of 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; or
 - (c) the Minister is satisfied a different tenure would be more appropriate for the purpose for which the land is used; or
 - (d) the reserve or part is in an urban development area.
- (2) The Minister may revoke the dedication of all or part of a reserve without receiving an application under section 34.

34 Applying to revoke dedication of reserve

A person may apply for the revocation of the dedication of all or part of a reserve.

34A Notice of proposal to revoke dedication of reserve

- (1) If the Minister proposes to revoke the dedication of all or part of a reserve, written notice of the proposal must be given to the following—
 - (a) the trustee of the reserve;
 - (b) any person who applied for the revocation, other than the trustee;
 - (c) each person with a registered interest in the reserve;
 - (d) another person the Minister considers should be given the notice.
- (2) The notice must—
 - (a) be in the approved form; and
 - (b) state the following—
 - (i) the reason for the proposed revocation;
 - (ii) that the person given the notice may make a submission against the proposed revocation to the Minister;
 - (iii) that the submission must be made in the approved form;
 - (iv) the closing day for the submission;
 - (v) the place where or the way the submission must be lodged.

34B Submissions

- (1) A person given notice of a proposal to revoke the dedication of all or part of a reserve under section 34A(1), other than a person who applied for the revocation of the dedication of the reserve, may make a submission against the proposed revocation to the Minister.
- (2) The submission must—
 - (a) be made in the approved form; and
 - (b) be received by the closing day for the submission stated in the notice under section 34A(2)(b)(iv); and

- (c) be lodged at the place or in the way stated in the notice under section 34A(2)(b)(v).
- (3) The Minister must consider all submissions received under this section before revoking the dedication of the reserve.

34C Removal of interests before revocation

Before the Minister revokes the dedication of a reserve—

- (a) any State lease or easement existing over the reserve must be resumed or surrendered; and
- (b) any permit to occupy existing over the reserve must be cancelled or surrendered.

Note—

Under section 372(2), a public utility easement may continue over unallocated State land when the dedication of a reserve is revoked.

34D Registration revokes dedication of reserve

- (1) The dedication of all or part of a reserve is revoked by registering a revocation notice or plan of subdivision for the reserve.
- (2) However, if the revocation relates to only part of a lot, the revocation may only be made by registering a plan of subdivision.
- (3) Also, if all or part of a reserve for cemetery purposes has been used for cemetery purposes, the dedication of the reserve or any part of it may be revoked under this section only if a regulation authorises the revocation.
- (4) A revocation notice or plan of subdivision registered for subsection (3)—
 - (a) must state the particulars of the regulation mentioned in subsection (3); and
 - (b) may only be registered when the *Statutory Instruments Act 1992*, section 50, can no longer operate to cause the regulation to cease to have effect.

- (5) The revocation of the dedication of all or part of a reserve takes effect on the day a revocation notice or plan of subdivision is registered.

34E Notice of revocation

- (1) Written notice of the revocation of the dedication of a reserve must be given to each person given notice under section 34A(1) about the proposed revocation.
- (2) The notice under subsection (1) must include all of the following—
- (a) the date of the revocation;
 - (b) the effect, under section 34F, of the revocation;
 - (c) if there are improvements on the land the subject of the reserve owned by the person receiving the notice—a statement that the person may apply to remove the improvements.
- (3) If the Minister decides not to revoke the dedication of a reserve, written notice of the fact must be given to each person given notice under section 34A(1) about the proposed revocation.

34F Effect of revocation

On the revocation of all or part of a reserve, all of the following apply in relation to the land the subject of the revocation—

- (a) the reserve ends;
- (b) all appointments of trustees are cancelled;
- (c) all trustee leases and interests in the trustee leases are cancelled;
- (d) all trustee permits are cancelled;
- (e) the land becomes unallocated State land;
- (f) no person has a right to claim compensation from the Minister or the State for the revocation.

34G Person to give up possession

- (1) On the revocation of the dedication of all or part of a reserve, a person occupying land the subject of the revocation must immediately vacate the land.
- (2) A person who does not give up possession under subsection (1), and is not otherwise entitled to possession, is a person who is unlawfully occupying unallocated State land.

Note—

Action for trespassing may be taken under chapter 7, part 2.

34H Dealing with improvements

- (1) An owner of improvements on a reserve the dedication of which has been revoked may apply to remove the owner's improvements on the reserve.
- (2) The owner may remove the improvements only with the written approval of, and within a time stated by, the Minister.
- (3) The improvements become the property of the State if—
 - (a) the Minister refuses to give written approval for their removal; or
 - (b) the Minister gives written approval for their removal but the improvements have not been removed within the time stated by the Minister.
- (4) However, if the land the subject of revocation is leased or sold, the owner has a right to payment for the improvements under chapter 5, part 5.
- (5) In this section—

owner, of improvements, means—

 - (a) if the trustee of the reserve the dedication of which has been revoked owned the improvements—the trustee; or
 - (b) a person who—
 - (i) made the improvements with the trustee's authority; and
 - (ii) owned the improvements.

Subdivision 2 Operational reserves

34I Applying for deed of grant

- (1) The trustee of an operational reserve may apply for the issue of a deed of grant over the reserve.
- (2) An application under subsection (1) may not be made for the issue of a deed of grant over part only of the reserve.

34J Notice of proposal to issue deed of grant

- (1) If the Governor in Council proposes to issue a deed of grant over an operational reserve, written notice of the proposal must be given to the following—
 - (a) the trustee of the reserve;
 - (b) each person with a registered interest in the reserve;
 - (c) another person the Minister considers should be given the notice.
- (2) The notice must—
 - (a) be in the approved form; and
 - (b) state the following—
 - (i) the reason for the proposed issue of a deed of grant;
 - (ii) that the person given the notice may make a submission against the issue of the deed of grant to the Governor in Council;
 - (iii) that the submission must be made in the approved form;
 - (iv) the closing day for the submission;
 - (v) the place where or the way the submission must be lodged.

34K Submissions

- (1) A person given notice of a proposal under section 34J(1), other than a trustee of the operational reserve, may make a

submission against the issue of the deed of grant to the Governor in Council.

- (2) The submission must—
 - (a) be made in the approved form; and
 - (b) be received by the closing day for the submission in the notice under section 34J(2)(b)(iv); and
 - (c) be lodged at the place or in the way stated in the notice under section 34J(2)(b)(v).
- (3) The Governor in Council must consider all submissions received under this section before issuing the deed of grant.

34L Removal of interests before grant

Before the Governor in Council may issue a deed of grant over an operational reserve—

- (a) any State lease that exists over the reserve must be resumed or surrendered; and
- (b) any permit to occupy that exists over the reserve must be cancelled or surrendered.

34M Registration of deed of grant revokes reservation and setting apart

- (1) The reservation and setting aside of an operational reserve is revoked by registering a deed of grant over the reserve.
- (2) The deed of grant takes effect on the day the deed of grant is registered.

34N Notice of registration of deed of grant

- (1) Written notice of the registration of the deed of grant over an operational reserve must be given to each person given notice under section 34J(1) about the issue of the deed of grant.
- (2) The notice under subsection (1) must include both of the following—
 - (a) the date of registration of the deed of grant;

- (b) the effect, under section 34O, of the registration of the deed of grant.
- (3) If the Governor in Council does not issue a deed of grant over an operational reserve, written notice of the fact must be given to each person given notice under section 34J(1) about the proposed issue of the deed of grant.

34O Effect of revocation

On the registration of a deed of grant over an operational reserve, all of the following apply—

- (a) the reservation and setting apart of the reserve is revoked;
- (b) the reserve ends;
- (c) all appointments of trustees are cancelled;
- (d) the deed of grant is issued subject to—
 - (i) all easements and trustee leases over the reserve; and
 - (ii) all registered interests in the easements and trustee leases.

Division 3 Deeds of grant in trust

34P Requirement about covenant for DOGIT land

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

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

exempt lot means—

- (a) land dedicated to public use under the plan; or

- (b) land resumed, taken or otherwise compulsorily acquired under an Act; or
- (c) land surrendered under section 55.

35 Use for community purposes of land granted in trust

- (1) The way land granted in trust by the Governor in Council is used must not be inconsistent with—
 - (a) a community purpose for which it was granted;¹³ or
 - (b) an additional community purpose notified under subsection (2).
- (2) The Governor in Council may, by gazette notice, notify an additional community purpose for land granted in trust.
- (3) The Governor in Council may notify an additional community purpose without receiving an application under section 38A(1)(a).
- (4) An additional community purpose for land granted in trust is registered by registering an adjustment notice.
- (5) The adjustment notice under subsection (4) must state—
 - (a) the particulars of the gazette notice notifying an additional community purpose; and
 - (b) the additional community purpose for the deed of grant in trust.
- (6) The additional community purpose for land granted in trust takes effect on the day the adjustment notice is registered.

36 Amalgamating land with common purposes

- (1) If unallocated State land to be granted in trust for a purpose adjoins land contained in a deed of grant in trust for the same

¹³ The power of the Governor in Council to grant land in trust is in section 14(2) (Governor in Council may grant land).

purpose, both areas of land may be included in a single deed of grant in trust.¹⁴

- (2) If land contained in a deed of grant in trust for a purpose adjoins land contained in another deed of grant in trust for the same purpose, both areas of land may be included in a single deed of grant in trust.

Note for subsections (1) and (2)—

A deed of grant issued because of an addition of land is issued under section 358.

- (3) However, the following land must not be included with land contained in a deed of grant in trust issued on or after 1 July 1995—
- (a) land contained in a deed of grant in trust issued before 1 July 1995;
 - (b) land contained in a conditional deed that became a deed of grant in trust under section 493(1).
- (4) For this section—
- (a) land separated from other land by a road or watercourse is taken to adjoin the other land; and
 - (b) a reference to a deed of grant in trust issued before 1 July 1995 is taken to include a reference to a deed of grant in trust issued on or after 1 July 1995 under section 358 for land originally granted in trust before 1 July 1995.

37 Removing area from deed of grant in trust

- (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*.

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

- (3) If land is resumed, compensation is payable only for improvements and development work lawfully carried out by the trustee, or a person with the trustee's authority, on the resumed land.

38 Cancelling a deed of grant in trust

- (1) The Governor in Council, by gazette notice, may cancel a deed of grant in trust if—
 - (a) the trust stops operating; or
 - (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; or
 - (e) the land is in an urban development area.
- (2) Before a deed of grant in trust is cancelled, the Minister may ask the court for a decision on a matter mentioned in subsection (1)(a) to (c).
- (3) The Governor in Council may cancel a deed of grant in trust without receiving an application under section 38A(2).
- (4) A deed of grant in trust is cancelled by the registration of a cancellation notice.
- (5) The cancellation notice must include the particulars of the gazette notice cancelling the deed of grant in trust.
- (6) The cancellation of the deed of grant in trust takes effect on the day the cancellation notice is registered.

38A Applying for additional community purpose, amalgamation or cancellation

- (1) The trustee of a deed of grant in trust may apply—
 - (a) for an additional community purpose to be notified under section 35; or

- (b) to amalgamate land with common purposes under section 36.
- (2) A person may apply for the cancellation of a deed of grant in trust under section 38.

38B Notice of proposal to add community purpose, amalgamate land or cancel

- (1) If the Minister proposes to notify an additional community purpose for land granted in trust under section 35, written notice of the proposal must be given to the following—
 - (a) the trustee of the deed of grant in trust;
 - (b) a person who made an application under section 38A(1)(a);
 - (c) each person with a registered interest in the trust land;
 - (d) another person the Minister considers should be given the notice.
- (2) If the Minister proposes to amalgamate land with common purposes under section 36, written notice of the proposal must be given to the following—
 - (a) the trustee of the deed of grant in trust;
 - (b) a person who made an application under section 38A(1)(b);
 - (c) each person with a registered interest in the trust land;
 - (d) another person the Minister considers should be given the notice.
- (3) If the Minister proposes to cancel a deed of grant in trust under section 38, written notice of the proposal must be given to the following—
 - (a) the trustee of the deed of grant in trust;
 - (b) a person who made an application under section 38A(2);
 - (c) each person with a registered interest in the trust land;
 - (d) another person the Minister considers should be given the notice.
- (4) The notice must—

- (a) be in the approved form; and
- (b) state the following—
 - (i) the reason for the proposal;
 - (ii) that the person given the notice may make a submission against the proposal to the Governor in Council;
 - (iii) that the submission must be made in the approved form;
 - (iv) the closing day for the submission;
 - (v) the place where or the way the submission must be lodged.

38C Submissions

- (1) A person given notice of a proposal under section 38B, other than a person who applied for the cancellation of the deed of grant in trust, may make a submission against the proposal to the Governor in Council.
- (2) The submission must—
 - (a) be made in the approved form; and
 - (b) be received by the closing day for the submission in the notice under section 38B(4)(b)(iv); and
 - (c) be lodged at the place or in the way stated in the notice under section 38B(4)(b)(v).
- (3) The Governor in Council must consider all submissions received under this section before adding a community purpose to, amalgamating land with, or cancelling the deed of grant in trust.

38D Notice of registration of action

- (1) Written notice of the registration of an action in relation to a deed of grant in trust must be given to each person given notice under section 38B about the proposed action.
- (2) The notice under subsection (1) must include the following—
 - (a) the date of registration of the action;

- (b) if the action is the addition of a community purpose for the deed of grant in trust—a copy of the gazette notice mentioned in section 35(2);
 - (c) if the action is the amalgamation of land with common purposes—the particulars of the new deed of grant in trust issued under section 358;
 - (d) if the action is the cancellation of a deed of grant in trust—
 - (i) a copy of the gazette notice mentioned in section 38(1); and
 - (ii) the effect, under section 38E, of the cancellation; and
 - (iii) if there are improvements on the land the subject of the deed of grant in trust owned by the person receiving the notice—a statement that the person may apply to remove the improvements.
- (3) If an action is not registered, written notice of the fact must be given to each person given notice under section 38B(1) about the proposed action.
- (4) In this section—
- action**, in relation to a deed of grant in trust, means—
- (a) the addition of a community purpose for the deed of grant in trust under section 35(2); or
 - (b) the amalgamation of land with common purposes under section 36; or
 - (c) the cancellation of a deed of grant in trust under section 38.

38E Effect of cancellation

On the cancellation of a deed of grant in trust, all of the following apply—

- (a) the trust ends;
- (b) all appointments of trustees are cancelled;
- (c) all interests in the deed of grant in trust are cancelled;

- (d) the land becomes unallocated State land;
- (e) no person has a right to claim compensation from the Minister or the State for the cancellation.

38F Person to give up possession

- (1) On the cancellation of a deed of grant in trust, a person occupying the land the subject of the cancellation must immediately vacate the land.
- (2) A person who does not give up possession under subsection (1), and is not otherwise entitled to possession, is a person who is unlawfully occupying unallocated State land.

Note—

Action for trespassing may be taken under chapter 7, part 2.

38G Dealing with improvements

- (1) An owner of improvements on a deed of grant in trust that has been cancelled may apply to remove the owner's improvements on the deed of grant in trust.
- (2) The owner may remove the improvements only with the written approval of, and within a time stated by, the Minister.
- (3) The improvements become the property of 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.
- (4) However, if the land the subject of cancellation is leased or sold, the owner has a right to payment for the improvements under chapter 5, part 5.
- (5) In this section—

owner, of improvements, means—

 - (a) if the trustee under the cancelled deed of grant in trust owned the improvements—the trustee; or
 - (b) a person who—

- (i) made the improvements with the trustee's authority; and
- (ii) owned the improvements.

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

39 Application of division

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.

40 Improvements and land may be excluded

- (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;
 - (b) land consisting of aerodromes, landing strips, ports, roads, stock routes, bridges and railways.
- (2) An exclusion may be by description rather than survey.

41 Survey not needed

- (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.

42 Change of boundaries or roads

- (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.¹⁵
- (2) The regulation must not decrease the area of land granted in trust.

42A Amalgamating unallocated State land with existing deeds of grant in trust

- (1) This section applies to unallocated State land that is—
 - (a) transferable land; and
 - (b) located within or adjoining the external boundaries of the land the subject of an existing deed of a grant in trust.
- (2) The State may prepare a plan of subdivision showing the inclusion of the unallocated State land with the land the subject of the deed of grant in trust.
- (3) Section 452A does not apply to the unallocated State land included with the deed of grant in trust.

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

- (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.

¹⁵ 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.

- (2) This section has effect despite sections 37 and 38.¹⁶
- (3) Subsection (1)(b) does not apply to the cancellation of a deed of grant in trust under section 358 for the purposes of an amalgamation under section 42A.
- (4) For subsection (1), an interest in land in an existing deed of grant in trust may be taken under the Acquisition Act by a constructing authority.
- (5) However, an interest in land in an existing deed of grant in trust may be taken under the Acquisition Act only for a relevant purpose.
- (6) To remove any doubt, it is declared that, for taking an interest in land in an existing deed of grant in trust under the Acquisition Act, the land is land as defined in that Act.
- (7) Subsection (1) does not apply to a deletion of land from an existing deed of grant in trust, or the cancellation of an existing deed of grant in trust, as a result of the taking of the land under the Acquisition Act.
- (8) In this section—

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

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

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

Division 5 Appointments, functions and removal of trustees

44 Appointing trustees

- (1) The Minister may appoint trustees of trust land.

¹⁶ 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.

- (2) A trustee may be—
 - (a) the State; or
 - (b) a statutory body; or
 - (c) an incorporated body; or
 - (d) a named individual.
- (3) The Minister may appoint a trustee subject to conditions.
- (4) Before a trustee may be appointed, the Minister must be given written acceptance of the appointment.
- (5) Written acceptance of the appointment under subsection (4) must be in the approved form.
- (6) A trustee is appointed by registering a trustee of trust land notice or plan of subdivision.
- (7) The appointment of a trustee under subsection (1) is effective—
 - (a) if the appointment is the appointment of a trustee of a reserve—on the day the trustee of trust land notice or plan of subdivision for the dedication of the reserve is registered; or
 - (b) if the appointment is the appointment of a trustee of a deed of grant in trust—on the day the trustee of trust land notice for the appointment is registered.
- (8) A plan of subdivision mentioned in subsection (7)(a) must include all of the following—
 - (a) the Minister's approval of the appointment;
 - (b) the name of the trustee;
 - (c) any conditions to which the appointment is subject under subsection (3).

45 Details of trustees

- (1) A change to a name of a trustee must be registered.
- (2) A trustee must advise the chief executive of the trustee's address and any change to the address.

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

46 Trustee's administrative functions

- (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.

47 Trustee's accounting functions

- (1) The trustee of trust land must keep proper books of account and have the books annually audited by a—
 - (a) member of CPA Australia who is entitled to use the letters 'CPA' or 'FCPA'; or
 - (b) member of The Institute of Chartered Accountants in Australia who is entitled to use the letters 'CA' or 'FCA'; or
 - (c) member of the National Institute of Accountants who is entitled to use the letters 'MNIA', 'FNIA', 'PNA' or 'FPNA'; or

- (d) 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.

48 Trustees to give information and allow inspection of records

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

- (a) apply for the approval of 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.

49 External audits

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

- (a) allow the auditor-general, a person mentioned in section 47(1)(a) to (d), 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.

50 Vacation of office by trustee

- (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 can not be located; or

- (b) if the trustee is an incorporated body—the incorporated body ceases to exist.
- (2) The vacation of office of a trustee must be registered.
- (3) The Minister may appoint, under section 44, a new trustee to fill the vacated office.

51 Removal of trustees

- (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 removal of a trustee from office must be registered.
- (3) The Minister may appoint, under section 44, a new trustee in the place of the trustee removed.

Division 6 Powers of trustee

52 General powers of trustee

- (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) any conditions of appointment of the trustee.
- (3) Despite subsection (2)(a), the Minister may approve action that is inconsistent (*inconsistent action*) with the purpose for which the reserve was dedicated or the land was granted in trust if the Minister is reasonably satisfied the inconsistent action will not—
 - (a) diminish the purpose for which the reserve was dedicated or the land was granted in trust; or

- (b) adversely affect any business in the area surrounding the reserve or land granted in trust.
- (4) The Minister's approval under subsection (3) may be subject to conditions.
- (5) A trustee of trust land may apply for the approval of an inconsistent action under subsection (3).

52A Declaration that trustee is statutory body

- (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).¹⁷
- (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*.

53 Statutory body trustee powers

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.

53A State trustee powers and delegation

- (1) If the State is the trustee of trust land, the State may only exercise, for the trust land, powers that are not inconsistent with this Act.
- (2) A relevant Minister for trust land may delegate a power of the State as trustee of trust land to an appropriately qualified officer of the State.
- (3) In this section—

¹⁷ 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 Act and a GOC.

appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

a person's level of employment in the entity in which the person is employed

officer of the State means a public service officer and any other person employed in a public sector unit.

relevant Minister, for trust land, means the Minister having responsibility for the State for administering the trust land.

54 No power to sell trust land

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

55 Power to surrender deed of grant in trust

- (1) A trustee may surrender all or part of a deed of grant in trust—
 - (a) on terms agreed to between the Minister and the trustee; and
 - (b) with the Minister's written approval.
- (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.

55A Applying to surrender

The trustee of a deed of grant in trust may apply to surrender all or part of the deed of grant in trust.

55B Notice of proposal to approve surrender

- (1) If the Minister proposes to approve a surrender of all or part of a deed of grant in trust, written notice of the proposal must be given to the following—
 - (a) the trustee of the deed of grant in trust;

- (b) each person with a registered interest in the deed of grant in trust;
 - (c) another person the Minister considers should be given the notice.
- (2) The notice must—
- (a) be in the approved form; and
 - (b) state the following—
 - (i) the reason for the proposed surrender;
 - (ii) that the person given the notice may make a submission against the proposed surrender to the Minister;
 - (iii) that the submission must be made in the approved form;
 - (iv) the closing day for the submission;
 - (v) the place where or the way the submission must be lodged.

55C Submissions

- (1) A person given notice of a proposal under section 55B(1), other than the trustee, may make a submission against the proposal to the Minister.
- (2) The submission must—
 - (a) be made in the approved form; and
 - (b) be received by the closing day for the submission in the notice under section 55B(2)(b)(iv); and
 - (c) be lodged at the place or in the way stated in the notice under section 55B(2)(b)(v).
- (3) The Minister must consider all submissions received under this section before approving the surrender of the deed of grant in trust.

55D Registration surrenders deed of grant in trust

- (1) All or part of a deed of grant in trust may be surrendered by registering a surrender notice or plan of subdivision.
- (2) However, if the surrender relates to only part of a lot, the surrender may only be made by registering a plan of subdivision.
- (3) The surrender of all or part of a deed of grant in trust takes effect on the day a surrender notice or plan of subdivision is registered.
- (4) The *Land Title Act 1994*, section 50, and the provisions of the *Integrated Planning Act 1997*, about reconfiguring a lot do not apply to a plan of subdivision registered to give effect to a surrender under this section.

55E Notice of surrender

- (1) Written notice of the surrender of a deed of grant in trust must be given to each person given notice under section 55B(1) about the proposed surrender.
- (2) The notice must include all of the following—
 - (a) the date of the surrender;
 - (b) the effect, under section 55F, of the surrender;
 - (c) if there are improvements on the land the subject of the deed of grant in trust owned by the person receiving the notice—a statement that the person may apply to remove the improvements.
- (3) If the Minister decides not to approve the surrender of a deed of grant in trust, written notice of the fact must be given to each person given notice under section 55B(1) about the proposed surrender.

55F Effect of surrender

On the surrender of all or part of a deed of grant in trust, the following applies in relation to the land the subject of the surrender—

- (a) the trusts ends;

- (b) all appointments of trustees are cancelled;
- (c) all interests in the deed of grant in trust are extinguished;
- (d) the land becomes unallocated State land;
- (e) no person has a right to claim compensation from the Minister or the State for the surrender.

55G Person to give up possession on surrender

- (1) On the surrender of all or part of a deed of grant in trust, a person occupying the land the subject of the surrender must immediately vacate the land.
- (2) A person who does not give up possession under subsection (1), and is not otherwise entitled to possession, is a person who is unlawfully occupying unallocated State land.

Note—

Action for trespassing may be taken under chapter 7, part 2.

55H Dealing with improvements

- (1) An owner of improvements on a deed of grant in trust that has been surrendered may apply to remove the owner's improvements on the deed of grant in trust.
- (2) The owner may remove the improvements only with the written approval of, and within a time stated by, the Minister.
- (3) The improvements become the property of 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.
- (4) However, if the land the subject of surrender is leased or sold, the owner has a right to payment for the improvements under chapter 5, part 5.
- (5) In this section—

owner, of improvements, means—

- (a) if the trustee under the surrendered deed of grant in trust owned the improvements—the trustee; or
- (b) a person who—
 - (i) made the improvements on the land the subject of the surrender with the trustee’s authority; and
 - (ii) owned the improvements.

56 Model by-laws

- (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 1993* 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

57 Trustee leases

- (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, including, for example, that a stated mandatory standard terms document must form part of the lease.
- (2A) Despite subsections (1) and (2) a trustee may, without the Minister's approval, lease (a *construction trustee lease*) all or part of the trust land to the State for the construction of transport infrastructure and the provision of transport services on the lease land.
- (2B) A construction trustee lease may be granted even if its purpose is inconsistent with the purpose for which the trust land was reserved or granted in trust.
- (3) Each trustee lease must be registered in the appropriate register.
- (3A) This section does not authorise the construction of works under a construction trustee lease before the lease is registered.
- (4) Each trustee lease must be endorsed with the Minister's approval before it is registered.

- (5) If the trustee lease is for only part of the trust land, the appropriate form for the trustee lease must also include—
- (a) a sketch plan the chief executive is satisfied identifies the land being leased; or
 - (b) if required by the chief executive—a plan of survey identifying the land being leased.
- (6) However, the chief executive may allow the land being leased to be identified by a description alone if the chief executive is satisfied the land is adequately identified by the description.

Note—

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

57A Amending a trustee lease

- (1) A registered trustee lease may, with the Minister's approval, be amended by registering an amendment of the trustee lease.
- (2) However, the document of amendment must not—
- (a) increase or decrease the area leased; or
 - (b) add or remove a party to the lease; or
 - (c) increase the term of the lease.

58 Other transactions relating to trustee leases

- (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 64¹⁸—the Minister's written approval to the transaction.
- (2) The Minister and the trustee's written approvals may include conditions, including, for example, in the case of a proposed

18 Under section 64, the Minister may give a trustee a standing authority to sublease.

sublease, that a stated mandatory standard terms document must form part of the sublease.

- (2A) Despite subsections (1) and (2)—
- (a) the State as the lessee under a construction trustee lease under section 57(2A) may, without the trustee's or Minister's approval, sublease (a **construction trustee sublease**) all or part of the lease land to someone else for the purposes mentioned in section 57(2A); and
 - (b) the sublessee may further sublease the land the subject of the sublease.
- (2B) A construction trustee sublease may be granted even if its purpose is inconsistent with the purpose for which the trust land was reserved or granted in trust.
- (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) All or part of a trustee lease or a sublease of a trustee lease may be surrendered only if each registered mortgagee and registered sublessee of the interest being surrendered has given written agreement to the surrender.
 - (6) Each transaction must be registered in the appropriate register.
- (6A) This section does not authorise the construction of works under a construction trustee sublease before the sublease is registered.
- (7) Section 342 applies, with necessary changes, to the release of a mortgage of a trustee lease or sublease of a trustee lease.

59 Basis of Ministerial approval

- (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.

60 Trustee permits

- (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 requirements prescribed under a regulation.
- (3) If a trustee permit is for more than 1 year, the trustee must lodge a copy of the permit for registration in the appropriate register.
- (4) A trustee permit must not be for more than 3 years.
- (5) If there is a registered mandatory standard terms document that applies generally to trustee permits—
 - (a) a trustee must not issue a trustee permit under this section unless the standard terms document forms part of the trustee permit; and
 - (b) the trustee permit is of no effect if the document does not form part of the trustee permit.
- (6) Subsection (5) applies to a trustee permit whether or not it is required to be registered.

61 Conditions on trustee leases and trustee permits

- (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.

62 Grouping trust land

- (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.

63 Rent to be charged

- (1) A trustee may keep the rent paid under a trustee lease or trustee permit.
- (2) The rent must be the most appropriate rent 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.

64 Minister may dispense with approval

- (1) If the Minister considers it appropriate, the Minister may give a relevant person a written authority dispensing with the need to obtain the Minister's approval for relevant leases.
- (2) If the Minister gives an authority, a relevant lease must be consistent with the purpose of the trust land and the requirements prescribed under a regulation.
- (3) The Minister, by written notice, may withdraw the authority.
- (4) A relevant person may apply for approval to lease, sublease or sub-sublease trust land even if an authority is in force.
- (5) If there is a registered mandatory standard terms document that applies generally to relevant leases—
 - (a) a relevant person must not lease, sublease or sub-sublease trust land unless the standard terms document forms part of the relevant lease; and
 - (b) the relevant lease is of no effect if the document does not form part of the relevant lease.
- (6) Also, if there is a registered mandatory standard terms document that applies to a stated type of relevant lease—
 - (a) a relevant person must not issue a relevant lease of the stated type unless the standard terms document forms part of the relevant lease; and
 - (b) the relevant lease is of no effect if the document does not form part of the relevant lease.

Examples of stated types of relevant lease—

a lease for a particular purpose or a lease relating to land in a particular area

- (7) In this section—

relevant lease means—

- (a) a trustee lease; or
- (b) a sublease of a trustee lease; or

- (c) a sub-sublease of a sublease of a trustee lease.

relevant person means—

- (a) a trustee; or
- (b) a lessee under a trustee lease; or
- (c) a sublessee under a sublease of a trustee lease.

65 Cancellation of a trustee lease or trustee permit

- (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.

66 Right to remove improvements on cancellation

- (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

67 Power to mortgage trust land

- (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 358¹⁹ and the deed being surrendered was issued before the commencement; or
 - (b) was issued under section 493.²⁰
- (4) Despite subsections (2) and (3), a trustee may mortgage a deed of grant in trust only if the Minister has approved the mortgage.
- (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.

68 Mortgagee in possession

- (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).

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

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

- (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.

69 What is the unimproved value

- (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.

70 Sale by mortgagee in possession

- (1) If a mortgagee complies with section 68, the mortgagee may sell the deed of grant in trust.²¹
- (2) The mortgagee must first offer the deed of grant in trust for sale by public auction.
- (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.

71 Effect of sale

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

²¹ Section 68 is about the notice a mortgagee in possession must give before exercising powers under the mortgage.

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.²²

72 Disposal of sale price

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.

Division 9 Winding-up trusts of trust land

73 Application of division

This division applies to trusts of trust land.

74 Minister may start winding-up

- (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) the dedication of a reserve is revoked; or
 - (b) a deed of grant in trust is cancelled; or
 - (c) a 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

²² Section 74 is about how the Minister appoints a liquidator to wind-up the affairs of a trust.

- (b) advise every trustee lessee and trustee permittee of the trust land of their rights to remove their improvements from the trust land.

75 Property vests in liquidator

- (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.

76 Sale of trust assets

- (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;²³ and
 - (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.

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

77 Trustees to help in winding-up

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.

78 Winding-up may continue after revocation, cancellation or sale

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

- (a) dedication of the 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**79 Cemetery registers**

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

80 Trustee may remove structures

- (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*.

81 Application to close or reopen cemetery

- (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 reopen the cemetery for burials.
- (5) A cemetery that was closed under an Act that has been repealed may be reopened under this Act.

82 Trustees may transfer trust to local government

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.

83 Exhumations

- (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.
- (3) To avoid any doubt, it is declared that in this section—

exhume includes take out of a place of interment, whether above or below ground.

Division 11 Other grants for public purposes

84 Surrender of land still needed for a public purpose

- (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.

85 Surrender of land no longer needed for a public purpose

- (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.

86 Public notice of proposed surrender

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.

87 Effect of surrender

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.

88 Dealing with land used as a cemetery

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

89 Survey of trust land

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.

90 Application of Acts to trustees

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.

91 Trustees taken to be owners for legal proceedings

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

92 Protection from liability

- (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****93 Meaning of *road***

- (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.

94 Dedication of road

- (1) The Minister may dedicate unallocated State land as a road for public use.
- (2) A person may apply for the dedication of land as a road for public use.
- (3) The Minister may dedicate land as a road for public use without receiving an application under subsection (2).
- (4) Land may be dedicated as a road for public use by the registration of a dedication notice or a plan of subdivision.
- (5) On the day the dedication notice or plan of subdivision is registered—
 - (a) the dedication of the land as a road for public use takes effect; and
 - (b) the land is opened for public use as a road.

95 Roads vest in the State

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*.

96 Roads in existing leases are dedicated

- (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 60m.
- (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.

97 Clarification of road status

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

97A Definitions for div 2

In this division—

permanent road closure application means an application to permanently close a road under section 99(1).

road closure application means—

- (a) a permanent road closure application; or
- (b) a temporary road closure application.

temporary road closure application means an application to temporarily close a road under section 99(2).

98 Closure of road

- (1) If, after inquiry and notice the Minister considers appropriate, the Minister is satisfied a road is not needed, the Minister may—
 - (a) permanently close the road under division 4; or
 - (b) temporarily close the road by gazette notice.

- (2) The Minister may permanently close the road without receiving an application under section 99(1).
- (3) A road is temporarily closed from the day the gazette notice is published.

99 Application to close road

- (1) An entity may apply for the permanent closure of a road if the entity is—
 - (a) a public utility provider; or
 - (b) an adjoining owner for the road.
- (2) A person may apply for the temporary closure of a road if the person is—
 - (a) an adjoining owner for the road; or
 - (b) another person, if the closure of the road is only for allowing the person to make the structural improvements mentioned in section 104(b)(ii) or (iii).
- (3) An adjoining owner who makes a permanent road closure application may ask for the road, on its closure, to be amalgamated with the adjoining owner's adjoining land.
- (4) Subsection (5) applies if the adjoining owner under subsection (3) is a registered owner, other than as trustee under a deed of grant in trust, of the adjoining land and other land that would be adversely affected by the permanent closure of the road.
- (5) The adjoining owner may ask in the application that, on the closure of the road, the road, the adjoining land and the other land be amalgamated.
- (6) The Minister may refuse a road closure application if the Minister is satisfied—
 - (a) the road is the only dedicated access to a person's land; or
 - (b) the road is, or may be, used regularly by the public as a road or stock route; or
 - (c) the road provides continuity to a road network.

100 Public notice of closure

- (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) However, appropriate public notice of a road closure application is not needed if—
 - (a) the road closure application is to close a no-through road; or
 - (b) the road closure application is to close part of a road by a volumetric format plan of subdivision and the closure will not adversely affect the part of the road being used as a road.
- (4) Appropriate public notice includes 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.
- (5) 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.

no-through road means a road that—

- (a) is closed at one end; and
- (b) provides access to the land of only 1 adjoining owner for the road.

relevant applicant means—

- (a) a public utility provider; or
- (b) an adjoining owner.

101 Minister to consider objections

- (1) The Minister must consider all objections properly made to the proposed road closure.
- (2) The Minister may approve the road closure application, with or without conditions, or refuse the application.
- (3) However, the Minister must refuse the road closure application if the Minister is satisfied the road is still needed.

102 Changing application

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

Division 3 Road licences for temporarily closed roads

103 Issue of road licence

- (1) The Minister may issue a road licence over a temporarily closed road only to—
 - (a) an adjoining owner; or
 - (b) another person, if the road licence is only for allowing the person holding the licence to make structural improvements mentioned in section 104(b)(ii) or (iii).
- (2) However, the Minister need not issue the road licence only to the person who applied for the road closure.

104 Conditions of issuing road licence

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 are permitted on the road temporarily closed, other than the following—
 - (i) boundary fences;
 - (ii) pipes for irrigation purposes that cross the road beneath its surface;
 - (iii) water channels for irrigation purposes that cross the road;
- (c) if the person holding the licence transfers or sells the land for the benefit of which the road licence is issued, the person must—
 - (i) also transfer the road licence to the new registered owner or lessee of the land; or
 - (ii) surrender the road licence at the time the sale is settled;
- (d) any other conditions the Minister considers appropriate.

105 Cancellation or surrender of road licence

- (1) The Minister may cancel all or part of a road licence after giving the licensee reasonable written notice of the Minister's intention to cancel.
- (2) No compensation is payable for the cancellation of a road licence.
- (3) A licensee, with the Minister's written approval, may surrender all or part of a road licence.
- (4) If a road licence is cancelled or surrendered, any improvements on the road become the property of the State and no compensation is payable.
- (5) However, the Minister may allow the licensee to remove any improvements within the time stated on the cancellation notice or the surrender approval.
- (6) If a road licence is cancelled or surrendered, the road remains temporarily closed.

Division 3A Temporarily closed roads

106 Temporarily closed road still dedicated land

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 can not use the road as a road until it is reopened.

107 Reopening a temporarily closed road

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

Division 4 Permanently closed roads

108 Permanent closure of road

- (1) If the Minister permanently closes a road, the road is permanently closed by the registration of a plan of subdivision.
- (2) The permanent closure of the road takes effect on the day the plan of subdivision is registered.

109 Closed road may be dealt with as lot or amalgamated with adjoining land

- (1) If the Minister is satisfied a road being permanently closed is of adequate area, having regard to the location of the road and the use made of adjoining land, to be used as a lot, the road—
 - (a) must be shown as a lot on the plan of subdivision; and
 - (b) may be dealt with as unallocated State land.
- (2) If the Minister is not satisfied under subsection (1), the road must be amalgamated with—
 - (a) adjoining unallocated State land; or
 - (b) if there is no adjoining unallocated State land—the land of an adjoining owner for the road.

109A Simultaneous opening and closing of roads—deed of grant

- (1) A registered owner may apply for the simultaneous opening and closing of roads if—
 - (a) a road is being opened in the land (the *relevant land*) the subject of a deed of grant; and
 - (b) at the same time—
 - (i) a road within the boundaries of or adjoining the relevant land is being closed; or
 - (ii) a road within the boundaries of land (the *additional land*) the subject of another deed of grant is being closed and the additional land and the relevant land adjoin and are owned by the same registered owner; or
 - (iii) a road adjoining land (also the *additional land*) the subject of another deed of grant is being closed and the additional land and the relevant land adjoin and are owned by the same registered owner; and
 - (c) the road being opened is a replacement of the road being closed.
- (2) The registered owner may ask that the following be included in a deed of grant issued under section 358—
 - (a) any severance of land created by the road being opened;
 - (b) the road being closed.
- (3) A registered owner may appeal against any conditions the Minister imposes under section 420I.
- (4) The *Land Title Act 1994*, section 50, and the provisions of the *Integrated Planning Act 1997*, about reconfiguring a lot do not apply to the replacement of a road under this section.
- (5) In this section—

close, a road, means permanently close the road under section 108.

open, a road, means open for public use as a road under section 94.

109B Simultaneous opening and closure of roads—trust land or lease land

- (1) A trustee or lessee may apply for the simultaneous opening and closure of roads if—
 - (a) a road is being opened in trust land or lease land (the *relevant land*); and
 - (b) at the same time a road within the boundaries of or adjoining the relevant land is being closed; and
 - (c) the road being opened is a replacement of the road being closed.
- (2) If a trustee makes an application under subsection (1), the trustee may ask that the land in the road being closed be included in—
 - (a) if the trustee is the trustee under a deed of grant in trust—a deed of grant in trust issued under section 358; or
 - (b) if the trustee is the trustee of a reserve—the land dedicated as a reserve under section 31A.
- (3) If a lessee makes an application under subsection (1), the lessee may ask that the land in the road being closed—
 - (a) if the lease is a freeholding lease—be amalgamated with the lease land under section 360(1)(e); or
 - (b) if the lease is a term lease, other than a State lease, or a perpetual lease—be amalgamated with the lease land under section 360A(2)(d).
- (4) A trustee or lessee may appeal against any conditions the Minister imposes under section 420I.
- (5) The *Land Title Act 1994*, section 50, and the provisions of the *Integrated Planning Act 1997*, about reconfiguring a lot do not apply to the replacement of a road in a deed of grant in trust under this section.
- (6) In this section—

close, a road, means permanently close the road under section 108.

open, a road, means open for public use as a road under section 94.

