



# Aboriginal Land Act 1991

Reprinted as in force on 1 July 2009

Reprint No. 7B

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**Also see endnotes for information about—**

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

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## Queensland

# Aboriginal Land Act 1991

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# Aboriginal Land Act 1991

[as amended by all amendments that commenced on or before 1 July 2009]

## **An Act providing for the grant, and the claim and grant, of land as Aboriginal land, and for other purposes**

Whereas—

- 1 Before European settlement land in what is now the State of Queensland had been occupied, used and enjoyed since time immemorial by Aboriginal people in accordance with Aboriginal tradition.
- 2 Land is of spiritual, social, historical, cultural and economic importance to Aboriginal people.
- 3 After European settlement many Aboriginal people were dispossessed and dispersed.
- 4 Some Aboriginal people have maintained their ancestors' traditional affiliation with particular areas of land.
- 5 Some Aboriginal people have a historical association with particular areas of land based on them or their ancestors having lived on or used the land or neighbouring land.
- 6 Some Aboriginal people have a requirement for land to ensure their economic or cultural viability.
- 7 Some land has been set aside for Aboriginal reserves or for the benefit of Aboriginal people and deeds of grant in trust are held on behalf of certain Aboriginal people.
- 8 The Parliament is satisfied that Aboriginal interests and responsibilities in relation to land have not been adequately and appropriately recognised by the law and that this has contributed to a general failure of previous policies in relation to Aboriginal people.

[s 1]

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- 9 The Parliament is further satisfied that special measures need to be enacted for the purpose of securing adequate advancement of the interests and responsibilities of Aboriginal people in Queensland and to rectify the consequences of past injustices.
- 10 It is, therefore, the intention of the Parliament to make provision, by the special measures enacted by this Act, for the adequate and appropriate recognition of the interests and responsibilities of Aboriginal people in relation to land and thereby to foster the capacity for self-development, and the self-reliance and cultural integrity, of the Aboriginal people of Queensland.

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Aboriginal Land Act 1991*.

### **3 Definitions**

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

### **4 Aborigines particularly concerned with land etc.**

- (1) For the purposes of this Act, an Aborigine is particularly concerned with land if the Aborigine—
  - (a) has a particular connection with the land under Aboriginal tradition; or
  - (b) lives on or uses the land or neighbouring land.
- (2) For the purposes of this Act, Aboriginal people are particularly concerned with land if—



- (a) they are members of a group that has a particular connection with the land under Aboriginal tradition; or
- (b) they live on or use the land or neighbouring land.

## **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.

# **Part 2 Basic concepts**

## **Division 1 Aboriginal people and their traditions**

### **7 Meaning of Aboriginal people**

Aboriginal people are people of the Aboriginal race of Australia.

### **8 Meaning of Aborigine**

An Aborigine is a person of the Aboriginal race of Australia.

### **9 Meaning of Aboriginal tradition**

Aboriginal tradition is the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

## **Division 2                    Aboriginal land**

### **10        Meaning of Aboriginal land**

- (1) Aboriginal land is—
  - (a) transferred land, that is, transferable land that is granted under this Act without a claim being made under this Act for the land; or
  - (b) granted land, that is—
    - (i) claimable land that has been claimed by, and is granted under this Act to, a group of Aboriginal people; or
    - (ii) claimable land that, under section 67, has been included in a deed of grant or lease.
- (2) Aboriginal land also includes land that is the subject of an Aboriginal lease.
- (3) Aboriginal land includes land that was transferred land and has subsequently become granted land.

## **Division 3                    Transferable and transferred land**

### **11        Meaning of transferable and transferred land**

- (1) Transferable land is land that is to be granted under part 3 without a claim being made under this Act for the land.
- (2) Transferred land is land that is granted under part 3 without a claim being made under this Act for the land.

### **12        Lands that are transferable lands**

- (1) The following lands are transferable lands—
  - (a) DOGIT land;
  - (b) Aboriginal reserve land;

- (c) Aurukun Shire lease land;
  - (d) Mornington Shire lease land;
  - (e) available State land declared by regulation to be transferable land;
  - (f) land that is transferable land under section 83K or 83L;
  - (g) land that becomes transferable land under section 114A.
- (2) However, land mentioned in subsection (1)—
- (a) ceases to be transferable land if it is taken, under the Acquisition Act, by a constructing authority; and
  - (b) if the land is Aboriginal trust land—is not transferable land if it is subject to a lease for more than 30 years granted under this Act for a commercial purpose; and
  - (c) is not transferable land if it is the subject of a declaration in force under section 16B.

### **13 DOGIT land**

- (1) DOGIT land is land that, at the beginning of the enactment day, is—
- (a) granted in trust under the *Land Act 1962* for the benefit of Aboriginal inhabitants or for the purpose of an Aboriginal reserve; or
  - (b) within the external boundaries of an area of such land and—
    - (i) is reserved and set apart for, or dedicated to, a public purpose under the *Land Act 1962*; or
    - (ii) is land that has become unallocated State land by way of resumption for a public purpose within the meaning of the *Land Act 1962*; or
    - (iii) is subject to a lease granted under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*; or

[s 14]

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(iv) is subject to a special lease granted under the *Land Act 1962*;

other than—

(v) a road; or

(vi) a stock route or associated reserve;

and includes land within those external boundaries that has, since the enactment day, ceased to be a road if the land is declared by regulation to be transferable land.

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

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

(b) becomes a road after the commencement.

## 14 Aboriginal reserve land

Aboriginal reserve land is land that, at the beginning of the enactment day, is—

(a) reserved and set apart under the *Land Act 1962* for an Aboriginal reserve or for the benefit of Aboriginal inhabitants; or

(b) within the external boundaries of an area of such land and subject to a lease granted under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*;

and includes land reserved and set apart under the *Land Act 1962* for any other public purpose if the land is declared by regulation to be land that was, or is included in land that was, at the beginning of the enactment day, being used as an Aboriginal reserve or for the benefit of Aboriginal people.

## 15 Aurukun Shire lease land

(1) Aurukun Shire lease land is land that, at the beginning of the enactment day, is—

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- (a) demised to the council of the Shire of Aurukun under the *Local Government (Aboriginal Lands) Act 1978*; or
  - (b) within the external boundaries of that land and reserved and set apart for, or dedicated to, a public purpose under the *Land Act 1962*, other than—
    - (i) a road; or
    - (ii) a stock route or associated reserve;

and includes land within those external boundaries that has, since the enactment day, ceased to be a road if the land is declared by regulation to be transferable land.

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

## 16 Mornington Shire lease land

- (1) Mornington Shire lease land is land that, at the beginning of the enactment day, is—
  - (a) demised to the council of the Shire of Mornington under the *Local Government (Aboriginal Lands) Act 1978*; or
  - (b) within the external boundaries of that land and reserved and set apart for, or dedicated to, a public purpose under the *Land Act 1962*, other than—
    - (i) a road; or
    - (ii) a stock route or associated reserve;

and includes land within those external boundaries that has, since the enactment day, ceased to be a road if the land is declared by regulation to be transferable land.

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

[s 16A]

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

## **Division 3A                      Declarations about particular transferable land**

### **16A      Definition for div 3A**

In this division—

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

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

### **16B      Particular land may be declared to be not transferable land**

- (1) The Minister may, by gazette notice, make a declaration under this division that relevant land is not transferable land if the Minister is satisfied that—
  - (a) housing or essential or other infrastructure is situated on the land; or
  - (b) the land is being used as a town site or part of a town site by the Aboriginal people on the land; or
  - (c) the land is being used as if it were a road; or
  - (d) having regard to the nature or use of the land, it is not appropriate or practicable in the circumstances for the land to be granted in fee simple under this Act.

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

## **16C Notice of intention to make declaration**

- (1) If the Minister intends to make a declaration under section 16B, the Minister must—
  - (a) give written notice of the Minister's intention to make the declaration to the trustee of the relevant land; and
  - (b) within 10 business days after giving the notice under paragraph (a), publish notice of the Minister's intention to make the declaration in a newspaper or other publication circulating generally in the area where the relevant land is situated; and
  - (c) consider all representations made under subsection (4).
- (2) The notice must—
  - (a) include a description of the relevant land; and
  - (b) state the following—
    - (i) the reasons for the proposed declaration;

[s 16D]

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- (ii) that a person may make written representations to the Minister about the proposed declaration;
  - (iii) the place where the representations may be made;
  - (iv) the period in which the representations must be made.
- (3) The stated period must end at least 28 days after the notice is published.
- (4) A person may make written representations about the proposed declaration to the Minister within the stated period.

#### **16D Minister to consider representations and give notice of decision**

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

#### **16E Appeal against particular decision**

- (1) If the Minister proposes to make the declaration under section 16B(1)(d), a person who made representations to the Minister



under this division about the proposed declaration may appeal to the Land Court against the decision.

- (2) An appeal is started by filing written notice of appeal with the registrar of the Land Court.
- (3) The notice of appeal must be filed within 28 days after the person receives notice of the decision.
- (4) However, the Land Court may, at any time within the 28 days, extend the period for making the appeal.
- (5) The appeal is by way of rehearing, unaffected by the decision, on the material before the Minister and any further evidence allowed by the Land Court.

#### **16F Powers of Land Court on appeal**

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

#### **16G Notice about declarations—trustee**

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

[s 16H]

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## **16H Notice about declarations—registrar**

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

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

- (1) This section applies if—
  - (a) under section 16B, the Minister declares land is not transferable land; and
  - (b) a plan of subdivision is lodged for the land under the Land Title Act or Land Act for the purpose of identifying the land; and
  - (c) the plan of subdivision has been consented to by the Minister.
- (2) The registrar must register the plan of subdivision without the consent of anyone whose consent would otherwise have been required under the relevant section if the plan otherwise complies with the relevant section.
- (3) In this section—

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*relevant section* means—

- (a) for freehold land—the Land Title Act, section 50; or
- (b) for other land—the Land Act, section 290J.

## **Division 4                      Claimable and granted land**

### **17            Meaning of claimable and granted land**

- (1) Claimable land is land that may be claimed by, and granted under this Act to, a group of Aboriginal people.
- (2) Granted land is—
  - (a) claimable land that has been claimed by, and granted under this Act to, a group of Aboriginal people; or
  - (b) claimable land that, under section 67, has been included in a deed of grant or lease.

### **18            Lands that are claimable lands**

- (1) Subject to subsection (3), claimable land is—
  - (a) available State land declared by regulation to be claimable land for this Act; or
  - (b) Aboriginal land that is transferred land.
- (2) A declaration under subsection (1)(a) may describe the available State land concerned in any way, including, for example, describing the land as land included in a stated area of the State.
- (3) A regulation may declare that an area of transferred land is not claimable land.
- (4) A declaration under subsection (3) may be made only if—
  - (a) the land is primarily used or occupied by Aboriginal people for residential or community purposes; or
  - (b) the Minister has consulted with Aboriginal people particularly concerned with the land and a substantial

[s 19]

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majority of the Aboriginal people are opposed to the land being claimable land.

## **Division 5 Available State land**

### **19 Lands that are available State land—general**

- (1) Subject to subsection (2) and sections 20 and 21, available State land is land in which no person other than the State has an interest, other than—
  - (a) land inside the Torres Strait area; or
  - (b) city or town land or township land; or
  - (c) a reserve under the Land Act; or
  - (d) land that is set apart and declared as a State forest or timber reserve under the *Forestry Act 1959*; or
  - (e) a road; or
  - (f) a stock route; or
  - (g) land subject to a special mining Act; or
  - (h) land that has become unallocated State land if a person has a right, other than under this Act, against the State to the grant of an interest in that land.
- (2) A regulation may declare land inside the Torres Strait area to be available State land if it is land in which no person, other than the State, has an interest.
- (3) In this section—

*interest* means a legal or equitable interest in the land, but does not include native title, a mining interest or an easement.

### **20 Beds and banks of watercourses and lakes**

Available State land includes the bed and banks of a watercourse or lake only if the bed and banks are—

- (a) within the external boundaries of land that is otherwise available State land; and
- (b) capable of being owned in fee simple by a person other than the State.

## **21 Tidal land**

- (1) Available State land includes tidal land only if the particular tidal land is declared by regulation to be available State land.
- (2) Subject to subsection (1), this Act applies to tidal land as if it were not tidal land.

## **22 Meaning of city or town land**

- (1) Subject to subsection (2), city or town land is land that is, at the beginning of the enactment day, within the boundaries of a city or town constituted under the *Local Government Act 1993* or the *City of Brisbane Act 1924*.
- (2) A regulation may change the boundaries of a city or town.
- (3) A regulation under subsection (2) has effect only for this Act.

## **23 Meaning of township land**

A regulation may declare that land is township land for this Act.

## **24 National parks**

To allay any doubt, it is declared that available State land includes any national park.

## **25 Lands that are not available State land**

To allay any doubt, it is declared that the following lands are not available State lands—

[s 25]

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- (a) the waters of the sea, and the seabed (other than tidal land that is available State land under a declaration under section 21);
- (b) freehold land;
- (c) an associated reserve;
- (d) land subject to a permit under the Land Act, including, for example, a permit to occupy;
- (e) land subject to a licence under the Land Act, including, for example—
  - (i) an occupation licence; or
  - (ii) a road licence;
- (f) land subject to a lease under the Land Act, including, for example—
  - (i) an agricultural farm; and
  - (ii) an auction perpetual lease; and
  - (iii) an auction purchase freehold; and
  - (iv) a grazing homestead freeholding lease; and
  - (v) a perpetual lease selection; and
  - (vi) a special lease purchase freehold; and
  - (vii) a grazing homestead perpetual lease; and
  - (viii) a perpetual lease; and
  - (ix) a perpetual lease (non-competitive); and
  - (x) a pastoral lease; and
  - (xi) a stud holding; and
  - (xii) a development lease; and
  - (xiii) a special lease; and
  - (xiv) a term lease; and
  - (xv) a perpetual lease; and
  - (xvi) a freeholding lease.

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## **Division 6                      Application of laws to Aboriginal land**

### **26            Application of laws**

- (1) To allay any doubt, it is declared that, except as provided by this Act or any other Act, the laws of the State apply to Aboriginal land, persons and things on Aboriginal land, and acts and things done on Aboriginal land, to the same extent, and in the same way, as if the land were not Aboriginal land.
- (2) Without limiting subsection (1), to allay any doubt it is declared that this Act has effect subject to the *Fisheries Act 1994*.

## **Part 2A                      Formal expression of interest about land**

### **26A        Purpose of pt 2A**

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

### **26B        Land to which pt 2A applies**

This part applies to the following land—

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

[s 26C]

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

- (1) Aboriginal people particularly concerned with land mentioned in section 26B may, by notice given to the chief executive (an *expression of interest*), express an interest in having the land made transferable land.
- (2) The expression of interest must—
  - (a) be in the approved form; and
  - (b) include the details required in the approved form to enable the chief executive to properly consider the expression of interest.

**26D Chief executive to consider expression of interest**

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

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

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



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## **Part 3**                      **Grant of transferable land as Aboriginal land**

### **Division 1**                **Grant of land**

#### **27**        **Deeds of grant to be prepared**

- (1) The chief executive must prepare such deeds of grant in fee simple as the Minister considers necessary and directs over transferable lands.
- (2) Transferable land need not be surveyed but may be described in a deed of grant in such manner as the Minister directs.
- (3) The deed of grant must show that the land is held by the grantees—
  - (a) if the grantee is a registered native title body corporate—for the native title holders of the land; or
  - (b) otherwise—for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants.
- (4) If the grantee is a registered native title body corporate, the deed of grant also must include information to identify the native title holders of the land.
- (5) Subsections (2), (3) and (4) have effect despite any other Act or any rule of law or practice.

#### **27A**        **Appointment of registered native title body corporate as grantee**

- (1) This section applies to transferable land if—
  - (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
  - (b) there is a registered native title body corporate for the determination.

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- (2) The Minister may, with the consent of the registered native title body corporate, appoint the body corporate to be the grantee of the land under a deed of grant prepared under section 27.
- (3) If the Minister appoints the registered native title body corporate to be the grantee of the land, the body corporate holds the land for the native title holders of the land the subject of the determination mentioned in subsection (1)(a).
- (4) In considering whether to appoint a registered native title body corporate under this section, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example—
  - (a) whether the making of the proposed appointment was a matter relevant to the native title claim under the Commonwealth Native Title Act that resulted in the determination that native title existed in relation to all or a part of the land; and
  - (b) whether any Aboriginal persons particularly concerned with the land, other than the native title holders of the land, may be adversely affected by the proposed appointment; and
  - (c) if the Minister is satisfied Aboriginal persons particularly concerned with the land will be adversely affected by the proposed appointment—any action the registered native title body corporate intends to take to address the concerns of the Aboriginal people.
- (5) If land is granted to a registered native title body corporate, a provision of this Act about the incorporation of grantees as a land trust on the grant of land does not apply in relation to the registered native title body corporate.

## **28 Minister to appoint particular trustees**

- (1A) This section applies if the Minister does not appoint, under section 27A, a registered native title body corporate as the grantee of land.

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- (1) The Minister must appoint such persons as the Minister considers necessary to be the grantees, as trustees for the benefit of Aboriginal people, of the land.
  - (2) The Minister may—
    - (a) remove or suspend trustees appointed under subsection (1); or
    - (b) appoint other persons as trustees.
  - (3) Before exercising powers under this section, the Minister must consult with, and consider the views of, Aboriginal people particularly concerned with the land.
  - (4) In exercising powers under this section, the Minister must, as far as practicable, act in a way that is consistent with any Aboriginal tradition applicable to the land concerned.
  - (5) Despite subsection (4), the Minister may appoint the trustees of transferable land to be the grantees of a deed of grant over the land, or part of the land, if—
    - (a) a declaration is in force under section 18(3) in relation to the land; or
    - (b) the Minister considers that in all the circumstances it is appropriate to do so.

## **28A Procedure for appointing grantees**

- (1) Before appointing grantees under this part, the Minister must—
  - (a) publish notice of the Minister's intention to appoint the grantees in a newspaper or other publication circulating generally in the area in which the land the subject of the deed of grant is situated; and
  - (b) consider all representations made to the Minister under subsection (4).
- (2) The notice must—
  - (a) include a description of the land; and
  - (b) state the following—

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- (i) the name of each proposed grantee;
  - (ii) that an Aboriginal person particularly concerned with the land may make written representations to the Minister about the proposed appointment;
  - (iii) the place where the representations may be made;
  - (iv) the period in which the representations must be made.
- (3) The stated period must end at least 28 days after the notice is published.
  - (4) An Aboriginal person particularly concerned with the land may make written representations about the proposed appointment to the Minister within the stated period.

## **28B Application of Trusts Act 1973**

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

## **29 Minister to act as soon as possible**

- (1) The Minister must, as soon as practicable after the commencement of sections 27 and 28, give all necessary directions under section 27, and make all necessary appointments under section 28, in relation to land that is transferable land on the enactment day.
- (2) If, under section 12(e) or 14, land becomes transferable land after the enactment day, the Minister must, as soon as practicable after the land becomes transferable land, give all

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necessary directions under section 27, and make all necessary appointments under section 27A or 28, in relation to the land.

**30 Authority to grant fee simple in transferable land**

The Governor in Council may, under this Act and the Land Act, grant transferable land in fee simple.

**31 Inclusion of additional areas in deed of grant**

- (1) An additional area of transferable land may be included in a deed of grant under section 30 if the Minister has consulted with Aboriginal people particularly concerned with each area of land and a substantial majority of them agree that the additional area should be included in the deed of grant.
- (2) Despite subsection (1), an additional area of transferable land may not be included in a deed of grant for Aboriginal land held by a registered native title body corporate.

**32 Deed of grant takes effect on delivery**

- (1) A deed of grant issued under section 27 takes effect on the delivery of the deed to the grantees.
- (2) On delivery of the deed of grant to the grantees, the land the subject of the deed becomes Aboriginal land that is transferred land.
- (3) Subsection (1) has effect despite any other Act or any rule of law or practice.

**33 Existing interests**

- (1) If transferable land was, immediately before becoming Aboriginal land under this division, subject to an interest or benefited by an easement, the interest continues in force or the land continues to be benefited by the easement.

