



# Aboriginal Land Act 1991

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## Queensland

# Aboriginal Land Act 1991

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# Aboriginal Land Act 1991

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

### Preamble

Whereas—

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

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

## **Part 1 Preliminary**

### **1 Short title**

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

### **2 Definitions**

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

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

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

(b) they live on or use the land or neighbouring land.

#### **4 Act binds all persons**

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

## **Part 2 Basic concepts**

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

#### **5 Meaning of Aboriginal people**

Aboriginal people are people of the Aboriginal race of Australia.

#### **6 Meaning of Aborigine**

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

#### **7 Meaning of Aboriginal tradition**

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

### **Division 2 Aboriginal land**

#### **8 Meaning of Aboriginal land**

(1) Aboriginal land is transferred land or granted land.

- (2) Aboriginal land includes land that was transferred land and has subsequently become granted land.

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

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

- (1) Transferable land is land that is to be granted under part 4 without a claim being made under this Act for the land.
- (2) Transferred land is land that is granted under part 4 without a claim being made under this Act for the land.

### **10                  Lands that are transferable lands**

- (1) The following lands are transferable lands—
  - (a) DOGIT land;
  - (b) Aboriginal reserve land;
  - (c) available State land declared by regulation to be transferable land;
  - (d) land that is transferable land under section 174, 176 or 177;
  - (e) land that becomes transferable land under section 230.
- (2) However, land mentioned in subsection (1) ceases to be transferable land to the extent either of the following applies—
  - (a) it is taken, under the Acquisition Act, by a constructing authority;
  - (b) it is available land approved for a grant in fee simple by the chief executive under section 32C.
- (3) Also, land mentioned in subsection (1) is not transferable land to the extent it is the subject of any of the following—
  - (a) a declaration in force under section 16;

- (b) an offer to allocate available land under section 32T, while the offer is in force;
- (c) an allocation process for available land under part 2A, division 6, until the process ends.

## 11 DOGIT land

- (1) DOGIT land is land that, at the beginning of the enactment day, was—
  - (a) prescribed DOGIT land or land granted in trust under the *Land Act 1962* for the benefit of Aboriginal inhabitants or for the purpose of an Aboriginal reserve; or
  - (b) within the external boundaries of an area of such land and—
    - (i) 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;
- other than—
  - (vi) a road; or
  - (vii) a stock route or associated reserve.

[s 12]

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- (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.
- (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.
- (4) DOGIT land does not include land within the external boundaries of land mentioned in subsection (1)(a) if the land has, since the enactment day, become a road.

## 12 Aboriginal reserve land

- (1) Aboriginal reserve land is land that, at the beginning of the enactment day, is—
  - (a) reserved and set apart under the *Land Act 1962* for an Aboriginal reserve or for the benefit of Aboriginal inhabitants; or
  - (b) within the external boundaries of an area of such land and—
    - (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 is included in land that was, at the beginning of the enactment day, being used as an Aboriginal reserve or for the benefit of Aboriginal people.

- 
- (2) Also, Aboriginal 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.
- (3) Further, Aboriginal reserve land includes land within the external boundaries of land mentioned in subsection (1)(a) if the land has, since the enactment day, ceased to be a road.
- (4) Aboriginal reserve land does not include land within the external boundaries of land mentioned in subsection (1)(a) if the land has, since the enactment day, become a road.

## **Division 4                      Declarations about particular transferable land**

### **15            Definition for div 4**

In this division—

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

- (a) DOGIT land;
- (b) Aboriginal reserve land, other than land declared under a regulation for section 12.

### **16            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—
- (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.

## **17 Notice of intention to make declaration**

- (1) If the Minister intends to make a declaration under section 16, the Minister must—
- (a) give 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.

## **18 Minister to consider representations and give notice of decision**

- (1) After considering all representations made under section 17(4) about the proposed declaration, the Minister must—
  - (a) decide whether to make the declaration; and
  - (b) give 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 17.
- (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 16(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.

## **19 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 notice of the declaration.

## **20 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 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 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.

## **21 Requirements about plans of subdivision for declarations**

- (1) This section applies if—
  - (a) under section 16, 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 Claimable and granted land**

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

- (1) Claimable land is land that may be claimed by, and granted under this Act to, a group of Aboriginal people.
- (2) Granted land is claimable land that has been claimed by, and granted under this Act to, a group of Aboriginal people.

## **23 Land that is claimable land**

- (1) Subject to subsection (3), claimable land is—
  - (a) available State land declared by regulation to be claimable land for this Act; or
  - (b) Aboriginal land that—
    - (i) is transferred land; and
    - (ii) became transferred land before 22 December 2006.
- (2) A declaration under subsection (1)(a) may describe the available State land concerned in any way, including, for example, describing the land as land included in a stated area of the State.
- (3) A regulation may declare that an area of transferred land is not claimable land.
- (4) A declaration under subsection (3) may be made only if—
  - (a) the land is primarily used or occupied by Aboriginal people for residential or community purposes; or
  - (b) the Minister has consulted with Aboriginal people particularly concerned with the land and a substantial majority of the Aboriginal people are opposed to the land being claimable land.

## **Division 6 Available State land**

### **24 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 granted by the State, if an available State land agreement is in force for the land; or
  - (c) land inside the Torres Strait area that is land—

- 
- (i) in which no person other than the State has an interest; and
  - (ii) declared under a regulation to be available State land.
- (2) Subsection (1) is subject to sections 26 and 27.
- (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.

## 25 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.
- (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 lease is to continue in force under section 45.
- (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.

## **26 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.

## **27 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.

## **28 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* or the *City of Brisbane Act 2010*.
- (2) A regulation may change the boundaries of a city or town.
- (3) A regulation under subsection (2) has effect only for this Act.

## **29 Meaning of township land**

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

## **30 National parks**

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

### **31 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 27(1);
  - (b) freehold land;
  - (c) an associated reserve;
  - (d) land subject to a lease, licence or permit under the Land Act.
- (2) Despite subsection (1)(d), 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.

## **Division 7 Application of laws to Aboriginal land**

### **32 Application of laws**

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

## **Part 2A**                      **Providing freehold**

### **Division 1**                      **Preliminary**

#### **32A**    **Overview**

This part—

- (a) allows available land to be granted in freehold under the Land Act to an eligible person for the available land; and
- (b) requires—
  - (i) the trustee of freehold option land to consult on and make a freehold instrument; and
  - (ii) the local government for the area in which the land is situated to attach the freehold instrument to its planning scheme; and
- (c) sets out how, and to whom, the trustee may allocate available land depending on whether the person is an eligible person for the land.

### **Division 2**                      **Basic concepts**

#### **32B**    **Definitions for pt 2A**

In this part—

*allocation method*, for available land, means—

- (a) the auction, ballot or tender to be used to allocate the available land; and
- (b) the conditions of the auction, ballot or tender.

*allocation notice* see section 32Z(1)(a).

*allocation process*, for available land, means—



- 
- (a) if there is an interest holder for the available land—the process stated in division 5; or
  - (b) otherwise—the process stated in division 6.

***appeal period***, for available land, means the period starting on the day a person receives an information notice in relation to the available land and ending—

- (a) if no notice of appeal is filed in relation to the available land—on the last day for making an appeal; or
- (b) if a notice of appeal is filed in relation to the available land—when the appeal is finally decided.

***available land*** see section 32D(3).

***closing day***, for division 6, see section 32ZA(1)(d).

***eligibility criteria*** see section 32D(6)(a).

***eligible person***, for available land, means a person who meets the eligibility criteria for the land and is—

- (a) an Aboriginal person or Torres Strait Islander; or
- (b) the spouse or former spouse of—
  - (i) a person mentioned in paragraph (a); or
  - (ii) an Aboriginal person or Torres Strait Islander who is deceased.

***freehold instrument*** means a freehold schedule and the freehold policy for the freehold schedule.

***freehold option land*** means land in the Aurukun Shire Council's area, the Mornington Shire Council's area or an indigenous local government's area if—

- (a) any of the following entities are the trustee of the land—
  - (i) the Aurukun Shire Council;
  - (ii) the Mornington Shire Council;
  - (iii) an indigenous local government;
  - (iv) a land trust;
  - (v) another entity holding the land under this Act; and

(b) the land is in an urban area.

**freehold policy**, for a freehold schedule, see section 32D(5).

**freehold schedule**—

(a) means a schedule made as mentioned in section 32D(1) by the trustee of freehold option land; and

(b) includes a model freehold schedule.

**indigenous local government** see the Local Government Act 2009, schedule 4.

**interest holder**, for available land, means a person who holds any of the following interests in the land—

(a) a registered lease granted under this Act or the Land Act, other than a townsite lease;

(b) a lease entitlement under the new Land Holding Act;

(c) a 1985 Act granted lease or a new Act granted lease under the new Land Holding Act;

(d) a registered sublease, including a registered sublease of a townsite lease;

(e) a residential tenancy agreement for a social housing dwelling situated on the available land;

(f) a right to occupy or use the available land under section 199.

**model freehold instrument**, for division 4, subdivision 2, see section 32F.

**model freehold schedule** see section 32D(4).

**native title holder** has the same meaning as it has in the Commonwealth Native Title Act.

**offer** means an offer to an eligible person by a trustee to allocate available land to the person under section 32T.

**planning scheme** means a planning scheme under the *Planning Act 2016*.

**probity advisor** see section 32ZB(1).

*urban area* means an area identified as an area intended for either urban purposes or future urban purposes on a map in a planning scheme used to show zones.

*urban purposes* means purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes.

## **Division 3                      Approval for grant of available land**

### **32C      Approval for grant of available land**

- (1) The trustee of freehold option land may apply to the chief executive, in the approved form, for available land to be granted in fee simple under the Land Act to the eligible person who has been allocated the available land under this part.
- (2) The trustee may make the application only if—
  - (a) there is a freehold instrument for the available land; and
  - (b) the trustee has followed the allocation process for the available land.
- (3) Information in the application must, if the approved form requires, be verified by a statutory declaration.
- (4) In deciding the application, the chief executive—
  - (a) must be reasonably satisfied—
    - (i) agreements or arrangements appropriate to granting the available land as freehold have been entered into or are in place, including, for example, in relation to the following—
      - (A) native title;
      - (B) any social housing dwelling on the available land;
      - (C) road access to the available land; and
    - (ii) there is a lot on plan description for the available land; and

- (iii) if the available land is allocated under section 32ZF—a probity advisor has certified the probity of the allocation process for the available land; and
  - (b) may consider any other matter the chief executive reasonably considers relevant.
- (5) If the chief executive approves the application, the Governor in Council may grant the land in fee simple under the Land Act.

*Note—*

See the Land Act, section 14.

## **Division 4            Freehold instruments**

### **Subdivision 1        Trustee may make freehold instrument**

#### **32D    Trustee may make freehold instrument**

- (1) The trustee of freehold option land may, by resolution, make a schedule identifying the freehold option land available to be granted in freehold.
- (2) The freehold schedule must identify the freehold option land so the boundaries of the land are capable of being decided.
- (3) Freehold option land identified in a freehold schedule is *available land*.
- (4) A freehold schedule that only identifies freehold option land of a type prescribed by regulation for this subsection is a *model freehold schedule*.
- (5) If the trustee makes a freehold schedule, the trustee must, by resolution, make a policy (a *freehold policy*) at the same time to help the trustee in implementing the freehold schedule.
- (6) The freehold policy must be in the approved form and state—

- (a) the criteria (the *eligibility criteria*) for participating in the allocation process for available land; and
- (b) if there is no interest holder for available land—the allocation method for available land; and
- (c) the sale price of available land and the costs to be recovered from the sale price; and
- (d) how the community will be consulted about the allocation process for available land; and
- (e) how the trustee will deal with interests in, or in relation to, available land, before it is allocated; and
- (f) the social and financial implications for the community in providing freehold; and
- (g) the social and financial implications for any eligible person who is granted freehold; and
- (h) the potential to attract investment and new members into the community; and
- (i) any other matter prescribed by regulation.

### **32E Trustee may have only 1 freehold instrument**

- (1) The trustee of freehold option land may have only 1 freehold instrument for the land.
- (2) However, if the trustee is an indigenous regional council, the trustee may have more than 1 freehold instrument only if the freehold instruments do not overlap in relation to available land.
- (3) In this section—  
*indigenous regional council* see the *Local Government Act 2009*, schedule 4.

## **Subdivision 2      Making, amending or repealing freehold instruments**

### **32F      Definition for sdiv 2**

In this subdivision—

*model freehold instrument* means a model freehold schedule and the freehold policy for the model freehold schedule.

### **32G      Application of sdiv 2**

This subdivision states how a freehold instrument may be made, amended or repealed.

### **32H      Minister to make and publish guideline**

- (1) The Minister must make, and publish on the department's website, a guideline about the process for—
  - (a) attaching a freehold instrument to a local government's planning scheme; and
  - (b) amending or repealing a freehold instrument.
- (2) The guideline must make provision for a local government to do all of the following things before attaching a freehold instrument to its planning scheme—
  - (a) publish a notice about the freehold instrument in a newspaper or other publication circulating generally in the local government's area at least once;
  - (b) carry out public consultation about the freehold instrument;
  - (c) give the Minister a notice summarising the matters raised during the public consultation and stating how the local government or the trustee dealt with the matters.

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### **32I Trustee to consult**

- (1) Before the trustee of freehold option land starts the process for making a freehold instrument in relation to freehold option land, the trustee must decide on the way (the *decided way*) in which the trustee will consult about the making of the freehold instrument.

*Note—*

See section 179.

- (2) The purpose of the consultation is to enable the trustee to be reasonably satisfied it is appropriate for the freehold option land to be granted in freehold.
- (3) The decided way must—
  - (a) require the trustee to consult with the native title holders for the freehold option land proposed to be included in the freehold schedule; and
  - (b) include how the trustee will notify the community about the freehold instrument; and
  - (c) allow a suitable and sufficient opportunity for each person the trustee consults to express their views about the freehold instrument.
- (4) The trustee must—
  - (a) consult on the freehold instrument in the decided way; and
  - (b) keep records about the consultation showing the consultation was consistent with the decided way.

### **32J Trustee to give freehold instrument to Minister or local government**

- (1) This section applies if, after consulting on a proposed freehold instrument, the trustee decides to continue to make a freehold instrument.
- (2) The trustee must—

[s 32K]

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- (a) for a model freehold instrument—give the model freehold instrument to the Minister for approval; or
  - (b) otherwise—ask, by notice, the local government for the area in which the proposed freehold option land is situated to attach the freehold instrument to the local government’s planning scheme.
- (3) In this section—  
*proposed freehold option land* means freehold option land proposed to be included in a freehold schedule.

### **32K Local government to follow process in guideline**

- (1) This section applies if a local government receives a notice under section 32J(2)(b) in relation to a freehold instrument.
- (2) The local government must follow the process stated in the guideline made by the Minister under section 32H.
- (3) After the process is completed, the local government must give the freehold instrument to the Minister for approval.

### **32L Minister may approve**

- (1) If the Minister is given a freehold instrument for approval, the Minister may—
  - (a) approve the freehold instrument; or
  - (b) approve the freehold instrument on the condition the local government or trustee for the available land amends the freehold instrument in the way the Minister directs; or
  - (c) refuse to approve the freehold instrument.
- (2) In making a decision under subsection (1) about a freehold instrument, other than a model freehold instrument, the Minister must have regard to information given to the Minister by the local government for the freehold instrument after the local government has completed the process under section 32K.



- (3) The Minister may approve a freehold instrument if reasonably satisfied—
  - (a) for a model freehold instrument—the model freehold schedule only includes freehold option land of a type prescribed by regulation for section 32D(4); and
  - (b) the trustee has consulted with the native title holders for the freehold option land proposed to be included in the freehold schedule; and
  - (c) the consultation was consistent with the way decided by the trustee under section 32I.
- (4) The Minister must give notice of the decision under subsection (1) to the local government and the trustee for the freehold instrument.
- (5) If the Minister approves a freehold instrument, the local government must—
  - (a) attach the freehold instrument to its planning scheme; and
  - (b) publish, in a newspaper or other publication circulating generally in the local government’s area at least once, a notice stating the freehold instrument is approved and attached to its planning scheme.

### **32M Amending or repealing freehold instrument**

A freehold instrument attached to a local government’s planning scheme may be amended or repealed by a trustee only by following the process stated in the guideline made by the Minister under section 32H.

### **Subdivision 3      Other provisions about freehold instruments**

#### **32N      Effect of freehold instrument**

A freehold instrument has effect on and after the day the local government for the area in which the available land is situated attaches the freehold instrument to the local government's planning scheme.

