



Queensland

Torres Strait Islander Land Act 1991

Current as at 2 March 2012

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This Act is reprinted as at 2 March 2012. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

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

Also see endnotes for information about—

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

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Queensland

Torres Strait Islander Land Act 1991

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Torres Strait Islander Land Act 1991

[as amended by all amendments that commenced on or before 2 March 2012]

An Act providing for the grant, and the claim and grant, of land as Torres Strait Islander land, and for other purposes

Whereas—

- 1 Before European settlement land in what is now the State of Queensland was occupied, used and enjoyed by Torres Strait Islanders in accordance with Island custom.
- 2 Land is of spiritual, social, historical, cultural and economic importance to Torres Strait Islanders.
- 3 After European settlement many Torres Strait Islanders maintained their ancestors' customary affiliation with particular areas of land.
- 4 Some Torres Strait Islanders 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.
- 5 Some Torres Strait Islanders have a requirement for land to ensure their economic or cultural viability.
- 6 Some land has been set aside for Torres Strait Islander reserves or for the benefit of Torres Strait Islanders and deeds of grant in trust are held on behalf of certain Torres Strait Islanders.
- 7 The Parliament is satisfied that Torres Strait Islander 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 Torres Strait Islanders.
- 8 The Parliament is further satisfied that special measures need to be enacted for the purpose of securing adequate

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advancement of the interests and responsibilities of Torres Strait Islanders and to rectify the consequences of past injustices.

- 9 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 Torres Strait Islanders in relation to land and thereby to foster the capacity for self-development, and the self-reliance and cultural integrity, of Torres Strait Islanders.

Part 1 Preliminary

1 Short title

This Act may be cited as the *Torres Strait Islander Land Act 1991*.

2 Definitions

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

3 Torres Strait Islanders particularly concerned with land etc.

- (1) For the purposes of this Act, a Torres Strait Islander is particularly concerned with land if the Torres Strait Islander—
- (a) has a particular connection with the land under Island custom; or
 - (b) lives on or uses the land or neighbouring land.
- (2) For the purposes of this Act, Torres Strait Islanders are particularly concerned with land if—

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

4 Acts 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 Torres Strait Islanders and their customs

5 Meaning of Torres Strait Islander

A Torres Strait Islander is a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands.

6 Meaning of Island custom

Island custom, known in the Torres Strait as Ailan Kastom, is the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

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Division 2 Torres Strait Islander land

7 Meaning of Torres Strait Islander land

Torres Strait Islander land is transferred land.

Division 3 Transferable and transferred land

8 Meaning of transferable and transferred land

- (1) Transferable land is land that is to be granted under part 4.
- (2) Transferred land is land that is granted under part 4.

9 Lands that are transferable lands

- (1) The following lands are transferable lands—
 - (a) DOGIT land;
 - (b) Torres Strait Islander reserve land;
 - (c) available State land declared by regulation to be transferable land.
- (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 Torres Strait Islander 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 13.

10 DOGIT land

- (1) DOGIT land is land (other than a road or prescribed DOGIT land) that, at the beginning of the enactment day, was—

-
- (a) granted in trust under the *Land Act 1962* for the benefit of Torres Strait Islander inhabitants or for the purpose of a Torres Strait Islander reserve; or
 - (b) within the external boundaries of an area of such land and—
 - (i) reserved and set apart for, or dedicated to, a public purpose under the *Land Act 1962*; or
 - (ii) 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) subject to a lease granted under the Land Holding Act; or
 - (iv) subject to a special lease granted under the *Land Act 1962*; or
 - (v) the subject of an application under the Land Holding Act, section 5, that had been approved by the trustee council, or approved on appeal by the appeal tribunal, under that Act, but for which a lease under that Act has not been granted.
- (2) DOGIT land includes land within the external boundaries of land mentioned in subsection (1)(a) that has, since the enactment day, ceased to be a road if the land was or is—
- (a) declared by regulation to be transferable land; or
 - (b) included in a new deed of grant issued under the Land Act, section 358 for the land mentioned in subsection (1)(a), because of the closing of a road under section 109(2)(b) or 109B of that Act.
- (3) Also, DOGIT land includes land within the external boundaries of land mentioned in subsection (1)(a) if—
- (a) the land was the subject of an application under the Land Holding Act, section 5, that was approved by the trustee council, or approved on appeal by the appeal tribunal, under that Act after the enactment day; and
 - (b) a lease under that Act has not been granted for the land.

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- (4) 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.

11 Torres Strait Islander reserve land

- (1) Torres Strait Islander reserve land is land that, at the beginning of the enactment day, is—
 - (a) reserved and set apart under the *Land Act 1962* for a Torres Strait Islander reserve or for the benefit of Torres Strait Islander inhabitants; or
 - (b) within the external boundaries of an area of such land and—
 - (i) subject to a lease granted under the Land Holding Act; or
 - (ii) the subject of an application under the Land Holding Act, section 5, that had been approved by the trustee council, or approved on appeal by the appeal tribunal, under that Act, but for which a lease under that Act has not been granted;

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 included land that was, at the beginning of the enactment day, being used as a Torres Strait Islander reserve or for the benefit of Torres Strait Islanders.

- (2) Also, Torres Strait Islander reserve land includes land within the external boundaries of land mentioned in subsection (1)(a) if—
 - (a) the land was the subject of an application under the Land Holding Act, section 5, that was approved by the

-
- trustee council, or approved on appeal by the appeal tribunal, under that Act after the enactment day; and
- (b) a lease under that Act has not been granted for the land.

Division 4 Declarations about particular transferable land

12 Definition for div 4

In this division—

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

- (a) DOGIT land;
- (b) Torres Strait Islander reserve land, other than land declared under a regulation for section 11.

13 Particular land may be declared to be not transferable land

- (1) The Minister may, by gazette notice, make a declaration 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; 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.
- (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—

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- (a) whether the land is likely to be used as a town site or part of a town site; 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 to the Land Court against the decision to make the declaration—the period for making an appeal ends; or
 - (b) if an appeal is made to the Land Court against the decision to make the declaration—the day the appeal is finally decided.

14 Notice of intention to make declaration

- (1) If the Minister intends to make a declaration under section 13, 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) as soon as practicable 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;
 - (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.

15 Minister to consider representations and give notice of decision

- (1) After considering all representations made under section 14(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) The Minister may, after considering the representations, decide to make the declaration for all or a part of the relevant land described in the notice under section 14.
- (3) If the Minister decides to make the declaration, the notice must—
 - (a) include a description of the relevant land to be declared not transferable under this division; and
 - (b) state all of the following—
 - (i) the provision under which the declaration is to be made;
 - (ii) the reasons for the decision;
 - (iii) if the Minister is to make the declaration under section 13(1)(d)—that a person who made representations about the proposed declaration may appeal against the decision to the Land Court within 28 days after receiving the notice, and how the person may appeal.

16 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.

17 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.

18 Requirements about plans of subdivision for declarations

- (1) This section applies if—
 - (a) under section 13, 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—
relevant section means—
 - (a) for freehold land—the Land Title Act, section 50; or
 - (b) for other land—the Land Act, section 290J.

Division 5 Available State land

19 Land that is available State land—general

- (1) Land is available State land if it is—
 - (a) land, other than excluded land, in which no person other than the State has an interest; or
 - (b) land, other than excluded land, that is subject to an interest issued by the State, if an available State land agreement is in force for the land.
- (2) Subsection (1) is subject to sections 21 and 22.
- (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 Agreement about particular land

- (1) The Minister may enter into a written agreement (an *available State land agreement*) about land, other than excluded land—
 - (a) with a person who has an interest in the land granted by the State; and
 - (b) under which the State and the person agree that the land may be available State land.

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- (2) The Minister may enter into an available State land agreement for particular land only if satisfied that entering into the agreement is appropriate in the circumstances having regard to an evaluation of the land under the Land Act, section 16.
- (3) An available State land agreement must provide that on the grant of the land under part 4 the person's interest in the land is to cease and a new interest granted by the trustee of the land is to have effect in substitution for the person's interest.
- (4) However, if the interest is a lease granted under the Land Act, the agreement may provide that the interest is to continue in force under section 41.
- (5) Subsection (6) applies if a proposed available State land agreement is to state that a person's interest in land is to cease and a new interest granted by the proposed trustee of the land is to have effect in substitution for the person's interest.
- (6) To remove any doubt, it is declared that the Minister need not enter into the available State land agreement unless satisfied a new interest granted by the proposed trustee of the land is to have effect in substitution for the person's interest in the land.

21 Watercourses and lakes

Available State land includes a watercourse or lake only to the extent the watercourse or lake is—

- (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.

22 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.

23 Meaning of city or town land

- (1) Subject to subsection (2), city or town land is land that is within the boundaries of a city or town constituted under the *Local Government Act 2009*.
- (2) A regulation may change the boundaries of a city or town.
- (3) A regulation under subsection (2) has effect only for this Act.

24 Meaning of township land

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

25 National parks

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

26 Land that is not available State land

- (1) To remove any doubt, it is declared that the following land is not available State land—
 - (a) the waters of the sea, and the seabed, other than tidal land declared to be available State land under section 22(1);
 - (b) freehold land;
 - (c) land subject to a lease, licence or permit under the Land Act.
- (2) Despite subsection (1)(c), land subject to a lease, licence or permit under the Land Act is available State land if an available State land agreement is in force for the land.

27 Torres Strait area

- (1) The Torres Strait area is—
 - (a) the area the boundaries of which are described in the Torres Strait Treaty, annex 9; and

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- (b) any other area declared by regulation to be included in the Torres Strait area.
- (2) An area declared under subsection (1)(b) may be described in any way.

Division 6 Application of laws to Torres Strait Islander land

28 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 Torres Strait Islander land, persons and things on Torres Strait Islander land, and acts and things done on Torres Strait Islander land, to the same extent, and in the same way, as if the land were not Torres Strait Islander land.
- (2) Without limiting subsection (1), to allay any doubt it is declared that this Act has effect subject to the following Acts—
 - (a) *Fisheries Act 1994*;
 - (b) *Torres Strait Fisheries Act 1984*.

Part 3 Formal expression of interest about land

29 Purpose of pt 3

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

30 Land to which pt 3 applies

This part applies to the following land—

- (a) available State land;
- (b) land dedicated as a reserve under the Land Act;
- (c) land subject to an occupation licence;
- (d) land held under a lease under the Land Act by or for Torres Strait Islanders.

31 Expression of interest in having land made transferable land

- (1) Torres Strait Islanders particularly concerned with land mentioned in section 30 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.

32 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.

33 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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- (b) there is a registered native title body corporate for the determination.
- (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 34.
- (3) If the Minister appoints the registered native title body corporate to be the grantee of the land under this section, 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 Torres Strait Islanders 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 Torres Strait Islanders 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 Torres Strait Islanders.

36 Appointment of grantee to hold land for benefit of Torres Strait Islanders

- (1) This section applies if the Minister does not appoint, under section 35, a registered native title body corporate as the grantee of land.

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- (2) The Minister may appoint as grantee of the land—
 - (a) a CATSI corporation that is qualified to hold the land; or
 - (b) a land trust.
- (3) However, the Minister may appoint a CATSI corporation that is a registered native title body corporate as a grantee of land under subsection (2) only 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) the registered native title body corporate is registered on the National Native Title Register for the determination.
- (4) Before making the appointment, the Minister must consult with, and consider the views of, Torres Strait Islanders particularly concerned with the land.
- (5) Subsection (4) does not apply if an ILUA has been entered into for the land and the entity is nominated in the ILUA as the proposed grantee for the land under this Act.
- (6) However, in considering whether to appoint an entity nominated in an ILUA as the proposed grantee for the land, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example—
 - (a) whether any Torres Strait Islanders particularly concerned with the land may be adversely affected by the appointment; and
 - (b) if the Minister is satisfied any Torres Strait Islanders particularly concerned with the land will be adversely affected by the appointment—any action the entity intends to take to address the concerns of the Torres Strait Islanders.
- (7) Also, in considering whether to appoint a registered native title body corporate as the proposed grantee for the land, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example, the matters mentioned in section 35(4)(b) and (c).

- (8) In appointing a grantee of land under this section, the Minister must have regard to any Island custom applicable to the land.

37 Procedure for appointing particular grantee

- (1) Before appointing a grantee of land under this part, other than an entity nominated in an ILUA as the proposed grantee for the land, the Minister must—
- (a) publish notice of the Minister’s intention to appoint the grantee 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—
 - (i) the name of the proposed grantee;
 - (ii) that a Torres Strait Islander 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) A Torres Strait Islander particularly concerned with the land may make written representations about the proposed appointment to the Minister within the stated period.

38 Minister to act as soon as possible

- (1) The Minister must, as soon as practicable after the commencement of sections 34 and 36, give all necessary

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directions under section 34, and make all necessary appointments under section 35 or 36, in relation to land that is transferable land on the enactment day.

- (2) If, under section 9(1)(c) or 11, land becomes transferable land after the enactment day, the Minister must, as soon as practicable after the land becomes transferable land, give all necessary directions under section 34, and make all necessary appointments under section 35 or 36, in relation to the land.
- (3) However, the Minister need not act as mentioned in subsections (1) and (2) in relation to land until the Minister is reasonably satisfied—
 - (a) arrangements are in place to ensure—
 - (i) the Commonwealth and the State can continue to provide services to communities on the land after it is granted; and
 - (ii) the local government for the area in which the land is situated can continue to provide local government services to communities on the land after it is granted; and

Example of an arrangement for paragraph (a)—

a lease

- (b) if the land is proposed to be granted to an entity other than a registered native title body corporate, arrangements that the Minister considers necessary—
 - (i) to support use of the land by Torres Strait Islanders particularly concerned with it; and
 - (ii) to ensure appropriate services, including, for example, social housing, public works and community infrastructure, can be provided for communities on the land;

are in place to deal with matters relevant to the use of the land after it is granted; and

Example of an arrangement for paragraph (b)—

an ILUA

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- (c) if the land is or includes township land, arrangements are in place to provide for—
- (i) the township land to continue to be used as township land; and
 - (ii) residents of the township land to continue to live on and access the land, and obtain tenure over the land under this Act.

Examples of an arrangement for paragraph (c)—

an ILUA, a townsite lease or another lease

- (4) In this section—

local government services includes any services a local government might ordinarily provide for the community in its local government area.

39 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.

40 Deed of grant takes effect on delivery

- (1) A deed of grant prepared under this division takes effect on the delivery of the deed to the grantee.
- (2) On delivery of the deed of grant to the grantee, the land the subject of the deed becomes Torres Strait Islander land that is transferred land.
- (3) Subsection (1) has effect despite any other Act or any rule of law or practice.

41 Existing interests

- (1) If transferable land was, immediately before becoming Torres Strait Islander 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 Torres Strait Islander land under this division, the subject of—
 - (a) a lease granted under the Land Holding Act; or
 - (b) a lease under the Land Act; or
 - (c) a trustee (Torres Strait Islander) lease;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 42 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) However, subsection (5) applies to an interest in transferable land (the *previous interest*) that, under an available State land agreement, is to cease on the grant of the land under this part and a new interest granted by the trustee of the land is to have effect in substitution for the previous interest on the grant of the land.
- (5) Despite subsections (1) to (3), on the grant of the land the previous interest ceases.
- (6) Subsection (5) applies despite any other Act.
- (7) In this section—

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

42 Interests to be endorsed on deed

- (1) If—
 - (a) land the subject of a deed of grant prepared under section 34 is, at the beginning of the enactment day, subject to, or subsequently becomes subject to, an

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- interest (other than an interest in favour of the State or Commonwealth that is not registered); and
- (b) the interest is created or registered under the Land Act; the chief executive must endorse on the deed, in the proper order of priority—
 - (c) the instruments under which the interest arose; and
 - (d) 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.
- (2) An instrument endorsed on the deed of grant under subsection (1) has effect as a registered instrument on the deed under the Land Title Act.
 - (3) 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.

43 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 40;

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

44 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;

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the Land Court may, on the application of the chief executive 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 Approvals to change how land is held

45 Application to hold Torres Strait Islander land for native title holders

- (1) This section applies if—
 - (a) a CATSI corporation that is the trustee of Torres Strait Islander land becomes a registered native title body corporate after it became the trustee of the land; and
 - (b) 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
 - (c) the registered native title body corporate is registered on the National Native Title Register for the determination.
- (2) The registered native title body corporate may apply to the Minister in the approved form for an approval to hold the land under this Act for the native title holders of the land.

46 Decision on application

- (1) The Minister must consider an application made under section 45 and decide—
 - (a) to give the approval; or
 - (b) to refuse the application.
- (2) In considering the application, the Minister must have regard to—

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- (a) whether any Torres Strait Islanders particularly concerned with the land, other than native title holders of the land, may be adversely affected by the approval; and
 - (b) if the Minister is satisfied Torres Strait Islanders particularly concerned with the land will be adversely affected by the approval—any action the registered native title body corporate intends to take to address the concerns of the Torres Strait Islanders.
- (3) The Minister may give the approval only if, having regard to the matters mentioned in subsection (2), the Minister is satisfied it is appropriate in the circumstances to give the approval.

47 Notices about decision

- (1) The Minister must give the registered native title body corporate written notice of the Minister's decision under section 46.
- (2) If the Minister gives the approval, the chief executive must notify the approval by gazette notice.
- (3) The gazette notice must—
 - (a) state the name of the registered native title body corporate; and
 - (b) include a description of the Torres Strait Islander land held by it that relates to the approval.
- (4) As soon as practicable after the gazette notice is published, the chief executive must give the registrar of titles written notice of the approval.
- (5) The notice must include a description of the Torres Strait Islander land held by the registered native title body corporate for the native title holders of the land.
- (6) On receiving the notice, the registrar must record in the freehold land register that the land is held under this Act by

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the registered native title body corporate for the native title holders of the land.

(7) In this section—

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

48 Effect of gazette notice

On publication of the gazette notice, the registered native title body corporate is taken to hold the land under this Act for the native title holders of the land.

Division 3 Reservations

49 Resource reservations under other Acts

A deed of grant of transferred land must contain the reservations to the State taken to be contained in the grant under the following—

- the *Geothermal Energy Act 2010*, section 29
- the *Greenhouse Gas Storage Act 2009*, section 28
- the *Mineral Resources Act 1989*, section 8
- the *Petroleum Act 1923*, section 10
- the *Petroleum and Gas (Production and Safety) Act 2004*, section 27.

50 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

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- (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.