109C Buying or leasing land if closed road amalgamated with adjoining land

- (1) This section applies if—
 - (a) land must be amalgamated under section 109(2)(b); or
 - (b) a registered owner has asked for an amalgamation of land under section 109A(2); or
 - (c) a lessee has asked for an amalgamation of land under section 109B(3).
- (2) Before the road is permanently closed, the road must be—
 - (a) sold to 1 or more adjoining owners who are registered owners or lessees who have freeholding leases; or
 - (b) with or without the payment of a premium as the Minister considers appropriate—leased to 1 or more adjoining owners who are lessees, other than lessees of freeholding leases.
- (3) Subsection (2) does not apply to an adjoining owner who is a trustee of trust land.
- (4) The Minister must decide the purchase price or the cash premium.

Division 5 Building of roads in State developments

110 Minister may build roads

- (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.

111 When road comes under local government control

- (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.

Chapter 4 Land holdings

Part 1 Making land available

Division 1 Interests in land available by competition

112 Interests in land available by auction, tender or ballot

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

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

113 Public notice of availability to be given

- (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.

114 Information to be included in sale notice

- (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.

115 Conditions of sale

- (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.
- (3) Subsections (4) and (5) apply to a lease made available by public auction, tender or ballot if—
 - (a) the lease is for—
 - (i) rural leasehold land; and
 - (ii) a term of 20 years or more; and
 - (b) the lease land is 100ha or more.
- (4) The sale of the lease is subject to a condition that the proposed lessee enter into a land management agreement for the lease.
- (5) The lease is subject to conditions that—
 - (a) there must be a current land management agreement for the lease; and
 - (b) the lessee must comply with the agreement.

116 Interests in land may be sold after auction

- (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.

117 Interest may be withdrawn from auction, tender or ballot

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.

118 Appeal against exclusion from ballot or tender

- (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.

119 Conduct of ballot

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

120 Offer to winner of ballot or tender

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

Division 2 Interests in land available without competition

120A Applying for interest in land without competition

- (1) A person may apply for an interest in land that, under this division, may be granted without competition.
- (2) If, under this division, the Minister decides to offer the interest, the interest may be offered to the applicant subject to conditions.
- (3) If a conditional offer is made, the offer is accepted only if the applicant complies with all of its conditions.

121 Leases of unallocated State land

- (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.²⁴
- (2) To remove any doubt, it is declared that a lease may be granted to the State, without competition.

122 Deeds of grant of unallocated State land

- (1) A deed of grant of unallocated State land may be granted without competition if the grant is to the Urban Land Development Authority or 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) A deed of grant of unallocated State land may be granted without competition to a constructing authority if the Minister decides the land is needed for a public purpose.
- (3) The Minister must decide the purchase price for the land.

123 Priority criteria

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) the applicant held a significant interest in the land before it became unallocated State land; or

Example of significant interest—

a deed of grant in trust or a long term lease

- (d) there is no dedicated access and the only practical access is through the applicant's land.

²⁴ The priority criteria are set out in section 123.

124 Leases of State forests and national parks

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.

125 Deeds of grant in trust and leases over reserves

- (1) A deed of grant in trust may be granted without competition.
- (2) A lease of a reserve may be granted without competition.

126 Strategic port land

- (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.

127 Reclaimed land

- (1) If a person has reclaimed land under the authority of an Act—
 - (a) the Governor in Council may issue to the person, without competition, a deed of grant over all or part of the land; or
 - (b) the Minister may issue to the person, without competition, a lease over all or part of the land.
- (2) When granting the reclaimed land, the Governor in Council or Minister 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.

128 Meaning of *significant development*

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.

129 Lease for significant development

- (1) If an application for a lease under this division is for a significant development, the chief executive 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.
- (5) The application for the lease must not be granted unless the chief executive is satisfied, having regard to the independent assessment, about the applicant's financial and managerial capabilities.

130 Transfer of lease for significant development

- (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.

130A Change of financial and managerial capabilities of lessee of lease for significant development

- (1) The Minister may make a note under this section in the appropriate register against a lease under this division if—
 - (a) in relation to the lease, there has been an independent assessment of at least 1 of the following—
 - (i) under section 129, an applicant's financial and managerial capabilities;
 - (ii) under section 130, a transferee's financial and managerial capabilities; or
 - (b) if paragraph (a) does not apply in relation to the lease—the Minister is satisfied the lease is a lease for a significant development.
- (2) Before acting under subsection (1), the Minister must give the lessee at least 14 days notice in writing of the Minister's intention to make the note.
- (3) The lessee of a relevant lease—
 - (a) must notify the Minister in the approved form as soon as practicable after there is a relevant change to the lessee; and
 - (b) must ensure that the notice to the Minister is accompanied by enough information about the relevant change to allow the Minister to decide whether an independent assessment of the financial and managerial capabilities of the lessee should be performed.

- (4) The Minister may cause an independent assessment of the financial and managerial capabilities of a lessee of a relevant lease to be performed if—
- (a) the lessee notifies the Minister under subsection (3); or
 - (b) the Minister is satisfied on reasonable grounds that the lessee should have notified the Minister under subsection (3) but has not done so.
- (5) To remove any doubt, it is declared that, for section 234(c), the lessee of a lease contravenes a provision of this Act in relation to the lease, and the lease may accordingly be forfeited under chapter 5, part 4, if—
- (a) the lease is a relevant lease; and
 - (b) the lessee contravenes subsection (3).
- (6) Further, a lease may be forfeited under chapter 5, part 4 as if the lessee had contravened a provision of this Act in relation to the lease if all of the following circumstances apply—
- (a) the lease is a relevant lease;
 - (b) an independent assessment of the financial and managerial capabilities of the lessee of the lease is performed under subsection (4);
 - (c) as a result of the assessment, the Minister is satisfied on reasonable grounds that—
 - (i) there has been a relevant change to the lessee; and
 - (ii) the relevant change can reasonably be expected to detrimentally affect the capacity of the lessee of the lease to meet the lessee's obligations under the lease.
- (7) If an independent assessment of the financial and managerial capabilities of a lessee of a relevant lease is performed under subsection (4)—
- (a) the Minister may give to the person performing the assessment any information given to the Minister under subsection (3)(b) by the lessee; and
 - (b) the lessee must pay the costs of the assessment; and
 - (c) the cost is not refundable.

- (8) If the Minister makes a note under this section against a lease—
- (a) written notice of the decision and the reasons for the decision must be given to the lessee; and
 - (b) the lessee may appeal against the decision.
- (9) The Minister may remove a note made under this section against a lease if, having regard to the significant development to which the lease relates, the Minister considers its removal is appropriate in all the circumstances.

Example—

The Minister might remove a note if the Minister considers development required to be undertaken under the lease is complete or substantially complete.

- (10) In this section—

relevant change, to a lessee of a relevant lease, means a change of substance in the financial and managerial capabilities of the lessee.

Examples of relevant changes to a lessee—

- 1 There is a change in the control of the lessee because of a share transaction involving the lessee or a holding company of the lessee, and the persons now directing the operations of the lessee do not have knowledge or experience in the lessee's operations that relate to the relevant lease.
- 2 Receivers are appointed for the lessee.

relevant lease means a lease noted in the register under subsection (1).

131 Amalgamation may be a condition

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.²⁵

²⁵ 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

132 Granting additional areas

- (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.

133 Who is eligible for additional areas

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.

134 Issues the Minister must consider

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.

135 Committee of review to help Minister

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

136 Conditions of offer and lease

- (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.
- (5) Subsections (6) and (7) apply to an offer of a lease for an additional area if—
 - (a) the additional area is 100ha or more; and
 - (b) the lease is to be a perpetual lease or a term lease for 20 years or more.
- (6) The offer is subject to a condition that the proposed lessee must enter into a land management agreement for—
 - (a) the additional area (the *relevant land*); and
 - (b) if the offer includes a condition mentioned in subsection (1) and the condition requires the additional area to be amalgamated or tied with lease land under another lease—the lease land (also the *relevant land*).
- (7) If the offered lease is issued, any lease for the relevant land is subject to conditions that—
 - (a) there must be a current land management agreement for the lease; and
 - (b) the lessee must comply with the agreement.

Division 4 Miscellaneous

137 Right to occupy

- (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.

138 Default

- (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.

138A Restriction on commencement of lease or permit

A lease or permit under this part must not start until—

- (a) for a lease or permit sold under this part—the buyer complies with all of the conditions of sale; or

- (b) for a lease or permit offered under this part—the offeree complies with all of the conditions of the offer.

139 Improvements to be bought by incoming lessee or buyer

- (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.

140 Provisional value may be negotiated

- (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 can not agree on a negotiated value, either party may make application to the court to decide the value.
- (5) To decide the value of the improvements, the court must decide each of the following amounts—
 - (a) the amount that fairly represents the value of the improvements to a prudent buyer, having regard to the buyer’s proposed use of the land;

- (b) the amount that fairly represents the cost of constructing the improvements, adjusted to allow for depreciation of the improvements since construction.
- (6) The value mentioned in subsection (5)(a) is the value on the day the offer was made or the sale notice was published.
- (7) The cost mentioned in subsection (5)(b) is the cost on the day the court decides the value of the improvements.
- (8) If the amount decided under subsection (5)(a) is equal to or less than the amount decided under subsection (5)(b), the value of the improvements is the amount decided under subsection (5)(a).
- (9) If the amount decided under subsection (5)(a) is more than the amount decided under subsection (5)(b), the value of the improvements is the amount decided under subsection (5)(b).
- (10) The value of the improvements decided by the court under subsections (5) to (9) becomes the negotiated value.

141 Payment of survey fee

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

142 Minors not to hold land

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

143 Departmental officers not to hold land without approval

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**144 Division applies only to leases for grazing and agriculture**

- (1) 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).
- (2) To remove any doubt, it is declared that—
 - (a) a reference in section 145, 146, 147 or 149 to a lease includes a reference to a sublease of a lease to which this division applies; and
 - (b) a reference in section 147, 149 or 151 to a lessee includes a reference to a sublessee of a sublease of a lease to which this division applies.

145 Only individuals may hold leases

- (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.

146 Maximum individual holding

- (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).

147 Calculating holdings

- (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.

148 Excess holdings

If an individual acquires more land than an individual is permitted to hold under this Act,²⁶ the lease acquired in excess of the eligible holding may be forfeited under this Act.²⁷

²⁶ See section 146 (Maximum individual holding).

²⁷ See chapter 5, part 4 (Forfeiture).

149 Leases may not be held on trust

- (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.

150 Meaning of *family arrangement*

- (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.
- (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.

151 Eligibility not affected by devolution by law

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) an administrator under the *Guardianship and Administration Act 2000* for a lessee; or
- (d) the public trustee under the authority of an Act.

152 Division does not apply to State

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

Part 3 Leases

Division 1 Preliminary

153 Lease must state its purpose

A lease must state the purpose for which it is issued.

Note—

See also sections 16(1) (Deciding appropriate tenure) and 199A (Land may be used only for tenure's purpose).

154 Minister may approve additional purposes

- (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; and

- (e) whether and in what way the lessee should apply under section 210 to change the conditions of the lease, having regard to the proposed purposes for which the lease is to be used.
- (3) An additional purpose must be complementary to, and not interfere with, the purpose for which the lease was originally issued.
- (4) The application must be accompanied by the written consent of all persons with a registered interest in the lease.
- (5) However, consent under subsection (4) must not be unreasonably withheld.
- (6) To remove any doubt, it is declared that an application under subsection (1) may be both for the addition of 1 or more purposes and for the removal of 1 or more purposes.
- (7) If the lessee agrees with the matters notified under subsection (2)(b) to (d), and there is no associated change of conditions proposed under section 210, the purposes of the lease, as changed, must be registered.
- (8) If the lessee agrees with the matters notified under subsection (2)(b) to (d), and the Minister and the lessee have agreed under section 210 to any associated change of conditions proposed under that section, the purposes of the lease, as changed, must be registered in conjunction with the registration of the change of conditions.
- (9) A change in the purposes of a lease is binding from the day the purposes, as changed, are registered.

155 Length of term leases

- (1) A term lease for land other than rural leasehold land must not be issued for more than 50 years.
- (2) However, a term lease for land other than rural leasehold land 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.
- (3) A term lease for rural leasehold land must not be issued for more than 30 years.
 - (4) However, a term lease for rural leasehold land may be issued for a term of no more than 40 years if the Minister is satisfied the lease land is in good condition.
 - (5) Also, a term lease for rural leasehold land may be issued for a term of no more than 50 years if—
 - (a) the Minister considers the lease land is in good condition; and
 - (b) if the Minister considers land (the *relevant land*) that is all or part of the lease land should be the subject of a conservation agreement or conservation covenant—a conservation agreement has been entered into, or a conservation covenant exists, for the relevant land; and
 - (c) if the Minister considers that it is appropriate for there to be an indigenous access and use agreement relating to the lease land—an indigenous access and use agreement relating to the land has been entered into.
 - (6) In addition, a term lease for rural leasehold land that is in an area of international conservation significance under the *Cape York Peninsula Heritage Act 2007* may be issued for a term of no more than 75 years if—
 - (a) the Minister considers that the lease land is in good condition; and
 - (b) an indigenous land use agreement relating to the land has been entered into; and
 - (c) if the Minister considers land (the *relevant land*) that is all or part of the lease land should be the subject of a conservation agreement or conservation covenant—a conservation agreement has been entered into, or a conservation covenant exists, for the relevant land.
 - (7) This section is subject to sections 155A and 155B.

155A Extending particular term leases for a term of up to 40 years

- (1) This section applies to a lease if—
 - (a) the lease is for rural leasehold land; and
 - (b) the lease land is 100ha or more; and
 - (c) the term of the lease is no more than 30 years; and
 - (d) there is a land management agreement for the lease; and
 - (e) the land management agreement contains a commitment by the Minister to extend the lease under this section; and
 - (f) no more than 10 years have passed since the agreement was first registered; and
 - (g) the lease has not already been extended under this section.
- (2) The lessee may apply to extend the lease.
- (3) The Minister may grant the application and extend the lease if the Minister is satisfied—
 - (a) the lessee has complied with the land management agreement and any requirements under it for the granting of the extension; and
 - (b) the lease land is in good condition.
- (4) However, the extension can not be for more than 10 years.

155B Extending particular term leases for a term of up to 50 years

- (1) This section applies to a lease if—
 - (a) the lease is for rural leasehold land; and
 - (b) the lease land is 100ha or more; and
 - (c) either—
 - (i) the term of the lease is for more than 30, but no more than 40, years; or
 - (ii) the term of the lease has been extended under section 155A; and

- (d) the unexpired term of the lease is at least 10 years; and
 - (e) there is a land management agreement for the lease; and
 - (f) the land management agreement contains a commitment by the Minister to extend the lease if the following circumstances apply—
 - (i) the Minister considers that land (the *relevant land*) that is all or part of the lease land should be the subject of a conservation agreement or conservation covenant;
 - (ii) a conservation agreement has been entered into, or a conservation covenant exists, for the relevant land;
 - (iii) if the Minister considers that it is appropriate for there to be an indigenous access and use agreement relating to the lease land—an indigenous access and use agreement relating to the land has been entered into; and
 - (g) the lease has not already been extended under this section.
- (2) The lessee may apply to extend the lease.
 - (3) The Minister may grant the application and extend the lease if the Minister is satisfied—
 - (a) the lessee has complied with the land management agreement and any requirements under it for the granting of the extension; and
 - (b) the lease land is in good condition.
 - (4) However, the extension can not be for more than 10 years.

155C Registering and taking of effect of extension

- (1) This section applies if, under section 155A or 155B, the Minister extends a term lease.
- (2) The extension must be registered as soon as practicable after it is made.

- (3) The extension has effect from the day it is registered.
- (4) No fee is payable for registering the extension.

155D Power to reduce term of extended term lease

- (1) This section applies to a term lease if—
 - (a) it has been extended under section 155A and the Minister considers the lease land is no longer in good condition; or
 - (b) it has been extended under section 155B and an indigenous access and use agreement entered into under section 155B(1)(f)(iii) is no longer in effect in relation to the lease land.
- (2) The Minister may reduce the term of the lease by an amount that is no more than the period for which it was extended under section 155A or 155B.
- (3) However, the Minister can not reduce the term by an amount that results in the lease no longer having an unexpired term.

Note—

A breach of a condition that the lessee comply with the land management agreement for the lease may also be dealt with by a remedial action notice.

155E Provisions about reduction

- (1) This section applies if, under section 155D(2), the Minister decides to reduce the term of a term lease.
- (2) Written notice must given to the lessee of the decision and the reasons for it.
- (3) The lessee may appeal against the decision.
- (4) The reduction must be registered as soon as practicable after the appeal expiration day for the decision.
- (5) The reduction has effect from the day it is registered.
- (6) No fee is payable for registering the reduction.
- (7) No compensation is payable by the State for the reduction.

156 Application of Dividing Fences Act

- (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**157 Expiry of lease**

- (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.²⁸

157A Chief executive's approval required for renewal

- (1) A term lease may be renewed only if—
 - (a) the lessee has made an application under section 158; and
 - (b) under this division, the chief executive has made an offer of a new lease and the offer has been accepted.
- (2) Subsection (1) is subject to section 164.²⁹

158 Application for new lease

- (1) The lessee of a term lease may apply for an offer of a new lease (a *renewal application*) unless a condition of the lease or this Act prohibits its renewal.

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

29 Section 164 (Short term extension)

- (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 can not be made for a lease if it contains a reservation that all of the lease land is a future conservation area.
- (4) 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.
- (5) In this section—

existing term, of the lease, does not include an extension under section 155A or 155B of the term of the lease.

159 General provisions for deciding application

- (1) The chief executive must consider the following before deciding whether or not to offer a new lease, the conditions of the offer or the imposed conditions of the new lease—
 - (a) the interest of the lessee;
 - (b) whether part of the lease land 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 land is needed for environmental or nature conservation purposes;
 - (e) the condition of the lease land;
 - (f) the extent to which the lease land suffers from, or is at risk of, land degradation;
 - (g) whether the lessee has complied with, or to what extent the lessee has complied with, the conditions of the lease and any land management agreement for the lease;

- (h) whether part of the lease land has a more appropriate use from a land planning perspective;
 - (i) whether part of the lease land 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 land is needed for a public purpose;
 - (k) whether part of the lease land 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 land could be subdivided without reducing the remaining land to less than a living area;
 - (m) whether a new lease is the most appropriate form of tenure for the lease land;
 - (n) the lessee's record of compliance with this Act;
 - (o) the natural environmental values of the lease land.
- (2) However, subsection (1)(d) applies only if the NCA department has given the chief executive—
- (a) a written notice stating the environmental or nature conservation purposes for which the part of the lease land is required; and
 - (b) either—
 - (i) a map showing the required particulars for a map of the part; or
 - (ii) a description of the boundary of the part by reference to Map Grid of Australia 1994 coordinates and zone references for the area.
- (3) If the lease contains a reservation that part of the lease land is a future conservation area the chief executive can not offer a new lease for that part.
- (4) To remove any doubt, it is declared that, to the extent the lease land is in an urban area, the chief executive need not consider any issue that is not relevant to an urban environment.

Example of an issue not relevant to an urban environment—

whether part of the lease land should be set apart and declared as State forest

- (5) In considering the natural environmental values of the lease land, the matters to which the chief executive must have regard include any advice about the values the chief executive receives from the NCA department.

159A Provisions for decision about most appropriate form of tenure

- (1) In deciding, under section 159(1)(m), whether a new lease is the most appropriate form of tenure for the lease land the subject of a renewal application, section 16 applies—
 - (a) as if a reference in the section to an allocation were a reference to the decision; and
 - (b) with other necessary changes.
- (2) If the lease is over a reserve, the chief executive must, before making the decision, consult with the trustee for the reserve.
- (3) If the decision is that another form of tenure is a more appropriate form of tenure than a new lease, the chief executive may elect to treat the application as a conversion application for the other form of tenure.
- (4) On the making of the election—
 - (a) the renewal is taken to be a conversion application for the other form of tenure; and
 - (b) division 3 applies to the conversion application.

160 Written notice of chief executive's decision

- (1) If the chief executive decides to offer a new lease, the applicant must be given written notice of the conditions on which the offer is made and to which the lease will be subject.
- (2) If the chief executive decides to refuse the renewal application, the applicant must be given written notice of the reasons for the decision.

- (3) The applicant may appeal against the chief executive'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.

160A Land management agreement condition for particular offers

- (1) This section applies if—
 - (a) a new lease is offered under section 160(1); and
 - (b) the new lease—
 - (i) is for rural leasehold land; and
 - (ii) is to be for a term of 20 years or more; and
 - (c) the lease land is 100ha or more.
- (2) The offer is subject to a condition that the proposed lessee must enter into a land management agreement for the new lease.

161 When offer has been accepted

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

162 Issuing of new lease

- (1) On acceptance of the offer, the Minister may issue a lease (the *new lease*) in accordance with the terms of the accepted offer.
- (2) The new lease must be issued for the same purpose as the lease (the *old lease*) the subject of the renewal application.
- (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 relevant registered interests to which the old lease was subject, and in the same priorities.

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

- (5) On the registration of the new lease, the old lease is taken to have been wholly surrendered.
- (6) The surrender must be registered.

162A Conditions imposed on particular new leases

- (1) This section imposes conditions on a lease issued under section 162 if—
 - (a) the lease—
 - (i) is for rural leasehold land; and
 - (ii) is to be for a term of 20 years or more; and
 - (b) the lease land is 100ha or more.
- (2) There must be a current land management agreement for the lease.
- (3) The lessee must comply with the agreement.

163 Land not included in the offer

If the offer is for only a part of the lease, the land not included in the offer, on surrender of the lease—

- (a) if the lease was over a reserve—remains a reserve; or
- (b) otherwise—becomes unallocated State land.

164 Short term extension

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

165 Application of division

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.

165A Chief executive's approval required for conversion

A lease may be converted under this division only if—

- (a) the lessee has made an application under section 166; and
- (b) under this division, the chief executive has made an offer to convert the lease and the offer has been accepted.

166 Application to convert lease

- (1) Subject to subsections (2) to (4), a lessee may apply to convert (a *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 chief executive's opinion, special circumstances exist.
- (3) A lessee of a term lease not issued for pastoral purposes may only apply to convert the lease to freehold land.
- (4) A conversion application can not be made for a lease if it contains a reservation that all of the lease land is a future conservation area.
- (5) 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.
- (6) In this section—
- existing term*, of the lease, does not include an extension under section 155A or 155B of the term of the lease.

167 Provisions for deciding application

- (1) The chief executive must consider the following in deciding whether or not to offer to convert a lease, the conditions on which the offer is made and, if the offer is for a lease, its imposed conditions—
- (a) whether part of the lease land needs to be set apart and declared as State forest under the *Forestry Act 1959*;
 - (b) whether part of the lease land 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 land is needed for environmental or nature conservation purposes;
 - (e) the condition of the lease land;
 - (f) the extent to which the lease land suffers from, or is at risk of, land degradation;
 - (g) whether the lessee has complied with, or to what extent the lessee has complied with, the conditions of the lease and with any land management agreement for the lease;
 - (h) whether part of the lease land has a more appropriate use from a land planning perspective;
 - (i) whether part of the lease land 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 land is needed for a public purpose;
 - (k) whether part of the lease land 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 land could be subdivided without reducing the remaining land to less than a living area;
 - (m) if the lease land is used for residential or industrial purposes—the most appropriate tenure for the land;
 - (n) the most appropriate form of tenure for the lease land;
 - (o) the lessee's record of compliance with this Act;
 - (p) the natural environmental values of the lease 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.
- (3) Also, subsection (1)(d) applies only if the NCA department has given the chief executive—
- (a) a written notice stating the environmental or nature conservation purposes for which the part of the lease land is required; and
 - (b) either—
 - (i) a map showing the required particulars for a map of the part; or
 - (ii) a description of the boundary of the part by reference to Map Grid of Australia 1994 coordinates and zone references for the area.
- (4) If the lease contains a reservation that part of the lease land is a future conservation area the chief executive can not offer a new lease or a deed of grant for that part.
- (5) To remove any doubt, it is declared that, to the extent the lease land is in an urban area, the chief executive need not consider any issue that is not relevant to an urban environment.

Example of an issue not relevant to an urban environment—

whether part of the lease land should be set apart and declared as State forest

- (6) In considering the natural environmental values of the lease land, the matters to which the chief executive must have regard include any advice about the values the chief executive receives from the NCA department.
- (7) For subsection (1)(m), section 16 applies, with necessary changes, as if a reference in the section to an allocation were a reference to a decision mentioned in subsection (1).

168 Written notice of chief executive's decision

- (1) If the chief executive decides to offer a new lease or a deed of grant, the applicant must be given written notice of the conditions on which the offer is made.
- (2) If the offer is for a lease, the offer must state the conditions to which the lease will be subject.
- (3) The offer may be for a smaller size area of land or a different tenure to that applied for.
- (4) If the chief executive decides to refuse the conversion application, the applicant must be given written notice of the reasons for the decision.
- (5) The applicant may appeal against the chief executive'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.

168A Land management agreement for new perpetual lease

- (1) This section applies to the offer under section 168(1) of a new perpetual lease if the lease land is rural leasehold land.
- (2) The offer is subject to a condition that the lessee must enter into a land management agreement for the lease.
- (3) The lease is subject to conditions that—

- (a) there must be a current land management agreement for the lease; and
- (b) the lessee must comply with the agreement.

169 Conditions of freehold offer

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;
- (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.

170 Purchase price if deed of grant offered

- (1) Unless a price or formula has already been stated in the lease to be converted, the chief executive decides the purchase price for the conversion of a lease to a deed of grant.
- (2) The lessee may appeal against the chief executive'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 chief executive 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.

171 When offer has been accepted

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

172 Issuing of new tenure

- (1) On acceptance of the offer a tenure (the *new tenure*) may be issued by—
 - (a) if the new tenure is a deed of grant or freeholding lease—the Governor in Council; or
 - (b) if the new tenure is a term or perpetual lease—the Minister.

Note—

See also section 153 (Lease must state its purpose).

- (2) The new tenure must be issued in accordance with the terms of the accepted offer.
- (3) Additional unallocated State land may be included in the new lease, if chapter 4, part 1, division 2 is complied with.³¹
- (4) If the new tenure is a lease, it must be issued for the same purpose as the lease (the *old lease*) the subject of the conversion application.
- (5) The new tenure is issued subject to all relevant registered interests to which the old lease was subject, and in the same priorities.
- (6) On the registration of the new tenure, the old lease is taken to have been wholly surrendered.
- (7) The surrender must be registered.

173 Land not included in the offer

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.

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

173A Short term extension

If it appears a lease would expire before a conversion 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.

174 Freehold lease may not be transferred without approval

- (1) If a perpetual lease for agricultural or grazing purposes is converted to a deed of grant, or a deed of grant issues for a grazing homestead freeholding lease, the deed of grant is issued subject to a covenant prohibiting the transfer of the land to a corporation, or to a person as trustee for a corporation, without the Governor in Council's approval.
- (2) Subsection (1) applies only if the area of the deed is more than 2500ha.
- (3) The registrar of titles may register the transfer of the land to a corporation, or to a person as trustee for 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 applicant must be given written notice of the Governor in Council's decision about the removal of the covenant.

Division 4 Subdividing leases**175 When lease may be subdivided**

A lease may be subdivided only if—

- (a) this Act or a condition of the lease does not prohibit its subdivision; and
- (b) the lease is not, by a registered covenant or tied condition, tied to another lease or freehold land; and
- (c) the chief executive has, on an application made under this division, approved the subdivision; and

- (d) the requirements under this division for the subdivision have been complied with.

176 Application to subdivide

- (1) A lessee of a lease (the *existing lease*) may apply for approval to subdivide the lease.
- (2) The application must be accompanied by—
 - (a) a statement of the applicant's reasons for seeking the proposed subdivision; and
 - (b) a statement by the relevant local government of its views on the proposed subdivision; and
 - (c) the written consent of all persons with a registered interest in the lease land.
- (3) However, consent under subsection (2)(c) must not be unreasonably withheld.

176A General provisions for deciding application

- (1) The chief executive must decide whether to approve the proposed subdivision.
- (2) If the chief executive decides to grant the approval, the chief executive must decide an offer (the *subdivision offer*) of new leases to the applicant for the lease land.
- (3) The subdivision offer must state the term and the imposed conditions of each of the new leases.
- (4) The subdivision offer may be made subject to conditions.

Example—

a condition that a plan of survey for the proposed subdivision, approved by the chief executive and capable of registration, be lodged

- (5) However, if there is a land management agreement for the existing lease, the subdivision offer must be subject to the condition that a land management agreement must be entered into for each new lease the subject of the offer.
- (6) The term of a new lease may be longer than the unexpired term of the existing lease.

176B Criteria for deciding application

In deciding the matters under section 176A the chief executive must consider—

- (a) whether the proposed subdivision—
 - (i) is appropriate, taking into account State, regional and local planning strategies and the objects of this Act; and
 - (ii) will require dedication of part of the lease land as a road for access to the subdivided land; and
- (b) the matters mentioned in section 159(1) to the extent they are relevant to the proposed subdivision and the term of any new leases to be offered.

176C Specific grounds for refusal

The chief executive may refuse to give the approval if—

- (a) the applicant has made an earlier application for approval to subdivide the existing lease; and
- (b) the earlier application was refused; and
- (c) there is no relevant change in circumstances from the earlier application.

176D Notice of decision

- (1) If the chief executive decides to grant the approval, the applicant must be given a written notice stating the subdivision offer.
- (2) If the chief executive decides to refuse the approval, the applicant must be given a written notice of the decision and the reason for it.

176E Appeal against refusal

If—

- (a) the chief executive decides to refuse the approval; and

- (b) the only reason for the refusal was that the applicant had not complied with the conditions of the existing lease; the applicant may appeal against the decision.

176F Acceptance of subdivision offer

The subdivision offer is accepted only if the applicant complies with its conditions.

176G Issuing of new leases

- (1) On acceptance of the subdivision offer—
- (a) any plan of subdivision required under a condition of the offer to be lodged must be registered; and
- (b) the designated person may issue the new leases in accordance with the terms of the accepted offer.

Note—

See also section 153 (Lease must state its purpose).

- (2) The new leases are issued subject to all relevant registered interests to which the existing lease was subject with the same priorities.
- (3) On registration of the new leases, the existing lease is taken to have been wholly surrendered.
- (4) The surrender must be registered.

176H Restriction on transferring new leases

It is a mandatory condition of each of the new leases that they can not be transferred for 5 years from when their terms start, unless the Minister is satisfied that special circumstances exist.

176I Power to waive fees if chief executive requested application

If the application was made at the chief executive's request and the subdivision offer is made, the chief executive may waive all or part of any charge or fee for the application, the

registration of any relevant plan of subdivision or the issue of the new leases.

Division 5 Amalgamating leases

176J When leases may be amalgamated

- (1) Two or more leases may be amalgamated only if—
 - (a) the lease land is not a reserve or State forest; and
 - (b) this Act or a condition of the lease does not prohibit the amalgamation; and
 - (c) there is no registered mortgage over only part of the lease land; and
 - (d) the chief executive has, on an application made under this division, approved the amalgamation; and
 - (e) the requirements under this division for the amalgamation have been complied with.
- (2) In this section—

lease land means the lease land for all of the leases.

176K Application to amalgamate

- (1) The lessee of 2 or more leases (the *existing leases*) may apply for approval to amalgamate them only if—
 - (a) the lessee is the lessee of all of them; and
 - (b) they are of the same tenure type; and
 - (c) the lease land for the existing leases is contiguous.
- (2) If the lessee comprises 2 or more persons, each person must be a party to the application.
- (3) The application must be accompanied by—
 - (a) a statement of the applicant's reasons for seeking the proposed amalgamation; and
 - (b) a statement by the relevant local government of its views on the proposed amalgamation; and

- (c) the written consent of all persons with a registered interest in the lease land for the existing leases.
- (4) However, consent under subsection (3)(c) must not be unreasonably withheld.

176L General provisions for deciding application

- (1) The chief executive must decide whether to approve the proposed amalgamation.
- (2) If the chief executive decides to grant the approval, the chief executive must decide an offer (the *amalgamation offer*) of an amalgamated lease to the applicant for the lease land of the existing leases.
- (3) The amalgamation offer must state the term and the imposed conditions of the amalgamated lease.
- (4) The amalgamation offer may be made subject to conditions.

Example—

a condition that a plan of survey for the proposed amalgamation, approved by the chief executive and capable of registration, be lodged

- (5) However, if there is a land management agreement for any of the existing leases, the amalgamation offer must be subject to a condition that a land management agreement must be entered into for the amalgamated lease.
- (6) The term of the amalgamated lease may be longer than the unexpired term of all or any of the existing leases.

176M Criteria for deciding application

In deciding the matters under section 176L the chief executive must consider—

- (a) whether the proposed amalgamation is appropriate, taking into account State, regional and local planning strategies and the objects of this Act; and
- (b) the matters mentioned in section 159(1) to the extent they are relevant to the proposed amalgamation and the term of any amalgamated lease to be offered.

176N Roads

- (1) This section applies if there is a road within the external boundaries of the lease land of any of the existing leases.
- (2) The chief executive must consider—
 - (a) whether the road is still needed for public use; and
 - (b) if the road were to be closed—whether it should be included within the external boundaries of the lease land of the proposed amalgamated lease.
- (3) If the applicant or the chief executive proposes to close the road and include its area in the lease land of any amalgamated lease, the chief executive must—
 - (a) seek the opinion of the relevant local government on the proposal; and
 - (b) comply with chapter 4, part 1, division 2.

176O Specific grounds for refusal

The chief executive may refuse to give the approval if—

- (a) the applicant has made an earlier application for approval to amalgamate the existing leases; and
- (b) the earlier application was refused; and
- (c) there is no relevant change in circumstances from the earlier application.

176P Notice of decision

- (1) If the chief executive decides to grant the approval the applicant must be given a written notice stating the amalgamation offer.
- (2) If the chief executive decides to refuse the approval the applicant must be given a written notice of the decision and the reasons for it.

176Q Appeal against refusal

If—

- (a) the chief executive decides to refuse the approval; and
 - (b) the only reason for the refusal was that the applicant had not complied with the conditions of 1 or more of the existing leases;
- the applicant may appeal against the decision.

176R Acceptance of amalgamation offer

The amalgamation offer is accepted only if the applicant complies with its conditions.

176S Issuing of amalgamated lease

- (1) On acceptance of the amalgamation offer—
 - (a) any plan of amalgamation required under a condition of the offer to be lodged must be registered; and
 - (b) the designated person may issue the amalgamated lease in accordance with the terms of the accepted offer.

Note—

See also section 153 (Lease must state its purpose).

- (2) The amalgamated lease is issued subject to all relevant registered interests to which the existing leases were subject with the same priorities.
- (3) On registration of the amalgamated lease, the existing leases are taken to have been wholly surrendered.
- (4) The surrenders must be registered.

176T Power to waive fees if chief executive requested application

If the application was made at the chief executive's request and the amalgamation offer is made, the chief executive may waive all or part of any charge or fee for the application, the registration of any relevant plan of amalgamation or the issue of the amalgamated lease.

Division 6 Land management agreements

176U Making and registration of agreement about land management

- (1) The Minister may, for the State, make or amend a written agreement with a lessee about the management and use of the lease land.
- (2) However the agreement or amendment has effect only if it is registered.

Note—

For registration of land management agreements, see section 279.

- (3) The agreement and any amendment of the agreement registered from time to time is a ***land management agreement***.

176V Purposes of a land management agreement

The purposes of a land management agreement for a lease are to do each of the following to the extent they are relevant to the lease land—

- (a) identify and describe the natural and physical attributes of the lease land, including its known indigenous and other cultural heritage and significant natural environmental values;
- (b) record the condition of the lease land at a particular point in time;
- (c) improve or maintain its condition so that it is, or will be, at least in good condition;
- (d) identify any land degradation issues relating to the land;
- (e) establish the agreed management outcomes for the identified land degradation issues and the associated management strategies to address them;
- (f) identify measures to protect the known indigenous and other cultural heritage and the identified significant natural environmental values;
- (g) establish a monitoring and reporting program;

- (h) establish a process to verify the performance of the lessee in relation to the outcomes;
- (i) establish a dispute resolution process;
- (j) establish a review process to maintain the relevance and effectiveness of the agreement.

176W Content of land management agreement

- (1) A land management agreement for a lease may include—
 - (a) a commitment mentioned in section 155A(1)(e) or 155B(1)(f); and
 - (b) any matter the Minister considers appropriate to achieve the purposes of a land management agreement.
- (2) The chief executive may issue guidelines about the content and preparation of land management agreements.

176X Reviewing land management agreement

The Minister must, at least once every 10 years, review each land management agreement for a lease to assess the lessee's performance in relation to the management outcomes under the agreement.

Note—

See also section 211(1) (Reviewing imposed conditions of lease).

Division 7 Miscellaneous provisions

176Y Part does not affect amounts owing relating to lease

To remove any doubt, it is declared that the following do not limit or otherwise affect a lessee's obligation to pay rent or another amount owing in relation to a lease—

- (a) an application under this part about the lease, other than an application under section 154;
- (b) the ending, under this part, of the lease.

176Z When payment obligations end if lease ends under part

If a lease ends under this part, an obligation to pay future rent and other amounts that may become payable in relation to the lease stops on the day before the day on which lease ended.

176ZA Overpayments relating to former lease

- (1) This section applies if a lease ends under this part and, because of section 176Z, an amount has been overpaid for rent or another amount relating to the former lease.
- (2) If a new lease is issued under this part in relation to the former lease, the amount must be credited to rent or other amounts payable under the new lease.
- (3) Otherwise, the amount must be refunded to the person who made the payment.
- (4) This section applies despite section 191.

Part 4 Permits to occupy particular land

177 Chief executive may issue permit

- (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) The permit may be issued for 2 or more reserves if the reserves—

- (a) have been dedicated for the same purpose; and
 - (b) are held by the same trustee.
- (6) A permit may not be transferred, sublet or mortgaged.
 - (7) A permit may be issued only if it is for 1 type of land mentioned in subsection (1).
 - (8) A permit for a term of not more than 12 months need not be registered.
 - (9) If a permit for a term of 12 months or more is issued for unallocated State land or a reserve, the chief executive must keep a record of its issue in the appropriate register.
 - (10) The chief executive may issue a permit without receiving an application under section 177A.

177A Applying for permit

A person may apply for a permit to occupy unallocated State land, a reserve or a road.

177B Notice of intention to issue permit

- (1) If the chief executive proposes to issue a permit, written notice of the proposal—
 - (a) must be given to each of the following—
 - (i) for a permit for a reserve—the trustee of the reserve;
 - (ii) for a permit for a State-controlled road—the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered;
 - (iii) for a permit for a road that is under the control of a local government—the local government;
 - (iv) another entity with a registered interest in the proposed permit land; and
 - (b) may be given to any other entity the chief executive considers has an interest in the proposed permit land.
- (2) The notice must—

- (a) be in the approved form; and
- (b) state the following—
 - (i) the reason for the proposed issue of the permit;
 - (ii) that the entity given the notice may make a submission against the proposal to the chief executive;
 - (iii) that the submission must be in the approved form;
 - (iv) the closing day for the submission;
 - (v) the place where or the way the submission must be lodged.
- (3) In this section—

State-controlled road means a road or land, or part of a road or land, declared under the *Transport Infrastructure Act 1994*, to be a State-controlled road.

177C Submissions

- (1) An entity given a notice under section 177B about the proposed issue of a permit may make a submission against the proposal to the chief executive.
- (2) The submission must—
 - (a) be in the approved form; and
 - (b) be received by the closing day for the submission stated in the notice; and
 - (c) be lodged at the place or in the way stated in the notice.
- (3) The chief executive must consider all submissions received under this section before issuing the permit.

