Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014*.

Policy objectives and the reasons for them

The policy objectives of the Bill are to:

1. Introduce the option of ordinary freehold title into Aboriginal and Torres Strait Islander communities;
2. Simplify the leasing framework that applies to Indigenous land to reduce the regulatory burden on trustees and lessees;
3. Amend the *Land Valuation Act 2010* to enable Indigenous Local Government Areas to be subject to statutory valuations;
4. Provide for the repeal of the *Aurukun and Mornington Shire Leases Act 1978* upon transfer under the *Aboriginal Land Act 1991* of the remaining shire lease land; and
5. Amend the *Land Act 1994* to provide the Minister with power to declare, on a case by case basis, a conditional right of public access over private land where, due to erosion, the access along the area of beach has been compromised by the private ownership of the beach area.

Providing freehold

Queensland's remote and regional Aboriginal and Torres Strait Islander communities are generally located on a type of land tenure known as Aboriginal or Torres Strait Islander deed of grant in trust (DOGIT) under the *Land Act 1994*, or as transferred land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*. The land is held by a trustee for the benefit of the Aboriginal or Torres Strait Islander inhabitants.

These land tenure types are transferable and may be transferred to a new trustee. This transferred land tenure is known as either Aboriginal freehold or Torres Strait Islander freehold and has some of the characteristics of ordinary freehold. However, this type of freehold land cannot be sold and is perpetually held in trust for the communal benefit of Aboriginal or Torres Strait Islander inhabitants or for the benefit of native title holders of the land.

These land tenure arrangements mean that ordinary freehold title is not available to Aboriginal people and Torres Strait Islanders wishing to own their own homes and pursue commercial interests in their communities. In light of the particular tenure arrangements, the Government considers that the Bill is necessary to ensure that Aboriginal people and Torres Strait Islanders can own their own homes and pursue commercial interests in the same way as other citizens.

The Bill will implement the Queensland Government's commitment to ensure that Aboriginal and Torres Strait Islander communities have the same access to freehold title as available throughout Queensland and to remove barriers to economic development in these communities.

Lease simplification

Trustee leasing of all Aboriginal and Torres Strait Islander lands (except trust land subject to the *Aurukun and Mornington Shire Leases Act 1978*) is dealt with under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. These two Acts provide for the transfer or grant of certain lands to Aboriginal people and Torres Strait Islanders to enable them to manage the land according to their traditional custom. Until 2008 a lease granted by the trustee of these trust lands was generally limited to a 30 year term and required the approval of the Minister.

The *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* were amended in 2008 to introduce up to 99 year lease terms for particular lease purposes. These amendments also placed a number of restrictions on leases such as the requirement for Ministerial approval, legislatively fixed terms and uses which can frustrate leasing opportunities for trustees. While it is recognised that these amendments improved the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* by supporting home ownership through 99 year leases and other long term leasing, the legislation still contains complex and prescriptive leasing arrangements for non-home ownership leases.

The Bill will implement the government's commitment to simplify and streamline leasing of Aboriginal and Torres Strait Islander land to remove barriers to Indigenous people pursuing their social and economic development interests.

Valuations

Currently the state does not provide ratings valuations for the land that the Bill applies to. While councils cannot set rates, they are able to recover their costs through service charges and levies. As part of delivering the same freehold that is available elsewhere in Queensland, the Bill provides that all land that the Bill applies to will be valued for general rating purposes, enabling councils to set rates for this land.

Repeal of the *Aurukun and Mornington Shire Leases Act 1978*

The *Aurukun and Mornington Shire Leases Act 1978* was enacted to provide for the granting of leases of land to the Council of the Shire of Aurukun and the Council of the Shire of Mornington Island (shire leases) and the regulation of entry on shire areas.

These shire leases are transferable lands under the *Aboriginal Land Act 1991* and must be transferred as soon as practicable. There is one small parcel of shire lease land remaining which is anticipated to be transferred in 2014.

Once the final remaining parcel of shire lease land is transferred the *Aurukun and Mornington Shire Leases Act 1978* will no longer be required and will be repealed.

Right of public access to the beach

Generally beaches in Queensland are owned and managed by the State or local government. Beaches are accessed by members of the public for recreation purposes or to move from one place to another. Beach access can be essential to accessing national parks, beach camping areas and recreational fishing spots. In addition, beaches may be accessed or used as a vehicle thoroughfare by tourism operators and commercial beach fishers.

In general the public has an expectation that they are able to access beaches throughout Queensland. This is also State policy, as articulated in the recently commenced 'Coastal Management Plan', which includes the principle that 'public access and use of the coast is maintained or enhanced for current and future generations.' In particular the Coastal Management Plan states that public access and use of the coast is maintained by avoiding the use of State coastal land for the creation of exclusive private access to the foreshore, the creation of exclusive private use of beaches and the location of erosion control structures to protect private property from coastal erosion.

However, despite widespread community beliefs and government policy, there is no specific legislative basis underpinning such rights of public access.

Most of the coastline is bordered by community purpose reserves and esplanades, however, in some instances, this land has been lost to the sea due to erosion and the sea has moved to some degree to be within the boundaries of private freehold and leasehold properties.

Once the sand area of a 'beach' has migrated onto private freehold or leasehold land, the owner can lawfully prevent public access across the beach area. In addition, these land owners (and their respective insurers) may incur a significant public liability risk if the public has access to their private property.

Achievement of policy objectives

Providing freehold

Land tenure provisions do not currently provide for ordinary freehold title to be granted in Aboriginal or Torres Strait Islander communities. To achieve the objective of providing the option of ordinary freehold title in these communities, the Bill amends the *Aboriginal Land Act 1991,* and the *Torres Strait Islander Land Act 1991* to create processes for trustees to allocate available land, and to create a new power in the *Land Act 1994* to grant this land as freehold.

The Bill is necessary because the existing legislation only allows for land to be held communally, and does not allow for ordinary freehold title to be granted. The intention is that Aboriginal people and Torres Strait Islanders in the relevant communities should be able to own freehold land in the same way as other citizens.

The Bill provides trustees with purpose-designed processes for allocating land for ordinary freehold. The proposed freehold model is an option for the 34 Aboriginal and Torres Strait Islander communities that are in either an Aboriginal shire council or an Indigenous regional council.

Freehold model – an overview

The Bill sets out the details of the freehold model, and how it is to be implemented. The Bill provides that the trustee must consult their community and native title holders about the proposed freehold instrument, including the land that could be made available for freehold, the terms and conditions on which available land would be allocated, and the details of how and to whom the land can be allocated. These terms and conditions form the basis of a freehold instrument that the trustee is required to prepare in consultation with their community.

The freehold instrument is made up of two documents - a freehold schedule (a map or description of land the community has decided to be made available for freehold), and a freehold policy that provides information about how and to whom the available land can be allocated. The freehold instrument must be publicly available to ensure everyone in the community is aware of where and how freehold will be available.

The Bill prescribes what details must be included in the freehold instrument and the minimum level of consultation that must be undertaken by the trustee. All other details are up to each trustee and community to develop, ensuring that freehold is provided in a way that is best suited to their community.

The Bill provides that certain steps must be completed before freehold is made available in a community. In addition to consultation, the freehold instrument must be approved by the Minister and attached to the local government planning scheme for that particular community for consultation and public notification purposes. Once these steps are completed, the land identified in the freehold instrument is available for allocation and eligible persons can apply for the available land.

Land that can be made available for freehold - freehold option land

The freehold model applies to the 34 rural and remote communities where land is held under the trusteeship of an Indigenous local council or trusteeship of an entity holding land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*. These communities are - Aurukun; Badu; Bamaga; Boigu; Cherbourg; Darnley; Dauan; Doomadgee; Hammond Island; Hope Vale; Injinoo; Kowanyama; Kubin; Lockhart River; Mabuaig; Mapoon; Masig; Mer; Mornington Island; Napranum; New Mapoon; Palm Island; Pormpuraaw; Poruma; Saibai; Seisia; St Pauls; Ugar; Umagico; Warraber; Woorabinda; Wujal Wujal; Yam and Yarrabah. This land is referred to as *freehold option land*.

The Bill provides that freehold option land is limited to townships only, which is defined as land identified in the relevant local planning scheme as urban or future urban use. Limiting the option of freehold to townships may remove concerns that large tracts of land will be granted freehold and forever lost to the community. It also has the advantage that the land will have already been identified for development through the local planning scheme process and in most cases already utilised.

Freehold instrument

A freehold instrument is a statutory instrument, approved by the Minister, which is attached to the local planning scheme. A freehold instrument is made up of a freehold schedule and the freehold policy for the particular freehold schedule.

Freehold schedule

The freehold schedule identifies what freehold option land will be made available for freehold in that community. The freehold schedule may take the form of a map identifying the parcels of land to be made available for freehold. The identified land is known as available land. Freehold can only be granted in a community with a freehold instrument and only for available land.