Part 5 **Register of entities holding Torres Strait Islander land**

51 **Keeping register of entities holding Torres Strait Islander land**

- (1) The chief executive must keep a register of entities that hold Torres Strait Islander land (the *Torres Strait Islander land holding entity register*).
- (2) The register must contain the following information for each entity—

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- (a) the entity's name, address for the service of documents and contact telephone number;
 - (b) a description of the Torres Strait Islander land held by the entity.
- (3) If the entity is a land trust, the register also must contain all the following information about the land trust—
- (a) the names and addresses of all the current members of the land trust;
 - (b) the name of each member of the land trust's executive committee, and the position held by the member;
 - (c) a contact telephone number for the chairperson and secretary of the land trust;
 - (d) a copy of the land trust's adopted rules;
 - (e) copies of annual financial statements and audit reports the chief executive receives from the land trust under this Act;
 - (f) a statement about whether or not the land trust has, for each financial year, operated in compliance with the Act.

Note—

Under section 164, the chief executive must record in the register whether or not a land trust has operated in compliance with the Act.

- (4) The chief executive may keep the register in the form the chief executive considers appropriate, including, for example, in electronic form.

52 Giving information for register to the chief executive

- (1) Each entity, other than a land trust, that holds Torres Strait Islander land must—
- (a) as soon as practicable after the end of each financial year, give to the chief executive the information mentioned in section 51(2) for the entity; and

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- (b) as soon as practicable after any of the information changes—give the chief executive a written notice of the change.
 - (2) A land trust must give to the chief executive all the information the chief executive reasonably requires to ensure the information in the register about the land trust is accurate.

53 Obtaining information in register

- (1) A person may, in the approved form, ask the chief executive to give the person information included in the Torres Strait Islander land holding entity register.
- (2) The chief executive must, if asked under subsection (1), give the person the information included in the publicly available part of the register.
- (3) The chief executive may, if asked under subsection (1), give the person the additional information for a land trust only if the chairperson of the land trust consents in writing to the giving of the information.
- (4) In this section—

additional information, for a land trust, means the following—

- (a) the names of all the current members of the land trust;
- (b) the information mentioned in section 51(3)(b), (d) or (e).

publicly available part, of the Torres Strait Islander land holding entity register, means the part of the register containing all the following information—

- (a) the information mentioned in section 51(2);
- (b) for a land trust—
 - (i) the names of the chairperson and secretary of the land trust; and
 - (ii) the information mentioned in section 51(3)(f).

- (2) The gazette notice must—
 - (a) include a description of the land; and
 - (b) state the reason that the CATSI corporation is no longer qualified to hold the land.

57 How land is held by the State

- (1) This section applies if—
 - (a) the land vests in the State under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth); or
 - (b) the land vests in the State under section 56.
- (2) The land—
 - (a) vests in the State in fee simple; and
 - (b) the State holds the land for the benefit of the persons for whose benefit the land was held immediately before it vested in the State.

58 Minister to transfer land as soon as practicable

- (1) The Minister must, by gazette notice as soon as practicable after the land vests in the State, transfer the land under this part.
- (2) The gazette notice must include—
 - (a) a description of the land being transferred; and
 - (b) the name of the entity to whom the land is transferred.

59 Transfer to registered native title body corporate to hold for native title holders

- (1) This section applies 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

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- (b) there is a registered native title body corporate for the determination.
- (2) The Minister may, with the consent of the registered native title body corporate, transfer the land to it.
- (3) If the Minister transfers the land under this section to a registered native title body corporate, 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 transfer the land to a registered native title body corporate, the Minister may have regard to any matter the Minister considers relevant to the proposed transfer, including, for example—
 - (a) whether any Torres Strait Islanders particularly concerned with the land, other than the native title holders of the land, may be adversely affected by the proposed transfer; and
 - (b) if the Minister is satisfied any Torres Strait Islanders particularly concerned with the land will be adversely affected by the proposed transfer—any action the registered native title body corporate intends to take to address the concerns of the Torres Strait Islanders.

60 Transfer to entity to hold for benefit of Torres Strait Islanders

- (1) This section applies if the Minister does not transfer the land under section 59 to a registered native title body corporate.
- (2) The Minister may transfer the land to—
 - (a) a CATSI corporation that is qualified to hold the land; or
 - (b) a land trust.
- (3) However, the Minister may transfer the land to a CATSI corporation that is a registered native title body corporate under subsection (2) only if—

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- (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) the registered native title body corporate is registered on the National Native Title Register for the determination.
- (4) Before transferring the land, the Minister must consult with, and consider the views of, the Torres Strait Islanders particularly concerned with the land.
- (5) Also, in considering whether to transfer the land to a registered native title body corporate, the Minister may have regard to any matter the Minister considers relevant to the proposed transfer, including, for example—
- (a) whether any Torres Strait Islanders particularly concerned with the land may be adversely affected by the proposed transfer; and
 - (b) if the Minister is satisfied any Torres Strait Islanders particularly concerned with the land will be adversely affected by the proposed transfer—any action the registered native title body corporate intends to take to address the concerns of the Torres Strait Islanders.
- (6) In deciding to transfer land under this section, the Minister must have regard to any Island custom applicable to the land.
- (7) If the land is transferred under this section, the entity to whom the land is transferred holds the land for the benefit of the persons for whose benefit the land was held immediately before it was transferred.

61 Procedure for transferring land

- (1) Before transferring the land, the Minister must—
- (a) publish notice of the Minister's intention to transfer the land in a newspaper or other publication circulating generally in the area in which the land is situated; and
 - (b) consider all representations made to the Minister under subsection (4).

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- (2) The notice must—
 - (a) include a description of the land; and
 - (b) state the following—
 - (i) the name of the proposed transferee;
 - (ii) that a Torres Strait Islander particularly concerned with the land may make written representations to the Minister about the proposed transfer;
 - (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 mentioned in subsection (2)(b)(ii) may make written representations about the proposed transfer to the Minister within the stated period.

62 Effect of gazette notice about transfer

The transfer of the land under this part has effect on publication of the gazette notice about the transfer under section 58.

Division 3 Notices to registrar

63 Notice about land

- (1) If land vests in the State or is transferred under this part, the chief executive must give the registrar written notice of the vesting or transfer.
- (2) The notice must include particulars of the land the subject of the vesting or transfer.
- (3) On receiving the notice, the registrar must record in the freehold land register the vesting or transfer.

65 Requirement for consultation

- (1) The trustee of Torres Strait Islander land must not deal with the land unless—
 - (a) the trustee has explained to the Torres Strait Islanders particularly concerned with the land the nature, purpose and effect of the dealing; and
 - (b) the Torres Strait Islanders are given a suitable opportunity to express their views on, and are generally in agreement with, the dealing.
- (2) Despite section 82, 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 84(1)(a)(i) 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, or in relation to, the land, other than—
 - (i) a residential tenancy; or
 - (ii) a lease or licence for the use of the land for not more than 10 years; or
 - (iii) a lease under section 84(1)(a)(i) for private residential purposes; or
- (d) dedicate a part of the land to public use; or
- (e) surrender any of the land to the State.

trustee, of Torres Strait Islander land, does not include a registered native title body corporate.

66 Provision about Minister's consent

- (1) Subsection (2) applies if the Minister's prior written consent is required for the grant of a lease or licence by the trustee of Torres Strait Islander 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.
- (3) Subsection (4) applies if the Minister's prior written consent is required for the grant of a townsite sublease or licence by the lessee of a townsite lease, or for the creation of an interest under a townsite sublease or licence.
- (4) The Minister's consent may be given for—
 - (a) the grant of a particular townsite sublease or licence, or a particular type of townsite sublease or licence; or
 - (b) the creation of a particular interest under a townsite sublease or licence, or a particular type of interest; or
 - (c) if the Minister considers it appropriate—
 - (i) all townsite subleases or licences, or all townsite subleases or licences of a particular type, that may be granted by the lessee; or
 - (ii) the creation of all interests, or all interests of a particular type, that may be created under a townsite sublease or licence.

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Division 2 Sale or mortgage prohibited

67 Prohibition on sale or mortgage of Torres Strait Islander land

The trustee of Torres Strait Islander land must not sell or mortgage the land.

Division 3 Grant of licences

68 Grant of licence for Torres Strait Islander land

- (1) The trustee of Torres Strait Islander land may grant a licence for the use of all or a part of the land only—
 - (a) to a Torres Strait Islander 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.
- (2) The lessee of the townsite lease may grant a licence for the use of all or a part of the lease land only—
 - (a) to a Torres Strait Islander 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.

69 Conditions of licences

- (1) A licence granted under section 68(1)(a) or (2)(a) is subject to the condition that an interest may be created under the licence

in favour of a person who is not a Torres Strait Islander only if—

- (a) the interest is in favour of the spouse, or former spouse, of a Torres Strait Islander or of a Torres Strait Islander who is deceased; or
- (b) the interest is—
 - (i) for not more than 10 years; or
 - (ii) created with the Minister’s prior written consent.
- (2) A licence granted under section 68(1)(b) or (c) or (2)(b) or (c) is subject to the condition that an interest can not be created under the licence.
- (3) A licence granted under section 68(1) or (2) can not be renewed or transferred.

Division 4 Transfer of Torres Strait Islander land by trustee

Subdivision 1 Land held by land trust

70 Application of sdiv 1

This subdivision applies to Torres Strait Islander land held by a land trust.

71 Transfer of Torres Strait Islander land

- (1) The trustee of the Torres Strait Islander land (the *transferor*) may transfer all or a part of the land only—
 - (a) with the Minister’s written approval; and
 - (b) to either of the following entities (the *transferee*)—
 - (i) another land trust;
 - (ii) a CATSI corporation that is qualified to hold the land.

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- (2) However, the trustee may transfer all or a part of the land to a CATSI corporation that is a registered native title body corporate only 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) the registered native title body corporate is registered on the National Native Title Register for the determination.
- (3) If a trustee transfers land under this subdivision—
 - (a) all improvements on the land must be transferred with the land; and
 - (b) for a transferee that is a registered native title body corporate—the transferee holds the land for—
 - (i) the native title holders of the land, if the transferor and the transferee agree it is to be held for the native title holders; or
 - (ii) the benefit of Torres Strait Islanders particularly concerned with the land and their ancestors and descendants, if subparagraph (i) does not apply to the transfer; and
 - (c) for a transferee that is not a registered native title body corporate—the transferee holds the land for the benefit of the Torres Strait Islanders particularly concerned with the land and their ancestors and descendants; and
 - (d) if all the Torres Strait Islander 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
 - (e) if paragraph (c) does not apply—the assets and liabilities of the trustee mentioned in section 73(1)(a)(ii) become the assets and liabilities of the transferee.

72 Application for approval to transfer

- (1) The trustee of the Torres Strait Islander 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) if the transferee is a land trust—be accompanied by evidence satisfactory to the Minister of each matter mentioned in section 73(1)(a) or (b) that applies to the transfer; and
 - (c) if the transferee is a CATSI corporation—be accompanied by evidence satisfactory to the Minister of the matters mentioned in section 73(1)(c).

73 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, 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) if the transferee is a land trust—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
 - (c) if the transferee is a CATSI corporation—
 - (i) the transferee agrees to the transfer; and

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- (ii) the transferee is qualified to hold the land; and
- (d) 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 Torres Strait Islander land, if any, that will be held by the transferor after the transfer;
 - (v) the name of the transferee;
 - (vi) a description of all Torres Strait Islander land that will be held by the transferee after the transfer; and
 - (b) if the transferor is a land trust that is dissolved under section 71(3)(d)(i) because of the transfer—state the land trust will be 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.

74 Effect of gazette notice about transfer

On publication of the gazette notice the Torres Strait Islander land proposed to be transferred may be transferred to the transferee.

Subdivision 2 Land held by CATSI corporation

75 Application of sdiv 2

- (1) This subdivision applies to Torres Strait Islander land held by a CATSI corporation.
- (2) However, this subdivision does not apply to a transfer of Torres Strait Islander land from a registered native title body corporate (the *original body corporate*) to another registered native title body corporate that, under the Commonwealth Native Title Act, replaces the original body corporate.

76 Transfer of Torres Strait Islander land

- (1) The trustee of the Torres Strait Islander land (the *transferor*) may transfer all or a part of the land only—
 - (a) with the Minister's written approval; and
 - (b) to another CATSI corporation that is qualified to hold the land (the *transferee*).
- (2) However, the trustee may transfer all or a part of the land to a CATSI corporation that is a registered native title body corporate only 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) the registered native title body corporate is registered on the National Native Title Register for the determination.
- (3) The transferee holds the land for—
 - (a) the native title holders of the land, if—
 - (i) the transferee is a registered native title body corporate; and
 - (ii) the transferor and the transferee agree it is to be held for the native title holders; or

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- (b) otherwise—the benefit of the Torres Strait Islanders particularly concerned with the land and their ancestors and descendants.

77 Application for approval to transfer

- (1) The trustee of the Torres Strait Islander land may apply to the Minister for an approval to transfer all or a part of the land.
- (2) The application must be in the approved form.

78 Minister's approval to transfer

- (1) The Minister may give an approval to transfer the land only if satisfied—
 - (a) the transferee agrees to the transfer; and
 - (b) the transferee is qualified to hold the land; and
 - (c) 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 include all of the following—
 - (a) the name of the transferor;
 - (b) a description of the land being transferred;
 - (c) the name of the transferee.
- (4) In this section—

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

79 Effect of gazette notice about transfer

On publication of the gazette notice the Torres Strait Islander land proposed to be transferred may be transferred to the transferee.

Subdivision 3 Exemption from fees and charges

80 Exemption

If a trustee of Torres Strait Islander land transfers all or a part of the land under this division, no fee or charge is payable by the trustee or the entity to whom the land is transferred in relation to lodgement and registration of any instrument in the land registry to give effect to the transfer.

Division 5 Other matters

81 Trustee to advise chief executive of change to description of land

If a trustee deals with Torres Strait Islander 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.

82 Particular dealings in Torres Strait Islander land void

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

83 Provision about resumption of Torres Strait Islander land etc.

- (1) An interest in Torres Strait Islander 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 Torres Strait Islander 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 Torres Strait Islander land under the Acquisition Act, the Torres Strait Islander 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 *Geothermal Energy Act 2010*; or
 - (b) the *Greenhouse Gas Storage Act 2009*; or
 - (c) the *Petroleum and Gas (Production and Safety) Act 2004*; or
 - (d) the *State Development and Public Works Organisation Act 1971*.

Part 8 Leasing of Torres Strait Islander land

Division 1 Grant of leases for Torres Strait Islander land

84 Grant of lease for Torres Strait Islander land

- (1) The trustee of Torres Strait Islander land may grant a lease over all or a part of the land only if—
 - (a) the lease is for not more than 99 years and is granted to—
 - (i) a Torres Strait Islander; or
 - (ii) the State; or

-
- (iii) another person; or
 - (b) the lease is a perpetual lease granted to a local government over land that is township land.
- (2) A lease mentioned in subsection (1)(a) is a *standard lease*.
- (3) A lease mentioned in subsection (1)(b) is a *townsite lease*.
- (4) Despite subsection (1)(a)(i)—
- (a) a person who is not a Torres Strait Islander 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 a Torres Strait Islander; and
 - (b) a lease may be granted under the subsection for private residential purposes to a person who is not a Torres Strait Islander if the person is the spouse, or former spouse, of a Torres Strait Islander or of a Torres Strait Islander who is deceased.

Division 2 Standard leases

Subdivision 1 Restrictions on grant of standard leases

85 Restrictions on grant of standard lease to a Torres Strait Islander

- (1) This section applies to a standard lease under section 84(1)(a)(i).
- (2) If the lease is for more than 30 years it may be granted only—
 - (a) for private residential purposes; or
 - (b) with the Minister's prior written consent, for another purpose.

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Examples of another purpose for paragraph (b)—

a commercial purpose or providing public infrastructure

- (3) The Minister may consent to the grant of the lease for another purpose under subsection (2)(b) only if—
- (a) 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; and
 - (b) for a lease for more than 30 years and for a commercial purpose—the lease is granted over an entire lot as shown in the appropriate register.

Note—

For a lease for more than 30 years and for a commercial purpose, also see section 89.

86 Restrictions on grant of standard lease to State

- (1) This section applies to a standard lease under section 84(1)(a)(ii).
- (2) If the standard lease is for more than 30 years it may be granted 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 police officers; or
 - (b) with the Minister's prior written consent, for another purpose.

Example of another purpose for paragraph (b)—

a commercial purpose

- (3) The Minister may consent to the grant of the lease for another purpose under subsection (2)(b) only if—

- (a) 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; and
- (b) for a lease for more than 30 years and for a commercial purpose—the lease is granted over an entire lot as shown in the appropriate register.

87 Restrictions on grant of standard lease to another person

- (1) This section applies to a standard lease under section 84(1)(a)(iii).
- (2) The lease may be granted for a private residential purpose only if the lease supports a standard lease granted to the person for a commercial purpose.
- (3) If the lease is for more than 10 years it may be granted only with the Minister's prior written consent unless the lease is for—
 - (a) a commercial purpose and for not more than 30 years; or
 - (b) a private residential purpose to support a lease for a commercial purpose.
- (4) The Minister may consent to the grant of the lease only if—
 - (a) 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; and
 - (b) for a lease for more than 30 years and for a commercial purpose—the lease is granted over an entire lot as shown in the appropriate register.

Subdivision 2 Requirements for Minister's consent

88 General requirements for Minister's consent

- (1) A person seeking the Minister's consent to the grant of a standard 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 is appropriate in the circumstances.
- (2) Also, a person seeking the Minister's consent to the grant of a standard 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
 - (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 standard 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 standard lease for more than 30 years, the Minister must be satisfied—

-
- (a) the trustee has complied with section 65(1)(a) for the lease; and
 - (b) the Torres Strait Islanders particularly concerned with the lease land are generally in agreement with the grant of the lease.

89 Requirement for Minister's consent for standard lease for commercial purpose

- (1) Before the Minister consents to the grant of a standard 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 88(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 88(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 independent assessment.
- (3) The cost is not refundable.

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90 Requirement for Minister's consent for creation of interest under a standard lease

- (1) This section applies if, under section 106, an interest under a standard 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.

Division 3 Townsite leases

Subdivision 1 Restriction on grant of townsite leases

91 Minister's consent for grant of townsite lease

- (1) A townsite lease may be granted only with the Minister's prior written consent.
- (2) The Minister may consent to the grant of a townsite lease only if—

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- (a) the lease is granted over an entire lot as shown in the appropriate register; and
 - (b) the Minister is satisfied that any existing interests in the land that is to be a town site under the lease are not inconsistent with the lease.