#### **32O      Relationship with planning scheme**

- (1) Attaching a freehold instrument to a planning scheme is not an amendment of the planning scheme.
- (2) A freehold instrument attached to a planning scheme—
  - (a) does not form part of the planning scheme; and
  - (b) is the responsibility of the trustee for the available land; and
  - (c) if the planning scheme is amended or repealed and remade (with or without modification)—may be attached without amendment by the local government to the amended or remade planning scheme.

### **Division 5              Allocation process for available land—interest holder**

#### **32P      Application of div 5**

This division states the allocation process for available land if there is an interest holder for the available land.

#### **32Q      Application for available land**

A person who is an eligible person and an interest holder for available land may apply, in the approved form, to the trustee of the land for the land to be granted to the person.

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### **32R Dwelling on available land**

- (1) This section applies if a dwelling is situated on available land the subject of the application.
- (2) The trustee must give notice about the application to the housing chief executive.
- (3) Within 28 days after receiving the notice, the housing chief executive must give the trustee a notice (a *dwelling notice*) stating whether—
  - (a) the dwelling is a social housing dwelling; and
  - (b) if the dwelling is a social housing dwelling—the housing chief executive consents to the applicant making the application.
- (4) In deciding whether to consent to the applicant making the application, the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be social housing.
- (5) If the dwelling notice states the housing chief executive consents to the applicant making the application, the trustee must decide the price of the dwelling—
  - (a) by agreement with the housing chief executive; or
  - (b) by using a methodology agreed between the trustee and the housing chief executive.
- (6) The housing chief executive must, if asked, give a person a copy of the methodology.

### **32S Decision on application**

- (1) The trustee must consider the application and decide to approve or refuse the application.
- (2) However, if a dwelling is situated on the available land the subject of the application, the trustee—
  - (a) must not decide the application until the trustee receives a notice from the housing chief executive under section 32R(3); and

- (b) must refuse the application if the notice states the dwelling is a social housing dwelling and the housing chief executive does not consent to the applicant making the application.
- (3) The trustee may approve the application only if the trustee is reasonably satisfied—
  - (a) the applicant is an eligible person for the available land the subject of the application; and
  - (b) if there is more than 1 interest holder for the available land, either—
    - (i) all interest holders for the available land have made the application; or
    - (ii) all interest holders for the available land have consented to the applicant making the application; and
  - (c) if there is a mortgage over the available land—the mortgagee has consented to the applicant making the application.
- (4) If the trustee is reasonably satisfied of the matters mentioned in subsection (3), the trustee must approve the application.
- (5) If the trustee decides to refuse the application, the trustee must give the applicant an information notice for the decision.

### **32T Offer to allocate available land**

- (1) If the trustee approves the eligible person’s application, the trustee must offer, in writing, to allocate the available land to the eligible person.
- (2) However, the trustee may make the offer only after the appeal period for the available land.
- (3) If there is a social housing dwelling on the available land, the trustee must make the offer subject to a condition that the eligible person must purchase the dwelling at the price decided under section 32R(5).

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- (4) The trustee may make the offer subject to any other conditions the trustee reasonably considers necessary.
  - (5) In deciding whether to impose conditions on the offer under subsection (4), the trustee must have regard to the freehold instrument.
  - (6) If the trustee decides to impose conditions on the offer, other than a condition mentioned in subsection (3), the trustee must give the eligible person an information notice for the decision.
  - (7) The trustee must give notice to the chief executive in the approved form about the offer.

### **32U Acceptance and refusal of offer**

- (1) On receipt of the trustee's offer, the eligible person may accept or refuse the offer by notice given to the trustee.
- (2) However, if the eligible person does not give notice to the trustee within 45 days after the eligible person receives the offer, the eligible person is taken to have refused the offer.
- (3) If the eligible person refuses the offer, the trustee must give notice about the refusal to the chief executive.

### **32V Cooling-off period to apply to acceptance**

- (1) A *cooling-off period*, for accepting an offer, is a period of 5 business days—
  - (a) starting on the day the eligible person gives notice about accepting the offer to the trustee; and
  - (b) ending at 5p.m. on the fifth business day after the day mentioned in paragraph (a).
- (2) An eligible person who accepts, or proposes to accept, an offer may give written notice to the trustee—
  - (a) waiving the cooling-off period for accepting the offer; or
  - (b) shortening the cooling-off period for accepting the offer.

- (3) An eligible person who has not waived the cooling-off period for accepting an offer may rescind or revoke the acceptance by giving a signed notice of rescission or revocation to the trustee at any time during—
  - (a) the cooling-off period; or
  - (b) if the period has been shortened under subsection (2)(b), the shortened period.
- (4) If the acceptance is rescinded or revoked under subsection (3), the trustee must, within 14 days, refund any deposit paid under the acceptance to the eligible person.
- (5) An amount payable to the eligible person under subsection (4) is recoverable from the trustee as a debt.

### **32W When offer ends**

An offer ends when the first of the following happens—

- (a) the eligible person refuses the offer under section 32U;
- (b) the eligible person gives notice of rescission or revocation of acceptance to the trustee under section 32V;
- (c) the eligible person dies;
- (d) the eligible person is no longer an interest holder for the available land;
- (e) if the offer includes a condition about when the offer ends—the day the offer ends under the condition.

### **32X Allocation of available land to eligible person**

- (1) After complying with all conditions of the offer, the eligible person must give notice to the trustee.
- (2) If, after receiving the notice, the trustee is reasonably satisfied the eligible person has complied with all conditions of the offer, the trustee must allocate the available land to the eligible person.

*Note—*

Available land may be granted in freehold to an eligible person who is allocated the available land. See section 32C.

## **Division 6                      Allocation process for available land if no interest holder**

### **32Y      Application of div 6**

This division states the allocation process for available land if there is no interest holder for the available land.

*Note—*

A freehold instrument states the allocation method for available land. See section 32D(6).

### **32Z      Public notice of intention to allocate available land**

- (1) Before allocating available land, the trustee of the available land must publish notice of the trustee's intention to allocate the available land—
  - (a) by gazette notice (the *allocation notice*); and
  - (b) in a newspaper or other publication circulating generally in the area in which the land is situated at least once.
- (2) The trustee may act under subsection (1) only if—
  - (a) there is a lot on plan description for the available land; and
  - (b) there is dedicated access to the available land; and
  - (c) native title over the available land has been, or will be, surrendered or extinguished; and
  - (d) the trustee has given notice to the chief executive about the trustee's intention to allocate the available land.

### **32ZA Information to be included in allocation notice**

- (1) The allocation notice must include the following information for the available land—
  - (a) the eligibility criteria;
  - (b) the allocation method;
  - (c) the conditions applying to an offer of the available land;
  - (d) the day (the *closing day*) applications to participate in the allocation process close;
  - (e) the time and place for making applications;
  - (f) the reserve or purchase price;
  - (g) the deposit, if any, to be paid to participate in the allocation process and the proposed date, time and place for payment of the deposit;
  - (h) the proposed date, time and place where the available land will be allocated;

*Note—*

After the appeal period for the available land, the trustee must give notice of the date, time and place where the available land will be allocated. See section 32ZD.

- (i) the name and contact details of the probity advisor appointed.
- (2) The closing day must be at least 30 days after the allocation notice is gazetted.

### **32ZB Probity advisor**

- (1) The trustee must appoint an appropriately qualified and independent person (a *probity advisor*) to ensure the probity of the allocation process for the available land.
- (2) The probity advisor must—
  - (a) monitor the allocation process for the available land;  
and



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- (b) advise the trustee on matters relating to the probity of the allocation process; and
  - (c) prepare and give to the trustee a report about the probity of the allocation process and, if reasonably satisfied the allocation process was undertaken correctly, certify that fact.

### **32ZC Decision on application to participate in allocation process**

- (1) As soon as practicable after the closing day, the trustee must decide whether each applicant is an eligible person for the available land and give each applicant a notice about the decision.
- (2) If the trustee decides an applicant is an eligible person for the available land, the trustee must allow the applicant to participate in the allocation process for the available land.
- (3) If the trustee decides the applicant is not an eligible person for the available land, the trustee—
  - (a) must give the applicant an information notice for the decision; and
  - (b) must not allow the applicant to participate in the allocation process for the available land.

### **32ZD Notice of allocation of available land**

- (1) After the appeal period for the available land, the trustee must give each applicant who is able to participate in the allocation process for the available land a notice stating—
  - (a) the date, time and place where the available land will be allocated (the *allocation date*); and
  - (b) if the allocation notice requires a deposit to be paid—the date by which the deposit must be paid; and
  - (c) the applicant must give notice to the trustee before the allocation date if the applicant no longer wishes to participate in the allocation process.

[s 32ZE]

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- (2) The date mentioned in subsection (1)(b) must be—
  - (a) at least 30 days after the notice under this section is given; and
  - (b) before the allocation date.
- (3) If the applicant does not pay the deposit by the date mentioned in subsection (1)(b), the applicant must not participate in the allocation process.

### **32ZE How and when trustee may allocate**

The trustee may allocate the available land only—

- (a) after the end of the appeal period; and
- (b) by using the allocation method consistent with all of the following for the available land—
  - (i) the freehold instrument;
  - (ii) the allocation notice;
  - (iii) the probity advisor's advice.

### **32ZF Allocation of available land**

The trustee must allocate the available land to the eligible person who is the winner under the allocation method used to allocate the available land.

*Note—*

Available land may be granted in freehold to an eligible person who is allocated the available land. See section 32C.

### **32ZG Deposits**

The trustee must refund the deposit of each unsuccessful applicant after the trustee allocates the available land.

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## Division 7                      Miscellaneous

### 32ZH Continuation of mortgages and easements

A deed of grant for available land approved to be granted in fee simple under section 32C is subject to all registered mortgages and easements to which the available land was subject immediately before it was granted, and in the same priorities.

### 32ZI Cancellation of deeds of grant in trust, reserves etc.

- (1) This section applies if—
  - (a) available land is subject to any of the following (each an *old tenure*) when the trustee for the land applies for the land to be granted in fee simple under section 32C—
    - (i) a deed of grant in trust;
    - (ii) a reserve dedicated under the Land Act;
    - (iii) a townsite lease;
    - (iv) an interest mentioned in section 32B, definition *interest holder*; and
  - (b) a deed of grant in fee simple (a *new tenure*) for the available land is registered.
- (2) The old tenure is cancelled to the extent of the new tenure.

## Part 3                              Formal expression of interest about land

### 33 Purpose of pt 3

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

### **34 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) a stock route;
- (d) land subject to an occupation licence;
- (e) land held under a lease under the Land Act by or for Aboriginal people.

### **35 Expression of interest in having land made transferable land**

- (1) Aboriginal people particularly concerned with land mentioned in section 34 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.

### **36 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.

### **37 Consideration of expression of interest does not impose obligation on State**

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

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## **Part 4**                      **Grant of transferable land as Aboriginal land**

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

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

- (1) The chief executive must prepare such deeds of grant in fee simple as the Minister considers necessary and directs over transferable lands.
- (2) Transferable land need not be surveyed but may be described in a deed of grant in such manner as the Minister directs.
- (3) The deed of grant must show that the land is held by the grantee—
  - (a) if the grantee is a registered native title body corporate appointed as the grantee under section 39—for the native title holders of the land; or
  - (b) otherwise—
    - (i) for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants; or
    - (ii) if the land is prescribed DOGIT land that is to be held for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land—for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land, and their ancestors and descendants.
- (4) If the grantee is a registered native title body corporate appointed under section 39, the deed of grant also must include information to identify the native title holders of the land.
- (5) Subsections (2), (3) and (4) have effect despite any other Act or any rule of law or practice.

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

- (1) This section applies to transferable land if—
  - (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
  - (b) there is a registered native title body corporate for the determination.
- (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 38.
- (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 Aboriginal people particularly concerned with the land, other than the native title holders of the land, may be adversely affected by the proposed appointment; and
  - (c) if the Minister is satisfied Aboriginal people particularly concerned with the land will be adversely affected by the proposed appointment—any action the registered native title body corporate intends to take to address the concerns of the Aboriginal people.

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**40 Appointment of grantee to hold land for benefit of Aboriginal people**

- (1) This section applies if the Minister does not appoint, under section 39, a registered native title body corporate as the grantee of land.
- (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 the grantee of the 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 the CATSI corporation is the registered native title body corporate for the determination; or
  - (b) a determination has not been made under the Commonwealth Native Title Act that native title exists in relation to all or a part of the land, but the Minister is satisfied it is appropriate in all the circumstances to appoint the CATSI corporation as the grantee of the land.

*Examples of when it is appropriate to appoint the CATSI corporation as the grantee of the land—*

- 1 The appointment of the CATSI corporation is supported by consultation with Aboriginal people particularly concerned with the land.
- 2 The land is within the external boundaries of an area of land the subject of a native title determination and the CATSI corporation is the registered native title body corporate for the determination.
- 3 An ILUA has been entered into for the land and the CATSI corporation is nominated in the ILUA as the proposed grantee for the land under this Act.
- 4 Anthropological research supports the CATSI corporation as being the appropriate grantee.

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- (4) Before making the appointment, the Minister must consult with, and consider the views of, Aboriginal people 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 Aboriginal people particularly concerned with the land may be adversely affected by the appointment; and
  - (b) if the Minister is satisfied any Aboriginal people 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 Aboriginal people.
- (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 39(4)(b) and (c).
- (8) In appointing a grantee of land under this section, the Minister must have regard to any Aboriginal tradition applicable to the land.

#### **41 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



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

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

- (1) The Minister must, as soon as practicable after the commencement of sections 38 and 40, give all necessary directions under section 38, and make all necessary appointments under section 39 or 40, in relation to land that is transferable land on the enactment day.
- (2) If, under section 10(1)(e) or 12, 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 38, and make all necessary appointments under section 39 or 40, 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 Aboriginal people 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

- (c) if the land is or includes township land, arrangements are in place to provide for—
- (i) the 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.

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*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.

#### **43 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.

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

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

#### **45 Existing interests**

- (1) If transferable land was, immediately before becoming Aboriginal land under this division, subject to an interest or benefited by an easement, the interest continues in force or the land continues to be benefited by the easement.
- (2) Without limiting subsection (1), if transferable land was, immediately before becoming Aboriginal land under this division, the subject of—
  - (a) a 1985 Act granted lease or a new Act granted lease under the new Land Holding Act; or
  - (b) a lease under the Land Act; or
  - (c) a trustee (Aboriginal) 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 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—
  - (a) native title; and
  - (b) a right of a local government to access, occupy, use or maintain a facility on the land; and
  - (c) an interest in favour of the State or Commonwealth other than an interest that is not registered.

#### **45A Existing interests held by local government**

- (1) This section applies if a local government has an existing interest under section 45 to access, occupy, use or maintain a facility on Aboriginal land.
- (2) If the local government does not intend to continue to access, occupy, use or maintain the facility, the local government must give the trustee of the land notice of that fact.

- (3) If subsection (2) does not apply, the local government and the trustee of the land must use their best endeavours to provide for the continued access, occupation, use or maintenance of the facility under a registered interest in the land given by the trustee of the land.

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

- (1) This section applies if a deed of grant (the *new deed*) over all or part of the land comprised in a deed of grant in trust takes effect under section 44.
- (2) The deed of grant in trust is cancelled to the extent of the new deed.

#### **49 Land Court may resolve difficulties**

- (1) If a difficulty arises in—
- (a) the application of this division to a particular matter; or
  - (b) the application, to a particular matter, of a provision of another Act because of the operation of this division;
- the Land Court may, on the application of the 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**

#### **50 Application to hold Aboriginal land for native title holders**

- (1) This section applies if—

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- (a) a CATSI corporation that is the trustee of Aboriginal 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.

## **51 Decision on application**

- (1) The Minister must consider an application made under section 50 and decide—
- (a) to give the approval; or
  - (b) to refuse the application.
- (2) In considering the application, the Minister must have regard to—
- (a) whether any Aboriginal people 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 Aboriginal people 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 Aboriginal people.
- (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.

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## 52 Notices about decision

- (1) The Minister must give the registered native title body corporate notice of the Minister's decision under section 51.
- (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 Aboriginal 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 notice of the approval.
- (5) The notice must include a description of the Aboriginal 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 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.

## 53 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**

### **54            Resource reservations under resource 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 8
- the *Mineral Resources Act 1989*, section 8
- the *Petroleum Act 1923*, section 10
- the *Petroleum and Gas (Production and Safety) Act 2004*, section 27.

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

- (1) A deed of grant of transferred land may contain a reservation to the State of forest products or quarry material above, on or below the surface of the land only if it is declared by regulation that—
  - (a) the forest products or quarry material is of vital State interest; and
  - (b) the rights in the forest products or quarry material are 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



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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**                      **Claims for claimable land**

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

#### **56**        **Duly made claims**

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

- (a) section 57;
- (b) section 58;
- (c) section 59;
- (d) section 60.