177D Notice of permit

- (1) If the chief executive issues a permit, written notice of its issue must be given to each entity given a notice about the permit under section 177B.
- (2) If the permit is for a term of 12 months or more, the notice must state the day the permit was registered.

178 Permits below high-water mark

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.

179 Fencing

- (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.

180 When permit may be cancelled or surrendered

- (1) A permit may be cancelled if—
 - (a) the permittee contravenes a provision of this Act in relation to the permit; or
 - (b) the permittee has more than 1 conviction, not including any spent convictions, for a vegetation clearing offence, regardless of whether any of the offences were committed on the permit land; or
 - (c) the chief executive considers the cancellation is in the interests of the State.
- (2) A permittee may surrender a permit—
 - (a) on terms agreed to between the chief executive and the permittee; and
 - (b) with the chief executive's written approval.

180A Applying to cancel or surrender permit

- (1) A relevant entity for a permit may apply to cancel the permit.
- (2) A permittee may apply to surrender the permit.
- (3) In this section—

relevant entity, for a permit, means all of the following—

- (a) a public utility provider;
- (b) if the permit land is a reserve—the trustee of the reserve;
- (c) if the permit land is a road—an adjoining owner of land adjoining the road.

180B Notice of proposal to cancel or approve surrender

- (1) If the chief executive proposes to cancel or approve the surrender of a permit, written notice of the proposal—
 - (a) must be given to each of the following—
 - (i) the permittee;
 - (ii) for an application to cancel a permit—the applicant;
 - (iii) another entity with a registered interest in the permit land; and
 - (b) may be given to any other entity the chief executive considers has an interest in the permit land.
- (2) The notice must—
 - (a) be in the approved form; and
 - (b) state the reason for the proposed cancellation or surrender; and
 - (c) for an application to cancel a permit, state the following—
 - (i) that the entity given the notice may make a submission against the proposed cancellation to the chief executive;
 - (ii) that the submission must be in the approved form;
 - (iii) the closing day for the submission;

- (iv) the place where or the way the submission must be lodged.

180C Submissions

- (1) An entity given a notice under section 180B of a proposal to cancel a permit may make a submission against the proposed cancellation to the chief executive.
- (2) The submission must—
 - (a) be in the approved form; and
 - (b) be received by the closing day for the submission stated in the notice; and
 - (c) be lodged at the place or in the way stated in the notice.
- (3) The chief executive must consider all submissions received under this section before cancelling the permit.

180D When cancellation or surrender is effective

- (1) A permit may be cancelled by registering a cancellation notice for the permit.
- (2) A permit may be surrendered by registering a surrender notice for the permit.
- (3) The cancellation or surrender takes effect on the day the cancellation notice or surrender notice is registered.

180E Notice about cancellation or surrender

- (1) Written notice of the cancellation or surrender of a permit must be given to—
 - (a) the permittee; and
 - (b) another entity given a notice under section 180B about the proposed cancellation or surrender.
- (2) The notice under subsection (1) must state all of the following—
 - (a) the day the cancellation or surrender has effect;

- (b) that the permit is ended and the permittee is divested of any interest in the permit land;
 - (c) if the notice is about the cancellation of a permit—no compensation is payable for the cancellation;
 - (d) if there are improvements on the permit land owned by the permittee—that the permittee may apply to remove the improvements.
- (3) If the chief executive decides not to cancel or surrender a permit, written notice of the fact must be given to each entity given a notice under section 180B about the proposed cancellation or surrender.

180F Effect of cancellation or surrender

On the cancellation or surrender of a permit—

- (a) the permit ends; and
- (b) the permittee is divested of any interest in the permit land; and
- (c) if the permit is cancelled—no compensation is payable for the cancellation.

180G Permittee to give up possession on cancellation or surrender

- (1) On the cancellation or surrender of a permit, the permittee must immediately vacate the permit land.
- (2) If the permittee does not give up possession under subsection (1), and is not otherwise entitled to be in possession, the permittee is a person who is unlawfully occupying the land.

Note—

Action for trespassing may be taken under chapter 7, part 2.

180H Dealing with improvements

- (1) A permittee for a permit that is cancelled or surrendered may apply to remove the permittee's improvements on the permit land.

- (2) The permittee may remove the improvements only—
 - (a) with the written approval of the chief executive; and
 - (b) within the period stated in the approval.
- (3) The improvements become the property of the State unless they are removed under subsection (2).

Chapter 5 Matters affecting land holdings

Part 1 Rents

Division 1 Rents

181 Rent periods

- (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.
- (4) Also, if the annual rent for a lease, licence or permit is more than the amount prescribed under a regulation, the rental period for the lease, licence or permit may be divided into the sub-periods prescribed under a regulation for the payment of the rent.

182 Rent categories

- (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.

183 Rent payable generally

- (1) The rent for a lease, licence or permit is the amount calculated by multiplying the valuation for rental purposes prescribed under a regulation by the rate prescribed under a regulation.
- (2) Subsection (1) does not apply to—
 - (a) a freeholding lease; or
 - (b) a lease, licence or permit for which there is a set rent.
- (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.

183A Set rents

The designated officer may 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.

183AA Protection against particular undue rental increases

- (1) This section applies if—
- (a) after applying section 183(1) to a category of leases, licences or permits (*relevant tenures*), there is an increase in rents for the category for a rental year (the *current year*); and
 - (b) the Minister considers the increase is an undue increase.
- (2) The Minister may decide that the amount of the current year's rent for all relevant tenures, other than an excluded tenure for the current year, is the lesser of the following—
- (a) the rent worked out by applying section 183(1);
 - (b) the rent worked out using the formula—

$$RCY = RPY + (RPY \times PP)$$

where—

RCY means the amount of the rent.

RPY means—

- (a) if the relevant tenure existed during the previous year—that year's annual rent for the relevant tenure; or
- (b) if the relevant tenure did not exist during the previous year but had a corresponding tenure for that year—that year's notional annual rent for the corresponding tenure.

PP means the percentage for the category, as prescribed under a regulation.

- (3) In this section—

corresponding tenure, for a relevant tenure, means a former lease, licence or permit, whether or not of the same area as the relevant tenure, that was ended for the purpose of changing its area, issuing a new tenure or for a renewal or conversion under this Act and because of which change, issuing renewal or conversion the relevant tenure was created.

excluded tenure, for the current year, means—

- (a) a freeholding lease; or
- (b) a relevant tenure for which there is a set rent; or

- (c) a relevant tenure that, during the previous year, did not exist and had no corresponding tenure.

Note—

For freeholding leases see chapter 8, part 2. For other excluded tenures, see sections 183 and 183A.

notional annual rent, for the previous year of a corresponding tenure of a relevant tenure, means the rent for each hectare of the corresponding tenure's area multiplied by the area of the relevant tenure.

previous year means the rental year that immediately preceded the current year.

184 Rent adjustments

- (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

185 Development and investigation concessions

- (1) If the designated officer considers a lease needs investigation and development work by a lessee, the designated officer 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) If a permit is for investigation for a lease for development work, the designated officer may fix an annual rent, instead of the rent normally applying to a permit, while the permit is in force.
- (4) This section does not apply to a lease or permit if the lease or permit has a set rent.

186 Charitable, recreational and sporting concessions

- (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.

187 Residential hardship concessions

- (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.

188 Property build-up concession

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.

Division 3 Rent and instalment payments**190 When rent is owing**

- (1) All rent and instalments must be paid by the times and at the places prescribed under a regulation, unless the chief executive is satisfied that, because of exceptional circumstances, the payment can not be made by the prescribed time or at the prescribed place.
- (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.

Examples of possible exceptional circumstances—

civil disturbance, computer failure, extreme climatic conditions and industrial action

191 Overpayment of rent

- (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.

192 Deferral of rent and instalment payments for hardship

- (1) The Minister may on the application of a lessee or licensee, defer, wholly or partly, the payment of rent or instalments for the lessee's lease or licensee's 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 grant the application only if the applicant gives the Minister—
 - (a) the returns and financial statements that the Minister asks for to help decide the application; or
 - (b) evidence that the applicant is receiving, for the hardship mentioned in subsection (1)(a)(i), financial assistance under a State or Commonwealth scheme.

Example of a scheme—

the exceptional circumstances scheme under the *Rural and Regional Adjustment Act 1994*

- (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.³²
- (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.

193 Forgiveness of deferred rent payments

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

³² Section 193 deals with the forgiveness of deferred rent payments.

194 Change of circumstances

- (1) If the Minister considers the financial circumstances of a lessee 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**194A Meaning of *instalment* for div 4**

In this division—

instalment includes a fee payable under this Act for issuing and registering a deed of grant.

195 Penalty interest on outstanding rent and instalments

- (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 designated officer 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.

196 Designated officer may take action for non-payment

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 designated officer, the designated officer may do 1 or more of the following—

- (a) take action in a court of competent jurisdiction to recover the rent, instalments, penalty interest or deferred interest owing;
- (b) forfeit the lease under chapter 5, part 4, division 2;
- (c) cancel the licence or permit.

197 Notice of intention to cancel

- (1) The designated officer must give notice to the lessee, licensee or permittee of the designated officer's intention to take action to do either or both of the following—
- (a) recover the rent, instalments, penalty interest or deferred interest;
 - (b) cancel the licence or permit.³³
- (2) The notice must state a reasonable time in which the designated officer 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.

33 See section 235 for notice of intention to forfeit a lease.

198 Designated officer may reinstate if payment made

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

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

Part 1A Future conservation areas**198A Management principles**

- (1) The management principles for future conservation areas are—
 - (a) that any use of their natural resources for agriculture or grazing is to be ecologically sustainable; and
 - (b) that they are to be maintained predominantly in their natural condition; and
 - (c) that their significant cultural and natural resources are to be protected.
- (2) In this section—

cultural resources, for a future conservation area, means places or objects that have anthropological, archaeological, historical, scientific, spiritual or sociological significance or value, including such significance or value under Aboriginal tradition or Island custom.

ecologically sustainable, for the use of the natural resources of a future conservation area for agriculture or grazing, means the use is within the area's capacity to sustain natural processes while—

- (a) maintaining the life support systems of nature; and

- (b) ensuring the benefit of the use to present generations does not diminish the potential to meet the needs and aspirations of future generations.

natural resources, for a future conservation area, means the natural and physical features of the area, including wildlife, soil, water, minerals and air.

198B Protection of reservation for future conservation area

If a lease contains a reservation for a future conservation area the lessee must not do an act or make an omission, or allow someone else to do an act or make an omission, that is inconsistent with the management principles under section 198A for future conservation areas.

Maximum penalty—1665 penalty units.

Part 2 Conditions

Division 1 General mandatory conditions

198C Operation of div 1

- (1) This division provides for particular conditions of leases, licences and permits.
- (2) Each condition under this division or under another provision mentioned in schedule 1A, that applies to a lease, licence or permit is a *mandatory condition* of the lease, licence or permit.
- (3) This division does not limit the conditions that the designated officer may, under division 2 or another provision of this Act, impose on a lease, licence or permit.

198D Mandatory conditions need not be registered

To remove any doubt, it is declared that a mandatory condition of a lease, licence or permit binds the lessee,

licensee or permittee even though the condition is not registered.

199 Duty of care condition

- (1) All leases, licences and permits are subject to the condition that the lessee, licensee or permittee has the responsibility for a duty of care for the land.
- (2) If a lease is issued for agricultural, grazing or pastoral purposes, the lessee's duty of care includes that the lessee must take all reasonable steps to do the following in relation to the lease land—
 - (a) avoid causing or contributing to land salinity that—
 - (i) reduces its productivity; or
 - (ii) damages any other land;
 - (b) conserve soil;
 - (c) conserve water resources;
 - (d) protect riparian vegetation;
 - (e) maintain pastures dominated by perennial and productive species;
 - (f) maintain native grassland free of encroachment from woody vegetation;
 - (g) manage any declared pest;
 - (h) conserve biodiversity.

199A Land may be used only for tenure's purpose

- (1) Lease land, licence land or permit land may be used only for the purpose for which the lease, licence or permit 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.

200 Noxious plants condition

- (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.

201 Information condition

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.

202 Improvement condition

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 Imposed conditions**202A Operation of div 2**

- (1) This division provides for conditions that may be imposed on leases, licences and permits.
- (2) Each condition decided as a condition of a lease, licence or permit under this division, division 3, section 159, 167, 176A, 176L, 214E or a transition to sale agreement is an *imposed condition* of the lease, licence or permit.
- (3) An imposed condition of a lease, licence or permit binds the lessee, licensee or permittee as well as any mandatory condition of the lease, licence or permit.
- (4) This section is subject to section 202B.

202B Imposed condition must be registered

A condition decided under this division, section 159, 167, 176A, 176L, 214E or a transition to sale agreement becomes an imposed condition of a lease, licence or permit and binds the lessee, licensee or permittee only if the condition is registered.

203 Typical conditions

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 transfer or sublease of the lease;
- (e) about the provision of reasonable services, roads and infrastructure external to but servicing the land;
- (f) about time frames and milestones for finishing conditions over the term of the lease;
- (g) about the preparation, maintenance, implementation and review of a land management agreement;
- (h) other conditions the Minister considers appropriate.

204 Survey condition

- (1) A lease, licence or permit may be subject to a condition (a *survey condition*) that the land must be surveyed under the *Survey and Mapping Infrastructure Act 2003* 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.

205 Tied condition

- (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.

206 Personal residence condition

- (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.

207 Another person may complete personal residence condition

- (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) an administrator under the *Guardianship and Administration Act 2000* is appointed for a lessee—the condition may be performed by a family member or the administrator; 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.

208 Resumption condition

- (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.

209 Performance security condition

- (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 and reviewing imposed conditions

210 Power to change imposed condition of lease, licence or permit by agreement

- (1) The designated officer for a lease, licence or permit may, with the lessee's, licensees's or permittee's agreement, change an imposed condition of the lease, licence or permit.
- (2) A lessee, licensee or permittee may apply for a change under this section.
- (3) The application must be accompanied by the written consent of all persons with a registered interest in the lease land.
- (4) However, consent under subsection (3) must not be unreasonably withheld.
- (5) A change made under this section must be registered.
- (6) The change has no effect until it is registered.
- (7) Once the change is registered, the imposed condition is taken to be the condition as amended by the change.
- (8) No fee is payable for registering the change.
- (9) In this section—

change, an imposed condition, includes extending the period within which the condition must be complied with.

211 Reviewing imposed conditions of lease

- (1) If, under section 176X, the Minister is reviewing a land management agreement for a lease, the Minister must also review the imposed conditions of the lease.
- (2) If a lease is not a lease of rural leasehold land and there is no land management agreement for the lease, the Minister must consider whether to carry out a review (a *standard review*) of

the imposed conditions of the lease at least once every 15 years after the lease started.

- (3) However, a standard review must not be made within 10 years after the lease started or after its last standard review.
- (4) A review under this section must be carried out in consultation with the lessee.

212 Minister may change imposed conditions after review

- (1) After reviewing a lease, the Minister may decide, with or without the lessee's agreement, to change an imposed condition (a *review change*) about the protection and sustainability of the lease 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 lease land.
- (4) On the first business day after the appeal expiration day for the decision, the change must be lodged for registration.
- (5) The change has no effect until it is registered.
- (6) Once the change is registered, the imposed condition is taken to be the condition as amended under the change.
- (6A) No fee is payable for registering the change.
- (7) No compensation is payable by the State for a review change.

Division 4 Compliance with conditions

213 Obligation to perform conditions

- (1) A lessee, licensee or permittee must perform all of the conditions of the person's tenure, to the satisfaction of the designated officer for the type of tenure.
- (2) If the lessee, licensee or permittee does not comply with subsection (1) the tenure may be cancelled or forfeited.

- (3) However, if the tenure is a lease, subsection (2) does not apply to a failure to comply with a land management agreement for the lease.

Note—

A breach of a condition of a lease that the lessee comply with a land management agreement for the lease may be dealt with by a remedial action notice.

- (4) To remove any doubt, it is declared that if no action is taken on a breach of condition of the tenure, it is not a waiver of, authorisation of or excuse for the breach.

- (5) In this section—

conditions, of a tenure, means all of its mandatory condition and imposed conditions.

tenure means—

- (a) for a lessee—the lessee’s lease; or
- (b) for a licensee—the licensee’s licence; or
- (c) for a permittee—the permittee’s permit.

Division 5 Remedial action

214 Minister’s power to give remedial action notice

- (1) The Minister may give a lessee or licensee a written notice (a **remedial action notice**) to take stated remedial action, within the reasonable time stated in the notice, if—
- (a) a ground for giving the notice exists; and
 - (b) section 214A has been complied with.
- (2) For subsection (1)(a) a ground for giving the notice is that—
- (a) the Minister is satisfied the lessee or licensee is—
 - (i) using the lease land or licence land—
 - (A) in a way that is not fulfilling the lessee’s or licensee’s duty of care for the land, under section 199; or

- (B) in a way that is likely to cause, or that has caused, land degradation; or
 - (ii) breaching a condition of the lease or licence, other than a condition that there must be a land management agreement for the lease; or
- Note—*
- A lease may be forfeited under section 234(b) for breach of a condition of the lease that there must be a land management agreement for the lease.
- (iii) in contravention of a provision of this Act in relation to the lease or licence; or
 - (b) the Minister has carried out a review under section 176X and, because of the review, the Minister considers that the stated remedial action is necessary or desirable.
- (3) If the notice relates to a lease and there is a land management agreement for the lease, the remedial action may include requiring the lessee to enter into an amended or a new land management agreement for the lease that includes stated provisions.
- (4) The lessee or licensee must be given a written notice of the decision to give the remedial action notice and the reasons for the decision.

214A Steps required before giving remedial action notice

- (1) This section applies if the Minister proposes to give a lessee or licensee a remedial action notice.
- (2) The Minister must give the lessee or licensee a notice (a **warning notice**) stating each of the following—
 - (a) that the Minister proposes to give the lessee or licensee a remedial action notice;
 - (b) the remedial action under the proposed remedial action notice;
 - (c) the grounds for giving the proposed remedial action notice;
 - (d) the facts and circumstances that are the basis for the grounds;

- (e) that the lessee or licensee may, within the reasonable period stated in the warning notice, make written submissions to show why the proposed remedial action notice should not be given.
- (3) The submissions may include a plan (a *remedial action plan*) for the taking of action to remedy the ground for the giving of the remedial action notice.
- (4) The Minister must consider any written submissions made under subsection (3) within the stated period.
- (5) The Minister may give the remedial action notice if, after complying with subsection (4), the Minister still believes the notice ought to be given.
- (6) Without limiting subsection (5), the Minister may give the remedial action notice if the lessee or licensee does not, at any time, comply with any remedial action plan included in the submissions.
- (7) The remedial action required under the remedial action notice may be different to the remedial action stated in the warning notice.

214B Appeal against decision to give remedial action notice

A lessee or licensee to whom a remedial action notice has been given may appeal against the decision to give the notice.

214C Additional condition of lease or licence to take required remedial action

- (1) This section applies if a lessee or licensee is given a remedial action notice.
- (2) The notice must be registered.
- (3) On registration of the notice, it is a condition of the lease or licence the subject of the notice that the lessee or licensee must, from the day the notice is given, take the action required under the notice.
- (4) However, if any appeal against the decision to give the notice is upheld—

- (a) the notice is cancelled and it is taken never to have been registered or to have had any effect; and
 - (b) the cancellation must be registered; and
 - (c) the condition is taken never to have been a condition of the lease.
- (5) No compensation is payable by the State in relation to the condition or anything required to be done under the notice before its cancellation.
- (6) No fee is payable for registration under this section.

214D Failure to comply with remedial action notice

- (1) A lessee or licensee to whom a remedial action notice has been given must comply with the notice unless the lessee or licensee has a reasonable excuse.

Maximum penalty—400 penalty units.

- (2) If a person is convicted of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order (a *remedial action order*) the person to comply with all or part of the remedial action notice.

214E Power to reduce term of lease or impose additional conditions

- (1) This section applies if a lessee is convicted of an offence against section 214D(1), whether or not a remedial action order is made.
- (2) The Minister may decide to do all or any of the following—
- (a) reduce the term of the relevant lease;
 - (b) impose additional conditions on the lease.
- (3) However, the Minister can not reduce the term by an amount that results in the lease no longer having an unexpired term.

Note—

Under section 234(f), a breach of a remedial action order is a ground for forfeiting a lease.

- (4) If the relevant lease is a perpetual lease, the reduction may be made by changing the lease to a term lease of a stated term.

214F Provisions about reduction or additional conditions

- (1) This section applies if, under section 214E(2), the Minister decides to reduce the term of, or impose additional conditions on, a lease.
- (2) The lessee must be given a written notice of the decision and the reasons for it.
- (3) The lessee may appeal against the decision.
- (4) The decision does not take effect until the first business day after the appeal expiration day for the decision.
- (5) As soon as practicable after the decision takes effect, the reduction or additional conditions must be registered.
- (6) The reduction or additional conditions have effect from their registration.
- (7) No fee is payable for registration under this section.
- (8) No compensation is payable by the State for the reduction or the imposition of the additional conditions.

Part 3 Resumption and compensation

Division 1 Resumption of a lease or easement

215 Application of division

- (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;³⁴ or
- (b) the resumption of possession of part of a lease subject to a reservation.³⁵

216 Resumption of lease

- (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.

217 Resumption of an easement

- (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.

218 Resumption for constructing authorities

- (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.

34 See division 2.

35 See division 3.

- (5) This section is subject to the *Acquisition of Land Act 1967*, section 5(3).³⁶

219 Effect of resumption

- (1) If a lease or part of a lease is resumed under this division, the land the subject of the interest comprising the lease or the part of the lease is free of any interest or obligation arising under the lease.
- (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*.

220 Service of order in council

- (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 subsection (1) or (2) does not affect the validity of the order in council.

³⁶ 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.

221 Application of Acquisition of Land Act 1967

- (1) The *Acquisition of Land Act 1967*, part 4 applies to a claim for compensation for a resumption under this division with the following changes³⁷—
 - (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.

222 Revoking a resumption

- (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.

³⁷ The *Acquisition of Land Act 1967*, part 4 is about the assessment and payment of compensation.

- (5) The Minister must decide the amount of the loss, costs and expenses.
- (6) The compensation claimant may appeal against the Minister's decision.

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

223 Application of division

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

224 Resumption of lease

- (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.

225 Effect of resumption

- (1) If a lease or part of a lease is resumed under this division, the land the subject of the interest comprising the lease or the part of the lease is free of any interest or obligation arising under the lease.
- (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.

226 Compensation limited to improvements

- (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.

227 Development work an improvement

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

Division 3 Resumption of a reservation for a public purpose

228 Application of division

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.

229 Resumption of reservation

- (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.

230 Effect of resumption of possession

- (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.

231 Application of Acquisition of Land Act 1967

- (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 changes³⁸—
 - (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.

232 Compensation limited to improvements

- (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.

³⁸ The *Acquisition of Land Act 1967*, part 4 is about the assessment and payment of compensation.

- (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.

233 Development work an improvement

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

Part 4 Forfeiture

Division 1 Grounds for forfeiture

234 When lease may be forfeited

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;³⁹ or
- (b) if the lessee breaches a condition of the lease, other than a condition that the lessee comply with a land management agreement for the lease; or

Note—

A breach of the condition that the lessee comply with a land management agreement for the lease may be dealt with by a remedial action notice.

- (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; or
- (e) if the lessee has—

³⁹ The Minister may take action for non-payment. See section 196 (Designated officer may take action for non-payment).

- (i) more than 1 conviction, not including any spent convictions, for a vegetation clearing offence, regardless of whether any of the offences were committed on lease land; or
 - (ii) at least 1 conviction, not including any spent convictions, for an offence committed on the lease land against section 198B; or
- (f) if the lessee fails to comply with a remedial action order relating to the lease.

Division 2 Forfeiture of leases for non-payment

234A Application of div 2

This division applies to the forfeiture of a lease under section 234(a).

235 Notice of forfeiture for outstanding amounts

- (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, any mortgagee and any relevant local government 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.

236 Designated person's options if amount unpaid

If the amount outstanding, and any interest, is not paid at the expiry of the notice, the designated person may forfeit the lease or allow any mortgagee, any relevant local government or the chief executive to sell the lease under division 3A.

237 Minister may reinstate lease if payment made

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
- (b) the Minister is satisfied the lessee had a reasonable excuse for not complying with the payment requirements.

Division 2A Forfeiture of leases by referral to court**237A Application of div 2A**

This division applies to the forfeiture of a lease under section 234(b), (c), (d) or (f).

238 Application to the court for forfeiture

- (1) Before the lease is forfeited, the Minister must refer the matter to the court to decide whether the lease may be forfeited.
- (2) The Minister must give the lessee, any mortgagee and any relevant local government 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.

239 Designated person's options if court decides on forfeiture

- (1) If the court decides that the lease may be forfeited, the designated person 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 conditions the designated person 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 designated person considers appropriate; or
 - (iii) allow the lessee to sell the lease within a time decided by the designated person; or
 - (iv) allow any mortgagee, any relevant local government or the chief executive to sell the lease under this part.
- (2) A mortgagee of a term or a perpetual lease may appeal against a decision under subsection (1)(b)(iv) to allow an entity other than the mortgagee to sell the lease.
- (3) A relevant local government of a term or a perpetual lease may appeal against a decision under subsection (1)(b)(iv) to allow an entity other than the relevant local government to sell the lease.

Division 3 Forfeiture of leases on conviction

Subdivision 1 Preliminary

240A Application of div 3

This division applies for the forfeiture of a lease under section 234(e).

Subdivision 2 Procedure for forfeiting lease

240B Show cause notice

- (1) Before the lease is forfeited, the Minister must give the lessee a notice (a *show cause notice*) inviting the lessee to show cause why the lease should not be forfeited.

- (2) The show cause notice must state the following—
 - (a) that the Minister proposes to forfeit the lease;
 - (b) the ground for the proposed forfeiture;
 - (c) the facts and circumstances that are the basis for the ground;
 - (d) that the lessee may make, within a stated period (the *show cause period*), written representations to the Minister to show why the lease should not be forfeited.
- (3) The show cause period must end at least 14 business days after the lessee is given the notice.

240C Decision about forfeiture

- (1) In deciding whether to forfeit the lease, the Minister must consider any written representations made by the lessee in the show cause period.
- (2) Within 5 business days after deciding whether to forfeit the lease, the Minister must give the lessee written notice of the decision.
- (3) If the Minister decides to forfeit the lease, the notice must include reasons for the decision.

240D Right of appeal

- (1) The lessee may appeal against the Minister's decision to forfeit the lease.⁴⁰
- (2) The Minister must not act to forfeit the lease until—
 - (a) the expiration of the 42 days mentioned in section 424(1) for applying for a review of the decision to forfeit the lease, if no application is made; or
 - (b) if an application is made, until all proceedings under chapter 7, part 3, and any appeals from those proceedings, are ended.

⁴⁰ Under section 421 (Notice of right of appeal to be given), a person who has a right to appeal against a decision must be given written notice of the right.

Division 3A Sale of lease instead of forfeiture**Subdivision 1 Sale by lessee****240E Sale by lessee**

- (1) After receiving a notice under section 235(1) or 238(2), a lessee of a lease may make written application for permission to sell the lease.
- (2) If the Minister approves the sale of the lease by the lessee, the Minister must give written notice of the Minister's approval to any mortgagee and any relevant local government.

Subdivision 2 Sale by mortgagee**240F Sale by mortgagee instead of forfeiture**

- (1) After receiving a notice under section 235(1) or 238(2), a mortgagee of a lease may make written application for permission to sell the lease.⁴¹
- (2) If the Minister approves the sale of the lease by the mortgagee, the Minister must give written notice of the Minister's approval to the mortgagee and the lessee.
- (3) After receiving the notice approving the sale, the mortgagee must sell the lease as a mortgagee in possession under chapter 6, part 4, division 4.⁴²

41 Section 235 is about forfeiture of a lease for outstanding amounts. Section 238 is about applying to the court for forfeiture.

42 Chapter 6, part 4, division 4 is about registering dealings about mortgages.

Subdivision 3 Sale by local government

240G Application

- (1) After receiving a notice under section 235(1) or 238(2), a relevant local government may apply to the Minister for approval to sell a lease.
- (2) However, a relevant local government may only apply to sell a lease under subsection (1) if the lessee of the lease has an overdue rate payable to the relevant local government for the lease land.
- (3) If the Minister approves the sale of the lease by the local government, the Minister must give written notice of the Minister's approval to the lessee and any mortgagee.
- (4) In this section—

overdue rate has the meaning given by the *Local Government Act 1993*, section 1016.⁴³

240H Notice of approval

- (1) If the Minister approves the sale of the lease by the relevant local government under this subdivision, written notice of the approval must be given to the lessee, the local government and any mortgagee.
- (2) The notice must state the required period within which the local government must start the procedures for selling the lease.

240I Sale of lease

- (1) This section applies if a relevant local government has been given notice under section 240H.

⁴³ *Local Government Act 1993*, section 1016 (Meaning of *overdue rate*)

- (2) The Local Government Act, chapter 14, part 7, divisions 3 and 5⁴⁴ other than sections 1039 and 1058 apply, with necessary changes, to the sale of a lease under this subdivision.
- (3) However, the required period for starting the procedures for selling a lease under this subdivision is the required period stated in the notice under section 240H(2) and not the required period stated in the Local Government Act, section 1042(2).
- (4) Also, the following must be at least the total of all charges owing to the State under this Act in relation to the lease—
 - (a) the reserve price chosen under the Local Government Act, section 1044;
 - (b) the price for sale by agreement under the Local Government Act, section 1045.
- (5) Further, in applying the proceeds of sale of a lease under the Local Government Act, section 1047(1), the local government must apply the proceeds to payment of charges on the lease, including any rent, instalments or penalty interest, owing to the State, in priority to all encumbrances, and in priority to the payments mentioned in the Local Government Act, section 1047(1)(b), (c) and (d).
- (6) In this section—

Local Government Act means the *Local Government Act 1993*.

Subdivision 4 Sale by chief executive

240J Application of sdiv 4

This subdivision applies to a lease if the chief executive is allowed to sell the lease under section 236 or 239(1)(b)(iv).

44 *Local Government Act 1993*, chapter 14 (Rates and charges), part 7 (Recovery of rates), divisions 3 (Sale of land for overdue rates) and 5 (Provisions about dealing with land under this part)

240K Notice that chief executive may sell

- (1) The chief executive must give written notice to each person who has a registered interest in the lease land that the chief executive is allowed to sell the lease under this subdivision.
- (2) The notice must state either—
 - (a) that the chief executive proposes to enter into possession of the lease and sell the lease under this subdivision; or
 - (b) that the chief executive proposes that the lessee and the chief executive enter into an agreement (a *transition to sale agreement*) that will apply until the lease is sold under this subdivision.
- (3) The notice must advise the matters mentioned in—
 - (a) if the notice states the matter mentioned in subsection (2)(a)—section 240L; or
 - (b) otherwise—sections 240L, 240M and 240N.
- (4) If the notice states that the chief executive proposes that the lessee and the chief executive enter into a transition to sale agreement, the notice must require the lessee to advise the chief executive, within the time stated in the notice, of whether the lessee wishes to enter into a transition to sale agreement.

240L Entry into possession and sale

- (1) This section applies if the chief executive enters into possession of the lease to sell the lease under this subdivision.
- (2) The chief executive must advise the lessee that the chief executive is entering into possession.
- (3) The lessee must, in the lessee's capacity as lessee, immediately vacate the lease land.
- (4) The chief executive enters into possession of the lease to the exclusion of the lessee's interests under the lease.
- (5) If the lessee does not vacate the lease land under subsection (3), and is not otherwise entitled to possession, the lessee is a person who is unlawfully occupying the lease land.

Note—

Action for trespassing may be taken under chapter 7, part 2.

- (6) Until the chief executive sells the lease, the chief executive may act in the place of the lessee for all matters in relation to the administration of the lease, including for example for all matters concerning the holders of any subleases over the lease.
- (7) The Minister may, for the proper administration of the lease until it is sold, change the imposed conditions as they apply to the lease, and may take action to have the changed conditions registered.
- (8) Despite subsection (6), the chief executive does not become liable to pay any amounts payable by the lessee in relation to the lease.
- (9) Without limiting subsection (8), the chief executive is not liable to pay any amount payable by the lessee to the holder of any registered interest in the lease.
- (10) While the chief executive is in possession, any amounts otherwise payable to the lessee by any person in relation to the lease, including rent payable by a sublessee, must be paid to the chief executive.
- (11) The chief executive must execute the transfer of the lease.

240M Transition to sale agreement

- (1) This section applies if the lessee and the chief executive enter into a transition to sale agreement.
- (2) Until the chief executive sells the lease, the following apply—
 - (a) the Minister may carry out a review of the imposed conditions of the lease as they apply to the lessee;
 - (b) the Minister may, for the proper administration of the lease until it is sold, change the imposed conditions as they apply to the lessee, and may take action to have the changed conditions registered;
 - (c) the lessee must not, without the Minister's written approval, further deal with the lease;
 - (d) to the extent stated in the agreement—

- (i) the lessee continues to pay rent payable under the lease; and
 - (ii) the lessee continues to receive rent and other amounts otherwise payable to the lessee in the lessee's capacity as lessee; and
 - (iii) the lessee remains in possession of the lease land; and
 - (iv) the chief executive and other persons authorised by the chief executive may enter the lease land, including for purposes connected with the chief executive's sale of the lease; and
 - (v) improvements may be dealt with, and development work may be performed, by the lessee or the chief executive; and
 - (vi) the lessee must perform tasks directed to the ongoing day to day administration of the lease, including the maintenance of the lease land;
- (e) the remedies for or consequences of a breach of the agreement are those stated in the agreement.
- (3) The chief executive must execute the transfer of the lease.
- (4) When the transfer of the lease is registered, the chief executive must cancel the registration of the transition to sale agreement.
- (5) If the lessee is in possession of the lease when the transfer of the lease is registered, subject to the transition to sale agreement, the lessee must immediately vacate the lease land.
- (6) If the lessee does not vacate the lease land under subsection (5), and is not otherwise entitled to possession, the lessee is a person who is unlawfully occupying the lease land.

Note—

Action for trespassing may be taken under chapter 7, part 2.

240N Advice about entering transition to sale agreement

- (1) This section applies if the written notice under section 240K (the **240K notice**) states that the chief executive proposes that the lessee and the chief executive enter into a transition to sale

agreement, and within the time stated in the 240K notice by the chief executive—

- (a) the lessee does not give written notice that the lessee wishes to enter into a transition to sale agreement; or
 - (b) the lessee advises the chief executive that the lessee does not wish to to enter into a transition to sale agreement.
- (2) This section also applies if—
- (a) the 240K notice states that the chief executive proposes that the lessee and the chief executive enter into a transition to sale agreement; and
 - (b) within the time stated in the 240K notice, the lessee gives written notice that the lessee wishes to enter into a transition to sale agreement; and
 - (c) the chief executive and the lessee—
 - (i) within the time stated for this subparagraph in the 240K notice or a longer time approved by the chief executive, do not execute a transition to sale agreement; or
 - (ii) earlier agree that the chief executive and the lessee are unable to agree on the terms of a transition to sale agreement.
- (3) The chief executive may enter into possession of the lease and sell the lease under this subdivision unless the Minister or designated person takes action under subsection (4) or (5).
- (4) If the lease was allowed to be sold by the chief executive under section 236, the Minister may withdraw the Minister's decision to allow the chief executive to sell the lease, and may take other action under section 236.
- (5) If the lease was allowed to be sold by the chief executive under section 239(1)(b)(iv), the designated person may withdraw the designated person's decision to allow the chief executive to sell the lease, and may take other action under section 239.

240O Making and registration of transition to sale agreement

- (1) The chief executive may enter into a transition to sale agreement, including any amendment of a transition to sale agreement, only with the Minister's approval.
- (2) A transition to sale agreement, including any amendment of a transition to sale agreement, has effect only if it is registered.

Note—

For registration of transition to sale agreements, see section 279.

240P Auction or sale of lease

- (1) This section states requirements that apply for the sale of the lease by the chief executive under this subdivision.
- (2) The chief executive must first offer the lease for sale by public auction.
- (3) However, the chief executive may with the Minister's written approval sell the lease by private contract.
- (4) Sections 114(1), 115, 116 and 117 apply, with the necessary changes, to a sale by the chief executive under this subdivision.

Note—

Transfers for the sale of a lease by the chief executive are dealt with under chapter 6, part 4, division 1.

- (5) The lease must not be offered for sale by public auction, and the chief executive must not enter into a contract of sale under subsection (3), until at least 28 days after the chief executive has published a sale notice under applied section 114 in a newspaper circulating generally in the locality of the lease, advising that the lease is for sale.
- (6) The imposed conditions that are to apply to the lease after its sale and that are stated in the sale notice may be different from the imposed conditions applying to the lease before the sale.
- (7) The consent of the holder of any registered interest in the lease is not required for the registration of the transfer of the lease.
- (8) The imposed conditions that are to apply to the lease after the sale must be registered when the transfer is registered.

- (9) If the sale of the lease is not completed within 2 years after this subdivision starts to apply to the lease—
- (a) if the lease was allowed to be sold by the chief executive under section 236—the Minister may withdraw the Minister’s decision to allow the chief executive to sell the lease, and may forfeit the lease under section 236; or
 - (b) if the lease was allowed to be sold by the chief executive under section 239(1)(b)(iv)—the designated person may withdraw the designated person’s decision to allow the chief executive to sell the lease, and may forfeit the lease under section 239.

240Q Disposal of proceeds of sale

The chief executive must apply the proceeds of sale of the lease as follows—

- (a) firstly, to payment to the State of all costs properly incurred by the chief executive for the sale or any attempted sale;
- (b) secondly, to payment to the State of charges on the lease, including any rent, instalments or penalty interest, owing to the State;
- (c) thirdly, to payment to the State of all costs properly incurred by the chief executive to rectify any damage caused to the land by the lessee;
- (d) fourthly, to payment to the State of all costs properly incurred by the chief executive—
 - (i) if there was a transition to sale agreement—in the administration of the agreement; or
 - (ii) otherwise—in the administration of the lease;
- (e) fifthly, to payment to the relevant local government of overdue rates payable to the local government under the *Local Government Act 1993*, chapter 14, part 7;
- (f) lastly, to payment to the lessee.

240R Protection from liability

- (1) The chief executive, and any person acting under the authority of the chief executive, does not incur civil liability for an act done, or omission made, honestly and without negligence under this subdivision.
- (2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.

Division 4 Forfeiture**240S Notice of forfeiture**

- (1) If the designated person forfeits a lease, the Minister must give the lessee and any mortgagee or relevant local government written notice that the lease is forfeited.
- (2) A notice that a lease is forfeited must be published in the gazette.
- (3) A lease is forfeited by the registration of a forfeiture notice.
- (4) The forfeiture notice must include the particulars of the gazette notice forfeiting the lease.
- (5) The forfeiture of the lease takes effect on the day the forfeiture notice is registered.
- (6) In this section—

forfeiture notice means a notice in the approved form requesting the registrar to register the forfeiture of a lease under this Act.

241 Effect of forfeiture

On forfeiture of a lease—

- (a) the lease ends; and
- (b) the lessee is divested of any interest in the lease; and
- (c) the lease land is free of any encumbrance; and
- (d) the lease land—

- (i) if the lease was a State lease—remains a reserve;
or
- (ii) otherwise—becomes unallocated State land.

242 Lessee to give up possession on forfeiture

- (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

243 Improvements on forfeited lease

- (1A) The lessee of a forfeited lease may apply to remove the lessee's improvements on the lease.
 - (1) The lessee may remove the improvements 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 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.

245 Effect of forfeiture of lease issued without competition for development purposes

If a lease issued without competition for development purposes is forfeited, all project plans, feasibility studies and

⁴⁵ Action for trespassing may be taken under chapter 7, part 2.

the results of investigations for the lease that have been given to the chief executive by the lessee become the property of the State.

