



Queensland

# **Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011**

**Act No. 26 of 2011**





Queensland

# Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title .....	24
2	Commencement .....	24
<b>Part 2</b>	<b>Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984</b>	
3	Act amended .....	24
4	Amendment of s 4 (Definitions) .....	24
5	Replacement of s 8A (Definition for div 1) .....	25
	8A Definitions for div 1 .....	25
6	Amendment of s 9 (Jurisdiction and powers of police) .....	25
7	Amendment of s 10 (Entry upon community government or IRC areas etc.) .....	26
8	Amendment of s 11 (Application to community government or IRC areas of laws relating to public places) .....	26
9	Amendment of s 12 (Community police officers) .....	26
10	Amendment of s 13 (Discharge of community police officers' functions etc.) .....	27
11	Amendment of s 14 (Other functions of community police officers) .....	27
<b>Part 3</b>	<b>Amendment of Aboriginal Land Act 1991</b>	
12	Act amended .....	28
13	Amendment of s 10 (Meaning of Aboriginal land) .....	28
14	Amendment of s 13 (DOGIT land) .....	28
15	Amendment of s 14 (Aboriginal reserve land) .....	29
16	Amendment of s 15 (Aurukun Shire lease land) .....	30
17	Amendment of s 16 (Mornington Shire lease land) .....	31

Contents

---

18	Amendment of s 16B (Particular land may be declared to be not transferable land) . . . . .	31
19	Amendment of s 16C (Notice of intention to make declaration) . .	31
20	Amendment of s 16D (Minister to consider representations and give notice of decision) . . . . .	32
21	Omission of ss 16E and 16F . . . . .	32
22	Amendment of s 16I (Requirements about plans of subdivision for declarations under s 16B) . . . . .	33
23	Amendment of s 17 (Meaning of claimable and granted land) . . .	33
24	Amendment of s 18 (Lands that are claimable lands) . . . . .	33
25	Replacement of s 19 (Lands that are available State land—general) . . . . .	33
	19 Land that is available State land—general . . . . .	33
	19A Agreement about particular land . . . . .	34
26	Amendment of s 22 (Meaning of city or town land) . . . . .	35
27	Replacement of s 25 (Lands that are not available State land) . .	35
	25 Land that is not available State land. . . . .	35
28	Amendment of s 27 (Deeds of grant to be prepared) . . . . .	36
29	Amendment of s 27A (Appointment of registered native title body corporate as grantee to hold land for native title holders) . .	36
30	Replacement of s 28 (Minister to appoint particular trustees) . . .	36
	28 Appointment of grantee to hold land for benefit of Aboriginal people . . . . .	37
31	Amendment of s 28A (Procedure for appointing grantees) . . . . .	38
32	Omission of s 28B (Application of Trusts Act 1973) . . . . .	39
33	Amendment of s 29 (Minister to act as soon as possible) . . . . .	39
34	Omission of s 31 (Inclusion of additional areas in deed of grant). .	40
35	Amendment of s 32 (Deed of grant takes effect on delivery) . . . .	40
36	Amendment of s 33 (Existing interests) . . . . .	41
37	Amendment of s 34 (Interests to be endorsed on deed) . . . . .	41
38	Omission of s 37 (Registrar of titles must take action etc. to resolve difficulties) . . . . .	42
39	Amendment of s 38 (Land Court may resolve difficulties) . . . . .	42
40	Replacement of pt 3, div 2 (Dealing with transferred land). . . . .	42
	Division 2 Approvals to change how land is held	
	39 Application to hold Aboriginal land for native title holders . . . . .	43
	40 Decision on application . . . . .	43

	41	Notices about decision . . . . .	44
	41A	Effect of gazette notice . . . . .	45
41		Amendment of s 46 (Grounds on which claim may be made) . . .	45
42		Amendment of s 47 (How claim is to be made) . . . . .	45
43		Amendment of s 49 (Registrar to determine whether claim duly made) . . . . .	45
44		Amendment of s 52 (Repeat claims) . . . . .	46
45		Omission of s 55 (Establishment of claim on ground of economic or cultural viability) . . . . .	46
46		Amendment of s 58 (Time at which it is to be determined whether land is claimable land) . . . . .	46
47		Amendment of s 60 (Recommendation to Minister) . . . . .	46
48		Amendment of s 61 (Resolution of conflicting claims) . . . . .	47
49		Omission of s 64 (Leases to be prepared) . . . . .	48
50		Replacement of s 65 (Minister to appoint trustees) . . . . .	48
	65	Appointment of grantee . . . . .	48
51		Amendment of s 66 (Authority to grant fee simple in, or lease of, claimable land) . . . . .	49
52		Omission of ss 67 and 68 . . . . .	49
53		Amendment of s 69 (Deed of grant takes effect on delivery) . . . .	49
54		Omission of s 70 (Lease commences on delivery) . . . . .	50
55		Amendment of s 73 (Cancellation of existing deed of grant) . . . .	50
56		Omission of s 74 (Registrar of titles must take action etc. to resolve difficulties) . . . . .	50
57		Amendment of s 75 (Land Court may resolve difficulties) . . . . .	50
58		Omission of pt 5, div 2 (Dealing with granted land) . . . . .	50
59		Amendment of s 80 (Reservations of minerals and petroleum) . .	51
60		Amendment of s 81 (Reservations of forest products and quarry material etc.) . . . . .	51
61		Replacement of pt 5A (Provisions about particular land trusts) . .	51
	Part 5AAA	Register of entities holding Aboriginal land	
	82AAA	Keeping register of entities holding Aboriginal land . .	51
	82AAB	Giving information for register to the chief executive .	52
	82AAC	Obtaining information in register . . . . .	53
	Part 5AA	Transfer of Aboriginal land by Minister	
	Division 1	Preliminary	
	82AA	Purpose of pt 5AA . . . . .	54
	82AB	Application of pt 5AA . . . . .	54

Contents

---

Division 2	Vesting and transfer of land	
82AC	Vesting of land in the State . . . . .	54
82AD	How land is held by the State . . . . .	55
82AE	Minister to transfer land as soon as practicable . . . . .	55
82AF	Transfer to registered native title body corporate to hold for native title holders . . . . .	55
82AG	Transfer to entity to hold for benefit of Aboriginal people . . . . .	56
82AH	Procedure for transferring land . . . . .	57
82AI	Effect of gazette notice about transfer . . . . .	58
Division 3	Notices to registrar	
82AJ	Notice about land . . . . .	59
Part 5A	General provisions for dealing with Aboriginal land	
Division 1	Trustee's power to deal with Aboriginal land and Ministerial consent	
82A	Power to deal with Aboriginal land . . . . .	59
82B	Requirement for consultation . . . . .	60
82C	Provision about Minister's consent . . . . .	61
Division 2	Sale or mortgage prohibited	
82D	Prohibition on sale or mortgage of Aboriginal land . . . . .	62
Division 3	Grant of licences	
82E	Grant of licence for Aboriginal land . . . . .	62
82F	Conditions of licences . . . . .	63
Division 4	Transfer of Aboriginal land by trustee	
Subdivision 1	Land held other than by CATSI corporation	
82G	Application of sdiv 1 . . . . .	64
82H	Transfer of Aboriginal land . . . . .	64
82I	Application for approval to transfer . . . . .	66
82J	Minister's approval to transfer . . . . .	66
82K	Effect of gazette notice about transfer . . . . .	68
Subdivision 2	Land held by CATSI corporation	
82L	Application of sdiv 2 . . . . .	68
82M	Transfer of Aboriginal land . . . . .	68
82N	Application for approval to transfer . . . . .	69
82O	Minister's approval to transfer . . . . .	69
82P	Effect of gazette notice about transfer . . . . .	70

Subdivision 3	Exemption from fees and charges	
82Q	Exemption. . . . .	70
Division 5	Land in Cape York Peninsula Region	
82R	Dealing with Aboriginal land in Cape York Peninsula Region . . . . .	70
Division 6	Other matters	
82S	Trustee to advise chief executive of change to description of land . . . . .	71
82T	Particular dealings in Aboriginal land void . . . . .	71
82U	Provision about resumption of Aboriginal land etc. . . . .	71
82V	Devolution of granted land . . . . .	72
Part 5AB	Leasing of Aboriginal Land	
Division 1	Grant of leases for Aboriginal land	
82W	Grant of lease for Aboriginal land. . . . .	73
Division 2	Standard leases	
Subdivision 1	Restrictions on grant of standard leases	
82X	Restrictions on grant of standard lease to an Aborigine . . . . .	74
82Y	Restrictions on grant of standard lease to State . . . . .	75
82YA	Restrictions on grant of standard lease to another person . . . . .	75
Subdivision 2	Requirements for Minister's consent	
82YB	General requirements for Minister's consent . . . . .	76
82YC	Requirement for Minister's consent for standard lease for commercial purpose . . . . .	77
82YD	Requirement for Minister's consent for creation of interest under a standard lease . . . . .	78
Division 3	Townsite leases	
Subdivision 1	Restriction on grant of townsite leases	
82YE	Minister's consent for grant of townsite lease. . . . .	79
Subdivision 2	Requirements for Minister's consent	
82YF	General requirements for Minister's consent . . . . .	79
Subdivision 3	Provisions about dealing with townsite leases	
82YG	Transfer or amendment of townsite lease. . . . .	80
82YH	Townsite lease and transfer, amendment or surrender of lease to be registered . . . . .	81
82YI	Surrender of townsite lease . . . . .	81
82YJ	No forfeiture of townsite lease . . . . .	81

Contents

---

Subdivision 4	Effect of townsite lease on existing interests	
82YK	Lessee of townsite lease taken to be lessor of existing leases . . . . .	82
Division 4	Townsite subleases	
Subdivision 1	Grant of subleases under townsite lease	
82YL	Grant of sublease . . . . .	83
Subdivision 2	Requirements about grants of subleases under townsite leases	
82YM	Restrictions on grant of townsite sublease to an Aborigine . . . . .	84
82YN	Restrictions on grant of townsite sublease to State . .	84
82YO	Restrictions on grant of townsite sublease to another person . . . . .	85
Subdivision 3	Requirements for Minister’s consent	
82YP	General requirements for Minister’s consent . . . . .	86
82YQ	Requirement for Minister’s consent for townsite sublease for commercial purpose. . . . .	87
82YR	Requirement for Minister’s consent for creation of interest under a townsite sublease . . . . .	88
Division 5	Common provisions for standard leases and townsite subleases	
Subdivision 1	Preliminary	
82YS	Definitions for div 5. . . . .	88
Subdivision 2	Conditions of leases	
82YT	Conditions of leases—general . . . . .	89
82YU	Leases for private residential purposes—general conditions and requirements . . . . .	90
82YV	Leases for private residential purposes—particular requirements if dwelling situated on land . . . . .	91
82YW	Option to renew particular lease or sublease . . . . .	93
Subdivision 3	Provisions about transfer, amendment or surrender of leases	
82YX	Transfer or amendment of lease or sublease . . . . .	93
82YY	Lease, sublease and particular dealings to be registered . . . . .	94
Division 6	Forfeiture and renewal of residential leases	
Subdivision 1	Preliminary	
82YZ	Definitions for div 6. . . . .	95
82Z	Application of div 6 . . . . .	95

	Subdivision 2	Forfeiture	
	82ZA	Grounds for forfeiture . . . . .	96
	82ZB	Referral to Land Court for forfeiture . . . . .	96
	82ZC	Lessor's options if Land Court decides residential lease may be forfeited . . . . .	97
	82ZD	Notice and effect of forfeiture . . . . .	97
	82ZE	Extension of term of lease—referral for forfeiture. . . . .	98
	Subdivision 3	Renewal	
	82ZF	Notice of expiry of lease . . . . .	98
	82ZG	Application to renew lease . . . . .	98
	82ZH	Lessor to consider and decide application . . . . .	99
	82ZI	Decision to renew lease . . . . .	99
	82ZJ	Lessor may decide not to renew lease . . . . .	99
	82ZK	Notice to lessee about decision not to renew lease . . . . .	100
	82ZL	Extension of term of lease—application for renewal . . . . .	100
	Subdivision 4	General matters about forfeiture or non-renewal of residential leases	
	82ZM	Right to remove improvements if residential lease forfeited or not renewed . . . . .	100
	82ZN	Payment by lessor for forfeited or non-renewed residential lease . . . . .	101
	82ZO	Unclaimed amounts . . . . .	102
	82ZP	Amounts owing to lessor or mortgagee to be deducted . . . . .	102
	82ZQ	Payment of amount to mortgagee in discharge of mortgage . . . . .	102
	Division 7	Miscellaneous	
	82ZR	Effect of option to renew or extend on calculation of term of leases. . . . .	103
	82ZS	Exemption from fees and charges . . . . .	104
	82ZT	Leases for private residential purposes—beneficiary. . . . .	104
62		Amendment of s 83F (Entering into indigenous management agreement). . . . .	105
63		Amendment of s 83G (Requirements for indigenous management agreement) . . . . .	105
64		Amendment of s 83I (Recording of indigenous management agreement) . . . . .	105
65		Amendment of s 83N (Decision making by trustee). . . . .	105

Contents

---

66	Replacement of pt 5E (Provisions about mortgages of leases over Aboriginal land) . . . . .	106
	Part 5E Provisions about mortgages of leases over Aboriginal land	
	Division 1 Preliminary	
	83OA Definitions for pt 5E . . . . .	106
	83O Application of pt 5E . . . . .	107
	Division 2 Mortgages of leases over Aboriginal land	
	83P Provisions about entering into possession, and selling, lease . . . . .	107
	83Q How lessor deals with proceeds of sale . . . . .	108
67	Amendment of s 83R (Definitions for pt 5F) . . . . .	109
68	Amendment of s 83T (Trustee (Aboriginal) leases) . . . . .	109
69	Amendment of s 83U (Amending trustee (Aboriginal) lease) . . . . .	110
70	Insertion of new pt 5G . . . . .	110
	Part 5G Special provisions about prescribed DOGIT land and prescribed reserve land	
	Division 1 Prescribed DOGIT land	
	83Z Application of div 1 . . . . .	110
	83ZA Prescribed DOGIT land may be granted under this Act . . . . .	110
	83ZB Minister to consult before grant of land . . . . .	111
	83ZC Application of general provisions . . . . .	111
	83ZD Application of provisions for grant of land. . . . .	111
	Division 2 Prescribed reserve land	
	83ZE Meaning of prescribed reserve land . . . . .	113
	83ZF Application of particular provisions. . . . .	114
71	Amendment of s 84 (Use of Aboriginal land preserved). . . . .	114
72	Amendment of s 85 (No rent payable) . . . . .	115
73	Amendment of s 86 (Access to land) . . . . .	115
74	Amendment of s 87 (Application of Mineral Resources Act) . . . . .	116
75	Amendment of s 88 (Royalties in relation to mining on Aboriginal land) . . . . .	116
76	Amendment of s 109 (Conferences). . . . .	117
77	Amendment of s 116 (Reasons to be given by tribunal). . . . .	117
78	Insertion of new pts 8A–8C . . . . .	117
	Part 8A Provisions about land trusts	
	Division 1 Preliminary	

130AA	Composition of land trust . . . . .	118
130AB	Nature of land trust. . . . .	118
130AC	Function and powers of land trust . . . . .	119
Division 2	Minister’s power to appoint, remove or suspend members of land trusts	
Subdivision 1	Appointment of members	
130AD	Minister may appoint member . . . . .	119
Subdivision 2	Removal or suspension of members	
130AE	Grounds for removal or suspension of member . . . . .	121
130AF	Show cause notice . . . . .	122
130AG	Representations about show cause notice. . . . .	122
130AH	Ending show cause process without further action . . . . .	122
130AI	Removing or suspending member . . . . .	123
130AJ	Immediate removal or suspension of member . . . . .	124
Subdivision 3	Other matters	
130AK	Limitation on land trust’s power about appointment or suspension of member. . . . .	125
Division 3	Recording information about compliance with Act	
130AL	Particular information to be recorded in register . . . . .	125
Division 4	Land trusts to give information to chief executive	
130A	Definition for div 4. . . . .	126
130B	Power to require particular information. . . . .	126
Division 5	Freezing accounts of land trusts	
130C	Definitions for div 5. . . . .	126
130D	Freezing land trust’s accounts . . . . .	127
130E	Financial institution must comply with direction . . . . .	127
130F	Withdrawal of direction . . . . .	128
Division 6	Miscellaneous	
130G	Chief executive may prepare model rules . . . . .	128
130H	Provision about vesting of Aboriginal land . . . . .	128
Part 8B	Application of Trusts Act 1973	
Division 1	Preliminary	
130I	Application of Trusts Act 1973 . . . . .	129
130J	Functions and powers of land trust under Trusts Act 1973 . . . . .	129

Contents

---

	Division 2	Powers of Supreme Court	
	130K	Jurisdiction of Supreme Court . . . . .	130
	130L	Power of court to relieve member of land trust from personal liability . . . . .	130
	130M	Court may order beneficiary to indemnify for certain breaches. . . . .	130
	130N	Right of land trust or member to apply to court for directions . . . . .	131
	130O	Court's jurisdiction to make orders conferring power on land trust or members . . . . .	131
	130P	Protection of land trust or member while acting under direction of court . . . . .	133
	130Q	Power of Supreme Court to make orders in absence of member . . . . .	133
	130R	Power of Supreme Court to charge costs on trust property . . . . .	134
	Part 8C	Appeals	
	130S	Who may appeal. . . . .	134
	130T	Starting appeal . . . . .	135
	130U	Nature of appeal. . . . .	135
	130V	Notice of appeal . . . . .	135
	130W	Powers of Land Court on appeal . . . . .	135
79		Amendment of s 131 (Creation of interests in transferable and claimable land) . . . . .	136
80		Amendment of s 132 (Rights of access to interests preserved) . . . . .	136
81		Amendment of s 132A (National park subject to lease to State etc.) . . . . .	137
82		Amendment of s 134 (Delegation by Minister) . . . . .	137
83		Omission of s 135 (Delegation by land claims registrar) . . . . .	137
84		Amendment of s 136 (Amendment of description of land) . . . . .	137
85		Replacement of s 136A (Dealing with particular trust property) . . . . .	138
	136A	Dealing with particular trust property . . . . .	138
86		Amendment of s 137 (Survey costs etc. to be paid by State). . . . .	139
87		Amendment of s 138 (Regulation-making power) . . . . .	139
88		Insertion of new s 139B . . . . .	140
	139B	Retrospective validation of dealings with trustee (Aboriginal) lease . . . . .	140
89		Insertion of new pt 11, div 3 . . . . .	141

	Division 3	Transitional provisions for Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011	
	144	Definition for div 3. . . . .	141
	145	Continued operation of provisions for appointing grantees . . . . .	141
	146	Continued operation of provisions about land trusts . . . . .	142
	147	References to previous provisions after renumbering . . . . .	143
90		Insertion of new pt 12. . . . .	143
	Part 12	Renumbering of Acts	
	148	Amendment to renumber . . . . .	143
	149	Expiry of part . . . . .	144
91		Amendment of schedule (Dictionary) . . . . .	144
	<b>Part 4</b>	<b>Amendment of Liquor Act 1992</b>	
92		Act amended . . . . .	150
93		Amendment of s 4 (Definitions) . . . . .	150
	<b>Part 5</b>	<b>Amendment of Local Government (Aboriginal Lands) Act 1978</b>	
94		Act amended . . . . .	150
95		Amendment of long title . . . . .	150
96		Replacement of s 1 (Short title) . . . . .	150
	1	Short title . . . . .	151
97		Amendment of s 2 (Definitions) . . . . .	151
98		Amendment of s 3 (Grant of leases to councils) . . . . .	151
99		Insertion of new s 4A . . . . .	151
	4A	Roads within shires . . . . .	152
100		Omission of pts 3 and 4 . . . . .	152
101		Amendment of s 18A (Application of pt 5) . . . . .	152
102		Amendment of s 20 (Entry upon and temporary stay in shires) . . . . .	153
103		Amendment of s 21 (Local laws may regulate presence in shires) . . . . .	153
104		Omission of s 22 (Councils may levy charge on residents of residential premises) . . . . .	153
105		Replacement of s 23 (Power of ejectment and control) . . . . .	153
	23	Removal from shires. . . . .	154
106		Omission of s 24 (Reason for exclusion—right of appeal) . . . . .	154
107		Amendment of s 29 (Restriction on councils' power over land) . . . . .	154
108		Omission of ss 30–33. . . . .	154

Contents

---

<b>Part 6</b>	<b>Amendment of Local Government Act 2009</b>	
109	Act amended . . . . .	155
110	Amendment of s 100 (Fees on residents of indigenous local government areas) . . . . .	155
<b>Part 7</b>	<b>Amendment of Nature Conservation Act 1992</b>	
112	Act amended . . . . .	156
113	Amendment of s 40 (Dedication of national park as national park (Aboriginal land) or national park (Torres Strait Islander land)) . . . . .	156
114	Amendment of s 41 (Dedication of Aboriginal land as national park (Aboriginal land) or Torres Strait Islander land as national park (Torres Strait Islander land)) . . . . .	156
115	Amendment of s 42AA (Dedication of national park as national park (Cape York Peninsula Aboriginal land)) . . . . .	156
116	Amendment of s 42AB (Dedication of Aboriginal land as national park (Cape York Peninsula Aboriginal land)) . . . . .	157
117	Amendment of s 42AC (Dedication of other land as national park (Cape York Peninsula Aboriginal land)) . . . . .	157
118	Amendment of s 42AD (Leases etc. over national park (Cape York Peninsula Aboriginal land)) . . . . .	157
119	Amendment of s 42AE (Particular powers about permitted uses in national park (Cape York Peninsula Aboriginal land)) . . . . .	158
120	Insertion of new s 42AF . . . . .	158
	42AF Revocation of national park (Cape York Peninsula Aboriginal land) . . . . .	158
121	Amendment of s 111 (Management plans) . . . . .	158
122	Amendment of s 120 (Implementation of approved plan) . . . . .	158
123	Amendment of schedule (Dictionary) . . . . .	159
<b>Part 8</b>	<b>Amendment of Petroleum Act 1923</b>	
124	Act amended . . . . .	159
125	Amendment of s 2 (Definitions) . . . . .	159
<b>Part 9</b>	<b>Amendment of Petroleum and Gas (Production and Safety) Act 2004</b>	
126	Act amended . . . . .	160
127	Amendment of sch 2 (Dictionary) . . . . .	160
<b>Part 10</b>	<b>Amendment of Residential Tenancies and Rooming Accommodation Act 2008</b>	
128	Act amended . . . . .	161
129	Amendment of s 422 (Application of Aboriginal tradition) . . . . .	161
130	Amendment of s 423 (Application of Island custom) . . . . .	161

<b>Part 11</b>	<b>Amendment of Right to Information Act 2009</b>	
131	Act amended . . . . .	162
132	Amendment of s 113 (Disciplinary action) . . . . .	162
<b>Part 12</b>	<b>Amendment of Torres Strait Islander Land Act 1991</b>	
133	Act amended . . . . .	162
134	Amendment of s 3 (Definitions) . . . . .	162
135	Omission of s 5 (Meaning of native title interests) . . . . .	168
136	Replacement of s 6 (Crown bound) . . . . .	168
	6 Acts binds all persons . . . . .	168
137	Amendment of s 9 (Meaning of Torres Strait Islander land) . . . . .	169
138	Amendment of s 10 (Meaning of transferable and transferred land) . . . . .	169
139	Amendment of s 12 (DOGIT land) . . . . .	169
140	Amendment of s 13 (Torres Strait Islander reserve land) . . . . .	170
141	Amendment of s 13B (Particular land may be declared to be not transferable land) . . . . .	171
142	Amendment of s 13C (Notice of intention to make declaration) . . . . .	171
143	Amendment of s 13D (Minister to consider representations and give notice of decision) . . . . .	172
144	Omission of ss 13E and 13F . . . . .	172
145	Amendment of s 13I (Requirements about plans of subdivision for declarations under s 13B) . . . . .	173
146	Omission of ss 14 and 15 . . . . .	173
147	Replacement of s 16 (Lands that are available Crown land—general) . . . . .	173
	16 Land that is available State land—general . . . . .	173
	16A Agreement about particular land . . . . .	173
148	Amendment of s 19 (Meaning of city or town land) . . . . .	174
149	Replacement of s 22 (Lands that are not available Crown land) . . . . .	174
	22 Land that is not available State land . . . . .	175
150	Insertion of new pt 2A . . . . .	175
	Part 2A Formal expression of interest about land	
	24A Purpose of pt 2A . . . . .	175
	24B Land to which pt 2A applies . . . . .	175
	24C Expression of interest in having land made transferable land . . . . .	176
	24D Chief executive to consider expression of interest . . . . .	176

Contents

---

	24E	Consideration of expression of interest does not impose obligation on State . . . . .	176
151		Amendment of s 25 (Deeds of grant to be prepared) . . . . .	176
152		Amendment of s 25A (Appointment of registered native title body corporate as grantee to hold land for native title holders) . . . . .	177
153		Replacement of s 26 (Minister to appoint particular trustees) . . . . .	177
	26	Appointment of grantee to hold land for benefit of Torres Strait Islanders . . . . .	177
	26AA	Procedure for appointing particular grantee . . . . .	179
154		Omission of s 26A (Application of Trusts Act 1973) . . . . .	179
155		Amendment of s 27 (Minister to act as soon as possible) . . . . .	180
156		Omission of s 29 (Inclusion of additional areas in deed of grant) . . . . .	181
157		Amendment of s 30 (Deed of grant takes effect on delivery) . . . . .	181
158		Amendment of s 31 (Existing interests) . . . . .	182
159		Amendment of s 32 (Interests to be endorsed on deed) . . . . .	183
160		Amendment of s 33 (Cancellation of deed of grant in trust) . . . . .	184
161		Omission of s 34 (Registrar of titles must take action etc. to resolve difficulties) . . . . .	184
162		Amendment of s 35 (Land Court may resolve difficulties) . . . . .	184
163		Replacement of pt 3, div 2 (Dealing with transferred land) . . . . .	184
	Division 2	Approvals to change how land is held	
	36	Application to hold Torres Strait Islander land for native title holders. . . . .	184
	37	Decision on application . . . . .	185
	38	Notices about decision . . . . .	186
	38A	Effect of gazette notice . . . . .	186
164		Amendment of s 40 (Reservations of forest products and quarry material etc.) . . . . .	186
165		Replacement of pts 4 and 5 . . . . .	187
	Part 4	Register of entities holding Torres Strait Islander land	
	41	Keeping register of entities holding Torres Strait Islander land . . . . .	187
	42	Giving information for register to the chief executive . . . . .	188
	43	Obtaining information in register . . . . .	189
	Part 4A	Transfer of Torres Strait Islander land by Minister	
	Division 1	Preliminary	
	44	Purpose of pt 4A. . . . .	190

45	Application of pt 4A . . . . .	190
Division 2	Vesting and transfer of land	
46	Vesting of land in the State . . . . .	190
47	How land is held by the State . . . . .	191
48	Minister to transfer land as soon as practicable . . . . .	191
49	Transfer to registered native title body corporate to hold for native title holders . . . . .	191
50	Transfer to entity to hold for benefit of Torres Strait Islanders . . . . .	192
51	Procedure for transferring land . . . . .	193
52	Effect of gazette notice about transfer . . . . .	194
Division 3	Notices to registrar	
53	Notice about land . . . . .	194
Part 4B	General provisions for dealing with Torres Strait Islander land	
Division 1	Trustees power to deal with Torres Strait Islander land and Ministerial consent	
54	Power to deal with Torres Strait Islander land . . . . .	195
54A	Requirement for consultation . . . . .	196
54B	Provision about Minister's consent . . . . .	197
Division 2	Sale or mortgage prohibited	
55	Prohibition on sale or mortgage of Torres Strait Islander land . . . . .	198
Division 3	Grant of licences	
56	Grant of licence for Torres Strait Islander land . . . . .	198
56A	Conditions of licences . . . . .	198
Division 4	Transfer of Torres Strait Islander land by trustee	
Subdivision 1	Land held by land trust	
57	Application of sdiv 1 . . . . .	199
57A	Transfer of Torres Strait Islander land . . . . .	199
57B	Application for approval to transfer . . . . .	201
57C	Minister's approval to transfer . . . . .	201
57D	Effect of gazette notice about transfer . . . . .	202
Subdivision 2	Land held by CATSI corporation	
58	Application of sdiv 2 . . . . .	203
58A	Transfer of Torres Strait Islander land . . . . .	203
58B	Application for approval to transfer . . . . .	204

Contents

---

58C	Minister's approval to transfer. . . . .	204
58D	Effect of gazette notice about transfer . . . . .	204
Subdivision 3 Exemption from fees and charges		
59	Exemption. . . . .	205
Division 5 Other matters		
60	Trustee to advise chief executive of change to description of land . . . . .	205
60A	Particular dealings in Torres Strait Islander land void.	205
60B	Provision about resumption of Torres Strait Islander land etc. . . . .	205
Part 4C Leasing of Torres Strait Islander land		
Division 1 Grant of leases for Torres Strait Islander land		
61	Grant of lease for Torres Strait Islander land . . . . .	206
Division 2 Standard leases		
Subdivision 1 Restrictions on grant of standard leases		
62	Restrictions on grant of standard lease to a Torres Strait Islander . . . . .	207
62A	Restrictions on grant of standard lease to State . . . .	208
62B	Restrictions on grant of standard lease to another person . . . . .	209
Subdivision 2 Requirements for Minister's consent		
63	General requirements for Minister's consent . . . . .	210
63A	Requirement for Minister's consent for standard lease for commercial purpose . . . . .	211
63B	Requirement for Minister's consent for creation of interest under a standard lease . . . . .	212
Division 3 Townsite leases		
Subdivision 1 Restriction on grant of townsite leases		
64	Minister's consent for grant of townsite lease . . . . .	212
Subdivision 2 Requirements for Minister's consent		
65	General requirements for Minister's consent . . . . .	213
Subdivision 3 Provisions about dealings with townsite leases		
66	Transfer or amendment of townsite lease. . . . .	214
66A	Townsite lease and transfer, amendment or surrender of lease to be registered . . . . .	215
66B	Surrender of townsite lease . . . . .	215
66C	No forfeiture of townsite lease . . . . .	215
Subdivision 4 Effect of townsite lease on existing interests		

67	Lessee of townsite lease taken to be lessor of existing leases . . . . .	215
Division 4	Townsite subleases	
Subdivision 1	Grant of subleases under townsite lease	
68	Grant of sublease . . . . .	216
Subdivision 2	Requirements about grant of subleases under townsite lease	
69	Restrictions on grant of townsite sublease to a Torres Strait Islander . . . . .	217
69A	Restrictions on grant of townsite sublease to State . .	218
69B	Restrictions on grant of townsite sublease to another person . . . . .	218
Subdivision 3	Requirements for Minister's consent	
70	General requirements for Minister's consent . . . . .	219
70A	Requirement for Minister's consent for townsite sublease for commercial purpose. . . . .	220
70B	Requirement for Minister's consent for creation of interest under a townsite sublease . . . . .	221
Division 5	Common provisions for standard leases and townsite subleases	
Subdivision 1	Preliminary	
71	Definitions for div 5 . . . . .	222
Subdivision 2	Conditions of leases	
72	Conditions of leases—general . . . . .	222
72A	Leases for private residential purposes—general conditions and requirements . . . . .	223
72B	Leases for private residential purposes—particular requirements if dwelling situated on land . . . . .	224
72C	Option to renew particular lease or sublease . . . . .	226
Subdivision 3	Provisions about transfer, amendment or surrender of leases	
73	Transfer or amendment of lease or sublease . . . . .	226
73A	Particular dealings to be registered . . . . .	227
Division 6	Forfeiture and renewal of leases for private residential purposes	
Subdivision 1	Preliminary	
74	Definitions for div 6 . . . . .	228
74A	Application of div 6 . . . . .	229
Subdivision 2	Forfeiture	

