Queensland

Land Act 1994

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Land Act 1994

Contents

		Page
Chapter 1	**Preliminary**	
Part 1	**Introduction**	
1	Short title	39
3	Dictionary	39
Part 2	**Objects**	
4	Object of this Act	39
Part 3	**Application of Act**	
5	Land to which Act applies	41
6	Act binds all persons	41
7	Relationship with Native Title Act	41
Part 4	**Tidal and non-tidal boundaries and associated matters**	
Division 1	**Preliminary**	
8	Definitions for pt 4	41
8A	Who is an adjacent owner for non-tidal watercourse land and non-tidal lake land	43
Division 2	**The tidal environment**	
9	Land adjacent to tidal boundary or right line tidal boundary owned by State	44
10	Land raised above high-water mark by works	45
11	Local government for new land	45
12	Inundated land	46
13	Power to deal with land seaward of tidal boundary or right line tidal boundary	46
Division 3	**The non-tidal environment**	
13A	Land adjacent to non-tidal boundary (watercourse) or non-tidal boundary (lake) owned by State	47
13AA	Power to deal with non-tidal watercourse land and non-tidal lake land	48

13AB Leasing non-tidal watercourse land or non-tidal lake land 49
13AC Dedicating non-tidal watercourse land or non-tidal lake land as reserve 50
13B Power to declare and deal with former watercourse land 50
Chapter 2 Land allocation
Part 1 Allocation powers
14 Governor in Council may grant land 52
15 Leasing land 53
16 Deciding appropriate tenure 54
17 Granting land to the State and the Commonwealth 55
18 Exchanging land 56
18A Grant or lease of unallocated State land in consideration of surrender of native title interest 56
19 Minister may buy land 57
20 Dealing with mining interests, geothermal tenures or GHG authorities 58
Part 2 Reservations
21 Reservation of minerals, petroleum etc. 58
22 Reservation of quarry materials 59
23 Reservation for public purposes 59
23A Floating reservation on plan of subdivision 59
24 Disposal of reservations no longer needed 60
25 Disposal of reservations by sale 61
26 Minister may decide boundaries of reservations 61
26A Disposal of redundant reservation 62
26B Forest entitlement areas 63
26C Effect of resumption of forest entitlement area 64
Part 3 Native title
27 Object 64
28 Interaction with native title legislation 65
29 Taking into consideration Aboriginal tradition and Islander custom 66
Chapter 3 Reserves, deeds of grant in trust and roads
Part 1 Reserves and deeds of grant in trust
Division 1 General
30 Object 66
Division 2 Reserves
Subdivision 1 Reserves generally

31	Dedication of reserve	67
31A	Changing boundaries of reserve	68
31B	Changing purpose	68
31C	Applying for dedication of reserve	69
31D	Applying for adjustment of reserve	70
31F	Notice of registration of action in relation to reserve	70
32	State leases over reserves	71
33	Revocation of reserves	71
34	Applying to revoke dedication of reserve	72
34C	Removal of interests before revocation	72
34D	Registration revokes dedication of reserve	73
34E	Notice of revocation	73
34F	Effect of revocation	74
34G	Person to give up possession	74
34H	Dealing with improvements	74
Subdivision 2	**Operational reserves**	
34I	Applying for deed of grant	75
34IA	Particular matters about issue of deed of grant	76
34L	Removal of interests before grant	76
34M	Registration of deed of grant revokes reservation and setting apart	76
34N	Notice of registration of deed of grant	77
34O	Effect of revocation	77
Division 3	**Deeds of grant in trust**	
34P	Subdivision of DOGIT land	78
35	Use of land granted in trust	78
36	Amalgamating land with common purposes	79
37	Removing area from deed of grant in trust	80
38	Cancelling a deed of grant in trust	80
38A	Applying for additional community purpose, amalgamation or cancellation	81
38D	Notice of registration of action	82
38E	Effect of cancellation	83
38F	Person to give up possession	83
38G	Dealing with improvements	83
Division 4	**Deeds of grant in trust for Aborigines and Torres Strait Islanders**	
39	Application of division	84

40	Improvements and land may be excluded	85
41	Survey not needed	85
42	Change of boundaries or roads	85
42A	Amalgamating particular land with existing deeds of grant in trust	86
43	Only Parliament may delete land from or cancel an existing deed of grant in trust	86
Division 5	**Appointments, functions and removal of trustees**	
44	Appointing trustees	87
45	Details of trustees	88
46	Trustee's administrative functions	89
47	Trustee's accounting functions	89
48	Trustees to give information and allow inspection of records	90
49	External audits	90
50	Vacation of office by trustee	91
51	Removal of trustees	91
Division 6	**Powers of trustee**	
52	General powers of trustee	92
52A	Declaration that trustee is statutory body	92
53	Statutory body trustee powers	93
53A	State trustee powers and delegation	93
54	No power to sell trust land	94
55	Power to surrender deed of grant in trust	94
55A	Applying to surrender	94
55D	Registration surrenders deed of grant in trust	94
55E	Notice of surrender	95
55F	Effect of surrender	95
55G	Person to give up possession on surrender	96
55H	Dealing with improvements	96
56	Model by-laws	97
Division 7	**Trustee leases and trustee permits**	
57	Trustee leases	98
57A	Amending a trustee lease	100
58	Other transactions relating to trustee leases	100
59	Basis of approval	101
60	Trustee permits	102
61	Conditions on trustee leases and trustee permits	103

62 Grouping trust land 104
63 Rent to be charged 104
64 Minister may dispense with approval 105
65 Cancellation of a trustee lease or trustee permit 105
66 Right to remove improvements on cancellation 106
Division 8 Mortgaging trust land
67 Power to mortgage trust land 106
68 Mortgagee in possession 107
69 What is the unimproved value 107
70 Sale by mortgagee in possession 108
71 Effect of sale 108
72 Disposal of sale price 109
Division 9 Winding up trusts of trust land
73 Application of division 109
74 Minister may start winding up 109
75 Property vests in liquidator 110
76 Sale of trust assets 110
77 Trustees to help in winding up 111
78 Winding up may continue after revocation, cancellation or sale . 111
Division 10 Cemeteries
79 Cemetery registers 111
80 Trustee may remove structures 112
81 Application to close or reopen cemetery 112
82 Trustees may transfer trust to local government 112
83 Exhumations 112
Division 11 Other grants for public purposes
84 Surrender of land still needed for a public purpose 113
85 Surrender of land no longer needed for a public purpose 113
86 Public notice of proposed surrender 114
87 Effect of surrender 114
88 Dealing with land used as a cemetery 114
Division 12 Miscellaneous
89 Survey of trust land 115
90 Application of Acts to trustees 115
91 Trustees taken to be owners for legal proceedings 115
92 Protection from liability 115

Part 2 Roads

Division 1 Dedicating and opening roads

93 Meaning of road 116

94 Dedication of road 116

95 Roads vest in the State 117

96 Roads in existing leases are dedicated 117

97 Clarification of road status 117

Division 2 Closing roads

97A Definitions for div 2 117

98 Closure of road 118

99 Application to close road 118

100 Public notice of closure 119

101 Minister to consider objections 121

102 Changing application 121

Division 3 Road licences

103 Issue of road licence 122

104 Conditions of issuing road licence 122

105 Cancellation or surrender of road licence 123

Division 3A Temporarily closed roads

106 Temporarily closed road still dedicated land 124

Division 4 Permanently closed roads

108 Permanent closure of road 124

109 Closed road may be dealt with as lot or amalgamated with adjoining land 124

109A Simultaneous opening and closing of roads—deed of grant 125

109B Simultaneous opening and closure of roads—trust land or lease land 126

109C Buying or leasing land if closed road amalgamated with adjoining land 127

Division 5 Building of roads in State developments

110 Minister may build roads 128

111 When road comes under local government control 128

Chapter 4 Land holdings

Part 1 Making land available

Division 1 Interests in land available by competition

112 Interests in land available by auction, tender or ballot 129

113 Public notice of availability to be given 129

114	Information to be included in sale notice	129
115	Conditions of sale	130
116	Interests in land may be sold after auction	131
117	Interest may be withdrawn from auction, tender or ballot	131
118	Appeal against exclusion from ballot or tender	131
119	Conduct of ballot	132
120	Offer to winner of ballot or tender	132
Division 2	**Interests in land available without competition**	
120A	Applying for interest in land without competition	133
121	Leases of unallocated State land	133
122	Deeds of grant of unallocated State land	133
123	Priority criteria	134
123A	Deeds of grant of unallocated State land under indigenous land use agreements	134
124	Leases of State forests and national parks	136
125	Deeds of grant in trust and leases over reserves	136
126	Strategic port land	136
127	Reclaimed land	136
127A	Amalgamation may be a condition	137
Division 2A	**Leases for significant development**	
128	Meaning of significant development	137
129	Lease for significant development	138
129A	Further dealings with lease land on completion of significant development	138
130	Transfer of lease for significant development	139
130A	Change of financial and managerial capabilities of lessee of lease for significant development	139
Division 4	**Miscellaneous**	
137	Right to occupy	142
138	Default	143
138A	Restriction on commencement of lease or permit	143
139	Improvements to be bought by incoming lessee or buyer	143
140	Provisional value may be negotiated	144
141	Payment of survey fee	145
Part 2	**Restrictions on eligibility to hold land**	
142	Minors not to hold land	145
143	Departmental officers not to hold land without approval	145

Part 3 Leases

Division 1 Preliminary

153 Lease must state its purpose 145

154 Minister may approve additional purposes 146

Division 1A Length of term on issue of term lease

155 Length of term leases 147

Division 1B Extension of particular term leases

155AA Application of div 1B 148

155A Extensions for a term of up to 40 years 148

155B Extensions for a term of up to 50 years 149

155BA Extensions for a term of up to 75 years 150

155C Registering and taking of effect of extension 152

Division 1C Reduction of particular term leases

155CA Non-application of division to particular term leases 152

155D When Minister may reduce 152

155DA Notice of intention to reduce term 154

155E Provisions about reduction 154

Division 2 Expiry, renewal and extension

Subdivision 1AA Improvements reports and notices and related matters

156 Lessee must give improvements report and other information . . 155

156A Minister may give improvements notice 156

156B Person must comply with improvements notice 158

156C Noncompliance with improvements notice 159

Subdivision 1 Expiry

157 Expiry of lease 160

Subdivision 2 Renewal

157AA Limited application of sdiv 2 160

157A Chief executive's approval required for renewal 161

157B Deciding not to make offer of new lease before receiving renewal application 161

158 Application for new lease 162

159 Deciding whether to offer new lease 163

159A Provisions for decision about most appropriate form of tenure . . 164

160 Notice of chief executive's decision 165

162 Issuing of new lease 165

163 Land not included in the offer 166

Subdivision 3 **Extensions of rolling term leases**

164 What is a rolling term lease 166

164A Approval of lease as a rolling term lease 167

164B Identification of lease as a rolling term lease 168

164C Making extension application or giving expiry advice 168

164D When extension application or expiry advice may not be made or given 170

164E Length of extension 170

164F Effect of extension 170

164G Notice of expiry 172

Subdivision 4 **Possible extension instead of renewal**

164H Application for term lease renewal may become extension application 172

Division 3 **Conversion of tenure**

165 Application of division 173

165A Chief executive's approval required for conversion 173

165B Deciding to make offer to convert lease before receiving conversion application 173

166 Application to convert lease 174

167 Provisions for deciding conversion application 175

168 Notice of chief executive's decision 177

169 Conditions of freehold offer 178

170 Purchase price if deed of grant offered 178

171 Compliance with particular conditional offers 178

172 Issuing of new tenure 179

173 Land not included in the offer 180

Division 4 **Subdividing leases**

175 When lease may be subdivided 180

176 Application to subdivide 180

176A General provisions for deciding application 181

176B Criteria for deciding application 181

176C Specific grounds for refusal 182

176D Notice of decision 182

176E Appeal against refusal 182

176G Issuing of new leases 182

176I Power to waive fees if chief executive requested application . . . 183

Division 5 **Amalgamating leases**

176J	When leases may be amalgamated	183
176K	Application to amalgamate	184
176L	General provisions for deciding application	184
176M	Criteria for deciding application	185
176N	Roads	185
176O	Specific grounds for refusal	186
176P	Notice of decision	186
176Q	Appeal against refusal	186
176S	Issuing of amalgamated lease	187
176T	Power to waive fees if chief executive requested application	187
Division 6	**Land management agreements**	
176U	Making and registration of agreement about land management	188
176UA	Power to require land management agreement in particular circumstances	188
176V	Purposes of a land management agreement	188
176W	Content of land management agreement	189
176X	Reviewing land management agreement	189
176XA	Cancellation of land management agreement	190
Division 7	**Miscellaneous provisions**	
176Y	Part does not affect amounts owing relating to lease	190
176Z	When payment obligations end if lease ends under part	190
176ZA	Overpayments relating to former lease	191
Part 4	**Permits to occupy particular land**	
177	Chief executive may issue permit	191
177A	Applying for permit	192
177D	Notice of permit	192
178	Permits for land in area of tidal influence	193
179	Fencing	193
180	When permit may be cancelled or surrendered	193
180A	Applying to cancel or surrender permit	194
180B	Chief executive may require report and other information	195
180C	Chief executive may require improvements report and other information	196
180D	When cancellation or surrender is effective	197
180E	Notice about cancellation or surrender	197
180F	Effect of cancellation or surrender	198

180G	Permittee to give up possession on cancellation or surrender	198
180H	Dealing with improvements	199
180I	Chief executive may give improvements notice	199
180J	Person must comply with improvements notice	201
180K	Noncompliance with improvements notice	202
Chapter 5	**Matters affecting land holdings**	
Part 2	**Conditions**	
Division 1	**General mandatory conditions**	
198C	Operation of div 1	202
198D	Mandatory conditions need not be registered	203
199	Duty of care condition	203
199A	Land may be used only for tenure's purpose	204
199B	Conditions relating to buildings and other structures	204
200	Noxious plants condition	205
201	Information condition	205
202	Improvement condition	205
202AA	Notice to transferee if lease land subject to indigenous cultural interest	205
202AB	Notice to sublessee if lease land is or is to be subject to indigenous cultural interest	206
Division 2	**Imposed conditions**	
202A	Operation of div 2	207
202B	Imposed condition must be registered	207
203	Typical conditions	207
204	Survey condition	208
205	Tied condition	208
208	Resumption condition	208
209	Performance security condition	209
Division 3	**Changing and reviewing imposed conditions**	
210	Power to change imposed condition of lease, licence or permit by agreement	209
211	Reviewing imposed conditions of lease	210
212	Minister may change imposed conditions after review	210
Division 3A	**Regulated conditions**	
212A	Operation of div 3A	211
212B	Regulation may impose conditions	211
212C	Regulated conditions need not be registered	212

Division 4 **Compliance with conditions**
213 Obligation to perform conditions 212
Division 5 **Remedial action**
214 Minister's power to give remedial action notice 213
214A Steps required before giving remedial action notice 215
214B Appeal against decision to give remedial action notice 216
214C Additional condition of lease or licence to take required remedial action 216
214D Failure to comply with remedial action notice 217
214E Power to reduce term of lease or impose additional conditions . 217
214F Provisions about reduction or additional conditions 218
214G Noncompliance with particular remedial action notice 218
Division 6 **Compliance notices**
214H Authorised officer may give compliance notice to permittee 219
214I Requirements for compliance notice 220
214J Failure to comply with compliance notice 220
214K State may take action and recover costs 221
214L How forfeited property may be dealt with 221
Part 3 **Resumption and compensation**
Division 1 **Resumption of a lease or easement**
215 Application of division 222
216 Resumption of lease 222
217 Resumption of an easement 223
218 Resumption for constructing authorities 223
219 Effect of resumption 223
220 Service of order in council 224
221 Application of Acquisition of Land Act 1967 224
222 Revoking a resumption 225
Division 2 **Resumption of a lease under a condition of the lease**
223 Application of division 226
224 Resumption of lease 226
225 Effect of resumption 226
226 Compensation limited to improvements 226
227 Development work an improvement 227
Division 3 **Resumption of a reservation for a public purpose**
228 Application of division 227

229	Resumption of reservation	227
230	Effect of resumption of possession	227
231	Application of Acquisition of Land Act 1967	228
232	Compensation limited to improvements	229
233	Development work an improvement	229
Part 4	**Forfeiture**	
Division 1	**Grounds for forfeiture**	
234	When lease may be forfeited	229
Division 2	**Forfeiture of leases for non-payment**	
234A	Application of div 2	230
235	Notice of forfeiture for outstanding amounts	230
236	Designated person's options if amount unpaid	231
237	Minister may reinstate lease if payment made	231
Division 2A	**Forfeiture of leases by referral to court or for fraud**	
237A	Application of div 2A	231
238	Application to the court for forfeiture	231
239	Designated person's options	232
Division 3A	**Sale of lease instead of forfeiture**	
Subdivision 1	**Sale by lessee**	
240E	Sale by lessee	233
Subdivision 2	**Sale by mortgagee**	
240F	Sale by mortgagee instead of forfeiture	233
Subdivision 3	**Sale by local government**	
240G	Application	234
240H	Notice of approval	234
240I	Sale of lease	234
Subdivision 4	**Sale by chief executive**	
240J	Application of sdiv 4	235
240K	Notice that chief executive may sell	235
240L	Entry into possession and sale	236
240M	Transition to sale agreement	237
240N	Advice about entering transition to sale agreement	238
240O	Making and registration of transition to sale agreement	239
240P	Auction or sale of lease	240
240Q	Disposal of proceeds of sale	241
240R	Protection from liability	241

Division 4 **Forfeiture**

240S Notice of forfeiture 242

241 Effect of forfeiture 242

242 Lessee to give up possession on forfeiture 243

242A Minister may require improvements report and other information 243

243 Improvements on forfeited lease 244

244 Minister may give improvements notice 245

244A Person must comply with improvements notice 246

244B Noncompliance with improvements notice 247

245 Effect of forfeiture of lease issued without competition for development purposes 248

Part 5 **Payment for improvements**

Division 1 **Payment for improvements by incoming lessee etc.**

246 Application of division 248

247 Application of payment for improvements by incoming lessee or buyer 249

248 Unclaimed improvement amounts 249

Division 2 **Payment by the State for improvements**

249 Payment by the State for improvements 250

Division 3 **General**

250 Amounts owing to the State to be deducted 251

251 Payment to mortgagee 251

Part 6 **Protection of monitoring sites**

252 Prohibition on interfering with monitoring marker or device 251

253 Evidentiary provision for proceedings under s 252 252

Chapter 5A **Prescribed terms of particular interests**

254 Definitions for chapter 253

255 Regulation may prescribe terms 253

256 Effect of prescribed term 253

257 Amendment of prescribed term 254

Chapter 6 **Registration and dealings**

Part 1 **Land registry and registers**

Division 1 **Land registry**

275 Registers comprising land registry 255

Division 2 **Registers**

276 Registers to be kept by registrar of titles 255

277	Form of registers	256
277A	Registration of document evidencing tenure	256
278	Particulars that must be registered	257
279	Registration of land management agreements and transition to sale agreements	257
279A	Registration of documents lodged or matters notified under particular Acts	258
280	Particulars that may be recorded	258
280A	Particulars that must be recorded for specified national parks	258
280AA	Particulars that may be removed	259
281	Other information may be kept	259
282	Procedures on lodgement and registration of document	260
283	Documents form part of a register	260
284	Entitlement to search a register	260
284A	Fee required to produce document under subpoena etc.	262
285	Evidentiary effect of certified copies of documents	262
285A	Supply of statistical data	262
Division 3	**General requirements for documents in registers**	
286	Form of documents	264
286A	Land practice manual	264
286B	Requiring plan of survey to be lodged	265
287	Registered documents must comply with particular requirements	265
287A	Registration of, or dealing with, particular documents	266
288	Certain documents must be signed	267
288A	Original mortgagee to confirm identity of mortgagor	267
288B	Mortgage transferee to confirm identity of mortgagor	269
288C	Effect of registration of mortgage under Land Title Act 1994	270
289	Giving consent for dealings	271
290	Offence not to use appropriate form	272
Division 3A	**Format of plans of survey**	
290A	Available formats for plans	272
290B	Standard format plan	273
290C	Volumetric format plan	273
Division 3B	**Explanatory format plans**	
290D	Explanatory format plan	273
Division 3C	**Plans of subdivision**	

290E	Meaning of plan of subdivision	273
290F	Plan of subdivision may be registered	274
290G	Standard format plan of subdivision	274
290H	Volumetric format plan of subdivision	274
290I	Division of lot on standard format plan of subdivision	274
290J	Requirements for registration of plan of subdivision	275
290JA	Dedication of public use land in plan	277
290JB	Access for public use land	278
290K	Particulars to be recorded when registered plan takes effect	278
290L	Lodged plan that is withdrawn and relodged	279
290M	Division excluding road or watercourse	279
290N	Pre-examination of plans	279
Division 3D	**Electronic conveyancing documents**	
290O	Reference to a particular type of document includes its electronic conveyancing form	279
290P	What is an electronic conveyancing document	280
290Q	Signing or executing an electronic conveyancing document	280
290R	Registering an electronic conveyancing document	280
Division 4	**Powers of the registrar of titles**	
291	Registrar of titles may correct registers	281
291A	Correction for omitted easement	281
292	Lot-on-plan description	282
294	Registrar of titles may require public notice to be given of certain proposed action	282
Part 1A	**Building management statements**	
Division 1	**Application**	
294A	Application	283
Division 2	**Building management statements**	
294B	Building management statement may be registered	283
294BA	Single area for lots to which building management statement applies	284
294C	Circumstances under which building management statement may be registered	284
294D	Content of building management statement	285
294E	Registration of building management statement	286
294F	Amending a building management statement	286
294G	Building management statement if lots owned by 1 lessee	286

294H	One person becoming lessee of all lots	287
294I	Extinguishing a building management statement	287
294J	Building management statement affecting freehold and non-freehold land	287
Part 2	**Registration and its effect**	
Division 1	**Registration of documents**	
295	Right to have interest registered	288
297	Order of registration of documents	289
298	Priority of registered documents	289
299	When a document is registered	290
299A	No registration in absence of required approval or consent of Minister or chief executive	290
Division 2	**Consequences of registration**	
300	Benefits of registration	291
301	Interest in land not transferred or created until registration	291
302	Effect of registration on interest	291
303	Evidentiary effect of recording particulars in the register	292
Part 3	**Documents**	
Division 1	**General**	
304	Correcting unregistered documents	292
305	Requisitions	293
305A	Electronic communication of statutory declaration or affidavit	294
306	Rejecting document after requisition given	295
306A	Forfeiture of fee on rejecting document	295
307	Borrowing lodged or deposited document before registration	296
308	Withdrawing lodged document before registration	296
309	Registrar of titles may call in document for correction or cancellation 297	
310	Execution of documents	297
311	Witnessing documents for individuals	298
313	Delivery of paper documents	299
314	Dispensing with production of paper document	299
315	Destroying document in certain circumstances	300
316	Transferor must do everything necessary	301
316A	Titles registry fees not payable for particular documents	301
Division 2	**Documents forming part of standard terms documents**	
317	Meaning of standard terms document in division	301

317A References to registered standard terms document 301
318 Standard terms document may be registered 301
319 Standard terms document part of a further document 302
320 Document not limited to that contained in standard terms document 302
321 Withdrawal or cancellation of standard terms document 302
Part 4 Dealings affecting land
Division 1 Transfers
322 Requirements for transfers 303
322AA Chief executive may grant exemption from approval requirement 305
322AB Recording exemptions 306
322A Severing joint tenancy by transfer 306
323 Transfers must be registered 307
324 Transfer of lands sold in possession or in execution 307
325 Effect of registration of transfer 308
326 Transferee to indemnify 308
326A Disclosure of information to proposed transferee of lease or licensee 308
Division 2 Surrender
327 Absolute surrender of freehold land 309
327A Surrender of lease 309
327B Applying to surrender freehold land 309
327C Applying to surrender lease 309
327D Minister may require report and other information 310
327E Registration surrenders lease 310
327F Notice of surrender 311
327G Effect of surrender 311
327H Person to give up possession on surrender 311
327I Dealing with improvements 312
328 Surrender of subleases 312
329 Notice of surrender needed 313
330 Requirements for effective surrender 313
331 Effect of surrender on existing interests 314
Division 3 Subleases
332 Requirements for subleases 314
333 General authority to lessee for particular dealings 315
334 When subleasing is totally prohibited 316

334A	Application to sub-subleases	316
335	Subleases must be registered	317
336	Amending a sublease	317
337	Lessee continues to be responsible for primary obligations	318
337A	Sublease must not contravene lease condition	318
338	Validity of sublease or amendment of sublease against mortgagee	318
339	Re-entry by sublessor	318
Division 3A	**Process for resolving disputes under particular subleases**	
Subdivision 1	**Preliminary**	
339A	Definitions for division	319
339B	Application of division	319
339C	Related disputes may be resolved together	320
339D	Admissibility of evidence	321
339E	Liability of prescribed dispute resolution entity	321
Subdivision 2	**Notice of dispute**	
339F	Notice of dispute	322
339G	Response to dispute notice	322
339H	Requirement for mediation before arbitration	323
Subdivision 3	**Mediation**	
339I	Appointment of mediator	324
339J	Time for mediation	324
339K	Conduct of mediation	324
339L	Costs of mediation	326
339M	When mediation ends	326
Subdivision 4	**Arbitration**	
339N	Application of Commercial Arbitration Act 2013	326
339O	Appointment of arbitrator	327
339P	Commencement of arbitral proceedings	327
339Q	Arbitrator's functions	327
339R	Experts appointed by arbitrator	328
339S	Law applicable to arbitration	328
339T	Effect of arbitrator's decision and limitation of review	329
339U	Costs of arbitration	330
Division 4	**Mortgages**	
340	Registering a mortgage	330
341	Effect of a mortgage	330

342 Releasing a mortgage 331
343 Amending a mortgage 331
344 Amending priority of mortgages 331
345 Mortgagee in possession may sell 331
346 Sale of mortgaged lease 332
347 Land to be sold within 2 years 333
348 Disposal of proceeds of sale 333
349 Liability of mortgagee in possession 334
350 Effect of transfer after sale by mortgagee 334
Division 7 Correcting and changing deeds of grant and leases
358 Changing deeds of grant—change in description or boundary of land 334
358C Correction of minor error in deed of grant 335
359 Correcting or cancelling deeds of grant 336
360 Governor in Council may change freeholding leases 337
360A Chief executive may change term leases, or perpetual leases, other than State leases 337
360B Minister may change State lease 339
360C Applying to amend description of lease 339
360D Notice of intention to apply to amend lease 340
360F Notice of registration of amendment of lease 340
Division 8 Easements
361 Definitions for div 8 340
362 Easements may be created only by registration 341
363 Registration of easement 341
364 Registration of plan showing proposed easement 342
365 Particulars to be registered 342
366 Rights and liabilities created on registration of document 343
367 Easement benefiting and burdening land of same person 343
368 Same person becoming trustee, lessee or licensee of benefited and burdened lands 343
369 Public utility easements 344
369A Transfer of public utility easements 346
369B Transfer of benefited land 346
370 Amending an easement 347
371 Surrendering an easement 347
372 End and continuation of easements 348

373	Court may modify or extinguish an easement	349
373AA	Particular matters about easements and permit land	349
Division 8A	**Covenants**	
373A	Covenant by registration	349
373AB	Compliance with s 373A	354
373B	Requirements of document creating covenant	354
373C	Amending document creating covenant	355
373D	Releasing a covenant	355
Division 8B	**Profits a prendre**	
373G	Profit a prendre by registration	355
373H	Profit a prendre affecting freehold land and a lease	356
373I	Requirements of document creating profit a prendre	356
373J	Particulars to be registered	356
373K	Profit a prendre benefiting and burdening same person's lease or freehold land	357
373L	Same person becoming lessee of benefited and burdened leases	357
373M	Owner of benefited lease acquiring interest in burdened lease	357
373N	Amending a profit a prendre	358
373O	Releasing or removing a profit a prendre	358
373P	Effect of surrender of lease on profit a prendre	358
373Q	Dealing with a profit a prendre	359
Division 8C	**Carbon abatement interests**	
Subdivision 1	**Preliminary**	
373R	Definitions for div 8C	359
Subdivision 2	**Creation and registration**	
373S	Creation only by registration	360
373T	Consent of relevant Minister required	361
373U	Requirements for registration	362
373V	Additional requirements if granted by lessee of term lease	362
373W	Grantor and grantee may be the same	362
Subdivision 3	**Amendments and dealings**	
373X	Amending interest	363
373Y	Surrendering or removing interest	363
373Z	Continuation of interest	363
373ZA	Dealing with a carbon abatement interest	364
Division 8D	**Indigenous cultural interests**	

Contents

Subdivision 1	**Preliminary**	
373ZB	Definitions for div 8D	365
Subdivision 2	**Mandatory terms**	
373ZC	Mandatory terms for approved agreements	366
Subdivision 3	**Creation and registration**	
373ZD	Creation only by registration	367
373ZE	Requirements for registration	368
Subdivision 4	**Amendments and dealings**	
373ZF	Amending interest	369
373ZG	When amendment or replacement of approved agreement ends interest	370
373ZH	Surrendering or removing interest	370
373ZI	Notice of end of approved agreement	371
373ZJ	Continuation of interest	371
373ZK	Transfer of lease affecting interest	372
373ZL	Reviewing approved agreements for indigenous cultural interests	373
Division 9	**Trusts, deceased estates and bankruptcy**	
374	Details of trust must be given	374
374A	Interests held in trust must be registered	374
375	Document of transfer to trustee	375
375A	Document to vest in trustee	375
376	Deed of grant or lease may issue in name of deceased person	376
377	Registering personal representative	376
378	References in documents to a person with an interest in land includes personal representatives etc.	378
379	Registering beneficiary	378
380	Applying for Supreme Court order	378
381	Transmission on bankruptcy	379
382	Disclaimer in bankruptcy	380
Division 10	**Powers of attorney and disabilities**	
383	Power of attorney	380
385	Acts in relation to substitute decision makers	381
Division 11	**Writs of execution**	
386	Registering a writ of execution	381
387	Effect of registering a writ of execution	381
388	Cancellation of registration of a writ of execution	382

389	Discharging or satisfying writ of execution	382
389A	Effect on writ of execution of transfer after sale by mortgagee	382
389B	Effect on writ of execution of transfer after sale by chief executive	382
Division 11A	**Caveats**	
Subdivision 1	**Caveats generally**	
389C	Requirements of caveats	383
389D	Lodging caveat	384
389E	Notifying caveat	384
389F	Effect of lodging caveat	384
389G	Withdrawing caveat	385
389H	Removing caveat	386
389I	Cancelling caveat	386
389J	Further caveat	387
389K	Notices to the caveator	387
Subdivision 2	**Caveats by registrar of titles**	
389L	Registrar of titles may prepare and register caveat	388
Division 12	**Liens**	
390	Vendor does not have equitable lien	389
Division 13	**Miscellaneous**	
390A	Special provision for defence land or transport related land	389
390B	Particular dealing with prescribed land	390
Chapter 6A	**Investigation and enforcement**	
Part 1	**Preliminary**	
390C	Definitions for chapter	391
Part 2	**General provisions about authorised officers**	
Division 1	**Appointment**	
390D	Functions of authorised officers	394
390E	Appointment and qualifications	394
390F	Appointment conditions and limit on powers	394
390G	When office ends	395
390H	Resignation	395
Division 2	**Identity cards**	
390I	Issue of identity card	396
390J	Production or display of identity card	396
390K	Return of identity card	397
Division 3	**Miscellaneous provisions**	

390L	References to exercise of powers	397
390M	Reference to document includes reference to reproductions from electronic document	397
Part 3	**Entry of places by authorised officers**	
Division 1	**Power to enter**	
390N	General power to enter places	398
Division 2	**Entry by consent**	
390O	Application of division	400
390P	Incidental entry to ask for access	400
390Q	Matters authorised officer must tell occupier	400
390R	Consent acknowledgement	400
Division 3	**Entry under warrant**	
Subdivision 1	**Obtaining warrant**	
390S	Application for warrant	402
390T	Issue of warrant	402
390U	Electronic application	403
390V	Additional procedure if electronic application	404
390W	Defect in relation to warrant	405
Subdivision 2	**Entry procedure**	
390X	Entry procedure	405
Part 4	**Other powers of authorised officers and related matters**	
Division 1	**Stopping or moving vehicles**	
390Y	Application of division	406
390Z	Power to stop or move	406
390ZA	Identification requirements if vehicle moving	407
390ZB	Failure to comply with direction	408
Division 2	**General powers of authorised officers after entering places**	
390ZC	Application of division	408
390ZD	General powers	409
390ZE	Power to require reasonable help	410
390ZF	Offence to contravene help requirement	411
Division 3	**Seizure by authorised officers and forfeiture**	
Subdivision 1	**Power to seize**	
390ZG	Seizing evidence at a place that may be entered without consent or warrant	411
390ZH	Seizing evidence at a place that may be entered with consent or warrant 412	

390ZI	Seizure of property subject to security	413
Subdivision 2	**Powers to support seizure**	
390ZJ	Power to secure seized thing	413
390ZK	Offence to contravene seizure requirement	414
390ZL	Offence to interfere	414
Subdivision 3	**Safeguards for seized things**	
390ZM	Receipt and information notice for seized thing	415
390ZN	Access to seized thing	416
390ZO	Return of seized thing	416
Subdivision 4	**Forfeiture**	
390ZP	Forfeiture by chief executive decision	417
390ZQ	Information notice about forfeiture decision	418
Subdivision 5	**Dealing with property forfeited or transferred to State**	
390ZR	When thing becomes property of the State	419
390ZS	How property may be dealt with	419
Division 4	**Disposal orders**	
390ZT	Disposal order	420
Division 5	**Other information-obtaining powers of authorised officers**	
390ZU	Power to require name and address	421
390ZV	Offence to contravene personal details requirement	421
390ZW	Power to require production of document	422
390ZX	Offence to contravene document production requirement	423
390ZY	Offence to contravene document certification requirement	424
390ZZ	Power to require information	424
390ZZA	Offence to contravene information requirement	425
Part 5	**Obtaining criminal history reports**	
390ZZB	Purpose of part	425
390ZZC	Chief executive's power to obtain criminal history report	426
390ZZD	Criminal history is confidential document	426
Part 6	**Miscellaneous provisions relating to authorised officers**	
Division 1	**Damage**	
390ZZE	Duty to avoid inconvenience and minimise damage	427
390ZZF	Notice of damage	427
Division 2	**Compensation**	
390ZZG	Compensation	428
Division 3	**Other offences relating to authorised officers**	

390ZZH	Giving authorised officer false or misleading information	430
390ZZI	Impersonating authorised officer	430
Division 4	**Other provisions**	
390ZZJ	Evidential immunity for individuals complying with particular requirements	430
Chapter 7	**General**	
Part 1	**Administration**	
Division 1	**Ministerial administration**	
391	Administration of Act	431
391A	General provision about approvals	431
392	Delegation by Minister	432
393	Delegation by chief executive	433
393AA	Delegation by registrar of titles	434
393A	Departmental officer may give notices for this Act	434
394	Committees	435
394A	Ministerial guidelines about what constitutes a good condition for lease land	435
Division 6	**Public notices other than gazette notices**	
403C	Publication of particular public notices on department's website	436
Part 1A	**Safety notices**	
Division 1	**Show cause procedure for particular safety notices**	
403D	Show cause notice	437
403E	Representations about show cause notice	438
403F	Ending show cause process without further action	438
Division 2	**Giving of safety notices and related matters**	
403G	Chief executive may give safety notice	438
403H	Person must comply with safety notice	439
Division 3	**Noncompliance with safety notices**	
403I	Safety notice requiring repair, rectification or fencing	439
403J	Safety notice requiring demolition or removal	440
Part 1B	**Regulatory and other notices on unallocated State land and particular trust land**	
403K	Regulatory notices	442
403L	Regulatory information notices	443
403M	Person must not interfere with notices	444
Part 1C	**Directions to leave unallocated State land and particular trust land**	
403N	Authorised officer may give direction	444

403O	Authorised officer must make record of direction	445
Part 1D	**Provisions about offers**	
403P	Application of part	446
403Q	Definitions for part	446
403R	Meaning of offer period	446
403S	Requirement for making conditional offers	447
403T	Requirements for acceptance of offers	447
403U	Lapse of offer	447
403V	Change in purchase price or cash premium if offer period extended	448
Part 2	**Unlawful occupation of non-freehold and trust land**	
Division 1	**Unlawful occupation of non-freehold and trust land**	
404	No trespassing	448
Division 2	**Action to deal with unlawful occupation**	
405	Application of division	449
405AA	Definitions for division	449
405A	Exercise of chief executive's powers under division	449
405B	Occupation fee for unlawful occupation by offeree until grant of tenure	450
406	Notice to person to leave land, remove structures etc.	451
407	Person must comply with notice	452
408	Forfeiture of improvements and other things on land	452
409	Person may start proceeding in Magistrates Court	452
410	Chief executive may start proceeding	453
411	Defence may be filed	454
412	State may carry out work	454
413	Powers of officers and employees of the department	454
Division 3	**Action by lessee, licensee, permittee or trustee**	
414	Application of division	455
415	Lessee, licensee, permittee or trustee may start proceeding	455
416	Defence may be filed	455
Division 4	**Court matters**	
417	Hearing procedures	456
418	Discretion of Magistrates Court about orders	456
419	Order of the Magistrates Court must be complied with	457
420	Appeal to District Court on questions of law only	457
Division 5	**Dealing with property forfeited to the State**	

420AA	How property may be dealt with	457
Part 2A	**General provisions for applications**	
420A	Application of pt 2A	458
420B	Application guidelines	458
420C	Requirements for making an application	459
420CA	Requirements for giving notice of intention to apply	460
420CB	Submissions	461
420D	Refusal of frivolous or vexatious applications	461
420E	Request to applicant about application	461
420F	Refusing application for failure to comply with request	462
420FA	Regard may be had to information and advice	462
420G	Particular criteria generally not exhaustive	463
420H	Particular grounds for refusal generally not exhaustive	463
420I	General power to impose conditions	463
Part 3	**Review of decisions and appeals**	
Division 1AA	**Preliminary**	
420J	Definitions for part	464
Division 1	**Right of appeal**	
420K	Right of appeal	465
421	Notice of right of appeal to be given	465
Division 2	**Internal review of decisions**	
422	Appeal process starts with internal review	465
423	Who may apply for review etc.	465
424	Applying for review	466
425	Stay of operation of decision etc.	466
426	Decision on reconsideration	466
Division 3	**Appeals**	
427	Who may appeal	467
428	Procedure for an appeal to the court	467
429	Powers of court on appeal	468
430	Effect of decision of court on appeal	468
431	Jurisdiction of the court	468
Part 3A	**Proceedings generally**	
Division 1	**Preliminary**	
431A	Application of pt 3A	468
Division 2	**Evidence**	

431B	Evidentiary provisions	469
431C	Further evidentiary aids	469
431D	Instruments, equipment and installations	470
431E	Certificate or report about remotely sensed image	470
Division 3	**Starting proceedings**	
431G	Offences are summary offences	471
431H	Limitation on time for starting offence proceedings	471
Division 4	**Other matters about proceedings**	
431J	Liability of executive officer—offence committed by corporation against s 214D(1)	472
431L	Recovery of costs of investigation	473
431M	Representation of departmental officer in court	473
431N	Ability to prosecute under other Acts	473
Part 3B	**Making land available for public use as beach**	
431O	Definitions	474
431P	References to a lot	475
431Q	Regulation may declare area of seashore to be a declared beach area 475	
431R	Declared beach area and lot boundaries	476
431S	Compensation not payable for declared beach area	477
431T	Management of declared beach area and conditions of use	477
431U	Notice to owner before making of regulation	479
431V	Consultation before registration of declaration and plan of survey	479
431W	Status of declared beach area	480
431X	Exemption from contravention of use condition	481
431Y	Obstruction of use or enjoyment	481
431Z	Other Acts not affected	482
Part 3C	**Access to State land**	
Division 1	**Preliminary**	
431ZA	Definitions for part	482
Division 2	**Entry to adjacent land**	
431ZB	Authorisation of persons to carry out authorised activities	483
431ZC	Notice of entry	484
431ZD	Entering adjacent land for authorised activities	484
Division 3	**Damage to adjacent land**	
431ZE	Duty to avoid inconvenience and minimise damage	485

431ZF	Relevant person must give notice of damage	486
431ZG	Notice of damage	486
431ZH	Remediation agreement	487
431ZI	Court's decision about remedial action	488
Part 4	**Miscellaneous**	
432	Pasturage rights for travelling stock	490
434	Meaning of tourism purposes	490
434A	Establishing an island as a regulated island	491
434B	Availability of short-term extension in particular circumstances	491
434C	Change of status of particular land	491
435	Minister may refer matters to the court	492
436	Auctioneer's licence not necessary	492
438	What are debts owing to the State	492
439	Words and expressions used in documents under Act	492
440	Obstructing particular officers	492
441	Protection from liability	493
443	No deed of grant until fees paid	494
444	Approved forms	494
445	Fees for titles registry functions	494
448	Regulation-making power	494
448A	Application of GST to rents	496
448B	Application of GST to purchase price for leases	496
Chapter 8	**Continued rights and tenures**	
Part 1	**Reserves, deeds of grant in trust and roads**	
Division 1	**Reserves**	
449	Existing reserves and purposes continue	497
450	Trustees continue	497
Division 2	**Deeds of grant in trust**	
451	Existing deeds of grant in trust and purposes continue	497
452	Trustees continue	498
452A	Land granted for Aboriginal or Islander inhabitants	498
Division 3	**Existing trustee leases**	
453	Existing trustee leases and licences continue	499
Division 4	**Roads**	
454	Existing roads continue	499
455	Existing road licences continue	499

Part 2 **Freeholding leases**

Division 1 **Pre-Wolfe freeholding leases**

456 Existing leases continue 499

457 Terms of pre-Wolfe freeholding leases 500

458 Deed of grant to issue 501

459 Residential hardship concessions 501

Division 2 **Post-Wolfe freeholding leases**

460 Existing leases continue 502

461 Terms of existing post-Wolfe freeholding leases continue 502

462 Terms of post-Wolfe freeholding leases 502

463 Deed of grant to issue 503

Division 3 **Grazing homestead freeholding leases**

464 Existing leases continue 503

465 Terms of existing grazing homestead freeholding leases continue 503

466 Terms of grazing homestead freeholding leases 504

467 Deed of grant to issue 505

Part 3 **Perpetual leases**

Division 1 **Grazing homestead perpetual leases**

468 Existing leases continue 505

Division 2 **Non-competitive leases**

470 Existing leases continue 505

471 Right to a post-Wolfe freeholding lease 506

Part 4 **Term leases**

Division 1 **Pastoral, preferential pastoral, pastoral development, and stud holdings**

472 Existing leases continue 506

473 Covenant for a new term lease 507

474 Uses of stud holdings 507

475 Restrictions on ownership of preferential pastoral holdings 507

Division 2 **Special and development leases**

476 Existing leases continue 507

477 Change of purpose for special lease 508

478 Right to a post-Wolfe freeholding lease 508

479 Development leases not to be sublet 508

Part 5 **Licences and permits**

Division 1 **Occupation licences**

480	Occupation licences continue	509
481	Cancellation	509
481A	Absolute surrender	510
481B	Application to cancel or surrender	510
481E	Registration cancels occupation licence	510
481F	Registration surrenders occupation licence	511
481G	Notice of cancellation or absolute surrender	511
481H	Effect of cancellation or absolute surrender	512
481I	Person to give up possession on cancellation or absolute surrender 512	
481J	Improvements	513
482	Approval needed for improvement and development work	513
Division 1A	**Permits**	
483	Existing permits continue	513
Division 2	**Fencing use licences**	
484	Existing fencing use licences continue	514
485	Minister may cancel licence for breach of condition	514
Part 6	**Continued tenures generally**	
486	Existing conditions continue	514
487	Existing concessions continue	514
488	Fencing conditions and exemptions	515
489	Amalgamating or subdividing existing leases	515
Part 7	**Tenures under other Acts**	
Division 1	**Sale to Local Authorities Land Act 1882**	
490	Existing deeds of grant continue	516
491	Conditions and reservations still applying	516
492	Application for new tenure under this Act	517
493	Automatic issue of new tenure under this Act	517
Division 2	**Miners homesteads**	
494	Objective	518
495	Definitions for div 2	518
496	Current applications	519
497	Refusal or lapsing of current miners homestead application	519
498	Time in which offer must be accepted	519
499	Automatic issue of new tenure	520
500	Application of prepaid rent	521

501	Replacement miners homestead documents	521
502	Replacement mining titles freeholding leases	521
503	Approvals continue	522
Division 2A	**Further opportunity to convert certain perpetual town leases, that were previously miners homesteads, to freehold**	
503A	Objective	522
503B	Definitions for div 2A	522
503C	Who may apply under this division	523
503D	Time within which application must be made	523
503E	How application is dealt with	523
503F	Lapse of offer	524
503G	Surrender of existing lease	524
503H	Existing encumbrances	524
503I	Credit for rent paid	524
Division 2B	**Treatment of special perpetual mining purposes leases under certain Acts**	
503J	Special perpetual mining purposes leases become perpetual leases 525	
503K	Replacement documents	525
Division 3	**Port and harbour lands**	
504	Changing tenures of port lands	526
505	Changing tenures of harbour land	527
Division 4	**Cemetery Act 1865**	
506	Existing cemeteries continue	528
Chapter 9	**Transitional and repeal provisions**	
Part 1	**Transitional provisions for original Act (No. 81 of 1994)**	
508	Interests under repealed Act continue	528
509	Registration of documents lodged before commencement	529
510	Offers made before commencement	529
511	References in Acts and documents	529
512	Harbour matters	531
513	Casino matters	531
514	Closure of Brigalow Fund	531
516	Existing by-laws	532
518	Existing powers of attorney	532
519	Things done under repealed Acts	532
520	Effect of repeal by this Act	533

Part 1A **Transitional provision for Natural Resources and Other Legislation Amendment Act 2000**

521A Lease of land under repealed Act, section 269(1) 533

Part 1B **Transitional provisions for Guardianship and Administration Act 2000**

521B Performance of condition under previous s 207(1)(b) possible for 1 year 534

521C Authorisation under repealed s 384 continues for 1 year 534

Part 1C **Transitional provision for Audit Legislation Amendment Act 2006**

521D Persons appointed to perform certain audits before commencement 534

Part 1D **Transitional provisions for Land and Other Legislation Amendment Act 2007**

521E Divesting and vesting trust land 535

521F Existing leases exempted from particular amendments 535

521G Offer of additional area 536

521H Forfeiture for outstanding amount 536

521I Requirements for plan of subdivision 536

521J Non-application of s 299A to particular documents 536

521L Continuance of power to substitute particular tenure or registered documents 536

521M Permits to occupy and unallocated State land 536

521N Dealing with disputes under particular subleases 537

521O Exclusion of imposed condition reviews for particular leases . . . 537

Part 1E **Transitional provision for Aboriginal and Torres Strait Islander Land Amendment Act 2008**

521P Trustee leases 538

Part 1F **Further transitional provisions for Land and Other Legislation Amendment Act 2007**

521Q Definition for pt 1F 538

521R Outstanding applications continued under post-amended Act . . 538

521S Particular new leases exempted from particular provisions 539

Part 1G **Transitional provision for Acquisition of Land and Other Legislation Amendment Act 2009**

521T Provision about change of purpose for reserves 540

Part 1H **Transitional provisions for Natural Resources and Other Legislation Amendment Act 2010**

521U Definitions for pt 1H 540

521V Existing term lease applications 541

521W	Existing extension applications	541
521X	Application of s 155D to existing leases	541
521Y	Application of s 201A to existing leases	541
521Z	Continuing application of no compensation provision	541
521ZA	Lease or permit	541
Part 1I	**Transitional provision for Classification of Computer Games and Images and Other Legislation Amendment Act 2013**	
521ZB	References to the repealed Dividing Fences Act 1953	542
Part 1J	**Transitional provision for amendments under Waste Reduction and Recycling Act 2011**	
521ZC	Existing profit a prendre relating to natural resource product	543
Part 1K	**Transitional provisions for Land, Water and Other Legislation Amendment Act 2013**	
521ZD	Definitions for pt 1K	543
521ZE	Cancellation of land management agreements	544
521ZF	Prohibition on cancellation of particular land management agreements 544	
521ZG	Particular conditions about land management agreements for relevant term leases	545
521ZH	Extension and reduction of relevant term leases	545
521ZI	Existing term lease applications	545
Part 1L	**Transitional provision for Vegetation Management Framework Amendment Act 2013**	
521ZJ	Particular existing forfeiture procedures	546
Part 1M	**Transitional provisions for Land and Other Legislation Amendment Act 2014**	
521ZK	Definitions for pt 1M	546
521ZL	Application for term lease renewal may become extension application for rolling term lease	547
521ZM	Application for term lease renewal before commencement may become extension application	547
521ZN	Ending of mandatory condition under repealed s 176H	548
521ZO	Transitional regulation-making power	548
Part 1N	**Transitional provisions for Nature Conservation and Other Legislation Amendment Act 2016**	
521ZP	Definitions for part	549
521ZQ	Protected area lease is not a rolling term lease	549
521ZR	Extension application for protected area lease	549
Part 2	**Repeal**	

522	Completion of repeal	550
Part 3	**Transitional provisions for Land, Explosives and Other Legislation Amendment Act 2019**	
525	Application of s 199B to existing leases and permits	550
526	Application of s 294E(3)	550
527	Authorised persons	550
528	Identity cards issued before commencement	551
529	Compensation	551
Part 4	**Transitional provisions for Natural Resources and Other Legislation Amendment Act 2019**	
Division 1	**Preliminary**	
530	Definitions for part	551
Division 2	**Provision relating to alternative dispute resolution**	
531	Existing disputes	552
Division 3	**Provisions relating to road closures**	
532	Steps taken in relation to road closure applications before commencement	552
533	Roads temporarily closed by gazette notice	553
Division 4	**Provisions relating to prescribed terms and mandatory standard terms documents**	
534	Definition for division	553
535	Application of mandatory standard terms document	553
536	Requirements for mandatory standard terms document	554
Division 5	**Provisions about functions of Minister and chief executive**	
537	Particular applications taken to have been made to the chief executive 554	
538	Particular things taken to have been done by chief executive	555
Division 6	**Other provision**	
539	Application of new s 311	555
Part 5	**Transitional provision for Natural Resources and Other Legislation (GDA2020) Amendment Act 2020**	
540	Existing applications to convert leases	555
Part 6	**Transitional provisions for Queensland Future Fund (Titles Registry) Act 2021**	
541	Definitions for part	556
542	Existing registers continue	556
543	Land practice manual continues	556
544	Engagements and agreements under former ss 284 or 285A	556

545 Approved forms continue as approved forms of registrar of titles 557

546 Approval of form of document under Electronic Conveyancing National Law (Queensland) 558

547 Other things done by or in relation to chief executive 558

548 Declaration of particular matters for s 547 559

549 Application of s 511 and references in documents 560

Part 7 Transitional provisions for Land and Other Legislation Amendment Act 2023

550 Definitions for part 560

551 Existing applications to transfer leases issued for significant development 560

552 Registration of documents for particular existing dealings 560

553 Existing offers for renewal of term leases 561

554 Lapse of existing offers 561

Schedule 1 Community purposes 562

Schedule 1A Provisions that include mandatory conditions for tenures . 564

Schedule 1B Regulation about the payment and collection of rent and instalments 565

1 Matters that may be included 565

Schedule 2 Original decisions 567

Schedule 3 Requirements for approved agreements 570

Schedule 6 Dictionary 576

Land Act 1994

An Act to consolidate and amend the law relating to the administration and management of non-freehold land and deeds of grant in trust and the creation of freehold land, and for related purposes

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

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

3 Dictionary

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

Part 2 Objects

4 Object of this Act

In the administration of this Act, land to which this Act applies must be managed for the benefit of the people of Queensland by having regard to the following principles—

Sustainability

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- sustainable resource use and development to ensure existing needs are met and the State's resources are conserved for the benefit of future generations

Evaluation

- land evaluation based on the appraisal of land capability and the consideration and balancing of the different economic, environmental, cultural and social opportunities and values of the land

Development

- allocating land for development in the context of the State's planning framework, and applying contemporary best practice in design and land management
- when land is made available, allocation to persons who will facilitate its most appropriate use that supports the economic, social and physical wellbeing of the people of Queensland

Community purpose

- if land is needed for community purposes, the retention of the land for the community in a way that protects and facilitates the community purpose

Protection

- protection of environmentally and culturally valuable and sensitive areas and features

Consultation

- consultation with community groups, industry associations and authorities is an important part of the decision-making process

Administration

- consistent and impartial dealings
- efficient, open and accountable administration
- a market approach in land dealings, adjusted when appropriate for community benefits arising from the dealing.

Authorised by the Parliamentary Counsel

Part 3 Application of Act

5 Land to which Act applies

(1) This Act applies to all land, including land that is, whether permanently or from time to time, covered by water subject to tidal influence.

Note—

Although this Act generally applies to non-freehold land, most freehold land contains a reservation to the State for minerals. To that extent, this Act applies to all land.

(2) Layers and strata above and below the surface of land may be dealt with under this Act.

Note—

However, see section 14(3).

6 Act binds all persons

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

7 Relationship with Native Title Act

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

Part 4 Tidal and non-tidal boundaries and associated matters

Division 1 Preliminary

8 Definitions for pt 4

In this part—

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adjacent owner—

(a) for non-tidal watercourse land—see section 8A(1) and (2); or

(b) for non-tidal lake land—see section 8A(3) and (4).

chief executive (water) means the chief executive of the department in which the *Water Act 2000* is administered.

non-tidal boundary (lake) has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

non-tidal boundary (watercourse) has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

non-tidal lake land see section 13AA(1)(b).

non-tidal watercourse land see section 13AA(1)(a).

owner, of land, means the following—

(a) if the land is freehold land—the registered owner of the land;

(b) if the land is the subject of a lease registered under the *Land Title Act 1994*—the lessee of the land;

(c) if the land is the subject of a lease registered under this Act—the lessee of the land;

(d) if the land is a reserve—the trustee of the reserve;

(e) if a person has occupation rights in relation to the land under a licence or permit—the licensee or permittee.

right line boundary has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

right line tidal boundary, of land, means a right line boundary of the land that—

(a) is located approximately where a tidal boundary might otherwise be located; or

Example—

The boundaries of a lot include a tidal boundary. Because of difficulties arising in relation to the location at law of the tidal boundary, or for some other reason, the registered owner of the

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lot agrees to surrender the lot to the State. The lot is resurveyed, and a new deed of grant is issued for the lot, but without the tidal boundary. The deed of grant and associated plan of survey now provide for a right line boundary in a location that is the approximate location of the previous tidal boundary.

(b) adjoins land that is, whether permanently or from time to time, covered by tidal water.

tidal boundary has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

tidal water means any part of the sea or of a port, or of a watercourse, lagoon, swamp or other place where water may be found, ordinarily within the ebb and flow of the tide at spring tides.

8A Who is an *adjacent owner* for non-tidal watercourse land and non-tidal lake land

(1) A person is an ***adjacent owner*** for non-tidal watercourse land if the person is the owner of land that adjoins a non-tidal boundary (watercourse) of the non-tidal watercourse land.

(2) Also, a person is an ***adjacent owner*** for non-tidal watercourse land if—

(a) the non-tidal watercourse land extends from the non-tidal boundary (watercourse) on 1 side of the watercourse (the ***subject boundary***) past the line along the middle of the bed of the watercourse; and

(b) the person is the owner of land that adjoins the non-tidal boundary (watercourse) of the non-tidal watercourse land on the other side of the watercourse, opposite the subject boundary.

(3) A person is an ***adjacent owner*** for non-tidal lake land if the person is the owner of land that adjoins a non-tidal boundary (lake) of the non-tidal lake land.

(4) Also, a person is an ***adjacent owner*** for non-tidal lake land if—

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(a) the non-tidal lake land extends from the non-tidal boundary (lake) on 1 side of the lake (the ***subject boundary***) past the centre of the lake; and

(b) the person is the owner of land that adjoins the non-tidal boundary (lake) of the non-tidal lake land on the other side of the lake, opposite the subject boundary.

Division 2 The tidal environment

9 Land adjacent to tidal boundary or right line tidal boundary owned by State

(1) If land has a boundary that is a tidal boundary or right line tidal boundary, other land that is on the same side of the boundary as the water subject to tidal influence—

(a) is the property of the State; and

(b) may be dealt with as unallocated State land.

(2) Subsection (1) does not apply to land if it is inundated land or a registered interest in the land is held by someone else.

(3) Subsections (1) and (2) apply even if a person owns land having tidal boundaries or right line tidal boundaries on both sides of water subject to tidal influence.

Example—

A person owns land that has as its northern boundary a tidal boundary that is located on the southern edge of a river. The same person also owns land in the same locality that has as its southern boundary a tidal boundary located on the northern edge of the same river. The ownership of land on both sides of the river does not in these circumstances confer on the person ownership of the river itself.

(4) To remove any doubt, it is declared that, before the commencement of this section, if a boundary of land (the ***relevant land***) was formed by high-water mark—

(a) other land that adjoined the boundary and was below high-water mark was, and always was, the property of the State, unless it was inundated land or a registered interest in the land was held by someone else; and

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(b) if the line of the high-water mark shifted over time by gradual and imperceptible degrees, the shift was a shift in the boundary of the relevant land.

(5) An act before the commencement of this section to occupy, use, build works or remove material or product, with or without lawful authority, could never divest the State of its ownership of land below high-water mark.

(6) An act after the relevant commencement to occupy, use, build works or remove material or product, with or without lawful authority, can not divest the State of its ownership of land that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence.

(7) For subsection (6), ***relevant commencement*** means—

(a) in relation to a tidal boundary or right line tidal boundary under section 8, definition *right line tidal boundary*, paragraph (a)—the commencement of subsection (6); or

(b) in relation to a right line tidal boundary under section 8, definition *right line tidal boundary*, paragraph (b)—the commencement of this subsection.

10 Land raised above high-water mark by works

(1) Land in the ownership of the State that becomes raised above high-water mark as a result of the carrying out of works on or in proximity to the land remains owned by the State and may be dealt with as unallocated State land.

(2) This section does not apply to land the subject of reclamation mentioned in section 127.

11 Local government for new land

(1) Land that becomes raised above high-water mark is land within the local government area of land adjoining the raised land.

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(2) If the raised land adjoins land in more than 1 local government area, the Minister must decide the local government for the land.

12 Inundated land

(1) If inundated land adjoins the limits of a port, the land forms part of the port for an Act applying to tidal water in the port.

(2) If inundated land is outside the limits of a port, the land forms part of the tidal water for an Act applying to tidal water.

(3) The registered owner of inundated land may suitably indicate where the boundaries of the land are across the surface of the water.

(4) If the registered owner of inundated land has suitably indicated where the boundaries of the land are, the registered owner may regulate or prohibit the use or movement of ships in or over the water above the inundated land.

(5) To remove any doubt, it is declared that an interest in freehold land immediately before the land becomes inundated land is not affected by the inundation and neither the State nor a port authority, port lessor, port lessee or port manager is authorised to deal with or give an interest in the land unless the State, port authority, port lessor, port lessee or port manager is the registered owner of the land.

(6) In this section—

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

13 Power to deal with land seaward of tidal boundary or right line tidal boundary

(1) Land that is on the seaward side of a tidal boundary or right line tidal boundary, other than inundated land, may be leased, granted, occupied, sold or transferred only under the authority of an Act.

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(2) Subsection (1) does not stop land that is on the seaward side of a tidal boundary or right line tidal boundary from being granted in fee simple if it is the subject of reclamation mentioned in section 127.

Division 3 The non-tidal environment

13A Land adjacent to non-tidal boundary (watercourse) or non-tidal boundary (lake) owned by State

(1) If land has a non-tidal boundary (watercourse), other land that adjoins the boundary and is on the watercourse side of the boundary is the property of the State.

(2) If land has a non-tidal boundary (lake), other land that adjoins the boundary and is on the lake side of the boundary is the property of the State.

(3) Subsections (1) and (2) apply despite the alienation of land by the State.

(4) A person (the ***owner***) who may take water under the *Water Act 2000*, section 96—

(a) may exercise a right of access for the owner, the owner's family, executive officers, employees, agents and stock over the part (the ***adjacent area***) of the watercourse or lake that is the property of the State and that adjoins the owner's land; and

(b) may exercise a right of grazing for the person's stock over the adjacent area; and

(c) may bring action against a person who trespasses on the adjacent area as if the owner were the registered owner of the adjacent area.

(5) If the adjacent area is being used by the State for a purpose under the *Water Act 2000*—

(a) subsection (4)(a) and (b) applies only to the extent exercising the right does not interfere with the State's use of the adjacent area; and

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(b) subsection (4)(c) does not allow the owner to bring an action against a person acting on behalf of the State.

(6) If the adjacent area is part of a reserve or the subject of a lease—

(a) subsection (4)(a) and (b) applies only to the extent exercising the right does not interfere with—

(i) a trustee of the reserve performing the trustee's functions, and fulfilling the trustee's duty of care for the land in the reserve; or

(ii) the lessee's rights and interests under the lease; and

(b) subsection (4)(c) does not allow the owner to bring an action against—

(i) a trustee of the reserve, a person acting for a trustee, or a person with a registered interest in the land in the reserve; or

(ii) the lessee, a person acting for the lessee, or a person with a registered interest in the lease.

Note—

This section effectively replaces the *Water Act 2000*, section 21 (Beds and banks forming boundaries of land are State property), which was repealed by the *Natural Resources and Other Legislation Amendment Act 2010*. However, that Act inserted a transitional provision into the *Water Act 2000* to provide that the repealed section 21 continues to apply for all matters arising before its repeal.

13AA Power to deal with non-tidal watercourse land and non-tidal lake land

(1) This section applies to—

(a) land that is the property of the State under section 13A(1) (***non-tidal watercourse land***); and

(b) land that is the property of the State under section 13A(2) (***non-tidal lake land***).

(2) Non-tidal watercourse land and non-tidal lake land are not unallocated State land, but may be leased, or dedicated as a

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reserve, under this Act as if the land were unallocated State land.

(3) Subsection (2) applies subject to sections 13AB and 13AC.

13AB Leasing non-tidal watercourse land or non-tidal lake land

(1) Non-tidal watercourse land or non-tidal lake land may be leased under this Act only if—

(a) the lessee is the State; and

(b) each person who is an adjacent owner for the land consents to the lease; and

(c) the chief executive (water) consents to the lease; and

(d) each condition of the consent of the chief executive (water) imposed under subsection (3)—

(i) has been satisfied; or

(ii) is imposed as a condition of the lease.

(2) In deciding whether to consent to the lease, the chief executive (water) must consider whether, and to what extent, the lease will interfere with—

(a) the State's control or use of any part of the non-tidal watercourse land or non-tidal lake land for a purpose under the *Water Act 2000*; or

(b) a right of the State or a person to take or use water under the *Water Act 2000*.

(3) The consent of the chief executive (water) may be given on conditions.

(4) A lease of non-tidal watercourse land or non-tidal lake land may not be transferred.

(5) Despite section 13AA(2), the granting of a lease over non-tidal watercourse land or non-tidal lake land is not subject to any public auction, tender or ballot requirements under chapter 4, part 1, division 1.

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13AC Dedicating non-tidal watercourse land or non-tidal lake land as reserve

(1) Non-tidal watercourse land or non-tidal lake land may be dedicated as a reserve only if—

(a) each person who is an adjacent owner for the land consents to the dedication; and

(b) the chief executive (water) consents to the dedication; and

(c) each condition of the consent of the chief executive (water) imposed under subsection (3)—

(i) has been satisfied; or

(ii) is imposed as a condition of the appointment of a trustee of the reserve.

(2) In deciding whether to consent to the dedication, the chief executive (water) must consider whether, and to what extent, the dedication will interfere with—

(a) the State's control or use of any part of the non-tidal watercourse land or non-tidal lake land for a purpose under the *Water Act 2000*; or

(b) a right of the State or a person to take or use water under the *Water Act 2000*.

(3) The consent of the chief executive (water) may be given on conditions.

13B Power to declare and deal with former watercourse land

(1) A person (the ***applicant***) who is the owner of land (the ***relevant land***) having a non-tidal boundary (watercourse) may apply to the chief executive (water) to have land (the ***watercourse land***) adjoining the relevant land's non-tidal boundary (watercourse) declared to be former watercourse land if—

(a) no person holds a registered interest in the watercourse land; and

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(b) the physical location of the boundary's associated watercourse has been the subject of change, whether before or after the commencement of this section; and

(c) on an application of the ambulatory boundary principles, the location at law of the non-tidal boundary (watercourse) has not changed correspondingly; and

(d) the watercourse land has effectively ceased to be part of a functioning watercourse.

(2) However, before applying, the person must give notice of the person's intention to make the application to the owners of any land that adjoins the watercourse land.

(3) The chief executive (water) may by gazette notice declare the watercourse land to be former watercourse land.

(4) However, the chief executive (water) may make the declaration only if satisfied that—

(a) the matters stated in subsection (1)(a) to (d) are true; and

(b) taking a long-term perspective, there is negligible likelihood that the watercourse land will again become part of a functioning watercourse.

(5) In making the application, the applicant must give the chief executive (water) enough evidence to satisfy the chief executive (water) that the watercourse land has effectively ceased to be part of a functioning watercourse.

Examples of evidence—

photographs, survey material identifying topographical changes and authoritative information about flow history

(6) The applicant may appeal against the refusal of the application, and a person entitled to be given notice of the proposed application under subsection (2) may appeal against the granting of the application.

(7) When the watercourse land becomes former watercourse land, it does not become unallocated State land, but it may be dealt with under this Act as if it were unallocated State land.

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(8) Despite subsection (7), the granting of an estate in fee simple, a lease or a permit to occupy for the purpose of dealing with the former watercourse land under that subsection is not subject to any public auction, tender or ballot requirements under chapter 4, part 1, division 1.

(9) To remove any doubt, it is declared that the former watercourse land declaration may incorporate by reference a map or plan held by the chief executive under this Act for identifying the boundaries of the former watercourse land.

(10) The chief executive (water) may delegate his or her powers under this section to an appropriately qualified public service officer or public service employee.

(11) In this section—

associated watercourse, of a non-tidal boundary (watercourse), means the watercourse on which the boundary is based.

former watercourse land means the land the subject of a former watercourse land declaration.

former watercourse land declaration means a declaration under subsection (3).

Chapter 2 Land allocation

Part 1 Allocation powers

14 Governor in Council may grant land

(1) The Governor in Council may grant, in fee simple, unallocated State land, an operational reserve, rail land or approved land.

(2) The Governor in Council may also grant, in fee simple in trust, unallocated State land for use for a community purpose.

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(3) A grant under subsection (1) or (2) may not be made for land that adjoins a tidal boundary or right line tidal boundary of other land.

(4) A grant of rail land under subsection (1) may be made only to the State.

(5) Subsection (3) does not stop land that is on the seaward side of a tidal boundary or right line tidal boundary from being granted in fee simple if it is the subject of a reclamation mentioned in section 127.

(6) A grant of approved land under subsection (1) may be made only to the person the subject of the application.

(7) In this section—

approved land means land the subject of an application approved by the chief executive under the *Aboriginal Land Act 1991*, section 32C or the *Torres Strait Islander Land Act 1991*, section 28C.

15 Leasing land

(1) The Governor in Council may issue a freeholding lease following an offer to convert a lease under chapter 4, part 3, division 3.

(2) The Minister may—

(a) lease unallocated State land for either a term of years or in perpetuity; and

(b) lease land in a reserve for a term of years only.

(3) However, a lease in perpetuity of unallocated State land may be granted only if—

(a) under a provision of an Act, other than this Act, a perpetual lease must be issued over the unallocated State land; or

Example of a provision of an Act for paragraph (a)—

Transport Infrastructure Act 1994, section 105J(4) and (5)

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(b) under a provision of this Act, the Minister may issue a perpetual lease; or

Example of a provision of this Act for paragraph (b)—

section 17(3)

(c) the Minister considers the lease is in the interests of the State.

(4) A lease for land that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence may be granted only if—

(a) it will not unduly affect safe navigation and sound development of the State's waterways and ports; and

(b) the impact on marine infrastructure has been considered; and

(c) it would not have a detrimental effect on coastal management; and

(d) it is consistent with the intent of any relevant State management plan.

(5) A lease for land that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence is not an approval to reclaim the lease land.

16 Deciding appropriate tenure

(1) Before land is allocated under this Act, the chief executive must evaluate the land to assess the most appropriate tenure and use for the land.

(2) When conducting the evaluation, the chief executive must—

(a) take account of State, regional and local planning strategies and policies and the object of this Act; and

(b) take account of commitments of, and undertakings given by, the State in relation to the land; and

(c) to the extent the land is in a priority development area—take account of, and give primary consideration to, any relevant development instrument under the

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Economic Development Act 2012 that applies to the land; and

(d) to the extent the land is Cape York agreement land—take account of commitments and undertakings given by a person under, or arising from, a Cape York agreement that have effect in relation to tenure.

(3) The chief executive may comply with subsection (1) by using, as the evaluation, an earlier assessment of the most appropriate tenure and use for the land if—

(a) the assessment was conducted by or for the State; and

(b) the chief executive is satisfied the assessment takes account of the matters mentioned in subsection (2).

(4) This section does not apply to a grant of rail land in fee simple to the State.

(5) In this section—

Cape York agreement means—

(a) the Cape York Peninsula Land Use Heads of Agreement made on 5 February 1996; or

(b) the agreement made on 17 September 2001, headed 'Deed of Endorsement Cape York Land Use Heads of Agreement'.

Cape York agreement land means unallocated State land to which a Cape York agreement applies.

17 Granting land to the State and the Commonwealth

(1) The Governor in Council may grant unallocated State land, an operational reserve or rail land in fee simple to the State.

(2) The Governor in Council may grant unallocated State land in fee simple to the Commonwealth.

(3) The Minister may lease unallocated State land to the State or the Commonwealth for either a term of years or in perpetuity.

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18 Exchanging land

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

Note—

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

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

Note—

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

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

Note—

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

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

(5) If a registered owner or lessee asks for an agreement to be made under this section, the request must be accompanied by the fee prescribed under a regulation.

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

(1) This section applies if, under an ILUA, all native title in relation to an area is extinguished by surrender to the State.

(2) The designated person may grant or lease unallocated State land to a grantee entity.

(3) The unallocated State land being granted or leased need not be land the subject of a surrender under the ILUA.

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(4) If there are 2 or more surrender areas, the grant or lease may be made to 2 or more grantee entities jointly.

(5) In this section—

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

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

grantee entity means—

(a) if there is, under the Commonwealth Native Title Act, a registered native title body corporate for a surrender area—the registered native title body corporate for the surrender area; or

(b) for any other surrender area—

(i) a body corporate whose membership is restricted to persons in the surrender group; or

(ii) a person as trustee for a trust whose beneficiaries are restricted to persons in the surrender group.

ILUA means an indigenous land use agreement.

surrender area means—

(a) an area in relation to which native title is surrendered under the ILUA and in relation to which there is a registered native title body corporate; or

(b) an area in relation to which native title is surrendered under the ILUA on behalf of a surrender group.

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

19 Minister may buy land

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

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20 Dealing with mining interests, geothermal tenures or GHG authorities

(1) Even if there is a mining interest, geothermal tenure or GHG authority over unallocated State land, the land is still unallocated State land for dealing with it under this Act.

(2) However, the dealing can not affect—

(a) the rights of the holder of the mining interest, geothermal tenure or GHG authority or the successors of the holder; or

(b) an agreement made, or anything else done, under the *Mineral Resources Act 1989*, the *Petroleum Act 1923*, the *Petroleum and Gas (Production and Safety) Act 2004*, the *Geothermal Energy Act 2010* or the *Greenhouse Gas Storage Act 2009*.

(3) In this section—

geothermal tenure means a geothermal tenure under the *Geothermal Energy Act 2010*.

GHG authority means a GHG authority under the *Greenhouse Gas Storage Act 2009*.

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

Part 2 Reservations

21 Reservation of minerals, petroleum etc.

Each deed of grant, deed of grant in trust or lease issued under this Act is subject to the reservations and conditions authorised or required under this or another Act.

Note—

The *Mineral Resources Act 1989*, section 8, the *Petroleum Act 1923*, section 10 and the *Petroleum and Gas (Production and Safety) Act 2004*, section 27 provide that each grant and lease issued under this Act

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is subject to the reservation of the minerals and petroleum mentioned in the sections.

22 Reservation of quarry materials

(1) A deed of grant or deed of grant in trust issued for land containing quarry material owned by the State must contain a reservation of the quarry material, other than topsoil, to the State.

(2) Subsection (1) applies to a deed of grant or deed of grant in trust issued under section 358 only if the land being surrendered is already subject to the reservation mentioned in subsection (1).

Note—

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

23 Reservation for public purposes

(1) A deed of grant, deed of grant in trust or lease issued under this Act may be issued containing a reservation for a public purpose.

(2) Each reservation must be for a stated area, in size, but the grant or lease need not identify the particular land reserved.

23A Floating reservation on plan of subdivision

(1) A person seeking to have a plan of subdivision registered in relation to the land contained in a deed of grant, deed of grant in trust or lease may apply to the chief executive for the allocation of a floating reservation to some or all of the lots created by the plan.

(2) In making a decision for subsection (1), the chief executive must have regard to the purpose of the reservation, the likely future use of the land and where the reservation is most likely to be needed.

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Example—

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

(3) If the reservation is contained in a deed of grant or freeholding lease, and the chief executive is satisfied that all or part of the reservation is no longer needed, the reservation, to the extent it is no longer needed, may be dealt with under section 24.

(4) If the reservation is contained in a deed of grant in trust, or in a lease other than a freeholding lease, and the chief executive is satisfied that all or part of the reservation is no longer needed, the reservation, to the extent it is no longer needed, may be dealt with under section 26A.

(5) Notice of the chief executive's decision for subsection (1) and the reasons for the decision must be given to the applicant.

(6) The applicant may appeal against the chief executive's decision.

24 Disposal of reservations no longer needed

(1) If a reservation for a public purpose in a deed of grant or freeholding lease is no longer needed for the purpose, the Governor in Council may sell all or part of the land in the reservation to the registered owner of the deed of grant or the lessee of the lease.

Note—

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

(2) Alternatively, if the reservation is adequate in size to be used by a person other than the registered owner or lessee and the registered owner or lessee does not buy the land—

(a) possession of all or part of the land reserved may be resumed; and

(b) the land resumed may be dealt with as unallocated State land.

(3) Land in a reservation may be sold under subsection (1) only if the registered owner or lessee has applied to the Minister to

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buy the land, and the Minister is satisfied the reservation is no longer needed.

(4) In making a decision under subsection (3), the Minister must have regard to the purpose of the reservation and the likely future use of the land.

Example—

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

25 Disposal of reservations by sale

(1) If land is sold under section 24(1), the sale price for the land is the unimproved value of the land decided by the Minister in the way prescribed by regulation.

(2) The registered owner or lessee may appeal against the unimproved value.

(3) The unimproved value must be decided—

(a) if the registered owner or lessee applied to buy the land—for the day the application was received by the Minister; or

(b) if the Minister made an offer to sell the land before the registered owner or lessee applied to buy the land—for the day the offer was made.

26 Minister may decide boundaries of reservations

(1) If the Governor in Council resumes possession of all or part of a reservation and the boundaries of the reservation are not stated in the lease, deed of grant or deed of grant in trust, the Minister may decide the boundaries of the reservation.

Note—

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

(2) In deciding the boundaries of the land being resumed, the Minister must consider the following matters unless the lessee, registered owner or trustee of the land otherwise agrees with the Minister—

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(a) 1 of the boundaries should adjoin, or be, an existing road;

(b) the lessee, registered owner or trustee should not be deprived of access to the land;

(c) the land to be resumed should be, as near as practicable, of the average qualities and capabilities of all the land in the lease, deed of grant or deed of grant in trust.