Part 5 Payment for improvements

Division 1 Payment for improvements by incoming lessee etc.

246 Application of division

This division applies to land—

- (a) that has been the subject of a lease that—
 - (i) has been forfeited; or
 - (ii) has been surrendered absolutely; or
 - (iii) 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 dedication of 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; or
- (d) that has been the subject of a deed of grant in trust if—
 - (i) the deed of grant in trust has been cancelled or surrendered absolutely; and
 - (ii) the improvements on the land have been made by the trustee or a person with the trustee's authority.

247 Application of payment for improvements by incoming lessee or buyer

- (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; or
 - (d) for a deed of grant in trust—the person who owned the improvements on the land.
- (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.

248 Unclaimed improvement amounts

If the chief executive can not 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**249 Payment by the State for improvements**

- (1) If a term lease for pastoral purposes, or a term lease for agricultural or grazing purposes of a type mentioned in section 160A(1), 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

250 Amounts owing to the State to be deducted

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.

251 Payment to mortgagee

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 Protection of monitoring sites

252 Prohibition on interfering with monitoring marker or device

- (1) This section applies if, under section 400, a monitoring site has been established on lease land, licence land or permit land.
- (2) A person must not interfere with any of the following the existence of which the person knows or ought reasonably to know unless the person has a reasonable excuse—
 - (a) a marker for the monitoring site;
 - (b) a monitoring device that, under section 400, has been installed or placed at the monitoring site.

Maximum penalty—100 penalty units.

- (3) For subsection (2), a person is taken to know of the existence of a marker for the monitoring site and any monitoring device at the site if the marker—
 - (a) is made of steel or other durable material; and
 - (b) protrudes above the surface of the ground so as to be clearly visible; and
 - (c) has attached to it a tag bearing clearly legible words as follows, or words to the effect of the words ‘Monitoring site marker. Interfering with this marker or any device at this site is an offence’.
- (4) In this section—

interfere with includes damage, deface or tamper with.

253 Evidentiary provision for proceedings under s 252

In a proceeding for an offence against section 252(2), a certificate, purporting to be signed by an authorised person, and stating any of the following matters is evidence of the matters stated—

- (a) that stated land was, at a stated time, or during a stated period, a monitoring site established on stated lease land, licence land or permit land;
- (b) that, at the time or during the period, all or any of the following applied—
 - (i) a marker for the monitoring site was installed or placed at the monitoring site;
 - (ii) the marker complied with section 252(3)(a), (b) and (c);
 - (iii) a monitoring device was installed or placed at the monitoring site.

Chapter 6 Registration and dealings

Part 1 Land registry and registers

Division 1 Land registry

275 Registers comprising land registry

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 unallocated State land;
- (e) a register of State housing leases;
- (f) registers about land prescribed under a regulation under this Act;
- (g) registers about land required or permitted by an Act to be kept by the chief executive;

- (h) other registers about land required or permitted by an Act to be included in the land registry.

Division 2 Registers

276 Registers to be kept by chief executive

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 unallocated State land;
- (e) a register of State housing leases;
- (f) registers about land prescribed under a regulation;
- (g) registers about land required or permitted by an Act to be kept by the chief executive;
- (h) other registers about land required or permitted by an Act to be included in the land registry.

277 Form of registers

- (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.

277A Registration of document evidencing tenure

- (1) If any of the following tenures are granted under this Act—
 - (a) a lease;
 - (b) a licence
 - (c) a permit for a term of 12 months or more;the tenure document for the tenure must be registered.

- (2) If a reserve is dedicated under this Act, the document evidencing the dedication must be registered.

278 Particulars that must be registered

The chief executive must register the particulars necessary to identify—

- (a) every interest registered; 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 required or needed to be registered under this or another Act.

279 Registration of land management agreements and transition to sale agreements

- (1) This section applies if an agreement mentioned in section 176U(1) or 240P in relation to a lease is made or amended.
- (2) The following must be registered while the lease continues in force—
 - (a) the agreement;
 - (b) any amendment of the agreement from time to time;
 - (c) any cancellation or other ending of the agreement.

280 Particulars that may be recorded

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.

281 Other information may be kept

- (1) 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.

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

282 Chief executive's procedures on lodgment and registration of document

- (1) When a document is lodged in the land registry, the chief executive must note on the document—
 - (a) the date and time of lodgment; and
 - (b) an identifying reference.
- (2) When the document is registered, the chief executive must record the information mentioned in subsection (1)(a) and (b) in the appropriate register.

283 Documents form part of a register

- (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.

284 Entitlement to search a register

- (1) A person may, on payment of the fee prescribed under a regulation—
 - (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.
- (3) A search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, an office of the land registry during office hours on a day the land registry is open for business.
- (4) Also, a search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, the website of an entity engaged by the chief executive for the purpose of allowing persons to search the land registry or obtain copies of particulars, documents or other information kept in the registry.
- (5) The chief executive may allow a person to carry out a search under subsection (1)(a) for—
 - (a) only part of the particulars recorded about a lease, licence, permit or reserve; or
 - (b) only part of a document lodged or deposited in the land registry; or
 - (c) only part of the information about a document lodged or deposited in the land registry.
- (6) The chief executive may enter into an agreement with another department allowing the department to carry out a search, or

obtain a copy, under this section without payment of the fee mentioned in subsection (1).

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

285 Evidentiary effect of certified copies of documents

- (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.

285A Supply of statistical data

- (1) The chief executive may enter into an agreement to supply statistical data derived from documents or information kept in the land registry.
- (2) If the chief executive supplies statistical data under subsection (1)—
 - (a) the fees and charges applying for the supply of the data are the fees and charges agreed to in the agreement; and
 - (b) without limiting paragraph (a), the agreement may also state—
 - (i) how the fees and charges are to be calculated; and
 - (ii) how payment of the fees and charges is to be made.

- (3) Without limiting subsection (1), an agreement for the supply of statistical data may limit the use to which the data supplied may be put.
- (4) An agreement for the supply of statistical data must include—
 - (a) a provision allowing the chief executive to exclude particulars from data supplied under the agreement, if the chief executive is satisfied, on reasonable grounds, that inclusion of the particulars may result in the particulars being inappropriately disclosed or used; and
 - (b) a provision allowing the chief executive to prohibit disclosure, or limit distribution or use, of data supplied under the agreement.
- (5) An agreement under this section must not provide for the obtaining of information or anything else that may be obtained under a search under section 284, other than section 284(1)(a)(iv).
- (6) The chief executive must exclude land particulars and personal information from data supplied under the agreement.
- (7) Subsection (6) applies despite anything in the agreement.
- (8) In this section—

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

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

Division 3 General requirements for documents in registers

286 Form of documents

- (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.

286A Land practice manual

- (1) The chief executive may keep a manual of land practice (by whatever name called) in the way the chief executive considers appropriate, for the information and guidance of land registry staff and persons dealing with the land registry.
- (2) The manual may include—
 - (a) directions given by the chief executive under section 287(1)(b); and
 - (b) directions given by the registrar under the *Land Title Act 1994*, section 10(1)(b); and
 - (c) practices developed in the land registry, before or after the commencement of this section, for the depositing and lodging of documents, including practices directed at ensuring—
 - (i) there is consistency and efficiency in land registry processes; and
 - (ii) each register under this Act is an accurate, comprehensive and useable record; and
 - (iii) the integrity of the registers included in the land registry is supported and maintained to the greatest practicable extent.
- (3) The manual may include statements about additional information a person may be required to produce, or additional documents a person may be required to deposit, under section 305.⁴⁶
- (4) The chief executive must make the manual available to the public in the way the chief executive considers appropriate.

46 Section 305 (Requisitions)

- (5) Without limiting subsection (4), the chief executive must ensure an up-to-date copy of the manual is available to be read free of charge at each office of the land registry.

286B Requiring plan of survey to be lodged

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

287 Registered documents must comply with particular requirements

- (1) A document may be registered only if—
- (a) the document is in the appropriate form and correctly executed; and
 - (b) the document complies with the directions of the chief executive about—
 - (i) how the appropriate form must be filled in; and
 - (ii) how information to be included in or given with the document must be included or given; and
 - (c) 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.

- (3) Also, a document that does not comply with a direction mentioned in subsection (1)(b) may be registered if the chief executive is satisfied it is reasonable to not require the compliance.

288 Certain documents must be signed

- (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.

288A Original mortgagee to confirm identity of mortgagor

- (1) This section applies to the mortgaging of a lease or a sublease.
- (2) Before the mortgage is lodged for registration, the mortgagee under the mortgage (the *original mortgagee*) must take reasonable steps to ensure the person who executed the mortgage as mortgagor is identical with the person who is, or who is about to become, the lessee of the lease or sublessee of the sublease.
- (3) Without limiting subsection (2), the original mortgagee takes reasonable steps under the subsection if the original mortgagee complies with practices included in the manual of land title practice under section 286A(2)(c) for the verification of identification of mortgagors.
- (4) The original mortgagee must, for 7 years after the mortgage is registered, and whether or not there is registered a transfer of the mortgage—
 - (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
 - (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the

original mortgagee in complying with subsection (2).

Maximum penalty—20 penalty units.

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

Maximum penalty—20 penalty units.

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

288B Mortgage transferee to confirm identity of mortgagor

- (1) This section applies to the transfer of the mortgage of a lease or a sublease.
- (2) Before the transfer is lodged for registration, the transferee under the transfer (the *mortgage transferee*) must take reasonable steps to ensure that the person who executed the mortgage as mortgagor was identical with the person who, when the mortgage was executed, was, or was about to become, the lessee of the lease or sublessee of the sublease.
- (3) Without limiting subsection (2), the mortgage transferee takes reasonable steps under the subsection if the mortgage transferee complies with practices included in the manual of land title practice under section 286A(2)(c) for the verification of identification of mortgagors.
- (4) The mortgagee transferee must, for 7 years after the transfer of the mortgage is registered, and whether or not there is registered a further transfer of the mortgage—

- (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
- (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the mortgage transferee in complying with subsection (2).

Maximum penalty—20 penalty units.

- (5) The chief executive may, whether before or after the registration of the transfer of the mortgage, and whether or not there has been registered a further transfer of the mortgage, ask the mortgage transferee—
 - (a) to advise the chief executive about the steps taken by the mortgage transferee under subsection (2); and
 - (b) to produce for the chief executive's inspection the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).
- (6) The mortgage transferee must comply with a request under subsection (5) unless the mortgage transferee has a reasonable excuse.

Maximum penalty—20 penalty units.

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

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

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

Example—

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

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

289 Consent to be written on document etc.

- (1) 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.
- (2) Subsection (3) applies if, under the *Electronic Transactions (Queensland) Act 2001*, an electronic form of the relevant document is lodged or deposited by electronic communication.
- (3) The person is taken to have complied with subsection (1) if—
 - (a) a method is used to identify the person and to indicate the person's consent; and
 - (b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the consent was communicated; and

- (c) the chief executive consents to the requirement being met by using the method mentioned in paragraph (a).

290 Required number of executed copies to be lodged

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.

290AA Offence not to use appropriate form

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.

Division 3A Format of plans of survey

290A Available formats for plans

- (1) A plan of survey may be in a standard or volumetric format.
- (2) The format to be used in the plan depends on how the plan is to define the land to which it relates.

290B Standard format plan

A *standard format* plan of survey defines land using a horizontal plane and references to marks on the ground.

Example of marks—

posts in the ground

290C Volumetric format plan

A *volumetric format* plan of survey defines land using 3 dimensionally located points to identify the position, shape and dimensions of each bounding surface.

Division 3B Explanatory format plans

290D Explanatory format plan

- (1) Despite section 286, the chief executive may approve the lodging of a plan relating to an interest in land other than a plan of survey (an *explanatory format plan*) if the chief executive is satisfied the land to which the interest relates may be accurately defined using—
 - (a) information already held in the land registry; or
 - (b) other information the chief executive considers gives a high level of accuracy about the extent of the interest.
- (2) Lodging an explanatory format plan, approved under this section, is sufficient compliance with a requirement under this Act to lodge a plan of survey.

Division 3C Plans of subdivision

290E Meaning of *plan of subdivision*

A *plan of subdivision* is a plan of survey providing for 1 or more of the following—

- (a) the division of 1 or more lots;
- (b) the amalgamation of 2 or more lots to create a smaller number of lots;
- (c) the dedication of land to public use;
- (d) the redefinition of a lot on a resurvey.

290F Plan of subdivision may be registered

- (1) A plan of subdivision may be registered in the appropriate register in the land registry.
- (2) The plan takes effect immediately it is registered.

Example—

A lot defined in the plan is created as a lot when the plan is registered.

- (3) The registration of a plan of subdivision does not limit anything the Governor in Council or Minister may do under this Act.
- (4) On the registration of a plan of subdivision of transport land, the description of the land is amended as provided by the plan of subdivision.
- (5) Subsection (4) is not limited by section 360 or 360A.⁴⁷
- (6) This section applies subject to section 290FA.

290FA Taking effect of plan of subdivision

- (1) This section applies if—
 - (a) the particulars of a plan of subdivision are recorded in the relevant register; and
 - (b) the registration of the plan of subdivision is for the purpose of the issue of a deed of grant, a deed of grant in trust or a lease over 1 or more of the lots created by the plan.
- (2) Although the plan of subdivision is registered, it does not take effect as a plan of subdivision until the particulars of the deed of grant, deed of grant in trust or lease are recorded in the appropriate register.
- (3) If the particulars of an issued deed of grant, deed of grant in trust or lease are not recorded in the appropriate register, the chief executive may, when the chief executive considers it appropriate to do so, cancel the registration of the plan of subdivision.
- (4) If the chief executive acts under subsection (3), for the purposes of any relevant register, the plan is taken never to have been registered.

290G Standard format plan of subdivision

A standard format plan of subdivision may only divide a standard format lot.

⁴⁷ Section 360 (Governor in Council may change freeholding leases) or 360A (Minister may change term leases, other than State leases, or perpetual leases)

290H Volumetric format plan of subdivision

A volumetric format plan of subdivision may divide a lot on a standard or volumetric format plan of subdivision.

290I Division of lot on standard format plan of subdivision

- (1) This section applies if a volumetric format plan of subdivision divides a standard format lot, creating 2 or more lots.
- (2) If, after the division, a created lot continues to be defined using a horizontal plane and references to marks on the ground, the created lot is a standard lot.

290J Requirements for registration of plan of subdivision

- (1) A plan of subdivision must—
 - (a) show all proposed lots marked with separate and distinct numbers; and
 - (b) show all proposed easements marked with separate and distinct letters; and
 - (c) distinctly show all roads, parks, reserves and other proposed lots that are to be public use land; and
 - (d) if it provides for any proposed public use land to be a reserve—state the community purpose of the reserve; and
 - (e) comply with the *Survey and Mapping Infrastructure Act 2003*; and
 - (f) be certified as accurate by a cadastral surveyor within the meaning of the *Surveyors Act 2003*; and
 - (g) if any land the subject of the plan of subdivision is the subject of a lease issued under this Act, include a statement agreeing to the plan by—
 - (i) if there is a mortgagee in possession of the lease—the mortgagee in possession; or
 - (ii) otherwise—the lessee of the lease; and
 - (h) if any land the subject of the plan of subdivision is the subject of an occupation licence under this Act and the

- licensee is surrendering all or part of the licence—include a statement agreeing to the plan by the licensee; and
- (i) if a road is permanently closed under section 108—show the road as permanently closed; and
 - (j) if a road permanently closed is amalgamated with land under section 109(2)—show the amalgamation; and
 - (k) be consented to by the Minister; and
 - (l) be consented to by—
 - (i) each person whose interests as a registered mortgagee are affected by the plan; and
 - (ii) each person whose interests as a registered sublessee are affected by the plan; and
 - (iii) each person whose interests as a registered grantee of an easement or profit a prendre are affected by the plan; and
 - (m) include a statement identifying each lot created by the plan of subdivision that is to remain subject to the title reference for any lease, licence, reserve or unallocated State land affected by the plan.
- (2) If the plan of subdivision defines the boundaries of a lease, or part of a lease, or another interest in land less than freehold, that is acquired by resumption under the authority of an Act—
- (a) subsection (1)(g), (h), (k) and (l) does not apply; and
 - (b) the plan must be consented to by the acquiring entity.
- (3) If the plan of subdivision relates only to transport land, the plan of subdivision need not be consented to by the Minister as otherwise would be required under subsection (1).
- (4) If the plan of subdivision is needed to effect the absolute or partial revocation of a reserve or the absolute or partial cancellation of an occupation licence, subsection (1)(l) does not apply.
- (5) Subsection (6) applies, despite subsection (1), if—
- (a) the land the subject of the subdivision is in an urban development area; and

- (b) the plan of subdivision has been consented to by the Urban Land Development Authority.
- (6) The plan must be registered without the consent of the Minister or anyone else whose consent would otherwise have been required for the plan if it otherwise complies with this section.

290JA Dedication of public use land in plan

- (1) This section applies to the dedication of land to public use in a registered plan of subdivision.
- (2) If the dedication is for a reserve, the coming into effect of the plan operates, without anything further, to dedicate the land as a reserve for the community purpose or purposes stated in the plan.
- (3) If the dedication is for a road, the coming into effect of the plan operates, without anything further, to open the land as a road.
- (4) If the dedication is for a public use other than a road or a reserve, on the coming into effect of the plan, the land becomes unallocated State land.
- (5) Subsection (6) applies to an easement over a lot if—
 - (a) the easement is an easement for providing access or a right of way, including a public thoroughfare easement; and
 - (b) the lot or a part of the lot is dedicated for a road under subsection (3).
- (6) The easement is extinguished to the extent it is over the lot or the part of the lot dedicated for the road.

290JB Access for public use land

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

- (a) on the registration and coming into effect of the plan, access to the lot will be available through a road or a public thoroughfare easement; or

- (b) the Minister has approved that the plan of subdivision may be registered without access to the lot being available.

290K Particulars to be recorded when registered plan takes effect

In registering a plan of subdivision, the chief executive must record in the appropriate register—

- (a) if the boundaries of land affected by the plan of subdivision are changed on the coming into effect of the plan—any new description as identified on the reverse of the plan; and
- (b) if all or part of land affected by the plan of subdivision becomes a reserve on the coming into effect of the plan—the particulars of the reserve; and
- (c) if all or part of land affected by the plan of subdivision becomes public use land other than a reserve or road—the particulars of the unallocated State land.

290L Lodged plan that is withdrawn and re-lodged

If a plan of subdivision is withdrawn and re-lodged under section 308, it must be treated for the purposes of section 283 and section 298 to have been lodged when it was first lodged.⁴⁸

290M Division excluding road or watercourse

- (1) A lot may be divided by a plan of subdivision, even though there is a road or watercourse within the boundaries of the lot that is not part of the lot.
- (2) However, the road or watercourse is not included in any lot created by the plan of subdivision, even though it may be within the boundaries of the lot.

⁴⁸ Section 308 (Withdrawing lodged document before registration), section 283 (Documents form part of a register) and section 298 (Priority of registered documents)

290N Pre-examination of plans

- (1) Nothing in this Act prevents the chief executive from examining a plan of survey and related instruments deposited before the plan is lodged for registration.
- (2) Section 305 applies to a plan and related instruments deposited under subsection (1).⁴⁹

Division 4 Powers of the chief executive**291 Chief executive may correct registers**

- (1) The chief executive may correct a register mentioned in section 276 if the chief executive is satisfied⁵⁰—
 - (a) the register is incorrect; and
 - (b) the correction will not prejudice the rights of the holder of an 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.

291A Correction for omitted easement

- (1) Despite section 291(1)(b), the chief executive may otherwise act under section 291 to correct the leasehold land register to

⁴⁹ Section 305 (Requisitions)

⁵⁰ Section 276 lists the registers to be kept by the chief executive.

include the particulars of an easement (*easement particulars*) that have been omitted from the register in relation to a lease.

- (2) For subsection (1), easement particulars are taken to have been omitted from the leasehold land register in relation to a lease only if—
 - (a) the easement was in existence when the particulars of the lease were first registered, but the easement particulars have never been recorded in the leasehold land register against the lease; or
 - (b) the easement particulars have previously been recorded in the leasehold land register, but the current particulars in the leasehold land register about the lease do not include the easement particulars, other than because the easement has been extinguished in relation to the lease; or
 - (c) the document providing for the easement was lodged for registration but, because of an error of the chief executive, has never been registered.
- (3) Subsection (2) applies whether or not the lease has at any time been transferred or otherwise dealt with.
- (4) In subsection (2)(b)—
extinguished includes surrendered.

292 Lot-on-plan description

The chief executive may simplify the description of land registered in a register by amending the existing description to a lot-on-plan description.

294 Chief executive may require public notice to be given of certain proposed action

- (1) This section applies if a person (the *applicant*) asks the chief executive to register a transmission of a registered interest.
- (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 1A Building management statements

Division 1 Application

294A Application

This part applies only to transport land.

Division 2 Building management statements

294B Building management statement may be registered

- (1) A building management statement may be registered.
- (2) A *building management statement* is a document that—
 - (a) identifies lots to which it applies; and
 - (b) contains provisions benefiting and burdening the lots to which it applies; and
 - (c) otherwise complies with the requirements of this division for a building management statement.
- (3) Each lot to which a building management statement applies must be a lot entirely or partly contained in, or entirely or partly containing, 1 or more buildings.
- (4) However, a building management statement that otherwise complies with subsection (3) may also apply to a lot that is not

entirely or partly contained in, and does not entirely or partly contain, 1 or more buildings if the lot is the subject of a building development approval.

- (5) If a lot to which a building management statement applies is the subject of a plan of subdivision, the statement applies to each lot created by the registration of the plan.
- (6) However, the registration of a building management statement does not limit anything the designated person may do, or the chief executive must do, under section 360 or 360A.⁵¹
- (7) In this section—

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

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

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

294C Circumstances under which building management statement may be registered

- (1) A building management statement may be registered only if the statement is signed by the lessees of all lots to which the statement applies.

⁵¹ Section 360 (Governor in Council may change freeholding leases) or 360A (Minister may change term leases, other than State leases, or perpetual leases)

- (2) The lots to which a building management statement applies must comprise—
 - (a) 2 or more volumetric format lots; or
 - (b) 1 or more volumetric format lots, and 1 or more standard format lots.

294D Content of building management statement

- (1) A building management statement must contain provisions about the following—
 - (a) the supply of services to lots;
 - (b) rights of access to lots;
 - (c) rights of support and shelter;
 - (d) insurance arrangements.
- (2) A building management statement may contain provisions about the following—
 - (a) the establishment and operation of a management group;
 - (b) the imposition and recovery of levies, how levy amounts are to be kept and how levy amounts are to be spent;
 - (c) property maintenance;
 - (d) architectural and landscaping standards;
 - (e) dispute resolution;
 - (f) rules for common services and facilities;
 - (g) administrative arrangements;
 - (h) arrangements for accomplishing the extinguishment of the statement;
 - (i) proposed future development.
- (3) To remove doubt, it is declared that a right of access, support or shelter, or other right in the nature of an easement, under a building management statement may operate according to its terms, and may be effective, despite the absence of a formal registered easement establishing the right.

- (4) A dispute resolution provision under a building management statement may operate to require the referral of a dispute arising under the statement other than to a court.
- (5) However, the provision is ineffective to the extent that it purports to operate to stop final determination of the dispute in a court of competent jurisdiction.

294E Registration of building management statement

- (1) When registering a building management statement, the chief executive must record a reference to the statement in the particulars for the lease in the appropriate register.
- (2) However, the chief executive, though not obliged to examine, may examine a building management statement for its validity, including, in particular, its consistency with any plan of subdivision, or its compliance with the requirements for a building management statement.

294F Amending a building management statement

- (1) A building management statement may be amended by registering an instrument of amendment of the building management statement.
- (2) The instrument of amendment must be signed by the lessees of all lots to which the building management statement applies.
- (3) The instrument of amendment must not change the lots to which it applies.

294G Building management statement if lots owned by 1 lessee

A building management statement may be registered even if all the lots to which it applies have the same lessee.

294H One person becoming lessee of all lots

If the same person becomes the lessee of all lots to which a building management statement applies, the building

management statement is extinguished only if the lessee asks the chief executive to extinguish it.

294I Extinguishing a building management statement

- (1) A building management statement may be extinguished by registering a document of extinguishment of the building management statement.
- (2) A building management statement may be extinguished in part to remove a lot that is not contained in, or does not contain, a building or a part of a building, by registering an instrument of partial extinguishment of the building management statement.
- (3) The instrument of extinguishment or partial extinguishment must be signed by the lessees of all lots to which the building management statement applies.
- (4) However, a building management statement may be extinguished or partially extinguished only if all registered mortgagees of lots to which the building management statement applies consent to the extinguishment.

294J Building management statement affecting freehold and non-freehold land

- (1) If a building management statement benefits or burdens both freehold and non-freehold land, the building management statement must be registered in the appropriate registers.
- (2) Further dealings affecting the building management statement must also be registered in the appropriate registers.
- (3) If a lot subject to a building management statement, including a lot under the *Land Title Act 1994*, is surrendered to the State to be dealt with under this Act, the building management statement continues over the resulting unallocated State land only if the Minister approves the continuation.
- (4) In considering whether to approve the continuation of the building management statement, the Minister may consider if it is reasonably necessary to benefit the lots, including the unallocated State land, the subject of the building management statement.

- (5) If a building management statement continues over unallocated State land, the continuation must be recorded in the appropriate register.
- (6) If unallocated State land, over which there is a building management statement, is dealt with under this Act—
 - (a) the Minister may approve the building management statement continue; and
 - (b) if approved—the continuation of the building management statement must be recorded in the appropriate register.

Part 2 Registration and its effect

Division 1 Registration of documents

295 Right to have interest registered

- (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; and
 - (e) the document is not inconsistent with another Act or law; and
 - (f) if the document is a plan of survey—it is not inconsistent with another plan of survey.

- (2) If the document is a plan of survey and it is inconsistent with another plan of survey, the chief executive may—
 - (a) give a written notice to a person holding an interest in a lot that may be affected by registration of the plan of survey; or
 - (b) require the person who lodged the document to give a written notice, in the way the registrar requires, to a person mentioned in paragraph (a).
- (3) However, subsection (1) does not prevent the person from withdrawing the document before it is registered.

297 Order of registration of documents

- (1) Documents about a single parcel of land must be registered in the order they are lodged.
- (2) Subsection (1) is subject to section 308.⁵²

298 Priority of registered documents

- (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.

299 When a document is registered

- (1) A document is registered when the particulars about the document are recorded in the relevant register.
- (2) This section applies subject to section 299A.

⁵² Section 308 is about withdrawing lodged documents before they are registered.

299A No registration in absence of required approval or consent of Minister

- (1) A document is not registered, even though the particulars about the document are recorded in the relevant register, if—
- (a) under this Act, the Minister's approval or consent, however described, is required for the document, including any aspect of the document, but the approval or consent has not been obtained; or

Examples—

- a plan of subdivision that has not been consented to by the Minister
 - a transfer document if the Minister has not given written approval to the transfer
- (b) the terms of the document are inconsistent with the terms of any approval or consent, however described, given by the Minister in relation to the document, including any aspect of the document.
- (2) If under subsection (1) a document is not registered, the chief executive may correct the particulars included in the appropriate register in relation to the document.
- (3) Subsection (1) applies to an approval or consent, however described, in relation to a document, whether or not the approval or consent is required to be endorsed on the document.
- (4) Subsection (1) does not affect the operation of a provision of this Act providing for the Minister to give a general authority.

Example—

Subsection (1) does not affect the operation of a lessee's authority, given under section 333 (General authority to lessee for particular dealings), to sublease without seeking the Minister's approval.

Division 2 Consequences of registration**300 Benefits of registration**

The benefits of this division apply to a document whether or not valuable consideration has been given.

301 Interest in land not transferred or created until registration

A document does not transfer a lease or licence or create a legal interest in a lease until it is registered.

302 Effect of registration on interest

- (1) 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.
- (2) The person holds the interest subject to—
 - (a) all other interests in the land previously registered; and
 - (b) all rights and interests of the State in the land, other than interests subsequently registered.

303 Evidentiary effect of recording particulars in the register

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

304 Correcting unregistered documents

- (1) The chief executive may correct an obvious error in a lodged document by noting the correction—
 - (a) on the document; or
 - (b) if the document is in electronic form—in the appropriate register.
- (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.

305 Requisitions

- (1) The chief executive, by written notice (the *requisition*) given to a person who has lodged or deposited a document, or to another person who reasonably appears to the chief executive to be relevantly associated with the document, may require a 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 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 (and any document depending on it for registration) until the requisition is complied with.

305A Electronic communication of statutory declaration or affidavit

- (1) A person is taken to have complied with a requirement under section 305(2) to give the chief executive a statutory declaration or affidavit (the *verifying document*) if the person gives a signed electronic form of the verifying document by electronic communication and—
 - (a) having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the verifying document provided a reliable way of maintaining the integrity of the information it contained; and
 - (b) when the communication was sent, it was reasonable to expect the information contained in the electronic form of the verifying document would be readily accessible so as to be useable for subsequent reference; and
 - (c) the chief executive consents to the electronic form of the verifying document being given by electronic communication.
- (2) The person is taken to have signed the electronic form of the verifying document if—
 - (a) a method is used to identify the person and to indicate the person's approval of the information communicated; and
 - (b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and
 - (c) the chief executive consents to the electronic form of the verifying document being signed by using the method mentioned in paragraph (a).

306 Rejecting document for failure to comply with requisition

- (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.⁵³
- (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 relodgment of a rejected document after the requisition has been complied with.

307 Borrowing lodged document before registration

- (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 paragraph (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.

308 Withdrawing lodged document before registration

- (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—

⁵³ Under section 298, registered documents have priority according to when they are lodged.

- (a) withdraw the document; or
 - (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 relodge a document that has been withdrawn by the chief executive.
 - (4) On receiving a written application, the chief executive may permit the applicant to relodge 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 relodgment.

309 Chief executive may call in document for correction or cancellation

The chief executive, by written notice, may require a person to deposit a document for correction or cancellation.

310 Execution of documents

- (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 46.⁵⁴
- (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

⁵⁴ The *Property Law Act 1974*, section 46 is about the execution of instruments by or for corporations.

even though the execution was not witnessed or was not witnessed by a person prescribed under the 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.

311 Witnessing documents for individuals

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.

313 Delivery of documents

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.

314 Dispensing with production of document

- (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 lease or licence, and that the document that can not 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.

315 Destroying document in certain circumstances

- (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) The chief executive may authorise a person to destroy a document held in a place other than an office of the department if the document—
 - (a) was lodged at the place for evidencing, in the land registry, an interest; and
 - (b) is evidence of an existing interest for which there is accurate evidence in the land registry.
- (3) 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.
- (4) However, the chief executive, or person acting under an authority given under subsection (2), must not destroy an original will.
- (5) The chief executive may return a suitably perforated cancelled tenure document to the person who, immediately before its cancellation, was entitled to it.
- (6) The chief executive's powers under subsections (1) and (2) are subject to the *Public Records Act 2002*.

316 Transferor must do everything necessary

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

317 Meaning of *standard terms document* in division

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.

317A References to registered standard terms document

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

318 Standard terms document may be registered

The chief executive or anyone else may lodge a standard terms document and may amend the standard terms document by lodging a further document.

318A Minister may lodge mandatory standard terms document

- (1) The Minister may act under section 318 to lodge or amend a standard terms document containing terms the Minister considers are necessary inclusions in the terms of a document creating an interest of any type under this Act.
- (2) The document may state that it is a mandatory standard terms document.
- (3) This section does not limit section 318.

319 Standard terms document part of a further document

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.

320 Document not limited to that contained in standard terms document

- (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.

320A Conflict with mandatory standard terms document

- (1) Section 320(2) does not apply to a standard terms document if the document is a mandatory standard terms document.
- (2) If there is a conflict between a mandatory standard terms document and the terms included in another document, the mandatory standard terms document prevails.
- (3) Subsection (2) applies whether the other document is the document of which the mandatory standard terms document forms part or is some other document.

321 Withdrawal or cancellation of standard terms document

- (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 Minister or 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, under this section or the *Land Title Act 1994*, 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

322 Requirements for transfers

- (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.
- (1A) However, a lease, licence or sublease may not be transferred if a provision of this Act or a condition of the lease, licence or sublease prohibits the transfer.
- (1B) A lessee, licensee or the holder of a sublease may apply for approval to transfer a lease, licence or sublease.
- (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 and any land management agreement for the lease, or the licence; and
 - (iii) any current property vegetation management plans affecting the lease or licence; and

- (iv) any current agreements under an Act affecting the lease, including any land management agreement, or the licence; and
 - (v) if, were the transfer to be registered, section 325(4) and (5) would apply—the provisions of section 325(4) and (5).
- (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) To remove any doubt, it is declared that the Minister's approval is not needed to transfer a mortgage.
 - (8) If a lessee holds a general authority under section 333, the authority is taken to be an approval under this section for any transfer in relation to a sublease of the lease.
 - (9) In this section—

transfer, of a lease, licence or sublease, includes, if it is held by persons as tenants in common, a transfer by 1 or more of the tenants in common of all or part of their interest in the lease, licence or sublease to someone else.

322A Severing joint tenancy by transfer

- (1) This section applies if a lease, licence or sublease (the *tenure*) is subject to a joint tenancy.
- (2) Subject to section 322, any of the joint tenants of the tenure (the *severing party*), may unilaterally sever the joint tenancy by registration of a transfer to the severing party.
- (3) The transfer need only be executed by the severing party.
- (4) The chief executive may register the transfer only if the severing party satisfies the chief executive that a copy of the transfer has been given to all of the other joint tenants.
- (5) On registration of the transfer, the severing party becomes entitled as a tenant in common with the other persons who were joint tenants immediately before the transfer.

- (6) If, before registration of the transfer, there were more than 2 joint tenants of the tenure, the joint tenancy of the other persons is not affected.

323 Transfers must be registered

- (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.

324 Transfer of lands sold in possession or in execution

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.

325 Effect of registration of transfer

- (1) 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.
- (2) If a land management agreement applies to a lease being transferred, on registration of the transfer—
- (a) the transferee is taken to be a party to the agreement in place of the transferor; and
- (b) the rights and responsibilities of the transferor under the agreement become the rights and responsibilities of the transferee; and
- (c) the lease continues to be subject to the following conditions—

- (i) there must be a current land management agreement for the lease;
 - (ii) the lessee must comply with the agreement.
- (3) Subsections (4) and (5) apply if—
 - (a) the subject of the transfer is a term lease, and the lease land is rural leasehold land; and
 - (b) the transferor is a party to an indigenous land use agreement for the lease land; and
 - (c) the transfer is registered.
- (4) For this Act—
 - (a) the incoming lessee is taken to be a party to the indigenous land use agreement in place of the transferor; and
 - (b) the rights and responsibilities of the transferor under the agreement become the rights and responsibilities of the transferee.
- (5) It is a condition of the lease that the incoming lessee must, within 28 days, give written notice of the transfer and of the effect of subsection (4) to—
 - (a) the native title group and any other native title parties to the indigenous land use agreement, at their address as recorded in the ILUA register; and
 - (b) the native title registrar.

326 Transferee to indemnify

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.

326A Disclosure of information to proposed transferee of lease or licensee

- (1) This section applies if an application has been made under section 322 for approval of a transfer.

- (2) The Minister may give the proposed transferee under the transfer any information the Minister considers appropriate about rent or instalments paid or payable for the lease.
- (3) However, the Minister must not disclose to the transferee the residential or business address or other personal details of the transferor.

Division 2 Surrender

327 Absolute surrender of deed of grant

A registered owner may surrender, absolutely, a deed of grant—

- (a) on terms agreed to between the Minister and the registered owner; and
- (b) with the Minister's written approval.

327A Surrender of lease

A lessee may surrender, absolutely or conditionally, all or part of a lease—

- (a) on terms agreed to between the Minister and the lessee; and
- (b) with the Minister's written approval.

327B Applying to surrender

- (1) A registered owner may apply to surrender a deed of grant.
- (2) A lessee may apply to surrender all or part of a lease.

327C Notice of proposal to approve surrender of lease

- (1) If the Minister proposes to approve a surrender of all or part of a lease, written notice of the proposal must be given to the following—
 - (a) the lessee of the lease;
 - (b) another person with a registered interest in the lease;

- (c) another person the Minister considers should be given the notice.
- (2) The notice must—
- (a) be in the approved form; and
 - (b) state the following—
 - (i) the reason for the proposed surrender;
 - (ii) that the person given the notice may make a submission against the proposed surrender to the Minister;
 - (iii) that the submission must be made in the approved form;
 - (iv) the closing day for the submission;
 - (v) the place where or the way the submission must be lodged.

327D Submissions against proposal to approve surrender

- (1) A person given notice of a proposal to surrender a lease under section 327C, other than the lessee of the lease, may make a submission against the proposal to the Minister.
- (2) The submission must—
 - (a) be made in the approved form; and
 - (b) be received by the closing day for the submission in the notice under section 327C(2)(b)(iv); and
 - (c) be lodged at the place or in the way stated in the notice under section 327C(2)(b)(v).
- (3) The Minister must consider all submissions received under this section before the lease is surrendered.

327E Registration surrenders lease

- (1) All or part of a lease may be surrendered by registering a surrender notice or plan of subdivision.

- (2) However, if the surrender relates to only part of a lot, the surrender may only be made by registering a plan of subdivision.
- (3) The surrender of all or part of a lease takes effect on the day the surrender notice or plan of subdivision is registered.

327F Notice of surrender

- (1) Written notice of the surrender of a lease must be given to each person given notice under section 327C(1) about the proposed surrender.
- (2) The notice under subsection (1) must include all of the following—
 - (a) the date of the surrender;
 - (b) the effect, under section 327G, of the surrender;
 - (c) if there are improvements on the lease land owned by the person receiving the notice—a statement that the person may apply to remove the improvements.
- (3) If the surrender of a lease is not registered, written notice of the fact must be given to each person given notice under section 327C(1) about the proposed surrender.

327G Effect of surrender

On the surrender of all or part of a lease, the land the subject of the surrender—

- (a) if the lease was a State lease—remains a reserve; or
- (b) otherwise—becomes unallocated State land.

327H Person to give up possession on surrender

- (1) On the surrender of all or part of a lease, a person occupying the land the subject of the surrender must immediately vacate the land.
- (2) A person who does not give up possession under subsection (1), and is not otherwise entitled to possession, is a person who is unlawfully occupying unallocated State land.

Note—

Action for trespassing may be taken under chapter 7, part 2.

327I Dealing with improvements

- (1) An owner of improvements on a lease that has been surrendered may apply to remove the owner's improvements on the lease.
- (2) The owner may remove the improvements only with the written approval of, and within a time stated by, the Minister.
- (3) The improvements become the property of 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.
- (4) However, if the lease the subject of surrender is leased or sold, the owner has a right to payment for the improvements under chapter 5, part 5.
- (5) In this section—

owner, of improvements, means—

 - (a) if the lessee owned the improvements—the lessee; or
 - (b) a person who—
 - (i) made the improvements on the land the subject of the surrender with the lessee's authority; and
 - (ii) owned the improvements.

328 Surrender of subleases

- (1) A registered sublease may be wholly or partly surrendered by operation of law or by registering an instrument of surrender of the sublease executed by the sublessor and the sublessee.
- (2) If a sublease or part of a sublease is surrendered, the surrender must be registered.

- (3) 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.
- (4) If an instrument of surrender of lease is lodged, the chief executive may register the instrument and record the date of surrender stated in the instrument in the leasehold land register.
- (5) On registration of a surrender of a registered sublease, the interest of the sublessee vests in the sublessor.
- (6) Subsection (2) does not apply to a surrender or disclaimer under a law about bankruptcy.

329 Notice of surrender needed

- (1) If a lessee is absolutely surrendering a lease under section 327A, 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.

330 Requirements for effective surrender

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 grantee of an easement or profit a prendre whose interest will be adversely affected by the surrender gives written approval to the surrender.

331 Effect of surrender on existing interests

- (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.

