Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Bill 2010

Explanatory Notes

Short Title

Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Bill 2010.

General Outline

Objectives of the Bill

The objectives of the Aboriginal Land and Torres Strait Islander Land Amendment Bill 2010 (the Bill) are to:

- amend the *Aboriginal Land Act 1991* (ALA) and the *Torres Strait Islander Land Act 1991* (TSILA) (the Acts) to:
  - — recognise the rights of Aboriginal traditional owners at Seisia, Bamaga and Hammond Island which are Torres Strait Islander Deeds of Grant in Trust (DOGIT) established on traditional Aboriginal land, and ensure that the Torres Strait Islander communities established on these lands can continue to prosper.
  - — reduce the number of organisations that need to be established in a community by providing for land to be granted under the Acts to bodies registered under the Australian Government's *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSIA), rather than create new land trusts under the Acts.
  - — improve the governance of existing land trusts established under the Acts.
  - — improve how the Acts align with, and interact with, the Commonwealth *Native Title Act 1993* (NTA).

- ensure that community development can proceed efficiently in communities following the grant of land under the Acts.

- amend the *Local Government (Aboriginal Lands) Act 1978* (LGALA) to:
  - clarify, simplify and update the legislative framework applying to Aurukun and Mornington Shires under the LG(AL)A so that it aligns with and does not unnecessarily duplicate similar legislation applicable to all other Local Governments generally or to Indigenous Local Governments specifically.
- amend the *Nature Conservation Act 1992* to:
  - provide for the revocation of national parks (Cape York Peninsula Aboriginal land).

Reason for the Objectives

The Acts were subject of a review; the aims of the review were to better align the Acts with the NTA and to improve the efficiency of their administration.

As a result of priority given to certain amendments it was decided that the outcomes of the review would be progressed in two tranches; the first being the development of the Aboriginal and Torres Strait Islander Land Amendment Bill 2008, which was enacted by Parliament in May 2008.

The second tranche of amendments are included in this Bill. Key amendments address the following matters:

Seisia, Bamaga and Hammond Island

Seisia, Bamaga and Hammond Island are Torres Strait Islander Deeds of Grant in Trust communities which were established on traditional Aboriginal land. As a result, these lands could not be transferred to Aboriginal people even though they are the traditional owners of the land.

Future Development

The grant of land under the Acts does not trigger the ‘future act’ provisions under the NTA, however future development of the land does need to comply with the NTA and this can be challenging and time consuming for trustees. Particularly for townships it is better to address native title prior to the transfer, than leave it for the trustee to address at a later date.

Land Holding Entities

In the past when land has been granted under the Acts a land trust has been established under the relevant Act to hold the land - currently there are 70 land trusts in existence. In many cases, communities already have a number of bodies established to conduct a range of activities and the creation of another body would only add to the administrative burden on a community.

Aborigines and Torres Strait Islanders (Land Holding) Act 1985 (Land Holding Act)

As a result of the interaction of the Acts and the Land Holding Act there is an unintended consequence in that any Land Holding Act leases granted within a DOGIT or reserve, on or before 12 June 1991, are transferable but any such lease granted after 12 June 1991 is not transferable under the Acts. This causes unnecessary complications when it is proposed to deal with the land under the Acts.

Local Government (Aboriginal Lands) Act amendments.

Over the last three years the local government system in Queensland has undergone extensive reform, its most significant legislative expression being the passage of the *Local Government Act 2009* (the LGA) which commenced on 1 July 2010. This LGA is contemporary, principles-based and applicable to all local governments across Queensland, including Aboriginal Shire and Indigenous Regional Councils.

On commencement of the LGA, the *Local Government (Community Government Areas) Act 2004,* which provided for the 14 Aboriginal Shire and Indigenous Regional Councils other than Aurukun and Mornington Shire Councils, was repealed as redundant.

Unlike other Indigenous Local Governments, the Aurukun and Mornington Shire Councils were originally established under the LGALA which, due to the new overarching local government legislation, contains a significant number of provisions relating to local government matters which are now redundant.

Nature Conservation Act amendments.

The *Cape York Peninsula Heritage Act 2007* (CYPHA) created a new type of park called ‘national park (Cape York Peninsula Aboriginal land)’. The underlying tenure for these parks is Aboriginal freehold land.

At the time the CYPHA was passed, there was no mechanism for the surrender of the Aboriginal land underlying ‘national park (Cape York Peninsula Aboriginal land)’. Therefore, unlike for other national parks, the NCA does not provide a mechanism for the revocation of these parks.

Amendments to the ALA in 2008 permitted the surrender of ‘national park (Cape York Peninsula Aboriginal land)’ and therefore it is now possible to bring these national parks into line with other national parks and provide a mechanism for their revocation.

How the Policy Objectives will be achieved

The Aboriginal Land Act and the Torres Strait Islander Land Act

The policy is to be achieved by:

- providing options for resolving land tenure issues for Torres Strait Islander and Aboriginal communities living on traditional Aboriginal land at Bamaga, Seisia and Hammond Island. These options include:
  - — for the land (or part of it) to be held by a body made up of solely Aboriginal people for the benefit of all people particularly concerned with the land; or
  - — for the land (or part of it) to be held by a body made up of both Aboriginal people and Torres Strait Islander people for the benefit of all people particularly concerned with the land; and
  - — for the township to be dealt with in a different manner to the balance of the land, for example through the grant of a perpetual lease over the township area.
- ensure that development can readily occur on Indigenous land by requiring that prior to granting the land, under the Acts, appropriate arrangements are in place to deal with matters relevant to the use of the land;
- providing that CATSIA bodies can hold land under the Acts. This will potentially reduce the number of bodies that need to be created in communities as there are existing CATSIA bodies in many Indigenous communities. Existing land trusts may be granted additional land without having to be incorporated under the CATSIA, though they will have the ability to become a CATSIA body if they so wish;

- allow an entity nominated in an Indigenous Land Use Agreement to be appointed to hold land under the Acts, without the requirement of further consultation under the Acts;
- reporting and governance arrangements for existing land trusts will be improved. For instance:
  - — the chief executive, Department of Environment and Resource Management will have the ability to freeze land trusts accounts on the basis of an adverse audit report finding;
  - — the chief executive may require that a land trust give certain information relevant to its operation. This may include information on how it made a particular decision, financial information and meeting minutes.
  - — The chief executive may prepare model rules for land trusts to refer to when changing its rules or adopting new rules.

Local Government (Aboriginal Lands) Act amendments.

The Bill will repeal redundant local government and other outdated provisions in the LGALA and ensure greater consistency between the powers and functions of the Shire Councils of Aurukun and Mornington and those of all other Aboriginal Shire and Indigenous Regional Councils in relation to entry and residence in their areas.

Nature Conservation Act amendments.

These amendments will permit the revocation of ‘national parks (Cape York Peninsula Aboriginal land)’ if the underlying land has been surrendered to the State by the Aboriginal landowners under section 40ZH(3)(a) of the ALA.

Amendments also provide for terminology changes in line with amendments to the ALA and TSILA.

Other amendments:

The Bill also includes amendments to the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (the Justice, Land and Other Matters Act), and the LGA, plus a number of minor consequential amendments to other legislation.

Amendments to the Justice, Land and Other Matters Act will ensure that its provisions relating to law and order in community government and Indigenous Regional Council areas also apply to Aurukun and Mornington

Shires. Amendments essentially aim to reduce existing duplication and do not represent any shift in current policy.

Amendment of the LGA will ensure that a specific revenue raising provision applicable to all other Aboriginal Shire and Indigenous Regional Councils continues to be applicable to the Councils of Aurukun and Mornington Shires.

Alternatives to the Bill

The Aboriginal Land Act and the Torres Strait Islander Land Act

An alternative to granting land under the Acts would be to grant ordinary freehold land under the Land Act. Consultation confirmed however, that the grants of inalienable land under the Acts are still strongly preferred to grants of ordinary freehold.

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

Local Government (Aboriginal Lands) Act amendments.

An alternative option is to retain the LGALA in its current form. However, this would perpetuate a significant number of obsolete and redundant local government provisions to no purpose. In addition it would not address the anomalous powers of Aurukun and Mornington Shires to expel individuals from their area.

Minor amendments to the Justice, Land and Other Matters Act and the LGA are generated by the need to align the powers and functions of the Aurukun and Mornington Shire Councils with those of all other Indigenous Local Governments.

Estimated administrative Cost to the Government for implementation

The proposed amendments are expected to introduce minimal new implementation costs with the majority of these costs to be met from existing budget allocations.

Amendments to section 84 of the ALA and section 81 of the TSILA will require agencies to use best endeavours to agree on an interest for occupied land, following the grant of that land. The rental cost for any such interest is expected to be absorbed by agencies within existing resources as part of normal core business.

Consistency with Fundamental Legislative Principles

Does not adversely affect rights and liberties, or impose obligations, retrospectively *Legislative Standards Act 1992*, section 4(3)(g); and has sufficient regard to Aboriginal tradition and Island custom *Legislative Standards Act 1992*, section 4(3)(j).

Clause 14 - Amendment of s 13 (DOGIT land) amends the definition of 'DOGIT land' under the ALA and acts retrospectively.

In particular, section 13(1)(b)(iii) of the ALA sets out that DOGIT land at the beginning of the enactment day of the DOGIT includes land subject to a lease granted under the Land Holding Act that is within the external boundaries of the DOGIT.

The (current) provision does not contemplate that leases under the Land Holding Act could be approved after the enactment day of the ALA. The consequence of this is that leases granted on or before the enactment day are 'transferable' lands under the ALA, but leases approved after the enactment day are not 'transferable' land.

The proposed amendment (Clause 14, section 5) rectifies this situation by providing that the term 'DOGIT' includes land that was the subject of an application under the Land Holding Act that had been approved by the trustee council or on appeal by the appeal tribunal, under the Land Holding Act, but for which a lease under that Land Holding Act has not been granted.

The same issue also arises in relation to the term 'Aboriginal reserve land' in the ALA (Clause 15) and the terms 'DOGIT' and 'Torres Strait Islander reserve land' in the TSILA (Clauses 139 & 140). This amendment extends to those definitions as well.

This amendment does not affect the rights of the individual lease applicants to have their leases granted but will provide that the underlying tenure is transferable land. Transferable land is land that can be granted to Indigenous grantees. Without this amendment the underlying land tenure would remain State land.

This provision simply puts approved lease applications into the same position as leases that were granted on or before the enactment date.

Does the legislation have sufficient regard to Aboriginal tradition and Island custom *Legislative Standards Act 1992*, section 4(3)(j).

The Bill in clauses 30, 61, 78, 153, 165, and 175 amend the Acts to replace the obligation on the Minister to act in a way that is consistent' with any Aboriginal tradition or Island custom with 'must have regard to any' Aboriginal tradition or Island custom.

Where several groups have an interest in the land, it may prove impossible for the Minister to act consistently with every group's tradition or custom, therefore it is more appropriate that the Minister has regard to the traditions or customs.

These proposed amendments were included in the exposure draft of the Bill that was available for comment – no comments were received on this proposed amendment.

Does not adversely affect rights and liberties, or impose obligations, retrospectively *Legislative Standards Act 1992*, section 4(3)(g).

Clauses 88 and 186 have a retrospective effect. As a result of the 2008 amendments to the Acts, new lease applications over Indigenous DOGITs and Reserves are made under the Acts, and the provisions of the Acts apply to the new leases. Leases that were granted over Indigenous DOGIT and Reserves prior to the 2008 amendments were granted under section 57 of the *Land Act 1994* (Land Act).

As it is unclear which Act covers dealings with a section 57 lease (e.g. amendments to the lease) that was granted before the new leasing regimes commenced, amendments are provided to address this uncertainty.