Contents

	75	Grounds for forfeiture . . . . .	229
	75A	Referral to Land Court for forfeiture . . . . .	229
	75B	Lessor's options if Land Court decides lease may be forfeited . . . . .	230
	75C	Notice and effect of forfeiture . . . . .	230
	75D	Extension of term of lease—referral for forfeiture. . . . .	231
	Subdivision 3 Renewal		
	76	Notice of expiry of lease . . . . .	231
	76A	Application to renew lease . . . . .	232
	76B	Lessor to consider and decide application . . . . .	232
	76C	Decision to renew lease . . . . .	232
	76D	Lessor may decide not to renew lease . . . . .	233
	76E	Notice to lessee about decision not to renew lease . . . . .	233
	76F	Extension of term of lease—application for renewal . . . . .	233
	Subdivision 4 General matters about forfeiture or non-renewal of residential leases		
	77	Right to remove improvements if lease forfeited or not renewed . . . . .	234
	77A	Payment by lessor for forfeited or non-renewed lease . . . . .	234
	77B	Unclaimed amounts . . . . .	235
	77C	Amounts owing to lessor or mortgagee to be deducted . . . . .	235
	77D	Payment of amount to mortgagee in discharge of mortgage . . . . .	236
	Division 7 Miscellaneous		
	78	Effect of option to renew or extend on calculation of term of leases . . . . .	237
	78A	Exemption from fees and charges . . . . .	237
	78B	Leases for private residential purposes—beneficiary. . . . .	237
	Part 5 Decision-making process		
	79	When agreement of Torres Strait Islanders is given. . . . .	238
	80	Decision-making by trustee . . . . .	238
166		Replacement of pt 5A (Provisions about mortgages of leases over Torres Strait Islander land) . . . . .	239
	Part 5A	Provisions about mortgages of leases over Torres Strait Islander land	
	Division 1 Preliminary		
	80AA	Definitions for pt 5A . . . . .	239

	80A	Application of pt 5A . . . . .	240
	Division 2	Mortgages of leases over Torres Strait Islander land	
	80B	Provisions about entering into possession, and selling, lease . . . . .	240
	80C	How lessor deals with proceeds of sale . . . . .	241
167		Amendment of s 80D (Definitions for pt 5B) . . . . .	242
168		Amendment of s 80F (Trustee (Torres Strait Islander) leases) . . . . .	242
169		Amendment of s 80G (Amending trustee (Torres Strait Islander) lease) . . . . .	243
170		Amendment of s 81 (Crown's use of Islander land preserved) . . . . .	244
171		Amendment of s 82 (No rent payable by Crown) . . . . .	245
172		Amendment of s 83 (Access to land used by Crown) . . . . .	245
173		Amendment of s 84 (Application of Mineral Resources Act) . . . . .	247
174		Amendment of s 85 (Royalties in relation to mining on Torres Strait Islander land) . . . . .	248
175		Replacement of pt 8 (The Land Tribunal) . . . . .	248
	Part 8	Provisions about land trusts	
	Division 1	Preliminary	
	86	Composition of land trust . . . . .	248
	87	Nature of land trust . . . . .	249
	88	Function and powers of land trust . . . . .	250
	Division 2	Minister's power to appoint, remove or suspend members of land trusts	
	Subdivision 1	Appointment of members	
	89	Minister may appoint member . . . . .	250
	Subdivision 2	Removal or suspension of members	
	90	Grounds for removal or suspension of member . . . . .	251
	91	Show cause notice . . . . .	252
	92	Representations about show cause notice . . . . .	253
	93	Ending show cause process without further action . . . . .	253
	94	Removing or suspending member . . . . .	253
	95	Immediate removal or suspension of member . . . . .	255
	Subdivision 3	Other matters	
	96	Limitation on land trust's power about appointment or suspension of members . . . . .	255
	Division 3	Recording information about compliance with Act	

Contents

---

97	Particular information to be recorded in register . . . .	256
Division 4	Land trusts to give information to chief executive	
98	Definition for div 4. . . . .	256
99	Power to require particular information. . . . .	256
Division 5	Freezing accounts of land trust	
100	Definitions for div 5. . . . .	257
101	Freezing land trust's accounts . . . . .	257
102	Financial institution must comply with direction . . . . .	258
103	Withdrawal of direction . . . . .	258
Division 6	Miscellaneous	
104	Chief executive may prepare model rules . . . . .	259
105	Provision about vesting of Torres Strait Islander land	259
Part 8A	Application of Trusts Act 1973	
Division 1	Preliminary	
106	Application of Trusts Act 1973 . . . . .	260
Division 2	Powers of Supreme Court	
107	Jurisdiction of Supreme Court . . . . .	260
108	Power of court to relieve member of land trust from personal liability . . . . .	261
109	Court may order beneficiary to indemnify for certain breaches. . . . .	261
110	Right of land trust or member to apply to court for directions . . . . .	261
111	Court's jurisdiction to make orders conferring power on land trust or members . . . . .	262
112	Protection of land trust or member while acting under direction of court . . . . .	263
113	Power of Supreme Court to make orders in absence of member . . . . .	264
114	Power of Supreme Court to charge costs on trust property . . . . .	264
Part 8B	Appeals	
115	Who may appeal. . . . .	265
116	Starting appeal. . . . .	265
117	Nature of appeal. . . . .	266
118	Notice of appeal . . . . .	266
119	Powers of Land Court on appeal . . . . .	266

176	Amendment of s 128 (Creation of interests in transferable and claimable land) . . . . .	266
177	Amendment of s 129 (Rights of access to interests preserved) . .	268
178	Amendment of s 130 (Persons and bodies representing Crown) .	268
179	Amendment of s 131 (Delegation by Minister) . . . . .	269
180	Omission of s 132 (Delegation by land claims registrar) . . . . .	269
181	Amendment of s 133 (Amendment of description of land) . . . . .	269
182	Replacement of s 133A (Dealing with particular trust property) . .	270
	133A Dealing with particular trust property . . . . .	270
183	Amendment of s 134 (Survey costs etc. to be paid by State) . . .	271
184	Amendment of s 134A (Application of Financial Administration and Audit Act 1977) . . . . .	271
185	Amendment of s 135 (Regulation-making power) . . . . .	271
186	Insertion of new pt 9A. . . . .	272
	Part 9A Validation provision	
	135A Retrospective validation of dealings with trustee (Torres Strait Islander) lease . . . . .	272
187	Insertion of new pt 10, div 3 . . . . .	273
	Division 3 Transitional provisions for Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011	
	138 Definitions for div 3 . . . . .	273
	139 Torres Strait Islander land—change to beneficiaries .	274
	140 Continued operation of provisions for appointing grantees . . . . .	274
	141 References to previous provisions after renumbering	275
188	Insertion of new pt 11. . . . .	275
	Part 11 Renumbering of Acts	
	142 Amendment to renumber . . . . .	275
	143 Expiry of part . . . . .	276
<b>Part 13</b>	<b>Minor and consequential amendments</b>	
189	Acts amended . . . . .	276
<b>Schedule</b>	<b>Minor and consequential amendments</b> . . . . .	277
	Aboriginal Land Act 1991 . . . . .	277
	Auditor-General Act 2009 . . . . .	278
	Environmental Protection Act 1994 . . . . .	278
	Greenhouse Gas Storage Act 2009 . . . . .	279
	Information Privacy Act 2009 . . . . .	279

Contents

---

Mineral Resources Act 1989 . . . . .	279
Nature Conservation Act 1992 . . . . .	280
Police Powers and Responsibilities Act 2000 . . . . .	282
Survey and Mapping Infrastructure Act 2003 . . . . .	282
Torres Strait Islander Land Act 1991 . . . . .	282
Vegetation Management Act 1999 . . . . .	283



## Queensland

### **Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011**

#### **Act No. 26 of 2011**

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**An Act to amend the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984, the Aboriginal Land Act 1991, the Liquor Act 1992, the Local Government (Aboriginal Lands) Act 1978, the Local Government Act 2009, the Nature Conservation Act 1992, the Petroleum Act 1923, the Petroleum and Gas (Production and Safety) Act 2004, the Residential Tenancies and Rooming Accommodation Act 2008, the Right to Information Act 2009 and the Torres Strait Islander Land Act 1991 for particular purposes, and to make minor and consequential amendments to the Auditor-General Act 2009, the Environmental Protection Act 1994, the Greenhouse Gas Storage Act 2009, the Information Privacy Act 2009, the Mineral Resources Act 1989, the Police Powers and Responsibilities Act 2000, the Survey and Mapping Infrastructure Act 2003 and the Vegetation Management Act 1999 for purposes related to those particular purposes**

**[Assented to 29 August 2011]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*.

### **2 Commencement**

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

## **Part 2 Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984**

### **3 Act amended**

This part amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

### **4 Amendment of s 4 (Definitions)**

Section 4—

*insert—*

*‘indigenous local government, for part 3, division 1, see section 8A.’.*

---

**5 Replacement of s 8A (Definition for div 1)**

Section 8A—

*omit, insert—*

**‘8A Definitions for div 1**

‘In this division—

*indigenous local government* means any of the following local governments—

- (a) the Aurukun Shire Council;
- (b) the Mornington Shire Council;
- (c) a community government;
- (d) an indigenous regional council.

*indigenous local government area* means—

- (a) the local government area for—
  - (i) Aurukun Shire Council; or
  - (ii) Mornington Shire Council; or
- (b) a community government area; or
- (c) an IRC area, including an IRC division area.’.

**6 Amendment of s 9 (Jurisdiction and powers of police)**

- (1) Section 9, ‘a community government or IRC area’—

*omit, insert—*

‘an indigenous local government area’.

- (2) Section 9(3), ‘community government or indigenous regional council established’—

*omit, insert—*

‘indigenous local government’.

[s 7]

---

**7 Amendment of s 10 (Entry upon community government or IRC areas etc.)**

- (1) Section 10, heading ‘community government or IRC areas’—  
*omit, insert—*  
**‘indigenous local government areas’.**
- (2) Section 10, ‘a community government area or IRC area’—  
*omit, insert—*  
**‘an indigenous local government area’.**
- (3) Section 10(b), ‘a community government or indigenous regional council’—  
*omit, insert—*  
**‘an indigenous local government’.**

**8 Amendment of s 11 (Application to community government or IRC areas of laws relating to public places)**

- (1) Section 11, heading ‘community government or IRC areas’—  
*omit, insert—*  
**‘indigenous local government areas’.**
- (2) Section 11, ‘community government or IRC areas’—  
*omit, insert—*  
**‘indigenous local government areas’.**
- (3) Section 11(1)(a) and (b), ‘a community government or IRC area’—  
*omit, insert—*  
**‘an indigenous local government area’.**

**9 Amendment of s 12 (Community police officers)**

- (1) Section 12(1), ‘a community government or IRC area’—

---

*omit, insert—*

‘an indigenous local government area’.

- (2) Section 12(2), ‘A’—

*omit, insert—*

‘An’.

- (3) Section 12(2) and (4), ‘community government or indigenous regional council’—

*omit, insert—*

‘indigenous local government’.

**10 Amendment of s 13 (Discharge of community police officers’ functions etc.)**

- (1) Section 13(1), (2) and (4), ‘a community government area or IRC area’—

*omit, insert—*

‘an indigenous local government area’.

- (2) Section 13(1), ‘local law of the community government or indigenous regional council established’—

*omit, insert—*

‘a local law of the indigenous local government’.

**11 Amendment of s 14 (Other functions of community police officers)**

- (1) Section 14, ‘A community government or indigenous regional council’—

*omit, insert—*

‘An indigenous local government’.

- (2) Section 14, ‘community government or IRC area’—



- 
- (3) Section 13(1)(b)(i) to (iv), ‘is’—  
*omit.*
- (4) Section 13(1)(b)(iii), ‘*Aborigines and Torres Strait Islanders (Land Holding) Act 1985*’—  
*omit, insert—*  
‘Land Holding Act’.
- (5) Section 13(1)(b)(v) and (vi)—  
*renumber* as section 13(1)(b)(vi) and (vii).
- (6) Section 13(1)(b), before ‘other than’—  
*insert—*  
‘(v) the subject of an application under the Land Holding Act, section 5, that had been approved by the trustee council, or approved on appeal by the appeal tribunal, under that Act, but for which a lease under that Act has not been granted;’.
- (7) Section 13(1A) and (2)—  
*renumber* as section 13(2) and (4).
- (8) Section 13—  
*insert—*
- ‘(3) Also, DOGIT land includes land within the external boundaries of land mentioned in subsection (1)(a) if —
- (a) the land was the subject of an application under the Land Holding Act, section 5, that was approved by the trustee council, or approved on appeal by the appeal tribunal, under that Act after the enactment day; and
- (b) a lease under that Act has not been granted for the land.’.

## 15 Amendment of s 14 (Aboriginal reserve land)

- (1) Section 14(b), from ‘and subject’ to ‘1985;’—  
*omit, insert—*

[s 16]

---

‘and—

- (i) subject to a lease granted under the Land Holding Act; or
- (ii) the subject of an application under the Land Holding Act, section 5, that had been approved by the trustee council, or approved on appeal by the appeal tribunal, under that Act, but for which a lease under that Act has not been granted;’.

(2) Section 14—

*insert—*

- ‘(2) Also, Aboriginal reserve land includes land within the external boundaries of land mentioned in subsection (1)(a) if—
- (a) the land was the subject of an application under the Land Holding Act, section 5, that was approved by the trustee council, or approved on appeal by the appeal tribunal, under that Act after the enactment day; and
  - (b) a lease under that Act has not been granted for the land.’.

## **16 Amendment of s 15 (Aurukun Shire lease land)**

(1) Section 15(1)(a)—

*insert—*

‘*Note—*

For the Act mentioned in paragraph (a), see the *Aurukun and Mornington Shire Leases Act 1978*.’.

(2) Section 15—

*insert—*

‘(3) In this section—

**road** includes a road mentioned in the *Aurukun and Mornington Shire Leases Act 1978*, section 4A(1).’.

---

**17 Amendment of s 16 (Mornington Shire lease land)**

(1) Section 16(1)(a)—

*insert—*

*‘Note—*

For the Act mentioned in paragraph (a), see the *Aurukun and Mornington Shire Leases Act 1978*.’.

(2) Section 16—

*insert—*

‘(3) In this section—

*road* includes a road mentioned in the *Aurukun and Mornington Shire Leases Act 1978*, section 4A(1).’.

**18 Amendment of s 16B (Particular land may be declared to be not transferable land)**

(1) Section 16B(1), ‘under this division’—

*omit.*

(2) Section 16B(1)(b) and (2)(a), ‘by the Aboriginal people on the land’—

*omit.*

(3) Section 16B(3), ‘under this division’—

*omit, insert—*

‘to the Land Court’.

**19 Amendment of s 16C (Notice of intention to make declaration)**

Section 16C(1)(b), ‘within 10 business days’—

*omit, insert—*

‘as soon as practicable’.

[s 20]

---

**20 Amendment of s 16D (Minister to consider representations and give notice of decision)**

(1) Section 16D(2)—

*renumber* as section 16D(3).

(2) Section 16D—

*insert*—

‘(2) The Minister may, after considering the representations, decide to make the declaration for all or a part of the relevant land described in the notice under section 16C.’.

(3) Section 16D(3), as renumbered under this section, from ‘must’—

*omit, insert*—

‘must—

(a) include a description of the relevant land to be declared not transferable under this division; and

(b) state all of the following—

(i) the provision under which the declaration is to be made;

(ii) the reasons for the decision;

(iii) if the Minister is to make the declaration under section 16B(1)(d)—that a person who made representations about the proposed declaration may appeal against the decision to the Land Court within 28 days after receiving the notice, and how the person may appeal.’.

**21 Omission of ss 16E and 16F**

Sections 16E and 16F—

*omit.*

**22 Amendment of s 16I (Requirements about plans of subdivision for declarations under s 16B)**

Section 16I, heading, ‘under s 16B’—

*omit.*

**23 Amendment of s 17 (Meaning of claimable and granted land)**

Section 17(2), from ‘land is—’—

*omit, insert—*

‘land is claimable land that has been claimed by, and granted under this Act to, a group of Aboriginal people.’.

**24 Amendment of s 18 (Lands that are claimable lands)**

(1) Section 18, heading—

*omit, insert—*

**‘18 Land that is claimable land’.**

(2) Section 18(1)(b)—

*omit, insert—*

‘(b) Aboriginal land that—

(i) is transferred land; and

(ii) became transferred land before 22 December 2006.’.

**25 Replacement of s 19 (Lands that are available State land—general)**

Section 19—

*omit, insert—*

**‘19 Land that is available State land—general**

‘(1) Land is available State land if it is—

[s 25]

---

- (a) land, other than excluded land, in which no person other than the State has an interest; or
  - (b) land, other than excluded land, that is subject to an interest granted by the State, if an available State land agreement is in force for the land; or
  - (c) land inside the Torres Strait area that is land—
    - (i) in which no person other than the State has an interest; and
    - (ii) declared under a regulation to be available State land.
- ‘(2) Subsection (1) is subject to sections 20 and 21.
- ‘(3) In this section—
- interest* means a legal or equitable interest in the land but does not include native title, a mining interest or an easement.

#### ‘19A Agreement about particular land

- ‘(1) The Minister may enter into a written agreement (an *available State land agreement*) about land, other than excluded land—
- (a) with a person who has an interest in the land granted by the State; and
  - (b) under which the State and the person agree that the land may be available State land.
- ‘(2) The Minister may enter into an available State land agreement for particular land only if satisfied that entering into the agreement is appropriate in the circumstances having regard to an evaluation of the land under the Land Act, section 16.
- ‘(3) An available State land agreement must provide that on the grant of the land under part 3 the person’s interest in the land is to cease and a new interest granted by the trustee of the land is to have effect in substitution for the person’s interest.
- ‘(4) However, if the interest is a lease granted under the Land Act the agreement may provide that the lease is to continue in force under section 33.

- ‘(5) Subsection (6) applies if a proposed available State land agreement is to state that a person’s interest in land is to cease and a new interest granted by the proposed trustee of the land is to have effect in substitution for the person’s interest.
- ‘(6) To remove any doubt, it is declared that the Minister need not enter into the available State land agreement unless satisfied a new interest granted by the proposed trustee of the land is to have effect in substitution for the person’s interest in the land.’.

**26 Amendment of s 22 (Meaning of city or town land)**

Section 22(1), ‘is, at the beginning of the enactment day, within’—

*omit, insert—*

‘is within’.

**27 Replacement of s 25 (Lands that are not available State land)**

Section 25—

*omit, insert—*

**‘25 Land that is not available State land**

- ‘(1) To remove any doubt, it is declared that the following land is not available State land—
- (a) the waters of the sea, and the seabed, other than tidal land declared to be available State land under section 21(1);
  - (b) freehold land;
  - (c) an associated reserve;
  - (d) land subject to a lease, licence or permit under the Land Act.
- ‘(2) Despite subsection (1)(d), land subject to a lease, licence or permit under the Land Act is available State land if an available State land agreement is in force for the land.’.

[s 28]

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**28 Amendment of s 27 (Deeds of grant to be prepared)**

Section 27(3)—

*omit, insert—*

- ‘(3) The deed of grant must show that the land is held by the grantee—
- (a) if the grantee is a registered native title body corporate appointed as the grantee under section 27A—for the native title holders of the land; or
  - (b) otherwise—
    - (i) for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants; or
    - (ii) if the land is prescribed DOGIT land that is to be held for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land—for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land, and their ancestors and descendants.’.

**29 Amendment of s 27A (Appointment of registered native title body corporate as grantee to hold land for native title holders)**

Section 27A(5)—

*omit.*

**30 Replacement of s 28 (Minister to appoint particular trustees)**

Section 28—

*omit, insert—*

---

**‘28 Appointment of grantee to hold land for benefit of Aboriginal people**

- ‘(1) This section applies if the Minister does not appoint, under section 27A, a registered native title body corporate as the grantee of land.
- ‘(2) The Minister may appoint as grantee of the land—
- (a) a CATSI corporation that is qualified to hold the land; or
  - (b) a land trust; or
  - (c) the Aurukun Shire Council, if the land is Aurukun Shire lease land; or
  - (d) the Mornington Shire Council, if the land is Mornington Shire lease land.
- ‘(3) However, the Minister may appoint a CATSI corporation that is a registered native title body corporate as a grantee of land under subsection (2) only if—
- (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
  - (b) the registered native title body corporate is registered on the National Native Title Register for the determination.
- ‘(4) Before making the appointment, the Minister must consult with, and consider the views of, Aboriginal people particularly concerned with the land.
- ‘(5) Subsection (4) does not apply if an ILUA has been entered into for the land and the entity is nominated in the ILUA as the proposed grantee for the land under this Act.
- ‘(6) However, in considering whether to appoint an entity nominated in an ILUA as the proposed grantee for the land, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example—
- (a) whether any Aboriginal people particularly concerned with the land may be adversely affected by the appointment; and

[s 31]

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- (b) if the Minister is satisfied any Aboriginal people particularly concerned with the land will be adversely affected by the appointment—any action the entity intends to take to address the concerns of the Aboriginal people.
- ‘(7) Also, in considering whether to appoint a registered native title body corporate as the proposed grantee for the land, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example, the matters mentioned in section 27A(4)(b) and (c).
- ‘(8) In appointing a grantee of land under this section, the Minister must have regard to any Aboriginal tradition applicable to the land.
- ‘(9) Despite subsection (8), the Minister may appoint the Aurukun Shire Council or Mornington Shire Council to be a grantee if the Minister considers that in all the circumstances it is appropriate to do so.’.

### 31 **Amendment of s 28A (Procedure for appointing grantees)**

- (1) Section 28A, heading, ‘grantees’—  
*omit, insert—*  
**‘particular grantee’.**
- (2) Section 28A(1), ‘grantees under this part’—  
*omit, insert—*  
‘a grantee of land under this part, other than an entity nominated in an ILUA as the proposed grantee for the land’.
- (3) Section 28A(1)(a), ‘grantees’—  
*omit, insert—*  
‘grantee’.
- (4) Section 28A(2)(b)(i), ‘each’—  
*omit, insert—*  
‘the’.

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**32 Omission of s 28B (Application of Trusts Act 1973)**

Section 28B—

*omit.*

**33 Amendment of s 29 (Minister to act as soon as possible)**

(1) Section 29(1), ‘section 28’—

*omit, insert—*

‘section 27A or 28’.

(2) Section 29(2), ‘section 12(e)’—

*omit, insert—*

‘section 12(1)(e)’.

(3) Section 29—

*insert—*

‘(3) However, the Minister need not act as mentioned in subsections (1) and (2) in relation to land until the Minister is reasonably satisfied—

(a) arrangements are in place to ensure—

(i) the Commonwealth and the State can continue to provide services to communities on the land after it is granted; and

(ii) the local government for the area in which the land is situated can continue to provide local government services to communities on the land after it is granted; and

*Example of an arrangement for paragraph (a)—*

a lease

(b) if the land is proposed to be granted to an entity other than a registered native title body corporate, arrangements that the Minister considers necessary—

(i) to support use of the land by Aboriginal people particularly concerned with it; and

[s 34]

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(ii) to ensure appropriate services, including, for example, social housing, public works and community infrastructure, can be provided for communities on the land;

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

*Example of an arrangement for paragraph (b)—*

an ILUA

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

(i) the land to continue to be used as township land; and

(ii) residents of the township land to continue to live on and access the land, and obtain tenure over the land under this Act.

*Examples of an arrangement for paragraph (c)—*

an ILUA, a townsite lease or another lease

‘(4) In this section—

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

### **34 Omission of s 31 (Inclusion of additional areas in deed of grant)**

Section 31—

*omit.*

### **35 Amendment of s 32 (Deed of grant takes effect on delivery)**

(1) Section 32(1), from ‘issued’—

*omit, insert—*

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‘prepared under this division takes effect on the delivery of the deed of grant to the grantee.’.

- (2) Section 32(2), ‘grantees’—

*omit, insert—*

‘grantee’.

### **36 Amendment of s 33 (Existing interests)**

- (1) Section 33(2)(a), ‘*Aborigines and Torres Strait Islanders (Land Holding) Act 1985*’—

*omit, insert—*

‘Land Holding Act’.

- (2) Section 33(2)—

*insert—*

‘(c) a trustee (Aboriginal) lease;’.

- (3) Section 33(4)—

*renumber* as section 33(7).

- (4) Section 33—

*insert—*

‘(4) However, subsection (5) applies to an interest in transferable land (the *previous interest*) that, under an available State land agreement, is to cease on the grant of the land under this part and a new interest granted by the trustee of the land is to have effect in substitution for the previous interest on the grant of the land.

‘(5) Despite subsections (1) to (3), on the grant of the land the previous interest ceases.

‘(6) Subsection (5) applies despite any other Act.’.

### **37 Amendment of s 34 (Interests to be endorsed on deed)**

- (1) Section 34(1), ‘*Local Government (Aboriginal Lands) Act 1978*’—

[s 38]

---

*omit, insert—*

*‘Aurukun and Mornington Shire Leases Act 1978’.*

- (2) Section 34(1), ‘registrar of titles, give to the registrar’—

*omit, insert—*

*‘chief executive, give to the chief executive’.*

- (3) Section 34(2), ‘Before the registrar of titles issues the deed of grant, the registrar’—

*omit, insert—*

*‘The chief executive’.*

- (4) Section 34(2)(a)(i) and (ii), ‘registrar’—

*omit, insert—*

*‘chief executive’.*

**38 Omission of s 37 (Registrar of titles must take action etc. to resolve difficulties)**

Section 37—

*omit.*

**39 Amendment of s 38 (Land Court may resolve difficulties)**

Section 38(1), ‘registrar of titles’—

*omit, insert—*

*‘chief executive’.*

**40 Replacement of pt 3, div 2 (Dealing with transferred land)**

Part 3, division 2—

*omit, insert—*

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## **‘Division 2                    Approvals to change how land is held**

### **‘39      Application to hold Aboriginal land for native title holders**

- ‘(1) This section applies if—
- (a) a CATSI corporation that is the trustee of Aboriginal land becomes a registered native title body corporate after it became the trustee of the land; and
  - (b) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
  - (c) the registered native title body corporate is registered on the National Native Title Register for the determination.
- ‘(2) The registered native title body corporate may apply to the Minister in the approved form for an approval to hold the land under this Act for the native title holders of the land.

### **‘40      Decision on application**

- ‘(1) The Minister must consider an application made under section 39 and decide—
- (a) to give the approval; or
  - (b) to refuse the application.
- ‘(2) In considering the application, the Minister must have regard to—
- (a) whether any Aboriginal people particularly concerned with the land, other than native title holders of the land, may be adversely affected by the approval; and
  - (b) if the Minister is satisfied Aboriginal people particularly concerned with the land will be adversely affected by the approval—any action the registered native title body corporate intends to take to address the concerns of the Aboriginal people.

[s 40]

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- ‘(3) The Minister may give the approval only if, having regard to the matters mentioned in subsection (2), the Minister is satisfied it is appropriate in the circumstances to give the approval.

#### ‘41 Notices about decision

- ‘(1) The Minister must give the registered native title body corporate written notice of the Minister’s decision under section 40.
- ‘(2) If the Minister gives the approval, the chief executive must notify the approval by gazette notice.
- ‘(3) The gazette notice must—
- (a) state the name of the registered native title body corporate; and
  - (b) include a description of the Aboriginal land held by it that relates to the approval.
- ‘(4) As soon as practicable after the gazette notice is published, the chief executive must give the registrar of titles written notice of the approval.
- ‘(5) The notice must include a description of the Aboriginal land held by the registered native title body corporate for the native title holders of the land.
- ‘(6) On receiving the notice, the registrar must record in the freehold land register that the land is held under this Act by the registered native title body corporate for the native title holders of the land.
- ‘(7) In this section—
- description*, in relation to land, means the description of the land as shown in the freehold land register.

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**41A Effect of gazette notice**

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

**41 Amendment of s 46 (Grounds on which claim may be made)**

(1) Section 46(1)(c)—

*omit.*

(2) Section 46(2) and (3)—

*omit.*

**42 Amendment of s 47 (How claim is to be made)**

(1) Section 47(a) and (b), ‘land claims registrar’—

*omit, insert—*

‘chief executive’.

(2) Section 47(c)(v)—

*omit.*

**43 Amendment of s 49 (Registrar to determine whether claim duly made)**

(1) Section 49, heading, ‘Registrar to determine’—

*omit, insert—*

**‘Deciding’.**

(2) Section 49(1), ‘land claims registrar, the registrar must determine’—

*omit, insert—*

‘chief executive, the chief executive must decide’.

(3) Section 49(2) to (7) and (10), ‘registrar’—

[s 44]

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*omit, insert—*

‘chief executive’.

- (4) Section 49(9), ‘or for the grant of a lease’—

*omit.*

**44 Amendment of s 52 (Repeat claims)**

Section 52, ‘sections 53 to 55’—

*omit, insert—*

‘section 53 or 54’.

**45 Omission of s 55 (Establishment of claim on ground of economic or cultural viability)**

Section 55—

*omit.*

**46 Amendment of s 58 (Time at which it is to be determined whether land is claimable land)**

- (1) Section 58, ‘determined’—

*omit, insert—*

‘decided’.

- (2) Section 58, ‘to the land claims registrar’—

*omit, insert—*

‘under this part’.

**47 Amendment of s 60 (Recommendation to Minister)**

- (1) Section 60(1), from ‘Minister—’—

*omit, insert—*

‘Minister that the land be granted in fee simple to the group.’.

- (2) Section 60(2)—

*omit.*

- (3) Section 60(3) to (6)—

*renumber* as section 60(2) to (5).

- (4) Section 60(2), as renumbered under this section, from ‘persons’ to ‘trustees’—

*omit, insert*—

‘entity, or the persons who are to be represented by an entity, that should be appointed to be the grantee of the land as trustee’.

- (5) Section 60(3), as renumbered under this section, ‘subsection (3)’—

*omit, insert*—

‘subsection (2)’.

- (6) Section 60(4)(b), as renumbered under this section, ‘or lease granted in relation to’—

*omit, insert*—

‘for’.

#### **48 Amendment of s 61 (Resolution of conflicting claims)**

Section 61(2)—

*omit, insert*—

- ‘(2) If—

- (a) more than 1 claim is established; and
- (b) each of the competing claims is established on 1 or more grounds; and
- (c) 1 or more of the claims is established on the ground of traditional affiliation;

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

[s 49]

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**49 Omission of s 64 (Leases to be prepared)**

Section 64—

*omit.*

**50 Replacement of s 65 (Minister to appoint trustees)**

Section 65—

*omit, insert—*

**‘65 Appointment of grantee**

- ‘(1) The Minister may appoint the following entities as grantee of land the subject of a deed of grant prepared under section 63—
- (a) a CATSI corporation that is qualified to hold the land; or
  - (b) a land trust.
- ‘(2) However, the Minister may appoint a CATSI corporation that is a registered native title body corporate as a grantee of land under subsection (1) only if—
- (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
  - (b) the registered native title body corporate is registered on the National Native Title Register for the determination.
- ‘(3) Before making the appointment, the Minister—
- (a) must consult with, and consider the views of, the group of Aboriginal people concerned; and
  - (b) unless the Minister is satisfied that exceptional circumstances exist that require the Minister to do otherwise, must have regard to—
    - (i) any Aboriginal tradition applicable to the land; and
    - (ii) the views of the group to the extent the views are not inconsistent with any Aboriginal tradition applicable to the land.

