



Survey and Mapping Infrastructure Act 2003

Current as at 3 July 2023

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Queensland

Survey and Mapping Infrastructure Act 2003

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Survey and Mapping Infrastructure Act 2003

An Act to provide for developing, maintaining and improving the State's survey and mapping infrastructure, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Survey and Mapping Infrastructure Act 2003*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Purposes of Act

- (1) The main purposes of this Act are to provide for the following—
- (a) developing, maintaining and improving the State survey and mapping infrastructure;
 - (b) maintaining and improving cadastral boundaries throughout the State and information held by the department about the boundaries;
 - (c) coordinating and integrating survey and mapping information;
 - (d) improving public access to survey and mapping information;

- (e) defining administrative areas, and describing and working out administrative area boundaries.
- (2) The purposes are to be achieved mainly by providing for the following—
- (a) the making of standards and guidelines for achieving an acceptable level of survey quality;
 - (b) the obligations and powers of persons carrying out surveys;
 - (c) the establishment and maintenance of recognised permanent survey marks;
 - (d) the recording of survey and mapping information, including the establishment of the following State datasets—
 - (i) the administrative area boundary dataset;
 - (ii) the State remotely sensed image library;
 - (iii) the State digital cadastral dataset;
 - (iv) the survey control register.

4 Act binds all persons

- (1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth.
- (2) Nothing in this Act makes the Commonwealth or the State liable to be prosecuted for an offence.

5 Definitions

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

Part 2 Survey standards and survey guidelines

6 Survey standards

- (1) The chief executive may make written standards for surveying (*survey standards*) to achieve an acceptable level of survey quality.
- (2) A survey standard must—
 - (a) be consistent with the principles, stated in a regulation, to be applied in carrying out a survey; and
 - (b) state—
 - (i) the area to which it applies; and
 - (ii) the type of survey to which it applies.
- (3) A survey standard may be made about all or any of the following for a survey—
 - (a) the coordinate reference framework to be used;
 - (b) the information to be collected;
 - (c) the information to be shown on the plan of survey, including how the information must be shown;
 - (d) how the information and plan of survey may be given to the chief executive under this Act, including, for example, by electronic communication;
 - (e) the accuracy level to be achieved;
 - (f) the characteristics of the survey marks to be used;
 - (g) particular requirements for—
 - (i) the surveying of any tidal or non-tidal boundary; and
 - (ii) the extent to which, and how, searchable registered, or otherwise authoritative, information held by the registrar of titles or the chief executive can be used to represent any length of a tidal or

non-tidal boundary of land on the plan of survey instead of resurveying that length of the boundary; and

- (iii) the type and extent of information to be supplied for demonstrating consistency with the public interest under part 7;
- (h) another matter prescribed under a regulation for this subsection.
- (4) The coordinate reference framework mentioned in subsection (3)(a) must be consistent with the geodetic reference framework prescribed under a regulation for use for surveying and mapping in the State.
- (5) The requirements for surveying a tidal or non-tidal boundary under subsection (3)(g)(i) may include requirements about—
 - (a) applying the ambulatory boundary principles to the tidal or non-tidal boundary; and
 - (b) extending a right line boundary of adjoining land to the tidal or non-tidal boundary.
- (6) A survey standard is a statutory instrument, but is not subordinate legislation.
- (7) In this section—

electronic communication see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

7 Survey guidelines

- (1) The chief executive may make written guidelines for surveying (*survey guidelines*) stating ways of complying with survey standards.
- (2) A survey guideline must —
 - (a) identify the survey standard to which it applies; and
 - (b) state the ways in which a survey may be carried out to comply with the survey standard.

-
- (3) A survey guideline is a statutory instrument, but is not subordinate legislation.

8 Consultation for survey standard or survey guideline

Before making a survey standard or survey guideline, the chief executive may consult with any or all of the following—

- (a) the entities, including the surveyors board, considered by the chief executive as representing the interests of surveyors in the State;
- (b) a local government whose area is affected by the standard or guideline;
- (c) another entity the chief executive considers appropriate.

9 Making survey standard or survey guideline and when it takes effect

- (1) A survey standard and survey guideline about a matter may be combined in 1 instrument.
- (2) A survey standard or survey guideline takes effect—
 - (a) on the day it is first published under section 10(1); or
 - (b) if a later day is stated in the survey standard or survey guideline—on the later day.
- (3) A survey standard must be tabled in the Legislative Assembly within 14 sitting days after it is published under section 10(1).
- (4) If a survey standard is not tabled under subsection (3), it ceases to have effect.
- (5) The *Statutory Instruments Act 1992*, sections 50 and 51 apply to a survey standard as if it were subordinate legislation.

10 Public access to survey standards and survey guidelines

- (1) The chief executive must publish on a government website a copy of—

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- (a) each survey standard or survey guideline made under this part; and
 - (b) each document applied, adopted or incorporated by the survey standard or survey guideline.
- (2) The chief executive must also keep a copy of each document mentioned in subsection (1) at the department's head office.
- (3) The chief executive must make the documents mentioned in subsection (1) available for inspection on a government website, and at the department's head office, free of charge.

11 Inconsistencies between survey standards and survey guidelines

If there is an inconsistency between a survey standard and a survey guideline, the survey standard prevails to the extent of the inconsistency.

12 Regulation may make provision about survey standard and survey guideline matters

- (1) A regulation may make provision about anything for which provision may be made by a survey standard or survey guideline.
- (2) If there is an inconsistency between a regulation and a survey standard or survey guideline, the regulation prevails to the extent of the inconsistency.

Part 3 Carrying out surveys

Division 1 Obligations of surveyors, surveying associates and surveying graduates

13 Compliance with survey standards

- (1) A surveyor, surveying associate or surveying graduate must comply with each relevant survey standard in carrying out a survey, unless the person has a reasonable excuse.
- (2) If a person contravenes subsection (1)—
 - (a) the chief executive may refer the matter to the surveyors board; or
 - (b) for a contravention by a surveyor—
 - (i) the chief executive, instead of acting under paragraph (a), may take action under division 5; or
 - (ii) the registrar of titles may take action under division 5.
- (3) However, this section does not apply to a person to the extent the person is exempted from complying with a survey standard under division 2.
- (4) In this section—

relevant survey standard, for a survey, means a survey standard applying to—

 - (a) the area in which the survey is being carried out; and
 - (b) the type of survey being carried out.

14 How to comply with survey standards

A surveyor, surveying associate or surveying graduate may comply with a survey standard by adopting and following—

- (a) the ways stated in a survey guideline for complying with the survey standard; or

- (b) other ways that achieve an equal or better level of compliance.

15 **Obligation on person placing permanent survey mark**

- (1) This section applies if a surveyor, surveying associate or surveying graduate places a permanent survey mark in carrying out a survey other than a State survey.
- (2) The person responsible for preparing the plan of survey must, as required under subsection (3), give the chief executive a copy of the plan of survey in the approved form (a ***permanent survey mark plan***), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (3) The copy of the permanent survey mark plan must be given to the chief executive—
 - (a) if, before the end of 40 days after the mark is placed, the person gives the chief executive a copy of a plan of survey under section 16 or lodges the plan in the land registry—at the same time as the person gives the copy of the plan of survey to the chief executive or lodges the plan in the land registry; or
 - (b) if paragraph (a) does not apply—within 40 business days after the mark is placed.

16 **Obligation on cadastral surveyor**

- (1) A cadastral surveyor must, within 40 business days after placing a survey mark in carrying out a cadastral survey, or supervising the placement of the mark, give the chief executive a copy of the plan of survey complying with subsection (3), unless the surveyor has a reasonable excuse.

Maximum penalty—20 penalty units.

- (2) However, subsection (1) does not apply if, within 40 business days of placing or supervising the placement of a survey mark, the cadastral surveyor lodges a copy of the plan of survey in the land registry.

- (3) If a recognised permanent survey mark was used as a reference point in carrying out the survey, the plan of survey must show the relationship between the cadastral survey and the recognised permanent survey mark.

17 Resolving inconsistencies between plans of survey

- (1) This section applies if—
- (a) there is an inconsistency in the identification of a boundary shown on 2 or more plans of survey registered, lodged for registration, or deposited, under the *Land Act 1994* or *Land Title Act 1994* or given to the chief executive under section 16; and
 - (b) the surveyors responsible for carrying out the surveys are aware of the inconsistency.
- (2) The surveyors must make reasonable efforts to resolve the inconsistency.
- (3) If the surveyors fail to comply with subsection (2) or are not able to resolve the inconsistency, the relevant person may take the reasonable action the relevant person considers necessary to resolve the matter.
- (4) In this section—
- relevant person*** means—
- (a) for a plan of survey registered, lodged for registration, or deposited under the *Land Act 1994* or the *Land Title Act 1994*—the registrar of titles; or
 - (b) for a plan not mentioned in paragraph (a) and given to the chief executive under section 16—the chief executive.

Division 2 Exemption from survey standard

18 Application for exemption

- (1) If a surveyor, surveying associate or surveying graduate reasonably believes it is impractical for the person to comply with a survey standard for a particular survey, the person may make written application to the chief executive for an exemption from all or part of the survey standard for the survey.
- (2) The application must—
 - (a) state the provisions of the survey standard, and the survey, for which the exemption is sought; and
 - (b) as briefly as possible, explain why the person believes it is impractical for the person to comply with the survey standard for the survey.

19 Decision on application

- (1) After considering the application, the chief executive may, by written notice given to the applicant—
 - (a) give the exemption, with or without conditions; or
 - (b) refuse to give the exemption.
- (2) If the chief executive decides to give the exemption on conditions or to refuse to give the exemption, the notice must also state the following—
 - (a) the decision;
 - (b) the reasons for the decision;
 - (c) that the applicant may apply to the Minister for a review of the decision within 30 business days after the day the notice is given.

20 Review of decision

- (1) As soon as practicable after receiving an application for review of a decision under section 19(2)(c), the Minister must—
 - (a) review the decision; and
 - (b) decide to confirm, amend or set aside the decision; and
 - (c) give written notice to the applicant of the Minister's decision and the reasons for it.
- (2) For section 13(3), the Minister's decision on the review is taken to be the chief executive's decision on the application for exemption.

Division 3 Surveyors' powers

21 Power to place a permanent survey mark

- (1) A surveyor may place a permanent survey mark on land that is—
 - (a) unallocated State land; or
 - (b) vested in, or under the control of, the State; or
 - (c) a road.
- (2) A surveyor may place a permanent survey mark on the following land if its owner or occupier consents to the placement of the mark—
 - (a) freehold land;
 - (b) land subject to any of the following tenures—
 - (i) a lease, licence or permit under the *Land Act 1994*;
 - (ii) an exploration permit, mining claim, mineral development licence or mining lease under the *Mineral Resources Act 1989*;
 - (iii) an authority to prospect or lease under the *Petroleum Act 1923*;

- (iv) a petroleum tenure under the *Petroleum and Gas (Production and Safety) Act 2004*;
 - (v) a GHG tenure under the *Greenhouse Gas Storage Act 2009*;
 - (vi) a geothermal tenure under the *Geothermal Energy Act 2010*.
- (3) In this section—

freehold land includes indigenous land that is freehold land, and includes any part of the indigenous land that is subject to a lease or lesser interest.

owner, for land mentioned in subsection (2)(b), means the holder of the relevant tenure.

unallocated State land means unallocated State land under the *Land Act 1994*, schedule 6.

22 Power to enter places

- (1) Subject to section 23, a surveyor may enter a place mentioned in section 21(1) or (2) at any reasonable time for—
- (a) carrying out a survey; or
 - (b) placing a permanent survey mark on the land.
- (2) Subsection (1) does not apply to a building or other structure where a person resides.

23 Surveyor's notice of entry

- (1) Before entering a place mentioned in section 21(2), a surveyor must do or make a reasonable attempt to do each of the following things—
- (a) identify himself or herself to a person present at the place who is an occupier of the place;
 - (b) tell the person—
 - (i) the purpose of the proposed entry; and

- (ii) that the surveyor is permitted under this Act to enter for the purpose.
- (2) For doing or attempting to do the things mentioned in subsection (1), the surveyor may, without the occupier's consent—
- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the surveyor reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

24 General powers after entering places

- (1) After entering a place under section 22, a surveyor may—
- (a) carry out the survey for which the entry was made; and
 - (b) place survey marks for the survey on the land; and
 - (c) if authorised under section 21, place permanent survey marks on the land; and
 - (d) inspect and maintain any recognised permanent survey mark on the land; and
 - (e) take onto the place any person, equipment and materials the surveyor reasonably requires for exercising a power under this division.
- (2) However, if the place is land subject to a tenure mentioned in section 21(2)(b)(ii), (iii) or (iv), the surveyor must comply with any reasonable directions given by the holder of the tenure or occupier of the land in relation to operations or safety at the place.

25 Power to uncover buried survey mark

- (1) This section applies if a surveyor who is carrying out a survey reasonably believes a survey mark that is essential for carrying out the survey is buried under the surface of land.

[s 25A]

- (2) Subject to subsection (3), the surveyor, or a person acting under the direction or authority of a surveyor (the *other person*), may take the action the surveyor reasonably considers necessary to uncover the mark.
- (3) The surveyor or other person—
 - (a) must cause as little damage as possible in uncovering the mark; and
 - (b) must not cause any permanent damage to any property on the land.

25A Special provision for taking of soil samples etc. for collecting relevant evidence

- (1) The chief executive may, for the purpose of making a declaration under section 83, 93, 109 or 120 about land of a type mentioned in section 21, direct a surveyor—
 - (a) to take soil samples from the land; or
 - (b) to acquire remotely sensed images or other information for the land, including by, from or using an aircraft, satellite or other device; or

Example of another device—
a remotely controlled device commonly known as a drone

 - (c) to do any other thing on the land that may provide evidence of the location of a natural feature or other thing forming a boundary of the land.
- (2) Subject to the direction, the surveyor—
 - (a) may enter the land and do the thing mentioned in the direction; and
 - (b) in entering the land and doing the thing mentioned in the direction is subject to the same requirements as would apply under sections 21 to 24 in relation to the placing of a permanent survey mark on the land.
- (3) The surveyor—

-
- (a) must cause as little damage as possible in doing the thing mentioned in the direction; and
 - (b) must not cause any permanent damage to any property on the land.

Division 4 Other matters about the exercise of surveyors' powers

26 Notice of damage

- (1) This section applies if—
 - (a) a surveyor damages property when exercising or purporting to exercise a power under division 3; or
 - (b) a person acting under the direction or authority of a surveyor (the *other person*) exercising or purporting to exercise a power under division 3 damages property.
- (2) The surveyor must immediately repair or reinstate the property if it is possible.
- (3) If it is not possible to immediately repair or reinstate the property, the surveyor must immediately give notice of particulars of the damage to the person who appears to the surveyor to be the owner of the property.
- (4) If the surveyor believes the damage was caused by a latent defect in the property or circumstances beyond the surveyor's, or other person's, control, the surveyor may state the belief in the notice.
- (5) If, for any reason, it is impractical to comply with subsection (3), the surveyor must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (6) This section does not apply to damage the surveyor reasonably believes is trivial.
- (7) In this section—

owner, of property, includes the person in possession or control of it.