Division 3 Subleases

332 Subleases require Minister's approval

- (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, including, for example, that a stated mandatory standard terms document form part of the sublease; 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.
- (8) Without limiting subsection (3)(a), the Minister may refuse to approve a sublease of a lease if the Minister is satisfied that the subleasing would be inappropriate, having regard to the purpose and conditions of the lease.

333 General authority to lessee for particular dealings

- (1) If the Minister considers it appropriate, the Minister may issue to the lessee of a lease issued under this Act an authority to agree to and as appropriate give effect to 1 or more of the following without seeking the Minister's approval—
 - (a) subleasing of the lease;
 - (b) transferring a sublease of the lease;
 - (c) amending a sublease of the lease;
 - (d) creating an easement that burdens or benefits a sublease of the lease;
 - (e) transferring a public utility easement that burdens a sublease of the lease;
 - (f) amending an easement that burdens or benefits a sublease of the lease.
- (2) The authority applies only to the lease identified, and to the lessee named, in the authority.
- (3) In acting under the authority, the lessee must comply with any requirements prescribed under a regulation for this section.
- (4) The authority may include the conditions the Minister considers appropriate, and may be withdrawn at any time.
- (5) The authority is cancelled immediately either of the following dealings are registered in the leasehold land register—
 - (a) the transfer of the lease;
 - (b) a transmission of the lessee's interest in the lease under a law about bankruptcy.
- (6) For subsection (1)(d), (e) or (f), a reference to a sublease of a lease must not be taken to include a reference to a sub-sublease of a sublease of a lease.

334 When subleasing is totally prohibited

A lessee may not sublease a lease issued under this Act if this Act forbids subletting, or the lease contains a condition specifically forbidding subletting.

334A Application to sub-subleases

In sections 332 to 334, for applying schedule 6, definition *sublease*, a reference to a lease issued under this Act may be taken to be a reference to a sublease of a lease issued under this Act, and correspondingly, a reference to a lessee may be taken to be a reference to a sublessee of a lease issued under this Act.

335 Subleases must be registered

- (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.

336 Amending a sublease

- (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.
- (3) Sections 332 and 333 apply to an amendment of a sublease as if the amendment were a sublease.
- (4) Before an amendment of a sublease is registered, the amendment must be endorsed with, as appropriate—

- (a) the Minister's approval under section 332, as applied; or
- (b) the Minister's general authority to amend under section 333, as applied.

337 Lessee continues to be responsible for primary obligations

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.

338 Validity of sublease or amendment of sublease against mortgagee

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.

339 Re-entry by sublessor

- (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 3A Mediation for disputes about terms of particular subleases

339A Application of div 3A

This division applies to a sublease, other than a sublease of trust land or transport land, if—

- (a) there is a dispute between any or all of the parties to the sublease about its terms; and
- (b) the dispute can not be dealt with under a dispute resolution process, under another Act, that specifically provides for dealing with disputes of that type; and

Examples of another Act—

- *Residential Tenancies Act 1994*
 - *Retail Shop Leases Act 1994*
- (c) the sublease does not include a dispute resolution process that is capable of being used to resolve the dispute.

339B Mediation

- (1) A party to the sublease may ask the chief executive to refer the dispute to mediation.
- (2) After consulting with the persons the chief executive reasonably considers are a party to the dispute, and having regard to the nature of the dispute, the chief executive may refer it to mediation.
- (3) If the chief executive refers the dispute to mediation—
- (a) the mediation must be conducted by—
 - (i) a person agreed to by the parties to the dispute; or
 - (ii) if the parties can not agree—an appropriately qualified mediator appointed by the chief executive; and
 - (b) the mediation must be conducted in the way decided by the mediator and the parties; and
 - (c) the parties must participate in the mediation in good faith to attempt to resolve the dispute; and

Examples of participating in the mediation in good faith—

- attending meetings that the parties have agreed to attend
 - complying with mediation procedures agreed to by the mediator and the parties
 - disclosing relevant information as appropriate for the mediation
 - ensuring a party's agent at a mediation is authorised to reach agreement for the party
- (d) the parties must pay the mediator the costs of the mediation in the proportions agreed by the mediator and the parties.

- (4) For subsection (3), a party to the dispute may be represented by an agent appointed by the party if the mediator is satisfied the appointment will facilitate the conduct of the mediation.
- (5) If a lessee who is a party to the dispute, in relation to a sublease of the lessee's lease, contravenes subsection (3)(c), the lessee is taken to have contravened a provision of this Act in relation to the lease.
- (6) Nothing in this section affects any rights or remedies to which a party to the dispute may be entitled.
- (7) Evidence of anything done or said, or an admission made, at a mediation about the dispute is admissible at the trial of the dispute or in another civil proceeding only if all parties who participated in the mediation agree.
- (8) For a proceeding under this Act about a lessee's contravention of this Act under subsection (5), evidence about the lessee's participation in a mediation may include evidence about the steps taken by the lessee to prepare for the mediation.
- (9) In this section—

appropriately qualified, for a mediator, means having the qualifications or experience appropriate to conduct the mediation.

civil proceeding does not include a proceeding under this Act about a lessee's contravention of this Act under subsection (5).

Division 4 Mortgages

340 Registering a mortgage

- (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)⁵⁵ or deposited under section 375(2)⁵⁶ with a transfer; and
- (b) the details of the trust have not since changed.

341 Effect of a mortgage

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.

342 Releasing a mortgage

- (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.

343 Amending a mortgage

- (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.

344 Amending priority of mortgages

- (1) The priority of registered mortgages may be amended by registering a document amending priority.
- (2) The document amending priority must—

55 Section 374 (Details of trust must be given)

56 Section 375 (Document of transfer to trustee)

- (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.

345 Mortgagee in possession may sell

- (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.

346 Sale of mortgaged lease

- (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 a newspaper circulating generally 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 any land management agreement for the lease; and

- (c) any current property vegetation management plan affecting the lease; and
- (d) any current agreement under an Act affecting the lease including any land management agreement.

347 Land to be sold within 2 years

- (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.

348 Disposal of proceeds of sale

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;⁵⁷

- (e) lastly, to the lessee.

349 Liability of mortgagee in possession

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.

350 Effect of transfer after sale by mortgagee

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 7 Correcting and changing deeds of grant and leases

358 Changing deeds of grant—change in description or boundary of land

- (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 or disposal 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

⁵⁷ Section 244 has been renumbered as section 240F under the Land and Other Legislation Amendment Act 2007, section 130(5).

- (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 section 109(2)(b), 109A or 109B; 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) the deed of grant or deed of grant in trust is cancelled; and
 - (b) a new deed 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.

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

- (1) This section applies if all of the following circumstances apply—
- (a) before the commencement of this section, action was taken under an acquisition Act to acquire an easement, over freehold or non-freehold land (the *relevant land*);

- (b) there is no outstanding issue of substance in relation to the payment of compensation under the acquisition Act for the acquisition;

Examples—

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

Example of documentary evidence—

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

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

created, or whether the relevant land is freehold land or leasehold land when the gazette notice mentioned in subsections (2) and (3) is published.

- (6) An amendment of a register may not be made under this section if 10 years have elapsed after the commencement of this section.
- (7) In this section—

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

extinguished includes surrendered.

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

A person is not entitled to compensation from the State under this Act, the *Land Title Act 1994* or the *Acquisition of Land Act 1967*, or otherwise, for deprivation of an interest in land, or for loss or damage of any kind, arising out of the recording of the particulars of an easement under section 358A.

358C Correction of minor error in deed of grant

- (1) This section applies if—
 - (a) a deed of grant is incorrect because of an error in issuing it; and
 - (b) the registrar of titles certifies that the correction of the deed of grant will not prejudice any person who holds an interest in the deed of grant.

Example—

The registrar of titles would be likely to certify that a correction will not prejudice any person if the deed of grant has been issued with its lot and plan correctly described, but with its parish name incorrect.

- (2) The registrar of titles must record the correction in the freehold land register.
- (3) The corrected deed of grant operates as if it had originally been issued that way.

- (4) In this section—

deed of grant includes a deed of grant in trust.

359 Correcting or cancelling deeds of grant

- (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) This section does not apply to the correction of a deed of grant if the correction has been made under section 358C.
- (8) In this section—
- deed of grant* includes a deed of grant in trust.

360 Governor in Council may change freeholding leases

- (1) The Governor in Council may, by gazette notice, amend the description or anything else in a freeholding lease if—

- (a) on resurvey of the lease land, the boundaries of the land do not agree with the boundaries described in the lease or appropriate plan, and no doubt exists about the boundaries of the land; or
 - (b) the lease is defective because of an error or omission in its preparation; or
 - (c) the boundaries of the lease land have significantly changed because of erosion or by gradual and imperceptible degrees; or
 - (d) 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
 - (e) the Governor in Council has approved that an area of unallocated State land be included in the lease; or
 - (f) the Governor in Council considers it necessary for another reason to correct the lease.
- (2) The chief executive must register the amendment.
 - (3) An amended freeholding lease operates as if it had been originally issued or executed as amended.

360A Minister may change term leases, other than State leases, or perpetual leases

- (1) This section applies to a term lease, other than a State lease, or a perpetual lease.
- (2) The Minister may, by approving a plan subdivision, amend the description or anything else in the lease if—
 - (a) the boundaries of the lease land are not stated in the lease with adequate certainty or do not agree with the boundaries shown on the relevant plan; or
 - (b) a survey of the land gives more accurate knowledge of the lease; or
 - (c) if the Minister has approved of a mutual exchange of areas adjoining a common boundary between leases and—

- (i) none of the areas adjoining the common boundary are subject to a freeholding lease; and
 - (ii) the lessees of the adjoining leases have agreed to the mutual exchange; or
- (d) the Minister has approved that an area of unallocated State land be included in the lease; or
- (e) the Minister has approved that a reservation no longer needed be absorbed by the lease.
- (3) The Minister may, by adjustment notice, amend the description or anything else in the lease if—
 - (a) the lease is defective because of an error or omission in its preparation; or
 - (b) the court has made a decision under section 435 on a dispute about the boundaries; or
 - (c) the Minister considers it necessary for another reason to correct the lease.
- (4) The chief executive must register the amendment.
- (5) An amended lease operates as if it had been originally issued or executed as amended.

360B Minister may change State lease

- (1) The Minister may, by registering an adjustment notice, amend the description or anything else in a State lease if—
 - (a) the boundaries of the lease land are not stated in the lease with adequate certainty or do not agree with the boundaries shown on the relevant plan; or
 - (b) a survey of the land gives more accurate knowledge of the lease; or
 - (c) the Minister has approved of a mutual exchange of areas adjoining a common boundary between State leases that are within the boundaries of 1 reserve, and the lessees of the leases agree to the exchange; or
 - (d) the Minister has approved that an area of trust land be included in the lease; or

- (e) the State lease is defective because of an error or omission in its preparation; or
 - (f) the Minister considers it necessary for another reason to correct the State lease.
- (2) The chief executive must register the amendment.
 - (3) An amended State lease operates as if it had been originally issued or executed as amended.

360C Applying to amend description of lease

- (1) A lessee or a person acting for the lessee may apply to amend the description in a freeholding lease if the description of the lease may be amended under section 360(1)(a), (c) or (d).
- (2) A lessee or a person acting for the lessee may apply to amend the description in a term lease, other than a State lease, or a perpetual lease if the description of the lease may be amended under section 360A(2)(a), (b) or (c).
- (3) A lessee or a person acting for the lessee may apply to amend the description in a State lease if the description of the lease may be amended under section 360B(1)(a), (b), (c) or (d).

360D Notice of proposal to amend lease

- (1) If the Governor in Council proposes to approve an amendment of freeholding lease under section 360, written notice must be given of the proposal to the following—
 - (a) the lessee of the lease;
 - (b) each person who made an application under section 360C(1);
 - (c) each person with a registered interest in the lease land;
 - (d) another person the Minister considers should be given the notice.
- (2) If the Minister proposes to approve an amendment of a term lease, other than a State lease, or a perpetual under section 360A, written notice of the proposal must be given to the following—
 - (a) the lessee of the lease;

- (b) each person who made an application under section 360C(2);
 - (c) each person with a registered interest in the lease land;
 - (d) another person the Minister considers should be given the notice.
- (3) If the Minister proposes to approve an amendment of a State lease under section 360B, written notice of the proposal must be given to the following—
- (a) the lessee of the lease;
 - (b) the trustee of the reserve over which the State lease is granted;
 - (c) each person who made an application under section 360C(3);
 - (d) each person with a registered interest in the lease land;
 - (e) another person the Minister considers should be given the notice.
- (4) The notice must—
- (a) be in the approved form; and
 - (b) state the following—
 - (i) the reason for the proposal;
 - (ii) that the person given the notice may make a submission against the proposal to the Governor in Council;
 - (iii) that the submission must be made in the approved form;
 - (iv) the closing day for the submission;
 - (v) the place where or the way the submission must be lodged.

360E Submissions

- (1) A person given notice of a proposal under section 360D, other than the lessee of the lease, may make a submission against the proposal to the designated person.

- (2) The submission must—
 - (a) be made in the approved form; and
 - (b) be received by the closing day for the submission in the notice under section 360D(4)(b)(iv); and
 - (c) be lodged at the place or in the way stated in the notice under section 360D(4)(b)(v).
- (3) The designated person must consider all submissions received under this section before approving the amendment of the lease.

360F Notice of registration of amendment of lease

- (1) If an amendment of a lease is registered under section 360(2), 360A(4) or 360B(2), written notice must be given to each person given notice under section 360D about the proposed amendment.
- (2) The notice must include both of the following—
 - (a) the date of registration of the amendment;
 - (b) the particulars of the amendment.
- (3) If the designated person does not approve of an amendment to the description of a lease, written notice of the fact must be given to each person given notice under section 360D about the proposed amendment.

Division 8 Easements

361 Definitions for div 8

In this division—

full supply level see the *Water Supply (Safety and Reliability) Act 2008*, schedule 3.

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

public utility easement means an easement in favour of a public utility provider.

362 Easements may be created only by registration

- (1) With the Minister's written approval, an easement may be created over land granted in trust or non-freehold land (including any lease of non-freehold land or sublease of a lease of 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.
- (5) A public utility easement for water storage may be created only for water storage—
 - (a) for a weir—on land upstream of the weir and within or outside the storage area at full supply level; or
 - (b) for a dam—on land upstream of the barrier of the dam and outside the storage area at full supply level.
- (6) The document creating the easement must show the part of the land over which water may be stored.

363 Registration of easement

- (1) A document creating an easement may be registered only if—
 - (a) a plan of survey designating the 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 compulsorily 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, trustee of land granted in trust, lessee and licensee.

364 Registration of plan showing proposed easement

- (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.

365 Particulars to be registered

- (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.
- (2A) A public utility easement for water storage burdens the whole of the land any part of which may be affected by the storage.
- (3) Further dealings affecting the easement must also be registered in the appropriate registers.

366 Rights and liabilities created on registration of document

- (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 and is not a public thoroughfare 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.

367 Easement benefiting and burdening land of same person

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.

368 Same person becoming trustee, lessee or licensee of benefited and burdened lands

- (1) An easement is not extinguished merely because the trustee, lessee or licensee of 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 trustee, lessee or licensee of the land benefited and the land burdened by an easement, the easement is extinguished only if—
 - (a) the trustee, lessee or licensee asks the chief executive to extinguish the easement; or
 - (b) the land benefited and the land burdened are amalgamated.

369 Public utility easements

- (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;
 - (d) water storage;
 - (e) an infrastructure corridor;
 - (f) a purpose mentioned in the *State Development and Public Works Organisation Act 1971*, section 125(1);
 - (g) in the case of a cane railway easement in favour of a mill owner—a purpose for which a cane railway easement may be granted under the *Sugar Industry Act 1999*.
- (3) Also, a public utility easement may be registered in favour of a person mentioned in schedule 6, definition *public utility provider* paragraph (e), only if the easement is for the public utility service mentioned in the paragraph.
- (4) Further, a public utility easement may be registered for a right of way for the public only if—
 - (a) the public utility provider under the easement is the State or a local government; and
 - (b) use of the easement is limited to the following—
 - (i) pedestrians;
 - (ii) cyclists;
 - (iii) vehicles reasonably necessary for the building and maintenance of the easement.
- (5) A registered public thoroughfare easement is taken not to be registered under this Act to the extent it—
 - (a) is inconsistent with the relevant provisions for the easement; or

- (b) purports to provide other than for a public thoroughfare easement.
- (6) Subsection (5) has effect only in relation to public utility easements registered after the commencement of this subsection.
- (7) The chief executive may refuse to register a document purporting to create a public thoroughfare easement if the chief executive is satisfied it—
 - (a) is to any extent inconsistent with the relevant provisions for the easement; or
 - (b) purports to any extent to provide other than for a public thoroughfare easement.

- (8) In this section—

infrastructure corridor means an infrastructure corridor under the *State Development and Public Works Organisation Act 1971*, section 82(8).

pedestrian includes—

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

Example for paragraph (b)—

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

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

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

369A Transfer of public utility easements

- (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.

369B Transfer of benefited land

- (1) This section applies if—
 - (a) land burdened by an easement is unallocated State land or a reserve; and
 - (b) the document creating the easement includes a provision (the *power of attorney provision*) appointing the grantor of the easement the attorney of the grantee of the easement, including for the purpose of surrendering the easement if circumstances stated in the document happen; and
 - (c) since the easement was created, the person (the *original owner*) who was the owner of the land benefited by the easement when the easement was created has not always been the owner of the land, whether or not the original owner is now the owner of the land.
- (2) The power of attorney provision binds the current owner of the land benefited by the easement, whether or not, since the easement was created, the current owner of the land has always been the owner of the land.
- (3) In this section—

current owner, of land, means the person who is now the owner of the land.

owner, of land, includes—

 - (a) for land granted in trust—the trustee of the land; and
 - (b) otherwise—a registered owner, lessee or licensee of the land.

370 Amending an easement

- (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.⁵⁸

371 Surrendering an easement

- (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 by the easement 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.
- (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, trustee of land granted in trust, lessee and licensee, and also includes a mortgagee in possession.

⁵⁸ Section 363 is about how an easement may be registered.

372 End and continuation of easements

- (1) An easement over land granted in trust, a lease, a licence or a reserve ends when the deed of grant in trust, lease or licence ends or the dedication of the reserve is revoked.
- (2) However, with the Minister's written approval, a public utility easement may continue over unallocated State land when the deed of grant in trust, lease or licence ends or the dedication of the reserve is revoked.
- (3) An easement over a sublease ends when the sublease ends.
- (4) 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.
- (5) If a public utility easement continues over unallocated State land, the continuation must be recorded in the appropriate register.
- (6) 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.

373 Court may modify or extinguish an easement

The *Property Law Act 1974*, section 181 applies to an easement under this Act.⁵⁹

373AA Particular matters about easements and permit land

- (1) An easement may be created over permit land without the permittee's consent.
- (2) If permit land is subject to an easement, the rights of the grantee under the easement prevail, to the extent of any

⁵⁹ The *Property Law Act 1974*, section 181 is about modifying and extinguishing easements and restrictive covenants.

inconsistency, over the occupation rights comprising the permit.

Division 8A Covenants

373A Covenant by registration

- (1) Non-freehold land (other than a road for which a person does not hold a road licence) 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 another entity representing the State, or a local government.
- (3) Subject to subsection (4), 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).
- (4) If non-freehold land is the subject of a lease, other than a trustee lease, or is land over which a person holds a road licence, a covenant to which the land is subject may—
 - (a) relate to the use of—
 - (i) the land or part of the land; or
 - (ii) a building, or building proposed to be built, on the land; or
 - (b) be aimed directly at preserving—
 - (i) a native animal or plant; or

- (ii) a natural or physical feature of the land that is of cultural or scientific significance.
- (5) A covenant under this division—
- (a) may be a positive covenant or a negative covenant; and
 - (b) is binding on the covenantor and the covenantor's successors in title.
- (6) The covenant must not prevent a person from—
- (a) registering an interest under this Act; or
 - (b) exercising the person's rights under a registered interest; or
 - (c) releasing or surrendering a registered interest.
- (7) The covenant must not—
- (a) secure the payment of money or money's worth payable under a condition of a development approval or an infrastructure agreement under the *Integrated Planning Act 1997*;⁶⁰ or
 - (b) provide for anything capable of being the subject of a document creating an easement.
- (8) For subsection (4)(a), the covenant relates to the use of the land, a part of the land, a building on the land or a building proposed to be built on the land, only if it provides for—
- (a) a purpose for which the land, the part or the building must be used; or
 - Examples of covenants for paragraph (a)—*
 - that a building on the land must be used for educational purposes
 - that the land must be used for noise attenuation purposes
 - (b) a purpose that is the only purpose for which the land, the part or the building may be used; or
 - Examples of covenants for paragraph (b)—*
 - that a building on the land may be used only for residential purposes

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

Land Act 1994

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

Examples of covenants for paragraph (c)—

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

Examples—

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

Example—

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

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

Examples for paragraph (d)—

- an obligation not to start proceedings in relation to activities happening on other land
 - an obligation not to use the land for residential purposes unless a rainwater tank is installed
- (10) In this section—

building means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a part of a building.

373AA Compliance with s 373A

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

373B Requirements of document creating covenant

- (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.

373C Amending document creating covenant

- (1) A covenant may be amended by registering a document amending the covenant.
- (2) The amending document may be registered only if—
 - (a) it is validly executed; and
 - (b) the Minister has given written approval to the amendment.
- (3) 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.

373D Releasing a covenant

- (1) A registered covenant may be wholly or partly discharged by registering a document releasing the covenant.
- (2) The document must be signed by the covenantee.
- (3) On lodgement of the document, the registrar may register the release to the extent shown in the document.
- (4) On registration of the document, the covenant is discharged, and the land is released from the covenant, to the extent shown in the document.

Division 8B Profits a prendre

373E Application of div 8B

This division applies to a profit a prendre relating to a natural resource—

- (a) on land subject to a lease; and
- (b) owned by the lessee of the land as an improvement.

373F Definitions for div 8B

In this division—

lease means a lease that allows the land held under the lease to be used for agricultural or timber plantation purposes.

natural resource means a tree or vegetation other than a tree planted to comply with a compliance notice.

373G Profit a prendre by registration

With the Minister's written approval, a lease may be made the subject of a profit a prendre by registering the document creating the profit a prendre over the lease.

373H Profit a prendre affecting freehold land and a lease

- (1) This section applies if a document creating a profit a prendre is registered under section 373G in relation to a lease and the profit a prendre also—
 - (a) benefits another lease; or
 - (b) benefits freehold land; or
 - (c) burdens another lease; or
 - (d) burdens freehold land; or
 - (e) has effect in any combination of paragraphs (a) to (d).
- (2) The document must be registered in the appropriate registers.
- (3) Further dealings affecting the profit a prendre must also be registered in the appropriate registers.

373I Requirements of document creating profit a prendre

- (1) A document creating a profit a prendre must—
 - (a) be validly executed; and
 - (b) include a description sufficient to identify the lease the subject of the profit a prendre; and
 - (c) include a description of the profit a prendre to which the lease is subject, including the period for which the profit a prendre is to be enjoyed.
- (2) Subsection (1) does not limit the matters that the appropriate form for a document creating a profit a prendre may require to be included in the document.
- (3) The period mentioned in subsection (1)(c) must not be longer than the term of the lease.

373J Particulars to be registered

When a document creating a profit a prendre is registered, the following particulars must be recorded in the appropriate registers—

- (a) the lease burdened by the profit a prendre;

- (b) any lease benefited by the profit a prendre;
- (c) any freehold land benefited or burdened by the profit a prendre.

373K Profit a prendre benefiting and burdening same person's lease or freehold land

A document creating a profit a prendre may be registered even if—

- (a) the lease or freehold land benefited and the lease burdened by the profit a prendre are owned by the same person; or
- (b) the lessee of the lease, or registered owner of the freehold land, benefited by the profit a prendre holds an interest in the lease burdened by the profit a prendre.

373L Same person becoming lessee of benefited and burdened leases

If the same person becomes the lessee of the lease benefited and the lease burdened by a profit a prendre, the profit a prendre is extinguished only if—

- (a) the lessee asks the chief executive to extinguish the profit a prendre; or
- (b) the leases are amalgamated under division 6.

373M Owner of benefited lease acquiring interest in burdened lease

If a lease is benefited by a profit a prendre, the profit a prendre is not extinguished only because the lessee of the lease acquires an interest, or a greater interest, in the lease burdened by the profit a prendre.

373N Amending a profit a prendre

- (1) A profit a prendre may be amended by registering a document amending the profit a prendre.
- (2) However, the document must not—

- (a) increase or decrease the area of land the subject of the profit a prendre; or
- (b) add or remove a party to the profit a prendre.

373O Releasing or removing a profit a prendre

- (1) On lodgment of a document releasing a profit a prendre to which a lease is subject, the chief executive may register the release to the extent shown in the document.
- (2) On registration of the document, the profit a prendre is discharged, and the lease is released from the profit a prendre, to the extent shown in the document.
- (3) Also, the chief executive may remove a profit a prendre from a lease if a request to remove the profit a prendre is lodged, and the request clearly establishes that—
 - (a) the period of time for which the profit a prendre was intended to subsist has ended; or
 - (b) the event upon which the profit a prendre was intended to end has happened.

373P Effect of surrender of lease on profit a prendre

- (1) If a lease subject to a profit a prendre is surrendered, other than absolutely, the profit a prendre is an interest in the lease that continues under section 331(1).
- (2) If a lease subject to a profit a prendre is surrendered absolutely, the profit a prendre is an interest that, under section 331(2), is extinguished from the day the surrender is registered.

373Q Dealing with a profit a prendre

- (1) A profit a prendre over a lease may be sold, mortgaged, given to another person or pass by will or intestacy to a beneficiary.

- (2) Divisions 1 and 4⁶¹ and sections 377 to 380⁶² apply, with necessary changes, to a dealing with a profit a prendre under subsection (1) as if the profit a prendre were a lease.
- (3) Without limiting subsection (2), for applying the provisions mentioned to a profit a prendre, a reference to a lessee is a reference to the holder of the benefit of a profit a prendre.

Division 9 Trusts, deceased estates and bankruptcy

374 Details of trust must be given

- (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.

374A Interests held in trust must be registered

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—

61 Part 4 (Dealings affecting land), divisions 1 (Transfers) and 4 (Mortgages)

62 Sections 377 to 380 are provisions relating to deceased estates.

- (a) a transfer of the interest to the person as trustee; or
- (b) a request to vest the interest in the person as trustee.

375 Document of transfer to trustee

- (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.

375A Document to vest in trustee

- (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.

376 Deed of grant or lease may issue in name of deceased person

- (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.

377 Registering personal representative

- (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, \$300000; 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—
 - (i) the person is, or is entitled to be, the deceased's personal representative; or
 - (ii) the chief executive considers the person would succeed in an application for a grant of representation.
- (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.

378 References in documents to a person with an interest in land includes personal representatives etc.

- (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.

379 Registering beneficiary

- (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 person who is, or is entitled to be, the deceased's personal representative gives written approval; and
 - (b) the person satisfies the chief executive the person is beneficially entitled to the lease, sublease or licence.

380 Applying for Supreme Court order

- (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.

381 Transmission on bankruptcy

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.

382 Disclaimer in bankruptcy

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

383 Power of attorney

- (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.
- (3) However, an individual who is a trustee of trust land can not, under a power of attorney, authorise a person to deal with an interest in the trust land that may be dealt with by the individual as trustee.

Example—

An individual who is the trustee of a reserve could not, under a power of attorney, authorise another person to act on the trustee's behalf to enter into a trustee lease with a third person.

385 Acts in relation to substitute decision makers

- (1) 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.
- (2) If—
 - (a) an act is required or permitted to be done in relation to a person under this Act; and
 - (b) the person has a power of attorney that gives an attorney power to deal with land;the act may be done in relation to the attorney.

Division 11 Writs of execution**386 Registering a writ of execution**

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.

387 Effect of registering a writ of execution

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.

388 Cancellation of registration of a writ of execution

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.

389 Discharging or satisfying writ of execution

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.

389A Effect on writ of execution of transfer after sale by mortgagee

- (1) Subsection (2) applies if—
 - (a) a mortgage is registered over a lease; and
 - (b) a writ of execution is later registered in relation to the lease.
- (2) If the mortgagee of the lease signs a transfer of the lease after exercising power of sale under the mortgage—
 - (a) registration of the writ of execution does not prevent registration of the transfer; and
 - (b) on registration of the transfer, the chief executive must cancel registration of the writ of execution.

389B Effect on writ of execution of transfer after sale by chief executive

- (1) This section applies if—
 - (a) a writ of execution has been registered in relation to a lease; and
 - (b) the chief executive has sold the lease under chapter 5, part 4, division 3A, subdivision 4.

- (2) If the chief executive executes a transfer of the lease for the purposes of the sale—
 - (a) the registration of the writ of execution does not prevent registration of the transfer; and
 - (b) on registration of the transfer, the chief executive must cancel registration of the writ of execution.

Division 11A Caveats

Subdivision 1 Caveats generally

389C Requirements of caveats

- (1) A caveat in relation to a lease or licence must be signed by or for the caveator.
- (2) The caveat must state—
 - (a) the name of the caveator; and
 - (b) an address where documents can be served on the caveator; and
 - (c) unless the chief executive dispenses with it, the name and address of—
 - (i) the lessee or licensee affected by the caveat; and
 - (ii) anyone else having the right to deal with the lease or licence affected by the caveat; and
 - (d) the registered interest affected by the caveat; and
 - (e) the interest claimed by the caveator; and
 - (f) the grounds on which the interest is claimed.
- (3) This section applies to caveats under this division other than a caveat prepared and registered by the chief executive under section 389L(1).

389D Lodging caveat

- (1) A caveat may be lodged by the following—

- (a) the chief executive under section 389L(1);
 - (b) a person to whom an Australian court has ordered that an interest in a lease or licence be transferred;
 - (c) a person who has the benefit of a subsisting order of an Australian court in restraining a lessee from dealing with a lease or licensee from dealing with a licence.
- (2) An office copy of a court order mentioned in subsection (1) must be deposited when a caveat is lodged under subsection (1).

389E Notifying caveat

The chief executive must give written notice of lodgement of a caveat under this division to each person whose interest or whose right to registration of a document is affected by the caveat.

389F Effect of lodging caveat

- (1) A caveat lodged under this division prevents registration of a document affecting the tenure over which the caveat is lodged from the date and time endorsed by the chief executive on the caveat as the caveat's date and time of lodgement.
- (2) Subsection (1) has effect for a caveat until the caveat is cancelled, rejected, removed or withdrawn.
- (3) However, lodgment of a caveat under this subdivision does not prevent registration of the following—
 - (a) a document stated in the caveat as a document to which the caveat does not apply;
 - (b) a document if the caveator consents to its registration;
 - (c) a document executed by a mortgagee whose interest was registered before lodgement of the caveat if—
 - (i) the mortgagee has power under the mortgage to execute the document; and
 - (ii) the caveator claims an interest in the lease as security for the payment of money or money's worth;

- (d) a document of transfer of mortgage executed by a mortgagee whose interest was registered before lodgement of the caveat;
 - (e) another interest that, if registered, will not affect the interest claimed by the caveator.
- (4) Also, lodgement of a caveat under section 389L(1) does not prevent registration of the following—
- (a) a document stated in the caveat as a document to which the caveat does not apply;
 - (b) a document if the chief executive consents to its registration.
- (5) Lodgment of a caveat does not create in the caveator an interest in the tenure affected by the caveat.

389G Withdrawing caveat

A caveator may withdraw a caveat lodged under this division by lodging a request to withdraw it.

389H Removing caveat

- (1) A caveatee may at any time apply to the Supreme Court for an order that a caveat lodged under this division be removed.
- (2) The Supreme Court may make the order whether or not the caveator has been served with the application, and may make the order on the terms it considers appropriate.

389I Cancelling caveat

- (1) This section does not apply to a chief executive's caveat prepared and registered under section 389L(1).
- (2) The chief executive may cancel a caveat if a request to cancel the caveat is lodged and the chief executive is satisfied that—
 - (a) the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn; or
 - (b) the claim of the caveator has been settled by agreement or otherwise satisfied; or

- (c) the nature of the interest claimed does not entitle the caveator to prevent registration of a document that has been lodged.
- (3) The chief executive must notify the caveator of the chief executive's intention to cancel the caveat at least 7 days before cancelling it.
- (4) If a document that has been lodged will, on registration, give full effect to an interest claimed in a caveat, the chief executive may remove the caveat immediately before registering the document.

389J Further caveat

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

389K Notices to the caveator

- (1) A notice to a caveator under this subdivision is sufficiently served if left at or sent to the address mentioned in section 389C(2)(b).
- (2) If the chief executive is satisfied that a notice under this subdivision will not reach the caveator if served in the way mentioned in subsection (1), the notice may be served in a way stated in a written direction by the chief executive.
- (3) If the chief executive is informed in writing, and is satisfied, that the name or address of the caveator has changed, the chief executive must note on the caveat details of the new name or address.
- (4) A new name or address noted under subsection (3) becomes the name or address for service of a notice on the caveator.

Subdivision 2 Chief executive's caveat

389L Chief executive may prepare and register caveat

- (1) The chief executive may prepare and register a caveat over a relevant tenure in favour of the State.
- (2) The chief executive may act under subsection (1) to prevent a dealing with a relevant tenure that may prejudice—
 - (a) the Commonwealth, a State or a relevant local government; or
 - (b) a person who is intellectually or mentally impaired or is incapable of managing the person's own affairs; or
 - (c) a person who is absent from the State; or
 - (d) a person because of—
 - (i) misdescription of the tenure; or
 - (ii) fraud or forgery; or
 - (e) a person to whom a notice has been given, or has been required to be given, under section 295(2); or
 - (f) a person, other than a person mentioned in any of paragraphs (a) to (e), who has an interest in the relevant tenure.
- (3) Also, the chief executive may act under subsection (1) to prevent a dealing with a relevant tenure—
 - (a) if the relevant tenure is to be extinguished; or
 - (b) to give effect to an order of a court of competent jurisdiction directed to the chief executive.
- (4) Subsection (2)(f) applies only if the chief executive is satisfied, because of the nature or urgency of particular circumstances, there is no practicable alternative to registering the caveat.
- (5) In this section—

dealing, with a relevant tenure, does not include registering a document to extinguish a relevant tenure.

extinguish means extinguish for the purposes of—

- (a) for a freeholding lease—an amalgamation, forfeiture, resumption, subdivision or surrender of, or the registration of a deed of grant over, the lease land; or
- (b) for a lease other than a freeholding lease—an amalgamation, conversion, forfeiture, renewal, resumption, subdivision or surrender of the lease; or
- (c) for a licence—a cancellation or surrender of the licence; or
- (d) for an operational reserve—the registration of a deed of grant over the operational reserve; or
- (e) for a reserve other than an operational reserve—the revocation of the dedication of the reserve.

Division 12 Liens

390 Vendor does not have equitable lien

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.

Division 13 Miscellaneous

390A Special provision for transport related land

- (1) This section applies to any of the following dealings affecting land—
 - (a) a transfer under section 322 of a sublease;
 - (b) a sublease under section 332;
 - (c) an amendment under section 336 of a sublease;
 - (d) the creation under section 362 of an easement;
 - (e) the registration under section 363 of an easement;
 - (f) a transfer under section 369A of a public utility easement;

- (g) an amendment under section 370 of a registered easement;
 - (h) the creation under section 373B of a covenant;
 - (i) the amendment under section 373C of a covenant.
- (2) If land affected by the dealing is transport land, or is lease land under a perpetual lease to the State for marine facility purposes, despite a provision mentioned in subsection (1), the Minister's approval is not required for the dealing or the registration of a document for the dealing.

390B Particular dealing with rail land

- (1) This section applies if the chief executive of the department under which the *Transport Infrastructure Act 1994* is administered applies for the issue of a deed of grant for a part of rail land.
- (2) If the Governor in Council issues the deed of grant for the part of the rail land—
- (a) the deed of grant takes effect on the day it is registered; and
 - (b) the lot the subject of the deed of grant stops being lease land under the perpetual lease for the rail land when the deed of grant is registered; and
 - (c) the chief executive must amend the leasehold land register to show the particulars of the perpetual lease after the deed of grant is issued.
- (3) The deed of grant is subject to the registered interests affecting the lot before its issue.

Chapter 7 General

Part 1 Administration

Division 1 Ministerial administration

391 Administration of Act

This Act is to be administered by the Minister and, subject to the Minister, by the chief executive.

391A General provision about approvals

- (1) If this Act permits or requires the Minister or chief executive to give approval for a matter or thing, the approval may be given subject to the conditions the Minister or chief executive considers appropriate.
- (2) If a document requires the Minister's approval to be registered, the Minister may tell the person seeking to register it that the approval will be given subject to conditions the Minister considers appropriate for the document.
- (3) An advice under subsection (2) may be considered to be an 'in principle' approval.
- (4) When the conditions are complied with, the Minister may give the approval by executing the appropriate form.

392 Delegation by Minister

- (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.
- (2A) The Minister may, for a lease held by the State to perform functions under another Act, delegate the Minister's functions under this Act to the chief executive or an officer of the public service of the department in which the other Act is administered.
- (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 functions of the Minister can not be delegated—
- (a) granting a lease;
 - (b) dispensing with the need to obtain the Minister's approval for trustee leases;
 - (c) extending the term of a lease for a year if the term has already been extended;
 - (d) extending the term of a lease, under section 155A or 155B;
 - (e) reducing the term of a lease, under section 155D or 214E;
 - (f) imposing an additional condition, under section 214E.
- (5) In this section—
functions includes powers.

393 Delegation by chief executive

- (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.
- (4A) However, the chief executive must not delegate the chief executive's power to appoint a person as a mediator under section 339B(3)(a)(ii).
- (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'.

393A Departmental officer may give notices for this Act

If a provision of this Act requires a notice to be given for any purpose and the provision does not state who is to give the notice, it is sufficient if the notice is given by an officer of the department.

394 Committees

- (1) The Minister must establish a committee (the *advisory committee*) to advise the Minister about the management and use of rural leasehold land.
- (2) The Minister may—
 - (a) establish—
 - (i) a committee of review to help the Minister with the administration of this Act; and
 - (ii) regional committees to support the advisory committee; and

- (b) decide the functions or terms of reference of a committee established under paragraph (a); and
 - (c) decide the following for any committee established under this section—
 - (i) its membership;
 - (ii) how it is to operate.
- (3) A member of a committee established under this section is entitled to be paid the fees and allowances decided by the Governor in Council.

394A Ministerial guidelines about what constitutes a good condition for lease land

- (1) The Minister may make guidelines about what constitutes a good condition for lease land.
- (2) Before making proposed guidelines, the Minister must seek advice from the advisory committee under section 394 about the appropriateness of the guidelines.
- (3) If the advice sought is not given within a reasonable period, the Minister may make the guidelines without receiving the advice.
- (4) The Minister must make the guidelines available to the public in the way the Minister considers appropriate.
- (5) Without limiting subsection (4), the Minister must ensure an up-to-date copy of the guidelines is available to be read free of charge at each office of the department.
- (6) If, under this Act, the Minister may consider or must be satisfied that lease land for a particular lease is in good condition, the Minister may have regard to the guidelines.

Division 2 Appointment of authorised persons and other matters

395 Appointment of authorised persons

- (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.

396 Authorised person's appointment conditions

- (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.

397 Authorised person's identity card

- (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 15 business 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.

398 Production of identity card

- (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.

399 Protection from liability

- (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 an authorised person, the liability attaches instead to the State.