- ‘(4) Also, in considering whether to appoint a registered native title body corporate as the proposed grantee for the land, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example—
- (a) whether any of the group of Aboriginal people concerned, other than the native title holders of the land, may be adversely affected by the proposed appointment; and
  - (b) if the Minister is satisfied any of the group of Aboriginal people concerned will be adversely affected by the proposed appointment—any action the registered native title body corporate intends to take to address the concerns of the Aboriginal people.’.

**51 Amendment of s 66 (Authority to grant fee simple in, or lease of, claimable land)**

- (1) Section 66, heading, ‘, or lease of,’—  
*omit.*
- (2) Section 66, from ‘Act—’—  
*omit, insert—*  
‘Act, grant claimable land in fee simple.’.

**52 Omission of ss 67 and 68**

Sections 67 and 68—  
*omit.*

**53 Amendment of s 69 (Deed of grant takes effect on delivery)**

- (1) Section 69(1), from ‘issued’—  
*omit, insert—*

[s 54]

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‘prepared under this division takes effect on the delivery of the deed of grant to the grantee.’.

(2) Section 69(2), ‘grantees’—

*omit, insert—*

‘grantee’.

**54 Omission of s 70 (Lease commences on delivery)**

Section 70—

*omit.*

**55 Amendment of s 73 (Cancellation of existing deed of grant)**

Section 73(3), (4) and (6), ‘registrar of titles’—

*omit, insert—*

‘chief executive’.

**56 Omission of s 74 (Registrar of titles must take action etc. to resolve difficulties)**

Section 74—

*omit.*

**57 Amendment of s 75 (Land Court may resolve difficulties)**

Section 75(1), ‘registrar of titles’—

*omit, insert—*

‘chief executive’.

**58 Omission of pt 5, div 2 (Dealing with granted land)**

Part 5, division 2—

*omit.*

**59 Amendment of s 80 (Reservations of minerals and petroleum)**

Section 80, ‘and an Aboriginal lease’—

*omit.*

**60 Amendment of s 81 (Reservations of forest products and quarry material etc.)**

(1) Section 81(1), ‘, and an Aboriginal (transferred land) lease,’—

*omit.*

(2) Section 81(1)(b), ‘is reserved’—

*omit, insert—*

‘are reserved’.

(3) Section 81(2), ‘, and an Aboriginal (non-transferred land) lease,’—

*omit.*

(4) Section 81(4), ‘, or an Aboriginal (transferred land) lease,’—

*omit.*

**61 Replacement of pt 5A (Provisions about particular land trusts)**

Part 5A—

*omit, insert—*

**‘Part 5AAA Register of entities holding Aboriginal land**

**‘82AAA Keeping register of entities holding Aboriginal land**

‘(1) The chief executive must keep a register of entities that hold Aboriginal land (the *Aboriginal land holding entity register*).

‘(2) The register must contain the following information for each entity—

[s 61]

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

*Note—*

Under section 130AL, the chief executive must record in the register whether or not a land trust has operated in compliance with the Act.

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

### **'82AAB Giving information for register to the chief executive**

- '(1) Each entity, other than a land trust, that holds Aboriginal land must—
- (a) as soon as practicable after the end of each financial year, give to the chief executive the information mentioned in section 82AAA(2) for the entity; and

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

### ‘82AAC Obtaining information in register

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

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

- (a) the names of all the current members of the land trust;
- (b) the information mentioned in section 82AAA(3)(b), (d) or (e).

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

- (a) the information mentioned in section 82AAA(2);
- (b) for a land trust—
  - (i) the names of the chairperson and secretary of the land trust; and
  - (ii) the information mentioned in section 82AAA(3)(f).

[s 61]

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## **‘Part 5AA                      Transfer of Aboriginal land by Minister**

### **‘Division 1                      Preliminary**

#### **‘82AA Purpose of pt 5AA**

‘The purpose of this part is to provide for—

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

#### **‘82AB Application of pt 5AA**

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

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

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

#### **‘82AC Vesting of land in the State**

- ‘(1) If the CATSI corporation is no longer qualified to hold the land, the Minister may, by gazette notice, declare that the land vests in the State.
- ‘(2) The gazette notice must—
  - (a) include a description of the land; and

- 
- (b) state the reason that the CATSI corporation is no longer qualified to hold the land.

### **'82AD How land is held by the State**

- '(1) This section applies if—
  - (a) the land vests in the State under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth); or
  - (b) the land vests in the State under section 82AC.
- '(2) The land—
  - (a) vests in the State in fee simple; and
  - (b) the State holds the land for the benefit of the persons for whose benefit the land was held immediately before it vested in the State.

### **'82AE Minister to transfer land as soon as practicable**

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

### **'82AF Transfer to registered native title body corporate to hold for native title holders**

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

[s 61]

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- ‘(2) The Minister may, with the consent of the registered native title body corporate, transfer the land to it.
- ‘(3) If the Minister transfers the land under this section to a registered native title body corporate, the body corporate holds the land for the native title holders of the land the subject of the determination mentioned in subsection (1)(a).
- ‘(4) In considering whether to transfer the land to a registered native title body corporate, the Minister may have regard to any matter the Minister considers relevant to the proposed transfer, including, for example—
  - (a) whether any Aboriginal people particularly concerned with the land, other than the native title holders of the land, may be adversely affected by the proposed transfer; and
  - (b) if the Minister is satisfied any Aboriginal people particularly concerned with the land will be adversely affected by the proposed transfer—any action the registered native title body corporate intends to take to address the concerns of the Aboriginal people.

### **‘82AG Transfer to entity to hold for benefit of Aboriginal people**

- ‘(1) This section applies if the Minister does not transfer the land under section 82AF to a registered native title body corporate.
- ‘(2) The Minister may transfer the land to—
  - (a) a CATSI corporation that is qualified to hold the land; or
  - (b) a land trust.
- ‘(3) However, the Minister may transfer the land to a CATSI corporation that is a registered native title body corporate under subsection (2) only if—
  - (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and

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

### ‘82AH Procedure for transferring land

- ‘(1) Before transferring the land, the Minister must—
  - (a) publish notice of the Minister’s intention to transfer the land in a newspaper or other publication circulating generally in the area in which the land is situated; and

[s 61]

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- (b) consider all representations made to the Minister under subsection (4).
- ‘(2) The notice must—
- (a) include a description of the land; and
  - (b) state the following—
    - (i) the name of the proposed transferee;
    - (ii) if the land is transferred land—that an Aboriginal person particularly concerned with the land may make written representations to the Minister about the proposed transfer;
    - (iii) if the land is granted land—that the group of Aboriginal people for whom the land is held may make written representations to the Minister about the proposed transfer;
    - (iv) the place where the representations may be made;
    - (v) the period in which the representations must be made.
- ‘(3) The stated period must end at least 28 days after the notice is published.
- ‘(4) A person, or the group, mentioned in subsection (2)(b)(ii) or (iii) may make written representations about the proposed transfer to the Minister within the stated period.

### **‘82AI Effect of gazette notice about transfer**

‘The transfer of the land under this part has effect on publication of the gazette notice about the transfer under section 82AE.

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## **‘Division 3                    Notices to registrar**

### **‘82AJ Notice about land**

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

## **‘Part 5A                    General provisions for dealing with Aboriginal land**

### **‘Division 1                    Trustee’s power to deal with Aboriginal land and Ministerial consent**

#### **‘82A Power to deal with Aboriginal land**

‘Subject to this part and part 5AB, the trustee of Aboriginal land may—

- (a) grant, transfer or otherwise create an interest in, or in relation to, the land in the way the trustee considers appropriate, including, for example, by—
  - (i) granting a lease or licence over all or a part of the land; or
  - (ii) consenting to the creation of a mining interest in the land; or
  - (iii) granting an easement over the land; or

[s 61]

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- (iv) entering into a conservation agreement under the *Nature Conservation Act 1992*, section 45, for the land; or
- (v) entering into an agreement with the State or the Commonwealth in relation to the getting and sale of forest products or quarry material above, on or below the land; or
- (b) dedicate a part of the land to public use by registering a plan of subdivision under the Land Title Act, part 4, division 3; or
- (c) surrender all or a part of the land to the State.

*Note—*

For restrictions on dealing with particular land in the Cape York Peninsula Region, see section 82R.

## **‘82B Requirement for consultation**

- ‘(1) The trustee of Aboriginal land must not deal with the land unless—
  - (a) the trustee has explained to the Aboriginal people particularly concerned with the land the nature, purpose and effect of the dealing; and
  - (b) the Aboriginal people are given a suitable opportunity to express their views on, and are generally in agreement with, the dealing.
- ‘(2) Despite section 82T, dealing with land in contravention of subsection (1) is not void under that section.
- ‘(3) In this section—

***deal***, with land, means—

  - (a) grant a lease, other than under section 82W(1)(a)(i) for private residential purposes, for more than 10 years over the land; or
  - (b) grant a licence for the use of the land for more than 10 years; or

- 
- (c) grant or otherwise create an interest in, or in relation to, the land, other than—
    - (i) a residential tenancy; or
    - (ii) a lease or licence for the use of the land for not more than 10 years; or
    - (iii) a lease under section 82W(1)(a)(i) for private residential purposes; or
  - (d) dedicate a part of the land to public use; or
  - (e) surrender any of the land to the State.

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

#### **‘82C Provision about Minister’s consent**

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

[s 61]

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- ‘(4) The Minister’s consent may be given for—
- (a) the grant of a particular townsite sublease or licence, or a particular type of townsite sublease or licence; or
  - (b) the creation of a particular interest under a townsite sublease or licence, or a particular type of interest; or
  - (c) if the Minister considers it appropriate—
    - (i) all townsite subleases or licences, or all townsite subleases or licences of a particular type, that may be granted by the lessee; or
    - (ii) the creation of all interests, or all interests of a particular type, that may be created under a townsite sublease or licence.

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

### **‘82D    Prohibition on sale or mortgage of Aboriginal land**

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

## **‘Division 3                    Grant of licences**

### **‘82E    Grant of licence for Aboriginal land**

- ‘(1) The trustee of Aboriginal land may grant a licence for the use of all or a part of the land only—
- (a) to an Aborigine for not more than 30 years; or
  - (b) to the State for not more than 30 years; or
  - (c) to another person—
    - (i) for not more than 10 years; or
    - (ii) with the Minister’s prior written consent, for more than 10 years but not more than 30 years.

- 
- ‘(2) The lessee of the townsite lease may grant a licence for the use of all or a part of the lease land only—
- (a) to an Aborigine for not more than 30 years; or
  - (b) to the State for not more than 30 years; or
  - (c) to another person—
    - (i) for not more than 10 years; or
    - (ii) with the Minister’s prior written consent, for more than 10 years but not more than 30 years.

#### **‘82F Conditions of licences**

- ‘(1) A licence granted under section 82E(1)(a) or (2)(a) is subject to the condition that an interest may be created under the licence in favour of a person who is not an Aborigine only if—
- (a) the interest is in favour of the spouse, or former spouse, of an Aborigine or of an Aborigine who is deceased; or
  - (b) the interest is—
    - (i) for not more than 10 years; or
    - (ii) created with the Minister’s prior written consent.
- ‘(2) A licence granted under section 82E(1)(b) or (c), or (2)(b) or (c), is subject to the condition that an interest can not be created under the licence.
- ‘(3) A licence granted under section 82E(1) or (2) can not be renewed or transferred.

[s 61]

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

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

**‘82G    Application of sdiv 1**

‘This subdivision applies to Aboriginal land held by—

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

**‘82H    Transfer of Aboriginal land**

‘(1) The trustee of the Aboriginal land (the *transferor*) may transfer all or a part of the land only—

- (a) with the Minister’s written approval; and
- (b) if the trustee is a land trust—to a following entity (the *transferee*)—
  - (i) another land trust;
  - (ii) a CATSI corporation that is qualified to hold the land;
  - (iii) Aurukun Shire Council;
  - (iv) Mornington Shire Council; and
- (c) if the trustee is Aurukun Shire Council or Mornington Shire Council—a CATSI corporation that is qualified to hold the land (also the *transferee*).

‘(2) However, the trustee may transfer all or a part of the land to a CATSI corporation that is a registered native title body corporate only if—

- 
- (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
  - (b) the registered native title body corporate is registered on the National Native Title Register for the determination.
- ‘(3) If a trustee transfers land under this subdivision—
- (a) all improvements on the land must be transferred with the land; and
  - (b) for a transferee that is a registered native title body corporate—the transferee holds the land for—
    - (i) the native title holders of the land if the transferor and the transferee agree it is to be held for the native title holders; or
    - (ii) the benefit of the Aboriginal people particularly concerned with the land and their ancestors and descendants if the land is transferred land and subparagraph (i) does not apply to the transfer; or
    - (iii) the benefit of the group of Aboriginal people and their ancestors and descendants if the land is granted land and subparagraph (i) does not apply to the transfer; and
  - (c) for a transferee that is not a registered native title body corporate—the transferee holds the land for—
    - (i) the benefit of the Aboriginal people particularly concerned with the land and their ancestors and descendants if the land is transferred land; or
    - (ii) the benefit of the group of Aboriginal people and their ancestors and descendants if the land is granted land; and
  - (d) if the trustee is a land trust and all the Aboriginal land held by the trustee is transferred to the transferee—
    - (i) the land trust for the land that is transferred is dissolved; and

[s 61]

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- (ii) all the assets and liabilities of the trustee become the assets and liabilities of the transferee; and
- (e) if the trustee is a land trust and paragraph (d) does not apply—the assets and liabilities of the trustee mentioned in section 82J(1)(a)(ii) become the assets and liabilities of the transferee.

### **‘82I Application for approval to transfer**

- ‘(1) The trustee of the Aboriginal land may apply to the Minister for an approval to transfer all or a part of the land.
- ‘(2) The application must—
  - (a) be in the approved form; and
  - (b) if the transferor or transferee is a land trust—be accompanied by evidence satisfactory to the Minister of each matter mentioned in section 82J(1)(a), (b) or (c) that applies to the transfer; and
  - (c) if the transferee is a CATSI corporation—be accompanied by evidence satisfactory to the Minister of the matters mentioned in section 82J(1)(c).

### **‘82J Minister’s approval to transfer**

- ‘(1) The Minister may give an approval to transfer the land only if satisfied—
  - (a) if the transferor is a land trust—at least 75% of the transferor’s members present at a general meeting of the transferor, agree to the transfer of—
    - (i) the land; and
    - (ii) the assets and liabilities of the transferor that will become the assets and liabilities of the transferee; and
  - (b) if the transferee is a land trust—at least 75% of the transferee’s members present at a general meeting of the transferee, agree to the transfer of—

- 
- (i) the land; and
  - (ii) the assets and liabilities of the transferor that will become the assets and liabilities of the transferee; and
- (c) if the transferee is a CATSI corporation—
- (i) the transferee agrees to the transfer; and
  - (ii) the transferee is qualified to hold the land; and
- (d) it is appropriate in the circumstances to transfer the land.
- ‘(2) If the Minister gives an approval to transfer the land, the chief executive must notify the approval by gazette notice.
- ‘(3) The gazette notice must—
- (a) include all of the following—
    - (i) the name of the transferor;
    - (ii) a description of the land being transferred;
    - (iii) details of each registered interest in the land being transferred;
    - (iv) a description of all Aboriginal land, if any, that will be held by the transferor after the transfer;
    - (v) the name of the transferee;
    - (vi) a description of all Aboriginal land that will be held by the transferee after the transfer; and
  - (b) if the transferor is a land trust that is dissolved under section 82H(3)(d)(i) because of the transfer—state the land trust will be dissolved.
- ‘(4) In this section—

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

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

[s 61]

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### **‘82K Effect of gazette notice about transfer**

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

## **‘Subdivision 2 Land held by CATSI corporation**

### **‘82L Application of sdiv 2**

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

### **‘82M Transfer of Aboriginal land**

- ‘(1) The trustee of the Aboriginal land (the *transferor*) may transfer all or a part of the land only—
  - (a) with the Minister’s written approval; and
  - (b) to another CATSI corporation that is qualified to hold the land (the *transferee*).
- ‘(2) However, the trustee may transfer all or a part of the land to a CATSI corporation that is a registered native title body corporate only if—
  - (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
  - (b) the registered native title body corporate is registered on the National Native Title Register for the determination.
- ‘(3) The transferee holds the land for—
  - (a) the native title holders of the land, if—

- 
- (i) the transferee is a registered native title body corporate; and
  - (ii) the transferor and the transferee agree it is to be held for the native title holders; or
- (b) otherwise—
- (i) the benefit of the Aboriginal people particularly concerned with the land and their ancestors and descendants if the land is transferred land; or
  - (ii) the benefit of the group of Aboriginal people and their ancestors and descendants if the land is granted land.

#### **‘82N Application for approval to transfer**

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

#### **‘82O Minister’s approval to transfer**

- ‘(1) The Minister may give an approval to transfer the land only if satisfied—
  - (a) the transferee agrees to the transfer; and
  - (b) the transferee is qualified to hold the land; and
  - (c) it is appropriate in the circumstances to transfer the land.
- ‘(2) If the Minister gives an approval to transfer the land, the chief executive must notify the approval by gazette notice.
- ‘(3) The gazette notice must include all of the following—
  - (a) the name of the transferor;
  - (b) a description of the land being transferred;
  - (c) the name of the transferee.
- ‘(4) In this section—

[s 61]

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

#### **‘82P Effect of gazette notice about transfer**

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

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

#### **‘82Q Exemption**

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

### **‘Division 5 Land in Cape York Peninsula Region**

#### **‘82R Dealing with Aboriginal land in Cape York Peninsula Region**

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

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

## ‘Division 6            Other matters

### ‘82S    **Trustee to advise chief executive of change to description of land**

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

### ‘82T    **Particular dealings in Aboriginal land void**

- ‘(1) A grant, transfer or other creation of an interest in Aboriginal land in contravention of this part or part 5AB is void.

*Note—*

See also section 82B.

- ‘(2) Subsection (1) does not apply to a registered interest.

### ‘82U    **Provision about resumption of Aboriginal land etc.**

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

[s 61]

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- ‘(3) To remove any doubt, it is declared that, for taking an interest in Aboriginal land under the Acquisition Act, the Aboriginal land is land as defined in that Act.
- ‘(4) Subsection (1) has effect despite any other Act, whether enacted before or after the commencement of this section.
- ‘(5) In this section—
- relevant purpose* means any purpose for which land may be taken under the Acquisition Act by a constructing authority, other than a purpose under—
- (a) the *Geothermal Energy Act 2010*; or
  - (b) the *Greenhouse Gas Storage Act 2009*; or
  - (c) the *Petroleum and Gas (Production and Safety) Act 2004*; or
  - (d) the *State Development and Public Works Organisation Act 1971*.

## ‘82V Devolution of granted land

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

that exceptional circumstances exist that require the Minister to do otherwise, must have regard to—

- (a) any Aboriginal tradition applicable to the land; and
- (b) the views of the Aboriginal people to the extent they are not inconsistent with the Aboriginal tradition.

‘(6) Subsection (2) applies despite any other Act.

## ‘Part 5AB Leasing of Aboriginal Land

### ‘Division 1 Grant of leases for Aboriginal land

#### ‘82W Grant of lease for Aboriginal land

- ‘(1) The trustee of Aboriginal land may grant a lease over all or a part of the land only if—
- (a) the lease is for not more than 99 years and is granted to—
    - (i) an Aborigine; or
    - (ii) the State; or
    - (iii) another person; or
  - (b) the lease is a perpetual lease granted to a local government over land that is township land.
- ‘(2) A lease mentioned in subsection (1)(a) is a *standard lease*.
- ‘(3) A lease mentioned in subsection (1)(b) is a *townsite lease*.
- ‘(4) Despite subsection (1)(a)(i)—
- (a) a person who is not an Aborigine may be a party to a lease granted under the subsection if—
    - (i) the lease is for private residential purposes; and
    - (ii) the person is the spouse of an Aborigine; and

[s 61]

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

## **‘Division 2                    Standard leases**

### **‘Subdivision 1            Restrictions on grant of standard leases**

#### **‘82X    Restrictions on grant of standard lease to an Aborigine**

- ‘(1) This section applies to standard lease under section 82W(1)(a)(i).
- ‘(2) If the lease is for more than 30 years it may be granted only—
  - (a) for private residential purposes; or
  - (b) with the Minister’s prior written consent, for another purpose.
    - Examples of another purpose for paragraph (b)—*
      - a commercial purpose or providing public infrastructure
- ‘(3) The Minister may consent to the grant of the lease for another purpose under subsection (2)(b) only if—
  - (a) having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the trustee holds the land; and
  - (b) for a lease for a commercial purpose—the lease is granted over an entire lot as shown in the appropriate register.

*Note—*

For a lease for more than 30 years and for a commercial purpose, also see section 82YC.

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**‘82Y Restrictions on grant of standard lease to State**

- ‘(1) This section applies to a standard lease under section 82W(1)(a)(ii).
- ‘(2) If the lease is for more than 30 years it may be granted only—
- (a) for a following purpose—
    - (i) a purpose under the *Housing Act 2003*;
    - (ii) providing public infrastructure;
    - (iii) providing residential accommodation for public service employees or police officers; or
  - (b) with the Minister’s prior written consent, for another purpose.  
*Example of another purpose for paragraph (b)—*  
a commercial purpose
- ‘(3) The Minister may consent to the grant of the lease for another purpose under subsection (2)(b) only if—
- (a) having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the trustee holds the land; and
  - (b) for a lease for a commercial purpose—the lease is granted over an entire lot as shown in the appropriate register.

**‘82YA Restrictions on grant of standard lease to another person**

- ‘(1) This section applies to a standard lease under section 82W(1)(a)(iii).
- ‘(2) The lease may be granted for a private residential purpose only if the lease supports a standard lease granted to the person for a commercial purpose.
- ‘(3) If the lease is for more than 10 years it may be granted only with the Minister’s prior written consent unless the lease is for—

[s 61]

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- (a) a commercial purpose and for not more than 30 years; or
  - (b) a private residential purpose to support a lease for a commercial purpose.
- ‘(4) The Minister may consent to the grant of the lease only if—
- (a) having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the trustee holds the land; and
  - (b) for a lease for more than 30 years and for a commercial purpose—the lease is granted over an entire lot as shown in the appropriate register.

## **‘Subdivision 2 Requirements for Minister’s consent**

### **‘82YB General requirements for Minister’s consent**

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

- 
- (c) other information or documents reasonably required by the Minister to show the purpose of the lease.
- ‘(3) In considering whether to give consent to the grant of a standard lease, the Minister—
- (a) must have regard to the information or documents given to the Minister under subsection (1) or (2); and
  - (b) may have regard to other information the Minister considers relevant to the proposed lease.
- ‘(4) Before giving consent to the grant of a standard lease for more than 30 years, the Minister must be satisfied—
- (a) the trustee has complied with section 82B(1)(a) for the lease; and
  - (b) the Aboriginal people particularly concerned with the lease land are generally in agreement with the grant of the lease.

**‘82YC Requirement for Minister’s consent for standard lease for commercial purpose**

- ‘(1) Before the Minister consents to the grant of a standard lease for more than 30 years for a commercial purpose, the Minister must—
- (a) obtain an independent assessment of—
    - (i) the business plan and evidence given to the Minister under section 82YB(2)(a) and (b); and
    - (ii) the proposed lessee’s financial and managerial capabilities; and
  - (b) be satisfied, having regard to the independent assessment, that—
    - (i) any proposed development under the lease will be commercially viable; and
    - (ii) the evidence given under section 82YB(2)(b) satisfactorily shows that an appropriate return on the investment for the purpose of the lease can not

[s 61]

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

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

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

**'82YD Requirement for Minister's consent for creation of interest under a standard lease**

- '(1) This section applies if, under section 82YT, an interest under a standard lease may be created only with the Minister's written consent.
- '(2) The Minister may consent to the creation of the interest only if—
- (a) having regard to the nature of the interest, the Minister is satisfied the creation of the interest is for the benefit of persons for whom the trustee holds the lease land; and
- (b) if the lease is for more than 30 years—
- (i) the interest is consistent with the purpose for which the lease was granted; or
- (ii) the interest would not diminish the purpose for which the lease was granted.
- '(3) A person seeking the Minister's consent must give the Minister the information or documents relevant to the proposed interest reasonably required by the Minister, including, for example, information or documents to show that the creation of the interest is for the benefit of persons for whom the trustee holds the lease land.

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**‘Division 3                    Townsite leases**

**‘Subdivision 1            Restriction on grant of townsite leases**

**‘82YE Minister’s consent for grant of townsite lease**

- ‘(1) A townsite lease may be granted only with the Minister’s prior written consent.
- ‘(2) The Minister may consent to the grant of a townsite lease only if—
  - (a) the lease is over an entire lot as shown in the appropriate register; and
  - (b) the Minister is satisfied that any existing interests in the lease land that is to be a town site under the lease are not inconsistent with the lease.

**‘Subdivision 2            Requirements for Minister’s consent**

**‘82YF General requirements for Minister’s consent**

- ‘(1) A person seeking the Minister’s consent to the grant of a townsite lease must give the Minister the information or documents reasonably required by the Minister to show—
  - (a) the purpose of the lease; and
  - (b) the grant of the lease is for the benefit of persons for whom the trustee holds the lease land; and
  - (c) the grant of the lease—
    - (i) will facilitate the continued operation of a township on the lease land; and

[s 61]

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- (ii) will not prevent residents of the township land from continuing to live on and access the land, or from obtaining tenure over the land under this Act.
- ‘(2) In considering whether to give consent to the grant of a townsite lease, the Minister—
  - (a) must have regard to the information or documents given to the Minister under subsection (1); and
  - (b) may have regard to other information the Minister considers relevant to the proposed lease.
- ‘(3) Before giving consent to the grant of a townsite lease, the Minister must be satisfied—
  - (a) the trustee has complied with section 82B(1)(a) for the lease; and
  - (b) the Aboriginal people particularly concerned with the lease land are generally in agreement with the grant of the lease; and
  - (c) the grant of the lease—
    - (i) will facilitate the continued operation of a township on the lease land; and
    - (ii) will not prevent residents of the township land from continuing to live on and access the land, or from obtaining tenure over the land under this Act.

### **‘Subdivision 3 Provisions about dealing with townsite leases**

#### **‘82YG Transfer or amendment of townsite lease**

- ‘(1) A townsite lease must not be transferred or amended without—
  - (a) the agreement of both the trustee and the lessee of the lease land; and
  - (b) the Minister’s prior written consent.

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- ‘(2) A person seeking the Minister’s consent to the transfer or amendment of a townsite lease must give the Minister the information or documents relevant to the proposed transfer or amendment reasonably required by the Minister.
  - ‘(3) In considering whether to consent to the transfer of a townsite lease, the Minister must consider whether the proposed transferee can comply with the conditions of the lease.
  - ‘(4) The Minister may consent to the amendment of a townsite lease only if satisfied—
    - (a) the amendment does not significantly change the conditions of the townsite lease; and
    - (b) the amendment will not diminish the purpose of the lease.
  - ‘(5) A townsite lease must not be transferred to a person who, under this Act, would not be entitled to a grant of the lease.

**‘82YH Townsite lease and transfer, amendment or surrender of lease to be registered**

- ‘(1) A townsite lease, and any transfer, amendment or surrender of a townsite lease, must be registered.
- ‘(2) Despite the Land Title Act, section 65(2), the instrument of lease for a townsite lease must include a plan of survey identifying the lease land.

**‘82YI Surrender of townsite lease**

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

**‘82YJ No forfeiture of townsite lease**

‘A townsite lease can not be forfeited.

[s 61]

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

### **‘82YK Lessee of townsite lease taken to be lessor of existing leases**

- ‘(1) Subsection (2) applies if a townsite lease is granted over Aboriginal land that is, immediately before the grant of the townsite lease, the subject of a following lease (each a *continued lease*)—
- (a) a lease granted under the Land Holding Act;
  - (b) a lease under the Land Act;
  - (c) a trustee (Aboriginal) lease.
- ‘(2) On the grant of the townsite lease—
- (a) the continued lease continues in force and is taken to be a townsite sublease; and
  - (b) the lessee for the townsite lease is substituted for the lessor as a party to the continued lease.

*Note—*

Under section 33(2) the trustee of the Aboriginal land is the lessor of the continued lease.

- ‘(3) Section 33(3) applies for the continued lease as if the reference in that subsection to the trustee of the land were a reference to the lessee of the townsite lease.
- ‘(4) Subsection (5) applies if lease land for a townsite lease—
- (a) is Aboriginal land that was Aurukun Shire lease land or Mornington Shire lease land; and
  - (b) is the subject of a sublease under a lease granted under the *Aurukun and Mornington Shire Leases Act 1978*.
- ‘(5) On the grant of the townsite lease—
- (a) a sublease mentioned in subsection (4)(b) continues in force and is taken to be a townsite sublease; and

- (b) the lessee for the townsite lease is substituted for the lessor as a party to the townsite sublease.

## **‘Division 4           Townsite subleases**

### **‘Subdivision 1       Grant of subleases under townsite lease**

#### **‘82YL Grant of sublease**

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

[s 61]

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## **‘Subdivision 2 Requirements about grants of subleases under townsite leases**

### **‘82YM Restrictions on grant of townsite sublease to an Aborigine**

- ‘(1) This section applies to a townsite sublease under section 82YL(2)(a).
- ‘(2) If the sublease is for more than 30 years, it may be granted only—
  - (a) for private residential purposes; or
  - (b) with the Minister’s prior written consent, for another purpose.

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

a commercial purpose or providing public infrastructure

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

*Note—*

For a lease for more than 30 years and for a commercial purpose, also see section 82YQ.

### **‘82YN Restrictions on grant of townsite sublease to State**

- ‘(1) This section applies to a townsite sublease under section 82YL(2)(b).
- ‘(2) If the sublease is for more than 30 years it may be granted only—

- 
- (a) for a following purpose—
    - (i) a purpose under the *Housing Act 2003*;
    - (ii) providing public infrastructure;
    - (iii) providing residential accommodation for public service employees or police officers; or
  - (b) with the Minister’s prior written consent, for another purpose.

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

a commercial purpose

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

### **‘82YO Restrictions on grant of townsite sublease to another person**

- ‘(1) This section applies to a townsite sublease under section 82YL(2)(c).
- ‘(2) The sublease may be granted for a private residential purpose only if the sublease supports a sublease granted to the person for a commercial purpose.
- ‘(3) If the sublease is for more than 10 years it may be granted only with the Minister’s prior written consent unless the sublease is for—
  - (a) a commercial purpose and for not more than 30 years; or
  - (b) a private residential purpose to support a sublease for a commercial purpose.

[s 61]

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

### **‘Subdivision 3 Requirements for Minister’s consent**

#### **‘82YP General requirements for Minister’s consent**

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

- 
- (c) other information or documents reasonably required by the Minister to show the purpose of the sublease.
- ‘(3) In considering whether to give consent to the grant of a townsite sublease, the Minister—
- (a) must have regard to the information or documents given to the Minister under subsection (1) or (2); and
  - (b) may have regard to other information the Minister considers relevant to the proposed sublease.
- ‘(4) Before giving consent to the grant of a townsite sublease for more than 30 years, the Minister must be satisfied the grant of the sublease will not diminish the purpose for which the townsite lease was granted.

**‘82YQ Requirement for Minister’s consent for townsite sublease for commercial purpose**

- ‘(1) Before the Minister consents to the grant of a townsite sublease for more than 30 years for a commercial purpose, the Minister must—
- (a) obtain an independent assessment of—
    - (i) the business plan and evidence given to the Minister under section 82YP(2)(a) and (b); and
    - (ii) the proposed sublessee’s financial and managerial capabilities; and
  - (b) be satisfied, having regard to the independent assessment, that—
    - (i) any proposed development under the sublease will be commercially viable; and
    - (ii) the evidence given under section 82YP(2)(b) satisfactorily shows that an appropriate return on the investment for the purpose of the sublease can not be obtained under a sublease for not more than 30 years; and

[s 61]

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- (iii) the proposed sublessee's financial and managerial capabilities are appropriate for carrying out any proposed development under the lease.
- '(2) The proposed sublessee must pay the cost of the independent assessment.
- '(3) The cost is not refundable.