27 Obstructing a surveyor

- (1) A person must not obstruct a surveyor in the exercise of a power under division 3, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If a person obstructs a surveyor and the surveyor decides to proceed with the exercise of the power, the surveyor must warn the person that—
 - (a) it is an offence to obstruct the surveyor, unless the person has a reasonable excuse; and
 - (b) the surveyor considers the person's conduct an obstruction.
- (3) In this section—

obstruct includes assault, hinder and threaten, and attempt to obstruct.

Division 5 Correcting survey errors

28 Correcting survey errors

- (1) The chief executive may, if the procedure under sections 29 to 31 is followed, ask a surveyor who is responsible for a survey error made in a survey, for which a plan of survey has been lodged under an Act other than the *Land Title Act 1994*, to correct the error at the surveyor's expense.
- (2) The registrar of titles may ask a surveyor who is responsible for a survey error made in a survey for which a plan of survey has been lodged or deposited under an Act to correct the error at the surveyor's expense if—

- (a) for a plan of survey lodged or deposited under the *Land Title Act 1994*—the registrar can not correct the survey error under section 15 of that Act; and
- (b) the procedure under sections 29 to 31 is followed.

29 Show cause notice

- (1) Before asking a surveyor to correct a survey error, the chief executive or registrar of titles must give the surveyor a written notice (the *show cause notice*) stating the following—
 - (a) that the person believes the surveyor has made a survey error that is capable of being corrected by the surveyor;
 - (b) the facts and circumstances that are the basis for the belief;
 - (c) that the person proposes giving the surveyor a notice (the *correction notice*) asking the surveyor, at the surveyor's expense, to correct the error;
 - (d) that the surveyor may make, within a stated period, written submissions to show that the surveyor has not made a survey error that is capable of being corrected by the surveyor.
- (2) The stated period must end at least 20 business days after the show cause notice is given.

30 Considering submissions

The chief executive or registrar of titles must consider any written submission made by the surveyor to the person within the period stated in the show cause notice.

31 Giving correction notice

- (1) If, after complying with section 30, the chief executive or registrar of titles still believes the surveyor has made a survey error that is capable of being corrected by the surveyor, the person may give the surveyor the correction notice.

- (2) The correction notice must be written and must state—
 - (a) the error the person reasonably believes is capable of being corrected; and
 - (b) the reasonable steps the surveyor must take to correct the error; and
 - (c) a reasonable period, of at least 20 business days after it is given, in which the surveyor must take the steps.
- (3) If the surveyor does not comply with the correction notice, the person who gave the notice may refer the matter to the surveyors board.

Division 6 Miscellaneous

32 **Authority for cadastral surveyor to act for another in particular circumstances**

- (1) A person who is or was a cadastral surveyor (the *original surveyor*) may, in writing, authorise another person who is a cadastral surveyor (an *authorised surveyor*) to take the action necessary to comply with any requirement about a relevant survey of the original surveyor made by—
 - (a) the registering entity; or
 - (b) for a plan of survey required for a purpose under the *Mineral Resources Act 1989*—a person acting under that Act.
- (2) The authorisation may be for—
 - (a) a particular plan of survey stated in the authorisation; or
 - (b) a stated period.
- (3) For subsection (2)(b), the authorisation may state it has effect until it is ended by the original surveyor.
- (4) As soon as practicable after giving the authorisation, the original surveyor must give a copy of it to the surveyors board.

- (5) If the original surveyor ends the authorisation, the surveyor must as soon as practicable give the surveyors board written notice of its ending.
- (6) Subsection (7) applies if—
- (a) a plan of survey has been lodged or deposited for registration; and
 - (b) the chief executive reasonably believes the cadastral surveyor responsible for the survey’s survey quality can not comply with a requirement about the plan.
- (7) The chief executive may ask the surveyors board to authorise another person who is a cadastral surveyor (also an **authorised surveyor**) to take the action necessary to comply with the requirement.
- (8) The authorisation given by the surveyors board must be written.
- (9) An authorised surveyor—
- (a) may take the action for which the person is authorised; and
 - (b) must certify on the plan of survey to which the action relates that it has been taken under an authority under this section.
- (10) Despite any other law or practice, if an authorised surveyor gives the registering entity a copy of the person’s authorisation, the registering entity must accept anything done by the authorised surveyor under subsection (9) as if it were done by the original surveyor.
- (11) In this section—
- registering entity**, for a plan of survey, means the person responsible for registering the plan under a registration Act.
- registration** means registration under a registration Act.
- registration Act** means the *Land Act 1994* or *Land Title Act 1994*.

relevant survey, of an original surveyor, means a plan of survey for the survey quality of which the original surveyor is responsible.

requirement, about a plan of survey, means—

- (a) a requisition or requirement made under a registration Act; or
- (b) a show cause notice or correction notice.

Part 4 Survey marks

Division 1 Establishing recognised permanent survey marks

33 State surveys

- (1) The chief executive may cause a survey of high precision, called the State control survey, to be carried out for establishing recognised permanent survey marks throughout the State.
- (2) In addition, the chief executive may cause another survey to be carried out in a particular part of the State for establishing recognised permanent survey marks in the part.

34 Chief executive may obtain information about survey marks placed other than in carrying out a State survey

- (1) If the chief executive reasonably considers a survey mark placed in carrying out a survey other than a State survey is of value for a survey and mapping infrastructure purpose, the chief executive may—
 - (a) in writing, ask the relevant person, for—
 - (i) a copy of the plan of survey in the approved form; or

-
- (ii) other information necessary to establish the survey mark as a recognised permanent survey mark; or
 - (b) cause a survey to be carried out for establishing the survey mark as a recognised permanent survey mark.
- (2) Subsection (1)(a)(i) does not apply if the person has given the chief executive a copy of the plan of survey under section 15 or 16.
- (3) The relevant person must comply with a request made under subsection (1)(a) within the reasonable period stated in the request, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—20 penalty units.

- (4) In this section—

relevant person means—

- (a) if paragraph (b) does not apply—the surveyor, surveying associate or surveying graduate who placed the survey mark; or
- (b) if the mark was placed by a surveying associate or surveying graduate under a surveyor’s supervision—the surveyor; or
- (c) if the mark was placed by or for a public authority—the public authority.

35 Establishing survey marks as recognised permanent survey marks

- (1) The chief executive must establish each permanent survey mark placed in carrying out a survey as a recognised permanent survey mark.
- (2) If the chief executive reasonably considers another survey mark placed in carrying out a survey is suitable as a recognised permanent survey mark, the chief executive may establish the survey mark as a recognised permanent survey mark.
- (3) A survey mark is established as a recognised permanent survey mark by the chief executive—

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- (a) recording each of the following details about the mark in the survey control register—
 - (i) the mark's unique identifying number;
 - (ii) a plan or other information identifying the mark's location;
 - (iii) a brief description of the mark;
 - (iv) the name of the surveyor, surveying associate, surveying graduate or public authority who placed the mark;
 - (v) the date when the mark was placed; and
- (b) classifying the mark as a recognised permanent survey mark in the register.

36 Removing or changing classification of recognised permanent survey mark

If the chief executive considers a recognised permanent survey mark is no longer suitable as a recognised permanent survey mark, the chief executive may remove or change the classification given to the mark under section 35(3)(b).

Division 2 Maintaining recognised permanent survey marks

37 Responsibility for recognised permanent survey marks placed in carrying out State surveys

The chief executive is responsible for maintaining the physical integrity of a recognised permanent survey mark placed in carrying out a State survey.

38 Responsibility for recognised permanent survey marks on State-controlled roads

- (1) Subject to section 37, if a recognised permanent survey mark is on a State-controlled road, the department whose chief executive may, under the *Transport Infrastructure Act 1994*, section 28, exercise powers for the road is responsible for—
- (a) maintaining the physical integrity of the survey mark; and
 - (b) giving the chief executive updated information about the survey mark for the survey control register.
- (2) In this section—

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

39 Responsibility for recognised permanent survey marks on local government controlled roads

Subject to section 37, if a recognised permanent survey mark is on a road under the control of a local government, the local government is responsible for—

- (a) maintaining the physical integrity of the survey mark; and
- (b) giving the chief executive updated information about the survey mark for the survey control register.

40 Responsibility for recognised permanent survey marks on land, other than roads, controlled by a public authority

Subject to section 37, if a recognised permanent survey mark is on land, other than a road, under the control of a public authority, the public authority is responsible for—

- (a) maintaining the physical integrity of the survey mark; and

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- (b) for a public authority other than the department—giving the chief executive updated information about the survey mark for the survey control register.

41 Notifying public authority about responsibility for recognised permanent survey marks

The chief executive must give each public authority, other than the department, that is responsible under section 38, 39 or 40 for maintaining a recognised permanent survey mark—

- (a) a written notice informing the public authority of its responsibility under the section for the mark; and
- (b) a copy of the current information about the mark recorded in the survey control register.

Division 3 Interfering with survey marks

42 Offence about interfering with survey mark

- (1) A person must not interfere with a survey mark the existence of which the person knows or ought reasonably to know, unless—
 - (a) for a cadastral survey mark for a boundary—the person interferes with the mark in order to erect a fence, wall or other permanent structure along the boundary; or
 - (b) for a recognised permanent survey mark—the person interferes with the mark under an authority given under section 43; or
 - (c) for a mark other than a recognised permanent survey mark—the person, before interfering with the mark—
 - (i) causes a survey to be carried out to establish the relationship between the mark and at least 2 recognised permanent survey marks; and
 - (ii) gives the chief executive a copy of the plan of survey; or

(d) the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is not a reasonable excuse for a person to interfere with a survey mark if the person could have obtained, but did not seek, an authority under section 43 for the interference.

43 Authority to interfere with recognised permanent survey mark

- (1) A person may apply to the chief executive for authority to interfere with a recognised permanent survey mark.
- (2) The chief executive may—
- (a) give the authority, with or without conditions; or
 - (b) refuse to give the authority.
- (3) If the chief executive gives the authority on conditions or refuses to give the authority, the chief executive must give the applicant a written notice stating the following—
- (a) the decision;
 - (b) the reasons for the decision;
 - (c) that the applicant may apply to the Minister for a review of the decision within 30 business days after the day the notice is given.
- (4) As soon as practicable after receiving an application under subsection (3)(c), the Minister must—
- (a) review the chief executive's decision; and
 - (b) decide to confirm, amend or set aside the chief executive's decision; and
 - (c) give written notice to the applicant about the Minister's decision and the reasons for it.
- (5) For section 42(1)(b), the Minister's decision on the review is taken to be the chief executive's decision about the authority.

44 Reinstating recognised permanent survey mark

- (1) If a person interferes with a recognised permanent survey mark in contravention of section 42, the chief executive or public authority responsible under division 2 for maintaining the mark may take the action reasonably necessary to reinstate the mark's physical and survey integrity.
- (2) The costs reasonably incurred by the chief executive or a department in reinstating the mark are a debt payable by the person to the State.
- (3) The costs reasonably incurred by another public authority in reinstating the mark are a debt payable by the person to the public authority.
- (4) If the person is convicted of an offence against section 42, the court may, as well as imposing a penalty for the offence, order the person to pay the amount of the costs to the State or public authority under subsection (2) or (3).

Division 4 Miscellaneous

45 Reporting and recording changes in recognised permanent survey mark

- (1) This section applies if a surveyor, surveying associate or surveying graduate becomes aware of—
 - (a) an apparent irregularity in information recorded in the survey control register for a recognised permanent survey mark; or
 - (b) the disrepair, destruction or removal of a recognised permanent survey mark.

Example of an apparent irregularity for subsection (1)(a)—

Observations made by the surveyor relating to the recognised permanent survey mark differ from the information recorded for the mark in the survey control register.

- (2) As soon as practicable after becoming aware of a matter mentioned in subsection (1), the person must give the chief executive written notice of the matter.
- (3) The chief executive must record details of the matter in the survey control register.

Part 5 Recording survey and mapping information

Division 1 State datasets

Subdivision 1 State digital cadastral dataset

46 State digital cadastral dataset

- (1) The chief executive must keep a dataset (the *State digital cadastral dataset*) comprising—
 - (a) a digital graphic representation of each parcel of land in the State; and
 - (b) the following current details about each parcel of land mentioned in paragraph (a)—
 - (i) a unique description of the land, including, for example, its real property description;
 - (ii) the approximate coordinates for the corners of the parcel; and
 - (c) a digital graphic representation of—
 - (i) roads; and
 - (ii) natural features forming a boundary of land; and
 - (d) the approximate coordinates of the roads and natural features mentioned in paragraph (c).

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- (2) The chief executive may, without fee, obtain information necessary to update and improve the dataset from the land registry.
- (3) Subsection (2) does not limit the sources from which the chief executive may obtain information for updating the dataset.
- (4) Subsection (1)(a) and (b) do not apply to a parcel of land shown on a building format or volumetric format plan of survey.
- (5) In this section—

building format plan of survey means a plan of survey that defines land using the structural elements of a building, including, for example, floors, walls and ceilings.

structural elements, of a building, includes projections of, and references to, structural elements of the building.

Example—

Projections might be used to define a lot that includes a balcony, courtyard, roof garden or other area not bounded, or completely bounded, by a floor, walls and a ceiling.

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

47 Effect and use of information in State digital cadastral dataset

- (1) The recording, in the State digital cadastral dataset, of information about a parcel of land does not create or affect an interest in the land.
- (2) If the information in the dataset is inconsistent with information recorded or noted in the land registry, the information recorded or noted in the land registry prevails to the extent of the inconsistency.
- (3) Information recorded by a public authority, other than in the land registry, about the coordinates of land boundaries must be consistent with the dataset.

Subdivision 2 Other State datasets

48 Administrative area boundary dataset

The chief executive must keep a dataset (the *administrative area boundary dataset*) of information—

- (a) given to the chief executive under section 49; or
- (b) otherwise obtained by the chief executive about an administrative area boundary.

49 Public authority may give chief executive information about administrative area boundaries

A public authority may give the chief executive information about the boundaries of an administrative area for recording in the administrative area boundary dataset.

50 State remotely sensed image library

The chief executive must keep a library (the *State remotely sensed image library*) containing the remotely sensed images of land and coastal waters of the State the chief executive considers are of value for—

- (a) a survey and mapping infrastructure purpose; or
- (b) defining an administrative area, or describing or working out an administrative area boundary.

51 Survey control register

- (1) The chief executive must keep a register (the *survey control register*) for recording information about survey marks obtained by the chief executive under this Act.
- (2) In addition to the details recorded under section 35(3), the register must contain, for each recognised permanent survey mark—
 - (a) the details recorded under section 45(3); and

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- (b) information about the survey mark taken, under section 139, to form part of the register; and
 - (c) updated information about the survey mark given to the chief executive under sections 38 to 40.
- (3) The register may also contain other information about a survey mark—
- (a) given to the chief executive for recording in the register; or
 - (b) that the chief executive considers is of value for a survey and mapping infrastructure purpose, including, for example, the integration of survey and mapping information.

52 Other datasets

The chief executive may keep another dataset for a survey and mapping infrastructure purpose and publish information about the dataset on a government website.

Subdivision 3 Other provisions about State datasets

53 Chief executive may arrange for another entity to keep a State dataset

The chief executive may enter into an arrangement with another entity to—

- (a) keep a State dataset for the chief executive; and
- (b) provide access by persons to the information contained in the dataset.