It is necessary that these amendments act retrospectively to provide that existing leases granted under section 57 are deemed to be "trustee (Aboriginal) leases" or "trustee (Torres Strait Islander) leases" and that any dealings with these existing leases are taken to have been validly done.

Consultation

The Aboriginal Land Act and the Torres Strait Islander Land Act amendments.

In 2004 an Issues Paper for the Acts was released and a comprehensive round of consultations with Aboriginal people and communities, other stakeholders and key Government departments was undertaken.

In April 2005 a discussion paper for the ALA was released for stakeholder consultation and submissions, and further consultation followed.

An exposure draft of the Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Bill 2010 (sans LGALA amendments) was released for comment in June 2010, with the period for making submissions closing 31 August 2010.

Community and Industry Stakeholders

Consultation on proposed amendments to the TSILA commenced in 2008 and was completed in 2009. Consultation consisted of:

- establishing a focus group to guide the community consultation;
- advertising on local radio of the purpose of the consultation and where and when it would take place; and
- conducting a series of two day workshops on each community island and in the mainland centres of Mackay, Townsville and Cairns.

Meetings were held with several Native Title Representative Bodies and local authorities. Details of proposed key amendments were sent out for comment to all Native Title Representative Bodies, the Queensland Indigenous Working Group and other key stakeholders.

Meetings were also held in relation to the specific amendments proposed for the communities of Seisia, Bamaga and Hammond Island. These meetings were held with community members, the traditional owners of those lands and included the mayors of the respective local authorities.

Government

A discussion paper was provided prior to the exposure draft to Department of Premier and Cabinet, Queensland Treasury, Queensland Health, Queensland Police Service, Department of Communities, Department of Public Works, Department of Transport and Main Roads, Department of Justice and Attorney-General and the Department of Employment, Economic Development and Innovation.

Local Government (Aboriginal Lands) Act amendments.

Government

The Department of Communities (Aboriginal and Torres Strait Islander Services) and the Department of Environment and Resource Management were consulted during the review of the LGALA and development of the

Bill's drafting instructions. All departments were consulted during the Cabinet process.

Local Governments

The Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships wrote to the Aurukun and Mornington Shire Councils to inform them of the review of the LGALA and to invite them to identify any issues or proposals of concern.

The Department of Infrastructure and Planning subsequently consulted directly with each of the Aurukun and Mornington Shire Councils on the issues under review and proposed changes to the legislation, including the removal of their power to summarily evict persons from their area.

Both Local Governments advised their support in principle for the proposed amendments.

Notes on Provisions

Part 1 - Preliminary

Short Title

Clause 1 describes the short title of the Act.

Commencement

Clause 2 provides that the Act commences on a day fixed by proclamation.

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

Clause 3 states that Part 2 amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

Clause 4 amends Section 4 of the Act (Definitions) to indicate that a definition of 'indigenous local government' for Part 3, Division 1 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984,* is provided at Section 8A of the Act.

Clause 5 amends Section 8A of the Act (Definition for div 1) to insert in Division 1, Part 3 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* definitions of 'indigenous local government' and 'indigenous local government area' that include the Shires of Aurukun and Mornington and their local government areas. This will ensure that the provisions in this Division relating to law and order in the 14 other Indigenous local government areas also apply to Aurukun and Mornington Shires, thereby enabling similar, current arrangements for these two communities to continue after amendment of the *Local Government (Aboriginal Lands) Act 1978*.

Clauses 6, 7 and 8 amend Sections 9, 10 and 11 of the Act to replace references to community government, indigenous regional council, community government area or IRC area with the more accurate and inclusive term, 'indigenous local government' or 'indigenous local government area' and so ensure that these provisions also apply to Aurukun and Mornington Shires following amendment of the *Local Government (Aboriginal Lands) Act 1978*.

Clauses 9, 10 and 11 amend Sections 12, 13 and 14 of the Act to stipulate that these provisions relating to the employment and functions of community police officers also apply to the Aurukun and Mornington Shire Councils. This preserves the existing powers of these two Councils relating to Aboriginal police post amendment of the *Local Government (Aboriginal Lands) Act 1978*.

Part 3 – Amendment of Aboriginal Land Act 1991

Act Amended

Clause 12 provides that this part and the schedule amend the ALA.

Amendment of s 10 (Meaning of Aboriginal Land)

Clause 13 omits superfluous text used to describe the meaning of Aboriginal land which is otherwise captured in sections 11 and 17 of the ALA, and reference to an Aboriginal lease as the ability to grant one is no longer available under the ALA.

Amendment of s 13 (DOGIT land)

Clause 14 includes in the definition of DOGIT land, 'prescribed DOGIT land' and land subject to approved lease applications (but not granted) under the Land Holding Act. These inclusions enable these lands to be transferred under the transferable land provisions of the ALA.

Further, amendments correct an error in tense and replaces reference to "*Aborigines and Torres Strait Islanders (Land Holding) Act 1985"* with the term "Land Holding Act" as that Act is now defined in the dictionary.

Amendment of s 14 (Aboriginal reserve land)

Clause 15 replaces the reference to "*Aborigines and Torres Strait Islanders (Land Holding) Act 1985*" with the term "Land Holding Act" as that Act is now defined in the dictionary; and includes in the definition of reserve land, land subject to approved, but not yet granted leases under Land Holding Act. This inclusion enables this land to be transferred under the transferable land provisions of the ALA. Further, an amendment corrects an error in tense.

Amendment of s 15 (Aurukun Shire lease land)

Clause 16 clarifies that for the purposes of the section Aurukun Shire lease land does not include land that is a road under section 4A(1) of the *Local Government (Aboriginal Lands) Act 1978.* It also notes that this Act will be renamed to the *Aurukun and Mornington Shire Leases Act 1978.*

Amendment of s 16 (Mornington Shire lease land)

Clause 17 clarifies that for the purposes of the section Mornington Shire lease land does not include land that is a road under section 4A(1) of the

Local Government (Aboriginal Lands) Act 1978. It also notes that this Act will be renamed to the *Aurukun and Mornington Shire Leases Act 1978*.

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

Clause 18 omits the words "under this division" and replaces with "to the land court". This amendment reflects that provisions relating to the land court hearing appeals under various sections of the ALA have been amalgamated into one section.

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

Clause 19 omits the words "within ten business days" and replaces with "as soon as is practical". This amendment reflects that the existing requirement to publish notice of the Minister's intention was not a practical timeframe.

Amendment of s 16D (Minister to consider representations and give notice of decisions)

Clause 20 provides the ability for the Minister to make a declaration for all or part of the land notified under section 16C. This amendment reflects that the existing section 16D did not allow that part of the land could be made subject to a declaration.

Further, section 16D(2), renumbered as 16D(3) is amended to provide further requirements for a declaration notice.

Omission of ss 16E and 16F

Clause 21 omits in sections 16E and 16F to reflect that provisions relating to the land court hearing appeals under various sections of the ALA have been amalgamated into one section.

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

Clause 22 amends the section heading to match other section headings in the Division, through removing the reference to a specific section.

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

Clause 23 removes reference to claimable land that under section 67 has been included in a deed of grant or lease. Section 67 is deleted from the ALA under another clause.

Amendment of s 18 (Lands that are claimable land)

Clause 24 amends the section heading to reflect section content and clarifies that claimable land can only include Aboriginal land that became transferred land before 22 December 2006 - reflecting that the time for making a claim of claimable land under the ALA has passed (the sunset clause).

Replacement of s 19 (Lands that are available State land – general)

Clause 25 omits and reinserts section 19, and adds new sections 19A and 19B.

As the clause relates to section 19, it amends the section heading to reflect section content; reflects the inclusion of lands that are not available State land in the section into a defined term "excluded land" now included in the dictionary; and includes under the meaning of available State land, land subject to an interest issued by the State if an available State land agreement is in force for the land.

The clause inserts new sections – section 19A – "Agreement about particular land".

Section 19A frees up certain lands that can not be readily granted under the ALA because of an existing property interest in place. It enables the Minister to enter into an agreement about certain lands – an "available State land agreement". Under an "available State land agreement'' the State and the person who holds an interest (issued by the State) in land, agree that the land may be 'available State land' under the ALA.

The section provides that the Minister may require satisfaction about certain matters before entering into an agreement, including that entering an agreement is appropriate in the circumstances having regard to an evaluation of the land under section 16 of the Land Act.

The section also states that an available State land agreement must either provide that on the grant of land that the person's interest in the land is to cease and that a new interest will be granted by the trustee in substitution for the ceased interest or that the interest is to continue.

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

Clause 26 amends the section to reflect that the boundaries of a city or town is not constrained to the boundary as at the enactment date of the ALA.

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

Clause 27 omits and inserts section 25. The reinserted section amends the section heading to reflect section content; amalgamates tenures under the Land Act into a succinct reference; and provides that a tenure under the Land Act identified as not available State land, is available State land if the **tenure is subject to an "available State land agreement".**

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

Clause 28 omits and inserts section 27(3). The reinserted section replaces the term grantees with grantee, reflecting that future grants of land will only be to an incorporated body (and no longer to individual persons); and that for prescribed DOGIT land, that this land can be held for the benefit of both Aboriginal and Torres Strait Islander people.

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

Clause 29 omits section 27A(5) as no land trusts can be incorporated for future grants of land under the ALA and therefore this section, specific to preventing a registered native title body corporate forming a land trust, is no longer required.

Replacement of s 28 (Minister to appoint particular trustees)

Clause 30 omits and inserts section 28. The reinserted section 28 provides that land can only be granted under this section to certain entities. Those entities are qualified corporation under the CATSIA, a land trust, the Aurukun Shire Council (if the land is Aurukun Shire lease land) or the Mornington Shire Council (if the land is Mornington Shire Lease land).

The ability to grant land to individuals, who would form a land trust, other than that which is provided for in transitional provisions in the ALA, has been removed. There are many bodies formed under legislation and operating under different rules that can hold land. So as not add to the complexity of land management of Aboriginal land, rather than having many different types of bodies that hold land, land will no longer be able to be transferred to individuals that would form a land trust under the Aboriginal Land Regulation 1991 (ALR). Rather land would be able to be transferred to bodies established under the CATSIA.

The ability to grant transferable land to the trustee of that land, other than in the case of Aurukun Shire and Mornington Shire lease land, in no longer available. Aurukun Shire and Mornington Shire lease land are treated

differently due to the land being a lease with a finite term and the option of the land remaining with the trustee is not an available option.

Under the section certain conditions and considerations apply when granting land to a registered native title body corporate, a body established under the CATSIA.

This section enables the Minister to appoint an entity nominated in an Indigenous land use agreement under certain circumstances, therefore dispensing with the need to consult, under the ALA, with Aboriginal people particularly concerned with the land for the appointment of a grantee.

The section provides that the Minister is required to have regard to any Aboriginal tradition applicable to the land rather then act in a manner consistent with it.

Previous section 28 (5)(a) is removed as it was an error in the legislation.

Amendment of s 28A (Procedure for appointing grantees)

Clause 31 amends the section heading to reflect section content; replacing the term grantees with grantee reflecting that future grants of land will only be to an incorporated body (and no longer to individual persons); and providing that the requirement to publish notice of the Minister's intention to appoint a proposed grantee to land under the Act does not apply if the grantee was nominated in an Indigenous land use agreement.

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

Clause 32 provides for the omission of section 28B as the section has been relocated in the ALA.

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

Clause 33 inserts a missing cross reference in the current section; and clarifies a section cross reference.

Further the section is amended to provide that prior to granting land, the Minister may require that, if the land to be transferred includes township land, the area can continue to be used as a township and residents of that land can continue to live on, access and secure tenure interests in the township; that appropriate arrangements are in place to ensure the continued provision of government services to any relevant Indigenous community; and that development can proceed with respect to native title after the grant of the land.