#### **57**        **Who may make a claim**

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

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

A claim under this Act may only be made on 1 or more of the following grounds—

- (a) traditional affiliation;
- (b) historical association.

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

A claim under this Act must—

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

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

A claim under this Act must be made not later than 15 years after the commencement of section 57.

*Note—*

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

## **Division 2 Determination of claims**

### **61 Deciding whether claim duly made**

- (1) If a claim is made to the chief executive, the chief executive must decide whether the claim appears to be duly made.

- (2) If the chief executive is satisfied that the claim appears to be duly made, the chief executive must accept the application and refer the claim to the Land Tribunal.
- (3) If the chief executive is not satisfied, the chief executive must refuse to accept the application.
- (4) The chief executive must notify the claimants, in writing, of his or her decision.
- (5) If the chief executive refuses to accept the application, the chief executive must also notify the claimants, in writing, of his or her reasons for refusing to accept the application.
- (6) If the chief executive refuses to accept the application, the claimants may ask the chairperson of the Land Tribunal to decide whether the claim is duly made.
- (7) If the chairperson decides that the claim is duly made, the chairperson must direct the chief executive to accept the application under subsection (2).
- (8) If the chairperson decides that a claim is not duly made, the chairperson must notify the claimants, in writing, of his or her reasons for refusing to accept the application.
- (9) Despite subsection (1), if a recommendation has been made to the Minister under section 71 for a grant in fee simple, another claim may not be duly made over the same land.
- (10) Nothing in this section prevents the chief executive from accepting an application if—
  - (a) a claim (the *repeat claim*) has been made to the chief executive under section 59 and it appears to the chief executive that the land to which the claim relates is completely or partly the same as land that has previously been claimed (the *previous claim*); and
  - (b) no recommendation was made to the Minister under section 71 about the previous claim.

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

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

## **63 Joint hearing of claims**

If—

- (a) a claim (the *first claim*) is duly made under this Act by a group of Aboriginal people for an area of claimable land; and

- (b) a claim (the *subsequent claim*) is duly made under this Act by another group of Aboriginal people for the whole or a part of the area of claimable land (whether or not an additional area of claimable land is also claimed); and
- (c) the subsequent claim is referred to the Land Tribunal within the period specified in the notice published under section 62 in relation to the first claim or before the hearing of the first claim has started;

then—

- (d) the first claim and the subsequent claim are to be heard and determined together; and
- (e) if the subsequent claim does not include an additional area of claimable land—section 62 does not apply to the subsequent claim.

## **64 Repeat claims**

If a repeat claim mentioned in section 61(10) has been referred to the Land Tribunal, the tribunal may hear the repeat claim only if a presiding member is satisfied that the repeat claim could be established on 1 or more grounds mentioned in section 65 or 66 because—

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

## **65 Establishment of claim on ground of traditional affiliation**

- (1) A claim by a group of Aboriginal people for an area of claimable land on the ground of traditional affiliation is established if the Land Tribunal is satisfied that the members of the group have a common connection with the land based

on spiritual and other associations with, rights in relation to, and responsibilities for, the land under Aboriginal tradition.

- (2) In determining the claim, the tribunal must consult with, and consider the views of, the persons recognised under Aboriginal tradition as the elders of the group of Aboriginal people.

## **66 Establishment of claim on ground of historical association**

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

## **67 Claim may be established for only part of land claimed**

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

## **68 Claim may be established on more than 1 ground**

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

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**69 Time at which it is to be decided whether land is claimable land**

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

**70 Amendment of claim**

- (1) A claim under this Act may be amended with the leave of the Land Tribunal.
- (2) If a claim is amended to include land that was not claimed in the original claim, section 62 applies as if a separate claim had been made for that land and the claim had been referred to the tribunal.

**71 Recommendation to Minister**

- (1) Subject to section 72, if a claim by a group of Aboriginal people for an area of claimable land is established, the Land Tribunal must recommend to the Minister that the land be granted in fee simple to the group.
- (2) When the tribunal makes a recommendation under subsection (1), the tribunal must also make recommendations to the Minister as to the entity, or the persons who are to be represented by an entity, that should be appointed to be the grantee of the land as trustee for the benefit of the group of Aboriginal people concerned.
- (3) In making recommendations under subsection (2), the tribunal must, unless it is satisfied that exceptional circumstances exist that require it to do otherwise, act in a manner that is consistent with—
  - (a) any Aboriginal tradition applicable to the land; and
  - (b) the views of the group of Aboriginal people concerned so far as they are not inconsistent with any such Aboriginal tradition.

- (4) When the tribunal makes a recommendation under subsection (1), the tribunal must advise the Minister, in writing, in relation to each of the following matters—
- (a) the number of Aborigines who will be advantaged by a grant of the land, and the nature and extent of the advantage that will accrue to them;
  - (b) the responsibilities in relation to the land that the group of Aboriginal people concerned agree to assume if the land is granted because of the claim, and how those responsibilities should be expressed in any deed of grant for the land;
  - (c) the detriment to persons or communities (including other Aboriginal groups and Torres Strait Islanders) that might result from a grant of the land;
  - (d) the effect (if any) that a grant of the land is likely to have on the existing and proposed patterns of land usage in the region of the land.
- (5) In this section—

*Minister* means the Minister administering the Land Act.

## **72 Resolution of conflicting claims**

- (1) Subject to subsection (2), if claims by 2 or more groups of Aboriginal people for the same area of claimable land are established on the same ground, the Land Tribunal must recommend to the Minister that the land be granted jointly to the groups.
- (2) If—
- (a) more than 1 claim is established; and
  - (b) each of the competing claims is established on 1 or more grounds; and
  - (c) 1 or more of the claims is established on the ground of traditional affiliation;



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a recommendation must not be made in favour of any other group on the ground of historical association.

(3) In this section—

*Minister* means the Minister administering the Land Act.

### **73 Notification of parties**

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

- (a) that the claim has been so established; and
- (b) of the recommendations (if any) made to the Minister in relation to the claim.

(2) If a claim by a group of Aboriginal people for an area of claimable land is not established on 1 or more grounds, the Land Tribunal must notify each party to the proceeding, in writing, that the claim has not been so established.

(3) In this section—

*Minister* means the Minister administering the Land Act.

## **Part 6 Grant of claimable land as Aboriginal land**

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

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

(1) If—

- (a) the Land Tribunal recommends to the Minister that an area of land be granted in fee simple to a group of Aboriginal people; and

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- (b) the Minister is satisfied that the land, or a part of the land, should be so granted to the group;  
the Minister must direct the chief executive to prepare a deed of grant in fee simple over the land or that part of the land.
- (2) The land need not be surveyed but may be described in the deed of grant in such manner as the Minister directs.
- (3) The deed of grant must show that the land is held by the grantees for the benefit of the group of Aboriginal people and their ancestors and descendants.
- (4) The deed of grant must specify—
  - (a) the ground on which the Land Tribunal recommended that the land be granted; and
  - (b) the responsibilities that the group of Aboriginal people have agreed to assume in relation to the land.
- (5) Subsections (2), (3) and (4) have effect despite any other Act or any rule of law or practice.

## **75 Appointment of grantee**

- (1) The Minister may appoint the following entities as grantee of land the subject of a deed of grant prepared under section 74—
  - (a) a CATSI corporation that is qualified to hold the land; or
  - (b) a land trust.
- (2) However, the Minister may appoint a CATSI corporation that is a registered native title body corporate as a grantee of land under subsection (1) 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) Before making the appointment, the Minister—

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- (a) must consult with, and consider the views of, the group of Aboriginal people concerned; and
  - (b) unless the Minister is satisfied that exceptional circumstances exist that require the Minister to do otherwise, must have regard to—
    - (i) any Aboriginal tradition applicable to the land; and
    - (ii) the views of the group to the extent the views are not inconsistent with any Aboriginal tradition applicable to the land.
- (4) 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—
- (a) whether any of the group of Aboriginal people concerned, other than the native title holders of the land, may be adversely affected by the proposed appointment; and
  - (b) if the Minister is satisfied any of the group of Aboriginal people concerned will be adversely affected by the proposed appointment—any action the registered native title body corporate intends to take to address the concerns of the Aboriginal people.

## **76 Authority to grant fee simple in claimable land**

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

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

- (1) A deed of grant prepared under this division takes effect on the delivery of the deed of grant to the grantee.
- (2) On delivery of the deed of grant to the grantee, the land the subject of the deed becomes granted land and, if the land is not already Aboriginal land, becomes Aboriginal land.

- (3) Subsection (1) has effect despite any other Act or any rule of law or practice.

## 78 Existing interests

- (1) If granted land was, immediately before becoming Aboriginal land under this division, subject to an interest or benefited by an easement, the interest continues in force or the land continues to be benefited by the easement.
- (2) In this section—  
*interest* includes native title, but does not include an interest in favour of the State or Commonwealth that is not registered.

## 79 Cancellation of existing deed of grant

- (1) If—
- (a) land is the subject of a deed of grant issued under part 4 (the *existing deed*); and
  - (b) a deed of grant (the *new deed*) over the whole or a part of the land takes effect under section 77;
- the existing deed is cancelled, to the extent of the new deed, by operation of this section.
- (2) The Minister must cause notice to be given to the registrar of titles of the day of delivery of the new deed to the grantees and the registrar must note the cancellation of the existing deed in the register accordingly.
- (3) The trustee that holds the existing deed must, on receipt of notice by the Minister so to do, deliver the existing deed to the chief executive within such reasonable period, as is specified in the notice.
- (4) If the existing deed is cancelled only in relation to part of the land, the chief executive must prepare and issue to the trustee that holds the deed a deed of grant under the Land Act (the *replacement deed*) over the remaining part of the land.

- (5) The replacement deed is, for the purposes of this Act, taken to be a deed of grant prepared and issued under part 4.
- (6) The chief executive must endorse on the replacement deed, in the proper order of priority, the instruments under which existing relevant interests arose.

## **80 Land Court may resolve difficulties**

- (1) If a difficulty arises in—
  - (a) the application of this division to a particular matter; or
  - (b) the application, to a particular matter, of a provision of another Act because of the operation of this division;the Land Court may, on the application of the 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 part or in an Act in force immediately before the commencement of this section.

## **Division 2 Reservations**

### **81 Resource reservations under other Acts**

A deed of grant of granted 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.

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

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

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## Division 3 Access to coastal land

### 83 Rights of access preserved

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

- (2) In this section—

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

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

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

## Part 7 Register of entities holding Aboriginal land

### 84 Keeping register of entities holding Aboriginal land

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

- (a) the entity's name, address for the service of documents and contact telephone number;
  - (b) a description of the Aboriginal land held by the entity.
- (3) If the entity is a land trust, the register must also 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 258, 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.

## **85 Giving information for register to the chief executive**

- (1) Each entity, other than a land trust, that holds Aboriginal land must—
- (a) as soon as practicable after the end of each financial year, give to the chief executive the information mentioned in section 84(2) for the entity; and



- (b) as soon as practicable after any of the information changes—give the chief executive a 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.

## 86 Obtaining information in register

- (1) A person may, in the approved form, ask the chief executive to give the person information included in the Aboriginal 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 84(3)(b), (d) or (e).

*publicly available part*, of the Aboriginal land holding entity register, means the part of the register containing all the following information—

- (a) the information mentioned in section 84(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 84(3)(f).

## **Part 8                      Transfer of Aboriginal land by Minister**

### **Division 1                Preliminary**

#### **87        Purpose of pt 8**

The purpose of this part is to provide for—

- (a) particular Aboriginal land to vest in the State; and
- (b) the transfer of Aboriginal land that vests in the State to another entity to hold as Aboriginal land.

#### **88        Application of pt 8**

This part applies to Aboriginal land that is or was held by a CATSI corporation for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants, if—

- (a) under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth)—
  - (i) the corporation stops being registered; and
  - (ii) the land is vested in the State; or
- (b) the corporation is no longer qualified to hold the land.

### **Division 2                Vesting and transfer of land**

#### **89        Vesting of land in the State**

- (1) If the CATSI corporation is no longer qualified to hold the land, the Minister may, by gazette notice, declare that the land vests in the State.
- (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.

## **90 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 89.
- (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.

## **91 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.

## **92 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
  - (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 Aboriginal people 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 Aboriginal people 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 Aboriginal people.

### **93 Transfer to entity to hold for benefit of Aboriginal people**

- (1) This section applies if the Minister does not transfer the land under section 92 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—
  - (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 the CATSI corporation is the registered native title body corporate for the determination; or

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- (b) a determination has not been made under the Commonwealth Native Title Act that native title exists in relation to all or a part of the land, but the Minister is satisfied it is appropriate in all the circumstances for the land to be transferred to the CATSI corporation.

*Examples of when it is appropriate for the land to be transferred to the CATSI corporation—*

- 1 The transfer to the CATSI corporation is supported by consultation with Aboriginal people particularly concerned with the land.
  - 2 The land is within the external boundaries of an area of land the subject of a native title determination and the CATSI corporation is the registered native title body corporate for the determination.
  - 3 An ILUA has been entered into for the land and the CATSI corporation is nominated in the ILUA as the proposed transferee for the land under this Act.
  - 4 Anthropological research supports the CATSI corporation as being the appropriate transferee.
- (4) Before transferring the land, the Minister must consult with, and consider the views of—
- (a) if the land is transferred land—Aboriginal people particularly concerned with the land; or
  - (b) if the land is granted land—the group of Aboriginal people for whom the land is held.
- (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 Aboriginal people particularly concerned with the land may be adversely affected by the proposed transfer; and
  - (b) if the Minister is satisfied any Aboriginal people 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 Aboriginal people.

- (6) In deciding to transfer land under this section, the Minister must have regard to any Aboriginal tradition 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.

## **94 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).
- (2) The notice must—
  - (a) include a description of the land; and
  - (b) state the following—
    - (i) the name of the proposed transferee;
    - (ii) if the land is transferred land—that an Aboriginal person particularly concerned with the land may make written representations to the Minister about the proposed transfer;
    - (iii) if the land is granted land—that the group of Aboriginal people for whom the land is held may make written representations to the Minister about the proposed transfer;
    - (iv) the place where the representations may be made;
    - (v) the period in which the representations must be made.
- (3) The stated period must end at least 28 days after the notice is published.

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- (4) A person, or the group, mentioned in subsection (2)(b)(ii) or (iii) may make written representations about the proposed transfer to the Minister within the stated period.

## **95 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 91.

## **Division 3 Notices to registrar**

### **96 Notice about land**

- (1) If land vests in the State or is transferred under this part, the chief executive must give the registrar 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.

## **Part 9 General provisions for dealing with Aboriginal land**

### **Division 1 Trustee's power to deal with Aboriginal land**

#### **97 Power to deal with Aboriginal land**

- (1) This section applies subject to this part and parts 2A and 10.
- (2) The trustee of Aboriginal land may—

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

*Note—*

For restrictions on dealing with particular land in the Cape York Peninsula Region, see section 114.

- (3) The lessee of a townsite lease may grant a licence for the use of all or a part of the lease land.

## **Division 2                      Sale or mortgage prohibited**

### **100      Prohibition on sale or mortgage of Aboriginal land**

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



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## **Division 4                      Transfer of Aboriginal land by trustee**

### **Subdivision 1                Land held other than by CATSI corporation**

#### **103      Application of sdiv 1**

This subdivision applies to Aboriginal land held by—

- (a) a land trust; or
- (b) Aurukun Shire Council; or
- (c) Mornington Shire Council.

#### **104      Transfer of Aboriginal land**

- (1) The trustee of the Aboriginal land (the *transferor*) may transfer all or a part of the land only—
  - (a) with the Minister’s written approval; and
  - (b) if the trustee is a land trust—to a following entity (the *transferee*)—
    - (i) another land trust;
    - (ii) a CATSI corporation that is qualified to hold the land;
    - (iii) Aurukun Shire Council;
    - (iv) Mornington Shire Council; and
  - (c) if the trustee is Aurukun Shire Council or Mornington Shire Council—to a CATSI corporation that is qualified to hold the land (also the *transferee*).
- (2) If a trustee transfers land under this subdivision—
  - (a) all improvements on the land must be transferred with the land; and

- (b) 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 the Aboriginal people particularly concerned with the land and their ancestors and descendants if the land is transferred land and subparagraph (i) does not apply to the transfer; or
  - (iii) the benefit of the group of Aboriginal people and their ancestors and descendants if the land is granted land and 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—
  - (i) the benefit of the Aboriginal people particularly concerned with the land and their ancestors and descendants if the land is transferred land; or
  - (ii) the benefit of the group of Aboriginal people and their ancestors and descendants if the land is granted land; and
- (d) if the trustee is a land trust and all the Aboriginal land held by the trustee is transferred to the transferee—
  - (i) the land trust for the land that is transferred is dissolved; and
  - (ii) all the assets and liabilities of the trustee become the assets and liabilities of the transferee; and
- (e) if the trustee is a land trust and paragraph (d) does not apply—the assets and liabilities of the trustee mentioned in section 106(1)(a)(ii) become the assets and liabilities of the transferee.