Subdivision 2 Requirements for Minister's consent

92 General requirements for Minister's consent

- (1) A person seeking the Minister's consent to the grant of a townsite lease must give the Minister the information or documents reasonably required by the Minister to show—
 - (a) the purpose of the lease; and
 - (b) the grant of the lease is for the benefit of persons for whom the trustee holds the lease land; and
 - (c) the grant of the lease—
 - (i) will facilitate the continued operation of a township on the lease land; and
 - (ii) will not prevent residents of the township land from continuing to live on and access the land, or from obtaining tenure over the land under this Act.
- (2) In considering whether to give consent to the grant of a townsite lease, the Minister—
 - (a) must have regard to the information or documents given to the Minister under subsection (1); and
 - (b) may have regard to other information the Minister considers relevant to the proposed lease.
- (3) Before giving consent to the grant of a townsite lease, the Minister must be satisfied—
 - (a) the trustee has complied with section 65(1)(a) for the lease; and

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- (b) the Torres Strait Islanders particularly concerned with the lease land are generally in agreement with the grant of the lease; and
- (c) the grant of the lease—
 - (i) will facilitate the continued operation of a township on the lease land; and
 - (ii) will not prevent residents of the township land from continuing to live on and access the land, or from obtaining tenure over the land under this Act.

Subdivision 3 Provisions about dealings with townsite leases

93 Transfer or amendment of townsite lease

- (1) A townsite lease must not be transferred or amended without—
 - (a) the agreement of both the trustee and the lessee of the lease land; and
 - (b) the Minister's prior written consent.
- (2) A person seeking the Minister's consent to the transfer or amendment of a townsite lease must give the Minister the information or documents relevant to the proposed transfer or amendment reasonably required by the Minister.
- (3) In considering whether to consent to the transfer of a townsite lease, the Minister must consider whether the proposed transferee can comply with the conditions of the lease.
- (4) The Minister may consent to the amendment of a townsite lease only if satisfied—
 - (a) the amendment does not significantly change the conditions of the townsite lease; and
 - (b) the amendment will not diminish the purpose of the lease.

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

94 Townsite lease and transfer, amendment or surrender of lease to be registered

- (1) A townsite lease, and any transfer, amendment or surrender of a townsite lease, must be registered.
- (2) Despite the Land Title Act, section 92(2) the instrument of lease for a townsite lease must include a plan of survey identifying the lease land.

95 Surrender of townsite lease

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

96 No forfeiture of townsite lease

A townsite lease can not be forfeited.

Subdivision 4 Effect of townsite lease on existing interests

97 Lessee of townsite lease taken to be lessor of existing leases

- (1) Subsection (2) applies if a townsite lease is granted over Torres Strait Islander land that is, immediately before the grant of the lease, the subject of a following lease (each a *continued lease*)—
- (a) a lease granted under the Land Holding Act; or
 - (b) a lease under the Land Act; or
 - (c) a trustee (Torres Strait Islander) lease.
- (2) On the grant of the townsite lease—

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- (a) the continued lease continues in force and is taken to be a townsite sublease; and
- (b) the lessee for the townsite lease is substituted for the lessor as a party to the continued lease.

Note—

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

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

Division 4 Townsite subleases

Subdivision 1 Grant of subleases under townsite lease

98 Grant of sublease

- (1) The lessee of a townsite lease may grant a sublease (a *townsite sublease*) over all or a part of the lease land.
- (2) A townsite sublease may not be granted for more than 99 years and may be granted only to—
 - (a) a Torres Strait Islander; or
 - (b) the State; or
 - (c) another person.
- (3) Despite subsection (2)(a)—
 - (a) a person who is not a Torres Strait Islander may be a party to a sublease granted under the subsection if—
 - (i) the sublease is for private residential purposes; and
 - (ii) the person is the spouse of a Torres Strait Islander; and

- (b) a sublease may be granted under the subsection for private residential purposes to a person who is not a Torres Strait Islander if the person is the spouse, or former spouse, of a Torres Strait Islander or of a Torres Strait Islander who is deceased.

Subdivision 2 Requirements about grant of subleases under townsite lease

99 Restrictions on grant of townsite sublease to a Torres Strait Islander

- (1) This section applies to a townsite sublease under section 98(2)(a).
- (2) If the sublease is for more than 30 years, it may be granted only—
 - (a) for private residential purposes; or
 - (b) with the Minister’s prior written consent, for another purpose.
Examples of another purpose for paragraph (b)—
a commercial purpose or providing public infrastructure
- (3) The Minister may consent to the grant of the sublease for another purpose under subsection (2)(b) only if—
 - (a) having regard to the nature of the sublease, the Minister is satisfied the grant of the sublease would not diminish the purpose for which the townsite lease was granted; and
 - (b) for a townsite sublease for more than 30 years and for a commercial purpose—the sublease is granted over an entire lot as shown in the appropriate register.

Note—

For a lease for more than 30 years and for a commercial purpose, also see section 103.

[s 100]

100 Restrictions on grant of townsite sublease to State

- (1) This section applies to a townsite sublease under section 98(2)(b).
- (2) If the sublease is for more than 30 years it may be granted 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 police officers; or
 - (b) with the Minister's prior written consent, for another purpose.

Example of another purpose for paragraph (b)—

a commercial purpose

- (3) The Minister may consent to the grant of the sublease for another purpose under subsection (2)(b) only if—
 - (a) having regard to the nature of the sublease, the Minister is satisfied the grant of the sublease would not diminish the purpose for which the townsite lease was granted; and
 - (b) for a townsite sublease for more than 30 years and for a commercial purpose—the sublease is granted over an entire lot as shown in the appropriate register.

101 Restrictions on grant of townsite sublease to another person

- (1) This section applies to a townsite sublease under section 98(2)(c).
- (2) The sublease may be granted for a private residential purpose only if the sublease supports a sublease granted to the person for a commercial purpose.

-
- (3) If the townsite sublease is for more than 10 years it may be granted only with the Minister's prior written consent unless the sublease is for—
 - (a) a commercial purpose and for not more than 30 years; or
 - (b) a private residential purpose to support a sublease for a commercial purpose.
 - (4) The Minister may consent to the grant of the townsite sublease only if—
 - (a) having regard to the nature of the sublease, the Minister is satisfied the grant of the sublease would not diminish the purpose for which the townsite lease was granted; and
 - (b) for a townsite sublease for more than 30 years and for a commercial purpose—the sublease is granted over an entire lot as shown in the appropriate register.

Subdivision 3 Requirements for Minister's consent

102 General requirements for Minister's consent

- (1) A person seeking the Minister's consent to the grant of a townsite sublease must give the Minister the information or documents reasonably required by the Minister to show—
 - (a) the purpose of the sublease; and
 - (b) the sublease will not diminish the purpose for which the townsite lease was granted; and
 - (c) if the sublease is for more than 30 years—that the grant of the sublease is appropriate in the circumstances.
- (2) Also, a person seeking the Minister's consent to the grant of a townsite sublease 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 sublease, including, for example,

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- financial details about any proposed development under the sublease; and
- (b) evidence to show that an appropriate return on the investment for the commercial purpose can not be obtained under a sublease for not more than 30 years; and
 - (c) other information or documents reasonably required by the Minister to show the purpose of the sublease.
- (3) In considering whether to give consent to the grant of a townsite sublease, 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 sublease.
- (4) Before giving consent to the grant of a townsite sublease for more than 30 years, the Minister must be satisfied the grant of the sublease will not diminish the purpose for which the townsite lease was granted.

103 Requirement for Minister's consent for townsite sublease for commercial purpose

- (1) Before the Minister consents to the grant of a townsite sublease 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 102(2)(a) and (b); and
 - (ii) the proposed sublessee's financial and managerial capabilities; and
 - (b) be satisfied, having regard to the independent assessment, that—
 - (i) any proposed development under the sublease will be commercially viable; and

- (ii) the evidence given under section 102(2)(b) satisfactorily shows that an appropriate return on the investment for the purpose of the sublease can not be obtained under a sublease for not more than 30 years; and
 - (iii) the proposed sublessee's financial and managerial capabilities are appropriate for carrying out any proposed development under the lease.
- (2) The proposed sublessee must pay the cost of the independent assessment.
- (3) The cost is not refundable.

104 Requirement for Minister's consent for creation of interest under a townsite sublease

- (1) This section applies if, under section 106, an interest under a townsite sublease may be created only with the Minister's written consent.
- (2) The Minister may consent to the creation of the interest only if—
 - (a) the interest is consistent with the purpose for which the townsite lease was granted; or
 - (b) the interest would not diminish the purpose for which the townsite 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 would not diminish the purpose for which the townsite lease was granted.

Division 5 Common provisions for standard leases and townsite subleases

Subdivision 1 Preliminary

105 Definitions for div 5

In this division—

lease means—

- (a) a standard lease; or
- (b) a townsite sublease.

lessor means—

- (a) for a standard lease—the trustee of the lease land; or
- (b) for a townsite sublease—the lessee of the townsite lease under which the townsite sublease is granted.

Subdivision 2 Conditions of leases

106 Conditions of leases—general

- (1) A lease 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.

Note—

For requirements for the Minister's consent, see sections 90 and 104.

- (2) Despite subsection (1)—
 - (a) an interest under a lease granted under section 84(1)(a)(i) or 98(2)(a) may be created without the Minister's prior written consent if the interest is in favour of—
 - (i) a Torres Strait Islander; or

-
- (ii) another person who is not a Torres Strait Islander if the person is the spouse, or former spouse, of a Torres Strait Islander or of a Torres Strait Islander who is deceased; and
 - (b) an interest under another lease may be created without the Minister's prior written consent if, under this part, the grant of the lease did not require the consent of the Minister.
- (3) A lease 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 lessor's prior written consent; or
 - (c) an interest under the lease, other than a mortgage of the lease, must not be created without the lessor's prior written consent.
- (4) If a lease includes a condition mentioned in subsection (3)(b) or (c), the lessor must not unreasonably withhold consent to the transfer or creation of an interest under the lease.
- (5) A lease may be mortgaged without the consent of the Minister or the lessor.
- (6) Subject to subsection (5), this section does not limit the conditions that may be imposed on a lease.

107 Leases for private residential purposes—general conditions and requirements

- (1) A lease granted for private residential purposes is subject to all of the following conditions—
- (a) if the lease is granted under section 84(1)(a)(i) or 98(2)(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 lessor; and

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- (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 lessor using at least 1 of the following—
 - (A) a valuation methodology decided by the chief executive;
 - (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; and
 - (iv) the lease land must be used primarily for private residential use;
 - (b) if a private residential premises is not situated on the lease land when the lease is granted—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 or a mortgage of the lease.
- (2) A lessor may grant a lease under section 84(1)(a)(i) or 98(2)(a) for private residential purposes only if the amount mentioned in subsection (1)(a)(iii) has been paid to the lessor.
- (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.

108 Leases for private residential purposes—particular requirements if dwelling situated on land

- (1) This section applies if—
- (a) a lessor proposes to grant a lease for private residential purposes; and
 - (b) a dwelling is situated on the land the subject of the proposed lease.

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- (2) The lessor must give the housing chief executive written notice of the lessor's intention to grant the lease.
 - (3) Within 28 days after receiving the notice, the housing chief executive must give the lessor a written notice stating whether the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
 - (4) The lessor 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 lessor must, before the lease is granted, decide the value of the dwelling by using a valuation methodology agreed between the lessor 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 lessor 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 lessor.
 - (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.
 - (10) If the lessor grants the lease, the lessor 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 lessor; and

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- (c) evidence showing the amount decided by the lessor under section 107(1)(a)(iii) for the lease land was paid to the lessor.

Note—

The amount mentioned in subsection (7) must be used by the lessor as required under section 192.

(11) This section does not limit section 107.

(12) In this section—

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

109 Option to renew particular lease or sublease

- (1) A lease or a sublease of a lease, other than a lease for private residential purposes, 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.

Subdivision 3 Provisions about transfer, amendment or surrender of leases

110 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 lessor—the lessor's prior written consent; and
 - (b) if, under this part, 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—
 - (i) for a standard lease—is for the benefit of persons for whom the trustee holds the land; or
 - (ii) for a townsite sublease—will not diminish the purpose of the relevant townsite lease.
- (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 independent 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.

111 Particular dealings 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 Torres Strait Islander land, must include a plan of survey identifying the lease land.
- (3) Subsection (2) does not apply to a lease entered into only in relation to an area completely within a building.

Division 6 Forfeiture and renewal of leases for private residential purposes

Subdivision 1 Preliminary

112 Definitions for div 6

In this division—

lessee means—

- (a) for a residential lease that is a standard lease—the lessee under the lease; or
- (b) for a residential lease that is a townsite sublease—the sublessee under the sublease.

lessor means—

- (a) for a residential lease that is a standard lease—the trustee of the lease land; or
- (b) for a residential lease that is a townsite sublease—the lessee of the townsite sublease under which the townsite sublease is created.

residential lease means—

- (a) a standard lease granted under section 84(1)(a)(i) for private residential purposes; or
- (b) a townsite sublease granted under section 98(2)(a) for private residential purposes.

113 Application of div 6

This division applies to all residential leases.

Subdivision 2 Forfeiture

114 Grounds for forfeiture

- (1) A residential 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 lessor; or
 - (b) the lessee acquired the lease by fraud.
- (2) In this section—

relevant condition, of a residential lease, means—

 - (a) a condition of the lease mentioned in section 107(1)(b); or
 - (b) another condition, if the lessor reasonably considers a breach of the condition is of a serious nature and warrants forfeiture of the lease.

115 Referral to Land Court for forfeiture

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

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- (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 lessor must file a copy of the notice in the Land Court at the same time as the lessor refers the matter to the court.

116 Lessor's options if Land Court decides lease may be forfeited

If the Land Court decides the residential lease may be forfeited, the lessor 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 lessor and the lessee.

117 Notice and effect of forfeiture

- (1) If the lessor forfeits the residential lease, the lessor 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.
- (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.

118 Extension of term of lease—referral for forfeiture

- (1) This section applies to the residential lease if—
 - (a) a matter has been referred to the Land Court for forfeiture of the lease; and
 - (b) after the referral but before the Land Court makes its decision on the matter, the term of the lease would, but for subsection (2), end.
- (2) The term of the lease is taken to continue until—
 - (a) if the lease is forfeited—notice of its forfeiture is given to the registrar under this subdivision; or
 - (b) otherwise—the end of 60 days after the lessor receives notice of the Land Court’s decision.
- (3) Subsection (2) applies to the lease despite the provisions of the lease and any other provision of this Act.

Subdivision 3 Renewal

119 Notice of expiry of lease

- (1) This section applies if the lessee under a residential lease has not, under section 120, applied for renewal of the lease at least 1 year before the term of the lease ends.
- (2) The lessor must, as soon as practicable, give the lessee written notice stating—
 - (a) the day the term of the lease ends; and
 - (b) that the lessee may apply under this subdivision for renewal of the lease and how the lessee may apply.

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120 Application to renew lease

- (1) The lessee may apply in writing to the lessor to renew the residential lease.
- (2) The application must be made not more than 2 years before the term of the lease ends.
- (3) The application must—
 - (a) state the name of the lessee; and
 - (b) include information to identify the lease.

121 Lessor to consider and decide application

The lessor must, within 6 months after an application is made under section 120, consider the application and decide to renew or not to renew the residential lease.

122 Decision to renew lease

- (1) If the lessor decides to renew the residential lease, the lessor must give the lessee—
 - (a) written notice of the decision; and
 - (b) a copy of the renewed lease.
- (2) The renewed lease—
 - (a) must be for the same term as the lease it replaces (the *replaced lease*); and
 - (b) has effect immediately after the replaced lease ends; and
 - (c) is subject to all the conditions to which the replaced lease was subject immediately before it ended.
- (3) No amount is payable under section 107(1)(a)(iii) for the renewed lease.
- (4) Also, section 108 does not apply for the renewal of the lease.

123 Lessor may decide not to renew lease

The lessor may decide not to renew the residential lease only if the lessor is satisfied the lease land is not being used for private residential purposes.

124 Notice to lessee about decision not to renew lease

If the lessor decides not to renew the residential lease, the lessor must give the lessee a written notice stating the following—

- (a) that the lessor has decided not to renew the lease;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may appeal to the Land Court against the decision within 28 days after receiving the notice;
- (d) how the person may appeal.

125 Extension of term of lease—application for renewal

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

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Subdivision 4 General matters about forfeiture or non-renewal of residential leases

126 Right to remove improvements if lease forfeited or not renewed

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

127 Payment by lessor for forfeited or non-renewed lease

- (1) If the lessor forfeits or decides not to renew the residential lease, the lessor must pay to the person who was the lessee the amount worked out under subsection (2) (the *required amount*).
- (2) The required amount is the amount equal to the combined value of the following (the *maximum amount*) less any amounts deducted from the maximum amount under section 129—
 - (a) the value of the lease land on the day the lease is forfeited or ends; and
 - (b) the value of the lessee's improvements on the land that become the property of the lessor.
- (3) The value of the lease land is the amount as decided by the lessor using the valuation methodology mentioned in section 107(1)(a)(iii).
- (4) The value of any 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 or non-renewed lease.
- (5) Subject to subsections (3) and (4), the lessor must decide the required amount.

- (6) The lessor must decide the required amount as soon as practicable after giving the person notice that the lease is forfeited or not renewed.
- (7) On deciding the required amount, the lessor must give the person written notice of the decision.
- (8) The notice must state—
 - (a) the required amount; and
 - (b) that the person may appeal to the Land Court against the decision within 28 days after receiving the notice; and
 - (c) how the person may appeal.
- (9) This section is subject to section 128.

128 Unclaimed amounts

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

129 Amounts owing to lessor or mortgagee to be deducted

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

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

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130 Payment of amount to mortgagee in discharge of mortgage

- (1) This section applies if the lessor forfeits or decides not to renew the residential 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 lessor must pay to the mortgagee—
 - (a) if the amount that may be deducted from the maximum amount under section 129(d) is less than the difference between the maximum amount and the amounts deducted under section 129(a), (b) or (c)—the amount that may be deducted from the maximum amount under section 129(d); or
 - (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 129(a), (b) or (c).
- (3) The lessor must pay the amount payable under subsection (2) to the mortgagee—
 - (a) if no appeal is made to the Land Court about the required amount payable to the person who was the lessee—within 28 days after the time for making an appeal ends; or
 - (b) if an appeal is made to the Land Court about the required amount—within 28 days after the appeal is finally decided.
- (4) If the lessor pays an amount to the mortgagee in relation to a mortgage of the lease, the mortgagee must use the amount in discharge of the mortgage.