While freehold option land can be identified in the freehold schedule as available land, not all available land would be capable of immediately becoming freehold due to there being existing interests in the land held by non-eligible people – for example a lease to the State. However if the State no longer required the land and relinquished its lease the land would then be capable of being allocated for freehold.

Model freehold schedule

The Bill provides that a trustee can adopt a *model freehold schedule*. A model freehold schedule provides a fast-track to freehold in a community, but only over specific areas which are prescribed in a regulation.

The Bill amends the *Aboriginal Land Regulation 2011* and the *Torres Strait Islander Land Regulation 2011* to provide that freehold option land for which there is an interest holder at the commencement of the provision meets the requirements of a model freehold schedule.

Freehold policy

The Bill provides that the freehold policy must be in the approved form and include certain mandatory information such as eligibility criteria, the allocation process and allocation method; the sale price and costs; how the community will be consulted about the allocation process; and how the trustee will deal with interests in the land before it is allocated. The trustee may include other information in the freehold policy.

The freehold policy ensures that decisions made by the trustee (such as what land to make available for freehold and who to allocate the land to) are equitable, consistent and transparent. In particular, the consultation requirements (see below) ensure both that the freehold policy meets the particular community's needs, and that the trustee properly takes into account any interests that may be adversely affected.

Consultation

The Bill provides that the trustee determines and decides how it will undertake consultation about making freehold available, and how it will consult on the freehold instrument. The consultation process decided upon must be detailed in the freehold policy.

In deciding upon the consultation process, the trustee's decision must be in accordance with the decision making process set out in either the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991* as applicable. The trustee must also be satisfied that the consultation process is appropriate for the land that is to be granted as freehold.

Eligibility to apply for freehold

The Bill limits the grant of freehold to individuals as follows:

- an Aboriginal person or Torres Strait Islander; or
- the spouse or former spouse of an Aboriginal person or Torres Strait Islander; or
- the spouse or former spouse of an Aboriginal person or Torres Strait Islander who is deceased.

The Bill further provides that the trustee, following consultation, may consider it appropriate to further restrict who is eligible to apply to be granted freehold by including additional eligibility criteria in the freehold policy.

Therefore, an *eligible person* for available land is:

- if there is an interest holder for the available land - an interest holder who meets the eligibility criteria for the available land; and
- if there is no interest holder, a person who meets the eligibility criteria for the available land.

Eligibility to apply for freehold is not available to corporations or Commonwealth, State or local government. Once the land is granted as freehold there is no restriction on who can hold the land for subsequent sales or transfers of the land.

Interest holders

An interest holder is a person or entity who holds an 'interest' in the available land that is included in a freehold instrument. An interest in the land includes a:

- registered lease granted under the *Aboriginal Land Act 1991*, the *Torres Strait Islander Land Act 1991* or the *Land Act 1994*, other than a townsite lease;
- lease entitlement under the *Aboriginal and Torres Strait Islander Land Holding Act 2013*;
- lease granted under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* or the new *Aboriginal and Torres Strait Islander Land Holding Act 2013*;
- registered sublease, including a registered townsite sublease;
- residential tenancy agreement for a social housing dwelling located on the available land;
- a right to occupy or use the available land under relevant sections of the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

Allocation process

The Bill provides for two processes for allocating available land depending on whether or not there is an interest holder.

Where there is an interest holder, the land can only be granted to the holder of that interest. If there are multiple interest holders for the available land, all must agree to the application for that land.

Where the existing interest is a social housing dwelling, the application for the available land is subject to approval by the chief executive of the department in which the *Housing Act 2003* is administered. Purchase of the dwelling is at the purchase price set by the trustee using the valuation methodology agreed between the trustee and the chief executive of the department in which the *Housing Act 2003* is administered.

Where there is no interest holder, the trustee can allocate land to any eligible person using the allocation method (auction, ballot or tender) as set out in the freehold policy. To ensure the integrity of this allocation process, the Bill provides that the trustee appoints a probity advisor to monitor and advise on the allocation process.

Transferable lands

The Bill provides that where land is not converted to freehold, leasing options under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* will remain available. The Bill also provides that available land ceases to be transferable land when that land is the subject of an allocation offer to an interest holder or an allocation notice where there is no interest holder.

Valuations

The Bill amends the *Land Valuation Act 2010* to provide that all Indigenous Local Government Areas (ILGAs) are subject to statutory valuations. The Bill also amends the *Local Government Regulation 2012* to provide for general rating of these council areas. These amendments put Indigenous local governments on the same footing as all other local governments, and enables them to recover costs across all blocks of land.

The Bill provides that these amendments will take effect in mid-2016 to provide enough time for ILGAs to be established on the valuation roll, valued, and for appropriate rating systems to be developed.

Repeal of the *Aurukun and Mornington Shire Leases Act 1978*

The Bill applies the option of ordinary freehold title to the Aurukun and Mornington Shires, which were created under the *Aurukun and Mornington Shire Leases Act 1978*. Apart from a small area of Aurukun, all shire lease areas have been transferred to Aboriginal freehold under the *Aboriginal Land Act 1991*. Once the final part of Aurukun shire lease is transferred, the *Aurukun and Mornington Shire Leases Act 1978* will no longer be required. As a result once the final part of Aurukun shire lease is transferred, the Bill provides for the repeal of the

Aurukun and Mornington Shire Leases Act 1978 upon proclamation of the relevant provisions.

Lease simplification

The Bill amends Part 10 of the *Aboriginal Land Act 1991* and Part 11 of the *Torres Strait Islander Land Act 1991* to simplify restrictions and requirements around the granting of leases and creates three simplified categories of lease:

- A home ownership lease – for private residential purposes;
- A non-residential lease – a lease other than a home ownership lease, consolidating standard leases for commercial and public infrastructure and social housing purposes; and
- A townsite lease – a perpetual lease granted to a local government over township land.

The Bill provides that the lessee of a townsite lease may grant either a home ownership sublease or a non-home ownership sublease over all or a part of the lease land. Townsite subleases for home ownership purposes will be considered a residential lease.

The requirements and restrictions that previously applied to private residential purpose leases will continue to apply under the Bill to home ownership leases.

The Bill provides the following simplified and consolidated requirements for non-home ownership leases:

- the term of the lease may be up to 99 years (previously only up to 30 years);
- the lease may include the option to renew;
- the area to be leased must be surveyed;
- the lease must be registered;
- the purpose and conditions are to be negotiated between trustee and lessee; and
- Trustee approval is required.

The Bill also provides that Ministerial consent is only required for the grant of a townsite lease. Ministerial consent is no longer required for the grant of other lease types.

Right of public access to the beach

The Bill amends the *Land Act 1994* to provide the Minister with power to declare, on a case by case basis, a right of public access over a property where, due to erosion, the access along the area of beach has been compromised by the private ownership of the beach area.

The right of access is based loosely on the situation in England, where there is a long history of people wanting greater access to open countryside. The *Countryside and Rights of Way Act 2000* created a new statutory right of area access as part of a wider package to improve public access to the countryside including coastal land, such as beaches and cliffs.

A similar Bill was enacted in Scotland by the *Land Reform (Scotland) Act 2003* which formalised the Scottish tradition of unhindered access to open countryside, provided that care is taken not to cause damage or interfere with activities including farming and game stalking.

The main components of the proposal are:

- The Minister may declare a right of access and attach conditions to that access by regulation. Standard conditions will be prescribed to alleviate any burden caused to the land owner. The standard conditions may be modified to meet the specific circumstances of a land owner;
- Conditions may address such issues as vehicle access, camping, the lighting of fires, animals and any other restrictions that may be necessary;
- The area over which the right of access is located will be placed under the management and control of either the relevant local government or the State;
- The owner of the land will be relieved of occupier liability, except to the extent that any injury is caused by intentional or reckless act by the owner of the land;
- The boundary of the declared right of access will, where possible, be ambulatory, identified by a feature such as the toe of the foreshore dune and move with the beach; and
- The right of access and the conditions attached to it are subject to the application and operation of other legislation.

The relevant local government will be provided with the opportunity to take control of the beach access area. Where the local government does wish to control the area, it will have the power to add to the standard conditions imposed by the Minister through the making of a local law.

Alternative ways of achieving policy objectives

Providing Freehold

Three other alternatives were considered. The first alternative was to provide perpetual leases under the *Aboriginal and Torres Strait Islander Land Holding Act 2013*. This was rejected as it only benefited previous lease holders such as those with granted leases and lease entitlements. Further, it would only confer a leasehold interest, and so did not provide Aboriginal people and Torres Strait Islanders living in Indigenous communities with the same entitlement to freehold as is enjoyed by other Queenslanders.

The second alternative was to provide 99 year leases under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. This was rejected as it did not provide the same security of tenure or access to the broader market.