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- (2) Without limiting subsection (1), if transferable land was, immediately before becoming Aboriginal land under this division, the subject of—
  - (a) a lease granted under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*; or
  - (b) a lease under the Land Act;the trustee of the land is, by operation of this section, substituted for the lessor as a party to the lease.
- (3) The terms of a lease mentioned in subsection (2) are not affected by the operation of this section, section 34 or any other provision of this Act and, for the purposes of those terms, the Land Act continues to apply to a lease under that Act, with all necessary modifications and such modifications as are prescribed, as if the lease continued to be such a lease and the trustee of the land were the lessor.
- (4) In this section—

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

### **34 Interests to be endorsed on deed**

- (1) If land the subject of a deed of grant prepared under section 27 is, at the beginning of the enactment day, subject to, or subsequently becomes subject to, an interest (other than an interest in favour of the State or Commonwealth that is not registered) and the interest is created under the *Local Government (Aboriginal Lands) Act 1978*, the council of the relevant shire must, as soon as practicable after being requested so to do by the registrar of titles, give to the registrar the original or an office copy of the instrument under which the interest arose.
- (2) Before the registrar of titles issues the deed of grant, the registrar must endorse on the deed, in the proper order of priority—
  - (a) the instruments—

- 
- (i) given to the registrar under subsection (1); or
  - (ii) created or registered under the Land Act and held by the registrar;  
before the issue of the deed; and
  - (b) if the land was previously held under a deed of grant in trust—any existing instruments that were endorsed on the deed of grant in trust.
- (3) An instrument endorsed on the deed of grant under subsection (2) has effect as a registered instrument on the deed under the Land Title Act.
- (4) If the registrar of titles is given notice of the creation of an interest after the issue of the deed of grant, the registrar of titles must make an appropriate note in the register.

### **35 Cancellation of deed of grant in trust**

If—

- (a) a community government under the *Local Government (Community Government Areas) Act 2004* holds title to land under a deed of grant in trust under the Land Act; and
- (b) a deed of grant (the *new deed*) over the whole or a part of the land takes effect under section 32;

the deed of grant in trust is cancelled, to the extent of the new deed, by operation of this section.

### **36 Cancellation of leases over Aurukun and Mornington Shire lease lands**

- (1) When a deed of grant over the whole or a part of Aurukun Shire lease land or Mornington Shire lease land takes effect under section 32, the lease granted to the relevant council under the *Local Government (Aboriginal Lands) Act 1978* is cancelled, to the extent of the deed of grant, by operation of this section.

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- (2) To allay any doubt, if a lease is cancelled only in relation to part of the land, a reference in the *Local Government (Aboriginal Lands) Act 1978* to the demised land is a reference to the remaining part of the land.

**37 Registrar of titles must take action etc. to resolve difficulties**

If a difficulty arises in the application of this division by the registrar of titles, the registrar must take such action and give such directions as the registrar considers necessary to resolve the difficulty.

**38 Land Court may resolve difficulties**

- (1) If a difficulty arises in—
- (a) the application of this division to a particular matter; or
  - (b) the application, to a particular matter, of a provision of another Act because of the operation of this division;
- the Land Court may, on the application of the registrar of titles or an interested person, make such order as it considers proper to resolve the difficulty.
- (2) An order made under subsection (1) has effect despite anything contained in this division or in an Act in force immediately before the commencement of this section.

**Division 2 Dealing with transferred land**

**Subdivision 1 General**

**39 Power to deal with transferred land**

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



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

*Note—*

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

#### **40 Requirement for consultation**

- (1) The trustee of transferred land must not deal with the land unless—
  - (a) the trustee has explained to the Aboriginal people particularly concerned with the land the nature, purpose and effect of the dealing; and
  - (b) the Aboriginal people are given a suitable opportunity to express their views on, and are generally in agreement with, the dealing.
- (2) Despite section 40ZJ, dealing with land in contravention of subsection (1) is not void under that section.

[s 40A]

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(3) In this section—

*deal*, with land, means—

- (a) grant a lease, other than under section 40D(1)(a) for private residential purposes, for more than 10 years over the land; or
- (b) grant a licence for the use of the land for more than 10 years; or
- (c) grant or otherwise create an interest in the land that is not a lease or a licence for the use of the land; or
- (d) dedicate a part of the land to public use; or
- (e) surrender any of the land to the State.

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

#### **40A Provision about Minister's consent**

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

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## **40B Provision about particular leases**

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

## **Subdivision 2 Sale or mortgage prohibited**

### **40C Prohibition on sale or mortgage of transferred land**

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

## **Subdivision 3 Grant of leases**

### **40D Grant of lease for transferred land**

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

[s 40E]

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

#### **40E Particular restrictions on grant of leases**

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

*Examples of another purpose for paragraph (b)—*

a commercial purpose or providing public infrastructure

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

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*Example of another purpose for paragraph (b)—*

a commercial purpose

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

#### **40F Requirements for Minister's consent—general**

- (1) A person seeking the Minister's consent to the grant of a lease must give the Minister the information or documents reasonably required by the Minister to show—
  - (a) the purpose of the lease; and
  - (b) that the grant of the lease is for the benefit of persons for whom the trustee holds the land; and
  - (c) if the lease is for more than 30 years—that the grant of the lease for more than 30 years is appropriate in the circumstances.
- (2) Also, a person seeking the Minister's consent to the grant of a lease for more than 30 years for a commercial purpose must give the Minister—
  - (a) a business plan outlining the details of the commercial purpose of the lease, including, for example, financial details about any proposed development under the lease; and
  - (b) evidence to show that an appropriate return on the investment for the commercial purpose can not be obtained under a lease for not more than 30 years; and

[s 40G]

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- (c) other information or documents reasonably required by the Minister to show the purpose of the lease.
- (3) In considering whether to give consent to the grant of a lease, the Minister—
  - (a) must have regard to the information or documents given to the Minister under subsection (1) or (2); and
  - (b) may have regard to other information the Minister considers relevant to the proposed lease.
- (4) Before giving consent to the grant of a lease for more than 30 years, the Minister must be satisfied—
  - (a) the trustee has complied with section 40(1)(a) in relation to the lease; and
  - (b) the Aboriginal people particularly concerned with the lease land are generally in agreement with the grant of the lease.

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

- (1) Before the Minister consents to the grant of a lease for more than 30 years for a commercial purpose, the Minister must—
  - (a) obtain an independent assessment of—
    - (i) the business plan and evidence given to the Minister under section 40F(2)(a) and (b); and
    - (ii) the proposed lessee’s financial and managerial capabilities; and
  - (b) be satisfied, having regard to the independent assessment, that—
    - (i) any proposed development under the lease will be commercially viable; and
    - (ii) the evidence given under section 40F(2)(b) satisfactorily shows that an appropriate return on the investment for the purpose of the lease can not

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be obtained under a lease for not more than 30 years; and

(iii) the proposed lessee's financial and managerial capabilities are appropriate for carrying out any proposed development under the lease.

- (2) The proposed lessee must pay the cost of the assessment.
- (3) The cost is not refundable.

#### **40H Conditions of leases—general**

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

[s 40I]

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

**40I Requirement for Minister's consent for creation of interest under a lease**

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



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

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

[s 40K]

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

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

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- (10) If the trustee grants the lease, the trustee must, within 28 days after the lease is registered, give the housing chief executive—
- (a) a written notice stating—
    - (i) the day the lease was registered; and
    - (ii) the names of the parties to the lease; and
  - (b) evidence showing the amount mentioned in subsection (7) for the dwelling was paid to the trustee; and
  - (c) evidence showing the amount decided by the trustee under section 40J(1)(a)(iii) for the lease land was paid to the trustee.

*Note—*

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

(11) This section does not limit section 40J.

(12) In this section—

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

#### **40L Renewal of lease or sublease**

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

#### **40M Transfer or amendment of lease or sublease**

- (1) A lease or a sublease of a lease must not be transferred or amended without—
  - (a) if, under a condition of the lease, the transfer or amendment of the lease or sublease requires the consent of the trustee of the lease land—the trustee's prior written consent; and

[s 40N]

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

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

- (1) All leases, and any sublease of a lease or transfer, amendment or surrender of a lease or sublease, must be registered.

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- (2) Despite the Land Title Act, section 65(2) an instrument of lease for transferred land must include a plan of survey identifying the lease land.

## **Subdivision 4      Forfeiture of particular leases**

### **40O      Application of sdiv 4**

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

### **40P      Grounds for forfeiture of lease**

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

### **40Q      Application to Land Court for forfeiture**

- (1) Before the lease is forfeited, the trustee must refer the matter to the Land Court to decide whether the lease may be forfeited.
- (2) The trustee must give the lessee, and any mortgagee of the lease, at least 28 days written notice of the trustee's intention to refer the matter to the Land Court.

[s 40R]

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- (3) The notice must state the grounds on which the trustee considers the lease may be forfeited.
- (4) In deciding whether the lease may be forfeited, the Land Court must have regard to—
  - (a) the stated grounds; and
  - (b) if the lease is proposed to be forfeited because of a breach of a condition of the lease—whether the court considers the breach is of a serious nature and warrants forfeiture of the lease.
- (5) The trustee must file a copy of the notice in the Land Court at the same time as the trustee refers the matter to the court.

#### **40R Trustee's options if Land Court decides lease may be forfeited**

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

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

#### **40S Notice and effect of forfeiture**

- (1) If the trustee forfeits the lease, the trustee must, within 60 days after receiving notice of the Land Court's decision about forfeiture of the lease, give written notice that the lease is forfeited to—
  - (a) the lessee and any mortgagee of the lease; and
  - (b) the registrar.
- (2) On receiving the notice, the registrar must record the forfeiture of the lease in the appropriate register.

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

#### **40T Payment by trustee for forfeited lease**

- (1) If the trustee forfeits the lease, the trustee must pay to the person who was the lessee the amount equal to the value of the lease land, and any lawful improvements on the land, on the day the lease is forfeited (the *maximum amount*) less any amounts deducted from the maximum amount under section 40V.
- (2) The value of the lease land is the amount as decided by the trustee using the valuation methodology mentioned in section 40J(1)(a)(iii).
- (3) The value of any lawful improvements on the lease land must be assessed as the market value of the improvements in a sale of a lease, of the same term and tenure as the forfeited lease.
- (4) Subject to subsections (2) and (3), the trustee must decide the amount payable to the person.
- (5) The trustee must decide the amount payable to the person as soon as practicable after giving the person notice that the lease is forfeited.
- (6) On deciding the amount payable, the trustee must give the person written notice of the decision.
- (7) The notice must state—
  - (a) the amount; and
  - (b) that the person may appeal against the decision and how the person may appeal.
- (8) This section is subject to section 40U.

[s 40U]

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#### **40U Unclaimed amounts**

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

#### **40V Amounts owing to trustee or mortgagee to be deducted**

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

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

#### **40W Payment of amount to mortgagee in discharge of mortgage**

- (1) This section applies if the trustee forfeits the lease and, under a mortgage of the lease, an amount is owing to a mortgagee of the lease by the person who was the lessee.
- (2) The trustee must pay to the mortgagee—
  - (a) if the amount that may be deducted from the maximum amount under section 40V(d) is less than the difference between the maximum amount and the amounts deducted under section 40V(a), (b) or (c)—the amount that may be deducted from the maximum amount under section 40V(d); or
  - (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 40V(a), (b) or (c).



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- (3) The trustee must pay the amount payable under subsection (2) to the mortgagee—
    - (a) if no appeal is made under this subdivision against the decision under section 40T about the amount payable to the person who was the lessee—within 28 days after the time for making an appeal ends; or
    - (b) if an appeal is made under this subdivision against the decision mentioned in paragraph (a)—within 28 days after the appeal is finally decided.
  - (4) If the trustee pays an amount to the mortgagee in relation to a mortgage of the lease, the mortgagee must use the amount in discharge of the mortgage.

#### **40X Appeal against decision under s 40T**

- (1) A person the subject of a decision under section 40T about an amount payable to the person may appeal to the Land Court against the decision.
- (2) An appeal is started by filing written notice of appeal with the registrar of the Land Court.
- (3) The person must give a copy of the notice of appeal to the trustee of the lease land to which the decision relates.
- (4) The notice of appeal must be filed within 28 days after the person receives notice of the decision.
- (5) However, the Land Court may, at any time within the 28 days, extend the period for making the appeal.
- (6) The appeal is by way of rehearing, unaffected by the decision, on the material before the trustee and any further evidence allowed by the Land Court.

#### **40Y Powers of Land Court on appeal**

- (1) In deciding the appeal, the Land Court has the same powers as the trustee of the lease land.
- (2) The Land Court may—

[s 40Z]

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

## **Subdivision 5 Grant of licences**

### **40Z Grant of licence for transferred land**

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

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

### **40ZA Conditions of licences**

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

- (2) A licence granted under section 40Z(b) or (c) is subject to the condition that an interest can not be created under the licence.
- (3) A licence for the use of all or a part of transferred land can not be renewed or transferred.

## **Subdivision 6      Transfer of land held by land trust**

### **40ZB    Application of sdiv 6**

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

### **40ZC    Transfer of transferred land held by land trust**

- (1) The trustee of transferred land (the *transferor*) may transfer all or a part of the land only—
  - (a) with the Minister’s written approval; and
  - (b) to a land trust (the *transferee*).
- (2) If a trustee transfers land under this subdivision—
  - (a) all improvements on the land must be transferred with the land; and
  - (b) the transferee holds the land as trustee for the benefit of the Aboriginal people particularly concerned with the land, and their ancestors and descendants; and
  - (c) if all the Aboriginal land held by the trustee is transferred to the transferee—
    - (i) the land trust for the land that is transferred is dissolved; and
    - (ii) all the assets and liabilities of the trustee become the assets and liabilities of the transferee; and
  - (d) if paragraph (c) does not apply—the assets and liabilities of the trustee as mentioned in section 40ZE(1)(a)(ii) become the assets and liabilities of the transferee.

[s 40ZD]

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#### **40ZD Application for approval to transfer**

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

#### **40ZE Minister's approval to transfer**

- (1) The Minister may give an approval to transfer the land only if satisfied—
  - (a) at least 75% of the transferor's members present at a general meeting of the transferor, and at least 75% of the transferee's members present at a general meeting of the transferee, agree to the transfer of—
    - (i) the land; and
    - (ii) the assets and liabilities of the transferor that will become the assets and liabilities of the transferee; and
  - (b) it is appropriate in the circumstances to transfer the land.
- (2) If the Minister gives an approval to transfer the land, the chief executive must notify the approval by gazette notice.
- (3) The gazette notice must—
  - (a) include all of the following—
    - (i) the name of the transferor;
    - (ii) a description of the land being transferred;
    - (iii) details of each registered interest in the land being transferred;
    - (iv) a description of all Aboriginal land, if any, held by the transferor after the transfer;

- (v) the name of the transferee;
  - (vi) a description of all Aboriginal land held by the transferee after the transfer; and
  - (b) if the transferor is a land trust that is dissolved under section 40ZC(2)(c)(i) because of the transfer—state the land trust is dissolved.
- (4) In this section—

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

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

#### **40ZF Effect of gazette notice about transfer**

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

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

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

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

[s 40ZH]

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## **Subdivision 8      Land in Cape York Peninsula Region**

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

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

## **Subdivision 9      Other matters**

### **40ZI Trustee to advise chief executive of change to description of land**

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

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**40ZJ Particular dealings in transferred land void**

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

**41 Provision about resumption of transferred land etc.**

- (1) An interest in transferred land can not be resumed, taken or otherwise compulsorily acquired, sold or dealt with other than under the Acquisition Act by a constructing authority.
- (2) However, an interest in transferred land may be taken under the Acquisition Act only for a relevant purpose.
- (3) To remove any doubt, it is declared that, for taking an interest in transferred land under the Acquisition Act, the transferred land is land as defined in that Act.
- (4) Subsection (1) has effect despite any other Act (whether enacted before or after the enactment of this section).
- (5) In this section—

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

- (a) the *State Development and Public Works Organisation Act 1971*; or
- (b) the *Petroleum and Gas (Production and Safety) Act 2004*; or
- (c) the *Greenhouse Gas Storage Act 2009*.

**Division 3 Reservations**

**42 Reservations of minerals and petroleum**

A deed of grant of transferred land must contain a reservation to the State of—

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- (a) all minerals; and
  - (b) all petroleum;
- on and below the surface of the land.

### **43 Reservations of forest products and quarry material etc.**

- (1) A deed of grant of transferred land may contain a reservation to the State of forest products or quarry material above, on or below the surface of the land only if it is declared by regulation that—
  - (a) the forest products or quarry material is of vital State interest; and
  - (b) the rights in the forest products or quarry material is reserved to the State.
- (2) If a deed of grant of transferred land does not contain a reservation of particular forest products or quarry material above, on or below the land, a regulation may declare that—
  - (a) the forest products or quarry material are of vital State interest; and
  - (b) rights in the forest products or quarry material are acquired by the State.
- (3) If a regulation is made under subsection (1) or (2), the trustee of the land is entitled to be paid by the State such reasonable compensation because of the reservation or acquisition as is agreed between the State and the trustee or, failing agreement, as is determined by the Land Court.
- (4) Despite subsection (1), a permit, lease, licence, agreement or contract granted or made under the *Forestry Act 1959*, before the day on which land became transferred land, in relation to the getting and selling of forest products or quarry material above, on or below the surface of the land, continues in force as if this section had not been enacted.



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## **Part 4                      Claims for claimable land**

### **Division 1                      Requirements for claims**

#### **44                      Duly made claims**

A claim for claimable land must comply with the following provisions in order to be duly made—

- (a) section 45;
- (b) section 46;
- (c) section 47;
- (d) section 48.

#### **45                      Who may make a claim**

- (1) A group of Aboriginal people may make a claim for an area of claimable land.
- (2) The claim may be made by members of a group of Aboriginal people on behalf of those Aboriginal people and other Aboriginal people who are members of the group.

#### **46                      Grounds on which claim may be made**

- (1) A claim under this Act may only be made on 1 or more of the following grounds—
  - (a) traditional affiliation;
  - (b) historical association;
  - (c) economic or cultural viability.
- (2) Land in a national park may not be claimed on the ground of economic or cultural viability.
- (3) Land that was, immediately before becoming claimable land, DOGIT land, Aurukun Shire lease land or Mornington Shire

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lease land may not be claimed on the ground of economic or cultural viability.

#### **47 How claim is to be made**

A claim under this Act must—

- (a) be made by written application to the land claims registrar; and
- (b) be in the appropriate form made available by the land claims registrar; and
- (c) include—
  - (i) a description of the land claimed and a map showing clearly the location of the land; and
  - (ii) a statement of the ground on which the claim is made; and
  - (iii) a description of the group of Aboriginal people making the claim; and
  - (iv) a statement of the responsibilities in relation to the land that the claimants agree to assume if the land is granted because of the claim; and
  - (v) if the claim is made on the ground of economic or cultural viability—a statement of the specific proposal for the use of the land claimed.

#### **48 Time limit for making of claims**

A claim under this Act must be made not later than 15 years after the commencement of section 45.

*Note—*

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

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## Division 2                      Determination of claims

### 49            Registrar to determine whether claim duly made

- (1) If a claim is made to the land claims registrar, the registrar must determine whether the claim appears to be duly made.
- (2) If the registrar is satisfied that the claim appears to be duly made, the registrar must accept the application and refer the claim to the Land Tribunal.
- (3) If the registrar is not satisfied, the registrar must refuse to accept the application.
- (4) The registrar must notify the claimants, in writing, of his or her decision.
- (5) If the registrar refuses to accept the application, the registrar must also notify the claimants, in writing, of his or her reasons for refusing to accept the application.
- (6) If the registrar refuses to accept the application, the claimants may ask the chairperson of the Land Tribunal to decide whether the claim is duly made.
- (7) If the chairperson decides that the claim is duly made, the chairperson must direct the registrar to accept the application under subsection (2).
- (8) If the chairperson decides that a claim is not duly made, the chairperson must notify the claimants, in writing, of his or her reasons for refusing to accept the application.
- (9) Despite subsection (1), if a recommendation has been made to the Minister under section 60 for a grant in fee simple or for the grant of a lease, another claim may not be duly made over the same land.
- (10) Nothing in this section prevents the registrar from accepting an application if—
  - (a) a claim (the *repeat claim*) has been made to the registrar under section 47 and it appears to the registrar that the land to which the claim relates is completely or partly

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the same as land that has previously been claimed (the *previous claim*); and

- (b) no recommendation was made to the Minister under section 60 about the previous claim.