Division 7 Miscellaneous

131 Effect of option to renew or extend on calculation of term of leases

- (1) This section applies to a lease granted for an initial term of—

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- (a) not more than 10 years; or
 - (b) at least 10 years but not more than 30 years.
- (2) For the purposes of section 65 and this part, the lease 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.
- (3) In this section—
- lease* means a standard lease or a townsite sublease.

132 Exemption from fees and charges

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

133 Leases for private residential purposes—beneficiary

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

Note—

Under section 106, the lease may include a condition that it must not be transferred without the lessor's prior written consent.

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

Part 9 Decision-making process

134 When agreement of Torres Strait Islanders is given

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

- (a) if there is a particular process of decision-making that, under the Island custom of the Torres Strait Islanders, 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 Torres Strait Islanders for the decision or for decisions of that kind.

135 Decision-making by trustee

- (1) This section applies if this Act provides that the trustee of Torres Strait Islander 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) have regard to—
 - (i) if the Torres Strait Islanders for whom the trustee holds the land have agreed on a decision-making process for decisions of that kind—the process; or

- (ii) if subparagraph (i) does not apply—any Island custom, for decisions of that kind, of the Torres Strait Islanders for whom the trustee holds the land; or
- (b) if there is no decision-making process mentioned in paragraph (a)(i) or relevant Island custom—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 10 **Provisions about mortgages of leases over Torres Strait Islander land**

Division 1 **Preliminary**

136 **Definitions for pt 10**

In this part—

lease means—

- (a) a standard lease; or
- (b) a townsite sublease.

lessor means—

- (a) for a standard lease—the trustee of the lease land; or
- (b) for a townsite sublease—the lessee of the townsite lease under which the townsite sublease is granted.

137 **Application of pt 10**

If, in relation to the mortgaging of a lease over Torres Strait Islander 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.

Division 2 Mortgages of leases over Torres Strait Islander land

138 Provisions about entering into possession, and selling, lease

- (1) This section applies if a mortgagee enters into possession of a lease granted over Torres Strait Islander land.
- (2) The mortgagee must give the lessor for the lease written notice of the fact within 28 days after entering into possession.
- (3) The mortgagee must arrange to sell the lease within—
 - (a) 4 years after entering into possession of the lease; or
 - (b) the longer period agreed in writing between the mortgagee and lessor.
- (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 lessor 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 period mentioned in subsection (3)(a), the lessor may sell the lease.
- (7) The mortgagee or lessor may sell the lease only to a person who, under this Act, would be entitled to a grant of the lease.
- (8) The lessor must not sell the lease for less than—

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- (a) the amount owing to the mortgagee by the lessee under the mortgage on the day the lease is sold; or
 - (b) if the lessor and the mortgagee agree the lease may be sold for an amount less than the amount mentioned in paragraph (a)—the agreed amount.
- (9) In this section—
- lessee* means—
- (a) for a standard lease—the lessee under the lease; or
 - (b) for a townsite sublease—the sublessee under the sublease.

139 How lessor deals with proceeds of sale

- (1) This section applies if, under section 138, a lessor sells a mortgaged lease.
- (2) The lessor 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 lessor must firstly apply the proceeds to the payment of all costs, charges and expenses properly incurred by the lessor for the sale or any attempted sale.

Part 11 Leasing of Torres Strait Islander trust land

Division 1 Preliminary

140 Definitions for pt 11

In this part—

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Torres Strait Islander trust land means—

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

trustee, of Torres Strait Islander trust land, means the trustee of the land under the Land Act.

trustee (Torres Strait Islander) lease means a lease of Torres Strait Islander trust land granted under—

- (a) part 8 as applied under section 142(2); or
- (b) the Land Act, section 57 before the commencement of this part.

141 Relationship with Land Act

- (1) The following provisions of the Land Act, chapter 3, part 1, division 7 do not apply to Torres Strait Islander 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 they relate to a lease of the land.

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- (2) For the purposes of the Land Act, other than the provisions mentioned in subsection (1), a trustee (Torres Strait Islander) lease is taken to be a trustee lease under that Act.

Division 2 Leases

142 Trustee (Torres Strait Islander) leases

- (1) A trustee of Torres Strait Islander trust land may lease all or a part of the land under part 8.
- (2) For subsection (1), the relevant provisions apply in relation to the leasing of Torres Strait Islander trust land—
- (a) as if a reference in the provisions to Torres Strait Islander land were a reference to Torres Strait Islander trust land; and
 - (b) as if a reference in the provisions to the Minister were a reference to—
 - (i) if the Torres Strait Islander trust land is transferable land—the Minister administering this Act; and
 - (ii) if the Torres Strait Islander trust land is not transferable land—the Minister administering the Land Act; and
 - (c) as if the reference in section 88(4)(a) to section 65(1)(a) were a reference to section 142(5)(a); and
 - (d) as if the reference in section 106(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.
- (3) Also, for subsection (1) the following provisions apply in relation to the leasing of Torres Strait Islander trust land that is prescribed DOGIT land as if a reference in the provisions to a Torres Strait Islander includes a reference to an Aborigine—
- (a) section 84;

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- (b) section 106(2).
- (4) If the consent of the Minister is required in relation to a lease of Torres Strait Islander trust land that is transferable land, the Minister must not give the consent unless satisfied the lease is for the benefit of Torres Strait Islanders particularly concerned with the land.
- (5) The trustee of Torres Strait Islander 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 Torres Strait Islanders particularly concerned with the land the nature, purpose and effect of the lease; and
- (b) the Torres Strait Islanders are given a suitable opportunity to express their views on, and are generally in agreement with, the grant of the lease.
- (6) The grant of a lease over Torres Strait Islander trust land in contravention of part 8 is void, unless the lease is registered.
- (7) Subsection (6) applies despite any other Act.
- (8) In this section—
relevant provisions means section 37A and part 8, divisions 1 to 6.

143 Amending trustee (Torres Strait Islander) lease

- (1) A document of amendment of a registered trustee (Torres Strait Islander) 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 (Torres Strait Islander) lease, includes a period of possession under the lease because of—
- (a) the renewal of the lease; or

- (b) a registered document of amendment extending the term of the lease.

144 Mortgage of trustee (Torres Strait Islander) lease

- (1) Subject to subsection (2), a lessee of Torres Strait Islander trust land may, under the Land Act, chapter 6, part 4, division 4, mortgage a trustee (Torres Strait Islander) lease.
- (2) For mortgaging a trustee (Torres Strait Islander) 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
 - (iv) as if section 347 were omitted; and
 - (b) section 138 applies as if the reference in section 138(1) to Torres Strait Islander land were a reference to Torres Strait Islander trust land.

145 Surrender of trustee (Torres Strait Islander) lease

All or part of a trustee (Torres Strait Islander) lease or a sublease of a trustee (Torres Strait Islander) 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

146 Trustee to advise about ending of particular lease for commercial purpose

- (1) This section applies if a trustee (Torres Strait Islander) lease for more than 30 years granted by a trustee over transferable land 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 (Torres Strait Islander) lease.

147 Recording information about land

- (1) If a 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 no longer 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 146(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 12 **Occupation and use of Torres Strait Islander land by the State or Commonwealth**

148 Use of Torres Strait Islander land preserved

- (1) If, on the day land becomes Torres Strait Islander 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) If the chief executive becomes aware the occupation or use of land under subsection (1) is no longer required by the State or Commonwealth, the chief executive must give the trustee of the land written notice of that fact.
- (4) Despite subsection (1), if the State or Commonwealth intends to continue to occupy or use the land, the State or Commonwealth and the trustee of the land are to use their best endeavours to provide for the continued occupation and use of the land under an interest in, or in relation to, the land given by the trustee of the land.
- (5) Subsection (1) ceases to apply to land if—
 - (a) it is leased to a person for a private residential purpose under part 8; or
 - (b) the State or Commonwealth has a right to occupy or use the land under an interest in, or in relation to, the land given by the trustee of the land; or
 - (c) the trustee of the land receives a notice under subsection (3) for the land.

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- (6) Subsection (7) applies if the Torres Strait Islander land being occupied or used by the State or the Commonwealth is land that is the subject of a townsite lease.
- (7) Subsections (3) to (5) apply as if a reference to the trustee of the land were a reference to the lessee of the townsite lease.

149 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 148(1).

150 Access to land

- (1) While the State or Commonwealth is entitled to the occupation or use of land under section 148, 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 Torres Strait Islander land for the purpose of gaining access to the land.
- (2) A person mentioned in subsection (1) must only cross Torres Strait Islander land by—
 - (a) the routes that were commonly used before the land became Torres Strait Islander land; or
 - (b) other routes agreed on from time to time by the State or Commonwealth and the trustee of the land.
- (3) The trustee of Torres Strait Islander 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 Torres Strait Islanders particularly concerned with the land the purpose and effect of the proposed route; and
 - (b) the Torres Strait Islanders are given adequate opportunity to express their views on, and are generally in agreement with, the proposed route.

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- (4) Contravention of subsection (3) does not invalidate an agreement made for the purposes of subsection (2)(b).
 - (5) If the Torres Strait Islander land being occupied or used by the State or the Commonwealth under section 148(1) is land that is the subject of a townsite lease or other registered interest (*relevant land*)—
 - (a) subsection (2) applies to the relevant land as if the reference to the trustee of the land were a reference to the lessee of the townsite lease or the person registered in the appropriate register as the holder of the other interest; and
 - (b) subsection (3) does not apply.
 - (6) Subsection (5) does not affect the operation of subsections (2) and (3) in relation to Torres Strait Islander land that is not relevant land.

Part 13 Mining

151 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.
- (2) Subject to subsection (3), the *Mineral Resources Act 1989* applies to Torres Strait Islander land that is or was transferred 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.
- (3) Subsection (2) does not apply in relation to the *Mineral Resources Act 1989*, sections 316 and 317.
- (4) 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

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the Torres Strait Islanders 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.

- (5) Subsection (4) applies in relation to Torres Strait Islander land held by a registered native title body corporate as if the reference in the subsection to Torres Strait Islanders particularly concerned with the land were a reference to the registered native title body corporate that holds the land.

152 Royalties in relation to mining on Torres Strait Islander land

- (1) This section applies if the State receives an amount (the *royalty amount*), by way of royalty under the *Mineral Resources Act 1989*, the *Petroleum and Gas (Production and Safety) Act 2004* or the *Geothermal Energy Act 2010*, in relation to land that is Torres Strait Islander land.
- (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 total royalty amount received in a financial year and must apply the amount received for the benefit of the Torres Strait Islanders for whose benefit the trustee holds the land, particularly those that are affected by the activities to which the royalty amount relates.

Part 14 Provisions about land trusts

Division 1 Preliminary

153 Composition of land trust

A land trust for an area of Torres Strait Islander land consists of all the members for the time being of the land trust.

154 Nature of land trust

- (1) A land trust—
 - (a) is a body corporate with perpetual succession; and
 - (b) has a seal; and
 - (c) may sue and be sued in its corporate name.
- (2) A land trust has all the powers of an individual and may, for example—
 - (a) acquire, hold and dispose of property; and
 - (b) borrow, receive and spend money; and
 - (c) employ staff, and engage consultants, necessary for the performance of its function.
- (3) The land trust's seal—
 - (a) is effective only if the land trust's name is inscribed on the seal in legible characters, but the seal may include other words; and
 - (b) is to be kept by a person who is authorised by the land trust for that purpose; and
 - (c) may be attached to a document only with the written authority signed by—
 - (i) if the land trust consists of 1 member—the member; or
 - (ii) if the land trust consists of no more than 3 members—the chairperson of the land trust and at least 1 other member; or
 - (iii) in any other case—
 - (A) the chairperson and at least 2 other members; or
 - (B) at least 3 members.
- (4) Judicial notice must be taken of the seal on a document.
- (5) A document marked with the seal must be presumed to have been properly sealed, unless the contrary is proved.

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155 Function and powers of land trust

- (1) The function of a land trust is to provide a legal entity by which the members of the land trust may perform functions under this Act.
- (2) A land trust may exercise all powers necessary or convenient to perform its function.

Note—

Also see section 173 (Application of Trusts Act 1973).

Division 2 Minister's power to appoint, remove or suspend members of land trusts

Subdivision 1 Appointment of members

156 Minister may appoint member

- (1) The Minister may, by written notice given to a land trust, appoint a person to be a member of the land trust if—
 - (a) the rules of the land trust do not provide for the appointment of members; or
 - (b) because of any circumstances affecting the operation of the land trust, the land trust can not appoint a member and a majority of members of the land trust have asked the Minister in writing to appoint the person as a member; or

Example of circumstances affecting the operation of a land trust—

A land trust can not form a quorum for a meeting of the land trust to appoint a member.

- (c) the Minister considers it appropriate to appoint the member to ensure the land trust can carry out its functions under this Act.

Example—

The Minister might appoint a member to replace a member removed by the Minister under this division.

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- (2) Before acting under subsection (1), the Minister must—
 - (a) consult with the land trust; and
 - (b) if the Minister considers it appropriate in the circumstances—consult with, and consider the views of, Torres Strait Islanders particularly concerned with the Torres Strait Islander land held by the land trust.
 - (3) The Minister must not appoint a person under subsection (1) without the person’s consent.
 - (4) The Minister must give the person a copy of the notice mentioned in subsection (1) when the notice is given to the land trust.
 - (5) A person appointed as a member of a land trust under this section becomes a member on the day stated in the notice.
 - (6) In acting under this section, the Minister must have regard to any Island custom applicable to the Torres Strait Islander land held by the land trust.

Subdivision 2 Removal or suspension of members

157 Grounds for removal or suspension of member

Each of the following is a ground for removing or suspending a member—

- (a) if the member is a member of the executive committee of the land trust, the member—
 - (i) in performing the member’s functions as a member of the committee, has contravened or is contravening a provision of this Act; or
 - (ii) is carrying on, or has carried on, the business of the land trust in a fraudulent or improper way;
- (b) the member has stolen, misappropriated or improperly applied trust property;

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- (c) the member is acting, or has acted, towards the land trust or another member in a fraudulent or improper way;
- (d) if the rules of the land trust do not provide for the removal or suspension of members—
 - (i) the land trust has asked the Minister in writing to remove or suspend the member; and
 - (ii) a ground mentioned in paragraph (a), (b) or (c) exists in relation to the member;
- (e) because of any circumstances affecting the operation of the land trust—
 - (i) the land trust can not remove or suspend a member and a majority of members of the land trust have asked the Minister in writing to remove or suspend the member; and
 - (ii) a ground mentioned in paragraph (a), (b) or (c) exists in relation to the member.

Example of circumstances affecting the operation of a land trust—

A land trust can not form a quorum for a meeting of the land trust to remove or suspend a member.

158 Show cause notice

- (1) This section applies if the Minister believes a ground exists to remove or suspend a member of a land trust.
- (2) The Minister must give the member and the land trust a notice (a *show cause notice*).
- (3) The show cause notice must state the following—
 - (a) the action the Minister proposes to take under this subdivision (the *proposed action*);
 - (b) the ground for the proposed action;
 - (c) an outline of the facts and circumstances forming the basis for the ground;
 - (d) if the proposed action is suspension of the member—the proposed suspension period;

- (e) that the member and the land trust may, within a stated period (the *show cause period*), make written representations to the Minister to show why the proposed action should not be taken.
- (4) The show cause period must end at least 1 month after the show cause notice is given.

159 Representations about show cause notice

- (1) The member or land trust may make written representations about the show cause notice to the Minister during the show cause period.
- (2) The Minister must consider all representations (the *accepted representations*) made under subsection (1).

160 Ending show cause process without further action

If, after considering the accepted representations for the show cause notice, the Minister no longer believes a ground exists to remove or suspend the member, the Minister must—

- (a) take no further action about the show cause notice; and
- (b) give the member and the land trust a notice that no further action is to be taken about the show cause notice.

161 Removing or suspending member

- (1) This section applies if—
 - (a) there are no accepted representations about the show cause notice; or
 - (b) after considering the accepted representations about the show cause notice, the Minister—
 - (i) still believes a ground exists to remove or suspend the member; and
 - (ii) believes removal or suspension of the member is warranted.

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- (2) The Minister may—
 - (a) if the proposed action was to remove the member—remove the member; or
 - (b) if the proposed action was to suspend the member—suspend the member for not longer than the proposed suspension period.
- (3) Before acting under subsection (2), the Minister must, if the Minister considers it appropriate in the circumstances, consult with and consider the views of Torres Strait Islanders particularly concerned with the Torres Strait Islander land held by the land trust.
- (4) In acting under this section, the Minister must have regard to any Island custom applicable to the Torres Strait Islander land held by the land trust.
- (5) If the Minister decides to take action under subsection (2), the Minister must as soon as practicable give—
 - (a) the person an information notice for the decision; and
 - (b) the land trust written notice of the decision.
- (6) The decision takes effect on the later of the following—
 - (a) the day the information notice is given to the person;
 - (b) the day stated in the information notice for that purpose.
- (7) In this section—

information notice, for a decision of the Minister, means a notice stating all of the following—

 - (a) the decision;
 - (b) the reasons for the decision;
 - (c) that the person to whom the notice is given may appeal against the decision within 28 days after the person receives the notice;
 - (d) how the person may appeal.

162 Immediate removal or suspension of member

- (1) The Minister may remove or suspend a member immediately if the Minister believes—
 - (a) a ground exists for removing or suspending the member; and
 - (b) it is necessary to remove or suspend the member immediately because there is an immediate and serious risk to the proper operation of the land trust or proper dealing with trust property.
- (2) The removal or suspension under this section—
 - (a) can be effected only by the Minister—
 - (i) giving an information notice to the member about the decision to remove or suspend the member, together with a show cause notice; and
 - (ii) giving notice of the removal or suspension to the land trust when the notices under subparagraph (i) are given to the member; and
 - (b) operates immediately the notices are given to the member; and
 - (c) continues to operate until the earlier of the following happens—
 - (i) the show cause notice is finally dealt with;
 - (ii) 60 days have passed since the notices were given to the member.

Subdivision 3 Other matters

163 Limitation on land trust's power about appointment or suspension of members

- (1) This section applies to a land trust that, under its rules, may appoint, remove or suspend members of the land trust.
- (2) The land trust can not—

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- (a) appoint a person as a member of the land trust if the person has been removed as a member by the Minister under this division; or
- (b) end the suspension of a person from membership of the land trust if the suspension is imposed by the Minister under this division.