54 Access to information in State datasets

- (1) A person may—

-
- (a) on payment of any fee decided by the chief executive, inspect the information contained in the publicly available part of a State dataset held in the department; and
 - (b) on payment of the fee decided by the chief executive, or under an agreement entered into between the person and the chief executive, obtain a copy of all or part of the information from the chief executive.
- (2) If a State dataset is kept by an entity under section 53, a person may—
- (a) on payment of any fee decided by the entity, inspect the information contained in the publicly available part of the dataset; and
 - (b) on payment of the fee decided by the entity, or under an agreement entered into between the person and the entity, obtain a copy of all or part of the information from the entity.

Division 2 Obligations of persons to provide information and data for survey and mapping infrastructure purposes

55 Surveyor's obligation

- (1) If a surveyor intends carrying out a survey the surveyor considers, or should reasonably consider, is of value for a survey and mapping infrastructure purpose, the surveyor must give the chief executive written notice—
 - (a) stating the surveyor's intention to carry out the survey; and
 - (b) asking the chief executive for advice about—
 - (i) any specifications for the survey required by the chief executive for a survey and mapping infrastructure purpose (the *required specifications*); and

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- (ii) any contribution the chief executive agrees to make towards the cost of the survey (the *agreed contribution*); and
 - (c) stating enough information about the survey to enable the chief executive to make a decision about the required specifications and agreed contribution.
- (2) As soon as practicable after receiving the notice, the chief executive must, in writing, give the surveyor the advice requested.
 - (3) The surveyor must comply with the required specifications in carrying out the survey.
 - (4) If the surveyor complies with the required specifications in carrying out the survey, the chief executive must make the agreed contribution for the survey.

56 Public authority's obligation

- (1) If the chief executive reasonably considers a public authority holds information or data that is of value for a survey and mapping infrastructure purpose, the chief executive may, in writing, ask the public authority for a copy of the information or data.
- (2) The public authority must, on payment by the chief executive of the fee decided by the public authority for the copy, give the copy to the chief executive.

Part 6 Administrative areas

Division 1 Defining administrative areas

57 Ways of defining an administrative area

- (1) An administrative area must be defined in 1 or more of the following ways—

-
- (a) by delineating its boundaries on a plan in a distinctive way, including, for example, by using symbols, colouring or hachuring;
 - (b) by describing its boundaries by reference to 1 or more of the following—
 - (i) lines described by length and bearing referenced to a stated datum;
 - (ii) a natural or other suitable feature;
 - (iii) the real property description of land adjoining the area;
 - (iv) parish, county or locality boundaries;
 - (v) boundaries shown on a plan of survey lodged under the *Land Act 1994* or *Land Title Act 1994*;
 - (vi) the coordinates, taken from the State digital cadastral dataset, of the corners and bends of the area;
 - (vii) metes and bounds;
 - (viii) the area or boundary of another administrative area defined under this subsection;
 - (c) by listing the real property descriptions of land comprising the area;
 - (d) another way, approved by the chief executive, as appropriate for defining the area.
- (2) The definition of an administrative area other than under subsection (1) does not affect the validity of the area's establishment.

Division 2 Working out administrative area boundaries

58 Application of div 2

- (1) This division applies to—

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- (a) the description of an administrative area boundary in an instrument establishing or changing the area; and
 - (b) the delineation of an administrative area boundary on a plan.
- (2) However, this division does not apply if a contrary intention appears in—
- (a) the instrument or plan; or
 - (b) the law under which the instrument or plan is made.

59 Meaning of particular words used in describing an administrative area boundary

- (1) In the description of an administrative area boundary—

bank means—

- (a) for a watercourse, the line—
 - (i) along the outer limits of the defined channel of the watercourse; and
 - (ii) following the highest points of land in the channel that are covered by the watercourse water, whether permanently or intermittently; and
- (b) for a lake, the line—
 - (i) along the outer limits of the depression of the lake; and
 - (ii) following the highest points of land in the depression that are covered by the lake water, whether permanently or intermittently.

bed, of a watercourse, means the land that is—

- (a) alternately covered or left bare as the water of the watercourse increases or diminishes; and
- (b) adequate to contain the water at its average flow without reference to extreme droughts or extraordinary freshets during floods.

high-water mark means the ordinary high-water mark at spring tides.

lake includes a lagoon, swamp, marsh, or other natural collection of water, whether permanent or intermittent, and not contained in an artificial work.

low-water mark means the ordinary low-water mark at spring tides.

tidal watercourse means the part of a watercourse in which the tide ebbs and flows.

watercourse means a river, creek or stream in which water flows, whether permanently or intermittently, in—

- (a) a natural channel, whether or not artificially improved; or
- (b) an artificial channel that has changed the course of the watercourse.

- (2) To remove any doubt, it is declared that definitions in this section apply only in the context of administrative area boundaries, and do not affect the meaning of words used in this Act other than in this part.

60 References to features forming part of an administrative area boundary

In the description of an administrative area boundary—

- (a) a reference to the left or right bank of a watercourse is a reference to the left or right bank when facing downstream; and
- (b) a reference to a dam is a reference to the line—
 - (i) along the outer limits of the dam; and
 - (ii) following the highest points of land covered by the dam water at full supply level; and
- (c) a reference to a mountain, mountain range, hill, or similar natural feature is a reference to the feature's watershed; and

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- (d) a reference to a natural feature having a high-water mark is a reference to the high-water mark; and
Example of natural feature having a high-water mark—
bay, inlet, harbour, gulf, shore or coast
- (e) a reference to a tidal lake or watercourse is a reference to the high-water mark along the lake or watercourse; and
- (f) a reference to a non-tidal lake is a reference to the bank of the lake; and
- (g) a reference to a non-tidal watercourse is a reference to the line along the middle of the bed of the watercourse; and
- (h) a reference to a railway or road is a reference to the centre line of the railway or road.

61 Working out an administrative area boundary shown on a plan

On a plan, the boundary of an administrative area marked—

- (a) along the line of a coast, harbour, tidal watercourse or tidal lake, is the high-water mark along the coast, harbour, watercourse or lake; or
- (b) along and within—
 - (i) the banks of a non-tidal watercourse; or
 - (ii) the boundaries of a road or railway;is the line along the middle of the bed of the watercourse, or the centre line of the road or railway; or
- (c) along a watercourse, road or railway shown by a single line, is the line along the middle of the bed of the watercourse, or the centre line of the road or railway; or
- (d) along but to 1 side of a non-tidal watercourse, or a road or railway, is—
 - (i) for a watercourse—the bank of the watercourse nearer to the marked boundary; or

- (ii) for a road or railway—the boundary of the road or railway nearer to the marked boundary.

Part 7 Tidal and non-tidal boundaries and associated matters

Division 1 Preliminary

62 Definitions for part

In this part—

ambulatory boundary principles means the principles applying under, and the operation generally of, the general law relating to boundaries of land bounded by water, whether tidal or non-tidal, and in particular the general law relating to—

- (a) the change to the location at law of a boundary, having regard to any shift or modification over time of the feature constituting the boundary, by gradual and imperceptible degrees; and
- (b) the absence of change to the location at law of a boundary, having regard to any shift or modification of the feature constituting the boundary that is not gradual and imperceptible, including, for example, a shift or modification caused by a flood or storm or another rapidly occurring natural process, or by substantial modification of land through human activity.

associated material, for a plan of survey, means—

- (a) anything that records, whether on the plan of survey, in field notes accompanying the plan of survey or anywhere else, any aspect of the survey the subject of the plan of survey, including any of the following—

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- (i) a measurement or analysis, including an electronically produced measurement or analysis, made for, or in relation to, the survey;
- (ii) information about survey marks for the survey; or
- (b) directions and instructions applying to surveyors when the plan of survey is or was prepared.

bar, in a watercourse, means a temporary accumulation of sediment—

- (a) that is within the bed of the watercourse; and
- (b) to which the following characteristics can generally be expected to apply—
 - (i) it is formed during the recession of flows in the watercourse when sediment is deposited in the bed of the watercourse;
 - (ii) it is a dynamic feature, being changed by flow events in the watercourse;
 - (iii) because of its dynamic nature as mentioned in subparagraph (ii), its covering vegetation is immature, and not woody;
 - (iv) it is made up of coarse materials, in particular, sand and gravel.

bed and banks, of a lake, means the land that is normally covered by the water of the lake, whether permanently or intermittently, regardless of frequency, but does not include adjoining land from time to time covered in flood events.

bench, in a watercourse, means a storage of sediment—

- (a) that is within the channel of the watercourse; and
- (b) to which the following characteristics can generally be expected to apply—
 - (i) it is higher than the bed of the watercourse and bars in the watercourse, but lower than the level of either outer bank of the watercourse;

- (ii) it is formed through sediment deposition during flow events in the watercourse that are at or near the level of either outer bank;
- (iii) it is a reasonably flat sediment deposit, reasonably straight or gently curved as viewed from above, and at least partly consolidated by riparian vegetation;
- (iv) it may be distinguished from a floodplain because the deposits making up a floodplain are finer and more layered.

boundary location criteria rule (non-tidal) provision means section 109.

court means the Land Court.

current adopted natural feature rule (non-tidal) exception provision means section 104.

current adopted natural feature rule (non-tidal) provision means section 103.

current adopted natural feature rule (tidal) provision means section 76.

declaration decision means a decision mentioned in section 83(9)(b), 93(10)(b), 109(9)(b) or 120(9)(b).

deposit, in relation to a plan of survey, means deposit under a registration Act.

depositional feature, in relation to a watercourse, means a deposit of clay, sand or silt that is carried during flows of water in the watercourse.

Examples—

- mud deposited in cracks in rocks
- sand deposits behind rocks

drainage feature means a natural landscape feature, including a gully, drain, drainage depression or other erosion feature that—

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- (a) is formed by the concentration of, or operates to confine or concentrate, overland flow water during and immediately after rainfall events; and
- (b) flows for only a short duration after a rainfall event, regardless of the frequency of flow events; and
- (c) commonly, does not have enough continuing flow to create a riverine environment.

Example for paragraph (c)—

There is commonly an absence of water favouring riparian vegetation.

floodplain means an area of reasonably flat land adjacent to a watercourse that—

- (a) is covered from time to time by floodwater overflowing from the watercourse; and
- (b) does not, other than in an upper valley reach of the watercourse, confine floodwater to generally follow the path of the watercourse; and
- (c) has finer sediment deposits than the sediment deposits of any bench, bar or in-stream island in the watercourse.

floodwater, in relation to a watercourse, means water that has overflowed the outer banks of the watercourse because of a flood event affecting the watercourse, and is on land near the watercourse.

gradual change, of a natural feature, means any shift or modification over time of the natural feature, by gradual and imperceptible degrees.

indigenous land means—

- (a) Aboriginal land under the *Aboriginal Land Act 1991* or Torres Strait Islander land under the *Torres Strait Islander Land Act 1991*; or
- (b) land that is the subject of a deed of grant in trust under the *Land Act 1994*, granted for the benefit of Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes; or

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- (c) any of the following land in the county of Torres, parish of Umaga—
- (i) lot 48 on crown plan TS207;
 - (ii) lot 1 on crown plan 846896;
 - (iii) lot 55 on crown plan 846896.

in-stream island, in a watercourse, means a storage of sediment—

- (a) that is within the channel of the watercourse; and
- (b) to which the following characteristics can generally be expected to apply—
 - (i) it is formed by processes within the watercourse;
 - (ii) its crest is not higher than either outer bank of the watercourse;
 - (iii) it is a dynamic feature, being changed by flow events in the watercourse;
 - (iv) it is made up of coarse materials, in particular, sand and gravel.

intermittent, in relation to the flow of water in a watercourse or the collection of water in a lake, includes variable, having regard to seasonal variations, and to year by year variability of seasons.

lake includes—

- (a) a lagoon, swamp or other natural collection of water, whether permanent or intermittent; and
- (b) the bed and banks of the lake, and any other element of the lake confining or containing the water of the lake.

Land Title Act compensation provisions means the *Land Title Act 1994*, sections 188 and 188A.

lessee means a person who is registered in the land registry as the holder of a lease from the State.

lodge means lodge under a registration Act.

multiple lot declaration (non-tidal) see section 120(1).

multiple lot declaration (non-tidal) provision means section 120.

multiple lot declaration (tidal) see section 93(1).

multiple lot declaration (tidal) provision means section 93.

new plan of survey means a plan of survey registered after the commencement of this definition.

new source material means source material that comes into force after the commencement of this definition.

non-tidal boundary means—

- (a) a non-tidal boundary (lake); or
- (b) a non-tidal boundary (watercourse).

non-tidal boundary (lake) see section 99(1).

non-tidal boundary (watercourse) see section 99(2).

non-tidal boundary (watercourse) location criteria means the criteria stated in section 100.

old plan of survey means a plan of survey registered, or otherwise recorded or recognised by the State as an authoritative instrument relating to land boundaries, before the commencement of this definition.

original adopted natural feature rule (tidal) provision means section 80.

outer bank, of a watercourse, means a line or feature that is an outer bank of the watercourse under the *Water Act 2000*.

overland flow water see the *Water Act 2000*, schedule 4.

plan of survey includes a plan of subdivision under a registration Act.

Property Law Act relief provisions means the *Property Law Act 1974*, part 11.

public interest includes the cultural, environmental, heritage, land protection, planning, recreational, social and strategic interests of the public.

register means register under a registration Act.

registered owner, in relation to land that is freehold land, means the person recorded in the freehold land register as the person entitled to the fee simple interest in the land.

registration Act means the *Land Act 1994* or the *Land Title Act 1994*, and if the context permits, includes an Act directly or indirectly superseded by the *Land Act 1994* or the *Land Title Act 1994*.

relevant evidence, in relation to making a declaration under section 83, 93, 109 or 120 about the location of a boundary, means evidence relevant to identifying the location of the boundary, including, for example, the following evidence about a natural feature relevant to identifying the location of the boundary—

- (a) evidence about the history of the location of the natural feature that is reasonably available to the chief executive;
- (b) if soil samples, images or other material is obtained under section 25A in relation to the last known location of the natural feature—the findings arising from the analysis of the samples, images or material.

review decision see section 125(1).

review notice day see section 125(3)(a).

right line boundary, of land, means a boundary of the land to which all of the following apply—

- (a) the boundary is represented, or, having regard to the source material for the land, would be represented, on a plan of survey for the land as a straight line or series of straight lines;
- (b) the boundary's location is fixed;

- (c) the boundary's location is marked on the ground, or, having regard to the source material for the land, would be marked on the ground, by the placement of survey marks that—
 - (i) delineate the boundary; or
 - (ii) allow the location of the boundary to be worked out by reference to them; or
 - (iii) are a combination of subparagraphs (i) and (ii).

scour mark, in relation to a watercourse, means—

- (a) a mark made by the sweeping action of suspended sediments in water during flows in the watercourse; or
- (b) a mark that can be identified by weathering stains, or the absence of lichens, on erosion-resistant surfaces of a bank of the watercourse.

Example of an erosion-resistant surface—

rock

second exception for the original adopted natural feature rule (tidal) provision (applied criteria exception) means section 82.

single lot declaration (non-tidal) see section 109(1).

single lot declaration (tidal) see section 83(1).

source material, for land, means any instrument forming the origin of the land's identity for the system of land titling or land administration in place in the State under the registration Acts.