A third alternative was that community land could simply be made available for sale on the open market. This was not pursued for several reasons. Firstly, there is no existing market in freehold land in the relevant communities, and to establish one instantly would lead to distortions and artificiality. Secondly, community members might not have the financial resources to enter the market immediately. Thirdly, the historical evolution of the communities' land tenure arrangements must be taken into account in ways that the market cannot. Fourthly, in light of that evolution, it is appropriate that the relevant communities decide how soon and to what extent ordinary freehold should be made available. Finally, the

interests of existing interest-holders and other community members need to be taken into account, and some of those interests may not be properly recognised by market forces.

The freehold model under the Bill was chosen as the preferred option as it gives eligible Aboriginal people and Torres Strait Islanders exclusive right to the land on the same basis as other Queenslanders, allowing the land to be developed or sold subject only to the restrictions that apply to ordinary freehold (such as the relevant planning scheme), and provides a tenure that financial institutions will lend against. These opportunities meet the government's commitment to provide freehold as is available to all other Queenslanders.

Lease simplification

The removal of all constraints and restrictions on leasing was considered. While this option would provide a high degree of flexibility for community and business, the ability of the trustee to lease the land without constraint or restriction could in time create a complex mixture of inconsistent leases between communities and trustees. This would put increasing pressure on land administration systems and ultimately reduce the level of certainty in lease conditions and requirements. Furthermore, significant work has already been done to prepare loan packages, template leases and sale contracts to support the existing 99 year home ownership leases. Considerable costs would be incurred in adapting these standardised processes to new and variable lease types under this alternative option.

The preferred option of simplifying and streamlining non-home ownership leasing requirements gives trustees greater flexibility to more effectively manage leasing arrangements to achieve the best return for their land. Removing limits and constraints on the purpose and duration of leases provides greater opportunities for eligible community members to pursue social and economic development.

Right of public access to the beach

There are no non-legislative options that will meet the government's policy objective.

The other legislative option that is available is to acquire the strip of land that forms the beach under the *Acquisition of Land Act 1967*. This option will still be considered where it is a more appropriate solution, where, for example, it was proposed to construct infrastructure on the beach, such as a pipeline. Amendments to the *Acquisition of Land Act 1967* contained in the Land and Other Legislation Amendment Bill 2014, which was introduced into the House on 19 March 2014, will enable a strip of private land to be acquired for a beach.

However, in the absence of any proposed construction of infrastructure, this is not the preferred option because landholders would be deprived of the ownership and use of their land while government would be faced with the considerable cost of buying direct waterfront land. Where a right of public access is used, the owner retains the opportunity to regain the entire parcel of land if accretion results in the beach moving further seaward. This opportunity would not exist where the land has been acquired.

In addition, where a right of access is acquired, the Minister will impose conditions on that access and can modify those conditions after consultation with the owner. In contrast, if the

land is acquired, no such consultation is required and no conditions would generally be imposed.

Estimated cost for government implementation

A funding pool of up to $75,000 is to be established by the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs and the Department of Natural Resources and Mines to assist trustees of pilot communities undertake community consultation as part of the freehold model.

There are no other financial implications for implementing the proposed freehold model for the State.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in Section 4 of the *Legislative Standards Act 1992* and is generally consistent with these provisions. A number of matters have been identified as potential departures from FLPs. Clauses of the Bill in which FLP issues arise, together with the justification for any departure, are outlined below.

Providing Freehold

Whether legislation is consistent with principles of natural justice - Legislative Standards Act 1992 s 4(3)(b)

In granting freehold land, the Bill gives the trustees of the land a number of powers (Clause 5 and 35). The trustee consists of members of the community who may have interests in land or may be eligible to apply for the allocation of available land.

The Bill includes a number of safeguards including:

- requiring the trustee to consult on the making of freehold instruments and for a freehold instrument to be approved by the Minister before it has effect;
- limiting the scope for the trustee to refuse an application for a grant of available land or to participate in the allocation process for available land;
- a right of appeal if a person's application for a grant or to participate in the allocation process is refused;
- giving an eligible person who is offered available land a 5-day cooling off period during which the person may rescind or revoke their acceptance of the offer; and
- the trustee must engage a probity advisor to oversee the allocation process where there is no existing interest in the land.

Whether legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review - Legislative Standards Act 1992 - s 4(2)(a)

Existing interest holders affected by freehold grants

Clauses 5 and 35 of the Bill insert new Part 2A into the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to allow particular land to be granted in freehold under the *Land Act 1994*. Rights of traditional owners, mortgagors, the State and persons who are not Aboriginal persons or Torres Strait Islanders but who hold an interest in available land may be affected.

The Bill includes a number of safeguards to protect existing interests including the need for all interest holders to consent to an application for freehold and for the chief executive to consider whether there is any existing interest when deciding an application for grant of available land.

Existing lessees or applicants affected by changes to lease provisions

The transitional provisions (clauses 25 and 52 of the Bill) provide for existing leases and applications for leases under the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* to be treated as if they are leases or applications for the same term under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991* as amended by the Bill. The effect of treating existing leases and applications for leases under the amended Acts may be considered beneficial because the Bill simplifies or reduces requirements and restrictions on leases and applications.

Effect of repeal on statutory rights

The repeal of the *Aurukun and Mornington Shire Leases Act 1978* may raise questions about sufficient regard to rights and liberties of individuals and statutory rights. In particular, sections 19 and 20 of that Act provide for those persons who are authorised to enter, to reside in or to be in the Shire of Aurukun or the Shire of Mornington (including, for example, persons holding leases, licences or permits for over land in the shires).

The *Aurukun and Mornington Shire Leases Act 1978* was enacted to provide for the grant of 'shire leases' over the entirety of Aurukun Shire and Mornington Island Shire. Sections 19 and 20 of the *Aurukun and Mornington Shire Leases Act 1978* were enacted to preserve the existing access of Aboriginal people to these lands once the land had been granted as a lease to the respective Aurukun and Mornington Island Councils.

The shire lease land is transferable land under the *Aboriginal Land Act 1991* and must be transferred as soon as practicable. The prelude to the *Aboriginal Land Act 1991* states "*It is, therefore, the intention of the Parliament to make provision, by the special measures enacted by this Act, for the adequate and appropriate recognition of the interests and responsibilities of Aboriginal people in relation to land and thereby to foster the capacity for self-development, and the self–reliance and cultural integrity, of the Aboriginal people of Queensland.*" It is clear that Parliament intended for the *Aboriginal Land Act 1991* to be the

primary Act for providing appropriate statutory rights for Aboriginal people in relation to land.

Only a relatively small parcel of Aurukun shire lease remains yet to be transferred; it is not proposed to repeal the *Aurukun and Mornington Shire Leases Act 1978* until that remaining land has been transferred under the *Aboriginal Land Act 1991*.

Land granted under the *Aboriginal Land Act 1991* is granted as inalienable freehold and held by a trustee. If the trustee is a registered native title body corporate then the trustee will hold the land for the native title holders of the land; where the trustee is not a native title body corporate then they will hold the land for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants.

Once all the shire lease land has been granted under the *Aboriginal Land Act 1991* the land will be held by the appropriate Aboriginal people and the preservation of access will no longer be required.

Effect of repeal on native title rights

The repeal of section 26 of the *Aurukun and Mornington Shire Leases Act 1978* would not affect the ability to exercise native title rights in the shire as these are separate rights to those preserved under the section.

Section 26, similar to sections 19 and 20, was enacted to ensure that the new lessee under the *Aurukun and Mornington Shire Leases Act 1978* would not be able to prevent the traditional practices of the Aboriginal people of the area. Once the land has been granted under the *Aboriginal Land Act 1991* the relevant Aboriginal people will hold the land and be able to carry out traditional practices subject to any relevant law.

Whether legislation has sufficient regard to Aboriginal tradition and Island Custom – Legislative Standards Act 1992_s 4(3)(j)

The Bill has been the subject of wide consultation with Aboriginal People and Torres Strait Islanders affected by the initiatives in the Bill. This has included the Premier writing to the Mayors of Aboriginal and Torres Strait Islander communities and other relevant stakeholders on 16 November 2012 advising them of the government's decision to provide them with the option of freehold title for their community; public release of a discussion paper in November 2012; targeted, face to face consultation undertaken by the Assistant Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs with the relevant Aboriginal and Torres Strait Islander Councils in the period December 2012 to April 2013; face to face consultation was also undertaken by the Assistant Minister with all the Native Title Representative Bodies; the Chief Executive Officers of the Aboriginal and Indigenous Regional Councils; and the native title prescribed bodies corporate in the Torres Strait. Newspaper advertisements were also placed in the relevant local papers during March 2013 seeking submissions in response to the discussion paper. A consultation draft of the Bill and accompanying explanatory material were released for public consultation in December 2013 with a closing date of 28 February 2014.