Division 3 Recording information about compliance with Act

164 Particular information to be recorded in register

- (1) The chief executive must, for each land trust and each financial year, record in the Torres Strait Islander land holding entity register whether or not the land trust has, for the financial year, operated in compliance with the Act.
- (2) In deciding whether or not a land trust has operated in compliance with the Act, the chief executive must have regard to any minimum requirements, prescribed under a regulation, that a land trust must meet to be compliant.

Division 4 Land trusts to give information to chief executive

165 Definition for div 4

In this division—

information includes a document.

166 Power to require particular information

- (1) The chief executive may, by written notice, require a land trust to give the chief executive stated information, or stated types of information, in its possession or control that is, or are,

relevant to the operation of the land trust or the conduct of its business.

Examples of information—

- information about how a land trust made a particular decision
 - accounts, bank statements and other financial information
 - minutes of meetings
- (2) The notice must state a reasonable period to comply with the requirement.
- (3) The land trust must comply with the requirement unless complying with the notice would place the land trust in contravention of a law.

Division 5 Freezing accounts of land trust

167 Definitions for div 5

In this division—

account, of a land trust, means—

- (a) an account, with a financial institution, in the land trust's name or in which the land trust has an interest; or
- (b) another account to which trust money is deposited.

holder, of a land trust's account, means the land trust or other person authorised to operate the account.

trust money means any amount that is trust property.

168 Freezing land trust's accounts

- (1) The chief executive may give a direction under subsection (2) if, on considering a report on an audit of a land trust's accounts, it appears to the chief executive that—
- (a) the land trust, a member of the land trust or another person has, or may have, stolen, misappropriated or misapplied trust money; or

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- (b) the accounts of the land trust are not being kept appropriately.
- (2) The chief executive may direct, by a written notice, that—
 - (a) an amount must not be drawn from a stated account other than with the chief executive’s approval; or
 - (b) a stated account may be operated only under stated conditions.
- (3) The direction must—
 - (a) be given to the holder of the account and the financial institution where the account is kept; and
 - (b) state the account to which it relates; and
 - (c) if it includes a direction under subsection (2)(b), state the conditions under which the account may be operated.

169 Financial institution must comply with direction

- (1) After the direction is given to a financial institution, and until it is withdrawn, the financial institution must not—
 - (a) pay a cheque or other instrument drawn on the account stated in the direction unless the cheque or instrument is also signed by the chief executive; or
 - (b) give effect to another transaction on the account that is not authorised because of the direction.

Maximum penalty—100 penalty units.

- (2) For section 168(2)(a), the chief executive’s signature on a cheque or instrument is sufficient evidence of the chief executive’s approval to draw an amount from the account to honour the cheque or instrument.

170 Withdrawal of direction

- (1) The chief executive may withdraw a direction given under section 168 at any time.

- (2) If the direction is withdrawn, the chief executive must immediately give all persons who were given the direction a written notice, signed by the chief executive, that the direction has been withdrawn.
- (3) A direction stops having effect when it is withdrawn.

Division 6 Miscellaneous

171 Chief executive may prepare model rules

- (1) The chief executive may prepare model rules for land trusts.
- (2) In adopting changes to its rules, or adopting new rules, a land trust must have regard to the model rules prepared under subsection (1).
- (3) If the chief executive prepares model rules under subsection (1), the chief executive must give a copy of the model rules to each land trust.

172 Provision about vesting of Torres Strait Islander land

- (1) If Torres Strait Islander land is held by a land trust, the land is taken to have been vested in the land trust.
- (2) Subsection (1) applies to Torres Strait Islander land whether or not the land was first held by the land trust before the commencement of this section.

Part 15 **Application of Trusts Act 1973**

Division 1 **Preliminary**

173 **Application of Trusts Act 1973**

- (1) The *Trusts Act 1973* applies to a land trust and its members in relation to dealings with Torres Strait Islander land only to the extent prescribed under this part.
- (2) To the extent that the *Trusts Act 1973* does apply to a land trust and its members in relation to dealings with Torres Strait Islander land, it applies with the changes prescribed under this part.
- (3) To remove any doubt, it is declared that the *Trusts Act 1973* applies, without changes, to a land trust and its members in relation to dealings with trust property that is not Torres Strait Islander land.

Division 2 **Powers of Supreme Court**

174 **Jurisdiction of Supreme Court**

- (1) Subject to subsection (2), the jurisdiction of the Supreme Court under the *Trusts Act 1973* includes matters arising under this Act.
- (2) The powers of the Supreme Court under the *Trusts Act 1973* are to be exercised—
 - (a) if provision is made in this part for a matter—in accordance with this part; or
 - (b) otherwise—in a way that is consistent with, and best achieves, the purposes of this Act.

175 Power of court to relieve member of land trust from personal liability

- (1) This section applies if it appears to the Supreme Court that a member of a land trust is or may be personally liable for a breach of trust by the member, another member or the land trust.
- (2) If it appears to the court that the member—
 - (a) has acted honestly and reasonably; and
 - (b) ought fairly to be excused for the breach of trust or for omitting to obtain the directions of the court in the matter in which the member, the other member or the land trust committed the breach;

the court may relieve the member wholly or partly from personal liability for the breach.

176 Court may order beneficiary to indemnify for certain breaches

- (1) This section applies if a land trust or a member of a land trust commits a breach of trust at the instigation or request of, or with the written consent of, a beneficiary.
- (2) The Supreme Court may, as it considers just, order that all or part of the interest of the beneficiary in the trust property is impounded to indemnify the land trust, the member or persons claiming through the land trust or member.

177 Right of land trust or member to apply to court for directions

- (1) A land trust or member of a land trust may apply to the Supreme Court for directions in relation to—
 - (a) the trust property of the land trust or its management or administration; or
 - (b) the exercise of a power of the land trust or a member of the land trust.

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- (2) The application must be served on, and the hearing of the application may be attended by—
 - (a) all persons interested in the application; or
 - (b) the persons interested in the application, or their representatives, that the court considers appropriate.

178 Court's jurisdiction to make orders conferring power on land trust or members

- (1) This section applies if, in the Supreme Court's opinion, a disposition or transaction—
 - (a) is expedient for the management or administration of trust property by a land trust or members of a land trust; or
 - (b) would be in the best interest of the Torres Strait Islanders, or a majority of the Torres Strait Islanders, for whose benefit the property is held;but—
 - (c) it is inexpedient, difficult or impractical to effect the disposition or transaction without the assistance of the Supreme Court; or
 - (d) the land trust or members do not have power under the Act to effect the disposition or transaction.
- (2) The Supreme Court may—
 - (a) confer on the land trust or members the necessary power for the purpose of effecting the disposition or transaction (other than a power to sell or mortgage Torres Strait Islander land), on such terms and subject to any conditions, as the court considers appropriate; and
 - (b) direct the way that—
 - (i) any amount authorised to be spent, and the costs of the disposition or transaction, are to be paid or borne from trust property; and

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- (ii) the amount is to be apportioned between the capital and income of the trust property.
- (3) The Supreme Court may—
- (a) rescind or vary an order under this section; or
 - (b) make a new or further order.
- (4) The rescission or variation of an order does not affect anything done by a person relying on the order before the person became aware of the application to the court to rescind or vary the order.
- (5) An application to the court under this section may be made by—
- (a) a land trust; or
 - (b) a member of a land trust; or
 - (c) a person for whose benefit the trust property is held.
- (6) In this section—

disposition means a sale, lease, mortgage, surrender, release or another type of disposition.

transaction means a purchase, investment, acquisition, retention, expenditure or another type of transaction.

179 Protection of land trust or member while acting under direction of court

- (1) If a land trust or member of a land trust acts under direction of the Supreme Court, the land trust or member is to be taken to have discharged the duty as trustee in the subject matter of the direction.
- (2) Subsection (1) applies even if the direction is subsequently declared invalid, overruled, set aside or otherwise rendered of no effect or varied.
- (3) This section does not indemnify a land trust or member of a land trust in relation to an act done in accordance with a direction of the court obtained by the land trust or member by fraud, wilful concealment or misrepresentation or in

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acquiescence in the fraud, wilful concealment or misrepresentation.

180 Power of Supreme Court to make orders in absence of member

- (1) If, in a proceeding under this Act, the Supreme Court is satisfied that—
- (a) a diligent search has been made for a member of a land trust who is named as a party in an action; and
 - (b) the member can not be found to serve the member with a process of the court;

the court may hear and decide the proceeding and give judgment against the member as if the member had been served or had entered an appearance in the action, and had also appeared by counsel or solicitor at the hearing.

- (2) Subsection (1) applies without prejudice to any interest the member may have in the matter in question in the proceeding in any other capacity.
- (3) If a member, at the time of the proceeding—
- (a) is not within the jurisdiction; or
 - (b) is under a disability; or
 - (c) can not be found;

the court may appoint a person to represent the member and may proceed in the absence of the member, and all orders made in the proceeding are binding on the member as if the member had been present and of full capacity.

181 Power of Supreme Court to charge costs on trust property

The Supreme Court may order the cost and expenses of, and incidental to, an application for an order or direction under this part—

- (a) to be paid or raised out of the trust property (other than Torres Strait Islander land) as the court considers appropriate; or
- (b) to be borne and paid in the way and by the persons as the court considers just.

Part 16 Appeals

182 Who may appeal

- (1) A person who made representations to the Minister under part 2, division 4 about a proposed declaration under section 13(1)(d) may appeal to the Land Court against the decision to make the declaration.
- (2) A lessee of a residential lease the subject of a decision under section 121 to not renew the lease may appeal to the Land Court against the decision.
- (3) A person the subject of a decision under section 127 about an amount payable to the person for forfeiture or non-renewal of a residential lease may appeal to the Land Court against the decision.
- (4) A member of a land trust who is given, or is entitled to be given, an information notice under part 14, division 2 about a decision to remove or suspend the member from the land trust may appeal to the Land Court against the decision.

183 Starting appeal

- (1) An appeal is started by filing written notice of appeal with the registrar of the Land Court.
- (2) The notice of appeal must be filed within 28 days after the person receives the notice of the decision or information notice about the decision.

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- (3) However, the Land Court may, at any time within the 28 days, extend the period for making the appeal.

184 Nature of appeal

The appeal is by way of rehearing, unaffected by the decision, on the material before the decision-maker and any further evidence allowed by the Land Court.

185 Notice of appeal

A person who appeals against a decision under this part must give a copy of the notice of appeal to—

- (a) for a decision mentioned in section 182(1), (2) or (3)—the decision-maker; or
- (b) for a decision mentioned in section 182(4)—the decision-maker and the land trust.

186 Powers of Land Court on appeal

- (1) In deciding the appeal, the Land Court has the same powers as the decision-maker.
- (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 decision-maker 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 part, taken to be the decision of the decision-maker.

Part 17 Miscellaneous

187 Creation of interests in transferable land

- (1) Nothing in this Act prevents the creation of an interest in transferable land if—
 - (a) the interest is a—
 - (i) mining interest; or
 - (ii) geothermal tenure under the *Geothermal Energy Act 2010*; or
 - (iii) GHG authority under the *Greenhouse Gas Storage Act 2009*; or
 - (iv) residential tenancy; or
 - (v) lease or permit granted in relation to transferable land that is Torres Strait Islander trust land; or
 - (b) the interest is the transfer, mortgage or sublease of a trustee (Torres Strait Islander) lease; or
 - (c) 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)(c) to the creation of the interest unless the Minister is satisfied that the creation of the interest is for the benefit of Torres Strait Islanders 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) This section has effect despite anything in any other Act.
- (5) In this section—

relevant entity means a trustee, under the Land Act, of Torres Strait Islander trust land.

188 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 Torres Strait Islander land; or
 - (ii) in the vicinity of Torres Strait Islander land and the only practicable way of gaining access to the person's land is across the Torres Strait Islander 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 Torres Strait Islander 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 Torres Strait Islander land and the person; or
 - (b) if the trustee and the person fail to agree within a reasonable time—that is determined by the Land Court on application by the trustee or person.
- (3) The trustee of Torres Strait Islander land, other than a registered native title body corporate, must not agree on a route for subsection (2)(a) unless—
 - (a) the trustee has explained to the Torres Strait Islanders particularly concerned with the land the purpose and effect of the proposed route; and
 - (b) the Torres Strait Islanders 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).
- (5) If the only practicable way of gaining access to the person's land is across Torres Strait Islander land that is the subject of a townsite lease or other registered interest (*relevant land*)—

- (a) subsection (2) applies to the relevant land as if the reference to the trustee of the Torres Strait Islander land, or the trustee, were a reference to the lessee of the townsite lease or the person registered in the appropriate register as the holder of the other interest; and
 - (b) subsection (3) does not apply.
- (6) Subsection (5) does not affect the operation of subsections (2) and (3) in relation to Torres Strait Islander land that is not relevant land.

189 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).

190 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.

191 Amendment of description of land

- (1) If, at any time after a deed of grant under this Act 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 the deed to the land within such reasonable period as is specified in the notice.
- (2) On surrender of the trustee's deed, a new deed of grant delineating the amended boundaries is to be issued to the trustee.
- (3) The new deed of grant is to be issued on the same ground (if any) as the surrendered deed of grant.

[s 192]

- (4) The registrar of titles must endorse on the new deed of grant, in the proper order or priority, the instruments under which existing relevant interests arose.

192 Dealing with particular trust property

- (1) Subsection (2) applies to a trustee, other than the State, if the trustee receives an amount paid under section 108 for the value of a dwelling.
- (2) The trustee must ensure an amount equal to the lease amount received is used by the trustee for housing services for Torres Strait Islanders concerned with the land held by the trustee.
- (3) Subsection (4) applies to the lessee of a townsite lease if the lessee receives an amount paid under section 108 for the value of a dwelling.
- (4) The lessee must ensure an amount equal to the amount received is used by the lessee for housing services for Torres Strait Islanders concerned with the land the subject of the townsite lease.
- (5) 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 Torres Strait Islander trust land.

193 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.

194 Survey costs etc. to be paid by State

- (1) Survey costs incurred in relation to the preparation of a deed of grant under section 34 or 191 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) a surrender, under or for this Act, of a deed of grant mentioned in paragraph (a).
- (3) This section has effect despite any other Act.

195 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 institution account details.

196 Approval of forms

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

[s 197]

197 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may make provision for—
 - (a) matters relevant to the operations, including the functions, of a land trust; and
 - (b) the indemnification of members of a land trust from personal liability; and
 - (c) rules for land trusts, including, for example, the adoption of rules and the matters that must be included in the rules; and
 - (d) accounting requirements for land trusts, including, for example, keeping accounts, preparing financial statements, auditing accounts and giving audit reports to the chief executive; and
 - (e) the minimum annual rental amount payable by the State under a lease granted to the State under this Act.

Part 18 Validation provision

198 Retrospective validation of dealings with trustee (Torres Strait Islander) lease

- (1) Subsection (2) applies to a trustee (Torres Strait Islander) lease if the lease—
 - (a) was granted under the Land Act, section 57 before 18 July 2008; and
 - (b) was amended, transferred, mortgaged or subleased, during the relevant period, under the Land Act, chapter 3, part 1, division 7.

-
- (2) The amendment, transfer, mortgage or sublease of the trustee (Torres Strait Islander) lease (the *dealing*) is taken to be, and to always have been, as valid as if—
- (a) the dealing were carried out under this Act; and
 - (b) section 140, as in force immediately after the commencement of this section, had been in force on the day the dealing was carried out.
- (3) Subsection (4) applies to a trustee (Torres Strait Islander) lease if the lease—
- (a) was granted under the Land Act, section 57 before 18 July 2008; and
 - (b) was amended, transferred, mortgaged or subleased, during the relevant period, under this Act.
- (4) The amendment, transfer, mortgage or sublease of the trustee (Torres Strait Islander) lease (also the *dealing*) is taken to be, and to always have been, as valid as if section 140, as in force immediately after the commencement of this section, had been in force on the day the dealing was carried out.
- (5) In this section—
- relevant period* means the period starting on 18 July 2008 and ending immediately before the commencement of this section.

Part 19 Transitional provisions

Division 1 Transitional provision for Audit Legislation Amendment Act 2006

199 Further amendment, or repeal, of Torres Strait Islander Land Regulation 1991

The amendment of the *Torres Strait Islander Land Regulation 1991* by the *Audit Legislation Amendment Act 2006* does not

[s 200]

affect the power of the Governor in Council to further amend that regulation or to repeal it.

Division 2 Transitional provision for Aboriginal and Torres Strait Islander Land Amendment Act 2008

200 Interests in Torres Strait Islander land continue

If Torres Strait Islander land was, immediately before the commencement of this section, subject to an interest granted or otherwise created under section 36 or 73 as in force before the commencement, the interest continues in force.

Division 3 Transitional provisions for Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011

201 Definitions for div 3

In this division—

commencement means the day this division commences.

previous, for a provision of this Act, means the provision as in force immediately before the commencement.

Editor's note—

The provisions of this Act in force before the commencement have been renumbered. See section 205.

202 Torres Strait Islander land—change to beneficiaries

- (1) This section applies to Torres Strait Islander land granted before the commencement.

- (2) On the commencement, the trustee of the land is taken to hold it for the benefit of Torres Strait Islanders 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).

203 Continued operation of provisions for appointing grantees

- (1) This section applies despite the amendment of this Act by the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*.
- (2) The Minister may, on or before 31 December 2011 and under previous section 26, appoint persons the Minister considers necessary to be the grantees, as trustees for the benefit of Torres Strait Islanders, of land.
- (3) If the Minister appoints grantees under previous section 26, the grantees are, on appointment, taken to be incorporated as a land trust under this Act for the land.
- (4) As soon as practicable after the grantees are incorporated, the Minister must, by gazette notice, state—
 - (a) the name of the land trust; and
 - (b) the description of the land as stated in the deed of grant held by the grantees; and
 - (c) an address for service of documents on the land trust.
- (5) The last 2 words of the name of the land trust must be the words ‘Land Trust’.

204 References to previous provisions after renumbering

- (1) A reference in another Act, a regulation or document to a particular previous provision of this Act may, if the context permits, be taken as a reference to any provision of the renumbered Act, all or part of which corresponds, or substantially corresponds, to the previous provision.
- (2) In this section—
renumbered Act means this Act as renumbered under section 205.

Schedule 1 Dictionary

section 2

Aboriginal group means a group of Aboriginal people within the meaning of the *Aboriginal Land Act 1991*.

accepted representations see section 159(2).

account, for part 14, division 5, see section 167.

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

ancestor includes an ancestor under Island custom.

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 196.

available State land means land that is available State land under section 19.

available State land agreement see section 20(1).

CATSI corporation means a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth).

city or town land see section 23.

commencement, for part 19, division 3, see section 201.