Examples of what is and what is not source material—

- 1 For freehold land, the most significant source material would ordinarily be the most recently issued deed of grant that granted the land in fee simple. A subsequently issued certificate of title under the *Land Title Act 1994* following a subdivision or resurvey of all or part of the freehold land would not ordinarily be source material for the land or a part of the land.
- 2 A map, plan of survey or other instrument that is contemporaneous with the deed of grant mentioned in example 1 could also be source material if, for example, it is at law justifiable to have recourse to it

to better interpret the deed of grant. A subsequent plan of subdivision following a subdivision or resurvey of all or part of the freehold land would not ordinarily be source material for the land or a part of the land.

- 3 For a road or reserve under the *Land Act 1994*, the most significant source material would ordinarily be the instrument under which the road or reserve is dedicated. Source material could also include a map or a plan of survey that is contemporaneous with the dedication of the road or reserve.
- 4 For land that is the subject of a lease, licence or permit under the *Land Act 1994*, the most significant source material would ordinarily be the instrument of lease, licence or permit. Source material could also include an entry in a register relating to the identity of the land before the grant of the lease, licence or permit, and a map or a plan of survey that is contemporaneous with the grant of the lease, licence or permit or the making of the entry in the register.

specified tidal boundary see section 71.

subsequent new plan of survey, for land having a tidal or non-tidal boundary, means a new plan of survey for the land, other than the first new plan of survey for the land.

sudden change, of a natural feature, means any shift or modification of the natural feature that is not gradual change of the natural feature, whether by a natural process or by human activity.

tidal boundary see section 70.

tidal boundary location criteria means the criteria stated in section 72.

watercourse see section 63.

63 Meaning of *watercourse* for this part

- (1) In this part, a *watercourse* is a river, creek or other stream, including a stream in the form of an anabranch or a tributary, in which water flows permanently or intermittently, regardless of the frequency of flow events—
 - (a) in a natural channel, whether artificially modified or not;
or

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- (b) in an artificial channel that has changed the course of the stream.
- (2) A *watercourse* includes any of the following located in it—
 - (a) in-stream islands;
 - (b) benches;
 - (c) bars.
- (3) However, a *watercourse* does not include a drainage feature.

64 Application of ambulatory boundary principles in this part

- (1) It is the intention of this part that the ambulatory boundary principles are taken to have always applied, and that the principles continue to apply, unless their operation is excluded by contrary intention.
- (2) Subsection (1) applies to a tidal boundary or non-tidal boundary even if the application to the boundary of division 2, subdivisions 2 to 4, or division 4, subdivisions 2 to 4, is excluded.
- (3) Subsection (4) applies if—
 - (a) a provision of this part provides for the application of the ambulatory boundary principles to a natural feature; and
 - (b) the natural feature is other than, strictly, the boundary between land and water.

Examples of natural features for paragraph (b)—

 - the top of a bank
 - the toe of a dune
 - a depositional feature
- (4) The ambulatory boundary principles are taken to apply, and if the case requires, are taken to have applied, to the natural feature, to the greatest practicable extent, in the same way and to the same extent as they apply, or would have applied, to the

boundary, between the land and the water, of land bounded by water.

65 Special provision for reserved plans of survey

- (1) This section applies if, after the commencement of this section, a reserved plan of survey is registered for land having a tidal boundary or non-tidal boundary (watercourse) before any other plan of survey is registered for the land.
- (2) The reserved plan of survey—
 - (a) is taken to be, for division 2, subdivision 2, or division 4, subdivision 2, the old plan of survey that is the most recently registered or that is otherwise currently authoritative in relation to the land; and
 - (b) takes the place of any other old plan of survey for the land that, immediately before the registration of the reserved plan of survey, was the most recently registered or otherwise currently authoritative old plan of survey in relation to the land.
- (3) For the application of division 2, subdivision 3, or division 4, subdivision 3 to the land, the reserved plan of survey is taken not to be the first new plan of survey for the land.
- (4) In this section—

reserved plan of survey means a plan of survey—

- (a) prepared and registered only for the purpose of a disposal of, or other dealing with, part of the land under the *Land Act 1994* for a public purpose under that Act; or
- (b) prepared and registered for the purposes of a development approval under the repealed *Sustainable Planning Act 2009* as in force at the commencement of this part, other than for the purposes of an amendment of the development approval made after the commencement of this part; or

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- (c) prepared on the basis of a survey performed before the commencement of this part for the purposes of work directed or authorised under a regulation under the *State Development and Public Works Organisation Act 1971* to be undertaken or completed by an entity.

Example for paragraph (c)—

Under the *State Development and Public Works Organisation Act 1971*, section 140, a regulation may authorise the Coordinator-General to undertake works in, on, over, through or across a foreshore.

65A Special provision for old plans of survey

- (1) This section applies in relation to an old plan of survey that—
 - (a) adopts a natural feature for representing a tidal or non-tidal boundary of land; and
 - (b) has not been superseded by a new plan of survey.
- (2) The natural feature is taken to have been adopted in compliance with the directions and instructions applying to surveyors when the old plan of survey was prepared if—
 - (a) a natural feature exists in a location that—
 - (i) corresponds with the location of a boundary shown on the old plan of survey; or
 - (ii) differs to the location mentioned in subparagraph (i) only to an extent attributable to a gradual change of a natural feature; and
 - (b) it is possible to describe the natural feature mentioned in paragraph (a).
- (3) Subsection (2) does not apply in relation to directions or instructions applying to surveyors about—
 - (a) tidal planes; or
 - (b) the adoption of the line of intersection of a particular level of water flow with land; or

-
- (c) the adoption of the notional middle line separating the lands of owners on opposite sides of a watercourse.

65B Special provision for particular boundaries of new land

- (1) This section applies in relation to a tidal or non-tidal boundary identified in source material for land (the *new land*) that is common with a boundary of land adjoining the new land that—
 - (a) is shown on a registered plan of survey for the adjoining land; and
 - (b) does not comply with the boundary location criteria to the extent allowed under this part.
- (2) The boundary shown on a plan of survey for the new land—
 - (a) must be represented as the boundary is shown on the registered plan of survey for the adjoining land; and
 - (b) is not required to comply with the boundary location criteria to the extent necessary to satisfy paragraph (a).
- (3) Subsection (2) applies until a new plan of survey for the adjoining land that shows the boundary in accordance with the boundary location criteria is registered.
- (4) In this section—

boundary location criteria means the criteria stated in section 72 or 100.

Division 2 Tidal boundaries

Subdivision 1 Preliminary

66 Non-application of sdivs 2 to 4 to particular land

- (1) Subdivisions 2 to 4 do not apply to the location at law of a tidal boundary of land if—

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- (a) the tidal boundary is a specified tidal boundary; or
 - (b) the land is indigenous land; or
 - (c) the land is strategic port land under the *Transport Infrastructure Act 1994*; or
 - (d) the land is, or is a part of, a forest reserve or protected area under the *Nature Conservation Act 1992*; or
 - (e) the land is comprised in a State forest under the *Forestry Act 1959*.
- (2) If land ceases to be strategic port land under the *Transport Infrastructure Act 1994*, subdivisions 2 to 4 commence to apply to the location at law of the tidal boundary of the land as if, for that land, the subdivisions commenced to apply when the land ceased to be strategic port land.
- (3) If the status of land as a protected area under the *Nature Conservation Act 1992* is revoked and the land is not immediately again dedicated as a protected area under that Act, subdivisions 2 to 4 commence to apply to the location at law of the tidal boundary of the land as if, for that land, the subdivisions commenced to apply on the revocation.
- (4) If the status of land as a forest reserve under the *Nature Conservation Act 1992* is revoked and the land is not immediately again dedicated as a forest reserve under that Act or immediately dedicated as a protected area under that Act, subdivisions 2 to 4 commence to apply to the location at law of the tidal boundary of the land as if, for that land, the subdivisions commenced to apply on the revocation.
- (5) If the status of land as being comprised in a State forest under the *Forestry Act 1959* is revoked and the land is not immediately again declared as a State forest under that Act or immediately dedicated as a forest reserve or protected area under the *Nature Conservation Act 1992*, subdivisions 2 to 4 commence to apply to the location at law of the tidal boundary of the land as if, for that land, the subdivisions commenced to apply on the revocation.
- (6) In this section—

protected area, under the *Nature Conservation Act 1992*, does not include a coordinated conservation area under that Act.

67 Overview of sdivs 2 to 6

- (1) Subdivision 2 provides for the location at law of a tidal boundary of land for the period starting when this division commences and ending on the registration of the first new plan of survey to be registered for the land after this division commences.
- (2) Generally, subdivision 2 provides for the location at law of the tidal boundary to be the current location of the natural feature adopted in the currently applicable plan of survey.
- (3) Subdivision 3 provides for the location at law of a tidal boundary of land from the registration of the first new plan of survey for the land.
- (4) Generally, subdivision 3 provides for the location at law of the tidal boundary to be the current location of the natural feature adopted in the first old plan of survey that adopted a natural feature, whether or not it is the most recently registered plan of survey for the land.
- (5) Exceptions to the general rules under subdivisions 2 and 3 include providing for the location of tidal boundaries in a way that involves the application of some or all of the tidal boundary location criteria.
- (6) Subdivision 4 provides for the location at law of a tidal boundary of land from the registration of any subsequent new plan of survey for the land, and relies on the feature identified under subdivision 3.
- (7) Subdivision 5 provides for the location at law of a tidal boundary of land, and for the non-application of subdivisions 2 to 4, if the land's source material is new source material.
- (8) Subdivision 6 provides for particular matters relating to the location at law of boundaries of esplanades not otherwise provided for in subdivisions 2 to 5.

68 Operation of sdivs 2 to 4

The provisions of subdivisions 2 to 4 about the location at law of a tidal boundary of land prevail even if their operation is inconsistent with—

- (a) the representation of the tidal boundary on a plan of survey; or
- (b) the location at law of the tidal boundary under any source material for the land immediately before the commencement of this division.

69 Noting of advice about operation of sdiv 3 or div 3

(1) The registrar of titles may keep records in a way that a search of the appropriate register kept by the registrar will show any case where—

- (a) subdivision 3 would, or is likely to, have the effect of locating a tidal boundary in a different place, or in a different form, from its location or form as provided for under subdivision 2; or

Example of possible record for paragraph (a)—

Land could be the subject of a record for paragraph (a) if its old plan of survey adopts the line of intersection of a tidal plane with land (for example, the line of mean high water springs) but, on the registration of its first new plan of survey, its tidal boundary will be a different feature (for example the top of a bank).

- (b) a multiple lot declaration (tidal) has been made and the declaration would, or is likely to, have the effect of locating a tidal boundary in a different place, or in a different form, from its location or form as provided for under this division.

Example of possible record for paragraph (b)—

Land could be the subject of a record for paragraph (b) if it and other land are the subject of a multiple lot declaration (tidal), so that on the registration of the next new plan of survey for the land, the tidal boundary will be in accordance with the boundary provided for in the declaration.

- (2) Neither the registrar of titles nor anyone else, including the State, has an obligation of any type, arising under this Act or otherwise, to take any action subsection (1) allows.
- (3) No fee is payable for the recording of anything under subsection (1).

70 Meaning of *tidal boundary* of land

- (1) A boundary of land is a *tidal boundary* if—
 - (a) under the source material for the land, the boundary is identified, either expressly or by necessary implication—
 - (i) with reference to water, however described, that is subject to tidal influence; or

Examples of tidal boundary identifiers for subparagraph (i)—

- ‘by the right bank of the Maroochy River’
- ‘high-water mark’
- ‘by the high-water mark of Moreton Bay’
- ‘mean high water springs’
- other similar language relating to a bay, ocean or sea
- other similar language relating to a watercourse at a place where the waters of the watercourse are subject to tidal influence

- (ii) with reference to a natural feature or other thing whose existence and location are dependent on, or otherwise linked to the existence and location of, water that is subject to tidal influence; and

Example of tidal boundary identifier for subparagraph (ii)—

the top of a bank running in proximity to the water’s edge at spring tide

- (b) having regard to how the boundary is identified, it can not appropriately be represented on a plan of survey as a right line boundary.

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- (2) For subsection (1), a boundary that would otherwise be a tidal boundary under subsection (1) is taken not to be a tidal boundary to the extent it is located upstream of a downstream limit identified on the watercourse identification map under the *Water Act 2000*.

71 Meaning of *specified tidal boundary*

- (1) A tidal boundary of land is a *specified tidal boundary* if, under the source material for the land, the identification of the tidal boundary is specific rather than general in relation to the element of tidal influence, including for example, a description of the tidal boundary that—
- (a) uses the expression ‘mean high water springs’ or ‘ordinary high-water mark at spring tides’; or
 - (b) uses some other form of words to describe the tidal boundary that indicates a clear intention to locate the boundary at a specific tidal plane.
- (2) Also, a tidal boundary of land is a *specified tidal boundary* if—
- (a) under the source material for the land, the identification of the tidal boundary is general rather than specific in relation to the element of tidal influence; and
 - (b) the source material was in force for the land on the commencement of this division and is, or includes, a deed of grant issued under—
 - (i) the *Land Act 1994*, section 358(3)(b) following a surrender under section 358(2)(b) of that Act; or
 - (ii) provisions of the repealed *Land Act 1962*, or an earlier Act relating to the creation of freehold land, corresponding to the provisions mentioned in subparagraph (i).
- (3) Without limiting what may be an identification of a tidal boundary that is general rather than specific, the identification of a tidal boundary is taken to be general rather than specific if it does not use a form of words to describe the tidal boundary

that indicates a clear intention to locate the boundary at a specific tidal plane.

Examples of forms of words achieving a general rather than specific identification of a tidal boundary—

- ‘by the left bank of the Endeavour River’
- ‘high-water mark’
- ‘by the high-water mark of Moreton Bay’

72 Tidal boundary location criteria

- (1) The first criterion is that the tidal boundary must not be subject to tidal inundation under any combination of astronomical conditions and average meteorological conditions.
- (2) The second criterion is that the tidal boundary must be on the landward side of any sandy beaches, foredunes, mangroves, sea grasses, salt grasses, salt marshes, saltpans, intertidal flats, tidal sand banks and other similar features.
- (3) The third criterion is that the location of the tidal boundary must be consistent with the public interest.
- (4) The fourth criterion is that the tidal boundary—
 - (a) must be in a stable location that has been shown to have long term sustainability under normal seasonal events; and
 - (b) must not require any construction to keep it free from complete or partial inundation or obliteration.
- (5) The fifth criterion is that a natural feature must be adopted as the tidal boundary unless there is no natural feature in reasonable proximity to where the tidal boundary must be located, having regard to the description of the boundary in the source material for the land.

Examples of natural features—

the top or bottom of a bank, a natural geomorphic form, a change in grade of the natural landform, a change in type of native vegetation

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- (6) The sixth criterion is that if the fourth criterion can not be complied with, and no natural feature can be adopted under the fifth criterion, the tidal boundary chosen must nevertheless be on the landward side of any sandy beaches or sandy dunes and of any active erosion areas that have no natural vegetation.

Example for subsection (6)—

The edge of vegetation that is above the highest astronomical tide could be adopted as the tidal boundary.