The Department of Natural Resources and Mines also directly consulted with the following stakeholders: Indigenous local councils through the Local Government Association of Queensland and individual meetings with Torres Strait Native Title Prescribed Bodies Corporate and the Torres Strait Regional Authority's Native Title Office; Torres Strait Island Regional Council; North Queensland Land Council and Yarrabah Aboriginal Shire Council; Cape York Regional Organisations; Queensland South and Torres Strait Island and Horn Island registered native title body corporates.

Right of public access to the beach

Whether legislation provides for the compulsory acquisition of property only with fair compensation - Legislative Standards Act 1992 s 4(3)(i)

Clause 61 of the Bill inserts a new Chapter 7, Part 3B in the *Land Act 1994* that would apply to land in a coastal area that includes within its boundaries land that has effectively become beach. The amendment will provide that a regulation may declare any part of the land that is effectively beach in nature to be a declared beach area. A declared beach area will be open to public use and enjoyment (even though remaining in the ownership of the land owner) with control and responsibility for the area passing to the State, or to a local government if the local government agrees to accept that control and responsibility.

Clause 61, new section 431S of the Bill provides that the State will not be liable for compensation to the land owner for the creation of a right of public access across a beach within that land owner's property. Arguably the amendment is a breach of fundamental legislative principles in that legislation should only provide for the compulsory acquisition of property with fair compensation.

However, it is in the public interest for the public to have reasonably unrestricted access to the seashore, including for travelling from one place to another. In addition, the value of the rights being affected is highly questionable since the area where the access right is granted is a sandy strip on which cultivation or construction is impracticable. The approach proposed is the only practicable approach in the circumstances.

No property is acquired by the State. What is created is merely a right of access. If accretion occurs, the beach will move seaward and the right of access will accordingly cease to apply.

The State will, however, take over the landowner's occupier's liability for the area over which the right of access is created. Conditions will also be applied to the right of access to alleviate the burden on the owner.

In addition, the general policy in Queensland is that land should not extend to the high water mark. The land over which it is proposed to declare a right of access was, in the majority of cases, not surveyed with exclusive beach access. Rather, the land had an esplanade or reserve between the land and the sea. The State never granted the owners exclusive beach access and should not be required to compensate them for their good fortune.

It should also be noted that there is a legislative precedent for land acquisition without compensation that was contained in the *Nerang River Entrance Development Act 1984*. A subdivision of freehold land using right line boundaries on South Stradbroke Island was made

around 1900. The blocks were never developed and presumably became valueless, and by 1984, after the southern part of the island had retreated northward and the Spit had correspondingly advanced, most of the blocks were either under water or had re-emerged on the Spit. Section 9 of the Act (Vesting of certain lands in the Crown) divested the whole subdivision from the owners and vested it in the Crown without compensation.

Whether legislation has sufficient regard to Aboriginal tradition and Island custom - Legislative Standards Act 1992 s 4(3)(j)

The Bill enables a right of beach access to be declared across land granted in trust or leasehold land. It is possible that native title will exist on such land.

The beach access provisions in the Bill are deliberately silent in relation to the effect of the reforms on native title and also in relation to compensation. Such silence cannot be construed that the Bill is seeking to over-ride the Commonwealth *Native Title Act 1993*. The Bill cannot override the Commonwealth *Native Title Act 1993*. It is silent on these matters as they are dealt with under the Commonwealth *Native Title Act 1993*. There is no need for the State, and nor should it, to re-enact the protections and provisions of the Commonwealth *Native Title Act 1993* in state legislation or limit the types of land and resource dealings it can carry out as the Commonwealth Act ensures that native title is protected through compliance under the future act regime.

When doing acts that affect native title, it is the Commonwealth *Native Title Act 1993* that sets out the requirements for addressing native title, the effect on native title, the relevant procedural rights and compensation for the effect on native title. It is the Commonwealth *Native Title Act 1993* which allows the States and Territories to validly proceed with land and resource dealings subject to the requirements of the Commonwealth Act.

It is important to note that the State cannot cause extinguishment of native title, or otherwise affect native title, unless that is the outcome provided under the Commonwealth *Native Title Act 1993*. In relation to compensation for the effect on native title, as noted above, there is no need for the Bill to deal with native title compensation as compensation for the effect on native title is dealt with under the Commonwealth *Native Title Act 1993*. It is a matter for the native title party to bring a compensation application forward in the Federal Court unless agreement is otherwise reached in the form of a registered Indigenous Land Use Agreement (ILUA).

Consultation

Providing freehold

The Premier wrote to the Mayors of Aboriginal and Torres Strait Islander communities and other relevant stakeholders on 16 November 2012 advising them of the government's decision to provide them with the option of freehold title for their community. A discussion paper was enclosed with the letter from the Premier, and also released for public comment.

Following release of the discussion paper, targeted, face to face consultation was undertaken by the Assistant Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs

with the relevant Aboriginal and Torres Strait Islander Councils in the period December 2012 to April 2013. Face to face consultation was also undertaken by the Assistant Minister with all the Native Title Representative Bodies; the Chief Executive Officers of the Aboriginal and Indigenous Regional Councils; and the native title prescribed bodies corporate in the Torres Strait. Newspaper advertisements were also placed in the relevant local papers during March 2013 seeking submissions in response to the discussion paper.

A consultation draft of the Bill and accompanying explanatory material were released for public consultation in December 2013 with a closing date of 28 February 2014.

The Department of Natural Resources and Mines also directly consulted with the following stakeholders: Indigenous local councils through the Local Government Association of Queensland and individual meetings with Torres Strait Native Title Prescribed Bodies Corporate and the Torres Strait Regional Authority's Native Title Office; Torres Strait Island Regional Council; North Queensland Land Council and Yarrabah Aboriginal Shire Council; Cape York Regional Organisations; Queensland South and Torres Strait Island and Horn Island registered native title body corporates.

Valuation and rating

There has been no public consultation on introducing valuation and ratings into ILGAs. However, it is noted that a number of Indigenous local governments have been requesting this change for a number of years.

Repeal of the *Aurukun and Mornington Shire Leases Act 1978*

Aurukun and Mornington Island local governments have been advised of the proposed repeal of the *Aurukun and Mornington Shire Leases Act 1978.*

Lease simplification

The Department of Natural Resources and Mines wrote to all Trustees of Aboriginal and Torres Strait Islander lands in February 2013 outlining the leasing simplification proposal and canvassing the views of trustees.

Right of public access to the beach

The Local Government Association of Queensland (LGAQ) and the Gladstone Regional Council have been consulted. The LGAQ sought views from the other key local governments that have right line boundary blocks that extend to the high water mark.

Locals and landholders who are immediately affected by implementation of the proposal at Rules beach (two owners of 3 separate lots) have also been consulted.

Results of consultation

Providing freehold

Thirteen submissions were received in response to the release of the consultation draft of the Bill. There was general in-principle support for making freehold available in Indigenous communities.

In particular, the following components of the model were well received:

- that the freehold model is optional for each individual community; and
- the control provided in the freehold instrument over what land can be freeholded.

A number of stakeholders rejected any entities other than individuals as being entitled to obtain freehold. As a result the Bill does not provide the ability to grant freehold to corporations or any level of government.

There was a difference of opinion about which land in a community is made available for freehold. Some submissions requested that the land available for freehold should be limited to the town area and additional areas identified for future urban development.

One submission strongly supported the entire town area being made freehold so the current situation where a range of different tenure types exist in a town area does not continue. This submission was rejected on the basis that it should be for trustees in consultation with the relevant community to decide whether and if so, where and how freehold should be made available in that community.

The Bill limits the proposed freehold model to areas identified in the relevant local planning scheme for urban or future urban use, rather than making the whole of the community land available for freehold.

All stakeholders raised the importance of communities being properly informed and consulted and the need to have appropriate native title agreements in place. The Bill addresses these concerns.

Lease simplification

A small number of responses were received from trustees in response to the Department's letter of February 2013 outlining the leasing simplification proposal. All responses were very supportive of the proposal.

Right of public access to the beach

The LGAQ has no issues with the proposed amendments. The LGAQ contacted those local councils where there are strips of beach where the proposed power to declare access could be used, namely:

- Gladstone Regional Council;
- Gold Coast City Council;
- Whitsunday Regional Council;

- Redland City Council; and
- Townsville City Council

The LGAQ advised that none of the councils approached had any issues with the proposed amendments. Gladstone Regional Council was interested, although focussed on how access will be achieved onto the beach and the associated environmental issues. That Council did not raise concerns with the prospect of being the on ground manager (in the same way as they manage roads).

The local Rules Beach community are very supportive of the proposed amendments, although cautious that Council is still going to restrict access.