(3) Notice of the Minister's decision on the boundaries and the reasons for the decision must be given to the lessee, registered owner or trustee.

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

26A Disposal of redundant reservation

(1) If a reservation for a public purpose in a deed of grant in trust, a term lease or a perpetual lease is no longer needed for the purpose, the Minister may dispose of the reservation under this section.

(2) The Minister disposes of the reservation by approving the lodgement of a plan of subdivision that cancels the reservation and incorporates the land the subject of the reservation as land contained in the grant or lease.

(3) If the reservation is in a deed of grant in trust, the disposal must happen in conjunction with a surrender, under section 358(1), of the land contained in the deed of grant in trust.

(4) If the reservation is in a term lease or perpetual lease and a rent and instalment regulation applies to it for the purposes of this section, its rent may be adjusted as provided for in the rent and instalment regulation in relation to any increase in the area of land in the lease.

(5) In this section—

reservation includes part of a reservation.

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26B Forest entitlement areas

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

(2) If the forest entitlement area is no longer needed by the State the lessee or registered owner may buy the forest entitlement area under sections 24 and 25.

Note—

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

(3) If the lessee or registered owner buys the forest entitlement area, the lessee or registered owner must also pay the value of the commercial timber on the forest entitlement area.

(4) When a payment, as a first instalment or in full, is made for the forest entitlement area and the value of the commercial timber—

(a) the reservation is discharged and the area ceases to be a forest entitlement area; and

(b) the commercial timber become the property of the person for whose benefit the reservation is discharged.

(5) If the lessee or registered owner does not want to buy the forest entitlement area, possession of the forest entitlement area may be resumed, subject to section 26C, under section 24.

Note—

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

(6) For subsection (3), the value of the commercial timber on a forest entitlement area is decided by the Minister in the way prescribed by regulation.

(7) The value of the commercial timber decided by the Minister must be its value on the day—

(a) if the lessee or registered owner applies to buy the forest entitlement area—the application was received by the Minister; or

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(b) if the Minister made an offer to sell the forest entitlement area before the lessee or registered owner applied to buy the forest entitlement area—the offer was made.

(8) The lessee or registered owner may appeal against the value decided by the Minister for the commercial timber.

Note—

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

(9) However, if the lessee or registered owner appeals against the value decided by the Minister under subsections (6) and (7), the value of the timber decided by the court must be the value of the timber on the day the appeal is decided.

(10) Subsection (9) has effect despite anything in chapter 7, part 3, division 3.

26C Effect of resumption of forest entitlement area

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

(a) improvements existing on the forest entitlement area before the reservation was made; and

(b) if building of improvements on the forest entitlement area were authorised by the chief executive and the authorisation has not specifically excluded the payment of compensation—the improvements authorised.

Part 3 Native title

27 Object

The object of this part is to emphasise that land administered under this Act must be dealt with in a way not inconsistent

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with the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993*.

28 Interaction with native title legislation

(1) Any action taken under this Act must be taken in a way not inconsistent with the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993*.

(2) To remove any doubt, it is declared that if native title exists over land, the land may still be dealt with under this Act.

(3) However, subsection (2) is subject to subsection (1).

Example—

The issue of a permit under this Act, with appropriate conditions, could be a low impact future act under the *Native Title Act 1993* (Cwlth).

(4) In subsection (1)—

action includes any of the following—

(a) reserving land;

(b) dedicating land as a road;

(c) granting land;

(d) issuing a lease, permit or licence over unallocated State land, reserve, road, national park, conservation park, State forest or timber reserve;

(e) including a reservation in a deed of grant, deed of grant in trust or lease;

(f) disposing of a reservation no longer needed;

(g) renewing or extending a lease;

(h) converting a lease to another form of tenure;

(i) including land in a lease or deed;

(j) approving a trustee lease or trustee permit;

(k) changing the purpose of a lease, licence, permit or reserve;

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(m) actions above and below high-water mark and in layers or strata;

(n) offering or agreeing to carry out an action.

29 Taking into consideration Aboriginal tradition and Islander custom

(1) If land is entered under chapter 6A, part 3, and the land is registered in the native title register or has been transferred or granted under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*, the entry must, to the extent possible, take Aboriginal traditions and Islander customs into consideration.

Note—

Chapter 6A, part 3 deals with the power of an authorised officer to enter a place, including a place that is freehold land or non-freehold land.

(2) In this section—

native title register means the National Native Title Register under the *Native Title Act 1993* (Cwlth).

Chapter 3 Reserves, deeds of grant in trust and roads

Part 1 Reserves and deeds of grant in trust

Division 1 General

30 Object

The object of this part is to—

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(a) enable unallocated State land to be dedicated as a reserve or granted in fee simple in trust for community purposes; and

(b) ensure that reserves and land granted in trust are properly and effectively managed—

(i) by persons (the ***trustees***) who have some particular association or expertise with the reserve or land and its purpose or with the local community; and

(ii) in a way that is consistent with the purpose for which the reserve was dedicated or the land was granted in trust; and

(c) ensure that the community purpose for which the reserve was dedicated or the land was granted in trust is not diminished by granting inappropriate interests over the reserve or land granted in trust; and

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

Division 2 Reserves

Subdivision 1 Reserves generally

31 Dedication of reserve

(1) The Minister may dedicate unallocated State land as a reserve for 1 or more community purposes.

(2) However, the Minister may dedicate unallocated State land as a reserve for a community purpose that is the provision of services beneficial to Aboriginal people particularly concerned with land or Torres Strait Islanders particularly concerned with land only if the unallocated State land is transferable land.

(3) The Minister may dedicate land under this section without receiving an application under section 31C(1).

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(4) Land is dedicated as a reserve by registering a dedication notice or plan of subdivision for the reserve.

(5) The dedication notice or plan of subdivision must state the community purpose for which the land is dedicated as a reserve.

(6) The dedication notice must also state the description of the land dedicated as a reserve.

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

31A Changing boundaries of reserve

(1) The Minister may change the boundaries of a reserve other than a reserve dedicated for a community purpose mentioned in section 31(2).

(2) The Minister may change the boundaries of a reserve under this section without receiving an application under section 31D(1).

(3) The boundaries of a reserve are changed by registering an adjustment notice or plan of subdivision.

(4) The adjustment notice must state—

(a) the reason for the change of the boundaries of the reserve; and

(b) the amended description of the land dedicated as the reserve.

(5) The change of the boundaries of a reserve takes effect on the day the adjustment notice or plan of subdivision for the change is registered.

31B Changing purpose

(1) The Minister may change the purpose for which a reserve is dedicated to a community purpose or another community purpose.

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(2) However, the Minister may change the purpose for which a reserve is dedicated to a purpose mentioned in section 31(2) only if the reserve is transferable land.

(3) Also, the Minister may change the purpose of a reserve dedicated for a purpose mentioned in section 31(2) only to Aboriginal purposes or Torres Strait Islander purposes.

(4) The Minister may change the purpose for which a reserve is dedicated under this section without receiving an application under section 31D(1).

(5) The purpose for which a reserve is dedicated is changed by registering an adjustment notice.

(6) The adjustment notice must state—

(a) the reason for the change of purpose of the reserve; and

(b) the changed purpose for which the reserve is dedicated.

(7) The change of purpose for which a reserve is dedicated takes effect on the day the adjustment notice for the change is registered.

31C Applying for dedication of reserve

(1) A person may apply to the Minister for the dedication of a reserve.

(2) However, before applying, the person must give notice of the person's intention to make the application to—

(a) if the person is not the proposed trustee of the reserve—the proposed trustee; and

(b) each person with a registered interest in the unallocated State land over which the reserve is proposed to be dedicated.

(3) The person may also give notice to any other person the first person considers has an interest in the unallocated State land over which the reserve is proposed to be dedicated.

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31D Applying for adjustment of reserve

(1) The trustee of a reserve may apply to the Minister—

(a) to change the boundaries of the reserve; or

(b) to change the purpose for which the reserve is dedicated.

(2) However, before applying, the trustee must give notice of the trustee's intention to make the application to each person with a registered interest in the reserve.

(3) The trustee may also give notice to any other person the trustee considers—

(a) has an interest in the reserve; or

(b) would have an interest in the reserve if the boundaries of the reserve or the purpose for which the reserve is dedicated were changed.

31F Notice of registration of action in relation to reserve

(1) The chief executive must give notice of the registration of an action relating to a reserve to each relevant person for the action.

(2) The notice must include the date of registration of the action.

(3) If an action is not registered, notice of the fact must be given to each relevant person for the action.

(4) In this section—

action, in relation to a reserve, means—

(a) the dedication of the reserve under section 31; or

(b) the change of the boundaries of the reserve under section 31A; or

(c) the change of purpose for which the reserve is dedicated under section 31B.

relevant person, for an action in relation to a reserve, means—

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(a) the person or trustee that made an application under section 31C or 31D in relation to the proposed action;

(b) each person given a notice under section 31C or 31D about the proposed action.

32 State leases over reserves

(1) The Minister must not grant a lease over a reserve for more than 30 years.

(2) A lease over a reserve must not contain a covenant, agreement or condition—

(a) to renew the lease; or

(b) to convert to another form of tenure (including freehold); or

(c) to buy the land.

(3) A lease over a reserve may be granted only if the lease—

(a) would be consistent with the purpose for which the land was reserved; or

(b) would facilitate or enhance the purpose for which the land was reserved.

(4) Despite subsection (3), a lease may be granted over a reserve for a purpose inconsistent with the purpose for which the reserve was dedicated if—

(a) the lease would not diminish the purpose; and

(b) no more improvements, other than improvements approved by the chief executive, are built or placed by the lessee on the leased part of the reserve.

(5) If there is a trustee of the reserve, the trustee must be consulted before the lease is granted.

33 Revocation of reserves

(1) The Minister, may revoke the dedication of all or part of a reserve if—

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(a) it is no longer needed for a community purpose; or

(b) it is needed, in the public interest, for a different use; or

(c) the Minister is satisfied a different tenure would be more appropriate for the purpose for which the land is used; or

(d) the reserve or part is in a priority development area.

(2) The Minister may revoke the dedication of all or part of a reserve without receiving an application under section 34.

34 Applying to revoke dedication of reserve

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

(2) However, before applying, the person must give notice of the person's intention to make the application to—

(a) if the person is not the trustee of the reserve—the trustee of the reserve; and

(b) each person with a registered interest in the reserve.

(3) The person may also give notice to any other person the first person considers has an interest in the reserve.

34C Removal of interests before revocation

Before the Minister revokes the dedication of a reserve—

(a) any State lease or easement existing over the reserve must be resumed or surrendered; and

(b) any permit to occupy existing over the reserve must be cancelled or surrendered.

Note—

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

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34D Registration revokes dedication of reserve

(1) The dedication of all or part of a reserve is revoked by registering a revocation notice or plan of subdivision for the reserve.

(2) However, if the revocation relates to only part of a lot, the revocation may only be made by registering a plan of subdivision.

(3) Also, if all or part of a reserve for cemetery purposes has been used for cemetery purposes, the dedication of the reserve or any part of it may be revoked under this section only if a regulation authorises the revocation.

(4) A revocation notice or plan of subdivision registered for subsection (3)—

(a) must state the particulars of the regulation mentioned in subsection (3); and

(b) may only be registered when the *Statutory Instruments Act 1992*, section 50, can no longer operate to cause the regulation to cease to have effect.

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

34E Notice of revocation

(1) The chief executive must give notice of the revocation of the dedication of a reserve to the person who applied for the revocation and each person given notice about the proposed revocation under section 34 (either a ***relevant person***).

(2) The notice under subsection (1) must include all of the following—

(a) the date of the revocation;

(b) the effect, under section 34F, of the revocation;

(c) if there are improvements on the land the subject of the reserve owned by the person receiving the notice—a

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statement that the person may apply to remove the improvements.

(3) If the Minister decides not to revoke the dedication of a reserve, notice of the fact must be given to each relevant person.

34F Effect of revocation

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

(a) the reserve ends;

(b) all appointments of trustees are cancelled;

(c) all trustee leases and interests in the trustee leases are cancelled;

(d) all trustee permits are cancelled;

(e) the land becomes unallocated State land;

(f) no person has a right to claim compensation from the Minister or the State for the revocation.

34G Person to give up possession

(1) On the revocation of the dedication of all or part of a reserve, a person occupying land the subject of the revocation must immediately vacate the land.

(2) A person who does not give up possession under subsection (1), and is not otherwise entitled to possession, is a person who is unlawfully occupying unallocated State land.

Note—

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

34H Dealing with improvements

(1) An owner of improvements on a reserve the dedication of which has been revoked may apply, in writing to the chief

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executive, to remove the owner's improvements on the reserve.

(2) The owner may remove the improvements only with the written approval of, and within a time stated by, the chief executive.

(3) The improvements become the property of the State if—

(a) the chief executive refuses to give written approval for their removal; or

(b) the chief executive gives written approval for their removal but the improvements have not been removed within the time stated by the chief executive.

(4) However, if the land the subject of revocation is leased or sold, the owner has a right to payment for the improvements under chapter 5, part 5.

(5) In this section—

owner, of improvements, means—

(a) if the trustee of the reserve the dedication of which has been revoked owned the improvements—the trustee; or

(b) a person who—

(i) made the improvements with the trustee's authority; and

(ii) owned the improvements.

Subdivision 2 Operational reserves

34I Applying for deed of grant

(1) The trustee of an operational reserve may apply for the issue of a deed of grant over the reserve if the trustee is a constructing authority.

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

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(3) However, before applying, the trustee must give notice of the trustee's intention to make the application to each person with a registered interest in the reserve.

(4) The trustee may also give notice to any other person the trustee considers has an interest in the reserve.

34IA Particular matters about issue of deed of grant

(1) The Minister may recommend to the Governor in Council the issue of a deed of grant only if satisfied the deed of grant would be an appropriate tenure for the reserve, having regard to—

(a) the public purpose for which the land was reserved and set apart under the repealed Act; and

(b) the current and proposed use of the land.

(2) If the Minister decides to recommend to the Governor in Council the issue of a deed of grant, the Minister must decide the purchase price for the land in the reserve in the way prescribed by regulation.

34L Removal of interests before grant

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

(a) any State lease that exists over the reserve must be resumed or surrendered; and

(b) any permit to occupy that exists over the reserve must be cancelled or surrendered.

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

(1) The reservation and setting aside of an operational reserve is revoked by registering a deed of grant over the reserve.

(2) The deed of grant takes effect on the day the deed of grant is registered.

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34N Notice of registration of deed of grant

(1) The chief executive must give notice of the registration of the deed of grant over an operational reserve to the trustee who applied for the issue of the deed of grant and each person given notice about the proposed issue under section 34I (either a ***relevant person***).

(2) The notice under subsection (1) must include both of the following—

(a) the date of registration of the deed of grant;

(b) the effect, under section 34O, of the registration of the deed of grant.

(3) If the Governor in Council does not issue a deed of grant over an operational reserve, notice of the fact must be given to each relevant person.

34O Effect of revocation

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

(a) the reservation and setting apart of the reserve is revoked;

(b) the reserve ends;

(c) all appointments of trustees are cancelled;

(d) the deed of grant is issued subject to—

(i) all easements and trustee leases over the reserve; and

(ii) all registered interests in the easements and trustee leases.

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Division 3 Deeds of grant in trust

34P Subdivision of DOGIT land

(1) DOGIT land may be subdivided by registration of a plan of subdivision creating 2 or more lots.

(2) The plan of subdivision may be registered only with the approval of the Minister.

(3) Subsection (2) does not apply to a plan of subdivision that is—

(a) for DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*; or

(b) only for the purposes of the resumption, taking or other compulsory acquisition under an Act of part of the DOGIT land.

(4) A plan of subdivision for DOGIT land lodged for registration in the freehold land register must be accompanied by an instrument of covenant ensuring the lots created by the plan, other than any exempt lot, are held by the same person.

(5) The covenantee under the instrument creating the covenant must be the State.

(6) In this section—

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

exempt lot means—

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

(b) land resumed, taken or otherwise compulsorily acquired under an Act; or

(c) land surrendered under section 55.

35 Use of land granted in trust

(1) The way land granted in trust by the Governor in Council is used must not be inconsistent with—

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(a) a purpose for which it was granted; or

Note—

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

(b) an additional community purpose notified under subsection (2).

(2) The Governor in Council may, by gazette notice, notify an additional community purpose for land granted in trust.

(3) The Governor in Council may notify an additional community purpose without receiving an application under section 38A(1)(a).

(4) An additional community purpose for land granted in trust is registered by registering an adjustment notice.

(5) The adjustment notice under subsection (4) must state—

(a) the particulars of the gazette notice notifying an additional community purpose; and

(b) the additional community purpose for the deed of grant in trust.

(6) The additional community purpose for land granted in trust takes effect on the day the adjustment notice is registered.

36 Amalgamating land with common purposes

(1) If unallocated State land to be granted in trust for a community purpose adjoins land contained in a deed of grant in trust for the same purpose, both areas of land may be included in a single deed of grant in trust.

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

Note for subsections (1) and (2)—

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

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(3) However, the following land must not be included with land contained in a deed of grant in trust issued on or after 1 July 1995—

(a) land contained in a deed of grant in trust issued before 1 July 1995;

(b) land contained in a conditional deed that became a deed of grant in trust under section 493(1).

(4) For this section—

(a) land separated from other land by a road or watercourse is taken to adjoin the other land; and

(b) a reference to a deed of grant in trust issued before 1 July 1995 is taken to include a reference to a deed of grant in trust issued on or after 1 July 1995 under section 358 for land originally granted in trust before 1 July 1995.

37 Removing area from deed of grant in trust

(1) If the Minister is satisfied the area of a deed of grant in trust is more than the area reasonably needed for the trust, the Minister may refer the matter to the court for a decision on whether the land is more than the area reasonably needed, and if so, the part not needed.

(2) If the court decides part of the land is surplus to the needs of the trust, the Governor in Council may resume the surplus land under the *Acquisition of Land Act 1967*.

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

38 Cancelling a deed of grant in trust

(1) The Governor in Council, by gazette notice, may cancel a deed of grant in trust if—

(a) the trust stops operating; or

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(b) the affairs of the trust are not properly managed in the public interest; or

(c) the land is used in a way inconsistent with the purpose of the trust; or

(d) the Governor in Council considers it appropriate in the public interest; or

(e) the land is in a priority development area.

(2) Before a deed of grant in trust is cancelled, the Minister may ask the court for a decision on a matter mentioned in subsection (1)(a) to (c).

(3) The Governor in Council may cancel a deed of grant in trust without receiving an application under section 38A(2).

(4) A deed of grant in trust is cancelled by the registration of a cancellation notice.

(5) The cancellation notice must include the particulars of the gazette notice cancelling the deed of grant in trust.

(6) The cancellation of the deed of grant in trust takes effect on the day the cancellation notice is registered.

38A Applying for additional community purpose, amalgamation or cancellation

(1) The trustee (the ***applicant***) of a deed of grant in trust may apply—

(a) for an additional community purpose to be notified under section 35; or

(b) to amalgamate land with common purposes under section 36.

(2) A person (also the ***applicant***) may apply for the cancellation of a deed of grant in trust under section 38.

(3) However, before applying under this section, the applicant must give notice of the applicant's intention to apply to each of the following—

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(a) the trustee of the deed of grant in trust, other than the applicant;

(b) each person with a registered interest in the trust land.

(4) The applicant may also give notice to any other person the applicant considers has an interest in the trust land.

38D Notice of registration of action

(1) The chief executive must give notice of the registration of an action relating to a deed of grant in trust to the applicant and each person given notice about the proposed action under section 38A (either a ***relevant person***).

(2) The notice under subsection (1) must include the following—

(a) the date of registration of the action;

(b) if the action is the addition of a community purpose for the deed of grant in trust—a copy of the gazette notice mentioned in section 35(2);

(c) if the action is the amalgamation of land with common purposes—the particulars of the new deed of grant in trust issued under section 358;

(d) if the action is the cancellation of a deed of grant in trust—

(i) a copy of the gazette notice mentioned in section 38(1); and

(ii) the effect, under section 38E, of the cancellation; and

(iii) if there are improvements on the land the subject of the deed of grant in trust owned by the person receiving the notice—a statement that the person may apply to remove the improvements.

(3) If an action is not registered, notice of the fact must be given to each relevant person.

(4) In this section—

action, in relation to a deed of grant in trust, means—

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(a) the addition of a community purpose for the deed of grant in trust under section 35(2); or

(b) the amalgamation of land with common purposes under section 36; or

(c) the cancellation of a deed of grant in trust under section 38.

38E Effect of cancellation

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

(a) the trust ends;

(b) all appointments of trustees are cancelled;

(c) all interests in the deed of grant in trust are cancelled;

(d) the land becomes unallocated State land;

(e) no person has a right to claim compensation from the Minister or the State for the cancellation.

38F Person to give up possession

(1) On the cancellation of a deed of grant in trust, a person occupying the land the subject of the cancellation must immediately vacate the land.

(2) A person who does not give up possession under subsection (1), and is not otherwise entitled to possession, is a person who is unlawfully occupying unallocated State land.

Note—

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

38G Dealing with improvements

(1) An owner of improvements on a deed of grant in trust that has been cancelled may apply, in writing to the chief executive, to remove the owner's improvements on the deed of grant in trust.

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(2) The owner may remove the improvements only with the written approval of, and within a time stated by, the chief executive.

(3) The improvements become the property of the State if—

(a) the chief executive has not given written approval for their removal; or

(b) the chief executive has given written approval for their removal but the improvements have not been removed within the time stated by the chief executive.

(4) However, if the land the subject of cancellation is leased or sold, the owner has a right to payment for the improvements under chapter 5, part 5.

(5) In this section—

owner, of improvements, means—

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

(b) a person who—

(i) made the improvements with the trustee's authority; and

(ii) owned the improvements.

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

39 Application of division

This division applies only to deeds of grant in trust granted for the benefit of Aboriginal and Islander inhabitants or for Aboriginal and Islander purposes.

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40 Improvements and land may be excluded

(1) The following things may be excluded from a deed of grant in trust when it is granted—

(a) improvements owned by the State, other than buildings built for the residence of Aboriginal or Islander inhabitants authorised to live within the boundaries of the land granted, together with—

(i) the land on which the improvements are located; and

(ii) a reasonable area of land surrounding the improvements; and

(iii) adequate access to the improvements;

(b) land consisting of aerodromes, landing strips, ports, roads, stock routes, bridges and railways.

(2) An exclusion may be by description rather than survey.

41 Survey not needed

(1) A deed of grant in trust may be issued even if it has not been surveyed.

(2) If the deed of grant is not surveyed before it is issued, the land must be described in a way approved by the registrar of titles.

(3) If a more accurate description of the land, including exclusions, becomes available, the registrar of titles must substitute the description for the previous description in the freehold land register.

42 Change of boundaries or roads

(1) A regulation may change the location of the boundaries of a deed of grant in trust or a road in or other thing excluded under section 40 from the deed of grant in trust.

Note—

A deed of grant issued because of a change of boundary or road is issued under section 358.

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Section 40 lists the things that may be excluded from a deed of grant in trust to which this division applies.

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

42A Amalgamating particular land with existing deeds of grant in trust

(1) This section applies to land that is—

(a) transferable land; and

(b) located within or adjoining the external boundaries of the land the subject of an existing deed of a grant in trust.

(2) The State may prepare a plan of subdivision showing the inclusion of the land with the land the subject of the deed of grant in trust.

(3) Section 452A does not apply to the land included with the deed of grant in trust.

(4) In this section—

transferable land includes land in a road that is to be—

(a) closed under section 109(2)(b) or 109B; and

(b) included in a new deed of grant issued under section 358.

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

(1) Only an Act may—

(a) delete land from an existing deed of grant in trust; or

(b) cancel an existing deed of grant in trust.

(2) This section has effect despite sections 37 and 38.

(3) Subsection (1)(b) does not apply to the cancellation of a deed of grant in trust under section 358 for the purposes of an amalgamation under section 42A.

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(4) For subsection (1), an interest in land in an existing deed of grant in trust may be taken under the Acquisition Act by a constructing authority.

(5) However, an interest in land in an existing deed of grant in trust may be taken under the Acquisition Act only for a relevant purpose.

(6) To remove any doubt, it is declared that, for taking an interest in land in an existing deed of grant in trust under the Acquisition Act, the land is land as defined in that Act.

(7) Subsection (1) does not apply to a deletion of land from an existing deed of grant in trust, or the cancellation of an existing deed of grant in trust, as a result of the taking of the land under the Acquisition Act.

(8) In this section—

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

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

(a) the *State Development and Public Works Organisation Act 1971*; or

(b) the *Petroleum and Gas (Production and Safety) Act 2004*; or

(c) the *Greenhouse Gas Storage Act 2009*; or

(d) the *Geothermal Energy Act 2010*.

Division 5 Appointments, functions and removal of trustees

44 Appointing trustees

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

(2) A trustee may be—

(a) the State; or

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(b) a statutory body; or

(c) an incorporated body; or

(d) a named individual.

(3) The Minister may appoint a trustee subject to conditions.

(4) Before a trustee may be appointed, the Minister must be given written acceptance of the appointment.

(5) Written acceptance of the appointment under subsection (4) must be in the approved form.

(6) A trustee is appointed by registering a trustee of trust land notice or plan of subdivision.

(7) The appointment of a trustee under subsection (1) is effective—

(a) if the appointment is the appointment of a trustee of a reserve—on the day the trustee of trust land notice or plan of subdivision for the dedication of the reserve is registered; or

(b) if the appointment is the appointment of a trustee of a deed of grant in trust—on the day the trustee of trust land notice for the appointment is registered.

(8) A plan of subdivision mentioned in subsection (7)(a) must include all of the following—

(a) the Minister's approval of the appointment;

(b) the name of the trustee;

(c) any conditions to which the appointment is subject under subsection (3).

45 Details of trustees

(1) A change to a name of a trustee must be registered.

(2) A trustee must advise the chief executive of the trustee's address and any change to the address.

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

46 Trustee's administrative functions

(1) A trustee's functions are to—

(a) manage the trust land consistent with achieving the purpose of the trust; and

(b) fulfil the trust within their conditions of appointment (if any); and

(c) control noxious plants on the trust land; and

(d) keep records required by the Minister or required under this and other Acts.

(2) A trustee has the responsibility for a duty of care for the trust land.

(3) Unless the Minister otherwise decides, a trustee's functions include protecting and maintaining, so far as is reasonable, all improvements on the trust land.

(4) The Minister may direct a trustee to erect signs on trust land indicating the land has been granted in trust or dedicated as a reserve.

(5) The trustee must comply with the Minister's direction.

47 Trustee's accounting functions

(1) The trustee of trust land must keep proper books of account and have the books annually audited by a—

(a) member of CPA Australia who is entitled to use the letters 'CPA' or 'FCPA'; or

(b) member of The Institute of Chartered Accountants in Australia who is entitled to use the letters 'CA' or 'FCA'; or

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(c) member of the Institute of Public Accountants who is entitled to use the letters 'MIPA' or 'FIPA'; or

(d) person approved by the chief executive.

(2) The trustee must give a copy of the audited financial statement to the chief executive within 28 days after it has been finished.

(3) Subsections (1) and (2) apply only to trusts receiving yearly income from the trust land greater than an amount prescribed under the regulations.

(4) If subsections (1) and (2) do not apply to a trust, the Minister may ask the trustees to give the Minister a report of the financial activities of the trust.

48 Trustees to give information and allow inspection of records

(1) The trustee of trust land must, if asked by the chief executive—

(a) apply for the approval of a management plan for the trust land; and

(b) at all reasonable times, make all trust records available for inspection by the chief executive and allow copies and notes of the records to be made.

(2) If a management plan mentioned in subsection (1)(a) is approved, the plan may be registered in the appropriate register.

49 External audits

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

(a) allow the auditor-general, a person mentioned in section 47(1)(a) to (d), or a person authorised by the chief executive of a department, to audit the trust's financial accounts; and

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(b) help the conduct of the audit, including the disclosure of financial institution accounts necessary for the audit.

50 Vacation of office by trustee

(1) A trustee of trust land is taken to have vacated office if—

(a) the trustee dies, becomes incapable of acting or can not be located; or

(b) the trustee resigns by signed notice of resignation given to the Minister and the trustee's resignation takes effect; or

(c) if the trustee is an incorporated body—the incorporated body ceases to exist.

(2) For subsection (1)(b), a trustee's resignation takes effect on the earlier of the following days—

(a) the day agreed by the Minister and the trustee;

(b) the day stated by the Minister in a notice given to the trustee;

(c) the day that is 1 year after the day the trustee's notice of resignation was given to the Minister.

(3) The vacation of office of a trustee must be registered.

(4) The Minister may appoint, under section 44, a new trustee to fill the vacated office.

51 Removal of trustees

(1) The Minister may remove a trustee from office if the Minister is satisfied—

(a) the trustee has breached the conditions of the trust, the conditions of appointment or this Act; or

(b) the removal is in the public interest.

(2) The removal of a trustee from office must be registered.

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(3) The Minister may appoint, under section 44, a new trustee in the place of the trustee removed.

Division 6 Powers of trustee

52 General powers of trustee

(1) The trustee of trust land may take all action necessary for the maintenance and management of the land.

(2) However, the action must be consistent with—

(a) the purpose for which the reserve was dedicated or the land was granted in trust; and

(b) this Act; and

(c) any conditions of appointment of the trustee.

(3) Despite subsection (2)(a), the Minister may approve action that is inconsistent (***inconsistent action***) with the purpose for which the reserve was dedicated or the land was granted in trust if the Minister is reasonably satisfied the inconsistent action will not—

(a) diminish the purpose for which the reserve was dedicated or the land was granted in trust; or

(b) adversely affect any business in the area surrounding the reserve or land granted in trust.

(4) The Minister's approval under subsection (3) may be subject to conditions.

(5) A trustee of trust land may apply for the approval of an inconsistent action under subsection (3).

52A Declaration that trustee is statutory body

(1) The trustee of trust land, in the capacity as trustee, is a statutory body for the *Statutory Bodies Financial Arrangements Act 1982*.

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(2) Subsection (1) applies despite the *Statutory Bodies Financial Arrangements Act 1982*, section 6(1).

Note—

Under the *Statutory Bodies Financial Arrangements Act 1982*, section 6(1) various entities are not statutory bodies, including, for example, a company incorporated under the Corporations Act and a GOC.

(3) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the powers of the trustee under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

53 Statutory body trustee powers

If a statutory body is the trustee of trust land, the body may only exercise, for the trust land, its powers that are not inconsistent with this Act.

53A State trustee powers and delegation

(1) If the State is the trustee of trust land, the State may only exercise, for the trust land, powers that are not inconsistent with this Act.

(2) A relevant Minister for trust land may delegate a power of the State as trustee of trust land to an appropriately qualified officer of the State.

(3) In this section—

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

Example of standing—

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

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

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

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54 No power to sell trust land

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

55 Power to surrender deed of grant in trust

(1) A trustee may surrender all or part of a deed of grant in trust—

(a) on terms agreed to between the Minister and the trustee; and

(b) with the Minister's written approval.

(2) If part of the land is surrendered, the deed of grant in trust remains in force for the land not surrendered and the registrar of titles must make an appropriate recording in the freehold land register.

55A Applying to surrender

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

(2) However, before applying, the trustee must give notice of the trustee's intention to apply to each person with a registered interest in the deed of grant in trust.

(3) The trustee may also give notice to any other person the trustee considers has an interest in the deed of grant in trust.

55D Registration surrenders deed of grant in trust

(1) All or part of a deed of grant in trust may be surrendered by registering a surrender notice or plan of subdivision.

(2) However, if the surrender relates to only part of a lot, the surrender may only be made by registering a plan of subdivision.

(3) The surrender of all or part of a deed of grant in trust takes effect on the day a surrender notice or plan of subdivision is registered.

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(4) The *Land Title Act 1994*, section 50, and the provisions of the Planning Act about reconfiguring a lot do not apply to a plan of subdivision registered to give effect to a surrender under this section.

55E Notice of surrender

(1) The chief executive must give notice of the surrender of a deed in grant in trust to the trustee and each person given a notice about the proposed surrender under section 55A (either a ***relevant person***).

(2) The notice must include all of the following—

(a) the date of the surrender;

(b) the effect, under section 55F, of the surrender;

(c) if there are improvements on the land the subject of the deed of grant in trust owned by the person receiving the notice—a statement that the person may apply to remove the improvements.

(3) If the Minister decides not to approve the surrender of a deed of grant in trust, notice of the fact must be given to each relevant person.

55F Effect of surrender

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

(a) the trust ends;

(b) all appointments of trustees are cancelled;

(c) all interests in the deed of grant in trust are extinguished;

(d) the land becomes unallocated State land;

(e) no person has a right to claim compensation from the Minister or the State for the surrender.

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55G Person to give up possession on surrender

(1) On the surrender of all or part of a deed of grant in trust, a person occupying the land the subject of the surrender must immediately vacate the land.

(2) A person who does not give up possession under subsection (1), and is not otherwise entitled to possession, is a person who is unlawfully occupying unallocated State land.

Note—

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

55H Dealing with improvements

(1) An owner of improvements on a deed of grant in trust that has been surrendered may apply, in writing to the chief executive, to remove the owner's improvements on the deed of grant in trust.

(2) The owner may remove the improvements only with the written approval of, and within a time stated by, the chief executive.

(3) The improvements become the property of the State if—

(a) the chief executive has not given written approval for their removal; or

(b) the chief executive has given written approval for their removal but the improvements have not been removed within the time stated by the chief executive.

(4) However, if the land the subject of surrender is leased or sold, the owner has a right to payment for the improvements under chapter 5, part 5.

(5) In this section—

owner, of improvements, means—

(a) if the trustee under the surrendered deed of grant in trust owned the improvements—the trustee; or

(b) a person who—

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(i) made the improvements on the land the subject of the surrender with the trustee's authority; and

(ii) owned the improvements.

56 Model by-laws

(1) The Minister may make model by-laws for trust land.

(1A) The chief executive must publish a model by-law made under subsection (1) on a Queensland government website.

(2) Without limiting subsection (1), a model by-law may be made about the following matters—

(a) the protection and use of trust land, including buildings on trust land;

(b) regulating the business and management of trusts;

(c) penalties, not more than 100 penalty units, for the contravention of a model by-law.

(3) A model by-law may state that all or part of trust land is a public place within the meaning of an Act—

(a) conferring or imposing on police officers powers or duties about public places; or

(b) providing for the punishment of offences committed in public places.

(4) If a local government is the trustee it may—

(a) make local laws for the trust land under the *Local Government Act 2009* or the *City of Brisbane Act 2010*; and

(b) adopt a model by-law.

(5) If a local government adopts a model by-law, it must follow the procedure under the *Local Government Act 2009* for adopting a model local law when it adopts the model by-law.

(6) A local law made under subsection (4)(a) must not be inconsistent with this Act.

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(7) A trustee other than a local government, in the way prescribed under the regulations, may adopt as its by-laws all or any of the model by-laws.

(8) A model by-law has no effect unless it is adopted in the prescribed way.

(9) In a proceeding, a copy of a public notice about the adoption of a model by-law is—

(a) evidence of the information in the notice; and

(b) evidence that the model by-law had been properly adopted.

(10) In this section—

Queensland government website means a website with a URL that contains 'qld.gov.au', other than the website of a local government.

Division 7 Trustee leases and trustee permits

57 Trustee leases

(1) A trustee may lease all or part of the trust land if the trustee first obtains the Minister's written 'in principle' approval to the lease.

(2) The Minister's approval may include conditions.

(3) Despite subsections (1) and (2) a trustee may, without the Minister's approval, grant a trustee lease (construction) or a trustee lease (State or statutory body) over all or part of the trust land.

(4) A ***trustee lease (construction)*** is a lease of trust land to the State for the construction of transport infrastructure and the provision of transport services on the trust land.

(5) A ***trustee lease (State or statutory body)*** is a lease of trust land if all of the following apply—

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(a) the trustee of the trust land is the State or a statutory body;

(b) the purpose of the lease is consistent with the purpose for which the trust land was reserved or granted in trust;

(c) if a management plan for the trust land is registered under section 48—the lease is consistent with the management plan.

(6) A trustee lease (construction) may be granted even if its purpose is inconsistent with the purpose for which the trust land was reserved or granted in trust.

(7) Each trustee lease must be registered in the appropriate register.

(8) This section does not authorise the construction of works under a trustee lease (construction) before the lease is registered.

(9) Each trustee lease, other than a trustee lease (construction) or trustee lease (State or statutory body), must be endorsed with the Minister's approval before it is registered.

(10) If the trustee lease is for only part of the trust land, the appropriate form for the trustee lease must also include—

(a) a sketch plan the registrar of titles is satisfied identifies the land being leased; or

(b) if required by the registrar of titles—a plan of survey identifying the land being leased.

(11) However, the registrar of titles may allow the land being leased to be identified by a description alone if the registrar is satisfied the land is adequately identified by the description.

Note—

This section and other provisions of this division do not apply in relation to leasing Aboriginal trust land as defined under the *Aboriginal Land Act 1991* or Torres Strait Islander trust land as defined under the *Torres Strait Islander Land Act 1991*. See the *Aboriginal Land Act 1991*, part 15 and the *Torres Strait Islander Land Act 1991*, part 11.

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57A Amending a trustee lease

(1) A registered trustee lease may, with the Minister's approval, be amended by registering an amendment of the trustee lease.

(2) However, the Minister's approval is not required if the lease is—

(a) a trustee lease (construction); or

(b) a construction trustee sublease; or

(c) a trustee lease (State or statutory body); or

(d) a sublease of a trustee lease (State or statutory body).

(3) Also, the document of amendment must not—

(a) increase or decrease the area leased; or

(b) add or remove a party to the lease; or

(c) increase the term of the lease.

58 Other transactions relating to trustee leases

(1) A trustee lessee may transfer, mortgage or sublease a trustee lease if the trustee lessee first obtains the written approval of—

(a) for a sublease of the trustee lease—the Minister; or

(b) otherwise—the chief executive.

(2) However, the Minister's or chief executive's approval is not required if—

(a) the trustee has a written authority under section 64; or

Note—

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

(b) the lease is a trustee lease (State or statutory body).

(3) An approval mentioned in subsection (1) may include conditions.

(4) Despite subsections (1) and (3)—

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(a) the State as the lessee trustee lease (construction) may, without an approval mentioned in subsection (1), sublease (a ***construction trustee sublease***) all or part of the lease land to someone else for the purposes mentioned in section 57(4); and

(b) the sublessee may further sublease the land the subject of the sublease.

(5) A construction trustee sublease may be granted even if its purpose is inconsistent with the purpose for which the trust land was reserved or granted in trust.

(6) If the Minister or chief executive refuses to approve the transfer, mortgage or sublease, notice of the decision and the reasons for the decision must be given to the trustee lessee.

(7) A trustee lessee may appeal against the decision.

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

(9) Each transaction must be registered in the appropriate register.

(10) This section does not authorise the construction of works under a construction trustee sublease before the sublease is registered.

(11) Section 342 applies, with necessary changes, to the release of a mortgage of a trustee lease or sublease of a trustee lease.

59 Basis of approval

(1) The Minister or the chief executive may approve a trustee lease or transaction under sections 57 and 58 only if the trustee lease or transaction—

(a) would be consistent with the purpose for which the land was reserved or granted in trust; and

(b) would facilitate or enhance the purpose for which the land was reserved or granted in trust.

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(2) Despite subsection (1), the Minister may approve a trustee lease or a sublease for a purpose inconsistent with the purpose for which the trust land was dedicated or granted only if—

(a) the lease or sublease would not diminish the purpose; and

(b) all further improvement built or placed by the lessee on the part of the trust land that is leased or subleased are first approved by the chief executive.

60 Trustee permits

(1) A trustee may issue a trustee permit for the use of all or part of trust land.

(2) A trustee permit must not be inconsistent with—

(a) the purpose of the trust land; or

(b) the requirements prescribed by regulation.

(3) Despite subsection (2)(a), a trustee permit may be inconsistent with the purpose of the trust land if—

(a) a management plan for the trust land has been approved under section 48; and

(b) the management plan—

(i) identifies the potential impacts of the trustee permit being inconsistent with the purpose of the trust land; and

(ii) states how the trustee permit being inconsistent with the purpose of the trust land would not diminish the purpose of the trust land.

(4) If a trustee permit is for more than 1 year, the trustee must lodge a copy of the permit for registration in the appropriate register.

(5) A trustee permit must not be for more than 3 years.

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61 Conditions on trustee leases and trustee permits

(1) A trustee lease or sublease must not be for more than 30 years.

(2) However, a trustee lease or sublease may be for up 100 years if—

(a) the lease or sublease is for land the subject of an operational deed of grant in trust; and

(b) the purpose of the lease or sublease is development that, in the opinion of the Minister—

(i) will have a significant impact on the economic and social development of a locality or region; and

(ii) is necessary to support existing or proposed infrastructure that provides, or will provide, services to the community.

Example of a purpose for paragraph (b)—

construction of buildings at, or an upgrade of, an airport in a regional area

(3) A trustee lease or sublease must not contain a covenant, agreement or condition—

(a) to renew the lease; or

(b) to convert to another form of tenure (including freehold); or

(c) to buy the land.

(4) It is a condition of every trustee lease, sublease and trustee permit that the lessee, sublessee or permittee holds the lease, sublease or permit so that the land may be used for the purpose for which it was reserved or granted in trust without undue interruption or obstruction.

Note—

See also chapter 5A for prescribed terms that apply to particular trustee leases or trustee permits.

(5) The condition mentioned in subsection (4) does not apply to a construction trustee lease or to a building permitted to be built on the land.

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(6) In this section—

operational deed of grant in trust means a deed of grant in trust that was granted under the repealed Act for a public purpose that is not a community purpose under this Act.

62 Grouping trust land

(1) The chief executive, if asked by a trustee, may approve the grouping of trust land, with the same or complementary purposes, under the control of the trustee.

(2) A grouping may be approved only if the chief executive is satisfied the grouping will enhance the financial and general management of the trust land sought to be grouped.

(3) The chief executive may cancel an approval to group trust land.

(4) If an approval is cancelled, the trust lands are no longer grouped.

63 Rent to be charged

(1) A trustee may keep the rent paid under a trustee lease or trustee permit.

(2) The rent must be the most appropriate rent having regard to the use and the community benefit and purpose of the trustee lease or trustee permit.

(3) Unless the Minister first gives written approval, rent received from a trustee lease or trustee permit over trust land must be spent on the maintenance or enhancement of the trust land or grouped trust land.

(4) Subsection (3) does not apply if the trustee is—

(a) the State; or

(b) a statutory body prescribed under a regulation.

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64 Minister may dispense with approval

(1) If the Minister considers it appropriate, the Minister may give a relevant person a written authority dispensing with the need to obtain the Minister's or chief executive's approval for relevant leases.

(2) If the Minister gives an authority, a relevant lease must be consistent with the purpose of the trust land and the requirements prescribed under a regulation.

(3) The Minister, by notice, may withdraw the authority.

(4) A relevant person may apply for approval to lease, sublease or sub-sublease trust land even if an authority is in force.

(5) In this section—

relevant lease means—

(a) a trustee lease; or

(b) a sublease of a trustee lease; or

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

relevant person means—

(a) a trustee; or

(b) a lessee under a trustee lease; or

(c) a sublessee under a sublease of a trustee lease.

65 Cancellation of a trustee lease or trustee permit

(1) A trustee may cancel a trustee lease or trustee permit if the lessee or permittee does not comply with the conditions of the lease or permit.

(2) The Minister may also cancel a trustee lease or trustee permit if—

(a) the lessee or permittee does not comply with the conditions of the lease or permit; or

(b) the Minister is satisfied cancellation would be in the public interest.

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(3) If a trustee lease or trustee permit is cancelled, no person has a right to a claim for compensation.

(4) Every cancellation of a trustee lease or trustee permit must be registered in the appropriate register.

66 Right to remove improvements on cancellation

(1) If a trustee lease or trustee permit is cancelled by the trustee, the trustee may allow the trustee lessee or trustee permittee to remove the trustee lessee's or trustee permittee's improvements on the land within a reasonable time stated by the trustee.

(2) If a trustee lease or trustee permit is cancelled by the Minister, the chief executive may allow the trustee lessee or trustee permittee to remove the trustee lessee's or trustee permittee's improvements on the land within a reasonable time stated by the chief executive.

(3) If the improvements are not removed within the stated time, they become the property of the trustee.

Division 8 Mortgaging trust land

67 Power to mortgage trust land

(1) A trustee of a reserve must not mortgage the reserve.

(2) A trustee of a deed of grant in trust, issued before the commencement of this Act, may mortgage the deed of grant in trust.

(3) A trustee may also mortgage a deed of grant in trust issued after the commencement if the deed—

(a) was issued because of a surrender under section 358 and the deed being surrendered was issued before the commencement; or

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Note—

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

(b) was issued under section 493.

Note—

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

(4) Despite subsections (2) and (3), a trustee may mortgage a deed of grant in trust only if the chief executive has approved the mortgage.

(5) The chief executive's approval may be subject to conditions.

(6) Amounts raised by mortgaging trust land must be used on the trust land and for the purpose for which the trust was granted.

68 Mortgagee in possession

(1) If a trustee defaults under a mortgage over a deed of grant in trust, the mortgagee must give the chief executive 28 days notice of the mortgagee's intention to exercise its powers under the mortgage.

Maximum penalty—5 penalty units.

(2) A mortgagee must not sell a deed of grant in trust until payment has been made to the State of the amount of the unimproved value of the land on the day the notice was given under subsection (1).

(3) However, the chief executive may allow a sale of the deed of grant in trust to proceed before payment of the amount of the unimproved value of the land is made, if the mortgagee gives the chief executive security or an undertaking, to the chief executive's satisfaction, that payment of the amount will be made on completion of the sale.

69 What is the unimproved value

(1) The Minister must decide the unimproved value in the way prescribed by regulation.

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(2) The unimproved value must be calculated as if the land were not restricted by the trust.

(3) The mortgagee may appeal against the Minister's decision.

70 Sale by mortgagee in possession

(1) If a mortgagee complies with section 68, the mortgagee may sell the deed of grant in trust.

Note—

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

(2) The mortgagee must first offer the deed of grant in trust for sale by public auction.

(3) The deed of grant must not be offered for sale by public auction until at least 28 days after the mortgagee has published a notice that the land is for sale, in a way the mortgagee considers is reasonably likely to come to the attention of members of the public in the locality of the land.

Examples of ways a notice may be published under subsection (3)—

- displaying the notice on the land so the notice is conspicuous and easily visible to members of the public from a place other than the land
- publishing the notice in a newspaper circulating generally in the locality of the land
- publishing the notice in an online local newspaper for the locality of the land

(4) The mortgagee is authorised to sign a surrender of the deed of grant in trust.

71 Effect of sale

When the land is sold—

(a) the trust is at an end; and

(b) all appointments of trustees are cancelled from the day the land is sold; and

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(c) the buyer is entitled to have a new deed of grant issued in the buyer's name and released from the trust but subject to other registered encumbrances that have not been released; and

(d) the Minister may appoint a person under section 74 to sell other property or assets of the trust.

Note—

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

72 Disposal of sale price

Anything remaining after the following amounts have been paid must be paid to the State—

(a) the amount of the unimproved value of the deed of grant in trust;

(b) the amount of the mortgage debt;

(c) the expenses incurred in selling the land;

(d) all other reasonable deductions.

Division 9 Winding up trusts of trust land

73 Application of division

This division applies to trusts of trust land.

74 Minister may start winding up

(1) The Minister, by gazette notice (the ***liquidation notice***), may appoint a person (the ***liquidator***) to wind up the affairs of a trust if—

(a) the dedication of a reserve is revoked; or

(b) a deed of grant in trust is cancelled; or

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(c) a deed of grant in trust is sold by a mortgagee in possession.

(2) The Minister must—

(a) give a copy of the liquidation notice to every person who has a registered interest in the trust land; and

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

75 Property vests in liquidator

(1) All the property of the trust and all the trustee's powers and obligations that, immediately before the day the liquidation notice was published, were vested in the trustee, or someone else for the trustee, vest in the liquidator.

(2) However, a trustee lessee or trustee permittee may remove their improvements from the land if—

(a) the trustee lease or trustee permit gave the trustee lessee or trustee permittee the right to remove the improvements at the expiry of the lease; and

(b) the trustee lessee or trustee permittee removes the improvements within 28 days after the liquidation notice was published.

(3) To remove any doubt, it is declared that trust land is not part of the property of a trust.

76 Sale of trust assets

(1) The liquidator must sell all the trust property and apply the proceeds of the sale towards payment of—

(a) firstly, the costs and expenses of the winding up; and

(b) secondly, the amount owing to any mortgagee (other than a mortgagee under section 70) or, if more than 1 mortgagee, according to their priorities; and

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Note—

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

(c) thirdly, the debts and obligations of the trust.

(2) If an amount remains, the liquidator must pay the amount to the State for disposal as the Minister considers appropriate.

77 Trustees to help in winding up

The trustees of the trust, and anyone else materially affected by the winding up, must do all things necessary to help the winding up.

Maximum penalty—5 penalty units.

78 Winding up may continue after revocation, cancellation or sale

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

(a) dedication of the reserve has been revoked; or

(b) deed of grant in trust has been cancelled; or

(c) trust land has been sold by the mortgagee in possession.

Division 10 Cemeteries

79 Cemetery registers

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

(2) The trustees must make the register available for public inspection at all reasonable times.

(3) If a trust for cemetery purposes is wound up, the register must be sent to the State archivist and held for public access.

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80 Trustee may remove structures

(1) A trustee may repair or remove structures, monuments or tombstones from a cemetery if the repair or removal is necessary for public health and safety.

(2) Subsection (1) is subject to the *Queensland Heritage Act 1992*.

81 Application to close or reopen cemetery

(1) The trustee of trust land for cemetery purposes may ask that a cemetery be closed to further burials.

(2) If the Minister is satisfied the cemetery should be closed, the Minister may close the cemetery by gazette notice.

(3) Subsection (2) does not affect a right to be buried in the cemetery if the right existed at the time of the closure.

(4) If asked by the trustees, the Minister, by gazette notice, may reopen the cemetery for burials.

(5) A cemetery that was closed under an Act that has been repealed may be reopened under this Act.

82 Trustees may transfer trust to local government

The trustees of a cemetery may transfer their trusteeship to a local government—

(a) if the chief executive, the trustee and the local government agree; and

(b) under the conditions agreed to between the parties.

83 Exhumations

(1) If a local government has not made a local law about authorising the exhumation of human remains from trust land for cemetery purposes, the Minister, on the written application of a person, may give written approval to the exhumation of the human remains.

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(2) A person improperly deals with human remains under the Criminal Code, section 236 if the person exhumes human remains from trust land for cemetery purposes other than under—

(a) an approval of the Minister; or

(b) a local law or another Act.

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

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

Division 11 Other grants for public purposes

84 Surrender of land still needed for a public purpose

(1) The trustees of land granted for an estate in fee simple for some community, public or similar purpose may apply to the Minister to surrender the land to the State, and for the issue of a deed of grant in trust under this Act for a community or public purpose, if—

(a) the land has been used for a public, community or similar purpose; but

(b) it is not known under what authority the trust was created over the land.

(2) If the Minister is satisfied that the trustees are deceased, untraceable, unknown or incapable of acting, a person in the community concerned may make the application.

85 Surrender of land no longer needed for a public purpose

(1) The Minister is authorised to sign a surrender of land, if the Minister is satisfied—

(a) the land was granted for an estate in fee simple for some community, public or similar purpose; and

(b) the land has been used for the purpose; and

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(c) the trustees of the land are deceased, untraceable, unknown or incapable of acting; and

(d) the land is no longer needed for a public, community or similar purpose.

(2) The surrendered land may be dealt with as unallocated State land.

86 Public notice of proposed surrender

The Minister may accept the surrender of, or may sign a surrender of, land mentioned in this division if the Minister is satisfied—

(a) the land is not subject to an encumbrance that would prevent the land from being surrendered or, if the land is encumbered, the encumbrancee has given written approval to the surrender; and

(b) the interests of any occupiers have been taken into consideration; and

(c) notice of the intention to surrender has been adequately advertised in the gazette.

87 Effect of surrender

On the surrender of land under this division—

(a) the trust is at an end; and

(b) the land is released from the trust; and

(c) all appointments of trustees are cancelled; and

(d) all encumbrances are discharged.

88 Dealing with land used as a cemetery

If land mentioned in this division was granted for cemetery purposes and the land has been used for burials or memorials, the Minister must dedicate the part of the land that has been

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used for cemetery purposes as a reserve for cemetery purposes.

Division 12 Miscellaneous

89 Survey of trust land

The Minister may require trust land to be surveyed, at the cost of the persons who are to be the trustees, before the land is dedicated or granted.

90 Application of Acts to trustees

The *Trusts Act 1973* and the *Financial Accountability Act 2009* do not and are taken never to have applied to trustees and trusts under this part.

91 Trustees taken to be owners for legal proceedings

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

92 Protection from liability

(1) A trustee appointed by the Minister under this part does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the trustee, the liability attaches instead to the State.

(3) Subsection (1) does not apply to a statutory or incorporated body.

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Part 2 Roads

Division 1 Dedicating and opening roads

93 Meaning of *road*

(1) A ***road*** means an area of land, whether surveyed or unsurveyed—

(a) dedicated, notified or declared to be a road for public use; or

(b) taken under an Act, for the purpose of a road for public use.

(2) The term includes—

(a) a street, esplanade, reserve for esplanade, highway, pathway, thoroughfare, track or stock route; and

(b) a bridge, causeway, culvert or other works in, on, over or under a road; and

(c) any part of a road.

94 Dedication of road

(1) The Minister may dedicate unallocated State land as a road for public use.

(2) A person may apply for the dedication of land as a road for public use.

(3) The Minister may dedicate land as a road for public use without receiving an application under subsection (2).

(4) Land may be dedicated as a road for public use by the registration of a dedication notice or a plan of subdivision.

(5) On the day the dedication notice or plan of subdivision is registered—

(a) the dedication of the land as a road for public use takes effect; and

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(b) the land is opened for public use as a road.

95 Roads vest in the State

The land in all roads dedicated and opened for public use under the following Acts vests in, or remains vested in, the State—

(a) this Act, or an Act repealed by this Act or repealed by the repealed Act;

(b) the *Land Title Act 1994*.

96 Roads in existing leases are dedicated

(1) If a road is shown on an existing lease or an existing lease mentions a plan and the plan shows a road is excluded from the lease, the road is taken to have been always dedicated as a road and open for public use.

(2) If the width of the road is not shown on the lease or plan, the width is taken to be 60m.

(3) If a better description of the location of a road becomes available, the Minister, by gazette notice, may declare the location of the road is amended by the description stated in the notice.

97 Clarification of road status

If there is doubt about whether or not land has been dedicated and opened for public use as a road, the Minister may refer the issue to the court for a decision.

Division 2 Closing roads

97A Definitions for div 2

In this division—

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

road closure application means—

(a) a permanent road closure application; or

(b) a temporary road closure application.

temporary road closure application means an application to temporarily close a road under section 99(3).

98 Closure of road

(1) If, after inquiry and notice the Minister considers appropriate, the Minister is satisfied a road is not needed, the Minister may—

(a) permanently close the road under division 4; or

(b) temporarily close the road by issuing, under section 103, a road licence over the road to a person.

(2) The Minister may—

(a) permanently close the road without receiving an application under section 99(1); or

(b) temporarily close the road without receiving an application under section 99(3).

(3) A road is temporarily closed from the day the road licence mentioned in subsection (1)(b) is issued.

99 Application to close road

(1) An entity may apply for the permanent closure of a road if the entity is—

(a) a public utility provider; or

(b) an adjoining owner for the road.

(2) However, a public utility provider can not apply for the permanent closure of a road if the provider is a non-core utility provider.

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(3) A person may apply for the temporary closure of a road if the person is—

(a) an adjoining owner for the road; or

(b) another person, if the closure of the road is only for allowing the person to make the structural improvements mentioned in section 104(b)(ii) or (iii).

(4) An adjoining owner who makes a permanent road closure application may ask for the road, on its closure, to be amalgamated with the adjoining owner's adjoining land.

(5) Subsection (6) applies if the adjoining owner under subsection (4) is a registered owner, other than as trustee under a deed of grant in trust, of the adjoining land and other land that would be adversely affected by the permanent closure of the road.

(6) The adjoining owner may ask in the application that, on the closure of the road, the road, the adjoining land and the other land be amalgamated.

(7) The Minister may refuse a road closure application if the Minister is satisfied—

(a) the road is the only dedicated access to a person's land; or

(b) the road is, or may be, used regularly by the public as a road or stock route; or

(c) the road provides continuity to a road network.

100 Public notice of closure

(1) If the Minister is satisfied a road closure application should proceed, the Minister must—

(a) give appropriate public notice of the application; and

(b) make appropriate enquiries about the effect the closure would have.

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(2) Alternatively, the Minister may accept appropriate public notice of the application and appropriate enquiries about the closure, that have been carried out by the applicant.

(3) However, appropriate public notice of a road closure application is not needed if—

(a) the road closure application is to close a no-through road; or

(b) the road closure application is to close part of a road by a volumetric format plan of subdivision and the closure will not adversely affect the part of the road being used as a road; or

(c) the road closure application is to close part of a road adjoining transport land and the closure will not adversely affect the part of the road being used as a road.

(4) Appropriate public notice includes the following information—

(a) that a person may object to the application;

(b) the closing day for objections;

(c) where the objection must be lodged.

(5) In this section—

appropriate enquiries, in relation to a road closure application, includes giving notice of the proposed road closure to each registered owner and lessee of the following land—

(a) for a road closure application to close an entire road—land that wholly or partly adjoins the road;

(b) for a road closure application to close only part of a road—

(i) land that wholly or partly adjoins the part; and

(ii) land that adjoins land mentioned in subparagraph (i) and the road;

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(c) land, other than land mentioned in paragraph (a) or (b), that has a dedicated access that may be affected by the proposed road closure.

appropriate public notice, of a road closure application, includes—

(a) placing and keeping a notice in a conspicuous place on or near—

(i) for a road closure application to close an entire road—the road; or

(ii) for a road closure application to close only part of a road—the part; or

(b) another method of notifying the public the Minister reasonably considers appropriate.

no-through road means a road that—

(a) is closed at one end; and

(b) provides access to the land of only 1 adjoining owner for the road.

101 Minister to consider objections

(1) The Minister must consider all objections properly made to the proposed road closure.

(2) The Minister may approve the road closure application, with or without conditions, or refuse the application.

(3) However, the Minister must refuse the road closure application if the Minister is satisfied the road is still needed.

102 Changing application

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

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Division 3 Road licences

103 Issue of road licence

(1) The Minister may issue a road licence over a road only to—

(a) an adjoining owner; or

(b) another person, if the road licence is only for allowing the person holding the licence to make structural improvements—

(i) mentioned in section 104(b)(ii) or (iii); and

(ii) for the benefit of land of which the person is the registered owner (other than a trustee of a deed of grant in trust), lessee or trustee.

Note—

See also section 98.

(2) However, the Minister need not issue the road licence only to the person who applied for the road closure.

(3) If the Minister issues a road licence under subsection (1), the registrar of titles must register a covenant of a type mentioned in section 373A(5)(c) over—

(a) for a road licence issued to an adjoining owner—the licence land and the adjoining owner's land; or

(b) otherwise—the licence land and the land for the benefit of which the road licence is issued.

104 Conditions of issuing road licence

A road licence is subject to the following conditions—

(a) it must not contain a covenant, agreement or condition to renew the road licence, or to convert it to another form of tenure, or to buy the land;

(b) no more structural improvements are permitted on the road for which the licence is issued, other than the following—

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(i) boundary fences;

(ii) pipes for irrigation purposes that cross the road beneath its surface;

(iii) water channels for irrigation purposes that cross the road;

(c) if the person holding the licence transfers or sells the land for the benefit of which the road licence is issued, the person must—

(i) also transfer the road licence to the new registered owner or lessee of the land; or

(ii) surrender the road licence at the time the sale is settled;

(d) any other conditions the Minister considers appropriate.

105 Cancellation or surrender of road licence

(1) The Minister may cancel all or part of a road licence after giving the licensee reasonable notice of the Minister's intention to cancel.

(2) No compensation is payable for the cancellation of a road licence.

(3) A licensee, with the Minister's written approval, may surrender all or part of a road licence.

(4) If a road licence is cancelled or surrendered, any improvements on the road become the property of the State and no compensation is payable.

(5) However, the Minister may allow the licensee to remove any improvements within the time stated on the cancellation notice or the surrender approval.

(6) If a road licence is cancelled or surrendered, the road is reopened.

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Division 3A Temporarily closed roads

106 Temporarily closed road still dedicated land

If a road is temporarily closed, the land comprising the road is still land that is dedicated as a road for public use even though the public can not use the road as a road until it is reopened.

Division 4 Permanently closed roads

108 Permanent closure of road

(1) If the Minister permanently closes a road, the road is permanently closed by the registration of a plan of subdivision.

(2) The permanent closure of the road takes effect on the day the plan of subdivision is registered.

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

(1) If the Minister is satisfied a road being permanently closed is of adequate area, having regard to the location of the road and the use made of adjoining land, to be used as a lot, the road—

(a) must be shown as a lot on the plan of subdivision; and

(b) may be dealt with as unallocated State land.

(2) If the Minister is not satisfied under subsection (1), the road must be amalgamated with—

(a) adjoining unallocated State land; or

(b) if there is no adjoining unallocated State land—the land of an adjoining owner for the road.

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

(1) A registered owner may apply for the simultaneous opening and closing of roads if—

(a) a road is being opened in the land (the ***relevant land***) the subject of a deed of grant; and

(b) at the same time—

(i) a road within the boundaries of or adjoining the relevant land is being closed; or

(ii) a road within the boundaries of land (the ***additional land***) the subject of another deed of grant is being closed and the additional land and the relevant land adjoin and are owned by the same registered owner; or

(iii) a road adjoining land (also the ***additional land***) the subject of another deed of grant is being closed and the additional land and the relevant land adjoin and are owned by the same registered owner; and

(c) the road being opened is a replacement of the road being closed.

(2) The registered owner may ask that the following be included in a deed of grant issued under section 358—

(a) any severance of land created by the road being opened;

(b) the road being closed.

(3) A registered owner may appeal against any conditions the Minister imposes under section 420I.

(4) The *Land Title Act 1994*, section 50, and the provisions of the Planning Act about reconfiguring a lot do not apply to the replacement of a road under this section.

(5) In this section—

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

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

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

(1) A trustee or lessee may apply for the simultaneous opening and closure of roads if—

(a) a road is being opened in trust land or lease land (the ***relevant land***); and

(b) at the same time a road within the boundaries of or adjoining the relevant land is being closed; and

(c) the road being opened is a replacement of the road being closed.

(2) If a trustee makes an application under subsection (1), the trustee may ask that the land in the road being closed be included in—

(a) if the trustee is the trustee under a deed of grant in trust—a deed of grant in trust issued under section 358; or

(b) if the trustee is the trustee of a reserve—the land dedicated as a reserve under section 31A.

(3) If a lessee makes an application under subsection (1), the lessee may ask that the land in the road being closed—

(a) if the lease is a freeholding lease—be amalgamated with the lease land under section 360(1)(e); or

(b) if the lease is a term lease, other than a State lease, or a perpetual lease—be amalgamated with the lease land under section 360A(2)(d).

(4) A trustee or lessee may appeal against any conditions the Minister imposes under section 420I.

(5) The *Land Title Act 1994*, section 50, and the provisions of the Planning Act about reconfiguring a lot do not apply to the replacement of a road in a deed of grant in trust under this section.

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(6) In this section—

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

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

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

(1) This section applies if—

(a) land must be amalgamated under section 109(2)(b); or

(b) a registered owner has asked for an amalgamation of land under section 109A(2); or

(c) a lessee has asked for an amalgamation of land under section 109B(3).

(2) Before the road is permanently closed, the road must be—

(a) sold to 1 or more adjoining owners who are registered owners or lessees who have freeholding leases; or

(b) with or without the payment of a premium as the Minister considers appropriate—leased to 1 or more adjoining owners who are lessees, other than lessees of freeholding leases.

(3) Subsection (2) does not apply to an adjoining owner who is a trustee of trust land.

(4) The Minister must decide the purchase price or the cash premium in the way prescribed by regulation.

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Division 5 Building of roads in State developments

110 Minister may build roads

(1) The Minister may authorise the building and maintenance of a road serving land made or to be made available under this or another Act.

(2) The Minister, and a person acting under the Minister's authority, has the same liability, and the same duties, as a local government for a matter under this division.

(3) If the Minister authorises a road to be built, it must be built to at least the standard applying to similar roads in the local government area.

111 When road comes under local government control

(1) After a road, authorised by the Minister, has been built, the Minister may fix a day from which the *Local Government Act 2009* applies to the road.

(2) From the day fixed—

(a) a regulation made for a purpose relating to the building of the road stops applying to the road; and

(b) the *Local Government Act 2009* applies to the road as if it had been built by the relevant local government.

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Chapter 4 Land holdings

Part 1 Making land available

Division 1 Interests in land available by competition

112 Interests in land available by auction, tender or ballot

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

(a) an estate in fee simple;

(b) a lease of, or permit over, unallocated State land;

(c) a term lease of, or permit over, a reserve.

113 Public notice of availability to be given

(1) The chief executive must advertise the intention to make an interest in land available by auction, tender or ballot.

(2) The advertisement must be—

(a) before the auction, tender or ballot takes place; and

(b) in the gazette (the ***sale notice***).

114 Information to be included in sale notice

(1) The sale notice must include the following information—

(a) the conditions of the auction, tender or ballot;

(b) the conditions attaching to the interest being made available;

(c) any restrictions on eligibility to bid, tender or take part in the ballot;

(d) the time and place where the auction will be held;

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(e) other appropriate information about the auction, tender, ballot or interest.

(2) If the sale notice is for a ballot or a sale by tender, it must also include the following information—

(a) the closing day for applications;

(b) the time and place for lodging applications.

115 Conditions of sale

(1) The following conditions apply to a sale by public auction—

(a) the highest bid at auction that is at least the reserve price or the reserve cash premium is the sale price;

(b) the deposit and other fees or payments, for survey or improvements, must be paid within the time stated in the sale notice;

(c) the buyer must be eligible to hold the interest under this Act and meet all other restrictions stated in the sale notice;

(d) the appropriate forms must be completed and lodged within the time stated in the sale notice.

(2) If the interest sold is a lease or permit—

(a) the amount bid at auction does not include the rent stated in the sale notice; and

(b) the rent stated is payable in the usual way.

(3) If the interest sold is a lease of rural leasehold land and the Minister is satisfied the land suffers from, or is at risk of, land degradation, the sale notice—

(a) may include a requirement that the proposed lessee enter into a land management agreement for the lease; and

(b) if a requirement as mentioned in paragraph (a) is included—must state that the lease will be issued subject to the condition that the lessee must comply with the agreement.

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116 Interests in land may be sold after auction

(1) If an interest in land is not sold at public auction, the interest may be sold—

(a) by accepting the best offer made after the auction that is at least the reserve price or reserve cash premium; or

(b) by reducing the reserve, advertising the reduced reserve and accepting the best offer that is at least the new reserve price or new reserve cash premium.

(2) The conditions of sale stated in the sale notice also apply to the sale.

(3) The advertisement may be made in the same way as the advertisement for the auction.

117 Interest may be withdrawn from auction, tender or ballot

Even if an interest in land has been advertised for ballot or sale by public auction or tender, the interest may be withdrawn from sale by the chief executive—

(a) before it is auctioned, before the closing day of tenders or before a ballot is conducted; or

(b) if not sold—after the auction.

118 Appeal against exclusion from ballot or tender

(1) Before a ballot is conducted or a tender concluded, the chief executive must give each applicant a notice advising whether or not they are to be included in the ballot or tender.

(2) If the chief executive decides to exclude a person from a ballot or tender, the person must be given notice of the decision and the reasons for the decision.

(3) An applicant who has been advised he or she is excluded from a ballot or tender may appeal against the decision to exclude the applicant.

(4) The ballot or tender may proceed—

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(a) if no appeal has been lodged—after the last day for lodging an appeal; or

(b) if an appeal has been lodged—after the appeal has been decided.

119 Conduct of ballot

(1) A ballot must be conducted in the way decided by the chief executive.

(2) In deciding the way a ballot must be conducted under subsection (1), the chief executive must consider the importance of fairness, transparency and equity.

120 Offer to winner of ballot or tender

(1) The winner of a ballot or tender must be made an offer on the terms stated in the sale notice.

(2) If the offer is refused—

(a) the applicant's deposit is forfeited to the State; and

(b) either—

(i) if the offer was made because of a ballot—the chief executive may reballot the land; or

(ii) otherwise—the Minister or chief executive may deal with the land in a way required or permitted under this Act.

(3) Only the applicants included in the earlier ballot, other than the applicant who refused the offer, are to be included in the reballot.

(4) An applicant who is eligible to be included in the reballot, by notice to the chief executive, may withdraw from the reballot.

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Division 2 Interests in land available without competition

120A Applying for interest in land without competition

(1) A person may apply for an interest in land that, under this division, may be granted without competition.

(2) If, under this division, the Minister decides to offer the interest, the interest may be offered to the applicant subject to conditions.

Note—

See section 403T for requirements for acceptance of offers.

121 Leases of unallocated State land

(1) A lease of unallocated State land may be granted without competition if—

(a) the land is needed for a public purpose; or

(b) the Minister decides—

(i) the land is not needed for a public purpose; and

(ii) the intended use is the most appropriate use of the land; and

(iii) exposure to public competition is inappropriate or 1 or more of the priority criteria apply.

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

122 Deeds of grant of unallocated State land

(1) A deed of grant of unallocated State land may be granted without competition if the grant is to MEDQ or if the Minister decides—

(a) the land is not needed for a public purpose; and

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(b) the intended use is the most appropriate use of the land; and

(c) 1 or more of the priority criteria apply.

(2) A deed of grant of unallocated State land may be granted without competition to a constructing authority if the Minister decides the land is needed for a public purpose.

(3) The Minister must decide the purchase price for the land in the way prescribed by regulation.

Note—

For the granting, without competition, of a deed of grant of unallocated State land in the master plan area under the *Implementation of The Spit Master Plan Act 2020*, see section 8 of that Act.

123 Priority criteria

For sections 121 and 122—

priority criteria are—

(a) the applicant is an adjoining registered owner or lessee, and selling or leasing to anyone else would be considered inequitable; or

(b) no other persons are likely to be interested in obtaining the land; or

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

Example of significant interest—

a deed of grant in trust or a long-term lease

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

123A Deeds of grant of unallocated State land under indigenous land use agreements

(1) This section applies if the Minister is satisfied—

(a) the State is a party to an indigenous land use agreement; and

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(b) the indigenous land use agreement provides for the grant of unallocated State land to a person as trustee of a trust, the beneficiaries of which are identified or identifiable Aboriginal or Torres Strait Islander people; and

(c) a native title party to the indigenous land use agreement—

(i) holds or claims to hold native title rights and interests in relation to the land; or

(ii) would have held native title rights and interests in relation to the land but for any prior extinguishment of those native title rights and interests.

(2) A deed of grant of the land may be granted to the person without competition.

(3) The purchase price for the land is—

(a) if consideration is provided for under the indigenous land use agreement—that consideration; or

(b) otherwise—the consideration decided by the Minister in the way prescribed by regulation.

(4) An expression defined in the *Native Title Act 1993* (Cwlth), other than *indigenous land use agreement*, and used in subsection (5) has the same meaning in subsection (5) as it has in that Act.

(5) In this section—

native title party, in relation to an indigenous land use agreement, means a party to the indigenous land use agreement that is—

(a) a registered native title body corporate; or

(b) a registered native title claimant; or

(c) a person who claims to hold native title in relation to land or waters in the area of the indigenous land use agreement.

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124 Leases of State forests and national parks

If land has been surrendered by a person and has been reserved as State forest or dedicated as national park, the person may be granted, without competition, a lease over all or part of the forest or park.

125 Deeds of grant in trust and leases over reserves

(1) A deed of grant in trust may be granted without competition.

(2) A lease of a reserve may be granted without competition.

126 Strategic port land

(1) If land having a tidal boundary or right line tidal boundary is needed as strategic port land for a port authority, the port authority may be given, without competition, either a lease or deed of grant.

(2) However, if land that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence is needed as strategic port land for a port authority, the port authority may be given, without competition, only a lease.

127 Reclaimed land

(1) If a person has reclaimed land under the authority of an Act—

(a) the Governor in Council may issue to the person, without competition, a deed of grant over all or part of the land; or

(b) the Minister may issue to the person, without competition, a lease over all or part of the land.

(2) When granting the reclaimed land, the Governor in Council or Minister may amalgamate the land granted with an adjoining tenure held by the person.

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(3) If the reclaimed land is already held under lease, the lease must be surrendered before a new lease or deed of grant is issued.

(4) If a deed of grant or lease is issued over only part of the reclaimed land, the rest of the land must be dedicated as a reserve or a road.

(5) If the reclaimed land is dedicated as a reserve and the person who reclaimed the land wishes to be the trustee of the reserve, the Minister must appoint the person as the trustee.

(6) If a deed of grant is issued, the purchase price is—

(a) the purchase price stated in the permission to reclaim the land or in the lease; or

(b) if no purchase price is stated—the amount of the unimproved value of the land, on the day the permission to reclaim the land was given, decided by the Minister in the way prescribed by regulation.

(7) The person may appeal against the Minister's decision on the amount of the unimproved value.

127A Amalgamation may be a condition

A condition of an offer under this division may be that the land being offered must be amalgamated with or tied to other land already owned by the person to whom the land is offered.

Note—

A deed of grant amended because of an allocation without competition is issued under section 358. A lease amended because of an allocation without competition is amended under section 360.

Division 2A Leases for significant development

128 Meaning of *significant development*

A ***significant development*** is a development that will—

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(a) have a significant impact on the environment or the economic and social development of a locality, a region or the State; and

(b) involve a high level of investment, a substantial development period and lease conditions requiring extensive development.

129 Lease for significant development

(1) This section applies if—

(a) an interest in a lease for a significant development is made available to a person under division 1; or

(b) under division 2, a person applies for a lease for a significant development.

(2) Before the lease is granted, the chief executive must obtain an independent assessment of the person's financial and managerial capabilities.

(3) The person must pay the cost of the assessment.

(4) The cost is not refundable.

(5) The lease must not be granted to the person unless the chief executive is satisfied, having regard to the independent assessment, about the person's financial and managerial capabilities.

129A Further dealings with lease land on completion of significant development

(1) The Minister may include the following in a lease for significant development—

(a) a purchase price, or formula for calculating the purchase price, if the land is converted to freehold land;

(b) the term of a new lease for operating and maintaining the significant development, if a new lease is granted.

(2) If a price, formula or term mentioned in subsection (1) is included in the lease, the lessee may, after the significant

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development is substantially complete, apply to the Minister to purchase the lease land or enter a new lease to operate and maintain the significant development.

(3) If the Minister is satisfied the lessee has complied with the terms of the lease, the Minister must—

(a) for an application to purchase the land—ask the Governor in Council to grant the land in fee simple to the lessee; or

(b) for an application for a new lease—grant the application.

(4) If a deed of grant or new lease is issued over part of the land the subject of a significant development lease, the rest of the land must be dedicated as a reserve or road.

130 Transfer of lease for significant development

(1) Before a lease issued for a significant development is transferred, the chief executive may obtain an independent assessment of the transferee's financial and managerial capabilities.

(2) The transferee must pay the cost of the assessment.

(3) The cost is not refundable.