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## **105 Application for approval to transfer**

- (1) The trustee of the Aboriginal 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 transferor or transferee is a land trust—be accompanied by evidence satisfactory to the Minister of each matter mentioned in section 106(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 each matter mentioned in section 106(1)(c) or (d) that applies to the transfer.

## **106 Minister's approval to transfer**

- (1) The Minister may give an approval to transfer the land only if satisfied—
  - (a) if the transferor is a land trust—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

- (ii) the transferee is qualified to hold the land; and
- (d) if the transferee is a CATSI corporation that is a registered native title body corporate—
  - (i) 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 the CATSI corporation is the registered native title body corporate for the determination; or
  - (ii) a determination has not been made under the Commonwealth Native Title Act that native title exists in relation to all or a part of the land, but it is appropriate in all the circumstances for the land to be transferred to the CATSI corporation; and

*Examples of when it is appropriate for the land to be transferred to the CATSI corporation—*

- 1 The transfer to the CATSI corporation is supported by consultation with Aboriginal people particularly concerned with the land.
  - 2 The land is within the external boundaries of an area of land the subject of a native title determination and the CATSI corporation is the registered native title body corporate for the determination.
  - 3 An ILUA has been entered into for the land and the CATSI corporation is nominated in the ILUA as the proposed transferee for the land under this Act.
  - 4 Anthropological research supports the CATSI corporation as being the appropriate transferee.
- (e) it is appropriate in the circumstances to transfer the land.
  - (2) If the Minister gives an approval to transfer the land, the chief executive must notify the approval by gazette notice.
  - (3) The gazette notice must—
    - (a) include all of the following—
      - (i) the name of the transferor;
      - (ii) a description of the land being transferred;

- (iii) details of each registered interest in the land being transferred;
  - (iv) a description of all Aboriginal land, if any, that will be held by the transferor after the transfer;
  - (v) the name of the transferee;
  - (vi) a description of all Aboriginal 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 104(2)(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.

## 107 Effect of gazette notice about transfer

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

## Subdivision 2 Land held by CATSI corporation

### 108 Application of sdiv 2

- (1) This subdivision applies to Aboriginal land held by a CATSI corporation.
- (2) However, this subdivision does not apply to a transfer of Aboriginal 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.

## **109 Transfer of Aboriginal land**

- (1) The trustee of the Aboriginal 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) 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
  - (b) otherwise—
    - (i) the benefit of the Aboriginal people particularly concerned with the land and their ancestors and descendants if the land is transferred land; or
    - (ii) the benefit of the group of Aboriginal people and their ancestors and descendants if the land is granted land.

## **110 Application for approval to transfer**

- (1) The trustee of the Aboriginal 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.

## **111 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) if the transferee is a CATSI corporation that is a registered native title body corporate—
- (i) 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 the CATSI corporation is the registered native title body corporate for the determination; or
  - (ii) a determination has not been made under the Commonwealth Native Title Act that native title exists in relation to all or a part of the land, but it is appropriate in all the circumstances for the land to be transferred to the CATSI corporation; and
- Examples of when it is appropriate for the land to be transferred to the CATSI corporation—*
- 1 The transfer to the CATSI corporation is supported by consultation with Aboriginal people particularly concerned with the land.
  - 2 The land is within the external boundaries of an area of land the subject of a native title determination and the CATSI corporation is the registered native title body corporate for the determination.
  - 3 An ILUA has been entered into for the land and the CATSI corporation is nominated in the ILUA as the proposed transferee for the land under this Act.
  - 4 Anthropological research supports the CATSI corporation as being the appropriate transferee.
- (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 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.

## **112 Effect of gazette notice about transfer**

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

## **Subdivision 3 Exemption from fees and charges**

### **113 Exemption**

If a trustee of Aboriginal 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 Land in Cape York Peninsula Region**

### **114 Dealing with Aboriginal land in Cape York Peninsula Region**

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



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

## **Division 6            Other matters**

### **115    Trustee to advise chief executive of change to description of land**

If a trustee deals with Aboriginal 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 notice of the change.

### **116    Particular dealings in Aboriginal land void**

- (1) A grant, transfer or other creation of an interest in Aboriginal land in contravention of this part or part 2A or 10 is void.
- (2) Subsection (1) does not apply to a registered interest.

### **117    Provision about resumption of Aboriginal land etc.**

- (1) An interest in Aboriginal 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 Aboriginal land may be taken under the Acquisition Act only for a relevant purpose.
- (3) To remove any doubt, it is declared that, for taking an interest in Aboriginal land under the Acquisition Act, the Aboriginal land is land as defined in that Act.

- (4) Subsection (1) has effect despite any other Act, whether enacted before or after the commencement 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*.

## **118 Devolution of granted land**

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

- (b) the views of the Aboriginal people to the extent they are not inconsistent with the Aboriginal tradition.
- (6) Subsection (2) applies despite any other Act.

## Part 10 Leasing of Aboriginal land

### Division 1 Definitions

#### 119 Definitions for pt 10

In this part—

*home ownership lease* see sections 120(2) and 121(2).

*lessee* means—

- (a) for a part 10 lease granted under a townsite lease—the sublessee under the townsite lease; or
- (b) for another part 10 lease—the lessee under the lease.

*lessor* means—

- (a) for a part 10 lease granted under a townsite lease—the lessee of the townsite lease; or
- (b) for another part 10 lease—the trustee of the lease land.

*part 10 lease* means a lease granted under this part.

*townsite lease* see section 120(3).

### Division 2 Grant of leases for Aboriginal land

#### 120 Grant of lease by trustee of Aboriginal land

- (1) The trustee of Aboriginal land may grant a lease over all or a part of the land for not more than 99 years.
- (2) Without limiting subsection (1), the trustee of Aboriginal land may grant a lease (a *home ownership lease*) over all or a part

of the land for 99 years to any of the following for residential use—

- (a) an Aboriginal person;
  - (b) a person who is not an Aboriginal person if—
    - (i) the person is the spouse or former spouse of—
      - (A) a person mentioned in paragraph (a); or
      - (B) a person mentioned in paragraph (a) who is deceased; or
    - (ii) the lease supports another part 10 lease granted to the person.
- (3) The trustee of Aboriginal land may grant a perpetual lease (a *townsite lease*) over all or a part of the land if—
- (a) the land or part is township land; and
  - (b) the lease is granted to a local government.

## **121 Grant of lease by lessee of townsite lease**

- (1) The lessee of a townsite lease may grant a lease for not more than 99 years over all or a part of the lease land.
- (2) Without limiting subsection (1), the lessee of a townsite lease may grant a lease (also a *home ownership lease*) over all or a part of the lease land for 99 years to any of the following for residential use—
  - (a) an Aboriginal person;
  - (b) a person who is not an Aboriginal person if—
    - (i) the person is the spouse or former spouse of—
      - (A) a person mentioned in paragraph (a); or
      - (B) a person mentioned in paragraph (a) who is deceased; or
    - (ii) the lease supports another part 10 lease granted to the person.

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## **Division 3                      Common provisions for part 10 leases**

### **122      General conditions of particular leases**

- (1) A part 10 lease, other than a townsite lease, may include any of the following conditions—
  - (a) a stated standard terms document under the Land Title Act forms part of the lease;
  - (b) the lease must not be transferred without the lessor's prior written consent;
  - (c) an interest under the lease, other than a mortgage of the lease, must not be created without the lessor's prior written consent.
- (2) If a part 10 lease includes a condition mentioned in subsection (1)(b) or (c), the lessor must not unreasonably withhold consent to the transfer or the creation of an interest under the lease.
- (3) A part 10 lease may be mortgaged without the consent of the lessor.
- (4) Subject to subsection (3), this section does not limit the conditions that may be imposed on a part 10 lease.

### **123      Option to renew particular lease**

- (1) A part 10 lease granted under section 120(1) or 121(1) may include an option to renew the lease.
- (2) The term of the renewed lease must not be more than the initial term of the lease.

### **124      Transfer of lease**

A part 10 lease must not be transferred to a person who, under this Act, would not be entitled to a grant of the lease.

## **125 Lease etc. to be registered**

- (1) The lessee of a part 10 lease must register the lease and an amendment, surrender or transfer of the lease.
- (2) Despite the Land Title Act, section 65(2), an instrument of lease for Aboriginal 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 4 Home ownership leases**

### **Subdivision 1 Conditions and requirements**

#### **126 General conditions and requirements**

- (1) A home ownership lease is subject to all of the following conditions—
  - (a) the annual rental under the lease is the amount, of not more than \$1, decided by the lessor;
  - (b) 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—
    - (i) a valuation methodology decided by the chief executive;
    - (ii) the benchmark purchase price, as prescribed by regulation, for land in the part of the State in which the lease land is situated;
  - (c) the lease land must be used primarily for residential use;
  - (d) if a dwelling for residential use is not situated on the lease land when the lease is granted—the lessee must ensure a dwelling for residential use is built on the land within 8 years after the lease is granted.

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- (2) A lessor may grant a home ownership lease only if the amount equal to the value of the lease land decided under subsection (1)(b) has been paid to the lessor.
  - (3) The chief executive—
    - (a) must, if asked, give a person a copy of the valuation methodology mentioned in subsection (1)(b)(i); and
    - (b) may make the valuation methodology available for inspection on the department’s website.
  - (4) However, the value of the lease land under subsection (1)(b) must be taken to be nil if—
    - (a) the lessee is the recipient of a hardship certificate under the new Land Holding Act; and
    - (b) the certificate has not previously been used under this section, whether or not the land identified in the certificate is the same as the lease land.

## **127 Additional requirement if dwelling situated on land**

- (1) This section applies if—
  - (a) a lessor proposes to grant a home ownership lease; and
  - (b) a dwelling is situated on the lease land.
- (2) The lessor must give the housing chief executive 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 notice stating whether or not the dwelling is a social housing dwelling.
- (4) The lessor must not grant the lease before receiving the notice under subsection (3).
- (5) This section and section 128 do not limit section 126.

**128 Additional conditions and requirements for social housing dwelling**

- (1) This section applies if the notice under section 127(3) states the dwelling is a social housing dwelling.
- (2) Before the lease is granted, the lessor must decide the price of the dwelling—
  - (a) by agreement with the housing chief executive; or
  - (b) by using a methodology agreed between the lessor and the housing chief executive.
- (3) The consideration payable for the lease must include, as a lump sum payment, an amount equal to the price of the dwelling decided under subsection (2).
- (4) The lessor may grant the lease only if—
  - (a) the housing chief executive has given written approval that the grant may include the sale of the dwelling; and
  - (b) the amount equal to the price of the dwelling decided under subsection (2) has been paid to the lessor.
- (5) In considering whether to give the approval mentioned in subsection (4)(a), the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be social housing.
- (6) If the lessor grants the lease, and within 28 days after the lease is registered, the lessor must give the housing chief executive—
  - (a) a notice stating—
    - (i) the day the lease was registered; and
    - (ii) the names of the parties to the lease; and
  - (b) evidence showing the consideration for the lease under subsection (3) and section 126(1)(b) has been paid to the lessor.



*Note—*

An amount paid under subsection (3) for the price of a dwelling must be used by the lessor as required under section 288.

## **Subdivision 2      Forfeiture**

### **129      Grounds for forfeiture**

A home ownership lease may be forfeited only if—

- (a) the lessee breaches either of the following conditions and fails to remedy the breach within 6 months after receiving notice of the breach from the lessor—
  - (i) a condition of the lease mentioned in section 126(1)(d);
  - (ii) another condition if the lessor reasonably considers a breach of the condition is of a serious nature and warrants forfeiture of the lease; or
- (b) the lessee acquired the lease by fraud.

### **130      Referral to Land Court for forfeiture**

- (1) Before a home ownership lease is forfeited, the lessor must refer the proposed forfeiture to the Land Court to decide whether the lease may be forfeited.
- (2) At least 28 days before the lessor refers the proposed forfeiture to the Land Court, the lessor must give notice of the proposed referral to the lessee and any mortgagee of the lease.
- (3) The notice must state the grounds on which the lessor reasonably considers the lease may be forfeited.
- (4) If the lessor refers the proposed forfeiture to the Land Court, the lessor must file a copy of the notice in the court.
- (5) In deciding whether the lease may be forfeited, the Land Court must have regard to—

- (a) the grounds stated in the notice under subsection (3);  
and
  - (b) if the proposed forfeiture is 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.
- (6) A decision by the Land Court that the lease may be forfeited may be subject to conditions.

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

- (1) If the Land Court decides a home ownership lease may be forfeited, the lessor may—
- (a) if the proposed forfeiture is subject to conditions decided by the court—forfeit the lease under this subdivision if the conditions of forfeiture are satisfied;  
or
  - (b) otherwise—forfeit the lease under this subdivision.
- (2) If the proposed forfeiture is because of a breach of a lease condition, the lessor may decide not to forfeit the lease and instead allow the lease to continue subject to the lease being amended to include conditions agreed between the lessor and the lessee.

### **132 Notice and effect of forfeiture**

- (1) If the lessor forfeits a home ownership lease, the lessor must, within 60 days after the Land Court makes its decision about forfeiture of the lease, give notice that the lease is forfeited to—
- (a) the lessee and any mortgagee of the lease; and
  - (b) the registrar of titles.
- (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.

### **133 Extension of term of lease if proposed forfeiture**

- (1) This section applies to a home ownership lease if—
  - (a) a proposed forfeiture of the lease has been referred to the Land Court; and
  - (b) after the referral but before the Land Court decides 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—the forfeiture of the lease takes effect as mentioned in section 132(3); or
  - (b) otherwise—the end of 60 days after the Land Court makes its decision.
- (3) Subsection (2) applies to the lease despite the provisions of the lease and any other provision of this Act.

## **Subdivision 3 Renewal**

### **134 Application to renew lease**

- (1) The lessee under a home ownership lease may apply in writing to the lessor to renew the lease.
- (2) The application must—
  - (a) state the name of the lessee; and

- (b) include information to identify the lease.

### **135 Notice of expiry of lease**

- (1) This section applies if the lessee under a home ownership lease has not, under section 134, applied for renewal of the lease at least 2 years before the term of the lease ends.
- (2) At least 1 year before the term of the lease ends, the lessor must give the lessee 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
  - (c) how the lessee may apply.

### **136 Lessor to consider and decide application**

Within 6 months after an application is made under section 134, the lessor must consider the application and decide to renew or not to renew the home ownership lease.

### **137 Decision to renew lease**

- (1) If the lessor decides to renew the home ownership lease, the lessor must give the lessee—
  - (a) notice of the decision; and
  - (b) a copy of the renewed lease.
- (2) The renewed lease—
  - (a) has effect immediately after the lease it replaces (the *replaced lease*) ends; and
  - (b) is subject to all the conditions to which the replaced lease was subject immediately before it ended.
- (3) No amount is payable under section 126(1)(b) for the renewed lease.

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**138 Lessor may decide not to renew lease**

The lessor may decide not to renew the home ownership lease only if the lessor is reasonably satisfied—

- (a) the lease land is not being used primarily for residential use; or
- (b) the lessee acquired the lease by fraud.

**139 Notice about decision not to renew lease**

If the lessor decides not to renew the home ownership lease, the lessor must give the lessee an information notice for the decision.

**140 Extension of term of lease if application for renewal**

- (1) This section applies to a home ownership lease if—
  - (a) the lessee has applied to renew the lease under section 134; and
  - (b) before the lessor decides 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.

**Subdivision 4 General matters about forfeiture or non-renewal of home ownership leases**

**141 Right to remove improvements if lease forfeited or not renewed**

- (1) If the lessor forfeits or decides not to renew a home ownership lease, the lessor must allow the lessee to remove the lessee's

improvements on the lease land within a reasonable period of at least 28 days decided by the lessor.

- (2) If the improvements are not removed within the period, they become the property of the lessor.

## **142 Payment by lessor if lease forfeited or not renewed**

- (1) If the lessor forfeits or decides not to renew a home ownership lease, the lessor must pay to the person who was the lessee the amount decided by the lessor 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 144—
  - (a) the value of the lease land on the day the lease is forfeited or ends;
  - (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 must be the amount decided by the lessor using the valuation methodology mentioned in section 126(1)(b)(i).
- (4) The value of any improvements on the lease land must be decided by the lessor based on 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) The lessor must decide the required amount as soon as practicable after giving the person notice that the lease is forfeited or not renewed.
- (6) On deciding the required amount, the lessor must give the person an information notice for the decision.
- (7) This section is subject to section 143.