The Rules Beach landholders who may be directly affected by implementation of the proposal at Rules Beach (two owners of three separate lots) were reluctant to participate at this time.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

Providing freehold

Land tenure arrangements in Queensland's Indigenous communities are not comparable with other jurisdictions. Queensland's Indigenous communities were created early last century by the then Government in an attempt to protect Aboriginal people and Torres Strait Islanders from perceived threats to their survival. Queensland used leases and reserves to settle Aboriginal people and Torres Strait Islanders in these communities. This has created a complex land tenure system which is unique to Queensland's Indigenous communities.

Provision of freehold as an option in Indigenous communities is currently not available in any other jurisdiction.

Right of public access to the beach

The law relating to boundaries adjacent to the high water mark has been codified in Queensland. In contrast, other States rely solely on common law. As a result, the law in other States surrounding public access to beaches where right line boundaries exist is uncertain.

Notes on provisions

Chapter 1 Preliminary

Short title

Clause 1 establishes the short title of the Act as the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014*.

Commencement

Clause 2 provides that Chapter 2, other than Part 6 and schedule 1, Part 1, commence on 1 January 2015. Chapter 2, Part 6, and schedule 1, Part 2, commence on a day to be fixed by proclamation.

Chapter 2 Aboriginal and Torres Strait Islander Land amendments

Part 1 Amendment of Aboriginal Land Act 1991

Act amended

Clause 3 provides that this part amends the *Aboriginal Land Act 1991*.

Amendment of s 10 (Lands that are transferable lands)

Clause 4 amends section 10(2) to clarify when Aboriginal land is no longer transferable land. Aboriginal land ceases to be transferable land if the land is available land for freehold and is the subject of an allocation notice where there is no interest holder for the land.

Aboriginal land also ceases to be transferable land if the land is available land for freehold and is the subject of an offer to allocate where there is an interest holder for that land. The land ceases to be transferable land while the offer to allocate is in force.

Insertion of new pt 2A

Clause 5 inserts a new Part 2A with new provisions for providing freehold.

New Part 2A Providing freehold

New Division 1 Preliminary

New section 32A - Overview

New section 32A provides an overview of the content of new Part 2A. The new part provides that available land may be granted in freehold under the *Land Act 1994* and the steps and processes the trustee for the available land must carry out to allocate land for the granting of freehold.

New Division 2 Basic concepts

New section 32B – Definitions for pt 2A

New section 32B introduces new definitions to clarify and explain the provisions providing freehold in new Part 2A.

New Division 3 Approval for grant of available land

New section 32C – Approval for grant of available land

New section 32C details the approval process and requirements when a trustee of freehold option land applies to the chief executive for available land to be granted in fee simple under the *Land Act 1994*. The requirements ensure that there is a freehold instrument for the land and that the trustee has followed the appropriate allocation process for the land. The trustee must apply on the approved form.

New section 32C also provides that the chief executive must be satisfied about of a number of matters before deciding the application. These include that agreements or arrangements have been entered into or are in place to address issues such as native title, social housing dwellings on the available land, and road access to the land.

The chief executive must also be satisfied that that there is a lot on plan description for the available land, and that if the available land is allocated under the prescribed process for allocation where there is no interest holder, a probity advisor has certified the probity of the allocation process. The chief executive may also consider any other matter the chief executive considers relevant, for example there may be an existing use or interest in the land that is not consistent with the proposed grant of freehold. The valid use of available land by the State is an example of where an allocation of freehold is not appropriate.

If the chief executive approves the trustee's application, the Governor in Council may then grant the land in fee simple under the *Land Act 1994*.

New Division 4 Freehold instruments

New subdivision 1 Trustee may make freehold instrument

New section 32D – Trustee may make freehold instrument

New section 32D provides that a trustee can make a freehold instrument. The freehold instrument is made up of a freehold schedule and a freehold policy. A freehold schedule must clearly identify land being made available for freehold applications. This identified land is known as *available land*.

If the freehold schedule only identifies freehold option land that is prescribed under a regulation, the freehold schedule is a *model freehold schedule*.

If a trustee makes a freehold schedule, they must at the same time also make a freehold policy in the approved form for the area covered by the freehold schedule. The freehold policy is

designed to assist the trustee implement the freehold model and ensure certainty and transparency in trustee decision making.

New section 32D also details the information that must be included in the freehold policy.

New section 32E – Trustee may have only 1 freehold instrument

New section 32E provides that a trustee may have only one freehold instrument unless the trustee is an Indigenous regional council (as defined in the *Local Government Act 2009*) in which case the trustee may have more than one freehold instrument, but only if the available land identified in the freehold schedules are separate blocks of land that do not overlap.

New Subdivision 2 Making, amending or repealing freehold instruments

New section 32F – Definition for sdiv 2

New section 32F explains that for the purposes of this division, the term *model freehold instrument* means a model freehold schedule and the freehold policy for the model freehold schedule.

New section 32G – Application of sdiv 2

New section 32G explains that new subdivision 2 states how a freehold instrument may be made, amended or repealed.

New section 32H – Minister to make and publish guideline

New section 32H provides that the Minister must make and publish a guideline on the department's website about the process the local government must follow in relation to attaching a freehold instrument to their planning scheme and making changes to, or repealing a freehold instrument. This section sets out what the guideline must provide for.

New section 32I - Trustee to consult

New section 32I provides that the trustee must undertake consultation so that the trustee is reasonably satisfied that it is appropriate to grant land as freehold in their community.

Before the trustee starts making a freehold instrument, the trustee must decide how the consultation will be undertaken (the *decided way*). This decision by the trustee must comply with current requirements of section 179 of the *Aboriginal Land Act 1991*.

New section 32I provides that the decided way must include consultation with native title holders for the land being proposed for freehold, include how the community will be notified about the freehold instrument, and ensure everyone consulted has an opportunity to express their views. The trustee must also keep a record of their consultation to show it was undertaken in the way decided.

New section 32J – Trustee to give freehold instrument to Minister or local government

New section 32J explains what the trustee must do if the trustee decides to continue to make a freehold instrument after consultation on the freehold instrument.

If the trustee makes a model freehold instrument, the trustee must give the model freehold instrument to the Minister for approval.

If the trustee makes a freehold instrument that is not a model freehold instrument, the trustee must ask, by notice, the relevant local government for the area in which the proposed freehold option land in situated, to attach the freehold instrument to the local government's planning scheme. In this instance, proposed freehold option land means freehold option land proposed to be included in a freehold schedule.

New section 32K – Local government to follow process in guideline

New section 32K provides that if a local government receives a notice from a trustee asking it to attach the freehold instrument for the proposed freehold option land, the local government must follow the process in the guideline that is made by the Minister. Once this process is completed, the local government must give the freehold instrument to the Minister for approval.

This section does not apply to model freehold instruments.

New section 32L – Minister may approve

New section 32L provides that if the Minister is given a freehold instrument for approval, the Minister may either approve the freehold instrument; approve the freehold instrument subject to any amendments the Minister directs the local government or trustee to make; or refuse to approve the freehold instrument.

Section 32L sets out the issues the Minister must consider when deciding whether to approve or refuse to approve a freehold instrument (other than a model freehold instrument). This is to ensure the Minister is satisfied that appropriate processes have been followed.

The Minister may approve a freehold instrument if reasonably satisfied that:

- for a model freehold instrument - the model freehold schedule only includes freehold option land of a type prescribed by a regulation;
- the trustee has consulted with native title holders for the freehold option land proposed to be included in the freehold schedule; and
- consultation was undertaken in the way decided under new section 32I.

The Minister must notify the trustee and local government about the decision on the freehold instrument. If the Minister approves the freehold instrument, the local government must attach the freehold instrument to its planning scheme and publish a notice about the freehold instrument. This is to advise the community of the Minister's decision and to inform them that the freehold instrument is publicly available.

New section 32M – Amending or repealing freehold instrument

New section 32M provides that if a trustee needs to amend or repeal a freehold instrument attached to a local government's planning scheme, the trustee must follow the process stated in the guideline made by the Minister.

New Subdivision 3 Other provisions about freehold instruments

New section 32N – Effect of freehold instrument

New section 32N provides that a freehold instrument takes effect from the day the local government attaches the freehold instrument to its planning scheme.

New section 32O – Relationship with planning scheme

New section 32O clarifies the relationship between a freehold instrument and a planning scheme. Attaching a freehold instrument to a planning scheme is not an amendment to that planning scheme. Also, once attached to a planning scheme, the freehold instrument does not form part of the planning scheme and remains the responsibility of the trustee. If the planning scheme is amended, repealed or remade, the freehold instrument does not need to be amended before it is attached by the local government to the amended or repealed and remade planning scheme.

New Division 5 Allocation process for available land–interest holder

New section 32P – Application of div 5

New section 32P explains that new division 5 details the allocation process to be used if there is an interest holder for the available land.