(4) If the chief executive obtains an assessment under subsection (1), the lease must not be transferred to the transferee unless the Minister is satisfied, having regard to the assessment, about the transferee's financial and managerial capabilities.

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

(1) The Minister may make a note under this section in the appropriate register against a lease under this division if—

(a) in relation to the lease, there has been an independent assessment of at least 1 of the following—

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(i) under section 129, an applicant's financial and managerial capabilities;

(ii) under section 130, a transferee's financial and managerial capabilities; or

(b) if paragraph (a) does not apply in relation to the lease—the Minister is satisfied the lease is a lease for a significant development.

(2) Before acting under subsection (1), the Minister must give the lessee at least 14 days notice of the Minister's intention to make the note.

(3) The lessee of a relevant lease—

(a) must notify the Minister in the approved form as soon as practicable after there is a relevant change to the lessee; and

(b) must ensure that the notice to the Minister is accompanied by enough information about the relevant change to allow the Minister to decide whether an independent assessment of the financial and managerial capabilities of the lessee should be performed.

(4) The Minister may cause an independent assessment of the financial and managerial capabilities of a lessee of a relevant lease to be performed if—

(a) the lessee notifies the Minister under subsection (3); or

(b) the Minister is satisfied on reasonable grounds that the lessee should have notified the Minister under subsection (3) but has not done so.

(5) To remove any doubt, it is declared that, for section 234(d), the lessee of a lease contravenes a provision of this Act in relation to the lease, and the lease may accordingly be forfeited under chapter 5, part 4, if—

(a) the lease is a relevant lease; and

(b) the lessee contravenes subsection (3).

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(6) Further, a lease may be forfeited under chapter 5, part 4 as if the lessee had contravened a provision of this Act in relation to the lease if all of the following circumstances apply—

(a) the lease is a relevant lease;

(b) an independent assessment of the financial and managerial capabilities of the lessee of the lease is performed under subsection (4);

(c) as a result of the assessment, the Minister is satisfied on reasonable grounds that—

(i) there has been a relevant change to the lessee; and

(ii) the relevant change can reasonably be expected to detrimentally affect the capacity of the lessee of the lease to meet the lessee's obligations under the lease.

(7) If an independent assessment of the financial and managerial capabilities of a lessee of a relevant lease is performed under subsection (4)—

(a) the Minister may give to the person performing the assessment any information given to the Minister under subsection (3)(b) by the lessee; and

(b) the lessee must pay the costs of the assessment; and

(c) the cost is not refundable.

(8) If the Minister makes a note under this section against a lease—

(a) notice of the decision and the reasons for the decision must be given to the lessee; and

(b) the lessee may appeal against the decision.

(9) The Minister may remove a note made under this section against a lease if, having regard to the significant development to which the lease relates, the Minister considers its removal is appropriate in all the circumstances.

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Example—

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

(10) In this section—

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

Examples of relevant changes to a lessee—

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

2 Receivers are appointed for the lessee.

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

Division 4 Miscellaneous

137 Right to occupy

(1) If there are improvements the property of the State, or a previous lessee, on land leased or sold under this Act, the incoming lessee or buyer is not entitled to occupy or enter into possession of the land until—

(a) the lessee or buyer has paid the amount of the value of the improvements; or

(b) the chief executive permits the lessee or buyer to do so.

(2) If there are no improvements, a lessee or buyer from the State is entitled to occupation and possession of the land from—

(a) if a lease—the day the lease starts, or an earlier day allowed by the chief executive; or

(b) the day the sale is completed.

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138 Default

(1) If land has been made available to a person, the person defaults if—

(a) the appropriate forms are not completed and lodged within the required time; or

(b) the amount to be paid for the interest in the land and the improvements is not paid within the time stated in the offer and in any written agreement under section 140.

(2) If a person defaults, the deed, lease, licence or permit must not be issued and any amount paid is forfeited.

(3) However, if the chief executive is satisfied there was a reasonable excuse for the default, the chief executive may refund the amount paid.

138A Restriction on commencement of lease or permit

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

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

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

139 Improvements to be bought by incoming lessee or buyer

(1) If there are improvements, the property of the State or a previous lessee, on land to be leased or bought under this Act, the value of the improvements must be stated in the offer or in the sale notice.

(2) The value of the improvements is the value on the day the offer was made or the sale notice was published.

(3) The value of the improvements may be—

(a) not negotiable; or

(b) negotiable (the ***provisional value***).

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(4) The incoming buyer or lessee must pay the State the value of improvements within the time stated in the offer or the sale notice, whether or not a provisional value is to be negotiated.

140 Provisional value may be negotiated

(1) If a provisional value has been stated in an offer or sale notice, the value may be negotiated (the ***negotiated value***) between the buyer and previous lessee.

(2) With the written agreement of the buyer and previous lessee, the negotiated value becomes the amount to be paid for the improvements.

(3) Any difference between the provisional value and the negotiated value must be paid or refunded within the time stated in the written agreement.

(4) If the buyer and previous lessee can not agree on a negotiated value, either party may make application to the court to decide the value.

(5) To decide the value of the improvements, the court must decide each of the following amounts—

(a) the amount that fairly represents the value of the improvements to a prudent buyer, having regard to the buyer's proposed use of the land;

(b) the amount that fairly represents the cost of constructing the improvements, adjusted to allow for depreciation of the improvements since construction.

(6) The value mentioned in subsection (5)(a) is the value on the day the offer was made or the sale notice was published.

(7) The cost mentioned in subsection (5)(b) is the cost on the day the court decides the value of the improvements.

(8) If the amount decided under subsection (5)(a) is equal to or less than the amount decided under subsection (5)(b), the value of the improvements is the amount decided under subsection (5)(a).

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(9) If the amount decided under subsection (5)(a) is more than the amount decided under subsection (5)(b), the value of the improvements is the amount decided under subsection (5)(b).

(10) The value of the improvements decided by the court under subsections (5) to (9) becomes the negotiated value.

141 Payment of survey fee

If a survey of land has been carried out by the State or will be carried out by the State to make or in making the land available, the State may require the buyer to pay the survey fee stated in the offer or sale notice or to pay the actual cost of survey.

Part 2 Restrictions on eligibility to hold land

142 Minors not to hold land

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

143 Departmental officers not to hold land without approval

An officer of the department is not eligible to acquire land under part 1 without the Minister's written approval.

Part 3 Leases

Division 1 Preliminary

153 Lease must state its purpose

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

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Note—

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

154 Minister may approve additional purposes

(1) The Minister may approve an application by a lessee that a lease be used for additional or fewer purposes.

(2) However, the Minister may approve an application by a lessee that a lease be used for an additional purpose only if—

(a) the additional purpose is complementary to, and does not interfere with, the purpose for which the lease was originally issued; or

(b) the additional purpose relates to the production of energy from a renewable source, including, for example, the sun or wind.

(3) If the application is approved, the lessee must be given notice of—

(a) the approval; and

(b) any change of rental category; and

(c) whether or not there will be an increase or decrease in the rental for the remainder of the current rental period; and

(d) if additional rent is payable—the time by which the additional rent must be paid; and

(e) whether and in what way the lessee should apply under section 210 to change the conditions of the lease, having regard to the proposed purposes for which the lease is to be used.

(4) The application must be accompanied by the written consent of all persons with a registered interest in the lease.

(5) However, consent under subsection (4) must not be unreasonably withheld.

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(6) To remove any doubt, it is declared that an application under subsection (1) may be both for the addition of 1 or more purposes and for the removal of 1 or more purposes.

(7) If the lessee agrees with the matters notified under subsection (3)(b) to (d), and there is no associated change of conditions proposed under section 210, the purposes of the lease, as changed, must be registered.

(8) If the lessee agrees with the matters notified under subsection (3)(b) to (d), and the Minister and the lessee have agreed under section 210 to any associated change of conditions proposed under that section, the purposes of the lease, as changed, must be registered in conjunction with the registration of the change of conditions.

(9) A change in the purposes of a lease is binding from the day the purposes, as changed, are registered.

Division 1A Length of term on issue of term lease

155 Length of term leases

(1) A term lease must not be issued for more than 50 years.

(2) However, a term lease may be issued for up to 100 years if it is for—

(a) a significant development or the operation and maintenance of a significant development; or

(b) a timber plantation; or

(c) a development that involves existing improvements that in the opinion of the Minister have required a high level of investment.

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Division 1B Extension of particular term leases

155AA Application of div 1B

(1) This division applies to a term lease if—

(a) the lease is for rural leasehold land; and

(b) the lease land is 1,000ha or more; and

(c) the term is 20 years or more; and

(d) there is a land management agreement for the lease; and

(e) more than 5 years have passed since the lease was entered into or the land management agreement was first registered, whichever is the later, unless the Minister is satisfied that special circumstances exist; and

(f) no more than 80% of the existing term of the lease has expired.

(2) However, this division does not apply to a rolling term lease whose term has been extended under division 2, subdivision 3.

(3) In this section—

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

155A Extensions for a term of up to 40 years

(1) This section applies to a lease if—

(a) the term of the lease is less than 40 years; and

(b) the land management agreement for the lease contains a commitment by the Minister to extend the lease under this section; and

(c) the lease has not already been extended under this section.

(2) The lessee may apply to extend the lease.

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(3) The Minister may grant the application and extend the lease if the Minister is satisfied—

(a) the lease land is in good condition; and

(b) the lessee has complied with the land management agreement and any requirements under it for the granting of the extension.

(4) However, the term of the extension—

(a) can not be for more than 10 years; and

(b) must not extend the term of the lease beyond 40 years.

155B Extensions for a term of up to 50 years

(1) This section applies to a lease if—

(a) the term of the lease is less than 50 years, including any extension of the term under section 155A; and

(b) the land management agreement for the lease contains a commitment by the Minister to extend the lease if either or both of the following circumstances apply—

(i) if the Minister considers land (the ***relevant land***) that is all or part of the lease should be the subject of a conservation agreement or conservation covenant—a conservation agreement has been entered into, or a conservation covenant exists, for the relevant land;

(ii) if the Minister considers it is appropriate for there to be an indigenous cultural interest for all or part of the lease land—the lease land is subject to an indigenous cultural interest; and

(c) the lease has not already been extended under this section.

(2) The lessee may apply to extend the lease.

(3) The Minister may grant the application and extend the lease if the Minister is satisfied—

(a) the lease land is in good condition; and

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(b) the lessee has complied with any land management agreement and any requirements under it for the granting of the extension; and

(c) the lessee has complied with the following for the lease land—

(i) any conservation agreement, or conservation covenant;

(ii) any approved agreement for an indigenous cultural interest; and

(d) the extension is appropriate, having regard to either or both of the following for the lease land—

(i) the terms of any conservation agreement or conservation covenant;

(ii) the terms of any approved agreement for an indigenous cultural interest.

(4) However, the extension—

(a) can not be for more than 10 years; and

(b) must not extend the term of the lease beyond 50 years.

(5) If an extension is granted for a lease under this section at the same time as an extension for the lease is granted under section 155A—

(a) for subsection (4)(b), the term of the lease includes the extension granted under section 155A; and

(b) the extension granted under this section starts on the day after the day the extension granted under section 155A ends.

155BA Extensions for a term of up to 75 years

(1) This section applies to a lease if—

(a) the term of the lease is less than 75 years, including any extension of the term under section 155A or 155B; and

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(b) the land management agreement for the lease contains a commitment by the Minister to extend the lease if the following circumstances apply—

(i) if the Minister considers land (the ***relevant land***) that is all or part of the lease should be the subject of a conservation agreement or conservation covenant—a conservation agreement has been entered into, or a conservation covenant exists, for the relevant land;

(ii) the lease land is subject to an indigenous cultural interest; and

(c) all or part of the lease land (the ***declared land***) is an area of international conservation significance under the *Cape York Peninsula Heritage Act 2007*; and

(d) the lease has not already been extended under this section.

(2) The lessee may apply to extend the lease.

(3) The Minister may grant the application and extend the lease if the Minister is satisfied—

(a) the lease land is in good condition; and

(b) the lessee has complied with the land management agreement and any requirements under it for the granting of the extension; and

(c) the lessee has complied with any conservation agreement or conservation covenant applying to all or part of the lease land; and

(d) the lessee has complied with the approved agreement for the indigenous cultural interest for the lease land; and

(e) the extension is appropriate, having regard to any or all of the following for the lease land—

(i) the terms of any conservation agreement or conservation covenant;

(ii) the terms of the approved agreement for the indigenous cultural interest;

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(iii) the size of the declared land.

(4) However, the term of the extension—

(a) can not be for more than 25 years; and

(b) must not extend the term of the lease beyond 75 years.

(5) If an extension is granted for a lease under this section at the same time as an extension is granted for the lease under section 155A or 155B—

(a) for subsection (4)(b), the term of the lease includes the extension granted under section 155A or 155B; and

(b) the extension granted under this section starts on the day after the day all extensions granted under sections 155A and 155B end.

155C Registering and taking of effect of extension

(1) This section applies if, under section 155A, 155B or 155BA, the Minister extends a term lease.

(2) The extension must be registered as soon as practicable after it is made.

(3) The extension has effect from the day it is registered.

(4) No fee is payable for registering the extension.

Division 1C Reduction of particular term leases

155CA Non-application of division to particular term leases

This division does not apply to a rolling term lease whose term has been extended under division 2, subdivision 3.

155D When Minister may reduce

(1) This section applies to a term lease for rural leasehold land granted for a term as provided for in repealed section 155(4), (5) or (6) or extended under section 155A, 155B or 155BA, if

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any of the following happens (each a ***relevant circumstance***)—

(a) if, when the lease was granted or extended, the Minister was satisfied the land was in good condition—the Minister considers the land is no longer in good condition;

(b) if a conservation covenant existed or a conservation agreement had been entered into for the land when the lease was granted or extended—

(i) the covenant or agreement ceases to be in effect for the land; or

(ii) the Minister considers the lessee has not complied with the terms of the covenant or agreement;

(c) if the lease land was subject to an indigenous cultural interest when the lease was granted or extended—

(i) the interest ceases to be in effect for the land; or

(ii) the Minister considers the lessee has not complied with the terms of the approved agreement for the interest;

(d) for a lease granted for a term of up to 75 years under repealed section 155(6) or extended under section 155BA—all or any part of the land ceases being an area of international significance under the *Cape York Peninsula Heritage Act 2007*.

(2) Subject to sections 155DA and 155E, the Minister may reduce the term of the lease by the number of years the Minister considers appropriate, having regard to the maximum term for which the lease would have been granted or extended if the relevant circumstance had existed at the time of the grant or extension.

(3) However, the Minister can not reduce the term by an amount that results in the lease no longer having an unexpired term.

(4) In this section—

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repealed, in relation to a provision, means as in force before the commencement of this definition.

term, of a lease, includes any extension of the term of the lease under section 155A, 155B or 155BA, whether or not the extended term has commenced.

155DA Notice of intention to reduce term

(1) This section applies if the Minister proposes to reduce the term of a lease under section 155D.

(2) However, this section does not apply to a lease if—

(a) the lease has been extended under section 155A, 155B or 155BA; and

(b) the Minister proposes to reduce the term of the lease by an amount that is no more than the period for which it was extended.

(3) Before reducing the term, the Minister must give the lessee a notice stating each of the following—

(a) that the Minister proposes to reduce the term of the lease;

(b) the number of years by which the Minister proposes to reduce the term;

(c) the reasons for the Minister's proposal to reduce the term;

(d) that the lessee may, within the reasonable period stated in the notice, make written submissions to show why the term should not be reduced.

(4) In deciding whether to reduce the term, the Minister must consider any written submissions made by the lessee within the period stated in the notice.

155E Provisions about reduction

(1) This section applies if—

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(a) the Minister decides under section 155D to reduce the term of a term lease; and

(b) for a reduction to which section 155DA applies—the Minister has complied with that section.

(2) Notice must be given to the lessee of the decision and the reasons for it.

(3) The lessee may appeal against the decision.

(4) The reduction must be registered as soon as practicable after the appeal expiration day for the decision.

(5) The reduction has effect from the day it is registered.

(6) No fee is payable for registering the reduction.

(7) No compensation is payable by the State for the reduction.

Division 2 Expiry, renewal and extension

Subdivision 1AA Improvements reports and notices and related matters

156 Lessee must give improvements report and other information

(1) This section applies if, before the relevant day—

(a) the chief executive decides not to make an offer of a new lease under section 157B; or

(b) a lessee of a term lease has not made a renewal application; or

(c) a renewal application made by the lessee is refused.

(2) The lessee must, within 1 month after the relevant day, give the Minister a report (an ***improvements report***) that states the following information for each building or other structure on the lease land—

(a) the nature of the building or structure;

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(b) the condition of the building or structure;

(c) the location of the building or structure;

(d) whether the lessee proposes to remove the building or structure before the lease expires.

(3) The improvements report may also include representations about why the Minister should not give the lessee an improvements notice requiring the lessee to take action under section 156A.

(4) The Minister may also, by notice given to the lessee, require the lessee, within a stated reasonable period, to—

(a) give the Minister information, or further information, about a building or other structure on the lease land; or

(b) give the Minister a report, prepared by a person with a stated qualification or expertise and at the lessee's expense, about the condition of the buildings and other structures on the lease land.

(5) If the lessee fails to comply with a requirement made under subsection (4)(b)—

(a) the Minister may obtain the report; and

(b) the cost of obtaining the report may be recovered from the lessee as a debt due to the State.

(6) In this section—

relevant day, in relation to a lease, means the day that is—

(a) for a lease that has a term of 5 years or more—1 year before the expiry of the lease; or

(b) otherwise—6 months before the expiry of the lease.

156A Minister may give improvements notice

(1) The Minister may, before the relevant day, give the lessee a notice (an ***improvements notice***) requiring the lessee, within a stated period after the lease expires, to—

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(a) carry out repairs to bring a stated building or another structure on the lease land into a good and substantial state of repair; or

(b) remove a stated building or another structure from the lease land; or

(c) remediate the lease land to the reasonable standard stated in the notice.

(2) For subsection (1), the stated period must be a reasonable period, of not less than 3 months, having regard to the nature of the action required under the improvements notice.

(3) An improvements notice may require the repair of a building or another structure only if the Minister is satisfied the building or structure is not in a good and substantial state of repair.

(4) An improvements notice may require the removal of a building or another structure only if the Minister is satisfied—

(a) 1 or more of the following applies for the building or structure—

(i) the building or structure is not consistent with the purpose for which the lease was originally issued or, if the purpose has been changed under section 154, the purpose of the lease as changed;

(ii) the presence of the building or structure on the lease land may substantially hinder options for the future use or allocation of the land;

(iii) the presence of the building or structure on the lease land, or the condition of the building or structure, is likely to create a substantial liability for the State;

(iv) the building or structure is not in a good and substantial state of repair and it is not practicable to bring the building or structure into a good and substantial state of repair; and

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(b) the lease is not subject to a condition requiring the building or structure to remain on the lease land or prohibiting its removal.

(5) An improvements notice may require the remediation of the lease land only if the Minister is satisfied—

(a) the land has been affected by a building or another structure on the land; or

(b) the land has been, or is likely to be, affected by the removal of a building or another structure from the land.

(6) In deciding whether to give the lessee an improvements notice, the Minister must consider any representations included in an improvements report given by the lessee.

(7) The improvements notice must be accompanied by or include an information notice about the decision to give the improvements notice.

(8) The Minister may also give the lessee an improvements notice after the relevant day, but not later than 6 months after the lease expires, if the lessee—

(a) fails to give the Minister an improvements report under section 156; or

(b) gives the Minister an improvements report that is false or misleading in a material particular; or

(c) fails to comply with a requirement made under section 156(4)(a) or (b).

(9) In this section—

relevant day, in relation to a lease, means the day that is—

(a) for a lease that has a term of 5 years or more—6 months before the expiry of the lease; or

(b) otherwise—4 months before the expiry of the lease.

156B Person must comply with improvements notice

(1) A person to whom an improvements notice is given (the ***recipient***) must comply with the notice.

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Note—

See section 156C for the consequences of failing to comply with the notice.

(2) For taking action to comply with the improvements notice, the recipient, or another person (the ***contractor***) taking the action for the recipient, may enter the land to which the notice applies only—

(a) with the consent of the Minister; or

(b) if the recipient or contractor has given the Minister a notice about the proposed entry at least 5 business days before the entry.

(3) The notice under subsection (2)(b) must inform the Minister about—

(a) the intention to enter the land; and

(b) the purpose of the entry; and

(c) the days and times the entry is to be made.

(4) In taking the action, the recipient or contractor must take all reasonable steps to ensure the recipient or contractor does as little damage as is practicable in the circumstances.

(5) If a person incurs loss or damage because of action taken by the recipient or contractor, the person is entitled to be paid by the recipient or contractor the reasonable compensation because of the loss or damage that is—

(a) agreed between the recipient or contractor and the person; or

(b) failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(6) The court may make an order about costs it considers just.

156C Noncompliance with improvements notice

(1) This section applies if a person to whom an improvements notice is given fails to comply with the notice.

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(2) The State may—

(a) take the action required under the improvements notice; and

(b) recover from the person the reasonable costs of taking the action as a debt due to the State.

(3) For subsection (2)(b), the costs of removing a building or other structure include costs reasonably incurred in disposing of the building or structure or part of it.

Examples of disposal costs—

transport costs, dump fees, storage costs, costs of sale

Subdivision 1 Expiry

157 Expiry of lease

(1) A lessee's right to possession of lease land ends on the day the lease expires, but does not end if the lease is renewed before it expires or its term is extended.

(2) Subject to subdivision 1AA and chapter 5, part 5 and the conditions of a lease, the improvements on the lease become the property of the State when the lease expires.

Note—

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

Subdivision 2 Renewal

157AA Limited application of sdiv 2

This subdivision does not apply to a rolling term lease.

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157A Chief executive's approval required for renewal

(1) A term lease may be renewed only if, under this subdivision, the chief executive has made an offer of a new lease and the offer has been accepted.

(2) Subsection (1) is subject to section 434B.

157B Deciding not to make offer of new lease before receiving renewal application

(1) The chief executive may decide not to make an offer of a new lease at any time before receiving a renewal application from the lessee of a term lease.

(2) Before deciding not to make an offer of a new lease under subsection (1), the chief executive must—

(a) give the lessee a notice stating each of the following—

(i) that the chief executive proposes not to make an offer of a new lease;

(ii) the reasons for the chief executive's proposal not to make an offer of a new lease;

(iii) that the lessee may, within the reasonable period stated in the notice, make written submissions about any matter relevant to the reasons for the chief executive's proposal; and

(b) consider any written submissions made by the lessee within the period stated in the notice.

(3) Sections 420FA, 420G and 420H apply in relation to making a decision under subsection (1)—

(a) as if a reference in the sections to deciding or refusing an application were a reference to making the decision; and

(b) with other necessary changes.

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158 Application for new lease

(1) The lessee of a term lease may apply for an offer of a new lease (a ***renewal application***) unless—

(a) the chief executive has given the lessee a notice under section 157B(2)(a) and the chief executive is continuing to consider whether to make a decision under that section; or

(b) the chief executive has made either of the following decisions on the ground that a new lease is not the most appropriate form of tenure for the lease land—

(i) a decision not to make an offer of a new lease under section 157B;

(ii) a decision to refuse an earlier renewal application; or

(c) a condition of the lease or this Act prohibits the renewal of the lease.

(2) A renewal application may be made only after 80% of the existing term of the lease has expired unless, in the Minister's opinion, special circumstances exist.

(3) A renewal application may be rejected without being considered under section 159 if—

(a) the chief executive has made either of the following decisions other than on the ground that a new lease is not the most appropriate form of tenure for the lease land—

(i) a decision not to make an offer of a new lease under section 157B;

(ii) a decision to refuse an earlier renewal application; and

(b) there is no relevant change in circumstances from the decision under section 157B or the earlier application.

(4) In this section—

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existing term, of the lease, does not include an extension under division 1B of the term of the lease.

159 Deciding whether to offer new lease

(1) The chief executive must consider the following before deciding whether or not to offer a new lease to the lessee of a term lease, the conditions of the offer or the imposed conditions of the new lease—

(a) the interest of the lessee;

(b) whether part of the lease land should be set apart and declared as State forest under the *Forestry Act 1959*;

(c) whether the public interest could be adversely affected, other than for an issue mentioned in paragraph (b), if the lease were renewed;

(d) whether part of the lease land is needed for environmental or nature conservation purposes;

(e) the condition of the lease land;

(f) the extent to which the lease land suffers from, or is at risk of, land degradation;

(g) whether the lessee has complied with, or to what extent the lessee has complied with, the following—

(i) the conditions of the lease;

(ii) any land management agreement for the lease;

(iii) any conservation agreement or conservation covenant applying to all or part of the lease land;

(iv) any approved agreement for an indigenous cultural interest for the lease land;

(h) whether part of the lease land has a more appropriate use from a land planning perspective;

(i) whether part of the lease land is on an island or its location, topography, geology, accessibility, heritage importance, aesthetic appeal or like issues make it special;

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(j) whether part of the lease land is needed for a public purpose;

(k) whether a new lease is the most appropriate form of tenure for the lease land;

(l) the lessee's record of compliance with this Act;

(m) the natural environmental values of the lease land.

(2) To remove any doubt, it is declared that, to the extent the lease land is in an urban area, the chief executive need not consider any issue that is not relevant to an urban environment.

Example of an issue not relevant to an urban environment—

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

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

159A Provisions for decision about most appropriate form of tenure

(1) In deciding, under section 159(1)(k), whether a new lease is the most appropriate form of tenure for the lease land, section 16 applies—

(a) as if a reference in the section to an allocation were a reference to the decision; and

(b) with other necessary changes.

(2) If the lease is over a reserve, the chief executive must, before making the decision, consult with the trustee for the reserve.

(3) If the decision in relation to a renewal application is that another form of tenure is a more appropriate form of tenure than a new lease, the chief executive may elect to treat the application as a conversion application for the other form of tenure.

(4) On the making of an election under subsection (3)—

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(a) the renewal application is taken to be a conversion application for the other form of tenure; and

(b) division 3 applies to the conversion application.

(5) Subsections (3) and (4) apply despite any provision contained in the lease.

160 Notice of chief executive's decision

(1) If the chief executive decides to offer a new lease, the lessee under the existing lease must be given notice of the conditions on which the offer is made and to which the lease will be subject.

(2) If the chief executive decides not to make an offer of a new lease under section 157B or decides to refuse a renewal application (each a ***refusal decision***), the lessee must be given notice of the reasons for the refusal decision.

(3) The lessee may appeal against the chief executive's refusal decision if the only reason for the decision was that the lessee had not complied with the conditions of the lease.

162 Issuing of new lease

(1) On acceptance of the offer, the Minister may issue a lease (the ***new lease***) in accordance with the terms of the accepted offer.

Note—

See section 403T for requirements for acceptance of offers.

(2) The new lease must be issued for the same purpose as the lease (the ***old lease***) being renewed.

(3) For working out the purpose of the old lease, the Minister may have regard to its rental category and conditions.

(4) Additional unallocated State land may be included in the new lease, if chapter 4, part 1, division 2 is complied with.

Note—

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

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(5) The new lease is issued subject to all relevant registered interests to which the old lease was subject, and in the same priorities.

(6) On the registration of the new lease, the old lease is taken to have been wholly surrendered.

(7) The surrender must be registered.

163 Land not included in the offer

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

(a) if the lease was over a reserve—remains a reserve; or

(b) otherwise—becomes unallocated State land.

Subdivision 3 Extensions of rolling term leases

164 What is a *rolling term lease*

(1) A term lease is a ***rolling term lease*** if any of the following circumstances apply to it—

(a) it is a lease for tourism purposes for land on a regulated island;

(b) it is a lease that—

(i) includes tidal water land the subject of a covenant ensuring the lease may only be transferred to a person if a tourism lease is also transferred to the person; and

(ii) the Minister has approved as a rolling term lease;

(c) it is a lease used for agriculture, grazing or pastoral purposes and the lease land is—

(i) rural leasehold land the area of which is 100ha or more; or

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(ii) rural leasehold land the area of which is less than 100ha and the Minister has approved the lease as a rolling term lease; or

(iii) land that is not rural leasehold land and is not within a nature conservation area or specified national park;

(d) another provision of this Act provides the lease is a rolling term lease.

Example for paragraph (d)—

Under section 176A(3), if a rolling term lease over 100ha in area is subdivided into 2 or more new leases, each new lease that is issued is a rolling term lease even if its lease land is less than 100ha in area.

(2) However, a State lease is not a ***rolling term lease*** if the lease land is used for agriculture, grazing or pastoral purposes.

(3) In this section—

tidal water land means land that, under section 9(1), is the property of the State and may be dealt with as unallocated State land.

tourism lease means a term lease, or a perpetual lease, for tourism purposes for land on a regulated island.

164A Approval of lease as a rolling term lease

(1) The Minister may approve a lease as a rolling term lease as mentioned in section 164(1)(b)(ii) only if improvements on the lease land facilitate the tourism purposes of the tourism lease mentioned in section 164(1)(b)(i).

(2) The Minister may approve a lease used for agriculture, grazing or pastoral purposes as a rolling term lease under section 164(1)(c)(ii) only if the Minister is satisfied the most appropriate use for the lease land is for agriculture, grazing or pastoral purposes as the case may be.

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164B Identification of lease as a rolling term lease

(1) The identification, under this subdivision, of a lease as a rolling term lease, including because of the Minister's approval of the lease as a rolling term lease—

(a) allows the provisions of this subdivision relating to the extension of rolling term leases to be applied to the lease; and

(b) does not affect any aspect of the lease, including any conditions of the lease.

(2) The registrar of titles must ensure the particulars recorded in the leasehold land register for each term lease that, under this subdivision, is a rolling term lease, include that the lease is a rolling term lease.

(3) The recording of a lease as a rolling term lease as mentioned in subsection (2) must be done—

(a) for a lease in existence immediately before the commencement of this section—as soon as practicable after the commencement of this section; and

(b) for a lease that is granted after the commencement of this section and is a rolling term lease immediately it is granted—when the particulars of the lease are first recorded in the leasehold land register; and

(c) for a lease that becomes a rolling term lease because of the Minister's approval of the lease as a rolling term lease—as soon as practicable after it becomes a rolling term lease.

164C Making extension application or giving expiry advice

(1) The Minister must grant an extension of the term of a rolling term lease if the lessee makes an application, in the approved form, to the chief executive to have the lease extended (an ***extension application***), and making the application is not prevented under section 164D.

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(2) The Minister must not grant an extension of the term of a rolling term lease if the lessee advises the chief executive, in the approved form, that the lessee wishes to allow the lease to expire at the end of its term (an ***expiry advice***).

(3) Despite subsection (1), if the rolling term lease is issued under this Act or the repealed Act, but on the authority of another Act, the Minister may grant an extension of the lease only with the agreement of a person whose agreement to the extension is required under the other Act.

(4) An agreement mentioned in subsection (3) may be given subject to a requirement for changing the conditions of the lease, and when the extension of the lease is granted, the conditions of the lease must be changed in the way required.

(5) An extension application may be made once during each term of the lease.

(6) An expiry advice may be given at any time in the last 5 years of the term of the lease.

(7) If the Minister refuses to extend a lease for which an extension application is made, the lessee may appeal against the Minister's decision.

(8) In this section—

original term, of a lease, see section 164E(3).

term, of a rolling term lease, means each of the following—

(a) the original term of the lease;

(b) the term of each extension of the lease under this subdivision.

Note—

Section 164F(1) provides for when an extension of a lease under this subdivision commences and ends.

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164D When extension application or expiry advice may not be made or given

A lessee may not make an extension application for a rolling term lease if the lessee has entered into an agreement with the Minister under section 327A to surrender the whole of the lease.

164E Length of extension

(1) This section provides for granting an extension of the term of a rolling term lease on an extension application being made under this subdivision.

(2) The length of the extension granted must be—

(a) for a lease to which section 164C(3) applies—the term, not longer than the original term of the lease, advised by a person whose agreement is required for the extension; or

(b) otherwise—the original term of the lease.

(3) In this section—

original term, of a lease, means the term of the lease—

(a) if the lease was issued because of a renewal under the renewal provisions—as provided for when the lease was issued as a new lease under those provisions; or

(b) otherwise—as provided for when the lease was issued;

and does not include any period by which the term of the lease has been extended under any provision of this Act, whether before or after the commencement of this definition, or under the repealed Act.

renewal provisions includes provisions of the repealed Act providing for renewals of term leases.

164F Effect of extension

(1) If a rolling term lease is extended under this subdivision—

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(a) the lease continues in force for the term of the extension; and

(b) the term of the extension commences immediately after the lease would otherwise have expired.

(2) Without limiting subsection (1), on the commencement of the term of the extension (the ***extension commencement***) of a rolling term lease under this subdivision—

(a) a condition of the lease that, immediately before the extension commencement, was or was taken to be, under this Act, an imposed condition of the term lease, continues as an imposed condition of the term lease as extended; and

(b) the term lease as extended is a lease for the same purposes as the purposes of the term lease immediately before the extension commencement; and

(c) the rent payable for the term lease immediately before the extension commencement continues to be the rent payable for the lease as extended, subject to adjustments applying from time to time under this Act; and

(d) the lease as extended is subject to all relevant registered interests, and to all advices and notings in the land registry, to which the lease was subject immediately before the extension commencement, and in the same priorities; and

(e) all acts done or omissions made in relation to the lease before the extension commencement have effect in relation to the term lease as extended.

Example for paragraph (e)—

A remedial action notice could be given after the extension commencement in relation to something done before the extension commencement.

(3) The granting of an extension of a term lease under this subdivision does not stop the taking of action under this Act in relation to the lease, including, for example, action to end the lease, before the term of the extension commences or would otherwise have commenced.

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(4) The term of a rolling term lease may be extended under this subdivision regardless of how many times it has previously been extended under this subdivision or under other provisions of this Act or the repealed Act providing for extensions.

164G Notice of expiry

(1) The chief executive must give the lessee of a rolling term lease notice advising when the lease is due to expire.

(2) The notice must be given not later than 2 years before the lease is due to expire.

(3) The notice need not be given if the chief executive has already received an extension application or expiry advice from the lessee, or if section 164D applies.

Subdivision 4 Possible extension instead of renewal

164H Application for term lease renewal may become extension application

(1) This section applies if—

(a) a renewal application for a term lease that is not a rolling term lease is made under the renewal provisions; and

(b) before the renewal application is finalised under those provisions, the lessee advises the chief executive that the lessee agrees to the lease becoming a rolling term lease; and

(c) the lease is the subject of an approval of the Minister under section 164(1) and becomes a rolling term lease.

(2) The renewal application for the lease is taken to be an extension application for the lease, and must be dealt with under subdivision 3.

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Division 3 Conversion of tenure

165 Application of division

This division does not apply—

(a) to a lease over a reserve; and

(b) to a licence or permit; and

(c) if the conditions of a lease or the conditions of a class of lease or this Act do not allow an application for conversion to be made or a particular type of conversion to be made.

165A Chief executive's approval required for conversion

A lease may be converted under this division only if the chief executive has made an offer to convert the lease under this division and the offer has been accepted.

165B Deciding to make offer to convert lease before receiving conversion application

(1) The chief executive may, at any time before receiving a conversion application, decide to offer to convert—

(a) a perpetual lease to freehold land; or

(b) a term lease to freehold land; or

(c) a term lease to a perpetual lease, but only if the term lease is—

(i) a lease for pastoral purposes; or

(ii) a lease for tourism purposes for land on a regulated island.

(2) Before making a decision under subsection (1), the chief executive must evaluate the lease land to assess the most appropriate tenure for the land.

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(3) For conducting the evaluation under subsection (2), section 16 applies with necessary changes.

(4) Sections 420FA and 420G apply in relation to making a decision under subsection (1)—

(a) as if a reference in the sections to deciding an application were a reference to making the decision; and

(b) with other necessary changes.

166 Application to convert lease

(1) A lessee may apply to convert (a ***conversion application***)—

(a) a perpetual lease to freehold land; and

(b) a term lease to freehold land; and

(c) a term lease to a perpetual lease, but only if the term lease is—

(i) a lease for pastoral purposes; or

(ii) a lease for tourism purposes for land on a regulated island.

(2) A conversion application may be rejected without consideration under section 167 if—

(a) either—

(i) the lessee has rejected an earlier offer by the chief executive to convert the lease to freehold land or a perpetual lease; or

(ii) the lessee has made an earlier conversion application and the application was refused; and

(b) there is no relevant change in circumstances from the rejection of the chief executive's offer or the earlier application.

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167 Provisions for deciding conversion application

(1) This section applies in relation to the chief executive deciding a conversion application.

(2) The chief executive must consider the following in deciding whether or not to offer to convert a lease, the conditions on which the offer is made and, if the offer is for a lease, its imposed conditions—

(a) whether part of the lease land needs to be set apart and declared as State forest under the *Forestry Act 1959*;

(b) whether part of the lease land is better suited for long-term forest management for the production of indigenous timbers of commercial value than for all other forms of primary production;

(c) whether the public interest could be adversely affected, other than about an issue mentioned in paragraph (a) or (b), if the lease were converted;

(d) whether part of the lease land is needed for environmental or nature conservation purposes;

(e) the condition of the lease land;

(f) the extent to which the lease land suffers from, or is at risk of, land degradation;

(g) whether the lessee has complied with, or to what extent the lessee has complied with, the conditions of the lease and with any land management agreement for the lease;

(h) whether part of the lease land has a more appropriate use from a land planning perspective;

(i) whether part of the lease land is on an island or its location, topography, geology, accessibility, heritage importance, aesthetic appeal or like issues make it special;

(j) whether part of the lease land is needed for a public purpose;

(k) the most appropriate form of tenure for the lease land;

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(l) the lessee's record of compliance with this Act;

(m) the natural environmental values of the lease land.

(3) Subsection (2) does not apply if the conversion application relates to a lease for development purposes and the lease states that conversion of the lease will be considered on compliance with the conditions stated in the lease.

(4) Also, subsection (2)(d) applies only if the NCA department has given the chief executive—

(a) a notice stating the environmental or nature conservation purposes for which the part of the lease land is required; and

(b) either—

(i) a map showing the required particulars for a map of the part; or

(ii) a description of the boundary of the part by reference to the prescribed datum.

(5) To remove any doubt, it is declared that, to the extent the lease land is in an urban area, the chief executive need not consider any issue that is not relevant to an urban environment.

Example of an issue not relevant to an urban environment—

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

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

(7) For subsection (2)(k), section 16 applies, with necessary changes, as if a reference in the section to an allocation were a reference to a decision mentioned in subsection (2).

(8) In this section—

prescribed datum means the geodetic reference framework prescribed under the *Survey and Mapping Infrastructure Act 2003*, section 6(4).

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required particulars, for a map of a part of lease land, means each of the following—

(a) the boundary of the area or part on an image base;

(b) 5 or more points visible in the image base that correspond to identifiable fixed features;

(c) coordinates for each point defined by reference to the prescribed datum;

(d) a description of the feature that each point represents.

168 Notice of chief executive's decision

(1) If the chief executive decides to offer a new lease or a deed of grant, the lessee must be given notice of the conditions on which the offer is made.

(1A) However, if the offer is for the conversion to freehold land of a lease for tourism purposes for land on a regulated island, the chief executive may offer a deed of grant only if the Governor in Council has first approved the conditions on which the offer is made.

(1B) If the land the subject of the proposed lease or deed of grant is to include a forest consent area—

(a) the proposed lease or deed of grant must be referred to the chief executive under the *Forestry Act 1959* to decide conditions to be included in the offer; and

(b) the offer must include any conditions decided under paragraph (a).

(2) If the offer is for a lease, the offer must state the conditions to which the lease will be subject.

(3) The offer may be for—

(a) a smaller size area of land; or

(b) if the offer is made in relation to a conversion application—a different tenure from the tenure applied for.

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(4) If the chief executive decides to refuse a conversion application, the applicant must be given notice of the reasons for the decision.

(5) The applicant may appeal against the chief executive's decision to refuse a conversion application if the only reason for the refusal was that the applicant had not complied with the conditions of the lease.

169 Conditions of freehold offer

If an offer is for a deed of grant, including a freeholding lease, the offer may include 1 or more of the following conditions—

(a) that the lessee enter into a conservation agreement;

(b) that either—

(i) the lessee enter into a forest consent agreement in relation to the land; or

(ii) the deed of grant or freeholding lease includes a forest entitlement area;

(c) that the purchase price for the conversion be paid in full.

170 Purchase price if deed of grant offered

(1) Unless a price or formula has already been stated in the lease to be converted, the purchase price is the amount decided by the chief executive in the way prescribed by regulation.

(3) Without limiting subsection (1), the regulation must provide for the purchase price to include the market value of any commercial timber that is the property of the State on the lease land, other than forest products the subject of a forest consent agreement.

171 Compliance with particular conditional offers

(1) This section applies if the conditions of an offer include a requirement to enter into a forest consent agreement.

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(2) The condition including the requirement is taken to be complied with only if the chief executive under the *Forestry Act 1959* advises the chief executive under this Act that the forest consent agreement has been entered into.

Note—

See section 403T for requirements for acceptance of offers.

172 Issuing of new tenure

(1) On acceptance of the offer a tenure (the ***new tenure***) may be issued by—

(a) if the new tenure is a deed of grant or freeholding lease—the Governor in Council; or

(b) if the new tenure is a term or perpetual lease—the Minister.

Note—

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

(2) The new tenure must be issued in accordance with the terms of the accepted offer.

(3) Additional unallocated State land may be included in the new lease, if chapter 4, part 1, division 2 is complied with.

Note—

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

(4) If the new tenure is a lease, it must be issued for the same purpose as the lease (the ***old lease***) the subject of the conversion application.

(5) The new tenure is issued subject to all relevant registered interests to which the old lease was subject, and in the same priorities.

(6) On the registration of the new tenure, the old lease is taken to have been wholly surrendered.

(7) The surrender must be registered.

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173 Land not included in the offer

If the offer is for only a part of the lease, the land not included in the offer, on surrender of the lease, becomes unallocated State land.

Division 4 Subdividing leases

175 When lease may be subdivided

A lease may be subdivided only if—

(a) this Act or a condition of the lease does not prohibit its subdivision; and

(b) the lease is not, by a registered covenant or tied condition, tied to another lease or freehold land; and

(c) the chief executive has, on an application made under this division, approved the subdivision; and

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

176 Application to subdivide

(1) A lessee of a lease (the ***existing lease***) may apply for approval to subdivide the lease.

(2) The application must be accompanied by—

(a) a statement of the applicant's reasons for seeking the proposed subdivision; and

(b) a statement by the relevant local government of its views on the proposed subdivision; and

(c) the written consent of all persons with a registered interest in the lease land.

(3) However, consent under subsection (2)(c) must not be unreasonably withheld.

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176A General provisions for deciding application

(1) The chief executive must decide whether to approve the proposed subdivision.

(2) If the chief executive decides to grant the approval, the chief executive must decide an offer (the ***subdivision offer***) of new leases to the applicant for the lease land.

(3) If the existing lease was a rolling term lease, each new lease is a rolling term lease under this Act, even if the lease land for the new lease is rural leasehold land of less than 100ha.

(4) The subdivision offer must state—

(a) the imposed conditions of each of the new leases; and

(b) for each new lease to be issued as a term lease—the term of the lease.

(5) The subdivision offer may be made subject to conditions.

Example—

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

(6) The term of a new lease may be longer than the unexpired term of the existing lease.

176B Criteria for deciding application

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

(a) whether the proposed subdivision—

(i) is appropriate, taking into account State, regional and local planning strategies and the objects of this Act; and

(ii) will require dedication of part of the lease land as a road for access to the subdivided land; and

(b) the matters mentioned in section 159(1) to the extent they are relevant to the proposed subdivision and the term of any new leases to be offered.

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176C Specific grounds for refusal

The chief executive may refuse to give the approval if—

(a) the applicant has made an earlier application for approval to subdivide the existing lease; and

(b) the earlier application was refused; and

(c) there is no relevant change in circumstances from the earlier application.

176D Notice of decision

(1) If the chief executive decides to grant the approval, the applicant must be given a notice stating the subdivision offer.

(2) If the chief executive decides to refuse the approval, the applicant must be given a notice of the decision and the reason for it.

176E Appeal against refusal

If—

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

(b) the only reason for the refusal was that the applicant had not complied with the conditions of the existing lease;

the applicant may appeal against the decision.

176G Issuing of new leases

(1) On acceptance of the subdivision offer—

(a) any plan of subdivision required under a condition of the offer to be lodged must be registered; and

(b) the designated person may issue the new leases in accordance with the terms of the accepted offer.

Note—

See—

(a) section 403T for requirements for acceptance of offers; and

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(b) section 153 for a requirement for a lease to state its purpose.

(2) The new leases are issued subject to all relevant registered interests to which the existing lease was subject with the same priorities.

(3) On registration of the new leases, the existing lease is taken to have been wholly surrendered.

(4) The surrender must be registered.

176I Power to waive fees if chief executive requested application

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

Division 5 Amalgamating leases

176J When leases may be amalgamated

(1) Two or more leases may be amalgamated only if—

(a) the lease land is not a reserve or State forest; and

(b) this Act or a condition of the lease does not prohibit the amalgamation; and

(c) there is no registered mortgage over only part of the lease land; and

(d) the chief executive has, on an application made under this division, approved the amalgamation; and

(e) the requirements under this division for the amalgamation have been complied with.

(2) In this section—

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

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176K Application to amalgamate

(1) The lessee of 2 or more leases (the ***existing leases***) may apply for approval to amalgamate them only if—

(a) the lessee is the lessee of all of them; and

(b) they are of the same tenure type; and

(c) the lease land for the existing leases is contiguous.

(1A) For subsection (1)(b), 2 or more leases are taken to be of the same tenure type if—

(a) each lease is for land on a regulated island, and is either a term lease for tourism purposes or a perpetual lease for tourism purposes; or

(b) each lease is either a term lease for pastoral purposes or a perpetual lease for pastoral purposes.

Example—

Two leases would be taken to be of the same tenure type for subsection (1)(b) if they were both for pastoral purposes even though one lease was a term lease and the other was a perpetual lease.

(2) If the lessee comprises 2 or more persons, each person must be a party to the application.

(3) The application must be accompanied by—

(a) a statement of the applicant's reasons for seeking the proposed amalgamation; and

(b) a statement by the relevant local government of its views on the proposed amalgamation; and

(c) the written consent of all persons with a registered interest in the lease land for the existing leases.

(4) However, consent under subsection (3)(c) must not be unreasonably withheld.

176L General provisions for deciding application

(1) The chief executive must decide whether to approve the proposed amalgamation.

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(2) If the chief executive decides to grant the approval, the chief executive must decide an offer (the ***amalgamation offer***) of an amalgamated lease to the applicant for the lease land of the existing leases.

(3) However, if the proposed amalgamation is an amalgamation of a term lease and a perpetual lease, the amalgamation offer must be for a perpetual lease.

(4) The amalgamation offer must state the term and the imposed conditions of the amalgamated lease.

(5) The amalgamation offer may be made subject to conditions.

Example—

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

(6) The term of the amalgamated lease may be longer than the unexpired term of all or any of the existing leases.

176M Criteria for deciding application

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

(a) whether the proposed amalgamation is appropriate, taking into account State, regional and local planning strategies and the objects of this Act; and

(b) the matters mentioned in section 159(1) to the extent they are relevant to the proposed amalgamation and the term of any amalgamated lease to be offered.

176N Roads

(1) This section applies if there is a road within the external boundaries of the lease land of any of the existing leases.

(2) The chief executive must consider—

(a) whether the road is still needed for public use; and

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(b) if the road were to be closed—whether it should be included within the external boundaries of the lease land of the proposed amalgamated lease.

(3) If the applicant or the chief executive proposes to close the road and include its area in the lease land of any amalgamated lease, the chief executive must—

(a) seek the opinion of the relevant local government on the proposal; and

(b) comply with chapter 4, part 1, division 2.

176O Specific grounds for refusal

The chief executive may refuse to give the approval if—

(a) the applicant has made an earlier application for approval to amalgamate the existing leases; and

(b) the earlier application was refused; and

(c) there is no relevant change in circumstances from the earlier application.

176P Notice of decision

(1) If the chief executive decides to grant the approval the applicant must be given a notice stating the amalgamation offer.

(2) If the chief executive decides to refuse the approval the applicant must be given a notice of the decision and the reasons for it.

176Q Appeal against refusal

If—

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

(b) the only reason for the refusal was that the applicant had not complied with the conditions of 1 or more of the existing leases;

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the applicant may appeal against the decision.

176S Issuing of amalgamated lease

(1) On acceptance of the amalgamation offer—

(a) any plan of amalgamation required under a condition of the offer to be lodged must be registered; and

(b) the designated person may issue the amalgamated lease in accordance with the terms of the accepted offer.

Note—

See—

(a) section 403T for requirements for acceptance of offers; and

(b) section 153 for a requirement for a lease to state its purpose.

(2) The amalgamated lease is issued subject to all relevant registered interests to which the existing leases were subject with the same priorities.

(3) On registration of the amalgamated lease, the existing leases are taken to have been wholly surrendered.

(4) The surrenders must be registered.

176T Power to waive fees if chief executive requested application

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

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Division 6 Land management agreements

176U Making and registration of agreement about land management

(1) The Minister may, for the State, make or amend a written agreement with a lessee about the management and use of the lease land.

(2) However the agreement or amendment has effect only if it is registered.

Note—

For registration of land management agreements, see section 279.

176UA Power to require land management agreement in particular circumstances

(1) This section applies for a term or perpetual lease if—

(a) the lease is for rural leasehold land; and

(b) the Minister is satisfied—

(i) the lease land suffers from, or is at risk of, land degradation; or

(ii) the lessee is using the lease land in a way that is not fulfilling the lessee's duty of care for the land, under section 199.

(2) The Minister, by notice, may require a land management agreement to be entered into for the lease land.

(3) If a land management agreement is entered into under this section the lease is subject to a condition that the lessee must comply with the agreement.

176V Purposes of a land management agreement

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

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(a) identify and describe the natural and physical attributes of the lease land, including its known indigenous and other cultural heritage and significant natural environmental values;

(b) record the condition of the lease land at a particular point in time;

(c) improve or maintain its condition so that it is, or will be, at least in good condition;

(d) identify any land degradation issues relating to the land;

(e) establish the agreed management outcomes for the identified land degradation issues and the associated management strategies to address them;

(f) identify measures to protect the known indigenous and other cultural heritage and the identified significant natural environmental values;

(g) establish a monitoring and reporting program;

(h) establish a process to verify the performance of the lessee in relation to the outcomes;

(i) establish a dispute resolution process;

(j) establish a review process to maintain the relevance and effectiveness of the agreement.

176W Content of land management agreement

(1) A land management agreement for a lease may include any matter the Minister considers appropriate to achieve the purposes of a land management agreement.

(2) The chief executive may issue guidelines about the content and preparation of land management agreements.

176X Reviewing land management agreement

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

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performance in relation to the management outcomes under the agreement.

Note—

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

176XA Cancellation of land management agreement

The Minister may, with the agreement of the lessee, cancel a land management agreement registered on a lease.

Division 7 Miscellaneous provisions

176Y Part does not affect amounts owing relating to lease

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

(a) an application under this part about the lease, other than an application under section 154;

(b) the ending, under this part, of the lease.

176Z When payment obligations end if lease ends under part

(1) This section applies if a lease ends under this part.

(2) An obligation to pay future rent and other amounts that may become payable in relation to the lease stops on—

(a) if the lease ends because an offer to convert the lease to freehold land is accepted—the day the offer to convert the lease is accepted; or

(b) otherwise—the day before the day on which the lease ends.

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176ZA Overpayments relating to former lease

(1) This section applies if a lease ends under this part and, because of section 176Z, an amount has been overpaid for rent or another amount relating to the former lease.

(2) If a new lease is issued under this part in relation to the former lease, the amount must be credited to rent or other amounts payable under the new lease.

(3) Otherwise, the amount must be refunded to the person who made the payment.

Part 4 Permits to occupy particular land

177 Chief executive may issue permit

(1) The chief executive may issue a permit to occupy unallocated State land, a reserve or a road.

(2) The permit may be issued for the purpose, and on the terms, the chief executive decides are appropriate to the land and the purpose of the permit.

(3) If there is a trustee of the reserve, the chief executive must consult the trustee before the permit is issued.

(4) If the purpose of the permit is inconsistent with the purpose of the reserve, no improvements, other than boundary fences, are to be built by the permittee.

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

(a) have been dedicated for the same purpose; and

(b) are held by the same trustee.

(6) A permit may not be transferred, sublet or mortgaged.

(7) A permit may be issued only if it is for 1 type of land mentioned in subsection (1).

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(8) A permit for a term of not more than 12 months need not be registered.

(9) If a permit for a term of 12 months or more is issued for unallocated State land or a reserve, the chief executive must, as soon as practicable, give the registrar of titles notice that the permit has been issued.

(10) On receiving the notice, the registrar of titles must keep a record of the issue of the permit in the appropriate register.

(11) The chief executive may issue a permit without receiving an application under section 177A.

177A Applying for permit

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

(2) However, before applying, the person must give notice of the person's intention to apply to the following and to any other entity with a registered interest in the proposed permit land—

(a) for a permit for a reserve—the trustee of the reserve;

(b) for a permit for a State-controlled road—the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered;

(c) for a permit for a road that is under the control of a local government—the local government.

(3) In this section—

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

177D Notice of permit

(1) If the chief executive issues a permit, notice of its issue must be given to each entity given a notice about the proposed permit under section 177A.

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(2) If the permit is for a term of 12 months or more, the notice must state the day the permit was registered.

178 Permits for land in area of tidal influence

A permit for land that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence may be issued only if—

(a) it would not unduly affect safe navigation and sound development of the State's waterways and ports; and

(b) its impact on marine infrastructure has been considered; and

(c) it would not have a detrimental effect on coastal management; and

(d) it would not be inconsistent with the intent of any relevant State management plan.

179 Fencing

(1) If an existing fence of a property not owned by an applicant for a permit is to be used as a boundary fence for the permit, a written agreement on conditions about the maintenance of the fence must be given to the chief executive before the permit is issued.

(2) The agreement must be signed by the owner of the fence and the applicant for the permit.

180 When permit may be cancelled or surrendered

(1) A permit may be cancelled if—

(a) the permittee contravenes a provision of this Act in relation to the permit; or

(b) the permittee has more than 1 conviction, not including any spent convictions, for a vegetation clearing offence, regardless of whether any of the offences were committed on the permit land; or

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(c) the chief executive, having evaluated the land under section 16, considers the permit is not consistent with the most appropriate tenure and use for the land; or

(d) for a permit for a reserve—the chief executive considers it appropriate for the trustee of the reserve to manage the reserve free of the permit; or

(e) for a permit for a State-controlled road—the chief executive considers it appropriate for the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered to control the road free of the permit; or

(f) for a permit for a road that is under the control of a local government—the chief executive considers it appropriate for the local government to control the road free of the permit; or

(g) the chief executive considers the cancellation is in the interests of the State, having regard to the public interest.

(2) A permittee may surrender a permit—

(a) on terms agreed to between the chief executive and the permittee; and

(b) with the chief executive's written approval.

180A Applying to cancel or surrender permit

(1) A relevant entity for a permit may apply to cancel the permit.

(2) However, before applying, the relevant entity must give notice of the entity's intention to apply to—

(a) the permittee; and

(b) any other entity with a registered interest in the permit land.

(3) Also, a relevant entity for a permit can not apply to cancel the permit if the relevant entity is a non-core utility provider.

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(4) The relevant entity may also give notice to any other entity the relevant entity considers has an interest in the permit land.

(5) A permittee may apply to surrender the permit.

(6) In this section—

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

(a) a public utility provider;

(b) if the permit land is a reserve—the trustee of the reserve;

(c) if the permit land is a road—an adjoining owner of land adjoining the road.

180B Chief executive may require report and other information

(1) This section applies if a permittee makes an application under section 180A(5) to surrender the permit.

(2) The chief executive may, by notice given to the permittee, require the permittee, within a stated reasonable period, to give the chief executive a report that states the following information for each building or other structure on the permit land—

(a) the nature of the building or structure;

(b) the condition of the building or structure;

(c) the location of the building or structure;

(d) whether, if the permit is surrendered, the permittee proposes to apply under section 180H(1) to remove the building or structure.

(3) The chief executive may also, by notice given to the permittee, require the permittee, within a stated reasonable period, to—

(a) give the chief executive information, or further information, about a building or other structure on the permit land; or

(b) give the chief executive a report, prepared by a person with a stated qualification or expertise and at the

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permittee's expense, about the condition of the buildings and other structures on the permit land.

(4) If the permittee fails to comply with a requirement made under subsection (3)(b)—

(a) the chief executive may obtain the report; and

(b) the cost of obtaining the report may be recovered from the permittee as a debt due to the State.

180C Chief executive may require improvements report and other information

(1) The chief executive may, at any time before a permit is cancelled, by notice given to the permittee, require the permittee, within a stated reasonable period, to give the chief executive a report (an ***improvements report***) that states the following information for each building or other structure on the permit land—

(a) the nature of the building or structure;

(b) the condition of the building or structure;

(c) the location of the building or structure;

(d) whether, if the permit is cancelled, the permittee proposes to apply under section 180H(1) to remove the building or structure.

(2) The permittee must comply with the notice.

(3) The improvements report may include representations about why the chief executive should not give the permittee an improvements notice requiring the permittee to take action under section 180I.

(4) The chief executive may also, by notice given to the permittee, require the permittee, within a stated reasonable period, to—

(a) give the chief executive information, or further information, about a building or other structure on the permit land; or

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(b) give the chief executive a report, prepared by a person with a stated qualification or expertise and at the permittee's expense, about the condition of the buildings and other structures on the permit land.

(5) If the permittee fails to comply with a requirement made under subsection (4)(b)—

(a) the chief executive may obtain the report; and

(b) the cost of obtaining the report may be recovered from the permittee as a debt due to the State.

180D When cancellation or surrender is effective

(1) A permit may be cancelled by registering a cancellation notice for the permit.

(2) A permit may be surrendered by registering a surrender notice for the permit.

(3) The cancellation or surrender takes effect on the day the cancellation notice or surrender notice is registered.

180E Notice about cancellation or surrender

(1) The chief executive must give notice about the cancellation or surrender of a permit to—

(a) if the permit is cancelled—

(i) the applicant; and

(ii) each entity given a notice under section 180A; and

(b) if the permit is surrendered—each entity with a registered interest in the permit land.

(2) The notice under subsection (1) must state all of the following—

(a) the day the cancellation or surrender has effect;

(b) that the permit is ended and the permittee is divested of any interest in the permit land;

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(c) if the notice is about the cancellation of a permit—no compensation is payable for the cancellation;

(d) if there are improvements on the permit land owned by the permittee—that the permittee may apply to remove the improvements.

(3) If the chief executive decides not to cancel or surrender a permit, notice of the fact must be given to—

(a) the permittee; and

(b) if the application was to cancel the permit—each entity given a notice under section 180A.

180F Effect of cancellation or surrender

On the cancellation or surrender of a permit—

(a) the permit ends; and

(b) the permittee is divested of any interest in the permit land; and

(c) if the permit is cancelled—no compensation is payable for the cancellation.

180G Permittee to give up possession on cancellation or surrender

(1) On the cancellation or surrender of a permit, the permittee must immediately vacate the permit land.

(2) If the permittee does not give up possession under subsection (1), and is not otherwise entitled to be in possession, the permittee is a person who is unlawfully occupying the land.

Note—

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

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180H Dealing with improvements

(1) A permittee for a permit that is cancelled or surrendered may, within 14 days after the permit is cancelled or surrendered, apply to remove the permittee's improvements on the permit land.

(2) The permittee may remove the improvements only—

(a) with the written approval of the chief executive; and

(b) within the period stated in the approval.

(3) The improvements become the property of the State unless they are removed under subsection (2).

180I Chief executive may give improvements notice

(1) The chief executive may, within 3 months after a permit is cancelled, give the person who, immediately before the cancellation, was the permittee for the permit a notice (an ***improvements notice***) requiring the person, within a stated period, to—

(a) carry out repairs to bring a stated building or another structure on the relevant land into a good and substantial state of repair; or

(b) remove a stated building or another structure from the relevant land; or

(c) remediate the relevant land to the reasonable standard stated in the notice.

(2) For subsection (1), the stated period must be a reasonable period, of not less than 3 months, having regard to the nature of the action required under the improvements notice.

(3) An improvements notice may require the repair of a building or another structure only if the chief executive is satisfied the building or structure is not in a good and substantial state of repair.

(4) An improvements notice may require the removal of a building or another structure only if the chief executive is satisfied—

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(a) 1 or more of the following applies for the building or structure—

(i) the building or structure is not consistent with the purpose for which the permit was issued;

(ii) the presence of the building or structure on the relevant land may substantially hinder options for the future use or allocation of the land;

(iii) the presence of the building or structure on the relevant land, or the condition of the building or structure, is likely to be a substantial liability for the State;

(iv) the building or structure is not in a good and substantial state of repair and it is not practicable to bring the building or structure into a good and substantial state of repair; and

(b) the permit was not subject to a condition requiring the building or structure to remain on the relevant land or prohibiting its removal.

(5) An improvements notice may require the remediation of the relevant land only if the chief executive is satisfied—

(a) the land has been affected by a building or another structure on the land; or

(b) the land has been, or is likely to be, affected by the removal of a building or another structure from the land.

(6) In deciding whether to give the person an improvements notice, the chief executive must consider any representations included in an improvements report given by the person.

(7) The improvements notice must be accompanied by or include an information notice about the decision to give the improvements notice.

(8) In this section—

relevant land, in relation to a permit that has been cancelled, means the land that was subject to the permit before its cancellation.

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180J Person must comply with improvements notice

(1) A person to whom an improvements notice is given (the ***recipient***) must comply with the notice.

Note—

See section 180K for the consequences of failing to comply with the notice.

(2) For taking action to comply with the improvements notice, the recipient, or another person (the ***contractor***) taking the action for the recipient, may enter the land to which the notice applies only—

(a) with the consent of the chief executive; or

(b) if the recipient or contractor has given the chief executive a notice about the proposed entry at least 5 business days before the entry.

(3) The notice under subsection (2)(b) must inform the chief executive about—

(a) the intention to enter the land; and

(b) the purpose of the entry; and

(c) the days and times the entry is to be made.

(4) In taking the action, the recipient or contractor must take all reasonable steps to ensure the recipient or contractor does as little damage as is practicable in the circumstances.

(5) If a person incurs loss or damage because of action taken by the recipient or contractor, the person is entitled to be paid by the recipient or contractor the reasonable compensation because of the loss or damage that is—

(a) agreed between the recipient or contractor and the person; or

(b) failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(6) The court may make an order about costs it considers just.

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180K Noncompliance with improvements notice

(1) This section applies if a person to whom an improvements notice is given fails to comply with the notice.

(2) The State may—

(a) take the action required under the improvements notice; and

(b) recover from the person the reasonable costs of taking the action as a debt due to the State.

(3) For subsection (2)(b), the costs of removing a building or other structure include costs reasonably incurred in disposing of the building or structure or part of it.

Examples of disposal costs—

transport costs, dump fees, storage costs, costs of sale

Chapter 5 Matters affecting land holdings

Part 2 Conditions

Division 1 General mandatory conditions

198C Operation of div 1

(1) This division provides for particular conditions of leases, licences and permits.

(2) Each condition under this division or under another provision mentioned in schedule 1A, that applies to a lease, licence or permit is a ***mandatory condition*** of the lease, licence or permit.

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(3) This division does not limit the conditions that the designated officer may, under division 2 or another provision of this Act, impose on a lease, licence or permit, or that are regulated conditions of a lease, licence or permit under division 3A.

198D Mandatory conditions need not be registered

To remove any doubt, it is declared that a mandatory condition of a lease, licence or permit binds the lessee, licensee or permittee even though the condition is not registered.

199 Duty of care condition

(1) All leases, licences and permits are subject to the condition that the lessee, licensee or permittee has the responsibility for a duty of care for the land.

(2) If a lease is issued for agricultural, grazing or pastoral purposes, the lessee's duty of care includes that the lessee must take all reasonable steps to do the following in relation to the lease land—

(a) avoid causing or contributing to land salinity that—

(i) reduces its productivity; or

(ii) damages any other land;

(b) conserve soil;

(c) conserve water resources;

(d) protect riparian vegetation;

(e) maintain pastures dominated by perennial and productive species;

(f) maintain native grassland free of encroachment from woody vegetation;

(g) manage any declared pest;

(h) conserve biodiversity.

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(3) However, if the lease land is also a special wildlife reserve or nature refuge under the *Nature Conservation Act 1992*, the lessee's duty of care does not include, or no longer includes, the requirements mentioned in subsection (2)(e) and (f).

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

(1) Licence land or permit land may be used only for the purpose for which the licence or permit was issued.

(2) Lease land may be used only for—

(a) the purpose for which the lease was originally issued; or

(b) if the purpose is changed under section 154, the purpose of the lease as changed.

(3) Lease land the subject of a term lease for pastoral purposes may be used only for agricultural or grazing purposes, or both.

(4) Despite subsections (2) and (3), lease land may be used—

(a) under an approved agreement for an indigenous cultural interest for the lease land; or

(b) for lease land that is also a special wildlife reserve or nature refuge under the *Nature Conservation Act 1992*—in a way permitted under that Act for the special wildlife reserve or nature refuge.

199B Conditions relating to buildings and other structures

All leases and permits are subject to the conditions that the lessee or permittee—

(a) must keep all buildings and other structures on the lease land or permit land in a good and substantial state of repair; and

(b) must not erect on the lease land or permit land a building or other structure that is not consistent with—

(i) for a lease—the purpose for which the lease was originally issued or, if the purpose is changed

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under section 154, the purpose of the lease as changed; or

(ii) for a permit—the purpose for which the permit was issued.

200 Noxious plants condition

(1) All leases, licences and permits are subject to the condition that the lessee, licensee or permittee must keep noxious plants on the land under control.

(2) If a person does not comply with subsection (1), the Minister may bring the noxious plants under control.

(3) The Minister's cost of bringing the noxious plants under control is a debt owing to the State and may be recovered from the person in a court of competent jurisdiction.

201 Information condition

All leases, licences and permits are subject to the condition that the lessee, licensee or permittee must give the Minister or the chief executive the information the Minister or the chief executive asks for about the lease, licence or permit.

202 Improvement condition

A term lease for pastoral purposes is subject to the condition that the lessee not make improvements or carry out development work on the lease within 2 years of the expiry of the lease, without the chief executive's written approval.

202AA Notice to transferee if lease land subject to indigenous cultural interest

(1) This section applies if—

(a) a lease is transferred; and

(b) the lease land is subject to an indigenous cultural interest.

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(2) The lease is subject to the condition that the lessee must, within 28 days after registration of the transfer, give notice of the transfer, and the effect of section 373ZK(2), to—

(a) if the approved agreement for the indigenous cultural interest is an indigenous access and use agreement—the indigenous parties for the interest; or

(b) if the approved agreement for the indigenous cultural interest is an indigenous land use agreement—

(i) the native title parties to the agreement, at their address as recorded in the Commonwealth ILUA register; and

(ii) the native title registrar.

202AB Notice to sublessee if lease land is or is to be subject to indigenous cultural interest

(1) Subsection (2) applies if—

(a) a proposed sublease is to be over lease land; and

(b) the lease land is subject to an indigenous cultural interest.

(2) The lessee for the lease land must give the sublessee a copy of the approved agreement for the indigenous cultural interest at least 28 days before the start of the sublease.

Maximum penalty—50 penalty units.

(3) Subsection (4) applies if—

(a) a sublease is over lease land; and

(b) the lease land is to be subject to an indigenous cultural interest.

(4) The lessee for the lease land must give the sublessee a copy of the approved agreement for the indigenous cultural interest at least 28 days before the indigenous cultural interest is registered.

Maximum penalty—50 penalty units.

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Division 2 Imposed conditions

202A Operation of div 2

(1) This division provides for conditions that may be imposed on leases, licences and permits.

(2) Each condition decided as a condition of a lease, licence or permit under this division, division 3, section 159, 167, 176A, 176L, 214E or a transition to sale agreement is an ***imposed condition*** of the lease, licence or permit.

(3) An imposed condition of a lease, licence or permit binds the lessee, licensee or permittee as well as any mandatory condition or regulated condition of the lease, licence or permit.

(4) This section is subject to section 202B.

202B Imposed condition must be registered

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

203 Typical conditions

A lease may be subject to any of the following conditions—

(a) about improvements or development on or to the land;

(b) about the care, sustainability and protection of the land;

(c) about the conversion or renewal of the lease;

(d) about the transfer or sublease of the lease;

(e) about the provision of reasonable services, roads and infrastructure external to but servicing the land;

(f) about time frames and milestones for finishing conditions over the term of the lease;

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(h) other conditions the Minister considers appropriate.

204 Survey condition

(1) A lease, licence or permit may be subject to a condition (a ***survey condition***) that the land must be surveyed under the *Survey and Mapping Infrastructure Act 2003* by, and at the cost of, the lessee, licensee or permittee.

(2) A survey condition may set a time within which the survey plan must be lodged in the land registry.

(3) If the person is able to demonstrate a good reason for not complying with a survey condition within the time stated, the Minister may extend the time.

(4) If a person does not comply with subsection (2), the Minister may arrange for the survey to be carried out or finished and charge the person the cost of the survey.

205 Tied condition

(1) A lease may be subject to a condition (a ***tied condition***) that it is tied to other land.

(2) Subsection (1) may apply even if both parcels of land are different tenures.

(3) It is a breach of condition of the lease if the lease or the other land are disposed of independent of each other.

208 Resumption condition

(1) A lease may be subject to a condition that—

(a) all or part of the lease may be resumed by giving the lessee 6 months notice; and

(b) if all or part of the lease is resumed—compensation will be paid only for improvements on the part of the lease resumed.

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(2) To remove any doubt, it is declared that no compensation is payable for the part of the lease resumed.

209 Performance security condition

(1) A lease, licence and permit may include a condition that the lessee, licensee or permittee give performance security for failure to comply with conditions under the lease, licence or permit.

(2) The Minister may approve a change of the amount of the performance security during the term of the lease, licence or permit.

Division 3 Changing and reviewing imposed conditions

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

(1) The designated officer for a lease, licence or permit may, with the lessee's, licensee's or permittee's agreement, change an imposed condition of the lease, licence or permit.

(2) A lessee, licensee or permittee may apply for a change under this section.

(3) The application must be accompanied by the written consent of all persons with a registered interest in the lease land.

(4) However, consent under subsection (3) must not be unreasonably withheld.

(5) A change made under this section must be registered.

(6) The change has no effect until it is registered.

(7) Once the change is registered, the imposed condition is taken to be the condition as amended by the change.

(8) No fee is payable for registering the change.

(9) In this section—

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

211 Reviewing imposed conditions of lease

(1) If, under section 176X, the Minister is reviewing a land management agreement for a lease, the Minister must also review the imposed conditions of the lease.

(2) If there is no land management agreement for a lease, the Minister must consider whether to carry out a review (a ***standard review***) of the imposed conditions of the lease at least once every 15 years after the lease started.

(3) However, a standard review must not be made within 10 years after the lease started or after its last standard review.

(4) A review under this section must be carried out in consultation with the lessee.

212 Minister may change imposed conditions after review

(1) After reviewing a lease, the Minister may decide, with or without the lessee's agreement, to change an imposed condition (a ***review change***) about the protection and sustainability of the lease land.

(2) The lessee must be given notice of the decision and the reasons for the decision.

(3) The lessee may appeal against the decision if the lessee considers the change is not necessary to protect or help the sustainability of the lease land.

(4) On the first business day after the appeal expiration day for the decision, the change must be lodged for registration.

(5) The change has no effect until it is registered.

(6) Once the change is registered, the imposed condition is taken to be the condition as amended under the change.

(6A) No fee is payable for registering the change.

(7) No compensation is payable by the State for a review change.

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Division 3A Regulated conditions

212A Operation of div 3A

(1) This division provides for particular conditions of leases, licences or permits that are provided for under a regulation.

(2) Each condition that a regulation states is a condition of a lease, licence or permit is a ***regulated condition*** of the lease, licence or permit.

(3) A regulated condition of a lease, licence or permit binds the lessee, licensee or permittee as well as any mandatory condition or imposed condition of the lease, licence or permit.

212B Regulation may impose conditions

(1) A regulation may impose a condition on a category of leases, licences or permits.

(2) If a lease is of a category of leases to which a regulated condition applies, the lease becomes subject to that regulated condition when, under this Act—

(a) it is first granted; or

(b) if it is a term lease—

(i) it is granted as a renewed lease; or

(ii) its term is extended, other than for an extension under section 434B.

(3) If a licence or permit is of a category of licences or permits to which a regulated condition applies, the licence or permit becomes subject to that regulated condition when it is issued under this Act.

(4) If a lease, licence or permit is subject to a regulated condition (the ***original condition***) and the regulation is amended to change or omit the original condition, the lease, licence or permit continues to be subject to the original condition as if it had not been changed or omitted.

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(5) However, the designated officer for the lease, licence or permit may, if considered appropriate, and with the agreement of the lessee, licensee, or permittee—

(a) omit the original condition from the lease, licence or permit if the regulated condition is omitted from the regulation; or

(b) change the original condition if the regulated condition is changed in the regulation.

(6) Without limiting subsection (1), a category of leases may be identified for the purposes of a regulation under this section having regard to any of the following—

(a) whether the leases are freeholding leases, perpetual leases or term leases;

(b) their rental categories;

(c) what area of Queensland they are located in;

(d) a combination of any of the matters mentioned in paragraphs (a) to (c).

212C Regulated conditions need not be registered

To remove any doubt, it is declared that a regulated condition of a lease, licence or permit binds the lessee, licensee or permittee even though the condition is not registered.

Division 4 Compliance with conditions

213 Obligation to perform conditions

(1) A lessee, licensee or permittee must perform all of the conditions of the person's tenure, to the satisfaction of the designated officer for the type of tenure.

(2) If the lessee, licensee or permittee does not comply with subsection (1) the tenure may be cancelled or forfeited.

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

Note—

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

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

(5) In this section—

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

tenure means—

(a) for a lessee—the lessee's lease; or

(b) for a licensee—the licensee's licence; or

(c) for a permittee—the permittee's permit.

Division 5 Remedial action

214 Minister's power to give remedial action notice

(1) The Minister may give a lessee or licensee a notice (a ***remedial action notice***) to take stated remedial action, within the reasonable time stated in the notice, if—

(a) a ground for giving the notice exists; and

(b) section 214A has been complied with.

(2) For subsection (1)(a) a ground for giving the notice is that—

(a) the Minister is satisfied the lessee or licensee is—

(i) using the lease land or licence land—

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(A) in a way that is not fulfilling the lessee's or licensee's duty of care for the land, under section 199; or

(B) in a way that is likely to cause, or that has caused, land degradation; or

(ii) breaching a condition of the lease or licence, other than a condition that there must be a land management agreement for the lease; or

Note—

A lease may be forfeited under section 234(b) for breach of a condition of the lease that there must be a land management agreement for the lease.

(iii) in contravention of a provision of this Act in relation to the lease or licence; or

(b) the Minister has carried out a review under section 176X and, because of the review, the Minister considers that the stated remedial action is necessary or desirable.

(3) If the notice relates to a lease and is given on the ground the Minister is satisfied the lessee has breached a condition of the lease applying under section 199B, the remedial action may require the lessee to—

(a) for the breach of a condition applying under section 199B(a)—carry out repairs to bring a stated building or another structure into a good and substantial state of repair; or

(b) for the breach of a condition applying under section 199B(b)(i) or (ii)—remove or demolish a stated building or another structure.

(4) If the notice relates to a lease and there is a land management agreement for the lease, the remedial action may include requiring the lessee to enter into an amended or a new land management agreement for the lease that includes stated provisions.

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(5) The lessee or licensee must be given a notice of the decision to give the remedial action notice and the reasons for the decision.