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

constructing authority means a constructing authority under the Acquisition Act.

decision-maker, for part 16, means—

- (a) for a decision mentioned in section 182(1) or (4)—the Minister; or

- (b) for a decision mentioned in section 182(2) or (3) about forfeiture or non-renewal of a lease—the lessor of the lease land.

descendant includes a descendant under Island custom.

DOGIT land see section 10.

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

excluded land means any of the following—

- (a) land outside the Torres Strait area;
- (b) city or town land or township land;
- (c) a reserve under the Land Act;
- (d) land that is set apart and declared as a State forest or timber reserve under the *Forestry Act 1959*;
- (e) a road;
- (f) 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.

executive committee, of a land trust, means the committee of the land trust—

- (a) primarily responsible for the management of the land trust; and
- (b) consisting of the following—
 - (i) the chairperson of the land trust;
 - (ii) the deputy chairperson and secretary, if any, of the land trust;
 - (iii) the persons holding another executive office of the land trust.

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

group includes a community.

group of Torres Strait Islanders includes—

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

holder, for part 14, division 5, see section 167.

ILUA means an indigenous land use agreement noted in the ILUA register.

ILUA register means the Register of Indigenous Land Use Agreements under the Commonwealth Native Title Act, section 253.

improvements see the Land Act, schedule 6.

information, for part 14, division 3, see section 165.

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 tenure under the *Geothermal Energy Act 2010*; and
- (f) a GHG authority under the *Greenhouse Gas Storage Act 2009*.

Island custom see section 6.

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

Land Act means the *Land Act 1994*.

Land Holding Act means the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

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

land trust means—

- (a) an entity—

- (i) formed through the incorporation under the repealed *Torres Strait Islander Land Regulation 1991* of persons as a land trust; and
 - (ii) in existence immediately before the commencement of the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*, part 12; or
- (b) an entity taken to be incorporated as a land trust under section 203.

lease—

1 *Lease*—

- (a) for part 8, division 5, see section 105; or
- (b) for part 10, see section 136.

2 A *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.

lessee, for part 8, division 6, see section 112.

lessor—

- (a) for part 8, division 5, see section 105; or
- (b) for part 8, division 6, see section 112; or
- (c) for part 10, see section 136.

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 see section 127(2).

member, of a land trust, means each person who, for the time being, is a member of the land trust, including, for example—

- (a) an initial grantee of Torres Strait Islander land held by the land trust; and

-
- (b) another person appointed by the Minister as trustee of the Torres Strait Islander land held by the land trust; and
 - (c) a person appointed by the Minister or the land trust as a member of the land trust.

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.

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.

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

- (a) if a 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.

NPARC means the Northern Peninsula Area Regional Council.

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

prescribed DOGIT land means land comprised in any of the following deeds of grant in trust held for the benefit of Islander inhabitants—

- (a) deed of grant in trust (title reference 21328057) for Bamaga;
- (b) deed of grant in trust (title reference 21296131) for Hammond Island;
- (c) deed of grant in trust (title reference 21352022) for Seisia.

previous, for part 19, division 3, see section 201.

proposed action see section 158(3)(a).

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

qualified, for a CATSI corporation that holds, or is proposed to hold, Torres Strait Islander land under this Act, means—

- (a) membership of the CATSI corporation is restricted to Torres Strait Islanders particularly concerned with the land; or
- (b) the CATSI corporation is a trustee of a trust the beneficiaries of which are restricted to Torres Strait Islanders particularly concerned with the land.

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; or
- (b) for other land—the chief executive of the department in which the Land Act is administered.

registrar of titles means the registrar of titles under the Land Title Act.

relevant land, for part 2, division 4, see section 12.

repealed Torres Strait Act means the *Community Services (Torres Strait) Act 1984* as in force before its repeal under the *Local Government and Other Legislation (Indigenous Regional Councils) Amendment Act 2007*.

required amount see section 127(1).

residential lease see section 112.

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

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 Island custom for the land, including, for example, responsibilities for areas that are of particular significance under Island custom; 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.

show cause notice see section 158(2).

show cause period see section 158(3)(e).

standard lease see section 84(2).

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

Torres Strait area see section 27.

Torres Strait Island council means—

- (a) in relation to any area that, immediately before the day that under the *Local Government Act 1993* is the changeover day for NPARC, was included in the

Bamaga or Seisia Council area under the repealed Torres Strait Act—NPARC; or

- (b) in relation to any area included in the local government area of TSIRC—TSIRC.

Torres Strait Islander see section 5.

Torres Strait Islander land see section 7.

Torres Strait Islander land holding entity register see section 51(1).

Torres Strait Islander reserve land see section 11.

Torres Strait Islander trust land see section 140.

Torres Strait Treaty has the meaning given by the *Torres Strait Fisheries Act 1984*, section 6(1), being the treaty a copy of which is set out in the schedule to that Act.

township land means land declared under section 24 to be township land.

townsite lease see section 84(3).

townsite sublease see section 98(1).

transferable land see section 8.

transferee—

- (a) for part 7, division 4, subdivision 1, see section 71(1);
and
- (b) for part 7, division 4, subdivision 2, see section 76(1).

transferor—

- (a) for part 7, division 4, subdivision 1, see section 71(1);
and
- (b) for part 7, division 4, subdivision 2, see section 76(1).

transferred land see section 8.

trustee—

- (a) in relation to Torres Strait Islander land—means the land trust or other entity that holds the land under this Act; and

(b) of Torres Strait Islander trust land—see section 140.

trustee (Torres Strait Islander) lease see section 140.

trust money, for part 14, division 5, see section 167.

trust property, in relation to a land trust or a member of a land trust, includes—

- (a) income derived from Torres Strait Islander land held by the land trust; and
- (b) amounts paid to the land trust in relation to—
 - (i) the grant of an interest in the land; or
 - (ii) the creation of a mining interest in the land; or
 - (iii) an agreement entered into in relation to the land; and
- (c) amounts paid by any person or governmental authority, or any other property, that is received or acquired by the land trust or for the land trust by a member of the land trust.

TSIRC means the Torres Strait Island Regional Council.

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

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 2 March 2012. Future amendments of the Torres Strait Islander 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	6 July 1995
3A	1995 Act No. 57	28 November 1995	16 August 1996
3B	1996 Act No. 37	1 December 1996	4 December 1996
3C	1998 Act No. 24	1 December 1996	13 July 1998
4	1998 Act No. 30	30 September 1998	2 October 1998
4A	1999 Act No. 19	30 April 1999	13 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. 71	28 February 2002	28 February 2002
4E	2001 Act No. 71	1 March 2002	1 March 2002

Endnotes

Reprint No.	Amendments included	Effective	Notes
4F	2003 Act No. 8	28 March 2003	
4G	2002 Act No. 74	1 April 2003	R4G withdrawn, see R5
5	—	1 April 2003	
5A	2003 Act No. 77	6 November 2003	
5B	2004 Act No. 4	6 May 2004	
5C	2004 Act No. 25	31 December 2004	
5D	2004 Act No. 12	25 March 2005	
5E	2006 Act No. 9	15 March 2006	R5E withdrawn, see R6
6	—	15 March 2006	
6A	2007 Act No. 59	15 March 2008	
6B	2008 Act No. 29	18 July 2008	
7	2009 Act No. 3	23 February 2009	
7A	2008 Act No. 73	1 July 2009	
	2009 Act No. 9		
7B	2009 Act No. 25	2 November 2009	
7C	2010 Act No. 12	7 May 2010	
7D	2009 Act No. 17	1 July 2010	
7E	2010 Act No. 39	20 September 2010	
7F	2010 Act No. 42	14 October 2010	
7G	2011 Act No. 26	9 September 2011	Act renumbered
8	—	11 September 2011	provs exp 10 September 2011
8A	2010 Act No. 31	2 March 2012	

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, 2, 3, 8
Obsolete and redundant provisions	2, 3
Renumbered provisions	2

6 List of legislation

Torres Strait Islander Land Act 1991 No. 33

date of assent 12 June 1991

ss 1–3 commenced on date of assent

remaining provisions commenced 21 December 1991 (1991 SL No. 222)

amending legislation—

**Aboriginal and Torres Strait Islander Land (Consequential Amendments) Act 1991
No. 76 pts 1, 10**

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(2), (4) pt 13 div 2 (this Act is amended, see amending legislation below)

date of assent 17 December 1993
ss 1–2(2) commenced on date of assent
ss 2(4), 170A–170E, 171A and 172–172D commenced 28 November 1994 (1994 SL No. 408)
ss 165–168, 169 and 170 commenced 21 December 1991 (see s 2(1), (4), 1994 SL No. 408 and 1991 SL No. 222)
s 171 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 (this Act is amended, see amending legislation below)

date of assent 1 December 1994
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 1995 (1995 SL No. 185)

amending legislation—

Statute Law Revision Act 1995 No. 57 ss 1, 4 sch 1 (amends 1994 No. 81 above)

date of assent 28 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (see s 4 sch 1)

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, 4

date of assent 14 May 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1998 (1998 SL No. 242)

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 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, 9

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

Justice and Other Legislation Amendment Act 2003 No. 77 ss 1, 2(2), pt 26

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

Geothermal Exploration Act 2004 No. 12 ss 1–2, ch 8 pt 8

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), 1038–1040
(prev ss 978–980)**

date of assent 12 October 2004
ss 1–2 commenced on date of assent
remaining provisions commenced 31 December 2004 (2004 SL No. 308)

Audit Legislation Amendment Act 2006 No. 9 pt 1, s 53 sch

date of assent 15 March 2006
commenced on date of assent

**Local Government and Other Legislation (Indigenous Regional Councils)
Amendment Act 2007 No. 59 ss 1–2, 152 sch**

date of assent 22 November 2007
ss 1–2 commenced on date of assent
remaining provisions commenced 15 March 2008 (2007 SL No. 336)

**Aboriginal and Torres Strait Islander Land Amendment Act 2008 No. 29 pts 1, 7, s
73 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 25

date of assent 23 February 2009
commenced on date of assent

Endnotes

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 commenced 1 July 2010 (2010 SL No. 122)

Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009 No. 25 pt 1, s 83 sch

date of assent 11 August 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 2 November 2009 (2009 SL No. 241)

Natural Resources and Other Legislation Amendment Act 2010 No. 12 ss 1, 2(1), pt 19

date of assent 26 March 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 7 May 2009 (2010 SL No. 78)

Geothermal Energy Act 2010 No. 31 ss 1–2(1), ch 10 pt 3 div 9, s 575 sch 2 pt 4

date of assent 1 September 2010

ss 1–2 commenced on date of assent

ss 577, 575 sch 2 pt 4 amdts 2 and 4 (to the extent it amends s 187(3)(a)(ii)) commenced 2 March 2012 (automatic commencement under AIA s 15DA(2) (2011 SL No. 156 s 2)) (amdts could not be given effect)

remaining provisions commenced 2 March 2012 (automatic commencement under AIA s 15DA(2) (2011 SL No. 156 s 2))

Land Valuation Act 2010 No. 39 s 1, ch 11 pt 5

date of assent 20 September 2010

commenced on date of assent

Justice and Other Legislation Amendment Act 2010 No. 42 s 1, pt 35

date of assent 14 October 2010

commenced on date of assent

Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011 No. 26 pts 1, 12, s 189 sch

date of assent 29 August 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 9 September 2011 (2011 SL No. 173)

7 List of annotations

This reprint has been renumbered—see tables of renumbered provisions in endnote 9.

Repeal of Queensland Coast Islands Declaratory Act

s 1.03 om R2 (see RA s 40)

Definitions

s 2 prev s 2 om R3 (see RA s 37)
pres s 2 amd 2011 No. 26 s 134(1)

Note—s 2 contained definitions for this Act. Definitions are now located in sch 1 (Dictionary). Annotations for definitions contained in prev s 2 are located in annotations for sch 1.

Acts binds all persons

s 4 sub 2011 No. 26 s 136

Meaning of “native title interests”

s 5 prev s 5 ins 1993 No. 85 s 167
om 2011 No. 26 s 135

PART 2—BASIC CONCEPTS**Meaning of Torres Strait Islander land**

s 7 amd 1993 No. 85 s 168 (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 75; 2011 No. 26 s 137

Meaning of transferable and transferred land

s 8 amd 1993 No. 85 s 168A (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 76; 2011 No. 26 s 138

Lands that are transferable lands

s 9 amd 1993 No. 85 s 168B (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 77; 2011 No. 26 s 189 sch

DOGIT land

s 10 amd 1993 No. 85 s 168C (amd 1994 No. 61 s 2 sch 2); 2010 No. 39 s 320; 2011 No. 26 s 139

Torres Strait Islander reserve land

s 11 amd 1993 No. 85 s 168D (amd 1994 No. 61 s 2 sch 2); 2011 No. 26 s 140

Division 4—Declarations about particular transferable land

div hdg ins 2008 No. 29 s 78

Definition for div 4

s 12 ins 2008 No. 29 s 78

Particular land may be declared to be not transferable land

s 13 ins 2008 No. 29 s 78
amd 2011 No. 26 s 141

Appeal against particular decision

s 13E ins 2008 No. 29 s 78
om 2011 No. 26 s 144

Powers of Land Court on appeal

s 13F ins 2008 No. 29 s 78
om 2011 No. 26 s 144

Notice of intention to make declaration

- s 14** prev s 14 amd 1993 No. 85 s 168E (amd 1994 No. 61 s 2 sch 2)
om 2011 No. 26 s 146
pres s 14 ins 2008 No. 29 s 78
amd 2011 No. 26 s 142

Minister to consider representations and give notice of decision

- s 15** prev s 15 amd 1991 No. 76 s 45
sub 1993 No. 85 s 168F (amd 1994 No. 61 s 2 sch 2)
amd 1995 No. 57 ss 1–2, 4, sch 1
om 2011 No. 26 s 146
pres s 15 ins 2008 No. 29 s 78
amd 2011 No. 26 s 143

Notice about declarations—trustee

- s 16** ins 2008 No. 29 s 78

Notice about declarations—registrar

- s 17** ins 2008 No. 29 s 78

Requirements about plans of subdivision for declarations

- prov hdg** amd 2011 No. 26 s 145
s 18 ins 2008 No. 29 s 78

Division 5—Available State land

- div hdg** amd 2011 No. 26 s 189 sch

Land that is available State land—general

- s 19** amd 1993 No. 85 s 168G (amd 1994 No. 61 s 2 sch 2); 1995 No. 57 s 4 sch 1;
2008 No. 29 s 73 sch
sub 2011 No. 26 s 147

Agreement about particular land

- s 20** ins 2011 No. 26 s 147

Watercourses and lakes

- prov hdg** amd 2010 No. 12 s 234(1)
s 21 amd 2010 No. 12 s 234(2); 2011 No. 26 s 189 sch

Tidal land

- s 22** amd 1993 No. 85 s 168H (amd 1994 No. 61 s 2 sch 2); 1994 No. 49 s 6 sch 2;
1994 No. 81 s 527 sch 5; 2011 No. 26 s 189 sch

Meaning of city or town land

- s 23** amd 1993 No. 85 s 168I (amd 1994 No. 61 s 2 sch 2); 2009 No. 17 s 331 sch
1; 2011 No. 26 s 148

Meaning of township land

- s 24** sub 1993 No. 85 s 168J (amd 1994 No. 61 s 2 sch 2)

National parks

- s 25** amd 2011 No. 26 s 189 sch

Land that is not available State land

s 26 amd 1994 No. 81 s 527 sch 5; 2008 No. 29 s 73 sch
sub 2011 No. 26 s 149

Application of Trusts Act 1973

s 26A ins 2008 No. 29 s 82
om 2011 No. 26 s 154

Torres Strait area

s 27 sub 1993 No. 85 s 168K (amd 1994 No. 61 s 2 sch 2)

Application of laws

s 28 amd 1994 No. 37 s 244 sch 2

PART 3—FORMAL EXPRESSION OF INTEREST ABOUT LAND

pt hdg ins 2011 No. 26 s 150

Purpose of pt 3

s 29 prev s 29 ins 1993 No. 85 s 168N (amd 1994 No. 61 s 2 sch 2)
amd 2008 No. 29 s 84
om 2011 No. 26 s 156
pres s 29 ins 2011 No. 26 s 150

Land to which pt 3 applies

s 30 ins 2011 No. 26 s 150

Expression of interest in having land made transferable land

s 31 ins 2011 No. 26 s 150

Chief executive to consider expression of interest

s 32 ins 2011 No. 26 s 150

Consideration of expression of interest does not impose obligation on State

s 33 ins 2011 No. 26 s 150

PART 4—GRANT OF TRANSFERABLE LAND AS TORRES STRAIT ISLANDER LAND**Deeds of grant to be prepared**

s 34 prev s 34 om 2011 No. 26 s 161
pres s 34 amd 2008 No. 29 s 79; 2010 No. 39 s 321; 2011 No. 26 s 151

Appointment of registered native title body corporate as grantee to hold land for native title holders

prov hdg amd 2010 No. 39 s 322(1)
s 35 ins 2008 No. 29 s 80
amd 2010 No. 39 s 322(2)–(3); 2011 No. 26 s 152

Appointment of grantee to hold land for benefit of Torres Strait Islanders

prov hdg amd 2008 No. 29 s 81(1)
s 36 amd 1991 No. 76 s 46; 1993 No. 85 s 168L (amd 1994 No. 61 s 2 sch 2); 2008
No. 29 s 81(2)–(4); 2010 No. 39 s 323
sub 2011 No. 26 s 153

Procedure for appointing particular grantee

s 37 ins 2011 No. 26 s 153

Provision about Minister's consent

s 37A ins 2008 No. 29 s 85
om 2011 No. 26 s 163

Provision about particular leases

s 37B ins 2008 No. 29 s 85
om 2011 No. 26 s 163

Subdivision 2—Sale or mortgage prohibited

sdiv 2 (s 37C) ins 2008 No. 29 s 85
om 2011 No. 26 s 163

Subdivision 3—Grant of leases

sdiv 3 (ss 37D–37N) ins 2008 No. 29 s 85
om 2011 No. 26 s 163

Subdivision 4—Forfeiture of particular leases

sdiv 4 (ss 37O–37Y) ins 2008 No. 29 s 85
om 2011 No. 26 s 163

Subdivision 5—Grant of licenses

sdiv 5 (ss 37Z–37ZA) ins 2008 No. 29 s 85
om 2011 No. 26 s 163

Subdivision 6—Transfer of land held by registered native title body corporate

sdiv 6 (s 37ZB) ins 2008 No. 29 s 85
om 2011 No. 26 s 163

Subdivision 7—Other matters

sdiv 7 (ss 37ZC–ZD) ins 2008 No. 29 s 85
om 2011 No. 26 s 163

Minister to act as soon as possible

s 38 amd 1993 No. 85 s 168M (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 83;
2011 No. 26 s 155