## **50 Tribunal to notify making of claims**

- (1) As soon as practicable after a claim is referred to the Land Tribunal, the tribunal must comply with this section.
- (2) The tribunal must cause copies of the application to be made available for public inspection at offices of the tribunal during ordinary working hours and at such other places as it considers appropriate.
- (3) The tribunal must publish notice of the claim in the gazette, a newspaper circulating throughout the State and such regional newspapers as the tribunal considers appropriate.
- (4) The tribunal must give notice of the claim, by letter or such other means as it considers more effective, to each person that it is aware is or may be an interested person.
- (5) A notice under subsection (3) or (4) must include a statement to the effect that—
  - (a) copies of the application are available for public inspection at places, and during times, specified in the notice; and
  - (b) interested persons may, within the period specified in the notice, apply to the tribunal to be made a party to the proceeding for the hearing of the claim; and
  - (c) any other group of Aboriginal people may, within that period, make a claim for the whole or part of the land the subject of the claim or for such an area and additional area of claimable land.
- (6) The period specified in a notice for the purposes of subsection (5)(a) must be a period of not less than 60 days after the publication of notice of the claim in the gazette.

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## 51 Joint hearing of claims

If—

- (a) a claim (the *first claim*) is duly made under this Act by a group of Aboriginal people for an area of claimable land; and
- (b) a claim (the *subsequent claim*) is duly made under this Act by another group of Aboriginal people for the whole or a part of the area of claimable land (whether or not an additional area of claimable land is also claimed); and
- (c) the subsequent claim is referred to the Land Tribunal within the period specified in the notice published under section 50 in relation to the first claim or before the hearing of the first claim has started;

then—

- (d) the first claim and the subsequent claim are to be heard and determined together; and
- (e) if the subsequent claim does not include an additional area of claimable land—section 50 does not apply to the subsequent claim.

## 52 Repeat claims

If a repeat claim mentioned in section 49(10) has been referred to the Land Tribunal, the tribunal may hear the repeat claim only if a presiding member is satisfied that the repeat claim could be established on 1 or more grounds mentioned in sections 53 to 55 because—

- (a) the basis on which the repeat claim is made is substantially different to the basis on which the previous claim was made; or
- (b) information has become available to the tribunal that was not previously available and, if the information had previously been available to the tribunal, it may have affected the decision of the tribunal on the previous claim.

**53 Establishment of claim on ground of traditional affiliation**

- (1) A claim by a group of Aboriginal people for an area of claimable land on the ground of traditional affiliation is established if the Land Tribunal is satisfied that the members of the group have a common connection with the land based on spiritual and other associations with, rights in relation to, and responsibilities for, the land under Aboriginal tradition.
- (2) In determining the claim, the tribunal must consult with, and consider the views of, the persons recognised under Aboriginal tradition as the elders of the group of Aboriginal people.

**54 Establishment of claim on ground of historical association**

- (1) A claim by a group of Aboriginal people for an area of claimable land on the ground of historical association is established if the Land Tribunal is satisfied that the group has an association with the land based on them or their ancestors having, for a substantial period, lived on or used—
  - (a) the land; or
  - (b) land in the district or region in which the land is located.
- (2) Without limiting subsection (1), the claim may be established whether or not all or a majority of the members of the group have themselves lived on or used such land.
- (3) In determining the claim, the tribunal must consult with, and consider the views of, the persons recognised under Aboriginal tradition as the elders of the group of Aboriginal people.

**55 Establishment of claim on ground of economic or cultural viability**

- (1) A claim by a group of Aboriginal people for an area of claimable land on the ground of economic or cultural viability is established if the Land Tribunal is satisfied that granting the claim would assist in restoring, maintaining or enhancing the

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capacity for self-development, and the self-reliance and cultural integrity, of the group.

- (2) In determining the claim, the tribunal must have regard to the proposal made in the claim for the use of the land.

**56 Claim may be established for only part of land claimed**

A claim by a group of Aboriginal people for an area of claimable land may be established for a part only of the land.

**57 Claim may be established on more than 1 ground**

A claim by a group of Aboriginal people for an area of claimable land may be established on more than 1 ground.

**58 Time at which it is to be determined whether land is claimable land**

The question whether land claimed under this Act is claimable land is to be determined as at the beginning of the day on which the relevant claim for the land was made to the land claims registrar.

**59 Amendment of claim**

- (1) A claim under this Act may be amended with the leave of the Land Tribunal.
- (2) If a claim is amended to include land that was not claimed in the original claim, section 50 applies as if a separate claim had been made for that land and the claim had been referred to the tribunal.

**60 Recommendation to Minister**

- (1) Subject to section 61, if a claim by a group of Aboriginal people for an area of claimable land is established, the Land Tribunal must recommend to the Minister—

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- (a) if the claim is established on the ground of traditional affiliation or historical association—that the land be granted in fee simple to the group; or
  - (b) if the claim is established on the ground of economic or cultural viability—that the land be granted to the group by way of a lease in perpetuity, or a lease for a specified term of years, on specified terms and conditions.
- (2) In deciding the terms of a recommendation under subsection (1)(b), the tribunal must have regard to the proposal made in the relevant claim for the use of the land concerned.
- (3) When the tribunal makes a recommendation under subsection (1), the tribunal must also make recommendations to the Minister as to the persons who should be appointed to be the grantees of the land as trustees for the benefit of the group of Aboriginal people concerned.
- (4) In making recommendations under subsection (3), the tribunal must, unless it is satisfied that exceptional circumstances exist that require it to do otherwise, act in a manner that is consistent with—
  - (a) any Aboriginal tradition applicable to the land; and
  - (b) the views of the group of Aboriginal people concerned so far as they are not inconsistent with any such Aboriginal tradition.
- (5) When the tribunal makes a recommendation under subsection (1), the tribunal must advise the Minister, in writing, in relation to each of the following matters—
  - (a) the number of Aborigines who will be advantaged by a grant of the land, and the nature and extent of the advantage that will accrue to them;
  - (b) the responsibilities in relation to the land that the group of Aboriginal people concerned agree to assume if the land is granted because of the claim, and how those responsibilities should be expressed in any deed of grant or lease granted in relation to the land;



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- (c) the detriment to persons or communities (including other Aboriginal groups and Torres Strait Islanders) that might result from a grant of the land;
  - (d) the effect (if any) that a grant of the land is likely to have on the existing and proposed patterns of land usage in the region of the land.
- (6) In this section—
- Minister* means the Minister administering the Land Act.

## 61 Resolution of conflicting claims

- (1) Subject to subsection (2), if claims by 2 or more groups of Aboriginal people for the same area of claimable land are established on the same ground, the Land Tribunal must recommend to the Minister that the land be granted jointly to the groups.
  - (2) If more than 1 claim is established and each of the competing claims is established on 1 or more grounds—
    - (a) if 1 or more of the claims is established on the ground of traditional affiliation—a recommendation must not be made in favour of any other group on the ground of historical association or on the ground of economic or cultural viability; and
    - (b) if 1 or more of the claims is established on the ground of historical association—a recommendation must not be made in favour of any other group on the ground of economic or cultural viability.
  - (3) In this section—
- Minister* means the Minister administering the Land Act.

## 62 Notification of parties

- (1) If a claim by a group of Aboriginal people for an area of claimable land is established on 1 or more grounds, the Land Tribunal must notify each party to the proceeding, in writing—

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- (a) that the claim has been so established; and
  - (b) of the recommendations (if any) made to the Minister in relation to the claim.
- (2) If a claim by a group of Aboriginal people for an area of claimable land is not established on 1 or more grounds, the Land Tribunal must notify each party to the proceeding, in writing, that the claim has not been so established.
- (3) In this section—

*Minister* means the Minister administering the Land Act.

## **Part 5**                      **Grant of claimable land as Aboriginal land**

### **Division 1**                **Grant of land**

#### **63**        **Deeds of grant to be prepared**

- (1) If—
- (a) the Land Tribunal recommends to the Minister that an area of land be granted in fee simple to a group of Aboriginal people; and
  - (b) the Minister is satisfied that the land, or a part of the land, should be so granted to the group;
- the Minister must direct the chief executive to prepare a deed of grant in fee simple over the land or that part of the land.
- (2) The land need not be surveyed but may be described in the deed of grant in such manner as the Minister directs.
  - (3) The deed of grant must show that the land is held by the grantees for the benefit of the group of Aboriginal people and their ancestors and descendants.
  - (4) The deed of grant must specify—

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- (a) the ground on which the Land Tribunal recommended that the land be granted; and
  - (b) the responsibilities that the group of Aboriginal people have agreed to assume in relation to the land.
- (5) Subsections (2), (3) and (4) have effect despite any other Act or any rule of law or practice.

## **64 Leases to be prepared**

- (1) If—
- (a) the Land Tribunal recommends to the Minister that an area of land be granted to a group of Aboriginal people by way of a lease in perpetuity or a lease for a specified term of years; and
  - (b) the Minister is satisfied that the land, or a part of the land, should be so granted to the group;
- the Minister must—
- (c) if the land is, or is part of, an area of transferred land—direct the chief executive to prepare the lease in registrable form, subject to the terms and conditions determined by the Minister; or
  - (d) if paragraph (c) does not apply—direct the chief executive to prepare the lease under the Land Act, subject to the terms and conditions determined by the Minister.
- (2) In determining the terms and conditions to which the lease is to be subject, the Minister is to have regard to the terms and conditions recommended by the Land Tribunal.
- (3) The land need not be surveyed but may be described in the lease in such manner as the Minister directs, and—
- (a) if subsection (1)(c) applies—the registrar of titles is to register the lease accordingly; or
  - (b) if subsection (1)(d) applies—the registrar of titles is to cause particulars of the lease to be recorded in the appropriate register.

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- (4) The lease must—
  - (a) show that the land is held by the grantees for the benefit of the group of Aboriginal people and their descendants; and
  - (b) specify the specific purpose for which the land is to be used; and
  - (c) specify the responsibilities that the group of Aboriginal people have agreed to assume in relation to the land.
- (5) Subsections (3) and (4) have effect despite any other Act or any rule of law or practice.

## **65 Minister to appoint trustees**

- (1) The Minister must appoint such persons as the Minister considers necessary to be the grantees, as trustees for the benefit of the group of Aboriginal people concerned, of the land the subject of each deed of grant prepared under section 63 and each lease prepared under section 64.
- (2) The Minister may—
  - (a) remove or suspend trustees appointed under subsection (1); or
  - (b) appoint other persons as trustees.
- (3) Before exercising powers under this section, the Minister must consult with the group of Aboriginal people concerned and, unless the Minister is satisfied that exceptional circumstances exist that require the Minister to do otherwise, must act in a way that is consistent with—
  - (a) any Aboriginal tradition applicable to the land; and
  - (b) the views of the group so far as they are not inconsistent with any such Aboriginal tradition.
- (4) The *Trusts Act 1973* (***the Act***) applies to trusts created for the purposes of this part, and to the trustees of such trusts, only to the extent (if any) that the regulations provide that the Act is to apply and, to the extent that the Act does apply, it applies with such modifications (if any) as are prescribed.

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**66 Authority to grant fee simple in, or lease of, claimable land**

The Governor in Council may, under this Act and the Land Act—

- (a) grant claimable land in fee simple; or
- (b) lease claimable land in perpetuity or for a term of years.

**67 Inclusion of additional areas in deed of grant**

An additional area of claimable land may be included in a deed of grant or lease under section 66 if the Minister has consulted with Aboriginal people particularly concerned with each area of land and a substantial majority of them agree that the additional area should be included in the deed of grant or lease.

**68 Signing of lease etc.**

- (1) If an Aboriginal (transferred land) lease is prepared, the grantees of the transferred land concerned must on receipt of a written notice to do so by the registrar of titles—
  - (a) sign the lease and deliver it to the registrar; and
  - (b) deliver the relevant deed of grant to the registrar; within the reasonable period specified in the notice.
- (2) Consent is not required to the lease despite anything to the contrary in any instrument creating an interest in the transferred land or in any Act.
- (3) When the lease has been registered, the registrar must return the relevant deed of grant to the grantees of the transferred land.
- (4) If—
  - (a) the grantees fail to comply with the notice to sign the lease—the Minister is authorised to sign the lease on behalf of the grantees; or

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- (b) the grantees fail to comply with the notice to deliver the deed of grant to the registrar—the registrar must, without further authority apart from this paragraph, register the lease.
- (5) Subsection (4)(b) applies despite—
- (a) any other Act or any rule of law or practice; and
  - (b) the nonproduction of the deed of grant.

## **69 Deed of grant takes effect on delivery**

- (1) A deed of grant issued under section 63 takes effect on the delivery of the deed to the grantees.
- (2) On delivery of the deed of grant to the grantees, the land the subject of the deed becomes granted land and, if the land is not already Aboriginal land, becomes Aboriginal land.
- (3) Subsection (1) has effect despite any other Act or any rule of law or practice.

## **70 Lease commences on delivery**

- (1) The term of an Aboriginal lease commences on the day of delivery of the lease to the grantees unless the lease specifies another commencement day (whether before or after the day of delivery).
- (2) On the commencement of the lease, the land the subject of the lease becomes granted land and, if the land is not already Aboriginal land, becomes Aboriginal land.
- (3) Subsection (1) has effect despite any other Act or any rule of law or practice.

## **71 Existing interests**

- (1) If granted land was, immediately before becoming Aboriginal land under this division, subject to an interest or benefited by an easement, the interest continues in force or the land continues to be benefited by the easement.

(2) In this section—

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

### **73 Cancellation of existing deed of grant**

(1) If—

- (a) land is the subject of a deed of grant issued under part 3 (the *existing deed*); and
- (b) a deed of grant (the *new deed*) over the whole or a part of the land takes effect under section 69;

the existing deed is cancelled, to the extent of the new deed, by operation of this section.

- (2) The Minister must cause written notice to be given to the registrar of titles of the day of delivery of the new deed to the grantees and the registrar must note the cancellation of the existing deed in the register accordingly.
- (3) The trustee that holds the existing deed must, on receipt of written notice by the Minister so to do, deliver the existing deed to the registrar of titles within such reasonable period, as is specified in the notice.
- (4) If the existing deed is cancelled only in relation to part of the land, the registrar of titles must prepare and issue to the trustee that holds the deed a deed of grant under the Land Act (the *replacement deed*) over the remaining part of the land.
- (5) The replacement deed is, for the purposes of this Act, taken to be a deed of grant prepared and issued under part 3.
- (6) The registrar of titles must endorse on the replacement deed, in the proper order of priority, the instruments under which existing relevant interests arose.

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**74 Registrar of titles must take action etc. to resolve difficulties**

If a difficulty arises in the application of this division by the registrar of titles, the registrar must take such action and give such directions as the registrar considers necessary to resolve the difficulty.

**75 Land Court may resolve difficulties**

- (1) If a difficulty arises in—
  - (a) the application of this division to a particular matter; or
  - (b) the application, to a particular matter, of a provision of another Act because of the operation of this division;the Land Court may, on the application of the registrar of titles or an interested person, make such order as it considers proper to resolve the difficulty.
- (2) An order made under subsection (1) has effect despite anything contained in this part or in an Act in force immediately before the commencement of this section.

**Division 2 Dealing with granted land**

**Subdivision 1 General**

**76 Power to deal with granted land**

- (1) Subject to this division, the trustee of granted land held under a deed of grant in fee simple may—
  - (a) grant, transfer or otherwise create an interest in the land in the way the trustee considers appropriate, including, for example, by—
    - (i) granting a lease or licence over all or a part of the land; or



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

*Note—*

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

## **77 Requirement for consultation**

- (1) The trustee of granted land must not deal with the land unless—
- (a) the trustee has explained to the Aboriginal people particularly concerned with the land the nature, purpose and effect of the dealing; and
  - (b) the Aboriginal people are given a suitable opportunity to express their views on, and are generally in agreement with, the dealing.

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- (2) Despite section 77ZH, dealing with land in contravention of subsection (1) is not void under that section.
- (3) In this section—  
*deal*, with land, means—
  - (a) grant a lease, other than under section 77D(1)(a) for private residential purposes, for more than 10 years over the land; or
  - (b) grant a licence for the use of the land for more than 10 years; or
  - (c) grant or otherwise create an interest in the land that is not a lease or a licence for the use of the land; or
  - (d) dedicate a part of the land to public use; or
  - (e) surrender any of the land to the State.

### **77A Provision about Minister's consent**

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

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## **77B Provision about particular leases**

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

## **Subdivision 2 Sale or mortgage prohibited**

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

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

## **Subdivision 3 Grant of leases**

### **77D Grant of lease for granted land**

- (1) The trustee of granted land held under a deed of grant in fee simple may grant a lease over all or a part of the land only—
  - (a) to an Aborigine for not more than 99 years; or
  - (b) to the State for not more than 99 years; or
  - (c) to another person—
    - (i) for not more than 10 years; or
    - (ii) with the Minister's prior written consent, for more than 10 years but not more than 99 years.
- (2) Despite subsection (1)(a)—

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

### **77E Particular restrictions on grant of leases**

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

*Examples of another purpose for paragraph (b)—*

a commercial purpose or providing public infrastructure

- (2) A lease for more than 30 years may be granted under section 77D(1)(b) only—
- (a) for a following purpose—
    - (i) a purpose under the *Housing Act 2003*;
    - (ii) providing public infrastructure;
    - (iii) providing residential accommodation for public service employees; or

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

*Example of another purpose for paragraph (b)—*

a commercial purpose

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

## **77F Requirements for Minister's consent—general**

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

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

**77G Particular requirement for Minister's consent for lease for commercial purpose**

- (1) Before the Minister consents to the grant of a lease for more than 30 years for a commercial purpose, the Minister must—
- (a) obtain an independent assessment of—
    - (i) the business plan and evidence given to the Minister under section 77F(2)(a) and (b); and
    - (ii) the proposed lessee's financial and managerial capabilities; and
  - (b) be satisfied, having regard to the independent assessment, that—
    - (i) any proposed development under the lease will be commercially viable; and

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

#### **77H Conditions of leases—general**

- (1) A lease granted under this subdivision is subject to a condition that an interest, other than a mortgage of the lease, for a term of more than 10 years may be created under the lease only with the Minister's prior written consent.
- (2) Despite subsection (1)—
  - (a) an interest under a lease granted under section 77D(1)(a) may be created without the Minister's prior written consent if the interest is in favour of—
    - (i) an Aborigine; or
    - (ii) another person who is not an Aborigine if the person is the spouse, or former spouse, of an Aborigine or of an Aborigine who is deceased; and
  - (b) an interest under another lease may be created without the Minister's prior written consent if under this subdivision the grant of the lease did not require the consent of the Minister.
- (3) A lease granted under this subdivision may include a condition that—
  - (a) a stated standard terms document under the Land Title Act forms part of the lease; or
  - (b) the lease must not be transferred without the trustee's prior written consent; or

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

**77I Requirement for Minister's consent for creation of interest under a lease**

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



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

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

[s 77K]

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

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

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- (10) If the trustee grants the lease, the trustee must, within 28 days after the lease is registered, give the housing chief executive—
- (a) a written notice stating—
    - (i) the day the lease was registered; and
    - (ii) the names of the parties to the lease; and
  - (b) evidence showing the amount mentioned in subsection (7) for the dwelling was paid to the trustee; and
  - (c) evidence showing the amount decided by the trustee under section 77J(1)(a)(iii) for the lease land was paid to the trustee.

*Note—*

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

(11) This section does not limit section 77J.

(12) In this section—

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

## **77L Renewal of lease or sublease**

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

## **77M Transfer or amendment of lease or sublease**

- (1) A lease or a sublease of a lease must not be transferred or amended without—
  - (a) if, under a condition of the lease, the transfer or amendment of the lease or sublease requires the consent of the trustee of the lease land—the trustee's prior written consent; and

[s 77N]

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

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

- (1) All leases, and any sublease of a lease or transfer, amendment or surrender of a lease or sublease, must be registered.

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- (2) Despite the Land Title Act, section 65(2) an instrument of lease for granted land must include a plan of survey identifying the lease land.

## **Subdivision 4      Forfeiture of particular leases**

### **77O      Application of sdiv 4**

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

### **77P      Grounds for forfeiture of lease**

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

### **77Q      Application to Land Court for forfeiture**

- (1) Before the lease is forfeited, the trustee must refer the matter to the Land Court to decide whether the lease may be forfeited.
- (2) The trustee must give the lessee, and any mortgagee of the lease, at least 28 days written notice of the trustee's intention to refer the matter to the Land Court.

[s 77R]

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- (3) The notice must state the grounds on which the trustee considers the lease may be forfeited.
- (4) In deciding whether the lease may be forfeited, the Land Court must have regard to—
  - (a) the stated grounds; and
  - (b) if the lease is proposed to be forfeited because of a breach of a condition of the lease—whether the court considers the breach is of a serious nature and warrants forfeiture of the lease.
- (5) The trustee must file a copy of the notice in the Land Court at the same time as the trustee refers the matter to the court.