New section 32Q – Application for available land

New section 32Q provides that a person who is an eligible person and an interest holder for the available land may apply on the approved form, to the trustee of available land for the land to be granted to them.

New section 32R – Dwelling on available land

New section 32R details the process to be followed when an application for available land is made where there is a dwelling on that land.

The trustee must give notice to the housing chief executive about the application. If the dwelling is a social housing dwelling, the housing chief executive must first approve that the social housing can be sold or whether it is more appropriate for the dwelling to remain as social housing. The chief executive has 28 days from receiving the initial notice from the trustee in which to advise the trustee of this decision (by a dwelling notice). Once approved, the purchase price will be set by the trustee using a methodology agreed between the trustee and the housing chief executive. If a person asks for a copy of the valuation methodology, the housing chief executive must provide a copy.

New section 32S – Decision on application

New section 32S provides that the trustee must consider an application that is made and decide to approve or refuse the application. However, if there is a dwelling on this land, the trustee cannot make a decision until the trustee receives a notice from the housing chief executive approving the application.

The trustee may only approve the application if reasonably satisfied that:

- the applicant is an eligible person for the land being applied for;
- if there is an interest over the land then the interest holder is the applicant;
- if there is more than one interest holder for the land and all interest holders are eligible persons, then either all interest holders have made the application, or alternatively, all interest holders agree to the applicant making the application;
- if there is more than one interest holder for the land and all interest holders are not eligible persons, all interest holders have agreed to the applicant making the application; and
- if there is a mortgage over the available land, that the mortgagee has agreed to the application being made.

If the trustee refuses the application for the available land, the trustee must advise the applicant with an information notice.

New section 32T – Offer to allocate available land

New section 32T provides that if the trustee approves the application they must then offer the available land to the applicant in writing. The trustee can only make the offer after any appeals in relation to the available land have been decided. The offer may be subject to conditions. For example if there is a social housing dwelling on the land, the offer must include that the dwelling be purchased at the value decided by the trustee under new section 32R . Any other conditions placed on the offer must be consistent with those detailed in the freehold instrument. If any conditions other than those in relation to purchasing the dwelling are included in the offer, the trustee must give notice about these conditions.

The trustee must advise the chief executive about making an offer to allocate the available land and the land ceases to be transferable land - see amendments to section 10 of the *Aboriginal Land Act 1991*.

New section 32U – Acceptance and refusal of offer

New section 32U provides that the person offered the available land has 45 days from receiving the offer to notify the trustee in writing of whether they will accept or refuse the offer. If notice of their decision is not given within this time, the person is taken to have refused the offer and the trustee must advise the chief executive that the offer has been refused; the land will then be transferable land again.

New section 32V – Cooling-off period to apply to acceptance

New section 32V provides that a cooling-off period of 5 business days applies to accepting an offer to allocate available land. If the person offered the land proposes to accept the offer, they can shorten this cooling-off period or waive it entirely by written notice to the trustee.
A person who has not waived the cooling-off period may rescind or revoke their acceptance at any time during the cooling-off period by giving the trustee a signed notice of rescission or revocation. If the acceptance is rescinded or revoked, the trustee has 14 days in which to refund any deposit received under the acceptance. This amount may be recoverable from the trustee as a debt.

New section 32W – When offer ends

New section 32W provides a number of conditions under which the offer is considered to have ended. These include when the eligible person refuses the offer; rescinds or revokes the offer; dies; or no longer is an interest holder for the land. The offer itself may also include a condition about when the offer ends. The offer will end when the first of these conditions occurs.

New section 32X – Allocation of available land to eligible person

New section 32X provides that once the applicant has complied with all conditions of the offer and notified the trustee, the trustee must allocate the land to the applicant.

New Division 6 Allocation process for available land if no interest holder

New section 32Y – Application of division 6

New section 32Y explains that new division 6 details the allocation process for available land where there is no interest holder for the land.

New section 32Z – Public notice of intention to allocate available land

New section 32Z provides that before allocating the available land, the trustee must advertise their intention to allocate the land through an allocation notice and in a newspaper or other publication for the area in which the land is situated. This ensures everyone in the community is aware of the intention to allocate the land.

There are preconditions to the trustee making the allocation notice, including that:
- there is a lot on plan description for the land;
- there is dedicated access to the land;
- native title over the land has been, or will be surrendered or extinguished; and
- the chief executive has been notified about the trustee's intention to allocate the land.

New section 32ZA – Information to be included in allocation notice

New section 32ZA provides that certain information must be included in the allocation notice. This information ensures that full details of the available land are provided to the community, including eligibility criteria, the purchase price and any deposit required, how

and when the land will be allocated and the process for making applications. The name and contact details of the probity advisor to be appointed must also be included. The closing day for applications to participate in the allocation process must be at least 30 days after the allocation notice is gazetted.

New section 32ZB – Probity advisor

New section 32ZB provides that the trustee must appoint an independent and appropriately qualified probity advisor to monitor and advise the trustee on the probity of the allocation process. The probity advisor must prepare a report on the probity of the allocation process and certify if the allocation process was undertaken correctly.

New section 32ZC – Decision on application to participate in allocation process

New section 32ZC provides that as soon as practicable after the closing day, the trustee must advise applicants about whether or not they can participate in the allocation process. The trustee must exclude a person from participating if they are not an eligible person. The trustee must advise a person excluded from participating in the allocation process by an information notice. A person who is the subject of a decision in an information notice may appeal to the Land Court against the decision.

New section 32ZD – Notice of allocation of available land

New section 32ZD provides that after the appeal period, the trustee must provide each person that is continuing to participate in the allocation process with a notice that details when the allocation process is to occur (allocation date) and when any deposit must be paid. The date for paying the deposit must be at least 30 days after the notice is given and before the allocation date. The applicant must advise the trustee in writing if they are no longer going to participate in the allocation process. If the applicant does not pay the required deposit by the due date, they can no longer participate in the process.

New section 32ZE – How and when trustee may allocate

New section 32ZE provides that the trustee may only allocate the available land after the end of the appeal period when any appeals about exclusion from participation in the allocation process are finalised. The trustee must use the allocation method (auction, ballot or tender) as detailed in the freehold instrument, the allocation notice and according to any advice provided by the probity advisor.

New section 32ZF – Allocation of available land

New section 32ZF provides that the trustee must allocate the available land to the winner of the allocation process.

New section 32ZG – Deposits

New section 32ZG provides that the trustee must refund the deposits of any unsuccessful applicants after the land has been allocated.

New Division 7 Miscellaneous

New section 32ZH – Continuation of mortgages and easements

New section 32ZH provides that all registered mortgages and easements that applied to the available land before it was approved to be granted under a deed of grant in fee simple still apply.

New section 32ZI – Cancellation of deeds of grant in trust, reserves etc

New section 32ZI provides that if available land approved to be granted in fee simple is the subject of certain 'old tenures' and a deed of grant in fee simple for the available land is registered (which becomes a 'new tenure'), then the old tenure is cancelled to the extent of the new tenure. Old tenures can be any of the following: a deed of grant in trust; a reserve dedicated under the *Land Act 1994*; a lease granted to the relevant council under the *Aurukun and Mornington Shire Leases Act 1978*; a townsite lease; or an interest held by an interest holder (other than an easement or mortgage).

Amendment of s 81 (Resource reservations under other Acts)

Clause 6 amends section 81 to remove the obsolete reference to an Aboriginal lease from this section.

Amendment of s 97 (Power to deal with Aboriginal land)

Clause 7 amends section 97 to provide that this section applies subject to provisions in this Act relating to providing freehold and leasing of Aboriginal land. Clause 7 also inserts a new subparagraph to provide that the lessee of a townsite lease has the power to grant a licence for the use of all or part of the lease land.

Amendment of pt 9, div 1, hdg (Trustee's power to deal with Aboriginal land and Ministerial consent)

Clause 8 removes reference to Ministerial consent from the heading of Part 9, division 1.

Omission of s 98 and 99

Clause 9 removes section 98 from the *Aboriginal Land Act 1991* as consultation requirements are now dealt with under the new freeholding provisions of new Part 2A. This clause also removes section 99 from the *Aboriginal Land Act 1991* as Minister's consent is only required for the grant of a townsite lease and this is dealt with in new section 148.

Omission of pt 9, div 3 (Grant of licences)

Clause 10 removes Part 9, division 3 which deals with the grant of licences under the Aboriginal Land Act 1991 as these provisions are no longer required.

Amendment of s 116 (Particular dealings in Aboriginal land void)

Clause 11 amends section 116(1) to clarify that this section now refers to new freeholding provisions of new Part 2A and to remove the note for this section which is no longer relevant.

Replacement of pt 10 (Leasing of Aboriginal Land)

Clause 12 replaces the previous Part 10 with a new Part 10 which amends provisions dealing with the leasing of Aboriginal land.