Arrangements may include the grant of a perpetual town site lease, other leasing or interest arrangements, or an Indigenous Land Use Agreement.

This will ensure communities can continue to function effectively; community members have continued access to the services authorities provide and can obtain interests in the land; and in respect to native title, an upfront arrangement addressing native title would provide a mechanism to ensure that trustees and those seeking an interest in the land are not burdened with the need to seek an Indigenous Land Use Agreement for each-and-every dealing with the land once it is transferred.

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

Clause 34 omits section 31, as this provision superfluous. In practice the grant of additional land under the ALA is not done by way of an inclusion of land into an existing deed of grant, rather a further (additional) deed of grant for a parcel of land is issued.

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

Clause 35 clarifies that a deed of grant is not issued under section 27, rather it prepared under the division; and replaces grantees with grantee, reflecting that future grants of land will only be to an incorporated body (and no longer to individual persons).

Amendment of s 33 (Existing Interests)

Clause 36 replaces reference to "*Aborigines and Torres Strait Islanders (Land Holding) Act 1985*" with the term "Land Holding Act" as that Act is now defined in the dictionary; and provides that for an interest in transferable land that, under an available State land agreement, is to cease on the grant of transferable land and a new interest is to be granted by the new trustee of the land in substitution, that the previous interest ceases.

Amendment of s 34 (Interest to be endorsed on deed)

Clause 37 replaces the registrar of titles with the chief executive who is more appropriate to undertake the specified responsibilities.

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

Clause 38 omits section 37 as there is no need to provide a requirement for the register of titles to act accordingly.

Amendment of s 38 (Land Court may resolve difficulties)

Clause 39 replaces the land claims registrar with the chief executive who is the same person under the current ALA definitions.

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

Clause 40 replaces part 3, division 2 reflecting that this section has been amalgamated with similar part 5, division 2 (Dealing with granted land) and relocated in the ALA to *Part 5A General provisions for dealing with Aboriginal land*. The following insertions have been made:

- Provides for a CATSIA body which is the trustee of Aboriginal land under the ALA, that has subsequently become a registered native title body corporate, to seek to hold the land under the ALA for the native title holders of the land.
- In considering the application the Minister must take into account whether any people particularly concerned with the land (other than native title holders) will be affected by the proposed change to how the land is to be held and if so, what does the registered native title body corporate propose to do to address the concerns of those people.
- The Minister must give written notice of the Minister's decision to the registered native title body corporate.
- If the Minister approves the change, the Chief Executive Officer must give notice of the approval by a gazette notice and must give the Registrar of Titles written notice of the approval.
- The Registrar must record the change in the freehold land register.

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

Clause 41 removes provisions providing for the claim of claimable land on the ground of economic and cultural viability. Provisions that provide for the ability to claim claimable land on the ground of economic or cultural viability and for that land to be granted as an Aboriginal lease have never been utilised. With the introduction of the NTA, greater recognition of traditional connection exists and claims under the ALA generally align with that connection.

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

Clause 42 replaces the land claims registrar with the chief executive who is the same person under the current ALA definitions and removes provisions relating to a claim of claimable land on the ground of economic and

cultural viability as the ability to make a claim on those grounds has been removed from the ALA.

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

Clause 43 amends the section heading to reflect section content; replaces the land claims registrar with the chief executive who is the same person under the current ALA definitions; and omits reference to ‘lease” as the ability to make a claim on the ground of economic and cultural viability and for that land to be granted as an Aboriginal lease has been removed from the ALA.

Amendment of s 52 (Repeat claims)

Clause 44 deletes reference to section 55 as this section relates to establishing a claim on the ground of economic and cultural viability and the ability to make a claim on this ground has been removed from the ALA.

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

Clause 45 omits section 55 as this section relates to establishing a claim on the ground of economic and cultural viability and the ability to make a claim on this ground has been removed from the ALA.

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

Clause 46 replaces the term “determined” with “decided”, a more appropriate word in the context of the provision; and replaces the land claims registrar with the chief executive who is the same person under the current ALA definitions.

Amendment of s 60 (Recommendation to Minister)

Clause 47 removes references to a claim established on the ground of economic or cultural viability and to grant of a lease as the ability to make a claim on this ground and for that land to be granted as an Aboriginal lease has been removed from the ALA.

Further it replaces “persons who should be appointed to be the grantees of the land as trustees” with the “entity, or persons who are to be represented by an entity that should be the grantees of the land as trustee”, reflecting that future grants of land will only be to an incorporated body (and no longer to individual persons).

Amendment of s 61 (Resolution of conflicting claims)

Clause 48 removes references to a claim established on the ground of economic or cultural viability as the ability to make a claim on this ground has been removed from the ALA.

Omission of s 64 (Leases to be prepared)

Clause 49 omits section 64. Provisions that provide for the ability to claim claimable land on the ground of economic or cultural viability and for that land to be granted as an Aboriginal lease have never been utilised. With the introduction of the NTA, greater recognition of traditional connection exists and claims under the ALA generally align with that connection.

Replacement of s 65 (Minister to appoint trustee)

Clause 50 omits and inserts section 65. The reinserted section provides that land can only be granted under this section to certain entities. Those entities are a corporation under the CATSIA that is qualified and a land trust. The ability to appoint a grantee to a lease is removed as the ability to grant an Aboriginal lease has been removed from the ALA.

The ability to grant land to individual, who would form a land trust, other than that which is provided for in transitional provisions in the ALA has been removed. There are many bodies formed under legislation and operating under different rules that can hold land. So as not add to the complexity of land management of Aboriginal land, rather than having many different types of bodies that hold land, land will no longer be able to be transferred to individuals that would form a land trust under the ALA. Rather land would be able to be transferred to bodies established under the CATSIA.

Certain conditions and considerations apply when granting land to a registered native title body corporate, a body established under the CATSIA under this section.

Under the section the Minister is no longer required to act in a way consistent with any Aboriginal tradition applicable to the land and the views of the group so as far as they are not consistent with any such Aboriginal tradition, but more appropriately have regard to it.

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

Clause 51 amends section heading to reflect section content and removes reference the leasing of claimable land. The ability to grant an Aboriginal lease has been removed from the ALA.

Omission of s 67 and 68

Clause 52 omits sections 67 and 68. Section 67 is omitted as this provision has had no application, and will have no future application as there is no claimable land that could be dealt with under this section. Section 68 is omitted as the ability to grant an Aboriginal lease has been removed from the ALA.

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

Clause 53 clarifies that a deed of grant is not issued under section 63, rather it prepared under the division; and replaces grantees with grantee, reflecting that future grants of land will only be to an incorporated body (and no longer to individual persons).

Omission of s 70 (Lease commences on delivery)

Clause 54 omits section 70 as the ability to grant an Aboriginal lease has been removed from the ALA.

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

Clause 55 replaces the land claims registrar with the chief executive who is the same person under the current ALA definitions.

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

Clause 56 omits section 74 as there is no need to provide a requirement for the register of titles to act accordingly.

Amendment of s 75 (Land Court may resolve difficulties)

Clause 57 replaces the land claims registrar with the chief executive who is the same person under the current ALA definitions.

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

Clause 58 omits part 5, division 2 reflecting that this section has been amalgamated with similar part 3, division 2 (Dealing with transferred land) and relocated in the ALA to *Part 5A General provisions for dealing with Aboriginal land.*

Amendment of s 80 (Reservations of minerals and petroleum)

Clause 59 removes reference to an Aboriginal lease as the ability to grant an Aboriginal lease has been removed from the ALA.

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

Clause 60 removes reference to an Aboriginal (non-transferred land) lease as the ability to grant an Aboriginal lease, including an Aboriginal (non-transferred land) lease has been removed from the ALA; and corrects a grammatical error.

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

Clause 61 replaces part 5A, as the ability to establish a land trust before the grant of land, other than that which is provided for in transitional provisions in the ALA, is removed. This reflects that future grants of land will only be to an incorporated body (and no longer to individual persons).

The inserted provisions are:

'Part 5AAA Register of entities holding Aboriginal land'

This part establishes a register of entities holding Aboriginal land, which incorporates the land trust register moved from the ALR to the ALA and includes the requirement that the register must also contain certain information about entities holding Aboriginal land that are not land trusts. For land trusts, an additional requirement to record whether or not they have for each financial year operated in compliance with the ALA is included.

Under this part a land holding body, other than a land trust, must give to the chief executive the information that the chief executive must record in the register about the entity. A land trust is required to provide such information under the ALR.

The part provides for how information on the register can be obtained. It incorporates provisions that were in the ALR concerning land trusts, and includes how information can be obtained about non-land trust bodies. Information about whether or not a land trust has for each financial year has operated in compliance with the ALA is made publicly available.

'Part 5AA Transfer of Aboriginal land by Minister'

This part establishes the process for particular Aboriginal land to vest in the State and for the State to vest that land to another entity.

The ALA provides that land may be transferred to a corporation under the CATSIA that is qualified. A corporation may cease to be registered under CATSIA or no longer be qualified under the ALA. This part enables that land to vest in the State and for the State to then vest that land in another entity.

If the corporation is no longer registered under CATSIA the land may be vested from the Commonwealth to the State. If a corporation is no longer qualified, the Minister may, by gazette notice, declare that the land vests in the State.

If land vests in the State the Minister must transfer the land as soon as is practical as is provided for under this part. Entities that the land may be transferred to are a corporation under the CATSIA, including a registered native title body corporate or a land trust.

'Part 5A General provisions for dealing with Aboriginal Land'

Part 5A reinserts omitted part 3, division 2 (excluding subdivisions 3 and 4) and part 5, division 2 (excluding subdivisions 3 and 4) as amalgamated provisions and makes the following amendments and insertions.

- Reference to an Aboriginal lease is omitted as the ability to grant an Aboriginal lease has been removed from the ALA.
- Clarifies the ALA at new section 82A by making reference to the creation of "an interest in relation to land" rather than just "an interest in land" as a dealing that a trustee of Aboriginal land may do.
- Provides that a residential tenancy agreement is not a dealing in land that requires that a trustee of Aboriginal land to consult the Aboriginal people particularly concerned with the land about and give them opportunity to express their views on and be generally in agreement about.
- Provides for a broadening of provisions for the transfer of land from a land trust to another land trust to capture the transfer of land between other bodies that may hold Aboriginal land. The provisions place restrictions on certain bodies as to what other body they may transfer their land to and whether a certain body may receive land; recognises that the transfer of land between the various bodies may require a change in the beneficiaries to which land is held and that the transfer of land under these provisions is exempted from fees and charges in relation to the lodgement of any instrument in the land registry to give effect to the transfer.

- Amalgamates the two sections that provide for the resumption of land. The Act provides for the resumption of transferred land and of granted land, these two provisions have been amalgamated to provide for the resumption of 'Aboriginal land' (which includes both transferred and granted land) and has been relocated.
- Provides, in respect of the devolution of granted land, that the Minister is required to have regard to any Aboriginal tradition applicable to the land rather then act in a manner consistent with it.

'Part 5AB Leasing of Aboriginal Land'

Part 5AB provides for the leasing of Aboriginal land. The part reinserts omitted part 3, division 2, subdivisions 3 and 4 and part 5, division 2, subdivisions 3 and 4 as amalgamated provisions and makes the following amendments and insertions.