#### **77R Trustee's options if Land Court decides lease may be forfeited**

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

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

#### **77S Notice and effect of forfeiture**

- (1) If the trustee forfeits the lease, the trustee must, within 60 days after receiving notice of the Land Court's decision about forfeiture of the lease, give written notice that the lease is forfeited to—
  - (a) the lessee and any mortgagee of the lease; and
  - (b) the registrar.
- (2) On receiving the notice, the registrar must record the forfeiture of the lease in the appropriate register.

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

### **77T Payment by trustee for forfeited lease**

- (1) If the trustee forfeits the lease, the trustee must pay to the person who was the lessee the amount equal to the value of the lease land, and any lawful improvements on the land, on the day the lease is forfeited (the *maximum amount*) less any amounts deducted from the maximum amount under section 77V.
- (2) The value of the lease land is the amount as decided by the trustee using a valuation methodology mentioned in section 77J(1)(a)(iii).
- (3) The value of any lawful improvements on the lease land must be assessed as the market value of the improvements in a sale of a lease, of the same term and tenure as the forfeited lease.
- (4) Subject to subsections (2) and (3), the trustee must decide the amount payable to the person.
- (5) The trustee must decide the amount payable to the person as soon as practicable after giving the person notice that the lease is forfeited.
- (6) On deciding the amount payable, the trustee must give the person written notice of the decision.
- (7) The notice must state—
  - (a) the amount; and
  - (b) that the person may appeal against the decision and how the person may appeal.
- (8) This section is subject to section 77U.

[s 77U]

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## **77U Unclaimed amounts**

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

## **77V Amounts owing to trustee or mortgagee to be deducted**

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

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

## **77W Payment of amount to mortgagee in discharge of mortgage**

- (1) This section applies if the trustee forfeits the lease and, under a mortgage of the lease, an amount is owing to a mortgagee of the lease by the person who was the lessee.
- (2) The trustee must pay to the mortgagee—
  - (a) if the amount that may be deducted from the maximum amount under section 77V(d) is less than the difference between the maximum amount and the amounts deducted under section 77V(a), (b) or (c)—the amount that may be deducted from the maximum amount under section 77V(d); or
  - (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 77V(a), (b) or (c).



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- (3) The trustee must pay the amount payable under subsection (2) to the mortgagee—
    - (a) if no appeal is made under this subdivision against the decision under section 77T about the amount payable to the person who was the lessee—within 28 days after the time for making an appeal ends; or
    - (b) if an appeal is made under this subdivision against the decision mentioned in paragraph (a)—within 28 days after the appeal is finally decided.
  - (4) If the trustee pays an amount to the mortgagee in relation to a mortgage of the lease, the mortgagee must use the amount in discharge of the mortgage.

#### **77X Appeal against decision under s 77T**

- (1) A person the subject of a decision under section 77T about an amount payable to the person may appeal to the Land Court against the decision.
- (2) An appeal is started by filing written notice of appeal with the registrar of the Land Court.
- (3) The person must give a copy of the notice of appeal to the trustee of the lease land to which the decision relates.
- (4) The notice of appeal must be filed within 28 days after the person receives notice of the decision.
- (5) However the Land Court may, at any time within the 28 days, extend the period for making the appeal.
- (6) The appeal is by way of rehearing, unaffected by the decision, on the material before the trustee and any further evidence allowed by the Land Court.

#### **77Y Powers of Land Court on appeal**

- (1) In deciding the appeal, the Land Court has the same powers as the trustee of the lease land.
- (2) The Land Court may—

[s 77Z]

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

## **Subdivision 5 Grant of licences**

### **77Z Grant of licence for granted land**

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

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

### **77ZA Conditions of licences**

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

- (2) A licence granted under section 77Z(b) or (c) is subject to the condition that an interest can not be created under the licence.
- (3) A licence for the use of all or a part of granted land can not be renewed or transferred.

## **Subdivision 6      Transfer of land**

### **77ZB Transfer of granted land**

- (1) The trustee of granted land held under a deed of grant in fee simple (the *transferor*) may transfer all or a part of the land only—
  - (a) with the Minister’s written approval; and
  - (b) to a land trust (the *transferee*).
- (2) If a trustee transfers land under this subdivision—
  - (a) all improvements on the land must be transferred with the land; and
  - (b) the transferee holds the land as trustee for the benefit of the group of Aboriginal people concerned with the land, and their ancestors and descendants; and
  - (c) if all the Aboriginal land held by the trustee is transferred to the transferee—
    - (i) the land trust for the land that is transferred is dissolved; and
    - (ii) all the assets and liabilities of the trustee become the assets and liabilities of the transferee; and
  - (d) if paragraph (c) does not apply—the assets and liabilities of the trustee as mentioned in section 77ZD(1)(a)(ii) become the assets and liabilities of the transferee.

[s 77ZC]

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### **77ZC Application for approval to transfer**

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

### **77ZD Minister's approval to transfer**

- (1) The Minister may give an approval to transfer the land only if satisfied—
  - (a) at least 75% of the transferor's members present at a general meeting of the transferor, and at least 75% of the transferee's members present at a general meeting of the transferee, agree to the transfer of—
    - (i) the land; and
    - (ii) the assets and liabilities of the transferor that will become the assets and liabilities of the transferee; and
  - (b) it is appropriate in the circumstances to transfer the land.
- (2) If the Minister gives an approval to transfer the land, the chief executive must notify the approval by gazette notice.
- (3) The gazette notice must—
  - (a) include all of the following—
    - (i) the name of the transferor;
    - (ii) a description of the land being transferred;
    - (iii) details of each registered interest in the land being transferred;
    - (iv) a description of all Aboriginal land, if any, held by the transferor after the transfer;

- (v) the name of the transferee;
  - (vi) a description of all Aboriginal land held by the transferee after the transfer; and
  - (b) if the transferor is a land trust that is dissolved under section 77ZB(2)(c)(i) because of the transfer—state the land trust is dissolved.
- (4) In this section—

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

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

### **77ZE Effect of gazette notice about transfer**

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

## **Subdivision 7 Land in Cape York Peninsula Region**

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

- (1) Subsection (2) applies to granted land in the Cape York Peninsula Region if the State and the trustee of the land agree the land or a part of the land is to become a national park (Cape York Peninsula Aboriginal land).
- (2) The trustee must, before the land or part becomes a national park (Cape York Peninsula Aboriginal land), enter into an indigenous management agreement with the State about the management of the land or part.
- (3) The trustee of land that is a national park (Cape York Peninsula Aboriginal land)—

[s 77ZG]

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- (a) may surrender all or any part of the land to the State; and
  - (b) must not, other than under the *Nature Conservation Act 1992*, sections 42AD and 42AE, transfer, grant or otherwise create, or consent to the creation of, any other interest in the land.
- (4) Subsection (3)(b) applies despite any other provision of this division or another Act.

## **Subdivision 8      Other matters**

### **77ZG    Trustee to advise chief executive of change to description of land**

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

### **77ZH    Particular dealings in granted land void**

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

### **78        Provision about resumption of granted land etc.**

- (1) An interest in granted land (other than land granted on the ground of economic or cultural viability) can not be resumed, taken or otherwise compulsorily acquired, sold or dealt with other than under the Acquisition Act by a constructing authority.
- (2) However, an interest in granted land may be taken under the Acquisition Act only for a relevant purpose.

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- (3) To remove any doubt, it is declared that, for taking an interest in granted land under the Acquisition Act, the granted land is land as defined in that Act.
  - (4) Subsection (1) has effect despite any other Act (whether enacted before or after the enactment of this section).
  - (5) In this section—

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

    - (a) the *State Development and Public Works Organisation Act 1971*; or
    - (b) the *Petroleum and Gas (Production and Safety) Act 2004*; or
    - (c) the *Greenhouse Gas Storage Act 2009*.

## 79 Devolution of granted land

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

[s 80]

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that exceptional circumstances exist that require the Minister to do otherwise, must act in a manner that is consistent with—

- (a) any Aboriginal tradition applicable to the land; and
  - (b) the views of the Aboriginal people so far as they are not inconsistent with such Aboriginal tradition.
- (6) Subsection (2) applies despite any other Act.

## **Division 3                      Reservations**

### **80            Reservations of minerals and petroleum**

A deed of grant of granted land and an Aboriginal lease must contain a reservation to the State of—

- (a) all minerals; and
  - (b) all petroleum;
- on and below the surface of the land.

### **81            Reservations of forest products and quarry material etc.**

- (1) A deed of grant of granted land that was transferred land, and an Aboriginal (transferred land) lease, may contain a reservation to the State of forest products or quarry material above, on or below the surface of the land only if it is declared by regulation that—
- (a) the forest products or quarry material is of vital State interest; and
  - (b) the rights in the forest products or quarry material is reserved to the State.
- (2) A deed of grant of granted land that was not transferred land, and an Aboriginal (non-transferred land) lease, must contain a reservation to the State of—
- (a) all forest products; and
  - (b) all quarry material;



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above, on and below the surface of the land.

- (3) Despite subsection (1), a permit, lease, licence, agreement or contract granted or made under the *Forestry Act 1959*, before the day on which transferred land became granted land, in relation to the getting and selling of forest products or quarry material above, on or below the surface of the land, continues in force as if this section had not been enacted.
- (4) If a deed of grant of granted land that was transferred land, or an Aboriginal (transferred land) lease, does not contain a reservation of particular forest products or quarry material above, on or below the land, a regulation may declare that—
  - (a) the forest products or quarry material is of vital State interest; and
  - (b) the rights in the forest products or quarry material are acquired by the State.
- (5) If a regulation is made under subsection (1) or (4), the trustee of the land is entitled to be paid by the State such reasonable compensation because of the reservation or acquisition as is agreed on between the State and the trustee or, failing agreement, as is determined by the Land Court.

## **Division 4                      Access to coastal land**

### **82            Rights of access preserved**

- (1) If—
  - (a) land that is an area of coast becomes Aboriginal land because of a claim under this Act; and
  - (b) a right of access to or across the area (whether by persons generally or particular persons) existed immediately before the land became claimable land;the right of access continues in force as if the land had not become Aboriginal land.
- (2) In this section—

[s 83A]

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

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

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

## **Part 5A**                      **Provisions about particular land trusts**

### **83A**    **Minister may establish land trust before grant of land**

- (1) The Minister may, before land in the Cape York Peninsula Region is granted under this Act, establish by gazette notice a land trust for the land.
- (2) The notice must include the following—
  - (a) the name of the land trust;
  - (b) the names of the members of the land trust;
  - (c) an address for service of documents on the land trust;
  - (d) a lot on plan description of the land proposed to be granted.
- (3) On the day the notice is gazetted—
  - (a) the land trust is established and the persons mentioned in subsection (2)(b) are appointed as the members of the land trust; and
  - (b) the members of the land trust are incorporated as the land trust, as provided for under the *Aboriginal Land*

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*Regulation 1991*, as if the members had been granted the land.

- (4) Before establishing a land trust under this section, the Minister must—
  - (a) if the land is transferable land—consult with the Aboriginal people particularly concerned with the land; and
  - (b) if the land is claimable land—consult with the group of Aboriginal people concerned with the land; and
  - (c) be satisfied a substantial majority of the Aboriginal people consulted support the establishment of the land trust.
- (5) In establishing a land trust under this section for transferable land, the Minister must, as far as practicable, act in a way that is consistent with Aboriginal tradition applicable to the land.
- (6) In establishing a land trust under this section for claimable land, the Minister must, unless satisfied that exceptional circumstances exist that require the Minister to do otherwise, act in a way that is consistent with—
  - (a) Aboriginal tradition applicable to the land; and
  - (b) the views of the group of Aboriginal people concerned with the land, so far as the views are not inconsistent with Aboriginal tradition relevant to the land.

### **83B Purpose of establishing land trust**

The purpose of establishing a land trust under section 83A is to provide for a legal entity to enter into an indigenous management agreement with the State about the management of particular land before it is granted under this Act.

### **83C Application of particular provisions**

- (1) A provision of this Act, other than this part, providing for matters about the functions or powers of a land trust, or the trustees of the trust, does not apply in relation to a land trust

[s 83D]

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established under section 83A for particular land until the members of the land trust hold the land as grantees.

- (2) If land is granted under this Act to grantees who are the members of a land trust established and incorporated under section 83A, a provision of this Act about the incorporation of the grantees as a land trust on the grant of the land does not apply in relation to the grantees.

### **83D Notice about land trust**

- (1) This section applies if land is granted under this Act to grantees who are the members of a land trust established under section 83A.
- (2) As soon as practicable after the land is granted, the Minister must, by gazette notice, give notice of—
  - (a) the name of the land trust; and
  - (b) an address for service of documents on the land trust; and
  - (c) a lot on plan description of the land.

### **83E Dissolution of land trust**

- (1) This section applies if, within 2 years after a land trust is established under section 83A in relation to particular land, or a further period approved by the Minister, the land trust has not entered into an indigenous management agreement with the State about the management of the land.
- (2) The Minister may, by gazette notice, dissolve the land trust.
- (3) The land trust is dissolved, and the trust created under section 83A is revoked, on the day the notice is gazetted.

## **Part 5B**                      **Indigenous management agreements and national parks in Cape York Peninsula Region**

### **Division 1**                      **Indigenous management agreements**

#### **83F**      **Entering into indigenous management agreement**

- (1) This section applies if—
  - (a) it is proposed that a land trust or registered native title body corporate hold land in the Cape York Peninsula Region as Aboriginal land; and
  - (b) the State and the land trust or registered native title body corporate agree that the land, or part of the land, is to become a national park (Cape York Peninsula Aboriginal land).
- (2) Before the land is granted, the land trust or registered native title body corporate must enter into an indigenous management agreement with the State about the proposed management of the land, or the part of the land, that is to become a national park (Cape York Peninsula Aboriginal land).

#### **83G**      **Requirements for indigenous management agreement**

- (1) An indigenous management agreement about the management of land must—
  - (a) include a lot on plan description of the land; and
  - (b) state the land will be managed as a national park (Cape York Peninsula Aboriginal land) in perpetuity; and
  - (c) state how the land is proposed to be managed; and

- (d) include details of any interim arrangements for its management before the approval of a management plan for the land; and
  - (e) state the responsibilities of the environment Minister, and the chief executive under the *Nature Conservation Act 1992*, in relation to the management of the land; and
  - (f) state the responsibilities of the grantees of the land in relation to its management; and
  - (g) include details of the process for developing a management plan for the land; and
  - (h) include details of areas of the land to which general public access may be restricted; and
  - (i) include information about the management of any infrastructure on the land; and
  - (j) state how existing interests in the land will be managed and how future interests in the land will be created and managed.
- (2) An indigenous management agreement about the management of land that is a national park that is to become a national park (Cape York Peninsula Aboriginal land) must not result in a decrease, in the aggregate, in the public rights of access that existed in relation to the national park immediately before it becomes a national park (Cape York Peninsula Aboriginal land).
- (3) An indigenous management agreement about the management of land may include other matters relevant to the management of the land that the trustee, or proposed trustee, for the land and the environment Minister consider appropriate.
- (4) An indigenous management agreement about the management of land can not be entered into without the consent of the environment Minister.
- (5) In this section—

*management plan* means a management plan under the *Nature Conservation Act 1992*.

### **83H Amending indigenous management agreement**

An indigenous management agreement about the management of land may be amended with the agreement of the trustee, or proposed trustee, for the land and the environment Minister.

### **83I Recording of indigenous management agreement**

- (1) The chief executive must give the registrar of titles written notice of each indigenous management agreement entered into under this Act.
- (2) The chief executive must give the notice—
  - (a) if the land the subject of the agreement becomes Aboriginal land after the agreement is entered into—as soon as practicable after the land becomes Aboriginal land; or
  - (b) if the land the subject of the agreement is Aboriginal land when the agreement is entered into—as soon as practicable after the agreement is entered into.
- (3) The notice must include particulars of the land.
- (4) The registrar must keep records that show the land is the subject of an indigenous management agreement.
- (5) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title to the land will show the existence of the agreement.
- (6) While the indigenous management agreement has effect for the land, and is recorded by the registrar under this section, the agreement is binding on—
  - (a) each person or entity who is from time to time a grantee of the land or a trustee for the land, whether or not the person or entity entered into the agreement or agreed to any amendment of the agreement; and
  - (b) each person who has an interest in the land.

## **Division 2                      National parks in Cape York Peninsula Region**

### **83J      Requirements about grant of national parks in Cape York Peninsula Region**

- (1) This section applies to the following land if the land is, or includes part of, a national park in the Cape York Peninsula Region (the *national park land*)—
  - (a) transferable land;
  - (b) land for which the Land Tribunal has, under section 60, made a recommendation to the Minister before the commencement of this section.
- (2) Before the national park land is granted under this Act, the trustee, or proposed trustee for the land must enter into an indigenous management agreement with the State about the management of the national park land.
- (3) A grant of the national park land under this Act is subject to the condition that the national park land must become a national park (Cape York Peninsula Aboriginal land).

### **83K      Particular national parks taken to be transferable land**

- (1) This section applies to all national parks in the Cape York Peninsula Region, other than a national park that is claimable land.
- (2) The national parks are transferable land for the purposes of this Act.



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## **Part 5C**                      **Provision about particular claimable land**

### **83L**      **Particular claimable land taken to be transferable land**

- (1) This section applies to claimable land that is in the Cape York Peninsula Region, other than—
  - (a) claimable land that is transferred land; or
  - (b) claimable land for which the Land Tribunal has, under section 60, made a recommendation to the Minister before the commencement of this section.
- (2) On the commencement of this section—
  - (a) the land is transferable land for the purposes of this Act; and
  - (b) the land stops being claimable land; and
  - (c) any proceeding before the Land Tribunal in relation to a claim for the land ends; and
  - (d) part 4, and part 5, division 1, stop applying to the claim for the land.
- (3) Subsection (2) applies despite any other provision of this Act.

## **Part 5D**                      **Decision making process**

### **83M**      **When agreement of Aboriginal people is given**

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

- (a) if there is a particular process of decision making that, under the Aboriginal tradition of the Aboriginal people,

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must be complied with for decisions of that kind—the decision was made under the process; or

- (b) otherwise—the decision was made under the process of decision making agreed to and adopted by the Aboriginal people for the decision or for decisions of that kind.

### **83N Decision making by trustee**

- (1) This section applies if this Act provides that the trustee of Aboriginal land is required to make a decision about the land, including, for example, a decision about whether to grant an interest in the land, consent to the creation of a mining interest in the land or enter into an agreement about the land.
- (2) The trustee must—
  - (a) as far as practicable, act in a way that is consistent with any Aboriginal tradition, for decisions of that kind, of the Aboriginal people for whom the trustee holds the land; or
  - (b) if there is no relevant Aboriginal tradition—make the decision under a process of decision making agreed to and adopted by the trustee for the decision or for decisions of that kind.

## **Part 5E Provisions about mortgages of leases over Aboriginal land**

### **83O Application of pt 5E**

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

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**83P Provisions about entering into possession, and selling, lease**

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

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### **83Q How trustee deals with proceeds of sale**

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

## **Part 5F Leasing of Aboriginal trust land**

### **Division 1 Preliminary**

#### **83R Definitions for pt 5F**

In this part—

*Aboriginal trust land* means—

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

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

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

### **83S Relationship with Land Act**

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

## **Division 2 Leases**

### **83T Trustee (Aboriginal) leases**

- (1) A trustee of Aboriginal trust land may lease all or a part of the land under part 3, division 2, subdivision 3.
- (2) For subsection (1), the relevant provisions apply in relation to the leasing of Aboriginal trust land—
  - (a) as if a reference in the provisions to transferred land were a reference to Aboriginal trust land; and
  - (b) as if a reference in the provisions to the Minister were a reference to—

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- (i) if the Aboriginal trust land is transferable land—the Minister administering this Act; and
    - (ii) if the Aboriginal trust land is not transferable land—the Minister administering the Land Act; and
  - (c) as if the reference in section 40F(4)(a) to section 40(1)(a) were a reference to section 83T(4)(a); and
  - (d) as if the reference in section 40H(3)(a) to a stated standard terms document under the Land Title Act were a reference to a stated mandatory standard terms document under the Land Act; and
  - (e) as if the reference in section 40N(2) to the Land Title Act, section 65(2) were a reference to the Land Act, section 57(5).
- (3) If the consent of the Minister is required in relation to a lease of Aboriginal trust land that is transferable land, the Minister must not give the consent unless satisfied the lease is for the benefit of Aboriginal people particularly concerned with the land.
- (4) The trustee of Aboriginal trust land that is transferable land must not grant a lease over the land for more than 30 years unless—
- (a) the trustee has explained to the Aboriginal people particularly concerned with the land the nature, purpose and effect of the lease; and
  - (b) the Aboriginal people are given a suitable opportunity to express their views on, and are generally in agreement with, the grant of the lease.
- (5) The grant of a lease over Aboriginal trust land in contravention of part 3, division 2, subdivision 3 is void, unless the lease is registered.
- (6) Subsection (5) applies despite any other Act.
- (7) In this section—

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*relevant provisions* means section 40A and part 3, division 2, subdivisions 3 and 4.