**'82YR Requirement for Minister's consent for creation of interest under a townsite sublease**

- '(1) This section applies if, under section 82YT, an interest under a townsite sublease may be created only with the Minister's written consent.
- '(2) The Minister may consent to the creation of the interest only if—
  - (a) the interest is consistent with the purpose for which the townsite lease was granted; or
  - (b) the interest would not diminish the purpose for which the townsite lease was granted.
- '(3) A person seeking the Minister's consent must give the Minister the information or documents relevant to the proposed interest reasonably required by the Minister, including, for example, information or documents to show that the creation of the interest would not diminish the purpose for which the townsite lease was granted.

**'Division 5 Common provisions for standard leases and townsite subleases**

**'Subdivision 1 Preliminary**

**'82YS Definitions for div 5**

'In this division—

*lease* means—

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

*lessor* means—

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

## **‘Subdivision 2      Conditions of leases**

### **‘82YT Conditions of leases—general**

- ‘(1) A lease is subject to a condition that an interest, other than a mortgage of the lease, for a term of more than 10 years may be created under the lease only with the Minister’s prior written consent.

*Note—*

For requirements for the Minister’s consent, see sections 82YD and 82YR.

- ‘(2) Despite subsection (1)—
- (a) an interest under a lease granted under section 82W(1)(a)(i) or 82YL(2)(a) may be created without the Minister’s prior written consent if the interest is in favour of—
    - (i) an Aborigine; or
    - (ii) another person who is not an Aborigine if the person is the spouse, or former spouse, of an Aborigine or of an Aborigine who is deceased; and
  - (b) an interest under another lease may be created without the Minister’s prior written consent if, under this part, the grant of the lease did not require the consent of the Minister.

- ‘(3) A lease may include a condition that—

[s 61]

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- (a) a stated standard terms document under the Land Title Act forms part of the lease; or
  - (b) the lease must not be transferred without the lessor's prior written consent; or
  - (c) an interest under the lease, other than a mortgage of the lease, must not be created without the lessor's prior written consent.
- '(4) If a lease includes a condition mentioned in subsection (3)(b) or (c), the lessor must not unreasonably withhold consent to the transfer or creation of an interest under the lease.
- '(5) A lease may be mortgaged without the consent of the Minister or the lessor.
- '(6) Subject to subsection (5), this section does not limit the conditions that may be imposed on a lease.

### **'82YU Leases for private residential purposes—general conditions and requirements**

- '(1) A lease granted for private residential purposes is subject to all of the following conditions—
- (a) if the lease is granted under section 82W(1)(a)(i) or 82YL(2)(a)—
    - (i) it must be for 99 years; and
    - (ii) the annual rental under the lease is the amount, of not more than \$1, decided by the lessor; and
    - (iii) the consideration payable for the lease must include, as a lump sum payment, an amount equal to the value of the lease land as decided by the lessor using at least 1 of the following—
      - (A) a valuation methodology decided by the chief executive;
      - (B) the benchmark purchase price, as prescribed under a regulation, for land in the part of the State in which the lease land is situated; and

- (iv) the lease land must be used primarily for private residential use;
  - (b) if a private residential premises is not situated on the lease land when the lease is granted—the lessee must ensure a private residential premises is built on the land within 8 years after the lease is granted;
  - (c) an interest may be created under the lease only if the interest is a residential tenancy or a mortgage of the lease.
- ‘(2) A lessor may grant a lease under section 82W(1)(a)(i) or 82YL(2)(a) for private residential purposes only if the amount mentioned in subsection (1)(a)(iii) has been paid to the lessor.
- ‘(3) The chief executive—
- (a) must, if requested, give a person a copy of the valuation methodology mentioned in subsection (1)(a)(iii); and
  - (b) may make the valuation methodology available for inspection on the department’s website.

**‘82YV Leases for private residential purposes—particular requirements if dwelling situated on land**

- ‘(1) This section applies if—
- (a) a lessor proposes to grant a lease for private residential purposes; and
  - (b) a dwelling is situated on the land the subject of the proposed lease.
- ‘(2) The lessor must give the housing chief executive written notice of the lessor’s intention to grant the lease.
- ‘(3) Within 28 days after receiving the notice, the housing chief executive must give the lessor a written notice stating whether the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
- ‘(4) The lessor must not grant the lease before receiving the housing chief executive’s notice under subsection (3).

[s 61]

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- ‘(5) Subsections (6) to (10) apply if the notice states the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
- ‘(6) The lessor must, before the lease is granted, decide the value of the dwelling by using a valuation methodology agreed between the lessor and the housing chief executive.
- ‘(7) The consideration payable for the lease must include, as a lump sum payment, an amount equal to the value of the dwelling decided under subsection (6).
- ‘(8) The lessor may grant the lease only—
  - (a) with the written approval of the housing chief executive; and
  - (b) if the amount mentioned in subsection (7) has been paid to the lessor.
- ‘(9) In considering whether to give an approval, the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be used to provide subsidised housing for residential use.
- ‘(10) If the lessor grants the lease, the lessor must, within 28 days after the lease is registered, give the housing chief executive—
  - (a) a written notice stating—
    - (i) the day the lease was registered; and
    - (ii) the names of the parties to the lease; and
  - (b) evidence showing the amount mentioned in subsection (7) for the dwelling was paid to the lessor; and
  - (c) evidence showing the amount decided by the lessor under section 82YU(1)(a)(iii) for the lease land was paid to the lessor.

*Note—*

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

- ‘(11) This section does not limit section 82YU.
- ‘(12) In this section—

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

### **‘82YW Option to renew particular lease or sublease**

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

### **‘Subdivision 3 Provisions about transfer, amendment or surrender of leases**

#### **‘82YX Transfer or amendment of lease or sublease**

- ‘(1) A lease or a sublease of a lease must not be transferred or amended without—
  - (a) if, under a condition of the lease, the transfer or amendment of the lease or sublease requires the consent of the lessor—the lessor’s prior written consent; and
  - (b) if, under this part, the grant of the lease or sublease requires the consent of the Minister—the Minister’s prior written consent.
- ‘(2) A person seeking the Minister’s consent to the transfer or amendment of a lease or sublease must give the Minister the information or documents relevant to the proposed transfer or amendment reasonably required by the Minister.
- ‘(3) In considering whether to consent to the transfer of a lease or sublease, the Minister must consider whether the proposed transferee can comply with the conditions of the lease.
- ‘(4) The Minister may consent to the amendment of a lease or sublease only if the Minister is satisfied—
  - (a) the amendment does not significantly change the conditions of the lease or sublease; and

[s 61]

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- (b) the amended lease or sublease—
  - (i) for a standard lease—is for the benefit of persons for whom the trustee holds the land; or
  - (ii) for a townsite sublease—will not diminish the purpose of the relevant townsite lease.
- ‘(5) Before the Minister consents to the transfer of a lease for more than 30 years for a commercial purpose, the Minister must—
  - (a) obtain an independent assessment of the proposed transferee’s financial and managerial capabilities; and
  - (b) be satisfied, having regard to the independent assessment, that the proposed transferee’s financial and managerial capabilities are appropriate for complying with the conditions of the lease.
- ‘(6) The proposed transferee must pay the cost of the independent assessment.
- ‘(7) The cost is not refundable.
- ‘(8) A lease or sublease of a lease must not be transferred to a person who, under this Act, would not be entitled to a grant of the lease.

**‘82YY Lease, sublease and particular dealings to be registered**

- ‘(1) All leases, and any sublease of a lease or transfer, amendment or surrender of a lease or sublease, must be registered.
- ‘(2) Despite the Land Title Act, section 65(2), an instrument of lease for Aboriginal land, must include a plan of survey identifying the lease land.
- ‘(3) Subsection (2) does not apply to a lease entered into only in relation to an area completely within a building.

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**‘Division 6                    Forfeiture and renewal of residential leases**

**‘Subdivision 1            Preliminary**

**‘82YZ Definitions for div 6**

‘In this division—

*lessee* means—

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

*lessor* means—

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

*residential lease* means—

- (a) a standard lease granted under section 82X(1)(a)(i) for private residential purposes; or
- (b) a townsite sublease granted under section 82YN(2)(a) for private residential purposes.

**‘82Z Application of div 6**

‘This division applies to all residential leases.

[s 61]

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## **‘Subdivision 2      Forfeiture**

### **‘82ZA Grounds for forfeiture**

- ‘(1) A residential lease may be forfeited only if—
- (a) the lessee breaches a relevant condition of the lease and fails to remedy the breach within 6 months after receiving written notice of the breach from the lessor; or
  - (b) the lessee acquired the lease by fraud.
- ‘(2) In this section—
- relevant condition*, of a residential lease, means—
- (a) a condition of the lease mentioned in section 82YU(1)(b); or
  - (b) another condition, if the lessor reasonably considers a breach of the condition is of a serious nature and warrants forfeiture of the lease.

### **‘82ZB Referral to Land Court for forfeiture**

- ‘(1) Before the residential lease is forfeited, the lessor must refer the matter to the Land Court to decide whether the lease may be forfeited.
- ‘(2) The lessor must give the lessee, and any mortgagee of the lease, at least 28 days written notice of the lessor’s intention to refer the matter to the Land Court.
- ‘(3) The notice must state the grounds on which the lessor considers the lease may be forfeited.
- ‘(4) In deciding whether the lease may be forfeited, the Land Court must have regard to—
- (a) the stated grounds; and
  - (b) if the lease is proposed to be forfeited because of a breach of a condition of the lease—whether the court considers the breach is of a serious nature and warrants forfeiture of the lease.

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- ‘(5) The lessor must file a copy of the notice in the Land Court when the lessor refers the matter to the court.

**‘82ZC Lessor’s options if Land Court decides residential lease may be forfeited**

‘If the Land Court decides the residential lease may be forfeited, the lessor may—

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

**‘82ZD Notice and effect of forfeiture**

- ‘(1) If the lessor forfeits the residential lease, the lessor must, within 60 days after receiving notice of the Land Court’s decision about forfeiture of the lease, give written notice that the lease is forfeited to—
- (a) the lessee and any mortgagee of the lease; and
  - (b) the registrar of titles.
- ‘(2) On receiving the notice, the registrar must record the forfeiture of the lease in the appropriate register.
- ‘(3) The forfeiture of the lease takes effect on the day the registrar acts under subsection (2).
- ‘(4) On forfeiture of the lease—
- (a) the lease ends; and
  - (b) the lessee is divested of any interest in the lease; and
  - (c) any person occupying the lease land must immediately vacate the land.

[s 61]

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### **‘82ZE Extension of term of lease—referral for forfeiture**

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

## **‘Subdivision 3 Renewal**

### **‘82ZF Notice of expiry of lease**

- ‘(1) This section applies if the lessee under a residential lease has not, under section 82ZG, applied for renewal of the lease at least 1 year before the term of the lease ends.
- ‘(2) The lessor must, as soon as practicable, give the lessee written notice stating—
  - (a) the day the term of the lease ends; and
  - (b) that the lessee may apply under this subdivision for renewal of the lease and how the lessee may apply.

### **‘82ZG Application to renew lease**

- ‘(1) The lessee under a residential lease may apply in writing to the lessor to renew the lease.

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- ‘(2) The application must be made not more than 2 years before the term of the lease ends.
  - ‘(3) The application must—
    - (a) state the name of the lessee; and
    - (b) include information to identify the lease.

### **‘82ZH Lessor to consider and decide application**

‘The lessor must, within 6 months after an application is made under section 82ZG, consider the application and decide to renew or not to renew the residential lease.

### **‘82ZI Decision to renew lease**

- ‘(1) If the lessor decides to renew the residential lease, the lessor must give the lessee—
  - (a) written notice of the decision; and
  - (b) a copy of the renewed lease.
- ‘(2) The renewed lease—
  - (a) must be for the same term as the lease it replaces (the *replaced lease*); and
  - (b) has effect immediately after the replaced lease ends; and
  - (c) is subject to all the conditions to which the replaced lease was subject immediately before it ended.
- ‘(3) No amount is payable under section 82YU(1)(a)(iii) for the renewed lease.
- ‘(4) Also, section 82YV does not apply for the renewal of the lease.

### **‘82ZJ Lessor may decide not to renew lease**

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

[s 61]

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### **‘82ZK Notice to lessee about decision not to renew lease**

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

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

### **‘82ZL Extension of term of lease—application for renewal**

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

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

### **‘82ZM Right to remove improvements if residential lease forfeited or not renewed**

- ‘(1) If the lessor forfeits or decides not to renew the residential lease, the lessor must allow the lessee to remove the lessee’s improvements on the lease land within a reasonable period decided by the lessor.

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

**‘82ZN Payment by lessor for forfeited or non-renewed residential lease**

- ‘(1) If the lessor forfeits or decides not to renew the residential lease, the lessor must pay to the person who was the lessee the amount worked out under subsection (2) (the *required amount*).
- ‘(2) The required amount is the amount equal to the combined value of the following (the *maximum amount*) less any amounts deducted from the maximum amount under section 82ZP—
- (a) the value of the lease land on the day the lease is forfeited or ends;
  - (b) the value of the lessee’s improvements on the land that become the property of the lessee.
- ‘(3) The value of the lease land is the amount as decided by the lessor using the valuation methodology mentioned in section 82YU(1)(a)(iii).
- ‘(4) The value of any improvements on the lease land must be assessed as the market value of the improvements in a sale of a lease of the same term and tenure as the forfeited or non-renewed lease.
- ‘(5) Subject to subsections (3) and (4), the lessor must decide the required amount.
- ‘(6) The lessor must decide the required amount as soon as practicable after giving the person notice that the lease is forfeited or not renewed.
- ‘(7) On deciding the required amount, the lessor must give the person written notice of the decision.
- ‘(8) The notice must state—
- (a) the required amount; and

[s 61]

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- (b) that the person may appeal to the Land Court against the decision within 28 days after receiving the notice; and
  - (c) how the person may appeal.
- ‘(9) This section is subject to section 82ZO.

### **‘82ZO Unclaimed amounts**

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

### **‘82ZP Amounts owing to lessor or mortgagee to be deducted**

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

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

### **‘82ZQ Payment of amount to mortgagee in discharge of mortgage**

- ‘(1) This section applies if the lessor forfeits or decides not to renew the lease and, under a mortgage of the lease, an amount is owing to a mortgagee of the lease by the person who was the lessee.

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- ‘(2) The lessor must pay to the mortgagee—
- (a) if the amount that may be deducted from the maximum amount under section 82ZP(d) is less than the difference between the maximum amount and the amounts deducted under section 82ZP(a), (b) or (c)—the amount that may be deducted from the maximum amount under section 82ZP(d); or
  - (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 82ZP(a), (b) or (c).
- ‘(3) The lessor must pay the amount payable under subsection (2) to the mortgagee—
- (a) if no appeal is made to the Land Court about the required amount payable to the person who was the lessee—within 28 days after the time for making an appeal ends; or
  - (b) if an appeal is made to the Land Court about the required amount—within 28 days after the appeal is finally decided.
- ‘(4) If the lessor pays an amount to the mortgagee in relation to a mortgage of the lease, the mortgagee must use the amount in discharge of the mortgage.

## ‘Division 7                      Miscellaneous

### ‘82ZR Effect of option to renew or extend on calculation of term of leases

- ‘(1) This section applies to a lease granted for an initial term of—
- (a) not more than 10 years; or
  - (b) at least 10 years but not more than 30 years.
- ‘(2) For the purposes of section 82B and this part, the lease is taken to be a lease for more than 10 years or more than 30 years if the lease includes an option to renew or extend the

[s 61]

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lease that, if exercised, would extend the term of the lease for more than 10 years or more than 30 years.

‘(3) In this section—

*lease* means a standard lease or a townsite sublease.

### **‘82ZS Exemption from fees and charges**

‘(1) This section applies to an instrument of lease for a residential lease.

‘(2) No fee or charge is payable for—

- (a) the lodgement and registration of the instrument in the land registry; or
- (b) the provision by the registrar of titles of other services for the lodgement and registration of the instrument.

### **‘82ZT Leases for private residential purposes—beneficiary**

‘(1) A person who is beneficially entitled under a will to a residential lease may ask the lessor—

- (a) to give the person a written notice stating whether or not the person is entitled to a grant of the lease under this Act; and
- (b) if, under a condition of the lease, the lease can not be transferred without the lessor’s written consent—for written notice of the lessor’s consent to the transfer of the lease.

*Note—*

Under section 82YT, the lease may include a condition that it must not be transferred without the lessor’s prior written consent.

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

**62 Amendment of s 83F (Entering into indigenous management agreement)**

- (1) Section 83F(1)(a), ‘a land trust or registered native title body corporate hold’—

*omit, insert—*

‘an entity holds’.

- (2) Section 83F(1)(b) and (2), ‘land trust or registered native title body corporate’—

*omit, insert—*

‘entity’.

**63 Amendment of s 83G (Requirements for indigenous management agreement)**

Section 83G(1)(f), ‘grantees of the land’—

*omit, insert—*

‘trustee’.

**64 Amendment of s 83I (Recording of indigenous management agreement)**

Section 83I(6)(a)—

*omit, insert—*

‘(a) each entity that is from time to time the trustee for the land, whether or not the entity entered into the agreement or agreed to any amendment of the agreement; and’.

**65 Amendment of s 83N (Decision making by trustee)**

- (1) Section 83N, heading, ‘Decision making’—

*omit, insert—*

‘**Decision-making**’.

- (2) Section 83N(2)—

[s 66]

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*omit, insert—*

- ‘(2) The trustee must—
- (a) have regard to—
    - (i) if the Aboriginal people for whom the trustee holds the land have agreed on a decision-making process for decisions of that kind—the process; or
    - (ii) if subparagraph (i) does not apply—any Aboriginal tradition, for decisions of that kind, of the Aboriginal people for whom the trustee holds the land; or
  - (b) if there is no decision-making process mentioned in paragraph (a)(i) or relevant Aboriginal tradition—make the decision under a process of decision-making agreed to and adopted by the trustee for the decision or for decisions of that kind.’.

**66 Replacement of pt 5E (Provisions about mortgages of leases over Aboriginal land)**

Part 5E—

*omit, insert—*

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

**‘Division 1 Preliminary**

**‘830A Definitions for pt 5E**

‘In this part—

*lease* means—

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

*lessor* means—

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

### **‘830 Application of pt 5E**

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

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

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

- ‘(1) This section applies if a mortgagee enters into possession of a lease granted over Aboriginal land.
- ‘(2) The mortgagee must give the lessor for the lease written notice of the fact within 28 days after entering into possession.
- ‘(3) The mortgagee must arrange to sell the lease within—
  - (a) 4 years after entering into possession of the lease; or
  - (b) the longer period agreed in writing between the mortgagee and lessor.
- ‘(4) For subsection (3)(b)—
  - (a) the period mentioned in subsection (3)(a) may be extended or further extended for not more than 2 years at a time; and
  - (b) an extension or further extension of the period must be agreed in writing before the period or further extended period would otherwise have ended.

[s 66]

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- ‘(5) In considering whether to agree to an extension or further extension, the lessor must have regard to the measures the mortgagee has already taken to sell the lease.
- ‘(6) If the mortgagee does not sell the lease within the period mentioned in subsection (3), the lessor may sell the lease.
- ‘(7) The mortgagee or lessor may sell the lease only to a person who, under this Act, would be entitled to a grant of the lease.
- ‘(8) The lessor must not sell the lease for less than—
  - (a) the amount owing to the mortgagee by the lessee under the mortgage on the day the lease is sold; or
  - (b) if the lessor and the mortgagee agree the lease may be sold for an amount less than the amount mentioned in paragraph (a)—the agreed amount.
- ‘(9) In this section—
  - lessee* means—
    - (a) for a standard lease—the lessee under the lease; or
    - (b) for a townsite sublease—the sublessee under the sublease.

### ‘83Q How lessor deals with proceeds of sale

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

**67 Amendment of s 83R (Definitions for pt 5F)**

- (1) Section 83R, definition *Aboriginal trust land*, paragraph (d), ‘reserve for’—  
*omit, insert—*  
‘reserve for Aboriginal purposes or’.
- (2) Section 83R, definition *trustee (Aboriginal) lease*, from ‘under’—  
*omit, insert—*  
‘under—
  - (a) part 5AB as applied under section 83T(2); or
  - (b) the Land Act, section 57 before the commencement of this part.’.

**68 Amendment of s 83T (Trustee (Aboriginal) leases)**

- (1) Section 83T(1) and (5), ‘part 3, division 2, subdivision 3’—  
*omit, insert—*  
‘part 5AB’.
- (2) Section 83T(2)(a), ‘transferred land’—  
*omit, insert—*  
‘Aboriginal land’.
- (3) Section 83T(2)(c), ‘section 40F(4)(a) to section 40(1)(a)’—  
*omit, insert—*  
‘section 82YB(4)(a) to section 82B(1)(a)’.
- (4) Section 83T(2)(d), ‘section 40H(3)(a)’—  
*omit, insert—*  
‘section 82YT(3)(a)’.
- (5) Section 83T(2)(e)—  
*omit.*
- (6) Section 83T(7), definition *relevant provisions*—

[s 69]

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*omit, insert—*

*‘relevant provisions* means section 82C and part 5AB, divisions 1 to 6.’.

**69 Amendment of s 83U (Amending trustee (Aboriginal lease))**

Section 83U(2), definition *term*, paragraph (a)—

*omit, insert—*

‘(a) the renewal of the lease; or’.

**70 Insertion of new pt 5G**

After section 83Y—

*insert—*

**‘Part 5G Special provisions about prescribed DOGIT land and prescribed reserve land**

**‘Division 1 Prescribed DOGIT land**

**‘83Z Application of div 1**

‘This division applies to prescribed DOGIT land.

**‘83ZA Prescribed DOGIT land may be granted under this Act**

‘(1) Despite any other provision of this Act, prescribed DOGIT land may be—

- (a) granted under part 3; and
- (b) held by a trustee for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land, and their ancestors and descendants.

- ‘(2) If the land is held as mentioned in subsection (1)(b), the land may, for any dealing with the land under this Act or another Act, be called Aboriginal and Torres Strait Islander land.

### **‘83ZB Minister to consult before grant of land**

‘Before the land is granted under part 3, the Minister must—

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

### **‘83ZC Application of general provisions**

- ‘(1) The following provisions apply in relation to the land as if a reference in the provisions to Aboriginal people includes a reference to Torres Strait Islanders—
- (a) section 87(6) and (7);
  - (b) section 131(2).
- ‘(2) However, subsection (1)(a) applies for prescribed DOGIT land that is transferred land only if the land is held for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land, and their ancestors and descendants.

### **‘83ZD Application of provisions for grant of land**

- ‘(1) This section applies if the land is to be or is—
- (a) granted under part 3; and

[s 70]

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- (b) held for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land, and their ancestors and descendants.
- ‘(2) The following provisions apply in relation to the land as if a reference in the provisions to Aboriginal people includes a reference to Torres Strait Islanders—
- (a) sections 27A and 28;
  - (b) section 29;
  - (c) section 82B;
  - (d) section 82H;
  - (e) section 82M;
  - (f) section 82YB;
  - (g) section 82YF;
  - (h) sections 83M and 83N;
  - (i) section 86;
  - (j) section 88;
  - (k) section 132;
  - (l) section 136A.
- ‘(3) The schedule, definition *qualified*, applies in relation to the land as follows—
- qualified***, for a CATSI corporation that holds, or proposes to hold, Aboriginal land under this Act that is prescribed DOGIT land, means—
- (a) membership of the CATSI corporation is restricted to—
    - (i) Aboriginal people particularly concerned with the land; or
    - (ii) Aboriginal people and Torres Strait Islanders particularly concerned with the land; or
  - (b) the CATSI corporation is a trustee of a trust the beneficiaries of which are restricted to—

- 
- (i) Aboriginal people particularly concerned with the land; or
  - (ii) Aboriginal people and Torres Strait Islanders particularly concerned with the land.
- ‘(4) Section 28A applies in relation to the land as if a reference in the section to an Aboriginal person includes a reference to a Torres Strait Islander.
- ‘(5) The following provisions apply in relation to the land as if a reference in the provisions to an Aborigine includes a reference to a Torres Strait Islander—
- (a) sections 82E and 82F;
  - (b) section 82W;
  - (c) section 82YT.
- ‘(6) Sections 83M and 83N apply in relation to the land as if a reference in the sections to Aboriginal tradition included a reference to Island custom.
- ‘(7) In this section—
- Island custom* see the *Torres Strait Islander Land Act 1991*, section 8.

## ‘Division 2 Prescribed reserve land

### ‘83ZE Meaning of *prescribed reserve land*

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

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

[s 71]

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beneficial to Aboriginal people particularly concerned with the land.

### **'83ZF Application of particular provisions**

'Sections 82W and 82YT apply in relation to prescribed reserve land as if a reference in the provisions to an Aborigine includes a reference to a Torres Strait Islander.'

### **71 Amendment of s 84 (Use of Aboriginal land preserved)**

Section 84(3)—

*omit, insert—*

- '(3) If the chief executive becomes aware the occupation or use of land under subsection (1) is no longer required by the State or Commonwealth, the chief executive must give the trustee of the land written notice of that fact.
- '(4) Despite subsection (1), if the State or Commonwealth intends to continue to occupy or use the land, the State or Commonwealth and the trustee of the land are to use their best endeavours to provide for the continued occupation and use of the land under an interest in, or in relation to, the land given by the trustee of the land.
- '(5) Subsection (1) ceases to apply to land if—
  - (a) it is leased to a person for a private residential purpose under part 5AB; or
  - (b) the State or Commonwealth has a right to occupy or use the land under an interest in, or in relation to, the land given by the trustee of the land; or
  - (c) the trustee of the land receives a notice under subsection (3) for the land.
- '(6) Subsection (7) applies if the Aboriginal land being occupied or used by the State or the Commonwealth is land that is the subject of a townsite lease.

‘(7) Subsections (3) to (5) apply as if a reference to the trustee of the land were a reference to the lessee for the townsite lease.’.

**72 Amendment of s 85 (No rent payable)**

Section 85, ‘section 84’—

*omit, insert*—

‘section 84(1)’.

**73 Amendment of s 86 (Access to land)**

(1) Section 86(1), ‘section 84’—

*omit, insert*—

‘section 84(1)’.

(2) Section 86(2)(b), ‘grantees’—

*omit, insert*—

‘trustee’.

(3) Section 86(3)(b), ‘those’—

*omit, insert*—

‘the’.

(4) Section 86—

*insert*—

‘(5) If the Aboriginal land being occupied or used by the State or the Commonwealth under section 84(1) is land that is the subject of a townsite lease or other registered interest (**relevant land**)—

(a) subsection (2) applies to the relevant land as if the reference to the trustee of the land were a reference to the lessee of the townsite lease or the person registered in the appropriate register as the holder of the other interest; and

(b) subsection (3) does not apply.

[s 74]

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‘(6) Subsection (5) does not affect the operation of subsections (2) and (3) in relation to Aboriginal land that is not relevant land.’.

**74 Amendment of s 87 (Application of Mineral Resources Act)**

- (1) Section 87(2)(b), ‘to the land claims registrar’—  
*omit, insert—*  
‘under this Act’.
- (2) Section 87(2)(b)(i)—  
*omit.*
- (3) Section 87(2)(b)(ii) and (iii)—  
*renumber* as section 87(2)(b)(i) and (ii).
- (4) Section 87(3), from ‘that was claimable land’ to ‘lease; or’—  
*omit, insert—*  
‘that—  
(a) was claimable land; and’.
- (5) Section 87(4), ‘to the lands claims registrar’—  
*omit, insert—*  
‘under this Act’.

**75 Amendment of s 88 (Royalties in relation to mining on Aboriginal land)**

- (1) Section 88(1), from ‘(other than’ to ‘lease)’—  
*omit.*
- (2) Section 88(2), ‘royalty amount and’—  
*omit, insert—*  
‘total royalty amount received in a financial year and’.

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**76 Amendment of s 109 (Conferences)**

- (1) Section 109(1), after ‘member’—

*insert—*

‘if the chairperson considers the holding of the conference may help to resolve the claim’.

- (2) Section 109—

*insert—*

- ‘(1A) A party to a proceeding to which the conference relates may be represented at the conference by a person who, under this Act, may represent the party at the hearing of the proceeding.’.

**77 Amendment of s 116 (Reasons to be given by tribunal)**

- (1) Section 116(3) and (4)—

*renumber* as section 116(4) and (5).

- (2) Section 116—

*insert—*

- ‘(3) Subsection (2) does not apply if the tribunal’s recommendations to the Minister are made without holding a hearing.’.

**78 Insertion of new pts 8A–8C**

After section 130—

*insert—*

[s 78]

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## **‘Part 8A                      Provisions about land trusts**

### **‘Division 1                      Preliminary**

#### **‘130AA Composition of land trust**

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

#### **‘130AB Nature of land trust**

- ‘(1) A land trust—
- (a) is a body corporate with perpetual succession; and
  - (b) has a seal; and
  - (c) may sue and be sued in its corporate name.
- ‘(2) A land trust has all the powers of an individual and may, for example—
- (a) acquire, hold and dispose of property; and
  - (b) borrow, receive and spend money; and
  - (c) employ staff, and engage consultants, necessary for the performance of its function.
- ‘(3) The land trust’s seal—
- (a) is effective only if the land trust’s name is inscribed on the seal in legible characters, but the seal may include other words; and
  - (b) is to be kept by a person who is authorised by the land trust for that purpose; and
  - (c) may be attached to a document only with the written authority signed by—
    - (i) if the land trust consists of 1 member—the member; or

- 
- (ii) if the land trust consists of no more than 3 members—the chairperson of the land trust and at least 1 other member; or
  - (iii) in any other case—
    - (A) the chairperson and at least 2 other members; or
    - (B) at least 3 members.
- ‘(4) Judicial notice must be taken of the seal on a document.
- ‘(5) A document marked with the seal must be presumed to have been properly sealed, unless the contrary is proved.

### **‘130AC Function and powers of land trust**

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

*Note—*

Also see section 130I.

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

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

#### **‘130AD Minister may appoint member**

- ‘(1) The Minister may, by written notice given to a land trust, appoint a person to be a member of the land trust if—
  - (a) the rules of the land trust do not provide for the appointment of members; or

[s 78]

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- (b) because of any circumstances affecting the operation of the land trust, the land trust can not appoint a member and a majority of members of the land trust have asked the Minister in writing to appoint the person as a member; or

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

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

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

*Example—*

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

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

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## **‘Subdivision 2      Removal or suspension of members**

### **‘130AE Grounds for removal or suspension of member**

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

- (a) if the member is a member of the executive committee of the land trust, the member—
  - (i) in performing the member’s functions as a member of the committee, has contravened or is contravening a provision of this Act; or
  - (ii) is carrying on, or has carried on, the business of the land trust in a fraudulent or improper way;
- (b) the member has stolen, misappropriated or improperly applied trust property;
- (c) the member is acting, or has acted, towards the land trust or another member in a fraudulent or improper way;
- (d) if the rules of the land trust do not provide for the removal or suspension of members—
  - (i) the land trust has asked the Minister in writing to remove or suspend the member; and
  - (ii) a ground mentioned in paragraph (a), (b) or (c) exists in relation to the member;
- (e) because of any circumstances affecting the operation of the land trust—
  - (i) the land trust can not remove or suspend a member and a majority of members of the land trust have asked the Minister in writing to remove or suspend the member; and
  - (ii) a ground mentioned in paragraph (a), (b) or (c) exists in relation to the member.