Authority to grant fee simple in transferable land

s 39 amd 2008 No. 29 s 73 sch

Deed of grant takes effect on delivery

s 40 amd 2011 No. 26 s 157

Existing interests

s 41 amd 1991 No. 76 s 47; 1993 No. 85 s 169; 1994 No. 81 s 527 sch 5; 2008 No.
29 s 73 sch; 2010 No. 39 s 324; 2011 No. 26 s 158

Interests to be endorsed on deed

s 42 amd 1992 No. 64 s 3 sch 1; 1993 No. 85 s 169A (amd 1994 No. 61 s 2 sch 2);
2008 No. 29 s 73 sch; 2011 No. 26 s 159

Cancellation of deed of grant in trust

s 43 amd 2008 No. 29 s 73 sch; 2011 No. 26 s 160

Land Court may resolve difficulties

s 44 amd 2011 No. 26 s 162

Division 2—Approvals to change how land is held

div hdg sub 2011 No. 26 s 163

Subdivision 1—General

sdiv hdg ins 2008 No. 29 s 85
om 2011 No. 26 s 163

Application to hold Torres Strait Islander land for native title holders

s 45 amd 2002 No. 74 s 90 sch
sub 2008 No. 29 s 85; 2011 No. 26 s 163

Decision on application

s 46 sub 2008 No. 29 s 85; 2011 No. 26 s 163

Notices about decision

prov hdg amd 2008 No. 29 s 86(1)
s 47 amd 2008 No. 29 s 86(2)–(5)
sub 2011 No. 26 s 163
amd 2010 No. 31 s 575 sch 2 pt 4 (amdt could not be given effect)

Effect of gazette notice

s 48 ins 2011 No. 26 s 163

Resource Reservations under other Acts

s 49 sub 2010 No. 31 s 576

Reservations of forest products and quarry material etc.

s 50 amd 1991 No. 76 s 48; 1993 No. 85 s 169B (amd 1994 No. 61 s 2 sch 2); 2011 No. 26 s 164

PART 5—REGISTER OF ENTITIES HOLDING TORRES STRAIT ISLANDER LAND

pt hdg sub 2011 No. 26 s 165

Division 1—Requirements for claims

div hdg om 2011 No. 26 s 165

Keeping register of entities holding Torres Strait Islander land

s 51 amd 2004 No. 4 s 57 sch
sub 2011 No. 26 s 165

Giving information for register to the chief executive

s 52 sub 2011 No. 26 s 165

Obtaining information in register

s 53 sub 2011 No. 26 s 165

Division 2—Determination of claims

div hdg om 2011 No. 26 s 165

PART 6—TRANSFER OF TORRES STRAIT ISLANDER LAND BY MINISTER

pt hdg ins 2011 No. 26 s 165

Division 1—Preliminary

div hdg ins 2011 No. 26 s 165

Purpose of pt 6

s 54 sub 2011 No. 26 s 165

Application of pt 6

s 55 sub 2011 No. 26 s 165

Division 2—Vesting and transfer of land

div hdg ins 2011 No. 26 s 165

Vesting of land in the State

s 56 amd 1993 No. 85 s 169C (amd 1994 No. 61 s 2 sch 2)
sub 2011 No. 26 s 165

How land is held by the State

s 57 sub 2011 No. 26 s 165

Minister to transfer land as soon as practicable

s 58 amd 1993 No. 85 s 169D (amd 1994 No. 61 s 2 sch 2)
sub 2011 No. 26 s 165

Transfer to registered native title body corporate to hold for native title holders

s 59 ins 1993 No. 85 s 169E (amd 1994 No. 61 s 2 sch 2)
sub 2011 No. 26 s 165

Transfer to entity to hold for benefit of Torres Strait Islanders

s 60 amd 1991 No. 76 s 49
sub 2011 No. 26 s 165

Procedure for transferring land

s 61 sub 2011 No. 26 s 165

Effect of gazette notice about transfer

s 62 sub 2011 No. 26 s 165

Division 3—Notices to registrar

div hdg ins 2011 No. 26 s 165

Notice about land

s 63 sub 2011 No. 26 s 165

PART 7—GENERAL PROVISIONS FOR DEALING WITH TORRES STRAIT ISLANDER LAND

pt hdg ins 2011 No. 26 s 165

Division 1—Trustees power to deal with Torres Strait Islander land and Ministerial consent

div hdg ins 2011 No. 26 s 165

Power to deal with Torres Strait Islander land

s 64 sub 2011 No. 26 s 165

Requirement for consultation

s 65 ins 2011 No. 26 s 165

Provision about Minister's consent

s 66 ins 2011 No. 26 s 165

Division 2—Sale or mortgage prohibited

div hdg ins 2011 No. 26 s 165

Prohibition on sale or mortgage of Torres Strait Islander land

s 67 sub 2011 No. 26 s 165

Division 3—Grant of licences

div hdg ins 2011 No. 26 s 165

Grant of licence for Torres Strait Islander land

s 68 sub 2011 No. 26 s 165

Conditions of licences

s 69 ins 2011 No. 26 s 165

Division 4—Transfer of Torres Strait Islander land by trustee

div hdg ins 2011 No. 26 s 165

Subdivision 1—Land held by land trust

sdiv hdg ins 2011 No. 26 s 165

Application of sdiv 1

s 70 amd 2003 No. 77 s 122; 2008 No. 29 s 73 sch
sub 2011 No. 26 s 165

Transfer of Torres Strait Islander land

s 71 ins 2011 No. 26 s 165

Application for approval to transfer

s 72 ins 2011 No. 26 s 165

Minister's approval to transfer

s 73 ins 2011 No. 26 s 165

Effect of gazette notice about transfer

s 74 ins 2011 No. 26 s 165

Subdivision 2—Land held by CATSI corporation

sdiv hdg ins 2011 No. 26 s 165

Application of sdiv 2

s 75 amd 1993 No. 85 s 169F (amd 1994 No. 61 s 2 sch 2); 2003 No. 77 s 123;
2008 No. 29 s 73 sch
sub 2011 No. 26 s 165

Transfer of Torres Strait Islander land

s 76 ins 2011 No. 26 s 165

Application for approval to transfer

s 77 ins 2011 No. 26 s 165

Minister's approval to transfer

s 78 ins 2011 No. 26 s 165

Effect of gazette notice about transfer

s 79 ins 2011 No. 26 s 165

Subdivision 3—Exemption from fees and charges

sdiv hdg ins 2011 No. 26 s 165

Exemption

s 80 amd 2003 No. 77 s 124; 2008 No. 29 s 73 sch
sub 2011 No. 26 s 165

Division 5—Other matters

div hdg ins 2011 No. 26 s 165

Trustee to advise chief executive of change to description of land

s 81 sub 2011 No. 26 s 165

Particular dealings in Torres Strait Islander land void

s 82 ins 2011 No. 26 s 165

Provision about resumption of Torres Strait Islander land etc.

s 83 ins 2011 No. 26 s 165

PART 8—LEASING OF TORRES STRAIT ISLANDER LAND

pt hdg ins 2011 No. 26 s 165

Division 1—Grant of leases for Torres Strait Islander land

div hdg ins 2011 No. 26 s 165

Grant of lease for Torres Strait Islander land

s 84 amd 2008 No. 29 s 73 sch
sub 2011 No. 26 s 165

Division 2—Standard leases

div hdg ins 2011 No. 26 s 165

Subdivision 1—Restrictions on grant of standard leases

sdiv hdg ins 2011 No. 26 s 165

Restrictions on grant of standard lease to a Torres Strait Islander

s 85 sub 2011 No. 26 s 165

Restrictions on grant of standard lease to State

s 86 ins 2011 No. 26 s 165

Restrictions on grant of standard lease to another person

s 87 ins 2011 No. 26 s 165

Subdivision 2—Requirements for Minister's consent

sdiv hdg ins 2011 No. 26 s 165

General requirements for Minister's consent

s 88 amd 2008 No. 29 s 73 sch
sub 2011 No. 26 s 165

Requirement for Minister's consent for standard lease for commercial purpose**s 89** ins 2011 No. 26 s 165**Requirement for Minister's consent for creation of interest under a standard lease****s 90** ins 2011 No. 26 s 165**Division 3—Townsite leases****div hdg** ins 2011 No. 26 s 165**Subdivision 1—Restriction on grant of townsite leases****sdiv hdg** ins 2011 No. 26 s 165**Minister's consent for grant of townsite lease****s 91** ins 1993 No. 85 s 169G (amd 1994 No. 61 s 2 sch 2)
sub 2011 No. 26 s 165**Subdivision 2—Requirements for Minister's consent****sdiv hdg** ins 2011 No. 26 s 165**General requirements for Minister's consent****s 92** sub 2011 No. 26 s 165**Subdivision 3—Provisions about dealings with townsite leases****sdiv hdg** ins 2011 No. 26 s 165**Transfer or amendment of townsite lease****s 93** sub 2011 No. 26 s 165**Townsite lease and transfer, amendment or surrender of lease to be registered****s 94** ins 2011 No. 26 s 165**Surrender of townsite lease****s 95** ins 2011 No. 26 s 165**No forfeiture of townsite lease****s 96** ins 2011 No. 26 s 165**Subdivision 4—Effect of townsite lease on existing interests****sdiv hdg** ins 2011 No. 26 s 165**Lessee of townsite lease taken to be lessor of existing leases****s 97** sub 2011 No. 26 s 165**Division 4—Townsite subleases****div hdg** ins 2011 No. 26 s 165**Subdivision 1—Grant of subleases under townsite lease****sdiv hdg** ins 2011 No. 26 s 165**Grant of sublease****s 98** amd 1993 No. 85 s 170
sub 2011 No. 26 s 165**Subdivision 2—Requirements about grant of subleases under townsite lease****sdiv hdg** ins 2011 No. 26 s 165

Restrictions on grant of townsite sublease to a Torres Strait Islander

s 99 amd 1992 No. 36 s 1 sch 2
 sub 2011 No. 26 s 165

Restrictions on grant of townsite sublease to State

s 100 ins 2011 No. 26 s 165

Restrictions on grant of townsite sublease to another person

s 101 ins 2011 No. 26 s 165

Subdivision 3—Requirements for Minister’s consent

sdiv hdg ins 2011 No. 26 s 165

General requirements for Minister’s consent

s 102 amd 2008 No. 29 s 73 sch
 sub 2011 No. 26 s 165

Requirement for Minister’s consent for townsite sublease for commercial purpose

s 103 ins 2011 No. 26 s 165

Requirement for Minister’s consent for creation of interest under a townsite sublease

s 104 ins 2011 No. 26 s 165

Division 5—Common provisions for standard leases and townsite subleases

div hdg ins 2011 No. 26 s 165

Subdivision 1—Preliminary

sdiv hdg ins 2011 No. 26 s 165

Definitions for div 5

s 105 sub 2011 No. 26 s 165

Subdivision 2—Conditions of leases

sdiv hdg ins 2011 No. 26 s 165

Conditions of leases—general

s 106 sub 2011 No. 26 s 165

Leases for private residential purposes—general conditions and requirements

s 107 ins 2011 No. 26 s 165

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

s 108 ins 2011 No. 26 s 165

Option to renew particular lease or sublease

s 109 ins 2011 No. 26 s 165

Subdivision 3—Provisions about transfer, amendment or surrender of leases

sdiv hdg ins 2011 No. 26 s 165

Transfer or amendment of lease or sublease

s 110 amd 2002 No. 74 s 90 sch
 sub 2011 No. 26 s 165

Particular dealings to be registered

s 111 ins 2011 No. 26 s 165

Division 6—Forfeiture and renewal of leases for private residential purposes

div hdg ins 2011 No. 26 s 165

Subdivision 1—Preliminary

sdiv hdg ins 2011 No. 26 s 165

Definitions for div 6

s 112 sub 2011 No. 26 s 165

Application of div 6

s 113 ins 2011 No. 26 s 165

Subdivision 2—Forfeiture

sdiv hdg ins 2011 No. 26 s 165

Grounds for forfeiture

s 114 sub 2011 No. 26 s 165

Referral to Land Court for forfeiture

s 115 ins 2011 No. 26 s 165

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

s 116 ins 2011 No. 26 s 165

Notice and effect of forfeiture

s 117 ins 2011 No. 26 s 165

Extension of term of lease—referral for forfeiture

s 118 ins 2011 No. 26 s 165

Subdivision 3—Renewal

sdiv hdg ins 2011 No. 26 s 165

Notice of expiry of lease

s 119 sub 2011 No. 26 s 165

Application to renew lease

s 120 prev s 120 om 2011 No. 26 s 175
pres s 120 ins 2011 No. 26 s 165

Lessor to consider and decide application

s 121 prev s 121 om 2011 No. 26 s 175
pres s 121 ins 2011 No. 26 s 165

Decision to renew lease

s 122 prev s 122 om 2011 No. 26 s 175
pres s 122 ins 2011 No. 26 s 165

Lessor may decide not to renew lease

s 123 prev s 123 om 2011 No. 26 s 175
pres s 123 ins 2011 No. 26 s 165

Notice to lessee about decision not to renew lease

s 124 prev s 124 sub 1996 No. 37 s 124 sch 2
amd 2009 No. 25 s 83 sch
om 2011 No. 26 s 175
pres s 124 ins 2011 No. 26 s 165

Extension of term of lease—application for renewal

s 125 prev s 125 om 2011 No. 26 s 175
pres s 125 ins 2011 No. 26 s 165

Subdivision 4—General matters about forfeiture or non-renewal of residential leases

sdiv hdg ins 2011 No. 26 s 165

Right to remove improvements if lease forfeited or not renewed

s 126 prev s 126 amd 2003 No. 8 s 17 sch; 2010 No. 42 s 206
om 2011 No. 26 s 175
pres s 126 ins 2011 No. 26 s 165
sub 2010 No. 31 s 577 (amdt could not be given effect)

Payment by lessor for forfeited or non-renewed lease

s 127 prev s 127 om 2011 No. 26 s 175
pres s 127 ins 2011 No. 26 s 165

Unclaimed amounts

s 128 ins 2011 No. 26 s 165

Amounts owing to lessor or mortgagee to be deducted

s 129 ins 2011 No. 26 s 165

Payment of amount to mortgagee in discharge of mortgage

s 130 ins 2011 No. 26 s 165

Division 7—Miscellaneous

div hdg ins 2011 No. 26 s 165

Effect of option to renew or extend on calculation of term of leases

s 131 amd 1991 No. 76 s 50; 1993 No. 85 s 170A (amd 1994 No. 61 s 2 sch 2)
sub 2011 No. 26 s 165

Exemption from fees and charges

s 132 prev s 132 om 2011 No. 26 s 180
pres s 132 ins 2011 No. 26 s 165

Leases for private residential purposes—beneficiary

s 133 ins 2011 No. 26 s 165

PART 9—DECISION-MAKING PROCESS

pt hdg sub 2011 No. 26 s 165

When agreement of Torres Strait Islanders is given

s 134 sub 2011 No. 26 s 165

Decision-making by trustee

s 135 sub 1992 No. 20 s 159 sch 2

amd 1993 No. 85 s 170B (amd 1994 No. 61 s 2 sch 2); 1995 No. 57 s 4 sch 1
sub 2011 No. 26 s 165

Division 1—Grant of land

div hdg (prev located in orig pt 5) om 2011 No. 26 s 165

Division 2—Dealing with granted land

div hdg (prev located in orig pt 5) om 2011 No. 26 s 165

Division 3—Reservations

div hdg (prev located in orig pt 5) om 2011 No. 26 s 165

Division 4—Access to coastal land

div hdg (prev located in orig pt 5) om 2011 No. 26 s 165

Division 5—National parks

div hdg (prev located in orig pt 5) sub 1992 No. 20 s 159 sch 2
om 2011 No. 26 s 165

**PART 10—PROVISIONS ABOUT MORTGAGES OF LEASES OVER TORRES
STRAIT ISLANDER LAND**

pt hdg ins 2008 No. 29 s 87
sub 2011 No. 26 s 166

Division 1—Preliminary

div hdg ins 2011 No. 26 s 166

Definitions for pt 10

s 136 ins 2011 No. 26 s 166

Application of pt 10

s 137 ins 2008 No. 29 s 87
sub 2011 No. 26 s 166

Division 2—Mortgages of leases over Torres Strait Islander land

div hdg ins 2011 No. 26 s 166

Provisions about entering into possession, and selling, lease

s 138 ins 2008 No. 29 s 87
sub 2011 No. 26 s 166

How lessor deals with proceeds of sale

s 139 ins 2008 No. 29 s 87
sub 2011 No. 26 s 166

PART 11—LEASING OF TORRES STRAIT ISLANDER TRUST LAND

pt hdg ins 2008 No. 29 s 87

Division 1—Preliminary

div hdg ins 2008 No. 29 s 87

Definitions for pt 11

s 140 ins 2008 No. 29 s 87
def “**Torres Strait Islander trust land**” amd 2011 No. 26 s 167(1)
def “**trustee (Torres Strait Islander) lease**” amd 2011 No. 26 s 167(2)

Relationship with Land Act

s 141 ins 2008 No. 29 s 87

Division 2—Leases

div hdg ins 2008 No. 29 s 87

Trustee (Torres Strait Islander) leases

s 142 ins 2008 No. 29 s 87
amd 2011 No. 26 s 168

Amending trustee (Torres Strait Islander) lease

s 143 ins 2008 No. 29 s 87
amd 2011 No. 26 s 169

Mortgage of trustee (Torres Strait Islander) lease

s 144 ins 2008 No. 29 s 87

Surrender of trustee (Torres Strait Islander) lease

s 145 ins 2008 No. 29 s 87

Division 3—Other matters

div 3 (ss 146–147) ins 2008 No. 29 s 87

Park remains National Park

s 5.21 om 1992 No. 20 s 159 sch 2

**PART 12—OCCUPATION AND USE OF TORRES STRAIT ISLANDER LAND BY
THE STATE OR COMMONWEALTH**

pt hdg amd 2011 No. 26 s 189 sch

Use of Torres Strait Islander land preserved

prov hdg amd 2011 No. 26 s 170(1)
s 148 amd 2008 No. 29 s 88; 2011 No. 26 s 170(2)–(6)

No rent payable

prov hdg amd 2011 No. 26 s 171(1)
s 149 amd 2011 No. 26 s 171(2)–(3)