### **83U Amending trustee (Aboriginal) lease**

- (1) A document of amendment of a registered trustee (Aboriginal) lease must not—
  - (a) increase or decrease the area leased; or
  - (b) add or remove a party to the lease; or
  - (c) be lodged after the lease's term has ended.
- (2) In this section—

*term*, of a trustee (Aboriginal) lease, includes a period of possession under the lease because of—

  - (a) the exercise of an option to renew the lease; or
  - (b) a registered document of amendment extending the term of the lease.

### **83V Mortgage of trustee (Aboriginal) lease**

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

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- (iv) as if section 347 were omitted; and
- (b) section 83P applies as if the reference in section 83P(1) to Aboriginal land were a reference to Aboriginal trust land.

### **83W Surrender of trustee (Aboriginal) lease**

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

## **Division 3 Other matters**

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

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

### **83Y Recording information about land**

- (1) If a trustee (Aboriginal) lease for more than 30 years for a commercial purpose on transferable land is registered, the registrar must keep records that show the land is not transferable land.
- (2) The registrar must keep the records in a way that a search of the appropriate register kept by the registrar will show the land is not transferable land.



- (3) If a trustee gives the registrar a notice under section 83X(2) about particular land, the registrar must keep records that show the land is transferable land.
- (4) The registrar must keep the records in a way that a search of the appropriate register kept by the registrar will show the land is transferable land.

## **Part 6                      Occupation and use of Aboriginal land by the State or Commonwealth**

### **84            Use of Aboriginal land preserved**

- (1) If, on the day land becomes Aboriginal land, the land or any part of the land is being occupied or used by the State or the Commonwealth, the State or Commonwealth is entitled to continue to occupy or use it for such period as the land, or that part of the land, is required by the State or Commonwealth.
- (2) While the State or Commonwealth is entitled to the occupation or use of land under subsection (1), the improvements on the land are the property of the State or Commonwealth.
- (3) This section ceases to apply to land on its being leased to the State or Commonwealth, or a person for a private residential purpose, under part 3, division 2 or part 5, division 2.

### **85            No rent payable**

The State or Commonwealth is not liable to pay any amount in the nature of rent in relation to its occupation or use of land under section 84.

## **86 Access to land**

- (1) While the State or Commonwealth is entitled to the occupation or use of land under section 84, the officers, employees, agents and servants of the State or Commonwealth and their licensees and invitees are entitled, with or without vehicles, machinery, plant and equipment (of any description), to enter and cross Aboriginal land for the purpose of gaining access to the land.
- (2) A person mentioned in subsection (1) must only cross Aboriginal land by—
  - (a) the routes that were commonly used before the land became Aboriginal land; or
  - (b) other routes agreed on from time to time by the State or Commonwealth and the grantees of the land.
- (3) The trustee of Aboriginal land, other than a registered native title body corporate, must not agree on a route for subsection (2)(b) unless—
  - (a) the trustee has explained to the Aboriginal people particularly concerned with the land the purpose and effect of the proposed route; and
  - (b) those Aboriginal people are given adequate opportunity to express their views on, and are generally in agreement with, the proposed route.
- (4) Contravention of subsection (3) does not invalidate an agreement made for the purposes of subsection (2)(b).

# **Part 7 Mining**

## **87 Application of Mineral Resources Act**

- (1) To allay any doubt, it is declared that the *Mineral Resources Act 1989* applies to transferable land as if it were a reserve within the meaning of that Act.

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- (2) Subject to subsection (5), the *Mineral Resources Act 1989* applies to the following land as if it were a reserve, and the trustee of the land were the owner of the land, within the meaning of that Act—
- (a) Aboriginal land that is or was transferred land;
  - (b) Aboriginal land (other than land that was transferred land) that was claimable land, but was not subject to a mining interest at the beginning of the day on which the relevant claim for the land was made to the land claims registrar, other than—
    - (i) land subject to an Aboriginal (non-transferred land) lease; or
    - (ii) land that was acquired by or on behalf of Aboriginal people if all interests in the land (other than interests in favour of the State) were surrendered to or acquired by the State before the land became claimable land; or
    - (iii) any national park.
- (3) To allay any doubt, it is declared that the *Mineral Resources Act 1989* applies to Aboriginal land (other than land that was transferred land) that was claimable land and—
- (a) is subject to an Aboriginal (non-transferred land) lease; or
  - (b) was acquired by or on behalf of Aboriginal people if all interests in the land (other than interests in favour of the State) were surrendered to or acquired by the State before the land became claimable land;
- as if that land were not Aboriginal land.
- (4) If Aboriginal land (other than land that was transferred land) was claimable land and was subject to a mining interest at the beginning of the day on which the relevant claim for the land was made to the lands claims registrar, then—
- (a) in relation to the mining interest and any associated interest—to allay any doubt, it is declared that the

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*Mineral Resources Act 1989* applies to the land as if the land were not Aboriginal land; and

- (b) in relation to any other mining interest—subject to subsection (5), the *Mineral Resources Act 1989* applies to the land as if it were a reserve, and the trustee of the land were the owner of the land, within the meaning of that Act.
- (5) Subsections (2) and (4)(b) do not apply in relation to the *Mineral Resources Act 1989*, sections 316 and 317.
- (6) The holder of a mining lease must, before making application for a mining lease under the *Mineral Resources Act 1989*, section 316 or a variation of a mining lease under section 317 of that Act, consult and endeavour to reach agreement with the Aboriginal people particularly concerned with the land in relation to which the application is to be made about the route of the proposed access over the land.
- (7) Subsection (6) applies in relation to Aboriginal land held by a registered native title body corporate as if the reference in the subsection to Aboriginal people particularly concerned with the land were a reference to the registered native title body corporate that holds the land.
- (8) In this section—
  - associated interest***, in relation to a mining interest, means—
    - (a) any renewal or other continuance in force of the interest;  
or
    - (b) any other mining interest derived through, or as a result of, the interest.

***relevant claim***, in relation to Aboriginal land, means the claim because of which the land became Aboriginal land.

## **88 Royalties in relation to mining on Aboriginal land**

- (1) This section applies if the State receives an amount (the ***royalty amount***), by way of royalty under the *Mineral Resources Act 1989* or the *Petroleum and Gas (Production*

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*and Safety) Act 2004*, in relation to land that is Aboriginal land (other than land that is subject to an Aboriginal (non-transferred land) lease).

- (2) The trustee of the land is entitled to receive, out of money appropriated by the Parliament, the percentage prescribed for the purposes of this subsection of the royalty amount and must apply the amount received for the benefit of the Aboriginal people for whose benefit the trustee holds the land, particularly those that are affected by the activities to which the royalty amount relates.

## **Part 8                      The Land Tribunal**

### **Division 1                Establishment and membership**

#### **89            Land Tribunal**

- (1) A tribunal called the Land Tribunal is established for the purposes of this Act.
- (2) The Land Tribunal consists of the chairperson and such number of deputy chairpersons and other members as are appointed under this Act.

#### **90            Appointment of members**

- (1) The members of the tribunal are to be appointed by the Governor in Council.
- (2) The chairperson is to be appointed on a part-time or full-time basis, and the deputy chairpersons and other members are to be appointed on a part-time basis.
- (3) A member of the tribunal is to be appointed under this Act, and not under the *Public Service Act 1996*.

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- (4) Nothing in this Act prevents the chairperson also holding office as the chairperson or other member of the Land Tribunal established for the purposes of the *Torres Strait Islander Land Act 1991*.

## **91 Qualifications for appointment**

- (1) A person is not eligible for appointment as chairperson or deputy chairperson of the Land Tribunal unless the person is a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of the State, another State or a Territory of not less than 5 years standing.
- (2) A person is not eligible for appointment as a non-presiding member of the Land Tribunal unless the person—
- (a) has, in the opinion of the Governor in Council, suitable knowledge of Aboriginal people or Aboriginal tradition; or
  - (b) has had experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or an authority of a government.

## **92 Term of appointment**

A member of the Land Tribunal is appointed for such term (not exceeding 7 years) as is specified in the instrument of appointment, but is eligible for reappointment.

## **93 Terms and conditions of appointment**

- (1) A member of the Land Tribunal is to be paid such remuneration and allowances as are determined by the Governor in Council.
- (2) A member of the Land Tribunal holds office on such terms and conditions not provided for by this Act as are determined by the Governor in Council.

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## **94 Preservation of rights**

- (1) This section applies if an officer of the public service is appointed as the chairperson of the Land Tribunal.
- (2) The person retains and is entitled to all rights that have accrued to the person because of employment as an officer of the public service, or that would accrue in the future to the person because of that employment, as if service as chairperson were a continuation of service as an officer of the public service.
- (3) If the person has not attained 65 years of age at the time of the expiry of the person's term of office or resignation—
  - (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the salary level, at that time, of an office equivalent to the one the person held before being appointed as chairperson; and
  - (b) the person's service as chairperson is to be regarded as service in the public service for the purpose of determining the person's rights as an officer of the public service.

## **95 Leave of absence**

The Minister may grant leave of absence to the chairperson of the Land Tribunal on such terms and conditions as the Minister considers appropriate.

## **96 Resignation**

A member of the Land Tribunal may resign by writing signed and delivered to the Governor.

## **97 Disclosure of interests**

- (1) If a member of the Land Tribunal is, or is to be, a member of the tribunal as constituted for the purposes of a proceeding and the member has or acquires an interest (whether pecuniary or otherwise) that could conflict with the proper

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performance of the member's functions in relation to the proceeding—

- (a) the member must disclose the interest to the parties to the proceeding; and
  - (b) except with the consent of all parties to the proceeding—the member must not take part in the proceeding or exercise any powers in relation to the proceeding.
- (2) Where the chairperson of the Land Tribunal becomes aware that a member of the tribunal, who is, or is to be, a member of the tribunal as constituted for the purposes of a proceeding, has in relation to the proceeding an interest of the kind mentioned in subsection (1)—
- (a) if the chairperson considers that the member should not take part, or continue to take part, in the proceeding—the chairperson must direct the member accordingly; or
  - (b) in any other case—the chairperson must cause the interest of the member to be disclosed to the parties to the proceeding if the interest has not already been disclosed to them.

## **98 Termination of appointment**

- (1) The Governor in Council may terminate the appointment of a member of the Land Tribunal if the member—
- (a) becomes mentally or physically incapable of satisfactorily performing the member's duties; or
  - (b) is convicted of an indictable offence (whether in Queensland or elsewhere); or
  - (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service; or
  - (d) contravenes section 97 or a direction given under that section; or



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- (e) in the case of the chairperson—is absent, without the Minister’s leave and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.
- (2) Subsection (1)(c) applies only to a non-presiding member.

## **99 Acting chairperson**

The Governor in Council may appoint a person to act as chairperson of the Land Tribunal—

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the chairperson is absent from duty or from the State or is, for any other reason, unable to perform the duties of the office.

## **Division 2 Organisation of tribunal**

### **100 Arrangement of business**

- (1) Subject to section 101, the chairperson of the Land Tribunal may give directions as to the arrangement of the business of the tribunal and as to the members who are to constitute the tribunal for the purposes of particular proceedings.
- (2) If the chairperson gives a direction as to the members who are to constitute the tribunal for the purposes of a particular proceeding, the chairperson may—
  - (a) at any time after giving the direction and before the start of the hearing of the proceeding; or
  - (b) if, in the case of a proceeding before the tribunal constituted by 3 members, 1 of those members ceases to be a member, or ceases to be available for the purposes of the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the matter to which the proceeding relates is determined—at any time after the member ceases to be a member or to be available;

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revoke the direction and give a further direction under subsection (1) as to the persons who are to constitute the tribunal for the purposes of the proceeding.

- (3) In giving a direction under this section as to the members who are to constitute the tribunal for the purposes of a particular proceeding, the chairperson must have regard to—
  - (a) the degree of public importance or complexity of the matters to which the proceeding relates; and
  - (b) the need for the tribunal's affairs to be conducted expeditiously and efficiently; and
  - (c) the nature of the issues likely to be involved in the proceeding.

## **101 Constitution of tribunal**

- (1) Subject to section 103, the tribunal is to be constituted for the purposes of the hearing and determination of a proceeding by—
  - (a) a presiding member; or
  - (b) subject to subsection (2), a presiding member and 2 non-presiding members.
- (2) If the tribunal is to be constituted as mentioned in subsection (1)(b)—
  - (a) 1 of the non-presiding members must be a person who, in the opinion of the chairperson of the tribunal, has suitable knowledge of Aboriginal people or Aboriginal tradition; and
  - (b) the other non-presiding member must have had experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or an authority of a government.
- (3) The tribunal may be constituted for the exercise of powers in relation to the hearing of a proceeding, or for the purposes

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other than the hearing and determination of a proceeding, by a presiding member.

## **102 Member presiding**

At the hearing of a proceeding before the tribunal at which the tribunal is constituted for the purposes of the proceeding by more than 1 member, the presiding member is to preside unless another member is directed under section 103 to preside.

## **103 Member of tribunal ceasing to be available**

- (1) If the hearing of a proceeding has been commenced or completed by the Land Tribunal constituted by 3 members but, before the matter to which the proceeding relates has been determined, 1 of the members constituting the tribunal ceases to be a member, or ceases to be available for the purposes of the proceeding—
  - (a) if the parties agree and the chairperson does not give a direction under section 100—the hearing and determination, or the determination, of the proceeding may be completed by the tribunal constituted by the remaining members or member; or
  - (b) in any other case—the proceeding is to be reheard by the tribunal as reconstituted under section 101.
- (2) If the member who ceases to be a member, or ceases to be available for the purposes of the proceeding, is the member who is, but for this subsection, to preside, the chairperson may, in writing, appoint 1 of the remaining members, or the remaining member, to preside.
- (3) If a proceeding is reheard by the tribunal, the tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the tribunal as previously constituted, including any evidence taken in the proceeding.

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## **104 Sitting places**

Sittings of the Land Tribunal may be held from time to time as required at any place in the State.

## **Division 3 Conduct of proceedings before tribunal**

### **105 Parties to proceeding before tribunal**

- (1) Subject to section 114, the parties to a proceeding for the hearing of a claim under this Act are—
  - (a) the claimants; and
  - (b) the claimants of any other claim under this Act that is to be heard and determined with that claim; and
  - (c) any other person who has been made a party to the proceeding by the tribunal on application by the person under subsection (2).
- (2) An interested person may, within the period specified in the notice published under section 50 in relation to the claim or within such further period as the tribunal allows, apply, in writing, to the tribunal to be made a party to the proceeding and the tribunal may, by order, make the person a party to the proceeding.

### **106 Tribunal to determine who are interested persons**

- (1) If it is necessary for the purposes of this Act to decide whether a person is an interested person in relation to a claim under this Act, the matter is to be decided by the Land Tribunal.
- (2) If the tribunal decides that a person is not an interested person in relation to a claim under this Act, the tribunal must give the person written reasons for its decision.

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## **107 Representation before tribunal**

At the hearing of a proceeding before the tribunal, a party to the proceeding may appear in person or be represented by an agent duly appointed in writing for the purpose but, unless the tribunal otherwise orders, can not be represented by counsel or a solicitor (enrolled in Queensland or elsewhere) engaged as counsel or solicitor for the proceeding.

## **108 Procedure of tribunal**

- (1) In a proceeding before the Land Tribunal—
  - (a) the procedure of the tribunal is, subject to this Act, within the discretion of the tribunal; and
  - (b) the tribunal must pursue the objective of performing its functions in a fair, just, economical, informal and prompt way; and
  - (c) the tribunal must take account of relevant cultural and customary concerns of Aboriginal people; and
  - (d) the tribunal is not bound by technicalities, legal forms or rules of evidence but may inform itself on anything in any way that it considers appropriate.
- (2) For the purposes of subsection (1), directions as to the procedure to be followed at or in connection with the hearing of a proceeding before the tribunal may be given—
  - (a) if the hearing of the proceeding has not started—by the chairperson or by a presiding member authorised by the chairperson to give directions for the purposes of this paragraph; and
  - (b) if the hearing of the proceeding has started—by the member presiding at the hearing or by another member authorised by the member presiding to give such directions.
- (3) A direction may be varied or revoked by a member empowered to give the direction.

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- (4) An authorisation by the chairperson may be of general application or may relate to the hearing of a particular proceeding or class of proceedings.
- (5) The chairperson may vary or revoke an authorisation.

## **109 Conferences**

- (1) If a claim is referred to the Land Tribunal, the chairperson may direct the holding of a conference of the parties presided over by a presiding member.
- (2) If a conference is held under subsection (1) and—
  - (a) at or after the conference, agreement is reached between the parties as to the terms of a decision of the tribunal in the proceeding that would be acceptable to the parties; and
  - (b) the terms of the agreement are reduced to writing, signed by the parties and given to the tribunal; and
  - (c) the tribunal is satisfied that—
    - (i) a decision in those terms would be within the powers of the tribunal; and
    - (ii) that it would be appropriate to make a decision in those terms;

the tribunal may, without holding a hearing, make a recommendation to the Minister in accordance with or based on those terms.

- (3) At the hearing of a proceeding before the tribunal, unless the parties otherwise agree, evidence must not be given, and statements must not be made, about anything that happens at a conference held under subsection (1) in relation to the proceeding.
- (4) If—
  - (a) a conference held under subsection (1) in relation to a proceeding is presided over by a member of the tribunal; and

- (b) a party to the proceeding who was present at the conference notifies the tribunal before, or at the start of, the hearing that the party objects to the member participating in the hearing;

the member is not entitled to be a member of the tribunal as constituted for the purposes of the proceeding.

- (5) In this section—

*Minister* means the Minister administering the Land Act.

## **110 Hearings to be in public except in special circumstances**

- (1) Subject to this section, the hearing of a proceeding before the Land Tribunal is to be in public.
- (2) If the tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the tribunal may, by order—
- (a) direct that a hearing or part of a hearing is to take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the tribunal, whether in public or in private, or of matters contained in documents lodged with the tribunal or received in evidence by the tribunal; or
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the tribunal, or of matters contained in documents lodged with the tribunal or received in evidence by the tribunal.
- (3) In considering—
- (a) whether the hearing of a proceeding should be held in private; or
- (b) whether publication, or disclosure to a party, of evidence, or of a matter contained in a document or received in evidence, should be prohibited or restricted;

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the tribunal is to take as the basis of its consideration the principle that it is desirable that the hearing of a proceeding before the tribunal should be held in public and that evidence given before the tribunal and the contents of documents lodged with the tribunal or received in evidence by the tribunal should be made available to the public and to all the parties, but must pay due regard to any reasons given to the tribunal why the hearing should be held in private or why publication or disclosure of the evidence or matter should be prohibited or restricted, particularly if those reasons are based on any applicable Aboriginal tradition.

### **111 Opportunity to make submissions**

Subject to section 110, the Land Tribunal must ensure that every party to a proceeding before the tribunal is given a reasonable opportunity to present the party's case and, in particular, to inspect any documents to which the tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to the documents.

### **112 Particular powers of tribunal**

- (1) For the purpose of a proceeding, the Land Tribunal may—
  - (a) take evidence on oath or affirmation; or
  - (b) proceed in the absence of a party who has had reasonable notice of the proceeding; or
  - (c) adjourn the proceeding from time to time.
- (2) For the purposes of the hearing of a proceeding, the chairperson, a presiding member, or an officer of the tribunal authorised in writing by the chairperson or a presiding member, may summon a person to appear before the tribunal to give evidence and to produce such documents (if any) as are specified in the summons.
- (3) The member who presides at the hearing of a proceeding—



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- (a) may require a person appearing before the tribunal to give evidence either to take an oath or to make an affirmation; and
  - (b) may administer an oath or affirmation to a person so appearing before the tribunal.
- (4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give to questions asked of the person will be true.

### **113 Manner in which questions to be decided**

- (1) A question of law arising in a proceeding before the Land Tribunal at which a presiding member is presiding (including the question whether a particular question is one of law) is to be decided in accordance with the opinion of the member presiding.
- (2) Subject to subsection (1), when the members constituting the tribunal for the purposes of a particular proceeding are divided in opinion as to the decision to be made on any question—
  - (a) if there is a majority of the one opinion—the question is to be decided according to the opinion of the majority; or
  - (b) in any other case—the question is to be decided according to the opinion of the member presiding.