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

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

[s 78]

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### **‘130AF Show cause notice**

- ‘(1) This section applies if the Minister believes a ground exists to remove or suspend a member of a land trust.
- ‘(2) The Minister must give the member and the land trust a notice (a *show cause notice*).
- ‘(3) The show cause notice must state the following—
  - (a) the action the Minister proposes to take under this subdivision (the *proposed action*);
  - (b) the ground for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) if the proposed action is suspension of the member—the proposed suspension period;
  - (e) that the member and the land trust may, within a stated period (the *show cause period*), make written representations to the Minister to show why the proposed action should not be taken.
- ‘(4) The show cause period must end at least 1 month after the show cause notice is given.

### **‘130AG Representations about show cause notice**

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

### **‘130AH Ending show cause process without further action**

- ‘If, after considering the accepted representations for the show cause notice, the Minister no longer believes a ground exists to remove or suspend the member, the Minister must—
- (a) take no further action about the show cause notice; and

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

### **‘130AI Removing or suspending member**

- ‘(1) This section applies if—
  - (a) there are no accepted representations about the show cause notice; or
  - (b) after considering the accepted representations about the show cause notice, the Minister—
    - (i) still believes a ground exists to remove or suspend the member; and
    - (ii) believes removal or suspension of the member is warranted.
- ‘(2) The Minister may—
  - (a) if the proposed action was to remove the member—remove the member; or
  - (b) if the proposed action was to suspend the member—suspend the member for not longer than the proposed suspension period.
- ‘(3) Before acting under subsection (2), the Minister must, if the Minister considers it appropriate in the circumstances, consult with and consider the views of Aboriginal people particularly concerned with the Aboriginal land held by the land trust.
- ‘(4) In acting under this section, the Minister must have regard to any Aboriginal tradition applicable to the Aboriginal land held by the land trust.
- ‘(5) If the Minister decides to take action under subsection (2), the Minister must as soon as practicable give—
  - (a) the person an information notice for the decision; and
  - (b) the land trust written notice of the decision.
- ‘(6) The decision takes effect on the later of the following—
  - (a) the day the information notice is given to the person;

[s 78]

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(b) the day stated in the information notice for that purpose.

‘(7) In this section—

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

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

### ‘130AJ Immediate removal or suspension of member

‘(1) The Minister may remove or suspend a member immediately if the Minister believes—

- (a) a ground exists for removing or suspending the member; and
- (b) it is necessary to remove or suspend the member immediately because there is an immediate and serious risk to the proper operation of the land trust or proper dealing with trust property.

‘(2) The removal or suspension under this section—

- (a) can be effected only by the Minister—
  - (i) giving an information notice to the member about the decision to remove or suspend the member, together with a show cause notice; and
  - (ii) giving notice of the removal or suspension to the land trust when the notices under subparagraph (i) are given to the member; and
- (b) operates immediately the notices are given to the member; and
- (c) continues to operate until the earlier of the following happens—

- (i) the show cause notice is finally dealt with;
- (ii) 60 days have passed since the notices were given to the member.

### **‘Subdivision 3      Other matters**

#### **‘130AK Limitation on land trust’s power about appointment or suspension of member**

- ‘(1) This section applies to a land trust that, under its rules, may appoint, remove or suspend members of the land trust.
- ‘(2) The land trust can not—
  - (a) appoint a person as a member of the land trust if the person has been removed as a member by the Minister under this division; or
  - (b) end the suspension of a person from membership of the land trust if the suspension is imposed by the Minister under this division.

### **‘Division 3                      Recording information about compliance with Act**

#### **‘130AL Particular information to be recorded in register**

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

[s 78]

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## **‘Division 4                    Land trusts to give information to chief executive**

### **‘130A Definition for div 4**

‘In this division—

*information* includes a document.

### **‘130B Power to require particular information**

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

*Examples of information—*

- information about how a land trust made a particular decision
- accounts, bank statements and other financial information
- minutes of meetings

- ‘(2) The notice must state a reasonable period to comply with the requirement.
- ‘(3) The land trust must comply with the requirement unless complying with the notice would place the land trust in contravention of a law.

## **‘Division 5                    Freezing accounts of land trusts**

### **‘130C Definitions for div 5**

‘In this division—

*account*, of a land trust, means—

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

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

*trust money* means any amount that is trust property.

### **'130D Freezing land trust's accounts**

- '(1) The chief executive may give a direction under subsection (2) if, on considering a report on an audit of a land trust's accounts, it appears to the chief executive that—
- (a) the land trust, a member of the land trust or another person has, or may have, stolen, misappropriated or misapplied trust money; or
  - (b) the accounts of the land trust are not being kept appropriately.
- '(2) The chief executive may direct, by a written notice, that—
- (a) an amount must not be drawn from a stated account other than with the chief executive's approval; or
  - (b) a stated account may be operated only under stated conditions.
- '(3) The direction must—
- (a) be given to the holder of the account and the financial institution where the account is kept; and
  - (b) state the account to which it relates; and
  - (c) if it includes a direction under subsection (2)(b), state the conditions under which the account may be operated.

### **'130E Financial institution must comply with direction**

- '(1) After the direction is given to a financial institution, and until it is withdrawn, the financial institution must not—
- (a) pay a cheque or other instrument drawn on the account stated in the direction unless the cheque or instrument is also signed by the chief executive; or

[s 78]

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- (b) give effect to another transaction on the account that is not authorised because of the direction.

Maximum penalty—100 penalty units.

- ‘(2) For section 130D(2)(a), the chief executive’s signature on the cheque or instrument is sufficient evidence of the chief executive’s approval to draw an amount from the account to honour the cheque or instrument.

### **‘130F Withdrawal of direction**

- ‘(1) The chief executive may withdraw a direction given under section 130D at any time.
- ‘(2) If the direction is withdrawn, the chief executive must immediately give all persons who were given the direction a written notice, signed by the chief executive, that the direction has been withdrawn.
- ‘(3) A direction stops having effect when it is withdrawn.

## **‘Division 6                    Miscellaneous**

### **‘130G Chief executive may prepare model rules**

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

### **‘130H Provision about vesting of Aboriginal land**

- ‘(1) If Aboriginal land is held by a land trust, the land is taken to have been vested in the land trust.

- 
- ‘(2) Subsection (1) applies to Aboriginal land whether or not the land was first held by the land trust before the commencement of this section.

## ‘Part 8B Application of Trusts Act 1973

### ‘Division 1 Preliminary

#### ‘130I Application of Trusts Act 1973

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

#### ‘130J Functions and powers of land trust under Trusts Act 1973

- ‘(1) A land trust may perform all the functions and exercise all the powers of a trustee under the *Trusts Act 1973*.
- ‘(2) Subsection (1)—
- (a) applies subject to any other provision of this Act; and
  - (b) does not limit section 130AC(2).

[s 78]

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## **‘Division 2                    Powers of Supreme Court**

### **‘130K Jurisdiction of Supreme Court**

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

### **‘130L Power of court to relieve member of land trust from personal liability**

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

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

### **‘130M Court may order beneficiary to indemnify for certain breaches**

- ‘(1) This section applies if a land trust or a member of a land trust commits a breach of trust at the instigation or request of, or with the written consent of, a beneficiary.

- 
- ‘(2) The Supreme Court may, as it considers just, order that all or part of the interest of the beneficiary in the trust property is impounded to indemnify the land trust, the member or persons claiming through the land trust or member.

**‘130N Right of land trust or member to apply to court for directions**

- ‘(1) A land trust or member of a land trust may apply to the Supreme Court for directions in relation to—
- (a) the trust property of the land trust or its management or administration; or
  - (b) the exercise of a power of the land trust or a member of the land trust.
- ‘(2) The application must be served on, and the hearing of the application may be attended by—
- (a) all persons interested in the application; or
  - (b) the persons interested in the application, or their representatives, that the court considers appropriate.

**‘130O Court’s jurisdiction to make orders conferring power on land trust or members**

- ‘(1) This section applies if, in the Supreme Court’s opinion, a disposition or transaction—
- (a) is expedient for the management or administration of trust property by a land trust or members of a land trust; or
  - (b) would be in the best interest of the Aboriginal people, or a majority of the Aboriginal people, for whose benefit the property is held;
- but—
- (c) it is inexpedient, difficult or impractical to effect the disposition or transaction without the assistance of the Supreme Court; or

[s 78]

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- (d) the land trust or members do not have power under the Act to effect the disposition or transaction.
- ‘(2) The Supreme Court may—
- (a) confer on the land trust or members the necessary power for the purpose of effecting the disposition or transaction (other than a power to sell or mortgage Aboriginal land), on such terms and subject to any conditions, as the court considers appropriate; and
  - (b) direct the way that—
    - (i) any amount authorised to be spent, and the costs of the disposition or transaction, are to be paid or borne from trust property; and
    - (ii) the amount is to be apportioned between the capital and income of the trust property.
- ‘(3) The Supreme Court may—
- (a) rescind or vary an order under this section; or
  - (b) make a new or further order.
- ‘(4) The rescision or variation of an order does not affect anything done by a person relying on the order before the person became aware of the application to the court to rescind or vary the order.
- ‘(5) An application to the court under this section may be made by—
- (a) a land trust; or
  - (b) a member of a land trust; or
  - (c) a person for whose benefit the trust property is held.
- ‘(6) In this section—
- disposition*** means a sale, lease, mortgage, surrender, release or another type of disposition.
- transaction*** means a purchase, investment, acquisition, retention, expenditure or another type of transaction.

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**‘130P Protection of land trust or member while acting under direction of court**

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

**‘130Q Power of Supreme Court to make orders in absence of member**

- ‘(1) If, in a proceeding under this Act, the Supreme Court is satisfied that—
  - (a) a diligent search has been made for a member of a land trust who is named as a party in an action; and
  - (b) the member can not be found to serve the member with a process of the court;the court may hear and decide the proceeding and give judgment against the member as if the member had been served or had entered an appearance in the action, and had also appeared by counsel or solicitor at the hearing.
- ‘(2) Subsection (1) applies without prejudice to any interest the member may have in the matter in question in the proceeding in any other capacity.
- ‘(3) If a member, at the time of the proceeding—
  - (a) is not within the jurisdiction; or
  - (b) is under a disability; or

[s 78]

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(c) can not be found;

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

### **‘130R Power of Supreme Court to charge costs on trust property**

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

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

## **‘Part 8C Appeals**

### **‘130S Who may appeal**

- ‘(1) A person who made representations to the Minister under part 2, division 3A about a proposed declaration under section 16B(1)(d) may appeal to the Land Court against the decision to make the declaration.
- ‘(2) A lessee of a residential lease the subject of a decision under section 82ZH to not renew the lease may appeal to the Land Court against the decision.
- ‘(3) A person the subject of a decision under section 82ZN about an amount payable to the person for forfeiture or non-renewal of a residential lease may appeal to the Land Court against the decision.
- ‘(4) A member of a land trust who is given, or is entitled to be given, an information notice under part 8A, division 2 about a

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decision to remove or suspend the member from the land trust may appeal to the Land Court against the decision.

### **‘130T Starting appeal**

- ‘(1) An appeal is started by filing written notice of appeal with the registrar of the Land Court.
- ‘(2) The notice of appeal must be filed within 28 days after the person receives the notice of the decision or information notice about the decision.
- ‘(3) However, the Land Court may, at any time within the 28 days, extend the period for making the appeal.

### **‘130U Nature of appeal**

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

### **‘130V Notice of appeal**

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

- (a) for a decision mentioned in section 130S(1), (2) or (3)—the decision-maker; or
- (b) for a decision mentioned in section 130S(4)—the decision-maker and the land trust.

### **‘130W Powers of Land Court on appeal**

- ‘(1) In deciding the appeal, the Land Court has the same powers as the decision-maker.
- ‘(2) The Land Court may—
  - (a) confirm the decision; or
  - (b) set aside the decision and substitute another decision; or

[s 79]

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(c) set aside the decision and return the issue to the decision-maker with directions the court considers appropriate.

‘(3) If the Land Court substitutes another decision, the substituted decision is, other than for the purpose of an appeal under this part, taken to be the decision of the decision-maker.’.

**79 Amendment of s 131 (Creation of interests in transferable and claimable land)**

(1) Section 131(1)(b), ‘agreement’—

*omit.*

(2) Section 131(6)—

*omit.*

(3) Section 131(7) and (8)—

*renumber* as section 131(6) and (7).

**80 Amendment of s 132 (Rights of access to interests preserved)**

(1) Section 132(2)(b), ‘Land Tribunal’—

*omit, insert—*

‘Land Court’.

(2) Section 132—

*insert—*

‘(5) If the only practicable way of gaining access to the person’s land is across Aboriginal land that is the subject of a townsite lease or other registered interest (*relevant land*)—

(a) subsection (2) applies to the relevant land as if the reference to the trustee of the Aboriginal land, or the trustee, were a reference to the lessee of the townsite lease or the person registered in the appropriate register as the holder of the other interest; and

(b) subsection (3) does not apply.

‘(6) Subsection (5) does not affect the operation of subsections (2) and (3) in relation to Aboriginal land that is not relevant land.’.

**81 Amendment of s 132A (National park subject to lease to State etc.)**

(1) Section 132A(7)(b), ‘as far as practicable, but’—

*omit.*

(2) Section 132A(7)(b), ‘act in a way that is consistent with’—

*omit, insert—*

‘have regard to’.

**82 Amendment of s 134 (Delegation by Minister)**

Section 134, from ‘Act’—

*omit, insert—*

‘Act.’.

**83 Omission of s 135 (Delegation by land claims registrar)**

Section 135—

*omit.*

**84 Amendment of s 136 (Amendment of description of land)**

(1) Section 136(1), ‘or an Aboriginal (non-transferred land) lease’—

*omit.*

(2) Section 136(1), ‘, or lease over,’—

*omit.*

(3) Section 136(2), (3) and (4), ‘or lease’—

*omit.*

[s 85]

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**85 Replacement of s 136A (Dealing with particular trust property)**

Section 136A—

*omit, insert—*

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

- ‘(1) Subsection (2) applies to a trustee, other than the State, if the trustee receives an amount paid under section 82YV for the value of a dwelling.
  - ‘(2) The trustee must ensure an amount equal to the amount received is used by the trustee for housing services for Aboriginal people concerned with the land held by the trustee.
  - ‘(3) Subsection (4) applies to the lessee of a townsite lease if the lessee receives an amount paid under section 82YV for the value of a dwelling.
  - ‘(4) The lessee must ensure an amount equal to the amount received is used by the lessee for housing services for Aboriginal people concerned with the land the subject of the townsite lease.
  - ‘(5) In this section—
    - housing service*** means—
      - (a) providing housing to an individual for residential use; or
      - (b) any of the following kinds of service—
        - (i) tenant advisory services;
        - (ii) tenant advocacy services;
        - (iii) home maintenance services;
        - (iv) home modification services;
        - (v) housing-related referral and information services.
- trustee*** includes a trustee, under the Land Act, of Aboriginal trust land.’.

**86 Amendment of s 137 (Survey costs etc. to be paid by State)**

(1) Section 137(1), ‘or an Aboriginal lease’—

*omit.*

(2) Section 137(2)(b)—

*omit, insert—*

‘(b) a lease prepared for section 132A; or’.

**87 Amendment of s 138 (Regulation-making power)**

Section 138(2)—

*omit, insert—*

‘(2) Without limiting subsection (1), a regulation may make provision for—

(a) matters relevant to the operations, including the functions, of a land trust; and

(b) the indemnification of members of a land trust from personal liability; and

(c) rules for land trusts, including, for example, the adoption of rules and the matters that must be included in the rules; and

(d) accounting requirements for land trusts, including, for example, keeping accounts, preparing financial statements, auditing accounts and giving audit reports to the chief executive; and

(e) matters relating to the dissolution of Aboriginal land claim associations; and

(f) the minimum annual rental amount payable by the State under a lease granted to the State under this Act.

‘(3) In this section—

***Aboriginal land claim association*** means an Aboriginal land claim association incorporated under the repealed regulation and in existence immediately before the commencement of

[s 88]

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the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*, part 3.’

## 88 Insertion of new s 139B

Part 10—

*insert—*

### ‘139B Retrospective validation of dealings with trustee (Aboriginal) lease

- ‘(1) Subsection (2) applies to a trustee (Aboriginal) lease if the lease—
- (a) was granted under the Land Act, section 57 before 18 July 2008; and
  - (b) was amended, transferred, mortgaged or subleased, during the relevant period, under the Land Act, chapter 3, part 1, division 7.
- ‘(2) The amendment, transfer, mortgage or sublease of the trustee (Aboriginal) lease (the *dealing*) is taken to be, and to always have been, as valid as if—
- (a) the dealing were a dealing carried out under this Act; and
  - (b) section 83R, as in force immediately after the commencement of this section, had been in force on the day the dealing was carried out.
- ‘(3) Subsection (4) applies to a trustee (Aboriginal) lease if the lease—
- (a) was granted under the Land Act, section 57 before 18 July 2008; and
  - (b) was amended, transferred, mortgaged or subleased, during the relevant period, under this Act.
- ‘(4) The amendment, transfer, mortgage or sublease of the trustee (Aboriginal) lease (also the *dealing*) is taken to be, and to always have been, as valid as if section 83R, as in force

immediately after the commencement of this section, had been in force on the day the dealing was carried out.

‘(5) In this section—

*relevant period* means the period starting on 18 July 2008 and ending immediately before the commencement of this section.’.

## **89 Insertion of new pt 11, div 3**

Part 11—

*insert—*

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

#### **‘144 Definition for div 3**

‘In this division—

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

#### **‘145 Continued operation of provisions for appointing grantees**

‘(1) This section applies despite the amendment of this Act by the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*.

‘(2) The Minister may, on or before 31 December 2011 and under previous section 28, appoint persons the Minister considers necessary to be the grantees, as trustees for the benefit of Aboriginal people, of land the subject of a deed of grant under previous section 27.

‘(3) The Minister may, on or before 31 December 2011 and under previous section 65, appoint persons the Minister considers

[s 89]

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necessary to be the grantees, as trustees for the benefit of the group of Aboriginal people concerned, of land.

- ‘(4) If the Minister appoints grantees under previous section 28 or 65, the grantees are, on appointment, taken to be incorporated as a land trust under this Act for the land.
- ‘(5) As soon as practicable after the grantees are incorporated, the Minister must, by gazette notice, state—
  - (a) the name of the land trust; and
  - (b) the description of the land as stated in the deed of grant held by the grantees; and
  - (c) an address for service of documents on the land trust.
- ‘(6) The last 2 words of the name of the land trust must be the words ‘Land Trust’.

#### **‘146 Continued operation of provisions about land trusts**

- ‘(1) The Minister may, on or before 31 December 2011, establish a land trust under previous part 5A for the purpose stated in previous section 83B.
- ‘(2) For subsection (1), previous section 83A applies—
  - (a) as if the reference in previous section 83A(3)(b) to the *Aboriginal Land Regulation 1991* were a reference to the repealed regulation; and
  - (b) as if the reference in previous section 83A(5) to ‘as far as practicable, act in a way that is consistent with’ were a reference to ‘have regard to’; and
  - (c) as if the reference in previous section 83A(6) to ‘act in a way that is consistent with’ were a reference to ‘have regard to’.
- ‘(3) Previous sections 83C to 83E continue to apply in relation to a land trust established under previous section 83A.
- ‘(4) For subsection (2)(a), the repealed regulation, as in force immediately before its repeal, continues in force despite its repeal.

- ‘(5) This section applies despite the amendment of this Act by the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*.

#### ‘147 References to previous provisions after renumbering

- ‘(1) A reference in another Act, a regulation or document to a particular previous provision of this Act may, if the context permits, be taken as a reference to any provision of the renumbered Act, all or part of which corresponds, or substantially corresponds, to the previous provision.
- ‘(2) In this section—  
*renumbered Act* means this Act as renumbered under section 148.’.

#### 90 Insertion of new pt 12

Before the schedule—  
*insert—*

### ‘Part 12 Renumbering of Acts

#### ‘148 Amendment to renumber

- ‘(1) On the commencement of this section, the provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.
- ‘(2) Subsection (1) applies to a provision of this Act enacted or otherwise affected (a *relevant provision*) by a provision of an amending Act enacted but uncommenced when subsection (1) is commenced (the *uncommenced provision*), with the following intent for the relevant provision—
- (a) if the number of the relevant provision would have changed under subsection (1) had the uncommenced provision commenced—

[s 91]

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- (i) a number is allocated to the relevant provision as if the uncommenced provision had commenced; and
  - (ii) when the uncommenced provision commences, the number of the relevant provision is amended by omitting it and inserting the number allocated to it under subparagraph (i);
- (b) if the relevant provision would have been omitted or relocated had the uncommenced provision commenced, its number remains the same as it was before the commencement of subsection (1) until the omission or relocation takes effect.
- ‘(3) Without limiting the *Reprints Act 1992*, section 43(4), each reference in this Act, and each reference in the *Torres Strait Islander Land Act 1991* to a provision of this Act renumbered under subsection (1), is amended, when the renumbering happens, by omitting the reference to the previous number and inserting the new number.
- ‘(4) In this section—  
***amending Act*** means an Act that amends this Act.

## ‘149 Expiry of part

‘This part expires on the later of the following—

- (a) the day after the commencement of the last numbering or renumbering of a provision done under section 148;
- (b) 31 July 2011.’.

## 91 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *Aboriginal land claim association*, *Aboriginal lease*, *Aboriginal (non-transferred land) lease*, *Aboriginal (transferred land) lease*, *land claims registrar*, *land trust*, *lease*, *maximum amount*, *registrar of titles*, *Torres Strait Islander, transferee, transferor* and *trustee (Aboriginal) lease*—  
*omit.*

(2) Schedule—

*insert—*

***‘Aboriginal land holding entity register*** see section 82AAA(1).

***accepted representations*** see section 130AG(2).

***account***, for part 8A, division 5, see section 130C.

***available State land agreement*** see section 19A(1).

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

***decision-maker***, for part 8C, means—

- (a) for a decision mentioned in section 130S(1) or (4)—the Minister; or
- (b) for a decision mentioned in section 130S(2) or (3) about forfeiture or non-renewal of a lease—the lessor of the lease land.

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

- (a) land inside the Torres Strait area;
- (b) city or town land or township land;
- (c) a reserve under the Land Act;
- (d) land that is set apart and declared as a State forest or timber reserve under the *Forestry Act 1959*;
- (e) a road;
- (f) a stock route;
- (g) land subject to a special mining Act;
- (h) land that has become unallocated State land, if a person has a right, other than under this Act, against the State to the grant of an interest in that land.

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

[s 91]

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

**holder**, for part 8A, division 5, see section 130C.

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

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

**information**, for part 8A, division 4, see section 130A.

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

**land trust** means—

- (a) an entity—
  - (i) formed through the incorporation, under the repealed regulation, of persons as a land trust; and
  - (ii) either established under section 146 or in existence immediately before the commencement of the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*, part 3; or
- (b) an entity taken to be incorporated as a land trust under section 145.

**lease**—

1 **Lease**—

- (a) for part 5AB, division 5, see section 82YS; or

(b) for part 5E, see section 83OA.

2 A *lease* does not include a residential tenancy agreement.

*lessee*, for part 5AB, division 6, see section 82YZ.

*lessor*—

- (a) for part 5AB, division 5, see section 82YS; or
- (b) for part 5AB, division 6, see section 82YZ; or
- (c) for part 5E, see section 83OA.

*maximum amount* see section 82ZN(2).

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

- (a) an initial grantee of Aboriginal land held by the land trust; and
- (b) another person appointed by the Minister as trustee of the Aboriginal land held by the land trust; and
- (c) a person appointed by the Minister or the land trust as a member of the land trust.

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

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

*prescribed reserve land* see section 83ZE.

*previous*, for part 11, division 3, see section 144.

*proposed action* see section 130AF(3)(a).

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

[s 91]

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

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

**repealed regulation** means the repealed *Aboriginal Land Regulation 1991*.

**required amount** see section 82ZN(1).

**residential lease** see section 82YZ.

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

**show cause notice** see section 130AF(2).

**show cause period** see section 130AF(3)(e).

**standard lease** see section 82W(2).

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

**Torres Strait Islander particularly concerned with the land**, for land that is or was prescribed DOGIT land, means a Torres Strait Islander who lives on the land.

**townsite lease** see section 82W(3).

**townsite sublease** see section 82YL(1).

**transferee**—

- (a) for part 5A, division 4, subdivision 1, see section 82H(1); and
- (b) for part 5A, division 4, subdivision 2, see section 82M(1).

**transferor**—

- 
- (a) for part 5A, division 4, subdivision 1, see section 82H(1); and
  - (b) for part 5A, division 4, subdivision 2, see section 82M(1).

***trustee (Aboriginal) lease*** see section 83R.

***trust money***, for part 8A, division 5, see section 130C.

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

- (a) income derived from Aboriginal land held by the land trust; and
  - (b) amounts paid to the land trust in relation to—
    - (i) the grant of an interest in the land; or
    - (ii) the creation of a mining interest in the land; or
    - (iii) an agreement entered into in relation to the land; and
  - (c) amounts paid by any person or governmental authority, or any other property, that is received or acquired by the land trust or for the land trust by a member of the land trust.’.
- (3) Schedule, definition *available State land*, from ‘section 19,’—  
*omit, insert—*  
‘section 19.’.
- (4) Schedule, definition *registrar*, paragraph (a), ‘under the Land Title Act’—  
*omit.*
- (5) Schedule, definition *trustee*, paragraph (a), ‘for a provision about’—  
*omit, insert—*  
‘in relation to’.



*omit, insert—*

**‘1 Short title**

‘This Act may be cited as the *Aurukun and Mornington Shire Leases Act 1978*.’

**97 Amendment of s 2 (Definitions)**

Section 2, definitions for *Aboriginal police officer*, *liquor provisions* and *police officer in charge—*

*omit.*

**98 Amendment of s 3 (Grant of leases to councils)**

- (1) Section 3(1)(a), ‘declared by section 6’—

*omit, insert—*

‘as shown on map no. LGRB2 held at the department’s office at Brisbane as the Shire of Aurukun.’

- (2) Section 3(1)(b), ‘declared by section 7’—

*omit, insert—*

‘as shown on map no. LGRB45 held at the department’s office at Brisbane as the Shire of Mornington.’

- (3) Section 3(1)—

*insert—*

*‘Editor’s note—*

A copy of each of the maps mentioned in this subsection is available for inspection, without charge, during normal business hours at the department’s head office and at each department office in the general area for which the lease is granted.’

**99 Insertion of new s 4A**

Part 2—

*insert—*

[s 100]

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#### **‘4A Roads within shires**

- ‘(1) This section applies to a road constructed or formed—
- (a) within the Shire of Aurukun by the Council of Shire of Aurukun; or
  - (b) within the Shire of Mornington by the Council of Shire of Mornington;
- whether before or after the commencement of this section.
- ‘(2) The road is taken to be a road dedicated to public use and to be a road within the meaning of—
- (a) the *Transport Infrastructure Act 1994*; or
  - (b) the *Transport Operations (Road Use Management) Act 1995*; or
  - (c) any other Act the application of which in or in relation to any place depends upon that place being a road or part of a road.
- ‘(3) Subsection (2) does not entitle a person to be on the road unless the person is authorised by some other provision of this Act to be in the Shire of Aurukun or, as the case may be, the Shire of Mornington at the material time.
- ‘(4) Land that is, or is under, the road is not part of the demised land.’.

#### **100 Omission of pts 3 and 4**

Parts 3 and 4—  
*omit.*

#### **101 Amendment of s 18A (Application of pt 5)**

- (1) Section 18A, ‘part, apart from section 32, applies’—  
*omit, insert—*  
‘part applies’.
- (2) Section 18A, ‘the *Local Government Act 1993*, part 1B, is’—

*omit, insert—*

‘the repealed *Local Government Act 1993*, chapter 3, part 1B, was’.

**102 Amendment of s 20 (Entry upon and temporary stay in shires)**

(1) Section 20(1)(b), from ‘religious’ to ‘or’—

*omit.*

(2) Section 20(2)—

*omit.*

**103 Amendment of s 21 (Local laws may regulate presence in shires)**

(1) Section 21(1)—

*omit, insert—*

‘(1) The Council of the Shire of Aurukun or the Council of the Shire of Mornington may make local laws, under section 28(1) of the *Local Government Act 2009*, that authorise persons of a stated class to enter, be in or reside in its area.’

(2) Section 21(2), ‘local law under’—

*omit, insert—*

‘local law mentioned in’.

**104 Omission of s 22 (Councils may levy charge on residents of residential premises)**

Section 22—

*omit.*

**105 Replacement of s 23 (Power of ejectment and control)**

Section 23—

[s 106]

---

*omit, insert—*

**‘23 Removal from shires**

- ‘(1) A police officer or community police officer may remove, from any part of a local government area to which this part applies, a person who is not permitted under this part to be in the area.
- ‘(2) It is lawful for a community police officer exercising or attempting to exercise a power under subsection (1), and anyone helping the community police officer, to use reasonably necessary force to exercise the power.

*Note—*

See also the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

- ‘(3) The force a community police officer may use under this section does not include force likely to cause grievous bodily harm to a person or the person’s death.’.

**106 Omission of s 24 (Reason for exclusion—right of appeal)**

Section 24—

*omit.*

**107 Amendment of s 29 (Restriction on councils’ power over land)**

Section 29(f)—

*omit.*

**108 Omission of ss 30–33**

Sections 30 to 33—

*omit.*





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*omit, insert—*

‘indigenous landholder for the land.’.

**116 Amendment of s 42AB (Dedication of Aboriginal land as national park (Cape York Peninsula Aboriginal land))**

(1) Section 42AB(1)(a)—

*omit, insert—*

‘(a) the indigenous landholder for the land has entered into an indigenous management agreement for it; and’.

(2) Section 42AB(1)(b), ‘grantees’—

*omit, insert—*

‘indigenous landholder’.

**117 Amendment of s 42AC (Dedication of other land as national park (Cape York Peninsula Aboriginal land))**

(1) Section 42AC(1)(a), ‘a land trust’—

*omit, insert—*

‘an entity’.

(2) Section 42AC(1)(b), ‘land trust’—

*omit, insert—*

‘entity’.

**118 Amendment of s 42AD (Leases etc. over national park (Cape York Peninsula Aboriginal land))**

Section 42AD(1), ‘land trust’—

*omit, insert—*

‘indigenous landholder’.

[s 119]

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**119 Amendment of s 42AE (Particular powers about permitted uses in national park (Cape York Peninsula Aboriginal land))**

Section 42AE(1), ‘land trust’—

*omit, insert—*

‘indigenous landholder’.

**120 Insertion of new s 42AF**

Part 4, division 3, subdivision 2—

*insert—*

**‘42AF Revocation of national park (Cape York Peninsula Aboriginal land)**

- ‘(1) A regulation may revoke the dedication of all or a part of a national park (Cape York Peninsula Aboriginal land) if the land in the national park or the part of the national park has been surrendered to the State.
- ‘(2) The regulation may be made only if the Legislative Assembly has, on a motion of which at least 28 days notice has been given, passed a resolution requesting the Governor in Council to make the revocation.’.

**121 Amendment of s 111 (Management plans)**

Section 111(8)(a), ‘land trust’—

*omit, insert—*

‘indigenous landholder’.

**122 Amendment of s 120 (Implementation of approved plan)**

Section 120(1)(b), ‘land trust’—

*omit, insert—*

‘indigenous landholder’.

### **123 Amendment of schedule (Dictionary)**

- (1) Schedule, definition *land trust*—  
*omit.*
- (3) Schedule, definition *landholder*, paragraph (c), ‘includes the grantees of’—  
*omit, insert—*  
‘the indigenous landholder for’.