214A Steps required before giving remedial action notice

(1) This section applies if the Minister proposes to give a lessee or licensee a remedial action notice.

(2) The Minister must give the lessee or licensee a notice (a ***warning notice***) stating each of the following—

(a) that the Minister proposes to give the lessee or licensee a remedial action notice;

(b) the remedial action under the proposed remedial action notice;

(c) the grounds for giving the proposed remedial action notice;

(d) the facts and circumstances that are the basis for the grounds;

(e) that the lessee or licensee may, within the reasonable period stated in the warning notice, make written submissions to show why the proposed remedial action notice should not be given.

(3) The submissions may include a plan (a ***remedial action plan***) for the taking of action to remedy the ground for the giving of the remedial action notice.

(4) The Minister must consider any written submissions made under subsection (3) within the stated period.

(5) The Minister may give the remedial action notice if, after complying with subsection (4), the Minister still believes the notice ought to be given.

(6) Without limiting subsection (5), the Minister may give the remedial action notice if the lessee or licensee does not, at any time, comply with any remedial action plan included in the submissions.

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(7) The remedial action required under the remedial action notice may be different to the remedial action stated in the warning notice.

214B Appeal against decision to give remedial action notice

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

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

(1) This section applies if a lessee or licensee is given a remedial action notice.

(2) The notice must be registered.

(3) On registration of the notice, it is a condition of the lease or licence the subject of the notice that the lessee or licensee must, from the day the notice is given, take the action required under the notice.

(4) However, if any appeal against the decision to give the notice is upheld—

(a) the notice is cancelled and it is taken never to have been registered or to have had any effect; and

(b) the cancellation must be registered; and

(c) the condition is taken never to have been a condition of the lease.

(5) No compensation is payable by the State in relation to the condition or anything required to be done under the notice before its cancellation.

(6) No fee is payable for registration under this section.

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214D Failure to comply with remedial action notice

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

Maximum penalty—400 penalty units.

Note—

This provision is an executive liability provision—see section 431J.

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

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

(1) This section applies if a lessee is convicted of an offence against section 214D(1), whether or not a remedial action order is made.

(2) The Minister may decide to do all or any of the following—

(a) reduce the term of the relevant lease;

(b) impose additional conditions on the lease;

(c) require a land management agreement to be entered into for the lease land.

(3) However, the Minister can not reduce the term by an amount that results in the lease no longer having an unexpired term.

Note—

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

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

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214F Provisions about reduction or additional conditions

(1) This section applies if, under section 214E(2), the Minister decides to reduce the term of, or impose additional conditions on, a lease.

(2) The lessee must be given a notice of the decision and the reasons for it.

(3) The lessee may appeal against the decision.

(4) The decision does not take effect until the first business day after the appeal expiration day for the decision.

(5) As soon as practicable after the decision takes effect, the reduction or additional conditions must be registered.

(6) The reduction or additional conditions have effect from their registration.

(7) No fee is payable for registration under this section.

(8) No compensation is payable by the State for the reduction or the imposition of the additional conditions.

214G Noncompliance with particular remedial action notice

(1) This section applies if a lessee fails to comply with a remedial action notice requiring the lessee to take remedial action mentioned in section 214(3)(a) or (b) in relation to a stated building or another structure, whether or not the lessee has been convicted of an offence against section 214D(1) for the noncompliance.

(2) The State may—

(a) take the remedial action required under the remedial action notice; or

(b) if the remedial action required is the repair of a building or another structure—remove or demolish the building or structure if it would not be in the public interest for the State to carry out the repairs to the building or structure.

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(3) Also, the State may recover from the person the reasonable costs of taking the action under subsection (2)(a) or (b) as a debt due to the State.

(4) Further, the Minister may decide whether it is appropriate in the circumstances to forfeit the lease.

(5) Without limiting subsection (4), the Minister may decide it is appropriate to forfeit the lease if—

(a) the action required under the remedial action notice is the removal or demolition of a stated building or another structure; and

(b) the building or structure is integral to the purpose for which the lease has been issued or, if the purpose has been changed under section 154, the purpose as changed.

Division 6 Compliance notices

214H Authorised officer may give compliance notice to permittee

(1) This section applies if an authorised officer reasonably believes a permittee is breaching, or has breached, a condition of the person's permit.

(2) The authorised officer may give the permittee a notice (a ***compliance notice***) requiring the permittee to remedy the breach, including by refraining from doing an act.

(3) The compliance notice must be accompanied by or include an information notice about the decision to give the compliance notice.

(4) However, if it is not practicable to comply with subsection (3), the authorised officer must give the permittee the information notice as soon as practicable after the compliance notice is given.

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214I Requirements for compliance notice

(1) A compliance notice must state the following matters—

(a) that the authorised officer reasonably believes the permittee to whom the notice is given is breaching, or has breached, a condition of the person's permit;

(b) the condition the authorised officer believes is being, or has been, breached;

(c) the nature of the breach;

(d) the reasonable steps the permittee must take to remedy the breach;

(e) the reasonable period within which the permittee must take the steps to remedy the breach.

(2) If the compliance notice requires the permittee to carry out work, it must also give details of the work involved.

(3) If the compliance notice requires the permittee to refrain from doing an act, it must also state—

(a) the period for which the requirement applies; or

(b) that the requirement applies until further notice.

214J Failure to comply with compliance notice

(1) A person to whom a compliance notice is given under this division must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—400 penalty units.

(2) If a person is convicted of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, make—

(a) an order (a ***compliance order***) that the person comply with all or part of the compliance notice within a stated period; and

(b) any other orders the court considers appropriate.

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(3) Without limiting subsection (2)(b), if the compliance notice requires the person to remove a thing from the land to which the person's permit relates, the court may order that the thing be forfeited to the State if the person fails to remove the thing within the period stated in the compliance order.

214K State may take action and recover costs

(1) This section applies if a person subject to a compliance order does not comply with the order within the period stated in the order.

(2) The State may—

(a) take the action required under the compliance order; and

(b) recover from the person the reasonable costs of taking the action as a debt due to the State.

214L How forfeited property may be dealt with

(1) This section applies if a thing is forfeited to the State because of a person's noncompliance with a compliance order.

(2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it, giving it away or otherwise disposing of it.

(3) However, the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the making of the compliance order.

(4) The State may recover from the person the reasonable costs of disposing of the thing as a debt due to the State.

Examples of disposal costs—

transport costs, dump fees, storage costs, costs of sale

(5) If the chief executive sells the thing or any part of it, the amount for which the thing or part is sold must be offset against—

(a) the amount the State may otherwise recover under subsection (4); and

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(b) any amount the State may otherwise recover under section 214K for doing a thing required under the compliance order.

(6) If the amount for which the thing or part is sold is greater than the total of the amounts mentioned in subsection (5)(a) and (b), the chief executive must, after deducting the total of those amounts, make reasonable efforts to return the proceeds of the sale to the person.

Part 3 Resumption and compensation

Division 1 Resumption of a lease or easement

215 Application of division

(1) This division applies to the resumption of a lease and the taking or cancellation of an easement.

(2) However, the division does not apply to—

(a) the resumption of a lease under a condition of the lease; or

Note—

See division 2.

(b) the resumption of possession of part of a lease subject to a reservation.

Note—

See division 3.

216 Resumption of lease

(1) A lease or part of a lease may be resumed by order in council.

(2) If an easement over a lease is adequate for a purpose, an order in council may take an easement over the lease instead of resuming the lease.

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(3) The taking of an easement is a resumption under this division.

(4) An order in council under this part is not subordinate legislation.

217 Resumption of an easement

(1) An easement over unallocated State land or a reserve may be cancelled by order in council.

(2) The cancellation of an easement is a resumption under this division.

218 Resumption for constructing authorities

(1) A resumption may be for a constructing authority other than the State.

(2) The costs incurred by the State for the resumption must be paid by the constructing authority.

(3) The costs incurred are payable even if the resumption is discontinued.

(4) Costs outstanding are a debt payable to the State and may be recovered by the State from the constructing authority in a court of competent jurisdiction.

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

Note—

Under the *Acquisition of Land Act 1967*, section 5(3) the resumption must be for a purpose for which a constructing authority may take land.

219 Effect of resumption

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

(2) If an easement is taken, the rights in the easement vest—

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(a) in the State; or

(b) if the resumption is made for a constructing authority—in the constructing authority.

(3) Every person who has a lawful interest in—

(a) a resumed lease, or part of a resumed lease; or

(b) part of a lease affected by the taking of an easement; or

(c) an easement cancelled by order in council;

(a ***compensation claimant***) has a right to claim compensation as prescribed by the *Acquisition of Land Act 1967*.

220 Service of order in council

(1) The Minister must serve a copy of the order in council on each person who has a registered interest in—

(a) the lease affected by the resumption; or

(b) the easement cancelled.

(2) The copy must be served immediately after notification of the order in council in the gazette.

(3) Failure to comply with subsection (1) or (2) does not affect the validity of the order in council.

221 Application of Acquisition of Land Act 1967

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

(a) a reference to a constructing authority is a reference to the State;

(b) a reference to the owner of land is a reference to the lessee of the lease affected by the resumption;

(c) the compensation claimant refers the claim for compensation to the court by filing in the office of the registrar of the court—

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(i) copies of the claim given by the claimant to the State; and

(ii) a copy of the order in council that effected the resumption;

(d) all other necessary changes and any changes prescribed under the regulations.

Note—

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

(2) If a resumption is made of a freeholding lease that has been converted from a perpetual lease, the compensation payable must not be less than the compensation that would have been payable had the conversion not happened.

222 Revoking a resumption

(1) A resumption may be revoked by repealing the order in council effecting the resumption.

(2) The revocation may be made only before compensation has been paid or decided by the court.

(3) On repeal of the order in council, the resumption is taken not to have happened.

(4) However, a compensation claimant is entitled to claim compensation only for loss, reasonable costs and expenses incurred by the claimant in relation to the resumption before it was revoked.

(5) The Minister must decide the amount of the loss, costs and expenses.

(6) The compensation claimant may appeal against the Minister's decision.

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

223 Application of division

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

224 Resumption of lease

(1) A lease or part of a lease may be resumed by the Minister.

(2) However, the resumption must be in accordance with the condition in the lease allowing the resumption.

225 Effect of resumption

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

(2) The owner of lawful improvements on the lease has the right to claim the compensation allowed under this division.

(3) To remove any doubt, it is declared that the lessee is the owner of improvements made to the lease by the State only if the lessee has paid for the improvements.

226 Compensation limited to improvements

(1) Compensation for a resumption under this division is payable only for lawful improvements on the lease or part of the lease resumed.

(2) The compensation is the value of the improvements on the day the resumption takes effect.

(3) The Minister must decide the compensation payable.

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(4) The value of the improvements must be assessed as their market value in a sale of the lease if the lease had not been resumed.

(5) The lessee may appeal against the Minister's decision.

227 Development work an improvement

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

Division 3 Resumption of a reservation for a public purpose

228 Application of division

This division applies to a lease, a deed of grant or a deed of grant in trust, containing a reservation for a public purpose and states the area of land reserved.

229 Resumption of reservation

(1) Possession of the area or part of the area of a lease, deed of grant or deed of grant in trust reserved for a public purpose may be resumed by order in council.

(2) If the reservation area is identified by description, the resumption may apply only to the land described.

(3) If the reservation area is not identified by description, possession of any part of the lease, deed of grant or deed of grant in trust, up to the total area of the reservation, may be resumed.

230 Effect of resumption of possession

(1) If possession of all or part of the reservation is resumed, the resumed area becomes unallocated State land free of any interest or obligation.

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Note—

See, however—

(a) the *Geothermal Energy Act 2010*, sections 350A and 350B in relation to geothermal interests under that Act; and

(b) the *Greenhouse Gas Storage Act 2009*, sections 369A and 369B in relation to GHG interests under that Act; and

(c) the *Mineral Resources Act 1989*, sections 10AAA and 10AAB in relation to mining tenement interests under that Act; and

(d) the *Petroleum Act 1923*, sections 124A and 124B in relation to 1923 Act petroleum interests under that Act; and

(e) the *Petroleum and Gas (Production and Safety) Act 2004*, sections 30AA and 30AB in relation to petroleum interests under that Act.

(2) An owner of lawful improvements on the resumed area has a right to claim the compensation allowed under this division.

(3) To remove any doubt, it is declared that the lessee, trustee or registered owner is the owner of improvements made by the State on the resumed area only if the lessee, trustee or registered owner has paid for the improvements.

231 Application of Acquisition of Land Act 1967

The *Acquisition of Land Act 1967*, part 4 applies to a claim for compensation for a resumption of possession under this division with the following changes—

(a) a reference to a constructing authority is a reference to the State;

(b) a reference to the owner of land is a reference to the owner of improvements affected by the resumption;

(c) the owner of improvements refers the claim for compensation to the court by filing in the office of the registrar of the court—

(i) copies of the claim given by the owner of improvements to the State; and

(ii) a copy of the order in council effecting the resumption;

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(d) all other necessary changes and any changes prescribed by the regulations.

Note—

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

232 Compensation limited to improvements

(1) Compensation for a resumption of possession under this division is payable only for lawful improvements on the resumed area.

(2) The compensation is the value of the improvements on the day the resumption takes effect.

(3) The Minister must decide the compensation payable.

(4) The value of the improvements must be assessed as their market value in a sale of the land if possession of the land had not been resumed.

(5) The owner of the improvements may appeal against the Minister's decision.

233 Development work an improvement

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

Part 4 Forfeiture

Division 1 Grounds for forfeiture

234 When lease may be forfeited

A lease may be forfeited—

(a) if the lessee defaults in the payment of an amount payable to the State under this Act for the lease; or

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Note—

A rent and instalment regulation may allow the Minister to take action for non-payment.

(b) if the lessee breaches a condition of the lease, other than—

(i) a condition of the lease applying under section 199B(a) or (b); or

(ii) a condition that the lessee comply with a land management agreement for the lease; or

Note—

A breach of a condition mentioned in subparagraph (i) or (ii) may be dealt with by a remedial action notice.

(c) if the lessee fails to comply with a remedial action notice requiring the lessee to take remedial action to remedy a breach of a condition of the lease applying under section 199B(a) or (b); or

(d) if the lessee contravenes a provision of this Act in relation to the lease; or

(e) if the lessee is found by a court of competent jurisdiction to have acquired the lease by fraud; or

(f) if the lessee fails to comply with a remedial action order relating to the lease.

Division 2 Forfeiture of leases for non-payment

234A Application of div 2

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

235 Notice of forfeiture for outstanding amounts

(1) Before a lease is forfeited because of non-payment of an amount payable to the State under this Act for the lease, the

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Minister must give the lessee, any mortgagee and any relevant local government at least 28 days notice of the Minister's intention to forfeit the lease.

(2) The notice must state the amount outstanding and the amount of any interest accruing each day.

236 Designated person's options if amount unpaid

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

237 Minister may reinstate lease if payment made

If a lease is forfeited because of the non-payment of an amount payable to the State under this Act for the lease, the Minister may reinstate the lease if—

(a) the lessee makes payment of all amounts owing; and

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

Division 2A Forfeiture of leases by referral to court or for fraud

237A Application of div 2A

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

238 Application to the court for forfeiture

(1) This section does not apply to the forfeiture of a lease under section 234(e).

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(2) Before the lease is forfeited, the Minister must refer the matter to the court to decide whether the lease may be forfeited.

(3) The Minister must give the lessee, any mortgagee and any relevant local government at least 28 days notice of the Minister's intention to refer the matter to the court.

(4) The notice must state the grounds on which the Minister considers the lease may be forfeited.

(5) A copy of the notice must be filed in the court at the same time as the Minister refers the matter to court.

239 Designated person's options

(1) This section applies—

(a) if the court decides the lease may be forfeited under section 238; or

(b) for a lease that may be forfeited under section 234(e).

(2) The designated person may—

(a) forfeit the lease; or

(b) decide not to forfeit the lease, but instead to—

(i) allow the lease to continue but subject to the conditions the designated person considers appropriate; or

(ii) allow the lessee to convert the lease to a lease of a lesser tenure, for the same or a lesser area, and subject to the conditions the designated person considers appropriate; or

(iii) allow the lessee to sell the lease within a time decided by the designated person; or

(iv) allow any mortgagee, any relevant local government or the chief executive to sell the lease under this part.

(3) A mortgagee of a term or a perpetual lease may appeal against a decision under subsection (2)(b)(iv) to allow an entity other than the mortgagee to sell the lease.

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(4) A relevant local government of a term or a perpetual lease may appeal against a decision under subsection (2)(b)(iv) to allow an entity other than the relevant local government to sell the lease.

Division 3A Sale of lease instead of forfeiture

Subdivision 1 Sale by lessee

240E Sale by lessee

(1) After receiving a notice under section 235(1) or 238(3), a lessee of a lease may apply, in writing, to the chief executive for permission to sell the lease.

(2) If the chief executive approves the sale of the lease by the lessee, the chief executive must give notice of the chief executive's approval to any mortgagee and any relevant local government.

Subdivision 2 Sale by mortgagee

240F Sale by mortgagee instead of forfeiture

(1) After receiving a notice under section 235(1) or 238(3), a mortgagee of a lease may apply, in writing, to the chief executive for permission to sell the lease.

Note—

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

(2) If the chief executive approves the sale of the lease by the mortgagee, the chief executive must give notice of the chief executive's approval to the mortgagee and the lessee.

(3) After receiving the notice approving the sale, the mortgagee must sell the lease as a mortgagee in possession under chapter 6, part 4, division 4.

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Note—

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

Subdivision 3 Sale by local government

240G Application

(1) After receiving a notice under section 235(1) or 238(3), a relevant local government may apply to the chief executive for approval to sell a lease.

(2) However, a relevant local government may only apply to sell a lease under subsection (1) if the lessee of the lease has overdue rates and charges payable to the relevant local government for the lease land.

(3) If the chief executive approves the sale of the lease by the local government, the chief executive must give notice of the chief executive's approval to the lessee and any mortgagee.

(4) In this section—

overdue rates and charges has the meaning given by the *Local Government Act 2009*.

240H Notice of approval

(1) If the chief executive approves the sale of the lease by the relevant local government under this subdivision, notice of the approval must be given to the lessee, the local government and any mortgagee.

(2) The notice must state the required period within which the local government must start the procedures for selling the lease.

240I Sale of lease

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

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(2) Subject to subsections (3) to (5), the *Local Government Act 2009*, to the extent that Act provides for the sale of land to recover overdue rates and charges relating to the land, applies to the sale of a lease under this subdivision.

(3) The local government must start the process of selling a lease under this subdivision within the required period stated in the notice under section 240H(2).

(4) The local government must set a reserve price for the sale of the lease by auction, or a price for the sale of the lease under an agreement, that is at least the total of all charges owing to the State under this Act relating to the lease.

(5) The local government must use the proceeds of the sale of the lease to pay the State the amount of all charges owing to the State under this Act relating to the lease before using the proceeds to pay any amount owing to the local government.

Subdivision 4 Sale by chief executive

240J Application of sdiv 4

This subdivision applies to a lease if the chief executive is allowed to sell the lease under section 236 or 239(2)(b)(iv).

240K Notice that chief executive may sell

(1) The chief executive must give notice to each person who has a registered interest in the lease land that the chief executive is allowed to sell the lease under this subdivision.

(2) The notice must state either—

(a) that the chief executive proposes to enter into possession of the lease and sell the lease under this subdivision; or

(b) that the chief executive proposes that the lessee and the chief executive enter into an agreement (a ***transition to sale agreement***) that will apply until the lease is sold under this subdivision.

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(3) The notice must advise the matters mentioned in—

(a) if the notice states the matter mentioned in subsection (2)(a)—section 240L; or

(b) otherwise—sections 240L, 240M and 240N.

(4) If the notice states that the chief executive proposes that the lessee and the chief executive enter into a transition to sale agreement, the notice must require the lessee to advise the chief executive, within the time stated in the notice, of whether the lessee wishes to enter into a transition to sale agreement.

240L Entry into possession and sale

(1) This section applies if the chief executive enters into possession of the lease to sell the lease under this subdivision.

(2) The chief executive must advise the lessee that the chief executive is entering into possession.

(3) The lessee must, in the lessee's capacity as lessee, immediately vacate the lease land.

(4) The chief executive enters into possession of the lease to the exclusion of the lessee's interests under the lease.

(5) If the lessee does not vacate the lease land under subsection (3), and is not otherwise entitled to possession, the lessee is a person who is unlawfully occupying the lease land.

Note—

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

(6) Until the chief executive sells the lease, the chief executive may act in the place of the lessee for all matters in relation to the administration of the lease, including for example for all matters concerning the holders of any subleases over the lease.

(7) The Minister may, for the proper administration of the lease until it is sold, change the imposed conditions as they apply to the lease, and may take action to have the changed conditions registered.

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(8) Despite subsection (6), the chief executive does not become liable to pay any amounts payable by the lessee in relation to the lease.

(9) Without limiting subsection (8), the chief executive is not liable to pay any amount payable by the lessee to the holder of any registered interest in the lease.

(10) While the chief executive is in possession, any amounts otherwise payable to the lessee by any person in relation to the lease, including rent payable by a sublessee, must be paid to the chief executive.

(11) The chief executive must execute the transfer of the lease.

240M Transition to sale agreement

(1) This section applies if the lessee and the chief executive enter into a transition to sale agreement.

(2) Until the chief executive sells the lease, the following apply—

(a) the Minister or chief executive may carry out a review of the imposed conditions of the lease as they apply to the lessee;

(b) the Minister or chief executive may, for the proper administration of the lease until it is sold, change the imposed conditions as they apply to the lessee, and may take action to have the changed conditions registered;

(c) the lessee must not, without the Minister's or chief executive's written approval, further deal with the lease;

(d) to the extent stated in the agreement—

(i) the lessee continues to pay rent payable under the lease; and

(ii) the lessee continues to receive rent and other amounts otherwise payable to the lessee in the lessee's capacity as lessee; and

(iii) the lessee remains in possession of the lease land; and

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(iv) the chief executive and other persons authorised by the chief executive may enter the lease land, including for purposes connected with the chief executive's sale of the lease; and

(v) improvements may be dealt with, and development work may be performed, by the lessee or the chief executive; and

(vi) the lessee must perform tasks directed to the ongoing day-to-day administration of the lease, including the maintenance of the lease land;

(e) the remedies for or consequences of a breach of the agreement are those stated in the agreement.

(3) The chief executive must execute the transfer of the lease.

(4) When the transfer of the lease is registered, the chief executive must cancel the registration of the transition to sale agreement.

(5) If the lessee is in possession of the lease when the transfer of the lease is registered, subject to the transition to sale agreement, the lessee must immediately vacate the lease land.

(6) If the lessee does not vacate the lease land under subsection (5), and is not otherwise entitled to possession, the lessee is a person who is unlawfully occupying the lease land.

Note—

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

240N Advice about entering transition to sale agreement

(1) This section applies if the notice under section 240K (the ***240K notice***) states that the chief executive proposes that the lessee and the chief executive enter into a transition to sale agreement, and within the time stated in the 240K notice by the chief executive—

(a) the lessee does not give notice that the lessee wishes to enter into a transition to sale agreement; or

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(b) the lessee advises the chief executive that the lessee does not wish to enter into a transition to sale agreement.

(2) This section also applies if—

(a) the 240K notice states that the chief executive proposes that the lessee and the chief executive enter into a transition to sale agreement; and

(b) within the time stated in the 240K notice, the lessee gives notice that the lessee wishes to enter into a transition to sale agreement; and

(c) the chief executive and the lessee—

(i) within the time stated for this subparagraph in the 240K notice or a longer time approved by the chief executive, do not execute a transition to sale agreement; or

(ii) earlier agree that the chief executive and the lessee are unable to agree on the terms of a transition to sale agreement.

(3) The chief executive may enter into possession of the lease and sell the lease under this subdivision unless the Minister or designated person takes action under subsection (4) or (5).

(4) If the lease was allowed to be sold by the chief executive under section 236, the Minister may withdraw the Minister's decision to allow the chief executive to sell the lease, and may take other action under section 236.

(5) If the lease was allowed to be sold by the chief executive under section 239(2)(b)(iv), the designated person may withdraw the designated person's decision to allow the chief executive to sell the lease, and may take other action under section 239.

240O Making and registration of transition to sale agreement

(1) The chief executive may enter into a transition to sale agreement.

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(2) A transition to sale agreement, including any amendment of a transition to sale agreement, has effect only if it is registered.

Note—

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

240P Auction or sale of lease

(1) This section states requirements that apply for the sale of the lease by the chief executive under this subdivision.

(2) The chief executive must first offer the lease for sale by public auction.

(3) However, the chief executive may with the Minister's written approval sell the lease by private contract.

(4) Sections 114(1), 115, 116 and 117 apply, with the necessary changes, to a sale by the chief executive under this subdivision.

Note—

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

(5) The lease must not be offered for sale by public auction, and the chief executive must not enter into a contract of sale under subsection (3), until at least 28 days after the chief executive has published a sale notice under applied section 114.

(6) The imposed conditions that are to apply to the lease after its sale and that are stated in the sale notice may be different from the imposed conditions applying to the lease before the sale.

(7) The consent of the holder of any registered interest in the lease is not required for the registration of the transfer of the lease.

(8) The imposed conditions that are to apply to the lease after the sale must be registered when the transfer is registered.

(9) If the sale of the lease is not completed within 2 years after this subdivision starts to apply to the lease—

(a) if the lease was allowed to be sold by the chief executive under section 236—the Minister may withdraw the

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Minister's decision to allow the chief executive to sell the lease, and may forfeit the lease under section 236; or

(b) if the lease was allowed to be sold by the chief executive under section 239(2)(b)(iv)—the designated person may withdraw the designated person's decision to allow the chief executive to sell the lease, and may forfeit the lease under section 239.

240Q Disposal of proceeds of sale

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

(a) firstly, to payment to the State of all costs properly incurred by the chief executive for the sale or any attempted sale;

(b) secondly, to payment to the State of all debts owing to the State under section 438;

(c) thirdly, to payment to the State of all costs properly incurred by the chief executive to rectify any damage caused to the land by the lessee;

(d) fourthly, to payment to the State of all costs properly incurred by the chief executive—

(i) if there was a transition to sale agreement—in the administration of the agreement; or

(ii) otherwise—in the administration of the lease;

(e) fifthly, to payment to the relevant local government of overdue rates payable to the local government under the *Local Government Act 2009*;

(f) lastly, to payment to the lessee.

240R Protection from liability

(1) The chief executive, and any person acting under the authority of the chief executive, does not incur civil liability for an act

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done, or omission made, honestly and without negligence under this subdivision.

(2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.

Division 4 Forfeiture

240S Notice of forfeiture

(1) If the designated person forfeits a lease, the chief executive must give the lessee and any mortgagee or relevant local government notice that the lease is forfeited.

(2) A notice that a lease is forfeited must be published in the gazette.

(3) A lease is forfeited by the registration of a forfeiture notice.

(4) The forfeiture notice must include the particulars of the gazette notice forfeiting the lease.

(5) The forfeiture of the lease takes effect on the day the forfeiture notice is registered.

(6) In this section—

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

241 Effect of forfeiture

On forfeiture of a lease—

(a) the lease ends; and

(b) the lessee is divested of any interest in the lease; and

(c) the lease land is free of any encumbrance; and

(d) the lease land—

(i) if the lease was a State lease—remains a reserve; or

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(ii) otherwise—becomes unallocated State land.

242 Lessee to give up possession on forfeiture

(1) On forfeiture of a lease, any person occupying the lease must immediately vacate the land.

(2) A person who fails to give up possession under subsection (1) is taken to be a person who is unlawfully occupying unallocated State land.

Note—

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

242A Minister may require improvements report and other information

(1) This section applies if the Minister has given a lessee a notice under section 235(1) or 238(3).

(2) The Minister may, by notice given to the lessee, require the lessee to give the Minister, within a stated reasonable period, a report (an ***improvements report***) that states the following information for each building or other structure on the lease land—

(a) the nature of the building or structure;

(b) the condition of the building or structure;

(c) the location of the building or structure;

(d) whether, if the lease is forfeited, the lessee proposes to apply under section 243(1A) to remove the building or structure.

(3) The lessee must comply with the notice.

(4) The improvements report may include representations about why the Minister should not give the lessee an improvements notice requiring the lessee to take action under section 244.

(5) The Minister may also, by notice given to the lessee, require the lessee, within a stated reasonable period, to—

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(a) give the Minister information, or further information, about a building or other structure on the lease land; or

(b) give the Minister a report, prepared by a person with a stated qualification or expertise and at the lessee's expense, about the condition of the buildings and other structures on the lease land.

(6) If the lessee fails to comply with a requirement made under subsection (5)(b)—

(a) the Minister may obtain the report; and

(b) the cost of obtaining the report may be recovered from the lessee as a debt due to the State.

243 Improvements on forfeited lease

(1A) The lessee of a forfeited lease may, within 14 days after the lease is forfeited, apply, in writing to the chief executive, to remove the lessee's improvements on the lease.

(1) The lessee may remove the improvements only with the written approval of, and within a time stated by, the chief executive.

(2) The improvements are forfeited to the State if—

(a) the chief executive has not given written approval for their removal; or

(b) the chief executive has given written approval for their removal but the improvements have not been removed within the time stated by the chief executive.

(3) The lessee has a right to payment for the improvements under part 5 unless the improvements become the property of the State for a lease forfeited because the—

(a) lessee acquired the lease by fraud; or

(b) lessee was not eligible to acquire or hold the lease.

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244 Minister may give improvements notice

(1) The Minister may, within 3 months after a lease is forfeited, give the person who, immediately before the forfeiture, was the lessee of the lease a notice (an ***improvements notice***) requiring the person, within a stated period, to—

(a) carry out repairs to bring a stated building or another structure on the relevant land into a good and substantial state of repair; or

(b) remove a stated building or another structure from the relevant land; or

(c) remediate the relevant land to the reasonable standard stated in the notice.

(2) For subsection (1), the stated period must be a reasonable period, of not less than 3 months, having regard to the nature of the action required under the improvements notice.

(3) An improvements notice may require the repair of a building or another structure only if the Minister is satisfied the building or structure is not in a good and substantial state of repair.

(4) An improvements notice may require the removal of a building or another structure only if the Minister is satisfied—

(a) 1 or more of the following applies for the building or structure—

(i) the building or structure is not consistent with the purpose for which the lease was originally issued or, if the purpose has been changed under section 154, the purpose of the lease as changed;

(ii) the presence of the building or structure on the relevant land may substantially hinder options for the future use or allocation of the relevant land;

(iii) the presence of the building or structure on the relevant land, or the condition of the building or structure, is likely to be a substantial liability for the State;

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(iv) the building or structure is not in a good and substantial state of repair and it is not practicable to bring the building or structure into a good and substantial state of repair; and

(b) the lease was not subject to a condition requiring the building or structure to remain on the lease land or prohibiting its removal.

(5) An improvements notice may require the remediation of the relevant land only if the Minister is satisfied—

(a) the land has been affected by a building or another structure on the land; or

(b) the land has been, or is likely to be, affected by the removal of a building or another structure from the land.

(6) In deciding whether to give the person an improvements notice, the Minister must consider any representations included in an improvements report given by the person.

(7) The improvements notice must be accompanied by or include an information notice about the decision to give the improvements notice.

(8) In this section—

relevant land, in relation to a lease that has been forfeited, means the land that was subject to the lease before its forfeiture.

244A Person must comply with improvements notice

(1) A person to whom an improvements notice is given (the ***recipient***) must comply with the notice.

Note—

See section 244B for the consequences of failing to comply with the notice.

(2) For taking action to comply with the improvements notice, the recipient, or another person (the ***contractor***) taking the action for the recipient, may enter the land to which the notice applies only—

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(a) with the consent of the Minister; or

(b) if the recipient or contractor has given the Minister a notice about the proposed entry at least 5 business days before the entry.

(3) The notice under subsection (2)(b) must inform the Minister about—

(a) the intention to enter the land; and

(b) the purpose of the entry; and

(c) the days and times the entry is to be made.

(4) In taking the action, the recipient or contractor must take all reasonable steps to ensure the recipient or contractor does as little damage as is practicable in the circumstances.

(5) If a person incurs loss or damage because of action taken by the recipient or contractor, the person is entitled to be paid by the recipient or contractor the reasonable compensation because of the loss or damage that is—

(a) agreed between the recipient or contractor and the person; or

(b) failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(6) The court may make an order about costs it considers just.

244B Noncompliance with improvements notice

(1) This section applies if a person to whom an improvements notice is given fails to comply with the notice.

(2) The State may—

(a) take the action required under the improvements notice; and

(b) recover from the person the reasonable costs of taking the action as a debt due to the State.

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(3) For subsection (2)(b), the costs of removing a building or other structure include costs reasonably incurred in disposing of the building or structure or part of it.

Examples of disposal costs—

transport costs, dump fees, storage costs, costs of sale

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

If a lease issued without competition for development purposes is forfeited, all project plans, feasibility studies and the results of investigations for the lease that have been given to the chief executive by the lessee become the property of the State.

Part 5 Payment for improvements

Division 1 Payment for improvements by incoming lessee etc.

246 Application of division

This division applies to land—

(a) that has been the subject of a lease that—

(i) has been forfeited; or

(ii) has been surrendered absolutely; or

(iii) has expired; or

(b) that has been the subject of an occupation licence that—

(i) has been cancelled; or

(ii) has been surrendered absolutely; or

(c) that has been set aside as a reserve if—

(i) the dedication of the reserve has been revoked; and

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(ii) the improvements on the reserve have been made by the trustee of the reserve, or by a person with the trustee's authority; or

(d) that has been the subject of a deed of grant in trust if—

(i) the deed of grant in trust has been cancelled or surrendered absolutely; and

(ii) the improvements on the land have been made by the trustee or a person with the trustee's authority.

247 Application of payment for improvements by incoming lessee or buyer

(1) If the State receives payment from an incoming lessee or buyer for the improvements and development work on land to which this division applies, the State must pay the amount to—

(a) for a lease—the previous lessee; or

(b) for an occupation licence—the previous licensee; or

(c) for a reserve—the person who owned the improvements on the reserve; or

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

(2) However, no amount is payable by the State to—

(a) a person mentioned in subsection (1), if the person waives the person's entitlement to payment of the amount; or

(b) a person who was a registered lessee of a lease, if the lease was forfeited because the lessee acquired the lease by fraud or was not eligible to acquire or hold the lease.

248 Unclaimed improvement amounts

If the chief executive can not find the person entitled to receive payment for the improvements or the person does not collect the amount from the State within 6 years from the day

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the State received the amount, the amount is forfeited to the State.

Division 2 Payment by the State for improvements

249 Payment by the State for improvements

(1) If a relevant term lease expires or is surrendered absolutely, or a perpetual lease for grazing or agricultural purposes is surrendered, and the State—

(a) sets aside any land, that was a part of the lease, as a reserve for a community purpose; or

(b) dedicates any land, that was a part of the lease, as a road;

the State must pay, to the person who was the lessee, the value of any lawful improvements on the part of the land set aside or dedicated.

(2) The value is the value of the improvements on the day of the expiry or surrender.

(3) The Minister must decide the amount payable.

(4) The value of the improvements must be assessed as their market value in a sale of a lease of the same term and tenure as the expired or surrendered lease.

(5) The lessee may appeal against the Minister's decision.

(6) To remove any doubt, it is declared that the lessee is the owner of improvements made to a lease by the State only if the lessee has paid for the improvements.

(7) In this section—

extension provisions means chapter 4, part 3, division 1B and division 2, subdivision 3.

relevant term lease means—

(a) a term lease for pastoral purposes; or

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(b) a term lease for agricultural or grazing purposes if—

(i) the lease is for rural leasehold land; and

(ii) the lease land is 1,000ha or more; and

(iii) the term is 20 years or more; and

(iv) it was granted under the renewal provisions or extended under the extension provisions.

Division 3 General

250 Amounts owing to the State to be deducted

If a lessee or other person is entitled to payment under this part, the State may deduct the following amounts from the amount payable to the lessee or other person—

(a) an amount in payment of expenses incurred by the State to rectify damage caused to the land by the lessee;

(b) any amount owing to the State under this Act.

251 Payment to mortgagee

If a lease was subject to a registered mortgage and payment is later made for improvements on the land, the Minister may deduct from the amount of the payment and pay to the mortgagee all or part of any amount owing to the mortgagee by the lessee under the mortgage on the day the lease ended.

Part 6 Protection of monitoring sites

252 Prohibition on interfering with monitoring marker or device

(1) This section applies if, under section 390ZD, a monitoring site has been established on lease land, licence land or permit land.

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(2) A person must not interfere with any of the following the existence of which the person knows or ought reasonably to know unless the person has a reasonable excuse—

(a) a marker for the monitoring site;

(b) a monitoring device that, under section 390ZD, has been installed or placed at the monitoring site.

Maximum penalty—100 penalty units.

(3) For subsection (2), a person is taken to know of the existence of a marker for the monitoring site and any monitoring device at the site if the marker—

(a) is made of steel or other durable material; and

(b) protrudes above the surface of the ground so as to be clearly visible; and

(c) has attached to it a tag bearing clearly legible words as follows, or words to the effect of the words 'Monitoring site marker. Interfering with this marker or any device at this site is an offence'.

(4) In this section—

interfere with includes damage, deface or tamper with.

253 Evidentiary provision for proceedings under s 252

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

(a) that stated land was, at a stated time, or during a stated period, a monitoring site established on stated lease land, licence land or permit land;

(b) that, at the time or during the period, all or any of the following applied—

(i) a marker for the monitoring site was installed or placed at the monitoring site;

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(ii) the marker complied with section 252(3)(a), (b) and (c);

(iii) a monitoring device was installed or placed at the monitoring site.

Chapter 5A Prescribed terms of particular interests

254 Definitions for chapter

In this chapter—

prescribed term, for a relevant interest, means a term that is prescribed under section 255 for interests of that type.

relevant interest means an interest in lease land, licence land, permit land or trust land created under this Act.

255 Regulation may prescribe terms

A regulation may prescribe a term to be a term of a type of relevant interest stated in the regulation.

256 Effect of prescribed term

(1) This section applies to a relevant interest if it is of a type for which there is a prescribed term.

(2) The relevant interest is subject to the prescribed term from—

(a) for a relevant interest that is required to be registered under this Act—

(i) if the interest was registered before the commencement of the prescribed term—the expiry of the transition period for the prescribed term; or

(ii) otherwise—the registration of the interest; or

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(b) for another relevant interest—

(i) if the interest was created before the commencement of the prescribed term—the expiry of the transition period for the prescribed term; or

(ii) otherwise—the creation of the interest.

(3) The prescribed term binds each person who holds the relevant interest and each successor in title of the person.

(4) If a term of a tenure document for the relevant interest, or another document creating the relevant interest, is inconsistent with the prescribed term, the prescribed term prevails to the extent of the inconsistency.

(5) This section applies despite any other provision of this Act, other than section 257.

(6) In this section—

transition period, for a prescribed term, means a period, prescribed by regulation, starting on the commencement of the prescribed term.

257 Amendment of prescribed term

(1) This section applies to a relevant interest that is subject to a prescribed term if the prescribed term is amended.

(2) The relevant interest is subject to the prescribed term as amended (the ***amended prescribed term***) from the expiry of the transition period for the amended prescribed term.

(3) This section applies despite any other provision of this Act.

(4) In this section—

transition period, for an amended prescribed term, means a period, prescribed by regulation, starting on the commencement of the amended prescribed term.

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Chapter 6 Registration and dealings

Part 1 Land registry and registers

Division 1 Land registry

275 Registers comprising land registry

The land registry includes the following registers—

(a) the leasehold land register;

(b) a register of reserves;

(c) a register of State forests and timber reserves;

(d) a register of nature conservation areas;

(e) a register of specified national parks;

(f) a register of land that has been vested in fee simple;

(g) a register of licences and permits;

(h) a register of unallocated State land;

(i) a register of State housing leases;

(j) the register of plantation licences;

(k) registers about land prescribed under a regulation under this Act;

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

Division 2 Registers

276 Registers to be kept by registrar of titles

The registrar of titles must keep the following registers—

(a) the leasehold land register;

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(b) a register of reserves;

(c) a register of State forests and timber reserves;

(d) a register of nature conservation areas;

(e) a register of specified national parks;

(f) a register of land that has been vested in fee simple;

(g) a register of licences and permits;

(h) a register of unallocated State land;

(i) a register of State housing leases;

(j) the register of plantation licences;

(k) registers about land prescribed under a regulation;

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

277 Form of registers

(1) A register kept by the registrar of titles may be kept in the form (whether or not in a documentary form) the registrar considers appropriate.

(2) Without limiting subsection (1), the registrar of titles may change the form in which a register or part of a register is kept.

277A Registration of document evidencing tenure

(1) If any of the following tenures are granted under this Act—

(a) a lease;

(b) a licence;

(c) a permit for a term of 12 months or more;

the tenure document for the tenure must be registered.

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

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278 Particulars that must be registered

The registrar of titles must register the particulars necessary to identify—

(a) every interest registered; and

(b) the name of the person who holds, and the name of each person who has held, the registered interest; and

(c) all documents registered in the register and when they were lodged and registered; and

(d) anything else required or needed to be registered under this or another Act.

279 Registration of land management agreements and transition to sale agreements

(1) This section applies if a land management agreement or transition to sale agreement in relation to a lease is made or amended.

(2) The following must be registered while the lease continues in force—

(a) the agreement;

(b) any amendment of the agreement from time to time;

(c) any cancellation or other ending of the agreement.

(3) A registered land management agreement is a relevant registered interest under the following—

(a) section 162(5);

(b) section 172(5), but only if the new tenure is a term lease or perpetual lease;

(c) section 176G(2);

(d) section 176S(2).

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279A Registration of documents lodged or matters notified under particular Acts

(1) If a document is lodged with the registrar of titles under a provision of the *Forestry Act 1959* or *Nature Conservation Act 1992*, the registrar must register the document in the appropriate register.

(2) If the registrar of titles is notified of a matter under a provision of the *Forestry Act 1959* or *Nature Conservation Act 1992* that affects land registered in the land registry, the registrar must record the matter in the appropriate register.

(3) If a conservation agreement is recorded in the land registry in relation to land, the agreement is taken to be—

(a) for sections 162(5), 164F(2)(d), 172(5), 176G(2) and 176S(2)—a relevant registered interest; or

(b) for sections 176(2)(c), 176K(3)(c), 240K(1), 240L(9), 325(1)(b), 327C(2) and 360D(2)—a registered interest.

280 Particulars that may be recorded

The registrar of titles may record in a register anything the registrar considers should be recorded to ensure the register is an accurate, comprehensive and usable record of the relevant land and dealings.

280A Particulars that must be recorded for specified national parks

(1) This section applies to land within a specified national park, the particulars of which are registered in more than 1 appropriate register.

(2) The registrar of titles must record in each appropriate register particulars sufficient to identify the information kept in each of the other appropriate registers relating to the land.

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280AA Particulars that may be removed

The registrar of titles may remove from a register anything recorded under section 280 if—

(a) the registrar no longer considers the thing should be recorded to ensure the register is an accurate, comprehensive and usable record of the land and dealings to which the register relates; and

(b) the removal of the thing will not prejudice the rights of the holder of an interest in a lease, licence, permit or reserve.

281 Other information may be kept

(1) The registrar of titles may keep separately from a register information the registrar considers necessary or desirable for the effective or efficient operation of the register.

(2) The information may include information given to the registrar of titles by another entity.

(3) A relevant entity is not civilly liable for an act done, or omission made, honestly and without negligence in relation to the giving or keeping of information under this section.

(4) Without limiting subsection (3), a relevant entity other than the registrar of titles is not civilly liable in relation to the giving or keeping of inaccurate information under this section if the relevant entity did not give the information to the registrar for keeping under this section.

(5) In this section—

relevant entity means—

(a) the registrar of titles; or

(b) the chief executive; or

(c) the Minister; or

(d) the State.

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282 Procedures on lodgement and registration of document

(1) When a document is lodged in the land registry, the registrar of titles must note on the document—

(a) the date and time of lodgement; and

(b) an identifying reference.

(2) When the document is registered, the registrar of titles must record the information mentioned in subsection (1)(a) and (b) in the appropriate register.

283 Documents form part of a register

(1) A registered document is part of the register to which it relates.

(2) A registered document forms part of the register from when it is lodged.

284 Entitlement to search a register

(1) A person may, on payment of the relevant titles registry fee—

(a) search and obtain a copy of—

(i) the particulars recorded about a lease, licence, permit or reserve; or

(ii) a registered document; or

(iii) a document that has been lodged but is not registered (whether or not it has been cancelled); or

(iv) information kept under section 281; and

(b) obtain a copy of the particulars recorded about a lease, licence, permit or reserve, or a registered document, certified by the registrar of titles to be an accurate copy.

(2) Subsection (1)(a)(iii) does not apply to a document destroyed by the registrar of titles.

(3) A search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, an office of the

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land registry during office hours on a day the office is open for business.

(4) Also, a search under subsection (1) may be carried out by, or a copy mentioned in subsection (1) obtained from, an entity engaged by the registrar of titles for the purpose of allowing persons to search the land registry or obtain copies of particulars, documents or other information kept in the registry.

(5) The registrar of titles may allow a person to carry out a search under subsection (1)(a) for—

(a) only part of the particulars recorded about a lease, licence, permit or reserve; or

(b) only part of a document lodged or deposited in the land registry; or

(c) only part of the information about a document lodged or deposited in the land registry.

(6) The registrar of titles may enter into an agreement with a department allowing the department to carry out a search, or obtain a copy, under this section without payment of the fee mentioned in subsection (1).

(7) However, the registrar of titles may enter into an agreement under subsection (6) only if the registrar is reasonably satisfied the information obtained from the search or the copy will not be—

(a) used for a commercial purpose, including, for example, the marketing or sale of the information or other information; or

(b) included in another database of information, in any form, other than with approval from the registrar.

(8) If the registrar of titles delegates the registrar's functions of keeping the land registry to the titles registry operator, subsections (4), (6) and (7) apply as if each reference to the registrar were a reference to the operator.

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284A Fee required to produce document under subpoena etc.

(1) This section applies if a fee is payable under section 284(1) for a person to obtain a copy of a document and—

(a) a subpoena requires the document to be produced; or

(b) a person has applied under the *Evidence Act 1977*, section 134A for the document to be produced for inspection.

(2) Despite any other law or rule of court, the registrar of titles is not required to produce, or provide a copy of, the document until the fee mentioned in section 284(1) is paid.

(3) Subsection (2) does not apply if a department is not required to pay a fee for the document under an agreement mentioned in section 284(6).

285 Evidentiary effect of certified copies of documents

(1) A document purporting to be a certified copy of the particulars recorded about a lease, licence, permit or reserve obtained under section 284(1)(b) is evidence of the particulars recorded.

(2) A document purporting to be a certified copy of a registered document obtained under section 284(1)(b) is evidence of the registered document.

285A Supply of statistical data

(1) The registrar of titles may enter into an agreement to supply statistical data derived from documents or information kept in the land registry.

(2) If the registrar of titles supplies statistical data under subsection (1)—

(a) the fees and charges applying for the supply of the data are the fees and charges agreed to in the agreement; and

(b) without limiting paragraph (a), the agreement may also state—

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(i) how the fees and charges are to be calculated; and

(ii) how payment of the fees and charges is to be made.

(3) Without limiting subsection (1), an agreement for the supply of statistical data may limit the use to which the data supplied may be put.

(4) An agreement for the supply of statistical data must include—

(a) a provision allowing the registrar of titles to exclude particulars from data supplied under the agreement, if the registrar is satisfied, on reasonable grounds, that inclusion of the particulars may result in the particulars being inappropriately disclosed or used; and

(b) a provision allowing the registrar of titles to prohibit disclosure, or limit distribution or use, of data supplied under the agreement.

(5) An agreement under this section must not provide for the obtaining of information or anything else that may be obtained under a search under section 284, other than section 284(1)(a)(iv).

(6) The registrar of titles must exclude land particulars and personal information from data supplied under the agreement.

(7) Subsection (6) applies despite anything in the agreement.

(8) If the registrar of titles delegates the registrar's function of keeping the land registry to the titles registry operator, this section applies as if each reference to the registrar were a reference to the operator.

(9) In this section—

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

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

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Division 3 General requirements for documents in registers

286 Form of documents

(1) A document lodged by a person or issued by the registrar of titles must be in the appropriate form.

(2) A document required or permitted to be executed must be in the appropriate form when it is executed.

(3) In this Act, a reference to a particular type of document is a reference to the document completed in the appropriate form.

286A Land practice manual

(1) The registrar of titles may keep a manual of land practice (by whatever name called) in the way the registrar considers appropriate, for the information and guidance of persons performing functions in relation to the land registry and other persons dealing with the land registry.

(2) The manual may include—

(a) directions given by the registrar of titles under—

(i) section 287(1)(b); or

(ii) the *Forestry Act 1959*, section 61RW(1)(b); or

(iii) the *Land Title Act 1994*, section 10(1)(b); and

(b) practices developed in the land registry, before or after the commencement of this section, for the depositing and lodging of documents, including practices directed at ensuring—

(i) there is consistency and efficiency in land registry processes; and

(ii) each register under this Act is an accurate, comprehensive and usable record; and

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(iii) the integrity of the registers included in the land registry is supported and maintained to the greatest practicable extent.

(3) The manual may include statements about additional information a person may be required to produce, or additional documents a person may be required to deposit, under section 305.

(4) The manual may provide for the registrar of titles' approval of the form of an electronic conveyancing document for the Electronic Conveyancing National Law (Queensland), section 7(1)(a).

(5) The registrar of titles must make the manual available to the public in the way the registrar considers appropriate.

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

286B Requiring plan of survey to be lodged

(1) The registrar of titles may—

(a) require a trustee of trust land who proposes to lease or otherwise deal with all or part of the land to lodge a plan of survey of the land; or

(b) require a lessee who proposes to sublease or otherwise deal with the lease or part of the lease to lodge a plan of survey of the lease land.

(2) The plan of survey must comply with the *Survey and Mapping Infrastructure Act 2003* and must be certified as accurate by a cadastral surveyor within the meaning of the *Surveyors Act 2003*.

287 Registered documents must comply with particular requirements

(1) A document may be registered only if—

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(a) the document is in the appropriate form and correctly executed; and

(b) the document complies with the directions of the registrar of titles about—

(i) how the appropriate form must be completed; and

(ii) how information to be included in or given with the document must be included or given; and

(c) if the Minister's or chief executive's approval is needed—the Minister or chief executive has given written approval to the transaction to which the document relates.

Note—

For the registration of particular documents under the *Forest Wind Farm Development Act 2020*, see also part 3, division 5 and part 4, division 6 of that Act.

(2) However, if a document is not in the appropriate form, it may be registered if the registrar of titles is satisfied it is not reasonable to require the document to have been executed in the appropriate form.

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

(4) Subsections (2) and (3) do not apply to an electronic conveyancing document.

287A Registration of, or dealing with, particular documents

(1) This section applies if a document is lodged or deposited other than in compliance with a requirement under this Act.

(2) The registrar of titles may register, or otherwise deal with, the document if the registrar is satisfied it is reasonable not to require the compliance.

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288 Certain documents must be signed

(1) A document transferring a lease, sublease or licence or creating an interest in a lease or sublease must be signed by—

(a) the transferor or the person creating the interest; and

(b) the transferee or the person in whose favour the interest is to be created or a legal practitioner authorised by the transferee or person.

(2) A total or partial discharge or release of mortgage need only be signed by the mortgagee.

(3) For a document that is an electronic conveyancing document, subsections (1) and (2) apply subject to the form approved for the document under the Electronic Conveyancing National Law (Queensland), section 7.

288A Original mortgagee to confirm identity of mortgagor

(1) This section applies to—

(a) the mortgaging of a lease or sublease; and

(b) an amendment of a mortgage mentioned in paragraph (a).

(2) Before the mortgage or amendment is lodged for registration, the mortgagee under the mortgage (the ***original mortgagee***) must take reasonable steps to ensure the person who is the mortgagor under the mortgage or amendment is identical with the person who is, or who is about to become, the lessee of the lease or sublessee of the sublease.

(2A) For subsection (2), a person is the mortgagor under a mortgage or amendment of mortgage if the person executes the mortgage or amendment as mortgagor, including, if the mortgage or amendment is an electronic conveyancing document, through a subscriber digitally signing the document under the Electronic Conveyancing National Law (Queensland).

(2B) Also, for subsection (2), a person is the mortgagor under a mortgage or amendment of mortgage if the mortgage or

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amendment is an electronic conveyancing document and the person signs, as mortgagor, a document that under the participation rules under the Electronic Conveyancing National Law (Queensland)—

(a) is required as a supporting document for the mortgage or amendment of mortgage; and

(b) is required to be kept by the original mortgagee.

(3) Without limiting subsection (2), the original mortgagee takes reasonable steps under the subsection if the original mortgagee complies with practices included in the manual of land title practice under section 286A(2)(c) for the verification of identification of mortgagors.

(4) The original mortgagee must, for 7 years after the mortgage or amendment is registered, and whether or not there is registered a transfer of the mortgage—

(a) keep, in the approved form, a written record of the steps taken under subsection (2); or

(b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the original mortgagee in complying with subsection (2).

Maximum penalty—20 penalty units.

(5) The registrar of titles may, whether before or after the registration of the mortgage or amendment, and whether or not there has been registered a transfer of the mortgage, ask the original mortgagee—

(a) to advise the registrar about the steps taken by the original mortgagee under subsection (2); and

(b) to produce for the registrar's inspection the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).

(6) The original mortgagee must comply with a request under subsection (5) unless the original mortgagee has a reasonable excuse.

Maximum penalty—20 penalty units.

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

288B Mortgage transferee to confirm identity of mortgagor

(1) This section applies to the transfer of the mortgage of a lease or a sublease.

(2) Before the transfer is lodged for registration, the transferee under the transfer (the ***mortgage transferee***) must take reasonable steps to ensure that the person who was the mortgagor under the mortgage was identical with the person who, when the mortgage was registered, was the lessee of the lease or sublessee of the sublease.

(2A) For subsection (2), a person was the mortgagor under a mortgage if the person executed the mortgage as mortgagor, including, if the mortgage is an electronic conveyancing document, through a subscriber digitally signing the document under the Electronic Conveyancing National Law (Queensland).

(2B) Also, for subsection (2), a person was the mortgagor under a mortgage if the mortgage is an electronic conveyancing document and the person signed, as mortgagor, a document that under the participation rules under the Electronic Conveyancing National Law (Queensland)—

(a) was required as a supporting document for the mortgage; and

(b) was required to be kept by the original mortgagee mentioned in section 288A(2).

(3) Without limiting subsection (2), the mortgage transferee takes reasonable steps under the subsection if the mortgage transferee complies with practices included in the manual of land title practice under section 286A(2)(c) for the verification of identification of mortgagors.

(4) The mortgage transferee must, for 7 years after the transfer of the mortgage is registered, and whether or not there is registered a further transfer of the mortgage—

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(a) keep, in the approved form, a written record of the steps taken under subsection (2); or

(b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the mortgage transferee in complying with subsection (2).

Maximum penalty—20 penalty units.

(5) The registrar of titles may, whether before or after the registration of the transfer of the mortgage, and whether or not there has been registered a further transfer of the mortgage, ask the mortgage transferee—

(a) to advise the registrar about the steps taken by the mortgage transferee under subsection (2); and

(b) to produce for the registrar's inspection the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).

(6) The mortgage transferee must comply with a request under subsection (5) unless the mortgage transferee has a reasonable excuse.

Maximum penalty—20 penalty units.

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

(8) However, this section applies in relation to a mortgage whenever executed.

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

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

Example—

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

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(2) Sections 288A and 288B continue to have effect in relation to the mortgage or transfer as if the mortgage were still registered under this Act.

(3) However, the *Land Title Act 1994*, sections 185(1A) and 189(1)(ab) have effect in relation to the mortgage.

(4) For applying subsection (3)—

(a) the references in the *Land Title Act 1994*, section 185(1A)(a) and (b) to the instrument of mortgage or amendment of mortgage are taken to be references to the relevant mortgage; and

(b) the references in the *Land Title Act 1994*, sections 185(1A)(a) and 189(1)(ab) to sections 11A(2) and 11B(2) of that Act are taken to be references to sections 288A(2) and 288B(2) respectively of this Act; and

(c) the reference in the *Land Title Act 1994*, section 185(1A)(b) to the registered proprietor of the lot or the interest in a lot is taken to be a reference to the lessee of the lease or the sublessee of the sublease.

289 Giving consent for dealings

(1) Subject to subsections (2) to (4), if the consent of a person is required or permitted for a dealing with a lease, sublease or licence, the consent must be—

(a) written on the document for the dealing (the ***relevant document***); or

(b) if the registrar of titles considers it appropriate—deposited with the relevant document.

(2) If the relevant document is an electronic conveyancing document, the person is taken to have complied with subsection (1) if the consent—

(a) is in the form of an electronic conveyancing document; and

(b) is deposited with the relevant document.

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(3) Subsection (4) applies if the relevant document is lodged or deposited in an electronic form by an electronic communication under—

(a) this Act or another law, other than the Electronic Conveyancing National Law (Queensland); and

(b) the *Electronic Transactions (Queensland) Act 2001*.

(4) The person is taken to have complied with subsection (1) if—

(a) a method is used to identify the person and to indicate the person's consent; and

(b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the consent was communicated; and

(c) the registrar of titles consents to the requirement being met by using the method.

290 Offence not to use appropriate form

If there is an appropriate form for a document, a person must not knowingly use a form for the document that is not the appropriate form.

Maximum penalty—20 penalty units.

Division 3A Format of plans of survey

290A Available formats for plans

(1) A plan of survey may be in a standard or volumetric format.

(2) The format to be used in the plan depends on how the plan is to define the land to which it relates.

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290B Standard format plan

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

Example of marks—

posts in the ground

290C Volumetric format plan

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

Division 3B Explanatory format plans

290D Explanatory format plan

(1) Despite section 286, the registrar of titles may approve the lodging of a plan relating to an interest in land other than a plan of survey (an ***explanatory format plan***) if the registrar is satisfied the land to which the interest relates may be accurately defined using—

(a) information already held in the land registry; or

(b) other information the registrar considers gives a high level of accuracy about the extent of the interest.

(2) Lodging an explanatory format plan, approved under this section, is sufficient compliance with a requirement under this Act to lodge a plan of survey.

Division 3C Plans of subdivision

290E Meaning of *plan of subdivision*

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

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(a) the division of 1 or more lots;

(b) the amalgamation of 2 or more lots to create a smaller number of lots;

(c) the dedication of land to public use;

(d) the redefinition of a lot on a resurvey.

290F Plan of subdivision may be registered

(1) A plan of subdivision may be registered in the appropriate register in the land registry.

(2) The plan takes effect immediately it is registered.

Example—

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

(3) The registration of a plan of subdivision does not limit anything the Governor in Council or Minister may do under this Act.

(4) On the registration of a plan of subdivision of transport land, the description of the land is amended as provided by the plan of subdivision.

(5) Subsection (4) is not limited by section 360 or 360A.

290G Standard format plan of subdivision

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

290H Volumetric format plan of subdivision

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

290I Division of lot on standard format plan of subdivision

(1) This section applies if a volumetric format plan of subdivision divides a standard format lot, creating 2 or more lots.

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(2) If, after the division, a created lot continues to be defined using a horizontal plane and references to marks on the ground, the created lot is a standard format lot.

290J Requirements for registration of plan of subdivision

(1) A plan of subdivision must—

(a) show all proposed lots marked with separate and distinct numbers; and

(b) show all proposed easements marked with separate and distinct letters; and

(c) distinctly show all roads, parks, reserves and other proposed lots that are to be public use land; and

(d) if it provides for any proposed public use land to be a reserve—state the community purpose of the reserve; and

(e) comply with the *Survey and Mapping Infrastructure Act 2003*; and

(f) be certified as accurate by a cadastral surveyor within the meaning of the *Surveyors Act 2003*; and

(g) if any land the subject of the plan of subdivision is the subject of a lease issued under this Act, include a statement agreeing to the plan by—

(i) if there is a mortgagee in possession of the lease—the mortgagee in possession; or

(ii) otherwise—the lessee of the lease; and

(h) if any land the subject of the plan of subdivision is the subject of an occupation licence under this Act and the licensee is surrendering all or part of the licence—include a statement agreeing to the plan by the licensee; and

(i) if a road is permanently closed under section 108—show the road as permanently closed; and

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(j) if a road permanently closed is amalgamated with land under section 109(2)—show the amalgamation; and

(k) be consented to by the Minister; and

(l) be consented to by—

(i) each person whose interests as a registered mortgagee are affected by the plan; and

(ii) each person whose interests as a registered sublessee are affected by the plan; and

(iii) each person whose interests as a registered grantee of an easement or profit a prendre are affected by the plan; and

(iv) if the land the subject of the plan of subdivision is the subject of a conservation agreement—the chief executive of the department in which the *Nature Conservation Act 1992* is administered; and

(m) include a statement identifying each lot created by the plan of subdivision that is to remain subject to the title reference for any lease, licence, reserve or unallocated State land affected by the plan.

(2) If the plan of subdivision defines the boundaries of a lease, or part of a lease, or another interest in land less than freehold, that is acquired by resumption under the authority of an Act—

(a) subsection (1)(g), (h), (k) and (l) does not apply; and

(b) the plan must be consented to by the acquiring entity.

(3) If the plan of subdivision relates only to transport land, the plan of subdivision need not be consented to by the Minister as otherwise would be required under subsection (1).

(4) If the plan of subdivision is needed to effect the absolute or partial revocation of a reserve or the absolute or partial cancellation of an occupation licence, subsection (1)(l) does not apply.

(5) Subsection (6) applies, despite subsection (1), if—

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(a) the land the subject of the subdivision is in a priority development area; and

(b) the plan of subdivision has been consented to by MEDQ.

(6) The plan must be registered without the consent of the Minister or anyone else whose consent would otherwise have been required for the plan if it otherwise complies with this section.

290JA Dedication of public use land in plan

(1) This section applies to the dedication of land to public use in a registered plan of subdivision.

(2) On the coming into effect of the plan, without anything further—

(a) if the dedication is for a reserve—the land is dedicated as a reserve for the community purpose or purposes stated in the plan; or

(b) if the dedication is for a road—the road is opened as a road; or

(c) if the dedication is for a non-tidal watercourse or a lake—the plan is taken to be the source material for the land for the *Survey and Mapping Infrastructure Act 2003*, section 99; or

Note—

The *Survey and Mapping Infrastructure Act 2003*, section 99 defines when a boundary of land is a non-tidal boundary (watercourse) or non-tidal boundary (lake). See section 13A of this Act for provisions about the ownership of land on the watercourse side or lake side of one of these boundaries.

(d) otherwise—the land becomes unallocated State land.

(3) Subsection (4) applies to an easement over a lot if—

(a) the easement is an easement for providing access or a right of way, including a public thoroughfare easement; and

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(b) the lot or a part of the lot is dedicated for a road under subsection (2).

(4) The easement is extinguished to the extent it is over the lot or the part of the lot dedicated for the road.

290JB Access for public use land

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

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

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

290K Particulars to be recorded when registered plan takes effect

In registering a plan of subdivision, the registrar of titles must record in the appropriate register—

(a) if the boundaries of land affected by the plan of subdivision are changed on the coming into effect of the plan—any new description as identified on the reverse of the plan; and

(b) if all or part of land affected by the plan of subdivision becomes a reserve on the coming into effect of the plan—the particulars of the reserve; and

(c) if all or part of land affected by the plan of subdivision becomes public use land other than a reserve or road—the particulars of the unallocated State land.

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290L Lodged plan that is withdrawn and relodged

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

290M Division excluding road or watercourse

(1) A lot may be divided by a plan of subdivision, even though there is a road or watercourse within the boundaries of the lot that is not part of the lot.

(2) However, the road or watercourse is not included in any lot created by the plan of subdivision, even though it may be within the boundaries of the lot.

290N Pre-examination of plans

(1) Nothing in this Act prevents the registrar of titles from examining a plan of survey and related instruments deposited before the plan is lodged for registration.

(2) Section 305 applies to a plan and related instruments deposited under subsection (1).

Division 3D Electronic conveyancing documents

290O Reference to a particular type of document includes its electronic conveyancing form

A reference in this Act to a document of a type that may be lodged or deposited under this Act includes a reference to the document in the form of an electronic conveyancing document.

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290P What is an *electronic conveyancing document*

(1) An ***electronic conveyancing document*** is a document under the Electronic Conveyancing National Law (Queensland) that—

(a) is of a type mentioned in schedule 6, definition *document*, paragraphs (a) to (g); and

(b) is lodged electronically under section 7 of the Law, in the land registry.

Note—

Under the Electronic Conveyancing National Law (Queensland), schedule 1, section 12(1), definition *document*, a document includes any record of information that exists in a digital form and is capable of being reproduced, transmitted, stored and duplicated by electronic means.

(2) Subsection (3) applies to a document that is lodged or deposited in an electronic form by an electronic communication under—

(a) this Act or another law, other than the Electronic Conveyancing National Law (Queensland); and

(b) the *Electronic Transactions (Queensland) Act 2001*.

(3) To remove any doubt, it is declared that the document is not an electronic conveyancing document.

290Q Signing or executing an electronic conveyancing document

If this Act provides for a document to be signed or executed and the document is an electronic conveyancing document, the document must be digitally signed as provided for under the Electronic Conveyancing National Law (Queensland).

290R Registering an electronic conveyancing document

For registering an electronic conveyancing document, the registrar of titles may rely on a certification made under the

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participation rules determined under the Electronic Conveyancing National Law (Queensland).

Division 4 Powers of the registrar of titles

291 Registrar of titles may correct registers

(1) The registrar of titles may correct a register mentioned in section 276 if the registrar is satisfied—

(a) the register is incorrect; and

(b) the correction will not prejudice the rights of the holder of an interest in the relevant lease, licence, permit or reserve.

(2) The registrar of titles' power to correct a register includes power to correct a particular in the register or a document forming part of the register.

(3) If a register is corrected, the registrar of titles must record in the register—

(a) the state of the register before the correction; and

(b) the time, day and circumstances of the correction.

(4) A register corrected by the registrar of titles under this section has the same effect as if the incorrect recording had not been made.

291A Correction for omitted easement

(1) Despite section 291(1)(b), the registrar of titles may otherwise act under section 291 to correct the leasehold land register to include the particulars of an easement (***easement particulars***) that have been omitted from the register in relation to a lease.

(2) For subsection (1), easement particulars are taken to have been omitted from the leasehold land register in relation to a lease only if—

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(a) the easement was in existence when the particulars of the lease were first registered, but the easement particulars have never been recorded in the leasehold land register against the lease; or

(b) the easement particulars have previously been recorded in the leasehold land register, but the current particulars in the leasehold land register about the lease do not include the easement particulars, other than because the easement has been extinguished in relation to the lease; or

(c) the document providing for the easement was lodged for registration but, because of an error of the registrar of titles, has never been registered.

(3) Subsection (2) applies whether or not the lease has at any time been transferred or otherwise dealt with.

(4) In subsection (2)(b)—

extinguished includes surrendered.

292 Lot-on-plan description

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

294 Registrar of titles may require public notice to be given of certain proposed action

(1) This section applies if a person (the ***applicant***) asks the registrar of titles to register a transmission of a registered interest.

(2) The registrar of titles, by notice, may require the applicant to give public notice of the request.

(3) The registrar of titles may specify in the notice to the applicant—

(a) what must be included in the public notice; and

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(b) how many times the public notice must be published; and

(c) how and when the public notice must be published.

(4) The applicant must satisfy the registrar of titles that the public notice has been given as required by the registrar.

Part 1A Building management statements

Division 1 Application

294A Application

This part applies only to transport land.

Division 2 Building management statements

294B Building management statement may be registered

(1) A building management statement may be registered.

(2) A ***building management statement*** is a document that—

(a) identifies lots to which it applies; and

(b) contains provisions benefiting and burdening the lots to which it applies; and

(c) otherwise complies with the requirements of this division for a building management statement.

(3) Each lot to which a building management statement applies must be a lot entirely or partly contained in, or entirely or partly containing, 1 or more buildings.

(4) However, a building management statement that otherwise complies with subsection (3) may also apply to a lot that is not entirely or partly contained in, and does not entirely or partly

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contain, 1 or more buildings if the lot is the subject of a building development approval.

(5) If a lot to which a building management statement applies is the subject of a plan of subdivision, the statement applies to each lot created by the registration of the plan.

(6) However, the registration of a building management statement does not limit anything the designated person may do, or the registrar of titles must do, under section 360 or 360A.

(7) In this section—

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

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

(1) The lots to which a building management statement applies must form a single, continuous area of land.

(2) A number of lots are taken to form a single, continuous area of land even if there is a road or watercourse within the external boundaries of the area comprising of the lots.

(3) Despite subsection (1), a building management statement may apply to lots that do not form a single, continuous area of land if the registrar of titles is satisfied, on reasonable grounds, that all the lots are located within an area that is sufficiently limited to ensure the effective and efficient application of the provisions of this division.

294C Circumstances under which building management statement may be registered

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

(2) The lots to which a building management statement applies must comprise—

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(a) 2 or more volumetric format lots; or

(b) 1 or more volumetric format lots, and 1 or more standard format lots.

294D Content of building management statement

(1) A building management statement must contain provisions about the following—

(a) the supply of services to lots;

(b) rights of access to lots;

(c) rights of support and shelter;

(d) insurance arrangements.

(2) A building management statement may contain provisions about the following—

(a) the establishment and operation of a management group;

(b) the imposition and recovery of levies, how levy amounts are to be kept and how levy amounts are to be spent;

(c) property maintenance;

(d) architectural and landscaping standards;

(e) dispute resolution;

(f) rules for common services and facilities;

(g) administrative arrangements;

(h) arrangements for accomplishing the extinguishment of the statement;

(i) proposed future development.

(3) To remove doubt, it is declared that a right of access, support or shelter, or other right in the nature of an easement, under a building management statement may operate according to its terms, and may be effective, despite the absence of a formal registered easement establishing the right.

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(4) A dispute resolution provision under a building management statement may operate to require the referral of a dispute arising under the statement other than to a court.

(5) However, the provision is ineffective to the extent that it purports to operate to stop final determination of the dispute in a court of competent jurisdiction.

294E Registration of building management statement

(1) When registering a building management statement, the registrar of titles must record a reference to the statement in the particulars for the lease in the appropriate register.

(2) However, the registrar of titles, though not obliged to examine, may examine a building management statement for its validity, including, in particular, its consistency with any plan of subdivision, or its compliance with the requirements for a building management statement.

(3) A registered building management statement binds the successors in title to the lessee of each lot to which the statement applies.

294F Amending a building management statement

(1) A building management statement may be amended by registering an instrument of amendment of the building management statement.

(2) The instrument of amendment must be signed by the lessees of all lots to which the building management statement applies.

(3) The instrument of amendment must not change the lots to which it applies.

294G Building management statement if lots owned by 1 lessee

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

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294H One person becoming lessee of all lots

If the same person becomes the lessee of all lots to which a building management statement applies, the building management statement is extinguished only if the lessee asks the registrar of titles to extinguish it.

294I Extinguishing a building management statement

(1) A building management statement may be extinguished by registering a document of extinguishment of the building management statement.

(2) A building management statement may be extinguished in part to remove a lot that is not contained in, or does not contain, a building or a part of a building, by registering an instrument of partial extinguishment of the building management statement.

(3) The instrument of extinguishment or partial extinguishment must be signed by the lessees of all lots to which the building management statement applies.

(4) However, a building management statement may be extinguished or partially extinguished only if—

(a) for a partial extinguishment—all registered mortgagees of a lot to be removed consent to the partial extinguishment; or

(b) otherwise—all registered mortgagees of lots to which the building management statement applies consent to the extinguishment.

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

(1) If a building management statement benefits or burdens both freehold and non-freehold land, the building management statement must be registered in the appropriate registers.

(2) Further dealings affecting the building management statement must also be registered in the appropriate registers.

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(3) If a lot subject to a building management statement, including a lot under the *Land Title Act 1994*, is surrendered to the State to be dealt with under this Act, the building management statement continues over the resulting unallocated State land only if the chief executive approves the continuation.

(4) In considering whether to approve the continuation of the building management statement, the chief executive may consider if it is reasonably necessary to benefit the lots, including the unallocated State land, the subject of the building management statement.

(5) If a building management statement continues over unallocated State land, the continuation must be recorded in the appropriate register.

(6) If unallocated State land, over which there is a building management statement, is dealt with under this Act—

(a) the chief executive may approve the building management statement continue; and

(b) if approved—the continuation of the building management statement must be recorded in the appropriate register.

Part 2 Registration and its effect

Division 1 Registration of documents

295 Right to have interest registered

(1) If a person lodges a document transferring or creating an interest in land under this Act, the registrar of titles must register the document if—

(a) the document has been correctly executed; and

(b) the person lodges the document and all other documents needed by the registrar to effect registration of the document; and

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(c) the document appears on its face to be capable of registration; and

(d) the person has otherwise complied with this Act for the registration of the document; and

(e) the document is not inconsistent with another Act or law; and

(f) if the document is a plan of survey—it is not inconsistent with another plan of survey.

(2) If the document is a plan of survey and it is inconsistent with another plan of survey, the registrar of titles may—

(a) give a notice to a person holding an interest in a lot that may be affected by registration of the plan of survey; or

(b) require the person who lodged the document to give a notice, in the way the registrar requires, to a person mentioned in paragraph (a).

(3) However, subsection (1) does not prevent the person from withdrawing the document before it is registered.

297 Order of registration of documents

(1) Documents about a single parcel of land must be registered in the order they are lodged.

(2) Subsection (1) is subject to section 308.

Note—

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

298 Priority of registered documents

(1) Registered documents have priority according to when each of them was lodged and not according to when each of them was executed.

(2) A document is taken to be lodged on the day and at the time endorsed on the document by the registrar of titles as the day and time of the lodgement unless the contrary is proved.

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(3) Subsection (1) is not affected by actual, implied or constructive notice.

299 When a document is registered

(1) A document is registered when the particulars about the document are recorded in the relevant register.

(2) This section applies subject to section 299A.

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

(1) A document is not registered, even though the particulars about the document are recorded in the relevant register, if—

(a) under this Act, the Minister's or chief executive's approval or consent, however described, is required for the document, including any aspect of the document, but the approval or consent has not been obtained; or

Examples—

- a plan of subdivision that has not been consented to by the Minister
- a transfer document if the chief executive has not given written approval to the transfer

(b) the terms of the document are inconsistent with the terms of any approval or consent, however described, given by the Minister or chief executive in relation to the document, including any aspect of the document.

(2) If under subsection (1) a document is not registered, the registrar of titles may correct the particulars included in the appropriate register in relation to the document.

(3) Subsection (1) applies to an approval or consent, however described, in relation to a document, whether or not the approval or consent is required to be endorsed on the document.

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(4) Subsection (1) does not affect the operation of a provision of this Act that provides for the approval or consent to be dispensed with.

Examples—

1 The Minister may, under section 333, give an authority to sublease without seeking the Minister's approval.

2 The chief executive may, under section 322AA, exempt particular persons from the requirement, under section 322(1)(b)(i), to obtain the chief executive's approval to a transfer of a lease.

Division 2 Consequences of registration

300 Benefits of registration

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

301 Interest in land not transferred or created until registration

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

302 Effect of registration on interest

(1) On registration of a document expressed to transfer or create an interest in land, the interest—

(a) is transferred or created in accordance with the document; and

(b) is registered; and

(c) vests in the person identified in the document as the person entitled to the interest.

(2) The person holds the interest subject to—

(a) all other interests in the land previously registered; and

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(b) all rights and interests of the State in the land, other than interests subsequently registered.