Division 3 Inspection powers

400 Power to enter land, generally

- (1) An authorised person may do any 1 or more of the following, with or without assistants, and only for a purpose of this Act or the *Vegetation Management Act 1999*—
- (a) enter on land at any reasonable time;
 - (b) inspect the land and the uses made of the land;
 - (c) photograph or film anything on the land;
 - (d) take samples of or from anything on the land;
 - (e) for lease land, licence land or permit land for agricultural, grazing or pastoral purposes, establish on the lease land, licence land or permit land sites (each a ***monitoring site***) to monitor compliance with—
 - (i) this Act; or
 - (ii) the lease, licence or permit; or
 - (iii) a land management agreement; or
 - (iv) a remedial action notice; or
 - (v) a remedial action order;
 - (f) place a marker to show where a monitoring site is;
 - (g) install or place at a monitoring site a device (a ***monitoring device***) to carry out the monitoring;
 - (h) read a monitoring device;
 - (i) check the accuracy of, or repair or replace, a monitoring device;
 - (j) do anything reasonable and necessary to exercise a power under any of paragraphs (a) to (i).

- (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—

non-freehold land includes freehold land containing a reservation for a public purpose or a deed of grant in trust.

occupier of a place includes a person who reasonably appears to be the occupier, or in charge, of the place.

Division 5 Other provisions about authorised persons

401 Authorised person to give notice of damage

- (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.

402 Compensation

- (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.

403 Impersonation of authorised person

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

403A False or misleading statements

- (1) A person must not state anything to an authorised person that the person knows is false or misleading in a material particular.
Maximum penalty—50 penalty units.
- (2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was, without specifying which, false or misleading.

403B False or misleading documents

- (1) A person must not give an authorised person a document containing information that the person knows is false or misleading in a material particular.
Maximum penalty—50 penalty units.
- (2) Subsection (1) does not apply to a person if the person, when giving the document—
 - (a) tells the authorised person, to the best of the person's ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (3) In a proceeding for an offence against subsection (1), it is enough to state that the document was, without specifying which, false or misleading.

Division 2 Action to deal with unlawful occupation

405 Application of division

This division applies to unallocated State land, trust land and roads.

405A Exercise of chief executive's powers under division

- (1) This section applies in relation to the chief executive's powers under this division for land to which this division applies.
- (2) The chief executive's powers are in addition to, and do not limit or otherwise affect, the corresponding powers of any trustee of, or the relevant local government for, the land.
- (3) The chief executive may decide not to exercise the chief executive's powers if the chief executive considers it is more appropriate for the trustee or local government to exercise the corresponding powers.
- (4) Subsection (3) is subject to subsection 405B(2).
- (5) In this section—

corresponding powers, of a trustee or local government, means the trustee's or local government's powers under an Act about the unlawful occupation of the land.

405B Occupation fee for unlawful occupation by offeree until grant of tenure

- (1) This section applies if—
 - (a) the chief executive is satisfied a person is or has been unlawfully occupying land; and
 - (b) the person has, under this Act, been made an offer of a tenure in relation to the land; and
 - (c) the person has accepted the offer, whether or not the tenure has been granted.
- (2) The chief executive may, for the State, by written notice to the person, charge the person a fee for the person's occupation of

the land for the period from when the chief executive is reasonably satisfied the person started to unlawfully occupy the land to when the tenure starts.

- (3) A notice may be for all or a stated part of the period.
- (4) The fee must be reasonable.
- (5) The fee is taken to be reasonable if it represents an amount that would have been payable by the person to the State had the person held the tenure, or a tenure of that type for the land, during the period.
- (6) The amount of the fee is a debt owing by the person to the State.

406 Notice to person to leave land, remove structures etc.

- (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*).
- (1A) However, the chief executive must give the person a trespass notice if—
 - (b) the person has, under this Act, been made an offer of a tenure in relation to the land; and
 - (c) the person has rejected the offer or the offer has lapsed.
- (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 the number of days prescribed under a regulation after the day the trespass notice is given to the person.

407 Person must comply with notice

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.

408 Improvements etc. forfeited

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.

409 Person may start proceeding in Magistrates Court

- (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.

410 Chief executive may start proceeding

- (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.

411 Defence may be filed

- (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.

412 State may carry out work

- (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.

413 Powers of officers and employees of the department

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

414 Application of division

This division applies to a lease, licence, permit and trust land.

415 Lessee, licensee, permittee or trustee may start proceeding

- (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.

416 Defence may be filed

- (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

417 Hearing procedures

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.

418 Discretion of Magistrates Court about orders

- (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.

419 Order of the Magistrates Court must be complied with

A person must comply with a trespass order.

Maximum penalty—400 penalty units.

420 Appeal to District Court on questions of law only

A party dissatisfied with a trespass order may appeal to the District Court, but only on a question of law.

Part 2A General provisions for applications**420A Application of pt 2A**

- (1) This part applies for the making and deciding of applications under this Act.
- (2) This part does not limit or otherwise affect a requirement under another provision of this Act about the making or deciding of a particular application.

420B Application guidelines

- (1) The chief executive may keep guidelines (by whatever name called) about the making of applications, in the way the chief executive considers appropriate, for the information and guidance of departmental staff and persons dealing with the department.
- (2) The guidelines may include directions by the chief executive about all or any of the following—
 - (a) practices developed in the department about the making of applications;
 - (b) how application forms must be filled in;
 - (c) how information required to be included in or given with applications must be included or given.
- (3) The chief executive must make the guidelines available to the public in the way the chief executive considers appropriate.
- (4) Without limiting subsection (3), the chief executive must ensure an up-to-date copy of the guidelines is available to be read free of charge at each office of the department.

420C Requirements for making an application

- (1) An application is made only if it complies with the following (the *application requirements*) and any particular requirements under this Act for making it—
 - (a) it must be made to the chief executive;
 - (b) it must be in the appropriate form;
 - (c) it must comply with all relevant guideline directions;
 - (d) it must be accompanied by the fee prescribed under a regulation.
- (2) Subsection (1)(a) applies even if the chief executive is not the person who may or must decide the application.
- (3) The chief executive must refuse to receive or process a purported application not made in accordance with the application requirements.
- (4) However, subsection (3) does not apply if—

- (a) the only noncompliance with the application requirements is a noncompliance with a guideline direction; and
 - (b) the chief executive considers that it is not reasonable in the circumstances to require compliance with the direction.
- (5) A lawyer acting for a person who wishes to make an application may sign and make the application for the person.
- (6) In this section—
- guideline direction*** means a direction given under section 420B(2).

420D Refusal of frivolous or vexatious applications

- (1) An application may be refused on the ground that it is frivolous or vexatious.
- (2) Subsection (1) does not limit any other ground for refusing the application.

420E Request to applicant about application

- (1) The chief executive may, by written notice, ask an applicant to—
 - (a) complete or correct the application if it appears to the chief executive to be incorrect, incomplete or defective; or
 - (b) give the chief executive—
 - (i) stated information, in support of the application; or
 - (ii) a statutory declaration verifying any information included in the application or any additional information required under subparagraph (i).
- (2) The request may state the period within which it must be complied with.
- (3) If no period is stated, it is 30 days after the making of the request.

- (4) The chief executive may extend the period for complying with the request.
- (5) The person who may or must decide the application may refuse to decide it until the request is complied with.
- (6) This section does not limit section 420C(3).
- (7) In this section—
information includes a document.

420F Refusing application for failure to comply with request

If—

- (a) a request under section 420E has been made; and
- (b) the period under section 420E for complying with the request has ended; and
- (c) the request has not been complied with to the satisfaction of the person who made it;

the person who may or must decide the application the subject of the request may refuse the application.

420G Particular criteria generally not exhaustive

- (1) This section applies if another provision of this Act permits or requires a person who may or must decide an application to consider particular criteria in making the decision.
- (2) To remove any doubt, it is declared that the person may, in making the decision, consider any other criteria the person considers relevant.
- (3) However, subsection (2) does not apply if the provision otherwise provides.
- (4) In this section—
criteria includes issues and matters.

420H Particular grounds for refusal generally not exhaustive

- (1) This section applies if another provision of this Act provides for particular grounds on which a person may refuse an application.

Example a provision of this Act for subsection (1)—

section 420F

- (2) To remove any doubt, unless the other provision otherwise provides, the person may refuse the application on another reasonable and relevant ground.
- (3) In this section—

refuse, an application, includes to refuse the thing the subject of the application.

420I General power to impose conditions

A power to decide an application includes a power to—

- (a) grant the application subject to conditions that must be complied with before the application is granted; or
- (b) approve or grant the thing the subject of the application subject to conditions that must be complied with before the thing is approved or granted.

Example for paragraph (b)—

An application is made under section 322 for approval of a transfer of a lease. The Minister may approve the transfer subject to a condition that all outstanding rent relating to the lease must be paid.

Part 3 Review of decisions and appeals**Division 1 Right of appeal****421 Notice of right of appeal to be given**

- (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 and how the appeal is started.

- (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

422 Appeal process starts with internal review

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.

423 Who may apply for review etc.

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.

424 Applying for review

- (1) An application by a person for review of a decision must be made within 42 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.

425 Stay of operation of decision etc.

- (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.

426 Decision on reconsideration

- (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) The notice must state—
- (a) the day the notice is given to the applicant (the *review notice day*); and
 - (b) if the review decision is not the decision sought by the applicant—
 - (i) the reasons for the decision; and
 - (ii) that the applicant may appeal against the decision to the court within 42 days after the review notice day.

Division 3 Appeals

427 Who may appeal

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.

428 Procedure for an appeal to the court

- (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 42 days after the review notice day under section 426.
- (4) However, a regulation may provide a different period for particular decisions.
- (5) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.
- (6) The notice of appeal must state fully the grounds of the appeal.

429 Powers of court on appeal

- (1) In deciding an appeal, the court has the same powers as the decision maker.
- (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.

430 Effect of decision of court on appeal

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.

431 Jurisdiction of the court

The court has jurisdiction to hear and decide matters referred to the court by the Minister.

Part 3A **Proceedings generally**

Division 1 **Preliminary**

431A Application of pt 3A

This part applies to a proceeding under this Act.

Division 2 **Evidence**

431B Evidentiary provisions

- (1) 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.
- (2) 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.
- (3) 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.

- (4) 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.

431C Further evidentiary aids

A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—

- (a) a stated document is one of the following things made, given, or issued under this Act—
 - (i) an appointment;
 - (ii) a decision;
- (b) a stated document is a copy of a thing mentioned in paragraph (a);
- (c) on a stated day, or during a stated period, a person's appointment as an authorised person was, or was not, in force;
- (d) on a stated day, a stated requirement was made of a stated person.

431D Instruments, equipment and installations

- (1) An instrument, equipment or installation prescribed under a regulation that is used in accordance with any conditions prescribed under a regulation is taken, in the absence of evidence to the contrary—
 - (a) to be accurate and precise; and
 - (b) to have been used by an appropriately qualified person.
- (2) A party to the proceeding intending to challenge a matter mentioned in subsection (1)(a) or (b), must give at least 28 day's notice of the party's intention to adduce relevant evidence.

431E Certificate or report about remotely sensed image

- (1) A signature on a certificate or report purporting to be the signature of an appropriately qualified person who gave the certificate or report is evidence of the signature it purports to be.
- (2) A statement of any of the following matters in the certificate or report is evidence of the matters stated in the absence of evidence to the contrary—
 - (a) the person's qualifications;
 - (b) a stated document is a remotely sensed image, or a copy of a remotely sensed image, of a stated area;
 - (c) the date on which a stated remotely sensed image was produced;
 - (d) the person's stated conclusions drawn from a stated remotely sensed image;
 - (e) the location of a stated area;
 - (g) whether a stated area is or is likely to be an area of remnant vegetation.
- (3) A party to the proceeding intending to challenge the statement must give at least 28 day's notice of the party's intention to adduce relevant evidence.
- (4) In this section—

remnant vegetation means remnant vegetation within the meaning of the Vegetation Management Act.

Division 3 Starting proceedings**431G Offences are summary offences**

An offence against this Act is a summary offence.

431H Limitation on time for starting offence proceedings

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 5 years after the offence is committed.

Division 4 Other matters about proceedings

431J Executive officers must ensure corporation complies with Act

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

- (5) In this section—

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

431L Recovery of costs of investigation

- (1) If a court convicts a person of an offence against this Act, the court may order the person to pay the department's reasonable costs of investigating the offence, including reasonable costs of preparing for the prosecution of the offence.

Examples of reasonable costs—

- 1 obtaining and analysing remotely sensed images
 - 2 costs of travelling for departmental officers and experts
- (2) This section does not limit the orders for costs the court may make.

431M Representation of departmental officer in court

- (1) Any departmental officer may appear for and represent another departmental officer in the court in a proceeding brought by the other officer under this Act.
- (2) In this section—

departmental officer means a public service officer employed in the department.

431N Ability to prosecute under other Acts

Nothing in this Act prevents a person from being prosecuted for any of the following offences in relation to the clearing of trees—

- (a) a development offence under the *Integrated Planning Act 1997*;
- (b) a vegetation clearing offence under the *Vegetation Management Act*;
- (c) an offence against a following provision of the *Environmental Protection Act 1994*—
 - section 437(1)
 - section 437(2)
 - section 438(1)
 - section 438(2).

Part 3B Tidal boundary plans of subdivision

431NA Definitions for pt 3B

In this part—

tidal boundary means a boundary of land that—

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

Example—

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

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

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

431NB Application of pt 3B

- (1) This part applies if—

- (a) a tidal boundary plan of subdivision (the *new plan of subdivision*)—

- (i) was lodged on or after 8 November 2005 but before the commencement of this section; or
- (ii) is lodged after the commencement but before 8 November 2008; and

- (b) the location of a section of tidal boundary (the *relevant section*), as represented on the new plan of subdivision, is inconsistent with its location as represented on the most recently registered previous plan of subdivision (the *earlier plan of subdivision*) to include some or all of the relevant section.

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

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

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

431ND Approval of Minister in circumstances of accretion or erosion

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

431NE Approval of Minister in other limited circumstances

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

must not be depastured on land on the other side of the stock route further than 1.6km 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 1.6km 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.

434 Meaning of *unimproved value*

- (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—

paid to the State does not include rent paid to the State.

unimproved state includes, if the value of improvements and development work to the land performed by the State has not been paid to the State, the improvements and development work finished before the lease started or the deed of grant was issued.

435 Minister may refer matters to the court

- (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.

436 Auctioneer's licence not necessary

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.

437 Changing county or parish boundaries

- (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.

438 What are debts owing to the State

All rents, instalments, penalties, interest and fees that have become payable under this Act are debts owing to the State.

439 Words and expressions used in documents under Act

- (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.

440 Obstruction of officers etc.

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.

441 Protection from liability

- (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.

441A Requirement for making conditional offers

- (1) This section applies if an offer is proposed to be made under this Act and the offer is subject to conditions.
- (2) The offer must state—
 - (a) that, for it to be accepted, the conditions must be complied with before the offer period ends; and
 - (b) that it lapses if the conditions are not complied with within the offer period.
- (3) In this section—

offer period means the length of time stated in the offer, or if does not state a length of time, the 3 months provided for under section 442(1).

442 Lapse of offer

- (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 person to whom the offer was made (the *offeree*) may, before the offer lapses, apply to the person who made the offer

(the *offeror*) to extend the time stated in the offer or that otherwise applies under subsection (1).

- (5) Subsections (6) to (9) apply if the time has passed.
- (6) The offeree may apply to the offeree to extend the time.
- (7) However, the application may be made only within 42 days after the time has passed.
- (8) The offeror may extend the time only if the offeror considers that exceptional circumstances exist.
- (9) If the offer included a purchase price or cash premium not fixed by a particular date, the offeror may, in extending the time, amend the offer by changing the price or premium.
- (10) If the time is extended under subsection (4) or (8) the time stated in the offer is, for subsection (3), taken to be, and to have always been, the extended time.

443 No deed of grant until fees paid

The appropriate fees prescribed under this Act for the issue of a deed of grant must be paid before a deed of grant is issued.

444 Chief executive may approve forms

The chief executive may approve forms for use under this Act.

448 Regulation-making power

- (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;
 - (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.

448A Application of GST to rents

If rent payable under this Act is for a supply for which GST is payable, the rent payable is the total of—

- (a) the rent that would have been payable if the rent were not for a supply for which GST is payable; and
- (b) 10% of the rent that would have been payable if the rent were not for a supply for which GST is payable.

448B Application of GST to purchase price for leases

- (1) Subsection (2) applies—
- (a) to all leases issued under this Act; and
 - (b) whether the lease was issued before or after the commencement of this section; and
 - (c) despite any provision contained in the lease.
- (2) If the purchase price payable for freeholding the lease is for a supply for which GST is payable, the purchase price payable is the total of—
- (a) the purchase price that would have been payable if the purchase price were not for a supply for which GST is payable; and

- (b) 10% of the purchase price that would have been payable if the purchase price were not for a supply for which GST is payable.

Chapter 8 Continued rights and tenures

Part 1 Reserves, deeds of grant in trust and roads

Division 1 Reserves

449 Existing reserves and purposes continue

- (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.
- (3) If, under subsection (1), land is taken to be reserved for cemetery purposes, the land is taken also to be reserved for crematorium and mortuary purposes.

450 Trustees continue

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

451 Existing deeds of grant in trust and purposes continue

- (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.
- (3) If, under subsection (1), land is taken to be granted for cemetery purposes, the land is taken also to be granted for crematorium and mortuary purposes.

452 Trustees continue

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.

452A Land granted for Aboriginal or Islander inhabitants

- (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 the person's residence, as an authorised resident on the land, shall, notwithstanding the grant in trust, be entitled to continue the person's occupation of the building or structure upon the same terms and conditions as the person occupied it at the time of the grant until—
 - (a) the trustee of the land determines otherwise and terminates the person's right to occupy the building or structure; or
 - (b) the trustee of the land and that person agree to new terms and conditions for the person's 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

453 Existing trustee leases and licences continue

- (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

454 Existing roads continue

All roads dedicated and set apart under the repealed Act are taken to be dedicated roads under this Act.

455 Existing road licences continue

All existing road licences are taken to be road licences under this Act.

Part 2 Freeholding leases

Division 1 Pre-Wolfe freeholding leases

456 Existing leases continue

A pre-Wolfe freeholding lease is taken to be a lease under this Act.

457 Terms of pre-Wolfe freeholding leases

- (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.
- (3) The discount mentioned in subsection (1)(d) does not apply to the amount of the remaining purchase price that, in the records of the department about the payment of the purchase price, is attributable to the value of commercial timber.

458 Deed of grant to issue

- (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.

459 Residential hardship concessions

- (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

460 Existing leases continue

A post-Wolfe freeholding lease is taken to be a lease under this Act.

461 Terms of existing post-Wolfe freeholding leases continue

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.

462 Terms of post-Wolfe freeholding leases

- (1) The following provisions apply to post-Wolfe freeholding leases⁶³—
- (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;

⁶³ These terms apply to both *existing* post-Wolfe freeholding leases and post-Wolfe freeholding leases issued under this Act.

- (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.

463 Deed of grant to issue

- (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

464 Existing leases continue

A grazing homestead freeholding lease is taken to be a lease under this Act.

465 Terms of existing grazing homestead freeholding leases continue

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.

466 Terms of grazing homestead freeholding leases

- (1) The following provisions apply to grazing homestead freeholding leases⁶⁴—
 - (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;
 - (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 3 does not reduce the purchase price.

⁶⁴ These terms apply to both *existing* grazing homestead freeholding leases and grazing homestead freeholding leases issued under this Act.

- (3) The discount mentioned in subsection (1)(c) does not apply to the amount of the remaining purchase price that, in the records of the department about the payment of the purchase price, is attributable to the value of commercial timber.

467 Deed of grant to issue

- (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

468 Existing leases continue

- (1) A grazing homestead perpetual lease is taken to be a perpetual lease for grazing or agricultural purposes issued under this Act.
- (2) To remove any doubt, it is declared that the perpetual lease may be used for either or both of the purposes.

469 Right to a grazing homestead freeholding lease

- (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.⁶⁵

- (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.
- (4) The conditions mentioned in subsection (3)(c) do not include conditions that—
 - (a) the Minister is satisfied are redundant in the context of the grazing homestead freeholding lease; and
 - (b) are expressly or impliedly excluded from the grazing homestead freeholding lease when it is issued.

Division 2 Non-competitive leases

470 Existing leases continue

A non-competitive lease is taken to be a perpetual lease issued under this Act for the purpose for which it was issued.

⁶⁵ Under section 168, the Minister must give written notice of the Minister's decision on a conversion application.

471 Right to a post-Wolfe freeholding lease

- (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.
- (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.
- (3) The conditions mentioned in subsection (2)(c) do not include conditions—
 - (a) the Minister is satisfied are redundant in the context of the post-Wolfe freeholding lease; and
 - (b) are expressly or impliedly excluded from the post-Wolfe freeholding lease when it is issued.

Part 4 Term leases**Division 1 Pastoral, preferential pastoral, pastoral development, and stud holdings****472 Existing leases continue**

A pastoral lease is taken to be a term lease for pastoral purposes issued under this Act.

473 Covenant for a new term lease

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.

474 Uses of stud holdings

A stud holding is not limited to stud purposes but must be used for grazing or agricultural purposes.

475 Restrictions on ownership of preferential pastoral holdings

- (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**476 Existing leases continue**

- (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.

477 Change of purpose for special lease

Despite section 154(3), the lessee of a special lease may apply to change the purpose of the lease.⁶⁶

478 Right to a post-Wolfe freeholding lease

- (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.
- (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.
- (3) The conditions mentioned in subsection (2)(c) do not include conditions—
 - (a) the Minister is satisfied are redundant in the context of the post-Wolfe freeholding lease; and
 - (b) are expressly or impliedly excluded from the post-Wolfe freeholding lease when it is issued.

479 Development leases not to be sublet

The lessee of a development lease must not sublease all or part of the lease.

⁶⁶ 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.

Part 5 Licences and permits

Division 1 Occupation licences

480 Occupation licences continue

An occupation licence is taken to be a licence issued under this Act.

481 Cancellation

The Minister may cancel all or part of an occupation licence, if—

- (a) the licensee defaults in the payment of an amount payable to the State under this Act for the occupation licence;⁶⁷ or
- (b) the licensee breaches a condition of the occupation licence; or
- (c) the licensee contravenes a provision of this Act in relation to the occupation licence; or
- (d) the licensee acquired the occupation licence by fraud; or
- (e) the licensee has more than 1 conviction, not including any spent convictions, for a vegetation clearing offence, regardless of whether any of the offences were committed on the land the subject of the occupation licence; or
- (f) the Minister considers the cancellation of the licence is in the interests of the State.

481A Absolute surrender

A licensee may surrender, absolutely, all or part of an occupation licence—

⁶⁷ The Minister may take action for non-payment. See section 196 (Designated officer may take action for non-payment).

- (a) on terms agreed to between the Minister and the licensee; and
- (b) with the Minister's written approval.

481B Application to cancel or surrender

- (1) A public utility provider may apply to cancel all or part of an occupation licence.
- (2) A licensee may apply to surrender, absolutely, all or part of an occupation licence.

481C Notice of proposal to cancel or surrender

- (1) If the Minister proposes to cancel all or part of an occupation licence, written notice of the proposal must be given to the following—
 - (a) the licensee of the occupation licence;
 - (b) a public utility provider who applied for the cancellation;
 - (c) each person with a registered interest in the occupation licence;
 - (d) if the occupation licence is a designated occupation licence—the chief executive of the department having responsibility for the administration of the forest reserve, national park, State forest or timber reserve the subject of the designated occupation licence;
 - (e) another person the chief executive considers should be given the notice.
- (2) If the Minister proposes to approve the absolute surrender of all or part of an occupation licence, written notice must be given to the following—
 - (a) the licensee of the occupation licence;
 - (b) each person with a registered interest in the occupation licence;
 - (c) if the occupation licence is a designated occupation licence—the chief executive of the department having responsibility for the administration of the forest

- reserve, national park, State forest or timber reserve the subject of the designated occupation licence;
- (d) another person the chief executive considers should be given the notice.
- (3) The notice must—
- (a) be in the approved form; and
 - (b) state the following—
 - (i) the reason for the proposed cancellation or surrender;
 - (ii) that the person given the notice may make a submission against the proposed cancellation or surrender to the Minister;
 - (iii) that the submission must be made in the approved form;
 - (iv) the closing day for the submission;
 - (v) the place where or the way the submission must be lodged.

481D Submissions

- (1) A person given notice of a proposal under section 481C, other than the licensee or public utility provider who applied for the cancellation or surrender, may make a submission against the proposed cancellation or surrender to the Minister.
- (2) The submission must—
- (a) be made in the approved form; and
 - (b) be received by the closing day for the submission in the notice under section 481C(3)(b)(iv); and
 - (c) be lodged at the place or in the way stated in the notice under section 481C(3)(b)(v).
- (3) The Minister must consider all submissions received under this section before cancelling or approving the surrender of the occupation licence.

481E Registration cancels occupation licence

- (1) All or part of an occupation licence may be cancelled by registering a cancellation notice or plan of subdivision.
- (2) However, if the cancellation relates to only part of a lot, the cancellation may only be made by registering a plan of subdivision.
- (3) The cancellation of all or part of an occupation licence takes effect on the day a cancellation notice or plan of subdivision is registered.

481F Registration surrenders occupation licence

- (1) All or part of an occupation licence may be surrendered, absolutely, by registering a surrender notice or plan of subdivision.
- (2) However, if the surrender relates to only part of a lot, the surrender may only be made by registering a plan of subdivision.
- (3) The surrender of all or part of an occupation licence takes effect on the day a surrender notice or plan of subdivision is registered.

481G Notice of cancellation or absolute surrender

- (1) Written notice of a cancellation or absolute surrender of all or part of an occupation licence must be given to each person given notice under section 481C about the proposed cancellation or surrender.
- (2) The notice must—
 - (a) be in the approved form; and
 - (b) state the following—
 - (i) the date of the cancellation or surrender;
 - (ii) the effect, under section 481H, of the cancellation or surrender;
 - (iii) if there are improvements on the land the subject of the occupation licence owned by the person

receiving the notice—a statement that the person may apply to remove the improvements.

- (3) If the cancellation or absolute surrender of an occupation licence is not registered, written notice of the fact must be given to each person given notice under section 481C about the proposed cancellation or surrender.

481H Effect of cancellation or absolute surrender

On the cancellation or absolute surrender of all or part of an occupation licence, all of the following apply in relation to the land the subject of the cancellation or surrender—

- (a) the occupation licence ends;
- (b) the licensee is divested of any interest in the occupation licence;
- (c) if the occupation licence is cancelled—no person has a right to compensation from the Minister or the State for the cancellation;
- (d) the land the subject of the occupation licence—
 - (i) if the land was subject to a designated occupation licence—remains a forest reserve, national park, State forest or timber reserve; or
 - (ii) otherwise—becomes unallocated State land.

481I Person to give up possession on cancellation or absolute surrender

- (1) On the cancellation or absolute surrender of all or part of an occupation licence, a person occupying the land the subject of the cancellation or surrender must immediately vacate the land.
- (2) A person who does not give up possession under subsection (1), and is not otherwise entitled to possession, is a person who is unlawfully occupying the land the subject of the cancellation or surrender.

481J Improvements

- (1) A licensee of an occupation licence that is cancelled or surrendered absolutely, may apply to remove the licensee's improvements on the licence.
- (2) The licensee may remove the licensee's improvements only with the written approval of, and within a time stated by, the Minister.
- (3) 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.
- (4) However, if the land the subject of the cancellation or absolute surrender is leased or sold, the owner has a right to payment for the improvements under chapter 5, part 5.

482 Approval needed for improvement and development work

The licensee of an occupation licence may carry out improvements or development work on the licence only with the Minister's written approval.

Division 1A Permits**483 Existing permits continue**

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**484 Existing fencing use licences continue**

- (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.

485 Minister may cancel licence for breach of condition

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

486 Existing conditions continue

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.

487 Existing concessions continue

- (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)
 - section 194.

488 Fencing conditions and exemptions

- (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.

489 Amalgamating or subdividing existing leases

- (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 can not 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

490 Existing deeds of grant continue

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.

491 Conditions and reservations still applying

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.

492 Application for new tenure under this Act

- (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.

493 Automatic issue of new tenure under this Act

- (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

494 Objective

The object of this division is to transfer miners homesteads to tenures under the *Land Act 1962*.

495 Definitions for div 2

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*.

496 Current applications

- (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.

497 Refusal or lapsing of current miners homestead application

- (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.

498 Time in which offer must be accepted

- (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.

499 Automatic issue of new tenure

- (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.

500 Application of prepaid rent

- (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.

501 Replacement miners homestead documents

- (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.

502 Replacement mining titles freeholding leases

- (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.

503 Approvals continue

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**

503A Objective

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.

503B Definitions for div 2A

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*.

503C Who may apply under this division

- (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.

503D Time within which application must be made

The application must be given to the chief executive before 1 February 1998.

503E How application is dealt with

- (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).

503F Lapse of offer

- (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.

503G Surrender of existing lease

If a lessee accepts an offer to convert to freehold, the lessee must surrender the existing lease before the new tenure is issued.

503H Existing encumbrances

The new tenure is subject to all encumbrances to which the existing lease was subject and in the same priorities.

503I Credit for rent paid

- (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;
 - (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 2B Treatment of special perpetual mining purposes leases under certain Acts**503J Special perpetual mining purposes leases become perpetual leases**

- (1) A special perpetual mining purposes lease issued under the agreement Act on or after 1 January 1995 and in existence immediately before the commencement of this section, becomes, on the commencement of this section, a perpetual lease under this Act.
- (2) A special perpetual mining purposes lease issued under the agreement Act on or after the commencement of this section becomes a perpetual lease under this Act immediately after it is issued.
- (3) Subsections (1) and (2) have effect despite anything in the agreement Act.
- (4) In this section—

agreement Act means the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*.

503K Replacement documents

- (1) This section applies if a special perpetual mining purposes lease (the *old lease*) becomes a perpetual lease (the *new lease*) under section 503J.
- (2) If the old lease becomes the new lease under section 503J(1), the chief executive must, as soon as practicable, issue a lease document for the new lease to replace the lease document for the old lease.
- (3) If the old lease becomes the new lease under section 503J(2), the chief executive must, as soon as practicable after the old lease is issued, issue a lease document for the new lease to replace the lease document for the old lease.
- (4) The new lease is subject to all the encumbrances to which the old lease was subject and in the same priorities.
- (5) When the lease document for the new lease is issued, the lease document for the old lease is no longer valid.
- (6) The lease document for the new lease must be given to the person who is entitled to possession of the lease document for the old lease.
- (7) The lease document for the old lease must be returned to the chief executive for cancellation when the lease document for the new lease is issued.
- (8) The lessee under the new lease may ask for the return of the lease document for the old lease suitably marked as cancelled.

Division 3 Port and harbour lands**504 Changing tenures of port lands**

- (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 or another body in the way stated in the order in council.
- (2) The port authority or other body 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) 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.

505 Changing tenures of harbour land

- (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)⁶⁸ 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) 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.

⁶⁸ The *Transport Infrastructure Act 1994*, section 231 expired 1 July 1997. The *Acts Interpretation Act 1954*, section 20A applies.

Division 4 Cemetery Act 1865

506 Existing cemeteries continue

- (1) 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.
- (2) All existing rules and regulations made by trustees under the *Cemetery Act 1865* for the purpose of a reserve or deed of grant in trust for cemetery purposes under the *Cemetery Act 1865* continue, as by-laws for the land comprising the reserve or deed of grant in trust for cemetery purposes under this Act, for a period of 3 years from the commencement.

Part 7A Brigalow and other lands development provisions

506A Definitions for pt 7A

In this part—

agreement means the agreement that was set out in the schedule to the repealed Act.

corporation means the Brigalow Corporation.

fund means the consolidated fund.

repealed Act means the *Brigalow and Other Lands Development Act 1962*.

506B Corporation

- (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.

506C Corporation represents the Crown

- (1) The corporation represents the Crown.
- (2) Without limiting subsection (1), the corporation has all the privileges and immunities of the Crown.

506D Functions and powers

The corporation has the functions and powers conferred on it by this part.

506E Undertaking by successful applicant

Subject to the issue to a successful applicant of the lease, the successful applicant shall perform in compliance in every respect with the terms thereof, any undertaking given by the successful applicant to the chief executive under this section, and any failure by the successful applicant to do so shall be a breach of a condition of the lease wherefor the lease shall be liable to be forfeited.

506F Area limitations under this Act

For the purpose of the provisions of this Act relating to the maximum area or maximum aggregated area which may be held by any 1 person under any tenure or tenures under this Act, a purchase lease shall be deemed to be a grazing homestead freeholding lease.

506G Transfer

- (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.

506H When fee simple of lease may be acquired

- (1) Upon and subject to—
 - (a) satisfying the Minister that all the developmental or improvement conditions of the lease have been performed; 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 section 23(1)(a) of the repealed Act; and
 - (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.

506I Fund

- (1) 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 (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.
- (2) 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 3 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).

506K Construction of instruments

Where the corporation has granted an extension and variation pursuant to section 24A of the repealed Act or a suspension of liability pursuant to section 24B of the repealed Act 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 of the repealed Act.

506L Powers of corporation

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.

506M Restricted application of Bills of Sale and Other Instruments Act

The provisions of the *Bills of Sale and Other Instruments Act 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.

506O Accounts

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.

506P Application of Act to purchase leases

- (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 repealed Act.
- (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 repealed Act.

Chapter 9 Transitional and repeal provisions

Part 1 Transitional provisions for original Act (No. 81 of 1994)

508 Interests under repealed Act continue

- (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.

509 Registration of documents lodged before commencement

- (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.

510 Offers made before commencement

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.

511 References in Acts and documents

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.

512 Harbour matters

If a lease is transferred to the Minister under the *Transport Infrastructure Act 1994*, section 232(2),⁶⁹ a reference in the lease to the Harbours Corporation is taken to be a reference to the Minister.

513 Casino matters

- (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

⁶⁹ The *Transport Infrastructure Act 1994*, section 232, expired 31 December 2000. The *Acts Interpretation Act 1954*, section 20A applies.

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.

514 Closure of Brigalow Fund

- (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.

516 Existing by-laws

All existing by-laws made by trustees under the repealed Act continue for a period of 3 years from the commencement.

518 Existing powers of attorney

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.

519 Things done under repealed Acts

- (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,⁷⁰ 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.

520 Effect of repeal by this Act

The repeal of the following sections of the repealed Act is limited in the following way—

- (a) section 334F 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 continues to apply to deeds of grant in trust granted before this Act commenced.

Part 1A Transitional provision for Natural Resources and Other Legislation Amendment Act 2000

521A Lease of land under repealed Act, section 269(1)

- (1) This section applies if—

70 The Acts repealed by this Act include 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*.

- (a) a lease (an *additional lease*) was issued under the repealed Act, section 269(1)⁷¹ to a lessee of a grazing homestead perpetual lease or pastoral lease; and
 - (b) on the commencement of this section, the additional lease is an interest in land held under this Act.
- (2) The additional lease is taken to have been issued on condition that the land the subject of the lease is tied to the land held under the grazing homestead perpetual lease or pastoral lease.
- (3) The condition is a tied condition under section 205.⁷²

Part 1B **Transitional provisions for Guardianship and Administration Act 2000**

521B Performance of condition under previous s 207(1)(b) possible for 1 year

Without limiting the operation of section 207(1)(b) as in force immediately after the commencement of this section, section 207(1)(b) as in force immediately before the commencement of this section also continues to have effect for 1 year after the commencement of this section as if the section had not been amended by the *Guardianship and Administration Act 2000*.

521C Authorisation under repealed s 384 continues for 1 year

An authorisation under section 384 that is in force immediately before the repeal of the section continues to have effect for 1 year after the repeal as if the section had not been repealed.

71 Section 269 (Additional areas (1927, s. 10)) of the repealed Act

72 Section 205 (Tied condition)

Part 1C Transitional provision for Audit Legislation Amendment Act 2006

521D Persons appointed to perform certain audits before commencement

- (1) This section applies if, before the commencement, the trustee of trust land appointed a person mentioned in pre-amended section 47(1)(a) or (b) to audit the trustee's books of account—
 - (a) for the 2004–2005 financial year and the person has not performed the audit; or
 - (b) for the 2005–2006 financial year.
- (2) For the purpose of the person performing the audit, pre-amended section 47(1)(a) or (b) continues to apply as if the *Audit Legislation Amendment Act 2006* had not commenced.
- (3) In this section—

commencement means commencement of this section.

pre-amended, in relation to section 47(1)(a) or (b), means the provision as in force before the commencement.

Part 1D Transitional provisions for Land and Other Legislation Amendment Act 2007

521E Divesting and vesting trust land

- (1) This section applies if a trustee of trust land is a trustee—
 - (a) mentioned in section 44(2)(c) or (e) as in force immediately before the commencement of this section; and
 - (b) represents the State.

- (2) On the commencement of this section, the trust land is vested in the State as trustee of the land.
- (3) The chief executive must register the vesting.

521F Existing leases exempted from particular amendments

The following provisions inserted under the *Land and Other Legislation Amendment Act 2007* do not apply for a lease that started before the commencement of this section—

- section 115(3) to (5)
- section 136(5) to (7)
- sections 155A to 155E, 160A, 162A and 168A.

521G Offer of additional area

Section 136(5) to (7) does not apply to an offer of an additional area made under chapter 4, part 1, division 3 before the commencement of this section.

521H Forfeiture for outstanding amount

If the Minister has given a lessee or mortgagee notice of the Minister's intention to forfeit a lease under section 235(1) or 238(2) as in force immediately before the commencement of this section, the provisions of chapter 5, part 4 as in force immediately before the commencement of this section continue to apply to the forfeiture of the lease.

521I Requirements for plan of subdivision

Section 290J as in force immediately before the commencement of this section continues to apply to a plan of subdivision lodged in the land registry before the commencement.

521J Non-application of s 299A to particular documents

Section 299A does not apply to a document if the particulars about the document are recorded in the relevant register before the commencement of this section.

521K Application made before commencement

- (1) This section applies if an application was made under the provisions of this Act as in force before the commencement of this section (the *commencement*) and the application is not finalised on the commencement.
- (2) The application continues under the provisions of the Act as in force immediately before the commencement.
- (3) However, an applicant may ask that the application mentioned in subsection (1) continue under the provisions of the Act as in force immediately after the commencement.

521L Continuance of power to substitute particular tenure or registered documents

Despite its repeal, section 312 continues to apply for a tenure document or other registered document for land included in a register kept under section 276(e), (g) or (h).

521M Permits to occupy and unallocated State land

To remove any doubt, it is declared that permit land for a permit issued before the commencement of this section is, and has always been, unallocated State land if the land was unallocated State land immediately before the permit was issued.

521N Dealing with disputes under particular subleases

- (1) This section applies in relation to a dispute under a sublease in force immediately before the commencement if—
 - (a) chapter 6, part 4, division 3A applies to the sublease immediately after the commencement; and
 - (b) the dispute arose before the commencement.
- (2) Section 339B applies in relation to the dispute under the sublease unless, before the commencement—
 - (a) a proceeding about the dispute was started in a court; or

(b) the issue in dispute was heard, other than in a proceeding before a court, under a dispute resolution process under another Act or the sublease.

(3) In this section—

commencement means the day this section commences.

521O Exclusion of imposed condition reviews for particular leases

Section 211 does not apply to a lease that started before 1 July 1995.

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

521P Trustee leases

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

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

(3) In this section—

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

Part 2 **Repeal**

522 **Completion of repeal**

To the extent it was not already repealed immediately before the commencement of this section, the *Land Act 1962* is repealed.