## **Part 8 Amendment of Petroleum Act 1923**

### **124 Act amended**

This part amends the *Petroleum Act 1923*.

### **125 Amendment of s 2 (Definitions)**

- (1) Section 2, definition *owner*, paragraph 1(j), ‘*Local Government (Aboriginal Lands) Act 1978*’—  
*omit, insert—*  
‘*Aurukun and Mornington Shire Leases Act 1978*’.
- (2) Section 2, definition *owner*, paragraph 1(k)—  
*omit, insert—*  
‘(k) for Aboriginal land under the *Aboriginal Land Act 1991* that is taken to be a reserve because of section 87(2) or 87(4)(b) of that Act—the trustee of the land;  
(ka) for Torres Strait Islander land under the *Torres Strait Islander Land Act 1991* that is taken to be a reserve because of section 84(2) of that Act—the trustee of the land;’.





[s 131]

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*omit, insert—*  
*‘Local Government Act 2009’.*

## **Part 11**                      **Amendment of Right to Information Act 2009**

### **131 Act amended**

This part amends the *Right to Information Act 2009*.

### **132 Amendment of s 113 (Disciplinary action)**

(1) Section 113(3)(c)—

*omit.*

(2) Section 113(3)(d) to (h)—

*renumber* as section 113(3)(c) to (g).

## **Part 12**                      **Amendment of Torres Strait Islander Land Act 1991**

### **133 Act amended**

This part amends the *Torres Strait Islander Land Act 1991*.

*Note—*

See also the schedule.

### **134 Amendment of s 3 (Definitions)**

(1) Section 3, ‘In this Act—’—

*omit, insert—*

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

- (2) Section 3, definitions *available Crown land, claimable land, coast, Crown, granted land, interested person, land claims registrar, Land Tribunal, land trust, lease, maximum amount, mineral, native title interests, non-presiding member, presiding member, quarry material, registrar of titles, Torres Strait Islander land claim association, Torres Strait Islander lease, Torres Strait Islander (non-transferred land) lease, Torres Strait Islander (transferred land) lease, township land, tribunal, trustee, trustee (Torres Strait Islander) lease and watercourse—*

*omit.*

- (3) Section 3—

*insert—*

**‘accepted representations** see section 92(2).

**account**, for part 8, division 5, see section 100.

**approved form** means a form approved under section 134B.

**available State land** means land that is available State land under section 16.

**available State land agreement** see section 16A(1).

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

**commencement**, for part 10, division 3, see section 138.

**decision-maker**, for part 8B, means—

- (a) for a decision mentioned in section 115(1) or (4)—the Minister; or
- (b) for a decision mentioned in section 115(2) or (3) about forfeiture or non-renewal of a lease—the lessor of the lease land.

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

[s 134]

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- (a) land outside the Torres Strait area;
- (b) city or town land or township land;
- (c) a reserve under the Land Act;
- (d) land that is set apart and declared as a State forest or timber reserve under the *Forestry Act 1959*;
- (e) a road;
- (f) land that has become unallocated State land, if a person has a right, other than under this Act, against the State to the grant of an interest in that land.

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

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

***holder***, for part 8, division 5, see section 100.

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

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

***information***, for part 8, division 3, see section 98.

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

***land trust*** means—

- (a) an entity—

- (i) formed through the incorporation under the repealed *Torres Strait Islander Land Regulation 1991* of persons as a land trust; and
  - (ii) in existence immediately before the commencement of the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*, part 12; or
- (b) an entity taken to be incorporated as a land trust under section 140.

***lease***—

1 *Lease*—

- (a) for part 4C, division 5, see section 71; or
- (b) for part 5A, see section 80AA.

2 A *lease* does not include a residential tenancy agreement.

***lessee***, for part 4C, division 6, see section 74.

***lessor***—

- (a) for part 4C, division 5, see section 71; or
- (b) for part 4C, division 6, see section 74; or
- (c) for part 5A, see section 80AA.

***maximum amount*** see section 77A(2).

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

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

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

[s 134]

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

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

***previous***, for part 10, division 3, see section 138.

***proposed action*** see section 91(3)(a).

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

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

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

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

***required amount*** see section 77A(1).

***residential lease*** see section 74.

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

***show cause notice*** see section 91(2).

***show cause period*** see section 91(3)(e).

***standard lease*** see section 61(2).

***Torres Strait Islander land holding entity register*** see section 41(1).

***township land*** means land declared under section 20 to be township land.

***townsite lease*** see section 61(3).

***townsite sublease*** see section 68(1).

***transferee***—

- (a) for part 4B, division 4, subdivision 1, see section 57A(1); and
- (b) for part 4B, division 4, subdivision 2, see section 58A(1).

***transferor***—

- (a) for part 4B, division 4, subdivision 1, see section 57A(1); and
- (b) for part 4B, division 4, subdivision 2, see section 58A(1).

***trust money***, for part 8, division 5, see section 100.

***trustee***—

- (a) in relation to Torres Strait Islander land—means the land trust or other entity that holds the land under this Act; and
- (b) of Torres Strait Islander trust land—see section 80D.

***trustee (Torres Strait Islander) lease*** see section 80D.

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

- (a) income derived from Torres Strait Islander land held by the land trust; and
- (b) amounts paid to the land trust in relation to—
  - (i) the grant of an interest in the land; or
  - (ii) the creation of a mining interest in the land; or
  - (iii) an agreement entered into in relation to the land; and

[s 135]

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- (c) amounts paid by any person or governmental authority, or any other property, that is received or acquired by the land trust or for the land trust by a member of the land trust.

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

- (4) Section 3, definitions *city or town land*, *DOGIT land*, *Island custom*, *lake*, *natural gas*, *Torres Strait area*, *Torres Strait Islander*, *Torres Strait Islander land*, *Torres Strait Islander reserve land*, *transferable land*, *transferred land*, ‘has the meaning given by’—

*omit*, *insert*—

‘see’.

- (5) Section 3, definition *registrar*, paragraph (a), ‘under the Land Title Act’—

*omit*.

- (6) Section 3, definitions, as amended under this section—

*relocate* to the schedule as inserted by this Act.

### **135 Omission of s 5 (Meaning of *native title interests*)**

Section 5—

*omit*.

### **136 Replacement of s 6 (Crown bound)**

Section 6—

*omit*, *insert*—

### **‘6 Acts binds all persons**

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

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**137 Amendment of s 9 (Meaning of Torres Strait Islander land)**

(1) Section 9(1), from ‘land is—’—

*omit, insert—*

‘land is transferred land.’.

(2) Section 9(2) and (3)—

*omit.*

**138 Amendment of s 10 (Meaning of transferable and transferred land)**

Section 10(1) and (2), from ‘part 3’—

*omit, insert—*

‘part 3.’.

**139 Amendment of s 12 (DOGIT land)**

(1) Section 12(1), ‘a road’—

*omit, insert—*

‘a road or prescribed DOGIT land’.

(2) Section 12(1), ‘is—’—

*omit, insert—*

‘was—’.

(3) Section 12(1)(b)(i) to (iv), ‘is’—

*omit.*

(4) Section 12(1)(b)(ii), ‘Crown land’—

*omit, insert—*

‘unallocated State land’.

(5) Section 12(1)(b)(iii), ‘by the Crown under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*’—

*omit, insert—*

[s 140]

---

‘under the Land Holding Act’.

(6) Section 12(1)(b)(iv), ‘by the Crown’—

*omit.*

(7) Section 12(1)(b)—

*insert—*

‘(v) the subject of an application under the Land Holding Act, section 5, that had been approved by the trustee council, or approved on appeal by the appeal tribunal, under that Act, but for which a lease under that Act has not been granted.’.

(8) Section 12(3)—

*renumber* as section 12(4).

(9) Section 12—

*insert—*

‘(3) Also, DOGIT land includes land within the external boundaries of land mentioned in subsection (1)(a) if—

(a) the land was the subject of an application under the Land Holding Act, section 5, that was approved by the trustee council, or approved on appeal by the appeal tribunal, under that Act after the enactment day; and

(b) a lease under that Act has not been granted for the land.’.

#### **140 Amendment of s 13 (Torres Strait Islander reserve land)**

(1) Section 13(b), from ‘and subject’ to ‘1985;’—

*omit, insert—*

‘and—

(i) subject to a lease granted under the Land Holding Act; or

(ii) the subject of an application under the Land Holding Act, section 5, that had been approved by the trustee council, or approved on appeal by the

appeal tribunal, under that Act, but for which a lease under that Act has not been granted;’.

(2) Section 13—

*insert—*

‘(2) Also, Torres Strait Islander reserve land includes land within the external boundaries of land mentioned in subsection (1)(a) if—

(a) the land was the subject of an application under the Land Holding Act, section 5, that was approved by the trustee council, or approved on appeal by the appeal tribunal, under that Act after the enactment day; and

(b) a lease under that Act has not been granted for the land.’.

**141 Amendment of s 13B (Particular land may be declared to be not transferable land)**

(1) Section 13B(1), ‘under this division’—

*omit.*

(2) Section 13B(1)(b) and (2)(a), ‘by Torres Strait Islanders on the land’—

*omit.*

(3) Section 13B(3), ‘under this division’—

*omit, insert—*

‘to the Land Court’.

**142 Amendment of s 13C (Notice of intention to make declaration)**

Section 13C(1)(b), ‘within 10 business days’—

*omit, insert—*

‘as soon as practicable’.

[s 143]

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**143 Amendment of s 13D (Minister to consider representations and give notice of decision)**

(1) Section 13D(2)—

*renumber* as section 13D(3).

(2) Section 13D—

*insert*—

‘(2) The Minister may, after considering the representations, decide to make the declaration for all or a part of the relevant land described in the notice under section 13C.’.

(3) Section 13D(3), as renumbered under this section, from ‘must’—

*omit, insert*—

‘must—

(a) include a description of the relevant land to be declared not transferable under this division; and

(b) state all of the following—

(i) the provision under which the declaration is to be made;

(ii) the reasons for the decision;

(iii) if the Minister is to make the declaration under section 13B(1)(d)—that a person who made representations about the proposed declaration may appeal against the decision to the Land Court within 28 days after receiving the notice, and how the person may appeal.’.

**144 Omission of ss 13E and 13F**

Sections 13E and 13F—

*omit.*

**145 Amendment of s 13I (Requirements about plans of subdivision for declarations under s 13B)**

Section 13I, heading, ‘under s 13B’—

*omit.*

**146 Omission of ss 14 and 15**

Sections 14 and 15—

*omit.*

**147 Replacement of s 16 (Lands that are available Crown land—general)**

Section 16—

*omit, insert—*

**‘16 Land that is available State land—general**

‘(1) Land is available State land if it is—

- (a) land, other than excluded land, in which no person other than the State has an interest; or
- (b) land, other than excluded land, that is subject to an interest issued by the State, if an available State land agreement is in force for the land.

‘(2) Subsection (1) is subject to sections 17 and 18.

‘(3) In this section—

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

**‘16A Agreement about particular land**

‘(1) The Minister may enter into a written agreement (an *available State land agreement*) about land, other than excluded land—

- (a) with a person who has an interest in the land granted by the State; and

[s 148]

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- (b) under which the State and the person agree that the land may be available State land.
- ‘(2) The Minister may enter into an available State land agreement for particular land only if satisfied that entering into the agreement is appropriate in the circumstances having regard to an evaluation of the land under the Land Act, section 16.
- ‘(3) An available State land agreement must provide that on the grant of the land under part 3 the person’s interest in the land is to cease and a new interest granted by the trustee of the land is to have effect in substitution for the person’s interest.
- ‘(4) However, if the interest is a lease granted under the Land Act, the agreement may provide that the interest is to continue in force under section 31.
- ‘(5) Subsection (6) applies if a proposed available State land agreement is to state that a person’s interest in land is to cease and a new interest granted by the proposed trustee of the land is to have effect in substitution for the person’s interest.
- ‘(6) To remove any doubt, it is declared that the Minister need not enter into the available State land agreement unless satisfied a new interest granted by the proposed trustee of the land is to have effect in substitution for the person’s interest in the land.’.

**148 Amendment of s 19 (Meaning of city or town land)**

Section 19(1), ‘is, at the beginning of the enactment day, within’—

*omit, insert—*

‘is within’.

**149 Replacement of s 22 (Lands that are not available Crown land)**

Section 22—

*omit, insert—*

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**‘22 Land that is not available State land**

- ‘(1) To remove any doubt, it is declared that the following land is not available State land—
- (a) the waters of the sea, and the seabed, other than tidal land declared to be available State land under section 18(1);
  - (b) freehold land;
  - (c) land subject to a lease, licence or permit under the Land Act.
- ‘(2) Despite subsection (1)(c), land subject to a lease, licence or permit under the Land Act is available State land if an available State land agreement is in force for the land.’.

**150 Insertion of new pt 2A**

After section 24—

*insert—*

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

**‘24A Purpose of pt 2A**

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

**‘24B Land to which pt 2A applies**

‘This part applies to the following land—

- (a) available State land;
- (b) land dedicated as a reserve under the Land Act;
- (c) land subject to an occupation licence;

[s 151]

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- (d) land held under a lease under the Land Act by or for Torres Strait Islanders.

**‘24C Expression of interest in having land made transferable land**

- ‘(1) Torres Strait Islanders particularly concerned with land mentioned in section 24B may, by notice given to the chief executive (an *expression of interest*), express an interest in having the land made transferable land.
- ‘(2) The expression of interest must—
  - (a) be in the approved form; and
  - (b) include the details required in the approved form to enable the chief executive to properly consider the expression of interest.

**‘24D Chief executive to consider expression of interest**

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

**‘24E Consideration of expression of interest does not impose obligation on State**

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

**151 Amendment of s 25 (Deeds of grant to be prepared)**

- (1) Section 25(1), ‘registrar of titles’—  
*omit, insert—*  
‘chief executive’.
- (2) Section 25(2), from ‘directs,’—

*omit, insert—*

‘directs.’.

- (3) Section 25(3), ‘grantees—’—

*omit, insert—*

‘grantee—’.

- (4) Section 25(3)(b), after ‘Islanders’—

*insert—*

‘particularly concerned with the land’.

- (5) Section 25(4)—

*omit.*

- (6) Section 25(3A)—

*renumber* as section 25(4).

- (7) Section 25(5), ‘, (3A)’—

*omit.*

**152 Amendment of s 25A (Appointment of registered native title body corporate as grantee to hold land for native title holders)**

Section 25A(5)—

*omit.*

**153 Replacement of s 26 (Minister to appoint particular trustees)**

Section 26—

*omit, insert—*

**‘26 Appointment of grantee to hold land for benefit of Torres Strait Islanders**

- ‘(1) This section applies if the Minister does not appoint, under section 25A, a registered native title body corporate as the grantee of land.

[s 153]

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- ‘(2) The Minister may appoint as grantee of the land—
  - (a) a CATSI corporation that is qualified to hold the land; or
  - (b) a land trust.
- ‘(3) However, the Minister may appoint a CATSI corporation that is a registered native title body corporate as a grantee of land under subsection (2) only if—
  - (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
  - (b) the registered native title body corporate is registered on the National Native Title Register for the determination.
- ‘(4) Before making the appointment, the Minister must consult with, and consider the views of, Torres Strait Islanders particularly concerned with the land.
- ‘(5) Subsection (4) does not apply if an ILUA has been entered into for the land and the entity is nominated in the ILUA as the proposed grantee for the land under this Act.
- ‘(6) However, in considering whether to appoint an entity nominated in an ILUA as the proposed grantee for the land, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example—
  - (a) whether any Torres Strait Islanders particularly concerned with the land may be adversely affected by the appointment; and
  - (b) if the Minister is satisfied any Torres Strait Islanders particularly concerned with the land will be adversely affected by the appointment—any action the entity intends to take to address the concerns of the Torres Strait Islanders.
- ‘(7) Also, in considering whether to appoint a registered native title body corporate as the proposed grantee for the land, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example, the matters mentioned in section 25A(4)(b) and (c).

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

**‘26AA Procedure for appointing particular grantee**

- ‘(1) Before appointing a grantee of land under this part, other than an entity nominated in an ILUA as the proposed grantee for the land, the Minister must—
- (a) publish notice of the Minister’s intention to appoint the grantee in a newspaper or other publication circulating generally in the area in which the land the subject of the deed of grant is situated; and
  - (b) consider all representations made to the Minister under subsection (4).
- ‘(2) The notice must—
- (a) include a description of the land; and
  - (b) state the following—
    - (i) the name of the proposed grantee;
    - (ii) that a Torres Strait Islander particularly concerned with the land may make written representations to the Minister about the proposed appointment;
    - (iii) the place where the representations may be made;
    - (iv) the period in which the representations must be made.
- ‘(3) The stated period must end at least 28 days after the notice is published.
- ‘(4) A Torres Strait Islander particularly concerned with the land may make written representations about the proposed appointment to the Minister within the stated period.’.

**154 Omission of s 26A (Application of Trusts Act 1973)**

Section 26A—

*omit.*

[s 155]

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**155 Amendment of s 27 (Minister to act as soon as possible)**

(1) Section 27(1), ‘section 26’—

*omit, insert—*

‘section 25A or 26’.

(2) Section 27(2), ‘section 11(c)’—

*omit, insert—*

‘section 11(1)(c)’.

(3) Section 27—

*insert—*

‘(3) However, the Minister need not act as mentioned in subsections (1) and (2) in relation to land until the Minister is reasonably satisfied—

(a) arrangements are in place to ensure—

(i) the Commonwealth and the State can continue to provide services to communities on the land after it is granted; and

(ii) the local government for the area in which the land is situated can continue to provide local government services to communities on the land after it is granted; and

*Example of an arrangement for paragraph (a)—*

a lease

(b) if the land is proposed to be granted to an entity other than a registered native title body corporate, arrangements that the Minister considers necessary—

(i) to support use of the land by Torres Strait Islanders particularly concerned with it; and

(ii) to ensure appropriate services, including, for example, social housing, public works and community infrastructure, can be provided for communities on the land;

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

*Example of an arrangement for paragraph (b)—*

an ILUA

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

*Examples of an arrangement for paragraph (c)—*

an ILUA, a townsite lease or another lease

‘(4) In this section—

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

**156 Omission of s 29 (Inclusion of additional areas in deed of grant)**

Section 29—

*omit.*

**157 Amendment of s 30 (Deed of grant takes effect on delivery)**

- (1) Section 30(1), from ‘issued’—

*omit, insert—*

‘prepared under this division takes effect on the delivery of the deed to the grantee.’.

- (2) Section 30(2), ‘grantees’—

[s 158]

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*omit, insert—*

‘grantee’.

## **158 Amendment of s 31 (Existing interests)**

- (1) Section 31(2)(a), from ‘by the Crown’ to ‘1985’—

*omit, insert—*

‘under the Land Holding Act’.

- (2) Section 31(2)—

*insert—*

‘(c) a trustee (Torres Strait Islander) lease;’.

- (3) Section 31(2), ‘grantees of the land are’—

*omit, insert—*

‘trustee of the land is’.

- (4) Section 31(2), ‘for the Crown’—

*omit, insert—*

‘for the lessor’.

- (5) Section 31(3), ‘grantees of the land were the Crown’—

*omit, insert—*

‘trustee of the land were the lessor’.

- (6) Section 31(4)—

*renumber* as section 31(7).

- (7) Section 31—

*insert—*

- ‘(4) However, subsection (5) applies to an interest in transferable land (the *previous interest*) that, under an available State land agreement, is to cease on the grant of the land under this part and a new interest granted by the trustee of the land is to have effect in substitution for the previous interest on the grant of the land.

- 
- ‘(5) Despite subsections (1) to (3), on the grant of the land the previous interest ceases.
- ‘(6) Subsection (5) applies despite any other Act.’.
- (8) Section 31(7), as renumbered under this section, definition *interest*, ‘native title interests’—
- omit, insert—*
- ‘native title’.

**159 Amendment of s 32 (Interests to be endorsed on deed)**

- (1) Section 32(1)(a), ‘Crown’—
- omit, insert—*
- ‘State or Commonwealth that is not registered’.
- (2) Section 32(1), from ‘of the department’—
- omit, insert—*
- ‘must endorse on the deed, in the proper order of priority—
- (c) the instruments under which the interest arose; and
- (d) if the land was previously held under a deed of grant in trust—any existing instruments that were endorsed on the deed of grant in trust.’.
- (3) Section 32(2)—
- omit.*
- (4) Section 32(3) and (4)—
- renumber* as section 32(2) and (3).
- (5) Section 32(2), as renumbered under this section, ‘subsection (2)’—
- omit, insert—*
- ‘subsection (1)’.

[s 160]

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**160 Amendment of s 33 (Cancellation of deed of grant in trust)**

(1) Section 33(1)(a)—

*omit, insert—*

‘(a) a community government under the *Local Government (Community Government Areas) Act 2004* holds title to land under a deed of grant in trust under the Land Act; and’.

(2) Section 33(2) to (4)—

*omit.*

**161 Omission of s 34 (Registrar of titles must take action etc. to resolve difficulties)**

Section 34—

*omit.*

**162 Amendment of s 35 (Land Court may resolve difficulties)**

Section 35(1), ‘registrar of titles’—

*omit, insert—*

‘chief executive’.

**163 Replacement of pt 3, div 2 (Dealing with transferred land)**

Part 3, division 2—

*omit, insert—*

**‘Division 2 Approvals to change how land is held**

**‘36 Application to hold Torres Strait Islander land for native title holders**

‘(1) This section applies if—

- 
- (a) a CATSI corporation that is the trustee of Torres Strait Islander land becomes a registered native title body corporate after it became the trustee of the land; and
  - (b) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
  - (c) the registered native title body corporate is registered on the National Native Title Register for the determination.
- ‘(2) The registered native title body corporate may apply to the Minister in the approved form for an approval to hold the land under this Act for the native title holders of the land.

### **‘37 Decision on application**

- ‘(1) The Minister must consider an application made under section 36 and decide—
- (a) to give the approval; or
  - (b) to refuse the application.
- ‘(2) In considering the application, the Minister must have regard to—
- (a) whether any Torres Strait Islanders particularly concerned with the land, other than native title holders of the land, may be adversely affected by the approval; and
  - (b) if the Minister is satisfied Torres Strait Islanders particularly concerned with the land will be adversely affected by the approval—any action the registered native title body corporate intends to take to address the concerns of the Torres Strait Islanders.
- ‘(3) The Minister may give the approval only if, having regard to the matters mentioned in subsection (2), the Minister is satisfied it is appropriate in the circumstances to give the approval.

[s 164]

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### **‘38 Notices about decision**

- ‘(1) The Minister must give the registered native title body corporate written notice of the Minister’s decision under section 37.
- ‘(2) If the Minister gives the approval, the chief executive must notify the approval by gazette notice.
- ‘(3) The gazette notice must—
  - (a) state the name of the registered native title body corporate; and
  - (b) include a description of the Torres Strait Islander land held by it that relates to the approval.
- ‘(4) As soon as practicable after the gazette notice is published, the chief executive must give the registrar of titles written notice of the approval.
- ‘(5) The notice must include a description of the Torres Strait Islander land held by the registered native title body corporate for the native title holders of the land.
- ‘(6) On receiving the notice, the registrar must record in the freehold land register that the land is held under this Act by the registered native title body corporate for the native title holders of the land.
- ‘(7) In this section—  
*description*, in relation to land, means the description of the land as shown in the freehold land register.

### **‘38A Effect of gazette notice**

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

### **164 Amendment of s 40 (Reservations of forest products and quarry material etc.)**

- (1) Section 40(2)(b), ‘Crown’—

*omit, insert—*

‘State’.

- (2) Section 40(3), ‘grantees of the land are’—

*omit, insert—*

‘trustee of the land is’.

- (3) Section 40(3), ‘grantees or’—

*omit, insert—*

‘trustee or’.

## 165 Replacement of pts 4 and 5

Parts 4 and 5—

*omit, insert—*

# ‘Part 4 Register of entities holding Torres Strait Islander land

## ‘41 Keeping register of entities holding Torres Strait Islander land

- ‘(1) The chief executive must keep a register of entities that hold Torres Strait Islander land (the *Torres Strait Islander land holding entity register*).
- ‘(2) The register must contain the following information for each entity—
- (a) the entity’s name, address for the service of documents and contact telephone number;
  - (b) a description of the Torres Strait Islander land held by the entity.
- ‘(3) If the entity is a land trust, the register also must contain all the following information about the land trust—
- (a) the names and addresses of all the current members of the land trust;

[s 165]

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- (b) the name of each member of the land trust's executive committee, and the position held by the member;
- (c) a contact telephone number for the chairperson and secretary of the land trust;
- (d) a copy of the land trust's adopted rules;
- (e) copies of annual financial statements and audit reports the chief executive receives from the land trust under this Act;
- (f) a statement about whether or not the land trust has, for each financial year, operated in compliance with the Act.

*Note—*

Under section 97, the chief executive must record in the register whether or not a land trust has operated in compliance with the Act.

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

#### **'42 Giving information for register to the chief executive**

- '(1) Each entity, other than a land trust, that holds Torres Strait Islander land must—
  - (a) as soon as practicable after the end of each financial year, give to the chief executive the information mentioned in section 41(2) for the entity; and
  - (b) as soon as practicable after any of the information changes—give the chief executive a written notice of the change.
- '(2) A land trust must give to the chief executive all the information the chief executive reasonably requires to ensure the information in the register about the land trust is accurate.

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**‘43 Obtaining information in register**

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

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

- (a) the names of all the current members of the land trust;
- (b) the information mentioned in section 41(3)(b), (d) or (e).

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

- (a) the information mentioned in section 41(2);
- (b) for a land trust—
  - (i) the names of the chairperson and secretary of the land trust; and
  - (ii) the information mentioned in section 41(3)(f).

[s 165]

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## **‘Part 4A                      Transfer of Torres Strait Islander land by Minister**

### **‘Division 1                      Preliminary**

#### **‘44                      Purpose of pt 4A**

‘The purpose of this part is to provide for—

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

#### **‘45                      Application of pt 4A**

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

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

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

#### **‘46                      Vesting of land in the State**

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

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

**‘47 How land is held by the State**

- ‘(1) This section applies if—
- (a) the land vests in the State under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth); or
  - (b) the land vests in the State under section 46.
- ‘(2) The land—
- (a) vests in the State in fee simple; and
  - (b) the State holds the land for the benefit of the persons for whose benefit the land was held immediately before it vested in the State.

**‘48 Minister to transfer land as soon as practicable**

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

**‘49 Transfer to registered native title body corporate to hold for native title holders**

- ‘(1) This section applies if—
- (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and

[s 165]

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- (b) there is a registered native title body corporate for the determination.
- ‘(2) The Minister may, with the consent of the registered native title body corporate, transfer the land to it.
- ‘(3) If the Minister transfers the land under this section to a registered native title body corporate, the body corporate holds the land for the native title holders of the land the subject of the determination mentioned in subsection (1)(a).
- ‘(4) In considering whether to transfer the land to a registered native title body corporate, the Minister may have regard to any matter the Minister considers relevant to the proposed transfer, including, for example—
  - (a) whether any Torres Strait Islanders particularly concerned with the land, other than the native title holders of the land, may be adversely affected by the proposed transfer; and
  - (b) if the Minister is satisfied any Torres Strait Islanders particularly concerned with the land will be adversely affected by the proposed transfer—any action the registered native title body corporate intends to take to address the concerns of the Torres Strait Islanders.

**‘50 Transfer to entity to hold for benefit of Torres Strait Islanders**

- ‘(1) This section applies if the Minister does not transfer the land under section 49 to a registered native title body corporate.
- ‘(2) The Minister may transfer the land to—
  - (a) a CATSI corporation that is qualified to hold the land; or
  - (b) a land trust.
- ‘(3) However, the Minister may transfer the land to a CATSI corporation that is a registered native title body corporate under subsection (2) only if—

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

## ‘51 Procedure for transferring land

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

[s 165]

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- ‘(2) The notice must—
- (a) include a description of the land; and
  - (b) state the following—
    - (i) the name of the proposed transferee;
    - (ii) that a Torres Strait Islander particularly concerned with the land may make written representations to the Minister about the proposed transfer;
    - (iii) the place where the representations may be made;
    - (iv) the period in which the representations must be made.
- ‘(3) The stated period must end at least 28 days after the notice is published.
- ‘(4) A person mentioned in subsection (2)(b)(ii) may make written representations about the proposed transfer to the Minister within the stated period.

## ‘52 Effect of gazette notice about transfer

‘The transfer of the land under this part has effect on publication of the gazette notice about the transfer under section 48.

## ‘Division 3 Notices to registrar

### ‘53 Notice about land

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

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**‘Part 4B                      General provisions for dealing  
with Torres Strait Islander land**

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

**‘54            Power to deal with Torres Strait Islander land**

‘Subject to this part and part 4C, the trustee of Torres Strait Islander land may—

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

[s 165]

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### **‘54A Requirement for consultation**

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

‘(2) Despite section 60A, dealing with land in contravention of subsection (1) is not void under that section.

‘(3) In this section—

*deal*, with land, means—

- (a) grant a lease, other than under section 61(1)(a)(i) for private residential purposes, for more than 10 years over the land; or
- (b) grant a licence for the use of the land for more than 10 years; or
- (c) grant or otherwise create an interest in, or in relation to, the land, other than—
  - (i) a residential tenancy; or
  - (ii) a lease or licence for the use of the land for not more than 10 years; or
  - (iii) a lease under section 61(1)(a)(i) for private residential purposes; or
- (d) dedicate a part of the land to public use; or
- (e) surrender any of the land to the State.

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

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**‘54B Provision about Minister’s consent**

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

[s 165]

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

### **‘55        Prohibition on sale or mortgage of Torres Strait Islander land**

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

## **‘Division 3                    Grant of licences**

### **‘56        Grant of licence for Torres Strait Islander land**

- ‘(1) The trustee of Torres Strait Islander land may grant a licence for the use of all or a part of the land only—
- (a) to a Torres Strait Islander for not more than 30 years; or
  - (b) to the State for not more than 30 years; or
  - (c) to another person—
    - (i) for not more than 10 years; or
    - (ii) with the Minister’s prior written consent, for more than 10 years but not more than 30 years.
- ‘(2) The lessee of the townsite lease may grant a licence for the use of all or a part of the lease land only—
- (a) to a Torres Strait Islander for not more than 30 years; or
  - (b) to the State for not more than 30 years; or
  - (c) to another person—
    - (i) for not more than 10 years; or
    - (ii) with the Minister’s prior written consent, for more than 10 years but not more than 30 years.

### **‘56A      Conditions of licences**

- ‘(1) A licence granted under section 56(1)(a) or (2)(a) is subject to the condition that an interest may be created under the licence

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

- (a) the interest is in favour of the spouse, or former spouse, of a Torres Strait Islander or of a Torres Strait Islander who is deceased; or
  - (b) the interest is—
    - (i) for not more than 10 years; or
    - (ii) created with the Minister’s prior written consent.
- ‘(2) A licence granted under section 56(1)(b) or (c) or (2)(b) or (c) is subject to the condition that an interest can not be created under the licence.
- ‘(3) A licence granted under section 56(1) or (2) can not be renewed or transferred.