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### **143 Unclaimed amount**

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.

### **144 Amount owing to lessor or mortgagee**

If the lessor forfeits or decides not to renew a home ownership 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.

### **145 Payment of amount to mortgagee in discharge of mortgage**

- (1) This section applies if—
  - (a) the lessor forfeits or decides not to renew a home ownership lease; and
  - (b) 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 144(d) is less than the difference between the maximum amount and the amounts

- deducted under section 144(a), (b) and (c)—the amount that may be deducted from the maximum amount under section 144(d); or
- (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 144(a), (b) and (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 payable to the person who was the lessee—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.

## **Subdivision 5      Miscellaneous**

### **146      Exemption from fees and charges**

- (1) This section applies to an instrument of lease for a home ownership 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.



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## **147 Beneficiary to home ownership lease**

- (1) A person who is beneficially entitled under a will to a home ownership lease may ask the lessor—
  - (a) to give the person a 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 the lessor's written consent to the transfer of the lease.

*Note—*

Under section 122, a home ownership lease may include a condition that it must not be transferred without the lessor's prior written consent.

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

## **Division 5 Townsite leases**

### **Subdivision 1 Restriction on grant**

#### **148 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—
  - (a) the lease is over an entire lot as shown in the appropriate register; and
  - (b) the Minister is reasonably satisfied that any existing interests in the proposed lease land are not inconsistent with the lease.

## **Subdivision 2      Requirements for Minister's consent**

### **149      General requirements for Minister's consent**

- (1) A person seeking the Minister's prior written 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 the consent, 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 reasonably considers relevant to the proposed lease.
- (3) Also, before giving the consent, the Minister must be reasonably satisfied—
  - (a) the Aboriginal people particularly concerned with the lease land are generally in agreement with the grant of the lease; and
  - (b) 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 dealing with townsite leases**

#### **150 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 prior written 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 is capable of complying with the conditions of the lease.
- (4) The Minister may consent to the amendment of a townsite lease only if reasonably 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.

### **151 Surrender of townsite lease**

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

### **152 No forfeiture of townsite lease**

A townsite lease can not be forfeited.

## **Subdivision 4 Effect of townsite lease on existing interests**

### **153 Lessee of townsite lease taken to be lessor of existing leases**

- (1) Subsection (2) applies if a townsite lease is granted over Aboriginal land that is, immediately before the grant of the townsite lease, the subject of a following lease (each a *continued lease*)—
  - (a) a 1985 Act granted lease or a new Act granted lease under the new Land Holding Act;
  - (b) a lease under the Land Act;
  - (c) a trustee (Aboriginal) lease.
- (2) On the grant of the townsite lease—
  - (a) the continued lease continues in force and is taken to be—
    - (i) if the continued lease is primarily for residential use—a home ownership lease for the same term for which the continued lease was granted; or
    - (ii) otherwise—a lease granted under section 121(1); and
  - (b) the lessee of the townsite lease is substituted for the lessor as a party to the continued lease.

*Note—*

Under section 45(2), the trustee of the Aboriginal land is the lessor of the continued lease.

- (4) Section 45(3) applies to a 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.

## **Part 11**                      **Indigenous management agreements and land in Cape York Peninsula Region and North Stradbroke Island Region**

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

#### **169**      **Entering into indigenous management agreement**

- (1) This section applies if—
- (a) it is proposed that an entity holds land in the Cape York Peninsula Region or the North Stradbroke Island Region as Aboriginal land; and
  - (b) the State and the entity agree that the land, or part of the land, is to become—
    - (i) for land in the Cape York Peninsula Region—a national park (Cape York Peninsula Aboriginal land); or
    - (ii) for land in the North Stradbroke Island Region—an indigenous joint management area.
- (2) Before the land is granted, the entity must enter into an indigenous management agreement with the State about the proposed management of the land, or the part of the land, that is to become a national park (Cape York Peninsula Aboriginal land) or an indigenous joint management area.

## **170 Requirements for indigenous management agreement**

- (1) An indigenous management agreement about the management of land must—
  - (a) include a lot on plan description of the land; and
  - (b) state the land will be managed in perpetuity as—
    - (i) for land in the Cape York Peninsula Region—a national park (Cape York Peninsula Aboriginal land); or
    - (ii) for land in the North Stradbroke Island Region—an indigenous joint management area; and
  - (c) state how the land is proposed to be managed; and
  - (d) include details of any interim arrangements for its management before the approval of a management statement or management plan for the land; and
  - (e) state the responsibilities of the environment Minister, and the chief executive under the *Nature Conservation Act 1992*, in relation to the management of the land; and
  - (f) state the responsibilities of the trustee in relation to its management; and
  - (g) include details of the process for developing a management statement or management plan for the land; and
  - (h) include details of areas of the land to which general public access may be restricted; and
  - (i) include information about the management of any infrastructure on the land; and
  - (j) state how existing interests in the land will be managed and how future interests in the land will be created and managed.
- (2) An indigenous management agreement about the management of land that is a national park that is to become a national park (Cape York Peninsula Aboriginal land) or an indigenous joint management area must not result in a decrease, in the

aggregate, in the public rights of access that existed in relation to the national park immediately before it becomes a national park (Cape York Peninsula Aboriginal land) or an indigenous joint management area.

- (3) An indigenous management agreement about the management of land may include other matters relevant to the management of the land that the trustee, or proposed trustee, for the land and the environment Minister consider appropriate.
- (4) An indigenous management agreement about the management of land can not be entered into without the consent of the environment Minister.
- (5) In this section—

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

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

## **171 Amending indigenous management agreement**

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

## **172 Recording of indigenous management agreement**

- (1) The chief executive must give the registrar of titles notice of each indigenous management agreement entered into under this Act.
- (2) The chief executive must give the notice—
  - (a) if the land the subject of the agreement becomes Aboriginal land after the agreement is entered into—as soon as practicable after the land becomes Aboriginal land; or
  - (b) if the land the subject of the agreement is Aboriginal land when the agreement is entered into—as soon as practicable after the agreement is entered into.

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

## **Division 2                      Protected areas in Cape York Peninsula Region**

### **173      Requirements about grant of prescribed protected areas in Cape York Peninsula Region**

- (1) This section applies to the following land if the land is, or includes part of, a prescribed protected area in the Cape York Peninsula Region (the *park land*)—
  - (a) transferable land;
  - (b) land for which the Land Tribunal has, under section 71, made a recommendation to the Minister before the commencement of this section.
- (2) Before the park land is granted under this Act, the trustee or proposed trustee for the land must enter into an indigenous management agreement with the State about the management of the park land.



- (3) A grant of the park land under this Act is subject to the condition that the park land must become a national park (Cape York Peninsula Aboriginal land).
- (4) In this section—  
*prescribed protected area* means—
  - (a) a national park; or
  - (b) a resources reserve under the *Nature Conservation Act 1992* prescribed by regulation.

#### **174 Prescribed protected areas are transferable land**

- (1) A prescribed protected area in the Cape York Peninsula Region is transferable land for the purposes of this Act.
- (2) In this section—  
*prescribed protected area* see section 173(4).

### **Division 3 Protected areas in North Stradbroke Island Region**

#### **175 Requirement about grant of prescribed protected areas in North Stradbroke Island Region**

- (1) This section applies to transferable land if the land is, or includes part of, a prescribed protected area in the North Stradbroke Island Region.
- (2) Before the land is granted under this Act, the trustee, or proposed trustee, for the land must enter into an indigenous management agreement with the State about the management of the land.
- (3) A grant of the land under this Act is subject to the condition that the land must become an indigenous joint management area.
- (4) In this section—

*prescribed protected area* means a national park (scientific), national park, conservation park or resources reserve under the *Nature Conservation Act 1992*.

## **Part 12 Provisions about particular claimable land**

### **176 Particular claimable land taken to be transferable land**

- (1) This section applies to claimable land that is in the Cape York Peninsula Region, other than—
  - (a) claimable land that is transferred land; or
  - (b) claimable land for which the Land Tribunal has, under section 71, made a recommendation to the Minister before the commencement of this section.
- (2) On the commencement of this section—
  - (a) the land is transferable land for the purposes of this Act; and
  - (b) the land stops being claimable land; and
  - (c) any proceeding before the Land Tribunal in relation to a claim for the land ends; and
  - (d) part 5, and part 6, division 1, stop applying to the claim for the land.
- (3) Subsection (2) applies despite any other provision of this Act.

### **177 Claimable land recommended for grant taken to be transferable land**

- (1) This section applies to the following land for which the Land Tribunal has, under section 71, made a recommendation to the Minister—
  - (a) land shown as national park 4 on plan NPW42;
  - (b) land shown as national park 8 on plan NPW118;

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- (c) land shown as national park 10 on plan NPW452, including the area shown and described on the plan as closed road;
  - (d) land shown as national park 16 on plan NPW359;
  - (e) lot 44 on plan NPW472;
  - (f) land declared to be national park by proclamation published in the gazette on 2 December 1939 at pages 1845 and 1846 and described as the Flinders Group of islands, comprising Flinders Island—exclusive of Special Lease No. 8544—and Stanley, Blackwood, Maclear, and Denham Islands;
  - (g) lots 1 and 2 on CP887589, lots 1 and 2 on CP887590, lot 3 on CP887717, lot 4 on CP887719, lot 5 on CP887718 and lot 285 on plan C157365;
  - (h) lot 215 on plan NPW46.
- (2) On the commencement of this section—
- (a) the land is transferable land for the purposes of this Act; and
  - (b) the land stops being claimable land; and
  - (c) any proceeding before the Land Tribunal in relation to a claim for the land ends; and
  - (d) part 5, and part 6, division 1, stop applying to the claim for the land.
- (3) Subsection (2) applies despite any other provision of this Act.

## Part 13 Decision-making process

### 178 When agreement of Aboriginal people is given

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

- (a) if there is a particular process of decision-making that, under the Aboriginal tradition of the Aboriginal people, must be complied with for decisions of that kind—the decision was made under the process; or
- (b) otherwise—the decision was made under the process of decision-making agreed to and adopted by the Aboriginal people for the decision or for decisions of that kind.

### **179 Decision-making by trustee**

- (1) This section applies if this Act provides that the trustee of Aboriginal land is required to make a decision about the land, including, for example, a decision about any of the following—
  - (a) the way in which the trustee will consult about the making of a freehold instrument for the land;
  - (b) whether to grant an interest in the land;
  - (c) whether to consent to the creation of a mining interest in the land;
  - (d) whether to enter into an agreement about the land.
- (2) The trustee must—
  - (a) have regard to—
    - (i) if the Aboriginal people 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 Aboriginal tradition, for decisions of that kind, of the Aboriginal people for whom the trustee holds the land; or
  - (b) if there is no decision-making process mentioned in paragraph (a)(i) or relevant Aboriginal tradition—make the decision under a process of decision-making agreed to and adopted by the trustee for the decision or for decisions of that kind.

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## **Part 14**                      **Provisions about mortgages of leases over Aboriginal land**

### **Division 1**                      **Preliminary**

#### **180**      **Definitions for pt 14**

In this part—

*lease* means a part 10 lease, other than a townsite lease.

*lessor* means—

- (a) for a lease granted under a townsite lease—the lessee of the townsite lease; or
- (b) for another lease—the trustee of the lease land.

#### **181**      **Application of pt 14**

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

### **Division 2**                      **Mortgages of leases over Aboriginal land**

#### **182**      **Provision about entering into possession of, and selling, lease**

- (1) This section applies if a mortgagee enters into possession of a lease granted over Aboriginal land.
- (2) The mortgagee must give the lessor for the lease 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), 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—
- (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 lease granted under a townsite lease—the lessee under the lease; or
  - (b) for another lease—the lessee under the lease.

### **183 How lessor deals with proceeds of sale**

- (1) This section applies if, under section 182, 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 15 Leasing of Aboriginal trust land

### Division 1 Preliminary

#### 184 Definitions for pt 15

In this part—

*Aboriginal trust land* means—

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

*trustee (Aboriginal) lease* means a lease of Aboriginal trust land granted under—

- (a) part 10 as applied under section 186(2); or

- (b) the Land Act, section 57 before the commencement of this part.

## **185 Relationship with Land Act**

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

## **Division 2 Leases**

### **186 Trustee (Aboriginal) leases**

- (1) A trustee of Aboriginal trust land may lease all or a part of the land under part 10.
- (2) For subsection (1), part 10 applies in relation to the leasing of Aboriginal trust land—
  - (a) as if a reference in the part to Aboriginal land were a reference to Aboriginal trust land; and
  - (b) as if the reference in section 122(1)(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) The grant of a lease over Aboriginal trust land in contravention of part 10 is void, unless the lease is registered.



- (4) Subsection (3) applies despite any other Act.

### **187 Amending trustee (Aboriginal) lease**

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

### **188 Mortgage of trustee (Aboriginal) lease**

- (1) Subject to subsection (2), a lessee of Aboriginal trust land may, under the Land Act, chapter 6, part 4, division 4, mortgage a trustee (Aboriginal) lease.
- (2) For mortgaging a trustee (Aboriginal) lease—
- (a) the Land Act, chapter 6, part 4, division 4, applies—
    - (i) as if the reference in section 345(2) to the Minister were a reference to the trustee; and
    - (ii) as if section 346(1) provided that the mortgagee may offer the lease for sale by public auction or may sell the lease by private contract; and
    - (iii) as if the reference in section 346(3) to a person qualified under the Land Act to hold the lease were a reference to a person entitled under this Act to a grant of the lease; and
    - (iv) as if section 347 were omitted; and

- (b) section 182 applies as if the reference in section 182(1) to Aboriginal land were a reference to Aboriginal trust land.

### **189 Surrender of trustee (Aboriginal) lease**

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

## **Part 16 Special provisions about prescribed DOGIT land and prescribed reserve land**

### **Division 1 Prescribed DOGIT land**

#### **192 Application of div 1**

This division applies to prescribed DOGIT land.

#### **193 Prescribed DOGIT land may be granted under this Act**

- (1) Despite any other provision of this Act, prescribed DOGIT land may be—
  - (a) granted under part 4; and
  - (b) held by a trustee for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land, and their ancestors and descendants.
- (2) If the land is held as mentioned in subsection (1)(b), the land may, for any dealing with the land under this Act or another Act, be called Aboriginal and Torres Strait Islander land.

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## **194 Minister to consult before grant of land**

Before the land is granted under part 4, the Minister must—

- (a) consult with Aboriginal people and Torres Strait Islanders particularly concerned with the land—
  - (i) to identify how the continued use of, and access to, the land by the Aboriginal people and Torres Strait Islanders can be achieved; and
  - (ii) about how the Aboriginal people and Torres Strait Islanders want the land to be held under this Act; and
- (b) consider the views of the Aboriginal people and Torres Strait Islanders mentioned in paragraph (a).

## **195 Application of general provisions**

- (1) The following provisions apply in relation to the land as if a reference in the provisions to Aboriginal people includes a reference to Torres Strait Islanders—
  - (a) section 202(6) and (7);
  - (b) section 282(2).
- (2) However, subsection (1)(a) applies for prescribed DOGIT land that is transferred land only if the land is held for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land, and their ancestors and descendants.

## **196 Application of provisions for grant of land**

- (1) This section applies if the land is to be or is—
  - (a) granted under part 4; and
  - (b) held for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land, and their ancestors and descendants.

- (2) The following provisions apply in relation to the land as if a reference in the provisions to Aboriginal people includes a reference to Torres Strait Islanders—
- (a) sections 39 and 40;
  - (b) section 42;
  - (c) section 104;
  - (d) section 109;
  - (e) section 149;
  - (f) sections 178 and 179;
  - (g) section 201;
  - (h) section 203;
  - (i) section 283;
  - (j) section 288.

- (3) Schedule 1, definition *qualified*, applies in relation to the land as follows—

***qualified***, for a CATSI corporation that holds, or proposes to hold, Aboriginal land under this Act that is prescribed DOGIT land, means—

- (a) membership of the CATSI corporation is restricted to—
  - (i) Aboriginal people particularly concerned with the land; or
  - (ii) Aboriginal people and 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—
  - (i) Aboriginal people particularly concerned with the land; or
  - (ii) Aboriginal people and Torres Strait Islanders particularly concerned with the land.

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- (4) The following provisions apply in relation to the land as if a reference in the provisions to an Aboriginal person includes a reference to a Torres Strait Islander—
- (a) section 41;
  - (b) sections 120(2) and 121(2).
- (5) Sections 178 and 179 apply in relation to the land as if a reference in the sections to Aboriginal tradition included a reference to Island custom.