Schedule 1 Community purposes

section 4

Aboriginal purposes
beach protection
buffer zones
cemeteries
coastal management
crematoriums
cultural purposes
drainage
environmental purposes
gardens
heritage
historical
jetties
landing places
mortuaries
natural resource management
navigational purposes
open space
parks
provision of services beneficial to Aboriginal people particularly concerned with land
provision of services beneficial to Torres Strait Islanders particularly concerned with land
public boat ramps
public halls

Schedule 1 (continued)

public toilet facilities

recreation

roads

scenic purposes

scientific purposes

showgrounds

sport

strategic land management

Torres Strait Islander purposes

travelling stock requirements

watering-places

Schedule 1A Provisions that include mandatory conditions for tenures

section 198C(2)

- section 115(5)
- section 136
- section 162A
- section 168A
- section 176H
- section 190(1)
- section 198B
- chapter 5, part 2, division 1
- section 214C(3)
- section 325(5)
- section 457(1)
- section 462(1)
- section 466(1)
- section 488(2)

Schedule 2 Original decisions

section 423

Section	Description of decision
23A	about the allocation of a floating reserve
25(2)	about the unimproved value of a reservation
26(3)	about the boundaries of the land being resumed
26B(6)	about the value of commercial timber
58(3)	refusing a transfer
69(3)	about the unimproved value of land to be sold by a mortgagee in possession
109A(3)	imposing conditions on the approval for the simultaneous opening and closing of roads in deed of grant land
109B(4)	imposing conditions on the approval for the simultaneous opening and closing of roads in trust land or lease land
118(2)	excluding an applicant from a ballot or tender
127(7)	about the unimproved value of reclaimed land
130A(1)	about making a note in the appropriate register against a lease
155D(2)	reducing the term of a lease
160(3)	about whether the conditions of a lease have been fulfilled
168(5)	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
176A(1)	refusal of approval of subdivision
176L(1)	refusal of approval of amalgamation

Schedule 2 (continued)

Section	Description of decision
182(2)	about the category of a lease
212(3)	about a review change
214(1)	giving a remedial action notice
214E(2)	reducing the term of a lease
214E(2)	imposing additional conditions on a lease
222(6)	about compensation when a resumption is stopped
226(5)	about the value of improvements
232(5)	about the value of improvements
239(1)	not allowing the sale of a lease by a mortgagee
239(1)	not allowing the sale of a lease by a relevant local government
240C	forfeiting a lease
249(5)	about the value of improvements
322(6)	refusing a transfer
332(6)	refusing a sublease
347(4)	refusing an extension of time

Schedule 6 Dictionary

section 3

Aboriginal people particularly concerned with land means Aborigines particularly concerned with land within the meaning given by the *Aboriginal Land Act 1991*, section 4.

additional area see section 132.

adjoining owner in relation to land adjoining a road, means—

- (a) the registered owner of the land, other than a trustee of a deed of grant in trust; or
- (b) if the land is lease land—the lessee; or
- (c) if the land is trust land—the trustee of the trust land.

adjustment notice means a notice in the approved form requesting the registrar to register an adjustment of the particulars of land under this Act.

agreement, for chapter 8, part 7A, see section 506A.

agriculture means the cultivation of land including, for example, the following—

- (a) farming;
- (b) crop-raising;
- (c) forestry.

amalgamation offer, for chapter 4, part 3, division 5, see section 176L(2).

appeal means an appeal under chapter 7, part 3.⁷³

appeal expiration day, for a decision, means—

- (a) if an application for review of the decision is not made within the 42 days mentioned in section 424(1) or within any extended period under section 424(2)—the day the 42 days or extended period ends; or

73 Chapter 7, part 3 is about the appeal process available under this Act.

Schedule 6 (continued)

- (b) if an application is made, the day all proceedings under chapter 7, part 3, in relation to the decision and any appeals from those proceedings, are ended.

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; or
- (c) if the chief executive has given consent for an electronic form of the document under section 305A(1) or the *Electronic Transactions (Queensland) Act 2001*—the electronic 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 unallocated State land and matters relating to unallocated State land—the register of unallocated State land.

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.

Schedule 6 (continued)

building means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a part of a building.

building management statement see section 294B(2).

cancellation notice means a notice in the approved form requesting the registrar to register a cancellation of a tenure or interest in land under this Act.

cane railway easement see the *Sugar Industry Act 1999*, section 63(5).

category, for a lease, licence or permit, means its rental category under section 182.

caveatee, for a lease, licence or interest in a reserve over which a caveat has been lodged, means—

- (a) a lessee of the lease or licensee of the licence; or
- (b) someone, other than the caveator, who has an interest in the lease or licence; or
- (c) a holder of an interest in a reserve.

caveator, for a lease, licence or interest in a reserve over which a caveat has been lodged, means a person in whose favour the caveat is lodged.

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).

conditional deed see section 490.

conservation agreement means a conservation agreement under the *Nature Conservation Act 1992*.

conservation covenant means a covenant registered under section 373A that is of a type mentioned in section 373A(4)(b).

Schedule 6 (continued)

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).

conviction includes a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

corporation, for chapter 8, part 7A, see section 506A.

correct includes correct by addition, omission or substitution.

court means the Land Court established under the *Land Court Act 2000*.

criminal history, of a person, means the convictions, including spent convictions, recorded against the person for offences, in Queensland or elsewhere, whether before or after the commencement of this Act.

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.

declared pest see the *Land Protection (Pest and Stock Route Management) Act 2002*, schedule 3.

dedication notice means a notice in the approved form—

- (a) requesting the chief executive to register a dedication of land under this Act; or
- (b) requesting the registrar to register a dedication of land as road under the *Acquisition of Land Act 1967*, section 12B.

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*.

Schedule 6 (continued)

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).

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

designated occupation licence means an occupation licence over—

- (a) a forest reserve; or
- (b) a national park; or
- (c) a State forest; or
- (d) a timber reserve.

designated officer, for a provision about a lease, licence or permit, means—

- (a) to the extent the provision is about a lease or licence—the Minister; or
- (b) to the extent the provision is about a permit—the chief executive.

designated person, for a provision about a lease, means—

- (a) for a freeholding lease—the Governor in Council; or
- (b) for a term or a perpetual lease—the Minister.

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.

 Schedule 6 (continued)

document includes—

- (a) a deed of grant or lease; and
- (b) a will, grant of representation, or exemplification of a will, that may be used to deal with a lot; and
- (c) a deed that relates to or may be used to deal with a lot; and
- (d) a power of attorney that may be used to deal with a lot; and
- (e) a request, application or other document that deals with a lot and may be registered under this Act; and
- (f) a map or plan of survey that may be lodged; and
- (g) another document that may be deposited.

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

electronic communication means a communication of information in the form of data, text or images by guided or unguided electromagnetic energy.

encumbrance includes a registered covenant under chapter 6, part 4, division 8A.

end includes end by cancellation, expiry, forfeiture and surrender.

enforcement warrant see the *Supreme Court of Queensland Act 1991*, section 93A.⁷⁴

environmentally sensitive area means an area declared under a regulation to be—

- (a) of high nature conservation value; or
- (b) vulnerable to land degradation.

error includes an error by omission.

⁷⁴ *Supreme Court of Queensland Act 1991*, section 93A (Enforcement warrant)

Schedule 6 (continued)

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.

existing lease, for chapter 4, part 3, division 4, see section 176(1).

existing leases, for chapter 4, part 3, division 5, see section 176K(1).

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.

explanatory format plan see section 290D.

family arrangement see section 150.

fee includes tax.

floating reservation means a reservation for a public purpose contained in a deed of grant, deed of grant in trust or lease if the grant or lease does not identify the particular land reserved.

Schedule 6 (continued)

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.

forest reserve has the same meaning as in the *Nature Conservation Act 1992*.

freeholding lease means a pre-Wolfe freeholding lease, a post-Wolfe freeholding lease or a grazing homestead freeholding lease.

freehold land means—

- (a) land recorded in the freehold land register; and
- (b) other land that has been granted or vested in fee simple.

full supply level, for chapter 6, part 4, division 8, see section 361.

fund, for chapter 8, part 7A, see section 506A.

future conservation area means an area that has been identified by or for the State as an area proposed to be dedicated under the *Nature Conservation Act 1992* as a—

- (a) national park (scientific); or
- (b) national park; or
- (c) national park (Aboriginal land); or
- (d) national park (Torres Strait Islander land); or
- (e) national park (recovery); or
- (f) conservation park; or
- (g) resources reserve.

GPS means global positioning system.

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) a grazing homestead perpetual lease issued under the repealed Act; or

Schedule 6 (continued)

- (b) a grazing homestead lease, grazing farm lease or settlement farm lease that, under the *Land Act Amendment Act 1984* (No. 54), was converted to and declared to be a grazing homestead perpetual lease under the repealed Act.

high-water mark means the ordinary high-water mark at spring tides.

identifiable fixed features include road intersections, fence intersections, survey marks and built infrastructure.

ILUA register means the Register of Indigenous Land Use Agreements under the *Native Title Act 1993* (Cwlth), section 253.

image base means an image or mosaic of images, including, for example an aerial photograph or a satellite image.

imposed condition, of a lease, licence or permit, see section 202A(2).

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.

indigenous access and use agreement means—

- (a) an indigenous land use agreement; or
- (b) a contractual agreement between a lessee and Aboriginal people or Torres Strait Islanders that allows an activity as follows to be carried out on the lease land for the traditional purposes of the people or islanders—

Schedule 6 (continued)

- (i) camping, fishing, gathering, or hunting;
- (ii) performing rites or other ceremonies;
- (iii) visiting sites of significance.

indigenous land use agreement means an indigenous land use agreement noted in the ILUA register.

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 *Coastal Protection and Management Act 1995*.

land degradation includes any of the following—

- (a) soil erosion, salinity or scalding;
- (b) destruction of soil structure, including, for example, the loss of fertility, organic matter or nutrients;
- (c) decline in perennial pasture grasses, pasture composition and density;
- (d) low ground cover;
- (e) thickening in woody plants;
- (f) stream bank instability and slumping;
- (g) the presence of any declared pest;
- (h) water logging;
- (i) rising water tables;
- (j) a process that results in declining water quality.

land management agreement see section 176U(3).

land registry means the land registry under section 275.

lease means the interest in land comprising a lease held under this Act, as shown by the current particulars of the interest in the appropriate register, and—

Schedule 6 (continued)

- (a) for chapter 6, part 4, division 8B, see also section 373F;
or
- (b) for chapter 6, part 4, division 11A—includes sublease.

lease land, for a provision about a lease or proposed lease, a lease to be made available or an offer of a lease, means the land subject to the lease, proposed lease or the lease to be made available or offered.

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, and for chapter 6, part 4, division 11A, includes sublessee.

licence means the occupation rights comprising a licence held under this Act, as shown by the current particulars of the rights in the appropriate register.

licence land, for a provision about a licence, means the land subject to the licence.

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.

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

Schedule 6 (continued)

- (d) the distance of the land from transport facilities and markets.

lodge means file for registration in the land registry.

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.

lot means a separate, distinct parcel of land created on the registration of a plan of subdivision.

mandatory condition, of a lease, licence or permit, see section 198C(2).

mandatory standard terms document means a document lodged by the Minister as a standard terms document if the document states that it is a mandatory standard terms document.

Map Grid of Australia 1994 has the meaning given in ‘Geocentric datum of Australia technical manual’ published by the Intergovernmental Committee on Surveying and Mapping.

Editor’s note—

At the commencement of this definition a copy of the manual could be found on the committee’s website <www.icsm.gov.au/icsm/gda/gdatm/>.

marker, for a monitoring site, means a marker for the site, installed or placed under section 400.

mill owner see the *Sugar Industry Act 1999*, schedule.

miners homestead means—

- (a) for chapter 8, part 7, division 2, see section 495; or
 (b) for chapter 8, part 7, division 2A, see section 503B.

mining interest see section 20.

mining titles freeholding lease means a mining titles freeholding lease issued under the *Mining Titles Freeholding*

Schedule 6 (continued)

Act 1980, and includes a replacement document issued under section 502.⁷⁵

monitoring device see section 400(1)(g).

monitoring site see section 400(1)(e).

national park means any of the following under the *Nature Conservation Act 1992*—

- (a) a national park (scientific);
- (b) a national park;
- (c) a national park (Aboriginal land);
- (d) a national park (Torres Strait Islander land);
- (e) a national park (recovery).

native title registrar means the Native Title Registrar under the *Native Title Act 1993* (Cwlth), section 253.

natural environmental values, of lease land, means the qualities and characteristics of the land that contribute to its biological diversity and integrity.

natural resource, for chapter 6, part 4, division 8B, see section 373F.

navigable river see section 8.

NCA department means the department in which the *Nature Conservation Act 1992* is administered.

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

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 plant that is a declared pest.

75 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.

offer, for chapter 8, part 7, division 2, see section 495.

operational reserve means a reserve that was reserved and set apart under the repealed Act for a public purpose that is not a community purpose under this Act.

Examples of possible operational reserves—

reserves for abattoirs, ambulance, electrical works and kindergartens

original decision means a decision mentioned in schedule 2.

pastoral lease means a pastoral holding, preferential pastoral holding, pastoral development holding or stud holding issued under the repealed Act.

penalty interest see section 192(5).

permanent road closure application see section 97A.

permit means the occupation rights comprising a permit held under this Act, as shown by the current particulars of the rights in the appropriate register.

permit land, for a provision about a permit, means the land subject to the permit.

permittee means—

- (a) for a permit for a term of not more than 12 months, issued under chapter 4, part 4, that is not registered—the holder of the permit; or
- (b) otherwise—the person registered as the holder of a permit from the State issued 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.

plan of subdivision see section 290E.

Schedule 6 (continued)

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 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; or
- (g) an existing lease for a term of years subject to a covenant entitling the lessee to a deed of grant in fee simple, if the lease was granted under the *Special Freeholding of Leases Act 1991* on the application of the lessee of a lease mentioned in section 4(1)(b) of that Act.

Schedule 6 (continued)

property vegetation management plan means—

- (a) a property vegetation management plan under this Act, as in force before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3; or
- (b) a property vegetation management plan as defined under the Vegetation Management Act.

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) a purpose for which land may be taken under the *Acquisition of Land Act 1967*; or
- (b) a community purpose; or
- (c) a future conservation area.

public thoroughfare easement, for chapter 6, part 4, division 8, see section 361.

public use land means land dedicated to public use by a plan of subdivision.

public utility easement see section 361.

public utility provider means—

- (a) the State or another entity representing the State; or
- (b) the Commonwealth or another entity representing the Commonwealth; or
- (c) a local government; or
- (d) a person authorised by law to provide a public utility service; or
- (e) a person approved by the Minister as suitable to provide a particular public utility service; or
- (f) a mill owner, but only for the registration of a cane railway easement.

Schedule 6 (continued)

quarry material has the same meaning as in the *Forestry Act 1959*.

quarter day means 1 January, 1 April, 1 July, and 1 October.

rail land means non-rail corridor land or rail corridor land, as defined under the *Transport Infrastructure Act 1994*, that is held under a perpetual lease.

reasonably believe means believe on grounds that are reasonable in the circumstances.

reasonably suspect means suspect on grounds that are reasonable in the circumstances.

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*.

relevant local government, in relation to land or a tenure, means the local government in whose area the land or tenure is situated.

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

relevant tenure, in relation to a caveat, means a lease, licence or reserve.

remedial action notice see section 214.

remedial action order see section 214D(2).

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—

- (a) for chapter 8, part 7A, see section 506A; or
- (b) otherwise, the *Land Act 1962*.

repealed miners homestead Acts means—

- (a) for chapter 8, part 7, division 2, see section 495; or

Schedule 6 (continued)

(b) for chapter 8, part 7, division 2A, see section 503B.

required particulars, for a map of a future conservation area or a part of lease land, means—

- (a) the boundary of the area or part on an image base; and
- (b) 5 or more points visible in the image base that correspond to identifiable fixed features; and
- (c) the Map Grid of Australia 1994 coordinates and zone references for each point, acquired by GPS or similar system of satellites that receives and processes information; and
- (d) a description of the feature that each point represents.

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, as shown by the current particulars in the appropriate register.

review change see section 212.

revocation notice means a notice in the approved form requesting the registrar to register a revocation under this Act.

road see section 93.

road closure application see section 97A.

rural leasehold land means land for which, under this Act, leases may be issued in perpetuity or for a term of years for agricultural, grazing or pastoral purposes, other than land in any of the following—

- (a) a reserve;
- (b) a State forest;
- (c) a timber reserve;
- (d) any of the following under the *Nature Conservation Act 1992*—
 - (i) a national park (scientific);

Schedule 6 (continued)

- (ii) a national park;
- (iii) a national park (Aboriginal land);
- (iv) a national park (Torres Strait Islander land);
- (v) a national park (Cape York Peninsula Aboriginal land);
- (vi) a national park (recovery);
- (vii) a conservation park;
- (viii) a resources reserve;
- (ix) a forest reserve.

sale notice see section 113(2)(b).

set rent see section 183A.

ship see section 8.

show cause period see section 240B(2)(d).

significant development see section 128.

special lease see section 476.

special perpetual mining purposes lease, for chapter 8, part 7, division 2A, see section 503B.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

standard format see section 290B.

standard format lot means a lot on a standard format plan of survey.

State forest has the same meaning as in the *Forestry Act 1959*.

Schedule 6 (continued)

State housing lease means a lease in force under the *Housing (Freeholding of Land) Act 1957* or the *Housing Act 2003*, part 10.⁷⁶

State lease means—

- (a) a lease issued over a reserve under section 15(2)(b); or
- (b) a special lease issued over a reserve under section 203(b)⁷⁷ of the repealed Act.

statutory body means a government entity within the meaning of the *Government Owned Corporations Act 1993*, a local government, a local government owned corporation 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*.

subdivision offer, for chapter 4, part 3, division 4, see section 176A(2).

sublease includes a sub-sublease.

surrender notice means a notice in the approved form requesting the registrar to register a surrender of a tenure or interest in land under this Act.

temporary road closure application see section 97A.

tenure document means the document evidencing the interest or rights in land held under this Act.

term lease means a lease for a term of years.

terms includes covenants and conditions.

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

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

76 *Housing Act 2003*, part 10 (Repeal, savings and transitional provisions)

77 Section 203 (Issue of special lease without notification) of the repealed Act

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*.

Torres Strait Islanders particularly concerned with land means Torres Strait Islanders particularly concerned with land within the meaning given by the *Torres Strait Islander Land Act 1991*, section 4.

transferrable land means transferrable land under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991*.

transition to sale agreement see section 240K(2)(b).

transport land, for chapter 6, means any of the following land that is held under a perpetual lease—

- (a) land declared to be busway land under the *Transport Infrastructure Act 1994*, chapter 9;
- (b) land declared to be light rail land under the *Transport Infrastructure Act 1994*, chapter 10;
- (c) non-rail corridor land as defined under the *Transport Infrastructure Act 1994*;
- (d) rail corridor land as defined under the *Transport Infrastructure Act 1994*;
- (e) State toll road corridor land as defined under the *Transport Infrastructure Act 1994*;
- (f) local government tollway corridor land as defined under the *Transport Infrastructure Act 1994*.

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.

Schedule 6 (continued)

trustee lease means a lease given by the trustee of trust land.

trustee of trust land notice means a notice in the approved form requesting the registrar to register particulars about the office of a trustee.

trustee permit means a permit given by a trustee of trust land.

trustees see section 30.

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 or for the State, other than a permit to occupy under this Act issued by the chief executive.

unimproved value see section 434.

urban development area means an urban development area under the *Urban Land Development Authority Act 2007*.

Urban Land Development Authority means the Urban Land Development Authority under the *Urban Land Development Authority Act 2007*.

valuation for rental purposes has the same meaning as in the *Valuation of Land Act 1944*.

vegetation clearing offence means—

- (a) a vegetation clearing offence under the *Vegetation Management Act*; or
- (b) a tree clearing offence under this Act, as in force immediately before the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.

Vegetation Management Act means the *Vegetation Management Act 1999*.

Schedule 6 (continued)

volumetric format see section 290C.

writ of execution means a writ or warrant of execution after judgment in any court, and includes an enforcement warrant.⁷⁸

⁷⁸ See the *Supreme Court of Queensland Act 1991*, section 129 (Abolition of old enforcement processes).

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 18 July 2008. 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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1995 Act No. 32	1 July 1995	7 July 1995
1A	1996 Act No. 7	9 May 1996	26 July 1996
2	1997 Act No. 41	19 September 1997	3 October 1997
2A	1997 Act No. 41	1 November 1997	17 November 1997
2B	1997 Act No. 78	5 December 1997	10 February 1998
3	1998 Act No. 24	1 June 1998	1 June 1998
3A	1998 Act No. 30	30 September 1998	5 October 1998
3B	1998 Act No. 48	18 December 1998	18 December 1998
3C	2000 Act No. 2	8 March 2000	20 March 2000
3D	2000 Act No. 5	23 March 2000	5 April 2000
4	2000 Act No. 26	1 July 2000	4 August 2000
4A	2000 Act No. 44	25 October 2000	10 November 2000
5	2001 Act No. 33	7 June 2001	6 July 2001
5A	2001 Act No. 45	15 July 2001	20 July 2001
5B	2001 Act No. 93	1 February 2002	15 February 2002
5C	2001 Act No. 93	1 March 2002	1 March 2002

Reprint No.	Amendments included	Effective	Notes
5D	2002 Act No. 11	1 July 2002	R5D withdrawn, see R6
6	—	1 July 2002	
6A	2002 Act No. 6	4 March 2003	
6B	2003 Act No. 10	28 March 2003	
6C	2003 Act No. 20	9 May 2003	
6D	2003 Act No. 25	16 May 2003	
6E	2002 Act No. 12	1 July 2003	
6F	2001 Act No. 93	20 October 2003	R6F withdrawn, see R7
7	—	20 October 2003	
7A	2002 Act No. 52	1 January 2004	
7B	2004 Act No. 4	6 May 2004	
7C	2004 Act No. 9	20 May 2004	
7D	2004 Act No. 1	21 May 2004	
7E	2004 Act No. 70	1 August 2004	
7F	2004 Act No. 25	31 December 2004	
7G	2005 Act No. 8	18 March 2005	
7H	2004 Act No. 9	21 May 2005	R7H withdrawn, see R8
8	—	21 May 2005	
8A	2005 Act No. 67	27 January 2006	
8B	2005 Act No. 68	6 February 2006	
8C	2006 Act No. 9	15 March 2006	
8D	2006 Act No. 54	7 December 2006	
8E	2007 Act No. 19	23 April 2007	
8F	2007 Act No. 19	18 May 2007	
8G	2007 Act No. 19	1 July 2007	R8G withdrawn, see R9
9	—	1 July 2007	
9A	2007 Act No. 36	29 August 2007	
9B	2007 Act No. 41	21 September 2007	
9C	2007 Act No. 57	16 November 2007	
9D	2007 Act No. 19 (amd 2007 Act No. 48; 2007 Act No. 57)	1 January 2008	R9D withdrawn, see R10
10	—	1 January 2008	
10A	2008 Act No. 22	1 July 2008	
	2008 Act No. 34		
10B	2008 Act No. 29	18 July 2008	

5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1, 3

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)

ch 5 (matters affecting land holdings), pt 6 (tree management) (other than s 263(5)), s 517 (existing local guidelines for broadscale tree clearing) and s 524 (repeals on commencement) so far as it relates to a provision of the repealed Act about tree clearing (a “tree clearing provision”), any definition in, or any administrative, offence or other provision of the repealed Act to the extent it is relevant to the operation of a tree clearing provision commenced 1 November 1997 (1997 SL No. 355)

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 524 (so far as it relates to the repealed Act) s 383A ((Fees) or any definition in, or administrative, offence or other provision of, the repealed Act to the extent it is relevant to the operation of s 383A) never proclaimed into force and on 1998 No. 48 s 7 sch

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)

s 263(5) commenced 15 September 2000 (2000 SL No. 241)

remaining provisions commenced 1 July 1995 (1995 SL No. 185)

Notes— (1) This Act contains provisions that were relocated from the following Acts—

- Brigalow and Other Lands Development Act 1962
- Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982

(2) A list of legislation for the relocated Acts appears below

amending legislation—

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

amending legislation—

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, ch 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 No. 17—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)

amending legislation—

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 ss 1, 2(3), pt 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)

Natural Resources and Other Legislation Amendment Act 1997 No. 78 pts 1, 6

date of assent 5 December 1997
ss 35, 61(2)–(3), 70 commenced 1 July 1995 (see s 2(3))
remaining provisions commenced on date of assent

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3), 191 sch

date of assent 23 March 1998

ss 1–2 commenced on date of assent

remaining amdts commenced 30 March 1998 (1998 SL No. 55)

Civil Justice Reform Act 1998 No. 20 ss 1, 2(3), 27 sch 2

date of assent 1 May 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1999 (automatic commencement under AIA s 15DA(2)) (1999 SL No. 70 s 2(3))

Powers of Attorney Act 1998 No. 22 ss 1–2 ch 9 pt 4

date of assent 14 May 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1998 (1998 SL No. 123)

Natural Resources Legislation Amendment Act 1998 No. 24 pts 1, 3

date of assent 14 May 1998

ss 1–2 commenced on date of assent

remaining provisions commenced on 25 May 1998 (1998 SL No. 172)

Native Title (Queensland) State Provisions Act 1998 No. 30 ss 1–2, 21 sch

date of assent 3 September 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 30 September 1998 (1998 SL No. 266 but see also s 2(1)(a))

Valuation of Land and Other Legislation Amendment Act 1998 No. 48 pt 1 s 17 sch

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 1998 (1998 SL No. 364)

Vegetation Management Act 1999 No. 90 ss 1–2 pt 8 (this Act is amended, see amending legislation below)

date of assent 21 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 15 September 2000 (2000 SL No. 242)

amending legislation—

Vegetation Management Amendment Act 2000 No. 35 ss 1, 18–23 (amends 1999 No. 90 above)

date of assent 13 September 2000

commenced on date of assent

Land Court Act 2000 No. 1 ss 1–2, 86 sch 1

date of assent 8 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (2000 SL No. 165)

Natural Resources and Other Legislation Amendment Act 2000 No. 2 pts 1, 3 s 32 sch

date of assent 8 March 2000

commenced on date of assent

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2(1)–(2), 373 sch 2

date of assent 23 March 2000

commenced on date of assent (see s 2(1)–(2))

Guardianship and Administration Act 2000 No. 8 ss 1–2, 263 sch 3

date of assent 20 April 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (2000 SL No. 125)

GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

Primary Industries and Natural Resources Legislation Amendment Act 2000 No. 26 ss 1, 12 sch 1

date of assent 27 June 2000

commenced on date of assent

Nature Conservation and Other Legislation Amendment Act 2000 No. 44 ss 1, 42 sch

date of assent 25 October 2000

commenced on date of assent

Natural Resources Legislation Amendment Act 2001 No. 33 pts 1, 6

date of assent 7 June 2001

commenced on date of assent

Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

Duties Act 2001 No. 71 ss 1–2(1), 551 sch 1

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 10)

Natural Resources and Other Legislation Amendment Act 2001 No. 92 ss 1, 2(2), pt 3

date of assent 10 December 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2002 SL No. 4)

Coastal Protection and Management and Other Legislation Amendment Act 2001 No. 93 ss 1–2, 24 sch

date of assent 10 December 2001

ss 1–2 commenced on date of assent

remaining provision commenced 20 October 2003 (2003 SL No. 202)

Public Records Act 2002 No. 11 ss 1, 2(2), 62 sch 1

date of assent 24 April 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2002 (2002 SL No. 115)

Land Protection (Pest and Stock Route Management) Act 2002 No. 12 ss 1–2, 329 sch 2

date of assent 24 April 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2003 SL No. 116)

Body Corporate and Community Management and Other Legislation Amendment Act 2003 No. 6 s 1, pt 7

date of assent 4 March 2003

commenced on date of assent

Natural Resources and Other Legislation Amendment Act 2003 No. 10 pts 1, 5 s 76 sch

date of assent 28 March 2003

commenced on date of assent

Land Legislation Amendment Act 2003 No. 20 s 1, pt 3

date of assent 9 May 2003

commenced on date of assent

Water and Other Legislation Amendment Act 2003 No. 25 pts 1, 3

date of assent 16 May 2003

commenced on date of assent

Housing Act 2003 No. 52 ss 1–2, 153 sch 2

date of assent 15 September 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2004 (2003 SL No. 332)

Surveyors Act 2003 No. 70 ss 1–2, 206 sch 2

date of assent 22 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 2004 (2004 SL No. 127)

Vegetation Management and Other Legislation Amendment Act 2004 No. 1 pts 1, 5, s 44(1) sch 1

date of assent 29 April 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 21 May 2004 (2004 SL No. 62)

Natural Resources and Other Legislation Amendment Act 2004 No. 4 s 1, pt 4, s 57 sch

date of assent 6 May 2004

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Transport and Other Legislation Amendment Act 2004 No. 9 pts 1, 7 sch

date of assent 20 May 2004

ss 1–2 commenced on date of assent

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**Petroleum and Gas (Production and Safety) Act 2004 No. 25 ss 1, 2(2), 999–1000
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date of assent 12 October 2004
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 remaining provisions commenced 31 December 2004 (2004 SL No. 308)

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Audit Legislation Amendment Act 2006 No. 9 pts 1, 12

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**Land and Other Legislation Amendment Act 2007 No. 19 pts 1, 4 (this Act is
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date of assent 23 April 2007
 ss 1–2, 61, 62, 166, 199 (to the extent it ins s 521N) commenced on date of assent
 (see s 2)
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 the extent it ins the entry for s 130A(1)) commenced 18 May 2007 (2007 SL No.
 88)
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**Cape York Peninsula Heritage Act 2007 No. 48 ss 1–2, pt 7 div 2 (amends
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date of assent 25 October 2007
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 remaining provisions commenced 2 November 2007 (2007 SL No. 270)

**Water and Other Legislation Amendment Act 2007 No. 57 ss 1, 16–25
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date of assent 16 November 2007
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Statute Law (Miscellaneous Provisions) Act 2007 No. 36

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Urban Land Development Authority Act 2007 No. 41 ss 1–2, pt 9

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Water and Other Legislation Amendment Act 2007 No. 57 s 1, pt 5

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Primary Industries and Other Acts Amendment Act 2008 No. 22 pts 1, 4

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remaining provisions commenced 1 July 2008 (see s 2)

Aboriginal and Torres Strait Islander Land Amendment Act 2008 No. 29 pts 1, 3

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remaining provisions commenced 18 July 2008 (2008 SL No. 233)

Water Supply (Safety and Reliability) Act 2008 No. 34 ss 1, 2(2), 751 sch 2

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s 265 amd 1999 No. 90 s 94B (amd 2000 No. 35 s 21)
 om 2004 No. 1 s 39

Cancellation of tree clearing permit

s 266 amd 1997 No. 78 s 51
 om 2004 No. 1 s 39

Tree clearing permit may continue on transfer

s 267 amd 1999 No. 90 s 94C (amd 2000 No. 35 s 21)
 om 2004 No. 1 s 39

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

div hdg om 2004 No. 1 s 39

Routine management

s 268 om 2004 No. 1 s 39

Routine rural management

s 269 amd 2000 No. 44 s 42 sch
 om 2004 No. 1 s 39

Conditions of clearing

s 270 amd 1999 No. 90 s 95
 om 2004 No. 1 s 39

Division 4—Broadscale tree clearing

div hdg om 2004 No. 1 s 39

Approval of broadscale tree clearing policy

s 271 om 2004 No. 1 s 39

Local guidelines for broadscale tree clearing

s 272 om 2004 No. 1 s 39

Finalising the guidelines

s 273 om 2004 No. 1 s 39

Publishing of guidelines

s 274 om 2004 No. 1 s 39

Division 5—Enforcing compliance

div hdg ins 2003 No. 10 s 22
 om 2004 No. 1 s 39

Compliance notice

s 274A ins 2003 No. 10 s 22
 amd 2004 No. 4 s 31
 om 2004 No. 1 s 39

Right of appeal

s 274B ins 2003 No. 10 s 22
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s 274C ins 2003 No. 10 s 22
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CHAPTER 6—REGISTRATION AND DEALINGS**PART 1—LAND REGISTRY AND REGISTERS****Division 1—Land registry****Registers comprising land registry**

s 275 amd 2005 No. 68 s 12; 2007 No. 19 s 134

Division 2—Registers**Registers to be kept by chief executive**

s 276 amd 2005 No. 68 s 13; 2007 No. 19 s 135

Registration of document evidencing tenure

s 277A ins 2007 No. 19 s 136

Particulars that must be registered

prov hdg amd 2007 No. 19 s 137(1)

s 278 amd 2007 No. 19 s 137(2)–(4)

Registration of land management agreements and transition to sale agreements

s 279 amd 2000 No. 2 s 19
sub 2007 No. 19 s 138

Other information may be kept

s 281 amd 2005 No. 68 s 14

Chief executive's procedures on lodgment and registration of document

s 282 sub 2005 No. 68 s 15

Entitlement to search a register

s 284 amd 2005 No. 68 s 16

Supply of statistical data

s 285A ins 2005 No. 68 s 17

Division 3—General requirements for documents in registers**Land practice manual**

s 286A ins 2005 No. 68 s 18

Requiring plan of survey to be lodged

s 286B ins 2005 No. 68 s 18
amd 2007 No. 19 s 139

Registered documents must comply with particular requirements

prov hdg amd 2005 No. 68 s 19(1)

s 287 amd 2005 No. 68 s 19(2)–(4); 2007 No. 19 s 140

Original mortgagee to confirm identity of mortgagor

s 288A ins 2005 No. 68 s 20

Mortgage transferee to confirm identity of mortgagor

s 288B ins 2005 No. 68 s 20

Effect of registration of mortgage under Land Title Act 1994

s 288C ins 2005 No. 68 s 20

Consent to be written on document etc.

s 289 amd 2003 No. 6 s 134

Offence not to use appropriate form

s 290AA ins 2003 No. 6 s 135

Division 3A—Format of plans of survey

div 3A (ss 290A–290C) ins 2004 No. 9 s 75

Division 3B—Explanatory format plansdiv hdg (prev div 3A) ins 2001 No. 33 s 11
renum 2004 No. 9 s 73**Explanatory format plan**s 290D (prev s 290A) ins 2001 No. 33 s 11
amd 2001 No. 92 s 13
renum 2004 No. 9 s 74
amd 2005 No. 68 s 21**Division 3C—Plans of subdivision**

div hdg ins 2004 No. 9 s 76

Meaning of “plan of subdivision”

s 290E ins 2004 No. 9 s 76

Plan of subdivision may be registereds 290F ins 2004 No. 9 s 76
amd 2007 No. 19 s 141**Taking effect of plan of subdivision**

s 290FA ins 2007 No. 19 s 142

Standard format plan of subdivision

s 290G ins 2004 No. 9 s 76

Volumetric format plan of subdivision

s 290H ins 2004 No. 9 s 76

Division of lot on standard format plan of subdivision

s 290I ins 2004 No. 9 s 76

Requirements for registration of plan of subdivisions 290J ins 2004 No. 9 s 76
amd 2004 No. 9 s 81 sch; 2005 No. 67 s 15; 2005 No. 68 s 22; 2007 No. 41 s
235; 2007 No. 19 s 143 (amd 2007 No. 57 s 23)**Dedication of public use land in plan**

s 290JA ins 2007 No. 19 s 144

Access for public use land

s 290JB ins 2007 No. 19 s 144

Particulars to be recorded when registered plan takes effect

s 290K ins 2004 No. 9 s 76
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Lodged plan that is withdrawn and re-lodged

s 290L ins 2004 No. 9 s 76

Division excluding road or watercourse

s 290M ins 2004 No. 9 s 76

Pre-examination of plans

s 290N ins 2004 No. 9 s 76

Chief executive may correct registers

s 291 amd 1995 No. 58 s 4 sch 2

Correction for omitted easement

s 291A ins 2005 No. 68 s 23

Chief executive may authorise printing and sale of forms

s 293 om 2003 No. 6 s 136

Chief executive may require public notice to be given of certain proposed action

s 294 amd 2007 No. 19 s 145

PART 1A—BUILDING MANAGEMENT STATEMENTS

pt hdg ins 2004 No. 9 s 77

Application

s 294A ins 2004 No. 9 s 77

Building management statement may be registered

s 294B ins 2004 No. 9 s 77
amd 2005 No. 68 s 24; 2007 No. 19 s 146

Single area for lots to which building management statement applies

s 294BA ins 2004 No. 68 s 25

Circumstances under which building management statement may be registered

s 294C ins 2004 No. 9 s 77
amd 2005 No. 68 s 26

Content of building management statement

s 294D ins 2004 No. 9 s 77
amd 2005 No. 68 s 27

Registration of building management statement

s 294E ins 2004 No. 9 s 77

Amending a building management statement

s 294F ins 2004 No. 9 s 77

Building management statement if lots owned by 1 lessee

s 294G ins 2004 No. 9 s 77

One person becoming lessee of all lots

s 294H ins 2004 No. 9 s 77

Extinguishing a building management statement

s 294I ins 2004 No. 9 s 77
amd 2005 No. 68 s 28

Building management statement affecting freehold and non-freehold land

s 294J ins 2004 No. 9 s 77

PART 2—REGISTRATION AND ITS EFFECT**Right to have interest registered**

s 295 amd 2005 No. 68 s 29

Tenure document to be returned to land registry

prov hdg sub 2000 No. 2 s 20(1)
s 296 amd 2000 No. 2 s 20(2)–(3); 2003 No. 6 s 137; 2005 No. 68 s 30; 2006 No. 54
s 22A
om 2007 No. 19 s 147

When a document is registered

s 299 amd 2007 No. 19 s 148

No registration in absence of required approval or consent of Minister

s 299A ins 2007 No. 19 s 149

Effect of registration on interest

s 302 amd 2005 No. 68 s 31

Correcting unregistered documents

s 304 amd 1997 No. 68 s 32; 2005 No. 68 s 32

Requisitions

s 305 amd 2005 No. 68 s 33

Electronic communication of statutory declaration or affidavit

s 305A ins 2003 No. 6 s 138

Borrowing lodged document before registration

s 307 amd 1997 No. 78 s 52

Substitute document

s 312 om 2007 No. 19 s 150

Dispensing with production of document

s 314 amd 2005 No. 68 s 34

Destroying document in certain circumstances

s 315 amd 2002 No. 11 s 62 sch 1; 2003 No. 6 s 139

Division 2—Documents forming part of standard terms documents

div hdg amd 1997 No. 28 s 295 sch 3

Meaning of “standard terms document” in division

prov hdg amd 1997 No. 28 s 295 sch 3

s 317 amd 1997 No. 28 s 295 sch 3

References to registered standard terms document

s 317A ins 2005 No. 68 s 35

Standard terms document may be registered**prov hdg** amd 1997 No. 28 s 295 sch 3**s 318** amd 1997 No. 28 s 295 sch 3**Minister may lodge mandatory standard terms document****s 318A** ins 2007 No. 19 s 151**Standard terms document part of a further document****prov hdg** amd 1997 No. 28 s 295 sch 3**s 319** amd 1997 No. 28 s 295 sch 3**Document not limited to that contained in standard terms document****prov hdg** amd 1997 No. 28 s 295 sch 3**s 320** amd 1997 No. 28 s 295 sch 3**Conflict with mandatory standard terms document****s 320A** ins 2007 No. 19 s 152**Withdrawal or cancellation of standard terms document****prov hdg** amd 1997 No. 28 s 295 sch 3**s 321** amd 1997 No. 28 s 295 sch 3; 2005 No. 68 s 36; 2007 No. 19 s 153**Requirements for transfers****s 322** amd 1999 No. 90 s 94D (amd 2000 No. 35 s 21); 2004 No. 4 s 32; 2007 No. 19 s 154**Severing joint tenancy by transfer****s 322A** ins 2007 No. 19 s 155**Effect of registration of transfer****s 325** amd 2007 No. 19 s 156**Disclosure of information to proposed transferee of lease or licensee****s 326A** ins 2007 No. 19 s 157**Absolute surrender of deed of grant****s 327** sub 2007 No. 19 s 158**Surrender of lease****s 327A** ins 2007 No. 19 s 158**Applying to surrender****s 327B** ins 2007 No. 19 s 158**Notice of proposal to approve surrender of lease****s 327C** ins 2007 No. 19 s 158**Submissions against proposal to approve surrender****s 327D** ins 2007 No. 19 s 158**Registration surrenders lease****s 327E** ins 2007 No. 19 s 158**Notice of surrender****s 327F** ins 2007 No. 19 s 158**Effect of surrender****s 327G** ins 2007 No. 19 s 158