303 Evidentiary effect of recording particulars in the register

In all proceedings, the particulars of a registered document recorded in the register are conclusive evidence of—

(a) the registration of the document; and

(b) the contents of the document; and

(c) all things stated or implied in it by this or another Act; and

(d) when the document was lodged and registered.

Part 3 Documents

Division 1 General

304 Correcting unregistered documents

(1) The registrar of titles may correct an obvious error in a lodged document by noting the correction—

(a) on the document; or

(b) if the document is in electronic form—in the appropriate register.

(2) The registrar of titles may correct an obvious error in a lodged document only if the registrar is satisfied the document is incorrect and the correction will not prejudice the rights of a person.

(3) A document corrected by the registrar of titles under this section has the same effect as if the relevant error had not been made.

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305 Requisitions

(1) The registrar of titles, by notice (the ***requisition***) given to a person who has lodged or deposited a document, or to another person who reasonably appears to the registrar to be relevantly associated with the document, may require a person to—

(a) re-execute, complete or correct the document if it appears to the registrar to be wrong, incomplete or defective; or

(b) produce to the registrar stated information, or deposit a stated document, in support of the application to register a document.

(2) The registrar of titles may require the document or information to be verified by statutory declaration or affidavit.

(3) The requisition may—

(a) state when, and where, it must be complied with; and

(b) if it relates to an electronic conveyancing document, be accompanied by a copy of the document.

(4) The registrar of titles may extend the time for complying with a requisition.

(5) The registrar of titles may refuse to deal with a document lodged or deposited (and any document depending on it for registration) until the requisition is complied with.

(6) Also, subsections (7) and (8) apply in relation to a document that is lodged if the registrar of titles is satisfied—

(a) the document is not capable of registration; and

(b) the reason the document is not capable of registration is not a matter for which a requisition may be given under subsection (1).

(7) The registrar of titles may give notice (also the ***requisition***) to the person who lodged the document, or to another person who reasonably appears to the registrar to be relevantly associated with the document, stating—

(a) that the document is not capable of registration; and

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(b) why the document is not capable of registration.

(8) The requisition may, if it relates to an electronic conveyancing document, be accompanied by a copy of the document.

305A Electronic communication of statutory declaration or affidavit

(1) A person is taken to have complied with a requirement under section 305(2) to give the registrar of titles a statutory declaration or affidavit (the ***verifying document***) if the person gives a signed electronic form of the verifying document by electronic communication and—

(a) having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the verifying document provided a reliable way of maintaining the integrity of the information it contained; and

(b) when the communication was sent, it was reasonable to expect the information contained in the electronic form of the verifying document would be readily accessible so as to be useable for subsequent reference; and

(c) the registrar consents to the electronic form of the verifying document being given by electronic communication.

(2) The person is taken to have signed the electronic form of the verifying document if—

(a) a method is used to identify the person and to indicate the person's approval of the information communicated; and

(b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and

(c) the registrar of titles consents to the electronic form of the verifying document being signed by using the method mentioned in paragraph (a).

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306 Rejecting document after requisition given

(1) The registrar of titles may reject a document to which a requisition relates and any document that depends on it for registration if—

(a) for a requisition given under section 305(1)—the requisition is not complied with by a person within the time stated or extended by the registrar; or

(b) the requisition is given under section 305(7).

(2) A document rejected under subsection (1) loses its priority under section 298.

(3) If the registrar of titles rejects a document under subsection (1) the registrar must—

(a) give a written notice of the rejection to the person to whom the registrar gave the requisition for the document; and

(b) if the document is in paper form—return the document to the person who lodged or deposited it.

(4) A memorandum recording the rejection of a document may be endorsed on the rejected document or recorded in a separate record kept in the relevant register.

(5) An electronic conveyancing document that has been rejected under subsection (1) can not be relodged.

(6) Subject to subsection (5), this section does not prevent relodgement of a document rejected under subsection (1)(a) after the requisition has been complied with.

306A Forfeiture of fee on rejecting document

(1) If a document (the ***rejected document***) is rejected by the registrar of titles under section 306(1), the titles registry fee paid for lodging the document is forfeited.

(2) Subsection (3) applies if—

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(a) the rejected document changes the lessee of a lease, the licensee of a licence or the holder of an interest in a lease or licence, for more than 1 lease or licence; and

(b) the titles registry fee paid for lodging the rejected document included an amount for each additional lease or licence; and

(c) the rejected document is relodged within 1 year after being rejected.

(3) The titles registry fee payable for relodging the document is the titles registry fee that would be payable if the document related to only 1 lease or licence.

307 Borrowing lodged or deposited document before registration

(1) The registrar of titles may permit any of the following persons to borrow a document lodged or deposited in paper form before the document is registered or used for the purpose for which it was deposited—

(a) the person who lodged or deposited the document;

(b) a person for whom the document was lodged or deposited;

(c) an agent of a person mentioned in paragraph (a) or (b).

(2) The person must return the document within the time stated or extended by the registrar of titles, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—50 penalty units.

308 Withdrawing lodged document before registration

(1) The registrar of titles may withdraw a document, or permit a document to be withdrawn, if the registrar is satisfied—

(a) the document will not give effect to the intention expressed in it or a related document because of the

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order in which the document has been lodged in relation to other documents; or

(b) the document should not have been lodged, including, for example, because the document can not be given legal effect.

Example of a document that can not be given legal effect—

a power of attorney that names the same person as principal and attorney

(2) A document withdrawn by the registrar of titles under subsection (1) remains in the land registry, unless the document is a document that should not have been lodged.

(3) The registrar of titles may relodge a document that has been withdrawn by the registrar.

(4) On receiving a written application, the registrar of titles may permit the applicant to relodge a document that the registrar has permitted to be withdrawn.

(5) A document withdrawn under subsection (1) loses its priority and is taken to have been lodged on the day and at the time endorsed on it by the registrar of titles on its relodgement.

309 Registrar of titles may call in document for correction or cancellation

The registrar of titles, by notice, may require a person to deposit a document for correction or cancellation.

310 Execution of documents

(1) For a corporation, a document is validly executed if—

(a) it is executed in a way permitted by law; or

(b) the document is sealed with the corporation's seal in accordance with the *Property Law Act 1974*, section 46F.

(2) For an individual, a document is validly executed if—

(a) it is executed in a way permitted by law; and

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(b) the execution is witnessed by a person prescribed under the regulations.

(3) However, the registrar of titles may, in exceptional circumstances, register a document executed by an individual even though the execution was not witnessed or was not witnessed by a person prescribed under the regulations.

(4) The witnessing of a document may be proved in any way permitted by law.

(5) This section does not apply to a plan of survey.

Note—

Under the Electronic Conveyancing National Law (Queensland), section 9(3)(b), if a registry instrument is digitally signed in accordance with the participation rules applicable to the instrument, the requirements of any other Queensland law relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied.

311 Witnessing documents for individuals

(1) A person who witnesses a document signed by an individual must—

(a) first take reasonable steps to verify the identity of the individual and ensure the individual is the person entitled to sign the document; and

(b) have the individual sign the document in the presence of the person; and

(c) not be a party to the document.

(2) Without limiting subsection (1)(a), the person takes reasonable steps to verify the identity of the individual if the person complies with practices included in the manual of land title practice under section 286A(2) for verifying the individual's identity.

(3) The person must, for 7 years after the person witnesses the signing of the document—

(a) keep a written record of the steps taken under subsection (1)(a); or

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(b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the person in complying with subsection (1)(a).

(4) The registrar of titles may, whether before or after the registration of the document, ask the person—

(a) to advise the registrar about the steps taken by the person under subsection (1)(a); and

(b) to produce for the registrar's inspection the written record mentioned in subsection (3)(a) or the originals or copies mentioned in subsection (3)(b).

(5) The person must comply with a request under subsection (4) unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

313 Delivery of paper documents

(1) This section applies if the registrar of titles is required or permitted to return—

(a) a document that has been lodged or deposited in paper form; or

(b) a document in paper form that is a representation of an electronic conveyancing document.

(2) The registrar of titles may return the document by leaving it at a place designated for the purpose in the land registry.

314 Dispensing with production of paper document

(1) The registrar of titles may dispense with the production of a document in paper form.

(2) Before the registrar of titles dispenses with the production of a document, the registrar may require evidence that a person seeking to deal with a lease or licence is entitled to deal with the lease or licence, and that the document that can not be produced—

(a) has been lost or no longer exists; and

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(b) is not deposited as security or for safe custody.

(3) The registrar of titles must record in the register that production of the document has been dispensed with and the day production of it was dispensed with.

315 Destroying document in certain circumstances

(1) The registrar of titles may destroy part of a register or a document held in the land registry if the part or the document—

(a) is not evidence of an existing interest; or

(b) is evidence of an existing interest for which there is accurate evidence in another part of the register; or

(c) will not be needed for registering the effect of a transaction.

(2) The registrar of titles may authorise a person to destroy a document held in a place other than an office of the department if the document—

(a) was lodged at the place for evidencing, in the land registry, an interest; and

(b) is evidence of an existing interest for which there is accurate evidence in the land registry.

(3) Before destroying part of a register or a document under subsection (1), the registrar of titles must copy it in whatever way the registrar considers appropriate.

(4) However, the registrar of titles, or person acting under an authority given under subsection (2), must not destroy an original will.

(5) The registrar of titles may return a suitably perforated cancelled tenure document to the person who, immediately before its cancellation, was entitled to it.

(6) The registrar of titles' powers under subsections (1) and (2) are subject to the *Public Records Act 2002*.

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316 Transferor must do everything necessary

A person who, for valuable consideration, signs a document to transfer or create an interest in a lease must do everything necessary to give effect to the matters stated in the document or implied by this or another Act.

316A Titles registry fees not payable for particular documents

No titles registry fee is payable for the lodgement and registration of a document that relates to—

(a) the acquisition by the State of an interest in land; or

(b) the release or surrender by the State of an interest in land, other than a fee simple interest.

Division 2 Documents forming part of standard terms documents

317 Meaning of *standard terms document* in division

In this division—

standard terms document means a document containing provisions treated as terms of a further document to which it must apply or applies.

317A References to registered standard terms document

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

318 Standard terms document may be registered

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

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319 Standard terms document part of a further document

All or part of a registered standard terms document, or an amended registered standard terms document, forms part of a document if the document—

(a) says it forms part of the document; and

(b) belongs to a class identified in the standard terms document as a document to which the standard terms document applies.

320 Document not limited to that contained in standard terms document

(1) As well as the provisions in a registered standard terms document, a document may include a provision incorporating other terms into the document.

(2) If there is a conflict between the standard terms document and terms included in another document, the other document prevails.

321 Withdrawal or cancellation of standard terms document

(1) The registrar of titles may withdraw a registered standard terms document if asked to withdraw it by the person who lodged it.

(2) The chief executive may cancel a registered standard terms document lodged by the Minister or the chief executive after giving 1 month's notice in the gazette.

(3) The registrar of titles must keep and, if asked, produce for inspection a copy of a standard terms document cancelled or withdrawn under this section.

(4) Withdrawal or cancellation of a standard terms document, under this section or the *Land Title Act 1994*, does not affect a document already registered or executed within 7 days after its withdrawal or cancellation.

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(5) If the chief executive cancels a standard terms document under this section, the chief executive must give the registrar of titles notice of the withdrawal or cancellation.

Part 4 Dealings affecting land

Division 1 Transfers

322 Requirements for transfers

(1) A lease, licence or sublease may be transferred—

(a) to a person only if the person is eligible to hold the lease, licence or sublease under this Act; and

(b) only if—

(i) the chief executive has given written approval to the transfer; and

(ii) the transfer is not prohibited by a provision of this Act or a condition of the lease, licence or sublease.

(2) However, subsection (1)(b)(i) does not apply to the transfer of a road licence over a temporarily closed road to a person if—

(a) the licence is held by—

(i) the registered owner of freehold land (the ***subject land***); or

(ii) the lessee of land leased under this Act (also the ***subject land***); and

(b) the licence land and the subject land are both the subject of a covenant mentioned in section 373A(5)(c); and

(c) an interest in the subject land is also being transferred to the person; and

(d) for a person who is an individual, the person is an adult; and

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Note—

Freehold land can be held under the *Land Title Act 1994* by an individual who is a child. See section 28 of that Act. Land, including a road licence, can be held under this Act by an individual only if the individual is an adult. See section 142.

(e) all charges owing to the State on the licence are paid before the transfer is lodged; and

(f) when the transfer is lodged, it is accompanied by a statutory declaration signed by the person stating—

(i) the person is aware of the conditions of the licence; and

(ii) any other matters prescribed by regulation for this paragraph.

(2A) If an exemption applies to a lease under section 322AA, subsection (1)(b)(i) does not apply to the transfer of—

(a) the lease; or

(b) a sublease of the lease.

(3) A lessee, licensee or the holder of a sublease may apply for approval to transfer a lease, licence or sublease.

(4) The chief executive's approval lapses unless the transfer is lodged in the land registry within 6 months after the chief executive's approval.

(5) The chief executive may extend the time mentioned in subsection (4).

(6) The chief executive's approval may be given on the conditions the chief executive states, including—

(a) that all rent and charges owing to the State on the lease or licence are paid before the transfer is lodged; and

(b) that the lodgement of the transfer must be accompanied by a statutory declaration signed by the incoming lessee or licensee stating the incoming lessee or licensee is aware of—

(i) the condition of the land; and

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(ii) the level of compliance with the conditions of the lease and any land management agreement for the lease, or the licence; and

(iii) any current property vegetation management plans affecting the lease or licence; and

(iv) any current agreements under an Act affecting the lease, including any land management agreement, or the licence; and

(v) if, were the transfer to be registered, the land would be subject to an indigenous cultural interest—the provisions of section 202AA.

(7) If the chief executive decides not to approve a transfer, the transferor must be given notice of the decision and the reasons for the decision.

(8) The transferor may appeal against the chief executive's decision.

(9) To remove any doubt, it is declared that the chief executive's approval is not needed to transfer a mortgage.

(10) If a lessee holds a general authority under section 333, the authority is taken to be an approval under this section for any transfer in relation to a sublease of the lease.

(11) In this section—

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

322AA Chief executive may grant exemption from approval requirement

(1) If the chief executive considers it appropriate, the chief executive may, by written notice, exempt the following persons from the requirement under section 322(1)(b)(i) to obtain the chief executive's approval to a transfer of a lease—

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(a) if the notice states a particular lease—the lessee under the lease;

(b) if the notice states a type of lease—each lessee under a lease of that type.

(2) If an exemption under subsection (1) applies to a lessee for a lease, a sublessee for a sublease under the lease is exempt from the requirement under section 322(1)(b)(i) to obtain the chief executive's approval to a transfer of the sublease.

(3) In acting under the notice, a lessee or sublessee must comply with any requirements prescribed by regulation.

(4) The notice may impose conditions on the exemption the chief executive considers appropriate.

(5) The chief executive may, by further written notice—

(a) impose additional conditions on the exemption; or

(b) amend or revoke a condition already imposed on the exemption under this section; or

(c) revoke the exemption.

(6) If the chief executive revokes the exemption under subsection (5)(c), the chief executive must give the registrar of titles notice of the revocation.

322AB Recording exemptions

(1) The registrar of titles may record an exemption granted under section 322AA(1) in the leasehold land register.

(2) Failure to record the exemption does not affect its validity.

(3) If an exemption recorded under subsection (1) is revoked under section 322AA(5)(c), the registrar of titles must remove the record of the exemption from the leasehold land register.

322A Severing joint tenancy by transfer

(1) This section applies if a lease, licence or sublease (the ***tenure***) is subject to a joint tenancy.

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(2) Subject to section 322, any of the joint tenants of the tenure (the ***severing party***), may unilaterally sever the joint tenancy by registration of a transfer to the severing party.

(3) The transfer need only be executed by the severing party.

(4) The registrar of titles may register the transfer only if the registrar is satisfied the severing party has given, or made a reasonable attempt to give, each other joint tenant the following—

(a) if the transfer is an electronic conveyancing document—notice of the severing party's intention to sever the joint tenancy under subsection (2);

(b) otherwise—a copy of the transfer.

(5) On registration of the transfer, the severing party becomes entitled as a tenant in common with the other persons who were joint tenants immediately before the transfer.

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

323 Transfers must be registered

(1) If a lease, licence, sublease or a mortgage is transferred, the transfer must be registered.

(2) An interest in a mortgage may not be transferred.

324 Transfer of lands sold in possession or in execution

If a lease or sublease is sold under a power of sale or a registered writ of execution—

(a) the mortgagee in possession; or

(b) the sheriff, registrar or clerk of the court of the relevant court;

must sign a transfer to a buyer eligible to hold the lease or sublease under this Act.

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325 Effect of registration of transfer

(1) On registration of a transfer—

(a) all the rights, powers, privileges and liabilities of the transferor vest in the transferee; and

(b) the transferee holds the interest in the land subject to the registered interests affecting the interest.

(2) If a land management agreement applies to a lease being transferred, on registration of the transfer—

(a) the transferee is taken to be a party to the agreement in place of the transferor; and

(b) the rights and responsibilities of the transferor under the agreement become the rights and responsibilities of the transferee; and

(c) the lease continues to be subject to the following conditions—

(i) there must be a current land management agreement for the lease;

(ii) the lessee must comply with the agreement.

326 Transferee to indemnify

If a lease or a sublease, subject to a registered mortgage, is transferred, the transferee is liable to indemnify the transferor against liability under the mortgage and under this or another Act.

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

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

(2) The chief executive may give the proposed transferee under the transfer any information the chief executive considers appropriate about rent or instalments paid or payable for the lease.

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(3) However, the chief executive must not disclose to the transferee the residential or business address or other personal details of the transferor.

Division 2 Surrender

327 Absolute surrender of freehold land

A registered owner may surrender, absolutely, freehold land—

(a) on terms agreed to between the chief executive and the registered owner; and

(b) with the chief executive's written approval.

327A Surrender of lease

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

(a) on terms agreed to between the chief executive and the lessee; and

(b) with the chief executive's written approval.

327B Applying to surrender freehold land

A registered owner may apply, in writing to the chief executive, to surrender freehold land.

327C Applying to surrender lease

(1) A lessee may apply, in writing to the chief executive, to surrender all or part of a lease.

(2) However, before applying, the lessee must give notice of the lessee's intention to apply to any other person with a registered interest in the lease.

(3) The lessee may also give notice to any other person the lessee considers has an interest in the lease.

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327D Minister may require report and other information

(1) This section applies if a lessee makes an application under section 327C(1) to surrender all or part of a lease.

(2) The Minister may, by notice given to the lessee, require the lessee, within a stated reasonable period, to give the Minister a report that states the following information for each building or other structure on the lease land—

(a) the nature of the building or structure;

(b) the condition of the building or structure;

(c) the location of the building or structure;

(d) whether, if the lease is surrendered, the lessee proposes to apply under section 327I(1) to remove the building or structure.

(3) The Minister may also, by notice given to the lessee, require the lessee, within a stated reasonable period, to—

(a) give the Minister information, or further information, about a building or other structure on the lease land; or

(b) give the Minister a report, prepared by a person with a stated qualification or expertise and at the lessee's expense, about the condition of the buildings and other structures on the lease land.

(4) If the lessee fails to comply with a requirement made under subsection (3)(b)—

(a) the Minister may obtain the report; and

(b) the cost of obtaining the report may be recovered from the lessee as a debt due to the State.

327E Registration surrenders lease

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

(2) However, if the surrender relates to only part of a lot, the surrender may only be made by registering a plan of subdivision.

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(3) The surrender of all or part of a lease takes effect on the day the surrender notice or plan of subdivision is registered.

327F Notice of surrender

(1) The chief executive must give notice of the surrender of a lease to the lessee and each person given notice about the proposed surrender under section 327C (either a ***relevant person***).

(2) The notice under subsection (1) must include all of the following—

(a) the date of the surrender;

(b) the effect, under section 327G, of the surrender;

(c) if there are improvements on the lease land owned by the person receiving the notice—a statement that the person may apply to remove the improvements.

(3) If the surrender of a lease is not registered, notice of the fact must be given to each relevant person.

327G Effect of surrender

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

(a) if the lease was a State lease—remains a reserve; or

(b) otherwise—becomes unallocated State land.

327H Person to give up possession on surrender

(1) On the surrender of all or part of a lease, a person occupying the land the subject of the surrender must immediately vacate the land.

(2) A person who does not give up possession under subsection (1), and is not otherwise entitled to possession, is a person who is unlawfully occupying unallocated State land.

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Note—

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

327I Dealing with improvements

(1) An owner of improvements on a lease that has been surrendered may apply, in writing to the chief executive, to remove the owner's improvements on the lease.

(2) The owner may remove the improvements only with the written approval of, and within a time stated by, the chief executive.

(3) The improvements become the property of the State if—

(a) the chief executive has not given written approval for their removal; or

(b) the chief executive has given written approval for their removal but the improvements have not been removed within the time stated by the chief executive.

(4) However, if the lease the subject of surrender is leased or sold, the owner has a right to payment for the improvements under chapter 5, part 5.

(5) In this section—

owner, of improvements, means—

(a) if the lessee owned the improvements—the lessee; or

(b) a person who—

(i) made the improvements on the land the subject of the surrender with the lessee's authority; and

(ii) owned the improvements.

328 Surrender of subleases

(1) A registered sublease may be wholly or partly surrendered by operation of law or by registering a document of surrender of the sublease executed by the sublessor and the sublessee.

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(2) If a sublease or part of a sublease is surrendered, the surrender must be registered.

(3) However, a document of surrender of a sublease may be registered only if each registered mortgagee and registered sub-sublessee has given written agreement to the surrender.

(4) Also, if a registered sublease (the ***surrendered sublease***) has been wholly or partly surrendered by operation of law, the registrar of titles may register a document evidencing the surrender if satisfied every registered mortgagee and registered sub-sublessee of the sublessee under the surrendered sublease has been given notice of the surrender.

(5) If a document of surrender of a sublease is lodged, the registrar of titles may register the document and record the date of surrender stated in the document in the leasehold land register.

(6) On registration of a document of surrender of a registered sublease, the interest of the sublessee vests in the sublessor.

(7) Subsection (2) does not apply to a surrender or disclaimer under a law about bankruptcy.

329 Notice of surrender needed

(1) If a lessee is absolutely surrendering a lease under section 327A, the lessee must give 1 year's notice of the intention to surrender or pay 1 year's rent in advance at the time of surrender.

(2) However, the chief executive may waive the giving of 1 year's notice or paying 1 year's rent in appropriate circumstances.

330 Requirements for effective surrender

A surrender of a lease may be registered only if—

(a) the chief executive gives written approval to the surrender; and

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(b) if the lease is subject to a mortgage or sublease—the mortgagee or sublessee gives written approval to the surrender; and

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

331 Effect of surrender on existing interests

(1) If a lease or part of a lease is surrendered, other than absolutely, all interests in the lease or part of the lease at the time of surrender continue in the new lease or deed of grant.

(2) If a lease or freehold land is absolutely surrendered, all interests are extinguished from the day the surrender is registered.

Division 3 Subleases

332 Requirements for subleases

(1) A lease issued under this Act may be subleased only—

(a) if—

(i) the Minister has given written approval to the sublease; or

(ii) the lessee holds a general authority to sublease; and

(b) to a person who is eligible to hold the sublease under this Act.

Note—

A sublease may be subject to a prescribed term. See chapter 5A.

(2) An application for the Minister's approval—

(a) may be made by a lessee or sublessee even though subsection (1)(a)(ii) applies to the lessee; and

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(b) must be accompanied by a copy of the proposed sublease.

(3) The Minister must consider the application and—

(a) if the Minister is satisfied the subleasing would be inconsistent with the purpose of the lease—must refuse to approve the application; or

(b) otherwise—may—

(i) approve the application, with or without conditions; or

(ii) refuse to approve the application.

Example of why the Minister may refuse to approve the application—

The subleasing would be inappropriate having regard to the purpose and conditions of the lease.

(4) If the Minister refuses to approve the application, the Minister must give the lessee a written notice of the decision that includes a statement of the reasons for the decision.

(5) The approval lapses unless the sublease is lodged in the land registry within 6 months after the approval was granted.

(6) The Minister may extend the time mentioned in subsection (5).

(7) The lessee may appeal against the Minister's decision.

333 General authority to lessee for particular dealings

(1) If the Minister considers it appropriate, the Minister may issue to the lessee of a lease issued under this Act an authority to agree to and as appropriate give effect to 1 or more of the following without seeking the Minister's approval—

(a) subleasing of the lease;

(b) transferring a sublease of the lease;

(c) amending a sublease of the lease;

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(d) creating an easement that burdens or benefits a sublease of the lease;

(e) transferring a public utility easement that burdens a sublease of the lease;

(f) amending an easement that burdens or benefits a sublease of the lease.

(2) The authority applies only to the lease identified, and to the lessee named, in the authority.

(3) In acting under the authority, the lessee must comply with any requirements prescribed under a regulation for this section.

(4) The authority may include the conditions the Minister considers appropriate, and may be withdrawn at any time.

(5) The authority is cancelled immediately either of the following dealings are registered in the leasehold land register—

(a) the transfer of the lease;

(b) a transmission of the lessee's interest in the lease under a law about bankruptcy.

(6) For subsection (1)(d), (e) or (f), a reference to a sublease of a lease must not be taken to include a reference to a sub-sublease of a sublease of a lease.

334 When subleasing is totally prohibited

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

334A Application to sub-subleases

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

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335 Subleases must be registered

(1) If a lease issued under this Act is subleased, the sublease must be registered.

(2) If the sublease is for part of a lease, the appropriate form for the sublease must identify the land being subleased by reference to whichever of the following the registrar of titles requires—

(a) a sketch plan in the appropriate form, drawn to a standard to the registrar's satisfaction;

(b) a building lease plan, drawn to a standard to the registrar's satisfaction;

(c) a plan of survey.

(3) However, the registrar of titles may allow the land being subleased to be identified by a description alone if the registrar is satisfied the land is adequately identified by the description in the document.

336 Amending a sublease

(1) A registered sublease may be amended by registering an amendment of the sublease.

(2) However, the document of amendment must not—

(a) increase or decrease the area subleased; and

(b) add or remove a party to the sublease; and

(c) increase the term of the sublease.

(3) Sections 332 and 333 apply to an amendment of a sublease as if the amendment were a sublease.

(4) Before an amendment of a sublease is registered, the amendment must be endorsed with, as appropriate—

(a) the Minister's approval under section 332, as applied; or

(b) the Minister's general authority to amend under section 333, as applied.

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337 Lessee continues to be responsible for primary obligations

The lessee of a lease that is sublet, in whole or in part, continues to be liable for all the conditions to which the lease is subject.

337A Sublease must not contravene lease condition

The lessee of a lease that is sublet, in whole or in part, must ensure the terms of the sublease do not contravene a condition to which the lease is subject.

338 Validity of sublease or amendment of sublease against mortgagee

A sublease or amendment of a sublease executed after the registration of a mortgage is valid against the mortgagee only if the mortgagee agreed to the sublease or amendment before its registration.

339 Re-entry by sublessor

(1) If a sublessor under a registered sublease lawfully re-enters and takes possession under the sublease, the sublessor may lodge a request for the registrar of titles to register the re-entry.

(2) The interest of the sublessee ends on the registration of the request for the re-entry.

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Division 3A Process for resolving disputes under particular subleases

Subdivision 1 Preliminary

339A Definitions for division

In this division—

dispute notice see section 339F(1).

notifier see section 339F(1).

prescribed dispute resolution entity means an entity, prescribed by regulation, that nominates mediators or arbitrators.

related subleases means subleases of the same lease.

related sublessee means a sublessee under a related sublease.

responder see section 339F(1).

response see section 339G(1).

339B Application of division

(1) This division applies in relation to a sublease, other than a sublease of trust land or transport land, if—

(a) there is a dispute between any or all of the parties to the sublease about—

(i) its terms, including, for example, any amount payable under it; or

(ii) conduct of a party that affects, or may affect, another party's rights or obligations under the sublease; and

(b) no other Act establishes a dispute resolution process that specifically deals with disputes of that type; and

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(c) the sublease does not include a dispute resolution process that is capable of being used to resolve the dispute.

(2) However, this division does not apply in relation to a dispute if the dispute—

(a) is the subject of a current proceeding between the parties to the dispute or a current dispute resolution process under this division; or

(b) was the subject of a proceeding that finally decided the dispute; or

(c) was the subject of a dispute resolution process under this division that resulted in—

(i) the parties to the dispute entering into a binding and enforceable agreement resolving the dispute; or

(ii) an award being issued under section 339Q.

339C Related disputes may be resolved together

(1) This section applies if—

(a) for 2 or more related subleases, there are disputes (***related disputes***) to which this division applies; and

(b) each related dispute is about—

(i) an identical, or substantially similar, term in each related sublease; or

(ii) identical, or substantially similar, conduct of the sublessor in relation to each related sublease; and

(c) each related sublessee has complied with subdivision 2 to the extent that subdivision applies to the related sublessee.

(2) The related disputes must be resolved under subdivision 3 or 4 in the same dispute resolution process, by the same mediator or arbitrator, if—

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(a) the related sublessees agree to the disputes being resolved in that way; and

(b) the mediator or arbitrator agrees to resolve the disputes in that way.

(3) If subsection (2) applies, a reference to a party to the dispute in section 339D, or subdivision 3 or 4, includes a reference to each related sublessee.

339D Admissibility of evidence

(1) This section applies to—

(a) evidence of anything done or said, or an admission made, by a party for the purpose of a dispute resolution process under this division; or

(b) a document prepared for the purpose of a dispute resolution process under this division.

(2) The evidence or document is admissible at the trial of a civil proceeding only if all parties to the dispute resolution process agree to the admission of the evidence or document.

(3) In this section—

civil proceeding does not include a proceeding under this Act about a lessee's contravention of this Act under section 339K(5).

339E Liability of prescribed dispute resolution entity

A prescribed dispute resolution entity does not incur civil liability for an act or omission in the performance, or purported performance, of a function under section 339I(3) or 339O(3) unless the act or omission is done or made in bad faith or through negligence.

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Subdivision 2 Notice of dispute

339F Notice of dispute

(1) A party to the sublease (the ***notifier***) may give another party to the sublease (the ***responder***) written notice of the dispute (a ***dispute notice***).

(2) The dispute notice must state the following matters—

(a) the parties to the dispute;

(b) a summary of the dispute, including the following matters—

(i) the terms of the sublease the notifier considers relevant to the dispute;

(ii) details of the conduct of a party the notifier considers relevant to the dispute;

(iii) any other information the notifier considers relevant for resolving the dispute;

(c) that the responder must, within 20 days of receiving the notice, give the notifier a written response to the notice;

(d) any other information prescribed by regulation.

(3) The notifier may, in the dispute notice, ask the responder to give the notifier information the notifier reasonably requires for resolving the dispute.

339G Response to dispute notice

(1) The responder must give the notifier a written response to the dispute notice (a ***response***) within 20 days of receiving the notice.

(2) The response must state—

(a) the responder's response to the summary of the dispute in the dispute notice, including the following matters—

(i) any information the responder agrees or disagrees with;

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(ii) the terms of the sublease the responder considers relevant to the dispute;

(iii) details of the conduct of a party the responder considers relevant to the dispute;

(iv) any other information the responder considers relevant for resolving the dispute; and

(b) any other information prescribed by regulation.

(3) If the dispute notice includes a request under section 339F(3), the responder must comply with the request in the response unless the responder has a reasonable excuse.

(4) The responder may, in the response, ask the notifier to give the responder further information the responder reasonably requires for resolving the dispute.

(5) The notifier must comply with a request under subsection (4) within 20 days of receiving the response unless the notifier has a reasonable excuse.

339H Requirement for mediation before arbitration

(1) This section applies if—

(a) the responder does not comply with section 339G(1), (2) or (3); or

(b) the notifier does not comply with section 339G(5); or

(c) the parties to the dispute comply with section 339G, to the extent that section applies to each party, and the dispute remains unresolved.

(2) Unless the parties to the dispute agree otherwise, the parties must attempt to resolve the dispute by mediation before submitting the dispute to arbitration.

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Subdivision 3 Mediation

339I Appointment of mediator

(1) The parties to the dispute may jointly appoint a mediator to mediate the dispute.

(2) A party to the dispute may request a prescribed dispute resolution entity to appoint a mediator if—

(a) another party to the dispute does not comply with section 339G to the extent that section applies to the other party; or

(b) the parties are otherwise unable to agree to the joint appointment of a mediator.

(3) If a request is made to a prescribed dispute resolution entity under subsection (2), the prescribed dispute resolution entity must appoint an appropriately qualified mediator to mediate the dispute.

339J Time for mediation

(1) The parties to the dispute may agree to a time for the mediation.

(2) A party to the dispute may request the mediator to set a time for the mediation if—

(a) another party to the dispute does not comply with section 339G to the extent that section applies to the other party; or

(b) the parties are otherwise unable to agree to a time.

(3) If a request is made to the mediator under subsection (2), the mediator must set a time for the mediation after consulting with each party to the dispute.

339K Conduct of mediation

(1) The mediation must be conducted—

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(a) by the mediator appointed under section 339I; and

(b) at a time agreed to or set under section 339J; and

(c) in the way decided by the mediator and the parties to the dispute.

(2) Despite subsection (1)(b), the mediator may decide to conduct the mediation at a later time, or adjourn the mediation, if—

(a) the parties to the dispute agree; or

(b) the mediator considers it reasonably necessary.

(3) The parties to the dispute must participate in the mediation in good faith to attempt to resolve the dispute.

Examples of participating in the mediation in good faith—

- attending meetings the parties have agreed to attend
- doing all things necessary for the proper and expeditious conduct of the mediation
- complying without undue delay with mediation procedures agreed to by the mediator and the parties
- disclosing without undue delay relevant information as appropriate for the mediation
- ensuring a party's agent at a mediation is authorised to reach agreement for the party

(4) A party to the dispute may be represented by an agent appointed by the party.

(5) If a lessee who is a party to the dispute, in relation to a sublease of the lessee's lease, contravenes subsection (3), the lessee is taken to have contravened a provision of this Act in relation to the lease.

(6) For a proceeding under this Act about a lessee's contravention of this Act under subsection (5), evidence about the lessee's participation in a mediation may include evidence about the steps taken by the lessee to prepare for the mediation.

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339L Costs of mediation

(1) The parties to the dispute must pay the mediator the costs of the mediation in equal shares.

(2) If section 339C(2) applies to the dispute, all related sublessees must be treated as a single party to the dispute for subsection (1).

(3) This section does not apply if the parties to the dispute and the mediator agree on how the costs of the mediation will be paid.

339M When mediation ends

The mediation ends if—

(a) the parties to the dispute enter into a binding and enforceable agreement resolving the dispute; or

(b) an arbitral proceeding in respect of the dispute starts under subdivision 4; or

(c) a party to the dispute starts any other proceeding in relation to the dispute; or

(d) the mediator and the parties to the dispute agree to end the mediation; or

(e) the mediator decides continuing the mediation has, for any other reason, become unnecessary or impossible.

Subdivision 4 Arbitration

339N Application of Commercial Arbitration Act 2013

The *Commercial Arbitration Act 2013* applies to an arbitration under this subdivision to the extent that Act is not inconsistent with this subdivision.

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339O Appointment of arbitrator

(1) The parties to the dispute may jointly appoint a single arbitrator to decide the dispute.

(2) If the parties to the dispute agree to submit the dispute to arbitration, but are unable to agree on the joint appointment of an arbitrator, a party to the dispute may request a prescribed dispute resolution entity to appoint a single arbitrator to decide the dispute.

(3) If a request is made to a prescribed dispute resolution entity under subsection (2), the prescribed dispute resolution entity must appoint an appropriately qualified arbitrator to decide the dispute.

339P Commencement of arbitral proceedings

Arbitral proceedings in respect of the dispute commence on—

(a) the day an arbitrator is appointed to decide the dispute; or

(b) a later day agreed by the parties to the dispute.

339Q Arbitrator's functions

(1) The arbitrator has authority to decide the dispute by issuing an award.

(2) The award must not be inconsistent with a term of the lease under which the sublease is granted.

(3) The award must be issued—

(a) within 6 months after the appointment of the arbitrator; or

(b) if the arbitrator decides—within 9 months after the appointment of the arbitrator; or

(c) if the parties to the dispute agree to extend the period mentioned in paragraph (a) or (b)—before the expiry of the extended period.

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(4) A regulation may prescribe matters the arbitrator must consider in deciding the dispute.

(5) A regulation made under subsection (4) does not limit the matters the arbitrator may consider.

339R Experts appointed by arbitrator

(1) The arbitrator may—

(a) appoint a qualified person (an ***appointed expert***) to report to the arbitrator on specific issues decided by the arbitrator; and

(b) require a party to the dispute to give the appointed expert any relevant information or to produce, or provide access to, any relevant documents or other property for the appointed expert's inspection.

(2) If a party to the dispute requests, or if the arbitrator considers it necessary, the appointed expert must, after delivering the appointed expert's written or oral report, participate in a hearing at which the parties to the dispute have the opportunity to put questions to the appointed expert and present persons with relevant expertise to give evidence on the points at issue.

(3) In this section—

qualified person, for reporting on a specific issue, means a person with—

(a) qualifications, competencies and experience relevant to the specific issue; or

(b) demonstrated knowledge of particular fields of knowledge relevant to the specific issue.

339S Law applicable to arbitration

The arbitrator must decide the dispute in accordance with the law of Queensland and relevant Commonwealth law.

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339T Effect of arbitrator's decision and limitation of review

(1) This section applies to a decision of the arbitrator on a matter in dispute between the parties to the dispute.

(2) The decision has the same effect as if the parties to the dispute had entered into a binding and enforceable agreement to the same effect as the decision.

(3) Subject to subsections (4) and (5), the decision—

(a) is final and conclusive; and

(b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

(4) The *Judicial Review Act 1991*, part 5 applies to the decision to the extent it is affected by jurisdictional error.

(5) Also, the Supreme Court may, on the application of a party to the dispute, set aside the decision if—

(a) the decision was induced or affected by the improper behaviour of a party to the dispute; or

Examples of improper behaviour—

fraud, duress, undue influence

(b) at any time during the arbitral proceeding, the party was a person with impaired capacity for a matter within the meaning of the *Guardianship and Administration Act 2000*; or

(c) a breach of the rules of natural justice happened in relation to the making of the decision.

(6) In this section—

decision includes a decision, or conduct, leading up to or forming part of the process of making a decision.

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339U Costs of arbitration

(1) The parties must pay the costs of the arbitration in equal shares.

(2) If section 339C(2) applies to the dispute, all related sublessees must be treated as a single party to the dispute for subsection (1).

(3) Subsections (1) and (2) do not apply if—

(a) the parties to the dispute agree on how the costs of the arbitration will be paid; or

(b) the arbitrator decides how the costs of the arbitration will be paid.

(4) Without limiting subsection (3)(b), the arbitrator, when making a decision about the costs of the arbitration, must take into account any matters prescribed by regulation.

Division 4 Mortgages

340 Registering a mortgage

(1) A lease or a sublease may be mortgaged by registering a mortgage.

(2) If the mortgagor is registered as a trustee, a document stating the details of the trust, or the document creating the trust, must be deposited with the mortgage, unless—

(a) a document has already been produced for the trust under section 374(2) or deposited under section 375(2) with a transfer; and

(b) the details of the trust have not since changed.

341 Effect of a mortgage

A registered mortgage of a lease or sublease operates only as a charge on the lease or sublease for the debt or liability secured by the mortgage.

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342 Releasing a mortgage

(1) If a release of mortgage is lodged, the registrar of titles may register the release to the extent shown in the release.

(2) The release of mortgage may release the debt or liability secured for—

(a) all or part of the mortgage; or

(b) 1 or more of the mortgagors.

(3) On registration of a release of mortgage, the mortgage is discharged, and the lease is released from the mortgage, to the extent shown in the release.

343 Amending a mortgage

(1) A registered mortgage may be amended only by registering an amendment of the mortgage.

(2) However, the document of amendment must not add or remove a party to the mortgage.

344 Amending priority of mortgages

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

(2) The document amending priority must—

(a) state the order of priority of all affected registered mortgages; and

(b) be executed by all mortgagees affected by the amendment.

(3) On registration of the document amending priority, the mortgages have priority in the order stated in the document.

345 Mortgagee in possession may sell

(1) A mortgagee is entitled to sell a lease if—

(a) the lessee defaults under a mortgage; and

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(b) the mortgagee has entered into possession of the mortgaged lease or is exercising a power of sale under the mortgage; and

(c) the mortgagee complies with this division.

(2) The mortgagee must notify the Minister within 28 days of entering into possession of the mortgaged lease.

Maximum penalty—5 penalty units.

346 Sale of mortgaged lease

(1) The mortgagee must first offer the lease for sale by public auction or with the Minister's written approval may sell the lease by private contract.

(2) The lease must not be offered for sale by public auction or a contract of sale entered into until at least 28 days after the mortgagee has published a notice that the lease is for sale, in a way the mortgagee considers is reasonably likely to come to the attention of members of the public in the locality of the lease.

Examples of ways a notice may be published under subsection (2)—

- displaying the notice on the land the subject of the lease so the notice is conspicuous and easily visible to members of the public from a place other than the land
- publishing the notice in a newspaper circulating generally in the locality of the lease
- publishing the notice in an online local newspaper for the locality of the lease

(3) A sale by a mortgagee must be to a person qualified under this Act to hold the lease.

(4) The lodgement of the transfer must be accompanied by a statutory declaration signed by the incoming lessee stating the incoming lessee is aware of—

(a) the condition of the land; and

(b) the level of compliance with the conditions of the lease and any land management agreement for the lease; and

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(c) any current property vegetation management plan affecting the lease; and

(d) any current agreement under an Act affecting the lease including any land management agreement.

347 Land to be sold within 2 years

(1) The mortgagee must arrange to sell the lease within 2 years of entering into possession of the lease.

(2) The mortgagee may apply to the Minister to extend the 2 years.

(3) The application under subsection (2) must be made within the 2 year period.

(4) If the Minister decides not to extend the time, the mortgagee must be given notice of the decision and the reasons for the decision.

(5) The mortgagee may appeal against the Minister's decision.

(6) If the mortgagee does not sell the lease within 2 years of entering into possession of the lease or an appeal to extend the time is unsuccessful, the chief executive may sell the mortgaged lease.

348 Disposal of proceeds of sale

The mortgagee must apply the proceeds of sale as follows—

(a) firstly, to the payment of all costs, charges and expenses properly incurred by the mortgagee for the sale or any attempted sale;

(b) secondly, to payment of charges on the lease, including all debts owing to the State under section 438;

(c) thirdly, to payment of any amount owing to a mortgagee or, if more than 1 mortgagee, according to their priorities;

(d) fourthly, if the mortgagee is selling in possession under section 240F, to payment of expenses incurred by the

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State to rectify any damage caused to the land by the lessee;

(e) lastly, to the lessee.

349 Liability of mortgagee in possession

A mortgagee who enters into possession under a lease or sublease (whether by taking the rents or profits or in another way) is liable under the lease or sublease to the same extent as the lessee or sublessee was liable under the lease or sublease before the mortgagee entered into possession.

350 Effect of transfer after sale by mortgagee

If a transfer executed by a registered mortgagee after the exercise of the power of sale under the mortgage is registered, registration of the document vests the mortgagor's interest that is transferred in the transferee, free from liability under the mortgage and any other mortgage registered after it.

Division 7 Correcting and changing deeds of grant and leases

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

(1) A registered owner or trustee may surrender the land contained in the registered owner's deed of grant or trustee's deed of grant in trust if the description of the land is no longer correct because of—

(a) an exchange of land under chapter 2, part 1; or

(b) a sale or disposal of all or part of a reservation under chapter 2, part 2; or

(c) the addition of land under chapter 3, part 1, division 3; or

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(d) a boundary correction or amendment under chapter 3, part 1, division 4; or

(e) the opening or closing of a road, through or adjoining any land held in fee simple, under section 109(2)(b), 109A or 109B; or

(f) a sale without competition under chapter 4, part 1, division 2.

(2) A registered owner or trustee, with the chief executive's written approval, may surrender the land contained in the registered owner's deed of grant or trustee's deed of grant in trust if, on resurvey of the land, the boundaries of the land do not agree with the boundaries described in the existing deed or appropriate plan, and no doubt exists about the boundaries of the land.

(3) On the surrender of the land—

(a) the deed of grant or deed of grant in trust is cancelled; and

(b) a new deed must be issued containing the land to which the registered owner or trustee is entitled.

(4) When issuing any new deed under this section, the Governor in Council may amend or change the description of the land.

(5) The registrar of titles must register the new deed and must record on the deed all mortgages, leases, easements or other transactions that were recorded on the deed surrendered.

358C Correction of minor error in deed of grant

(1) This section applies if—

(a) a deed of grant is incorrect because of an error in issuing it; and

(b) the registrar of titles certifies that the correction of the deed of grant will not prejudice any person who holds an interest in the deed of grant.

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Example—

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

(2) The registrar of titles must record the correction in the freehold land register.

(3) The corrected deed of grant operates as if it had originally been issued that way.

(4) In this section—

deed of grant includes a deed of grant in trust.

359 Correcting or cancelling deeds of grant

(1) A notice of intention to correct, or cancel, a deed of grant must be published in the gazette if it appears that the deed of grant—

(a) is incorrect because of an error in issuing it; or

(b) should not have been issued.

(2) If the Minister considers it appropriate, the Minister may—

(a) apply to the Supreme Court for directions; or

(b) state a case for decision by the Supreme Court.

(3) If the Governor in Council is satisfied the deed of grant is incorrect or should not have been issued, the Governor in Council may publish a gazette notice correcting the error or cancelling the deed of grant.

(4) On the publication of the notice, the registrar of titles must record the correction or cancellation in the appropriate register.

(5) The corrected deed of grant operates as if it had been originally issued that way.

(6) The cancelled deed of grant is taken never to have been issued.

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(7) This section does not apply to the correction of a deed of grant if the correction has been made under section 358C.

(8) In this section—

deed of grant includes a deed of grant in trust.

360 Governor in Council may change freeholding leases

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

(a) on resurvey of the lease land, the boundaries of the land do not agree with the boundaries described in the lease or appropriate plan, and no doubt exists about the boundaries of the land; or

(b) the lease is defective because of an error or omission in its preparation; or

(d) the Governor in Council has approved of the mutual exchange, after agreement by the lessees of adjoining leases, of areas adjoining a common boundary between the leases; or

(e) the Governor in Council has approved that an area of unallocated State land be included in the lease; or

(f) the Governor in Council considers it necessary for another reason to correct the lease.

(2) The registrar of titles must register the amendment.

(3) An amended freeholding lease operates as if it had been originally issued or executed as amended.

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

(1) This section does not apply to a State lease.

(2) The chief executive may, by approving a plan of subdivision, amend the description or anything else in a term lease, or a perpetual lease, if—

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(a) the boundaries of the lease land are not stated in the lease with adequate certainty or do not agree with the boundaries shown on the relevant plan; or

(b) a survey of the land gives more accurate knowledge of the lease; or

(c) the chief executive has approved of a mutual exchange of areas adjoining a common boundary between leases and—

(i) none of the areas adjoining the common boundary are subject to a freeholding lease; and

(ii) the lessees of the adjoining leases have agreed to the mutual exchange; or

(d) the chief executive has approved that an area of unallocated State land be included in the lease.

(3) The chief executive may, by adjustment notice, amend the description or anything else in a term lease, or a perpetual lease, if—

(a) the lease is defective because of an error or omission in its preparation; or

(b) the court has made a decision under section 435 on a dispute about the boundaries; or

(c) the chief executive has approved that an area of unallocated State land be included in the lease; or

(d) the chief executive considers it necessary for another reason to correct the lease.

(4) The chief executive may act under subsection (2)(d) or (3)(c) in relation to unallocated State land that is to be granted without competition only if the Minister decides under section 121(1)(b) that the lease of the unallocated State land may be granted without competition.

(5) The registrar of titles must register the amendment.

(6) An amended lease operates as if it had been originally issued or executed as amended.

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360B Minister may change State lease

(1) The Minister may, by registering an adjustment notice, amend the description or anything else in a State lease if—

(a) the boundaries of the lease land are not stated in the lease with adequate certainty or do not agree with the boundaries shown on the relevant plan; or

(b) a survey of the land gives more accurate knowledge of the lease; or

(c) the Minister has approved of a mutual exchange of areas adjoining a common boundary between State leases that are within the boundaries of 1 reserve, and the lessees of the leases agree to the exchange; or

(d) the Minister has approved that an area of trust land be included in the lease; or

(e) the State lease is defective because of an error or omission in its preparation; or

(f) the Minister considers it necessary for another reason to correct the State lease.

(2) The registrar of titles must register the amendment.

(3) An amended State lease operates as if it had been originally issued or executed as amended.

360C Applying to amend description of lease

(1) A lessee or a person acting for the lessee may apply to amend the description in a freeholding lease if the description of the lease may be amended under section 360(1)(a) or (d).

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

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

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360D Notice of intention to apply to amend lease

(1) This section applies if a lessee or a person acting for the lessee (each ***an applicant***) intends to make an application under section 360C to amend the description of a lease.

(2) Before applying, the applicant must give notice of the applicant's intention to apply to any other person with a registered interest in the lease land.

(3) The applicant may also give notice to any other person the applicant considers has an interest in the lease.

360F Notice of registration of amendment of lease

(1) If an amendment of a lease is registered under section 360(2), 360A(5) or 360B(2), the chief executive must give notice to the lessee of the lease and each person given notice about the proposed amendment under section 360D (either a ***relevant person***).

(2) The notice must include both of the following—

(a) the date of registration of the amendment;

(b) the particulars of the amendment.

(3) If the designated person does not approve of an amendment to the description of a lease, notice of the fact must be given to each relevant person.

Division 8 Easements

361 Definitions for div 8

In this division—

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

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

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362 Easements may be created only by registration

(1) With the chief executive's written approval, an easement may be created over land granted in trust or non-freehold land (including any lease of non-freehold land or sublease of a lease of non-freehold land), other than a road, by registering the document creating the easement in the appropriate register.

(2) The document must state—

(a) the nature of the easement and its terms; and

(b) the land to be benefited, and the land to be burdened, by the easement.

(3) However, it is not necessary to state the land benefited in a public utility easement that is not attached to, or used or enjoyed with, other land.

(4) An easement may be limited wholly or partly in height or depth.

(5) A public utility easement for water storage may be created only for water storage—

(a) for a weir—on land upstream of the weir and within or outside the storage area at full supply level; or

(b) for a dam—on land upstream of the barrier of the dam and outside the storage area at full supply level.

(6) The document creating the easement must show the part of the land over which water may be stored.

(7) In this section—

full supply level, for a dam or weir, means the level of the dam's or weir's water surface when water storage is at maximum operating level without being affected by flood.

363 Registration of easement

(1) A document creating an easement may be registered only if—

(a) a plan of survey designating the easement is also registered; and

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(b) it is signed by—

(i) the owner of the land to be burdened; and

(ii) the owner of the land to be benefited by the easement or the public utility provider; and

(c) the chief executive has given written approval to the easement.

(2) A plan of survey is not necessary if the registrar of titles considers it is unnecessary because of exceptional circumstances.

(3) Subsections (1)(b) and (c) do not apply to an easement compulsorily acquired by the State.

(4) In this section, the State is taken to be the owner of unallocated State land and reserves.

(5) In subsection (1)—

owner of the land includes a registered owner, trustee of land granted in trust, lessee and licensee.

364 Registration of plan showing proposed easement

(1) A plan designating a proposed easement may be registered only if the designation includes the words 'proposed easement'.

(2) Registration of the plan does not create an easement.

365 Particulars to be registered

(1) When an easement is registered, the following particulars must be recorded in the appropriate registers—

(a) the land burdened by the easement;

(b) any land benefited by the easement;

(c) any registered sublease (or, if the land is freehold land, registered lease) benefited or burdened by the easement.

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(2) To remove any doubt, it is declared that subsection (1) applies even if the appropriate registers are for both freehold and non-freehold land.

(2A) A public utility easement for water storage burdens the whole of the land any part of which may be affected by the storage.

(3) Further dealings affecting the easement must also be registered in the appropriate registers.

366 Rights and liabilities created on registration of document

(1) On the registration of the document creating the easement, the proposed easement shown on the plan is created and, without anything further, vests in the person entitled to the benefit of it.

(2) If the easement is a public utility easement and is not a public thoroughfare easement, the lessee of the land burdened by the easement may recover from the public utility provider a reasonable contribution towards the cost of keeping the part of the land affected by the easement in a condition appropriate for enjoyment of the easement.

(3) The liability under subsection (2) may be amended or excluded by agreement.

367 Easement benefiting and burdening land of same person

An easement may be registered even if—

(a) the land benefited and the land burdened by the easement are owned by the same person; or

(b) the owner of the land benefited by the easement holds an interest in the land burdened by the easement.

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

(1) An easement is not extinguished merely because the trustee, lessee or licensee of the land benefited by the easement

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acquires an interest, or a greater interest, in the land burdened by the easement.

(2) If the same person becomes the trustee, lessee or licensee of the land benefited and the land burdened by an easement, the easement is extinguished only if—

(a) the trustee, lessee or licensee asks the registrar of titles to extinguish the easement; or

(b) the land benefited and the land burdened are amalgamated.

369 Public utility easements

(1) A public utility easement may be registered even though it is not attached to, or used or enjoyed with, other land.

(2) A public utility easement may be registered only for the following—

(a) a right of way;

(b) drainage or sewerage;

(c) the supply of water, gas, electricity, telecommunication facilities or another public utility service;

(d) water storage;

(e) an infrastructure corridor;

(f) a purpose mentioned in the *State Development and Public Works Organisation Act 1971*, section 125(1);

(g) in the case of a cane railway easement in favour of a mill owner—a purpose for which a cane railway easement may be granted under the *Sugar Industry Act 1999*.

(3) Also, a public utility easement may be registered in favour of a person mentioned in schedule 6, definition *public utility provider*, paragraph (g), only if the easement is for the public utility service mentioned in the paragraph.

(4) Further, a public utility easement may be registered for a right of way for the public only if—

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(a) the public utility provider under the easement is the State or a local government; and

(b) use of the easement is limited to the following—

(i) pedestrians;

(ii) cyclists;

(iii) vehicles reasonably necessary for the building and maintenance of the easement.

(5) A registered public thoroughfare easement is taken not to be registered under this Act to the extent it—

(a) is inconsistent with the relevant provisions for the easement; or

(b) purports to provide other than for a public thoroughfare easement.

(6) Subsection (5) has effect only in relation to public utility easements registered after the commencement of this subsection.

(7) The registrar of titles may refuse to register a document purporting to create a public thoroughfare easement if the registrar is satisfied it—

(a) is to any extent inconsistent with the relevant provisions for the easement; or

(b) purports to any extent to provide other than for a public thoroughfare easement.

(8) In this section—

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

pedestrian includes—

(a) anyone who is a pedestrian within the meaning of the *Transport Operations (Road Use Management) Act 1995*; and

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(b) anyone or anything else whose use of an area is commonly associated with pedestrian use of the area.

Examples for paragraph (b)—

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

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

(a) if the public utility provider under the easement is a local government—the *Local Government Act 2009*; or

(b) if the public utility provider under the easement is the State—the *Transport Infrastructure Act 1994*.

369A Transfer of public utility easements

(1) A public utility easement may be transferred to another public utility provider.

(2) The transfer must be recorded in the appropriate register.

369B Transfer of benefited land

(1) This section applies if—

(a) land burdened by an easement is unallocated State land or a reserve; and

(b) the document creating the easement includes a provision (the ***power of attorney provision***) appointing the grantor of the easement the attorney of the grantee of the easement, including for the purpose of surrendering the easement if circumstances stated in the document happen; and

(c) since the easement was created, the person (the ***original owner***) who was the owner of the land benefited by the easement when the easement was created has not always been the owner of the land, whether or not the original owner is now the owner of the land.

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(2) The power of attorney provision binds the current owner of the land benefited by the easement, whether or not, since the easement was created, the current owner of the land has always been the owner of the land.

(3) In this section—

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

owner, of land, includes—

(a) for land granted in trust—the trustee of the land; and

(b) otherwise—a registered owner, lessee or licensee of the land.

370 Amending an easement

(1) A registered easement may be amended by registering a document amending the easement.

(2) However, the document of amendment must not—

(a) change the location of the easement; or

(b) increase or decrease the area of land affected by the easement; or

(c) change a party to the easement.

(3) Section 363 applies to this section.

Note—

Section 363 is about how an easement may be registered.

371 Surrendering an easement

(1) An easement may be surrendered (wholly or partly) only if a document surrendering the easement is registered in the appropriate registers for the land benefited and burdened.

(2) The document of surrender may be signed by the—

(a) owner of the land benefited by the easement and the owner of the land burdened by the easement; or

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(b) owner of the land benefited by the easement; or

(c) public utility provider in whose favour the easement is registered.

(3) A document surrendering an easement may be registered only if all persons who have a registered interest in the land benefited by the easement agree to the surrender.

(4) Subsection (3) does not apply to a sublessee or lessee who does not receive a benefit from the easement.

(5) In this section, the State is taken to be the owner of unallocated State land and reserves.

(6) In subsection (2)—

owner of the land includes a registered owner, trustee of land granted in trust, lessee and licensee, and also includes a mortgagee in possession.

372 End and continuation of easements

(1) An easement over land granted in trust, a lease, a licence or a reserve ends when the deed of grant in trust, lease or licence ends or the dedication of the reserve is revoked.

(2) However, with the Minister's written approval, a public utility easement may continue over unallocated State land when the deed of grant in trust, lease or licence ends or the dedication of the reserve is revoked.

(3) Also, with the Minister's written approval, a public utility easement that burdens a State lease over a reserve may continue over the reserve when the State lease ends.

(4) An easement over a sublease ends when the sublease ends.

(5) If freehold land is subject to a public utility easement and the land is surrendered, the easement may continue, with the Minister's written approval, over the resulting unallocated State land.

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(6) If a public utility easement continues over unallocated State land or a reserve, the continuation must be recorded in the appropriate register.

(7) If unallocated State land, over which there is a public utility easement, is dealt with under this Act—

(a) the Minister may approve the easement continue; and

(b) if approved—the continuation of the easement must be recorded in the appropriate register.

373 Court may modify or extinguish an easement

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

Note—

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

373AA Particular matters about easements and permit land

(1) An easement may be created over permit land without the permittee's consent.

(2) If permit land is subject to an easement, the rights of the grantee under the easement prevail, to the extent of any inconsistency, over the occupation rights comprising the permit.

Division 8A Covenants

373A Covenant by registration

(1) Subject to this section, non-freehold land (other than a road for which a person does not hold a road licence) may be made the subject of a covenant by the registration of the document creating the covenant in the appropriate register.

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(2) However, non-freehold land the subject of a trust, lease or sublease may be made the subject of a covenant only with the consent of—

(a) for trust land—the trustee; or

(b) for lease land—the lessee; or

(c) for land the subject of a sublease—the sublessee.

(2A) Despite subsection (2)(c), non-freehold land the subject of a sublease may be made the subject of a covenant without the consent of the sublessee if—

(a) the non-freehold land is—

(i) all or part of land the subject of a term lease, or perpetual lease, for tourism purposes on a regulated island (a ***tourism lease***); or

(ii) all or part of land the subject of a lease that includes tidal water land (a ***tidal water land lease***); and

(b) the covenant is for ensuring—

(i) for non-freehold land mentioned in paragraph (a)(i)—the tourism lease may be transferred to a person only if there is also transferred to the person a lease of other non-freehold land the subject of a tidal water land lease; or

(ii) for non-freehold land mentioned in paragraph (a)(ii)—the tidal water land lease may be transferred to a person only if there is also transferred to the person a lease of other non-freehold land the subject of a tourism lease.

(3) A document creating a covenant may be registered under this division only if the covenantee under the document is the State or another entity representing the State, or a local government.

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(4) A document creating the covenant may be registered even if the covenantor under the document is the same entity as the covenantee.

(5) The covenant must—

(a) relate to the use of—

(i) the land or part of the land; or

(ii) a building, or building proposed to be built, on the land; or

(b) be aimed directly at preserving—

(i) a native animal or plant; or

(ii) a natural or physical feature of the land that is of cultural or scientific significance; or

(c) be for ensuring a relevant interest in the land may be transferred to a person only if there is also transferred to the person—

(i) a relevant interest in other non-freehold land that is also the subject of the covenant; or

(ii) a lot that, under the *Land Title Act 1994*, is the subject of the covenant; or

(iii) a relevant interest in non-freehold land mentioned in subparagraph (i) together with a lot mentioned in subparagraph (ii).

(7) The covenant—

(a) may be a positive covenant or a negative covenant; and

(b) is binding on the covenantor and the covenantor's successors in title.

(8) The covenant must not prevent a person from—

(a) registering an interest under this Act; or

(b) exercising the person's rights under a registered interest; or

(c) releasing or surrendering a registered interest.

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(9) Also, the covenant must not—

(a) secure the payment of money, or money's worth, payable under a condition of a development approval, or an infrastructure agreement, under the Planning Act; or

Note—

See also the Planning Act, section 107.

(b) be inconsistent with a planning scheme under the Planning Act that—

(i) applies to the land the subject of the covenant; and

(ii) is in effect when the document creating the covenant is registered; or

(c) provide for anything capable of being the subject of a document creating an easement.

(9A) Subsection (9)(b) does not apply to a covenant if it was entered into under a condition of a development approval, or an infrastructure agreement, under the Planning Act.

(10) For subsection (5)(a), the covenant relates to the use of the land, a part of the land, a building on the land or a building proposed to be built on the land, only if it provides for—

(a) a purpose for which the land, the part or the building must be used; or

Examples of covenants for paragraph (a)—

- that a building on the land must be used for educational purposes
- that the land must be used for noise attenuation purposes

(b) a purpose that is the only purpose for which the land, the part or the building may be used; or

Examples of covenants for paragraph (b)—

- that a building on the land may be used only for residential purposes
- that the land may be used only for organic farming

(c) a purpose for which the land, the part or the building must not be used.

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Examples of covenants for paragraph (c)—

- that a building on the land must not be used for a stated commercial purpose
- that the land must not be used for industrial purposes

(11) For subsection (5)(a), the covenant does not relate to the use of the land, a part of the land, a building on the land or a building proposed to be built on the land, to the extent it provides for—

(a) an architectural, construction or landscaping standard for the land or building; or

(b) a statement, acknowledgement or obligation relating to the use of other land; or

Examples—

- an acknowledgement that the land is in the vicinity of other land and that the other land is used for industrial purposes
- a statement that the occupier of other land can not be made the subject of any proceedings relating to the occupier's use of that land

(c) a condition that must be complied with before the land can be used for a stated purpose or any purpose; or

Example—

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

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

Examples for paragraph (d)—

- an obligation not to start proceedings in relation to activities happening on other land
- an obligation not to use the land for residential purposes unless a rainwater tank is installed

(12) In this section—

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

relevant interest, in non-freehold land, means—

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(a) a lease of the land; or

(b) a road licence issued over the land; or

(c) an occupation licence issued over the land.

tidal water land means land that, under section 9(1), is the property of the State and may be dealt with as unallocated State land.

373AB Compliance with s 373A

(1) A registered document of covenant is taken not to be registered under this Act to the extent it is inconsistent with section 373A.

(2) Subsection (1) has effect only in relation to documents of covenant registered after the commencement of this section.

(3) The registrar of titles may refuse to register a document creating or purporting to create a covenant if the registrar is satisfied it is to any extent inconsistent with section 373A.

(4) However, the registrar of titles need not consider whether a document creating or purporting to create a covenant complies with section 373A(9)(b).

373B Requirements of document creating covenant

(1) A document creating a covenant may be registered only if—

(a) it is validly executed; and

(b) it includes a description adequate to identify the land to be the subject of the covenant; and

(c) it includes a description of the covenant; and

(d) the chief executive has given written approval to the covenant.

(2) Subsection (1) does not limit the matters that the appropriate form for a document creating a covenant may require to be included in the form.

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373C Amending document creating covenant

(1) A covenant may be amended by registering a document amending the covenant.

(2) The amending document may be registered only if—

(a) it is validly executed; and

(b) the chief executive has given written approval to the amendment.

(3) However, the amending document must not—

(a) increase or decrease the area of land the subject of the covenant; or

(b) add or remove a party to the covenant.

373D Releasing a covenant

(1) A registered covenant may be wholly or partly discharged by registering a document releasing the covenant.

(2) The document must be signed by the covenantee.

(3) On lodgement of the document, the registrar of titles may register the release to the extent shown in the document.

(4) On registration of the document, the covenant is discharged, and the land is released from the covenant, to the extent shown in the document.

Division 8B Profits a prendre

373G Profit a prendre by registration

(1) With the chief executive's written approval, a lease may be made the subject of a profit a prendre by registering the document creating the profit a prendre over the lease.

(2) However, the chief executive's approval is not required if the profit a prendre is a forest consent agreement.

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373H Profit a prendre affecting freehold land and a lease

(1) This section applies if a document creating a profit a prendre is registered under section 373G in relation to a lease and the profit a prendre also—

(a) benefits another lease; or

(b) benefits freehold land; or

(c) burdens another lease; or

(d) burdens freehold land; or

(e) has effect in any combination of paragraphs (a) to (d).

(2) The document must be registered in the appropriate registers.

(3) Further dealings affecting the profit a prendre must also be registered in the appropriate registers.

373I Requirements of document creating profit a prendre

(1) A document creating a profit a prendre must—

(a) be validly executed; and

(b) include a description sufficient to identify the lease the subject of the profit a prendre; and

(c) include a description of the profit a prendre to which the lease is subject, including the period for which the profit a prendre is to be enjoyed.

(2) Subsection (1) does not limit the matters that the appropriate form for a document creating a profit a prendre may require to be included in the document.

(3) The period mentioned in subsection (1)(c) must not be longer than the term of the lease.

373J Particulars to be registered

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

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

(b) any lease benefited by the profit a prendre;

(c) any freehold land benefited or burdened by the profit a prendre.

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

A document creating a profit a prendre may be registered even if—

(a) the lease or freehold land benefited and the lease burdened by the profit a prendre are owned by the same person; or

(b) the lessee of the lease, or registered owner of the freehold land, benefited by the profit a prendre holds an interest in the lease burdened by the profit a prendre.

373L Same person becoming lessee of benefited and burdened leases

If the same person becomes the lessee of the lease benefited and the lease burdened by a profit a prendre, the profit a prendre is extinguished only if—

(a) the lessee asks the registrar of titles to extinguish the profit a prendre; or

(b) the leases are amalgamated under chapter 4, part 3, division 5.

373M Owner of benefited lease acquiring interest in burdened lease

If a lease is benefited by a profit a prendre, the profit a prendre is not extinguished only because the lessee of the lease acquires an interest, or a greater interest, in the lease burdened by the profit a prendre.

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373N Amending a profit a prendre

(1) A profit a prendre may be amended by registering a document amending the profit a prendre.

(2) However, the document must not—

(a) increase or decrease the area of land the subject of the profit a prendre; or

(b) add or remove a party to the profit a prendre.

373O Releasing or removing a profit a prendre

(1) On lodgement of a document releasing a profit a prendre to which a lease is subject, the registrar of titles may register the release to the extent shown in the document.

(2) On registration of the document, the profit a prendre is discharged, and the lease is released from the profit a prendre, to the extent shown in the document.

(3) Also, the registrar of titles may remove a profit a prendre from a lease if a request to remove the profit a prendre is lodged, and the request clearly establishes that—

(a) the period of time for which the profit a prendre was intended to subsist has ended; or

(b) the event upon which the profit a prendre was intended to end has happened.

373P Effect of surrender of lease on profit a prendre

(1) If a lease subject to a profit a prendre is surrendered, other than absolutely, the profit a prendre is an interest in the lease that continues under section 331(1).

(2) If a lease subject to a profit a prendre is surrendered absolutely, the profit a prendre is an interest that, under section 331(2), is extinguished from the day the surrender is registered.

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373Q Dealing with a profit a prendre

(1) A profit a prendre over a lease may be sold, mortgaged, given to another person or pass by will or intestacy to a beneficiary.

(2) Divisions 1 and 4 and sections 377 to 380 apply, with necessary changes, to a dealing with a profit a prendre under subsection (1) as if the profit a prendre were a lease.

Note—

Sections 377 to 380 are provisions relating to deceased estates.

(3) Without limiting subsection (2), for applying the provisions mentioned to a profit a prendre, a reference to a lessee is a reference to the holder of the benefit of a profit a prendre.

Division 8C Carbon abatement interests

Subdivision 1 Preliminary

373R Definitions for div 8C

In this division—

carbon abatement interest, for land, means an interest in the land consisting of the exclusive right to the economic benefits associated with carbon sequestration on the land.

carbon abatement product means all or any of the following—

(a) living biomass;

(b) dead organic matter;

(c) soil;

(d) carbon sequestration by, and carbon stored in, a carbon abatement product mentioned in paragraphs (a) to (c).

carbon sequestration, for living biomass, dead organic matter or soil, includes—

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(a) the process by which the biomass, matter or soil removes and stores carbon dioxide from the atmosphere; and

(b) the use of the biomass, matter or soil to avoid, reduce or eliminate greenhouse gas emissions.

owner—

(a) of freehold land, means the registered owner of the land; or

(b) of land vested in fee simple—the vested person for the land; or

(c) of non-freehold land, means the State and any of the following—

(i) if the land is the subject of a lease other than a State lease—the lessee of the land; or

(ii) if the land is a reserve—the trustee of the reserve; or

(iii) if the land is the subject of an occupation licence—the licensee.

Subdivision 2 Creation and registration

373S Creation only by registration

(1) A carbon abatement interest for land—

(a) is created by registering the document creating the interest in the appropriate register; and

(b) can not be created other than under this division.

(2) A document creating a carbon abatement interest must—

(a) be validly executed; and

(b) include—

(i) a description adequate to identify the land the subject of the interest; and

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(ii) the terms of the interest, including the right to use the land; and

(iii) the period for which the interest is granted.

(3) If the carbon abatement interest relates to a part of a lot, the document may only be registered if—

(a) a plan of survey has been registered, designating the part of the lot as being the subject of a carbon abatement interest; and

(b) the document includes a description identifying the part of the lot designated on the registered plan of survey.

(4) This section does not limit the matters that the appropriate form for a document creating a carbon abatement interest may require to be included in the document.

373T Consent of relevant Minister required

(1) A document creating a carbon abatement interest for land must not be registered without the consent of the following (each a ***relevant Minister***)—

(a) if the land is within a State forest, timber reserve or forest entitlement area—the Minister administering the *Forestry Act 1959*;

(b) if the land is within a nature conservation area or specified national park—the Minister administering the *Nature Conservation Act 1992*;

(c) if the land is unallocated State land, trust land, lease land or licence land—the Minister.

(2) In deciding whether to consent to the registration of a carbon abatement interest, the relevant Minister must consider whether the land will, or is likely to, be used or dealt with in a way that is inconsistent with the proposed carbon abatement interest.

(3) Consent by a relevant Minister under this section may be given subject to conditions.

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373U Requirements for registration

The registrar of titles may register a document creating a carbon abatement interest for land only if—

(a) the proposed grantor of the interest is an owner of the land; and

(b) the registrar is satisfied the proposed grantor is the holder of the right to deal with carbon abatement product on the land; and

(c) all holders of a registered interest in the land whose interest may be affected by the proposed carbon abatement interest consent to the proposed grant; and

(d) there are no existing carbon abatement interests registered for the part of land to which the proposed carbon abatement interest relates.

373V Additional requirements if granted by lessee of term lease

(1) This section applies if—

(a) an owner who is the lessee of a term lease proposes to grant a carbon abatement interest for land; and

(b) the proposed interest is for a period greater than the remaining term of the term lease.

(2) The document creating the interest may be registered only if the State—

(a) is a party to the interest; and

(b) has approved the terms of the document.

373W Grantor and grantee may be the same

A carbon abatement interest may be registered even though the proposed grantor and proposed grantee of the interest are the same.

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Subdivision 3 Amendments and dealings

373X Amending interest

(1) A carbon abatement interest may be amended only by registering a document amending the carbon abatement interest.

(2) However, the amendment can not—

(a) increase or decrease the area of land the subject of the interest; or

(b) add or remove a party to the interest.

373Y Surrendering or removing interest

(1) On lodgement of a document surrendering a carbon abatement interest to which land is subject, the registrar of titles may register the surrender to the extent shown in the document.

(2) On registration of the document the interest is surrendered to the extent shown in the document.

(3) Also, the registrar of titles may remove a carbon abatement interest from land if—

(a) a request to remove the carbon abatement interest is lodged that establishes—

(i) the period of time for which the interest was intended to exist has ended; or

(ii) an event upon which the interest was intended to end has happened; or

(b) the registrar receives a request to remove the interest under an Act of the Commonwealth.

373Z Continuation of interest

(1) This section applies if—

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(a) a change happens for land or an interest in land registered in an appropriate register (a ***registration change***), resulting in—

(i) the cancellation of the particulars for the land or interest in the appropriate register; and

(ii) if the change relates to land—the registration of the particulars in another appropriate register; and

Examples of a registration change for land—

- a national park is revoked under the *Nature Conservation Act 1992*, resulting in the removal of the particulars of the land from the register of nature conservation areas, and the registration of the particulars in the register of unallocated State land
- a deed of grant in trust is surrendered, resulting in the removal of the particulars of the interest from the freehold land register, and registration of the particulars in the register of unallocated State land

(b) a carbon abatement interest is registered for the land or interest.

(2) However, this section does not apply in relation to a carbon abatement interest to which the State is a party under section 373V(2).

(3) If a registration change happens for land or an interest in land, the relevant Minister for the land may give written approval for the interest to continue.

(4) If the carbon abatement interest is continued under subsection (3), the continuation must be recorded in the appropriate register.

373ZA Dealing with a carbon abatement interest

(1) The holder of a carbon abatement interest for land may transfer, mortgage or pass to a beneficiary the holder's interest over the land.

(2) However, before dealing with the interest the grantee must obtain the consent of the relevant Minister for the land.

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(3) Divisions 1 and 4 and sections 377 to 380 apply to a dealing with a carbon abatement interest—

(a) as if the interest were a lease; and

(b) as if a reference to a lessee were a reference to the holder of the interest; and

(c) with other necessary changes.

Division 8D Indigenous cultural interests

Subdivision 1 Preliminary

373ZB Definitions for div 8D

In this division—

approved agreement, for an indigenous cultural interest, means either of the following agreements if approved by the chief executive under section 373ZD for the interest—

(a) an indigenous access and use agreement;

(b) an indigenous land use agreement.

indigenous access and use agreement—

(a) means an agreement between a lessee and Aboriginal people or Torres Strait Islanders that allows the Aboriginal people or Torres Strait Islanders to carry out the following activities on the lease land as agreed to by the lessee and the Aboriginal people or Torres Strait Islanders—

(i) activities for traditional purposes of the Aboriginal people or Torres Strait Islanders;

Examples of activities for subparagraph (i)—

- camping, fishing, gathering or hunting
- performing rites or other ceremonies
- visiting sites of significance

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(ii) activities incidental to an activity mentioned in subparagraph (i); and

Examples of activities for subparagraph (ii)—

- controlling pests
- teaching rites or other ceremonies
- preserving sites of significance

(b) does not include an indigenous land use agreement.

indigenous cultural interest, for land, means an interest in the land that consists of the right to access and use the land under an approved agreement for the interest.

indigenous land use agreement means an indigenous land use agreement recorded in the Commonwealth ILUA register.

mandatory terms see section 373ZC(1).

set format see section 373ZC(3).

Subdivision 2 Mandatory terms

373ZC Mandatory terms for approved agreements

(1) The Minister may fix the terms (the ***mandatory terms***) to be included in indigenous access and use agreements, or indigenous land use agreements, proposed to be approved agreements for indigenous cultural interests.

(2) However, the mandatory terms can not be inconsistent with—

(a) for indigenous access and use agreements—the requirements stated in schedule 3, part 1, items 1 to 7; or

(b) for indigenous land use agreements—the requirements stated in schedule 3, part 2, items 1 to 7.