## **Division 2                      Prescribed reserve land**

### **197      Meaning of *prescribed reserve land***

*Prescribed reserve land* means any of the following land that is situated on Thursday Island and prescribed under a regulation for this section—

- (a) land reserved and set apart under the repealed *Land Act 1962* for an Aboriginal reserve or for the benefit of Aboriginal inhabitants;
- (b) land dedicated under the Land Act as a reserve for Aboriginal purposes or the provision of services beneficial to Aboriginal people particularly concerned with the land.

### **198      Application of particular provisions**

Sections 120 and 121 apply in relation to prescribed reserve land as if a reference in the provisions to an Aboriginal person includes a reference to a Torres Strait Islander.

## **Part 17**

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

### **199 Use of Aboriginal land preserved**

- (1) If, on the day land becomes Aboriginal land, the land or any part of the land is being occupied or used by the State or the Commonwealth, the State or Commonwealth is entitled to continue to occupy or use it for such period as the land, or that part of the land, is required by the State or Commonwealth.
- (2) While the State or Commonwealth is entitled to the occupation or use of land under subsection (1), the improvements on the land are the property of the State or Commonwealth.
- (3) 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 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 subject to a home ownership lease; 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.
- (6) Subsection (7) applies if the Aboriginal 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 for the townsite lease.
- (8) For subsection (1) but without otherwise limiting the subsection, land is being occupied or used by the State or Commonwealth if, immediately before becoming Aboriginal land, it was a reserve under the Land Act and the State or Commonwealth was the trustee of the reserve.

## **200 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 199(1).

## **201 Access to land**

- (1) While the State or Commonwealth is entitled to the occupation or use of land under section 199(1), the officers, employees, agents and servants of the State or Commonwealth and their licensees and invitees are entitled, with or without vehicles, machinery, plant and equipment (of any description), to enter and cross Aboriginal land for the purpose of gaining access to the land.
- (2) A person mentioned in subsection (1) must only cross Aboriginal land by—
  - (a) the routes that were commonly used before the land became Aboriginal land; or
  - (b) other routes agreed on from time to time by the State or Commonwealth and the trustee of the land.
- (3) The trustee of Aboriginal land, other than a registered native title body corporate, must not agree on a route for subsection (2)(b) unless—
  - (a) the trustee has explained to the Aboriginal people particularly concerned with the land the purpose and effect of the proposed route; and

- (b) the Aboriginal people are given adequate opportunity to express their views on, and are generally in agreement with, the proposed route.
- (4) Contravention of subsection (3) does not invalidate an agreement made for the purposes of subsection (2)(b).
- (5) If the Aboriginal land being occupied or used by the State or the Commonwealth under section 199(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 Aboriginal land that is not relevant land.

## Part 18 Mining

### 202 Application of Mineral Resources Act 1989

- (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 (5), the *Mineral Resources Act 1989* applies to the following land as if it were a reserve, and the trustee of the land were the owner of the land, within the meaning of that Act—
  - (a) Aboriginal land that is or was transferred land;
  - (b) Aboriginal land (other than land that was transferred land) that was claimable land, but was not subject to a mining interest at the beginning of the day on which the relevant claim for the land was made under this Act, other than—



- (i) land that was acquired by or on behalf of Aboriginal people if all interests in the land (other than interests in favour of the State) were surrendered to or acquired by the State before the land became claimable land; or
  - (ii) any national park.
- (3) To allay any doubt, it is declared that the *Mineral Resources Act 1989* applies to Aboriginal land (other than land that was transferred land) that—
  - (a) was claimable land; and
  - (b) was acquired by or on behalf of Aboriginal people if all interests in the land (other than interests in favour of the State) were surrendered to or acquired by the State before the land became claimable land;as if that land were not Aboriginal land.
- (4) If Aboriginal land (other than land that was transferred land) was claimable land and was subject to a mining interest at the beginning of the day on which the relevant claim for the land was made under this Act, then—
  - (a) in relation to the mining interest and any associated interest—to allay any doubt, it is declared that the *Mineral Resources Act 1989* applies to the land as if the land were not Aboriginal land; and
  - (b) in relation to any other mining interest—subject to subsection (5), the *Mineral Resources Act 1989* applies to the land as if it were a reserve, and the trustee of the land were the owner of the land, within the meaning of that Act.
- (5) Subsections (2) and (4)(b) do not apply in relation to the *Mineral Resources Act 1989*, sections 316 and 317.
- (6) The holder of a mining lease must, before making application for a mining lease under the *Mineral Resources Act 1989*, section 316 or a variation of a mining lease under section 317 of that Act, consult and endeavour to reach agreement with the Aboriginal people particularly concerned with the land in

relation to which the application is to be made about the route of the proposed access over the land.

(7) Subsection (6) applies in relation to Aboriginal land held by a registered native title body corporate as if the reference in the subsection to Aboriginal people particularly concerned with the land were a reference to the registered native title body corporate that holds the land.

(8) In this section—

***associated interest***, in relation to a mining interest, means—

- (a) any renewal or other continuance in force of the interest;  
or
- (b) any other mining interest derived through, or as a result of, the interest.

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

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

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

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## Part 19 The Land Tribunal

### Division 1 Establishment and membership

#### 204 Land Tribunal

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

#### 205 Appointment of members

- (1) The members of the tribunal are to be appointed by the Governor in Council.
- (2) The chairperson is to be appointed on a part-time or full-time basis, and the deputy chairpersons and other members are to be appointed on a part-time basis.
- (3) A member of the tribunal is to be appointed under this Act, and not under the *Public Service Act 2008*.
- (4) Nothing in this Act prevents the chairperson also holding office as the chairperson or other member of the Land Tribunal established for the purposes of the *Torres Strait Islander Land Act 1991*.

#### 206 Qualifications for appointment

- (1) A person is not eligible for appointment as chairperson or deputy chairperson of the Land Tribunal unless the person is a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of the State, another State or a Territory of not less than 5 years standing.
- (2) A person is not eligible for appointment as a non-presiding member of the Land Tribunal unless the person—

- (a) has, in the opinion of the Governor in Council, suitable knowledge of Aboriginal people or Aboriginal tradition; or
- (b) has had experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or an authority of a government.

## **207 Term of appointment**

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

## **208 Terms and conditions of appointment**

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

## **209 Preservation of rights**

- (1) This section applies if an officer of the public service is appointed as the chairperson of the Land Tribunal.
- (2) The person retains and is entitled to all rights that have accrued to the person because of employment as an officer of the public service, or that would accrue in the future to the person because of that employment, as if service as chairperson were a continuation of service as an officer of the public service.
- (3) If the person has not attained 65 years of age at the time of the expiry of the person's term of office or resignation—

- (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the salary level, at that time, of an office equivalent to the one the person held before being appointed as chairperson; and
- (b) the person's service as chairperson is to be regarded as service in the public service for the purpose of determining the person's rights as an officer of the public service.

## **210 Leave of absence**

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

## **211 Resignation**

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

## **212 Disclosure of interests**

- (1) If a member of the Land Tribunal is, or is to be, a member of the tribunal as constituted for the purposes of a proceeding and the member has or acquires an interest (whether pecuniary or otherwise) that could conflict with the proper performance of the member's functions in relation to the proceeding—
  - (a) the member must disclose the interest to the parties to the proceeding; and
  - (b) except with the consent of all parties to the proceeding—the member must not take part in the proceeding or exercise any powers in relation to the proceeding.
- (2) Where the chairperson of the Land Tribunal becomes aware that a member of the tribunal, who is, or is to be, a member of the tribunal as constituted for the purposes of a proceeding,

has in relation to the proceeding an interest of the kind mentioned in subsection (1)—

- (a) if the chairperson considers that the member should not take part, or continue to take part, in the proceeding—the chairperson must direct the member accordingly; or
- (b) in any other case—the chairperson must cause the interest of the member to be disclosed to the parties to the proceeding if the interest has not already been disclosed to them.

### **213 Termination of appointment**

- (1) The Governor in Council may terminate the appointment of a member of the Land Tribunal if the member—
  - (a) becomes mentally or physically incapable of satisfactorily performing the member's duties; or
  - (b) is convicted of an indictable offence (whether in Queensland or elsewhere); or
  - (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service; or
  - (d) contravenes section 212 or a direction given under that section; or
  - (e) in the case of the chairperson—is absent, without the Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.
- (2) Subsection (1)(c) applies only to a non-presiding member.

### **214 Acting chairperson**

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

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the chairperson is absent from duty or from the State or is,

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for any other reason, unable to perform the duties of the office.

## **Division 2                      Organisation of tribunal**

### **215      Arrangement of business**

- (1) Subject to section 216, the chairperson of the Land Tribunal may give directions as to the arrangement of the business of the tribunal and as to the members who are to constitute the tribunal for the purposes of particular proceedings.
- (2) If the chairperson gives a direction as to the members who are to constitute the tribunal for the purposes of a particular proceeding, the chairperson may—
  - (a) at any time after giving the direction and before the start of the hearing of the proceeding; or
  - (b) if, in the case of a proceeding before the tribunal constituted by 3 members, 1 of those members ceases to be a member, or ceases to be available for the purposes of the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the matter to which the proceeding relates is determined— at any time after the member ceases to be a member or to be available;

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

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

- (c) the nature of the issues likely to be involved in the proceeding.

## **216 Constitution of tribunal**

- (1) Subject to section 218, the tribunal is to be constituted for the purposes of the hearing and determination of a proceeding by—
  - (a) a presiding member; or
  - (b) subject to subsection (2), a presiding member and 2 non-presiding members.
- (2) If the tribunal is to be constituted as mentioned in subsection (1)(b)—
  - (a) 1 of the non-presiding members must be a person who, in the opinion of the chairperson of the tribunal, has suitable knowledge of Aboriginal people or Aboriginal tradition; and
  - (b) the other non-presiding member must have had experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or an authority of a government.
- (3) The tribunal may be constituted for the exercise of powers in relation to the hearing of a proceeding, or for the purposes other than the hearing and determination of a proceeding, by a presiding member.

## **217 Member presiding**

At the hearing of a proceeding before the tribunal at which the tribunal is constituted for the purposes of the proceeding by more than 1 member, the presiding member is to preside unless another member is directed under section 218 to preside.



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

- (1) If the hearing of a proceeding has been commenced or completed by the Land Tribunal constituted by 3 members but, before the matter to which the proceeding relates has been determined, 1 of the members constituting the tribunal ceases to be a member, or ceases to be available for the purposes of the proceeding—
  - (a) if the parties agree and the chairperson does not give a direction under section 215—the hearing and determination, or the determination, of the proceeding may be completed by the tribunal constituted by the remaining members or member; or
  - (b) in any other case—the proceeding is to be reheard by the tribunal as reconstituted under section 216.
- (2) If the member who ceases to be a member, or ceases to be available for the purposes of the proceeding, is the member who is, but for this subsection, to preside, the chairperson may, in writing, appoint 1 of the remaining members, or the remaining member, to preside.
- (3) If a proceeding is reheard by the tribunal, the tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the tribunal as previously constituted, including any evidence taken in the proceeding.

## **219 Sitting places**

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

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

### **220 Parties to proceeding before tribunal**

- (1) Subject to section 229, the parties to a proceeding for the hearing of a claim under this Act are—

- (a) the claimants; and
  - (b) the claimants of any other claim under this Act that is to be heard and determined with that claim; and
  - (c) any other person who has been made a party to the proceeding by the tribunal on application by the person under subsection (2).
- (2) An interested person may, within the period specified in the notice published under section 62 in relation to the claim or within such further period as the tribunal allows, apply, in writing, to the tribunal to be made a party to the proceeding and the tribunal may, by order, make the person a party to the proceeding.

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

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

## **222 Representation before tribunal**

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

## **223 Procedure of tribunal**

- (1) In a proceeding before the Land Tribunal—
  - (a) the procedure of the tribunal is, subject to this Act, within the discretion of the tribunal; and

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

## **224 Conferences**

- (1) If a claim is referred to the Land Tribunal, the chairperson may direct the holding of a conference of the parties presided over by a presiding member if the chairperson considers the holding of the conference may help to resolve the claim.
- (2) A party to a proceeding to which the conference relates may be represented at the conference by a person who, under this Act, may represent the party at the hearing of the proceeding.

- (3) If a conference is held under subsection (1) and—
- (a) at or after the conference, agreement is reached between the parties as to the terms of a decision of the tribunal in the proceeding that would be acceptable to the parties; and
  - (b) the terms of the agreement are reduced to writing, signed by the parties and given to the tribunal; and
  - (c) the tribunal is satisfied that—
    - (i) a decision in those terms would be within the powers of the tribunal; and
    - (ii) that it would be appropriate to make a decision in those terms;

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

- (4) At the hearing of a proceeding before the tribunal, unless the parties otherwise agree, evidence must not be given, and statements must not be made, about anything that happens at a conference held under subsection (1) in relation to the proceeding.
- (5) If—
- (a) a conference held under subsection (1) in relation to a proceeding is presided over by a member of the tribunal; and
  - (b) a party to the proceeding who was present at the conference notifies the tribunal before, or at the start of, the hearing that the party objects to the member participating in the hearing;

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

- (6) In this section—

***Minister*** means the Minister administering the Land Act.

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**225 Hearings to be in public except in special circumstances**

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

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

## **226 Opportunity to make submissions**

Subject to section 225, the Land Tribunal must ensure that every party to a proceeding before the tribunal is given a reasonable opportunity to present the party's case and, in particular, to inspect any documents to which the tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to the documents.

## **227 Particular powers of tribunal**

- (1) For the purpose of a proceeding, the Land Tribunal may—
  - (a) take evidence on oath or affirmation; or
  - (b) proceed in the absence of a party who has had reasonable notice of the proceeding; or
  - (c) adjourn the proceeding from time to time.
- (2) For the purposes of the hearing of a proceeding, the chairperson, a presiding member, or an officer of the tribunal authorised in writing by the chairperson or a presiding member, may summon a person to appear before the tribunal to give evidence and to produce such documents (if any) as are specified in the summons.
- (3) The member who presides at the hearing of a proceeding—
  - (a) may require a person appearing before the tribunal to give evidence either to take an oath or to make an affirmation; and
  - (b) may administer an oath or affirmation to a person so appearing before the tribunal.
- (4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give to questions asked of the person will be true.

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**228 Manner in which questions to be decided**

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

**229 Power of tribunal to dismiss claim or strike out party**

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

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

**230 Tribunal may order that particular claimable land is transferable land**

- (1) This section applies if, before the Land Tribunal makes a decision about whether or not a claim under this Act for claimable land, other than transferred land, is established—
  - (a) each party to the proceeding that made a claim agrees in writing that the claimable land become transferable land; and
  - (b) the tribunal is given notice of the agreement.

- (2) If the Land Tribunal is satisfied it is appropriate in the circumstances that the land become transferable land, the tribunal may make an order that it is transferable land.
- (3) Before the Land Tribunal makes an order under subsection (2), the tribunal must have regard to the interests of any other party to the proceeding and how the interests are likely to be affected by the order.
- (4) If the Land Tribunal makes an order under subsection (2)—
  - (a) the land becomes transferable land when the order is made; and
  - (b) all claims for the land are taken to have been dismissed by the tribunal.

### **231 General powers**

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

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

- (1) Subject to this section and to section 225, the Land Tribunal must give written reasons for—
  - (a) its recommendations to the Minister in relation to a claim; and
  - (b) a claim being or not being established on 1 or more grounds.
- (2) The reasons must include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.
- (3) Subsection (2) does not apply if the tribunal's recommendations to the Minister are made without holding a hearing.



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- (4) The tribunal must cause a copy of its reasons to be given (in writing) to the Minister and each party to the proceeding.
- (5) In this section—
- Minister* means the Minister administering the Land Act.

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

- (1) A party to a proceeding before the Land Tribunal may—
- (a) appeal to the Land Appeal Court against a decision of the tribunal—
- (i) that an area of land is or is not claimable land; or
  - (ii) that a claim for an area of claimable land is or is not established on a particular ground; or
  - (iii) to make or not to make a particular recommendation to the Minister in relation to a claim; or
  - (iv) as to the terms of a particular recommendation to the Minister; and
- (b) appeal to the Land Appeal Court, with the leave of that court, against any other decision of the tribunal made in or in relation to the proceeding.
- (2) If—
- (a) a person has applied to be made a party to a proceeding before the Land Tribunal; and
  - (b) the tribunal decides that the person is not an interested person;
- the person may appeal to the Land Appeal Court against the decision.
- (3) An interested person who is dissatisfied with a determination of the Land Tribunal under section 283(2)(b) may appeal to the Land Appeal Court.