- Provides the ability for the trustee to grant a perpetual lease over a township land – a townsite lease.
- Leases provided for under reinserted part 3, division 2, subdivision 3 and part 5, division 2, subdivision 3 are now referred to as 'standard leases'.
- Provides for existing interests to continue and that where there is a townsite lease, the lessee for the townsite lease is substituted as the lessor of any leases or sublease that continues.
- Provides for creating sub interests under a townsite lease the same as if the lessee was the trustee of the land.
- Provides that in determining the consideration payable for lease for private residential purposes the trustee of the land, or if there is a townsite lease, than the lessee of the townsite lease, must use either the valuation methodology decided by the chief executive officer, or any benchmark purchase price prescribed under regulation, or both.
- Corrects at new section 82YU an error in the ALA that incorrectly requires that before the grant of all leases for private residential purposes the trustee must receive consideration for the land. Under the ALA the relevant consideration is only payable for private residential leases granted under specific sections of the ALA and not all private residential leases.
- Clarifies that private residential lease land must be used primarily for private residential use; not solely.

- Provides that the renewal of lease for private residential purposes is not dealt with under the general lease renewal provision, rather it is provided for under a new specific section. This section provides that a lessee of a private residential lease may apply in writing to the trustee to renew the lease. Applications can not be made more than two years before the term of the lease ends and the trustee must consider the application within six months. The trustee may decide not to renew the lease only if satisfied the lease land is not being used for private residential purposes. If a lessee has not applied to renew their lease at least one year before the term of the lease ends, the trustee must notify the lessee that they may apply for a renewal of the lease. A lease will not expire whilst a trustee is making a decision on a lease renewal application.
- Provides that a lease entirely within a building (and no external land to the building) is exempted from the requirement to survey the lease land.
- Provides that a private residential lease that has been referred to the Land Court to decide whether a lease may be forfeited and is otherwise to end, does not end during the time of the forfeiture considerations.
- Provides that a trustee must allow a lessee of a private residential lease to remove the lessee's improvements on the land within a reasonable time if the trustee decides to forfeit or not renew a lease. Further the trustee must now also pay to the lessee an amount equal to the value of the land and lessee's improvements on the land that become the property of the trustee, if a lease is not renewed.
- Removes provisions relating to the Land Court hearing an appeal of an amount that is paid by the trustee of land, that was subject to a private residential lease, as provisions relating to the Land Court hearing appeals under various sections of the ALA have been amalgamated into one section and inserted into a new section of the ALA.
- Provides that an Aborigine lessee of a lease for private residential purposes is exempted from fees and charges in relation to the lodgement or the provision by the registrar of titles of other services for the lodgement, of a lease instrument in the land registry.

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

Clause 62 replaces the reference to “a land trust or registered native title body corporate” with “an entity”, reflecting that land can be held by another type of trustee.

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

Clause 63 replaces the reference to “grantees of the land” with “trustee”, reflecting that land can now only be held by an individual trustee and not individual grantees.

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

Clause 64 replaces sub section (6)(a) to reflect that land can now only be held by an individual trustee and not individual grantees.

Amendment of s 83N (Decision making by trustee)

Clause 65 amends section heading to reflect section content; amends the requirement to act in a way consistent with any Aboriginal tradition to more appropriately that the trustee have regard to it; recognising that a trustee will be a corporation; and provides for an alternative decision making process.

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

Clause 66 omits and inserts part 5E. The reinserted part updates terminology to include townsite leases and subleases of a townsite lease.

Amendment of s 83R (Definition for pt 5F)

Clause 67 includes in the definition of Aboriginal trust land, a reserve type previously not identified to which the leasing provisions under this section are appropriate for application; adjusts a cross reference to another part in the ALA because it has been moved; and clarifies in the ALA that provisions that relate to Aboriginal trust land also capture leases that where granted under section 57 of the Land Act before commencement of this part.

The latter addresses uncertainty as to which Act covered dealings with a section 57 lease (e.g. amendments to the lease) that was granted before the new ALA leasing regime commenced in 2008.

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

Clause 68 adjusts a cross references sections in the ALA because they have been moved; and replaces the term "transferred land" with the term "Aboriginal land", reflecting an amalgamation of the transferred land and granted land provisions that provided for the trustee of land to deal with their land, for example grant a lease. Transferred land and granted land are by definition, Aboriginal land.

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

Clause 69 provides that a lease's term includes "the renewal of the lease", rather than "the exercise of an option to renew the lease".

Insertion of new pt 5G Special provisions about prescribed DOGIT land and prescribed reserve land.

Clause 70 inserts a new part 5G into the ALA.

Division 1 provides an option for resolving land tenure issues where Torres Strait Islander communities are located on traditional Aboriginal land.

The Torres Strait Islander communities at the Seisia, Bamaga and Hammond Island DOGITS are located on traditional Aboriginal lands. The inclusion of these lands under the TSILA, with the TSILA requiring that they be transferred to Torres Strait Islander people, preceded the recognition of the continued existence of native title. This has created a situation where the rights of the people with historical linkages to land are greater than those with traditional and native title linkages.

This part provides that these lands are now made transferable under the ALA and can be transferred with a range of options for trusteeship of the land that can recognise both groups of people. The provisions do not dictate who will hold the land or how, but provide options that can be discussed through the consultation process for the granting of the land.

The provisions set out that the Minister must consult with the Aboriginal people and the Torres Strait Islanders about the continued use of, and access to, the land by these people will be achieved and consider their views.

The ALA will provide that certain provisions that deal with this land, as transferable land, are modified to include a reference to Torres Strait Islander people, and that if the land when transferred under the ALA is held for both groups, that other provisions in the ALA that make specific reference to Aboriginal people will include Torres Strait Islander people.

Division 2 recognises that for certain reserves on Thursday Island a unique situation presents in which Torres Strait Islander people who have a long established historical connection with land are not treated equally under the ALA when they seek to obtain a lease over these lands. The ALA provides that any person can seek a lease over these lands, however for those persons for whom the land is held, it is a simpler process. In particular they can more readily obtain a lease for private residential or commercial purposes from the trustee of the land.

This division provides that for specific reserves on Thursday Island prescribed under a regulation, an equalisation in the leasing requirements of these lands for Aboriginal and Torres Strait Islander people. Specifically for these reserves a reference to an Aborigine will include a reference to a Torres Strait Islander.

Amendment of s 84 (Use of Aboriginal land preserved)

Clause 71 provides that notice is to be given to the trustee of Aboriginal land when the chief executive becomes aware that the use and occupation by the State or Commonwealth of the land is no longer required; provides that if the State or Commonwealth intend to continue to use and occupation Aboriginal land that they and the trustee use their best endeavours to provide for the continued use and occupation under an interest in or in relation to the land; provides further detail as to when a right to use and occupy ceases; and adjusts a cross reference to provisions in the ALA.

Under the section, where the State or Commonwealth occupy land (without a registered interest in the land), the Act provides that they can continue to use and occupy the land after the land is granted without the need for tenure. The current arrangements can lead to difficulties in managing the land as there is no tenure or survey plan for the area of use and there can be an inequity in that the ALA expressly provides that no rent is payable for the continued use of the land in this situation irrespective of the level of use of the land.

The section will now require that the State or Commonwealth, and the trustee of the land, are to use best endeavours after the grant of the land to agree on an interest in or in relation to land that is occupied and used. This may include a lease, licence or permit, but is not limited to those interests. This will formalise arrangements for the use of the land to the benefit of the State or Commonwealth and the trustee.

Amendment of s 85 (No rent payable)

Clause 72 clarifies that this section applies to section 84(1) rather than 84 generally.

Amendment of s 86 (Access to land)

Clause 73 clarifies that section 86(1) applies to section 84(1) rather than 84 generally and updates terminology.

Amendment of s 87 (Application of the Mineral Resources Act)

Clause 74 removes references to land claims register as this term is no longer used in the ALA; removes reference to a Aboriginal (non-transferred land) lease as the ability to grant an Aboriginal lease, including an Aboriginal (non-transferred land) lease has been removed from the ALA; and corrects a grammatical error.

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

Clause 75 removes reference to a Aboriginal (non-transferred land) lease as the ability to grant an Aboriginal lease, including an Aboriginal (non-transferred land) lease has been removed from the ALA; and clarifies when the statutory amount is payable to the trustee by providing that it is occurs on an annual financial year basis.

Amendment of s 109 (Conferences)

Clause 76 broadens the power of the chairperson of the Land Tribunal, providing that the chairperson may direct the holding of such conferences of the parties or their representatives as the Tribunal considers will help in resolving a claim.

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

Clause 77 provides that where the Land Tribunal makes a recommendation in accordance with section 109, the Tribunal is not required to include in its reasons, any findings on material questions of fact.

Where a conference takes place between the parties under section 109, the Tribunal has the power to make a recommendation in accordance with or based on terms agreed in writing by the parties. While section 109 permits a recommendation to be made without holding a hearing, section 116 requires the Tribunal to give written reasons which must in accordance with the section include the Tribunal's findings of fact.

Where the Tribunal makes a recommendation in accordance with section 109, the Tribunal is not required to include in its reasons any findings on material questions of fact.

Insertion of new pts 8A-8C

Clause 78 inserts new parts 8A-8C.

Part 8A Division 1, provides that a land trust consists of all the members of the land trust; and inserts provisions regarding the nature, functions and powers of land trust from the ALR into the ALA where they more appropriately belong.

Part 8A Division 2 prescribes under what circumstance the Minister may appoint, remove or suspend members of land trusts. Previously the ALA, though providing that the Minister held these responsibilities, did not detail under what circumstance the Minister may act, provide a procedure under which the Minister must follow, or provide, in the case of a suspension or removal, a member or a land trust opportunity to make representations as to why a suspension or removal should not proceed.

The division provides that if the Minister has removed or suspended a member, that a land trust can not reappoint the member or end the suspension of the member.

Part 8A Division 3 provides that the chief executive must for each financial year, record whether or not a land trust has operated in compliance with the ALA and in deciding this, have regard to any minimum requirements, prescribed under a regulation that a land trust must meet to be compliant. This information is made publically available elsewhere in the ALA and serves to provide greater accountability in land trust corporate governance.

Part 8A Division 4 provides that the chief executive may require that a land trust give certain information relevant to its operation. This may include information on how it made a particular decision, financial information and meeting minutes. This power serves to provide greater accountability in land trust corporate governance.

Part 8A Division 5 provides that the chief executive may upon considering an audit report direct that a land trust may not draw an amount from its account without the chief executives approval or that the account may only be operated under stated conditions.

In considering the audit report it must appear to the chief executive that the land trust, a member of the land trust or another person has, or may have stolen, misappropriated or misapplied trust money or the accounts of the

land trust are not being kept appropriately. If the chief executive makes a direction, the relevant financial institution where the account is kept must not pay a cheque or other instrument drawn on the account unless they also signed by the chief executive or give effect to another transaction on the account that is not authorised.

This division serves to provide greater accountability in land trust corporate governance.

Part 8A Division 6 provides that the chief executive may prepare model rules for land trusts and that a land trust when changing its rules or adopting new rules must have regard to the model rules. A land trust is not bound to adopt a model rule; however, the adoption of the model rules would serve to support a land trust in fulfilling its corporate governance requirements.

Further, this division provides certainty under the ALA that Aboriginal land held by a land trust has always been vested in the land trust and is not held by the grantees of the land.

Part 8B Division 1 contains provisions concerning the application of the *Trusts Act 1973* (Trusts Act) to land trusts taken from elsewhere in the ALA and the ALR. It is more appropriate that they are contained in the ALA under one provision. Further, the application of the Trusts Act is clarified to only apply to trust property other than Aboriginal land.

Part 8B Division 2 inserts in the ALA, where they more appropriately belong, provisions from the ALR providing for the powers of the Supreme Court.

Part 8C provides for appeals to be made to the Land Court. It includes existing appeal provisions amalgamated from the current ALA and inserts appeal provisions for when a decision is made not to renew a private residential lease held by an Aborigine and to remove or suspend a member of a land trust, and over an amount payable to a person for the value of lease land and lessee's improvement on the land when a private residential lease held by an Aborigine is not renewed.