Access to land

prov hdg amd 2011 No. 26 s 172(1)
s 150 amd 2008 No. 29 s 89; 2011 No. 26 s 172(2)–(7)

Application of Mineral Resources Act

s 151 amd 2008 No. 29 s 90; 2011 No. 26 s 173

Royalties in relation to mining on Torres Strait Islander land

s 152 amd 2004 No. 25 s 1040; 2011 No. 26 s 174; 2010 No. 31 s 575 sch 2 pt 4

PART 14—PROVISIONS ABOUT LAND TRUSTS

pt hdg sub 2011 No. 26 s 175

Division 1—Preliminary

div hdg sub 2011 No. 26 s 175

Composition of land trust

s 153 sub 2011 No. 26 s 175

Nature of land trust

s 154 amd 1991 No. 76 s 51; 1996 No. 37 s 147 sch 2; 2001 No. 33 s 35; 2009 No. 25 s 83 sch
sub 2011 No. 26 s 175

Function and powers of land trust

s 155 sub 2011 No. 26 s 175

Division 2—Minister’s power to appoint, remove or suspend members of land trusts

div hdg sub 2011 No. 26 s 175

Subdivision 1—Appointment of members

sdiv hdg ins 2011 No. 26 s 175

Minister may appoint member

s 156 sub 2011 No. 26 s 175

Subdivision 2—Removal or suspension of members

sdiv hdg ins 2011 No. 26 s 175

Grounds for removal or suspension of member

s 157 sub 2011 No. 26 s 175

Show cause notice

s 158 sub 2011 No. 26 s 175

Representations about show cause notice

s 159 sub 2011 No. 26 s 175

Ending show cause process without further action

s 160 sub 2011 No. 26 s 175

Removing or suspending member

s 161 sub 2011 No. 26 s 175

Immediate removal or suspension of member

s 162 amd 1992 No. 36 s 2 sch 2; 1993 No. 85 s 170C (amd 1994 No. 61 s 2 sch 2);
2000 No. 16 s 590 sch 1 pt 2
sub 2011 No. 26 s 175

Subdivision 3—Other matters

sdiv hdg ins 2011 No. 26 s 175

Limitation on land trust’s power about appointment or suspension of members

s 163 sub 2011 No. 26 s 175

Division 3—Recording information about compliance with Act

div hdg sub 2011 No. 26 s 175

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s 164 sub 2011 No. 26 s 175

Division 4—Land trusts to give information to chief executive

div hdg sub 2011 No. 26 s 175

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s 165 sub 2011 No. 26 s 175

Power to require particular information

s 166 sub 2011 No. 26 s 175

Division 5—Freezing accounts of land trust

div hdg ins 2011 No. 26 s 175

Definitions for div 5

s 167 sub 2011 No. 26 s 175

Freezing land trust's accounts

s 168 sub 2011 No. 26 s 175

Financial institution must comply with direction

s 169 sub 2011 No. 26 s 175

Withdrawal of direction

s 170 sub 2011 No. 26 s 175

Division 6—Miscellaneous

div hdg ins 2011 No. 26 s 175

Chief executive may prepare model rules

s 171 sub 2011 No. 26 s 175

Provision about vesting of Torres Strait Islander land

s 172 amd 1993 No. 85 s 170D (amd 1994 No. 61 s 2 sch 2)
sub 2011 No. 26 s 175

PART 15—APPLICATION OF TRUSTS ACT 1973

pt hdg ins 2011 No. 26 s 175

Division 1—Preliminary

div hdg ins 2011 No. 26 s 175

Application of Trusts Act 1973

s 173 amd 2003 No. 77 s 125; 2008 No. 29 s 73 sch
sub 2011 No. 26 s 175

Division 2—Powers of Supreme Court

div hdg ins 2011 No. 26 s 175

Jurisdiction of Supreme Court

s 174 sub 2011 No. 26 s 175

Power of court to relieve member of land trust from personal liability

s 175 sub 2011 No. 26 s 175

Court may order beneficiary to indemnify for certain breaches

s 176 amd 1993 No. 85 s 170E (amd 1994 No. 61 s 2 sch 2)
sub 2011 No. 26 s 175

Right of land trust or member to apply to court for directions

s 177 sub 2011 No. 26 s 175

Court's jurisdiction to make orders conferring power on land trust or members

s 178 sub 2011 No. 26 s 175

Protection of land trust or member while acting under direction of court

s 179 sub 2011 No. 26 s 175

Power of Supreme Court to make orders in absence of members 180 amd 2003 No. 77 s 126; 2008 No. 29 s 73 sch
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2008 No. 29 s 73 sch
sub 2011 No. 26 s 175**PART 16—APPEALS**

pt hdg ins 2011 No. 26 s 175

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s 182 sub 2011 No. 26 s 175

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amd 1998 No. 30 s 21 sch; 1999 No. 19 s 3 sch
sub 2011 No. 26 s 175**Nature of appeal**

s 184 sub 2011 No. 26 s 175

Notice of appeals 185 ins 1993 No. 85 s 172A (amd 1994 No. 61 s 2 sch 2)
sub 2011 No. 26 s 175**Powers of Land Court on appeal**

s 186 sub 2011 No. 26 s 175

Creation of interests in transferable land

prov hdg amd 2011 No. 26 s 176(1)

s 187 amd 2004 No. 12 s 162; 2009 No. 3 s 602; 2011 No. 26 s 176(2)–(7); 2010
No. 31 s 575 sch 2 pt 4 (amdt 4 (to the extent it amends s 187(3)(a)(ii))
could not be given effect)**Rights of access to interests preserved**

s 188 amd 2008 No. 29 s 91; 2011 No. 26 s 177

Persons and bodies representing State or Commonwealth

prov hdg amd 2011 No. 26 s 178(1)

s 189 amd 2011 No. 26 s 178(2)

Delegation by Minister

s 190 amd 2008 No. 29 s 92; 2011 No. 26 s 179

Delegation by Registrar of Titles

s 9.05 om 1993 No. 85 s 172B (amd 1994 No. 61 s 2 sch 2)

Amendment of description of land

s 191 amd 2011 No. 26 s 181

Dealing with particular trust property

s 192 ins 2008 No. 29 s 93
sub 2011 No. 26 s 182

Application of Residential Tenancies and Rooming Accommodation Act 2008

prov hdg amd 2008 No. 73 s 554 sch 1

s 193 ins 2008 No. 29 s 93
amd 2008 No. 73 s 554 sch 1

Survey costs etc. to be paid by State

s 194 amd 2001 No. 71 s 551 sch 1; 2011 No. 26 s 183

Application of Financial Accountability Act 2009

prov hdg amd 2011 No. 26 s 184(1)

s 195 ins 1998 No. 24 s 13
amd 2009 No. 9 s 136 sch 1; 2011 No. 26 s 184(2)

Approval of forms

s 196 ins 1998 No. 24 s 13

Orders in council to be tabled and disallowable

s 9.09 om 1993 No. 85 s 172B (amd 1994 No. 61 s 2 sch 2)

Regulation-making power

prov hdg sub 2004 No. 4 s 57 sch

s 197 amd 1993 No. 85 s 172C (amd 1994 No. 61 s 2 sch 2); 1998 No. 24 s 14; 2008
No. 29 s 94; 2011 No. 26 s 185

Renumbering of Act

s 9.11 ins 1993 No. 85 s 172D (amd 1994 No. 61 s 2 sch 2)
om R2 (see RA s 37)

PART 18—VALIDATION PROVISION

pt 18 (s 198) ins 2011 No. 26 s 186

PART 19—TRANSITIONAL PROVISIONS

pt hdg ins 2006 No. 9 s 53 sch
sub 2008 No. 29 s 73 sch

Division 1—Transitional provision for Audit Legislation Amendment Act 2006

div hdg ins 2008 No. 29 s 73 sch

Further amendment, or repeal, of Torres Strait Islander Land Regulation 1991

s 199 ins 2006 No. 9 s 53 sch

Division 2—Transitional provision for Aboriginal and Torres Strait Islander Land Amendment Act 2008

div 2 (s 200) ins 2008 No. 29 s 95

Division 3—Transitional provisions for Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011

div 3 (ss 201–204) ins 2011 No. 26 s 187

PART 20—RENUMBERING OF ACTS

pt 20 (ss 205–206) ins 2011 No. 26 s 188

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SCHEDULE 1—DICTIONARY

sch hdg ins 2011 No. 26 s 189 sch

sch 1 Note—definitions for this Act were originally located in orig s 3.

def “**Aboriginal group**” reloc 2011 No. 26 s 134(6)

def “**accepted representations**” ins 2011 No. 26 s 134(3)

reloc 2011 No. 26 s 134(6)

def “**account**” ins 2011 No. 26 s 134(3)

reloc 2011 No. 26 s 134(6)

def “**Acquisition Act**” ins 2008 No. 29 s 74(1)

reloc 2011 No. 26 s 134(6)

def “**ancestor**” reloc 2011 No. 26 s 134(6)

def “**appropriate register**” ins 2008 No. 29 s 74(1)

reloc 2011 No. 26 s 134(6)

def “**approved form**” ins 2011 No. 26 s 134(3)

reloc 2011 No. 26 s 134(6)

def “**available Crown land**” om 2011 No. 26 s 134(2)

def “**available State land**” ins 2011 No. 26 s 134(3)

reloc 2011 No. 26 s 134(6)

def “**available State land agreement**” ins 2011 No. 26 s 134(3)

reloc 2011 No. 26 s 134(6)

def “**bed and banks**” amd 2000 No. 34 s 1145 sch 3

om 2010 No. 12 s 233

def “**CATSI corporation**” ins 2011 No. 26 s 134(3)

reloc 2011 No. 26 s 134(6)

def “**city or town land**” amd 2011 No. 26 s 134(4)

reloc 2011 No. 26 s 134(6)

def “**claimable land**” om 2011 No. 26 s 134(2)

def “**coast**” om 2011 No. 26 s 134(2)

def “**commencement**” ins 2011 No. 26 s 134(3)

reloc 2011 No. 26 s 134(6)

def “**Commonwealth Native Title Act**” ins 2008 No. 29 s 74(1)

reloc 2011 No. 26 s 134(6)

def “**constructing authority**” ins 2008 No. 29 s 74(1)

reloc 2011 No. 26 s 134(6)

def “**Crown**” om 2011 No. 26 s 134(2)

def “**decision-maker**” ins 2011 No. 26 s 134(3)

reloc 2011 No. 26 s 134(6)

def “**descendant**” reloc 2011 No. 26 s 134(6)

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- def “**director**” om R3 (see RA s 39)
- def “**DOGIT land**” amd 2011 No. 26 s 134(4)
reloc 2011 No. 26 s 134(6)
- def “**enactment day**” reloc 2011 No. 26 s 134(6)
- def “**excluded land**” ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def “**executive committee**” ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def “**forest products**” reloc 2011 No. 26 s 134(6)
- def “**granted land**” om 2011 No. 26 s 134(2)
- def “**group**” reloc 2011 No. 26 s 134(6)
- def “**group of Torres Strait Islanders**” reloc 2011 No. 26 s 134(6)
- def “**holder**” ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def “**ILUA**” ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def “**ILUA register**” ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def “**improvements**” ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)
- def “**information**” ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def “**interest**” amd 2004 No. 12 s 161; 2009 No. 3 s 601
reloc 2011 No. 26 s 134(6)
amd 2010 No. 31 s 575 sch 2 pt 4
- def “**interested person**” om 2011 No. 26 s 134(2)
- def “**Island custom**” amd 2011 No. 26 s 134(4)
reloc 2011 No. 26 s 134(6)
- def “**lake**” amd 2000 No. 34 s 1145 sch 3; 2011 No. 26 s 134(4)
reloc 2011 No. 26 s 134(6)
- def “**land**” om R2 (see RA s 39)
- def “**Land Act**” ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)
- def “**land claims registrar**” om 2011 No. 26 s 134(2)
- def “**Land Holding Act**” ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def “**Land Title Act**” ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)
- def “**Land Tribunal**” om 2011 No. 26 s 134(2)
- def “**land trust**” ins 1998 No. 24 s 12
sub 2011 No. 26 s 134(2)–(3)
reloc 2011 No. 26 s 134(6)
- def “**lease**” ins 2008 No. 29 s 74(1)
sub 2011 No. 26 s 134(2)–(3)
reloc 2011 No. 26 s 134(6)
- def “**lease land**” ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)

- def **“lessee”** ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def **“lessor”** ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def **“management plan”** reloc 2011 No. 26 s 134(6)
- def **“maximum amount”** ins 2008 No. 29 s 74(1)
sub 2011 No. 26 s 134(2)–(3)
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- def **“member”** ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def **“mineral”** sub 2011 No. 26 s 134(2)–(3)
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- def **“mining interest”** amd 2004 No. 25 s 1039(2)
reloc 2011 No. 26 s 134(6)
- def **“National Native Title Register”** ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)
- def **“national park”** amd 1992 No. 20 s 159 sch 2
reloc 2011 No. 26 s 134(6)
- def **“native title holder”** ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)
- def **“native title interests”** ins 1993 No. 85 s 166
amd 2004 No. 4 s 57 sch
om 2011 No. 26 s 134(2)
- def **“natural gas”** amd 2011 No. 26 s 134(4)
reloc 2011 No. 26 s 134(6)
- def **“non-presiding member”** om 2011 No. 26 s 134(2)
- def **“NPARC”** ins 2007 No. 59 s 152 sch
reloc 2011 No. 26 s 134(6)
- def **“petroleum”** sub 2004 No. 25 s 1039
reloc 2011 No. 26 s 134(6)
- def **“prescribed DOGIT land”** ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def **“presiding member”** om 2011 No. 26 s 134(2)
- def **“previous”** ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def **“proposed action”** ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def **“public infrastructure”** ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)
- def **“qualified”** ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def **“quarry material”** sub 2011 No. 26 s 134(2)–(3)
reloc 2011 No. 26 s 134(6)
- def **“registered”** ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)
- def **“registered native title body corporate”** ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)

Endnotes

- def “**registrar**” ins 2008 No. 29 s 74(1)
amd 2011 No. 26 s 134(5)
reloc 2011 No. 26 s 134(6)
- def “**registrar of titles**” ins 1994 No. 81 s 527 sch 5 (amd 1995 No. 57 s 4 sch 1)
amd 2008 No. 29 s 74(2)
sub 2011 No. 26 s 134(2)–(3)
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- def “**relevant land**” ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)
- def “**repealed Torres Strait Act**” ins 2007 No. 59 s 152 sch
reloc 2011 No. 26 s 134(6)
- def “**required amount**” ins 2011 No. 26 s 134(3)
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- def “**residential lease**” ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def “**residential tenancy**” ins 2011 No. 26 s 134(3)
reloc 2011 No. 26 s 134(6)
- def “**residential tenancy agreement**” ins 2008 No. 29 s 74(1)
sub 2008 No. 73 s 554 sch 1
reloc 2011 No. 26 s 134(6)
- def “**responsibilities**” reloc 2011 No. 26 s 134(6)
- def “**road**” reloc 2011 No. 26 s 134(6)
- def “**sea**” reloc 2011 No. 26 s 134(6)
- def “**show cause notice**” ins 2011 No. 26 s 134(3)
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- def “**show cause period**” ins 2011 No. 26 s 134(3)
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- def “**standard lease**” ins 2011 No. 26 s 134(3)
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- def “**tidal land**” reloc 2011 No. 26 s 134(6)
- def “**Torres Strait area**” amd 2011 No. 26 s 134(4)
reloc 2011 No. 26 s 134(6)
- def “**Torres Strait Island council**” sub 2007 No. 59 s 152 sch
reloc 2011 No. 26 s 134(6)
- def “**Torres Strait Islander**” amd 2011 No. 26 s 134(4)
reloc 2011 No. 26 s 134(6)
- def “**Torres Strait Islander land**” amd 2011 No. 26 s 134(4)
reloc 2011 No. 26 s 134(6)
- def “**Torres Strait Islander land claim association**” ins 1998 No. 24 s 12
om 2011 No. 26 s 134(2)
- def “**Torres Strait Islander land holding entity register**” ins 2011 No. 26 s 134(3)
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- def “**Torres Strait Islander lease**” om 2011 No. 26 s 134(2)
- def “**Torres Strait Islander (non-transferred land) lease**” om 2011 No. 26 s 134(2)

- def “**Torres Strait Islander reserve land**” amd 2011 No. 26 s 134(4)
reloc 2011 No. 26 s 134(6)
- def “**Torres Strait Islander (transferred land) lease**” om 2011 No. 26 s 134(2)
- def “**Torres Strait Islander trust land**” ins 2008 No. 29 s 74(1)
reloc 2011 No. 26 s 134(6)
- def “**Torres Strait Treaty**” reloc 2011 No. 26 s 134(6)
- def “**township land**” sub 2011 No. 26 s 134(2)–(3)
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- def “**townsite lease**” ins 2011 No. 26 s 134(3)
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- def “**townsite sublease**” ins 2011 No. 26 s 134(3)
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- def “**transferable land**” amd 2011 No. 26 s 134(4)
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- def “**transferee**” ins 2011 No. 26 s 134(3)
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- def “**tribunal**” om 2011 No. 26 s 134(2)
- def “**trustee**” ins 2008 No. 29 s 74(1)
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- def “**trustee (Torres Strait Islander) lease**” ins 2008 No. 29 s 74(1)
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- def “**trust money**” ins 2011 No. 26 s 134(3)
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- def “**trust property**” ins 2011 No. 26 s 134(3)
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- def “**TSIRC**” ins 2007 No. 59 s 152 sch
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- def “**watercourse**” amd 2000 No. 34 s 1145 sch 3
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8.04	.89
8.05	.90
8.06	.91
8.07	.92
8.08	.93

Previous	Renumbered as
8.09	94
8.10	95
8.11	96
8.12	97
8.13	98
8.14	99
8.15	100
8.16	101
8.17	102
8.18	103
8.19	104
8.20	105
8.21	106
8.22	107
8.23	118
8.24	109
8.25	110
8.26	111
8.27	112
8.28	113
8.29	114
8.29(3A)	114(4)
8.29(4)	114(5)
8.29(5)	114(6)
8.29(6)	114(7)
8.29(7)	114(8)
8.30	115
8.30A	116
8.31	117
8.31A	118
8.32	119
8.33	120
8.34	121
8.35	122
8.36	123
8.37	124
8.38	125
8.39	126
8.40	127
9.01	128
9.02	129
9.03	130
9.04	131
9.06	132
9.07	133

Endnotes

Previous	Renumbered as
9.08	134
9.10	135

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