Person to give up possession on surrender

s 327H ins 2007 No. 19 s 158

Dealing with improvements

s 327I ins 2007 No. 19 s 158

Surrender of subleases

s 328 amd 2004 No. 4 s 33; 2007 No. 19 s 159

Notice of surrender needed

s 329 amd 2007 No. 19 s 160

Requirements for effective surrender

s 330 amd 2007 No. 19 s 161

Subleases require Minister's approval

s 332 amd 2007 No. 19 s 162

General authority to lessee for particular dealings

s 333 sub 2007 No. 19 s 163

When subleasing is totally prohibited

s 334 amd 2007 No. 19 s 164

Application for sub-subleasess 334A ins 1997 No. 78 s 53
amd 2007 No. 19 s 165**Amending a sublease**

s 336 amd 2004 No. 4 s 34

Division 3A—Mediation for disputes about terms of particular subleases

div 3A (ss 339A–339B) ins 2007 No. 19 s 166

Registering a mortgage

s 340 amd 1995 No. 32 s 23 sch

Sale of mortgaged lease

s 346 amd 1999 No. 90 s 94E (amd 2000 No. 35 s 21); 2007 No. 19 s 167

Division 5—Subdividing leases

div hdg om 2007 No. 19 s 168

Minister's approval required for subdivision

s 351 om 2007 No. 19 s 168

Plan of survey must be registered if neededs 352 amd 2004 No. 9 s 78; 2003 No. 70 s 206 sch 2
om 2007 No. 19 s 168**Issue of new leases**

s 353 om 2007 No. 19 s 168

Conditions of new leases

s 354 om 2007 No. 19 s 168

Division 6—Amalgamating leases

div hdg om 2007 No. 19 s 168

Amalgamation only by agreement

s 355 om 2007 No. 19 s 168

Issue of new lease

s 356 om 2007 No. 19 s 168

Conditions of amalgamated lease

s 357 om 2007 No. 19 s 168

Changing deeds of grant—change in description or boundary of land

prov hdg sub 2000 No. 2 s 21(1)

s 358 amd 1997 No. 78 s 54; 2000 No. 2 s 21(2); 2007 No. 19 s 169

Amendment of leasehold land register or freehold land register for omitted acquired easement

s 358A ins 2005 No. 68 s 37

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

s 358B ins 2005 No. 68 s 37

Correction of minor error in deed of grant

s 358C ins 2007 No. 19 s 170

Correcting or cancelling deeds of grant

prov hdg sub 2000 No. 2 s 32 sch

s 359 amd 2007 No. 19 s 171

Governor in Council may change freeholding leases

prov hdg sub 2000 No. 2 s 32 sch

amd 2007 No. 19 s 172(1)

s 360 amd 2007 No. 19 s 172(2)–(9)

Minister may change term leases, other than State leases, or perpetual leases

s 360A ins 2007 No. 19 s 173

Minister may change State lease

s 360B ins 2007 No. 19 s 173

Applying to amend description of lease

s 360C ins 2007 No. 19 s 173

Notice of proposal to amend lease

s 360D ins 2007 No. 19 s 173

Submissions

s 360E ins 2007 No. 19 s 173

Notice of registration of amendment of lease

s 360F ins 2007 No. 19 s 173

Definitions for div 8

prov hdg amd 2007 No. 19 s 174(1)

s 361 def “full supply level” ins 2003 No. 25 s 8

amd 2008 No. 34 s 751 sch 2

def “public thoroughfare easement” ins 2005 No. 68 s 38(1)

def “**public utility provider**” amd 1997 No. 28 s 295 sch 3; 2005 No. 68 s 38(2); 2007 No. 36 s 2 sch
om 2007 No. 19 s 174(2)

Easements may be created only by registration

s 362 amd 2001 No. 33 s 12; 2003 No. 25 s 9; 2004 No. 4 s 35; 2005 No. 68 s 39

Registration of easement

s 363 amd 1997 No. 78 s 55; 2001 No. 33 s 13; 2004 No. 4 s 36

Particulars to be registered

s 365 amd 2001 No. 33 s 14

Rights and liabilities created on registration of document

s 366 amd 2005 No. 68 s 40

Same person becoming trustee, lessee or licensee of benefited and burdened lands

prov hdg amd 2004 No. 4 s 37

s 368 amd 1997 No. 78 s 56; 2004 No. 4 s 37

Public utility easements

s 369 amd 1997 No. 28 s 295 sch 3; 2001 No. 33 s 15; 2005 No. 68 s 41; 2006 No. 54 s 23; 2008 No. 22 s 40

Transfer of public utility easements

s 369A ins 1997 No. 28 s 295 sch 3

Transfer of benefited land

s 369B ins 1997 No. 78 s 57

amd 2004 No. 4 s 38

Surrendering an easement

s 371 amd 2004 No. 4 s 39; 2005 No. 68 s 42

End and continuation of easements

s 372 amd 2004 No. 4 s 40; 2005 No. 68 s 43; 2007 No. 19 s 175

Particular matters about easements and permit land

s 373AA ins 2007 No. 19 s 176

Division 8A—Covenants

div hdg ins 1997 No. 28 s 295 sch 3

Covenant by registration

s 373A ins 1997 No. 28 s 295 sch 3

amd 2000 No. 2 s 22; 2003 No. 6 s 140; 2005 No. 68 s 44

Compliance with s 373A

s 373AA ins 2005 No. 68 s 45

Requirements of document creating covenant

s 373B ins 1997 No. 28 s 295 sch 3

Amending document creating covenant

s 373C ins 1997 No. 28 s 295 sch 3

amd 2000 No. 2 s 23

Releasing a covenant

s 373D ins 1997 No. 28 s 295 sch 3
sub 2000 No. 2 s 24

Division 8B—Profits a prendre

div 8B (ss 373E–373Q) ins 2004 No. 4 s 41

Interests held in trust must be registered

s 374A ins 1997 No. 28 s 295 sch 3

Document of transfer to trustee

prov hdg sub 1997 No. 28 s 295 sch 3
s 375 amd 1997 No. 28 s 295 sch 3

Document to vest in trustee

s 375A ins 1997 No. 28 s 295 sch 3

Registering personal representative

s 377 amd 2005 No. 68 s 46

Registering beneficiary

s 379 amd 2005 No. 68 s 47

Power of attorney

s 383 amd 2007 No. 19 s 177

Persons under a disability

s 384 om 2000 No. 8 s 263 sch 3

Acts in relation to substitute decision makers

prov hdg sub 1998 No. 22 s 180(1)
s 385 amd 1998 No. 22 s 180(2)

Effect of writ of execution of transfer after sale by mortgagee

s 389A ins 2001 No. 33 s 16

Effect on writ of execution of transfer after sale by chief executive

s 389B ins 2007 No. 19 s 178

Division 11A—Caveats

div hdg ins 2007 No. 19 s 179

Subdivision 1—Caveats generally

sdiv 1 (ss 389C–389K) ins 2007 No. 19 s 179

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sdiv 2 (s 389L) ins 2007 No. 19 s 179

Division 13—Miscellaneous

div hdg ins 2005 No. 67 s 16

Special provision for transport related land

prov hdg amd 2007 No. 19 s 180(1)
s 390A ins 2005 No. 67 s 16
amd 2007 No. 19 s 180(2)

Particular dealing with rail land

s 390B ins 2007 No. 19 s 181

General provision about approvals

s 391A ins 2007 No. 19 s 182

Delegation by Minister

s 392 amd 1996 No. 7 s 6; 2004 No. 9 s 79; 2007 No. 19 s 183

Delegation by chief executive

s 393 amd 1995 No. 32 s 23 sch; 2007 No. 19 s 184

Departmental officer may give notices for this Act

s 393A ins 2004 No. 4 s 42

Committees

s 394 sub 2007 No. 19 s 185

Ministerial guidelines about what constitutes a good condition for lease land

s 394A ins 2007 No. 19 s 185

Authorised person's identity card

s 397 amd 2003 No. 10 s 23

Production of identity card

s 398 amd 2000 No. 5 s 373 sch 2

Protection from liability

s 399 amd 1995 No. 57 s 4 sch 1; 2000 No. 2 s 32 sch

Power to enter land, generally

prov hdg sub 2003 No. 10 s 24(1)

s 400 amd 2001 No. 92 s 14; 2003 No. 10 s 24(2)–(3); 2004 No. 1 s 40; 2007 No. 19 s 186

Division 4—Monitoring and enforcement powers for tree clearing provisionsdiv 4 (ss 400A–400ZB) ins 2003 No. 10 s 25
om 2004 No. 1 s 41**Division 5—Other provisions about authorised persons**

div hdg ins 2003 No. 10 s 25

False or misleading statements

s 403A ins 2003 No. 10 s 26

False or misleading documents

s 403B ins 2003 No. 10 s 26

No trespassing

s 404 amd 2007 No. 19 s 187

Exercise of chief executive's powers under division

s 405A ins 2007 No. 19 s 188

Occupation fee for unlawful occupation by offeree until grant of tenure

s 405B ins 2007 No. 19 s 188

Notice to person to leave land, remove structures etc.

s 406 amd 2007 No. 19 s 189

Person may start proceeding in Magistrates Court

s 409 amd 1995 No. 57 s 4 sch 1

Chief executive may start proceeding

s 410 amd 1995 No. 57 s 4 sch 1

Defence may be filed

s 411 amd 1995 No. 57 s 4 sch 1

Lessee, licensee, permittee or trustee may start proceeding

s 415 amd 1995 No. 57 s 4 sch 1

Defence may be filed

s 416 amd 1995 No. 57 s 4 sch 1

Hearing procedures

s 417 amd 1995 No. 57 s 4 sch 1

PART 2A—GENERAL PROVISIONS FOR APPLICATIONS

pt 2A (ss 420A–420I) ins 2007 No. 19 s 190

Notice of right of appeal to be given

s 421 amd 1997 No. 78 s 58

Appeal process starts with internal review

s 422 amd 1995 No. 57 s 4 sch 1

Applying for review

s 424 amd 1997 No. 78 s 59

Decision on reconsideration

s 426 amd 1997 No. 78 s 60

Procedure for an appeal to the court

s 428 amd 1997 No. 78 s 61(1), (2)–(3) (retro)

Powers of court on appeal

s 429 amd 2000 No. 1 s 86 sch 1

Jurisdiction of the court

s 431 amd 2000 No. 1 s 86 sch 1

PART 3A—PROCEEDINGS GENERALLY

pt hdg ins 2003 No. 10 s 27

Division 1—Preliminary

div 1 (s 431A) ins 2003 No. 10 s 27

Division 2—Evidence

div hdg ins 2003 No. 10 s 27

Evidentiary provisions

s 431B (prev s 447) amd 2003 No. 10 s 76 sch
renum and reloc 2003 No. 10 s 76 sch

Further evidentiary aids

s 431C ins 2003 No. 10 s 27
sub 2004 No. 1 s 42

Instruments, equipment and installations

s 431D ins 2003 No. 10 s 27

Certificate or report about remotely sensed images 431E ins 2003 No. 10 s 27
amd 2004 No. 1 s 44(1) sch 1**Responsibility for unauthorised tree clearing**s 431F ins 2003 No. 10 s 27
om 2004 No. 1 s 44(1) sch 1**Division 3—Starting proceedings**

div hdg ins 2003 No. 10 s 27

Offences are summary offencess 431G (prev s 445) amd 2003 No. 10 s 76 sch
renum and reloc 2003 No. 10 s 76 sch**Limitation on time for starting offence proceedings**s 431H (prev s 446) amd 2003 No. 10 s 28(1)–(3)
renum and reloc 2003 No. 10 s 28(4)
amd 2004 No. 1 s 44(1) sch 1**Particulars to be stated for complaint for tree clearing offence**s 431I ins 2003 No. 10 s 27
om 2004 No. 1 s 44(1) sch 1**Division 4—Other matters about proceedings**

div hdg ins 2003 No. 10 s 27

Rate of travel of stock

s 431J ins 2003 No. 10 s 27

Guide for deciding penalty for tree clearing offences 431K ins 2003 No. 10 s 27
om 2004 No. 1 s 44(1) sch 1**Recovery of costs of investigation**

s 431L ins 2003 No. 10 s 27

Representation of departmental officer in court

s 431M ins 2003 No. 10 s 27

Ability to prosecute under other Acts

s 431N ins 2003 No. 10 s 27

PART 3B—TIDAL BOUNDARY PLANS OF SUBDIVISION

pt 3B (ss 431NA–431NG) ins 2005 No. 68 s 48

Rate of travel of stock

s 433 om 2002 No. 12 s 329 sch 2

Meaning of “unimproved value”

s 434 amd 1997 No. 78 s 62

Requirement for making conditional offers

s 441A ins 2007 No. 19 s 191

Lapse of offer

s 442 amd 2007 No. 19 s 192

No deed of grant until fees paid

s 443 amd 2004 No. 4 s 43

Regulation-making power

prov hdg sub 2004 No. 4 s 57 sch

s 448 amd 2001 No. 71 s 551 sch 1

Application of GST to rents

s 448A ins 2000 No. 20 s 29 sch 3

Application of GST to purchase price for leases

s 448B ins 2000 No. 20 s 29 sch 3

Existing reserves and purposes continue

s 449 amd 1997 No. 78 s 63

Existing deeds of grant in trust and purposes continue

s 451 amd 1997 No. 78 s 64

Land granted for Aboriginal or Islander inhabitants

s 452A (prev 1982 No. 17 ss 21–22) amd 1995 No. 57 s 4 sch 1

reloc 1995 No. 57 s 4 sch 1

amd 1998 No. 48 s 17 sch

Terms of pre-Wolfe freeholding leases

s 457 amd 1997 No. 78 s 65

Terms of grazing homestead freeholding leases

s 466 amd 1997 No. 78 s 66

Existing leases continue

s 468 amd 2007 No. 19 s 193

Right to a grazing homestead freeholding lease

s 469 amd 1997 No. 78 s 67

Right to a post-Wolfe freeholding lease

s 471 amd 1997 No. 78 s 68

Existing leases continue

s 472 amd 2000 No. 2 s 32 sch

Right to a post-Wolfe freeholding lease

s 478 amd 1997 No. 78 s 69

Division 1—Occupation licences

div hdg amd 2007 No. 19 s 194

Cancellation

s 481 amd 2004 No. 4 s 44

sub 2007 No. 19 s 195

Absolute surrender

s 481A ins 2007 No. 19 s 195

Notice of proposal to cancel or surrender

s 481B ins 2007 No. 19 s 195

Notice of proposal to cancel or surrender

s 481C ins 2007 No. 19 s 195

Submissions

s 481D ins 2007 No. 19 s 195

Registration cancels occupation licence

s 481E ins 2007 No. 19 s 195

Registration surrenders occupation licence

s 481F ins 2007 No. 19 s 195

Notice of cancellation or absolute surrender

s 481G ins 2007 No. 19 s 195

Effect of cancellation or absolute surrender

s 481H ins 2007 No. 19 s 195

Person to give up possession on cancellation or absolute surrender

s 481I ins 2007 No. 19 s 195

Improvements

s 481J ins 2007 No. 19 s 195

Division 1A—Permits

div hdg ins 2007 No. 19 s 196

Existing permits continue

s 483 amd 1995 No. 57 s 4 sch 1

Existing concessions continue

s 487 amd 2004 No. 4 s 57 sch

Definitions for div 2

s 495 prov hdg amd 2007 No. 19 s 197

Application of prepaid rent

s 500 amd 1995 No. 57 s 4 sch 1

Division 2A—Further opportunity to convert certain perpetual town leases, that were previously miners homesteads, to freehold

div hdg ins 1997 No. 41 s 5

Objective

s 503A ins 1997 No. 41 s 5

Definitions for div 2A

s 503B ins 1997 No. 41 s 5
amd 2007 No. 19 s 198

Who may apply under this division

s 503C ins 1997 No. 41 s 5

Time within which application must be made

s 503D ins 1997 No. 41 s 5

How application is dealt with

s 503E ins 1997 No. 41 s 5

Lapse of offer

s 503F ins 1997 No. 41 s 5

Surrender of existing lease

s 503G ins 1997 No. 41 s 5

Existing encumbrances

s 503H ins 1997 No. 41 s 5

Credit for rent paids 503I ins 1997 No. 41 s 5
amd 1998 No. 48 s 17 sch**Division 2B—Treatment of special perpetual mining purposes leases under certain Acts**

div hdg ins 1998 No. 24 s 10

Special perpetual mining purposes leases become perpetual leases

s 503J ins 1998 No. 24 s 10

Replacement documents

s 503K ins 1998 No. 24 s 10

Changing tenures of port lands

s 504 amd 2001 No. 33 s 17; 2001 No. 71 s 551 sch 1

Changing tenures of harbour land

s 505 amd 2001 No. 71 s 551 sch 1

Existing cemeteries continue

s 506 amd 1995 No. 57 s 4 sch 1; 1997 No. 78 s 70 (retro)

PART 7A—BRIGALOW AND OTHER LANDS DEVELOPMENT PROVISIONS

pt hdg ins 1995 No. 57 s 4 sch 1

Definitions for pt 7A

prov hdg sub 1997 No. 78 s 71(1)

s 506A (prev 1962 No. 44 s 2) amd 1995 No. 57 s 4 sch 1

reloc 1995 No. 57 s 4 sch 1

amd 1997 No. 78 s 71(1)

def “**agreement**” sub 1995 No. 57 s 4 sch 1

sub 1997 No. 78 s 71(2)–(3)

def “**chief executive**” ins 1992 No. 64 s 3 sch 1

om 1995 No. 57 s 4 sch 1

def “**Commission**” om 1992 No. 64 s 3 sch 1def “**corporation**” sub 1992 No. 64 s 3 sch 1def “**declared area**” om 1995 No. 57 s 4 sch 1def “**explanatory format plan**” ins 2001 No. 33 s 18def “**fund**” ins 1994 No. 81 s 527 sch 5def “**Land Act**” sub 1994 No. 81 s 527 sch 5

om 1998 No. 48 s 17 sch

def “**Minister**” sub 1965 No. 62 s 2
 om 1992 No. 64 s 3 sch 1
 def “**repealed Act**” ins 1997 No. 78 s 71(3)

Corporation

s 506B (prev 1962 No. 44 s 4) sub 1992 No. 64 s 7
 reloc 1995 No. 57 s 4 sch 1

Corporation represents the Crown

s 506C (prev 1962 No. 44 s 5) amd 1967 No. 47 s 2; 1968 No. 48 s 3(2) sch 1
 sub 1992 No. 64 s 7
 reloc 1995 No. 57 s 4 sch 1
 amd 2001 No. 45 s 29 sch 3

Functions and powers

s 506D (prev 1962 No. 44 s 5A) ins 1992 No. 64 s 7
 amd 1995 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1

Undertaking by successful applicant

s 506E (prev 1962 No. 44 s 9) amd 1992 No. 64 s 3 sch 1; 1994 No. 81 s 527 sch 5;
 1995 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1
 amd 1998 No. 48 s 17 sch

Area limitations under this Act

s 506F (prev 1962 No. 44 s 15) amd 1992 No. 64 s 3 sch 1; 1994 No. 81 s 527 sch 5;
 1995 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1

Transfer

s 506G (prev 1962 No. 44 s 16) sub 1967 No. 47 s 6; 1992 No. 64 s 3 sch 1
 amd 1994 No. 81 s 527 sch 5; 1995 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1

When fee simple of lease may be acquired

prov hdg amd 1997 No. 78 s 72(1)
s 506H (prev 1962 No. 44 s 18) amd 1965 No. 62 s 5; 1967 No. 47 s 8; 1978 No. 4 s 2;
 1994 No. 81 s 527 sch 5; 1995 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1
 amd 1997 No. 78 s 72; 1998 No. 48 s 17 sch

Fund

s 506I (prev 1962 No. 44 s 20) amd 1994 No. 81 s 527 sch 5; 1995 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1
 amd 1997 No. 78 s 73

Further advances

s 506J (prev 1962 No. 44 s 24) om 1974 No. 57 s 8 sch
 ins 1978 No. 4 s 3
 reloc 1995 No. 57 s 4 sch 1
 om 1997 No. 78 s 74

Construction of instruments

- s 506K** (prev 1962 No. 44 s 24C) ins 1978 No. 4 s 3
 reloc 1995 No. 57 s 4 sch 1
 amd 1997 No. 78 s 75

Powers of corporation

- s 506L** (prev 1962 No. 44 s 25) amd 1995 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1

Restricted application of Bills of Sale and Other Instruments Act

prov hdg sub 1997 No. 78 s 76(1)

- s 506M** (prev 1962 No. 44 s 26) amd 1967 No. 47 s 12; 1995 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1
 amd 1997 No. 78 s 76(2)

No stamp duty

- s 506N** (prev 1962 No. 44 s 27) amd 1995 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1
 om 2001 No. 71 s 551 sch 1

Accounts

prov hdg sub 1997 No. 78 s 77

- s 506O** (prev 1962 No. 44 s 29) amd 1967 No. 47 s 13; 1992 No. 64 s 3 sch 1; 1995
 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1

Application of Act to purchase leases

- s 506P** (prev 1962 No. 44 s 30) amd 1994 No. 81 s 527 sch 5
 sub 1995 No. 57 s 4 sch 1
 reloc 1995 No. 57 s 4 sch 1
 amd 1997 No. 78 s 78; 1998 No. 48 s 17 sch

PART 8—GENERAL

pt hdg om 1998 No. 48 s 17 sch

Transitional regulations

- s 507** exp 1 July 1997 (see s 507(5))

CHAPTER 9—TRANSITIONAL AND REPEAL PROVISIONS

ch hdg sub 2000 No. 2 s 32 sch

PART 1—TRANSITIONAL PROVISIONS FOR ORIGINAL ACT (No. 81 OF 1994)

pt hdg sub 2000 No. 2 s 32 sch

References in Acts and documents

- s 511** amd 1995 No. 57 s 4 sch 1

Burdekin Irrigation Area freeholding leases

- s 515** exp 1 July 1998 (see s 515(3))

Existing local guidelines for broadscale tree clearing

- s 517** om 2004 No. 1 s 44(1) sch 1

Effect of repeal by this Act

- s 520** amd 2004 No. 4 s 57 sch

Continuation of certain provisions of repealed Act about Land Court and Land Appeal Court

s 521 amd 1995 No. 32 s 23 sch; 1995 No. 51 s 4 sch; 1996 No. 7 s 3; 1998 No. 48 s 17 sch
om 2000 No. 1 s 86 sch 1

PART 1A—TRANSITIONAL PROVISION FOR NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT ACT 2000

pt hdg ins 2000 No. 2 s 25

Lease of land under repealed Act, section 296(1)

s 521A ins 2000 No. 2 s 25

PART 1B—TRANSITIONAL PROVISIONS FOR GUARDIANSHIP AND ADMINISTRATION ACT 2000

pt hdg ins 2000 No. 8 s 263 sch 3

Performance of condition under previous s 207(1)(b) possible for 1 year

s 521B ins 2000 No. 8 s 263 sch 3

Authorisation under repealed s 384 continues for 1 year

s 521C ins 2000 No. 8 s 263 sch 3

PART 1C—TRANSITIONAL PROVISION FOR AUDIT LEGISLATION AMENDMENT ACT 2006

pt 1C (s 521D) ins 2006 No. 9 s 29

PART 1D—TRANSITIONAL PROVISIONS FOR LAND AND OTHER LEGISLATION AMENDMENT ACT 2007

pt hdg ins 2007 No. 19 s 199

Divesting and vesting trust land

521E ins 2007 No. 19 s 199 (amd 2007 No. 57 s 24)

Existing leases exempted from particular amendments

521F ins 2007 No. 19 s 199

Offer of additional area

521G ins 2007 No. 19 s 199

Forfeiture for outstanding amount

521H ins 2007 No. 19 s 199

Requirements for plan of subdivision

521I ins 2007 No. 19 s 199

Non-application of s 299A to particular documents

521J ins 2007 No. 19 s 199

Application made before commencement

521K ins 2007 No. 19 s 199

Continuance of power to substitute particular tenure or registered documents

521L ins 2007 No. 19 s 199

Permits to occupy and unallocated State land

521M ins 2007 No. 19 s 199

Dealing with disputes under particular subleases

s 521N ins 2007 No. 19 s 199

Exclusion of imposed condition reviews for particular leases

s 521O ins 2007 No. 19 s 199

PART 1E—TRANSITIONAL PROVISION FOR ABORIGINAL AND TORRES STRAIT ISLANDER LAND AMENDMENT ACT 2008

pt 1E (s 521P) ins 2008 No. 29 s 64

PART 2—REPEAL

pt hdg sub 1998 No. 48 s 17 sch

Completion of repeals 522 prev s 522 exp 1 January 1996 (see s 522(3))
pres s 522 ins 1998 No. 48 s 17 sch**Repeals on 1 January 1995**

s 523 om R1 (see RA s 40)

Repeals on commencements 524 amd R1 (see RA s 40)
om 1998 No. 48 s 17 sch**Amendment of Acts on assent—Sch 3**

s 525 om R1 (see RA s 40)

Amendment of Land Title Act—Sch 4

s 526 om R1 (see RA s 40)

Amendment of Acts on commencement—Sch 5

s 527 om R1 (see RA s 40)

SCHEDULE 1—COMMUNITY PURPOSES

amd 2007 No. 19 s 200

SCHEDULE 1A—PROVISIONS THAT INCLUDE MANDATORY CONDITIONS FOR TENURES

ins 2007 No. 19 s 201

SCHEDULE 2—ORIGINAL DECISIONS

amd 1995 No. 57 s 4 sch 1; 1997 No. 78 s 79; 2003 No. 10 s 29; 2004 No. 1 s 44(1) sch 1; 2004 No. 4 s 45; 2007 No. 19 s 202

SCHEDULE 3—AMENDMENT OF ACTS ON ASSENT

om R1 (see RA s 40)

SCHEDULE 4—AMENDMENT OF LAND TITLE ACT 1994

om R1 (see RA s 40)

SCHEDULE 5—AMENDMENT OF ACTS ON COMMENCEMENTamd 1995 No. 10 s 37; 1995 No. 32 s 23 sch; 1995 No. 57 s 4 sch 1
om R1 (see RA s 40)**SCHEDULE 6—DICTIONARY**

def “Aboriginal people particularly concerned with land” ins 2007 No. 19 s 203(2)

- def **“adjoining owner”** ins 2000 No. 2 s 26
sub 2007 No. 19 s 203(1)–(2)
- def **“adjustment notice”** ins 2007 No. 19 s 203(2)
- def **“agreement”** ins 2007 No. 19 s 203(2)
- def **“agriculture”** ins 2003 No. 20 s 6
- def **“amalgamation offer”** ins 2007 No. 19 s 203(2)
- def **“appeal expiration day”** ins 2007 No. 19 s 203(2)
- def **“appropriate form”** amd 2003 No. 6 s 141(2)
- def **“appropriate register”** amd 2007 No. 19 s 203(3)
- def **“broadscale tree clearing”** om 2004 No. 1 s 44(1) sch 1
- def **“building”** ins 2004 No. 9 s 80(1)
- def **“building management statement”** ins 2004 No. 9 s 80(1)
- def **“cancellation notice”** ins 2007 No. 19 s 203(2)
- def **“cane railway easement”** ins 2008 No. 22 s 41(1)
- def **“category”** ins 2007 No. 19 s 203(2)
- def **“caveatee”** ins 2007 No. 19 s 203(2)
- def **“caveator”** ins 2007 No. 19 s 203(2)
- def **“compliance notice”** ins 2003 No. 10 s 30
om 2004 No. 1 s 44(1) sch 1
- def **“compliance notice offence”** ins 2003 No. 10 s 30
om 2004 No. 1 s 44(1) sch 1
- def **“conditional deed”** ins 2007 No. 19 s 203(2)
- def **“conservation agreement”** ins 2007 No. 19 s 203(2)
- def **“conservation covenant”** ins 2007 No. 19 s 203(2)
- def **“conviction”** ins 2003 No. 10 s 30
- def **“corporation”** ins 2007 No. 19 s 203(2)
- def **“court”** amd 2000 No. 1 s 86 sch 1
- def **“criminal history”** ins 2003 No. 10 s 30
- def **“critical area”** om 1999 No. 90 s 96(1)
- def **“declared pest”** ins 2007 No. 19 s 203(2)
- def **“dedication notice”** ins 2007 No. 19 s 203(2) (amd 2007 No. 57 s 25)
- def **“deposit”** ins 2005 No. 68 s 49(2)
- def **“designated occupation licence”** ins 2007 No. 19 s 203(2)
- def **“designated officer”** ins 2007 No. 19 s 203(2)
- def **“designated person”** ins 2007 No. 19 s 203(2)
- def **“destroy”** om 2004 No. 1 s 44(1) sch 1
- def **“document”** ins 2004 No. 9 s 80(1)
- def **“document certification requirement”** ins 2003 No. 10 s 30
om 2004 No. 1 s 44(1) sch 1
- def **“document production requirement”** ins 2003 No. 10 s 30
om 2004 No. 1 s 44(1) sch 1
- def **“earlier plan of subdivision”** ins 2005 No. 68 s 49(2)
- def **“electronic communication”** ins 2003 No. 6 s 141(1)
- def **“encumbrance”** ins 2000 No. 2 s 26
- def **“enforcement warrant”** ins 1998 No. 20 s 27 sch 2
- def **“environmentally sensitive area”** sub 1999 No. 90 s 96(1)–(2) (amd
2000 No. 35 s 22)
- def **“existing lease”** ins 2007 No. 19 s 203(2)
- def **“existing leases”** ins 2007 No. 19 s 203(2)

- def “**explanatory format plan**” ins 2001 No. 33 s 18
amd 2004 No. 9 s 80(2)
- def “**floating reservation**” ins 2007 No. 19 s 203(2)
- def “**forest reserve**” ins 2007 No. 19 s 203(2)
- def “**freehold land**” ins 2007 No. 19 s 203(2)
- def “**full supply level**” ins 2007 No. 19 s 203(2)
- def “**fund**” ins 2007 No. 19 s 203(2)
- def “**future conservation area**” ins 2007 No. 19 s 203(2)
- def “**GPS**” ins 2007 No. 19 s 203(2)
- def “**grazing homestead perpetual lease**” sub 2007 No. 19 s 203(1)–(2)
- def “**identifiable fixed features**” ins 2007 No. 19 s 203(2)
- def “**ILUA register**” ins 2007 No. 19 s 203(2)
- def “**image base**” ins 2007 No. 19 s 203(2)
- def “**imposed condition**” ins 2007 No. 19 s 203(2)
- def “**indigenous access and use agreement**” ins 2007 No. 19 s 203(2)
- def “**indigenous land use agreement**” ins 2007 No. 19 s 203(2)
- def “**land degradation**” ins 1999 No. 90 s 96(2)
sub 2007 No. 19 s 203(1)–(2)
- def “**land management agreement**” ins 2007 No. 19 s 203(2)
- def “**land registry**” ins 2007 No. 19 s 203(2)
- def “**lease**” sub 2007 No. 19 s 203(1)–(2)
- def “**lease land**” ins 2007 No. 19 s 203(2)
- def “**lessee**” sub 2007 No. 19 s 203(1)–(2)
- def “**licence**” sub 2007 No. 19 s 203(1)–(2)
- def “**licence land**” ins 2007 No. 19 s 203(2)
- def “**lopping**” sub 2005 No. 68 s 49
- def “**lot**” ins 2004 No. 9 s 80(1)
- def “**mandatory condition**” ins 2007 No. 19 s 203(2)
- def “**mandatory standard terms document**” ins 2007 No. 19 s 203(2)
- def “**Map Grid of Australia 1994**” ins 2007 No. 19 s 203(2)
- def “**marker**” ins 2007 No. 19 s 203(2)
- def “**mill owner**” ins 2008 No. 22 s 41(1)
- def “**miners homestead**” sub 2007 No. 19 s 203(1)–(2)
- def “**mining titles freeholding lease**” ins 1995 No. 32 s 23 sch
- def “**monitoring device**” ins 2007 No. 19 s 203(2)
- def “**monitoring site**” ins 2007 No. 19 s 203(2)
- def “**national park**” ins 2000 No. 44 s 42 sch
- def “**native title registrar**” ins 2007 No. 19 s 203(2)
- def “**natural environmental values**” ins 2007 No. 19 s 203(2)
- def “**natural resource**” ins 2007 No. 19 s 203(2)
- def “**NCA department**” ins 2007 No. 19 s 203(2)
- def “**new plan of subdivision**” ins 2005 No. 68 s 49(2)
- def “**noxious plant**” sub 2002 No. 12 s 329 sch 2
amd 2007 No. 19 s 203(4)
- def “**occupier**” ins 2003 No. 10 s 30
om 2004 No. 1 s 44(1) sch 1
- def “**offer**” ins 2007 No. 19 s 203(2)
- def “**operational reserve**” ins 2007 No. 19 s 203(2)
- def “**pastoral lease**” ins 2000 No. 2 s 26
amd 2007 No. 19 s 203(5)

- def “**permanent road closure application**” ins 2007 No. 19 s 203(2)
- def “**permit**” sub 2007 No. 19 s 203(1)–(2)
- def “**permit land**” ins 2007 No. 19 s 203(2)
- def “**permittee**” sub 2007 No. 19 s 203(1)–(2)
- def “**plan of subdivision**” ins 2004 No. 9 s 80(1)
- def “**pre-Wolfe freeholding lease**” amd 1995 No. 32 s 23 sch; 1997 No. 78 s 80(2)
- def “**property vegetation management plan**” ins 1999 No. 90 s 96 (amd 2000 No. 35 s 22)
sub 2004 No. 1 s 44(1) sch 1
- def “**public purpose**” sub 2007 No. 19 s 203(1)–(2)
- def “**public thoroughfare easement**” ins 2007 No. 19 s 203(2)
- def “**public use land**” ins 2007 No. 19 s 203(2)
- def “**public utility provider**” sub 2007 No. 19 s 203(1)–(2)
amd 2008 No. 22 s 41(2)
- def “**rail land**” ins 2007 No. 19 s 203(2)
- def “**reasonably believe**” ins 2003 No. 10 s 30
- def “**reasonably suspect**” ins 2003 No. 10 s 30
- def “**relevant local government**” ins 2007 No. 19 s 203(2)
- def “**relevant section**” ins 2005 No. 68 s 49(2)
- def “**relevant tenure**” ins 2007 No. 19 s 203(2)
- def “**remedial action order**” ins 2007 No. 19 s 203(2)
- def “**repealed Act**” sub 2007 No. 19 s 203(1)–(2)
- def “**repealed miners homestead Acts**” sub 2007 No. 19 s 203(1)–(2)
- def “**required particulars**” ins 2007 No. 19 s 203(2)
- def “**reserve**” amd 2007 No. 19 s 203(6)
- def “**revocation notice**” ins 2007 No. 19 s 203(2)
- def “**road closure application**” amd 2007 No. 19 s 203(7)
- def “**rural leasehold land**” ins 2007 No. 19 s 203(2) (amd 2007 No. 48 s 41)
- def “**set rent**” sub 1996 No. 7 s 8
amd 2007 No. 19 s 203(8)
- def “**show cause period**” ins 2003 No. 10 s 30
- def “**special perpetual mining purposes lease**” ins 2007 No. 19 s 203(2)
- def “**spent conviction**” ins 2003 No. 10 s 30
- def “**standard document**” om 1997 No. 78 s 80(1)
- def “**standard format**” ins 2004 No. 9 s 80(1)
- def “**standard format lot**” ins 2004 No. 9 s 80(1)
- def “**State housing lease**” sub 2003 No. 52 s 153 sch 2
- def “**State lease**” ins 2007 No. 19 s 203(2)
- def “**statutory body**” amd 2004 No. 4 s 46
- def “**subdivision offer**” ins 2007 No. 19 s 203(2)
- def “**surrender notice**” ins 2007 No. 19 s 203(2)
- def “**temporary road closure application**” ins 2007 No. 19 s 203(2)
- def “**term lease**” ins 2007 No. 19 s 203(2)
- def “**tidal boundary**” ins 2005 No. 68 s 49(2)
- def “**tidal boundary plan of subdivision**” ins 2005 No. 68 s 49(2)
- def “**Torres Strait Islanders particularly concerned with land**” ins 2007 No. 19 s 203(2)
- def “**transferrable land**” ins 2007 No. 19 s 203(2)
- def “**transition to sale agreement**” ins 2007 No. 19 s 203(2)

- def “**transport land**” ins 2004 No. 9 s 80(1)
 amd 2005 No. 67 s 17
- def “**tree clearing offence**” ins 2003 No. 10 s 30
 om 2004 No. 1 s 44(1) sch 1
- def “**tree clearing provision**” ins 2003 No. 10 s 30
 om 2004 No. 1 s 44(1) sch 1
- def “**trustee of trust land notice**” ins 2007 No. 19 s 203(2)
- def “**trustees**” amd 2001 No. 92 s 15
- def “**unallocated State land**” amd 2007 No. 19 s 203(9)
- def “**urban development area**” ins 2007 No. 41 s 236
- def “**Urban Land Development Authority**” ins 2007 No. 41 s 236
- def “**vegetation clearing offence**” ins 2004 No. 1 s 44(1) sch 1
- def “**Vegetation Management Act**” ins 2003 No. 10 s 30
- def “**volumetric format**” ins 2004 No. 9 s 80(1)
- def “**writ of execution**” ins 1998 No. 20 s 27 sch 2

8 List of forms notified or published in the gazette

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

Form 1 Version 5—Transfer

pubd gaz 23 March 2007 p 1249

Form 2 Version 4—Mortgage

pubd gaz 23 March 2007 p 1249

Form 3 Version 4—Release of Mortgage

pubd gaz 23 March 2007 p 1249

Form 4 Version 5—Request to Record Death

pubd gaz 23 March 2007 p 1249

Form 5 Version 6—Transmission Application by Personal Representative (Grant in Queensland)

pubd gaz 23 March 2007 p 1249

Form 5A Version 5—Transmission Application by Personal Representative (No Grant in Queensland)

pubd gaz 23 March 2007 p 1249

Form 6 Version 6—Transmission Application for Registration as Devisee/Legatee

pubd gaz 23 March 2007 p 1249

Form 7 Version 6—Lease/Sub-Lease

pubd gaz 23 March 2007 p 1249

Form 8 Version 4—Surrender of Lease

pubd gaz 23 March 2007 p 1249

Form 9 Version 4—Easement

pubd gaz 23 March 2007 p 1248

Form 10 Version 4—Surrender of Easement

pubd gaz 23 March 2007 p 1248

Form 12 Version 4—Request to Register Writ/Warrant of Execution

pubd gaz 23 March 2007 p 1249

Form 13 Version 6—Amendment

pubd gaz 23 March 2007 p 1249

Form 14 Version 4—General Request

pubd gaz 23 March 2007 p 1249

Form 16 Version 4—Request to Register Power of Attorney/Revocation of Power of Attorney

pubd gaz 23 March 2007 p 1248

Form 17 Version 4—Request to Dispense with Production of Instrument

pubd gaz 23 March 2007 p 1248

Form 18 Version 5—General Consent

pubd gaz 23 March 2007 p 1249

Form 20 Version 2—Schedule/Enlarged Panel/Declaration

pubd gaz 22 August 2003 p 1327

Form 29 Version 3—Profit a Prendre

pubd gaz 23 March 2007 p 1248

Form 30 Version 3—Mortgage Priority

pubd gaz 23 March 2007 p 1249

Form 31 Version 3—Covenant

pubd gaz 23 March 2007 p 1248

Form 32 Version 3—Building Management Statement

pubd gaz 23 March 2007 p 1248

Form 33 Version 3—Release of Covenant/Profit a Prendre

pubd gaz 23 March 2007 p 1248

Form 34 Version 3—Extinguishment of Building Management Statement

pubd gaz 23 March 2007 p 1248

9 Information about retrospectivity

Retrospective amendments that have been consolidated are noted in the list of legislation and list of annotations. Any retrospective amendment that has not been consolidated is noted in footnotes to the text.

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