New Part 10 Leasing of Aboriginal land

New Division 1 Definitions

New section 119 – Definitions for pt 10

New section 119 introduces new definitions to clarify and explain new provisions in relation to the leasing of Aboriginal land.

New Division 2 Grant of leases for Aboriginal land

New section 120 – Grant of leases by trustee of Aboriginal land

New section 120 provides for the trustee of Aboriginal land to grant the following lease types:

- Townsite perpetual leases
- Home ownership leases; and
- Leases for not more than 99 years.

The section also details specific terms, conditions or restrictions that apply to each particular lease type.

New section 121 – Grant of lease by lessee of townsite lease

New section 121 provides that the lessee of a townsite lease may grant leases of up to, and including, 99 year terms over all or a part of the lease land. The lessee of a townsite lease may also grant a home ownership lease over all or a part of the lease land.

New Division 3 Common provisions for part 10 leases

New section 122 – General conditions for particular lease

New section 122 provides that particular conditions may be applied to particular leases, other than townsite leases. If a lease contains the following conditions – that the lease must not be transferred without the lessor's prior written consent, or that an interest other than a mortgage must not be created without the lessor's prior written consent - the lessor is not permitted to unreasonably withhold consent to the transfer or creation of an interest under the lease.

Section 122 also provides that a lease other than townsite leases may be mortgaged without the lessor's consent and can be subject to conditions other than those stated above.

New section 123 – Option to renew particular lease

New section 123 provides that a lease granted for 99 years over all or a part of the land or a townsite lease granted for 99 years over all or a part of the land, may include an option to renew only if the term of the renewed lease is not more than the initial term of the lease or sublease.

New section 124 – Transfer of lease

New section 124 provides that a Part 10 lease must not be transferred to a person who would not have been originally entitled to a grant of a lease under the *Aboriginal Land Act 1991*.

New section 125 – Lease etc. to be registered

New section 125 provides that the lessee of a Part 10 lease must register the lease and any amendment, surrender or transfer of the lease, and include a plan of survey identifying the lease land. A plan of survey is not required if the lease applies to an area entirely within a building.

New Division 4 Home ownership leases

New subdivision 1 Conditions and requirements

New section 126 – General conditions and requirements

New section 126 provides that a home ownership lease is subject to the following mandatory conditions and requirements:

- an annual rent, decided by the lessor of not more than $1;
- a consideration payable for the lease, as a lump sum, equal to the value of the lease land decided by the lessor using either a valuation methodology decided by the chief executive, or a benchmark price prescribed in a regulation for land in the part of the State where the lease is situated;
- the land must be used primarily for residential use;
- if there is no dwelling for residential use on the lease when granted, a dwelling must be built on the land within 8 years after the lease is granted.

The lessor may only grant a home ownership lease once the consideration payable for the lease has been paid. The value of the lease land must be taken to be nil if the lessee is the recipient of a hardship certificate under the *Aboriginal and Torres Strait Islander Land Holding Act 2013*, and if the certificate has not previously been used, whether or not it has been used for the lease land.

This section also provides that the chief executive must give a person a copy of the valuation methodology if requested and make the valuation methodology available of the department's website.

New section 127 – Additional requirement if dwelling situated on land

New section 127 applies in situations where a lessor proposes to grant a home ownership lease where there is a dwelling on the lease land. The lessor must notify the housing chief executive of their intention to grant the lease, and must not grant the lease until notified by the housing chief executive as to whether or not the dwelling is a social housing dwelling. This provision does not limit the general conditions and requirements that must be applied to home ownership leases.

New section 128 – Additional conditions and requirements for social housing dwelling

New section 128 sets out the conditions that apply where the housing chief executive has notified the lessor that the dwelling on lease land is a social housing dwelling.

Before the lease is granted, the lessor must decide on the value of the dwelling by using a valuation methodology agreed with the housing chief executive. The consideration payable for the lease must be a lump sum payment equal to the agreed value of the dwelling.

The lessor may only grant the lease if the housing executive approves that the grant may include the sale of the dwelling and the consideration payable has been paid. If the lease is granted, the lessor must give the housing chief executive notice, within 28 days of the lease being registered, that the lease has been registered and the names of the parties to the lease. Evidence of payment of the consideration for the lease must also be provided to the housing chief executive.

New Subdivision 2 Forfeiture

New section 129 – Grounds for forfeiture

New section 129 details the situations under which a home ownership lease may be forfeited. A home ownership lease may be forfeited if the lessee breaches either of the following conditions and fails to remedy the breach within 6 months of being notified of the breach:

- if the lessee does not build a dwelling for residential use on the lease within 8 years after the lease is granted if there was no dwelling for residential use on the lease when granted; or
- the lessee breaches any of the other conditions applied to the lease if the lessor considers the breach serious enough to warrant forfeiture.

A home ownership lease may also be forfeited if the lease was acquired by fraud.

New section 130 – Referral to Land Court for forfeiture

New section 130 provides that a home ownership lease cannot be forfeited before the proposed forfeiture is referred to the Land Court for a decision. The lessor must give notice of the proposed forfeiture to the lessee and any mortgagee at least 28 days before referring the forfeiture to the Land Court. The notice must state the grounds for the proposed forfeiture and a copy of the notice must be filed in court by the lessor.

The Land Court must give regard to the grounds stated for the forfeiture and if there has been a breach of any of the conditions of the lease, whether the breach is serious enough to warrant forfeiture. If the Land Court decides that a lease may be forfeited, the Land Court may set conditions on the forfeiture.

New section 131 – Lessor's options if Land Court decides lease may be forfeited

New section 131 provides three alternatives for the lessor if the Land Court decides the lease may be forfeited. The lessor can either go ahead and forfeit the lease; or if the proposed forfeiture is subject to conditions, forfeit the lease if the conditions of forfeiture are met; or if the proposed forfeiture is due to a breach of a lease condition, decide not to forfeit and instead allow the lease to continue while the lease is amended to include conditions agreed between the lessor and lessee.

New section 132 – Notice and effect of forfeiture

News section 132 provides that if a lessor decides to forfeit a home ownership lease after the Land Court's decision, they have 60 days to give notice of the forfeiture to the lessee and any mortgagee of the lease and to the registrar of titles. The forfeiture must be recorded on an appropriate register. Once recorded, the forfeiture takes effect and the lease ends, the lessee is divested of any interest in the lease and any person occupying the lease land must vacate the land immediately.

New section 133 – Extension of term of lease if proposed forfeiture

New section 133 applies to a home ownership lease if the proposed forfeiture has been referred to the Land Court but the Land Court has not made a decision before the lease is due to end. In this situation the term of the lease continues until the forfeiture takes effect or until the end of the 60 days after the Land Court makes its decision. The extension of the lease under this section applies despite provisions of the lease and any other provisions under the *Aboriginal Land Act 1991*.

New Subdivision 3 Renewal

New section 134 – Application to renew lease

New section 134 provides that the lessee under a home ownership lease may apply in writing to the lessor to renew the lease. The application must state the name of the lessee and include information that can identify the lease.

New section 135 – Notice of expiry of lease

New section 135 applies if the lessee under a home ownership lease has not applied for renewal of the lease at least 2 years before the lease is due to end. In this situation, the lessor must notify the lessee of the day the lease ends and how the lessee may apply for renewal of the lease. This notice must be given at least one year before the lease ends.

New section 136 – Lessor to consider and decide application

New section 136 provides that the lessor has 6 months in which to make a decision to renew or not to renew a home ownership lease if the application to renew was made not more than 2 years before the end of the lease.

New section 137 – Decision to renew lease

New section 137 provides that if the lessor decides to renew the home ownership lease, the lessor must give the lessee a notice of the decision and a copy of the renewed lease. The renewed lease takes effect immediately after the replaced lease ends and is subject to all conditions that applied to the replaced lease before it ended. There is no consideration payable for the renewed lease.

New section 138 – Lessor may decide not to renew lease

New section 138 provides that the lessor may decide not to renew the home ownership lease only if they are satisfied the lease land is not being used primarily for residential use, or that the lessee acquired the lease by fraud.

New section 139 – Notice about decision not to renew lease

New section 139 provides that if the lessor decides not to renew the home ownership lease, they must give an information notice to the lessee. A person who is the subject of a decision in an information notice may appeal to the Land Court against the decision.

New section 140 – Extension of term of lease if application for renewal

New section 140 applies to a home ownership lease if the lessee has applied to renew the lease but the term of the lease ends before the lessor has made a decision about the application. If this occurs, the term of the lease is taken to continue until the lessor has given their decision to the lessee, irrespective of any provisions of the lease or other provisions under the *Aboriginal Land Act 1991*.