## ‘Division 4                      **Transfer of Torres Strait Islander land by trustee**

### ‘Subdivision 1              **Land held by land trust**

#### ‘57              **Application of sdiv 1**

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

#### ‘57A              **Transfer of Torres Strait Islander land**

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

[s 165]

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- ‘(2) However, the trustee may transfer all or a part of the land to a CATSI corporation that is a registered native title body corporate only if—
- (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
  - (b) the registered native title body corporate is registered on the National Native Title Register for the determination.
- ‘(3) If a trustee transfers land under this subdivision—
- (a) all improvements on the land must be transferred with the land; and
  - (b) for a transferee that is a registered native title body corporate—the transferee holds the land for—
    - (i) the native title holders of the land, if the transferor and the transferee agree it is to be held for the native title holders; or
    - (ii) the benefit of Torres Strait Islanders particularly concerned with the land and their ancestors and descendants, if subparagraph (i) does not apply to the transfer; and
  - (c) for a transferee that is not a registered native title body corporate—the transferee holds the land for the benefit of the Torres Strait Islanders particularly concerned with the land and their ancestors and descendants; and
  - (d) if all the Torres Strait Islander land held by the trustee is transferred to the transferee—
    - (i) the land trust for the land that is transferred is dissolved; and
    - (ii) all the assets and liabilities of the trustee become the assets and liabilities of the transferee; and
  - (e) if paragraph (c) does not apply—the assets and liabilities of the trustee mentioned in section 57C(1)(a)(ii) become the assets and liabilities of the transferee.

---

**‘57B Application for approval to transfer**

- ‘(1) The trustee of the Torres Strait Islander land may apply to the Minister for an approval to transfer all or a part of the land.
- ‘(2) The application must—
  - (a) be in the approved form; and
  - (b) if the transferee is a land trust—be accompanied by evidence satisfactory to the Minister of each matter mentioned in section 57C(1)(a) or (b) that applies to the transfer; and
  - (c) if the transferee is a CATSI corporation—be accompanied by evidence satisfactory to the Minister of the matters mentioned in section 57C(1)(c).

**‘57C Minister’s approval to transfer**

- ‘(1) The Minister may give an approval to transfer the land only if satisfied—
  - (a) at least 75% of the transferor’s members present at a general meeting of the transferor, agree to the transfer of—
    - (i) the land; and
    - (ii) the assets and liabilities of the transferor that will become the assets and liabilities of the transferee; and
  - (b) if the transferee is a land trust—at least 75% of the transferee’s members present at a general meeting of the transferee, agree to the transfer of—
    - (i) the land; and
    - (ii) the assets and liabilities of the transferor that will become the assets and liabilities of the transferee; and
  - (c) if the transferee is a CATSI corporation—
    - (i) the transferee agrees to the transfer; and

[s 165]

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- (ii) the transferee is qualified to hold the land; and
  - (d) it is appropriate in the circumstances to transfer the land.
- ‘(2) If the Minister gives an approval to transfer the land, the chief executive must notify the approval by gazette notice.
- ‘(3) The gazette notice must—
  - (a) include all of the following—
    - (i) the name of the transferor;
    - (ii) a description of the land being transferred;
    - (iii) details of each registered interest in the land being transferred;
    - (iv) a description of all Torres Strait Islander land, if any, that will be held by the transferor after the transfer;
    - (v) the name of the transferee;
    - (vi) a description of all Torres Strait Islander land that will be held by the transferee after the transfer; and
  - (b) if the transferor is a land trust that is dissolved under section 57A(3)(d)(i) because of the transfer—state the land trust will be dissolved.
- ‘(4) In this section—

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

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

#### ‘57D Effect of gazette notice about transfer

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

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## **‘Subdivision 2      Land held by CATSI corporation**

### **‘58      Application of sdiv 2**

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

### **‘58A      Transfer of Torres Strait Islander land**

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

[s 165]

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

**‘58B Application for approval to transfer**

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

**‘58C Minister’s approval to transfer**

- ‘(1) The Minister may give an approval to transfer the land only if satisfied—
  - (a) the transferee agrees to the transfer; and
  - (b) the transferee is qualified to hold the land; and
  - (c) it is appropriate in the circumstances to transfer the land.
- ‘(2) If the Minister gives an approval to transfer the land, the chief executive must notify the approval by gazette notice.
- ‘(3) The gazette notice must include all of the following—
  - (a) the name of the transferor;
  - (b) a description of the land being transferred;
  - (c) the name of the transferee.
- ‘(4) In this section—  
*description*, in relation to land, means the description of the land as shown in the freehold land register.

**‘58D Effect of gazette notice about transfer**

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

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

#### **‘59 Exemption**

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

### **‘Division 5 Other matters**

#### **‘60 Trustee to advise chief executive of change to description of land**

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

#### **‘60A Particular dealings in Torres Strait Islander land void**

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

#### **‘60B Provision about resumption of Torres Strait Islander land etc.**

- ‘(1) An interest in Torres Strait Islander land can not be resumed, taken or otherwise compulsorily acquired, sold or dealt with other than under the Acquisition Act by a constructing authority.
- ‘(2) However, an interest in Torres Strait Islander land may be taken under the Acquisition Act only for a relevant purpose.

[s 165]

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- ‘(3) To remove any doubt, it is declared that, for taking an interest in Torres Strait Islander land under the Acquisition Act, the Torres Strait Islander land is land as defined in that Act.
- ‘(4) Subsection (1) has effect despite any other Act (whether enacted before or after the enactment of this section).
- ‘(5) In this section—
- relevant purpose* means any purpose for which land may be taken under the Acquisition Act by a constructing authority, other than a purpose under—
- (a) the *Geothermal Energy Act 2010*; or
  - (b) the *Greenhouse Gas Storage Act 2009*; or
  - (c) the *Petroleum and Gas (Production and Safety) Act 2004*; or
  - (d) the *State Development and Public Works Organisation Act 1971*.

## ‘Part 4C                      Leasing of Torres Strait Islander land

### ‘Division 1                      Grant of leases for Torres Strait Islander land

#### ‘61                      Grant of lease for Torres Strait Islander land

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

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

## ‘Division 2                      Standard leases

### ‘Subdivision 1                Restrictions on grant of standard leases

#### ‘62            Restrictions on grant of standard lease to a Torres Strait Islander

- ‘(1) This section applies to a standard lease under section 61(1)(a)(i).
- ‘(2) If the lease is for more than 30 years it may be granted only—
- (a) for private residential purposes; or
  - (b) with the Minister’s prior written consent, for another purpose.

[s 165]

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

a commercial purpose or providing public infrastructure

- ‘(3) The Minister may consent to the grant of the lease for another purpose under subsection (2)(b) only if—
- (a) having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the trustee holds the land; and
  - (b) for a lease for more than 30 years and for a commercial purpose—the lease is granted over an entire lot as shown in the appropriate register.

*Note—*

For a lease for more than 30 years and for a commercial purpose, also see section 63A.

## **‘62A Restrictions on grant of standard lease to State**

- ‘(1) This section applies to a standard lease under section 61(1)(a)(ii).
- ‘(2) If the standard lease is for more than 30 years it may be granted only—
- (a) for a following purpose—
    - (i) a purpose under the *Housing Act 2003*;
    - (ii) providing public infrastructure;
    - (iii) providing residential accommodation for public service employees or police officers; or
  - (b) with the Minister’s prior written consent, for another purpose.

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

a commercial purpose

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

- (a) having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the trustee holds the land; and
- (b) for a lease for more than 30 years and for a commercial purpose—the lease is granted over an entire lot as shown in the appropriate register.

**‘62B Restrictions on grant of standard lease to another person**

- ‘(1) This section applies to a standard lease under section 61(1)(a)(iii).
- ‘(2) The lease may be granted for a private residential purpose only if the lease supports a standard lease granted to the person for a commercial purpose.
- ‘(3) If the lease is for more than 10 years it may be granted only with the Minister’s prior written consent unless the lease is for—
  - (a) a commercial purpose and for not more than 30 years; or
  - (b) a private residential purpose to support a lease for a commercial purpose.
- ‘(4) The Minister may consent to the grant of the lease only if—
  - (a) having regard to the nature of the lease, the Minister is satisfied the grant of the lease is for the benefit of persons for whom the trustee holds the land; and
  - (b) for a lease for more than 30 years and for a commercial purpose—the lease is granted over an entire lot as shown in the appropriate register.

[s 165]

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## **‘Subdivision 2      Requirements for Minister’s consent**

### **‘63      General requirements for Minister’s consent**

- ‘(1) A person seeking the Minister’s consent to the grant of a standard lease must give the Minister the information or documents reasonably required by the Minister to show—
- (a) the purpose of the lease; and
  - (b) that the grant of the lease is for the benefit of persons for whom the trustee holds the land; and
  - (c) if the lease is for more than 30 years—that the grant of the lease is appropriate in the circumstances.
- ‘(2) Also, a person seeking the Minister’s consent to the grant of a standard lease for more than 30 years for a commercial purpose must give the Minister—
- (a) a business plan outlining the details of the commercial purpose of the lease, including, for example, financial details about any proposed development under the lease; and
  - (b) evidence to show that an appropriate return on the investment for the commercial purpose can not be obtained under a lease for not more than 30 years; and
  - (c) other information or documents reasonably required by the Minister to show the purpose of the lease.
- ‘(3) In considering whether to give consent to the grant of a standard lease, the Minister—
- (a) must have regard to the information or documents given to the Minister under subsection (1) or (2); and
  - (b) may have regard to other information the Minister considers relevant to the proposed lease.
- ‘(4) Before giving consent to the grant of a standard lease for more than 30 years, the Minister must be satisfied—

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- (a) the trustee has complied with section 54A(1)(a) for the lease; and
  - (b) the Torres Strait Islanders particularly concerned with the lease land are generally in agreement with the grant of the lease.

**‘63A Requirement for Minister’s consent for standard lease for commercial purpose**

- ‘(1) Before the Minister consents to the grant of a standard lease for more than 30 years for a commercial purpose, the Minister must—
  - (a) obtain an independent assessment of—
    - (i) the business plan and evidence given to the Minister under section 63(2)(a) and (b); and
    - (ii) the proposed lessee’s financial and managerial capabilities; and
  - (b) be satisfied, having regard to the independent assessment, that—
    - (i) any proposed development under the lease will be commercially viable; and
    - (ii) the evidence given under section 63(2)(b) satisfactorily shows that an appropriate return on the investment for the purpose of the lease can not be obtained under a lease for not more than 30 years; and
    - (iii) the proposed lessee’s financial and managerial capabilities are appropriate for carrying out any proposed development under the lease.
- ‘(2) The proposed lessee must pay the cost of the independent assessment.
- ‘(3) The cost is not refundable.

[s 165]

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**‘63B Requirement for Minister’s consent for creation of interest under a standard lease**

- ‘(1) This section applies if, under section 72, an interest under a standard lease may be created only with the Minister’s written consent.
- ‘(2) The Minister may consent to the creation of the interest only if—
  - (a) having regard to the nature of the interest, the Minister is satisfied the creation of the interest is for the benefit of persons for whom the trustee holds the lease land; and
  - (b) if the lease is for more than 30 years—
    - (i) the interest is consistent with the purpose for which the lease was granted; or
    - (ii) the interest would not diminish the purpose for which the lease was granted.
- ‘(3) A person seeking the Minister’s consent must give the Minister the information or documents relevant to the proposed interest reasonably required by the Minister, including, for example, information or documents to show that the creation of the interest is for the benefit of persons for whom the trustee holds the lease land.

**‘Division 3 Townsite leases**

**‘Subdivision 1 Restriction on grant of townsite leases**

**‘64 Minister’s consent for grant of townsite lease**

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

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

## **‘Subdivision 2      Requirements for Minister’s consent**

### **‘65      General requirements for Minister’s consent**

- ‘(1) A person seeking the Minister’s consent to the grant of a townsite lease must give the Minister the information or documents reasonably required by the Minister to show—
  - (a) the purpose of the lease; and
  - (b) the grant of the lease is for the benefit of persons for whom the trustee holds the lease land; and
  - (c) the grant of the lease—
    - (i) will facilitate the continued operation of a township on the lease land; and
    - (ii) will not prevent residents of the township land from continuing to live on and access the land, or from obtaining tenure over the land under this Act.
- ‘(2) In considering whether to give consent to the grant of a townsite lease, the Minister—
  - (a) must have regard to the information or documents given to the Minister under subsection (1); and
  - (b) may have regard to other information the Minister considers relevant to the proposed lease.
- ‘(3) Before giving consent to the grant of a townsite lease, the Minister must be satisfied—
  - (a) the trustee has complied with section 54A(1)(a) for the lease; and

[s 165]

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

### **‘Subdivision 3      Provisions about dealings with townsite leases**

#### **‘66      Transfer or amendment of townsite lease**

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

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

**‘66A Townsite lease and transfer, amendment or surrender of lease to be registered**

- ‘(1) A townsite lease, and any transfer, amendment or surrender of a townsite lease, must be registered.
- ‘(2) Despite the Land Title Act, section 65(2) the instrument of lease for a townsite lease must include a plan of survey identifying the lease land.

**‘66B Surrender of townsite lease**

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

**‘66C No forfeiture of townsite lease**

‘A townsite lease can not be forfeited.

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

**‘67 Lessee of townsite lease taken to be lessor of existing leases**

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

[s 165]

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

*Note—*

Under section 31(2) the trustee of the Torres Strait Islander land is the lessor of the continued lease.

- ‘(3) Section 31(3) applies for the continued lease as if the reference in that subsection to the trustee of the land were a reference to the lessee of the townsite lease.

## ‘Division 4                   Townsite subleases

### ‘Subdivision 1           Grant of subleases under townsite lease

#### ‘68           Grant of sublease

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

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

## **‘Subdivision 2      Requirements about grant of subleases under townsite lease**

### **‘69      Restrictions on grant of townsite sublease to a Torres Strait Islander**

- ‘(1) This section applies to a townsite sublease under section 68(2)(a).
- ‘(2) If the sublease is for more than 30 years, it may be granted only—
  - (a) for private residential purposes; or
  - (b) with the Minister’s prior written consent, for another purpose.
    - Examples of another purpose for paragraph (b)—*
      - a commercial purpose or providing public infrastructure
- ‘(3) The Minister may consent to the grant of the sublease for another purpose under subsection (2)(b) only if—
  - (a) having regard to the nature of the sublease, the Minister is satisfied the grant of the sublease would not diminish the purpose for which the townsite lease was granted; and
  - (b) for a townsite sublease for more than 30 years and for a commercial purpose—the sublease is granted over an entire lot as shown in the appropriate register.

*Note—*

For a lease for more than 30 years and for a commercial purpose, also see section 70A.

[s 165]

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### **‘69A Restrictions on grant of townsite sublease to State**

- ‘(1) This section applies to a townsite sublease under section 68(2)(b).
- ‘(2) If the sublease is for more than 30 years it may be granted only—
  - (a) for a following purpose—
    - (i) a purpose under the *Housing Act 2003*;
    - (ii) providing public infrastructure;
    - (iii) providing residential accommodation for public service employees or police officers; or
  - (b) with the Minister’s prior written consent, for another purpose.

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

a commercial purpose

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

### **‘69B Restrictions on grant of townsite sublease to another person**

- ‘(1) This section applies to a townsite sublease under section 68(2)(c).
- ‘(2) The sublease may be granted for a private residential purpose only if the sublease supports a sublease granted to the person for a commercial purpose.

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

### **‘Subdivision 3 Requirements for Minister’s consent**

#### **‘70 General requirements for Minister’s consent**

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

[s 165]

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- financial details about any proposed development under the sublease; and
- (b) evidence to show that an appropriate return on the investment for the commercial purpose can not be obtained under a sublease for not more than 30 years; and
  - (c) other information or documents reasonably required by the Minister to show the purpose of the sublease.
- ‘(3) In considering whether to give consent to the grant of a townsite sublease, the Minister—
- (a) must have regard to the information or documents given to the Minister under subsection (1) or (2); and
  - (b) may have regard to other information the Minister considers relevant to the proposed sublease.
- ‘(4) Before giving consent to the grant of a townsite sublease for more than 30 years, the Minister must be satisfied the grant of the sublease will not diminish the purpose for which the townsite lease was granted.

**‘70A Requirement for Minister’s consent for townsite sublease for commercial purpose**

- ‘(1) Before the Minister consents to the grant of a townsite sublease for more than 30 years for a commercial purpose, the Minister must—
- (a) obtain an independent assessment of—
    - (i) the business plan and evidence given to the Minister under section 70(2)(a) and (b); and
    - (ii) the proposed sublessee’s financial and managerial capabilities; and
  - (b) be satisfied, having regard to the independent assessment, that—
    - (i) any proposed development under the sublease will be commercially viable; and

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- (ii) the evidence given under section 70(2)(b) satisfactorily shows that an appropriate return on the investment for the purpose of the sublease can not be obtained under a sublease for not more than 30 years; and
  - (iii) the proposed sublessee's financial and managerial capabilities are appropriate for carrying out any proposed development under the lease.
- '(2) The proposed sublessee must pay the cost of the independent assessment.
- '(3) The cost is not refundable.

**'70B Requirement for Minister's consent for creation of interest under a townsite sublease**

- '(1) This section applies if, under section 72, an interest under a townsite sublease may be created only with the Minister's written consent.
- '(2) The Minister may consent to the creation of the interest only if—
- (a) the interest is consistent with the purpose for which the townsite lease was granted; or
  - (b) the interest would not diminish the purpose for which the townsite lease was granted.
- '(3) A person seeking the Minister's consent must give the Minister the information or documents relevant to the proposed interest reasonably required by the Minister, including, for example, information or documents to show that the creation of the interest would not diminish the purpose for which the townsite lease was granted.

[s 165]

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## **‘Division 5                    Common provisions for standard leases and townsite subleases**

### **‘Subdivision 1        Preliminary**

#### **‘71        Definitions for div 5**

‘In this division—

*lease* means—

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

*lessor* means—

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

### **‘Subdivision 2        Conditions of leases**

#### **‘72        Conditions of leases—general**

- ‘(1) A lease is subject to a condition that an interest, other than a mortgage of the lease, for a term of more than 10 years may be created under the lease only with the Minister’s prior written consent.

*Note—*

For requirements for the Minister’s consent, see sections 63B and 70B.

- ‘(2) Despite subsection (1)—
- (a) an interest under a lease granted under section 61(1)(a)(i) or 68(2)(a) may be created without the Minister’s prior written consent if the interest is in favour of—
    - (i) a Torres Strait Islander; or

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

**'72A Leases for private residential purposes—general conditions and requirements**

- '(1) A lease granted for private residential purposes is subject to all of the following conditions—
- (a) if the lease is granted under section 61(1)(a)(i) or 68(2)(a)—
    - (i) it must be for 99 years; and
    - (ii) the annual rental under the lease is the amount, of not more than \$1, decided by the lessor; and

[s 165]

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- (iii) the consideration payable for the lease must include, as a lump sum payment, an amount equal to the value of the lease land as decided by the lessor using at least 1 of the following—
    - (A) a valuation methodology decided by the chief executive;
    - (B) the benchmark purchase price, as prescribed under a regulation, for land in the part of the State in which the lease land is situated; and
  - (iv) the lease land must be used primarily for private residential use;
  - (b) if a private residential premises is not situated on the lease land when the lease is granted—the lessee must ensure a private residential premises is built on the land within 8 years after the lease is granted;
  - (c) an interest may be created under the lease only if the interest is a residential tenancy or a mortgage of the lease.
- ‘(2) A lessor may grant a lease under section 61(1)(a)(i) or 68(2)(a) for private residential purposes only if the amount mentioned in subsection (1)(a)(iii) has been paid to the lessor.
- ‘(3) The chief executive—
- (a) must, if requested, give a person a copy of the valuation methodology mentioned in subsection (1)(a)(iii); and
  - (b) may make the valuation methodology available for inspection on the department’s website.

**‘72B Leases for private residential purposes—particular requirements if dwelling situated on land**

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

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- ‘(2) The lessor must give the housing chief executive written notice of the lessor’s intention to grant the lease.
- ‘(3) Within 28 days after receiving the notice, the housing chief executive must give the lessor a written notice stating whether the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
- ‘(4) The lessor must not grant the lease before receiving the housing chief executive’s notice under subsection (3).
- ‘(5) Subsections (6) to (10) apply if the notice states the housing chief executive considers the dwelling has been used to provide subsidised housing for residential use.
- ‘(6) The lessor must, before the lease is granted, decide the value of the dwelling by using a valuation methodology agreed between the lessor and the housing chief executive.
- ‘(7) The consideration payable for the lease must include, as a lump sum payment, an amount equal to the value of the dwelling decided under subsection (6).
- ‘(8) The lessor may grant the lease only—
- (a) with the written approval of the housing chief executive; and
  - (b) if the amount mentioned in subsection (7) has been paid to the lessor.
- ‘(9) In considering whether to give an approval, the housing chief executive must have regard to whether it would be more appropriate in the circumstances for the dwelling to continue to be used to provide subsidised housing for residential use.
- ‘(10) If the lessor grants the lease, the lessor must, within 28 days after the lease is registered, give the housing chief executive—
- (a) a written notice stating—
    - (i) the day the lease was registered; and
    - (ii) the names of the parties to the lease; and
  - (b) evidence showing the amount mentioned in subsection (7) for the dwelling was paid to the lessor; and

[s 165]

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- (c) evidence showing the amount decided by the lessor under section 72A(1)(a)(iii) for the lease land was paid to the lessor.

*Note—*

The amount mentioned in subsection (7) must be used by the lessor as required under section 133A.

‘(11) This section does not limit section 72A.

‘(12) In this section—

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

### **‘72C Option to renew particular lease or sublease**

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

## **‘Subdivision 3 Provisions about transfer, amendment or surrender of leases**

### **‘73 Transfer or amendment of lease or sublease**

- ‘(1) A lease or a sublease of a lease must not be transferred or amended without—
  - (a) if, under a condition of the lease, the transfer or amendment of the lease or sublease requires the consent of the lessor—the lessor’s prior written consent; and
  - (b) if, under this part, the grant of the lease or sublease requires the consent of the Minister—the Minister’s prior written consent.
- ‘(2) A person seeking the Minister’s consent to the transfer or amendment of a lease or sublease must give the Minister the

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information or documents relevant to the proposed transfer or amendment reasonably required by the Minister.

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

### **‘73A Particular dealings to be registered**

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

[s 165]

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- ‘(2) Despite the Land Title Act, section 65(2), an instrument of lease for Torres Strait Islander land, must include a plan of survey identifying the lease land.
- ‘(3) Subsection (2) does not apply to a lease entered into only in relation to an area completely within a building.

## ‘Division 6                    **Forfeiture and renewal of leases for private residential purposes**

### ‘Subdivision 1            **Preliminary**

#### ‘74            **Definitions for div 6**

‘In this division—

*lessee* means—

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

*lessor* means—

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

*residential lease* means—

- (a) a standard lease granted under section 61(1)(a)(i) for private residential purposes; or
- (b) a townsite sublease granted under section 68(2)(a) for private residential purposes.

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**‘74A Application of div 6**

‘This division applies to all residential leases.

**‘Subdivision 2 Forfeiture**

**‘75 Grounds for forfeiture**

- ‘(1) A residential lease may be forfeited only if—
- (a) the lessee breaches a relevant condition of the lease and fails to remedy the breach within 6 months after receiving written notice of the breach from the lessor; or
  - (b) the lessee acquired the lease by fraud.
- ‘(2) In this section—
- relevant condition*, of a residential lease, means—
- (a) a condition of the lease mentioned in section 72A(1)(b);  
or
  - (b) another condition, if the lessor reasonably considers a breach of the condition is of a serious nature and warrants forfeiture of the lease.

**‘75A Referral to Land Court for forfeiture**

- ‘(1) Before the residential lease is forfeited, the lessor must refer the matter to the Land Court to decide whether the lease may be forfeited.
- ‘(2) The lessor must give the lessee, and any mortgagee of the lease, at least 28 days written notice of the lessor’s intention to refer the matter to the Land Court.
- ‘(3) The notice must state the grounds on which the lessor considers the lease may be forfeited.
- ‘(4) In deciding whether the lease may be forfeited, the Land Court must have regard to—
- (a) the stated grounds; and

[s 165]

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- (b) if the lease is proposed to be forfeited because of a breach of a condition of the lease—whether the court considers the breach is of a serious nature and warrants forfeiture of the lease.
- ‘(5) The lessor must file a copy of the notice in the Land Court at the same time as the lessor refers the matter to the court.

**‘75B Lessor’s options if Land Court decides lease may be forfeited**

‘If the Land Court decides the residential lease may be forfeited, the lessor may—

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

**‘75C Notice and effect of forfeiture**

- ‘(1) If the lessor forfeits the residential lease, the lessor must, within 60 days after receiving notice of the Land Court’s decision about forfeiture of the lease, give written notice that the lease is forfeited to—
- (a) the lessee and any mortgagee of the lease; and
  - (b) the registrar.
- ‘(2) On receiving the notice, the registrar must record the forfeiture of the lease in the appropriate register.
- ‘(3) The forfeiture of the lease takes effect on the day the registrar acts under subsection (2).
- ‘(4) On forfeiture of the lease—
- (a) the lease ends; and
  - (b) the lessee is divested of any interest in the lease; and

- 
- (c) any person occupying the lease land must immediately vacate the land.

### **‘75D Extension of term of lease—referral for forfeiture**

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

## **‘Subdivision 3 Renewal**

### **‘76 Notice of expiry of lease**

- ‘(1) This section applies if the lessee under a residential lease has not, under section 76A, applied for renewal of the lease at least 1 year before the term of the lease ends.
- ‘(2) The lessor must, as soon as practicable, give the lessee written notice stating—
  - (a) the day the term of the lease ends; and
  - (b) that the lessee may apply under this subdivision for renewal of the lease and how the lessee may apply.

[s 165]

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**‘76A Application to renew lease**

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

**‘76B Lessor to consider and decide application**

‘The lessor must, within 6 months after an application is made under section 76A, consider the application and decide to renew or not to renew the residential lease.

**‘76C Decision to renew lease**

- ‘(1) If the lessor decides to renew the residential lease, the lessor must give the lessee—
  - (a) written notice of the decision; and
  - (b) a copy of the renewed lease.
- ‘(2) The renewed lease—
  - (a) must be for the same term as the lease it replaces (the *replaced lease*); and
  - (b) has effect immediately after the replaced lease ends; and
  - (c) is subject to all the conditions to which the replaced lease was subject immediately before it ended.
- ‘(3) No amount is payable under section 72A(1)(a)(iii) for the renewed lease.
- ‘(4) Also, section 72B does not apply for the renewal of the lease.

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**‘76D Lessor may decide not to renew lease**

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

**‘76E Notice to lessee about decision not to renew lease**

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

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

**‘76F Extension of term of lease—application for renewal**

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

[s 165]

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

### **‘77      Right to remove improvements if lease forfeited or not renewed**

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

### **‘77A      Payment by lessor for forfeited or non-renewed lease**

- ‘(1) If the lessor forfeits or decides not to renew the residential lease, the lessor must pay to the person who was the lessee the amount worked out under subsection (2) (the *required amount*).
- ‘(2) The required amount is the amount equal to the combined value of the following (the *maximum amount*) less any amounts deducted from the maximum amount under section 77C—
  - (a) the value of the lease land on the day the lease is forfeited or ends; and
  - (b) the value of the lessee’s improvements on the land that become the property of the lessor.
- ‘(3) The value of the lease land is the amount as decided by the lessor using the valuation methodology mentioned in section 72A(1)(a)(iii).
- ‘(4) The value of any improvements on the lease land must be assessed as the market value of the improvements in a sale of a lease of the same term and tenure as the forfeited or non-renewed lease.

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- ‘(5) Subject to subsections (3) and (4), the lessor must decide the required amount.
  - ‘(6) The lessor must decide the required amount as soon as practicable after giving the person notice that the lease is forfeited or not renewed.
  - ‘(7) On deciding the required amount, the lessor must give the person written notice of the decision.
  - ‘(8) The notice must state—
    - (a) the required amount; and
    - (b) that the person may appeal to the Land Court against the decision within 28 days after receiving the notice; and
    - (c) how the person may appeal.
  - ‘(9) This section is subject to section 77B.

#### **‘77B Unclaimed amounts**

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

#### **‘77C Amounts owing to lessor or mortgagee to be deducted**

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

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

[s 165]

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- (d) any amount owing to a mortgagee of the lease by the person under a mortgage of the lease.

**‘77D Payment of amount to mortgagee in discharge of mortgage**

- ‘(1) This section applies if the lessor forfeits or decides not to renew the residential lease and, under a mortgage of the lease, an amount is owing to a mortgagee of the lease by the person who was the lessee.
- ‘(2) The lessor must pay to the mortgagee—
  - (a) if the amount that may be deducted from the maximum amount under section 77C(d) is less than the difference between the maximum amount and the amounts deducted under section 77C(a), (b) or (c)—the amount that may be deducted from the maximum amount under section 77C(d); or
  - (b) otherwise—the amount equal to the difference between the maximum amount and the amounts deducted under section 77C(a), (b) or (c).
- ‘(3) The lessor must pay the amount payable under subsection (2) to the mortgagee—
  - (a) if no appeal is made to the Land Court about the required amount payable to the person who was the lessee—within 28 days after the time for making an appeal ends; or
  - (b) if an appeal is made to the Land Court about the required amount—within 28 days after the appeal is finally decided.
- ‘(4) If the lessor pays an amount to the mortgagee in relation to a mortgage of the lease, the mortgagee must use the amount in discharge of the mortgage.

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## **‘Division 7                      Miscellaneous**

### **‘78      Effect of option to renew or extend on calculation of term of leases**

- ‘(1) This section applies to a lease granted for an initial term of—
  - (a) not more than 10 years; or
  - (b) at least 10 years but not more than 30 years.
- ‘(2) For the purposes of section 54A and this part, the lease is taken to be a lease for more than 10 years or more than 30 years if the lease includes an option to renew or extend the lease that, if exercised, would extend the term of the lease for more than 10 years or more than 30 years.
- ‘(3) In this section—  
*lease* means a standard lease or a townsite sublease.

### **‘78A    Exemption from fees and charges**

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

### **‘78B    Leases for private residential purposes—beneficiary**

- ‘(1) A person who is beneficially entitled under a will to a residential lease may ask the lessor—
  - (a) to give the person a written notice stating whether or not the person is entitled to a grant of the lease under this Act; and

[s 165]

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- (b) if, under a condition of the lease, the lease can not be transferred without the lessor's written consent—for written notice of the lessor's consent to the transfer of the lease.

*Note—*

Under section 72, the lease may include a condition that it must not be transferred without the lessor's prior written consent.

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

## **'Part 5                      Decision-making process**

### **'79      When agreement of Torres Strait Islanders is given**

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

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

### **'80      Decision-making by trustee**

- (1) This section applies if this Act provides that the trustee of Torres Strait Islander land is required to make a decision about the land, including, for example, a decision about whether to grant an interest in the land, consent to the creation

of a mining interest in the land or enter into an agreement about the land.

- ‘(2) The trustee must—
- (a) have regard to—
    - (i) if the Torres Strait Islanders for whom the trustee holds the land have agreed on a decision-making process for decisions of that kind—the process; or
    - (ii) if subparagraph (i) does not apply—any Island custom, for decisions of that kind, of the Torres Strait Islanders for whom the trustee holds the land; or
  - (b) if there is no decision-making process mentioned in paragraph (a)(i) or relevant Island custom—make the decision under a process of decision-making agreed to and adopted by the trustee for the decision or for decisions of that kind.’.

**166 Replacement of pt 5A (Provisions about mortgages of leases over Torres Strait Islander land)**

Part 5A—

*omit, insert—*

**‘Part 5A Provisions about mortgages of leases over Torres Strait Islander land**

**‘Division 1 Preliminary**

**‘80AA Definitions for pt 5A**

‘In this part—

*lease* means—

- (a) a standard lease; or

[s 166]

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(b) a townsite sublease.