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

Clause 79 omits section 131(6) as it serves no purpose. Under the ALA, land that may become transferable land is "available State land". In order for available State land to become transferable land it must be declared transferable land under the Act. Until such time as when consideration is

made to whether land is "available State land" for the purposes of declaring it transferable land, what happens on that land is irrelevant.

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

Clause 80 places a responsibility of the Land Tribunal with the Land Court. The responsibility is outside of the claimable land process and it is not necessarily a responsibility that need sit with the Tribunal. This responsibility is transferred in anticipation that the Land Tribunal, once the remaining active claims under the ALA have been determined or otherwise finalised, would cease to have any further responsibility under the ALA, other than under this section if this responsibility is not transferred.

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

Clause 81 replaces the Minister's requirement to act in a way consistent with any Aboriginal tradition applicable to the land, with the more appropriately requirement to have regard to it.

Amendment of s 134 (Delegation by Minister)

Clause 82 provides that the Minister can now delegate all the Minister's powers under the ALA.

Amendment of s 135 (Delegation by land claims registrar)

Clause 83 omits section 135. The land claims registrar is the chief executive under the current ALA definitions and reference to the land claims registrar is now omitted from the ALA. The chief executive under the *Public Service Act 2008* may delegate the chief executive's functions under an Act.

Amendment of s 136 (Amendment of description of land)

Clause 84 omits references to an Aboriginal (non-transferred land) lease as the ability to grant an Aboriginal lease, including an Aboriginal (non-transferred land) lease has been removed from the ALA.

Replacement of s 136A (Dealing with particular trust land)

Clause 85 omits and inserts section 136A. The clause updates terminology, inserts provisions catering for townsite leases and adjusts a cross reference to other parts in the ALA because they have been moved.

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

Clause 86 omits references to an Aboriginal lease as the ability to grant an Aboriginal lease has been removed from the ALA.

Amendment of s 138 (Regulation-making power)

Clause 87 provides that the regulation making under the ALA is not restrictive.

Insertion of new s 139B

Clause 88 inserts a new section 139B which validates any transfer amendment, mortgage or sublease of a trustee (Aboriginal) lease that was granted under section 57 of the Land Act before 18 July 2008, if the dealing was undertaken between that date and the commencement of this section.

The section addresses uncertainty as to which Act covered dealings with a section 57 lease (e.g. amendments to the lease) that was granted before the new ALA leasing regime commenced in 2008.

Insertion of new pt 11, div 3

Clause 89 inserts a new part 11 providing transitional provisions for the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2010.*

Sections 145 and 146 provide that the Minister may appoint persons to be the grantees of Aboriginal land and for a land trust to be incorporated under the ALA until 1 July 2011, despite the omission of sections from the ALA and the ALR, providing for such. The sections also enable a land trust to be established prior to the grant of land if the land is in the Cape York Peninsula Region.

These transitional provisions recognise that for certain areas of transferable, administrative actions and consultation under the existing provisions of the ALA for the appointment of grantees have progressed significantly and it is appropriate that they be finalised as is currently provided.

Section 147 provides that a reference in another Act, regulation or document that makes reference to the ALA may if the context permits be taken as a reference to any provision of the ALA as renumber which corresponds.

Insertion of new pt 12

Clause 90 inserts a new part 12 which provides for the renumbering of the ALA.

Section 148 provides for the renumbering of the ALA.

Section 149 provides that part 12 expires the day after the renumbering or on 31 July 2011.

Amendment of schedule (Dictionary)

Clause 91 amends the dictionary to the ALA by omitting, amending or including definitions.

Part 4 – Amendment of Liquor Act 1992

Clause 92 states that Part 4 amends the *Liquor Act 1992*.

Clause 93 amends the definition of 'community police officer' in section 4 of the Act to remove references to 'Aboriginal police officer under the *Local Government (Aboriginal Lands) Act 1978'* as this will become obsolete once that Act and the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* are amended by this Bill.

Part 5 – Amendment of Local Government (Aboriginal Lands) Act 1978

Clause 94 states that Part 5 amends the *Local Government (Aboriginal Lands) Act 1978*.

Clause 95 amends the long title of the Act so that it more accurately reflects the principal purpose and scope of the retained provisions following removal of all redundant and obsolete provisions relating to local government and justice matters. Essentially, the amended Act will continue as the lease instrument and to deal with associated land matters for the shire lease lands of Aurukun and Mornington Shire Councils.

Clause 96 replaces section 1 of the Act (Short title) to rename the Act as the *Aurukun and Mornington Shire Leases Act 1978*.

Clause 97 amends section 2 of the Act to remove definitions for 'Aboriginal police officer', 'liquor provisions' and 'police officer in

charge’ as these relate to provisions removed from the Act by this Bill and are therefore redundant.

Clause 98 amends section 3 of the Act (Grant of leases to councils) to replace the existing descriptions of the land lease areas for Aurukun and Mornington Shires, which refer to areas declared by existing sections 6 and 7 removed by this Bill, with descriptions referencing maps numbered LGRB2 and LGRB45 (replacing older maps SC211 and 212 respectively referenced in the repealed sections 6 and 7).

Clause 99 inserts a new section — Section 4A— that provides that a road constructed or formed within the Shire of Aurukun or the Shire of Mornington is taken to be a road under relevant legislation and that such roads are not part of the lease.

Clause 100 removes the existing parts 3 and 4 of the Act.

The existing Part 3 (Local government areas and councils) contains local government provisions (sections 6–12) that are now redundant as they have been superseded by passage and commencement of the *Local Government Act 2009* (LGA) which establishes a local government framework for all of Queensland’s local governments, Indigenous and non-Indigenous.

The existing sections 6–10 provide for creation of the Shires and application of the Local Government Act. These are rendered redundant by Chapter 2 of the LGA and Schedule 1 of the *Local Government (Operations) Regulation 2010*.

The existing section 12, which requires consultation with the Commonwealth prior to dissolving a council under the LGA, is obsolete and no longer necessary. The Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs advised it has no objection to the removal of this provision.

The existing Part 4 (Coordinating and advisory committees) contains provisions (sections 13–18) relating to committees which were to be established for each of the two Shire Councils for a prescribed period of three years from commencement of the Act. These committees have not operated since the first three years of the councils’ existence and sections 13–17 are therefore redundant.

The existing section 18 providing for the Governor in Council to direct a Minister to assist the council is unnecessary and anachronistic as provision of assistance to councils can be achieved administratively and does not require a specific law. This section is therefore obsolete.

Clause 101 amends the existing section 18A of the Act (Application of pt 5) to remove reference to section 32 which is removed by this Bill. The amended section 18A otherwise preserves the intent of the existing section which is to clarify that Part 5 of the Act applies only to the original Mornington Shire area, which was the same area as the Council's land lease, and does not apply to 2007 additions to the Shire.

Clause 102 amends section 20 of the Act to remove anachronistic and paternalistic provisions authorising persons whose purpose is to bring religious instruction or material comforts to Shire residents to enter and be in the Shire.

Clause 103 amends section 21 of the Act (Local laws may regulate presence in shires) replacing the existing section 21(1) with a new section 21(1) that preserves the existing power of the Aurukun and Mornington Shire Councils to make local laws under the LGA to authorise persons of a stated class to enter, be in or reside in their area, but removes the existing power of the two Shire Councils to make laws to exclude persons from, or restricting access to, their Shire areas.

The existing provision, which was occasionally used to banish residents from the Shire area, has led to ambiguity as it appears to conflict with the general right of residents to be in the area under section 19 and the broader principle that the Shire lease areas were granted for the benefit of those who live there. This ambiguity is now removed as the new section 21(1) allows only for local laws to extend access to the trust area, not to restrict it.

The provision for these two local governments to make a local law authorising entry might be used to authorise access to the area, or part of the area, by guests of residents or persons with a permit. For example, the Shire Council could establish a permitting regime for campers or tourists under this provision. The provision might also be useful in granting authority to individuals conducting scientific research or other activities.

Clause 104 removes the existing section 22 of the Act (Councils may levy charges on residents of residential premises).

Because neither Shire Council can raise rates on land they required a special power to levy a charge on individual residents. The LGA includes a provision enabling Indigenous Local Governments to levy a fee on residents which will be amended by this Bill to apply also to the Shire Councils of Aurukun and Mornington. This provision is therefore redundant.

Clause 105 replaces the existing section 23 of the Act (Power of ejectment and control) with a new section 23 (Removal from shires).

The new section 23 omits the existing power of the Shire Councils to cause their agents to use force to eject unauthorized persons from their area. Instead it restricts this power to State police officers or community police officers, enabling them to remove a person from the Shire area, if that person is not permitted under the Part to be in the Shire area. When exercising this power, community police officers, and those assisting them, are permitted to use reasonable necessary force provided it is not likely to cause grievous bodily harm, or death, to the person.

Clause 106 removes the existing section 24 (Reason for exclusion—right of appeal) which is rendered redundant by the replacement of section 23.

Clause 107 amends section 29 of the Act (Restriction on council's power over land) to remove the requirement for ministerial approval before the Council of the Shire of Aurukun or the Council of the Shire or Mornington to acquire or hold interest in other land on the basis that this is unduly restrictive and inconsistent with the acquisition powers of all other Local Governments in Queensland.

Clause 108 removes the existing sections 30—33 of the Act.

Sections 30-31 relate to law and order in the Shires of Aurukun and Mornington, including enforceability of a range of State laws covering public places and the functions and powers of Aboriginal police. This Bill will amend Part 3 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* to apply its almost identical provisions to the Aurukun and Mornington Shires, thereby aligning them with all other Indigenous Local Governments in Queensland.

Section 32 (Appointment of chief executive officer of councils) is both obsolete and anachronistic. The LGA provides for the appointment of council chief executive officers and is applicable to all Local Governments in Queensland, Indigenous and non-Indigenous.

Section 33 (Roads within shires) has been replaced by new Section 4A.

Part 6 - Amendment of Local Government Act 2009

Clause 109 states that Part 6 amends the *Local Government Act 2009.*

Clause 110 amends and renames section 100 of the Act (Fees on residents of Indigenous local government areas) to apply its provisions to the Aurukun Shire Council and the Mornington Shire Council and so ensure continuity and transition of current arrangements following repeal of section 22 of the *Local Government (Aboriginal Lands) Act 1978*. This will also ensure that these two Councils have the same powers as other Indigenous Local Governments in Queensland.

Clause 111 amends section 163(3) of the *Local Government Act 2009* to allow a local government 10 weeks to fill a vacancy instead of 2 months to align with the 10 week time period allowed by section 270 to fill a vacancy by a by-election.

Part 7 – Amendment of Nature Conservation Act 1992

Act Amended

Clause 112 provides that this part amends the NCA.

Amendment of s 40 (Dedication of national park as national park (Aboriginal land) or national park (Torres Strait Islander land))

Clause 113 replaces the term “grantees” with a term “indigenous landholder for the land”, reflecting that future grants of land under the ALA and TSILA will only be to an incorporated body (and no longer to individual persons).

Amendment of s 41 (Dedication of Aboriginal land as national park (Aboriginal land) or national park (Torres Strait Islander land) as national park (Torres Strait Islander Land)

Clause 114 replaces the references to “grantees” with “indigenous landholder”, reflecting that future grants of land under the ALA and TSILA will only be to an incorporated body (and no longer to individual persons).

Amendment of s 42AA (Dedication of national park as national park (Cape York Peninsula Aboriginal land))

Clause 115 replaces references to "grantees" with "indigenous landholder", reflecting that future grants of land under the ALA and TSILA will only be to an incorporated body (and no longer to individual persons).