### **114 Power of tribunal to dismiss claim or strike out party**

If a party to a proceeding before the Land Tribunal fails either to appear at a preliminary conference or at the hearing of the proceeding, the tribunal may—

- (a) if the party has made a claim under this Act to which the proceeding relates—dismiss the claim concerned; or
- (b) in any other case—direct that the person who failed to appear is to cease to be a party to the proceeding.

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### **114A Tribunal may order that particular claimable land is transferable land**

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

### **115 General powers**

For the purpose of a proceeding in relation to a claim, the Land Tribunal may do all other things necessary or convenient to be done for or in connection with the hearing and determination of the claim.

### **116 Reasons to be given by tribunal**

- (1) Subject to this section and to section 110, the Land Tribunal must give written reasons for—
  - (a) its recommendations to the Minister in relation to a claim; and

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- (b) a claim being or not being established on 1 or more grounds.
  - (2) The reasons must include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.
  - (3) The tribunal must cause a copy of its reasons to be given (in writing) to the Minister and each party to the proceeding.
  - (4) In this section—

*Minister* means the Minister administering the Land Act.

### **117 Appeals to Land Appeal Court from decisions of tribunal**

- (1) A party to a proceeding before the Land Tribunal may—
  - (a) appeal to the Land Appeal Court against a decision of the tribunal—
    - (i) that an area of land is or is not claimable land; or
    - (ii) that a claim for an area of claimable land is or is not established on a particular ground; or
    - (iii) to make or not to make a particular recommendation to the Minister in relation to a claim; or
    - (iv) as to the terms of a particular recommendation to the Minister; and
  - (b) appeal to the Land Appeal Court, with the leave of that court, against any other decision of the tribunal made in or in relation to the proceeding.
- (2) If—
  - (a) a person has applied to be made a party to a proceeding before the Land Tribunal; and
  - (b) the tribunal decides that the person is not an interested person;

the person may appeal to the Land Appeal Court against the decision.

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- (3) An interested person who is dissatisfied with a determination of the Land Tribunal under section 132(2)(b) may appeal to the Land Appeal Court.
- (4) If the chairperson of the tribunal decides under section 49 that a claim is not duly made, the claimants may appeal to the Land Appeal Court.
- (5) An appeal, or application for leave to appeal, under this section must be made in accordance with any applicable rules of court and any regulations made for the purpose of this section.
- (6) The Land Appeal Court must hear and determine the appeal, or application for leave to appeal, and may make such order as it considers appropriate.
- (7) Without limiting subsection (6), the orders that may be made by the Land Appeal Court on an appeal include—
  - (a) an order affirming a decision of the Land Tribunal; or
  - (b) an order varying a decision of the Land Tribunal; or
  - (c) an order setting aside a decision of the Land Tribunal and—
    - (i) making a decision in substitution for the decision set aside; or
    - (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Land Appeal Court.
- (8) For the purposes of an appeal, the Land Appeal Court may exercise all the powers and discretions conferred on the Land Tribunal.
- (9) In this section—

*Minister* means the Minister administering the Land Act.

## **118 Reference of questions of law to Land Appeal Court**

- (1) The Land Tribunal may, of its own motion or at the request of a party, refer a question of law arising in a proceeding before

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the tribunal to the Land Appeal Court for decision, but a question is not to be referred without the agreement of the presiding member (if any) who is presiding or the chairperson of the tribunal.

- (2) If a question of law arising in a proceeding before the Land Tribunal has been referred to the Land Appeal Court, the tribunal must not, in the proceeding—
- (a) give a decision to which the question is relevant while the reference is pending; or
  - (b) proceed in a manner, or make a decision, that is inconsistent with the decision of the Land Appeal Court on the question.

## **119 Evidence and other findings in other proceedings**

In a proceeding, the Land Tribunal may—

- (a) receive into evidence the transcript of evidence in another proceeding before—
  - (i) a court; or
  - (ii) the Land Tribunal; or
  - (iii) the National Native Title Tribunal; or
  - (iv) a recognised State/Territory body within the meaning of the *Native Title Act 1993* (Cwlth); or
  - (v) another entity;and draw conclusions of fact from the transcript; and
- (b) receive into evidence a document or other thing introduced into evidence in another proceeding before a court, tribunal, body or other entity and draw conclusions from the document or thing; and
- (c) adopt findings, reports, recommendations, decisions, determinations or judgments of a court, tribunal, body or other entity.

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## **120 Protection of members etc.**

- (1) A member of the Land Tribunal has, in the performance of the member's duties as a member, the same protection and immunity as a judge of the Supreme Court.
- (2) A person representing a party before the Land Tribunal has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the Supreme Court.
- (3) A person summoned to attend or appearing before the Land Tribunal as a witness has the same protection as a witness in a proceeding in the Supreme Court.

## **121 Continuing authority of member**

If a member's appointment expires, the appointment continues until the member finishes performing any function started, but not finished, before the expiry of the appointment.

## **122 Failure of witness to attend**

A person served, as prescribed, with a summons to appear as a witness before the Land Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear from time to time in the course of the proceeding as required by the presiding member.

Maximum penalty—20 penalty units.

## **123 Refusal of witness to be sworn or to answer questions**

- (1) A person appearing as a witness at a hearing of the Land Tribunal must not, without reasonable excuse—
  - (a) fail to be sworn or to make an affirmation; or
  - (b) fail to answer a question that the person is required to answer by the presiding member; or

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- (c) fail to produce a document that the person was required to produce by a summons under this Act served on the person as prescribed.

Maximum penalty—20 penalty units.

- (2) It is a reasonable excuse for a person to fail to answer a question if answering the question may tend to incriminate the person.
- (3) It is a reasonable excuse for a person to fail to produce a document if producing the document may tend to incriminate the person.

#### **124 Obstructing tribunal etc.**

- (1) A person must not obstruct or improperly influence the conduct of a hearing of the Land Tribunal or attempt to do so.
- (2) A person must not contravene an order under section 110.

Maximum penalty—40 penalty units.

#### **125 Allowances for witnesses**

A witness summoned to appear at a hearing of the Land Tribunal is entitled to be paid such allowances and expenses—

- (a) as are prescribed; or
- (b) as the chairperson of the tribunal determines in the absence of regulations.

### **Division 4 Miscellaneous**

#### **126 Management of administrative affairs of tribunal**

The chairperson of the Land Tribunal is responsible for managing the administrative affairs of the tribunal.

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### **127 Staff of tribunal employed under Public Service Act**

The staff of the Land Tribunal are to be employed under the *Public Service Act 1996*.

### **128 Consultants to tribunal**

The Land Tribunal may, on behalf of the State, engage persons having suitable qualifications and experience as consultants to the tribunal.

### **129 Annual report**

- (1) The chairperson of the Land Tribunal must, not later than 4 months after the end of each financial year, prepare and give to the Minister a report on the operations of the tribunal during the year.
- (2) The Minister must cause a copy of the report to be laid before the Legislative Assembly within 14 days after its receipt by the Minister.
- (3) If, at the time the Minister would otherwise be required to lay a copy of the report before the Legislative Assembly, the Legislative Assembly is not in session or not actually sitting, the Minister must give a copy of the report to the clerk of the Parliament.
- (4) The clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.
- (5) For the purposes of its publication, the report is taken to have been laid before the Legislative Assembly, and to have been ordered to be published by the Legislative Assembly, when it is given to the clerk.

### **130 Delegation of powers by chairperson**

The chairperson of the Land Tribunal may delegate his or her powers under this or any other Act to another presiding member of the tribunal.



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## Part 9 Miscellaneous

### 131 Creation of interests in transferable and claimable land

- (1) Nothing in this Act prevents the creation of an interest in transferable land if—
  - (a) the interest is a mining interest or a geothermal exploration permit under the *Geothermal Exploration Act 2004*; or
  - (b) the interest is a residential tenancy agreement; or
  - (c) the interest is a lease or permit granted in relation to transferable land that is Aboriginal trust land; or
  - (d) the interest is the transfer, mortgage or sublease of a trustee (Aboriginal) lease; or
  - (e) for another interest—the Minister, subject to subsection (2), consents to the creation of the interest.
- (2) The Minister must not consent under subsection (1)(e) to the creation of the interest unless the Minister is satisfied that the creation of the interest is for the benefit of Aboriginal people particularly concerned with the land.
- (3) The Minister may give a relevant entity a written authority dispensing with the need to obtain the Minister's consent to the creation of a particular type of interest in transferable land if the Minister considers it is appropriate in all the circumstances to give the authority.
- (4) Nothing in this Act prevents the creation of an interest in claimable land that is not transferred land (whether or not a claim has been made under this Act for the land) if—
  - (a) the interest is a mining interest or a geothermal exploration permit under the *Geothermal Exploration Act 2004*; or
  - (b) for another interest—the Minister, subject to subsection (5), consents to the creation of the interest.

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- (5) The Minister must not consent under subsection (4)(b) to the creation of the interest unless the Minister is satisfied that—
  - (a) the creation of the interest is for the benefit of Aboriginal people particularly concerned with the land;  
or
  - (b) the interest will cease to have effect before, or if and when, the land becomes Aboriginal land.
- (6) Nothing in this Act prevents the creation of an interest in land that may become transferable land.
- (7) This section has effect despite anything in any other Act.
- (8) In this section—

*relevant entity* means—

  - (a) a trustee, under the Land Act, of Aboriginal trust land;  
or
  - (b) the Council of the Shire of Aurukun or the Council of the Shire of Mornington.

## **132 Rights of access to interests preserved**

- (1) This section applies if—
  - (a) a person has an interest in land (the *person's land*); and
  - (b) the person's land is—
    - (i) surrounded by Aboriginal land; or
    - (ii) in the vicinity of Aboriginal land and the only practicable way of gaining access to the person's land is across the Aboriginal land.
- (2) The person and the person's officers, employees, agents, servants, licensees and invitees are entitled, with or without vehicles, machinery, plant and equipment (of any description), to enter and cross Aboriginal land for the purpose of gaining access to the person's land by a route—
  - (a) that is agreed on from time to time by the trustee of the Aboriginal land and the person; or

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- (b) if the trustee and the person fail to agree within a reasonable time—that is determined by the Land Tribunal on application by the person.
  - (3) The trustee of Aboriginal land, other than a registered native title body corporate, must not agree on a route for the purposes of subsection (2)(a) unless—
    - (a) the trustee has explained to the Aboriginal people particularly concerned with the land the purpose and effect of the proposed route; and
    - (b) those Aboriginal people are given an adequate opportunity to express their views on, and are generally in agreement with, the proposed route.
  - (4) Contravention of subsection (3) does not invalidate an agreement made for the purposes of subsection (2)(a).

### **132A National park subject to lease to State etc.**

- (1) If transferred land or granted land is, or includes part of, a national park (the *national park land*), the grant of the national park land—
  - (a) is subject to the condition that the grantees lease the national park land, in perpetuity, to the State for the purposes of the management of the national park land under the *Nature Conservation Act 1992*; and
  - (b) is subject to the conditions prescribed under a regulation for the national park land or national parks generally.
- (2) There is to be a board of management for the national park land.
- (3) Subject to subsection (4), the board of management is to be composed in the way approved by the Minister.
- (4) The Aboriginal people particularly concerned with the national park land are to be represented on the board of management if the land is granted other than to a registered native title body corporate.

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- (4A) If the national park land is granted to a registered native title body corporate, the registered native title body corporate is to be represented on the board of management.
- (5) The Minister must, in cooperation with the board of management and before the grant of the land, prepare a management plan for the national park land.
- (6) The *Nature Conservation Act 1992*, part 7 applies to the management plan as if it were a management plan required to be prepared under the part.
- (7) In the preparation of a management plan, the Minister must—
  - (a) if the national park land is granted other than to a registered native title body corporate—consult with, and consider the views of, the Aboriginal people particularly concerned with the national park land; and
  - (b) as far as practicable, but subject to this section and the *Nature Conservation Act 1992*, act in a way that is consistent with any Aboriginal tradition applicable to the national park land (including any tradition relating to activities on the national park land).
- (8) The lease of the national park land must be subject to the following conditions—
  - (a) that the national park is to be managed in accordance with the management plan as in force from time to time;
  - (b) that the management plan is to be implemented by the board of management.
- (9) The grantees of the transferred land or granted land must—
  - (a) sign a lease of the national park land in registrable form containing the required conditions and such other terms and conditions as are agreed; and
  - (b) give the signed lease to the Minister before or at the time of delivery of the deed of grant issued under section 27 or 63 in relation to the land.
- (10) Nothing in this Act or a management plan or lease under this section is to result in a decrease, in the aggregate, in the public

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rights of access that existed in relation to the national park land immediately before the land became transferable land or claimable land.

(11) In this section—

*Minister* means the Minister administering the *Nature Conservation Act 1992*.

*national park* does not include a national park in the Cape York Peninsula Region.

### **133 Persons and bodies representing State or Commonwealth**

The regulations may declare that a person or body is to be treated for the purposes of this Act, or a particular provision of this Act, as representing, or as not representing, the State or the Commonwealth (whether generally or in relation to a particular area or class of land).

### **134 Delegation by Minister**

The Minister may, by signed writing, delegate to an officer of the public service all or any of the Minister's powers under or in relation to this Act (other than powers under section 16B, 27, 27A, 28, 63, 64 or 65).

### **135 Delegation by land claims registrar**

The land claims registrar may, by signed writing, delegate to an officer of the public service all or any of the registrar's powers under or in relation to this Act.

### **136 Amendment of description of land**

(1) If, at any time after a deed of grant under this Act or an Aboriginal (non-transferred land) lease takes effect, greater certainty, by survey or otherwise, is obtained as to the boundaries of the land, the trustee must, on receipt of a written notice to do so by the chief executive, surrender to the State

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the deed to, or lease over, the land within such reasonable period as is specified in the notice.

- (2) On surrender of the deed or lease, a new deed of grant or lease delineating the amended boundaries is to be issued to the trustee.
- (3) The new deed of grant or lease is to be issued on the same ground (if any) as the surrendered deed of grant or lease.
- (4) The registrar of titles must endorse on the new deed of grant or lease, in the proper order or priority, the instruments under which existing relevant interests arose.

### **136A Dealing with particular trust property**

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

*housing service* means—

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

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

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**136B Application of Residential Tenancies and Rooming Accommodation Act 2008**

The *Residential Tenancies and Rooming Accommodation Act 2008* does not apply to a lease granted under this Act for private residential purposes.

**137 Survey costs etc. to be paid by State**

- (1) Survey costs incurred in relation to the preparation of a deed of grant under section 27, 63 or 136 or an Aboriginal lease are to be paid by the State.
- (2) No fees or charges are payable for the preparation and registration of—
  - (a) a deed of grant in fee simple under this Act; or
  - (b) an Aboriginal lease or a lease prepared for section 132A or 136; or
  - (c) a surrender, under or for this Act, of a deed of grant or lease mentioned in paragraph (a) or (b).
- (3) This section has effect despite any other Act.

**137A Application of Financial Accountability Act 2009**

- (1) A land trust is not a statutory body for the *Financial Accountability Act 2009*.
- (2) However, a land trust must, at all reasonable times—
  - (a) allow a suitably qualified person appointed by the chief executive to audit the accounts of the land trust; and
  - (b) give the person appointed to audit the accounts of the land trust the help the person reasonably requires for conducting the audit, including disclosing financial institution account details.

**137AB Confirmation of status of particular land**

- (1) To remove any doubt, it is declared that—

[s 137B]

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- (a) the sales permit does not create, and never has created, for the purposes of section 19, an interest in land; and
  - (b) the amending regulation was valid.
- (2) In this section—

*amending regulation* means the *Aboriginal Land Amendment Regulation (No. 1) 2002*.

*sales permit* means Sales Permit No. 004490, dated 18 October 1990, issued under the *Forestry Act 1959*.

### 137B Approval of forms

The chief executive may approve forms for use under this Act.

### 138 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may make provision with respect to—
  - (a) the incorporation of the grantees of land granted or leased, or to be granted or leased, under this Act; and
  - (b) requiring the grantees to become incorporated; and
  - (c) the indemnification of incorporated grantees, and any other trustees, from personal liability; and
  - (d) the procedure to be followed by the grantees or a land trust in arriving at decisions in relation to land; and
  - (e) evidence of decisions made by the grantees or a land trust; and
  - (f) the establishment and maintenance by the chief executive of a land trust register, including, for example, the information each land trust must give the chief executive for inclusion in the register; and
  - (g) rules for land trusts and Aboriginal land claim associations, including, for example, the adoption of



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rules and the matters that must be included in the rules;  
and

- (h) accounting requirements for land trusts, including, for example, maintaining accounts, preparing financial statements, auditing accounts and giving audit reports to the chief executive; and
- (i) the minimum annual rental amount payable by the State under a lease granted to the State under this Act.

## Part 10                      Validation provisions

### 139      Existing conservation agreements

- (1) This section applies to a conservation agreement in relation to transferred land entered into, or purportedly entered into, under the *Nature Conservation Act 1992*, section 45, by the grantees of the land before 18 March 2005.
- (2) The agreement is taken to be, and always to have been, valid.

### 139A   Existing interest in transferable land

- (1) This section applies to an interest in transferable land that is a residential tenancy agreement if, on the commencement—
  - (a) the agreement is in force; and
  - (b) the Minister had not consented to the creation of the interest under section 131.
- (2) On the commencement, the Minister is taken to have consented to the creation of the interest under section 131 as in force before the commencement.
- (3) In this section—  
***commencement*** means the day this section commences.

## **Part 11**                      **Transitional provisions**

### **Division 1**                      **Transitional provision for Audit Legislation Amendment Act 2006**

#### **140**      **Further amendment, or repeal, of Aboriginal Land Regulation 1991**

The amendment of the *Aboriginal Land Regulation 1991* by the *Audit Legislation Amendment Act 2006* does not affect the power of the Governor in Council to further amend that regulation or to repeal it.

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

#### **Subdivision 1**              **Preliminary**

##### **141**      **Definition for div 2**

In this division—

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

#### **Subdivision 2**              **Transitional provisions**

##### **142**      **Transferred land—change to beneficiaries**

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

- (2) On the commencement, the trustee of the land is taken to hold it for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants.
- (3) As soon as practicable after the commencement, the chief executive must give written notice to the registrar of titles that the land vests in the trustee as mentioned in subsection (2).
- (4) On receiving the notice, the registrar of titles must record in the freehold land register that the land is vested as mentioned in subsection (2).

### **143 Interests in Aboriginal land continue**

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

## Schedule Dictionary

### section 3

*Aboriginal land* see section 10.

*Aboriginal land claim association* means an entity formed through the incorporation, under a regulation, of—

- (a) the members of a group of Aboriginal people who intend to make a land claim under this Act on their own behalf and on behalf of other Aboriginal people in the group; or
- (b) a group of Aboriginal people who intend to make a land claim under this Act.

*Aboriginal lease* means a lease prepared under section 64.

*Aboriginal (non-transferred land) lease* means a lease prepared under section 64(1)(d).

*Aboriginal people* see section 7.

*Aboriginal reserve land* see section 14.

*Aboriginal tradition* see section 9.

*Aboriginal (transferred land) lease* means a lease prepared under section 64(1)(c).

*Aboriginal trust land* see section 83R.

*Aborigine* see section 8.

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

*ancestor* includes an ancestor under Aboriginal tradition.

*appropriate register* means—

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

*approved form* means a form approved under section 137B.

***associated reserve*** means land—

- (a) dedicated as a reserve under the Land Act for travelling stock requirements or watering-places; or
- (b) reserved and set apart under the *Land Act 1962* for works for obtaining, conserving, distributing or utilising water.

***Aurukun Shire lease land*** see section 15.

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

***bed and banks*** see the *Water Act 2000*, schedule 4.

***Cape York Peninsula Region*** means the Cape York Peninsula Region under the *Cape York Peninsula Heritage Act 2007*.

***city or town land*** see section 22.

***claimable land*** see section 17.

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

***constructing authority*** means a constructing authority under the Acquisition Act.

***descendant*** includes a descendant under Aboriginal tradition.

***DOGIT land*** see section 13.

***enactment day*** means the day on which this Act receives the Royal Assent.

***environment Minister*** means the Minister administering the *Nature Conservation Act 1992*.

***expression of interest*** see section 26C(1).

***forest products*** means all vegetable growth and material of vegetable origin (whether living or dead and whether standing or fallen).

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

***granted land*** see section 17.

**group** includes a community.

**group of Aboriginal people** includes—

- (a) the descendants of the group; and
- (b) if there is only 1 surviving member of a group of Aboriginal people—that person.

**improvements** see the Land Act, schedule 6.

**indigenous management agreement**, about the management of land, means an agreement complying with the requirements of section 83G in relation to the land.