*lessor* means—

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

### **‘80A Application of pt 5A**

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

## **‘Division 2                   Mortgages of leases over Torres Strait Islander land**

### **‘80B Provisions about entering into possession, and selling, lease**

- ‘(1) This section applies if a mortgagee enters into possession of a lease granted over Torres Strait Islander land.
- ‘(2) The mortgagee must give the lessor for the lease written notice of the fact within 28 days after entering into possession.
- ‘(3) The mortgagee must arrange to sell the lease within—
  - (a) 4 years after entering into possession of the lease; or
  - (b) the longer period agreed in writing between the mortgagee and lessor.
- ‘(4) For subsection (3)(b)—
  - (a) the period mentioned in subsection (3)(a) may be extended or further extended for not more than 2 years at a time; and

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- (b) an extension or further extension of the period must be agreed in writing before the period or further extended period would otherwise have ended.
  - ‘(5) In considering whether to agree to an extension or further extension, the lessor must have regard to the measures the mortgagee has already taken to sell the lease.
  - ‘(6) If the mortgagee does not sell the lease within the period mentioned in subsection (3)(a), the lessor may sell the lease.
  - ‘(7) The mortgagee or lessor may sell the lease only to a person who, under this Act, would be entitled to a grant of the lease.
  - ‘(8) The lessor must not sell the lease for less than—
    - (a) the amount owing to the mortgagee by the lessee under the mortgage on the day the lease is sold; or
    - (b) if the lessor and the mortgagee agree the lease may be sold for an amount less than the amount mentioned in paragraph (a)—the agreed amount.
  - ‘(9) In this section—
    - lessee* means—
      - (a) for a standard lease—the lessee under the lease; or
      - (b) for a townsite sublease—the sublessee under the sublease.

### ‘80C How lessor deals with proceeds of sale

- ‘(1) This section applies if, under section 80B, a lessor sells a mortgaged lease.
- ‘(2) The lessor must apply the proceeds of the sale, under the *Property Law Act 1974*, as if the lease were sold by the mortgagee and the amount of the sale were received by the mortgagee.
- ‘(3) However, in applying the proceeds of the sale, the lessor must firstly apply the proceeds to the payment of all costs, charges and expenses properly incurred by the lessor for the sale or any attempted sale.’

[s 167]

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**167 Amendment of s 80D (Definitions for pt 5B)**

- (1) Section 80D, definition *Torres Strait Islander trust land*, paragraph (d), ‘reserve for’—  
*omit, insert—*  
‘reserve for Torres Strait Islander purposes or’.
- (2) Section 80D, definition *trustee (Torres Strait Islander) lease*, from ‘under’—  
*omit, insert—*  
‘under—
  - (a) part 4C as applied under section 80F(2); or
  - (b) the Land Act, section 57 before the commencement of this part.’.

**168 Amendment of s 80F (Trustee (Torres Strait Islander) leases)**

- (1) Section 80F(1), ‘part 3, division 2, subdivision 3’—  
*omit, insert—*  
‘part 4C’.
- (2) Section 80F(2)(a), ‘transferred land’—  
*omit, insert—*  
‘Torres Strait Islander land’.
- (3) Section 80F(2)(c), from ‘section 37F(4)(a)’ to ‘section 80F(4)(a)’—  
*omit, insert—*  
‘section 63(4)(a) to section 54A(1)(a) were a reference to section 80F(5)(a)’.
- (4) Section 80F(2)(d) and (f)—  
*omit.*
- (5) Section 80F(2)(e)—  
*renumber* as section 80F(2)(d).

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- (6) Section 80F(2)(d), as renumbered under this section, ‘section 37H(3)(a)’—  
*omit, insert—*  
‘section 72(3)(a)’.
- (7) Section 80F—  
*insert—*
- ‘(2A) Also, for subsection (1) the following provisions apply in relation to the leasing of Torres Strait Islander trust land that is prescribed DOGIT land as if a reference in the provisions to a Torres Strait Islander includes a reference to an Aborigine—
- (a) section 61;
- (b) section 72(2).’.
- (8) Section 80F(5), ‘part 3, division 2, subdivision 3’—  
*omit, insert—*  
‘part 4C’.
- (9) Section 80F(7), definition *relevant provisions*, ‘part 3, division 2, subdivisions 3 and 4’—  
*omit, insert—*  
‘part 4C, divisions 1 to 6’.
- (10) Section 80F(2A) to (7)—  
*renumber* as section 80F(3) to (8).
- (11) Section 80F(7), as renumbered under this section, ‘Subsection (5)’—  
*omit, insert—*  
‘Subsection (6)’.

**169 Amendment of s 80G (Amending trustee (Torres Strait Islander) lease)**

Section 80G(2), definition *term*, paragraph (a)—

[s 170]

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*omit, insert—*

‘(a) the renewal of the lease; or’.

**170 Amendment of s 81 (Crown’s use of Islander land preserved)**

(1) Section 81, heading, ‘Crown’s use of Islander’—

*omit, insert—*

**‘Use of Torres Strait Islander’.**

(2) Section 81(1), ‘the Crown in right of’—

*omit.*

(3) Section 81(1), ‘Crown is entitled’—

*omit, insert—*

‘State or Commonwealth is entitled’.

(4) Section 81(1), ‘required by the Crown’—

*omit, insert—*

‘required by the State or Commonwealth’.

(5) Section 81(2), ‘Crown’—

*omit, insert—*

‘State or Commonwealth’.

(6) Section 81(3)—

*omit, insert—*

‘(3) If the chief executive becomes aware the occupation or use of land under subsection (1) is no longer required by the State or Commonwealth, the chief executive must give the trustee of the land written notice of that fact.

‘(4) Despite subsection (1), if the State or Commonwealth intends to continue to occupy or use the land, the State or Commonwealth and the trustee of the land are to use their best endeavours to provide for the continued occupation and use of

the land under an interest in, or in relation to, the land given by the trustee of the land.

- ‘(5) Subsection (1) ceases to apply to land if—
- (a) it is leased to a person for a private residential purpose under part 4C; or
  - (b) the State or Commonwealth has a right to occupy or use the land under an interest in, or in relation to, the land given by the trustee of the land; or
  - (c) the trustee of the land receives a notice under subsection (3) for the land.
- ‘(6) Subsection (7) applies if the Torres Strait Islander land being occupied or used by the State or the Commonwealth is land that is the subject of a townsite lease.
- ‘(7) Subsections (3) to (5) apply as if a reference to the trustee of the land were a reference to the lessee of the townsite lease.’.

### **171 Amendment of s 82 (No rent payable by Crown)**

- (1) Section 82, heading, ‘by Crown’—  
*omit.*
- (2) Section 82, ‘The Crown’—  
*omit, insert—*  
‘The State or Commonwealth’.
- (3) Section 82, ‘section 81’—  
*omit, insert—*  
‘section 81(1)’.

### **172 Amendment of s 83 (Access to land used by Crown)**

- (1) Section 83, heading, ‘used by Crown’—  
*omit.*
- (2) Section 83(1), ‘Crown is entitled’—

[s 172]

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*omit, insert—*

‘State or Commonwealth is entitled’.

- (3) Section 83(1), ‘Crown and its’—

*omit, insert—*

‘State or Commonwealth and their’.

- (4) Section 83(2)(b), ‘Crown and the grantees’—

*omit, insert—*

‘State or Commonwealth and the trustee’.

- (5) Section 83(3), ‘grantees’—

*omit, insert—*

‘trustee’.

- (6) Section 83(3)(a), ‘they have’—

*omit, insert—*

‘the trustee has’.

- (7) Section 83(3)(c)—

*omit.*

- (8) Section 83—

*insert—*

- ‘(5) If the Torres Strait Islander land being occupied or used by the State or the Commonwealth under section 81(1) is land that is the subject of a townsite lease or other registered interest (**relevant land**)—

- (a) subsection (2) applies to the relevant land as if the reference to the trustee of the land were a reference to the lessee of the townsite lease or the person registered in the appropriate register as the holder of the other interest; and
- (b) subsection (3) does not apply.

- ‘(6) Subsection (5) does not affect the operation of subsections (2) and (3) in relation to Torres Strait Islander land that is not relevant land.’.

**173 Amendment of s 84 (Application of Mineral Resources Act)**

- (1) Section 84(2), ‘subsection (5)’—  
*omit, insert—*  
‘subsection (3)’.
- (2) Section 84(2), from ‘the following’—  
*omit, insert—*  
‘Torres Strait Islander land that is or was transferred land as if it were a reserve, and the trustee of the land were the owner of the land, within the meaning of that Act.’.
- (3) Section 84(3) and (4)—  
*omit.*
- (4) Section 84(5), (6) and (7)—  
*renumber* as section 84(3), (4) and (5).
- (5) Section 84(3), as renumbered under this section, ‘Subsections (2) and (4)(b) do’—  
*omit, insert—*  
‘Subsection (2) does’.
- (6) Section 84(5), as renumbered under this section, ‘Subsection (6)’—  
*omit, insert—*  
‘Subsection (4)’.
- (7) Section 84(8)—  
*omit.*

[s 174]

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**174 Amendment of s 85 (Royalties in relation to mining on Torres Strait Islander land)**

- (1) Section 85(1), from ‘(other’ to ‘lease’—  
*omit.*
- (2) Section 85(2), ‘grantees of the land are’—  
*omit, insert—*  
‘trustee of the land is’.
- (3) Section 85(2), ‘royalty amount, and the grantees are to apply’—  
*omit, insert—*  
‘total royalty amount received in a financial year and must apply’.
- (4) Section 85(2), ‘they hold’—  
*omit, insert—*  
‘the trustee holds’.
- (5) Section 85(3)—  
*omit.*

**175 Replacement of pt 8 (The Land Tribunal)**

Part 8—

*omit, insert—*

**‘Part 8 Provisions about land trusts**

**‘Division 1 Preliminary**

**‘86 Composition of land trust**

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

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**‘87 Nature of land trust**

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

[s 175]

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## **‘88 Function and powers of land trust**

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

*Note—*

Also see section 106 (Application of Trusts Act 1973).

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

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

#### **‘89 Minister may appoint member**

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

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

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

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

*Example—*

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

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

## **‘Subdivision 2      Removal or suspension of members**

### **‘90      Grounds for removal or suspension of member**

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

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

[s 175]

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

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

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

## **‘91 Show cause notice**

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

(e) that the member and the land trust may, within a stated period (the *show cause period*), make written representations to the Minister to show why the proposed action should not be taken.

‘(4) The show cause period must end at least 1 month after the show cause notice is given.

## ‘92 Representations about show cause notice

‘(1) The member or land trust may make written representations about the show cause notice to the Minister during the show cause period.

‘(2) The Minister must consider all representations (the *accepted representations*) made under subsection (1).

## ‘93 Ending show cause process without further action

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

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

## ‘94 Removing or suspending member

‘(1) This section applies if—

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

[s 175]

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- ‘(2) The Minister may—
- (a) if the proposed action was to remove the member—remove the member; or
  - (b) if the proposed action was to suspend the member—suspend the member for not longer than the proposed suspension period.
- ‘(3) Before acting under subsection (2), the Minister must, if the Minister considers it appropriate in the circumstances, consult with and consider the views of Torres Strait Islanders particularly concerned with the Torres Strait Islander land held by the land trust.
- ‘(4) In acting under this section, the Minister must have regard to any Island custom applicable to the Torres Strait Islander land held by the land trust.
- ‘(5) If the Minister decides to take action under subsection (2), the Minister must as soon as practicable give—
- (a) the person an information notice for the decision; and
  - (b) the land trust written notice of the decision.
- ‘(6) The decision takes effect on the later of the following—
- (a) the day the information notice is given to the person;
  - (b) the day stated in the information notice for that purpose.
- ‘(7) In this section—
- information notice***, for a decision of the Minister, means a notice stating all of the following—
- (a) the decision;
  - (b) the reasons for the decision;
  - (c) that the person to whom the notice is given may appeal against the decision within 28 days after the person receives the notice;
  - (d) how the person may appeal.

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**‘95 Immediate removal or suspension of member**

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

**‘Subdivision 3 Other matters**

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

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

[s 175]

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

### **‘Division 3                    Recording information about compliance with Act**

#### **‘97       Particular information to be recorded in register**

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

### **‘Division 4                    Land trusts to give information to chief executive**

#### **‘98       Definition for div 4**

‘In this division—

*information* includes a document.

#### **‘99       Power to require particular information**

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

*Examples of information—*

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

## ‘Division 5                      Freezing accounts of land trust

### ‘100    Definitions for div 5

‘In this division—

*account*, of a land trust, means—

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

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

*trust money* means any amount that is trust property.

### ‘101    Freezing land trust’s accounts

- ‘(1) The chief executive may give a direction under subsection (2) if, on considering a report on an audit of a land trust’s accounts, it appears to the chief executive that—
- (a) the land trust, a member of the land trust or another person has, or may have, stolen, misappropriated or misapplied trust money; or
  - (b) the accounts of the land trust are not being kept appropriately.

[s 175]

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

#### **‘102 Financial institution must comply with direction**

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

Maximum penalty—100 penalty units.

- ‘(2) For section 101(2)(a), the chief executive’s signature on a cheque or instrument is sufficient evidence of the chief executive’s approval to draw an amount from the account to honour the cheque or instrument.

#### **‘103 Withdrawal of direction**

- ‘(1) The chief executive may withdraw a direction given under section 101 at any time.
- ‘(2) If the direction is withdrawn, the chief executive must immediately give all persons who were given the direction a

written notice, signed by the chief executive, that the direction has been withdrawn.

- ‘(3) A direction stops having effect when it is withdrawn.

## **‘Division 6                    Miscellaneous**

### **‘104    Chief executive may prepare model rules**

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

### **‘105    Provision about vesting of Torres Strait Islander land**

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

[s 175]

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## **‘Part 8A                      Application of Trusts Act 1973**

### **‘Division 1                      Preliminary**

#### **‘106      Application of Trusts Act 1973**

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

### **‘Division 2                      Powers of Supreme Court**

#### **‘107      Jurisdiction of Supreme Court**

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

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**‘108 Power of court to relieve member of land trust from personal liability**

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

**‘109 Court may order beneficiary to indemnify for certain breaches**

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

**‘110 Right of land trust or member to apply to court for directions**

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

[s 175]

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

**‘111 Court’s jurisdiction to make orders conferring power on land trust or members**

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

(ii) the amount is to be apportioned between the capital and income of the trust property.

‘(3) The Supreme Court may—

- (a) rescind or vary an order under this section; or
- (b) make a new or further order.

‘(4) The rescision or variation of an order does not affect anything done by a person relying on the order before the person became aware of the application to the court to rescind or vary the order.

‘(5) An application to the court under this section may be made by—

- (a) a land trust; or
- (b) a member of a land trust; or
- (c) a person for whose benefit the trust property is held.

‘(6) In this section—

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

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

## ‘112 Protection of land trust or member while acting under direction of court

‘(1) If a land trust or member of a land trust acts under direction of the Supreme Court, the land trust or member is to be taken to have discharged the duty as trustee in the subject matter of the direction.

‘(2) Subsection (1) applies even if the direction is subsequently declared invalid, overruled, set aside or otherwise rendered of no effect or varied.

‘(3) This section does not indemnify a land trust or member of a land trust in relation to an act done in accordance with a direction of the court obtained by the land trust or member by fraud, wilful concealment or misrepresentation or in

[s 175]

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acquiescence in the fraud, wilful concealment or misrepresentation.

**‘113 Power of Supreme Court to make orders in absence of member**

‘(1) If, in a proceeding under this Act, the Supreme Court is satisfied that—

- (a) a diligent search has been made for a member of a land trust who is named as a party in an action; and
- (b) the member can not be found to serve the member with a process of the court;

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

‘(2) Subsection (1) applies without prejudice to any interest the member may have in the matter in question in the proceeding in any other capacity.

‘(3) If a member, at the time of the proceeding—

- (a) is not within the jurisdiction; or
- (b) is under a disability; or
- (c) can not be found;

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

**‘114 Power of Supreme Court to charge costs on trust property**

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

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

## **‘Part 8B                    Appeals**

### **‘115    Who may appeal**

- ‘(1) A person who made representations to the Minister under part 2, division 3A about a proposed declaration under section 13B(1)(d) may appeal to the Land Court against the decision to make the declaration.
- ‘(2) A lessee of a residential lease the subject of a decision under section 76B to not renew the lease may appeal to the Land Court against the decision.
- ‘(3) A person the subject of a decision under section 77A about an amount payable to the person for forfeiture or non-renewal of a residential lease may appeal to the Land Court against the decision.
- ‘(4) A member of a land trust who is given, or is entitled to be given, an information notice under part 8, division 2 about a decision to remove or suspend the member from the land trust may appeal to the Land Court against the decision.

### **‘116    Starting appeal**

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

[s 176]

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

**‘117 Nature of appeal**

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

**‘118 Notice of appeal**

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

- (a) for a decision mentioned in section 115(1), (2) or (3)—the decision-maker; or
- (b) for a decision mentioned in section 115(4)—the decision-maker and the land trust.

**‘119 Powers of Land Court on appeal**

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

**176 Amendment of s 128 (Creation of interests in transferable and claimable land)**

- (1) Section 128, heading, ‘and claimable’—

*omit.*

- (2) Section 128(1)(a)—

*insert—*

‘(iv) residential tenancy; or

(v) lease or permit granted in relation to transferable land that is Torres Strait Islander trust land; or’.

- (3) Section 128(1)(b)—

*omit, insert—*

‘(b) the interest is the transfer, mortgage or sublease of a trustee (Torres Strait Islander) lease; or

(c) for another interest—the Minister, subject to subsection (2), consents to the creation of the interest.’.

- (4) Section 128(2), ‘subsection (1)(b)’—

*omit, insert—*

‘subsection (1)(c)’.

- (5) Section 128(3), (4) and (5)—

*omit, insert—*

‘(3) The Minister may give a relevant entity a written authority dispensing with the need to obtain the Minister’s consent to the creation of a particular type of interest in transferable land if the Minister considers it is appropriate in all the circumstances to give the authority.’.

- (6) Section 128(6)—

*renumber* as section 128(4).

- (7) Section 128—

*insert—*

‘(5) In this section—

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

[s 177]

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**177 Amendment of s 129 (Rights of access to interests preserved)**

- (1) Section 129(2) and (3), ‘grantees’—  
*omit, insert—*  
‘trustee’.
- (2) Section 129(2)(b), ‘Land Tribunal’—  
*omit, insert—*  
‘Land Court’.
- (3) Section 129(3)(a), ‘they have’—  
*omit, insert—*  
‘the trustee has’.
- (4) Section 129(3)(c)—  
*omit.*
- (5) Section 129—  
*insert—*  
‘(5) If the only practicable way of gaining access to the person’s land is across Torres Strait Islander land that is the subject of a townsite lease or other registered interest (*relevant land*)—
  - (a) subsection (2) applies to the relevant land as if the reference to the trustee of the Torres Strait Islander land, or the trustee, were a reference to the lessee of the townsite lease or the person registered in the appropriate register as the holder of the other interest; and
  - (b) subsection (3) does not apply.
- ‘(6) Subsection (5) does not affect the operation of subsections (2) and (3) in relation to Torres Strait Islander land that is not relevant land.’.

**178 Amendment of s 130 (Persons and bodies representing Crown)**

- (1) Section 130, heading, ‘Crown’—

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*omit, insert—*

‘State or Commonwealth’.

- (2) Section 130, ‘the Crown in right of’—

*omit.*

**179 Amendment of s 131 (Delegation by Minister)**

Section 131, from ‘Act’—

*omit, insert—*

‘Act.’.

**180 Omission of s 132 (Delegation by land claims registrar)**

Section 132—

*omit.*

**181 Amendment of s 133 (Amendment of description of land)**

- (1) Section 133(1), ‘or a Torres Strait Islander (non-transferred land) lease’—

*omit.*

- (2) Section 133(1), ‘grantees’—

*omit, insert—*

‘trustee’.

- (3) Section 133(1), from ‘registrar’ to ‘over, the land’—

*omit, insert—*

‘chief executive, surrender to the State the deed to the land’.

- (4) Section 133(2), from ‘grantee’s’ to ‘grantees’—

*omit, insert—*

‘trustee’s deed, a new deed of grant delineating the amended boundaries is to be issued to the trustee’.

[s 182]

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- (5) Section 133(3), ‘or lease’—  
*omit.*
- (6) Section 133(4), after ‘registrar’—  
*insert—*  
‘of titles’.
- (7) Section 133(4), ‘or lease’—  
*omit.*

## **182 Replacement of s 133A (Dealing with particular trust property)**

Section 133A—  
*omit, insert—*

### **‘133A Dealing with particular trust property**

- ‘(1) Subsection (2) applies to a trustee, other than the State, if the trustee receives an amount paid under section 72B for the value of a dwelling.
- ‘(2) The trustee must ensure an amount equal to the lease amount received is used by the trustee for housing services for Torres Strait Islanders concerned with the land held by the trustee.
- ‘(3) Subsection (4) applies to the lessee of a townsite lease if the lessee receives an amount paid under section 72B for the value of a dwelling.
- ‘(4) The lessee must ensure an amount equal to the amount received is used by the lessee for housing services for Torres Strait Islanders concerned with the land the subject of the townsite lease.
- ‘(5) In this section—  
*housing service* means—
  - (a) providing housing to an individual for residential use; or
  - (b) any of the following kinds of service—
    - (i) tenant advisory services;

- (ii) tenant advocacy services;
- (iii) home maintenance services;
- (iv) home modification services;
- (v) housing-related referral and information services.

*trustee* includes a trustee, under the Land Act, of Torres Strait Islander trust land.’

**183 Amendment of s 134 (Survey costs etc. to be paid by State)**

- (1) Section 134(1), from ‘section’ to ‘lease’—

*omit, insert—*

‘section 25 or 133’.

- (2) Section 134(2)(b) and (c)—

*omit, insert—*

‘(b) a surrender, under or for this Act, of a deed of grant mentioned in paragraph (a).’

**184 Amendment of s 134A (Application of Financial Administration and Audit Act 1977)**

- (1) Section 134A, heading, ‘Administration and Audit Act 1977’—

*omit, insert—*

‘**Accountability Act 2009**’.

- (2) Section 134A(2)(a), ‘land claims registrar’—

*omit, insert—*

‘chief executive’.

**185 Amendment of s 135 (Regulation-making power)**

Section 135(2)—

*omit, insert—*

[s 186]

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

## **186 Insertion of new pt 9A**

Before part 10—

*insert—*

### **‘Part 9A Validation provision**

#### **‘135A Retrospective validation of dealings with trustee (Torres Strait Islander) lease**

- ‘(1) Subsection (2) applies to a trustee (Torres Strait Islander) lease if the lease—
- (a) was granted under the Land Act, section 57 before 18 July 2008; and
  - (b) was amended, transferred, mortgaged or subleased, during the relevant period, under the Land Act, chapter 3, part 1, division 7.
- ‘(2) The amendment, transfer, mortgage or sublease of the trustee (Torres Strait Islander) lease (the *dealing*) is taken to be, and to always have been, as valid as if—

- 
- (a) the dealing were carried out under this Act; and
- (b) section 80D, as in force immediately after the commencement of this section, had been in force on the day the dealing was carried out.
- ‘(3) Subsection (4) applies to a trustee (Torres Strait Islander) lease if the lease—
- (a) was granted under the Land Act, section 57 before 18 July 2008; and
- (b) was amended, transferred, mortgaged or subleased, during the relevant period, under this Act.
- ‘(4) The amendment, transfer, mortgage or sublease of the trustee (Torres Strait Islander) lease (also the *dealing*) is taken to be, and to always have been, as valid as if section 80D, as in force immediately after the commencement of this section, had been in force on the day the dealing was carried out.
- ‘(5) In this section—
- relevant period* means the period starting on 18 July 2008 and ending immediately before the commencement of this section.’.

## 187 Insertion of new pt 10, div 3

Part 10—

*insert—*

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

#### ‘138 Definitions for div 3

‘In this division—

*commencement* means the day this division commences.

[s 187]

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

**‘139 Torres Strait Islander land—change to beneficiaries**

- ‘(1) This section applies to Torres Strait Islander land granted before the commencement.
- ‘(2) On the commencement, the trustee of the land is taken to hold it for the benefit of Torres Strait Islanders particularly concerned with the land and their ancestors and descendants.
- ‘(3) As soon as practicable after the commencement, the chief executive must give written notice to the registrar of titles that the land vests in the trustee as mentioned in subsection (2).
- ‘(4) On receiving the notice, the registrar of titles must record in the freehold land register that the land is vested as mentioned in subsection (2).

**‘140 Continued operation of provisions for appointing grantees**

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

- (c) an address for service of documents on the land trust.
- ‘(5) The last 2 words of the name of the land trust must be the words ‘Land Trust’.

#### ‘141 References to previous provisions after renumbering

- ‘(1) A reference in another Act, a regulation or document to a particular previous provision of this Act may, if the context permits, be taken as a reference to any provision of the renumbered Act, all or part of which corresponds, or substantially corresponds, to the previous provision.
- ‘(2) In this section—  
*renumbered Act* means this Act as renumbered under section 142.’.

#### 188 Insertion of new pt 11

After section 141, as inserted by this Act—  
*insert—*

### ‘Part 11 Renumbering of Acts

#### ‘142 Amendment to renumber

- ‘(1) On the commencement of this section, the provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.
- ‘(2) Subsection (1) applies to a provision of this Act enacted or otherwise affected (a *relevant provision*) by a provision of an amending Act enacted but uncommenced when subsection (1) is commenced (the *uncommenced provision*), with the following intent for the relevant provision—
- (a) if the number of the relevant provision would have changed under subsection (1) had the uncommenced provision commenced—

[s 189]

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- (i) a number is allocated to the relevant provision as if the uncommenced provision had commenced; and
  - (ii) when the uncommenced provision commences, the number of the relevant provision is amended by omitting it and inserting the number allocated to it under subparagraph (i);
- (b) if the relevant provision would have been omitted or relocated had the uncommenced provision commenced, its number remains the same as it was before the commencement of subsection (1) until the omission or relocation takes effect.
- ‘(3) Without limiting the *Reprints Act 1992*, section 43(4), each reference in this Act, and each reference in the *Aboriginal Land Act 1991* to a provision of this Act renumbered under subsection (1), is amended, when the renumbering happens, by omitting the reference to the previous number and inserting the new number.
- ‘(4) In this section—  
*amending Act* means an Act that amends this Act.

### ‘143 Expiry of part

‘This part expires on the later of the following—

- (a) the day after the commencement of the last numbering or renumbering of a provision done under section 142;
- (b) 31 July 2011.’.

## Part 13                      Minor and consequential amendments

### 189 Acts amended

The schedule amends the Acts it mentions.

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## **Schedule**                      **Minor and consequential amendments**

section 189

### **Aboriginal Land Act 1991**

**1**            **Section 36(1) and (2), ‘Local Government (Aboriginal  
Lands) Act 1978’—**

*omit, insert—*

*‘Aurukun and Mornington Shire Leases Act 1978’.*

**2**            **Section 43(1)(b), ‘is reserved’—**

*omit, insert—*

*‘are reserved’.*

**3**            **Section 83J(2), ‘trustee,’—**

*omit, insert—*

*‘trustee’.*

**4**            **Part 5D, heading, ‘Decision making’—**

*omit, insert—*

*‘Decision-making’.*

**5**            **Section 83P, heading, from ‘Provisions’ to ‘possession’—**

*omit, insert—*

*‘Provision about entering into possession of’.*

Schedule

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**6 Section 132A(1)(a), ‘grantees lease’—**

*omit, insert—*

‘grantee leases’.

**7 Section 132A(3), ‘subsection (4)’—**

*omit, insert—*

‘subsections (4) and (4A)’.

**8 Section 132A(9), ‘grantees’—**

*omit, insert—*

‘grantee’.

## **Auditor-General Act 2009**

**1 Schedule, definition *appropriate Minister*, paragraph (e), ‘Local Government (Aboriginal Lands) Act 1978’—**

*omit, insert—*

‘*Aurukun and Mornington Shire Leases Act 1978*’.

## **Environmental Protection Act 1994**

**1 Section 38(2)(h), ‘Local Government (Aboriginal Lands) Act 1978’—**

*omit, insert—*

‘*Aurukun and Mornington Shire Leases Act 1978*’.

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**2 Section 579(6), definition *owner*, paragraph (b), ‘Local Government (Aboriginal Lands) Act 1978’—**

*omit, insert—*

*‘Aurukun and Mornington Shire Leases Act 1978’.*

## **Greenhouse Gas Storage Act 2009**

**1 Schedule 2, definition *owner*, paragraph 1(j), ‘Local Government (Aboriginal Lands) Act 1978’—**

*omit, insert—*

*‘Aurukun and Mornington Shire Leases Act 1978’.*

## **Information Privacy Act 2009**

**1 Section 126(3), definition *responsible Minister*, paragraph (c), ‘Local Government (Aboriginal Lands) Act 1978’—**

*omit, insert—*

*‘Aurukun and Mornington Shire Leases Act 1978’.*

## **Mineral Resources Act 1989**

**1 Schedule, definition *owner*, paragraph (a)(iv), ‘Local Government (Aboriginal Lands) Act 1978’—**

*omit, insert—*

*‘Aurukun and Mornington Shire Leases Act 1978’.*

**2 Schedule, definition *reserve*, paragraph (b), ‘Local Government (Aboriginal Lands) Act 1978’—**

*omit, insert—*

‘*Aurukun and Mornington Shire Leases Act 1978*’.

## **Nature Conservation Act 1992**

**1 Section 45(1)(c), ‘area;’—**

*omit, insert—*

‘area; and’.

**2 Section 70E(1), ‘Council, may’—**

*omit, insert—*

‘Council may,’.

**3 Section 74(c), ‘prohibit’—**

*omit, insert—*

‘to prohibit’.

**4 Section 88(3), ‘subsection (1)’—**

*omit, insert—*

‘subsection (2)’.

**5 Section 95(4), ‘The person’—**

*omit, insert—*

‘A person’.

- 6 Section 100A(2)(b), ‘authorise’—**  
*omit, insert—*  
‘authorising’.
- 7 Section 100B(4), definition *recovery plan*, example, before ‘Act’—**  
*insert—*  
‘*Conservation*’.
- 8 Section 101, definition *protected area*, ‘Wet Tropics Area’—**  
*omit, insert—*  
‘wet tropics area’.
- 9 Section 134(6), definition *registrable conservation agreement*, ‘successor’s’—**  
*omit, insert—*  
‘successors’.
- 10 Section 152A(1)(d)(vi), ‘(iii);’—**  
*omit, insert—*  
‘(iii).’.
- 11 Section 167(1), ‘(1)’—**  
*omit.*

## **Police Powers and Responsibilities Act 2000**

**1 Schedule 4, heading ‘Local Government (Aboriginal Lands) Act 1978’—**

*omit, insert—*

**‘Aurukun and Mornington Shire Leases Act 1978’.**

## **Survey and Mapping Infrastructure Act 2003**

**1 Section 62, definition *indigenous land*, paragraph (b)(ii), ‘Local Government (Aboriginal Lands) Act 1978’—**

*omit, insert—*

**‘Aurukun and Mornington Shire Leases Act 1978’.**

## **Torres Strait Islander Land Act 1991**

**1 Sections 11(1)(c), 17, 18(1) and 21, ‘Crown’—**

*omit, insert—*

**‘State’.**

**2 Part 2, division 4, heading, ‘Claimable and granted’—**

*omit, insert—*

**‘Available State’.**

**3 Part 6, heading, from ‘former’—**

*omit, insert—*

**‘Torres Strait Islander land by the State or Commonwealth’.**

**4 After section 143, as inserted by this Act—**

*insert—*

**‘Schedule Dictionary**

section 3’.

**Vegetation Management Act 1999**

**1 Schedule, definition *indigenous land*, paragraph (a),  
‘Local Government (Aboriginal Lands) Act 1978’—**

*omit, insert—*

*‘Aurukun and Mornington Shire Leases Act 1978’.*

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