73 Special regulation-making power to support tidal boundary location

- (1) Regulations made under this Act may include a regulation supporting the application of the provisions of this division relating to tidal boundaries.
- (2) Without limiting subsection (1), a regulation may, by words and diagrams, indicate how the provisions of this division must be applied in varying tidal environments.
- (3) A regulation under this section is not invalid only because it supplements the provisions of this Act by providing greater certainty than would otherwise be the case in relation to the location at law of tidal boundaries in particular circumstances or types of circumstances.

74 Special provision for plans of survey approved under stay provisions

- (1) This section applies if—
- (a) the registration of a plan of survey of land (the *relevant plan of survey*) was approved under the *Land Act 1994*, section 431ND or 431NE or the *Land Title Act 1994*, section 191D or 191E before the repeal of those provisions; and
- (b) the relevant plan of survey—
- (i) was registered before the commencement of this section; or

-
- (ii) is registered after the commencement of this section.
- (2) Subsections (3) to (5) apply to the land—
- (a) if subsection (1)(b)(i) applies—from the commencement of this section; or
- (b) if subsection (1)(b)(ii) applies—from the registration of the relevant plan of survey.
- (3) The tidal boundary of the land is, at law, the natural feature or anything else represented on the plan of survey.
- (4) To decide where the tidal boundary is located at any time after the commencement of this section or the registration of the relevant plan of survey, there must be taken into account the application of the ambulatory boundary principles to a natural feature represented on the relevant plan of survey.
- (5) Subdivisions 2 and 3 do not apply to the location at law of the tidal boundary of the land, but subdivision 4 applies as if the relevant plan of survey were the first new plan of survey for the land.

Subdivision 2 Locating tidal boundaries at law until registration of first new plan of survey

75 Application of sdiv 2

This subdivision provides for the location at law of a tidal boundary of land at any time in the period starting when this division commences and ending on the registration of the first new plan of survey for the land.

76 Current adopted natural feature rule (tidal) provision

- (1) This section applies if an old plan of survey that is the most recently registered or that is otherwise currently authoritative in relation to the land, together with any associated material

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for the plan, clearly adopted a natural feature for representing the tidal boundary.

Examples of natural features—

landward edge of mangroves, seaward edge of grassy dune, stable toe of dune

- (2) For subsection (1), the adoption of the line of intersection of a tidal plane with land is sufficient to have achieved the adoption of a natural feature.
- (3) The tidal boundary is, at law, the adopted natural feature, taking into account the application of the ambulatory boundary principles to the adopted natural feature both before and after the commencement of this division.

Example for subsection (3)—

Immediately before the commencement of this division, the tidal boundary may have been located, at law, having regard strictly to the terms of a deed of grant, at the current line of mean high water springs. Further, the most recently registered plan of survey for the land adopted the line of mean high water springs, rather than a natural feature such as the top of a bank, to represent the tidal boundary. On the commencement of this division, the tidal boundary remains as mean high water springs until a new plan of survey is registered.

- (4) Subsection (3) has effect even if, immediately before the commencement of this division, the tidal boundary was at law located in a different place.

Example for subsection (4)—

Immediately before the commencement of this division, the tidal boundary may have been located at law, having regard strictly to the terms of a deed of grant, at the current line of mean high water springs. However, the most recently registered plan of survey for the land adopted an adjacent top of a bank to represent the boundary. On the commencement of this division, the tidal boundary changes to the current location of the top of the bank.

77 Current adopted natural feature rule (tidal) exception provision

- (1) This section provides for the location at law of the tidal boundary if the current adopted natural feature rule (tidal)

provision does not apply or can not practicably be applied to establish the location.

- (2) The tidal boundary is, at law, located where it could most reasonably be expected to be located, under subdivision 3, if the first new plan of survey were to be registered for the land.
- (3) To decide where the tidal boundary is located at any time, there must be taken into account the application of the ambulatory boundary principles to any natural feature that locates the tidal boundary under subsection (2).
- (4) Without limiting subsection (1), the current adopted natural feature rule (tidal) provision can not practicably be applied if all of the following apply—
 - (a) there is an old plan of survey that is the most recently registered or that is otherwise currently authoritative in relation to the land;
 - (b) the plan, together with any associated material for the plan, adopted a natural feature for representing the tidal boundary;
 - (c) either—
 - (i) it is not possible to make a meaningful correspondence between the evidence on the plan of the adopted natural feature and evidence on the ground of any natural feature; or
 - (ii) the adopted natural feature is currently located in a substantially different location than it would have been if it had been the subject of only gradual change since it was adopted in the old plan of survey.

Subdivision 3 Locating tidal boundaries at law from registration of first new plan of survey

78 Application of sdiv 3

This subdivision provides for the location at law of a tidal boundary of land on and from the registration of the first new plan of survey for the land.

Note—

The operation of this subdivision could be displaced by a multiple lot declaration (tidal) under division 3.

80 Original adopted natural feature rule (tidal) provision

- (1) This section applies if—
 - (a) an old plan of survey, whether or not it is the most recently registered or is otherwise currently authoritative in relation to the land, together with any associated material for the plan, clearly adopted a natural feature for representing the tidal boundary; and
 - (b) the old plan of survey was the first plan of survey to be registered or otherwise become authoritative in relation to the land that adopted a natural feature for representing the tidal boundary.
- (2) For subsection (1)(a), the adoption of the line of intersection of a tidal plane with land is not sufficient to have achieved the adoption of a natural feature.
- (3) The tidal boundary is, at law, the adopted natural feature, taking into account the application of the ambulatory boundary principles to the adopted natural feature, both before and after the registration of the first new plan of survey.
- (4) Subsection (3) has effect even if, immediately before the registration of the first new plan of survey, the tidal boundary was, at law, having regard to the provisions of subdivision 2, located in a different place.

Example for subsection (4)—

Immediately before the registration of the first new plan of survey, the tidal boundary may have been located at law, having regard to subdivision 2, at the current line of mean high water springs. However, the first old plan of survey for the land to adopt a natural feature (other than the line of intersection of a tidal plane with land) to represent the tidal boundary adopted an adjacent top of a bank to represent the boundary. On the registration of the first new plan of survey, the location at law of the tidal boundary changes to the current location of the top of the bank.

81 First exception for the original adopted natural feature rule (tidal) provision (alternative natural feature exception)

- (1) This section provides for an alternative for the location at law of the tidal boundary, but applies only if the land was freehold land when this section commenced.
- (2) This alternative applies if, although the original adopted natural feature rule (tidal) provision can be applied to establish the location (the *location under the rule*), there exists, on the same side of the location under the rule as the water subject to tidal influence, a natural feature (the *alternative natural feature*) that complies with the requirements of the first, second, third and fourth of the tidal boundary location criteria.
- (3) The cadastral surveyor may adopt the alternative natural feature for representation on the first new plan of survey.
- (4) The surveyor must consult with the registered owner of the land before acting under subsection (3).
- (5) If the alternative natural feature is adopted, the tidal boundary is, at law, the alternative natural feature, taking into account the application of the ambulatory boundary principles to the adopted natural feature after the registration of the first new plan of survey.
- (6) In this section—

water subject to tidal influence, in relation to the location under the rule, means the water that is relevant to the identification of the tidal boundary as a tidal boundary.

82 Second exception for the original adopted natural feature rule (tidal) provision (applied criteria exception)

- (1) This section provides for the location at law of the tidal boundary if the original adopted natural feature rule (tidal) provision can not be applied because there is no old plan of survey that, together with any associated material for the plan, clearly adopted a natural feature (other than the line of intersection of a tidal plane with land) for representing the tidal boundary.
- (2) The tidal boundary is, at law, the natural feature or anything else that to the greatest practicable extent complies with the requirements of all the tidal boundary location criteria and is represented on the first new plan of survey.
- (3) To decide where the tidal boundary is located at any time after the registration of the first new plan of survey, there must be taken into account the application of the ambulatory boundary principles to a natural feature represented on the first new plan of survey under subsection (2).
- (4) Subsection (2) does not apply if a single lot declaration (tidal) is made about the location of the tidal boundary.

83 Third exception for the original adopted natural feature rule (tidal) provision (chief executive single lot declaration (tidal) exception)

- (1) This section provides for the location at law of the tidal boundary if the chief executive has by gazette notice under this section made a declaration (a *single lot declaration (tidal)*) about the location of the tidal boundary.
- (2) The tidal boundary is, at law, the natural feature or anything else declared by the chief executive to be the tidal boundary for the land under the single lot declaration (tidal).

- (3) To decide where the tidal boundary is located at any time after the registration of the first new plan of survey, there must be taken into account the application of the ambulatory boundary principles to any natural feature declared by the chief executive to be the tidal boundary.
- (4) The chief executive may make a single lot declaration (tidal) only if a plan of survey intended to be the first new plan of survey for the land has been lodged, or has been deposited with a view to subsequent lodgement.
- (5) Subject to subsection (4), the chief executive may make a single lot declaration (tidal) only if—
 - (a) the original adopted natural feature rule (tidal) provision would otherwise apply, but—
 - (i) it is not possible to make a meaningful correspondence between the evidence on the old plan of survey of the adopted natural feature and evidence on the ground of any natural feature; or
 - (ii) the adopted natural feature is currently located in a substantially different location than it would have been if it had been the subject of only gradual change since it was adopted in the old plan of survey; or
 - (iii) the natural feature adopted for representing the tidal boundary in the old plan of survey was different from the natural feature that should have been adopted, having regard to the directions and instructions applying to surveyors when the old plan of survey was prepared; or
 - (iv) because of circumstances not otherwise provided for in this subdivision, the original adopted natural feature rule (tidal) provision can not practicably be applied; or
 - (b) all of the following apply—
 - (i) the directions and instructions applying to surveyors when an old plan of survey was prepared were not correctly complied with;

- (ii) if they had been complied with, the old plan of survey would have been the first old plan of survey to be registered or otherwise become authoritative in relation to the land that clearly adopted a natural feature (other than the line of intersection of a tidal plane with land) for representing the tidal boundary;
 - (iii) the old plan of survey instead incorrectly adopted a line other than a natural feature for representing the tidal boundary; or
 - (c) the second exception for the original adopted natural feature rule (tidal) provision (applied criteria exception) would otherwise have applied to locate the tidal boundary.
- (6) To remove any doubt, it is declared that the single lot declaration (tidal) may incorporate by reference a map or plan held by the chief executive for identifying the tidal boundary.
- (7) In making a single lot declaration (tidal), the chief executive must ensure the location of the tidal boundary to the greatest practicable extent, having regard to all relevant evidence, complies with the requirements of the first, second and third of the tidal boundary location criteria.
- (8) The chief executive or registrar of titles may defer dealing with a first new plan of survey that has been lodged, or has been deposited with a view to subsequent lodgement, to allow the chief executive a reasonable time to investigate and make a single lot declaration (tidal).
- (9) The following requirements apply for the making of a single lot declaration (tidal)—
 - (a) the chief executive must take reasonable steps to obtain the views of any registered owner or lessee of the land about the proposed declaration;
 - (b) the chief executive must make a decision that the chief executive intends to make the proposed declaration, and what the terms of the proposed declaration are to be;

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- (c) the chief executive must give the registered owner or lessee of the land written notice of—
 - (i) the decision and reasons for the decision; and
 - (ii) the owner's or lessee's right to appeal against the decision and how the appeal is started;
 - (d) after any review of, and any appeal against, the decision have been completed, the chief executive may, unless following review or appeal no declaration is to be made, make the single lot declaration (tidal)—
 - (i) in accordance with the decision; or
 - (ii) if the decision is amended or substituted as a result of review or appeal—in accordance with the decision as amended or substituted.

Subdivision 4 Locating tidal boundaries at law from registration of subsequent new plan of survey

84 Application of sdiv 4

This subdivision provides for the location at law of a tidal boundary of land on and from the registration of a subsequent new plan of survey for the land.

Note—

The operation of this subdivision could be displaced by a multiple lot declaration (tidal) under division 3.

86 First new plan of survey adopted feature rule (tidal)

The tidal boundary is, at law, the natural feature or other thing that constituted the tidal boundary immediately before the registration of the subsequent new plan of survey, taking into account, if a natural feature constituted the boundary, the application of the ambulatory boundary principles to the

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natural feature, both before and after the registration of the subsequent new plan of survey.

Subdivision 5 Locating tidal boundaries at law on coming into force of new source material

87 Application of sdiv 5

This subdivision provides for the location at law of a tidal boundary of land on and from the coming into force of new source material for the land.

88 Special requirement to support the operation of sdiv 5

The representation of the tidal boundary on any plan of survey for the land together with associated material must, to the greatest practicable extent, be consistent with the location at law of the boundary as provided for in this subdivision.

89 New source material adopted feature rule (tidal)

- (1) Subdivisions 2 to 4 do not apply to the land.
- (2) The tidal boundary is, at law, the natural feature or other thing identified as the tidal boundary in the new source material, taking into account, if a natural feature is identified as the boundary, the application of the ambulatory boundary principles to the natural feature, after the coming into force of the source material.
- (3) For subsection (2), the adoption of the line of intersection of a tidal plane with land is not sufficient to have achieved the adoption of a natural feature unless the land is, or is about to become, indigenous land or a protected area under the *Nature Conservation Act 1992*.

Subdivision 6 Esplanades

90 **Boundary of land with excluded or dedicated esplanade—source material coming into force before commencement**

- (1) This section applies if—
 - (a) either—
 - (i) source material for land (the *relevant land*) coming into force before the commencement of this section, and still in force on the commencement, provides for the exclusion of land from the relevant land for an esplanade; or
 - (ii) source material for land (also the *relevant land*) coming into force before the commencement of this section, and still in force on the commencement, provides for the reservation of land within the relevant land for an esplanade, and the land the subject of the reservation has been dedicated as an esplanade; and
 - (b) the esplanade is bounded on one side by a tidal boundary and on the other by the relevant land; and
 - (c) the boundary between the relevant land and the esplanade (the *esplanade boundary* of the relevant land) is not a right line boundary.
- (2) To remove any doubt, it is declared that subdivisions 2 to 4 apply to the location at law of the tidal boundary unless, under subdivision 1, the subdivisions do not apply to its location.
- (3) The location of the esplanade boundary of the relevant land is taken to have been fixed as if it were a right line boundary on the coming into force of—
 - (a) if subsection (1)(a)(i) applies—the source material; or
 - (b) if subsection (1)(a)(ii) applies—the dedication.

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Example for subsection (3)—

If the tidal boundary of the esplanade is for any reason eroded, there is no corresponding change in the location of the esplanade boundary of the relevant land.

- (4) If subsection (1)(a)(i) applies and a survey was performed to identify the location of the tidal boundary, the esplanade boundary is located at the offset from the tidal boundary as provided for in—
 - (a) the source material; and
 - (b) the plan of the survey, whether or not the plan forms part of the source material.
- (5) If subsection (1)(a)(i) applies and no survey was performed to identify the location of the tidal boundary, the esplanade boundary is located at an offset, consistent with the source material, from the tidal boundary's location at law when the source material came into force.
- (6) If subsection (1)(a)(ii) applies, the esplanade boundary is located as provided for in the dedication of the esplanade.