**interest**, in relation to land, means—

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in relation to, the land;

and includes—

- (c) a permit or licence issued in relation to the land; and
- (d) a mining interest; and
- (e) a geothermal exploration permit under the *Geothermal Exploration Act 2004*.

**interested person**, in relation to a claim under this Act for claimable land, means a person whose interests (whether pecuniary or otherwise) could be affected by the grant of the land as Aboriginal land because of the claim.

**lake** see the *Water Act 2000*, schedule 4.

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

**land claims registrar** means the chief executive of the department.

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

**Land Tribunal** means the Land Tribunal established for the purposes of this Act.

**land trust** means—

- 
- (a) an entity formed through the incorporation, under a regulation, of the grantees of Aboriginal land; or
  - (b) a land trust established under section 83A.

*lease* does not include a residential tenancy agreement.

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

*management plan*, in relation to a national park, means a statement of specific objectives and policies relating to the planning, use, development and management of the national park.

*maximum amount*—

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

*mineral* see the *Mineral Resources Act 1989*, section 6.

*mining interest* means a lease, claim or other interest in, or a permit, licence or other right in relation to, land that is granted under—

- (a) the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*; or
- (b) another Act relating to mining for minerals, petroleum or natural gas.

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

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

*national park* means an area dedicated under the *Nature Conservation Act 1992* as a national park.

*national park (Cape York Peninsula Aboriginal land)* means an area dedicated under the *Nature Conservation Act 1992* as a national park (Cape York Peninsula Aboriginal land).

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

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

**natural gas** see the *Petroleum Act 1923*, section 2.

**non-presiding member**, in relation to the Land Tribunal, means a member of the tribunal other than the chairperson or a deputy chairperson.

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

**presiding member**, in relation to the Land Tribunal, means the chairperson or a deputy chairperson of the tribunal.

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

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

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

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

**registrar** means—

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

**registrar of titles**, for a matter for which the chief executive under the Land Act has responsibility, means the chief executive.

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



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**residential tenancy agreement** means a residential tenancy agreement under the *Residential Tenancies and Rooming Accommodation Act 2008*.

**responsibilities**, in relation to land, include—

- (a) responsibilities under Aboriginal tradition for the land, including, for example, responsibilities for areas that are of particular significance under Aboriginal tradition; and
- (b) responsibilities for the land that may affect neighbouring land, including, for example, responsibilities in relation to fire and vermin control.

**road** means a surveyed or unsurveyed road that is, under an Act, dedicated, notified or declared to be a road for public use.

**sea** includes waters within the ebb and flow of the tide.

**special mining Act** means—

- (a) *Alcan Queensland Pty. Limited Agreement Act 1965*; or
- (b) *Central Queensland Coal Associates Agreement Act 1968*; or
- (c) *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*; or
- (d) *Mount Isa Mines Limited Agreement Act 1985*; or
- (e) *Queensland Nickel Agreement Act 1970*; or
- (f) *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*; or
- (g) *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*.

**stock route** see the Land Act, schedule 6.

**tidal land** means land that is ordinarily covered and uncovered by the flow and ebb of the tide at spring tides.

**Torres Strait area** means the Torres Strait area under the *Torres Strait Islander Land Act 1991*.

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

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

***transferable land*** see section 11.

***transferee***—

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

***transferor***—

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

***transferred land*** see section 11.

***tribunal*** means the Land Tribunal.

***trustee***—

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

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

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

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

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## 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 1 July 2009. Future amendments of the Aboriginal Land Act 1991 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	1992 Act No. 36	2 July 1992	3 July 1992
2	1994 Act No. 81	27 January 1995	24 February 1995
3	1994 Act No. 81	1 July 1995	5 July 1995
3A	1995 Act No. 57	28 November 1995	26 July 1996
3B	1996 Act No. 37	1 December 1996	4 December 1996
3C	1998 Act No. 24	1 December 1996	17 July 1998
4	1998 Act No. 30	30 September 1998	2 October 1998
4A	1999 Act No. 19	30 April 1999	21 May 1999
4B	2000 Act No. 34	13 September 2000	20 September 2000
4C	2001 Act No. 33	7 June 2001	20 June 2001
4D	2001 Act No. 16	28 February 2002	28 February 2002
5	2001 Act No. 71	1 March 2002	1 March 2002

Reprint No.	Amendments included	Effective	Notes
5A	2003 Act No. 8	28 March 2003	
5B	2003 Act No. 74	1 April 2003	
5C	2003 Act No. 20	9 May 2003	
5D	2003 Act No. 77	6 November 2003	
5E	2004 Act No. 4	6 May 2004	
5F	2004 Act No. 5	13 May 2004	
5G	2004 Act No. 25	31 December 2004	
5H	2004 Act No. 37	1 January 2005	
5I	2005 Act No. 8	18 March 2005	
5J	2004 Act No. 12	25 March 2005	R5J withdrawn, see R6
6	—	25 March 2005	
6A	2006 Act No. 9	15 March 2006	
6B	2007 Act No. 36	29 August 2007	
6C	2007 Act No. 48	2 November 2007	
6D	2008 Act No. 29	18 July 2008	R6D withdrawn, see R7
7	—	18 July 2008	
7A	2009 Act No. 3	23 February 2009	
7B	2008 Act No. 73	1 July 2009	
	2009 Act No. 9		

## 5 Tables in earlier reprints

Name of table	Reprint No.
Changed citations and remade laws	3
Changed names and titles	3
Corrected minor errors	1, 3
Obsolete and redundant provisions	2, 3
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## 6 List of legislation

### Aboriginal Land Act 1991 No. 32

date of assent 12 June 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1991 (1991 SL No. 221)

amending legislation—

### Aboriginal and Torres Strait Islander Land (Consequential Amendments) Act 1991 No. 76 pts 1–2

date of assent 21 November 1991

commenced on date of assent

**Nature Conservation Act 1992 No. 20 ss 1–2, 159 sch 2**

date of assent 22 May 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 19 December 1994 (1994 SL No. 472)

**Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 2**

date of assent 2 July 1992

commenced on date of assent

**Lands Legislation Amendment Act 1992 No. 64 ss 1–3 sch 1**

date of assent 7 December 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 1992 (1992 SL No. 448)

**Native Title (Queensland) Act 1993 No. 85 ss 1–2(1)–(3), pt 13 div 1 (this Act is amended, see amending legislation below)**

date of assent 17 December 1993

ss 1–2(1) and (2) commenced on date of assent

ss 2(3), 162A–162E, 163A and 164–164D commenced 28 November 1994 (1994 SL No. 408)

ss 157–160, 161 and 162 commenced 21 December 1991 (see s 2(1), (3), 1994 SL No. 408 and 1991 SL No. 221)

s 163 never proclaimed into force and on 1998 No. 30 s 20

remaining provisions commenced 5 December 1994 (1994 SL No. 421)

amending legislation—

**Native Title Queensland Amendment Act 1994 No. 61 s 2 sch 2 (amends 1993 No. 85 above)**

date of assent 24 November 1994

commenced on date of assent

**Fisheries Act 1994 No. 37 ss 1–2, 244 sch 2**

date of assent 8 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 27 January 1995 (1995 SL No. 9)

**Transport Infrastructure Amendment Act (No. 2) 1994 No. 49 ss 1–2, 6 sch 2**

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 18 November 1994 (1994 SL No. 399)

**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

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent  
remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Natural Resources Legislation Amendment Act 1998 No. 24 pts 1–2**

date of assent 14 May 1998  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 September 1998

**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 (see s 2(1) and 1998 SL No. 266)

**Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch**

date of assent 30 April 1999  
commenced on date of assent

**Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2**

date of assent 8 June 2000  
ss 1–2, 590 commenced on date of assent (see s 2(1))  
remaining provisions commenced 28 February 2002 (2002 SL No. 27)

**Water Act 2000 No. 34 ss 1–2, 1145 sch 3**

date of assent 13 September 2000  
commenced on date of assent (see s 2(2))

**Natural Resources Legislation Amendment Act 2001 No. 33 pts 1–2**

date of assent 7 June 2001  
commenced on date of assent

**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)

**Discrimination Law Amendment Act 2002 No. 74 ss 1–2, 90 sch**

date of assent 13 December 2002  
ss 1–2 commenced on date of assent  
s 90 commenced 31 March 2003 (2003 SL No. 51)  
remaining provisions commenced 1 April 2003 (2003 SL No. 51)

**Parliament of Queensland Amendment Act 2003 No. 8 ss 1, 17 sch**

date of assent 28 March 2003  
commenced on date of assent

**Land Legislation Amendment Act 2003 No. 20 s 1, pt 2**

date of assent 9 May 2003  
commenced on date of assent

**Justice and Other Legislation Amendment Act 2003 No. 77 ss 1, 2(2), pt 2**

date of assent 6 November 2003  
commenced on date of assent (see s 2(2))

**Natural Resources and Other Legislation Amendment Act 2004 No. 4 ss 1, 57 sch**

date of assent 6 May 2004  
commenced on date of assent

**Aurukun Associates Agreement Repeal Act 2004 No. 5 ss 1, 8 sch**

date of assent 13 May 2004  
commenced on date of assent

**Geothermal Exploration Act 2004 No. 12 ss 1–2, ch 8 pt 1**

date of assent 31 May 2004  
ss 1–2 commenced on date of assent  
remaining provisions commenced 25 March 2005 (2005 SL No. 43)

**Petroleum and Gas (Production and Safety) Act 2004 No. 25 ss 1, 2(2), 939–941 (prev ss 879–881)**

date of assent 12 October 2004  
ss 1–2 commenced on date of assent  
remaining provisions commenced 31 December 2004 (2004 SL No. 308)

**Local Government (Community Government Areas) Act 2004 No. 37 ss 1–2, 86 sch 1**

date of assent 27 October 2004  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 January 2005 (2004 SL No. 266)

**Mineral Resources and Other Legislation Amendment Act 2005 No. 8 pts 1, 3**

date of assent 18 March 2005  
commenced on date of assent

**Audit Legislation Amendment Act 2006 No. 9 pt 1, s 53 sch**

date of assent 15 March 2006  
commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 2007 No. 36**

date of assent 29 August 2007  
commenced on date of assent

**Cape York Peninsula Heritage Act 2007 No. 48 ss 1–2, pt 7 div 1**

date of assent 25 October 2007  
ss 1–2 commenced on date of assent  
remaining provisions commenced 2 November 2007 (2007 SL No. 270)

**Aboriginal and Torres Strait Islander Land Amendment Act 2008 No. 29 pts 1–2, s 3 sch**

date of assent 21 May 2008  
ss 1–2 commenced on date of assent  
remaining provisions commenced 18 July 2008 (2008 SL No. 233)

**Residential Tenancies and Rooming Accommodation Act 2008 No. 73 ss 1–2, 554 sch 1**

date of assent 11 December 2008  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2009 (2009 SL No. 40)



**Greenhouse Gas Storage Act 2009 No. 3 s 1, ch 9 pt 1**

date of assent 23 February 2009  
commenced on date of assent

**Financial Accountability Act 2009 No. 9 ss 1, 2(2), 136 sch 1**

date of assent 28 May 2009  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2009 (2009 SL No. 80)

**Local Government Act 2009 No. 17 ss 1, 2(4), 331 sch 1**

date of assent 12 June 2009  
ss 1–2 commenced on date of assent  
remaining provisions not yet proclaimed into force (see s 2(4))

## 7 List of annotations

**This reprint has been renumbered—see table of renumbered provisions in endnote 8**

**Commencement**

**s 2** om R3 (see RA s 37)

**Definitions**

**s 3** amd 2008 No. 29 s 4(1), (11)  
Note—s 3 contained definitions for this Act. Definitions are now located in the schedule (Dictionary). Annotations for definitions contained in s 3 are located in annotations for the schedule.

**Meaning of “native title interests”**

**s 5** ins 1993 No. 85 s 159 (retro)  
om 2008 No. 29 s 5

**Act binds all persons**

**s 6** sub 2008 No. 29 s 6

**Meaning of Aboriginal land**

**s 10** amd 1993 No. 85 s 160 (amd 1994 No. 61 s 2 sch 2) (retro); 2008 No. 29 s 7

**Meaning of transferable and transferred land**

**s 11** amd 1993 No. 85 s 160A (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 8

**Lands that are transferable lands**

**s 12** amd 1993 No. 85 s 160B (amd 1994 No. 61 s 2 sch 2); 2007 No. 48 s 32; 2008 No. 29 s 9

**DOGIT land**

**s 13** amd 1993 No. 85 s 160C (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 10

**Aboriginal reserve land**

**s 14** amd 1993 No. 85 s 160D (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 3 sch

**Aurukun Shire lease land**

**s 15** amd 1993 No. 85 s 160C (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 11

**Mornington Shire lease land**

**prov hdg** amd 2008 No. 29 s 12(1)

**s 16** amd 1993 No. 85 s 160C (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 12

**Division 3A—Declarations about particular transferable land**

**div 3A (ss 16A–16I)** ins 2008 No. 29 s 13

**Meaning of claimable and granted land**

**s 17** amd 1993 No. 85 s 160E (amd 1994 No. 61 s 2 sch 2)

**Lands that are claimable lands**

**s 18** amd 1991 No. 76 s 4

sub 1993 No. 85 s 160F (amd 1994 No. 61 s 2 sch 2)

amd 2008 No. 29 s 3 sch

**Division 5—Available State land**

**div hdg** (prev div 4A hdg) ins 2008 No. 29 s 3 sch

renum 2008 No. 29 s 3 sch

**Lands that are available State land—general**

**prov hdg** amd 2008 No. 29 s 14(1)

**s 19** amd 1991 No. 76 s 5; 1993 No. 85 s 160G (amd 1994 No. 61 s 2 sch 2); 1995 No. 57 s 4 sch 1; 2008 No. 29 s 14(2)–(7)

**Beds and banks of watercourses and lakes**

**s 20** amd 2008 No. 29 s 3 sch

**Tidal land**

**s 21** amd 1993 No. 85 s 160H (amd 1994 No. 61 s 2 sch 2); 1994 No. 49 s 6 sch 2; 1994 No. 81 s 527 sch 5; 2008 No. 29 s 3 sch

**Meaning of city or town land**

**s 22** amd 1993 No. 85 s 160I (amd 1994 No. 61 s 2 sch 2)

**Meaning of township land**

**s 23** sub 1993 No. 85 s 160J (amd 1994 No. 61 s 2 sch 2)

**National Parks**

**s 24** amd 2008 No. 29 s 3 sch

**Lands that are not available State land**

**prov hdg** amd 2008 No. 29 s 3 sch

**s 25** amd 1994 No. 81 s 527 sch 5; 2008 No. 29 s 3 sch

**Division 6—Application of laws to Aboriginal land**

**div hdg** (prev div 5 hdg) renum 2008 No. 29 s 3 sch

**Application of laws**

**s 26** amd 1994 No. 37 s 244 sch 2; 2004 No. 5 s 8 sch

**PART 2A—FORMAL EXPRESSION OF INTEREST ABOUT LAND**

**pt 2A (ss 26A–26E)** ins 2008 No. 29 s 15

**Deeds of grant to be prepared**

**s 27** amd 2008 No. 29 s 16

**Appointment of registered native title body corporate as grantee**

s 27A ins 2008 No. 29 s 17

**Minister to appoint particular trustees**

prov hdg amd 2008 No. 29 s 18(1)

s 28 amd 1991 No. 76 s 6; 1993 No. 85 s 160K (amd 1994 No. 61 s 2 sch 2); 2007 No. 48 s 33; 2008 No. 29 s 18(2)–(4)

**Procedure for appointing grantees**

s 28A ins 2008 No. 29 s 19

**Application of Trusts Act 1973**

s 28B ins 2008 No. 29 s 19

**Minister to act as soon as possible**

s 29 amd 1993 No. 85 s 160L (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 20

**Authority to grant fee simple in transferable land**

s 30 amd 2008 No. 29 s 3 sch

**Inclusion of additional areas in deed of grant**

s 31 ins 1993 No. 85 s 160M (amd 1994 No. 61 s 2 sch 2)  
amd 2008 No. 29 s 21

**Existing interests**

s 33 amd 1991 No. 76 s 7; 1993 No. 85 s 161 (retro); 1994 No. 81 s 527 sch 5;  
2008 No. 29 s 22

**Interests to be endorsed on deed**

s 34 amd 1992 No. 64 s 3 sch 1; 1993 No. 85 s 161A (amd 1994 No. 61 s 2 sch 2)  
(retro); 2008 No. 29 s 3 sch

**Cancellation of deed of grant in trust**

s 35 ins 1991 No. 76 s 8  
amd 2004 No. 37 s 86 sch 1; 2008 No. 29 s 23

**Cancellation of leases over Aurukun and Mornington Shire lease lands**

prov hdg amd 2008 No. 29 s 3 sch

s 36 amd 2008 No. 29 s 3 sch

**Subdivision 1—General**

sdiv hdg ins 2008 No. 29 s 24

**Power to deal with transferred land**

s 39 amd 2002 No. 74 s 90 sch; 2005 No. 8 s 47; 2007 No. 48 s 34  
sub 2008 No. 29 s 24