(3) The Minister may fix the format (the ***set format***) to be complied with for indigenous access and use agreements, or indigenous land use agreements, proposed to be approved agreements for indigenous cultural interests.

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(4) The Minister may fix the mandatory terms and the set format by reference to 1 or more templates for indigenous access and use agreements and indigenous land use agreements.

(5) A decision of the Minister under subsection (1) or (3) takes effect on the day notice of the decision is published in the gazette.

(6) The department must publish the mandatory terms on its website.

Subdivision 3 Creation and registration

373ZD Creation only by registration

(1) An indigenous cultural interest for land—

(a) is created by registering the document creating the interest in the appropriate register; and

(b) can not be created other than under this division.

(2) An indigenous cultural interest for land can not be registered unless the indigenous access and use agreement, or the indigenous land use agreement, for the interest is approved by the chief executive.

(3) The chief executive may approve the indigenous access and use agreement, or the indigenous land use agreement, only if—

(a) the party to the agreement who is a lessee is proposing to have registered an indigenous cultural interest relating to the agreement; and

(b) the chief executive is satisfied the agreement—

(i) includes the mandatory terms for the agreement; and

(ii) complies with the set format for the agreement; and

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(c) the chief executive is satisfied the conditions for the exercise of traditional activities under the agreement are appropriate having regard to the following—

(i) the types of the activities;

(ii) the size of the area to which the agreement applies;

(iii) the reasonableness of any restrictions imposed;

(iv) another matter the chief executive considers relevant.

(4) The chief executive's approval may be given subject to conditions.

(5) In this section—

traditional activities means—

(a) activities for traditional purposes; and

(b) activities incidental to an activity mentioned in paragraph (a).

373ZE Requirements for registration

(1) The registrar of titles may register a document creating an indigenous cultural interest for land only if the document—

(a) is validly executed; and

(b) includes—

(i) a description and map adequate to identify the part of the lease land the subject of the interest; and

(ii) the terms of the interest, including the right to access and use the land; and

(c) is accompanied by a copy of the approval under section 373ZD.

(2) This section does not limit the matters that the appropriate form for a document creating an indigenous cultural interest may require to be included in the document.

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Subdivision 4 Amendments and dealings

373ZF Amending interest

(1) An indigenous cultural interest may be amended only by registering a document amending the interest.

(2) However, the amendment can not—

(a) increase or decrease the area of the land the subject of the indigenous cultural interest; or

(b) add or remove a party to the interest.

(3) Also, if the amendment relates to an amendment or replacement of the approved agreement for the indigenous cultural interest, the amendment of the interest must be approved by the chief executive before the document amending the interest is registered.

(4) The chief executive may approve an amendment relating to an amendment or replacement of the approved agreement for the indigenous cultural interest only if—

(a) the chief executive is satisfied the proposed amended agreement or replacement agreement—

(i) includes the mandatory terms for the agreement; and

(ii) complies with the set format for the agreement; and

(b) the chief executive is satisfied the conditions for the exercise of traditional activities under the proposed amended agreement or replacement agreement are appropriate having regard to the following—

(i) the types of the activities;

(ii) the size of the area to which the agreement applies;

(iii) the reasonableness of any restrictions imposed;

(iv) another matter the chief executive considers relevant.

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(5) The chief executive's approval may be given subject to conditions.

(6) In this section—

traditional activities means—

(a) activities for traditional purposes; and

(b) activities incidental to an activity mentioned in paragraph (a).

373ZG When amendment or replacement of approved agreement ends interest

(1) Registration of an indigenous cultural interest ends if the approved agreement for the interest is amended or replaced and the approval mentioned in section 373ZF is refused.

(2) If an indigenous cultural interest ends under subsection (1), the chief executive must give notice of the ending of the interest to the registrar of titles.

(3) As soon as practicable after receiving notice under subsection (2), the registrar of titles must remove the indigenous cultural interest from the appropriate register.

(4) No compensation is payable by the State for removal of the interest.

373ZH Surrendering or removing interest

(1) On lodgement of a document surrendering an indigenous cultural interest for land, the registrar of titles may register the surrender to the extent shown in the document.

(2) On registration of the document, the indigenous cultural interest is surrendered to the extent shown in the document.

(3) The registrar of titles may remove an indigenous cultural interest for land from the appropriate register if—

(a) a request to remove the interest is lodged and the request establishes that an event on which the interest was intended to end has happened; or

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(b) the registrar receives a request to remove the interest under an Act of the Commonwealth.

373ZI Notice of end of approved agreement

(1) This section applies if an approved agreement for an indigenous cultural interest ends.

(2) If the approved agreement is an indigenous access and use agreement, the lessee for the lease land subject to the indigenous cultural interest relating to the approved agreement must notify the registrar of titles of the ending of the agreement within 10 business days of its ending.

(3) If the approved agreement is an indigenous land use agreement, the lessee for the lease land subject to the indigenous cultural interest must notify the registrar of titles of the ending of the agreement within—

(a) if the agreement ends because of a determination of native title—28 business days after the determination; or

(b) otherwise—10 business days after the agreement ending.

373ZJ Continuation of interest

(1) Subsection (2) applies if—

(a) an indigenous cultural interest is removed from the leasehold land register because a lease ends; and

(b) immediately before the lease ends, the lease land was subject to the interest.

(2) The relevant Minister for the land after the lease ends may give written approval for the interest to continue unless the land is freehold land.

(3) If an indigenous cultural interest is continued under subsection (2)—

(a) the continuation must be recorded in the appropriate register; and

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(b) for this Act—

(i) the State is taken to be a party to the approved agreement for the indigenous cultural interest in place of the lessee; and

(ii) the rights and responsibilities of the lessee under the approved agreement become the rights and responsibilities of the State; and

(c) this division continues to apply to the interest with necessary changes.

(4) In this section—

relevant Minister, for land, means—

(a) if the land is within a State forest, timber reserve or forest entitlement area—the Minister administering the *Forestry Act 1959*; or

(b) if the land is within a nature conservation area or specified national park—the Minister administering the *Nature Conservation Act 1992*; or

(c) if the land is unallocated State land, trust land or licence land—the Minister.

specified national park means the following under the *Nature Conservation Act 1992*—

(a) a national park (Aboriginal land);

(b) a national park (Torres Strait Islander land);

(c) a national park (Cape York Peninsula Aboriginal land);

(d) an indigenous joint management area.

373ZK Transfer of lease affecting interest

(1) This section applies if—

(a) lease land is subject to an indigenous cultural interest; and

(b) a transfer of the lease for the lease land is registered.

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(2) For this Act—

(a) the transferee is taken to be a party to the approved agreement for the indigenous cultural interest in place of the transferor; and

(b) the rights and responsibilities of the transferor under the approved agreement become the rights and responsibilities of the transferee.

373ZL Reviewing approved agreements for indigenous cultural interests

(1) The chief executive may review the approved agreement for an indigenous cultural interest to assess—

(a) the compliance of the parties to the agreement with their obligations under the agreement; or

(b) whether the agreement has been changed or has ended.

(2) A lessee of land that is subject to an indigenous cultural interest must give the chief executive a written report about the matters mentioned in subsection (1) when asked to do so by the chief executive.

(3) Also, the lessee must give the chief executive a written report about the matters mentioned in subsection (1) every 10 years after—

(a) if the chief executive has not made a request of the lessee under subsection (2)—the creation of the interest; or

(b) if the chief executive has made a request of the lessee under subsection (2)—the last request by the chief executive under that subsection.

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Division 9 Trusts, deceased estates and bankruptcy

374 Details of trust must be given

(1) The Governor in Council may issue a deed of grant or a lease to a person as trustee only if—

(a) the deed of grant or lease may be issued to a trustee under this Act; and

(b) either of the following has been given to the registrar of titles—

(i) a document in the form required by the registrar stating the details of the trust;

(ii) a certified copy of the document creating the trust.

(2) A copy of the document stating details of the trust must be produced, for a deed of grant, to the registrar of titles when the deed of grant is registered.

(3) The document stating details of the trust does not form part of the register.

(4) To remove any doubt, it is declared that this section does not apply to deeds of grant in trust.

374A Interests held in trust must be registered

(1) Unless a lease is issued to a person as trustee under section 374, a person may hold an interest in a lease or sublease in trust only if there is registered—

(a) a transfer of the interest to, or a document creating the interest in favour of, the person as trustee; or

(b) a request to vest the interest in the person as trustee.

(2) For subsection (1)(b), a request to vest an interest in a lease or sublease in a person as trustee includes a request to give effect to an order of a court appointing the person as trustee for the sale of the lease or sublease.

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375 Document of transfer to trustee

(1) A transfer of an interest to be held in trust may be registered only if—

(a) the transferee is eligible, under this Act, to hold the land on trust; and

(b) either of the following is deposited with the transfer—

(i) a document, in the form required by the registrar of titles, stating details of the trust;

(ii) a certified copy of a document creating the trust.

(2) The document deposited with the transfer does not form part of the register.

375A Document to vest in trustee

(1) A request to vest an interest in a person as trustee may be registered only if—

(a) the person is eligible, under this Act, to hold the land on trust; and

(b) the request to vest gives effect to an order (the ***vesting order***) of a court.

(2) The vesting order, and all other documents (the ***other documents***) stating details of the trust subject to which the interest is vested in the trustee, must be deposited with the request to vest.

(3) The other documents do not form part of the register.

(4) The registrar of titles must keep certified copies of the other documents and return the originals to the person who deposited them.

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376 Deed of grant or lease may issue in name of deceased person

(1) The Governor in Council may issue a deed of grant or freeholding lease, and the Minister may issue a term or perpetual lease, in the name of a deceased person—

(a) if the person was entitled to its issue on the day of the person's death; or

(b) on the happening of an event after the person's death that would otherwise entitle the person to its issue.

(2) The deed of grant or lease issued—

(a) is as valid as it would have been if the person had been alive when it was issued; and

(b) has the same effect, as between the persons entitled to the land contained in the deed of grant or lease, as if the person had died immediately after its issue.

377 Registering personal representative

(1) A person may apply to the registrar of titles to be registered as personal representative of a deceased lessee, sublessee, licensee or mortgagee.

(2) The registrar of titles may register the person as personal representative only if—

(a) the person has obtained—

(i) a grant of representation in Queensland; or

(ii) the resealing in Queensland of a grant of representation; or

(b) if paragraph (a) does not apply and the lessee, sublessee, licensee or mortgagee died without a will—

(i) letters of administration of the deceased person's estate have not been granted in Queensland within 6 months after the death; and

(ii) the gross value of the deceased person's Queensland estate at the day of death was no more

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than the amount prescribed under the regulations or, if no amount is prescribed, $300,000; and

(iii) the registrar is of the opinion the person would succeed in an application for a grant of representation; or

(c) if paragraph (a) does not apply and the lessee, sublessee or licensee died leaving a will—

(i) the person is, or is entitled to be, the deceased's personal representative; or

(ii) the registrar considers the person would succeed in an application for a grant of representation; or

(iii) the person has obtained a grant of representation other than in Queensland and the registrar considers the person would succeed in an application for the resealing of the grant in Queensland.

(3) A person registered as personal representative without a grant of representation has the same rights, powers and liabilities as if a grant of representation had been made to the person.

(4) The validity of an act done or payment made in good faith by a person registered as personal representative is not affected by a later grant of representation.

(5) If the grantee of a grant of representation is different from the person registered as personal representative, the person must—

(a) account to the grantee for all property of the deceased person controlled by the person before the grant; and

(b) take all action necessary to divest from the person and vest in the grantee all property of the deceased person remaining under the person's control.

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378 References in documents to a person with an interest in land includes personal representatives etc.

(1) In a document made or executed under this Act, a reference to a person as registered owner, transferor, transferee, mortgagor, mortgagee, lessor, lessee, trustee or as having an interest in land includes a reference to the person's personal representatives, successors and assigns.

(2) The application of this section may be displaced, wholly or partly, by a contrary intention appearing in the document.

379 Registering beneficiary

(1) A person who is beneficially entitled under a will to a lease, sublease or licence of a deceased lessee, sublessee or licensee may apply to the registrar of titles to be registered as lessee, sublessee or licensee.

(2) However, the registrar of titles may register the person only if—

(a) written consent is given by—

(i) the person who is or is entitled to be the deceased's personal representative; or

(ii) a person the registrar considers would succeed in an application for a grant of representation; or

(iii) a person who has obtained a grant of representation other than in Queensland and the registrar considers would succeed in an application for the resealing of the grant in Queensland; and

(b) the person satisfies the registrar the person is beneficially entitled to the lease, sublease or licence.

380 Applying for Supreme Court order

(1) This section applies to—

(a) the Attorney-General; or

(b) a trustee or beneficiary under a trust; or

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(c) a personal representative, a beneficiary or anyone else interested in—

(i) a lease, sublease or licence of a deceased person; or

(ii) a trust involving a lease, sublease or licence of a deceased person; or

(iii) a lease, sublease or licence registered in the name of a person as personal representative.

Example of a person interested in a lease, sublease or licence mentioned in subparagraph (iii)—

a person claiming to be entitled to be appointed as personal representative in the place of the person in whose name the lease, sublease or licence is registered

(2) A person to whom this section applies may apply to the Supreme Court for an order that a named person be registered as lessee, sublessee or licensee.

(3) The Supreme Court may make 1 or more of the following orders—

(a) that a person be registered as lessee, sublessee or licensee;

(b) that a person be removed from the appropriate register as lessee, sublessee or licensee;

(c) that a person advertise in a particular way;

(d) that costs be paid by any person or out of any property.

(4) The registrar of titles must register particulars of an order if a request to register the order is lodged and an office copy of the order is deposited.

(5) An order does not vest an interest in the lease, sublease or licence until it is registered.

381 Transmission on bankruptcy

The registrar of titles may register a transmission of an interest in a lease, sublease or licence under a law about

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bankruptcy only if a request to register the transmission is lodged.

382 Disclaimer in bankruptcy

The registrar of titles may register a disclaimer of an interest in land under this Act under a law about bankruptcy only if notice of the disclaimer and a request to register the disclaimer is lodged.

Division 10 Powers of attorney and disabilities

383 Power of attorney

(1) A power of attorney that allows dealings with land under this Act must be registered in the powers of attorney register under the *Land Title Act 1994*.

(2) A power of attorney registered under the *Land Title Act 1994*—

(a) is taken to be a power of attorney registered for this Act; and

(b) authorises the donee to deal with any interest in land that may be dealt with by the donor under the power of attorney and this Act.

(3) However, an individual who is a trustee of trust land can not, under a power of attorney, authorise a person to deal with an interest in the trust land that may be dealt with by the individual as trustee.

Example—

An individual who is the trustee of a reserve could not, under a power of attorney, authorise another person to act on the trustee's behalf to enter into a trustee lease with a third person.

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385 Acts in relation to substitute decision makers

(1) An act may be done by a person who is responsible by law for the management and care of someone else's interests if—

(a) the act is required or permitted to be done by or for the other person under this Act; and

(b) the person has a mental illness or is incapable of managing their own affairs.

(2) If—

(a) an act is required or permitted to be done in relation to a person under this Act; and

(b) the person has a power of attorney that gives an attorney power to deal with land;

the act may be done in relation to the attorney.

Division 11 Writs of execution

386 Registering a writ of execution

The registrar of titles may register a request to record a writ of execution only if an office copy of the writ is lodged with the request.

387 Effect of registering a writ of execution

For buyers, sublessees, mortgagees and creditors, until a writ of execution is registered—

(a) it does not bind or affect a lease, whether or not there is actual or constructive notice of the writ; and

(b) binds or affects a lease only if the writ is executed and put in force within—

(i) 6 months of its lodgement; or

(ii) the extended time allowed by the court where the writ is filed and notified to the registrar of titles.

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388 Cancellation of registration of a writ of execution

Registration of a writ of execution may be cancelled if a request to cancel it is lodged and the registrar of titles is satisfied the time, or extended time, for executing and putting the writ into force has ended.

389 Discharging or satisfying writ of execution

Discharge or satisfaction of a writ of execution may be registered if a request to register it is lodged and the registrar of titles is satisfied the writ has been discharged or satisfied.

389A Effect on writ of execution of transfer after sale by mortgagee

(1) Subsection (2) applies if—

(a) a mortgage is registered over a lease; and

(b) a writ of execution is later registered in relation to the lease.

(2) If the mortgagee of the lease signs a transfer of the lease after exercising power of sale under the mortgage—

(a) registration of the writ of execution does not prevent registration of the transfer; and

(b) on registration of the transfer, the registrar of titles must cancel registration of the writ of execution.

389B Effect on writ of execution of transfer after sale by chief executive

(1) This section applies if—

(a) a writ of execution has been registered in relation to a lease; and

(b) the chief executive has sold the lease under chapter 5, part 4, division 3A, subdivision 4.

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(2) If the chief executive executes a transfer of the lease for the purposes of the sale—

(a) the registration of the writ of execution does not prevent registration of the transfer; and

(b) on registration of the transfer, the registrar of titles must cancel registration of the writ of execution.

Division 11A Caveats

Subdivision 1 Caveats generally

389C Requirements of caveats

(1) A caveat in relation to a lease or licence must be signed by or for the caveator.

(2) The caveat must state—

(a) the name of the caveator; and

(b) an address where documents can be served on the caveator; and

(c) unless the registrar of titles dispenses with it, the name and address of—

(i) the lessee or licensee affected by the caveat; and

(ii) each other person whose interest or whose right to registration of a document is affected by the caveat; and

(d) the registered interest affected by the caveat; and

(e) the interest claimed by the caveator; and

(f) the grounds on which the interest is claimed.

(2A) Without limiting subsection (2)(b), the address stated may be the address of a stated legal practitioner.

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(3) This section applies to caveats under this division other than a caveat prepared and registered by the registrar of titles under section 389L(1).

389D Lodging caveat

(1) A caveat may be lodged by the following—

(a) the registrar of titles under section 389L(1);

(b) a person to whom an Australian court has ordered that an interest in a lease or licence be transferred;

(c) a person who has the benefit of a subsisting order of an Australian court in restraining a lessee from dealing with a lease or licensee from dealing with a licence.

(2) An office copy of a court order mentioned in subsection (1) must be deposited when a caveat is lodged under subsection (1).

389E Notifying caveat

The registrar of titles must give notice of the lodgement of a caveat to each person mentioned in section 389C(2)(c)(i) and (ii).

389F Effect of lodging caveat

(1) A caveat lodged under this division prevents registration of a document affecting the tenure over which the caveat is lodged from the date and time endorsed by the registrar of titles on the caveat as the caveat's date and time of lodgement.

(2) Subsection (1) has effect for a caveat until the caveat is cancelled, rejected, removed or withdrawn.

(3) However, lodgement of a caveat under this subdivision does not prevent registration of the following—

(a) a document stated in the caveat as a document to which the caveat does not apply;

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(b) a document if the caveator consents to its registration;

(c) a document executed by a mortgagee whose interest was registered before lodgement of the caveat if—

(i) the mortgagee has power under the mortgage to execute the document; and

(ii) the caveator claims an interest in the lease as security for the payment of money or money's worth;

(d) a document of transfer of mortgage executed by a mortgagee whose interest was registered before lodgement of the caveat;

(e) if the caveator is a person who has the benefit of an order mentioned in section 389D(1)(c)—a document for a dealing other than a dealing restrained by the order;

Example—

A caveat lodged by a person who has the benefit of an order mentioned in section 389D(1)(c) restrains the lessee of a lease issued under this Act from subleasing the lease. The lodgement of the caveat does not prevent registration of a mortgage of the lease.

(f) another interest that, if registered, will not affect the interest claimed by the caveator.

(4) Also, lodgement of a caveat under section 389L(1) does not prevent registration of the following—

(a) a document stated in the caveat as a document to which the caveat does not apply;

(b) a document if the registrar of titles consents to its registration.

(5) Lodgement of a caveat does not create in the caveator an interest in the tenure affected by the caveat.

389G Withdrawing caveat

A caveator may withdraw a caveat lodged under this division by lodging a request to withdraw it.

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389H Removing caveat

(1) A caveatee may at any time apply to the Supreme Court for an order that a caveat lodged under this division be removed.

(2) The Supreme Court may make the order whether or not the caveator has been served with the application, and may make the order on the terms it considers appropriate.

389I Cancelling caveat

(1) This section does not apply to a caveat prepared and registered under section 389L(1).

(2) The registrar of titles may cancel a caveat if a request to cancel the caveat is lodged and the registrar is satisfied that—

(a) the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn; or

(b) the claim of the caveator has been settled by agreement or otherwise satisfied; or

(c) the nature of the interest claimed does not entitle the caveator to prevent registration of a document that has been lodged; or

(d) if the caveator is a person who has the benefit of an order mentioned in section 389D(1)(c)—the proceeding in which the order was made has been discontinued or dismissed, or has otherwise ended.

(3) The registrar of titles must notify the caveator of the registrar's intention to cancel the caveat at least 7 days before cancelling it.

(4) If a document that has been lodged will, on registration, give full effect to an interest claimed in a caveat, the registrar of titles may cancel the caveat immediately before registering the document.

(5) Also, the registrar of titles may cancel a caveat lodged by a person who has the benefit of an order mentioned in section 389D(1)(c) if—

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(a) a document for a dealing other than a dealing restrained by the order is registered; and

(b) because of the registration of the document, the order can have no further effect to restrain dealings by the person subject to the order.

389J Further caveat

(1) This section applies if a caveat is lodged under this division (the ***original caveat***) in relation to an interest.

(2) A further caveat with the same caveator can never be lodged in relation to the interest on the same, or substantially the same, grounds as the grounds stated in the original caveat unless the leave of a court of competent jurisdiction to lodge the further caveat has been granted.

(3) However, subsection (2) does not apply if the original caveat is a caveat prepared and registered by the registrar of titles under section 389L.

389K Notices to the caveator

(1) A notice to a caveator under this subdivision is sufficiently served if left at or sent to the address mentioned in section 389C(2)(b).

(2) If the registrar of titles is satisfied that a notice under this subdivision will not reach the caveator if served in the way mentioned in subsection (1), the notice may be served in a way stated in a written direction by the registrar.

(3) If the registrar of titles is informed in writing, and is satisfied, that the name or address of the caveator has changed, the registrar must note on the caveat details of the new name or address.

(4) A new name or address noted under subsection (3) becomes the name or address for service of a notice on the caveator.

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Subdivision 2 Caveats by registrar of titles

389L Registrar of titles may prepare and register caveat

(1) The registrar of titles may prepare and register a caveat over a relevant tenure in favour of the State.

(2) The registrar of titles may act under subsection (1) to prevent a dealing with a relevant tenure that may prejudice—

(a) the Commonwealth, a State or a relevant local government; or

(b) a person who is intellectually or mentally impaired or is incapable of managing the person's own affairs; or

(c) a person who is absent from the State; or

(d) a person because of—

(i) misdescription of the tenure; or

(ii) fraud or forgery; or

(e) a person to whom a notice has been given, or has been required to be given, under section 295(2); or

(f) a person, other than a person mentioned in any of paragraphs (a) to (e), who has an interest in the relevant tenure.

(3) Also, the registrar of titles may act under subsection (1) to prevent a dealing with a relevant tenure—

(a) if the relevant tenure is to be extinguished; or

(b) to give effect to an order of a court of competent jurisdiction directed to the registrar.

(4) Subsection (2)(f) applies only if the registrar of titles is satisfied, because of the nature or urgency of particular circumstances, there is no practicable alternative to registering the caveat.

(5) In this section—

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dealing, with a relevant tenure, does not include registering a document to extinguish a relevant tenure.

extinguish means extinguish for the purposes of—

(a) for a freeholding lease—an amalgamation, forfeiture, resumption, subdivision or surrender of, or the registration of a deed of grant over, the lease land; or

(b) for a lease other than a freeholding lease—an amalgamation, conversion, forfeiture, renewal, resumption, subdivision or surrender of the lease; or

(c) for a licence—a cancellation or surrender of the licence; or

(d) for an operational reserve—the registration of a deed of grant over the operational reserve; or

(e) for a reserve other than an operational reserve—the revocation of the dedication of the reserve.

Division 12 Liens

390 Vendor does not have equitable lien

A vendor of a lease or licence does not have an equitable lien on the lease or licence because of the buyer's failure to pay all or part of the purchase price for the lease or licence.

Division 13 Miscellaneous

390A Special provision for defence land or transport related land

(1) This section applies to any of the following dealings affecting land—

(a) a transfer under section 322 of a sublease;

(b) a sublease under section 332;

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(c) an amendment under section 336 of a sublease;

(d) the creation under section 362 of an easement;

(e) the registration under section 363 of an easement;

(f) a transfer under section 369A of a public utility easement;

(g) an amendment under section 370 of a registered easement;

(h) the creation under section 373B of a covenant;

(i) the amendment under section 373C of a covenant.

(2) If land affected by the dealing is defence land or transport related land, despite a provision mentioned in subsection (1), the Minister's or the chief executive's approval is not required for the dealing or the registration of a document for the dealing.

(3) In this section—

defence land means lease land under a term lease or perpetual lease to the Commonwealth for defence purposes.

transport related land means—

(a) transport land; or

(b) lease land under a perpetual lease to the State for marine facility purposes.

390B Particular dealing with prescribed land

(1) This section applies if the chief executive of the department under which the *Transport Infrastructure Act 1994* is administered applies for the issue of a deed of grant for a part of prescribed land.

(2) If the Governor in Council issues the deed of grant for the part of the prescribed land—

(a) the deed of grant takes effect on the day it is registered; and

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(b) the lot the subject of the deed of grant stops being lease land under the perpetual lease for the prescribed land when the deed of grant is registered; and

(c) the registrar of titles must amend the leasehold land register to show the particulars of the perpetual lease after the deed of grant is issued.

(3) The deed of grant is subject to the registered interests affecting the lot before its issue.

(4) In this section—

busway land means land declared as busway land under the *Transport Infrastructure Act 1994*, chapter 9.

light rail land means land declared as light rail land under the *Transport Infrastructure Act 1994*, chapter 10.

prescribed land means—

(a) busway land; or

(b) light rail land; or

(c) rail land.

Chapter 6A Investigation and enforcement

Part 1 Preliminary

390C Definitions for chapter

In this chapter—

court means a Magistrates Court.

disposal order see section 390ZT(2).

document certification requirement see section 390ZW(6).

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document production requirement see section 390ZW(2).

former owner see section 390ZQ(1).

general power see section 390ZD(1) and (2).

help requirement see section 390ZE(1).

offence warning, for a direction or requirement by an authorised officer, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given, or of whom the requirement is made, not to comply with it.

owner, of a thing that has been seized under this chapter, includes a person who would be entitled to possession of the thing had it not been seized.

personal details requirement see section 390ZU(5).

person in control—

(a) of a vehicle, includes—

(i) the vehicle's driver or rider; and

(ii) anyone who reasonably appears to be, claims to be, or acts as if he or she is, the vehicle's driver or rider or the person in control of the vehicle; or

(b) of another thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

place includes the following—

(a) freehold land;

(b) non-freehold land;

(c) premises;

(d) a place in Queensland waters;

(e) a place held under more than 1 title or by more than 1 owner;

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(f) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

premises includes—

(a) a building or other structure; and

(b) a part of a building or other structure; and

(c) a caravan or vehicle; and

(d) a cave or tent; and

(e) premises held under more than 1 title or by more than 1 owner.

public place means a place, or part of a place—

(a) that the public is entitled to use, whether or not on payment of money; or

Examples of a place that may be a public place under paragraph (a)—

a beach, a park, a road

(b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

Examples of a place that may be a public place under paragraph (b)—

a saleyard, a showground

vehicle—

(a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and

(b) includes a vessel under that Act.

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Part 2 General provisions about authorised officers

Division 1 Appointment

390D Functions of authorised officers

An authorised officer has the following functions—

(a) to investigate, monitor and enforce compliance with this Act;

(b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;

(c) to facilitate the exercise of powers under this Act.

390E Appointment and qualifications

(1) The chief executive may, by instrument in writing, appoint any of the following persons as authorised officers—

(a) a public service employee; or

(b) another person prescribed by regulation.

(2) However, the chief executive may appoint a person as an authorised officer only if the chief executive is satisfied the person is appropriately qualified.

390F Appointment conditions and limit on powers

(1) An authorised officer holds office on any conditions stated in—

(a) the authorised officer's instrument of appointment; or

(b) a signed notice given to the authorised officer; or

(c) a regulation.

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(2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer's powers.

(3) In this section—

signed notice means a notice signed by the chief executive.

390G When office ends

(1) The office of a person as an authorised officer ends if any of the following happens—

(a) the term of office stated in a condition of office ends;

(b) under another condition of office, the office ends;

(c) the authorised officer's resignation under section 390H takes effect.

(2) Subsection (1) does not limit the ways the office of a person as an authorised officer ends.

(3) In this section—

condition of office means a condition under which the authorised officer holds office.

390H Resignation

(1) An authorised officer may resign by signed notice given to the chief executive.

(2) However, if holding office as an authorised officer is a condition of the authorised officer holding another office, the authorised officer may not resign as an authorised officer without resigning from the other office.

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Division 2 Identity cards

390I Issue of identity card

(1) The chief executive must issue an identity card to each authorised officer.

(2) The identity card must—

(a) contain a recent photo of the authorised officer; and

(b) contain a copy of the authorised officer's signature; and

(c) identify the person as an authorised officer under this Act; and

(d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

390J Production or display of identity card

(1) In exercising a power in relation to a person in the person's presence, an authorised officer must—

(a) produce the authorised officer's identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the authorised officer has entered a place as mentioned in section 390N(1)(b), (f) or (g).

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390K Return of identity card

If the office of a person as an authorised officer ends, the person must return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Division 3 Miscellaneous provisions

390L References to exercise of powers

If—

(a) a provision of this Act refers to the exercise of a power by an authorised officer; and

(b) there is no reference to a specific power;

the reference is to the exercise of all or any authorised officers' powers under this chapter or a warrant, to the extent the powers are relevant.

390M Reference to document includes reference to reproductions from electronic document

A reference in this chapter to a document includes a reference to an image or writing—

(a) produced from an electronic document; or

(b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

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Part 3 Entry of places by authorised officers

Division 1 Power to enter

390N General power to enter places

(1) An authorised officer may enter a place, for a purpose of this Act or the Vegetation Management Act, if—

(a) an occupier at the place consents under division 2 to the entry and section 390Q has been complied with for the occupier; or

(b) the place is unallocated State land or relevant trust land; or

(c) the place is non-freehold land subject to a trust, lease, licence or permit, or freehold land containing a reservation for a public purpose, and the authorised officer reasonably believes—

(i) the terms or conditions of the trust, lease, licence, permit or reservation applying to the land are not being complied with; or

(ii) this Act is not being complied with; or

(d) the place is non-freehold land and the authorised officer reasonably suspects a building or other structure or equipment on the land is dangerous and poses a serious risk to the safety of the public; or

Note—

See chapter 7, part 1A in relation to safety notices.

(e) the place is non-freehold land (other than unallocated State land or relevant trust land), or freehold land containing a reservation for a public purpose, and the entry is made at least 14 days after giving the occupier of the place a notice stating—

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(i) the authorised officer's intention to enter the place; and

(ii) the proposed purpose of entering the place; and

(iii) the day and time, or the 48 hour period during which, the authorised officer proposes to enter the place; or

(f) the place is a public place and the entry is made when the place is open to the public; or

(g) the place is the place of business of a lessee, licensee or permittee and is—

(i) open for carrying on the business; or

(ii) otherwise open for entry; or

(h) the entry is authorised under a warrant and, if there is an occupier of the place, section 390X has been complied with for the occupier.

(2) However, subsection (1)(a) to (g) does not authorise the entry of a part of the place consisting of premises where a person resides.

(3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.

(4) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

(5) The consent may provide consent for re-entry and is subject to the conditions of consent.

(6) If the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.

(7) In this section—

relevant trust land means—

(a) trust land of which the State is the trustee; or

(b) trust land for which there is no trustee.

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Division 2 Entry by consent

390O Application of division

This division applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 390N(1)(a).

390P Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an authorised officer may, without the occupier's consent or a warrant—

(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 authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

390Q Matters authorised officer must tell occupier

Before asking for the consent, the authorised officer must—

(a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and

(b) tell the occupier that—

(i) the occupier is not required to consent; and

(ii) the consent may be given subject to conditions and may be withdrawn at any time.

390R Consent acknowledgement

(1) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.

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(2) The acknowledgement must state—

(a) the purpose of the entry, including the powers to be exercised; and

(b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and

(c) that the occupier has been told—

(i) that the occupier is not required to consent; and

(ii) that the consent may be given subject to conditions and may be withdrawn at any time; and

(d) that the occupier gives the authorised officer or another authorised officer consent to enter the place and exercise the powers; and

(e) the day and time the consent was given; and

(f) any conditions of the consent.

(3) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.

(4) However, if it is not practicable to comply with subsection (3), the authorised officer must give the occupier a copy of the acknowledgement at the first reasonable opportunity.

(5) If—

(a) an issue arises in a proceeding about whether the occupier consented to the entry; and

(b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

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Division 3 Entry under warrant

Subdivision 1 Obtaining warrant

390S Application for warrant

(1) An authorised officer may apply to a magistrate for a warrant for a place.

(2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

390T Issue of warrant

(1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of—

(a) the commission of an offence against this Act; or

(b) the breach of a condition of a person's lease, licence or permit.

(2) The warrant must state—

(a) the place to which the warrant applies; and

(b) that a stated authorised officer or any authorised officer may with necessary and reasonable help and force—

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(i) enter the place and any other place necessary for entry to the place; and

(ii) exercise the authorised officer's powers; and

(c) particulars of the offence or breach of condition that the magistrate considers appropriate; and

(d) the name of the person suspected of having committed the offence or having breached the condition unless the name is unknown or the magistrate considers it inappropriate to state the name; and

(e) the evidence that may be seized under the warrant; and

(f) the hours of the day or night when the place may be entered; and

(g) the magistrate's name; and

(h) the day and time of the warrant's issue; and

(i) the day, within 14 days after the warrant's issue, the warrant ends.

390U Electronic application

(1) An application under section 390S may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the authorised officer's remote location.

(2) The application—

(a) may not be made before the authorised officer prepares the written application under section 390S(2); but

(b) may be made before the written application is sworn.

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390V Additional procedure if electronic application

(1) For an application made under section 390U, the magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied—

(a) it was necessary to make the application under section 390U; and

(b) the way the application was made under section 390U was appropriate.

(2) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or

(b) otherwise—

(i) the magistrate must tell the authorised officer the information mentioned in section 390T(2); and

(ii) the authorised officer must complete a form of warrant, including by writing on it the information mentioned in section 390T(2) provided by the magistrate.

(3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 390S(2) and (3); and

(b) if the authorised officer completed a form of warrant under subsection (2)(b), the completed form of warrant.

(5) Despite subsection (3), if—

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(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(6) This section does not limit section 390S.

390W Defect in relation to warrant

(1) A warrant is not invalidated by a defect in—

(a) the warrant; or

(b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

warrant includes a duplicate warrant mentioned in section 390V(3).

Subdivision 2 Entry procedure

390X Entry procedure

(1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this division.

(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised officer's identity card or another document evidencing the authorised officer's appointment;

(b) give the person a copy of the warrant;

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(c) tell the person the authorised officer is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

(3) However, the authorised officer need not comply with subsection (2) if the authorised officer reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

(4) In this section—

warrant includes a duplicate warrant mentioned in section 390V(3).

Part 4 Other powers of authorised officers and related matters

Division 1 Stopping or moving vehicles

390Y Application of division

This division applies if an authorised officer reasonably suspects, or is aware, that—

(a) a vehicle is being used to commit an offence against this Act; or

(b) a thing in or on a vehicle may provide evidence of—

(i) the commission of an offence against this Act; or

(ii) the breach of a condition of a person's lease, licence or permit.

390Z Power to stop or move

(1) If the vehicle is moving, the authorised officer may, to exercise the authorised officer's powers, signal or otherwise direct the person in control of the vehicle to stop the vehicle

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and to bring the vehicle to, and keep it at, a convenient place within a reasonable distance to allow the authorised officer to exercise the powers.

(2) If the vehicle is stopped, the authorised officer may direct the person in control of the vehicle—

(a) not to move it until the authorised officer has exercised the authorised officer's powers; or

(b) to move the vehicle to, and keep it at, a stated reasonable place to allow the authorised officer to exercise the powers.

(3) When giving the direction under subsection (2), the authorised officer must give the person in control an offence warning for the direction.

390ZA Identification requirements if vehicle moving

(1) This section applies if the authorised officer proposes to give a direction under section 390Z(1) and the vehicle is moving.

(2) The authorised officer must clearly identify himself or herself as an authorised officer exercising the authorised officer's powers.

Examples—

1 If the authorised officer is in a moving vehicle, the authorised officer may use a loudhailer to identify himself or herself as an authorised officer exercising powers.

2 If the authorised officer is standing at the side of the road, the authorised officer may use a sign to identify himself or herself as an authorised officer exercising powers.

(3) When the vehicle stops, the authorised officer must—

(a) have with him or her the authorised officer's identity card; and

(b) immediately produce the identity card for the inspection of the person in control of the vehicle.

(4) Subsection (3) applies despite section 390J.

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390ZB Failure to comply with direction

(1) The person in control of the vehicle must comply with a direction under section 390Z unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) It is a reasonable excuse for the person not to comply with a direction if—

(a) the vehicle was moving and the authorised officer did not comply with section 390ZA; or

(b) to comply immediately would have endangered someone else or caused loss or damage to property, and the person complies as soon as it is practicable to do so.

(3) Subsection (2) does not limit what may be a reasonable excuse for subsection (1).

(4) A person does not commit an offence against subsection (1) if—

(a) the direction the person fails to comply with is given under section 390Z(2); and

(b) the person is not given an offence warning for the direction.

Division 2 General powers of authorised officers after entering places

390ZC Application of division

(1) The powers under this division may be exercised if an authorised officer enters a place under section 390N(1)(a), (b), (c), (d), (e), (g) or (h).

(2) However, if the authorised officer enters under section 390N(1)(a) or (h), the powers under this division are subject to any conditions of the consent or terms of the warrant.

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390ZD General powers

(1) The authorised officer may do any of the following (each a ***general power***)—

(a) search any part of the place;

(b) inspect, examine or film any part of the place, anything at the place or the uses made of the place;

(c) take for examination a thing, or a sample of or from a thing, at the place;

(d) place an identifying mark in or on anything at the place;

(e) take an extract from, or copy, a document at the place, or take the document to another place to copy;

(f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

(g) take to, into or onto the place and use any person, equipment and materials the authorised officer reasonably requires for exercising the authorised officer's powers under this chapter;

(h) remain at the place for the time necessary to achieve the purpose of the entry.

(2) Also, if the place is lease land, licence land or permit land for agricultural, grazing or pastoral purposes, the authorised officer may do any of the following (also each a ***general power***)—

(a) establish 1 or more sites (each a ***monitoring site***) on the land to monitor compliance with—

(i) this Act; or

(ii) the lease, licence or permit; or

(iii) a land management agreement; or

(iv) a remedial action notice; or

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(v) a remedial action order; or

(vi) a compliance notice; or

(vii) a compliance order;

(b) without limiting subsection (1)(d), place a marker to show where a monitoring site is;

(c) install or place a device (a ***monitoring device***) at a monitoring site to carry out the monitoring;

(d) read a monitoring device;

(e) check the accuracy of, or repair or replace, a monitoring device.

(3) The authorised officer may take a necessary step to allow the exercise of a general power.

(4) If the authorised officer takes a document from the place to copy it, the authorised officer must copy the document and return it to the place as soon as practicable.

(5) If the authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised officer must produce the document and return the article or device to the place as soon as practicable.

(6) In this section—

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in another way.

inspect, a thing, includes open the thing and examine its contents.

390ZE Power to require reasonable help

(1) The authorised officer may make a requirement (a ***help requirement***) of an occupier of the place or a person at the place to give the authorised officer reasonable help to exercise

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a general power, including, for example, to produce a document or to give information.

(2) When making the help requirement, the authorised officer must give the person an offence warning for the requirement.

390ZF Offence to contravene help requirement

(1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

(3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the individual under this Act.

Note—

See, however, section 390ZZJ.

Division 3 Seizure by authorised officers and forfeiture

Subdivision 1 Power to seize

390ZG Seizing evidence at a place that may be entered without consent or warrant

(1) An authorised officer who enters a place the authorised officer may enter under this chapter without the consent of an occupier of the place and without a warrant may seize a thing at the place if the authorised officer reasonably believes the thing is evidence of—

(a) the commission of an offence against this Act; or

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(b) a breach of a condition of a person's lease, licence or permit.

(2) However, if the authorised officer enters the place under section 390N(1)(c), (d) or (e), the authorised officer may seize a thing at the place only if the authorised officer also reasonably believes the seizure is necessary to prevent the thing being—

(a) hidden, lost or destroyed; or

(b) used to commit, continue or repeat an offence against this Act.

390ZH Seizing evidence at a place that may be entered with consent or warrant

(1) This section applies if—

(a) an authorised officer is authorised to enter a place under this chapter with the consent of an occupier of the place or a warrant; and

(b) the authorised officer enters the place after obtaining the consent or under a warrant.

(2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place only if—

(a) the authorised officer reasonably believes the thing is evidence of—

(i) the commission of an offence against this Act; or

(ii) a breach of a condition of a person's lease, licence or permit; and

(b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.

(3) If the authorised officer enters the place under a warrant, the authorised officer may seize the evidence for which the warrant was issued.

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(4) The authorised officer may also seize anything else at the place if the authorised officer reasonably believes—

(a) the thing is evidence of—

(i) the commission of an offence against this Act; or

(ii) a breach of a condition of a person's lease, licence or permit; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

(5) The authorised officer may also seize a thing at the place if the authorised officer reasonably believes it has just been used in—

(a) committing an offence against this Act; or

(b) breaching a condition of a person's lease, licence or permit.

390ZI Seizure of property subject to security

(1) An authorised officer may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.

(2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised officer or a person acting under the direction or authority of the authorised officer.

Subdivision 2 Powers to support seizure

390ZJ Power to secure seized thing

(1) Having seized a thing under this division, an authorised officer may—

(a) leave it at the place where it was seized (the ***place of seizure***) and take reasonable action to restrict access to it; or

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(b) move it from the place of seizure.

(2) For subsection (1)(a), the authorised officer may, for example—

(a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or

(b) for equipment—make it inoperable; or

Example—

make it inoperable by dismantling it or removing a component without which the equipment can not be used

(c) require a person the authorised officer reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an authorised officer could do under subsection (1)(a).

390ZK Offence to contravene seizure requirement

A person must comply with a requirement made of the person under section 390ZJ(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

390ZL Offence to interfere

(1) If access to a seized thing is restricted under section 390ZJ, a person must not tamper with the thing or with anything used to restrict access to the thing without—

(a) an authorised officer's approval; or

(b) a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If access to a place is restricted under section 390ZJ, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

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(a) an authorised officer's approval; or

(b) a reasonable excuse.

Maximum penalty—100 penalty units.

Subdivision 3 Safeguards for seized things

390ZM Receipt and information notice for seized thing

(1) This section applies if an authorised officer seizes anything under section 390ZG or 390ZH unless—

(a) the authorised officer reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or

(b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised officer to comply with this section.

(2) The authorised officer must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

(a) a receipt for the thing that generally describes the thing and its condition; and

(b) an information notice about the decision to seize it.

(3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

(4) The receipt and information notice may—

(a) be given in the same document; and

(b) relate to more than 1 seized thing.

(5) The authorised officer may delay giving the receipt and information notice if the authorised officer reasonably

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suspects giving them may frustrate or otherwise hinder an investigation by the authorised officer under this chapter.

(6) However, the delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

390ZN Access to seized thing

(1) Until a seized thing is forfeited or returned, the authorised officer who seized the thing must allow an owner of the thing—

(a) to inspect it at any reasonable time and from time to time; and

(b) if it is a document—to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

(3) The inspection or copying must be allowed free of charge.

390ZO Return of seized thing

(1) This section applies if a seized thing is not—

(a) forfeited or transferred under subdivision 4 or 5; or

(b) subject to a disposal order under division 4.

(2) As soon as the chief executive stops being satisfied there are reasonable grounds for retaining the thing, the chief executive must return it to its owner.

(3) If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the chief executive for its return.

(4) Within 30 days after receiving the application, the chief executive must—

(a) if the chief executive is satisfied there are reasonable grounds for retaining the thing and decides to retain

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it—give the owner an information notice about the decision, including the grounds for retaining the thing; or

(b) otherwise—return the thing to the owner.

(5) For this section, there are reasonable grounds for retaining a seized thing if—

(a) the thing is being, or is likely to be, examined; or

(b) the thing is needed, or may be needed, for the purposes of—

(i) a proceeding for an offence against this Act that is likely to be started or that has been started but not completed; or

(ii) an appeal from a decision in a proceeding for an offence against this Act; or

(c) it is not lawful for the owner to possess the thing.

(6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.

(7) Nothing in this section affects a lien or other security over the seized thing.

(8) In this section—

examine includes analyse, test, measure, weigh, grade, gauge and identify.

Subdivision 4 Forfeiture

390ZP Forfeiture by chief executive decision

(1) The chief executive may decide a seized thing is forfeited to the State if an authorised officer—

(a) after making reasonable inquiries, can not find an owner; or

(b) after making reasonable efforts, can not return it to an owner; or

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(c) for a thing seized for an offence—reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.

(2) However, the authorised officer is not required to—

(a) make inquiries if it would be unreasonable to make inquiries to find an owner; or

(b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Example for paragraph (b)—

The owner of the thing has migrated to another country.

(3) Regard must be had to the thing's condition, nature and value in deciding—

(a) whether it is reasonable to make inquiries or efforts; and

(b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

390ZQ Information notice about forfeiture decision

(1) If the chief executive decides under section 390ZP(1) to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the ***former owner***) an information notice about the decision.

(2) If the decision was made under section 390ZP(1)(a) or (b), the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.

(3) The information notice must state that the former owner may apply for a stay of the decision if the former owner appeals against the decision.

(4) However, subsections (1) to (3) do not apply if—

(a) the decision was made under section 390ZP(1)(a) or (b); and

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(b) the place where the thing was seized is—

(i) a public place; or

(ii) a place where the notice is unlikely to be read by the former owner.

Subdivision 5 Dealing with property forfeited or transferred to State

390ZR When thing becomes property of the State

A thing becomes the property of the State if—

(a) the thing is forfeited to the State under section 390ZP(1); or

(b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

390ZS How property may be dealt with

(1) This section applies if, under section 390ZR, a thing becomes the property of the State.

(2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.

(3) The chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this chapter.

(4) If the chief executive sells the thing, the chief executive must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the former owner of the thing.

(5) For subsection (4), the ***costs of the sale*** include the amount of any costs reasonably incurred, after the thing was forfeited or transferred to the State, in storing or transporting the thing.

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(6) This section is subject to any disposal order made for the thing.

Division 4 Disposal orders

390ZT Disposal order

(1) This section applies if a person is convicted of an offence against this Act.

(2) The court may make an order (a ***disposal order***), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—

(a) anything that was the subject of, or used to commit, the offence;

(b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.

(3) The court may make a disposal order for a thing—

(a) whether or not it has been seized under this chapter; and

(b) if the thing has been seized—whether or not it has been returned to the former owner.

(4) In deciding whether to make a disposal order for a thing, the court—

(a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and

(b) must hear any submissions that any person claiming to have any property in the thing may wish to make.

(5) The court may make any order it considers appropriate to enforce the disposal order.

(6) This section does not limit the court's powers under another law.

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Division 5 Other information-obtaining powers of authorised officers

390ZU Power to require name and address

(1) This section applies if an authorised officer—

(a) finds a person committing an offence against this Act; or

(b) finds a person in circumstances that lead the authorised officer to reasonably suspect the person has just committed an offence against this Act; or

(c) has information that leads the authorised officer to reasonably suspect a person has just committed an offence against this Act.

(2) The authorised officer may require the person to state the person's name and residential address or, if the person does not have a residential address in the State, another address in the State where the person may be contacted.

(3) The authorised officer may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—

(a) be in possession of evidence of the correctness of the stated name or address; or

(b) otherwise be able to give the evidence.

(4) When making a personal details requirement, the authorised officer must give the person an offence warning for the requirement.

(5) A requirement under this section is a ***personal details requirement***.

390ZV Offence to contravene personal details requirement

(1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

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Maximum penalty—50 penalty units.

(2) A person may not be convicted of an offence against subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

390ZW Power to require production of document

(1) An authorised officer may require a person to make available for inspection by an authorised officer, or to produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer—

(a) a document issued to the person under this Act; or

(b) a document required to be kept by the person under this Act; or

(c) if a document or information required to be kept by the person under this Act is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document or information.

(2) A requirement under subsection (1) is a ***document production requirement***.

(3) For an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.

(4) The authorised officer may keep the document to copy it.

(5) If the authorised officer copies the document, or an entry in the document, the authorised officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

(6) A requirement under subsection (5) is a ***document certification requirement***.

(7) The authorised officer must return the document to the person as soon as practicable after copying it.

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(8) However, if a document certification requirement is made of a person, the authorised officer may keep the document until the person complies with the requirement.

390ZX Offence to contravene document production requirement

(1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) It is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

Note—

See, however, section 390ZZJ.

(3) The authorised officer must inform the person, in a way that is reasonable in the circumstances, that—

(a) the person must comply with the document production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and

(b) if the person is an individual—there is a limited immunity under section 390ZZJ against the future use of the information or document given in compliance with the requirement.

(4) If the person fails to comply with the document production requirement when the authorised officer has failed to comply with subsection (3), the person may not be convicted of the offence against subsection (1).

(5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

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390ZY Offence to contravene document certification requirement

(1) A person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) It is not a reasonable excuse for a person to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

Note—

See, however, section 390ZZJ.

(3) The authorised officer must inform the person, in a way that is reasonable in the circumstances, that—

(a) the person must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and

(b) if the person is an individual—there is a limited immunity under section 390ZZJ against the future use of the information or document given in compliance with the requirement.

(4) If the person fails to comply with the document certification requirement when the authorised officer has failed to comply with subsection (3), the person may not be convicted of the offence against subsection (1).

390ZZ Power to require information

(1) This section applies if an authorised officer reasonably believes—

(a) an offence against this Act has been committed or a condition of a lease, licence or permit has been breached; and

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(b) a person may be able to give information about the offence or breach.

(2) The authorised officer may, by notice given to the person, require the person to give the authorised officer information related to the offence or breach by a stated reasonable time.

(3) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.

(4) In this section—

information includes a document.

390ZZA Offence to contravene information requirement

(1) A person of whom a requirement is made under section 390ZZ(2) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

Part 5 Obtaining criminal history reports

390ZZB Purpose of part

The purpose of this part is to help an authorised officer to decide whether the authorised officer's unaccompanied entry of a place under part 3 would create an unacceptable level of risk to the authorised officer's safety.

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390ZZC Chief executive's power to obtain criminal history report

(1) The chief executive may ask the commissioner of the police service for a written report about the criminal history of a person if an authorised officer reasonably suspects the person—

(a) may be present at a place when the authorised officer enters the place under part 3; and

(b) may create an unacceptable level of risk to the authorised officer's safety.

(2) The commissioner of the police service must give the report to the chief executive.

(3) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.

(4) The chief executive must examine the report and identify, to the extent it is reasonably practicable to do so, offences involving the use of a weapon or violence against a person.

(5) The chief executive may give the authorised officer information in the report about the offences identified under subsection (4).

390ZZD Criminal history is confidential document

(1) A person must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 390ZZC.

Maximum penalty—100 penalty units.

(2) However, the person does not contravene subsection (1) if—

(a) the disclosure of the report or information is for the purpose of the other person performing a function in relation to this Act; or

(b) the disclosure of the report or information is otherwise required or permitted by law.

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(3) The chief executive or an authorised officer to whom the report or written information in the report is provided must destroy the report or written information as soon as practicable after the authorised officer considers the risk mentioned in section 390ZZB.

Part 6 Miscellaneous provisions relating to authorised officers

Division 1 Damage

390ZZE Duty to avoid inconvenience and minimise damage

In exercising a power, an authorised officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Note—

See also section 390ZZG.

390ZZF Notice of damage

(1) This section applies if—

(a) an authorised officer damages something when exercising, or purporting to exercise, a power; or

(b) a person (the ***assistant***) acting under the direction or authority of an authorised officer damages something.

(2) However, this section does not apply in relation to damage the authorised officer reasonably considers is trivial or if the authorised officer reasonably believes—

(a) there is no-one apparently in possession of the thing; or

(b) the thing has been abandoned.

(3) The authorised officer must give notice of the damage to a person who appears to the authorised officer to be an owner, or person in control, of the thing.

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(4) However, if for any reason it is not practicable to comply with subsection (3), the authorised officer must—

(a) leave the notice at the place where the damage happened; and

(b) ensure it is left in a conspicuous position and in a reasonably secure way.

(5) The authorised officer may delay complying with subsection (3) or (4) if the authorised officer reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the authorised officer.

(6) However, the delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place.

(7) If the authorised officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised officer or the assistant, the authorised officer may state the belief in the notice.

(8) The notice must state—

(a) particulars of the damage; and

(b) that the person who suffered the damage may claim compensation under section 390ZZG.

Division 2 Compensation

390ZZG Compensation

(1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised officer under this chapter, including a loss arising from compliance with a requirement made of the person under part 4, division 3 or 5.

(2) The compensation may be claimed and ordered in a proceeding—

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(a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

(b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.

(3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) In considering whether it is just to order compensation, the court must have regard to—

(a) any relevant offence committed by the claimant; and

(b) any relevant breach of a condition of any licence, lease or permit of the claimant; and

(c) whether the loss arose from a lawful seizure or lawful forfeiture.

(5) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

(6) Section 390ZZE does not provide for a statutory right of compensation other than as provided by this section.

(7) In this section—

loss includes costs and damage.

Division 3 Other offences relating to authorised officers

Note—

See also section 440 in relation to the obstruction of authorised officers and other persons.

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390ZZH Giving authorised officer false or misleading information

(1) A person must not, in relation to the administration of this Act, give an authorised officer information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) applies to information given in relation to the administration of this Act whether or not the information was given in response to a specific power under this Act.

(3) Subsection (1) does not apply to a person if the person, when giving information in a document—

(a) tells the authorised officer, to the best of the person's ability, how the document is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

390ZZI Impersonating authorised officer

A person must not impersonate an authorised officer.

Maximum penalty—100 penalty units.

Division 4 Other provisions

390ZZJ Evidential immunity for individuals complying with particular requirements

(1) Subsection (2) applies if an individual gives or produces information or a document to an authorised officer under section 390ZE or 390ZW.

(2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.

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(3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

Chapter 7 General

Part 1 Administration

Division 1 Ministerial administration

391 Administration of Act

This Act is to be administered by the Minister and, subject to the Minister, by the chief executive.

391A General provision about approvals

(1) If this Act permits or requires the Minister, chief executive or registrar of titles to give approval for a matter or thing, the approval may be given subject to the conditions the Minister, chief executive or registrar considers appropriate.

(2) If a document requires the Minister's or the chief executive's approval to be registered, the Minister or the chief executive may tell the person seeking to register it that the approval will be given subject to conditions the Minister or the chief executive considers appropriate for the document.

(3) An advice under subsection (2) may be considered to be an 'in principle' approval.

(4) When the conditions are complied with, the Minister or the chief executive may give the approval by executing the appropriate form.

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392 Delegation by Minister

(1) The Minister may delegate the Minister's powers under this Act or another Act administered by the Minister to the chief executive or to an appropriately qualified public service employee employed in the department.

(2) The Minister may delegate the Minister's powers about matters connected with the public business of the State administered by the Minister (whether the powers arise under an Act or otherwise) to—

(a) another Minister; or

(b) the chief executive or the chief executive of another department; or

(c) an appropriately qualified public service employee.

(2A) The Minister may, for a lease held by the State to perform functions under another Act, delegate the Minister's functions under this Act to the chief executive or an appropriately qualified public service employee employed in the department in which the other Act is administered.

(3) The Minister may delegate the Minister's powers under this Act about roads and trust land to a local government.

(4) Despite subsections (1) to (3), the following functions of the Minister can not be delegated—

(a) granting a lease;

(b) dispensing with the need to obtain the Minister's approval for trustee leases;

(c) extending the term of a lease for a year if the term has already been extended;

(d) granting an extension of a term of a lease under chapter 4, part 3, division 1B;

(e) reducing the term of a lease, under section 155D or 214E;

(f) imposing an additional condition, under section 214E.

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(4A) To remove any doubt, it is declared that other than the power to grant an extension of a lease, the Minister may delegate any of the Minister's other functions under chapter 4, part 3, division 1B to the chief executive or an appropriately qualified public service employee employed in the department.

(5) In this section—

functions includes powers.

393 Delegation by chief executive

(1) The chief executive may delegate the chief executive's powers under this Act or another Act administered by the Minister to an appropriately qualified public service employee employed in the department.

(2) The chief executive may delegate the chief executive's powers about matters connected with the public business of the State administered by the Minister (whether the powers arise under an Act or otherwise) to an appropriately qualified public service employee.

(3) The chief executive may delegate the chief executive's powers under this Act about roads and trust land to a local government.

(4) The chief executive may delegate to a port authority the chief executive's powers to issue a permit to occupy land—

(a) that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence and that is within the limits of a port; and

(b) having a tidal boundary or right line tidal boundary, if the land adjoins the limits of a port and is needed as strategic port land.

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393AA Delegation by registrar of titles

(1) The registrar of titles may delegate the registrar's functions under this Act to—

(a) an appropriately qualified public service employee employed in the department and under the control of the registrar; or

(b) the titles registry operator.

(2) If a function of the registrar of titles is delegated to the titles registry operator, the titles registry operator must subdelegate the function to an appropriately qualified employee of the titles registry operator.

(3) The titles registry operator may impose conditions on a subdelegation under subsection (2) that are not inconsistent with any conditions to which the delegation to the titles registry operator is subject.

(4) If the registrar of titles delegates the registrar's function of keeping the land registry to the titles registry operator, a reference in an Act to an office of the land registry is, if the context permits, taken to be a reference to an office of the titles registry operator—

(a) where documents may be lodged; and

(b) that is published on the operator's website.

(5) In this section—

function includes power.

393A Departmental officer may give notices for this Act

If a provision of this Act requires a notice to be given for any purpose and the provision does not state who is to give the notice, it is sufficient if the notice is given by an officer of the department.

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394 Committees

(1) The Minister may establish a committee (the ***advisory committee***) to advise the Minister about the management and use of rural leasehold land.

(2) The Minister may—

(a) establish—

(i) a committee of review to help the Minister with the administration of this Act; and

(ii) regional committees to support the advisory committee; and

(b) decide the functions or terms of reference of a committee established under paragraph (a); and

(c) decide the following for any committee established under this section—

(i) its membership;

(ii) how it is to operate.

(3) A member of a committee established under this section is entitled to be paid the fees and allowances decided by the Governor in Council.

394A Ministerial guidelines about what constitutes a good condition for lease land

(1) The Minister may make guidelines about what constitutes a good condition for lease land.

(2) Before making proposed guidelines, the Minister must seek advice from the advisory committee under section 394 about the appropriateness of the guidelines.

(3) If the advice sought is not given within a reasonable period, the Minister may make the guidelines without receiving the advice.

(4) The Minister must make the guidelines available to the public in the way the Minister considers appropriate.

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(5) Without limiting subsection (4), the Minister must ensure an up-to-date copy of the guidelines is available to be read free of charge at each office of the department.

(6) If, under this Act, the Minister may consider or must be satisfied that lease land for a particular lease is in good condition, the Minister may have regard to the guidelines.

Division 6 Public notices other than gazette notices

403C Publication of particular public notices on department's website

(1) This section applies if an official is required under this Act to give a public notice, unless the notice is a gazette notice.

(2) This section applies even if this Act provides for a particular way in which the notice must be given.

(3) The official must publish the notice on the department's website for a total of at least 10 business days.

(4) The 10 business days may be, but need not necessarily be, consecutive.

(5) Subsection (3) does not prevent the official from also giving the notice in another way the official considers appropriate.

(6) In deciding to give the notice in another way, the official must consider the intended audience for the notice.

(7) In this section—

give, for a notice, includes advertising it.

notice includes an advertisement.

official means—

(a) the Minister; or

(b) the chief executive; or

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(c) a person performing functions or exercising powers under this Act for the Minister or the chief executive.

public notice means a notice of a public nature that is not required only to be given, or only intended for, a particular person or group of persons.

Part 1A Safety notices

Division 1 Show cause procedure for particular safety notices

403D Show cause notice

(1) This section applies if the chief executive proposes to give a person a safety notice under section 403G(2)(c) in relation to a building or other structure or equipment.

(2) The chief executive must first give the person a notice (a ***show cause notice***) stating the following—

(a) that the chief executive proposes to give the person a safety notice requiring the person to demolish or remove a stated building or another structure or stated equipment;

(b) the grounds for giving the proposed safety notice;

(c) an outline of the facts and circumstances forming the basis for the grounds;

(d) that the person may, within a stated period (the ***show cause period***), make written representations to the chief executive to show why the safety notice should not be given.

(3) The show cause period must end at least 21 days after the person is given the show cause notice.

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403E Representations about show cause notice

(1) The person may, within the show cause period, make written representations to the chief executive about why the safety notice should not be given.

(2) The chief executive must consider all representations (the ***accepted representations***) made under subsection (1).

403F Ending show cause process without further action

(1) If, after considering the accepted representations for the show cause notice, the chief executive no longer believes a ground exists to give the safety notice, the chief executive—

(a) must not take any further action about the show cause notice; and

(b) must give the person a notice that no further action is to be taken about the show cause notice.

(2) Subsection (1) does not prevent the chief executive giving the person a safety notice under section 403G(2)(a) or (b) in relation to the same building, structure or equipment.

Division 2 Giving of safety notices and related matters

403G Chief executive may give safety notice

(1) This section applies if the chief executive reasonably believes a building or other structure or equipment on non-freehold land—

(a) is dangerous; and

(b) poses a serious risk to the safety of the public.

(2) The chief executive may give the occupier of the land on which the building, structure or equipment is situated a notice (a ***safety notice***) requiring the person, within a stated reasonable period, to take any of the following actions (each a ***safety action***)—

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(a) to repair or rectify the building, structure or equipment to make it safe;

(b) to fence off the building, structure or equipment to protect the public;

(c) to demolish or remove the building, structure or equipment.

(3) However, a person may be required to take a safety action mentioned in subsection (2)(c) only if—

(a) the chief executive reasonably believes it is not possible or practicable to take steps to comply with a safety action mentioned in subsection (2)(a) or (b); and

(b) the chief executive has complied with division 1.

(4) The safety notice must be accompanied by or include an information notice about the decision to give the safety notice.

(5) In this section—

occupier, of land, means—

(a) if the land is the subject of a lease registered under this Act—the lessee of the land; or

(b) if the land is a reserve—the trustee of the reserve; or

(c) if a person has occupation rights in relation to the land under a licence or permit—the licensee or permittee.

403H Person must comply with safety notice

A person to whom a safety notice is given must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—400 penalty units.

Division 3 Noncompliance with safety notices

403I Safety notice requiring repair, rectification or fencing

(1) This section applies if—

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(a) a person is given a safety notice under section 403G(2)(a) or (b); and

(b) the person fails to comply with the notice, whether or not the person has been convicted of an offence against section 403H for the noncompliance.

(2) The State may—

(a) take the safety action required under the safety notice; and

(b) recover from the person the reasonable costs of taking the safety action as a debt due to the State.

403J Safety notice requiring demolition or removal

(1) This section applies if—

(a) a person is given a safety notice under section 403G(2)(c); and

(b) the person fails to comply with the notice, whether or not the person has been convicted of an offence against section 403H for the noncompliance.

(2) The chief executive may give the person a notice (a ***warning notice***) stating—

(a) the chief executive is satisfied the person has failed to take a stated safety action required under the safety notice; and

(b) if the person fails to take the safety action within 7 days after the person is given the warning notice (the ***relevant period***), the State may—

(i) take the safety action; and

(ii) recover from the person the reasonable costs of taking the safety action, including any disposal costs, as a debt due to the State.

(3) The warning notice must be accompanied by or include an information notice about the decision to give the warning notice.

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(4) If the person does not, within the relevant period, take the safety action required under the safety notice, the State may—

(a) take the safety action; and

(b) for the purpose of taking the safety action, remove anything in or on the building, structure or equipment to which the safety notice applies; and

(c) recover from the person the reasonable costs of taking the safety action as a debt due to the State.

(5) When the safety action is started, the building, structure or equipment to which the safety notice applies is forfeited to the State.

(6) If a thing becomes the property of the State under subsection (5), the chief executive may deal with the thing (the ***forfeited thing***) as the chief executive considers appropriate, including, for example, by destroying it, giving it away or otherwise disposing of it.

(7) For subsection (4)(c), the costs of taking the safety action include the following costs (each the ***disposal costs***)—

(a) any costs reasonably incurred in disposing of the forfeited thing or any part of it;

Examples of disposal costs—

transport costs, dump fees, storage costs, costs of sale

(b) any costs reasonably incurred in removing a thing in or on the forfeited thing for the purpose of taking the safety action.

(8) If the chief executive sells the forfeited thing, or any part of it, the amount for which the thing or part is sold must be offset against the amount that may otherwise be recovered under subsection (4)(c).

(9) If the amount for which the forfeited thing or part is sold is greater than the reasonable costs of taking the safety action and any disposal costs, the chief executive must, after deducting the costs of taking the safety action and any disposal costs, make reasonable efforts to return the proceeds of the sale to the person.

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Part 1B Regulatory and other notices on unallocated State land and particular trust land

403K Regulatory notices

(1) The chief executive may, for the purpose of regulating or prohibiting a stated activity in an area of unallocated State land or relevant trust land, erect or display a notice (a ***regulatory notice***) at or near the access points to the area of land to which the notice applies (the ***restricted use area***).

Example of an access point to an area of unallocated State land—

a track or trail giving access to the area

(2) A person must not contravene a requirement of the regulatory notice unless the person has a reasonable excuse.

Maximum penalty—400 penalty units.

(3) The regulation or prohibition of the stated activity under the regulatory notice must be for 1 or more of the following purposes—

(a) to protect public health or safety;

(b) to prevent a nuisance in the restricted use area;

Example of a nuisance—

excessive noise from trail bike riding

(c) to protect infrastructure in the restricted use area;

(d) to protect the cultural or environmental value of the restricted use area;

(e) another purpose prescribed by regulation.

(4) The regulatory notice must—

(a) be easily visible to passers-by; and

(b) identify the restricted use area—

(i) by describing or depicting the limits of the area; or

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(ii) by reference to an area or feature beyond a stated access point; and

(c) state the activity to which it applies and how the activity is regulated or prohibited.

(5) The regulatory notice may state that a contravention of a requirement of the notice is an offence against this Act and the penalty for the offence.

(6) Evidence that the regulatory notice was erected or displayed at or near an access point to the restricted use area is evidence that the notice was erected or displayed by the chief executive.

(7) In this section—

relevant trust land means—

(a) trust land of which the State is the trustee; or

(b) trust land for which there is no trustee.

403L Regulatory information notices

(1) This section applies if a regulatory notice for a restricted use area does not state that a contravention of a requirement of the notice is an offence against this Act and the penalty for the offence.

(2) The chief executive must erect or display at or near the access points to the restricted use area, and at other places the chief executive considers appropriate, a notice (a ***regulatory information notice***) stating—

(a) that a contravention of a requirement of the regulatory notice is an offence against this Act; and

(b) the penalty for the offence.

(3) The regulatory information notices must be placed so at least 1 of them is likely to be seen by anyone who sees a regulatory notice mentioned in subsection (1).

(4) The regulatory information notice may contain any other information about the restricted use area the chief executive considers appropriate.

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403M Person must not interfere with notices

A person must not move, destroy, damage, deface, alter or otherwise interfere with—

(a) a regulatory notice; or

(b) a regulatory information notice.

Maximum penalty—400 penalty units.

Part 1C Directions to leave unallocated State land and particular trust land

403N Authorised officer may give direction

(1) This section applies in relation to a person on unallocated State land or relevant trust land.

(2) An authorised officer may direct the person to leave the land, or a stated part of the land, if the authorised officer reasonably believes—

(a) it is unsafe for the person to remain on the land; or

Example of when it may be unsafe for a person to remain on the land—

A controlled burn is being carried out on the land.

(b) the person is contravening a requirement of a regulatory notice that applies to the land and leaving the land is the only way the person can comply with the requirement.

Example—

A person is driving a vehicle in a part of unallocated State land where the driving of vehicles is prohibited under a regulatory notice. An authorised officer may direct the person to leave the part of the unallocated State land to which the regulatory notice applies.

(3) The direction may be given orally or in writing.

(4) If the direction is given orally, the authorised officer must, when giving the direction, tell the person—

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(a) for a direction under subsection (2)(a)—

(i) why it is unsafe for the person to remain on the land; and

(ii) that it is an offence for the person not to comply with the direction unless the person has a reasonable excuse; or

(b) for a direction under subsection (2)(b)—

(i) the requirement of the regulatory notice the authorised officer believes is being contravened; and

(ii) the way in which it is believed the requirement is being contravened; and

(iii) that it is an offence for the person not to comply with the direction unless the person has a reasonable excuse.

(5) If the direction is given in writing, the direction must state the matters mentioned in subsection (4)(a) or (b).

(6) The person must comply with the direction unless the person has a reasonable excuse.

Maximum penalty—400 penalty units.

(7) In this section—

relevant trust land means—

(a) trust land of which the State is the trustee; or

(b) trust land for which there is no trustee.

403O Authorised officer must make record of direction

(1) This section applies if an authorised officer—

(a) gives a direction under section 403N orally; or

(b) gives a direction under section 403N in writing, but does not have a copy of the direction.

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(2) The authorised officer must, as soon as reasonably practicable after the direction is given, make a written record of—

(a) the name of the person to whom the direction was given; and

(b) details of the direction; and

(c) the day and time the direction was given.

Part 1D Provisions about offers

403P Application of part

This part applies in relation to an offer made under this Act by a person (the ***offeror***) to another person (the ***offeree***).

403Q Definitions for part

In this part—

offeree see section 403P.

offeror see section 403P.

offer period see section 403R.

403R Meaning of *offer period*

(1) The period for which an offer is valid (the ***offer period***) is—

(a) the period stated in the offer; or

(b) if no period is stated in the offer—3 months from the day the offer is made.

(2) However, if the offer period is extended under subsection (3) or (4), the extended period is the ***offer period***.

(3) The offeror may extend the period for which the offer is valid in the offer period if the offeree applies for the extension within the offer period.

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(4) The offeror may extend the period for which the offer is valid after, but within 42 days after, the offer period ends if—

(a) the offeree applies for the extension after, but within 42 days after, the offer period ends; and

(b) the offeror considers that exceptional circumstances exist.

(5) The period for which an offer is valid may be extended under subsection (4) only once.

403S Requirement for making conditional offers

(1) This section applies if an offer is subject to conditions.

(2) The offer must state—

(a) that, for the offer to be accepted, the conditions must be complied with within the offer period; and

(b) that the offer lapses if the offer is not accepted under this Act within the offer period.

403T Requirements for acceptance of offers

(1) An acceptance of an offer must be in writing.

(2) An offer that is made subject to conditions is accepted only if the conditions are complied with within the offer period.

Note—

See section 171 for a requirement about accepting particular conditional offers.

403U Lapse of offer

An offer lapses at the end of the offer period if the offer is not accepted under this Act within the offer period.

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403V Change in purchase price or cash premium if offer period extended

(1) This section applies if—

(a) an offer includes a purchase price, or a cash premium, that is not fixed by reference to a particular date; and

(b) the offeror extends the period for which the offer is valid under section 403R(3) or (4).

(2) The offeror may amend the offer to change the purchase price or cash premium.

(3) The offeror must decide the new purchase price or cash premium in the way the offeror was required to decide the original purchase price or cash premium under this Act.

Part 2 Unlawful occupation of non-freehold and trust land

Division 1 Unlawful occupation of non-freehold and trust land

404 No trespassing

(1) A person must not unlawfully, do any of the following things (a ***trespass related act***) in relation to non-freehold or trust land—

(a) occupy or live on it;

(b) enclose it;

(c) build, place or maintain any structure, improvement, work or thing on it;

(d) clear, dig up or cultivate it;

(e) depasture stock or cause stock to be depastured on it.

Maximum penalty—400 penalty units.

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(1A) To remove any doubt, it is declared that the mere making of an offer under this Act in relation to non-freehold or trust land does not make it lawful for the offeree to do a trespass related act in relation to the land.

(2) If a person is found guilty by a Magistrates Court of an offence against subsection (1), the court may make any further order the court may make in a proceeding by the chief executive under division 2.

(3) Subsection (2) does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other Act.

Division 2 Action to deal with unlawful occupation

405 Application of division

This division applies to unallocated State land, trust land and roads.

405AA Definitions for division

In this division—

compliance period see section 406(4)(a).

relevant period see section 409(2).

405A Exercise of chief executive's powers under division

(1) This section applies in relation to the chief executive's powers under this division for land to which this division applies.

(2) The chief executive's powers are in addition to, and do not limit or otherwise affect, the corresponding powers of any trustee of, or the relevant local government for, the land.

(3) The chief executive may decide not to exercise the chief executive's powers if the chief executive considers it is more

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appropriate for the trustee or local government to exercise the corresponding powers.

(4) Subsection (3) is subject to subsection 405B(2).

(5) In this section—

corresponding powers, of a trustee or local government, means the trustee's or local government's powers under an Act about the unlawful occupation of the land.

405B Occupation fee for unlawful occupation by offeree until grant of tenure

(1) This section applies if—

(a) the chief executive is satisfied a person is or has been unlawfully occupying land; and

(b) the person has, under this Act, been made an offer of a tenure in relation to the land; and

(c) the person has accepted the offer, whether or not the tenure has been granted.

(2) The chief executive may, for the State, by notice to the person, charge the person a fee for the person's occupation of the land for the period from when the chief executive is reasonably satisfied the person started to unlawfully occupy the land to when the tenure starts.

(3) A notice may be for all or a stated part of the period.

(4) The fee must be reasonable.

(5) The fee is taken to be reasonable if it represents an amount that would have been payable by the person to the State had the person held the tenure, or a tenure of that type for the land, during the period.

(6) The amount of the fee is a debt owing by the person to the State.

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406 Notice to person to leave land, remove structures etc.

(1) If the chief executive is satisfied a person is unlawfully occupying land or has unlawfully done a trespass related act on land, the chief executive may give the person a notice (a ***trespass notice***).

(2) However, the chief executive must give the person a trespass notice if—

(a) the person has, under this Act, been made an offer of a tenure in relation to the land; and

(b) the person has rejected the offer or the offer has lapsed.

(3) The trespass notice may require the person—

(a) to leave the land; or

(b) to remove from the land, improvements, goods (including stock) or anything else; or

(c) not to remove from the land, improvements, goods (including stock) or anything else; or

(d) to remove anything enclosing the land; or

(e) to do anything necessary to restore the land to its state before the person occupied the land or did anything to the land.

(4) The trespass notice must state—

(a) the period (the ***compliance period***) within which the person must comply with the notice; and

(b) that failure to comply with the notice—

(i) is an offence; and

(ii) may result in proceedings in the Magistrates Court being started against the person.

(5) The trespass notice may be given by fixing the notice in a conspicuous position and in a reasonably secure way on the land, or on a thing on the land.

(6) The compliance period must be at least the period prescribed by regulation after—

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(a) if the trespass notice is given to the person in the way mentioned in subsection (5)—the person becomes aware of the existence of the notice; or

(b) otherwise—the notice is given to the person.