91 Boundary of land with excluded or dedicated esplanade—source material coming into force after commencement

- (1) This section applies if—
 - (a) either—
 - (i) the source material for land (the *relevant land*) coming into force after the commencement of this section provides for the exclusion of land from the relevant land for an esplanade; or
 - (ii) the source material for land (also the *relevant land*) coming into force after the commencement of this section provides for the reservation of land within the relevant land for an esplanade, and the land the subject of the reservation has been dedicated as an esplanade; and

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- (b) the esplanade is bounded on one side by a tidal boundary and on the other by the relevant land; and
 - (c) the boundary between the relevant land and the esplanade (the *esplanade boundary* of the relevant land) is not a right line boundary.
- (2) To remove any doubt, it is declared that subdivision 5 applies to the location at law of the tidal boundary.
 - (3) The location of the esplanade boundary of the relevant land is taken to have been fixed as if it were a right line boundary on the coming into force of—
 - (a) if subsection (1)(a)(i) applies—the source material; or
 - (b) if subsection (1)(a)(ii) applies—the dedication.

Example for subsection (3)—

If the tidal boundary of the esplanade is for any reason eroded, there is no corresponding change in the location of the esplanade boundary of the relevant land.

- (4) If subsection (1)(a)(i) applies and a survey is performed to identify the location of the tidal boundary, the esplanade boundary is located at the offset from the tidal boundary as provided for in—
 - (a) the source material; and
 - (b) the plan of the survey, whether or not the plan forms part of the source material.
- (5) If subsection (1)(a)(i) applies and no survey is performed to identify the location of the tidal boundary, the esplanade boundary is located at an offset, consistent with the source material, from the tidal boundary's location at law when the source material came into force.
- (6) If subsection (1)(a)(ii) applies, the esplanade boundary is located as provided for in the dedication of the esplanade.

92 Boundary of land subject to reservation of esplanade, before dedication

- (1) This section applies if—

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- (a) the source material that is currently in force for land (the *relevant land*) provides for the reservation of land within the relevant land for an esplanade; and
 - (b) the land proposed as an esplanade has not been dedicated as an esplanade in accordance with the reservation; and
 - (c) dedication of the esplanade in accordance with the source material would require that the esplanade be bounded on one side by a tidal boundary and on the other by the relevant land.
- (2) To remove any doubt, it is declared that, until the esplanade is dedicated in accordance with the reservation—
- (a) if the source material came into force before the commencement of this section, subdivisions 2 to 4 apply to the location at law of the tidal boundary of the relevant land unless, under subdivision 1, the subdivisions do not apply to its location; and
 - (b) if the source material came into force after the commencement of this section, subdivision 5 applies to the location at law of the tidal boundary of the relevant land.

Division 3 Miscellaneous issues in the tidal environment

93 Multiple lot declaration (tidal) provision

- (1) The chief executive may by gazette notice make a declaration (a *multiple lot declaration (tidal)*) under this section providing for the location of the tidal boundary of each of 2 or more lots (each a *relevant lot*).
- (2) The chief executive may make a multiple lot declaration (tidal) even if, for any relevant lot—
 - (a) a new plan of survey has been lodged, or has been deposited with a view to subsequent lodgement; or

- (b) there has already been 1 or more new plans of survey registered.
- (3) However, the chief executive may make a multiple lot declaration (tidal) only if—
- (a) all the land constituting the relevant lots was the subject of 1 old plan of survey (the *original old plan of survey*), whether or not any other land was also the subject of the original old plan of survey; and
 - (b) either—
 - (i) the original adopted natural feature rule (tidal) provision would otherwise apply to 1 or more of the relevant lots but, on a consideration of all the relevant lots taken as a whole, the chief executive is satisfied a circumstance mentioned in subsection (4) exists for the relevant lots; or
 - (ii) the second exception for the original adopted natural feature rule (tidal) provision (applied criteria exception) would otherwise have applied to locate the tidal boundary.
- (4) For subsection (3)(b)(i), the circumstances are—
- (a) it is not possible to make a meaningful correspondence between the evidence on the original old plan of survey of an adopted natural feature and evidence on the ground of any natural feature; or
 - (b) the adopted natural feature is currently located in a substantially different location than it would have been if it had been the subject of only gradual change since it was adopted in the original old plan of survey; or
 - (c) the natural feature adopted for representing the tidal boundary in the original old plan of survey was different from the natural feature that should have been adopted, having regard to the directions and instructions applying to surveyors when the original old plan of survey was prepared; or

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- (d) because of circumstances not otherwise provided for in this subdivision, the original adopted natural feature rule (tidal) provision can not practicably be applied.
- (5) On and from the registration of the next new plan of survey for a relevant lot—
 - (a) the tidal boundary of the relevant lot is, at law, the line that would describe on the ground the line declared by the chief executive to be the tidal boundary for the lot under the multiple lot declaration (tidal); and
 - (b) the tidal boundary is taken to be fixed as if it were a right line boundary.
- (6) To remove any doubt, it is declared that the gazette notice may incorporate by reference a map or plan held by the chief executive for identifying the location of the tidal boundary of the relevant lots.
- (7) In making a multiple lot declaration (tidal), the chief executive must ensure, to the greatest practicable extent, having regard to all relevant evidence, that the location of the tidal boundary as provided for in the multiple lot declaration (tidal) complies with the requirements of the first, second and third of the tidal boundary location criteria.
- (8) On and from the registration of the next new plan of survey for a relevant lot, the lot is taken still to be land having a tidal boundary, even though the location of the boundary becomes fixed as provided for under subsection (5)(b).
- (9) The chief executive or registrar of titles may defer dealing with a new plan of survey that has been lodged, or has been deposited with a view to subsequent lodgement, to allow the chief executive a reasonable time to investigate the making of, and make, a multiple lot declaration (tidal).
- (10) The following requirements apply for the making of a multiple lot declaration (tidal)—
 - (a) the chief executive must take reasonable steps to obtain the views of any registered owner or lessee of each relevant lot about the proposed declaration;

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- (b) the chief executive must make a decision that the chief executive intends to make the proposed declaration, and what the terms of the proposed declaration are to be;
 - (c) the chief executive must give the registered owner or lessee of each relevant lot written notice of—
 - (i) the decision and reasons for the decision; and
 - (ii) the owner's or lessee's right to appeal against the decision and how the appeal is started;
 - (d) after any review of, and any appeal against, the decision have been completed, the chief executive may, unless, following review or appeal no declaration is to be made, make the multiple lot declaration (tidal)—
 - (i) in accordance with the decision; or
 - (ii) if the decision is amended or substituted as a result of review or appeal—in accordance with the decision as amended or substituted.
- (11) Division 2, subdivisions 3 and 4 do not provide for the location at law of a tidal boundary of land to the extent their operation would be inconsistent with the operation of this section.

94 No compensation for operation of div 2 or this division

A person is not entitled to relief or compensation from the State or anyone else, under this Act, the Land Title Act compensation provisions, the Property Law Act relief provisions or otherwise, for deprivation of an interest of any type in land, or for loss or damage of any kind, arising out of the operation of division 2 or this division, including in particular—

- (a) the relocation, at law, of a tidal boundary because of the operation of—
 - (i) the current adopted natural feature rule (tidal) provision, or any exception to it, under division 2, subdivision 2; or

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- (ii) the original adopted natural feature rule (tidal) provision, or any exception to it, under division 2, subdivision 3; or
- (iii) the multiple lot declaration (tidal) provision; or
- (b) the registrar of titles keeping, or not keeping, a record about the likely location of a tidal boundary arising out of the operation of division 2, subdivision 3 or out of a multiple lot declaration (tidal).

Division 4 Non-tidal boundaries

Subdivision 1 Preliminary

95 Non-application of sdivs 2 to 4 to particular land

- (1) Subdivisions 2 to 4 do not apply to the location at law of a non-tidal boundary (watercourse) of land if the land—
 - (a) is indigenous land; or
 - (b) is, or is a part of, a forest reserve or protected area under the *Nature Conservation Act 1992*; or
 - (c) is comprised in a State forest under the *Forestry Act 1959*.
- (2) If the status of land as a protected area under the *Nature Conservation Act 1992* is revoked and the land is not immediately again dedicated as a protected area under that Act, subdivisions 2 to 4 commence to apply to the location at law of the non-tidal boundary (watercourse) of the land as if, for that land, the subdivisions commenced to apply on the revocation.
- (3) If the status of land as a forest reserve under the *Nature Conservation Act 1992* is revoked and the land is not immediately again dedicated as a forest reserve under that Act or immediately dedicated as a protected area under that Act, subdivisions 2 to 4 commence to apply to the location at law

of the non-tidal boundary (watercourse) of the land as if, for that land, the subdivisions commenced to apply on the revocation.

- (4) If the status of land as being comprised in a State forest under the *Forestry Act 1959* is revoked and the land is not immediately again declared as a State forest under that Act or immediately dedicated as a protected area under the *Nature Conservation Act 1992*, subdivisions 2 to 4 commence to apply to the location at law of the non-tidal boundary (watercourse) of the land as if, for that land, the subdivisions commenced to apply on the revocation.

- (5) In this section—

protected area, under the *Nature Conservation Act 1992*, does not include a coordinated conservation area under that Act.

96 Overview of sdivs 2 to 6

- (1) Subdivision 2 provides for the location at law of a non-tidal boundary (watercourse) of land for the period starting when this division commences and ending on the registration of the first new plan of survey to be registered for the land after this division commences.
- (2) Generally, subdivision 2 provides for the location at law of the non-tidal boundary (watercourse) to be the current location of the natural feature adopted in the currently applicable plan of survey, although it also provides for circumstances in which the location at law of the non-tidal boundary (watercourse) must be decided on an application of the non-tidal boundary (watercourse) location criteria.
- (3) Subdivision 3 provides for the location at law of a non-tidal boundary (watercourse) of land from the registration of the first new plan of survey for the land.
- (4) Subdivision 3 provides for the location at law of the non-tidal boundary (watercourse) to be decided on an application of the non-tidal boundary (watercourse) location criteria.

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- (5) Subdivision 4 provides for the location at law of a non-tidal boundary (watercourse) of land from the registration of any subsequent new plan of survey for the land, and relies on the feature identified under subdivision 3.
- (6) Subdivision 5 provides for the location at law of a non-tidal boundary (watercourse) of land, and for the non-application of subdivisions 2 to 4, if the land's source material is new source material.
- (7) Generally, subdivision 6 provides for the location at law of a non-tidal boundary (lake) at any time.

97 Operation of sdivs 2 to 4

The provisions of subdivisions 2 to 4 about the location at law of a non-tidal boundary (watercourse) of land prevail even if their operation is inconsistent with—

- (a) the representation of the non-tidal boundary (watercourse) on a plan of survey; or
- (b) the location at law of the non-tidal boundary (watercourse) under any source material for the land immediately before the commencement of this division.

98 Noting of advice about operation of sdiv 3 or div 5

- (1) The registrar of titles may keep records in a way that a search of the appropriate register kept by the registrar will show any case where—
 - (a) subdivision 3 would, or is likely to, have the effect of locating a non-tidal boundary (watercourse) in a different place, or in a different form, from its location or form as provided for under subdivision 2; or

Example of possible record for paragraph (a)—

Land could be the subject of a record for paragraph (a) if its old plan of survey adopts the line of intersection of a particular level of water flow with land but, on the registration of its first new plan of survey, its non-tidal boundary (watercourse) will be a different feature (for example, a scour mark).

- (b) a multiple lot declaration (non-tidal) has been made and the declaration would, or is likely to, have the effect of locating a non-tidal boundary (watercourse) in a different place, or in a different form, from its location or form as provided for under this division.

Example of possible record for paragraph (b)—

Land could be the subject of a record for paragraph (b) if it and other land are the subject of a multiple lot declaration (non-tidal), so that on the registration of the next new plan of survey for the land, the non-tidal boundary (watercourse) will be in accordance with the boundary provided for in the declaration.

- (2) Neither the registrar or titles nor anyone else, including the State, has an obligation of any type, arising under this Act or otherwise, to take any action subsection (1) allows.
- (3) No fee is payable for the recording of anything under subsection (1).

99 **Meanings of *non-tidal boundary (lake)* and *non-tidal boundary (watercourse)***

- (1) A boundary of land is a ***non-tidal boundary (lake)*** if—
- (a) under the source material for the land, the boundary is identified with reference to a lake, however described; and
- Examples of non-tidal boundary (lake) identifiers—*
- the southwest bank of Victoria Lake
 - the eastern bank of the lagoon
- (b) having regard to how the boundary is identified, no part of the boundary can appropriately be represented on a plan of survey as a right line boundary; and
- (c) the boundary is not a tidal boundary.
- (2) A boundary of land is a ***non-tidal boundary (watercourse)*** if—
- (a) under the source material for the land, the boundary is identified, either expressly or by necessary implication—

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- (i) with reference to a watercourse, however described; or

Examples of non-tidal boundary (watercourse) identifiers for subparagraph (i)—

- the left bank of the Calladoon Anabranche of the Macintyre River
- the Bremer River
- the left bank of the Gregory River

- (ii) with reference to a natural feature or other thing whose existence and location are dependent on, or otherwise linked to the existence and location of, a watercourse; and

Examples of non-tidal boundary (watercourse) identifiers for subparagraph (ii)—

- an identified scour mark on a bank of the watercourse
- an identified depositional feature on a bank of the watercourse

- (b) having regard to how the boundary is identified, no part of the boundary can appropriately be represented on a plan of survey as a right line boundary; and
- (c) the boundary is not a tidal boundary.

Note—

Under the *Land Act 1994*, section 290JA(2)(c) and the *Land Title Act 1994*, section 51(2)(b), a registered plan of subdivision is taken to be source material for land for this section in particular circumstances.

100 Non-tidal boundary (watercourse) location criteria

- (1) The first criterion to be satisfied for identifying a non-tidal boundary (watercourse) is that the boundary must be a feature that—
- (a) occurs naturally; and
- (b) is within the channel, but not within the bed, of the watercourse; and
- (c) is in a reasonably stable location.

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- (2) The second criterion to be satisfied for identifying a non-tidal boundary (watercourse) is that the boundary must not be a feature, or form part of a feature—
- (a) that is the line of intersection of a particular level of water flow with land; or
 - (b) that is transient in nature, including, for example, any of the following transient features within the watercourse—
 - (i) a bar;
 - (ii) an in-stream island;
 - (iii) a sand or reed bank.
- (3) The third criterion to be satisfied for identifying a non-tidal boundary (watercourse) is that the boundary must be any of the following—
- (a) the top of a bank;
 - (b) a particular line of change in a grade of a landform;
 - (c) a naturally occurring change in vegetation;
 - (d) another feature of sufficient substance to be an equivalent of a feature mentioned in paragraph (a), (b) or (c).
- (4) However, if it is not practicable to identify a non-tidal boundary (watercourse) under subsection (3), the alternative third criterion to be satisfied for identifying a non-tidal boundary (watercourse) is that the boundary must be—
- (a) a depositional feature or a scour mark; or
 - (b) if it is not practicable to identify a depositional feature or a scour mark but a non-tidal boundary (watercourse) is identifiable on the other side of the watercourse on an application of this section—the line that runs along the bank of the watercourse at the same level as the non-tidal boundary (watercourse) on the other side.

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- (5) A line identified under subsection (4)(b) is taken to be a natural feature for the provisions of this part applying to natural features.