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

Clause 116 replaces references to "grantees" with "indigenous landholder", reflecting that future grants of land under the ALA and TSILA will only be to an incorporated body (and no longer to individual persons).

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

Clause 117 replaces references to "grantees" with "entity", reflecting that future grants of land under the ALA and TSILA will only be to an incorporated body (and no longer to individual persons).

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

Clause 118 replaces references to "land trust" with "indigenous landholder", reflecting that future grants of land under the ALA and TSILA will be held by other types of incorporated bodies (and not just land trusts).

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

Clause 119 replaces references to "land trust" with "indigenous landholder", reflecting that future grants of land under the ALA and TSILA will be held by other types of incorporated bodies (and not just land trusts).

Insertion of new s 42AF

Clause 120 inserts a new section - 42AF - that provides that all or part of a national park (Cape York Peninsula Aboriginal land) may be revoked by the Governor in Council if that part of the land has been surrendered to the State by the Aboriginal landholder.

New section 42AF can be applied if land has been surrendered to the State by the Aboriginal landowners under section 40ZH(3)(a) of the ALA.

Amendment of s 111 (Management plans)

Clause 121 replaces references to "land trust" with "indigenous landholder", reflecting that future grants of land under the ALA and TSILA will be held by other types of incorporated bodies (and not just land trusts).

Amendment of s 120 (Implementation of approved plan)

Clause 122 replaces the term "land trust" with the term "indigenous landholder", reflecting that future grants of land under the Aboriginal Land Act will be held by other types of incorporated bodies (and not just land trusts).

Amendment of schedule (Dictionary)

Clause 123 amends the dictionary to the NCA by amending definitions.

Part 8 – Amendment of Petroleum Act 1923

Act Amended

Clause 124 provides that this part amends the *Petroleum Act 1923*.

Amendment of s 2 (Definitions)

Clause 125 amends the dictionary to the *Petroleum Act 1923* by amending definitions.

Part 9 – Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act Amended

Clause 126 provides that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of sch 2 (Dictionary)

Clause 127 amends the dictionary to the *Petroleum and Gas (Production and Safety) Act 2004* by amending definitions.

Part 10 – Amendment of Residential Tenancies and Rooming Accommodation Act 2008

Clause 128 states that Part 10 amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

Clause 129 amends Section 422 of the Act (Application of Aboriginal tradition) to remove redundant references to repealed or amended legislation and to ensure that it continues to apply where the lessor is an Indigenous local government, including Indigenous regional councils and Mornington and Aurukun Shire Councils, which may observe Aboriginal tradition in dealing with residential tenancies.

Clause 130 amends Section 423 of the Act (Application of Island Custom) to replace reference to the repealed *Local Government Act 1993* with reference to the *Local Government Act 2009*.

Part 11 – Amendment of Right to Information Act 2009

Clause 131 states that Part 11 amends the *Right to Information Act 2009*.

Clause 132 amends section 113 of the Act (Disciplinary action) to remove consequentially redundant references to the *Local Government (Aboriginal Land) Act 1978.*

Part 12 – Amendment of Torres Strait Islander Land Act 1991

Act Amended

Clause 133 provides that this part amends the TSILA.

Amendment of s 3 (Dictionary)

Clause 134 amends section 3, the dictionary, by omitting, amending or including definitions and relocates the definition to a newly created schedule to the TSILA.

Omission of sch 5 (Meaning of native title interests)

Clause 135 omits section 5, which defines native title interest for the purpose of this TSILA. Native Title is defined under the NTA, therefore a definition in the TSILA is unnecessary.

Replacement of s 6 (Crown bound)

Clause 136 replaces section 6 to provide that the TSILA appropriately binds all persons, rather than only the Crown.

Amendment of s 9 (Meaning of Torres Strait Islander land)

Clause 137 removes superfluous text used to describe the meaning of Torres Strait Islander land as the omitted description is otherwise captured in section 10 of the TSILA; and removes provisions relating to the claimable land process in the TSILA as this process is no longer available.

Amendment of s 10 (Meaning of transferable and transferred land)

Clause 138 removes reference to land granted under the claimable land process, as the claimable land process in the TSILA is no longer available.

Amendment of s 12 (DOGIT land)

Clause 139 provides that prescribed DOGIT land is not DOGIT land under the Act.

The Torres Strait Islander communities at the Seisia, Bamaga and Hammond Island DOGITS are located on traditional Aboriginal lands. The inclusion of these lands under the TSILA, with it requiring that they be transferred to Torres Strait Islander people, preceded the recognition of the continued existence of native title. This has created a situation where the rights of the people with historical linkages to land are given greater weight under the Acts than those with traditional and native title linkages.

This part provides that these lands, defined as prescribed DOGIT land, are now not transferable under the TSILA. Corresponding provisions in the ALA makes these lands transferable under the ALA.

Further the clause includes in the definition of DOGIT land, land subject to approved, but not yet granted leases under Land Holding Act, enabling this land to be transferred under the transferable land provisions of the Act; replaces the reference to "*Aborigines and Torres Strait Islanders (Land*

Holding) Act 1985" with the term "Land Holding Act" as that Act is now defined in the dictionary; addresses an error in tense; and updates terminology.

Amendment of s 13 (Torres Strait Islander reserve land)

Clause 140 addresses an error in tense; replaces the reference to "*Aborigines and Torres Strait Islanders (Land Holding) Act 1985*" with the term "Land Holding Act" as that Act is now defined in the dictionary; and includes in the definition of reserve land, land subject to approved, but not yet granted leases under Land Holding Act. This inclusion enables this land to be transferred under the transferable land provisions of the TSILA.

Amendment of s 13B (Particular land may be declared to be not transferable land)

Clause 141 omits in section 13B(3) the words "under this division" and replaces with "to the land court". This amendment reflects that provisions relating to the land court hearing appeals under various sections of the TSILA have been amalgamated into one section.

Amendment of s 13C (Notice of intention to make declaration)

Clause 142 omits the words "within ten business days" and replaces with "as soon as is practical". This amendment reflects that the existing requirement to publish notice of the Minister's intention was not a practical timeframe.

Amendment of s 13D (Minister to consider representations and give notice of decisions)

Clause 143 provides the ability for the Minister to make a declaration for all or part of the land notified under section 13C. This amendment reflects that the existing section 16D did not allow that part of the land could be made subject to a declaration.

Further, section 13D(2), renumbered as 13D(3) is amended to provide further requirements for a declaration notice.

Omission of ss 13E and 13F

Clause 144 omits in sections 13E and 13F to reflect that provisions relating to the land court hearing appeals under various sections of the TSILA have been amalgamated into one section.

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

Clause 145 amends the section heading to reflect section content and replaces reference to a specific section with a reference to the division in which the section is located.

Omission of ss 14 and 15

Clause 146 omits in sections 14 and 15 as these sections relate to the claimable land process in the TSILA and this process is no longer available

Replacement of s 16 (Lands that are available Crown land – general)

Clause 147 omits and reinserts section 16, and adds a new section 16A.

As Clause 147 relates to section 16, it amends the section heading to reflect section content; reflects the inclusion of lands that are not available State land in the section into a defined term “excluded land” now included in the dictionary; includes under the meaning of available State land, land subject to an interest issued by the State if an available State land agreement is in force for the land; and addresses terminology.

Clause 147 also inserts new sections – section 16A – “Agreement about particular land”.

Section 16A frees up certain lands that can not be readily granted under the TSILA because of an existing property interest in place. It enables the Minister to enter into an agreement about certain lands – an “available State land agreement”. Under an ‘available State land agreement’ the State and the person who holds an interest (issued by the State) in land, agree that the land may be ‘available State land’ under the TSILA.

The section provides that the Minister may require satisfaction about certain matters before entering into an agreement, including that entering an agreement is appropriate in the circumstances having regard to an evaluation of the land under section 16 of the Land Act.

The section also states that an available State land agreement must either provide that on the grant of land that the person’s interest in the land is to cease and that a new interest will be granted by the trustee in substitution for the ceased interest or that the interest is to continue.

Amendment of s 19 (Meaning of city or town land)

Clause 148 amends the section to reflect that the boundaries of a city or town is not constrained to the boundary as at the enactment date of the TSILA.

Replacement of s 22 (Lands that are not available State land)

Clause 149 omits and inserts section 22. The reinserted section amends the section heading to reflect section content; amalgamates tenures under the Land Act into a succinct reference; and provides that a tenure under the Land Act identified as not available State land, is available State land if the tenure is subject to an ‘‘available State land agreement’’.

Insertion of new pt 2A

Clause 150 inserts a new part 2A - Formal expression of interest about land - providing a process under which Torres Strait Islanders people may formally express an interest in having particular land made transferable.

It identifies those lands to which an expression of interest can be lodged, the process that Torres Strait Islanders people must follow to lodge an expression of interest; and that the chief executive must consider each expression of interest.

It provides that the chief executive’s consideration of an expression of interest does not impose an obligation on the State to make land transferable.

Amendment of s 25 (Deeds of grant to be prepared)

Clause 151 replaces the land claims registrar with the chief executive who is the same person under the current TSILA definitions; deletes the requirement under the TSILA for the registrar of titles to enrol and issue the deed of grant as it is not necessary to state this under the TSILA and as it is not a function of the registrar, respectively; replaces grantees with grantee, reflecting that future grants of land will only be to an incorporated body (and no longer to individual persons); deletes the requirement for the recording of responsibilities Torres Strait Islander people agree to assume in relation to land (as they are not compelled under the legislation to state those responsibilities); and renumbers sections.

Further the current requirement in the TSILA that if land is granted to an entity other than to a registered native title body corporate, that it is held for Torres Strait Islanders, that is all Torres Strait Islanders has been amended. This amendment provides that land will be held for the benefit of Torres

Strait Islander people 'particularly concerned with the land', rather than broadly for all Torres Strait Islander people, to more appropriately reflect how land is held under Torres Strait Islander custom.

Amendment of s 25A (Appointment of registered native title body corporate as grantee to hold land for native title holders)

Clause 152 omits section 25A(5) as no land trusts can be incorporated upon future grants of land under the TSILA and therefore this section, specific to preventing a registered native title body corporate forming a land trust, in no longer required.

Replacement of s 26 (Minister to appoint particular trustees)

Clause 153 omits and inserts section 26. The reinserted section 26 provides that land can only be granted under this section to certain entities. Those entities are a corporation under the CATSIA that is qualified and a land trust.

The ability to grant land to individual, who would form a land trust, other than that which is provided for in transitional provisions in the TSILA has been removed. There are many bodies formed under legislation and operating under different rules that can hold land. So as not add to the complexity of land management of Torres Strait Islander land, rather than having many different types of bodies that hold land, land will no longer be able to be transferred to individuals that would form a land trust under the *Torres Strait Islander Land Regulation 1991* (TSILR). Rather, land will be able to be transferred to bodies established under the CATSIA.

The ability to grant transferable land to the trustee of that land is no longer available. This reflects that if in all circumstances it is not appropriate that this land be granted to a new body, that the land should be retained as its current tenure, i.e. deed of grant in trust or reserve, under the control of its current trustee and be made not-transferable land.

Under the section, certain conditions and considerations apply when granting land to a registered native title body corporate - a body established under the CATSIA.

The section enables the Minister to appoint an entity nominated in an Indigenous land use agreement under certain circumstances, therefore dispensing with the need to consult, under the TSILA, with Torres Strait Islander people particularly concerned with the land for the appointment of a grantee.

The section provides that the Minister is required to have regard to any Island custom applicable to the land rather then act in a manner consistent with it.

Previous section 26(5)(a) is removed as it was an error in the legislation.

The newly inserted section s 26AA - Procedure for appointing particular grantee - sets out a procedure to notify the proposed appointment of a grantee.