407 Person must comply with notice

A person who is given a trespass notice must comply with the notice, unless the person starts a proceeding under this division or has a reasonable excuse.

Maximum penalty—400 penalty units.

408 Forfeiture of improvements and other things on land

(1) This section applies if a person to whom a trespass notice is given—

(a) does not comply with the notice; and

(b) does not start a proceeding under this division within the relevant period.

(2) On the expiry of the relevant period, any improvements, goods or anything else belonging to the person that is on the land the subject of the trespass notice is forfeited to the State.

(3) In this section—

goods includes stock.

409 Person may start proceeding in Magistrates Court

(1) A person who receives a trespass notice may start a proceeding in the Magistrates Court nearest to the land the subject of the notice.

(2) The proceeding must be started by the person within the following period (the ***relevant period***)—

(a) if the compliance period stated in the trespass notice is 7 days or less—7 days;

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(b) otherwise—the compliance period stated in the trespass notice.

(3) The person starts the proceeding by—

(a) filing a notice (a ***proceeding notice***) with the registrar of the Magistrates Court stating the orders sought in relation to the trespass notice; and

(b) filing a copy of the trespass notice; and

(c) giving to the chief executive a copy of the proceeding notice.

(4) The proceeding notice must state the grounds on which the orders of the court are sought.

410 Chief executive may start proceeding

(1) If the chief executive is satisfied a person is unlawfully occupying land, or has unlawfully done a trespass related act on land, the chief executive may start a proceeding in the Magistrates Court.

(2) The chief executive may start a proceeding whether or not a trespass notice has been given to a person.

(3) The proceeding must be started in the Magistrates Court nearest to the land the subject of the proceeding.

(4) The chief executive starts the proceeding by—

(a) filing a notice (a ***proceeding notice***) with the registrar of the Magistrates Court stating the orders sought by the chief executive; and

(b) giving a copy of the proceeding notice to the person mentioned in subsection (1).

(5) The proceeding notice must state the grounds on which the orders of the court are sought.

(6) However, if a trespass notice has been given to a person, a proceeding may be started by the chief executive only if—

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(a) the relevant period has expired and the person has not started a proceeding under this division about the trespass notice; or

(b) the person has started, but has discontinued or not continued a proceeding under this division about the trespass notice.

411 Defence may be filed

(1) A person who receives a proceeding notice may defend the proceeding by filing a notice (a ***defence notice***) with the registrar of the Magistrates Court within 14 days of receiving the proceeding notice.

(2) The defence notice must state—

(a) the grounds on which the proceeding is defended; and

(b) the orders sought by the chief executive or the person.

412 State may carry out work

(1) If a person does not comply with a trespass order, within a reasonable time, the State may carry out work stated in the order.

(2) If the State carries out work stated in a trespass order, the cost of the work is a debt owing by the person to the State.

413 Powers of officers and employees of the department

Officers and employees of the department may exercise the powers and force reasonable and necessary to enforce a trespass order.

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Division 3 Action by lessee, licensee, permittee or trustee

414 Application of division

This division applies to a lease, licence, permit and trust land.

415 Lessee, licensee, permittee or trustee may start proceeding

(1) A trustee of trust land and a lessee, licensee or permittee may start a proceeding in the Magistrates Court if the trustee, lessee, licensee or permittee believes, on reasonable grounds, another person is unlawfully occupying the trust land, lease, licence or permit or has unlawfully done a trespass related act on the trust land, lease, licence or permit.

(2) The proceeding must be started in the Magistrates Court nearest to the trust land, lease, licence or permit.

(3) A trustee, lessee, licensee or permittee may start a proceeding by—

(a) filing a notice (a ***proceeding notice***) with the registrar of the Magistrates Court stating the orders sought by the trustee, lessee, licensee or permittee; and

(b) giving a copy of the proceeding notice to the other person mentioned in subsection (1) and the chief executive.

(4) The proceeding notice must state the grounds on which the orders of the court are sought.

416 Defence may be filed

(1) A person who receives a proceeding notice may defend the proceeding by filing a notice (a ***defence notice***) with the registrar of the Magistrates Court within 14 days of receiving the proceeding notice.

(2) The defence notice must state—

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(a) the grounds on which the proceeding is defended; and

(b) the orders sought by the person.

Division 4 Court matters

417 Hearing procedures

In a proceeding in a Magistrates Court under this part, the court—

(a) is not bound by the rules of evidence; and

(b) must observe natural justice; and

(c) may hear the proceeding in court or chambers.

418 Discretion of Magistrates Court about orders

(1) In a proceeding under this part, the Magistrates Court may make any order (a ***trespass order***) it considers appropriate.

(2) Without limiting subsection (1), the court may order that—

(a) a person leave the land and not return; or

(b) a person remove from the land improvements, goods (including stock) or anything else; or

(c) a person not remove from the land improvements, goods (including stock) or anything else; or

(d) a person remove anything enclosing the land; or

(e) improvements, goods (including stock) or anything else be forfeited to the State or someone else; or

(f) work be performed on the land by a person to rectify damage to the land by the person; or

(g) the cost of the work to be performed on the land be a debt owing by the person to the State or someone else.

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419 Order of the Magistrates Court must be complied with

A person must comply with a trespass order.

Maximum penalty—400 penalty units.

420 Appeal to District Court on questions of law only

A party dissatisfied with a trespass order may appeal to the District Court, but only on a question of law.

Division 5 Dealing with property forfeited to the State

420AA How property may be dealt with

(1) This section applies if a thing becomes the property of the State under—

(a) section 408; or

(b) a trespass order.

(2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it, giving it away or otherwise disposing of it.

(3) However, if the thing is forfeited to the State under a trespass order, the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the making of the trespass order.

(4) The State may recover from the former owner any costs reasonably incurred in disposing of the thing (the ***disposal costs***) as a debt due to the State.

Examples of disposal costs—

transport costs, dump fees, storage costs, costs of sale

(5) If the chief executive sells the thing or any part of it, the amount for which the thing or part is sold must be offset against the amount that may otherwise be recovered under subsection (4).

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(6) If the amount for which the thing or part is sold is greater than the disposal costs, the chief executive must, after deducting the disposal costs, make reasonable efforts to return the proceeds of the sale to the former owner.

(7) In this section—

former owner, in relation to a thing that has been forfeited, means the person who owned the thing immediately before the forfeiture.

Part 2A General provisions for applications

420A Application of pt 2A

(1) This part applies for the making and deciding of applications under this Act.

(2) However, this part does not apply in relation to applications made to the registrar of titles.

(3) This part does not limit or otherwise affect a requirement under another provision of this Act about the making or deciding of a particular application.

420B Application guidelines

(1) The chief executive may keep guidelines (by whatever name called) about the making of applications, in the way the chief executive considers appropriate, for the information and guidance of departmental staff and persons dealing with the department.

(2) The guidelines may include directions by the chief executive about all or any of the following—

(a) practices developed in the department about the making of applications;

(b) how application forms must be filled in;

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(c) how information required to be included in or given with applications must be included or given.

(3) The chief executive must make the guidelines available to the public in the way the chief executive considers appropriate.

(4) Without limiting subsection (3), the chief executive must ensure an up-to-date copy of the guidelines is available to be read free of charge at each office of the department.

420C Requirements for making an application

(1) An application is made only if it complies with the following (the ***application requirements***) and any particular requirements under this Act for making it—

(a) it must be made to the chief executive;

(b) it must be in the appropriate form;

(c) it must comply with all relevant guideline directions;

(d) it must be accompanied by the fee prescribed under a regulation;

(e) if the particular requirements under this Act for making the application include a notification provision—it must be accompanied by a copy of the notice of the applicant's intention to make the application given to each entity under the notification provision.

(2) Subsection (1)(a) applies even if the chief executive is not the person who may or must decide the application.

(3) The chief executive must refuse to receive or process a purported application not made in accordance with the application requirements.

(4) However, subsection (3) does not apply if—

(a) the only noncompliance with the application requirements is a noncompliance with a guideline direction; and

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(b) the chief executive considers that it is not reasonable in the circumstances to require compliance with the direction.

(4A) Also, the chief executive may refuse to process an application relating to a lease if payment of rent under the lease is in arrears.

(5) A legal practitioner acting for a person who wishes to make an application may sign and make the application for the person.

(6) In this section—

guideline direction means a direction given under section 420B(2).

notification provisions, for an application, means a requirement or discretion for the person making the application to give notice of the person's intention to make the application to a particular person or entity.

420CA Requirements for giving notice of intention to apply

(1) This section applies if a person is required or permitted to give notice of the person's intention to make an application (the ***proposed application***) under this Act.

(2) The notice must—

(a) be in the approved form; and

(b) state the following—

(i) the purpose of the proposed application;

(ii) that the entity given the notice may make a submission against the proposal to the person or to the chief executive;

(iii) that the submission must be in the approved form;

(iv) the closing day for the submission;

(v) the place or places where, or the way or ways, the submission must be lodged.

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420CB Submissions

(1) An entity given a notice about a proposed application mentioned in section 420CA may make a submission against the proposed application to—

(a) the person who gave the entity the notice; or

(b) the chief executive.

(2) The submission must—

(a) be in the approved form; and

(b) be received by the closing day for the submission stated in the notice; and

(c) be lodged at a place or in a way stated in the notice.

(3) The person who may or must decide the proposed application must, before deciding the application, consider all submissions received—

(a) under this section; or

(b) with the application.

420D Refusal of frivolous or vexatious applications

(1) An application may be refused on the ground that it is frivolous or vexatious.

(2) Subsection (1) does not limit any other ground for refusing the application.

420E Request to applicant about application

(1) The chief executive may, by notice, ask an applicant to—

(a) complete or correct the application if it appears to the chief executive to be incorrect, incomplete or defective; or

(b) give the chief executive—

(i) stated information, in support of the application; or

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(ii) a statutory declaration verifying any information included in the application or any additional information required under subparagraph (i).

(2) The request may state the period within which it must be complied with.

(3) If no period is stated, it is 30 days after the making of the request.

(4) The chief executive may extend the period for complying with the request.

(5) The person who may or must decide the application may refuse to decide it until the request is complied with.

(6) This section does not limit section 420C(3).

(7) In this section—

information includes a document.

420F Refusing application for failure to comply with request

If—

(a) a request under section 420E has been made; and

(b) the period under section 420E for complying with the request has ended; and

(c) the request has not been complied with to the satisfaction of the person who made it;

the person who may or must decide the application the subject of the request may refuse the application.

420FA Regard may be had to information and advice

A person who may or must decide an application may, in making the decision, have regard to information and advice obtained in the way the person considers appropriate.

Example—

If the Minister is making a decision under section 24 about a reservation for road purposes, the Minister might decide to seek advice

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from the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered.

420G Particular criteria generally not exhaustive

(1) This section applies if another provision of this Act permits or requires a person who may or must decide an application to consider particular criteria in making the decision.

(2) To remove any doubt, it is declared that the person may, in making the decision, consider any other criteria the person considers relevant.

(3) However, subsection (2) does not apply if the provision otherwise provides.

(4) In this section—

criteria includes issues and matters.

420H Particular grounds for refusal generally not exhaustive

(1) This section applies if another provision of this Act provides for particular grounds on which a person may refuse an application.

Example of a provision of this Act for subsection (1)—

section 420F

(2) To remove any doubt, unless the other provision otherwise provides, the person may refuse the application on another reasonable and relevant ground.

(3) In this section—

refuse, an application, includes to refuse the thing the subject of the application.

420I General power to impose conditions

A power to decide an application includes a power to—

(a) grant the application subject to conditions that must be complied with before the application is granted; or

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(b) approve or grant the thing the subject of the application subject to conditions that must be complied with before the thing is approved or granted.

Example for paragraph (b)—

An application is made under section 322 for approval of a transfer of a lease. The chief executive may approve the transfer subject to a condition that all outstanding rent relating to the lease must be paid.

Part 3 Review of decisions and appeals

Division 1AA Preliminary

420J Definitions for part

In this part—

court, in relation to an original decision or a review decision relating to an original decision, means—

(a) if the original decision is an investigation decision—a Magistrates Court; or

(b) otherwise—the Land Court.

investigation decision means an original decision under any of the following provisions—

(a) section 390ZG;

(b) section 390ZH;

(c) section 390ZO;

(d) section 390ZP(1).

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Division 1 Right of appeal

420K Right of appeal

(1) A person who is given, or is entitled to be given, an information notice about an original decision may appeal against the decision.

(2) Subsection (1) does not limit any other provision of this Act that gives a person a right to appeal against an original decision.

421 Notice of right of appeal to be given

(1) A person who has a right to appeal against a decision under this Act must be given notice of the person's right to appeal against the decision and how the appeal is started.

(2) The notice must be given when notice of the decision and the reasons for the decision are given to the person.

(3) Subsections (1) and (2) do not apply in relation to an original decision for which a person is entitled to be given an information notice.

Division 2 Internal review of decisions

422 Appeal process starts with internal review

Every appeal against an original decision must be, in the first instance, by way of an application for internal review.

423 Who may apply for review etc.

A person who has a right to appeal against an original decision may apply to the Minister for a review of the decision.

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424 Applying for review

(1) An application by a person for review of a decision must be made within 42 days after notice of the decision was given to the person.

(2) The Minister may extend the period for making an application for review.

(3) An application for review must be written and state in detail the grounds on which the applicant seeks review of the decision.

425 Stay of operation of decision etc.

(1) If an application is made under this part for review of a decision, the applicant may immediately apply for a stay of the decision to the court.

(2) The court may stay the decision to secure the effectiveness of the review and any later appeal to the court.

(3) A stay—

(a) may be given on conditions; and

(b) operates for the period stated by the court; and

(c) may be revoked or amended by the court.

(4) The period of a stay under this section must not extend past the time when the Minister reviews the decision and any later period the court allows the applicant to enable the applicant to appeal against the decision.

(5) The making of an application under this part for review of a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

426 Decision on reconsideration

(1) After reviewing the original decision, the Minister must make a further decision (the ***review decision***) to confirm the original decision, amend the original decision or substitute a new decision.

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(2) The chief executive must immediately give the applicant notice of the decision.

(3) The notice must state—

(a) the day the notice is given to the applicant (the ***review notice day***); and

(b) if the review decision is not the decision sought by the applicant—

(i) the reasons for the decision; and

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

Division 3 Appeals

427 Who may appeal

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

428 Procedure for an appeal to the court

(1) An appeal to the court is started by filing notice of appeal with the registrar of the court.

(2) A copy of the notice must be served on the chief executive.

(3) The notice of appeal must be filed within 42 days after the review notice day under section 426.

(4) However, a regulation may provide a different period for particular decisions.

(5) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.

(6) The notice of appeal must state fully the grounds of the appeal.

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429 Powers of court on appeal

(1) In deciding an appeal, the court has the same powers as the decision maker.

(2) An appeal is by way of rehearing.

(3) The court may—

(a) confirm the review decision; or

(b) set aside the review decision and substitute another decision; or

(c) set aside the review decision and return the issue to the Minister with directions the court considers appropriate.

430 Effect of decision of court on appeal

If the court substitutes another decision, the substituted decision is, for the relevant provision of this Act, taken to be the decision maker's decision.

431 Jurisdiction of the court

The court has jurisdiction to hear and decide matters referred to the court by the Minister.

Part 3A Proceedings generally

Division 1 Preliminary

431A Application of pt 3A

This part applies to a proceeding under this Act.

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Division 2 Evidence

431B Evidentiary provisions

(1) The appointment or power of the chief executive, the registrar of titles or an authorised officer must be presumed unless a party, by reasonable notice, requires proof of—

(a) the appointment; or

(b) the power to do anything under this Act.

(2) A signature purporting to be the signature of the Minister, the chief executive or an authorised officer is evidence of the signature it purports to be.

(3) A certificate purporting to be signed by the Minister stating any of the following matters is evidence of the matter—

(a) that land is or was, at a time or day mentioned in the complaint, a deed of grant in trust or non-freehold land;

(b) that, for a deed of grant in trust or non-freehold land, a person, at a time or day mentioned in the certificate—

(i) occupied or lived on it; or

(ii) enclosed it; or

(iii) built, placed or maintained any structure, improvement, work or thing on it; or

(iv) cleared, dug up or cultivated it; or

(v) depastured stock or caused stock to be depastured on it.

(4) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

431C Further evidentiary aids

A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—

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(a) a stated document is one of the following things made, given, or issued under this Act—

(i) an appointment;

(ii) a decision;

(b) a stated document is a copy of a thing mentioned in paragraph (a);

(c) on a stated day, or during a stated period, a person's appointment as an authorised officer was, or was not, in force;

(d) on a stated day, a stated requirement was made of a stated person;

(e) that on a stated day, or during a stated period, a stated notice was published on the department's website.

431D Instruments, equipment and installations

(1) An instrument, equipment or installation prescribed under a regulation that is used in accordance with any conditions prescribed under a regulation is taken, in the absence of evidence to the contrary—

(a) to be accurate and precise; and

(b) to have been used by an appropriately qualified person.

(2) A party to the proceeding intending to challenge a matter mentioned in subsection (1)(a) or (b), must give at least 28 days notice of the party's intention to adduce relevant evidence.

431E Certificate or report about remotely sensed image

(1) A signature on a certificate or report purporting to be the signature of an appropriately qualified person who gave the certificate or report is evidence of the signature it purports to be.

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(2) A statement of any of the following matters in the certificate or report is evidence of the matters stated in the absence of evidence to the contrary—

(a) the person's qualifications;

(b) a stated document is a remotely sensed image, or a copy of a remotely sensed image, of a stated area;

(c) the date on which a stated remotely sensed image was produced;

(d) the person's stated conclusions drawn from a stated remotely sensed image;

(e) the location of a stated area;

(g) whether a stated area is or is likely to be an area of remnant vegetation.

(3) A party to the proceeding intending to challenge the statement must give at least 28 days notice of the party's intention to adduce relevant evidence.

(4) In this section—

remnant vegetation means remnant vegetation within the meaning of the Vegetation Management Act.

Division 3 Starting proceedings

431G Offences are summary offences

An offence against this Act is a summary offence.

431H Limitation on time for starting offence proceedings

A proceeding for an offence against this Act must start within—

(a) 1 year after the offence is committed; or

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(b) 1 year after the offence comes to the complainant's knowledge, but within 5 years after the offence is committed.

Division 4 Other matters about proceedings

431J Liability of executive officer—offence committed by corporation against s 214D(1)

(1) An executive officer of a corporation commits an offence if—

(a) the corporation commits an offence against section 214D(1); and

(b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of section 214D(1) by an individual.

(2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—

(a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against section 214D(1); and

(b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against section 214D(1); and

(c) any other relevant matter.

(3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against section 214D(1).

(4) This section does not affect—

(a) the liability of the corporation for the offence against section 214D(1); or

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(b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against section 214D(1).

(5) In this section—

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

431L Recovery of costs of investigation

(1) If a court convicts a person of an offence against this Act, the court may order the person to pay the department's reasonable costs of investigating the offence, including reasonable costs of preparing for the prosecution of the offence.

Examples of reasonable costs—

1 obtaining and analysing remotely sensed images

2 costs of travelling for departmental officers and experts

(2) This section does not limit the orders for costs the court may make.

431M Representation of departmental officer in court

(1) Any departmental officer may appear for and represent another departmental officer in the court in a proceeding brought by the other officer under this Act.

(2) In this section—

departmental officer means a public service officer employed in the department.

431N Ability to prosecute under other Acts

Nothing in this Act prevents a person from being prosecuted for any of the following offences in relation to the clearing of trees—

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(a) a development offence under the Planning Act or the repealed *Sustainable Planning Act 2009*;

(b) a vegetation clearing offence under the Vegetation Management Act;

(c) an offence against a following provision of the *Environmental Protection Act 1994*—

- section 437(1)
- section 437(2)
- section 438(1)
- section 438(2).

Part 3B Making land available for public use as beach

431O Definitions

In this part—

declared beach area means an area of a lot declared by regulation to be a declared beach area.

foreshore means land between the high-water mark and low-water mark.

lot includes a lot under the *Land Title Act 1994*.

manager, of a declared beach area, means the State or a local government, as provided for in this part.

owner, of a lot, means—

(a) if the lot is land granted in trust under this Act—the trustee of the lot; or

(b) if the lot is non-freehold land under this Act—the lessee or licensee of the lot; or

(c) if the lot is a lot under the *Land Title Act 1994*—the registered owner of the lot.

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public use includes public enjoyment.

seashore means—

(a) any land that is foreshore; and

(b) any land that is—

(i) above the high-water mark; and

(ii) ordinarily covered only by sand or shingle; and

(c) any land that is below the low-water mark.

use conditions see section 431T.

431P References to a lot

For a reference in this part to a lot, it does not matter whether the lot has 1 or more tidal boundaries or has right line boundaries for all its boundaries.

431Q Regulation may declare area of seashore to be a declared beach area

(1) A regulation may declare a part of a lot to be a declared beach area.

(2) The part of the lot declared under subsection (1) must essentially be seashore and must, if practicable, extend to include a natural feature that is—

(a) suitable for physically delineating the extent of the declared beach area; and

(b) capable of being regarded as being ambulatory in nature.

Examples of a natural feature—

- the top of a bank
- the toe of a dune

(3) The declared beach area must be shown, in the way the registrar of titles requires, on a plan of survey identified in the regulation.

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(4) Until the plan of survey is registered as provided for under this section, a copy of the plan of survey must be held by the chief executive and be available for inspection.

(5) The declaration of a part of a lot as a declared beach area does not affect the rights or obligations of any person in relation to the part until, on a request from the chief executive in the approved form, the following are registered for the lot in the appropriate register for the lot—

(a) the declaration;

(b) the plan of survey.

(6) The plan of survey may be registered without the consent of anyone whose consent would otherwise have been required under this Act or the *Land Title Act 1994* if the plan otherwise complies with this Act or the *Land Title Act 1994* and has been endorsed with the consent of the chief executive or the Minister.

(7) If the declaration of a part of a lot as a declared beach area is repealed—

(a) the part ceases to be a declared beach area; and

(b) the registrar of titles, on a request from the chief executive in the approved form, must cancel the registration of the declaration.

(8) No fee is payable in relation to the lodgement or registration of a request or other document under subsection (5) or (7).

431R Declared beach area and lot boundaries

(1) If a natural feature chosen to delineate the extent of a declared beach area is capable of being regarded as being ambulatory in nature, it must be shown on the plan of survey as ambulatory.

(2) It is the intention of this part that the ambulatory boundary principles are to be taken to apply to a natural feature shown as being ambulatory to the greatest practicable extent.

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(3) The declaration of a part of a lot as a declared beach area does not affect the location at law of any external boundary of the lot, whether a right line boundary or a tidal boundary.

431S Compensation not payable for declared beach area

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, the provisions of any other Act or otherwise for deprivation of an interest of any type in land, or for loss or damage of any kind, arising out of a part of a lot becoming a declared beach area.

431T Management of declared beach area and conditions of use

(1) A regulation may state whether the manager of a declared beach area is the State or the local government in whose local government area the declared beach area is located.

(2) If no manager is stated, the State is the manager.

(3) A regulation may state conditions of use (***use conditions***) to apply to—

(a) a particular declared beach area; or

(b) some or all declared beach areas generally.

(4) Use conditions may apply to a declared beach area whether or not the State is the manager of the area.

(5) A regulation may include a penalty for contravention of a use condition stated in the regulation.

Note—

Under section 448, a regulation may prescribe a penalty of not more than 100 penalty units for an offence created under the regulation.

(6) A local government may make a local law that states conditions of use (also ***use conditions***) to apply to—

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(a) a particular declared beach area for which it is the manager; or

(b) some or all declared beach areas generally for which it is the manager.

(7) A local law mentioned in subsection (6) may include a penalty for contravention of a use condition stated in the local law, but the penalty must not be more than 100 penalty units.

(8) Use conditions for a declared beach area as stated in a local law apply subject to use conditions applying to the declared beach area as stated in a regulation.

(9) Without limiting subsection (3) or (6), use conditions may include conditions about any of the following—

(a) limiting access to the declared beach area to particular times, including, for example, by limiting access to daylight hours or to particular hours according to the season;

(b) whether vehicles are permitted on the declared beach area;

(c) whether any activities are prohibited on the declared beach area, including, for example, whether camping is prohibited;

(d) whether dogs or other animals are permitted on the declared beach area;

(e) whether fires may be lit on the declared beach area;

(f) the nature and legal effect of signs erected on the declared beach area by the manager of the area.

(10) Without limiting the issues that may be considered, the Minister or a local government may, in devising use conditions, consider the following issues—

(a) safety of the public;

(b) the particular circumstances of the owner of the lot of which the declared beach area forms a part;

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(c) particular issues raised by members of the public, including, for example, whether the use of a vehicle on the declared beach area may be necessary for accessing another area;

(d) environmental issues, including, for example, turtle-breeding habitat requirements;

(e) the location of relevant existing infrastructure.

431U Notice to owner before making of regulation

(1) The Minister may recommend to the Governor in Council the making of a regulation declaring a part of a lot to be a declared beach area only if the Minister is reasonably satisfied notice has been given as required under this section.

(2) The Minister must give the owner of the lot a written notice stating the intention to declare a part of the lot a declared beach area.

(3) The notice must include a reasonably approximate indication of the boundaries of the proposed declared beach area.

431V Consultation before registration of declaration and plan of survey

(1) The Minister may proceed to the registration under this part of a declaration or plan of survey only if the Minister is reasonably satisfied consultation has been undertaken as required under this section.

(2) The Minister must consult with the local government in whose local government area the declared beach area is located about whether it wishes to be the manager of the declared beach area.

(3) If the local government wishes to be the manager, it must take reasonable steps to consult with the owner of the lot and the public generally about the use conditions that are to apply to the declared beach area under a local law.

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(4) If the local government does not wish to be the manager, the Minister must take reasonable steps to consult with the owner of the lot and the public generally about the use conditions that are to apply to the declared beach area under a regulation.

431W Status of declared beach area

(1) Subject to this part and to use conditions for a declared beach area, the area is open to public use.

(2) The manager of a declared beach area—

(a) has control of the area subject to this part and any regulation under this Act relating to the area; and

(b) is responsible for taking reasonable and practical measures to maintain the area in a safe condition.

Example of a reasonable and practical measure for paragraph (b)—

It may be a reasonable and practical measure to restrict public access to a part of a declared beach area that has significantly eroded rather than carry out extensive restoration work for the part.

Note—

See the *Civil Liability Act 2003*, chapter 2, part 3, division 1, for civil liability principles that apply to public and other authorities, including local governments.

(3) Control under subsection (2)(a) includes the right to take necessary steps for maintaining the declared beach area as mentioned in subsection (2)(b).

(4) The owner of a lot of which a declared beach area forms a part, and any other person having an interest in the lot—

(a) is not required, and can not be required, to maintain, or to contribute to the maintenance of, any part of the declared beach area; and

(b) is not, and can not be made, civilly liable for an act or omission of the person in relation to the declared beach area unless—

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(i) the act or omission creates a risk in relation to which the person would, other than for this section, be civilly liable; and

(ii) the person intends to create the risk or is reckless as to whether the risk is created.

(5) If subsection (4)(b) prevents civil liability attaching to a person, the liability attaches instead to the State.

(6) Despite this Act or the *Local Government Act 2009*, an officer or employee of the manager of a declared beach area may enter the area at any time without notice to any other person if the entry—

(a) is authorised by the manager, whether generally or otherwise; and

(b) the entry relates to the enforcement of the use conditions for the area or to fulfilling the manager's responsibilities as the entity in control of the area.

431X Exemption from contravention of use condition

(1) A person is taken not to contravene a use condition for a declared beach area if the person is—

(a) a police officer acting in the performance of the police officer's functions or powers; or

(b) a person acting in the performance of functions or powers—

(i) under an Act; or

(ii) as authorised or directed by the manager of the declared beach area.

(2) Subsection (1) does not limit the extent to which a use condition may provide for circumstances under which a person may be taken not to contravene the condition.

431Y Obstruction of use or enjoyment

A person must not obstruct another person—

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(a) in the other person's exercise of the right of public use of a declared beach area; or

(b) in the other person's performance of functions or powers in a declared beach area.

Maximum penalty—50 penalty units.

431Z Other Acts not affected

(1) This part does not affect the operation of any other provision of this Act, or any provision of another Act, in relation to a declared beach area.

(2) Without limiting subsection (1), a person's exercise of a right of public use of a declared beach area under this part, including under use conditions applying to the declared beach area, is subject to the operation of any other provision of this Act, or any provision of another Act, applying to the area.

Part 3C Access to State land

Division 1 Preliminary

431ZA Definitions for part

In this part—

adjacent land, in relation to relevant land, means land that is adjacent to the relevant land, whether or not the land adjoins the relevant land.

authorised activity means an activity lawfully carried out on relevant land—

(a) for the management or care of the land; or

(b) to otherwise ensure compliance with this Act or another Act or law.

interested person see section 431ZG(1)(b).

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relevant land means land managed or cared for by the chief executive for the State, including, for example, the following land—

(a) freehold land of which the State is the registered owner;

(b) lease land of which the State is the registered lessee;

(c) licence land or permit land for which the State has occupation or management rights under a licence or permit;

(d) unallocated State land;

(e) a reserve of which the State is the trustee or of which there is no trustee;

(f) land that is the property of the State under this Act or another Act.

relevant person, in relation to relevant land, means—

(a) an authorised person; or

(b) a person authorised by the chief executive under section 431ZB(1) to carry out an authorised activity on the land; or

(c) a person engaged by the State under a contract or other arrangement to carry out an authorised activity on the land.

Division 2 Entry to adjacent land

431ZB Authorisation of persons to carry out authorised activities

(1) The chief executive may authorise a person to carry out an authorised activity on relevant land.

(2) An authorisation under subsection (1) must be in writing and state the period for which the person is authorised to carry out the authorised activity.

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431ZC Notice of entry

(1) A relevant person who intends to enter adjacent land under this part must give the occupier of the land written notice of the entry.

(2) The written notice must state the following matters—

(a) the relevant person is permitted, under this Act, to enter the adjacent land without consent or a warrant to carry out authorised activities on relevant land;

(b) the period during which the entry will be made;

(c) the authorised activities that will be carried out on the relevant land;

(d) the period during which the authorised activities mentioned in paragraph (c) will be carried out;

(e) the number of persons and things the relevant person intends to take into or over the adjacent land to carry out the authorised activities mentioned in paragraph (c).

(3) However, before the relevant person gives the written notice under subsection (1), the relevant person must make a reasonable attempt to contact the occupier of the adjacent land and obtain the occupier's consent to the entry.

431ZD Entering adjacent land for authorised activities

(1) A relevant person may, without consent or a warrant, enter adjacent land if—

(a) the entry is for the purpose of carrying out an authorised activity on relevant land; and

(b) the relevant person has no other reasonably practicable way of entering the relevant land without entering the adjacent land; and

(c) the relevant person has given written notice (the ***notice***) of the entry under section 431ZC; and

(d) the entry—

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(i) happens during the period stated in the notice but after the notice period has ended; and

(ii) is for the purpose of carrying out an authorised activity stated in the notice.

(2) The relevant person may, when entering the adjacent land, take into or over the adjacent land any person or thing the relevant person reasonably requires for carrying out an authorised activity stated in the notice.

Examples of things the relevant person may reasonably require for carrying out an authorised activity—

vehicles, tools, building or landscaping supplies

(3) However, subsections (1) and (2) do not authorise—

(a) entry of a structure, or a part of a structure, without the consent of the occupier of the structure or part; or

(b) entry of adjacent land between 6p.m. and 7a.m. unless the entry is reasonably necessary to carry out an authorised activity stated in the notice during that period.

(4) In this section—

enter includes re-enter.

notice period means a period of 10 business days starting on the day the occupier of the adjacent land is given the notice.

Division 3 Damage to adjacent land

431ZE Duty to avoid inconvenience and minimise damage

A relevant person, or another person, who enters adjacent land under this part, or with the consent of the occupier of the land, must take all reasonable steps to avoid—

(a) causing inconvenience to the occupier; and

(b) damaging the land or anything on the land.

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431ZF Relevant person must give notice of damage

(1) This section applies if—

(a) a relevant person, or another person, enters adjacent land under this part, or with the consent of the occupier of the land, to carry out an authorised activity; and

(b) the relevant person or other person causes or contributes to damage to the land or something on the land.

(2) However, this section does not apply if—

(a) the relevant person reasonably considers the damage is trivial; or

(b) for damage to a thing—the relevant person reasonably believes there is no-one in possession of the thing.

(3) The relevant person must give notice of the damage to the occupier of the adjacent land.

(4) However, if it is not practicable to comply with subsection (3), the relevant person must—

(a) leave the notice at the place where the damage happened; and

(b) ensure the notice is left in a conspicuous position and in a reasonably secure way.

(5) The notice must state—

(a) particulars of the damage; and

(b) that the owner of the land or thing may seek remediation of the damage under this division.

(6) If the relevant person believes the damage was caused by a latent defect, or other circumstances beyond the control of the person who caused or contributed to the damage, the relevant person may state the belief in the notice.

431ZG Notice of damage

(1) This section applies if—

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(a) a relevant person, or another person, enters adjacent land under this part, or with the consent of the occupier of the land, to carry out an authorised activity; and

(b) a person (the ***interested person***) reasonably believes the relevant person or other person has caused or contributed to damage to the land or something on the land; and

(c) the interested person owns the land or thing.

(2) The interested person may give the chief executive written notice of the damage.

(3) The notice must include the following information—

(a) details of the damage;

(b) details of the entry during which the interested person believes the damage was caused or contributed to;

(c) whether the interested person believes the land or thing can be returned to the condition it was in before the damage;

(d) the remedial action the interested person considers—

(i) if the interested person maintains the belief mentioned in paragraph (c)—reasonably necessary to return the land or thing to the condition it was in before the damage; or

(ii) otherwise—appropriate having regard to the consequences of the damage to use of the land or thing.

(4) Within 30 days of receiving the notice, the chief executive must notify the interested person of whether the chief executive will enter into a remediation agreement under section 431ZH.

431ZH Remediation agreement

(1) This section applies if—

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(a) an interested person gives the chief executive a notice under section 431ZG within the notice period; or

(b) if an interested person gives a notice under section 431ZG after the notice period has ended—the chief executive is satisfied the person has a reasonable excuse for not giving the notice within the notice period.

(2) The chief executive may enter into an agreement (a ***remediation agreement***) with the interested person to take remedial action in relation to the land or thing stated in the notice.

(3) A remediation agreement has no effect unless it is—

(a) in writing; and

(b) signed by or for the parties to the agreement; and

(c) filed at an office of the department.

(4) A remediation agreement is binding on the parties to the agreement and the parties' personal representatives, successors and assigns.

(5) At any time before a remediation agreement is made, the interested person may apply in writing to the court to have the court decide what remedial action, if any, will be taken in relation to the land or thing.

(6) In this section—

notice period, in relation to a notice mentioned in section 431ZG, means 30 days from the last day on which the relevant person, or the other person, mentioned in section 431ZG(1)(a) entered the adjacent land for the purpose of carrying out an authorised activity.

431ZI Court's decision about remedial action

(1) This section applies if an interested person makes an application to the court under section 431ZH(5).

(2) The court must fix a date for the hearing and immediately give written notice of the date to—

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(a) the chief executive; and

(b) the interested person.

(3) The date for the hearing must be at least 20 business days after the day on which it is fixed by the court.

(4) If the court considers it appropriate, the court may order that remedial action be taken in relation to the land or thing stated in the notice.

(5) In deciding whether to order remedial action, or what remedial action should be ordered, the court may consider the following matters—

(a) whether it is likely the damage to the land or thing was caused or contributed to by a relevant person or another person entering the adjacent land under this part, or with the consent of the occupier of the land, to carry out an authorised activity;

(b) whether the damage was reasonably necessary for carrying out the authorised activity;

(c) whether the person who caused or contributed to the damage took reasonable steps to avoid the damage;

(d) whether the land or thing can be returned to the condition it was in before the damage;

(e) the consequences of the damage on the use of the land or thing by the interested person;

(f) whether the claim is vexatious.

(6) An order made under subsection (4) may state—

(a) when the remedial action is to be taken; and

(b) conditions on which the remedial action is to be taken.

(7) The court may, for a matter decided under this section, make any order about costs the court considers appropriate.

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Part 4 Miscellaneous

432 Pasturage rights for travelling stock

(1) Stock being driven on foot along a stock route through a term lease for pastoral purposes or occupation licence, from which the stock route is not fenced out, must not be depastured on land further than 800m from the centre line of the stock route.

(2) However, if there is a fence or stock proof barrier on 1 side of the road within 800m of the centre line of a stock route, stock must not be depastured on land on the other side of the stock route further than 1.6km from the fence.

(3) Despite subsections (1) and (2), stock must not be depastured—

(a) within an enclosed garden or paddock under cultivation; or

(b) within 1.6km of a principal homestead or head station; or

(c) on land lawfully separated from the stock route by a fence or stock proof barrier.

(4) A person in charge of stock being driven on foot along a stock route must not contravene this section.

Maximum penalty for subsection (4)—100 penalty units.

434 Meaning of *tourism purposes*

(1) For this Act, a lease is a lease for ***tourism purposes*** if it is a lease for, or is ancillary to, a major tourist facility or a major resort development.

(2) Without limiting subsection (1), if a lease expressly states that it is a lease for a major tourist facility or a major resort development it is taken to be a lease for ***tourism purposes*** for this Act.

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434A Establishing an island as a regulated island

(1) A regulation may declare an island, or a part of an island, is a regulated island.

(2) The Minister may recommend a regulation under subsection (1) only if the Minister is satisfied the island or the part, if held under a lease for tourism purposes, should not be the subject of a conversion to freehold land unless the Governor in Council has first approved the conditions on which the offer for the conversion is made.

434B Availability of short-term extension in particular circumstances

(1) This section applies if a term lease is the subject of an offer or application under this Act for renewal, extension, conversion, subdivision or amalgamation.

(2) If it appears the term lease will expire before the offer or application is fully dealt with, the Minister may extend the term of the lease, for periods of no longer than 2 years, until the offer or application is fully dealt with.

(3) A lease may be extended under subsection (2) for 2 or more periods having regard to the same circumstances or different circumstances each time it is extended.

434C Change of status of particular land

(1) This section applies to a term lease issued under this Act or the repealed Act, on the authority of another Act (the ***original Act***), over land (the ***relevant land***) set apart and declared, or dedicated, under the original Act.

(2) If the relevant land ceases to be administered under the original Act and becomes an area set apart and declared, or dedicated, under another Act (the ***new Act***), the lease continues to be a term lease under this Act and the new Act.

(3) However, the term lease ends if the new Act states that any interest in the relevant land is ended.

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435 Minister may refer matters to the court

(1) The Minister may refer a matter about the administration of this Act to the court for inquiry and report.

(2) The Minister may refer a dispute about the boundary of a term lease for pastoral purposes to the court for decision, even if the Minister is not a party to the dispute.

436 Auctioneer's licence not necessary

A person authorised by the chief executive may auction land for this or another Act administered by the Minister without being the holder of an auctioneer's licence.

438 What are debts owing to the State

(1) All rents, instalments, penalties, interest and fees that have become payable under this Act are debts owing to the State.

(2) This section does not apply to—

(a) titles registry fees; and

(b) fees and charges applying under an agreement under section 285A.

Note—

See the *Queensland Future Fund (Titles Registry) Act 2021*, section 11.

439 Words and expressions used in documents under Act

(1) Words and expressions used in this Act and in documents made or executed under this Act have the same respective meanings in the documents as they have in this Act.

(2) Subsection (1) may be wholly or partly displaced if a contrary intention appears in the document.

440 Obstructing particular officers

(1) A person must not obstruct a relevant officer exercising a power under this Act, or a person helping a relevant officer

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exercising a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—400 penalty units.

(2) If a person has obstructed a relevant officer, or someone helping a relevant officer, and the relevant officer decides to proceed with the exercise of the power, the relevant officer must warn the person that—

(a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and

(b) the relevant officer considers the person's conduct an obstruction.

(3) In this section—

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

relevant officer means—

(a) an authorised officer; or

(b) a public service employee employed in the department.

441 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 a civil liability attaching to an official, the liability attaches instead to the State.

(3) This section does not apply to an official if the official is a prescribed person under the *Public Sector Act 2022*, section 267.

Note—

For protection from civil liability in relation to prescribed persons under the *Public Sector Act 2022*, section 267, see the *Public Sector Act 2022*, section 269.

(4) In this section—

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official means—

(a) an authorised officer; or

(b) a person acting under the direction or authority of an authorised officer.

443 No deed of grant until fees paid

The appropriate fees prescribed under this Act for the issue of a deed of grant must be paid before a deed of grant is issued.

444 Approved forms

(1) The chief executive may approve forms for use under this Act other than in relation to the land registry.

(2) The registrar of titles may approve forms for use under this Act in relation to the land registry.

445 Fees for titles registry functions

(1) The fees provided under the *Queensland Future Fund (Titles Registry) Act 2021* are payable in relation to a titles registry function performed under this Act.

Note—

See the *Queensland Future Fund (Titles Registry) Act 2021*, part 3.

(2) In this section—

titles registry function see the *Queensland Future Fund (Titles Registry) Act 2021*, section 5.

448 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about the following matters—

(a) fees, other than titles registry fees, payable under this Act;

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(b) how fees, other than titles registry fees, are to be paid and may be recovered, including the provision of credit facilities to persons approved by the chief executive;

(c) additional information to be supplied with a form approved by the chief executive or a non-registry document;

(d) transitional arrangements if a new form is approved by the chief executive;

(e) the execution of non-registry documents;

(f) anything else about a form approved by the chief executive or a non-registry document;

(g) the payment and collection of rent and instalments under this Act;

(h) the closure of roads;

(i) the building and maintenance of roads under chapter 3, part 2, division 5.

(3) A regulation may require the following to be lodged or deposited using an Electronic Lodgment Network—

(a) documents of a stated class;

(b) documents lodged or deposited by a person of a stated class.

(4) Schedule 1B provides for matters that may be included in a regulation under subsection (2)(g).

(5) Subsection (4) does not limit subsection (2)(g).

(6) A regulation may create offences and prescribe penalties of not more than 100 penalty units for the offences.

(7) In this section—

Electronic Lodgment Network has the meaning given by the Electronic Conveyancing National Law (Queensland), section 13.

non-registry document means a document that is prepared other than for depositing or lodging in the land registry.

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448A Application of GST to rents

If rent payable under this Act is for a supply for which GST is payable, the rent payable is the total of—

(a) the rent that would have been payable if the rent were not for a supply for which GST is payable; and

(b) 10% of the rent that would have been payable if the rent were not for a supply for which GST is payable.

448B Application of GST to purchase price for leases

(1) Subsection (2) applies—

(a) to all leases issued under this Act; and

(b) whether the lease was issued before or after the commencement of this section; and

(c) despite any provision contained in the lease.

(2) If the purchase price payable for freeholding the lease is for a supply for which GST is payable, the purchase price payable is the total of—

(a) the purchase price that would have been payable if the purchase price were not for a supply for which GST is payable; and

(b) 10% of the purchase price that would have been payable if the purchase price were not for a supply for which GST is payable.

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Chapter 8 Continued rights and tenures

Part 1 Reserves, deeds of grant in trust and roads

Division 1 Reserves

449 Existing reserves and purposes continue

(1) All existing reserves are taken to be reserves under this Act for the purpose for which they were reserved.

(2) Subsection (1) applies even if the purpose for which the land was reserved is not a community purpose under this Act.

(3) If, under subsection (1), land is taken to be reserved for cemetery purposes, the land is taken also to be reserved for crematorium and mortuary purposes.

450 Trustees continue

An existing trustee of a reserve is taken to be a trustee of the reserve under this Act.

Division 2 Deeds of grant in trust

451 Existing deeds of grant in trust and purposes continue

(1) All existing deeds of grant in trust are taken to be deeds of grant in trust under this Act for the purpose for which they were granted.

(2) Subsection (1) applies even if the purpose for which the land was granted is not a community purpose under this Act.

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(3) If, under subsection (1), land is taken to be granted for cemetery purposes, the land is taken also to be granted for crematorium and mortuary purposes.

452 Trustees continue

An existing trustee of a deed of grant in trust is taken to be a trustee of the deed of grant in trust under this Act.

452A Land granted for Aboriginal or Islander inhabitants

(1) Any person who, at the time when land was granted in trust under the repealed Act for the benefit of Aboriginal or Islander inhabitants, occupies any building or structure as the person's residence, as an authorised resident on the land, shall, notwithstanding the grant in trust, be entitled to continue the person's occupation of the building or structure upon the same terms and conditions as the person occupied it at the time of the grant until—

(a) the trustee of the land determines otherwise and terminates the person's right to occupy the building or structure; or

(b) the trustee of the land and that person agree to new terms and conditions for the person's occupation of the building or structure.

(2) No permit, claim, licence or lease under the *Mineral Resources Act 1989* is to be granted or exist in respect of land granted in trust under the repealed Act for the benefit of Aboriginal or Islander inhabitants unless the approval of the Governor in Council thereto has first been obtained.

(3) In considering whether or not to approve a permit, claim, licence or lease in respect of land referred to in subsection (1) the Governor in Council shall have regard to the views of and any recommendation made by the trustee of the land in question.

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Division 3 Existing trustee leases

453 Existing trustee leases and licences continue

(1) All existing trustee leases are taken to be trustee leases under this Act, even if the terms of the lease would not be approved under this Act.

(2) All existing licences issued under section 350 of the repealed Act are taken to be trustee permits under this Act, even if the terms of the licence would not be approved under this Act.

Division 4 Roads

454 Existing roads continue

All roads dedicated and set apart under the repealed Act are taken to be dedicated roads under this Act.

455 Existing road licences continue

All existing road licences are taken to be road licences under this Act.

Part 2 Freeholding leases

Division 1 Pre-Wolfe freeholding leases

456 Existing leases continue

A pre-Wolfe freeholding lease is taken to be a lease under this Act.

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457 Terms of pre-Wolfe freeholding leases

(1) The following provisions also apply to pre-Wolfe freeholding leases—

(a) the length of the term of the lease and purchase price (including commercial timber) for which a pre-Wolfe freeholding lease was issued continue to apply;

(b) lease payments are instalments that pay out the purchase price of the land;

(c) instalments do not attract interest;

(d) if the remaining purchase price is paid in cash during a lease, a discount, prescribed under the regulations, applies;

(e) regulations may prescribe minimum instalments for all but the final payment;

(f) the length of the term of a lease may increase or decrease because of changes to minimum instalments or hardship concessions or deferrals;

(g) the land must be surveyed, at the lessee's expense, for inclusion in the freehold land register;

(h) the Minister may require the preparation of a compiled plan before the deed of grant is issued;

(i) the final payment must include the appropriate fees prescribed under the *Land Title Act 1994* for the issue of a deed of grant.

(2) To remove any doubt, it is declared that the purchase price for a pre-Wolfe freeholding lease is not reduced by any deferral for hardship that may apply under a rent and instalment regulation.

(3) The discount mentioned in subsection (1)(d) does not apply to the amount of the remaining purchase price that, in the records of the department about the payment of the purchase price, is attributable to the value of commercial timber.

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458 Deed of grant to issue

(1) A deed of grant must be issued for land contained in a pre-Wolfe freeholding lease when—

(a) the conditions of the lease have been complied with; and

(b) the purchase price and all relevant fees have been paid; and

(c) if needed—a survey plan has been lodged in the land registry.

(2) The deed of grant is issued subject to all the encumbrances to which the lease was subject and in the same priorities.

459 Residential hardship concessions

(1) The Minister may reduce an instalment to less than the instalment normally applying to a pre-Wolfe freeholding lease, if—

(a) the lease is used exclusively for the lessee's own residential use; and

(b) the lessee is suffering hardship and meets the criteria prescribed under the regulations.

(2) If the Minister considers the lessee's financial circumstances have changed to the extent that a concession should be amended or cancelled, the Minister may, for future instalments, amend or cancel the amount of the concession.

(3) If a lease is transferred, a concession applying to the lease does not apply from the day of the transfer.

(4) To remove any doubt, it is declared that a hardship concession does not reduce the purchase price of a pre-Wolfe freeholding lease.

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Division 2 Post-Wolfe freeholding leases

460 Existing leases continue

A post-Wolfe freeholding lease is taken to be a lease under this Act.

461 Terms of existing post-Wolfe freeholding leases continue

The length of the term of the lease and purchase price (including commercial timber) for which an existing post-Wolfe freeholding lease was issued continue to apply.

462 Terms of post-Wolfe freeholding leases

(1) The following provisions apply to post-Wolfe freeholding leases—

(a) lease payments are instalments that pay out the purchase price of the land;

(b) instalments attract a rate of interest prescribed under the regulations;

(c) if the remaining purchase price is paid in cash during a lease, no discount applies;

(d) regulations may prescribe minimum instalments for all but the final payment;

(e) the length of the term of a lease may increase or decrease because of changes to minimum instalments or hardship deferral;

(f) the land must be surveyed, at the lessee's expense, for inclusion in the freehold land register;

(g) the Minister may require the preparation of a compiled plan before the deed of grant is issued;

(h) the final payment must include the appropriate fees prescribed under the *Land Title Act 1994* for the issue of a deed of grant.

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Note—

These terms apply to both *existing* post-Wolfe freeholding leases and post-Wolfe freeholding leases issued under this Act.

(2) To remove any doubt, it is declared that the purchase price for a post-Wolfe freeholding lease is not reduced by any deferral for hardship that may apply under a rent and instalment regulation.

463 Deed of grant to issue

(1) A deed of grant must be issued for land contained in a post-Wolfe freeholding lease when—

(a) the conditions of the lease have been complied with; and

(b) the purchase price and all relevant fees have been paid; and

(c) if needed—a survey plan has been lodged in the land registry.

(2) The deed of grant is issued subject to all the encumbrances to which the lease was subject and in the same priorities.

Division 3 Grazing homestead freeholding leases

464 Existing leases continue

A grazing homestead freeholding lease is taken to be a lease under this Act.

465 Terms of existing grazing homestead freeholding leases continue

The length of the term of the lease and purchase price (including commercial timber) for which an existing grazing homestead freeholding lease was issued continue to apply.

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466 Terms of grazing homestead freeholding leases

(1) The following provisions apply to grazing homestead freeholding leases—

(a) lease payments are instalments that pay out the purchase price of the land;

(b) instalments attract a rate of interest prescribed under the regulations;

(c) if the remaining purchase price is paid in cash at any stage during a lease, and the lease is used for grazing or agricultural purposes, a discount, prescribed under the regulations, applies;

(d) regulations may prescribe a minimum instalment for all but the final payment;

(e) the length of the term of a lease may increase or decrease because of changes to minimum instalments or hardship deferral;

(f) the land must be surveyed, at the lessee's expense, for inclusion in the freehold land register;

(g) the Minister may require the preparation of a compiled plan before the deed of grant is issued;

(h) the final payment must include the appropriate fees prescribed under the *Land Title Act 1994* for the issue of a deed of grant.

Note—

These terms apply to both *existing* grazing homestead freeholding leases and grazing homestead freeholding leases issued under this Act.

(2) To remove any doubt, it is declared that the purchase price for a grazing homestead freeholding lease is not reduced by any deferral for hardship that may apply under a rent and instalment regulation.

(3) The discount mentioned in subsection (1)(c) does not apply to the amount of the remaining purchase price that, in the records of the department about the payment of the purchase price, is attributable to the value of commercial timber.

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467 Deed of grant to issue

(1) A deed of grant must be issued for land contained in a grazing homestead freeholding lease when—

(a) the conditions of the lease have been complied with; and

(b) the purchase price and all relevant fees have been paid; and

(c) if needed—a survey plan has been lodged in the land registry.

(2) The deed of grant is issued subject to all the encumbrances to which the lease was subject and in the same priorities.

Part 3 Perpetual leases

Division 1 Grazing homestead perpetual leases

468 Existing leases continue

(1) A grazing homestead perpetual lease is taken to be a perpetual lease for grazing or agricultural purposes issued under this Act.

(2) To remove any doubt, it is declared that the perpetual lease may be used for either or both of the purposes.

Division 2 Non-competitive leases

470 Existing leases continue

A non-competitive lease is taken to be a perpetual lease issued under this Act for the purpose for which it was issued.

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471 Right to a post-Wolfe freeholding lease

(1) The lessee of a non-competitive lease, other than a lease for grazing or agricultural purposes, who has an offer for conversion to freehold approved under section 168 may elect in writing to pay the purchase price by instalments.

(2) If a lessee elects to pay the purchase price by instalments—

(a) the Governor in Council may issue a post-Wolfe freeholding lease for a maximum term of 30 years; and

(b) the lessee may pay the market value of the commercial timber by instalments on terms stated by the Minister; and

(c) the conditions, purpose and encumbrances of the non-competitive lease transfer to the post-Wolfe freeholding lease.

(3) The conditions mentioned in subsection (2)(c) do not include conditions—

(a) the Minister is satisfied are redundant in the context of the post-Wolfe freeholding lease; and

(b) are expressly or impliedly excluded from the post-Wolfe freeholding lease when it is issued.

Part 4 Term leases

Division 1 Pastoral, preferential pastoral, pastoral development, and stud holdings

472 Existing leases continue

A pastoral lease is taken to be a term lease for pastoral purposes issued under this Act.

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473 Covenant for a new term lease

An existing covenant in a pastoral lease, under the repealed Act, part 6, division 2, for a new lease at the expiry of the existing lease is taken to be a covenant to offer a new term lease for pastoral purposes, of a maximum of a living area, on the conditions that could be imposed on a term lease under this Act.

474 Uses of stud holdings

A stud holding is not limited to stud purposes but must be used for grazing or agricultural purposes.

475 Restrictions on ownership of preferential pastoral holdings

(1) To remove any doubt, it is declared that restrictions under the repealed Act about the ownership of preferential pastoral holdings do not apply under this Act.

(2) However, any restrictions under this Act about the ownership of term leases for pastoral purposes apply to a preferential pastoral holding.

Division 2 Special and development leases

476 Existing leases continue

(1) A development lease or a special lease is taken to be a term lease issued under this Act for the purpose (if any) for which it was issued.

(2) In this division—

development lease means an existing development lease issued under the repealed Act, part 9, division 1.

special lease means an existing special lease issued under the repealed Act, part 8, division 1.

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477 Change of purpose for special lease

Despite section 154(2), the lessee of a special lease may apply to change the purpose of the lease.

Note—

Section 154(2) requires the purpose of a lease to be complementary to, and not interfere with, the purpose for which a lease was originally issued.

478 Right to a post-Wolfe freeholding lease

(1) The lessee of a special lease, other than a lease for grazing or agricultural purposes, who has an offer for conversion to freehold approved under section 168 may elect in writing to pay the purchase price by instalments.

(2) If a lessee elects to pay the purchase price by instalments—

(a) the Governor in Council may issue a post-Wolfe freeholding lease for a maximum term of 30 years; and

(b) the lessee may pay the market value of the commercial timber by instalments on terms stated by the Minister; and

(c) the conditions, purpose and encumbrances of the special lease transfer to the post-Wolfe freeholding lease.

(3) The conditions mentioned in subsection (2)(c) do not include conditions—

(a) the Minister is satisfied are redundant in the context of the post-Wolfe freeholding lease; and

(b) are expressly or impliedly excluded from the post-Wolfe freeholding lease when it is issued.

479 Development leases not to be sublet

The lessee of a development lease must not sublease all or part of the lease.

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Part 5 Licences and permits

Division 1 Occupation licences

480 Occupation licences continue

An occupation licence is taken to be a licence issued under this Act.

481 Cancellation

The Minister may cancel all or part of an occupation licence. if—

(a) the licensee defaults in the payment of an amount payable to the State under this Act for the occupation licence; or

Note—

A rent and instalment regulation may allow the Minister to take action for non-payment.

(b) the licensee breaches a condition of the occupation licence; or

(c) the licensee contravenes a provision of this Act in relation to the occupation licence; or

(d) the licensee acquired the occupation licence by fraud; or

(e) the licensee has more than 1 conviction, not including any spent convictions, for a vegetation clearing offence, regardless of whether any of the offences were committed on the land the subject of the occupation licence; or

(f) the Minister considers the cancellation of the licence is in the interests of the State.

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481A Absolute surrender

A licensee may surrender, absolutely, all or part of an occupation licence—

(a) on terms agreed to between the Minister and the licensee; and

(b) with the Minister's written approval.

481B Application to cancel or surrender

(1) A public utility provider (an ***applicant***) may apply to cancel all or part of an occupation licence.

(2) However, an applicant mentioned in subsection (1) can not apply to cancel all or part of an occupation licence if the applicant is a non-core utility provider.

(3) A licensee (also an ***applicant***) may apply to surrender, absolutely, all or part of an occupation licence.

(4) However, before applying, an applicant must give notice of the applicant's intention to apply to each of the following—

(a) if the applicant is not the licensee of the occupation licence—the licensee;

(b) any other person with a registered interest in the occupation licence;

(c) if the occupation licence is a designated occupation licence—the chief executive of the department having responsibility for the administration of the forest reserve, national park, State forest or timber reserve the subject of the designated occupation licence.

(5) The applicant may also give notice to any other person the applicant considers has an interest in the occupation licence.

481E Registration cancels occupation licence

(1) All or part of an occupation licence may be cancelled by registering a cancellation notice or plan of subdivision.

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(2) However, if the cancellation relates to only part of a lot, the cancellation may only be made by registering a plan of subdivision.

(3) The cancellation of all or part of an occupation licence takes effect on the day a cancellation notice or plan of subdivision is registered.

481F Registration surrenders occupation licence

(1) All or part of an occupation licence may be surrendered, absolutely, by registering a surrender notice or plan of subdivision.

(2) However, if the surrender relates to only part of a lot, the surrender may only be made by registering a plan of subdivision.

(3) The surrender of all or part of an occupation licence takes effect on the day a surrender notice or plan of subdivision is registered.

481G Notice of cancellation or absolute surrender

(1) The chief executive must give notice of a cancellation or absolute surrender of all or part of an occupational licence to the applicant and each person given a notice about the proposed cancellation or surrender under section 481B (either a ***relevant person***).

(2) The notice must—

(a) be in the approved form; and

(b) state the following—

(i) the date of the cancellation or surrender;

(ii) the effect, under section 481H, of the cancellation or surrender;

(iii) if there are improvements on the land the subject of the occupation licence owned by the person

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receiving the notice—a statement that the person may apply to remove the improvements.

(3) If the cancellation or absolute surrender of an occupation licence is not registered, notice of the fact must be given to each relevant person.

481H Effect of cancellation or absolute surrender

On the cancellation or absolute surrender of all or part of an occupation licence, all of the following apply in relation to the land the subject of the cancellation or surrender—

(a) the occupation licence ends;

(b) the licensee is divested of any interest in the occupation licence;

(c) if the occupation licence is cancelled—no person has a right to compensation from the Minister or the State for the cancellation;

(d) the land the subject of the occupation licence—

(i) if the land was subject to a designated occupation licence—remains a forest reserve, national park, State forest or timber reserve; or

(ii) otherwise—becomes unallocated State land.

481I Person to give up possession on cancellation or absolute surrender

(1) On the cancellation or absolute surrender of all or part of an occupation licence, a person occupying the land the subject of the cancellation or surrender must immediately vacate the land.

(2) A person who does not give up possession under subsection (1), and is not otherwise entitled to possession, is a person who is unlawfully occupying the land the subject of the cancellation or surrender.

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481J Improvements

(1) A licensee of an occupation licence that is cancelled or surrendered absolutely, may apply to remove the licensee's improvements on the licence.

(2) The licensee may remove the licensee's improvements only with the written approval of, and within a time stated by, the Minister.

(3) The improvements are forfeited to the State if—

(a) the Minister has not given written approval for their removal; or

(b) the Minister has given written approval for their removal but the improvements have not been removed within the time stated by the Minister.

(4) However, if the land the subject of the cancellation or absolute surrender is leased or sold, the owner has a right to payment for the improvements under chapter 5, part 5.

482 Approval needed for improvement and development work

The licensee of an occupation licence may carry out improvements or development work on the licence only with the Minister's written approval.

Division 1A Permits

483 Existing permits continue

An existing permit issued under the repealed Act, part 13, division 1 is taken to be a permit issued under this Act.

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Division 2 Fencing use licences

484 Existing fencing use licences continue

(1) An existing licence (a ***fence licence***) issued under the repealed Act, section 113 continues to apply.

(2) A fence licence does not give the licensee a right to use the land comprising the road enclosed.

485 Minister may cancel licence for breach of condition

The Minister, by notice to the holder of a fence licence, may cancel the licence if the licensee breaches a condition of the licence.

Part 6 Continued tenures generally

486 Existing conditions continue

To remove any doubt, it is declared that all existing conditions contained in a lease, licence or permit document, schedule to a lease, licence or permit document or a sale notification for a lease, licence or permit issued under an Act repealed by this Act continue to apply and the lessee, licensee and permittee must comply with the conditions.

487 Existing concessions continue

(1) A lessee who was entitled to a concessional rent or instalment under the repealed Act is entitled to the same benefits under this Act.

(2) Subsection (1) has effect subject to any provisions of a rent and instalment regulation relating to changes of a lessee's circumstances.

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488 Fencing conditions and exemptions

(1) The conditions mentioned in subsection (2) continue to apply to—

(a) pre-Wolfe freeholding leases applied for before 5 February 1990 and issued under the repealed Act, part 4, division 5; and

(b) grazing homestead freeholding leases; and

(c) grazing homestead perpetual leases.

(2) The lessee must—

(a) within 3 years after the lease starts, enclose the land with a good and substantial fence of the standard stated in the opening notification or imposed by the Minister or have an existing and substantial fence in good repair; and

(b) keep the land fenced in the way mentioned in paragraph (a).

(3) If the lessee is the owner of adjoining land, the lessee need not enclose the lease if the lease and the adjoining land are wholly enclosed with a good and substantial fence.

(4) The Minister may exempt a lessee who applies for exemption from fencing conditions of a lease.

(5) The exemption may be for a stated time and may be conditional.

(6) An exemption granted under subsection (5) may be withdrawn after giving reasonable notice of the intention to withdraw the exemption.

489 Amalgamating or subdividing existing leases

(1) If 2 leases of the same type issued under the repealed Act are amalgamated, the new lease is taken to be an existing lease of the same type unless otherwise agreed by the lessee and the Minister.

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(2) If a lease issued under the repealed Act is subdivided, the new lease is taken to be an existing lease of the same type unless otherwise agreed by the lessee and the Minister.

(3) The following leases can not be subdivided—

(a) an auction perpetual lease that is a perpetual country, suburban or town lease issued under the repealed Act, part 7, division 2;

(b) a perpetual lease selection issued under the repealed Act, part 4, division 2;

(c) an agricultural farm issued before 31 December 1991 under the repealed Act, part 4, division 1;

(d) a freeholding lease that has less than the amount prescribed under the regulations to be paid before the deed of grant may issue.

Part 7 Tenures under other Acts

Division 1 Sale to Local Authorities Land Act 1882

490 Existing deeds of grant continue

The conditions and reservations on which a deed of grant was issued under the *Sale to Local Authorities Land Act 1882* (a ***conditional deed***) continue to apply to the deed of grant.

491 Conditions and reservations still applying

An existing conditional deed continues to be subject to the following provisions—

(a) the land must continue to be used for the public purpose for which it was granted;

(b) the land must not be leased, mortgaged or sold without the Governor in Council's approval;

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(c) the term of a lease must not be longer than 14 years with a covenant for renewal for up to a further 7 years;

(d) the lease must be consistent with the purpose for which it was granted.

492 Application for new tenure under this Act

(1) If land contained in a conditional deed is still needed for the public purpose, the local government may apply to exchange the conditional deed for a reserve or deed of grant in trust with the local government as trustee or a lease issued under this Act.

(2) If land contained in a conditional deed is exchanged for a reserve or deed of grant in trust, the public purpose for which the conditional deed was issued may be changed to another public purpose.

(3) An exchange of tenure under this section is subject to all the encumbrances to which the existing conditional deed was subject and in the same priorities, unless the parties involved agree otherwise.

493 Automatic issue of new tenure under this Act

(1) A conditional deed becomes a deed of grant in trust under this Act for the same public purpose for which it was granted, with the local government as trustee, if within 5 years of the commencement—

(a) the local government does not apply to exchange the conditional deed; or

(b) an application by the local government has been refused and no other application has been made.

(2) If the land contained in a conditional deed was subject to a lease, the lease becomes a trustee lease on the terms originally granted.

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(3) A deed of grant in trust mentioned in subsection (1) is subject to all the encumbrances to which the conditional deed was subject and in the same priorities.

Division 2 Miners homesteads

494 Objective

The object of this division is to transfer miners homesteads to tenures under the *Land Act 1962*.

495 Definitions for div 2

In this division—

current miners homestead application is an application to freehold a miners homestead that—

(a) was lodged before 1 January 1995; and

(b) has not been rejected; and

(c) for which a notice of approval to freehold has not lapsed or been accepted.

miners homestead means any of the following held under the *Miners' Homestead Leases Act 1913*—

(a) miner's homestead lease;

(b) miner's homestead perpetual lease;

(c) business area;

(d) market garden area;

(e) residence area;

and, to remove any doubt, it is declared that it includes a special perpetual mining purposes lease issued under the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*, the *Alcan Queensland Pty. Limited Agreement Act 1965* or the *Aurukun Associates Agreement Act 1975*.

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offer means a notice of approval to freehold under the repealed miners homestead Acts.

repealed miners homestead Acts means the repealed *Miners' Homestead Leases Act 1913* and the repealed *Mining Titles Freeholding Act 1980*.

496 Current applications

(1) All current miners homestead applications and all dealings with a miners homestead, the subject of a current miners homestead application, must be dealt with as if the repealed miners homestead Acts had not been repealed.

(2) If a miners homestead is transferred while it is the subject of a current miners homestead application, the application continues and is taken to have been made by the transferee.

(3) A current miners homestead application ceases to be a current miners homestead application on the day it is rejected, or on the day the offer lapses.

497 Refusal or lapsing of current miners homestead application

(1) If a current miners homestead application is refused on or after 1 January 1995, it is taken that no current miners homestead application was made and section 499 applies from the day of the refusal.

(2) If a current miners homestead application results in an offer being made, or if an offer has already been made, and the offer lapses under section 498, it is taken that no current miners homestead application was made and section 499 applies from the day the offer lapses.

498 Time in which offer must be accepted

(1) An offer made before 1 January 1995 lapses on 31 March 1995.

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(2) An offer made on or after 1 January 1995 lapses 90 days after it is made.

(3) The Minister may extend the time during which an offer may be accepted.

499 Automatic issue of new tenure

(1) If there is no current miners homestead application for a miners homestead, the miners homestead becomes a perpetual town lease (non-competitive lease) under the *Land Act 1962*, section 210.

(2) A lease under subsection (1) is also subject to the following provisions—

(a) all the conditions and encumbrances of the miners homestead that existed on 31 December 1994 continue to apply to the lease with the same priority;

(b) the first rental period for the lease is from 1 January 1995 to 30 June 1995 and annual rental periods apply after that;

(c) subsection (1) applies despite the *Land Act 1962*, section 210(1);

(d) the lease is not subject to the conditions of the *Land Act 1962*, section 210(2);

(e) if the miners homestead was a miner's homestead lease on 31 December 1994—the lease is subject to a special condition that, if freeholding of the lease is ever approved, the purchase price is an amount prescribed under the regulations;

(f) trees and quarry materials continue to belong to the lessee;

(g) arrears of rent on a miners homestead become arrears of rent on the lease.

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500 Application of prepaid rent

(1) If a current miners homestead application is approved, rent paid for the period after the application was lodged, is credited to the cost of freeholding, or, if the rent paid is more than the cost, the overpaid amount must be refunded to the lessee together with interest at the rate prescribed under the regulations.

(2) The interest is payable from the day the excess rent was received to the day the amount of the excess is refunded.

501 Replacement miners homestead documents

(1) This section applies to miners homesteads that become leases under section 499(1).

(2) As soon as practicable after the commencement, the chief executive must issue a new lease document to replace each existing miners homestead document.

(3) The new lease is subject to all the encumbrances to which the existing miners homestead was subject and in the same priorities.

(4) When the new lease is issued, the replaced document is no longer valid.

(5) The new lease must be sent to the person who is entitled to possession of the document being replaced.

(6) The replaced document must be returned to the chief executive for cancellation when the new lease is issued.

(7) A lessee may ask for the return of the replaced document suitably marked as cancelled.

502 Replacement mining titles freeholding leases

(1) As soon as practicable after the commencement, the chief executive must issue a new lease document to replace each existing mining titles freeholding lease document.

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(2) The new lease is subject to all the encumbrances to which the existing lease was subject and in the same priorities.

(3) When the new lease is issued, the old lease is no longer valid.

(4) The new lease must be sent to the person who is entitled to the possession of the old lease.

(5) The old lease must be returned to the chief executive for cancellation when the new lease is issued.

(6) A lessee may ask for the return of the old lease suitably marked as cancelled.

(7) This section also applies if there is an entitlement to a mining titles freeholding lease but the lease has not been issued.

503 Approvals continue

An approval given under the repealed miners homestead Acts to deal with an existing miners homestead is taken to be an approval for the same purpose under the *Land Act 1962*.

Division 2A Further opportunity to convert certain perpetual town leases, that were previously miners homesteads, to freehold

503A Objective

The object of this division is to give an opportunity to lessees of certain perpetual town leases (non-competitive leases), to convert their tenures to freehold.

503B Definitions for div 2A

In this division—

miners homestead has the meaning given in division 2 but does not include a special perpetual mining purposes lease that commenced on or after 1 January 1995.

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repealed miners homestead Acts has the meaning given in division 2.

special perpetual mining purposes lease means a special perpetual mining purposes lease issued under the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*, the *Alcan Queensland Pty. Limited Agreement Act 1965* or the *Aurukun Associates Agreement Act 1975*.

503C Who may apply under this division

(1) This section applies to a perpetual town lease (non-competitive lease) that was previously a miners homestead.

(2) The lessee may apply to convert the lease to freehold.

503D Time within which application must be made

The application must be given to the chief executive before 1 February 1998.

503E How application is dealt with

(1) The application must be dealt with as if—

(a) the repealed miners homestead Acts had not been repealed; and

(b) the application were made under the *Mining Titles Freeholding Act 1980*; and

(c) the lease were a miners homestead.

(2) However, if a mining titles freeholding lease would have issued under the repealed miners homestead Acts a pre-Wolfe freeholding lease is to be issued instead.

(3) A perpetual town lease (non-competitive lease) that was previously a miners homestead is to be treated as a miners homestead for the purposes only of an application under subsection (1).

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503F Lapse of offer

(1) An offer to convert the lease to freehold is valid for 3 months.

(2) An offer must be accepted in writing.

(3) If an offer is not accepted or rejected in writing within the stated time, the offer lapses.

(4) The Minister, before or after the offer lapses, may extend the time stated in the offer.

503G Surrender of existing lease

If a lessee accepts an offer to convert to freehold, the lessee must surrender the existing lease before the new tenure is issued.

503H Existing encumbrances

The new tenure is subject to all encumbrances to which the existing lease was subject and in the same priorities.

503I Credit for rent paid

(1) If an application to convert to freehold is approved, the following amounts are credited to the cost of freeholding—

(a) rent paid on the perpetual town lease (non-competitive lease) in excess of the amount that would have been payable if the lease had remained a miners homestead;

(b) rent paid for the period after the application was lodged.

(2) If the rent paid is more than the cost of freeholding, the overpaid amount must be refunded to the lessee together with interest at the rate prescribed under a regulation.

(3) The interest is payable from the date the excess rent was received to the day the amount of the excess is refunded.

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Division 2B Treatment of special perpetual mining purposes leases under certain Acts

503J Special perpetual mining purposes leases become perpetual leases

(1) A special perpetual mining purposes lease issued under the agreement Act on or after 1 January 1995 and in existence immediately before the commencement of this section, becomes, on the commencement of this section, a perpetual lease under this Act.

(2) A special perpetual mining purposes lease issued under the agreement Act on or after the commencement of this section becomes a perpetual lease under this Act immediately after it is issued.

(3) Subsections (1) and (2) have effect despite anything in the agreement Act.

(4) In this section—

agreement Act means the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*.

503K Replacement documents

(1) This section applies if a special perpetual mining purposes lease (the ***old lease***) becomes a perpetual lease (the ***new lease***) under section 503J.

(2) If the old lease becomes the new lease under section 503J(1), the chief executive must, as soon as practicable, issue a lease document for the new lease to replace the lease document for the old lease.

(3) If the old lease becomes the new lease under section 503J(2), the chief executive must, as soon as practicable after the old lease is issued, issue a lease document for the new lease to replace the lease document for the old lease.

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(4) The new lease is subject to all the encumbrances to which the old lease was subject and in the same priorities.

(5) When the lease document for the new lease is issued, the lease document for the old lease is no longer valid.

(6) The lease document for the new lease must be given to the person who is entitled to possession of the lease document for the old lease.

(7) The lease document for the old lease must be returned to the chief executive for cancellation when the lease document for the new lease is issued.

(8) The lessee under the new lease may ask for the return of the lease document for the old lease suitably marked as cancelled.

Division 3 Port and harbour lands

504 Changing tenures of port lands

(1) The Governor in Council, by order in council, may approve that all or part of land owned, vested in, leased or managed by a port authority or port lessor and surrendered to the State be dedicated or reallocated, without competition, to the port authority or port lessor or another body in the way stated in the order in council.

(1A) An order in council under subsection (1) may set the rent for a lease of the land.

(1B) Without limiting subsection (1A), rent set under this section may be set at zero dollars in total or for a rental period.

(1C) A rent and instalment regulation does not apply to the lease until the order in council ceases to apply to it.

(2) The port authority, port lessor or other body and the State must take all necessary action to fulfil the changes approved in the order in council.

(3) All interests over the land at the time of the surrender continue until the interest ends and are not affected by the change of

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tenure, even though the interests may not be interests that would be granted or issued under this Act.

(4) Registration fees are not payable for a change of tenure under this section.

(5) An order in council under this section is not subordinate legislation.

505 Changing tenures of harbour land

(1) The Governor in Council, by order in council, may approve that land that became an asset of the State because of the *Transport Infrastructure Act 1994*, section 231(1) be dedicated or allocated, without competition, to a local government or another body in the way stated in the order in council.

Note—

The *Transport Infrastructure Act 1994*, section 231 expired 1 July 1997. The *Acts Interpretation Act 1954*, section 20A applies.

(2) Before land can be dedicated or allocated, the local government or other body must agree to the dedication or allocation.

(3) If land is allocated or dedicated to a local government or other body, the local government or body takes the place of the State as a party to an interest in the land held by someone else.

(4) An interest in the land is not affected by the allocation or dedication, even though the interest may not be an interest that would be granted or issued under this Act.

(5) Registration fees are not payable for an allocation or dedication mentioned in this section.

(6) An order in council under this section is not subordinate legislation.

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Division 4 Cemetery Act 1865

506 Existing cemeteries continue

(1) To remove any doubt, it is declared that all reserves and deeds of grant in trust for cemetery purposes under the *Cemetery Act 1865* are reserves and deeds of grant in trust for cemetery purposes under this Act.

(2) All existing rules and regulations made by trustees under the *Cemetery Act 1865* for the purpose of a reserve or deed of grant in trust for cemetery purposes under the *Cemetery Act 1865* continue, as by-laws for the land comprising the reserve or deed of grant in trust for cemetery purposes under this Act, for a period of 3 years from the commencement.

Chapter 9 Transitional and repeal provisions

Part 1 Transitional provisions for original Act (No. 81 of 1994)

508 Interests under repealed Act continue

(1) On the commencement—

(a) each interest in land held by a person immediately before the commencement, and recorded under an Act repealed by this Act, is taken to be an interest held by the person, under this Act, in the land registry; and

(b) each document or duplicate document issued under an Act repealed by this Act before the commencement is taken to be a document issued under this Act.