Example for subsection (5)—

A provision of this part that applies the ambulatory boundary principles to a natural feature will also have the effect of applying the ambulatory boundary principles to the line identified under subsection (4)(b).

101 Special regulation-making power to support non-tidal boundary (watercourse) location

- (1) Regulations made under this Act may include a regulation supporting the application of the provisions of this division relating to non-tidal boundaries (watercourse).
- (2) Without limiting subsection (1), a regulation may, by words and diagrams—
- (a) indicate how the provisions of this division must be applied in varying environments and in watercourses, or sections of watercourses, of varying profiles; or
 - (b) give examples of the occurrence of depositional features and scour marks and of how they may locate non-tidal boundaries (watercourse); or
 - (c) explain how a bench, bar, in-stream island or sand or reed bank in a watercourse may typically be recognised; or
 - (d) explain how an anabranch may be recognised.
- (3) A regulation under this section is not invalid only because it supplements the provisions of this Act by providing greater certainty than would otherwise be the case in relation to the location at law of non-tidal boundaries (watercourse) in particular circumstances or types of circumstances.

Subdivision 2 Locating non-tidal boundaries (watercourse) at law until registration of first new plan of survey

102 Application of sdiv 2

This subdivision provides for the location at law of a non-tidal boundary (watercourse) of land at any time in the period starting when this division commences and ending on the registration of the first new plan of survey for the land.

103 Current adopted natural feature rule (non-tidal) provision

- (1) This section applies if an old plan of survey that is the most recently registered or that is otherwise currently authoritative in relation to the land, together with any associated material for the plan, clearly adopted a natural feature for representing the non-tidal boundary (watercourse).

Examples of natural features—

- the top of a bank
 - a particular point of change in a grade of landform
 - a naturally occurring change in vegetation
 - the edge of useable land
- (2) For subsection (1)—
- (a) the adoption of the line of intersection of a particular level of water flow with land is sufficient to have achieved the adoption of a natural feature; and
 - (b) the adoption of the notional middle line separating the lands of owners on opposite sides of the watercourse is not sufficient to have achieved the adoption of a natural feature.
- (3) The non-tidal boundary (watercourse) is, at law, the adopted natural feature, taking into account the application of the ambulatory boundary principles to the adopted natural feature both before and after the commencement of this division.

Example for subsection (3)—

Immediately before the commencement of this division, the non-tidal boundary (watercourse) may have been located, at law, having regard strictly to the terms of a deed of grant and the provisions of the *Water Act 2000*, at the line of a particular level of flow in the watercourse. The most recently registered plan of survey for the land adopted a natural feature such as the line of the edge of useable land to represent the non-tidal boundary (watercourse). On the commencement of this division, the non-tidal boundary (watercourse) changes to the current location of the line of the edge of useable land until the first new plan of survey is registered.

- (4) Subsection (3) has effect even if, immediately before the commencement of this division, the non-tidal boundary (watercourse) was at law located in a different place.

104 Current adopted natural feature rule (non-tidal) exception provision

- (1) This section provides for the location at law of the non-tidal boundary (watercourse) if the current adopted natural feature rule (non-tidal) provision does not apply or can not practicably be applied to establish the location.
- (2) The non-tidal boundary (watercourse) is, at law—
 - (a) the natural feature that to the greatest practicable extent complies with the requirements of the non-tidal boundary (watercourse) location criteria; or
 - (b) if it is not practicable to identify a natural feature under paragraph (a)—located where it could most reasonably be expected to be located, under subdivision 3, if the first new plan of survey were to be registered for the land.
- (3) To decide where the non-tidal boundary (watercourse) is located at any time, there must be taken into account the application of the ambulatory boundary principles to any natural feature that locates the non-tidal boundary (watercourse) under subsection (2).

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- (4) Without limiting subsection (1), the current adopted natural feature rule (non-tidal) provision can not practicably be applied if all of the following apply—
- (a) there is an old plan of survey that is the most recently registered or that is otherwise currently authoritative in relation to the land;
 - (b) the plan, together with any associated material for the plan, adopted a natural feature (other than the notional middle line separating the lands of owners on opposite sides of the watercourse) for representing the non-tidal boundary (watercourse);
 - (c) either—
 - (i) it is not possible to make a meaningful correspondence between the evidence on the plan of the adopted natural feature and evidence on the ground of any natural feature; or
 - (ii) the adopted natural feature is currently located in a substantially different location than it would have been if it had been the subject of only gradual change since it was adopted in the old plan of survey.
- (5) Without limiting subsection (2)(b), it is not practicable to identify a natural feature under subsection (2)(a) if, for example, the watercourse has been significantly modified over time because of the installation of walls, jetties, ramps, revetments or other structures.

105 No shift of boundary towards watercourse

- (1) This section applies if the application of the current adopted natural feature rule (non-tidal) provision or the current adopted natural feature rule (non-tidal) exception provision would result in the non-tidal boundary (watercourse) being located at law generally closer to the opposite side of the watercourse than it was located at law immediately before the commencement of this division.

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- (2) Despite the provisions mentioned in subsection (1), on the commencement of this division, the non-tidal boundary (watercourse) stays located at law in the same place it was located at law immediately before the commencement.
- (3) Subsection (2) does not prevent subsequent movement of the non-tidal boundary (watercourse) through the application of the ambulatory boundary principles.

Subdivision 3 Locating non-tidal boundaries (watercourse) at law from registration of first new plan of survey

106 Application of sdiv 3

This subdivision provides for the location at law of a non-tidal boundary (watercourse) of land on and from the registration of the first new plan of survey for the land.

Note—

The operation of this subdivision could be displaced by a multiple lot declaration (non-tidal) under division 5.

108 Boundary location criteria rule (non-tidal) provision

- (1) The non-tidal boundary (watercourse) is, at law, the natural feature closest to the water of the watercourse that, to the greatest practicable extent, complies with the requirements of the non-tidal boundary (watercourse) location criteria.
- (2) To decide where the non-tidal boundary (watercourse) is located at any time after the registration of the first new plan of survey, there must be taken into account the application of the ambulatory boundary principles to the natural feature mentioned in subsection (1).
- (3) Subsections (1) and (2) have effect even if, immediately before the registration of the first new plan of survey, the

non-tidal boundary (watercourse) was, at law, having regard to the provisions of subdivision 2, located in a different place.

Example—

Immediately before the registration of the first new plan of survey, the non-tidal boundary (watercourse) may have been located at law, having regard to subdivision 2, at the current line of the edge of useable land. On the registration of the first new plan of survey, the location at law of the non-tidal boundary (watercourse) changes to the current location of a depositional feature identified under the non-tidal boundary (watercourse) location criteria.

- (4) Subsection (5) applies if subsection (1) would result in the non-tidal boundary (watercourse) being located at law generally closer to the opposite side of the watercourse than it was immediately before the registration of the first new plan of survey.
- (5) Despite subsection (1), on the registration of the first new plan of survey, the non-tidal boundary (watercourse) stays located at law in the same place it was located immediately before the registration of the first new plan of survey.
- (6) Subsection (5) does not prevent subsequent movement of the non-tidal boundary (watercourse) through the application of the ambulatory boundary principles.

109 First exception for the boundary location criteria rule (non-tidal) provision (chief executive single lot declaration (non-tidal) exception)

- (1) This section provides for the location at law of the non-tidal boundary (watercourse) if the chief executive has by gazette notice under this section made a declaration (a *single lot declaration (non-tidal)*) about the location of the non-tidal boundary (watercourse).
- (2) The non-tidal boundary (watercourse) is, at law, a natural feature or anything else declared by the chief executive to be the non-tidal boundary (watercourse) for the land under the single lot declaration (non-tidal).
- (3) To decide where the non-tidal boundary (watercourse) is located at any time after the registration of the first new plan

of survey, there must be taken into account the application of the ambulatory boundary principles to any natural feature declared by the chief executive to be the non-tidal boundary (watercourse).

- (4) The chief executive may make a single lot declaration (non-tidal) only if—
 - (a) a plan of survey intended to be the first new plan of survey for the land has been lodged, or has been deposited with a view to subsequent lodgement; and
 - (b) it is not practicable to identify a natural feature for the purpose of applying the boundary location criteria rule (non-tidal) provision.
- (5) To remove any doubt, it is declared that the single lot declaration (non-tidal) may incorporate by reference a map or plan held by the chief executive for identifying the location of the non-tidal boundary (watercourse).
- (6) In making a single lot declaration (non-tidal), the chief executive must ensure the location of the non-tidal boundary (watercourse) to the greatest practicable extent complies with the requirements of the non-tidal boundary (watercourse) location criteria.
- (7) However, in making the single lot declaration (non-tidal), the chief executive must ensure, to the greatest practicable extent, having regard to all relevant evidence, that the location of the non-tidal boundary (watercourse) as provided for in the single lot declaration (non-tidal) is not generally closer to the opposite side of the watercourse than the last known location of the non-tidal boundary (watercourse).
- (8) The chief executive or registrar of titles may defer dealing with a first new plan of survey that has been lodged, or has been deposited with a view to subsequent lodgement, to allow the chief executive a reasonable time to investigate the making of, and to make, a single lot declaration (non-tidal).
- (9) The following requirements apply for the making of a single lot declaration (non-tidal)—

-
- (a) the chief executive must take reasonable steps to obtain the views of any registered owner or lessee of the land about the proposed declaration;
 - (b) the chief executive must make a decision that the chief executive intends to make the proposed declaration, and what the terms of the proposed declaration are to be;
 - (c) the chief executive must give the registered owner or lessee of the land written notice of—
 - (i) the decision and reasons for the decision; and
 - (ii) the owner’s or lessee’s right to appeal against the decision and how the appeal is started;
 - (d) after any review of, and any appeal against, the decision have been completed, the chief executive may, unless, following review or appeal no declaration is to be made, make the single lot declaration (non-tidal)—
 - (i) in accordance with the decision; or
 - (ii) if the decision is amended or substituted as a result of review or appeal—in accordance with the decision as amended or substituted.

110 Second exception for the boundary location criteria rule (non-tidal) provision (previous sudden change)

- (1) This section provides for the location at law of the non-tidal boundary (watercourse) if the natural feature applying as the boundary under the current adopted natural feature rule (non-tidal) provision was the subject of sudden change at any time before the registration of the first new plan of survey, whether before or after the commencement of this division.
- (2) The location of the non-tidal boundary (watercourse) is in accordance with its location on an application of the ambulatory boundary principles to the natural feature.

Subdivision 4 Locating non-tidal boundaries (watercourse) at law from registration of subsequent new plan of survey

111 Application of sdiv 4

This subdivision provides for the location at law of a non-tidal boundary (watercourse) of land on and from the registration of a subsequent new plan of survey for the land.

Note—

The operation of this subdivision could be displaced by a multiple lot declaration (non-tidal) under division 5.

113 First new plan of survey adopted feature rule (non-tidal)

The non-tidal boundary (watercourse) is, at law, the natural feature or other thing that constituted the non-tidal boundary (watercourse) immediately before the registration of the subsequent new plan of survey, taking into account, if a natural feature constituted the boundary, the application of the ambulatory boundary principles to the natural feature, both before and after the registration of the subsequent new plan of survey.

Subdivision 5 Locating non-tidal boundaries (watercourse) at law on coming into force of new source material

114 Application of sdiv 5

This subdivision provides for the location at law of a non-tidal boundary (watercourse) of land on and from the coming into force of new source material for the land.

115 Special requirement to support the operation of sdiv 5

The representation of the non-tidal boundary (watercourse) on any plan of survey for the land together with associated material must, to the greatest practicable extent, be consistent with the location at law of the boundary as provided for in this subdivision.

116 New source material adopted feature rule (non-tidal)

- (1) Subdivisions 2 to 4 do not apply to the land.
- (2) The non-tidal boundary (watercourse) is, at law, the natural feature or other thing identified as the non-tidal boundary (watercourse) in the new source material, taking into account, if a natural feature is identified as the boundary, the application of the ambulatory boundary principles to the natural feature, after the coming into force of the source material.

Subdivision 6 Locating non-tidal boundaries (lake)

117 Application of sdiv 6

- (1) This subdivision provides for the location at law of a non-tidal boundary (lake) of land at any time.
- (2) This subdivision is not intended to provide for the location at law of a non-tidal boundary (lake) of land immediately after the commencement of this division to be different from its location at law immediately before the commencement.

118 Special requirement to support the operation of sdiv 6

The representation of the non-tidal boundary (lake) on any plan of survey for the land together with associated material must, to the greatest practicable extent, be consistent with the location at law of the boundary as provided for in this subdivision.

119 Lake boundary rule

- (1) The non-tidal boundary (lake) is, at law, the line of the outermost extent of the bed and banks of the lake.
- (2) To decide where the non-tidal boundary (lake) is located at any time, there must be taken into account the application of the ambulatory boundary principles to the bed and banks, both before and after the commencement of this division.

Division 5 Miscellaneous issues in the non-tidal environment

120 Multiple lot declaration (non-tidal) provision

- (1) The chief executive may by gazette notice make a declaration (a *multiple lot declaration (non-tidal)*) under this section providing for the location of the non-tidal boundary (watercourse) of each of 2 or more lots (each a *relevant lot*).
- (2) The chief executive may make a multiple lot declaration (non-tidal) even if, for any relevant lot—
 - (a) a new plan of survey has been lodged, or has been deposited with a view to subsequent lodgement; or
 - (b) there has already been 1 or more new plans of survey registered.
- (3) However, the chief executive may make a multiple lot declaration (non-tidal) only if—
 - (a) at any time before the commencement of this section—
 - (i) all the land (the *original land*) constituting the relevant lots was the subject of one old plan of survey (the *original old plan of survey*), whether or not any other land was also the subject of the original old plan of survey; and
 - (ii) the non-tidal boundary (watercourse) of the original land was represented on the original old

plan of survey by an adopted natural feature (the *original adopted natural feature*); and

Example for paragraph (a)—

The original land was represented on the original old plan of survey as being bounded by a bank, and if the original land was made up of 2 or more lots, each lot was represented on the original plan of survey as being bounded by a separate length of that bank.

- (b) on a consideration of all the relevant lots taken as a whole, any suitable natural feature that could be adopted as the non-tidal boundary (watercourse) for the relevant lots under the non-tidal boundary (watercourse) location criteria has effectively been obliterated.
- (4) On and from the registration of the next new plan of survey for a relevant lot—
- (a) the non-tidal boundary (watercourse) of the relevant lot is, at law, the line that would describe on the ground the line declared by the chief executive to be the non-tidal boundary (watercourse) for the lot under the multiple lot declaration (non-tidal); and
 - (b) the non-tidal boundary (watercourse) is taken to be fixed as if it were a right line boundary.
- (5) To remove any doubt, it is declared that the gazette notice may incorporate by reference a map or plan held by the chief executive for identifying the location of the non-tidal boundary (watercourse) of the relevant lots.
- (6) In making a multiple lot declaration (non-tidal), the chief executive must ensure, to the greatest practicable extent, having regard to all relevant evidence, that the location of the non-tidal boundary (watercourse) as provided for in the multiple lot declaration (non-tidal) is not generally closer to the opposite side of the watercourse than the last known location of the original adopted natural feature.
- (7) On and from the registration of the next new plan of survey for a relevant lot, the lot is taken still to be land having a non-tidal boundary (watercourse), even though the location of

the boundary becomes fixed as provided for under subsection (4)(b).