The procedure requires that the Minister must before appointing a grantee to hold transferable land publish notice detailing the description of the land and the proposed grantee; and provides a process for Torres Strait Islanders to make written representation about the proposed appointment. The requirement to publish notice of the Minister's intention to appoint a proposed grantee to land under the Act does not apply if the grantee was nominated in an Indigenous land use agreement.

Omission of s 26A (Application of Trusts Act 1973)

Clause 154 provides for the omission of section 26B as the section has been relocated in the TSILA.

Amendment of s 27 (Minister to act as soon as possible)

Clause 155 includes a missing cross reference to section 25A and clarifies a section cross reference.

Further the section is amended to provide that prior to granting land, the Minister may require that, if the land to be transferred includes township land, the area can continue to be used as a township and residents of that land can continue to live on, access and secure tenure interests in the township; that appropriate arrangements are in place to ensure the continued provision of government services to any relevant Indigenous community; and that development can proceed with respect to native title after the grant of the land.

Arrangements may include the grant of a perpetual town site lease, other leasing or interest arrangements, or an Indigenous Land Use Agreement.

This will ensure communities can continue to function effectively; community members have continued access to the services authorities provide and can obtain interests in the land; and in respect to native title, an upfront arrangement addressing native title would provide a mechanism to ensure that trustees and those seeking an interest in the land are not

burdened with the need to seek an Indigenous Land Use Agreement for each-and-every dealing with the land once it is transferred.

Omission of s 29 (Inclusion of additional areas in deed of grant)

Clause 156 omits section 29, as this provision superfluous. In practice the grant of additional land under the TSILA is not done by way of an inclusion of land into an existing deed of grant, rather a further (additional) deed of grant for a parcel of land is issued.

Amendment of s 30 (Deed of grant takes effect on delivery)

Clause 157 clarifies that a deed of grant is not issued under section 25, rather it prepared under the division; and replaces grantees with grantee, reflecting that future grants of land will only be to an incorporated body (and no longer to individual persons).

Amendment of s 31 (Existing Interests)

Clause 158 replaces reference to "*Aborigines and Torres Strait Islanders (Land Holding) Act 1985"* with the term "Land Holding Act" as that Act is now defined in the dictionary; provides that for an interest in transferable land that, under an available State land agreement, is to cease on the grant of transferable land and a new interest is to be granted by the new trustee of the land in substitution, that the previous interest ceases; and updates terminology.

Amendment of s 32 (Interest to be endorsed on deed)

Clause 159 replaces the registrar of titles with the chief executive who is more appropriate to undertake the specified responsibilities; updates terminology; and rewrites the section.

Amendment of s 33 (Cancellation of deed of grant in trust)

Clause 160 omits sections 2 to 4, as these sections describe processes that are either provided for under other legislation or policy, making them unnecessary for inclusion in the TSILA. The head power to issue a deed of grant over a transferable deed of grant in trust, or part of one, remains. The clause updates terminology.

Omission of s 34 (Registrar of titles must take action to resolve etc. to resolve difficulties)

Clause 161 omits section 34 as there is no need to provide a requirement for the register of titles to act accordingly.

Amendment of s 35 (Land Court may resolve difficulties)

Clause 162 replaces the land claims registrar with the chief executive who is the same person under the current TSILA definitions.

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

Clause 163 replaces part 3, division 2 as this part has been moved to a more appropriate location in the TSILA.

The following insertions have been made:

- Provides for a CATSIA body which is the trustee of Aboriginal land under the TSILA, that has subsequently become a registered native title body corporate, to seek to hold the land under the TSILA for the native title holders of the land.
- In considering the application the Minister must take into account whether any people particularly concerned with the land (other than native title holders) will be affected by the proposed change to how the land is to be held and if so, what does the registered native title body corporate propose to do to address the concerns of those people.
- The Minister must give written notice of the Minister’s decision to the registered native title body corporate.
- If the Minister approves the change, the Chief Executive Officer must give notice of the approval by a gazette notice and must give the Registrar of Titles written notice of the approval.
- The Registrar must record the change in the freehold land register.

Amendment of s 40 (Reservations of forest products and quarry material etc.)

Clause 164 updates terminology.

Replacement of pts 4 and 5

Clause 165 omits parts 4 and 5, as these parts relate to the claimable land process under the TSILA, and this process is no longer available.

The inserted provisions are:

‘Part 4 – Register of entities holding Torres Strait Islander Land.’

This part establishes a Register of entities holding Torres Strait Islander land, which incorporates the land trust register moved from the TSILR to the TSILA and includes the requirement that the register must also contain

certain information about entities holding Torres Strait Islander land that are not land trusts. For land trusts an additional requirement to record whether or not a land trust have for each financial year operated in compliance with the TSILA is included.

Under this part a land holding body, other than a land trust, must give to the chief executive the information that the chief executive must record in the register of about the entity. A land trust is required to provide such information under the TSILR.

This part provides for how information from the register can be obtained. Information about whether or not a land trust has for each financial year operated in compliance with the TSILA is made publicly available along with other land trust specific information.

'Part 4A Transfer of Torres Strait Islander land by Minister.'

This part establishes the process for particular Torres Strait Islander land to vest in the State and for the State to vest that land to another entity.

The TSILA provides that land may be transferred to a corporation under the CATSIA that is qualified. A corporation may cease to be registered under CATSIA or no longer be qualified under the TSILA. This part enables that land to vest in the State and for the State to then vest that land in another entity.

If the corporation is no longer registered under CATSIA the land may be vested from the Commonwealth to the State. If a corporation is no longer qualified, the Minister may, by gazette notice, declare that the land vests in the State.

If land vests in the State, the Minister must transfer the land as soon as is practical as is provided for under this part. Entities that the land may be transferred to are a corporation under the CATSIA, including a registered native title body corporate or a land trust.

'Part 4B General provisions for dealing with Torres Strait Islander Land.'

Part 4B reinserts omitted part 3, division 2, (excluding subdivisions 1 and 2), and makes the following amendments and insertions.

- reference to a Torres Strait Islander lease and provision providing for the devolution of granted land are omitted. A Torres Strait Islander lease is provided for through the claimable land process and devolution of granted land relates to the claimable land process. The claimable land process has been removed from the TSILA.

- Clarifies the TSILA at new section 54 by making reference to the creation of “an interest in relation to land” rather than just “an interest in land” as a dealing that a trustee of Torres Strait Islander land may do.
- Clarifies at new section 54A that a residential tenancy agreement is not dealing that requires that a trustee of Torres Strait Islander land to consult the Torres Strait Islander people particularly concerned with the land about and given them opportunity to express their views on and be generally in agreement about.
- Provides for a broadening of provisions for the transfer of land from a land trust to another land trust to capture the transfer of land between other bodies that may hold Torres Strait Islander land. The provisions place restrictions on certain bodies as to what other body they may transfer their land to and whether a certain body may receive land; recognises that the transfer of land between the various bodies may require a change in the beneficiaries to which land is held and that the transfer of land under these provisions is exempted from fees and charges in relation to the lodgement of any instrument in the land registry to give effect to the transfer.
- Relocates the provision dealing with resumption of transferred land (section 38) and amends the section heading to reflect section content as it now provides for the resumption of Torres Strait Islander land, rather than ‘transferred’ or ‘granted’ land. The claimable land process in the TSILA is no longer available and no land was granted under the claimable land provisions of the TSILA.

Insertion of new pt 4C Leasing of Torres Strait Islander Land

Part 4C provides for the leasing of Torres Strait Islander land. The part reinserts omitted part 3, division 2, subdivisions 1 and 2, and makes the following amendments and insertions.

- provides the ability for the trustee to grant a perpetual lease over a township land – a townsite lease.
- leases provided for under reinserted part 3, division 2, subdivision 3 are now referred to as ‘standard leases’.
- provides for existing interests to continue and that where there is a townsite lease, the lessee for the townsite lease is substituted as the lessor of any leases or sublease that continues.

- provides for creating sub interests under a townsite lease the same as if the lessee was the trustee of the land.
- provides that in determining the consideration payable for lease for private residential purposes the trustee of the land, or if there is a townsite lease, than the lessee of the townsite lease, must use either the valuation methodology decided by the chief executive officer, or any benchmark purchase price prescribed under regulation, or both.
- corrects an error in the TSILA at new section 72A that incorrectly requires that before the grant of all leases for private residential purposes the trustee must receive consideration for the land. Under the TSILA the relevant consideration is only payable for private residential leases granted under specific sections of the TSILA and not all private residential leases.
- clarifies that private residential lease land must be used primarily for private residential use; not solely.
- provides that the renewal of lease for private residential purposes is not dealt with under the general lease renewal provision, rather it is provided for under a new specific section. This section provides that a lessee of a private residential lease may apply in writing to the trustee to renew the lease. Applications can not be made more than two years before the term of the lease ends and the trustee must consider the application within six months. The trustee may decide not to renew the lease only if satisfied the lease land is not being used for private residential purposes. If a lessee has not applied to renew their lease at least one year before the term of the lease ends, the trustee must notify the lessee that they may apply for a renewal of the lease. A lease will not expire whilst a trustee is making a decision on a lease renewal application.
- provides that a lease entirely within a building (and no external land to the building) is exempted from the requirement to survey the lease land.
- provides that a private residential lease that has been referred to the Land Court to decide whether a lease may be forfeited and is otherwise to end, does not end during the time of the forfeiture considerations.
- provides that a trustee must allow a lessee of a private residential lease to remove the lessee’s improvements on the land within a reasonable

time if the trustee decides to forfeit or not renew a lease. Further the trustee must now also pay to the lessee an amount equal to the value of the land and lessee's improvements on the land that become the property of the trustee, if a lease is not renewed.

- removes provisions relating to the Land Court hearing an appeal of an amount that is paid by the trustee of land, that was subject to a private residential lease, as provisions relating to the Land Court hearing appeals under various sections of the TSILA have been amalgamated into one section and inserted into a new section of the TSILA.
- provides that an Torres Strait Islander lessee of a lease for private residential purposes is exempted from fees and charges in relation to the lodgement or the provision by the registrar of titles of other services for the lodgement, of a lease instrument in the land registry.

Insertion of new pt 5 Decision making process

Part 5 provides for an alternative decision making process; and for when a trustee must make a decision about the land, then the trustee must have regard to any relevant Island custom or otherwise any decision making process agreed on by the people for whom the trustee holds the land.

Replacement of pt 5A (Provisions about mortgages of leases over Torres Strait Islander land)

Clause 166 omits and inserts part 5A. The reinserted part updates terminology to include townsite leases and subleases of a townsite lease.

Amendment of s 80D (Definition for pt 5B)

Clause 167 amends section 80D by including in the definition of Torres Strait Islander trust land, a reserve type previously not identified to which the leasing provisions under this section are appropriate for application; adjusts a cross reference to another part in the TSILA because it has been moved; and clarifies in the TSILA provisions that relate to Torres Strait Islander trust land also capture leases that where granted under section 57 of the Land Act before commencement of this part.

The latter addresses uncertainty as to which Act covered dealings with a section 57 lease (e.g. amendments to the lease) that was granted before the new TSILA leasing regime commenced in 2008.

Amendment of s 80F (Trustee (Torres Strait Islander) leases)

Clause 168 amends section 80F by adjusting cross references to other parts and sections in the TSILA because they have been moved; and replaces the

term “transferred land” with the term “Torres Strait Islander land”, reflecting the removal of the term granted land which under the current TSILA needed to be distinguished separately from transferred land in this provision. Transferred land is by definition, Torres Strait Islander land.