**Requirement for consultation**

s 40 sub 2008 No. 29 s 24

**Provision about Minister's consent**

s 40A ins 2008 No. 29 s 24

**Provision about particular leases**

s 40B ins 2008 No. 29 s 24

**Subdivision 2—Sale or mortgage prohibited**

**sdiv 2 (s 40C)** ins 2008 No. 29 s 24

**Subdivision 3—Grant of leases**

**sdiv 3 (ss 40D–40N)** ins 2008 No. 29 s 24

**Subdivision 4—Forfeiture of particular leases**

**sdiv 4 (ss 40O–40Y)** ins 2008 No. 29 s 24

**Subdivision 5—Grant of licences**

**sdiv 5 (ss 40Z–40ZA)** ins 2008 No. 29 s 24

**Subdivision 6—Transfer of land held by land trust**

**sdiv 6 (ss 40ZB–40ZF)** ins 2008 No. 29 s 24

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

**sdiv 7 (s 40ZG)** ins 2008 No. 29 s 24

**Subdivision 8—Land in Cape York Peninsula Region**

**sdiv 8 (s 40ZH)** ins 2008 No. 29 s 24

**Subdivision 9—Other matters**

**sdiv 9 (ss 40ZI–40ZJ)** ins 2008 No. 29 s 24

**Provision about resumption of transferred land etc.**

**prov hdg** amd 2008 No. 29 s 25(1)

**s 41** amd 2008 No. 29 s 25(2)–(5); 2009 No. 3 s 438

**Reservations of minerals and petroleum**

**s 42** amd 2008 No. 29 s 3 sch

**Reservations of forest products and quarry material etc.**

**s 43** amd 1991 No. 76 s 9; 1993 No. 85 s 161B (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 26

**Duly made claims**

**s 44** amd 2004 No. 4 s 57 sch

**Grounds on which claim may be made**

**s 46** amd 2008 No. 29 s 3 sch

**Time limit for making of claims**

**s 48** amd 2008 No. 29 s 27

**Registrar to determine whether claim duly made**

**s 49** amd 1993 No. 85 s 161C (amd 1994 No. 61 s 2 sch 2)

**Joint hearing of claims**

**s 51** amd 1993 No. 85 s 161D (amd 1994 No. 61 s 2 sch 2)

**Repeat claims**

**s 52** ins 1993 No. 85 s 161E (amd 1994 No. 61 s 2 sch 2)

**Recommendation to Minister**

**s 60** amd 2003 No. 77 s 4; 2008 No. 29 s 3 sch

**Resolution of conflicting claims**

**s 61** amd 1993 No. 85 s 161F (amd 1994 No. 61 s 2 sch 2); 2003 No. 77 s 5; 2008 No. 29 s 3 sch

**Notification of parties**

**s 62** amd 2003 No. 77 s 6; 2008 No. 29 s 3 sch

**Deeds of grant to be prepared**

**s 63** amd 2008 No. 29 s 28

**Leases to be prepared**

**s 64** amd 2008 No. 29 s 29

**Minister to appoint trustees**

**s 65** amd 2007 No. 48 s 35

**Authority to grant fee simple in, or lease of, claimable land**

**s 66** amd 2008 No. 29 s 3 sch

**Inclusion of additional areas in deed of grant**

**s 67** ins 1993 No. 85 s 161G (amd 1994 No. 61 s 2 sch 2)

**Existing interests**

**s 71** amd 1993 No. 85 s 162 (retro); 2008 No. 29 s 30

**Interests to be endorsed on deed**

**s 72** amd 1992 No. 36 s 1 sch 2  
om 2008 No. 29 s 31

**Cancellation of existing deed of grant**

**s 73** amd 2008 No. 29 s 31

**Subdivision 1—General**

**sdiv hdg** ins 2008 No. 29 s 33

**Power to deal with granted land**

**s 76** amd 2002 No. 74 s 90 sch; 2007 No. 48 s 36  
sub 2008 No. 29 s 33

**Requirement for consultation**

**s 77** sub 2008 No. 29 s 33

**Provision about Minister's consent**

**s 77A** sub 2008 No. 29 s 33

**Provision about particular leases**

**s 77B** sub 2008 No. 29 s 33

**Subdivision 2—Sale or mortgage prohibited**

**sdiv 2 (s 77C)** ins 2008 No. 29 s 33

**Subdivision 3—Grant of leases**

**sdiv 3 (ss 77D–77N)** ins 2008 No. 29 s 33

**Subdivision 4—Forfeiture of particular leases**

**sdiv 4 (ss 77O–77Y)** ins 2008 No. 29 s 33

**Subdivision 5—Grant of licences**

**sdiv 5** (ss 77Z–77ZA) ins 2008 No. 29 s 33

**Subdivision 6—Transfer of land**

**sdiv 6** (ss 77ZB–77ZE) ins 2008 No. 29 s 33

**Subdivision 7—Land in Cape York Peninsula Region**

**sdiv 7** (s 77ZF) ins 2008 No. 29 s 33

**Subdivision 8—Other matters**

**sdiv 8** (ss 77ZG–77ZH) ins 2008 No. 29 s 33

**Provision about resumption of granted land etc.**

**prov hdg** amd 2008 No. 29 s 34(1)

**s 78** amd 2008 No. 29 s 34(2)–(5); 2009 No. 3 s 439

**Devolution of granted land**

**s 79** amd 2008 No. 29 s 35

**Reservations of minerals and petroleum**

**s 80** amd 2008 No. 29 s 3 sch

**Reservations of forest products and quarry material etc.**

**s 81** amd 1991 No. 76 s 10; 1993 No. 85 s 162A (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 36

**Rights of access preserved**

**s 82** amd 2008 No. 29 s 37

**Division 5—National parks**

**div hdg** sub 1992 No. 20 s 159 sch 2

om 2008 No. 29 s 3 sch

**PART 5A—PROVISIONS ABOUT PARTICULAR LAND TRUSTS**

**pt hdg** ins 2007 No. 48 s 38

**Minister may establish land trust before grant of land**

**s 83A** ins 2007 No. 48 s 38

**Purpose of establishing land trust**

**s 83B** ins 2007 No. 48 s 38

**Application of particular provisions**

**s 83C** ins 2007 No. 48 s 38

**Notice about land trust**

**s 83D** ins 2007 No. 48 s 38

**Dissolution of land trust**

**s 83E** (prev s 83F) ins 2007 No. 48 s 38

renum 2008 No. 29 s 3 sch

**PART 5B—INDIGENOUS MANAGEMENT AGREEMENTS AND NATIONAL PARKS IN CAPE YORK PENINSULA REGION**

**pt hdg** ins 2007 No. 48 s 38

**Division 1—Indigenous management agreements****div hdg** ins 2007 No. 48 s 38**Entering into indigenous management agreement****prov hdg** amd 2008 No. 29 s 39(1)**s 83F** (prev s 83FA (orig s 83E)) ins 2007 No. 48 s 38

amd 2008 No. 29 s 39(2)

renum and reloc 2008 No. 29 s 39(3)

renum 2008 No. 29 s 3 sch

**Requirements for indigenous management agreement****s 83G** ins 2007 No. 48 s 38

amd 2008 No. 29 s 40

**Amending indigenous management agreement****s 83H** ins 2007 No. 48 s 38

amd 2008 No. 29 s 41

**Recording of indigenous management agreement****s 83I** ins 2007 No. 48 s 38

amd 2008 No. 29 s 42

**Division 2—National parks in Cape York Peninsula Region****div hdg** ins 2007 No. 48 s 38**Requirements about grant of national parks in Cape York Peninsula Region****s 83J** ins 2007 No. 48 s 38

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**Particular national parks taken to be transferable land****s 83K** ins 2007 No. 48 s 38**PART 5C—PROVISION ABOUT PARTICULAR CLAIMABLE LAND****pt 5C (s 83L)** ins 2007 No. 48 s 38**PART 5D—DECISION MAKING PROCESS****pt 5D (ss 83M–83N)** ins 2008 No. 29 s 44**PART 5E—PROVISIONS ABOUT MORTGAGES OF LEASES OVER  
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**Park remains national park**

s 5.21 om 1992 No. 20 s 159 sch 2

**PART 6—OCCUPATION AND USE OF ABORIGINAL LAND BY THE STATE OR COMMONWEALTH**

**pt hdg** sub 2008 No. 29 s 3 sch

**Use of Aboriginal land preserved**

**prov hdg** amd 2008 No. 29 s 45(1)

s 84 amd 2008 No. 29 s 45(2)–(6)

**No rent payable**

**prov hdg** amd 2008 No. 29 s 46(1)

s 85 amd 2008 No. 29 s 46(2)

**Access to land**

**prov hdg** amd 2008 No. 29 s 47(1)

s 86 amd 2008 No. 29 s 47(2)–(8)

**Application of Mineral Resources Act**

s 87 amd 2008 No. 29 s 48

**Royalties in relation to mining on Aboriginal land**

s 88 amd 2004 No. 25 s 941; 2008 No. 29 s 49

**Appointment of members**

s 90 amd 1991 No. 76 s 11; 1996 No. 37 s 147 sch 2; 2001 No. 33 s 3

**Termination of appointment**

s 98 amd 1992 No. 36 s 2 sch 2; 1993 No. 85 s 162C (amd 1994 No. 61 s 2 sch 2);  
2000 No. 16 s 590 sch 1 pt 2

**Arrangement of business**

s 100 amd 1992 No. 36 s 3 sch 2

**Procedure of tribunal**

s 108 amd 1993 No. 85 s 162D (amd 1994 No. 61 s 2 sch 2)

**Conferences**

s 109 amd 2003 No. 77 s 7; 2008 No. 29 s 3 sch

**Particular powers of tribunal**

s 112 amd 1993 No. 85 s 162E (amd 1994 No. 61 s 2 sch 2)

**Tribunal may order that particular claimable land is transferable land**

s 114A ins 2008 No. 29 s 50

**Reasons to be given by tribunal**

s 116 amd 2003 No. 77 s 8; 2008 No. 29 s 3 sch

**Appeals to Land Appeal Court from decisions of tribunal**

s 117 amd 1993 No. 85 s 163A (amd 1994 No. 61 s 2 sch 2); 2003 No. 77 s 9; 2008  
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**Evidence and other findings in other proceedings**

s 119 ins 1993 No. 85 s 164 (amd 1994 No. 61 s 2 sch 2)  
amd 1998 No. 30 s 21 sch; 1999 No. 19 s 3 sch

**Continuing authority of member**

s 121 ins 1993 No. 85 s 164A (amd 1994 No. 61 s 2 sch 2)

**Staff of tribunal employed under Public Service Act**

s 127 sub 1996 No. 37 s 147 sch 2

**Annual report**

s 129 amd 2003 No. 8 s 17 sch

**Delegation by Registrar of Titles**

s 9.05 om 1993 No. 85 s 164B (amd 1994 No. 61 s 2 sch 2)

**Creation of interests in transferable and claimable land**

s 131 amd 2004 No. 12 s 142; 2008 No. 29 s 51

**Rights of access to interests preserved**

s 132 amd 2008 No. 29 s 52

**National park subject to lease to State etc.**

s 132A (prev s 83) sub 1992 No. 20 s 159 sch 2  
amd 1993 No. 85 s 162B (amd 1994 No. 61 s 2 sch 2); 1995 No. 57 s 4 sch 1;  
2007 No. 48 s 37; 2008 No. 29 s 38(1)–(6)  
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**Persons and bodies representing State and Commonwealth**

prov hdg amd 2008 No. 29 s 3 sch  
s 133 amd 2008 No. 29 s 3 sch

**Delegation by Minister**

s 134 amd 2008 No. 29 s 53

**Amendment of description of land**

s 136 amd 2008 No. 29 s 54

**Dealing with particular trust property**

s 136A ins 2008 No. 29 s 55

**Application of Residential Tenancies and Rooming Accommodation Act 2008**

prov hdg amd 2008 No. 73 s 554 sch 1  
s 136B ins 2008 No. 29 s 55  
amd 2008 No. 73 s 554 sch 1

**Survey costs etc. to be paid by State**

s 137 amd 2001 No. 71 s 551 sch 1; 2008 No. 29 s 3 sch

**Orders in council to be tabled and disallowable**

s 9.09 om 1993 No. 85 s 164B (amd 1994 No. 61 s 2 sch 2)

**Application of Financial Accountability Act 2009**

**prov hdg** amd 2009 No. 9 s 136 sch 1  
**s 137A** ins 1998 No. 24 s 5  
amd 2008 No. 29 s 56; 2009 No. 9 s 136 sch 1

**Confirmation of status of particular land**

**s 137AB** ins 2003 No. 20 s 4

**Approval of forms**

**s 137B** ins 1998 No. 24 s 5

**Regulation-making power**

**prov hdg** sub 2004 No. 4 s 57 sch  
**s 138** amd 1993 No. 85 s 164C (amd 1994 No. 61 s 2 sch 2); 1998 No. 24 s 6; 2008  
No. 29 s 57

**Numbering and renumbering of Act**

**s 9.11** ins 1993 No. 85 s 164D (amd 1994 No. 61 s 2 sch 2)  
om R2 (see RA s 37)

**PART 10—VALIDATION PROVISIONS**

**pt hdg** ins 2005 No. 8 s 48  
amd 2008 No. 29 s 3 sch

**Existing conservation agreements**

**s 139** ins 2005 No. 8 s 48  
amd 2008 No. 29 s 3 sch

**Existing interest in transferable land**

**s 139A** ins 2008 No. 29 s 58

**PART 11—TRANSITIONAL PROVISIONS**

**pt hdg** ins 2006 No. 9 s 53 sch  
amd 2008 No. 29 s 3 sch

**Division 1—Transitional provision for Audit Legislation Amendment Act 2006**

**div hdg** ins 2008 No. 29 s 3 sch

**Further amendment, or repeal, of Aboriginal land Regulation 1991**

**s 140** ins 2006 No. 9 s 53 sch

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

**div 2 (ss 141–143)** ins 2008 No. 29 s 59

**SCHEDULE—DICTIONARY**

**sch hdg** Note—definitions for this Act were originally located in s 3.  
ins 2008 No. 29 s 3 sch  
def “**Aboriginal council**” om from s 3 2004 No. 37 s 86 sch 1  
def “**Aboriginal land**” amd 2008 No. 29 s 4(10)  
reloc 2008 No. 29 s 4(11)  
def “**Aboriginal land claim association**” ins 1998 No. 24 s 4  
reloc 2008 No. 29 s 4(11)  
def “**Aboriginal lease**” reloc 2008 No. 29 s 4(11)

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- def “**Aboriginal (non-transferred land) lease**” reloc 2008 No. 29 s 4(11)
- def “**Aboriginal people**” amd 2008 No. 29 s 4(10)  
reloc 2008 No. 29 s 4(11)
- def “**Aboriginal reserve land**” amd 2008 No. 29 s 4(10)  
reloc 2008 No. 29 s 4(11)
- def “**Aboriginal tradition**” amd 2008 No. 29 s 4(10)  
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- def “**Aboriginal (transferred land) lease**” reloc 2008 No. 29 s 4(11)
- def “**Aboriginal trust land**” ins 2008 No. 29 s 4(3)  
reloc 2008 No. 29 s 4(11)
- def “**Aborigine**” amd 2008 No. 29 s 4(10)  
reloc 2008 No. 29 s 4(11)
- def “**Acquisition Act**” ins 2008 No. 29 s 4(3)  
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- def “**ancestor**” reloc 2008 No. 29 s 4(11)
- def “**appropriate register**” ins 2008 No. 29 s 4(3)  
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- def “**approved form**” ins 2008 No. 29 s 4(3)  
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- def “**associated reserve**” sub 1995 No. 57 s 4 sch 1  
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- def “**Aurukun Shire lease land**” amd 2008 No. 29 s 4(10)  
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- def “**available Crown land**” om from s 3 2008 No. 29 s 4(2)
- def “**available State land**” ins 2008 No. 29 s 4(3)  
reloc 2008 No. 29 s 4(11)
- def “**bed and banks**” amd 2000 No. 34 s 1145 sch 3; 2008 No. 29 s 4(5)  
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- def “**Cape York Peninsula Region**” ins 2007 No. 48 s 31(2)  
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- def “**city or town land**” amd 2008 No. 29 s 4(10)  
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- def “**claimable land**” amd 2008 No. 29 s 4(10)  
reloc 2008 No. 29 s 4(11)
- def “**coast**” om from s 3 2008 No. 29 s 4(2)
- def “**Commonwealth Native Title Act**” ins 2008 No. 29 s 4(3)  
reloc 2008 No. 29 s 4(11)
- def “**constructing authority**” ins 2008 No. 29 s 4(3)  
reloc 2008 No. 29 s 4(11)
- def “**Crown**” om from s 3 2008 No. 29 s 4(2)
- def “**descendant**” reloc 2008 No. 29 s 4(11)
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- def “**enactment day**” reloc 2008 No. 29 s 4(11)
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- def **“expression of interest”** ins 2008 No. 29 s 4(3)
  - reloc 2008 No. 29 s 4(11)
- def **“forest products”** reloc 2008 No. 29 s 4(11)
- def **“general meeting”** ins 2008 No. 29 s 4(3)
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- def **“granted land”** amd 2008 No. 29 s 4(10)
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- def **“group”** reloc 2008 No. 29 s 4(11)
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- def **“improvements”** ins 2008 No. 29 s 4(3)
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- def **“interest”** amd 2004 No. 12 s 141
  - reloc 2008 No. 29 s 4(11)
- def **“interested person”** reloc 2008 No. 29 s 4(11)
- def **“lake”** amd 2000 No. 34 s 1145 sch 3; 2008 No. 29 s 4(10)
  - reloc 2008 No. 29 s 4(11)
- def **“land”** om from s 3 R2 (see RA s 39)
- def **“Land Act”** ins 2008 No. 29 s 4(3)
  - reloc 2008 No. 29 s 4(11)
- def **“land claims registrar”** reloc 2008 No. 29 s 4(11)
- def **“Land Title Act”** ins 2008 No. 29 s 4(3)
  - reloc 2008 No. 29 s 4(11)
- def **“Land Tribunal”** reloc 2008 No. 29 s 4(11)
- def **“land trust”** ins 1998 No. 24 s 4
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- def **“lease”** ins 2008 No. 29 s 4(3)
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- def **“lease land”** ins 2008 No. 29 s 4(3)
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- def **“management plan”** reloc 2008 No. 29 s 4(11)
- def **“maximum amount”** ins 2008 No. 29 s 4(3)
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- def **“mineral”** amd 2007 No. 36 s 2 sch; 2008 No. 29 s 4(10)
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- def **“Mornington Island Shire lease land”** om from s 3 2008 No. 29 s 4(2)
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  - reloc 2008 No. 29 s 4(11)
- def **“National Native Title Register”** ins 2008 No. 29 s 4(3)
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- def **“national park”** amd 1992 No. 20 s 159 sch 2
  - reloc 2008 No. 29 s 4(11)

- def **“national park (Cape York Peninsula Aboriginal land)”** ins 2007 No. 48 s 31(2)  
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- def **“native title holder”** ins 2008 No. 29 s 4(3)  
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- def **“native title interests”** ins 1993 No. 85 s 158 (retro)  
om from s 3 2008 No. 29 s 4(2)
- def **“natural gas”** amd 2007 No. 36 s 2 sch; 2008 No. 29 s 4(10)  
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- def **“non-presiding member”** reloc 2008 No. 29 s 4(11)
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- def **“presiding member”** reloc 2008 No. 29 s 4(11)
- def **“public infrastructure”** ins 2008 No. 29 s 4(3)  
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- def **“quarry material”** sub 2008 No. 29 s 4(2)–(3)  
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- def **“registered”** ins 2008 No. 29 s 4(3)  
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- def **“registered native title body corporate”** ins 2008 No. 29 s 4(3)  
reloc 2008 No. 29 s 4(11)
- def **“registrar”** ins 2008 No. 29 s 4(3)  
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- def **“registrar of titles”** ins 1994 No. 81 s 527 sch 5  
amd 2008 No. 29 s 4(6)  
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- def **“relevant land”** ins 2008 No. 29 s 4(3)  
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- def **“residential tenancy agreement”** ins 2008 No. 29 s 4(3)  
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- def **“responsibilities”** reloc 2008 No. 29 s 4(11)
- def **“road”** reloc 2008 No. 29 s 4(11)
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- def **“special mining Act”** amd 2008 No. 29 s 4(7)–(8)  
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- def **“stock route”** sub 1995 No. 57 s 4 sch 1; 2008 No. 29 s 4(2)–(3)  
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- def **“tidal land”** reloc 2008 No. 29 s 4(11)
- def **“Torres Strait area”** amd 2008 No. 29 s 4(9)  
reloc 2008 No. 29 s 4(11)
- def **“Torres Strait Islander”** ins 2008 No. 29 s 4(3)  
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- def **“Torres Strait Islanders”** om from s 3 2008 No. 29 s 4(2)
- def **“township land”** sub 2008 No. 29 s 4(2)–(3)  
reloc 2008 No. 29 s 4(11)
- def **“transferable land”** amd 2008 No. 29 s 4(10)  
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Endnotes

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- def “**transferee**” ins 2008 No. 29 s 4(3)  
     reloc 2008 No. 29 s 4(11)
- def “**transferor**” ins 2008 No. 29 s 4(3)  
     reloc 2008 No. 29 s 4(11)
- def “**transferred land**” amd 2008 No. 29 s 4(10)  
     reloc 2008 No. 29 s 4(11)
- def “**tribunal**” reloc 2008 No. 29 s 4(11)
- def “**trustee**” ins 2008 No. 29 s 4(3)  
     reloc 2008 No. 29 s 4(11)
- def “**trustee (Aboriginal) lease**” ins 2008 No. 29 s 4(3)  
     reloc 2008 No. 29 s 4(11)
- def “**unallocated State land**” ins 2008 No. 29 s 4(3)  
     reloc 2008 No. 29 s 4(11)
- def “**watercourse**” amd 2000 No. 34 s 1145 sch 3  
     sub 2008 No. 29 s 4(2)–(3)  
     reloc 2008 No. 29 s 4(11)

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4.08 .....	.51
4.08A .....	.52
4.09 .....	.53
4.10 .....	.54
4.11 .....	.55
4.12 .....	.56
4.13 .....	.57
4.14 .....	.58
4.15 .....	.59
4.16 .....	.60
4.17 .....	.61
4.18 .....	.62
5.01 .....	.63
5.02 .....	.64
5.03 .....	.65
5.04 .....	.66

Endnotes

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Previous	Renumbered as
5.04A	.67
5.05	.68
5.06	.69
5.07	.70
5.08	.71
5.09	.72
5.10	.73
5.11	.74
5.12	.75
5.13	.76
5.14	.77
5.15	.78
5.16	.79
5.17	.80
5.18	.81
5.19	.82
5.20	.83
6.01	.84
6.02	.85
6.03	.86
7.01	.87
7.02	.88
8.01	.89
8.02	.90
8.03	.91
8.04	.92
8.05	.93
8.06	.94
8.07	.95
8.08	.96
8.09	.97
8.10	.98
8.11	.99
8.12	.100
8.13	.101
8.14	.102
8.15	.103
8.16	.104
8.17	.105
8.18	.106
8.19	.107
8.20	.108
8.21	.109
8.22	.110
8.23	.111
8.24	.112
8.25	.113



Previous	Renumbered as
8.26 .....	114
8.27 .....	115
8.28 .....	116
8.29 .....	117
8.29(3A) .....	117(4)
8.29(4) .....	117(5)
8.29(5) .....	117(6)
8.29(6) .....	117(7)
8.29(7) .....	117(8)
8.30 .....	118
8.30A .....	119
8.31 .....	120
8.31A .....	121
8.32 .....	122
8.33 .....	123
8.34 .....	124
8.35 .....	125
8.36 .....	126
8.37 .....	127
8.38 .....	128
8.39 .....	129
8.40 .....	130
9.01 .....	131
9.02 .....	132
9.03 .....	133
9.04 .....	134
9.06 .....	135
9.07 .....	136
9.08 .....	137
9.10 .....	138

## 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 an editor's note to the text.