- (8) The chief executive or registrar of titles may defer dealing with a new plan of survey that has been lodged, or has been deposited with a view to subsequent lodgement, to allow the chief executive a reasonable time to investigate the making of, and if considered appropriate, to make, a multiple lot declaration (non-tidal).
- (9) The following requirements apply for the making of a multiple lot declaration (non-tidal)—
 - (a) the chief executive must take reasonable steps to obtain the views of any registered owner or lessee of each relevant lot about the proposed declaration;
 - (b) the chief executive must make a decision that the chief executive intends to make the proposed declaration, and what the terms of the proposed declaration are to be;
 - (c) the chief executive must give the registered owner or lessee of each relevant lot written notice of—
 - (i) the decision and reasons for the decision; and
 - (ii) the owner's or lessee's right to appeal against the decision and how the appeal is started;
 - (d) after any review of, and any appeal against, the decision have been completed, the chief executive may, unless, following review or appeal no declaration is to be made, make the multiple lot declaration (non-tidal)—
 - (i) in accordance with the decision; or
 - (ii) if the decision is amended or substituted as a result of review or appeal—in accordance with the decision as amended or substituted.
- (10) Division 4, subdivisions 3 and 4 do not provide for the location at law of a non-tidal boundary (watercourse) of land to the extent their operation would be inconsistent with the operation of this section.

121 No compensation for operation of div 4 or this division

A person is not entitled to compensation from the State or anyone else, under this Act, the Land Title Act compensation provisions, the Property Law Act relief provisions or otherwise, for deprivation of an interest of any type in land, or for loss or damage of any kind, arising out of the operation of division 4 or this division, including in particular—

- (a) the relocation, at law, of a non-tidal boundary (watercourse) because of the operation of—
 - (i) the current adopted natural feature rule (non-tidal) provision, or any exception to it, under division 4, subdivision 2; or
 - (ii) the boundary location criteria rule (non-tidal) provision, or any exception to it, under division 4, subdivision 3; or
 - (iii) the multiple lot declaration (non-tidal) provision; or
- (b) the registrar of titles keeping, or not keeping, a record about the likely location of a non-tidal boundary (watercourse) arising out of the operation of division 4, subdivision 3 or out of a multiple lot declaration (non-tidal).

Division 6 Review of declaration decisions and appeals

Subdivision 1 Right of appeal

122 Right of appeal

A registered owner or lessee who is given notice of a declaration decision has a right to appeal against the decision.

Subdivision 2 Internal review of decisions

123 Appeal process starts with internal review

- (1) Every appeal against a declaration decision must be, in the first instance, by way of an application for an internal review.
- (2) A person who has a right to appeal against a declaration decision may apply to the Minister for a review of the decision.

124 Applying for review

- (1) An application by a person for review of a declaration decision must be made within 42 days after notice of the decision was given to the person.
- (2) The Minister may extend the period for making an application for review.
- (3) An application for review must be written and state in detail the grounds on which the applicant seeks review of the decision.

125 Decision on reconsideration

- (1) After reviewing the declaration decision, the Minister must make a further decision (the *review decision*) to confirm the declaration decision, amend the declaration decision or substitute a new declaration decision.
- (2) The chief executive must immediately give the applicant written notice of the review decision.
- (3) The notice must state—
 - (a) the day the notice is given to the applicant (the *review notice day*); and
 - (b) if the review decision is not the decision sought by the applicant—
 - (i) the reasons for the decision; and

- (ii) that the applicant may appeal against the decision to the court within 42 days after the review notice day.

Subdivision 3 Appeals

126 Who may appeal

A person who has applied for review of a declaration decision under subdivision 2 and is dissatisfied with the review decision may appeal to the court against the decision.

127 Procedure for an appeal to the court

- (1) An appeal to the court is started by filing written notice of appeal with the registrar of the court.
- (2) A copy of the notice must be served on the chief executive.
- (3) The notice of appeal must be filed within 42 days after the review notice day.
- (4) However, a regulation may provide a different period for particular declaration decisions.
- (5) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.
- (6) The notice of appeal must state fully the grounds of the appeal.

128 Powers of court on appeal

- (1) In deciding an appeal, the court has the same powers as the chief executive.
- (2) An appeal is by way of rehearing.
- (3) The court may—
 - (a) confirm the review decision; or

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- (b) set aside the review decision and substitute another; or
- (c) set aside the review decision and return the issue to the chief executive with directions the court considers appropriate.

129 Effect of decision of court on appeal

- (1) If the court acts to set aside the review decision and return the issue to the chief executive with directions the court considers appropriate, and the chief executive makes a new declaration decision, the new decision is not subject to review or appeal under this division.
- (2) If the court substitutes another decision, the substituted decision is taken to be the declaration decision of the chief executive, and the chief executive may give effect to the decision as if the decision was the original declaration decision of the chief executive and no application for review or appeal had been made.

130 Evidentiary provisions for appeal

- (1) Subsections (2) to (4) apply for a proceeding under this subdivision.
- (2) The appointment or power of the chief executive or a surveyor must be presumed unless a party, by reasonable notice, requires proof of—
 - (a) the appointment; or
 - (b) the power to do anything under this Act.
- (3) A signature purporting to be the signature of the Minister, the chief executive or a surveyor is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
 - (a) that the source material for any land is the material stated in the certificate;

- (b) that the records of the department in which the *Land Act 1994* is administered in relation to any land are the records identified in the certificate.

Part 8 Miscellaneous

131 Evidentiary provisions about State remotely sensed image

- (1) This section applies to any proceeding.
- (2) A certificate, purporting to be signed by the chief executive or by a person authorised by the chief executive, and stating any of the following matters about a State remotely sensed image of land or coastal waters accompanying the certificate is evidence of the matters stated—
 - (a) the image is a State remotely sensed image, or a copy of a State remotely sensed image of a stated area;
 - (b) the location of the area shown in the image;
 - (c) a feature or point, or the location of a feature or point, shown in the image;
 - (d) the date and time when the image was taken or made;
 - (e) the approximate scale of the image.
- (3) The signature on the certificate is evidence of the signature it purports to be.
- (4) A person who purports to be authorised by the chief executive to sign the certificate is taken, in the absence of evidence to the contrary, to be authorised to sign the certificate.
- (5) A party to the proceeding intending to challenge a matter mentioned in subsection (2) must give at least 28 days notice of the party's intention to adduce relevant evidence.
- (6) In this section—

State remotely sensed image means a remotely sensed image taken or copied from the State remotely sensed image library.

132 Protection from liability

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—
official means—
 - (a) the chief executive; or
 - (b) an officer or employee of the department; or
 - (c) a surveyor carrying out a State survey; or
 - (d) a person helping a surveyor mentioned in paragraph (c) at the surveyor's direction.

133 Deciding fees

- (1) This section applies to an entity authorised under this Act to decide a fee payable to the entity for a copy of a document or information contained in a document.
- (2) The fee decided by the entity must be not more than the entity's reasonable cost of producing the copy.

134 Delegations

- (1) The chief executive may delegate his or her functions under this Act to an appropriately qualified officer or employee of the department.

- (2) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate for the functions.

Example of standing for an employee of the department—

the employee's classification level in the department

functions includes powers.

135 Approval of forms

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

136 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may create offences and prescribe penalties of not more than 20 penalty units for offences against the regulation.

Part 9 Transitional provisions and repeals for Act No. 71 of 2003

Division 1 Transitional provisions

137 Existing State control survey

From the commencement of this section, the State control survey carried out under the repealed Survey Act continues and is taken to form part of the State control survey kept by the chief executive under section 33(1).

138 Existing established permanent marks

On the commencement of this section, an established permanent mark within the meaning of the repealed Survey Act, in existence immediately before the commencement, is taken to have been established under this Act as a recognised permanent survey mark.

139 Existing survey control database

- (1) This section applies to information about permanent marks, within the meaning of the repealed Survey Act—

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- (a) held by the chief executive under that Act immediately before the commencement of this section; and
 - (b) commonly known as the survey control database.
- (2) On the commencement, the information is taken to form part of the survey control register.

140 References to Administrative Boundaries Terminology Act 1985

In an Act or document, a reference to the *Administrative Boundaries Terminology Act 1985* is, if the context permits, taken to be a reference to this Act.

141 References to repealed Survey Act

In an Act or document, a reference to the repealed Survey Act is, if the context permits, taken to be a reference to this Act.

Division 2 Repeals

142 Acts repealed

The following Acts are repealed—

- Administrative Boundaries Terminology Act 1985
- Survey Coordination Act 1952.

Part 10 Transitional provisions for Land and Other Legislation Amendment Act 2023

143 Existing survey standards and survey guidelines continue in effect

A survey standard or survey guideline in effect immediately before the commencement continues in effect as a survey standard or survey guideline made under this Act.

144 Public access to survey standards and survey guidelines made before commencement

- (1) Section 10 applies in relation to a survey standard or survey guideline made under this Act before the commencement, including a former standard or guideline.
- (2) In this section—

former standard or guideline means a survey standard or survey guideline made under this Act, before the commencement, that is no longer in effect.

Schedule Dictionary

section 5

administrative area means an area established for a purpose under an Act before or after the commencement of this Act.

administrative area boundary dataset see section 48.

ambulatory boundary principles see section 62.

approved form means a form approved under section 135.

associated material, for part 7, see section 62.

bar, for part 7, see section 62.

bed and banks, for part 7, see section 62.

bench, for part 7, see section 62.

boundary location criteria rule (non-tidal) provision, for part 7, see section 62.

cadastral surveyor means a surveyor who holds a registration endorsement under the *Surveyors Act 2003* for carrying out cadastral surveys.

correction notice see section 29(1)(c).

court, for part 7, see section 62.

current adopted natural feature rule (non-tidal) exception provision, for part 7, see section 62.

current adopted natural feature rule (non-tidal) provision, for part 7, see section 62.

current adopted natural feature rule (tidal) provision, for part 7, see section 62.

declaration decision, for part 7, see section 62.

deposit, for part 7, see section 62.

depositional feature, for part 7, see section 62.

drainage feature, for part 7, see section 62.

establish a survey mark as a recognised permanent survey mark, means record details about the mark, and classify the mark as a recognised permanent survey mark, under section 35(3).

floodplain, for part 7, see section 62.

floodwater, for part 7, see section 62.

government website means—

- (a) the department’s website; or
- (b) a whole-of-government website.

gradual change, for part 7, see section 62.

indigenous land see section 62.

in-stream island, for part 7, see section 62.

intermittent, for part 7, see section 62.

lake, for part 7, see section 62.

land registry means the land registry kept under the *Land Act 1994* or the *Land Title Act 1994*.

Land Title Act compensation provisions, for part 7, see section 62.

lessee, for part 7, see section 62.

lodge, for part 7, see section 62.

lot means a lot under a registration Act.

multiple lot declaration (non-tidal) see section 120(1).

multiple lot declaration (non-tidal) provision means section 120.

multiple lot declaration (tidal) see section 93(1).

multiple lot declaration (tidal) provision means section 93.

new plan of survey, for part 7, see section 62.

new source material, for part 7, see section 62.

non-tidal boundary see section 62.

non-tidal boundary (lake), for part 7, see section 62.

non-tidal boundary (watercourse) see section 62.

non-tidal boundary (watercourse) location criteria, for part 7, see section 62.

old plan of survey, for part 7, see section 62.

original adopted natural feature rule (tidal) provision, for part 7, see section 62.

outer bank, for part 7, see section 62.

overland flow water, for part 7, see section 62.

permanent survey mark means a mark—

- (a) clearly identifiable as a survey mark; and
- (b) having the characteristics required under a survey standard for a permanent survey mark; and
- (c) placed as—
 - (i) evidence of a survey; and
 - (ii) an enduring reference point for surveys.

physical integrity, of a survey mark, means its durability and stability and long term usefulness for its intended purpose.

plan—

- (a) means a chart, map, photograph (including a remotely sensed image) and sketch of land; and
- (b) includes an electronically produced plan.

plan of survey, for part 7, see section 62.

Property Law Act relief provisions, for part 7, see section 62.

public authority means—

- (a) an entity declared under the *Public Sector Act 2022* to be a department of government; or
- (b) a local government or other entity established by an Act.

public interest, for part 7, see section 62.

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably considers means considers on grounds that are reasonable in the circumstances.

recognised permanent survey mark means a survey mark having a particular value for a survey and mapping infrastructure purpose and classified as a recognised permanent survey mark under section 35(3)(b).

register, for part 7, see section 62.

registered owner, for part 7, see section 62.

registrar of titles means the registrar of titles under the *Land Title Act 1994*.

registration Act, for part 7, see section 62.

relevant evidence, for part 7, see section 62.

repealed Survey Act means the *Survey Coordination Act 1952*.

review decision, for part 7, see section 62.

review notice day, for part 7, see section 62.

right line boundary, for part 7, see section 62.

road means a road as defined under the *Land Act 1994*, section 93.

scour mark, for part 7, see section 62.

second exception for the original adopted natural feature rule (tidal) provision (applied criteria exception), for part 7, see section 62.

show cause notice see section 29(1).

single lot declaration (non-tidal), for part 7, see section 62.

single lot declaration (tidal), for part 7, see section 62.

source material, for part 7, see section 62.

specified tidal boundary, for part 7, see section 71.

State dataset means 1 of the following—

- (a) the administrative area boundary dataset;
- (b) the State remotely sensed image library;

- (c) the State digital cadastral dataset;
- (d) the survey control register;
- (e) another dataset kept by the chief executive under section 52.

State digital cadastral dataset see section 46.

State remotely sensed image library see section 50.

State survey means a survey carried out under section 33.

subsequent new plan of survey, for part 7, see section 62.

sudden change, for part 7, see section 62.

survey includes—

- (a) a survey of artificial features on, above or below the earth's surface; and
- (b) recording the survey on a plan.

survey and mapping infrastructure purpose means a purpose stated in section 3(1)(a) to (d).

survey control register see section 51(1).

survey error—

- (a) means an error made in carrying out a survey that is capable of correction by—
 - (i) carrying out another survey; or
 - (ii) amending the plan of survey; or
 - (iii) lodging another plan of survey; and
- (b) includes carrying out a survey in contravention of a survey standard.

survey guidelines see section 7(1).

surveying associate means a person registered as a surveying associate under the *Surveyors Act 2003*.

surveying graduate means a person registered as a surveying graduate under the *Surveyors Act 2003*.

survey mark means a mark placed as—

- (a) evidence of a survey; or
- (b) a reference point for a survey.

surveyor—

- (a) means a person registered as a surveyor under the *Surveyors Act 2003*; and
- (b) for part 3, divisions 3 to 5—includes a surveying associate and surveying graduate.

surveyors board means the Surveyors Board of Queensland established under the *Surveyors Act 2003*.

survey quality means the quality of each of the following—

- (a) the way in which the survey is carried out, including the survey marks used;
- (b) the survey results, including the information collected and the accuracy level achieved;
- (c) the plan of survey.

survey standards see section 6(1).

tidal boundary see section 70.

tidal boundary location criteria, for part 7, see section 62.

watercourse, for part 7, see section 63.

whole-of-government website means—

- (a) an official Queensland government website with a URL that includes ‘qld.gov.au’, other than the website of a local government; or
- (b) another website prescribed by regulation.