Further this section addresses a leasing issue where Torres Strait Islander communities are located on traditional Aboriginal land. The Torres Strait Islander communities at the Seisia, Bamaga and Hammond Island Deeds of Grant in Trust are located on traditional Aboriginal lands. The inclusion of these lands under the TSILA, with that TSILA requiring that they be transferred to Torres Strait Islander people, preceded the recognition of the continued existence of native title. This has created a situation where the rights of the people with historical linkages to land are given greater weight than those with traditional and native title linkages.

Amendments to the TSILA and the Aboriginal Land Act rectify this issue by placing these DOGITs under the transferable land provisions of the ALA. However, as these DOGITS are Torres Strait Islander DOGITS whilst transferable, the leasing of these lands is provided for under the TSILA. The existing leasing provisions mean any person can seek a lease over these lands, however for those persons for whom the land is held, it is a simpler process. In particular they can more readily obtain a lease for private residential or commercial purposes from the trustee of the land.

Amendment will provide that for these DOGITS an equalisation in the leasing requirements for Aboriginal and Torres Strait Islander people. Specifically the TSILA, will for these lands, provide that a reference to a Torres Strait Islander includes a reference to a Aborigine.

Amendment of s 80G (Amending trustee (Torres Strait Islander) lease)

Clause 169 amends section 80G by clarify that a lease’s term includes “the renewal of the lease”, rather than “the exercise of an option to renew the lease”.

Amendment of s 81 (Crown’s use of Islander land preserved)

Clause 170 provides that notice is to be given to the trustee of Torres Strait Islander land when the chief executive becomes aware that the use and occupation by the State or Commonwealth of the land is no longer required; provides that if the State or Commonwealth intend to continue to use and occupation Torres Strait Islander land that they and the trustee use their best endeavours to provide for the continued use and occupation under an interest in or in relation to the land; provides further detail as to

when a right to use and occupy ceases; adjusts a cross reference to provisions in the TSILA; amends the section heading to reflect section content; and updates terminology.

Under the section, where the State or Commonwealth occupy land (without a registered interest in the land), the TSILA provides that they can continue to use and occupy the land after the land is granted without the need for tenure. The current arrangements can lead to difficulties in managing the land as there is no tenure or survey plan for the area of use and there can be an inequity in that the TSILA expressly provides that no rent is payable for the continued use of the land in this situation irrespective of the level of use of the land.

The section will now require that the State or Commonwealth, and the trustee of the land, are to use best endeavours after the grant of the land to agree on an interest in or in relation to land that is occupied and used. This may include a lease, licence or permit, but is not limited to those interests. This will formalise arrangements for the use of the land to the benefit of the State or Commonwealth and the trustee.

Amendment of s 82 (No rent payable by Crown)

Clause 171 clarifies that this section applies to section 81(1) rather than 81 generally; amends the section heading to reflect section content; and updates terminology.

Amendment of s 83 (Access to land used by the Crown)

Clause 172 amend the section heading to better reflect section content; updates terminology; and deletes the requirement for the trustee to give one month's notice of intention to enter into an agreement.

In respect of the latter, this requirement is removed, as the provision also requires that the trustee must have already consulted Torres Strait Islanders particularly concerned with the land on, and received general agreement regarding, an access route. The requirement of then having to give notice of its intention to enter into an agreement with the State or Commonwealth is unnecessary.

Amendment of s 84 (Application of the Mineral Resources Act)

Clause 173 removes provisions relating to the claimable land process under the TSILA, as this process is no longer available.

Amendment of s 85 (Royalties in relation to mining on Torres Strait Islander land)

Clause 174 provides that the chief executive is no longer entitled to receive a percentage of royalties and that all prescribed royalties are to go to the trustee of the land; provisions relating to the claimable land process under the TSILA are deleted, as this process is no longer available; and clarifies when the statutory amount is payable to the trustee, by providing that it is occurs on an annual financial year basis.

Replacement of pt 8 (The Land Tribunal)

Clause 175 omits part 8 as the Land Tribunal provisions relate to the claimable land process under the TSILA, and this process is no longer available; and inserts parts 8 to 8B.

Part 8 Division 1, provides that a land trust consists of all the members of the land trust, and inserts provisions regarding the nature, functions and powers of land trust from the TSILR into the TSILA where they more appropriately belong.

Part 8 Division 2 prescribes under what circumstance the Minister may appoint, remove or suspend members of land trusts. Previously the TSILA, though providing that the Minister held these responsibilities, it did not detail under what circumstance the Minister may act, provide procedure under which the Minister must follow, or provide, in the case of a suspension or removal, a member or a land trust opportunity to make representations as to why a suspension or removal should not proceed.

This division provides that if the Minister has removed or suspended a member, that a land trust can reappoint the member or end the suspension of the member.

Part 8 Division 3 provides that the chief executive must for each financial year, record whether or not a land trust has operated in compliance with the TSILA and must in deciding this, have regard to any minimum requirements, prescribed under a regulation that a land trust must meet to be compliant. This information is made publically available elsewhere in the TSILA and serves to provide greater accountability in land trust corporate governance.

Part 8 Division 4 provides that the chief executive may require that a land trust give certain information relevant to its operation. This may include information on how it made a particular decision, financial information and

meeting minutes. This power serves to provide greater accountability in land trust corporate governance.

Part 8 Division 5 provides that the chief executive may upon considering an audit report direct that a land trust may not draw an amount from its account without the chief executives approval or that the account may only be operated under stated conditions.

In considering the audit report it must appear to the chief executive that the land trust, a member of the land trust or another person has, or may have stolen, misappropriated or misapplied trust money or the accounts of the land trust are not being kept appropriately.

If the chief executive makes a direction, the relevant financial institution where the account is kept must not pay a cheque or other instrument drawn on the account unless they also signed by the chief executive or give effect to another transaction on the account that is not authorised.

This division serves to provide greater accountability in land trust corporate governance.

Part 8 Division 6 provides that the chief executive may prepare model rules for land trusts and that a land trust when changing its rules or adopting new rules must have regard to the model rules. A land trust is not bound to adopt a model rule; however, the adoption of the model rules would serve to support a land trust in fulfilling its corporate governance requirements.

Further, this division provides certainty under the TSILA that Torres Strait Islander land held by a land trust has always been vested in the land trust and is not held by the grantees of the land.

Part 8A Division 1 contains provisions concerning the Trusts Act application to land trusts taken from elsewhere in the TSILA and the TSILR. It is more appropriate that they are contained in the TSILA under one provision. Further, the application of the Trusts Act is clarified to only apply to trust property other than Islander land.

Part 8A Division 2 inserts in the TSILA, where they more appropriately belong, provisions from the TSILR providing for the powers of the Supreme Court.

Part 8B provides for appeals to be made to the Land Court. It includes existing appeal provisions amalgamated from the current TSILA and inserts appeal provisions for when a decision is made not to renew a private residential lease held by an Torres Strait Islander and to remove or suspend a member of a land trust, and over an amount payable to a person for the

value of lease land and lessee's improvement on the land when a private residential lease held by an Torres Strait Islander is not renewed.

Amendment of s 128 (Creation of interests in transferable land and claimable land)

Clause 176 amends the section heading to reflect section content; deletes provisions relating to the claimable land process under the TSILA, as this process is no longer available; provides that certain interests in transferable land no longer require Ministerial consent; provides that the Minister may dispense with the need to obtain the Minister's consent for particular types of interests if the Minister considers it appropriate to do so; and deletes section 128(5) as it serves no purpose.

In respect of the latter, under the TSILA, land that may become transferable land is "available State land". In order for available State land to become transferable land it must be declared transferable land under the TSILA. Until such time as when consideration is made to whether land is "available State land" for the purposes of declaring it transferable land, what happens on that land is irrelevant.

Amendments will provide more autonomy in decision making by the trustees of land held for the benefit of Torres Strait Islanders and remove certain approvals of the Minister that are similarly provided elsewhere under the TSILA, for example as it relates to leasing of land.

Amendment of s 129 (Rights of access to interests preserved)

Clause 177 placing a responsibility of the Land Tribunal with the Land Court; updates terminology; and removes the requirement for the trustee to give one month's notice of intention to enter into an agreement

In respect to the transfer of a responsibility, the responsibility of the Land Tribunal is outside of the claimable land process. It is not necessarily a responsibility that need sit with the Tribunal and it is appropriate that this responsibility move as the Land Tribunal would cease to have any further responsibility under the TSILA if this responsibility is not transferred. The claimable land process is no longer available under the TSILA.

In giving notice, as the provision also requires that the trustee must have already consulted Torres Strait Islanders particularly concerned with the land on an access route (and received general agreement), the requirement of then having to give notice of its intention to enter into an agreement is unnecessary.

Amendment of s 130 (Persons and bodies representing Crown)

Clause 178 updates terminology.

Amendment of s 131 (Delegation by Minister)

Clause 179 provides that the Minister can now delegate all the Minister's powers under the TSILA.

Amendment of s 132 (Delegation by land claims registrar)

Clause 180 omits section 132. The land claims registrar is the chief executive under the current TSILA definitions and reference to the land claims registrar is now omitted from the TSILA. The chief executive under the Public Service Act 2008 may delegate the chief executive's functions under an Act.

Amendment of s 133 (Amendment of description of land)

Clause 181 omits references to claimable land related provisions as this process is no longer available; replaces the registrar of titles with the chief executive who is more appropriate to undertake the specified responsibilities and updates terminology.

Amendment of s 133A (Dealing with particular trust land)

Clause 182 updates terminology and adjusts a cross reference to other parts in the TSILA because they has been moved and updates terminology.

Amendment of s 134 (Survey costs etc. to be paid by State)

Clause 183 omits references to claimable land related provisions as this process is no longer available.

Amendment of s 134A (Application of Financial Administration and Audit Act 1997)

Clause 184 replaces the land claims registrar with the chief executive who is the same person under the current TSILA definitions, and updates a reference to an Act.

Amendment of s 135 (Regulation-making power)

Clause 185 provides that the regulation making under the TSILA is not restrictive.

Insertion of new pt 9A

Clause 186 inserts a new section part 9A which validates any transfer amendment, mortgage or sublease of a trustee (Torres Strait Islander) lease

that was granted under section 57 of the Land Act before 18 July 2008, if dealing was undertaken between that date and the commencement of this section.

The section addresses uncertainty as to which Act covered dealings with a section 57 lease (e.g. amendments to the lease) that was granted before the new TSILA leasing regime commenced in 2008.

Insertion of new pt 10, div 3

Clause 187 inserts a new part 10, division 3 - Transitional provisions for *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2010*.

Section 139 provides that transferred land that was granted prior to commencement of this section is now held for of Torres Strait Islander people 'particularly concerned with the land', rather than broadly for all Torres Strait Islander people to more appropriately reflect how land is held under Torres Strait Islander custom.

Section 140 provides that the Minister may appoint persons to be the grantees of Torres Strait Islander land and for a land trust to be incorporated under the TSILA until 1 July 2011, despite the omission of sections from the TSILA and the TSILR, providing for such.

This transitional provisions recognises that for certain areas of transferable, administrative actions and consultation under the existing provisions of the TSILA for the appointment of grantees have progressed significantly and it is appropriate that the be finalised as is currently provided.

Section 141 provides that a reference in another Act, regulation or document that makes reference to the TSILA may if the context permits be taken as a reference to any provision of the TSILA as renumber which corresponds.

Insertion of new pt 11

Clause 188 inserts a new part 11 which provides for the renumbering of the TSILA.

Section 142 provides for the renumbering of the TSILA.

Section 143 provides that part 11 expires the day after the renumbering or on 31 July 2011.

Part 13 Minor and consequential amendments

Clause 189 states that Part 13 amends the acts mentioned in the schedule attached to the Bill.

Schedule – Minor and consequential amendments

Schedule 1 makes minor and consequential amendments to a number of Acts.

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