- (4) If the chairperson of the tribunal decides under section 61 that a claim is not duly made, the claimants may appeal to the Land Appeal Court.
- (5) An appeal, or application for leave to appeal, under this section must be made in accordance with any applicable rules of court and any regulations made for the purpose of this section.
- (6) The Land Appeal Court must hear and determine the appeal, or application for leave to appeal, and may make such order as it considers appropriate.
- (7) Without limiting subsection (6), the orders that may be made by the Land Appeal Court on an appeal include—
  - (a) an order affirming a decision of the Land Tribunal; or
  - (b) an order varying a decision of the Land Tribunal; or
  - (c) an order setting aside a decision of the Land Tribunal and—
    - (i) making a decision in substitution for the decision set aside; or
    - (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Land Appeal Court.
- (8) For the purposes of an appeal, the Land Appeal Court may exercise all the powers and discretions conferred on the Land Tribunal.
- (9) In this section—

*Minister* means the Minister administering the Land Act.

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

- (1) The Land Tribunal may, of its own motion or at the request of a party, refer a question of law arising in a proceeding before the tribunal to the Land Appeal Court for decision, but a question is not to be referred without the agreement of the

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presiding member (if any) who is presiding or the chairperson of the tribunal.

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

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

In a proceeding, the Land Tribunal may—

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

**236 Protection of members etc.**

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

**237 Continuing authority of member**

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

**238 Failure of witness to attend**

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

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

Maximum penalty—20 penalty units.

**239 Refusal of witness to be sworn or to answer questions**

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

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

Maximum penalty—20 penalty units.

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

#### **240 Obstructing tribunal etc.**

- (1) A person must not obstruct or improperly influence the conduct of a hearing of the Land Tribunal or attempt to do so.
- (2) A person must not contravene an order under section 225.

Maximum penalty—40 penalty units.

#### **241 Allowances for witnesses**

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

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

### **Division 4 Miscellaneous**

#### **242 Management of administrative affairs of tribunal**

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

### **243 Staff of tribunal employed under Public Service Act 2008**

The staff of the Land Tribunal are to be employed under the *Public Service Act 2008*.

### **244 Consultants to tribunal**

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

### **245 Annual report**

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

### **246 Delegation of powers by chairperson**

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

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## **Part 20**                      **Provisions about land trusts**

### **Division 1**                      **Preliminary**

#### **247**      **Composition of land trust**

A land trust for an area of Aboriginal land consists of all the members for the time being of the land trust.

#### **248**      **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.

## **249 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 267.

## **Division 2 Appointment, removal and suspension of members of land trusts**

### **Subdivision 1 Appointment of members**

#### **250 Minister may appoint member**

- (1) The Minister may, by notice given to a land trust, appoint a person to be a member of the land trust if—
  - (a) because of any circumstances affecting the operation of the land trust, the land trust can not appoint a member



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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.

- (b) 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.

- (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, Aboriginal people particularly concerned with the Aboriginal 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 Aboriginal tradition applicable to the Aboriginal land held by the land trust.

## **250A Land trust may appoint member**

- (1) A land trust may, by resolution, appoint a person to be a member of the land trust.
- (2) A land trust can not appoint a person under subsection (1)—

- (a) without the person's consent; or
  - (b) if the person has been removed as a member of any land trust by the Minister under this division.
- (3) A person appointed as a member of a land trust under this section becomes a member on the later of the following—
- (a) the day the resolution appointing the person as a member is made;
  - (b) any later day stated in the resolution.
- (4) A land trust must record its decision to appoint a person as a member of the land trust in the minutes of the meeting at which the person was appointed.

## **Subdivision 2      Grounds for removal or suspension of members**

### **251      Grounds for removal or suspension of member**

- (1) 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;
  - (c) the member is acting, or has acted, towards the land trust or another member in a way that is fraudulent, improper or contrary to the best interests of the land trust.

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- (2) Also, it is a ground for the Minister to remove or suspend a member that, because of any circumstances affecting the operation of the land trust—
- (a) 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
  - (b) a ground mentioned in subsection (1)(a), (b) or (c) exists for the member.

*Example of circumstances affecting the operation of a land trust—*

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

### **Subdivision 3      Removal or suspension of members by Minister**

#### **252      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;

- (f) that, if the member is removed as a member of the land trust, the member is also removed as a member of any other land trust.
- (4) The show cause period must end at least 1 month after the show cause notice is given.

### **253 Representations about show cause notice**

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

### **254 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.

### **255 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.
- (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 Aboriginal people particularly concerned with the Aboriginal land held by the land trust.
- (4) In acting under this section, the Minister must have regard to any Aboriginal tradition applicable to the Aboriginal 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 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.

### **255A Effect of removing member on other land trust membership**

- (1) This section applies if the Minister removes a member from a land trust under section 255(2) and the member is also a member of another land trust.
- (2) The member is also removed as a member of the other land trust.

### **256 Immediate suspension of member**

- (1) The Minister may suspend a member of a land trust immediately if the Minister believes—
  - (a) either—

- (i) a ground exists to remove or suspend the member;  
or
    - (ii) the member is a member of the executive committee of the land trust and, in performing the member's functions as a member of the committee, is likely to contravene this Act; and
  - (b) it is necessary to suspend the member immediately because there is an immediate risk to the proper operation of the land trust or proper dealing with trust property.
- (2) However, the Minister may immediately suspend the member only if the Minister also gives the member and the land trust a show cause notice for action to remove or suspend the member under this subdivision.
- (3) If the Minister decides to immediately suspend the member, the Minister must, when the Minister gives the show cause notice—
- (a) give the member an information notice about the decision; and
  - (b) give the land trust a copy of the information notice.
- (4) The suspension—
- (a) operates immediately the member is given the information notice; and
  - (b) if the member is also a member of another land trust—suspends the member as a member of the other land trust; 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 suspension took effect.

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## Subdivision 4      Removal or suspension of members by land trust

### 257      Proposed removal or suspension approved by resolution and show cause notice

- (1) A land trust may, by resolution, decide to take action under this subdivision (the *proposed action*) to remove or suspend a member of the land trust because a ground exists for the removal or suspension.
- (2) However, members of the land trust must be given at least 14 days notice of the general meeting of the land trust at which the resolution is intended to be proposed.
- (3) If the land trust makes a decision under subsection (1), the land trust must—
  - (a) refer the matter of the proposed action to the executive committee of the land trust to decide; and
  - (b) give the member a notice (a *show cause notice*).
- (4) The show cause notice must state all of the following—
  - (a) details of the resolution mentioned in subsection (1), including the date the resolution was made;
  - (b) the proposed action;
  - (c) the ground for the proposed action;
  - (d) an outline of the facts and circumstances forming the basis for the ground;
  - (e) if the proposed action is suspension of the member—the proposed suspension period;
  - (f) that the member may, within a stated period (the *show cause period*), make written representations to the land trust to show why the proposed action should not be taken.
- (5) The show cause period must end at least 1 month after the show cause notice is given.

### **257A Representations about show cause notice**

- (1) The member may make written representations to the land trust about the show cause notice during the show cause period.
- (2) A copy of any representations made by the member under subsection (1) must be given to each member of the executive committee of the land trust.

### **257B Land trust decisions about removal or suspension of member**

- (1) This section provides for how, by a resolution of the executive committee of the land trust, the land trust decides the action to be taken about a show cause notice given to a member of the land trust.
- (2) The resolution may be made only if the show cause period stated in the show cause notice has ended.
- (3) The executive committee must—
  - (a) consider all representations about the show cause notice received under section 257A(1); and
  - (b) decide—
    - (i) whether a ground exists to remove or suspend the member; and
    - (ii) if the executive committee decides a ground exists—whether removal or suspension of the member is warranted.
- (4) The land trust must take no further action about the show cause notice if the executive committee decides—
  - (a) no ground exists to remove or suspend the member; or
  - (b) a ground exists but the removal or suspension of the member is not warranted.
- (5) Subsections (6) to (8) apply if the executive committee decides a ground exists to remove or suspend the member and that the removal or suspension of the member is warranted.



- (6) The executive committee may decide to—
  - (a) if the proposed action was to remove the member—remove or suspend the member; or
  - (b) if the proposed action was to suspend the member—suspend the member for not longer than the proposed suspension period.
- (7) If a motion proposing removal or suspension fails to pass by resolution, the executive committee of the land trust may decide to—
  - (a) adjourn the matter of the proposed action; or
  - (b) refer the matter of the proposed action to a general meeting of the land trust to decide; or
  - (c) take no further action about the show cause notice.
- (8) A decision to remove or suspend takes effect on the later of the following—
  - (a) the day an information notice about the decision is given to the member under section 257D;
  - (b) any later day stated in the notice.
- (9) The executive committee of the land trust must record its decisions under this section—
  - (a) if a decision was made at a meeting of the executive committee—in the minutes of the meeting at which the decision was made; or
  - (b) otherwise—in writing.

### **257C Decisions about removal or suspension of member referred to land trust general meeting**

- (1) This section applies if the executive committee of a land trust refers, to a general meeting of the land trust, the matter of the action to be taken about a show cause notice given to a member of the land trust.

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- (2) The land trust may, by resolution at a general meeting of the land trust, decide the action to be taken about the show cause notice.
- (3) For subsection (2), section 257B applies with a reference to the executive committee of the land trust taken to be a reference to the land trust.
- (4) However, if a motion proposing removal or suspension fails to pass by resolution, the land trust must take no further action about the show cause notice.

### **257D Action after decision about removal or suspension of member**

- (1) This section applies if a decision about a show cause notice given to a member of a land trust is made under section 257B or 257C.
- (2) As soon as practicable after the decision is made, the land trust must give the member notice of the following—
  - (a) if, because of the decision, the land trust is, or is required, to take no further action about the show cause notice—notice that no further action will be taken;
  - (b) if the decision is to remove or suspend the member—an information notice for the decision;
  - (c) if the decision is to adjourn the matter of the removal or suspension of the member—notice of the decision to adjourn the matter;
  - (d) if the decision is to refer the matter of the removal or suspension of a member of the land trust to a general meeting of the land trust—notice of the decision to refer the matter and of the day and time of the general meeting of the land trust at which the matter will be considered.

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## **257E Immediate suspension of member**

- (1) A land trust may, by a resolution of the executive committee of the land trust, suspend a member of a land trust immediately if the executive committee decides—
  - (a) either—
    - (i) a ground exists to remove or suspend the member; or
    - (ii) the member is a member of the executive committee and, in performing the member's functions as a member of the executive committee, is likely to contravene this Act; and
  - (b) it is necessary to suspend the member immediately because there is an immediate risk to the proper operation of the land trust or proper dealing with trust property.
- (2) If the executive committee decides to immediately suspend the member, it must—
  - (a) give the member an information notice about the decision; and
  - (b) ensure a motion proposing disciplinary action be taken against the member is considered at a general meeting of the land trust within 60 days after the giving of the information notice.
- (3) The suspension—
  - (a) operates immediately the information notice is given; and
  - (b) continues to operate until the earliest of the following happens—
    - (i) a motion proposing disciplinary action be taken against the member fails to pass by resolution at a general meeting of the land trust;
    - (ii) 60 days have passed since the giving of the information notice and the member has not been

given a show cause notice for proposed disciplinary action against the member;

(iii) a show cause notice for proposed disciplinary action against the member is finally dealt with;

(iv) 60 days have passed since the suspension took effect.

(4) In this section—

*disciplinary action*, against a member of a land trust, means action to remove or suspend the member under this subdivision.

### **257F Limitation on land trust's power about suspension of member**

A land trust can not end the suspension of a person from membership of the land trust if the suspension is imposed by the Minister under this division.

## **Subdivision 5 Information about appointment, removal or resignation of members**

### **257G Information about appointment, removal or resignation of members**

(1) This section applies to a land trust if—

(a) the land trust appoints a person as a member of the land trust or removes a member from the land trust; or

(b) a member of the land trust resigns.

(2) As soon as practicable after the appointment, removal or resignation has effect, the land trust must give the chief executive notice of the appointment, removal or resignation.



- (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 trusts

### 261      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.

### 262      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
  - (b) the accounts of the land trust are not being kept appropriately.
- (2) The chief executive may direct, by a 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.

### **263 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 262(2)(a), the chief executive's signature on the 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.

### **264 Withdrawal of direction**

- (1) The chief executive may withdraw a direction given under section 262 at any time.
- (2) If the direction is withdrawn, the chief executive must immediately give all persons who were given the direction a 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**

### **265      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.

### **265A    Resolution of executive committee without meeting**

A resolution of the executive committee of a land trust is validly made by the committee, even if it is not passed at a meeting of the committee, if—

- (a) notice of the proposed resolution is given, under procedures approved by the committee, to all members of the committee entitled to vote on the resolution (the *voting members*); and
- (b) a majority of the voting members give written agreement to the resolution.

### **266      Provision about vesting of Aboriginal land**

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



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## Part 21                      Application of Trusts Act 1973

### Division 1                      Preliminary

#### 267      Application of Trusts Act 1973

- (1) The *Trusts Act 1973* applies to a land trust and its members in relation to dealings with Aboriginal 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 Aboriginal 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 Aboriginal land.

#### 268      Functions and powers of land trust under Trusts Act 1973

- (1) A land trust may perform all the functions and exercise all the powers of a trustee under the *Trusts Act 1973*.
- (2) Subsection (1)—
  - (a) applies subject to any other provision of this Act; and
  - (b) does not limit section 249(2).

### Division 2                      Powers of Supreme Court

#### 269      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—

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- (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.

**270 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.

**271 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.

**272 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—

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- (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.
- (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.

**273 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 Aboriginal people, or a majority of the Aboriginal people, 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 Aboriginal 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
  - (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.

## **274 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 acquiescence in the fraud, wilful concealment or misrepresentation.

## **275 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.

**276 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 to be—

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

## **Part 22 Appeals**

**277 Who may appeal**

- (1) A person who made representations to the Minister under part 2, division 4 about a proposed declaration under section 16(1)(d) may appeal to the Land Court against the decision to make the declaration.
- (2) A person who is given, or is entitled to be given, an information notice for a decision under part 2A may appeal to the Land Court against the decision.
- (3) A lessee of a home ownership lease the subject of a decision under section 136 to not renew the lease may appeal to the Land Court against the decision.
- (4) A person the subject of a decision under section 142 about an amount payable to the person for forfeiture or non-renewal of a home ownership lease may appeal to the Land Court against the decision.
- (5) A member of a land trust who is given, or is entitled to be given, an information notice under part 20, division 2 about a decision to remove or suspend the member from the land trust may appeal to the Land Court against the decision.

## **278 Starting appeal**

- (1) An appeal is started by filing 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.
- (3) However, the Land Court may, at any time within the 28 days, extend the period for making the appeal.

## **279 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.

## **280 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 277(1), (2), (3) or (4)—the decision-maker; or
- (b) for a decision mentioned in section 277(5)—the decision-maker and the land trust.

## **281 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 23                      Miscellaneous

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

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



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- (4) Nothing in this Act prevents the creation of an interest in claimable land that is not transferred land (whether or not a claim has been made under this Act for the land) if—
- (a) the interest is a—
    - (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
  - (b) for another interest—the Minister, subject to subsection (5), consents to the creation of the interest.
- (5) The Minister must not consent under subsection (4)(b) to the creation of the interest unless the Minister is satisfied that—
- (a) the creation of the interest is for the benefit of Aboriginal people particularly concerned with the land; or
  - (b) the interest will cease to have effect before, or if and when, the land becomes Aboriginal land.
- (6) This section has effect despite anything in any other Act.
- (7) In this section—
- relevant entity*** means—
- (a) a trustee, under the Land Act, of Aboriginal trust land; or
  - (b) the Council of the Shire of Aurukun or the Council of the Shire of Mornington.

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

- (1) This section applies if—
- (a) a person has an interest in land (the ***person's land***); and
  - (b) the person's land is—
    - (i) surrounded by Aboriginal land; or

- (ii) in the vicinity of Aboriginal land and the only practicable way of gaining access to the person's land is across the Aboriginal land.
- (2) The person and the person's officers, employees, agents, servants, licensees and invitees are entitled, with or without vehicles, machinery, plant and equipment (of any description), to enter and cross Aboriginal land for the purpose of gaining access to the person's land by a route—
  - (a) that is agreed on from time to time by the trustee of the Aboriginal land and the person; or
  - (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 person.
- (3) The trustee of Aboriginal land, other than a registered native title body corporate, must not agree on a route for the purposes of subsection (2)(a) unless—
  - (a) the trustee has explained to the Aboriginal people particularly concerned with the land the purpose and effect of the proposed route; and
  - (b) those Aboriginal people are given an adequate opportunity to express their views on, and are generally in agreement with, the proposed route.
- (4) Contravention of subsection (3) does not invalidate an agreement made for the purposes of subsection (2)(a).
- (5) If the only practicable way of gaining access to the person's land is across Aboriginal 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 Aboriginal 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 Aboriginal land that is not relevant land.