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(2) The chief executive must do everything necessary or desirable to ensure that the particulars of each interest mentioned in subsection (1) are fully and accurately recorded in the land registry.

(3) To remove any doubt, it is declared that all reservations in existing deeds of grant, deeds of grant in trust and leases continue.

509 Registration of documents lodged before commencement

(1) The chief executive may register a document after the commencement, if—

(a) the document was lodged, but not registered, before the commencement; and

(b) the registrar of titles had power to register the document when it was lodged.

(2) In registering a document under subsection (1), the chief executive must exercise the powers the registrar of titles had when the document was lodged.

510 Offers made before commencement

If an offer was made under the repealed Act and had not lapsed before the commencement, but is accepted on or after the commencement—

(a) the offer must be dealt with as if the repealed Act had not been repealed; and

(b) the tenure issued is taken to be an existing tenure.

511 References in Acts and documents

A reference in an Act or document to—

(a) the Land Administration Commission, the chief commissioner of lands or the secretary, Land

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Administration Commission may, if the context permits, be taken to be a reference to the chief executive; and

(b) a land commissioner, assistant land commissioner, deputy land commissioner, land agent or land inspector may, if the context permits, be taken to be a reference to an officer of the department; and

(c) Crown land and State land as defined in the repealed Act may, if the context permits, be taken to be a reference to unallocated State land; and

(d) a holding within the meaning of, or as defined in, the repealed Act may, if the context permits, be taken to be a reference to a lease under this Act; and

(e) a reservation for irrigation works or purposes may, if the context permits, be taken to be a reference to a reservation for a public purpose under this Act; and

(f) the registrar of titles may, if the reference is about a register or the registration of a document under this Act and the context otherwise permits, be taken to be a reference to the chief executive; and

Note—

See section 549 in relation to the application of this paragraph.

(g) a stud advisory committee in an existing tenure document may, if the context permits, be taken to be a reference to the Minister; and

(h) a licensee under a particular type of licence under the repealed Act may, if the context permits, be taken to be a reference to a licensee under this Act; and

(i) a permission to occupy under the repealed Act may, if the context permits, be taken to be a reference to a permit to occupy under this Act; and

(j) the repealed Act, or the *Land Act 1897*, the *Land Act 1902* or the *Land Act 1910*, may, if the context permits, be taken to be a reference to this Act; and

(k) a section of the repealed Act, or the *Land Act 1897*, the *Land Act 1902* or the *Land Act 1910*, may, if the context

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permits, be taken to be a reference to the corresponding section in this Act.

512 Harbour matters

If a lease is transferred to the Minister under the *Transport Infrastructure Act 1994*, section 232(2), a reference in the lease to the Harbours Corporation is taken to be a reference to the Minister.

Note—

The *Transport Infrastructure Act 1994*, section 232, expired 31 December 2000. The *Acts Interpretation Act 1954*, section 20A applies.

513 Casino matters

(1) If the *Breakwater Island Casino Agreement Act 1984*, the *Brisbane Casino Agreement Act 1992* or the *Cairns Casino Agreement Act 1993* (the ***Casino Act***) requires or permits the State or a person to do a thing to fulfil its or the person's obligations under the Casino Act, and to fulfil the obligation, it is necessary to take action allowed under the repealed Act, the action may be taken under this Act whether or not the action would be allowed under this Act.

(2) If there is any inconsistency between this Act and any Casino Act, the Casino Act prevails to the extent of the inconsistency.

Examples—

1 If under a Casino Act it was agreed that the State would arrange for a lease over a reserve of 75 years duration (the maximum allowable under the repealed Act), a lease for 75 years may be issued under this Act even though the maximum allowable under this Act is 30 years.

2 If a Casino Act has particular rent, termination, subleasing and transfer provisions, the provisions override this Act in that respect.

514 Closure of Brigalow Fund

(1) All amounts in the Fitzroy Brigalow Land Development Trust Fund, established under the *Brigalow and Other Lands*

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Development Act 1962, immediately before the commencement is transferred to and becomes part of the consolidated fund.

(2) On and from the commencement, all amounts to be paid to or from the Fitzroy Brigalow Land Development Trust Fund must be paid to or from the consolidated fund.

516 Existing by-laws

All existing by-laws made by trustees under the repealed Act continue for a period of 3 years from the commencement.

518 Existing powers of attorney

A power of attorney forms part of the power of attorney register under the *Land Title Act 1994* if it was—

(a) registered under the repealed Act; or

(b) lodged before the commencement and was capable of registration under the repealed Act.

519 Things done under repealed Acts

(1) In this section—

done includes issued, recorded, entered, kept, granted, declared, registered, lodged, deposited, produced, transferred, created, served, given, acquired, required, executed, removed, noted, sealed, imprinted, witnessed, advertised and anything else prescribed under the regulations for this definition.

(2) Everything done under an Act repealed by this Act, is as effective as if it had been done for the same purpose under this Act.

Note—

The Acts repealed by this Act include the following—

- *Irrigation Areas (Land Settlement) Act 1962*
- *Land Act 1962*
- *Miners' Homestead Leases Act 1913*

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- *Mining Titles Freeholding Act 1980*
- *Sale to Local Authorities Land Act 1882*.

(3) An approval given under an Act repealed by this Act for a matter is taken to be an approval for the same purpose under this Act.

520 Effect of repeal by this Act

The repeal of the following sections of the repealed Act is limited in the following way—

(a) section 334F continues to apply to deeds of grant in trust granted for the benefit of Aboriginal or Islander inhabitants before this Act commenced;

(b) section 361A continues to apply to deeds of grant in trust granted before this Act commenced.

Part 1A Transitional provision for Natural Resources and Other Legislation Amendment Act 2000

521A Lease of land under repealed Act, section 269(1)

(1) This section applies if—

(a) a lease (an ***additional lease***) was issued under the repealed Act, section 269(1) to a lessee of a grazing homestead perpetual lease or pastoral lease; and

(b) on the commencement of this section, the additional lease is an interest in land held under this Act.

(2) The additional lease is taken to have been issued on condition that the land the subject of the lease is tied to the land held under the grazing homestead perpetual lease or pastoral lease.

(3) The condition is a tied condition under section 205.

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Part 1B Transitional provisions for Guardianship and Administration Act 2000

521B Performance of condition under previous s 207(1)(b) possible for 1 year

Without limiting the operation of section 207(1)(b) as in force immediately after the commencement of this section, section 207(1)(b) as in force immediately before the commencement of this section also continues to have effect for 1 year after the commencement of this section as if the section had not been amended by the *Guardianship and Administration Act 2000*.

521C Authorisation under repealed s 384 continues for 1 year

An authorisation under section 384 that is in force immediately before the repeal of the section continues to have effect for 1 year after the repeal as if the section had not been repealed.

Part 1C Transitional provision for Audit Legislation Amendment Act 2006

521D Persons appointed to perform certain audits before commencement

(1) This section applies if, before the commencement, the trustee of trust land appointed a person mentioned in pre-amended section 47(1)(a) or (b) to audit the trustee's books of account—

(a) for the 2004–2005 financial year and the person has not performed the audit; or

(b) for the 2005–2006 financial year.

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(2) For the purpose of the person performing the audit, pre-amended section 47(1)(a) or (b) continues to apply as if the *Audit Legislation Amendment Act 2006* had not commenced.

(3) In this section—

commencement means commencement of this section.

pre-amended, in relation to section 47(1)(a) or (b), means the provision as in force before the commencement.

Part 1D Transitional provisions for Land and Other Legislation Amendment Act 2007

521E Divesting and vesting trust land

(1) This section applies if a trustee of trust land is a trustee—

(a) mentioned in section 44(2)(c) or (e) as in force immediately before the commencement of this section; and

(b) represents the State.

(2) On the commencement of this section, the trust land is vested in the State as trustee of the land.

(3) The chief executive must register the vesting.

521F Existing leases exempted from particular amendments

The following provisions inserted under the *Land and Other Legislation Amendment Act 2007* do not apply for a lease that started before the commencement of this section—

- section 115(3) to (5)
- section 136(5) to (7)
- sections 155A to 155E, 160A, 162A and 168A.

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521G Offer of additional area

Section 136(5) to (7) does not apply to an offer of an additional area made under chapter 4, part 1, division 3 before the commencement of this section.

521H Forfeiture for outstanding amount

If the Minister has given a lessee or mortgagee notice of the Minister's intention to forfeit a lease under section 235(1) or 238(2) as in force immediately before the commencement of this section, the provisions of chapter 5, part 4 as in force immediately before the commencement of this section continue to apply to the forfeiture of the lease.

521I Requirements for plan of subdivision

Section 290J as in force immediately before the commencement of this section continues to apply to a plan of subdivision lodged in the land registry before the commencement.

521J Non-application of s 299A to particular documents

Section 299A does not apply to a document if the particulars about the document are recorded in the relevant register before the commencement of this section.

521L Continuance of power to substitute particular tenure or registered documents

Despite its repeal, section 312 continues to apply for a tenure document or other registered document for land included in a register kept under section 276(e), (g) or (h).

521M Permits to occupy and unallocated State land

To remove any doubt, it is declared that permit land for a permit issued before the commencement of this section is, and

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has always been, unallocated State land if the land was unallocated State land immediately before the permit was issued.

521N Dealing with disputes under particular subleases

(1) This section applies in relation to a dispute under a sublease in force immediately before the commencement if—

(a) chapter 6, part 4, division 3A applies to the sublease immediately after the commencement; and

(b) the dispute arose before the commencement.

(2) Section 339B applies in relation to the dispute under the sublease unless, before the commencement—

(a) a proceeding about the dispute was started in a court; or

(b) the issue in dispute was heard, other than in a proceeding before a court, under a dispute resolution process under another Act or the sublease.

(3) In this section—

commencement means the day this section commences.

521O Exclusion of imposed condition reviews for particular leases

Section 211 does not apply to a lease that started before 1 July 1995.

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Part 1E Transitional provision for Aboriginal and Torres Strait Islander Land Amendment Act 2008

521P Trustee leases

(1) This section applies to a trustee lease in force on the commencement of this section and given in relation to trust land that, immediately after the commencement, is indigenous trust land.

(2) The trustee lease continues in force in relation to the trust land.

(3) In this section—

indigenous trust land means Aboriginal trust land as defined under the *Aboriginal Land Act 1991* or Torres Strait Islander trust land as defined under the *Torres Strait Islander Land Act 1991*.

Part 1F Further transitional provisions for Land and Other Legislation Amendment Act 2007

521Q Definition for pt 1F

In this part—

commencement means the commencement of this section.

521R Outstanding applications continued under post-amended Act

(1) An outstanding application continues under the provisions of the post-amended Act.

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(2) However, the matters the designated officer, designated person or other person deciding the application must consider are—

(a) if the applicant for the application asks that the matters to be considered in deciding the application are the matters to be considered under the post-amended Act—the matters to be considered for a similar application under the post-amended Act; or

(b) otherwise—the matters that would have been considered in deciding the application under the pre-amended Act.

(3) Also, chapter 7, part 2A of the post-amended Act does not apply to the application.

(4) In this section—

outstanding application means an application made under the pre-amended Act but not dealt with as at the commencement.

post-amended Act means the *Land Act 1994* as in force from time to time on and after 1 January 2008.

pre-amended Act means the *Land Act 1994* as in force immediately before 1 January 2008.

521S Particular new leases exempted from particular provisions

(1) The following provisions do not apply to a new lease—

- section 162A
- section 168A
- section 176H.

(2) In this section—

new lease means a lease offered and accepted under this Act before 1 January 2008 but not granted as at the commencement.

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Part 1G Transitional provision for Acquisition of Land and Other Legislation Amendment Act 2009

521T Provision about change of purpose for reserves

(1) This section applies if—

(a) under section 31B as in force before the commencement, the purpose of a reserve that was not a community purpose was changed to a community purpose; and

(b) the change was registered before the commencement.

(2) The change is taken to have been lawfully made under this Act.

(3) In this section—

commencement means the day this section commences.

Part 1H Transitional provisions for Natural Resources and Other Legislation Amendment Act 2010

521U Definitions for pt 1H

In this part—

commencement means the day this section commences.

previous, for a stated provision that includes a number, means the provision that included that number as in force immediately before the commencement.

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521V Existing term lease applications

Section 155 applies to an application for a term lease that has been made but not decided before the commencement.

521W Existing extension applications

(1) Section 155A applies to an application for an extension of a term lease made under previous section 155A, but not decided before the commencement.

(2) Section 155B applies to an application for an extension of a term lease made under previous section 155B, but not decided before the commencement.

521X Application of s 155D to existing leases

From the commencement, section 155D applies to leases granted under previous section 155 or extended under previous section 155A or 155B.

521Y Application of s 201A to existing leases

Section 201A does not apply to leases entered into before the commencement.

521Z Continuing application of no compensation provision

(1) The repealed section 431NG continues to apply after the repeal of chapter 7, part 3B in relation to the operation of that part.

(2) In this section—

repealed section 431NG means section 431NG as in force immediately before the commencement of this section.

521ZA Lease or permit

(1) This section applies if—

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(a) immediately before the commencement of this section, a person (the ***relevant person***) is the lessee of, or is the holder of a permit to occupy, land (the ***relevant land***) that adjoins a tidal boundary of other land (the ***primary land***); and

(b) the relevant person is also the registered owner or lessee of the primary land; and

(c) after the commencement of this section, because of the operation of the *Survey and Mapping Infrastructure Act 2003*, part 7, division 2, subdivision 2 or 3, there effectively occurs a relocation of the tidal boundary of the primary land.

(2) There is taken to be a corresponding alteration of the area of the permit or lease for the relevant land to ensure it continues to adjoin the primary land.

Part 1I Transitional provision for Classification of Computer Games and Images and Other Legislation Amendment Act 2013

521ZB References to the repealed Dividing Fences Act 1953

(1) In a document under this Act, a reference to the repealed *Dividing Fences Act 1953* may, if the context permits, be taken to be a reference to the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

(2) Subsection (1) applies subject to the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, section 98.

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Part 1J Transitional provision for amendments under Waste Reduction and Recycling Act 2011

521ZC Existing profit a prendre relating to natural resource product

(1) This section applies to a profit a prendre relating to a natural resource product registered under chapter 6, part 4, division 8B as in force immediately before the commencement of this section (***previous part 4, division 8B***).

(2) Previous part 4, division 8B continues to apply for the profit a prendre as if the *Waste Reduction and Recycling Act 2011* had not been enacted.

Part 1K Transitional provisions for Land, Water and Other Legislation Amendment Act 2013

521ZD Definitions for pt 1K

In this part—

commencement means the commencement of the provision in which the word appears.

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

relevant term lease means a term lease to which the following apply—

(a) the lease—

(i) is for rural leasehold land; and

(ii) is for a term of 20 years of more;

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(b) the lease land is 100ha or more but less than 1,000ha;

(c) the lease is subject to a land management agreement.

521ZE Cancellation of land management agreements

(1) This section applies to a relevant term lease in force on the commencement.

(2) Subject to section 521ZF, the lessee may apply in writing to the Minister for the cancellation of the land management agreement for the lease.

(3) The Minister may grant the cancellation.

(4) However, the agreement must not be cancelled if the Minister is satisfied—

(a) the lease land suffers from, or is at risk of, land degradation; or

(b) the lessee is using the lease land in a way that is not fulfilling the lessee's duty of care for the land, under section 199.

(5) The cancellation of a land management agreement under this section does not affect the term of the lease.

(6) If the Minister decides to refuse to grant the cancellation the lessee may appeal against the decision.

521ZF Prohibition on cancellation of particular land management agreements

(1) This section applies to a relevant term lease in force on the commencement for which an extension of the term is granted under chapter 4, part 3, division 1B, regardless of whether the application for the extension is made before or after the commencement.

(2) The lessee can not apply for the cancellation, under section 521ZE, of the land management agreement for the lease.

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521ZG Particular conditions about land management agreements for relevant term leases

(1) This section applies to a relevant term lease in force on the commencement that is subject to a condition imposed under section 203(g).

(2) If, under section 521ZE, the Minister cancels the land management agreement for the lease—

(a) the condition is taken to have been cancelled; and

(b) the chief executive must amend the leasehold land register to show the condition has been cancelled.

(3) The amendment of the register may be made despite any other provision of the Act.

521ZH Extension and reduction of relevant term leases

(1) This section applies to a relevant term lease in force on the commencement, subject to section 521ZE.

(2) Previous chapter 4, part 3, divisions 1B and 1C continue to apply for the lease.

521ZI Existing term lease applications

(1) This section applies to an application for a term lease that has been made under previous chapter 4, part 3 but not decided before the commencement.

(2) Previous chapter 4, part 3 and chapter 5, part 2 continue to apply to the application.

(3) However, subsection (4) applies if the application is for a lease to which the following apply—

(a) the lease—

(i) is for rural leasehold land; and

(ii) is for a term of 20 years of more;

(b) the lease land is 100ha or more but less than 1,000ha.

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(4) The Minister may, at the applicant's request, decide the application as if chapter 4, part 3 as amended under the amending Act applied to the application.

(5) In this section—

amending Act means the *Land, Water and Other Legislation Amendment Act 2013*.

Part 1L Transitional provision for Vegetation Management Framework Amendment Act 2013

521ZJ Particular existing forfeiture procedures

(1) This section applies to a proceeding commenced before the commencement of this section for the forfeiture of a lease under chapter 5, part 4, division 3, as in force immediately before the commencement of this section.

(2) This Act, as in force immediately before the commencement of this section, continues to apply to the proceeding as if the *Vegetation Management Framework Amendment Act 2013*, part 3 had not been enacted.

Part 1M Transitional provisions for Land and Other Legislation Amendment Act 2014

521ZK Definitions for pt 1M

In this part—

amending Act means the *Land and Other Legislation Amendment Act 2014*.

commencement means the commencement of this part.

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repealed means repealed by the amending Act.

521ZL Application for term lease renewal may become extension application for rolling term lease

(1) This section applies if—

(a) immediately before the commencement, a renewal application for a term lease had been made under the renewal provisions but had not been finalised under those provisions; and

(b) on the commencement, the term lease becomes a rolling term lease.

(2) After the commencement, and before the renewal application is finalised under the renewal provisions, the lessee may advise the chief executive that the lessee agrees to the renewal application being treated as an extension application.

(3) If the lessee advises the chief executive under subsection (2), the renewal application for the lease is taken to be an extension application for the lease, and must be dealt with under chapter 4, part 3, division 2, subdivision 3.

(4) If, immediately before the commencement, an offer to renew the lease had been made but not accepted, on the lessee giving advice under subsection (2), the offer is taken to have been withdrawn.

(5) If the chief executive is satisfied the lessee does not wish the renewal application to be treated as an extension application, the renewal application must be dealt with under this Act as in force immediately before the commencement.

521ZM Application for term lease renewal before commencement may become extension application

(1) This section applies if—

(a) immediately before the commencement, a renewal application for a term lease had been made under the

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renewal provisions but had not been finalised under those provisions; and

(b) on the commencement, the term lease does not become a rolling term lease.

(2) After the commencement, and before the application is finalised under the renewal provisions, the lessee may advise the chief executive that the lessee wishes the lease to become a rolling term lease.

(3) If the lessee advises the chief executive under subsection (2), and the Minister approves the lease as a rolling term lease under section 164(1)(c), the renewal application for the lease is taken to be an extension application for the lease, and must be dealt with under chapter 4, part 3, division 2, subdivision 3.

(4) If the lessee does not advise the chief executive under subsection (2), or if the lessee advises the chief executive under subsection (2) but the Minister does not approve the lease as a rolling term lease under section 164(1)(c), the renewal application must be dealt with under this Act as in force immediately before the commencement.

521ZN Ending of mandatory condition under repealed s 176H

(1) This section applies to a lease that, immediately before the commencement, was subject to a mandatory condition under repealed section 176H.

(2) On and from the commencement, the lease is no longer subject to the condition.

521ZO Transitional regulation-making power

A rent and instalment regulation may include a provision about a matter for which—

(a) it is necessary to make provision to allow for or to facilitate achieving the transition from the repealed chapter 5, part 1 to the rent and instalment regulation; and

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(b) this Act does not make provision or sufficient provision.

Part 1N Transitional provisions for Nature Conservation and Other Legislation Amendment Act 2016

521ZP Definitions for part

In this part—

protected area lease means a rolling term lease under the unamended Act, section 164(1)(b) in which the lease land, or part of the lease land, is within a nature conservation area or specified national park.

unamended Act means this Act as in force before the commencement.

521ZQ Protected area lease is not a rolling term lease

On the commencement—

(a) a protected area lease stops being a rolling term lease; and

(b) chapter 4, part 3, division 2, subdivision 3 does not apply to a protected area lease.

521ZR Extension application for protected area lease

(1) This section applies to an application for the extension of the term of a protected area lease under the unamended Act, section 164C if—

(a) the application was made before the commencement; and

(b) on the commencement, the extension has not been granted or refused.

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(2) The application is taken to have been withdrawn.

Part 2 Repeal

522 Completion of repeal

To the extent it was not already repealed immediately before the commencement of this section, the *Land Act 1962* is repealed.

Part 3 Transitional provisions for Land, Explosives and Other Legislation Amendment Act 2019

525 Application of s 199B to existing leases and permits

Section 199B applies to a lease or permit, whether it was issued before or after the commencement.

526 Application of s 294E(3)

Section 294E(3) applies to a registered building management statement whether the statement was registered before or after the commencement.

527 Authorised persons

(1) This section applies to a person who, immediately before the commencement, held an appointment as an authorised person under this Act.

(2) The person holds office as an authorised officer under this Act on the same conditions until the person's office as an authorised officer ends under this Act.

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528 Identity cards issued before commencement

(1) This section applies to an identity card given under former section 397 to a person who, under section 527, holds office as an authorised officer under this Act.

(2) From the commencement, the identity card is taken to be an identity card issued to the authorised officer under section 390I.

(3) In this section—

former section 397 means section 397 as in force from time to time before the commencement.

529 Compensation

(1) Despite its repeal, former section 402 continues to apply in relation to a loss or expense mentioned in former section 402(1).

(2) In this section—

former section 402 means section 402 as in force immediately before the commencement.

Part 4 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2019

Division 1 Preliminary

530 Definitions for part

In this part—

former, in relation to a provision, means as in force from time to time before the commencement of the section in which the term is used.

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new, in relation to a provision, means as in force on the commencement of the section in which the term is used.

Division 2 Provision relating to alternative dispute resolution

531 Existing disputes

(1) New chapter 6, part 4, division 3A applies in relation to a dispute mentioned in new section 339B whether the dispute started before or after the commencement.

(2) However, new chapter 6, part 4, division 3A does not apply in relation to a dispute if, before the commencement, the dispute was referred to mediation under former section 339B.

Division 3 Provisions relating to road closures

532 Steps taken in relation to road closure applications before commencement

(1) This section applies if, before the commencement, the Minister—

(a) had complied with former section 100(1)(a) and (b), or had acted under former section 100(2), in relation to a road closure application; but

(b) had not dealt with the application under section 101.

(2) The Minister is taken to have—

(a) if the Minister complied with former section 100(1)(a) and (b)—complied with new section 100(1)(a) and (b); or

(b) if the Minister acted under former section 100(2)—acted under new section 100(2).

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533 Roads temporarily closed by gazette notice

(1) This section applies in relation to a road that, immediately before the commencement, had been temporarily closed under former section 98(1)(b) and had not been reopened under former section 107.

(2) The Minister may, by gazette notice, reopen the road.

Division 4 Provisions relating to prescribed terms and mandatory standard terms documents

534 Definition for division

In this division—

mandatory standard terms document means a mandatory standard terms document under this Act as in force before the commencement.

535 Application of mandatory standard terms document

(1) This section applies if, under section 319, a mandatory standard terms document formed part of a document immediately before the commencement.

(2) The document is not affected by the repeal of former section 318A.

(3) Subject to subsection (4), the mandatory standard terms document continues to form part of the document unless, and until, the interest in land to which the document relates becomes subject to a prescribed term.

Note—

A relevant interest may be subject to a prescribed term. See chapter 5A.

(4) If there is a conflict between the document, or another document, and the mandatory standard terms document, the mandatory standard terms document prevails.

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(5) Subsection (4) applies despite section 320(2).

536 Requirements for mandatory standard terms document

(1) This section applies to an approval mentioned in section 57(1), 58(1) or 332(1)(a)(i), or an authority mentioned in section 64(1) or 333(1), if—

(a) immediately before the commencement, the approval or authority included a condition, or other requirement, that a mandatory standard terms document must form part of an interest in land; and

(b) the interest in land to which the approval or authority relates becomes subject to a prescribed term.

(2) The approval or authority is no longer subject to the condition or requirement.

Division 5 Provisions about functions of Minister and chief executive

537 Particular applications taken to have been made to the chief executive

(1) This section applies if—

(a) immediately before the commencement, a provision of this Act required or permitted an application to be made to the Minister; and

Examples—

former section 23A, 34H or 38G

(b) on the commencement—

(i) the provision requires or permits the application to be made to the chief executive; and

(ii) the application has not been decided.

(2) The application is taken to have been made to the chief executive.

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538 Particular things taken to have been done by chief executive

(1) This section applies in relation to a function of the chief executive under this Act if, before the commencement, the function was a function of the Minister.

Examples—

former section 48, 240E, 240F, 240G or 243

(2) From the commencement, any performance or exercise of the function by the Minister before the commencement is taken to be a performance or exercise of the function by the chief executive to the extent the context permits.

(3) In this section—

function includes a power.

Division 6 Other provision

539 Application of new s 311

New section 311 applies in relation to a document only if the document is executed after the commencement.

Part 5 Transitional provision for Natural Resources and Other Legislation (GDA2020) Amendment Act 2020

540 Existing applications to convert leases

Section 167(3)(b)(ii) as in force immediately before the commencement continues to apply to a conversion application made under section 166 but not decided before the commencement.

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Part 6 Transitional provisions for Queensland Future Fund (Titles Registry) Act 2021

541 Definitions for part

In this part—

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

new, for a provision of this Act, means the provision as in force from the commencement.

registry function means a function of the chief executive under this Act as in force before the commencement that immediately after the commencement is a function of the registrar of titles.

542 Existing registers continue

Each register kept by the chief executive under former section 276 immediately before the commencement continues and must be kept by the registrar of titles under new section 276.

543 Land practice manual continues

The manual of land practice kept by the chief executive under former section 286A immediately before the commencement continues and must be kept by the registrar of titles under new section 286A.

544 Engagements and agreements under former ss 284 or 285A

(1) This section applies if—

(a) before the commencement, the chief executive had—

(i) engaged an entity under former section 284(4); or

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(ii) entered into an agreement under former section 284(6) or 285A(1); and

(b) on the commencement, the engagement or agreement—

(i) has not ended; and

(ii) has not been transferred to the titles registry operator under a transfer notice.

(2) From the commencement, the engagement or agreement is taken to have been entered into by the registrar of titles under—

(a) for an engagement entered into under former section 284(4)—new section 284(4); or

(b) for an agreement entered into under former section 284(6)—new section 284(6); or

(c) for an agreement entered into under former section 285A(1)—new section 285A(1).

(3) In this section—

transfer notice see the *Queensland Future Fund (Titles Registry) Act 2021*, section 20.

545 Approved forms continue as approved forms of registrar of titles

(1) This section applies to a form approved by the chief executive under former section 444 that is in force immediately before the commencement.

(2) From the commencement, the form is taken to be—

(a) if the form was approved for use other than in relation to the land registry—a form approved by the chief executive under new section 444(1); or

(b) if the form was approved for use in relation to the land registry—a form approved by the registrar of titles under new section 444(2).

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546 Approval of form of document under Electronic Conveyancing National Law (Queensland)

(1) This section applies to the approval of the form of a document by the chief executive under the Electronic Conveyancing National Law (Queensland), section 7 if the approval is in force immediately before the commencement.

(2) From the commencement, the approval of the form of the document is taken to be an approval of the form of the document by the registrar of titles under the Electronic Conveyancing National Law (Queensland), section 7.

547 Other things done by or in relation to chief executive

(1) This section applies to anything done by or in relation to the chief executive under this Act before the commencement in relation to a registry function if—

(a) were the thing done after the commencement, the thing would be done by or in relation to the registrar of titles; and

(b) the thing is not otherwise dealt with by a provision of this part.

(2) From the commencement, the thing done by or in relation to the chief executive is, if the context permits, taken to have been done by or in relation to the registrar of titles.

(3) This Act applies in relation to the thing taken to have been done by or in relation to the registrar of titles with necessary changes.

(4) Without limiting any other provision of this part, a regulation may—

(a) declare an act done or omission made under this Act before the commencement to be an act or omission to which this section applies; and

(b) provide for how the provisions of this Act apply in relation to a thing taken to have been done by or in relation to the registrar of titles under this section.

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548 Declaration of particular matters for s 547

(1) This section declares matters for section 547(2) and (3) but does not limit those provisions.

(2) Subsection (3) applies if a thing done by the chief executive before the commencement is or includes a direction or requirement (however called) applying to or of a person.

Examples of directions or requirements—

- a direction about the form of a document for registration
- a requirement that a document borrowed under section 307(1) be returned by a particular time
- a requirement under section 309 to deposit a document for correction or cancellation

(3) From the commencement, the person must comply with the direction or requirement in relation to the registrar of titles.

(4) For subsection (3), if failure to comply with the direction or requirement constitutes an offence, a proceeding for the offence may be started and the person may be convicted of and punished for the offence.

(5) Subsection (6) applies if the doing of a thing in relation to the chief executive required or allowed the chief executive to take action in relation to the thing that was not taken before the commencement.

(6) From the commencement, the registrar of titles is required or allowed to take the action in relation to the thing under this Act.

Examples of action that the registrar of titles may be required or allowed to take—

- give a notice of a caveat that was lodged under former section 389D before the commencement
- deal with an application, notice or other document in relation to a registry function made, deposited or lodged before the commencement

(7) For subsection (6), if this Act required that the chief executive have a particular opinion, belief or state of mind in order to take the action, then the registrar of titles must have the opinion, belief or state of mind to take the action.

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549 Application of s 511 and references in documents

(1) From the commencement of this section, section 511(f) no longer applies to references to the registrar of titles.

(2) A reference in a document to the chief executive may, if the reference relates to a registry function and the context otherwise permits, be taken to be a reference to the registrar of titles.

Part 7 Transitional provisions for Land and Other Legislation Amendment Act 2023

550 Definitions for part

In this part—

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

new, for a provision of this Act, means the provision as in force from the commencement.

551 Existing applications to transfer leases issued for significant development

(1) This section applies if an application for approval to transfer a lease issued for a significant development is made, but not decided, under this Act before the commencement.

(2) New section 130 applies in relation to the lease.

552 Registration of documents for particular existing dealings

(1) This section applies to a dealing mentioned in new section 390A(1) affecting defence land if—

(a) the dealing or the process for the dealing started before the commencement, whether or not the dealing or

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process was also completed before the commencement; and

(b) immediately before the commencement, a document for the dealing had not been registered.

(2) New section 390A applies in relation to the dealing and the registration of a document for the dealing.

(3) In this section—

defence land see section 390A(3).

553 Existing offers for renewal of term leases

(1) This section applies if a term lease is the subject of an offer under this Act for renewal that was made, but not fully dealt with, before the commencement.

(2) New section 434B applies in relation to the lease.

554 Lapse of existing offers

(1) This section applies to an offer—

(a) made under this Act before the commencement; and

(b) that has not, immediately before the commencement, lapsed under former section 442.

(2) New chapter 7, part 1D applies in relation to the offer.

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Schedule 1 Community purposes

schedule 6, definition *community purpose*

Aboriginal purposes

beach protection

buffer zones

cemeteries

coastal management

crematoriums

cultural purposes

drainage

environmental purposes

gardens

heritage

historical

jetties

landing places

mortuaries

natural resource management

navigational purposes

open space

parks

provision of services beneficial to Aboriginal people particularly concerned with land

provision of services beneficial to Torres Strait Islanders particularly concerned with land

public boat ramps

public halls

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public toilet facilities

recreation

roads

scenic purposes

scientific purposes

showgrounds

sport

strategic land management

Torres Strait Islander purposes

travelling stock requirements

watering-places

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Schedule 1A Provisions that include mandatory conditions for tenures

section 198C(2)

- section 176UA(3)
- chapter 5, part 2, division 1
- section 214C(3)
- section 457(1)
- section 462(1)
- section 466(1)
- section 488(2)

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Schedule 1B Regulation about the payment and collection of rent and instalments

section 448(4)

1 Matters that may be included

Matters that may be included in a regulation under section 448(2)(g), include, for leases, licences and permits (***authorities***), the following—

(a) the setting of periods for which rents are payable;

(b) the categorisation of authorities for rental purposes, including how categories may be changed, and including the review and appeal of decisions about categorisation;

(c) the calculation of rent payable for authorities, including for different categories of authorities;

(d) the setting of rent payable for particular authorities if calculation provisions under paragraph (c) are not to be applied, having regard to prescribed circumstances;

(e) provision for the Minister to apply an alternative way of calculating the rent payable for a category of authority so that a lower rental amount may be applied in prescribed circumstances;

(f) ending the requirement to pay rent for leases subject to conversion to freehold;

(g) making of rent adjustments for authorities having regard to prescribed events, including, for example, a change in the area of an authority or a change in the category because of a change of purpose;

(h) the fixing, in prescribed circumstances, of lesser rents than would otherwise be payable, whether by applying a discount or in some other way, including, for example,

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the setting by the Minister of concessional arrangements for authorities—

(i) requiring unusual development or investigative activity; or

(ii) held by charitable, sporting or recreational organisations; or

(iii) affected by a property build-up scheme or an indigenous cultural interest;

(i) when and where any rent or instalment must be paid, including requiring payments to be made before objections or appeals are finalised;

(j) the refunding of overpaid rent or instalments, and the extent to which interest is payable on overpaid amounts;

(k) deferral arrangements for the payment of rent or instalments because of hardship and when deferral arrangements cease to apply;

(l) the payment of penalty interest on unpaid rent or instalments;

(m) action that may be taken in relation to the non-payment of an amount of rent or instalments, or of any amount of interest payable because of the non-payment of rent or instalments, including—

(i) the giving of notice about an intention to take an action mentioned in subparagraph (ii) or (iv); or

(ii) action to recover the amount in a court; or

(iii) action under this Act for the forfeiture of a lease; or

(iv) the cancellation of a licence or permit; or

(v) reinstatement of a cancelled licence or permit on payment of an unpaid amount.

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Schedule 2 Original decisions

schedule 6, definition *original decision*, paragraph (a)

Section	Description of decision
13B	about the granting of an application to have land declared as former watercourse land
23A	about the allocation of a floating reserve
25(2)	about the unimproved value of a reservation
26(3)	about the boundaries of the land being resumed
26B(6)	about the value of commercial timber
58(6)	refusing a transfer, mortgage or sublease
69(3)	about the unimproved value of land to be sold by a mortgagee in possession
109A(3)	imposing conditions on the approval for the simultaneous opening and closing of roads in deed of grant land
109B(4)	imposing conditions on the approval for the simultaneous opening and closing of roads in trust land or lease land
118(2)	excluding an applicant from a ballot or tender
127(7)	about the unimproved value of reclaimed land
130A(1)	about making a note in the appropriate register against a lease
155D(2)	reducing the term of a lease
156A(1)	giving an improvements notice
160(3)	about whether the conditions of a lease have been complied with
164C(7)	about the Minister's refusal to grant an extension of a lease

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Section	Description of decision
168(5)	about whether the conditions of a lease have been complied with
176A(1)	refusal of approval of subdivision
176L(1)	refusal of approval of amalgamation
180I(1)	giving an improvements notice
212(3)	about a review change
214(1)	giving a remedial action notice
214E(2)	reducing the term of a lease
214E(2)	imposing additional conditions on a lease
214H(2)	giving a compliance notice
232(5)	about the value of improvements
239(1)	not allowing the sale of a lease by a mortgagee
239(2)	not allowing the sale of a lease by a relevant local government
244(1)	giving an improvements notice
249(5)	about the value of improvements
322(8)	refusing a transfer
332(4)	refusing a sublease
347(4)	refusing an extension of time
390ZG	seizing a thing unless a circumstance mentioned in section 390ZM(1)(a) or (b) applies in relation to the thing
390ZH	seizing a thing unless a circumstance mentioned in section 390ZM(1)(a) or (b) applies in relation to the thing
390ZO	retaining a seized thing

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Section	Description of decision
390ZP(1)	forfeiting a seized thing unless— (a) the decision to forfeit the thing was made under section 390ZP(1)(a) or (b); and (b) the place where the thing was seized is a place mentioned in section 390ZQ(4)(b)(i) or (ii)
403G(2)	giving a safety notice
403J(2)	giving a warning notice
521ZE(6)	refusal to grant the cancellation of a land management agreement

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Schedule 3 Requirements for approved agreements

section 373ZC(2)

Part 1 Indigenous access and use agreements

1 The lease affected by an indigenous access and use agreement must be a lease for—

(a) rural leasehold land; and

(b) a term, including any extension of the lease that has been or may be granted under section 155A or 155B, of 20 or more years but no more than 50 years; and

(c) lease land that is 1,000ha or more.

2 Native title must not have been extinguished for the land the subject of the lease.

3 The parties to an indigenous access and use agreement must be—

(a) the lessee; and

(b) the determined native title holders or registered native title claimants for the area that is subject to the agreement.

4 An indigenous access and use agreement—

(a) must not provide for the assigning, surrendering or extinguishing of native title over any part of the lease land; and

(b) must not provide for the validation of future acts within the meaning of the *Native Title Act 1993* (Cwlth), section 233; and

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(c) must not provide for the burial of human remains on the lease land by a party to the agreement mentioned in item 3(b), unless the party—

(i) is a determined native title holder; and

(ii) has the prior consent of the lessee and the chief executive; and

(d) must not purport to prevent or be inconsistent with—

(i) the establishment of a nature refuge under the *Nature Conservation Act 1992*; or

(ii) a covenant, of a type mentioned in section 373A(5)(b) if the covenantee is the State, being registered; and

(e) must not be for a term less than the unexpired term of the lease affected by the agreement, including any extension of the lease that may be granted under section 155A or 155B.

5 The area that is subject to an indigenous access and use agreement must include—

(a) if the agreement requires the lessee to withdraw from a native title claim made by another party to the agreement—

(i) all parts of the lease land relevant to the other party's native title claim; and

(ii) any areas over which native title will be extinguished or the extinguished areas under a determination of native title; or

(b) otherwise—all, or the part, of the lease land that is within the other party's determined or registered native title claim area under the *Native Title Act 1993* (Cwlth).

6 If native title claim areas overlap on the lease land, an indigenous access and use agreement for the lease land must exclude that part of the lease land where one native title claim overlaps another unless—

(a) the agreement is entered into on behalf of more than one native title claim group; and

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(b) the native title parties for the claims have agreed that the overlapping claim area is shared country for the purposes of the agreement; and

(c) the shared country is clearly described and identified on a map included in the agreement; and

(d) the nature and extent of the native title for the shared country, and the responsibilities of the native title parties for the shared country, are stated in the agreement.

7 If a party to an indigenous access and use agreement is a registered native title claimant for the area the subject of the agreement and the agreement includes conditions relating to a lessee withdrawing from that party's native title claim, the agreement must include conditions as follows for the purpose of a determination of native title—

(a) the burial of human remains by the registered native title claimant must not take place on the lease land without the prior consent of the lessee and the chief executive;

(b) the lessee's rights and interests under the lease and the indigenous access and use agreement must be included as one of the interests under the determination;

(c) the areas identified as permanent exclusion areas under the indigenous access and use agreement must be areas in which native title is, subject to the determination, validly extinguished.

Part 2 Indigenous land use agreements

1 The lease affected by an indigenous land use agreement must be a lease for—

(a) rural leasehold land; and

(b) a term, including any extension of the lease that has been or may be granted under section 155A, 155B or 155BA, of 20 or more years but no more than 75 years; and

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(c) lease land that is 1,000ha or more.

2 Native title must not have been extinguished for the land the subject of the lease.

3 The parties to an indigenous land use agreement must be—

(a) the lessee; and

(b) the native title party for the part of the lease land subject to the agreement.

4 An indigenous land use agreement—

(a) must not provide for the assigning, surrendering or extinguishing of native title over any part of the lease land; and

(b) must allow the native title party to carry out the following activities on the lease land—

(i) activities for traditional purposes of the native title party;

Examples of activities for subparagraph (i)—

- camping, fishing, gathering or hunting
- performing rites or other ceremonies
- visiting sites of significance

(ii) activities incidental to an activity mentioned in subparagraph (i); and

Examples of activities for subparagraph (ii)—

- controlling pests
- teaching rites or other ceremonies
- preserving sites of significance

(c) must not provide for the burial of human remains on lease land by the native title party unless the native title party has the prior consent of the lessee and the chief executive; and

(d) must not purport to prevent or be inconsistent with—

(i) the establishment of a nature refuge under the *Nature Conservation Act 1992*; or

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(ii) a covenant, of a type mentioned in section 373A(5)(b) if the covenantee is the State, being registered; and

(e) must not be for a term less than the unexpired term of the lease affected by the agreement, including any extension of the lease that may be granted under section 155A, 155B or 155BA.

5 The area that is subject to an indigenous land use agreement must include—

(a) if the agreement requires the lessee to withdraw from a native title claim made by the native title party—

(i) all parts of the lease land relevant to that party's native title claim; and

(ii) any areas over which native title will be extinguished or the extinguished areas under a determination of native title; or

(b) otherwise—all, or the part, of the lease land that is within the native title party's determined or registered native title claim area under the *Native Title Act 1993* (Cwlth).

6 If native title claim areas overlap on the lease land, an indigenous land use agreement for the lease land must exclude that part of the lease land where one native title claim overlaps another unless—

(a) the agreement is entered into on behalf of more than one native title claim group; and

(b) the native title parties for the claims have agreed that the overlapping claim area is shared country for the purposes of the agreement; and

(c) the shared country is clearly described and identified on a map included in the agreement; and

(d) the nature and extent of the native title for the shared country, and the responsibilities of the native title parties for the shared country, are expressed in the agreement.

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7 If an indigenous land use agreement includes conditions relating to a lessee withdrawing from the native title party's native title claim, the agreement must include conditions as follows for the purpose of a determination of native title—

(a) burial of human remains by the native title party must not take place on the lease land without the prior consent of the lessee and the chief executive;

(b) the lessee's rights and interests under the lease and the indigenous land use agreement must be included as one of the interests under a determination;

(c) the areas identified as permanent exclusion areas under the indigenous land use agreement are to be areas in which native title is, subject to the determination, validly extinguished.

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Schedule 6 Dictionary

section 3

Aboriginal people particularly concerned with land means Aborigines particularly concerned with land within the meaning given by the *Aboriginal Land Act 1991*, section 3.

accepted representations see section 403E(2).

adjacent land, in relation to relevant land, for chapter 7, part 3C, see section 431ZA.

adjacent owner, for chapter 1, part 4, see section 8A.

adjoining owner in relation to land adjoining a road, means—

(a) the registered owner of the land, other than a trustee of a deed of grant in trust; or

(b) if the land is lease land—the lessee; or

(c) if the land is trust land—the trustee of the trust land.

adjustment notice means a notice in the approved form requesting the registrar of titles to register an adjustment of the particulars of land under this Act.

agriculture means the cultivation of land including, for example, the following—

(a) farming;

(b) crop-raising;

(c) forestry.

amalgamation offer, for chapter 4, part 3, division 5, see section 176L(2).

ambulatory boundary principles see the *Survey and Mapping Infrastructure Act 2003*, part 7.

appeal means an appeal under chapter 7, part 3.

appeal expiration day, for a decision, means—

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(a) if an application for review of the decision is not made within the 42 days mentioned in section 424(1) or within any extended period under section 424(2)—the day the 42 days or extended period ends; or

(b) if an application is made, the day all proceedings under chapter 7, part 3, in relation to the decision and any appeals from those proceedings, are ended.

appropriate form, for the completion of a document, means the completion of—

(a) the approved form for the document; or

(b) if a form is approved or prescribed for the document under another Act—that form; or

(c) if the registrar of titles has given consent for an electronic form of the document under section 305A(1)—the electronic form; or

(d) if the chief executive or registrar of titles has given consent for an electronic form of the document under the *Electronic Transactions (Queensland) Act 2001*—the electronic form.

appropriate register means—

(a) for leases and matters relating to leases—the leasehold land register; or

(b) for reserves and matters relating to reserves—the register of reserves; or

(c) for State forests and timber reserves and matters relating to State forests and timber reserves—

(i) generally—the register of State forests and timber reserves; and

(ii) in relation to a plantation licence or a dealing with a plantation licence—the register mentioned in paragraph (a) and the register of plantation licences; or

(d) for nature conservation areas and matters relating to protected areas, critical habitat, or areas of major

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interest, under the *Nature Conservation Act 1992*—the register of nature conservation areas; or

(e) for specified national parks and matters relating to specified national parks—the register of specified national parks; or

(f) for licences and permits and matters relating to licences and permits—the register of licences and permits; or

(g) for unallocated State land and matters relating to unallocated State land—the register of unallocated State land; or

(h) for State housing leases and matters relating to State housing leases—the register of State housing leases; or

(i) for land vested in fee simple and matters relating to the land—the register of land vested in fee simple.

approved agreement, for an indigenous cultural interest, see section 373ZB.

approved form means—

(a) for an electronic conveyancing document—a form approved by the registrar of titles under the Electronic Conveyancing National Law (Queensland), section 7; or

(b) otherwise—a form approved under section 444.

authorised activity, for chapter 7, part 3C, see section 431ZA.

authorised officer means a person who holds office under chapter 6A, part 2 as an authorised officer.

bankruptcy includes a proceeding under a law about bankruptcy, insolvency or the liquidation of corporations.

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

building management statement see section 294B(2).

cancellation notice means a notice in the approved form requesting the registrar of titles to register a cancellation of a tenure or interest in land under this Act.

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cane railway easement see the *Sugar Industry Act 1999*, section 63(5).

carbon abatement interest, for chapter 6, part 4, division 8C, see section 373R.

carbon abatement product, for chapter 6, part 4, division 8C, see section 373R.

carbon sequestration, for chapter 6, part 4, division 8C, see section 373R.

caveatee, for a lease, licence or interest in a reserve over which a caveat has been lodged, means—

(a) a lessee of the lease or licensee of the licence; or

(b) someone, other than the caveator, who has an interest in the lease or licence; or

(c) a holder of an interest in a reserve.

caveator, for a lease, licence or interest in a reserve over which a caveat has been lodged, means a person in whose favour the caveat is lodged.

chief executive (water), for chapter 1, part 4, see section 8.

clear a tree includes clear by blading, burning, cutting, dozing, felling, poisoning, pulling, ringbarking and sawing, but does not include lopping or the destruction of standing vegetation by stock.

Commonwealth ILUA register means the Register of Indigenous Land Use Agreements under the *Native Title Act 1993* (Cwlth).

community purpose means a purpose in schedule 1.

compensation claimant see section 219(3).

compliance notice see section 214H(2).

compliance order see section 214J(2)(a).

compliance period, for chapter 7, part 2, division 2, see section 406(4)(a).

conditional deed see section 490.

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conservation agreement means a conservation agreement under the *Nature Conservation Act 1992*.

conservation covenant means a covenant registered under section 373A that is of a type mentioned in section 373A(5)(b).

conservation park means a conservation park under the *Nature Conservation Act 1992*.

constructing authority has the meaning given by the *Acquisition of Land Act 1967*.

construction trustee sublease see section 58(4)(a).

conversion application see section 166(1).

conviction includes a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

copy, of a document, if the document is an electronic conveyancing document, means—

(a) a representation of the document in paper form; or

(b) a reproduction or representation of the document in digital form.

correct includes correct by addition, omission or substitution.

court—

(a) generally, other than in relation to an offence—means the Land Court; or

(b) in relation to an offence—means a Magistrates Court; or

(c) for chapter 6A—see section 390C; or

(d) for chapter 7, part 3—see section 420J.

criminal history, of a person, means the person's criminal history, as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than a spent conviction.

cultivation means planting seeds for a crop or improved pasture species, whether or not the soil has been broken to prepare a seed bed, but does not include the breaking of the soil for the natural regeneration of indigenous grasses.

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current miners homestead application see section 495.

declared beach area, for chapter 7, part 3B, see section 431O.

declared pest means a plant or animal, other than a native species of plant or animal, that is—

(a) invasive biosecurity matter under the *Biosecurity Act 2014*; or

Notes—

1 See the *Biosecurity Act 2014*, schedule 1, part 3 or 4 or schedule 2, part 2.

2 See also the notes to the *Biosecurity Act 2014*, schedules 1 and 2.

(b) controlled biosecurity matter or regulated biosecurity matter under the *Biosecurity Act 2014*.

dedication notice means a notice in the approved form—

(a) requesting the registrar of titles to register a dedication of land under this Act; or

(b) requesting the registrar of titles to register a dedication of land as a road under the *Acquisition of Land Act 1967*, section 12B.

deed of grant means—

(a) land granted in fee simple by the State; or

(b) the document evidencing the grant, including an indefeasible title under the *Land Title Act 1994*.

deed of grant in trust means—

(a) land granted in fee simple in trust by the State; or

(b) the document evidencing the grant, including an indefeasible title under the *Land Title Act 1994*.

deposit means file in the land registry other than for registration.

Note—

For filing an electronic conveyancing document, see the definition *file*.

designated occupation licence means an occupation licence over—

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(a) a forest reserve; or

(b) a national park; or

(c) a State forest; or

(d) a timber reserve.

designated officer, for a provision about a document, means—

(a) to the extent the provision is about a lease or licence—the Minister; or

(b) to the extent the provision is about a permit or other document—the chief executive.

designated person, for a provision about a lease, means—

(a) for a freeholding lease—the Governor in Council; or

(b) for a term or a perpetual lease—the Minister.

determination of native title see the *Native Title Act 1993* (Cwlth), section 225.

determined native title holders, for an area, means the person or group of persons holding the common or group rights comprising native title in the area under a determination of native title.

development lease see section 476.

development work, for land, means—

(a) if clearing of trees enhances the productivity of the land—the clearing of trees; and

(b) work performed for the rehabilitation and sustainability of the land; and

(c) filling, reclamation or any other works making the land suitable for use or the building or erection of a building or structure on the land.

disposal order, for chapter 6A, see section 390ZT(2).

dispute notice, for chapter 6, part 4, division 3A, see section 339F(1).

document includes—

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(a) a deed of grant or lease; and

(b) a will, grant of representation, or exemplification of a will, that may be used to deal with a lot; and

(c) a deed that relates to or may be used to deal with a lot; and

(d) a power of attorney that may be used to deal with a lot; and

(e) a request, application or other document that deals with a lot and may be registered under this Act; and

(f) a map or plan of survey that may be lodged; and

(g) another document that may be deposited; and

(h) an electronic conveyancing document.

document certification requirement, for chapter 6A, see section 390ZW(6).

document production requirement, for chapter 6A, see section 390ZW(2).

electronic communication means a communication of information in the form of data, text or images by guided or unguided electromagnetic energy.

electronic conveyancing document see section 290P.

Electronic Conveyancing National Law (Queensland) see the *Electronic Conveyancing National Law (Queensland) Act 2013*, section 4.

encumbrance includes a registered covenant under chapter 6, part 4, division 8A.

end includes end by cancellation, expiry, forfeiture and surrender.

endorse, in relation to endorsing information on a document, if the document is an electronic conveyancing document, means record the information in electronic form as part of the document in such a way that it is reasonable to expect the information will be readily accessible as part of the document so as to be useable for subsequent reference.

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enforcement warrant see the *Civil Proceedings Act 2011*, section 90.

error includes an error by omission.

existing means existing immediately before section 524 commenced.

existing grazing homestead freeholding lease means a grazing homestead freeholding lease issued under the repealed Act, part 4, division 5 because of an application received on or after 5 February 1990.

existing lease, for chapter 4, part 3, division 4, see section 176(1).

existing leases, for chapter 4, part 3, division 5, see section 176K(1).

existing post-Wolfe freeholding lease means—

(a) an existing perpetual country, suburban or town lease that was taken to be, under the repealed Act, part 7, division 3 a lease for a term of years subject to a covenant entitling the lessee to the issue of a deed of grant if an application was received—

(i) on or after 5 February 1990; or

(ii) for leases issued for an industrial lease under the repealed *Industrial Development Act 1963*—on or after 3 October 1991; or

(b) an existing agricultural farm issued on or after 31 December 1991 under the repealed Act, part 4, division 1; or

(c) an existing special lease purchase freehold issued under the repealed Act, part 8, division 2; or

(d) an existing auction purchase freehold issued under the repealed Act, part 7, division 1.

expiry advice see section 164C(2).

explanatory format plan see section 290D.

extension application see section 164C(1).

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fee includes tax.

file, a document, if the document is an electronic conveyancing document, means lodge the document electronically under the Electronic Conveyancing National Law (Queensland), section 7.

floating reservation means a reservation for a public purpose contained in a deed of grant, deed of grant in trust or lease if the grant or lease does not identify the particular land reserved.

foreshore, for chapter 7, part 3B, see section 431O.

forest consent agreement see the *Forestry Act 1959*, section 61J.

forest consent area see the *Forestry Act 1959*, section 61J.

forest entitlement area means a reservation of commercial timber, and the land on which it stands, to the State in a deed of grant or freeholding lease.

forest products see the *Forestry Act 1959*, schedule 3.

forest reserve has the same meaning as in the *Nature Conservation Act 1992*.

former owner, for chapter 6A, see section 390ZQ(1).

freeholding lease means a pre-Wolfe freeholding lease, a post-Wolfe freeholding lease or a grazing homestead freeholding lease.

freehold land means—

(a) land recorded in the freehold land register; and

(b) other land that has been granted or vested in fee simple.

general power, for chapter 6A, see section 390ZD(1) and (2).

GPS means global positioning system.

grazing homestead freeholding lease means an existing grazing homestead freeholding lease or a grazing homestead freeholding lease issued under this Act.

grazing homestead perpetual lease means—

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(a) a grazing homestead perpetual lease issued under the repealed Act; or

(b) a grazing homestead lease, grazing farm lease or settlement farm lease that, under the *Land Act Amendment Act 1984* (No. 54), was converted to and declared to be a grazing homestead perpetual lease under the repealed Act.

help requirement, for chapter 6A, see section 390ZE(1).

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

identifiable fixed features include road intersections, fence intersections, survey marks and built infrastructure.

identity card, for a provision about authorised officers, means an identity card issued under section 390I.

image base means an image or mosaic of images, including, for example, an aerial photograph or a satellite image.

imposed condition, of a lease, licence or permit, see section 202A(2).

improvements means any—

(a) building, fence or yard; and

(b) artificial watercourse or watering-place, bore, reservoir, well or apparatus for raising, holding or conveying water; and

(c) cultivation, garden, orchard or plantation; and

(d) building, structure or appliance that is a fixture for the working or management of land or stock pastured on the land or for maintaining, protecting or increasing the natural capabilities of the land;

but does not include development work.

improvements notice—

(a) for chapter 4, part 3, division 2, subdivision 1AA—see section 156A(1); or

(b) for chapter 4, part 4—see section 180I(1); or

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(c) for chapter 5, part 4, division 4—see section 244(1).

improvements report—

(a) for chapter 4, part 3, division 2, subdivision 1AA—see section 156(2); or

(b) for chapter 4, part 4—see section 180C(1); or

(c) for chapter 5, part 4, division 4—see section 242A(2).

indigenous access and use agreement see section 373ZB.

indigenous cultural interest see section 373ZB.

indigenous land use agreement see section 373ZB.

indigenous party, for an indigenous cultural interest, means—

(a) if the approved agreement for the interest is an indigenous access and use agreement—the determined native title holders, or registered native title claimants, for the subject area who are a party to the agreement; or

(b) if the approved agreement for the interest is an indigenous land use agreement—the native title party for the subject area who is a party to the agreement.

information notice, about a decision, means a notice stating—

(a) the decision and the reasons for it; and

(b) the rights of review and appeal under this Act; and

(c) the period in which any review or appeal under this Act must be started; and

(d) how rights of review and appeal under this Act are to be exercised; and

(e) that, if the person who is given the notice applies under this Act for review of the decision, the person may apply for a stay of the decision.

instalment includes any interest that is a component of the instalment.

interested person, for chapter 7, part 3C, see section 431ZG(1)(b).

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inundated land means freehold land that, through the excavation of the land or other land, has become inundated by water subject to tidal influence, but does not include a canal, or part of a canal, within the meaning of the *Coastal Protection and Management Act 1995*.

investigation decision, for chapter 7, part 3, see section 420J.

lake has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, section 62.

land degradation includes any of the following—

(a) soil erosion, salinity or scalding;

(b) destruction of soil structure, including, for example, the loss of fertility, organic matter or nutrients;

(c) decline in perennial pasture grasses, pasture composition and density;

(d) low ground cover;

(e) thickening in woody plants;

(f) stream bank instability and slumping;

(g) the presence of any declared pest;

(h) water logging;

(i) rising water tables;

(j) a process that results in declining water quality.

land management agreement means an agreement about the management and use of lease land, entered into under chapter 4, part 3, division 6, whether before or after the commencement of this definition, and includes the agreement as amended from time to time.

land registry means the land registry under section 275.

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

Land Valuation Act means the *Land Valuation Act 2010*.

lease—

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(a) generally—means the interest in land comprising a lease held under this Act, as shown by the current particulars of the interest in the appropriate register; and

(b) for chapter 6, part 4, division 11A—includes sublease.

lease land, for a provision about a lease or proposed lease, a lease to be made available or an offer of a lease, means the land subject to the lease, proposed lease or the lease to be made available or offered.

legal practitioner means—

(a) an Australian legal practitioner as defined under the *Legal Profession Act 2007*, section 6(1); or

(b) a government legal officer engaged in government work as defined under the *Legal Profession Act 2007*, section 12(1) and (2).

lessee means the person registered in the land registry as the holder of a lease from the State under this Act or the repealed Act, and for chapter 6, part 4, division 11A, includes sublessee.

licence means the occupation rights comprising a licence held under this Act, as shown by the current particulars of the rights in the appropriate register.

licence land, for a provision about a licence, means the land subject to the licence.

licensee means the person registered in the land registry as the holder of a licence from the State under this Act or the repealed Act.

liquidation notice see section 74.

liquidator see section 74.

living area means the area of grazing or agricultural land that will be adequate to enable a competent person to derive from the working of the land, according to the use for which the land is suited, an income adequate to ensure a reasonable standard of living for the person, the person's spouse and dependant children, as well as provide a reserve to meet adverse seasons and the cost of developing and maintaining

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the land at a sustainable rate of production throughout average seasons, having regard to—

(a) the locality of the land; and

(b) the nature of the land; and

(c) the potential of the land for sustainable development; and

(d) the distance of the land from transport facilities and markets.

lodge means file for registration in the land registry.

Note—

For filing an electronic conveyancing document, see the definition *file*.

lopping, a tree, means cutting or pruning branches of the tree, but does not include—

(a) removing the trunk of the tree; or

(b) cutting or pruning branches of the tree so severely that the tree is likely to die.

lot means a separate, distinct parcel of land created on the registration of a plan of subdivision and for chapter 7, part 3B, see section 431O.

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

manager, for chapter 7, part 3B, see section 431O.

mandatory condition, of a lease, licence or permit, see section 198C(2).

mandatory terms, for chapter 6, part 4, division 8D, see section 373ZB.

marker, for a monitoring site, means a marker for the site, installed or placed under section 390ZD.

MEDQ means MEDQ under the *Economic Development Act 2012*.

mill owner see the *Sugar Industry Act 1999*, schedule.

miners homestead means—

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(a) for chapter 8, part 7, division 2, see section 495; or

(b) for chapter 8, part 7, division 2A, see section 503B.

mining interest see section 20.

mining titles freeholding lease means a mining titles freeholding lease issued under the *Mining Titles Freeholding Act 1980*, and includes a replacement document issued under section 502.

monitoring device see section 390ZD(2)(c).

monitoring site see section 390ZD(2)(a).

national park means a national park (scientific) or national park under the *Nature Conservation Act 1992*.

native title see the *Native Title Act 1993* (Cwlth), section 223.

native title claim means a claim in an application for a determination of native title made to the Federal Court under the *Native Title Act 1993* (Cwlth), section 13.

native title claim area means an area that is the subject of a native title claim.

native title claim group see the *Native Title Act 1993* (Cwlth), section 253.

native title party see the *Native Title Act 1993* (Cwlth), section 253.

native title registrar means the Native Title Registrar under the *Native Title Act 1993* (Cwlth), section 253.

natural environmental values, of lease land, means the qualities and characteristics of the land that contribute to its biological diversity and integrity.

nature conservation area means any of the following under the *Nature Conservation Act 1992*—

(a) a national park;

(b) a conservation park;

(c) a resources reserve;

(d) a forest reserve;

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(e) a special wildlife reserve.

NCA department means the department in which the *Nature Conservation Act 1992* is administered.

non-competitive lease means an existing perpetual country, suburban or town lease issued under the repealed Act, part 8, division 2 or 3.

non-core utility provider means a person or entity mentioned in this schedule, definition *public utility provider*, paragraph (e) or (f).

non-freehold land means all land that is not freehold land.

non-tidal boundary (lake), for chapter 1, part 4, see section 8.

non-tidal boundary (watercourse), for chapter 1, part 4, see section 8.

non-tidal lake land, for chapter 1, part 4, see section 13AA(1)(b).

non-tidal watercourse means a watercourse in which the water that flows is not subject to tidal influence.

non-tidal watercourse land, for chapter 1, part 4, see section 13AA(1)(a).

note, in relation to noting particular information on a document, if the document is an electronic conveyancing document, means record the information in electronic form as part of the document in such a way that it is reasonable to expect the information will be readily accessible as part of the document so as to be useable for subsequent reference.

notice means written notice.

notifier, for chapter 6, part 4, division 3A, see section 339F(1).

noxious plant means a plant that is a declared pest.

occupation licence means an existing occupation licence issued under the repealed Act, part 3, division 3.

occupier, of a place, for chapter 6A and chapter 7, part 3C, includes the following persons—

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(a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

(b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;

(c) if no-one apparently occupies the place—

(i) for a place that is non-freehold land—the lessee, licensee, permittee or trustee of the land; or

(ii) for a place that is freehold land—any person who is a registered owner of the place.

of, a place, includes at or on the place.

offence warning, for a direction or requirement by an authorised officer, for chapter 6A, see section 390C.

offer, for chapter 8, part 7, division 2, see section 495.

offeree, for chapter 7, part 1D, see section 403P.

offeror, for chapter 7, part 1D, see section 403P.

offer period, for chapter 7, part 1D, see section 403R.

operational reserve means a reserve that was reserved and set apart under the repealed Act for a public purpose that is not a community purpose under this Act.

Examples of possible operational reserves—

reserves for abattoirs, ambulance, electrical works and kindergartens

original decision means a decision—

(a) made under this Act and mentioned in schedule 2; or

(b) made under a regulation, if the regulation provides for an appeal in relation to the decision.

owner—

(a) for chapter 1, part 4, see section 8; or

(b) for chapter 6, part 4, division 8C, see section 373R; or

(c) for chapter 6A, see section 390C; or

(d) for chapter 7, part 3B, see section 431O.

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pastoral lease means a pastoral holding, preferential pastoral holding, pastoral development holding or stud holding issued under the repealed Act.

permanent road closure application see section 97A.

permit means the occupation rights comprising a permit held under this Act, as shown by the current particulars of the rights in the appropriate register.

permit land, for a provision about a permit, means the land subject to the permit.

permittee means—

(a) for a permit for a term of not more than 12 months, issued under chapter 4, part 4, that is not registered—the holder of the permit; or

(b) otherwise—the person registered as the holder of a permit from the State issued under this Act or the repealed Act.

perpetual lease means a lease granted in perpetuity.

personal details requirement, for chapter 6A, see section 390ZU(5).

personally lives means continuous living on a lease by a lessee or 1 or more of the lessees of a joint interest or interest in common, or within a distance of the lease, stated in the lease, sale notice or prescribed under the regulations.

person in control, for chapter 6A, see section 390C.

place, for chapter 6A, see section 390C.

Planning Act means the *Planning Act 2016*.

plan of subdivision see section 290E.

plantation licence means a plantation licence under the *Forestry Act 1959*.

port has the same meaning as in the *Transport Infrastructure Act 1994*.

port authority means a port authority under the *Transport Infrastructure Act 1994*.

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port lessee has the meaning given in the *Transport Infrastructure Act 1994*, section 267.

port lessor has the meaning given in the *Transport Infrastructure Act 1994*, section 267.

port manager has the meaning given in the *Transport Infrastructure Act 1994*, section 267.

post-Wolfe freeholding lease means an existing post-Wolfe freeholding lease or a freeholding lease issued under chapter 8, part 2, division 2.

premises, for chapter 6A, see section 390C.

prescribed dispute resolution entity, for chapter 6, part 4, division 3A, see section 339A.

prescribed term see section 254.

pre-Wolfe freeholding lease means—

(a) an existing auction perpetual lease that is a perpetual country, suburban or town lease issued under the repealed Act, part 7, division 2; or

(b) an existing perpetual country, suburban or town lease that was taken to be, under the repealed Act, part 7, division 3, a lease for a term of years subject to a covenant entitling the lessee to the issue of a deed of grant if an application was received—

(i) before 5 February 1990; or

(ii) for leases issued for an industrial lease under the repealed *Industrial Development Act 1963*—before 3 October 1991; or

(c) an existing perpetual lease selection issued under the repealed Act, part 4, division 2; or

(d) an existing agricultural farm issued before 31 December 1991 under the repealed Act, part 4, division 1; or

(e) an existing grazing homestead freeholding lease issued under the repealed Act, part 4, division 5 because of an application received before 5 February 1990; or

(f) a mining titles freeholding lease; or

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(g) an existing lease for a term of years subject to a covenant entitling the lessee to a deed of grant in fee simple, if the lease was granted under the *Special Freeholding of Leases Act 1991* on the application of the lessee of a lease mentioned in section 4(1)(b) of that Act.

priority development area means a priority development area under the *Economic Development Act 2012*.

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

property vegetation management plan means—

(a) a property vegetation management plan under this Act, as in force before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3; or

(b) a property vegetation management plan as defined under the Vegetation Management Act.

provisional value see section 139(3).

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

public place, for chapter 6A, see section 390C.

public purpose means—

(a) a purpose for which land may be taken under the *Acquisition of Land Act 1967*; or

(b) a community purpose.

public thoroughfare easement, for chapter 6, part 4, division 8, see section 361.

public use, for chapter 7, part 3B, see section 431O.

public use land means land dedicated to public use by a plan of subdivision.

public utility easement see section 361.

public utility provider means—

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(a) the State or another entity representing the State; or

(b) the Commonwealth or another entity representing the Commonwealth; or

(c) a local government; or

(d) a person authorised by law to provide a public utility service; or

(e) a person authorised under an Act to provide a particular public utility service;

Examples for paragraph (e)—

a special approval holder under the *Electricity Act 1994* or a service provider for a registered service under the *Water Supply (Safety and Reliability) Act 2008*

(f) an entity approved by the Minister as suitable to provide infrastructure for use by another entity in the provision of a particular public utility service;

Example for paragraph (f)—

a relevant infrastructure owner as defined under the *Water Supply (Safety and Reliability) Act 2008* whose infrastructure may be used by another entity authorised to supply a water or sewerage service under that Act

(g) a person approved by the Minister as suitable to provide a particular public utility service; or

(h) a mill owner, but only for the registration of a cane railway easement.

quarry material has the same meaning as in the *Forestry Act 1959*.

rail land means non-rail corridor land or rail corridor land, as defined under the *Transport Infrastructure Act 1994*, that is held under a perpetual lease.

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

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

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register a document, an interest, land or something else, means to record the particulars of the thing in the appropriate register in the land registry.

registered native title claimant see the *Native Title Act 1993* (Cwlth), section 253.

registered owner has the same meaning as in the *Land Title Act 1994*.

register of plantation licences means the register of plantation licences under the *Forestry Act 1959*.

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

regulated condition see section 212A.

regulated island means an island, or a part of an island, declared by regulation under section 434A to be a regulated island.

regulatory information notice see section 403L(2).

regulatory notice see section 403K(1).

related subleases, for chapter 6, part 4, division 3A, see section 339A.

related sublessee, for chapter 6, part 4, division 3A, see section 339A.

relevant interest see section 254.

relevant land, for chapter 7, part 3C, see section 431ZA.

relevant local government, in relation to land or a tenure, means the local government in whose area the land or tenure is situated.

relevant Minister, for land for chapter 6, part 4, division 8C, see section 373T(1).

relevant period, for chapter 7, part 2, division 2, see section 409(2).

relevant person, in relation to relevant land, for chapter 7, part 3C, see section 431ZA.

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relevant tenure, in relation to a caveat, means a lease, licence or reserve.

remedial action, in relation to land or a thing that has suffered damage, means—

(a) action to return the land or thing to the condition it was in before the damage; or

(b) other appropriate action performed on the land or thing that is of the same, or a similar, value to the action mentioned in paragraph (a).

remedial action notice see section 214.

remedial action order see section 214D(2).

renewal application see section 158(1).

renewal provisions means chapter 4, part 3, division 2, subdivision 2.

rent means the amount payable under a rent and instalment regulation by a lessee, licensee or permittee for a rental period, but does not include rent for a trustee lease or trustee permit.

rental category, of a lease, licence or permit, means the categorisation of the lease, licence or permit under a rent and instalment regulation to the extent the regulation relates to rent.

rental period, for a lease, licence or permit, means the rental period prescribed for the lease, licence or permit by a rent and instalment regulation.

rent and instalment regulation means a regulation, or provisions of a regulation, made under this Act for the purposes of section 448(2)(g).

repealed Act means the *Land Act 1962*.

repealed miners homestead Acts means—

(a) for chapter 8, part 7, division 2, see section 495; or

(b) for chapter 8, part 7, division 2A, see section 503B.

requisition see section 305.

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reserve includes land dedicated as a reserve under this Act, or reserved and set apart under the repealed Act, as shown by the current particulars in the appropriate register.

resources reserve means a resources reserve under the *Nature Conservation Act 1992*.

responder, for chapter 6, part 4, division 3A, see section 339F(1).

response, for chapter 6, part 4, division 3A, see section 339G(1).

restricted use area see section 403K(1).

review change see section 212.

review decision see section 426(1).

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

right line boundary see section 8.

right line tidal boundary see section 8.

road see section 93.

road closure application see section 97A.

rolling term lease see section 164.

rural leasehold land means land for which, under this Act, leases may be issued in perpetuity or for a term of years for agricultural, grazing or pastoral purposes, other than land in any of the following—

(a) a reserve;

(b) a State forest;

(c) a timber reserve;

(d) any of the following under the *Nature Conservation Act 1992*—

(i) a national park;

(ii) a national park (Aboriginal land);

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(iii) a national park (Torres Strait Islander land);

(iv) a national park (Cape York Peninsula Aboriginal land);

(v) a conservation park;

(vi) a resources reserve;

(vii) a forest reserve.

safety action see section 403G(2).

safety notice see section 403G(2).

sale notice see section 113(2)(b).

seashore, for chapter 7, part 3B, see section 431O.

seaward side, of a tidal boundary or right line tidal boundary, means on the same side of the boundary as the water subject to tidal influence that is relevant to the identification of the boundary as a tidal boundary or right line tidal boundary.

set format, for chapter 6, part 4, division 8D, see section 373ZB.

shared country means land that is subject to two or more native title claims.

show cause notice see section 403D(2).

show cause period see section 403D(2)(d).

significant development see section 128.

special lease see section 476.

special perpetual mining purposes lease, for chapter 8, part 7, division 2A, see section 503B.

specified national parks means the following under the *Nature Conservation Act 1992*—

(a) national parks (Aboriginal land);

(b) national parks (Torres Strait Islander land);

(c) national parks (Cape York Peninsula Aboriginal land);

(d) indigenous joint management areas.

standard format see section 290B.

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standard format lot means a lot on a standard format plan of survey.

State forest has the same meaning as in the *Forestry Act 1959*.

State housing lease means a lease in force under the *Housing (Freeholding of Land) Act 1957* or the *Housing Act 2003*, part 10.

State lease means—

(a) a lease issued over a reserve under section 15(2)(b); or

(b) a special lease issued over a reserve under section 203(b) of the repealed Act.

statutory body means a government entity within the meaning of the *Government Owned Corporations Act 1993*, a local government and a port authority.

stock route means a road or route ordinarily used for travelling stock or declared under an Act to be a stock route.

strategic port land means strategic port land under the *Transport Infrastructure Act 1994*.

subdivision offer, for chapter 4, part 3, division 4, see section 176A(2).

subject area, for an indigenous cultural interest, means the area that is subject to the interest.

sublease includes—

(a) for trust land—a sub-sublease; and

(b) for other land—any derivative under lease, including, for example, a sub-sub-sublease.

surrender notice means a notice in the approved form requesting the registrar of titles to register a surrender of a tenure or interest in land under this Act.

temporary road closure application see section 97A.

tenure document means the document evidencing the interest or rights in land held under this Act.

term lease means a lease for a term of years.

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terms includes covenants and conditions.

tidal boundary see section 8.

tidal water see section 8.

tied condition see section 205.

timber reserve has the same meaning as in the *Forestry Act 1959*.

titles registry fee, for a matter mentioned in a provision of this Act, means the fee payable for the matter under section 445.

titles registry operator means the operator under the *Queensland Future Fund (Titles Registry) Act 2021*.

topsoil has the same meaning as in the *Forestry Act 1959*.

Torres Strait Islanders particularly concerned with land means Torres Strait Islanders particularly concerned with land within the meaning given by the *Torres Strait Islander Land Act 1991*, section 3.

tourism purposes see section 434.

transferable land means transferable land under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991*.

transition to sale agreement see section 240K(2)(b).

transport land, for chapter 6, means any of the following land that is held under a perpetual lease—

(a) land declared to be busway land under the *Transport Infrastructure Act 1994*, chapter 9;

(b) land declared to be light rail land under the *Transport Infrastructure Act 1994*, chapter 10;

(c) non-rail corridor land as defined under the *Transport Infrastructure Act 1994*;

(d) rail corridor land as defined under the *Transport Infrastructure Act 1994*;

(e) State toll road corridor land as defined under the *Transport Infrastructure Act 1994*;

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(f) local government tollway corridor land as defined under the *Transport Infrastructure Act 1994*.

tree has the same meaning as in the *Forestry Act 1959*.

trespass notice see section 406(1).

trespass order see section 418.

trespass related act see section 404.

trustee lease means a lease given by the trustee of trust land.

trustee lease (construction) see section 57(4).

trustee lease (State or statutory body) see section 57(5).

trustee of trust land notice means a notice in the approved form requesting the registrar of titles to register particulars about the office of a trustee.

trustee permit means a permit given by a trustee of trust land.

trustees see section 30.

trust land means the land comprising a reserve or deed of grant in trust.

unallocated State land means all land that is not—

(a) freehold land, or land contracted to be granted in fee simple by the State; or

(b) a road or a reserve, or a national park, conservation park, State forest or timber reserve; or

(c) subject to a lease, licence or permit issued by or for the State, other than a permit to occupy under this Act issued by the chief executive.

use conditions, for chapter 7, part 3B, see section 431T.

vegetation clearing offence means—

(a) a vegetation clearing offence under the Vegetation Management Act; or

(b) a tree clearing offence under this Act, as in force immediately before the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.

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Vegetation Management Act means the *Vegetation Management Act 1999*.

vehicle, for chapter 6A, see section 390C.

volumetric format see section 290C.

watercourse has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, section 63.

water subject to tidal influence, in relation to a boundary that is a tidal boundary or right line tidal boundary, means the water that is relevant to the identification of the boundary as a tidal boundary or right line tidal boundary.

writ of execution means a writ or warrant of execution after judgment in any court, and includes an enforcement warrant.

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