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**284 National park subject to lease to State etc.**

- (1) If transferred land or granted land is, or includes part of, a national park (the *national park land*), the grant of the national park land—
  - (a) is subject to the condition that the grantee leases the national park land, in perpetuity, to the State for the purposes of the management of the national park land under the *Nature Conservation Act 1992*; and
  - (b) is subject to the conditions prescribed under a regulation for the national park land or national parks generally.
- (2) There is to be a board of management for the national park land.
- (3) Subject to subsections (4) and (5), the board of management is to be composed in the way approved by the Minister.
- (4) The Aboriginal people particularly concerned with the national park land are to be represented on the board of management if the land is granted other than to a registered native title body corporate.
- (5) If the national park land is granted to a registered native title body corporate, the registered native title body corporate is to be represented on the board of management.
- (6) The Minister must, in cooperation with the board of management and before the grant of the land, prepare a management plan for the national park land.
- (7) The *Nature Conservation Act 1992*, part 7 applies to the management plan as if it were a management plan prepared under section 112 of that Act.
- (8) In the preparation of a management plan, the Minister must—
  - (a) if the national park land is granted other than to a registered native title body corporate—consult with, and consider the views of, the Aboriginal people particularly concerned with the national park land; and
  - (b) subject to this section and the *Nature Conservation Act 1992*, have regard to any Aboriginal tradition applicable

to the national park land (including any tradition relating to activities on the national park land).

- (9) The lease of the national park land must be subject to the following conditions—
- (a) that the national park is to be managed in accordance with the management plan as in force from time to time;
  - (b) that the management plan is to be implemented by the board of management.
- (10) The grantee of the transferred land or granted land must—
- (a) sign a lease of the national park land in registrable form containing the required conditions and such other terms and conditions as are agreed; and
  - (b) give the signed lease to the Minister before or at the time of delivery of the deed of grant issued under section 38 or 74 in relation to the land.
- (11) Nothing in this Act or a management plan or lease under this section is to result in a decrease, in the aggregate, in the public rights of access that existed in relation to the national park land immediately before the land became transferable land or claimable land.
- (12) In this section—

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

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

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

## 285 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

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the Commonwealth (whether generally or in relation to a particular area or class of land).

## **286 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.

## **287 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 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.
- (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.

## **288 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 128 for the price of a dwelling.
- (2) The trustee must ensure an amount equal to the amount received is used by the trustee for housing services for Aboriginal people 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 128 for the price of a dwelling.

- (4) The lessee must ensure an amount equal to the amount received is used by the lessee for housing services for Aboriginal people concerned with the land the subject of the townsite lease.
- (5) Subsection (6) applies to the trustee of available land if the trustee receives an amount for a social housing dwelling situated on the available land.
- (6) The trustee must ensure an amount equal to the amount received is used by the trustee for housing services for Aboriginal people concerned with the land held by the trustee.
- (7) In this section—

*housing service* means—

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

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

## **290 Survey costs etc. to be paid by State**

- (1) Survey costs incurred in relation to the preparation of a deed of grant under section 38, 74 or 287 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 lease prepared for section 284; or

- (c) a surrender, under or for this Act, of a deed of grant or lease mentioned in paragraph (a) or (b).
- (3) This section has effect despite any other Act.

## **291 Application of Financial Accountability Act 2009**

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

## **292 Confirmation of status of particular land**

- (1) To remove any doubt, it is declared that—
  - (a) the sales permit does not create, and never has created, for the purposes of section 24, an interest in land; and
  - (b) the amending regulation was valid.
- (2) In this section—

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

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

## **293 Approval of forms**

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

## **294 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) matters relating to the dissolution of Aboriginal land claim associations; and
  - (f) the minimum annual rental amount payable by the State under a lease granted to the State under this Act.
- (3) In this section—

*Aboriginal land claim association* means an Aboriginal land claim association incorporated under the repealed regulation and in existence immediately before the commencement of the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*, part 3.

## **Part 24 Validation provisions**

### **295 Existing conservation agreements**

- (1) This section applies to a conservation agreement in relation to transferred land entered into, or purportedly entered into,



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under the *Nature Conservation Act 1992*, section 45, by the grantees of the land before 18 March 2005.

- (2) The agreement is taken to be, and always to have been, valid.

## **296 Existing interest in transferable land**

- (1) This section applies to an interest in transferable land that is a residential tenancy agreement if, on the commencement—
- (a) the agreement is in force; and
  - (b) the Minister had not consented to the creation of the interest under section 282.
- (2) On the commencement, the Minister is taken to have consented to the creation of the interest under section 282 as in force before the commencement.
- (3) In this section—

*commencement* means the day this section commences.

## **297 Retrospective validation of dealings with trustee (Aboriginal) lease**

- (1) Subsection (2) applies to a trustee (Aboriginal) 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 (Aboriginal) lease (the *dealing*) is taken to be, and to always have been, as valid as if—
- (a) the dealing were a dealing carried out under this Act; and

- (b) section 184, 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 (Aboriginal) 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 (Aboriginal) lease (also the *dealing*) is taken to be, and to always have been, as valid as if section 184, 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 25 Transitional provisions

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

#### Subdivision 1 Preliminary

##### 299 Definition for div 2

In this division—

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

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## **Subdivision 2      Transitional provisions**

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

- (1) This section applies to transferred land granted before the commencement.
- (2) On the commencement, the trustee of the land is taken to hold it for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants.
- (3) As soon as practicable after the commencement, the chief executive must give 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).

### **301      Interests in Aboriginal land continue**

If Aboriginal land was, immediately before the commencement, subject to an interest granted or otherwise created under section 50 or 76 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**

### **302      Definition for div 3**

In this division—

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

### **303 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 40, appoint persons the Minister considers necessary to be the grantees, as trustees for the benefit of Aboriginal people, of land the subject of a deed of grant under previous section 38.
- (3) The Minister may, on or before 31 December 2011 and under previous section 75, appoint persons the Minister considers necessary to be the grantees, as trustees for the benefit of the group of Aboriginal people concerned, of land.
- (4) If the Minister appoints grantees under previous section 40 or 75, the grantees are, on appointment, taken to be incorporated as a land trust under this Act for the land.
- (5) 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.
- (6) The last 2 words of the name of the land trust must be the words ‘Land Trust’.

### **304 Continued operation of provisions about land trusts**

- (1) The Minister may, on or before 31 December 2011, establish a land trust under previous part 9 for the purpose stated in previous section 83B.
- (2) For subsection (1), previous section 83A applies—
  - (a) as if the reference in previous section 83A(3)(b) to the *Aboriginal Land Regulation 1991* were a reference to the repealed regulation; and

- (b) as if the reference in previous section 83A(5) to ‘as far as practicable, act in a way that is consistent with’ were a reference to ‘have regard to’; and
  - (c) as if the reference in previous section 83A(6) to ‘act in a way that is consistent with’ were a reference to ‘have regard to’.
- (3) Previous sections 83C to 83E continue to apply in relation to a land trust established under previous section 83A.
  - (4) For subsection (2)(a), the repealed regulation, as in force immediately before its repeal, continues in force despite its repeal.
  - (5) This section applies despite the amendment of this Act by the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*.

### **305 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 148, as inserted by the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*, section 90.

## **Division 4                      Transitional provision for Land, Water and Other Legislation Amendment Act 2013**

### **306      Continuation of Mornington Shire subleases**

- (1) This section applies to a lease that, immediately before the cancellation of the Mornington Shire lease under section 48(1), was a sublease of the Mornington Shire lease.

*Note—*

The Mornington Shire lease was cancelled under section 48(1) when deeds of grant for all the Mornington Shire lease land took effect under section 44.

- (2) From the cancellation, the sublease is taken to have been, and is, continued in force as a lease under section 45 (as amended) with the trustee of the Aboriginal land as the lessor.
- (3) In this section—

*commencement* means the commencement of the *Land, Water and Other Legislation Amendment Act 2013*, section 6.

*Mornington Shire lease* see section 45(7).

*section 45 (as amended)* means section 45, as in force immediately after the commencement.

## **Division 5                      Transitional provisions for Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014**

### **307      Definitions for div 5**

In this division—

*commencement* means the commencement of this section.

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*pre-amended Act* means this Act as in force before its amendment by the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014*, section 12.

### **308 Provision for existing leases**

- (1) This section applies to a lease under the pre-amended Act in effect immediately before the commencement.
- (2) A standard lease under the pre-amended Act is taken to be a part 10 lease for the same term for which the standard lease was granted.
- (3) A townsite lease under the pre-amended Act is taken to be a townsite lease.
- (4) A lease for private residential purposes under the pre-amended Act is taken to be a home ownership lease for the same term for which the lease for private residential purposes was granted.

### **309 Provision for existing applications**

- (1) This section applies to an application under the pre-amended Act that, before the commencement, had not been granted or refused.
- (2) An application for a lease under the pre-amended Act is taken to be—
  - (a) if the application is for a lease for private residential purposes under the pre-amended Act—an application for a home ownership lease; or
  - (b) otherwise—an application for a part 10 lease for the same term and purpose as the term and purpose for which the application was made.
- (3) An application to renew a lease under the pre-amended Act is taken to be an application to renew a part 10 lease.

## Schedule 1 Dictionary

### section 2

*Aboriginal land* see section 8.

*Aboriginal land holding entity register* see section 84(1).

*Aboriginal people* see section 5.

*Aboriginal reserve land* see section 12.

*Aboriginal tradition* see section 7.

*Aboriginal trust land* see section 184.

*Aborigine* see section 6.

*accepted representations* see section 253(2).

*account*, for part 20, division 5, see section 261.

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

*allocation method*, for available land, for part 2A, see section 32B.

*allocation notice*, for part 2A, see section 32Z(1)(a).

*allocation process*, for available land, for part 2A, see section 32B.

*ancestor* includes an ancestor under Aboriginal tradition.

*appeal period*, for available land, for part 2A, see section 32B.

*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 293.

*associated reserve* means land—

- (a) dedicated as a reserve under the Land Act for travelling stock requirements or watering-places; or



- (b) reserved and set apart under the *Land Act 1962* for works for obtaining, conserving, distributing or utilising water.

**available land** see section 32D(3).

**available State land** means land that is available State land under section 24.

**available State land agreement** see section 25(1).

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

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

**city or town land** see section 28.

**claimable land** see section 22.

**closing day**, for part 2A, division 6, see section 32ZA(1)(d).

**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 22, means—

- (a) for a decision mentioned in section 277(1) or (5)—the Minister; or
- (b) for a decision mentioned in section 277(2)—the trustee of the available land to which the decision relates; or
- (c) for a decision mentioned in section 277(3) or (4) about forfeiture or non-renewal of a lease—the lessor of the lease land.

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

**DOGIT land** see section 11.

**eligibility criteria**, for part 2A, see section 32D(6)(a).

**eligible person**, for available land, for part 2A, see section 32B.

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

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

***excluded land*** means any of the following—

- (a) land inside 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) a stock route;
- (g) land subject to a special mining Act;
- (h) land that has become unallocated State land, if a person has a right, other than under this Act, against the State to the grant of an interest in that land.

***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.

***expression of interest*** see section 35(1).

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

***freehold instrument*** see section 32B.

***freehold option land*** see section 32B.

***freehold policy***, for a freehold schedule, for part 2A, see section 32D(5).

***freehold schedule***, for part 2A, see section 32B.

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

***granted land*** see section 22.

***group*** includes a community.

***group of Aboriginal people*** includes—

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

***holder***, for part 20, division 5, see section 261.

***home ownership lease*** see sections 120(2) and 121(2).

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

***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.

***indigenous joint management area*** means an area declared under the *Nature Conservation Act 1992* as an indigenous joint management area.

***indigenous local government***, for part 2A, see section 32B.

***indigenous management agreement***, about the management of land, means an agreement complying with the requirements of section 170 in relation to the land.

***information***, for part 20, division 4, see section 259.

***information notice***, about a decision, 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 to the Land Court against the decision within 28 days after receiving the notice;
- (d) how the person may appeal.

***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*.

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

***interest holder***, for available land, for part 2A, see section 32B.

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

***land trust*** means—

- 
- (a) an entity—
- (i) formed through the incorporation, under the repealed regulation, of persons as a land trust; and
  - (ii) either established under section 304 or in existence immediately before the commencement of the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*, part 3; or
- (b) an entity taken to be incorporated as a land trust under section 303.

***lease***—

- (a) generally, does not include a residential tenancy agreement; and
- (b) for part 14, see section 180.

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

***lessee***, for part 10, see section 119.

***lessor***—

- (a) for part 10, see section 119; or
- (b) for part 14, see section 180.

***maximum amount*** see section 142(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 Aboriginal land held by the land trust; and
- (b) another person appointed by the Minister as trustee of the Aboriginal 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.

***model freehold instrument***, for part 2A, division 4, subdivision 2, see section 32F.

***model freehold schedule***, for part 2A, see section 32D(4).

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

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

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

***native title determination***, in relation to land, means a determination under the Commonwealth Native Title Act that native title exists in relation to all or a part of the land.

***native title holder***—

- (a) for part 2A, see section 32B; or
- (b) otherwise—in relation to land held, or to be held, by a registered native title body corporate, means—
  - (i) if the registered native title body corporate holds the native title in relation to the land, or part of the land, on trust—the persons on whose behalf the registered native title body corporate holds the native title; or
  - (ii) if subparagraph (i) does not apply—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.

**new Land Holding Act** means the *Aboriginal and Torres Strait Islander Land Holding Act 2013*.

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

**North Stradbroke Island Region** see the *North Stradbroke Island Protection and Sustainability Act 2011*, section 5.

**notice** means a written notice.

**offer**, for part 2A, see section 32B.

**part 10 lease** see section 119.

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

**planning scheme**, for part 2A, see section 32B.

**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.

**prescribed reserve land** see section 197.

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

**previous**, for part 25, division 3, see section 302.

**probity advisor**, for part 2A, see section 32ZB(1).

**proposed action**—

- (a) for a provision about action to be taken by the Minister under part 20, division 2, subdivision 3, see section 252(3)(a); or

- (b) for a provision about action to be taken by a land trust under part 20, division 2, subdivision 4, see section 257(1).

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

**qualified**, for a CATSI corporation that holds, or is proposed to hold, Aboriginal land under this Act, means—

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

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

**reasonably considers** means considers on grounds that are reasonable in the circumstances.

**reasonably satisfied** means satisfied on grounds that are reasonable in the circumstances.

**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 15.

**repealed regulation** means the repealed *Aboriginal Land Regulation 1991*.



**required amount** see section 142(1).

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

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

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

**show cause notice**—

- (a) for a notice given by the Minister, see section 252(2); or
- (b) for a notice given by a land trust, see section 257(3).

**show cause period**—

- (a) for a provision about a show cause notice given by the Minister, see section 252(3)(e); or
- (b) for a provision about a show cause notice given by a land trust, see section 257(4)(f).

**social housing** means housing that—

- (a) is being used to provide subsidised housing for residential use; or
- (b) has been used to provide subsidised housing for residential use and for which an amount, payable under either of the following sections for the dwelling, has not been paid to the trustee—

- (i) section 128;
- (ii) section 143 as in force before the commencement of the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014*, section 12.

***social housing dwelling*** means a dwelling the housing chief executive reasonably considers to be social housing.

***special mining Act*** means—

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

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

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

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

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

***Torres Strait Islander particularly concerned with the land***, for land that is or was prescribed DOGIT land, means a Torres Strait Islander who lives on the land.

***township land*** means land declared under section 29 to be township land.

***townsite lease*** see section 120(3).

***transferable land*** see section 9.

***transferee***—

- (a) for part 9, division 4, subdivision 1, see section 104(1);  
and
- (b) for part 9, division 4, subdivision 2, see section 109(1).

***transferor***—

- (a) for part 9, division 4, subdivision 1, see section 104(1);  
and
- (b) for part 9, division 4, subdivision 2, see section 109(1).

***transferred land*** see section 9.

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

***trustee***, in relation to land, is the entity that—

- (a) holds, as trustee, the land under this Act; or
- (b) is the trustee of the land under the Land Act.

***trustee (Aboriginal) lease*** see section 184.

***trust money***, for part 20, division 5, see section 261.

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

- (a) income derived from Aboriginal 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.

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

*urban area*, for part 2A, see section 32B.

*urban purposes*, for part 2A, see section 32B.

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