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

New section 141 – Right to remove improvements if lease forfeited or not renewed

New section 141 provides that if the lessor forfeits or decides not to renew a home ownership lease, the lessee must be allowed to remove any improvements on the lease land that they have made. The lessor must allow at least 28 days for this to occur. If improvements are not removed within this time, they become the property of the lessor.

New section 142 – Payment by lessor if lease forfeited or not renewed

New section 142 provides that the lessor is required to pay the lessee a certain amount of money if they forfeit the lease or decide not to renew the lease. The amount payable (known

as the *required amount*) is the combined value of the lease land on the day the lease is forfeited or ends, plus the value of the lessee's improvements on the land that become the property of the lessor (maximum amount) – less any money owing to the lessor or mortgagee (as set out in section 144 below). The value of the lease land must be decided by the lessor using the valuation methodology used previously to set the consideration payable. The value of improvements must be set as the market value of the improvements in a sale of a lease of the same term and conditions. Once the amount is decided, the lessor must give the person an information notice for the decision.

New section 143 – Unclaimed amount

New section 143 provides that the required amount forfeits to the lessor if the lessor cannot find the person entitled to this money or the person entitled to it does not claim it within 9 years after the lease is forfeited or not renewed.

New section 144 – Amount owing to lessor or mortgagee

New section 144 establishes what amount the lessor can deduct from the maximum amount.

New section 145 – Payment of amount to mortgagee in discharge of mortgage

New section 145 establishes the amount payable by the lessor if money is owed by the lessee under a mortgage of the lease at the time the lease is forfeited or not renewed. The lessor must pay this amount within 28 days of the day appeals to the Land Court about the required amount can be made, if no appeal is made. Alternatively, if an appeal is made, the payment must be made within 28 days after the appeal is decided. The mortgagee must use any money received by the lessor in the discharge of the mortgage.

New Subdivision 5 Miscellaneous

New section 146 – Exemption from fees and charges

New section 146 provides that there is no fee or charge payable for lodging and registering an instrument of lease for a home ownership lease in the land registry or for any other service provided by the registrar of titles as part of lodging and registering an instrument.

New section 147 – Beneficiary to home ownership

New section 147 provides that a beneficiary under a will to a home ownership lease may ask the lessor for a notice confirming their entitlement to the grant of the lease, or in the case where the lease may not be transferred without the lessor's consent, for notice of the lessor's consent to the transfer. The lessor must comply with such a request as soon as the lessor is able to.

New Division 5 Townsite leases

New Subdivision 1 Restriction on grant

New section 148 – Minister's consent for grant of townsite lease

New section 148 provides that a townsite lease must be granted with the Minister's prior written consent. This consent may only be given if the Minister is satisfied that any existing interests in the lease are consistent with the lease and that the lease is over an entire lot as shown on an appropriate register.

New Subdivision 2 Requirements for Minister's consent

New section 149 – General requirements for Minister's prior consent.

New section 149 provides that certain information or documents must be provided to the Minister when seeking the Minister's prior consent to enable the Minister to decide whether to give consent.

As well as considering this information, the Minister must also be satisfied that the Aboriginal people concerned with the lease are in general agreement with the grant of the lease. The Minister must also be satisfied that the grant of the lease will allow continued operation of a township on the lease land and will not prevent residents from continuing to live on and access the land, and to obtain tenure over the land under the *Aboriginal Land Act 1991*.

New Subdivision 3 Provisions about dealing with townsite leases

New section 150 – Transfer or amendment of townsite lease

New section 150 provides that a townsite lease may be transferred or amended only with the agreement of both the trustee and lessee of the land, and with the Minister's prior written consent. Information or documents relevant to the proposed transfer or amendment must be provided to the Minister when seeking the Minister's consent.

The Minister must consider the transferee's capacity to comply with lease conditions when considering to consent to a transfer. A transfer must not be made to a person who would not be entitled to a grant of a townsite lease under the *Aboriginal Land Act 1991*.

The Minister may consent to an amendment of a townsite lease if satisfied the amendment does not significantly change the conditions of the lease nor diminish its purpose.

New section 151 – Surrender of townsite lease

New section 151 provides that the Minister's prior written consent must be sought before a townsite lease is surrendered.

New section 152 – No forfeiture of townsite lease

New section 152 provides that a townsite lease cannot be forfeited.

New Subdivision 4 Effect of townsite lease on existing interests

New section 153 – Lessee of townsite lease taken to be lessor of existing leases

New section 153 provides the circumstances in which a lessee of a townsite lease is taken to be a lessor of an existing lease, which becomes known as a continued lease after the grant of the townsite lease.

This section also provides that on the grant of a townsite lease, the continued lease continues in force for the same term as the continued lease was granted and is taken to be a home ownership lease if the lease is primarily for residential use.

Similarly, if a townsite lease is granted over a sublease granted under the *Aurukun and Mornington Shire Leases Act 1978*, the sublease continues in force for the same term as the continued lease was granted and is taken to be a home ownership lease if the lease is primarily for residential use.

Amendment of s 179 (Decision-making by trustee)

Clause 13 amends section 179(1) to provide that this section also applies to decisions by the trustee in relation to consultation about the making of a freehold instrument.

Amendment of s 180 (Definitions for pt 14)

Clause 14 amends section 180 to provide new definitions for lease and lessor for Part 14.

Amendment of s 182 (Provision about entering into possession, and selling, lease)

Clause 15 amends section 182(9) to clarify the meaning of lessee for a standard lease and a townsite sublease.

Amendment of s 186 (Trustee (Aboriginal) leases)

Clause 16 makes a number of minor and consequential amendments to section 186 to reflect amendments made in Part 10 in relation to the leasing of Aboriginal land.

Omission of pt 15, div 3 (Other matters)

Clause 17 omits Part 15, division 3 which deals with other matters in relation to the leasing of Aboriginal trust land as these provisions are no longer required.

Amendment of s 196 (Application of provisions for grant of land)

Clause 18 makes a number of minor and consequential amendments to section 196 to reflect amendments made in Part 10 in relation to the leasing of Aboriginal land. It also amends an obsolete reference to Aborigines in the section.

Amendment of s 198 (Application of particular provisions)

Clause 19 makes a number of minor and consequential amendments to section 198 to reflect amendments made in Part 10 in relation to the leasing of Aboriginal land, and to remove an obsolete reference to Aborigines in the section.

Amendment of s 199 (Use of Aboriginal land preserved)

Clause 20 amends section 199(5)(a) to reflect amendments made in Part 10 in relation to the leasing of Aboriginal land.

Amendment of s 277 (Who may appeal)

Clause 21 makes a number of minor and consequential amendments to section 277 to reflect amendments made to the leasing of Aboriginal land in Part 10. Section 277 is also amended to clarify that a person who is given or entitled to be given an information notice for a decision under the new freeholding provisions, may appeal to the Land Court against the decision.

Amendment of s 280 (Notice of appeal)

Clause 22 makes a number of minor and consequential amendments to section 280 to reflect amendments made elsewhere in part 10 in relation to the leasing of Aboriginal land.

Amendment of s 288 (Dealing with particular trust property)

Clause 23 makes a number of minor and consequential amendments to section 288 to reflect new provisions in new Part 2A for providing freehold. In particular, this clause clarifies that if a trustee receives an amount for a social housing dwelling on available land, the trustee must use this amount for housing services for Aboriginal people concerned with the land held by the trustee.

Omission of s 289 (Application of Residential Tenancies and Rooming Accommodation Act 2008)

Clause 24 removes section 289 as it is no longer relevant following amendments to part 10 in relation to the leasing of Aboriginal land.

Insertion of new pt 25, div 5

Clause 25 inserts new Division 5 into the transitional provisions of Part 25 to provide a transitional provision for the Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014.

New section 307 – Definitions for div 5

New section 307 inserts definitions for this division.

New section 308 – Provision for existing leases

New section 308 provides the transitional arrangements for existing leases or applications for a lease that were in force before this amendment Act comes into force.

New section 309 – Provision for existing applications

New section 309 provides the transitional arrangements for applications that were in effect prior to the commencement of this section but had not been granted or refused.

Amendment of sch 1 (Dictionary)

Clause 26 removes existing definitions for decision-maker, lease, lessee, lessor, native title holder, residential lease, standard lease, townsite sublease and trustee from schedule 1 and inserts new definitions to reflect new freehold provisions of Part 2A and amendments to Part 10 for the leasing of Aboriginal land.

Part 2 Amendment of Aboriginal Land Regulation 2011

Regulation amended

Clause 27 provides that this part amends the *Aboriginal Land Regulation 2011*.

Omission of pt 3 (Code of conduct about mining leases)

Clause 28 removes Part 3 of the *Aboriginal Land Regulation 2011* which deals with consultation on a code of conduct for mining leases consistent with the removal of the consultation provisions on the granting of the interest itself.

Amendment of s 50 (Application of provisions for particular land)

Clause 29 makes minor and consequential amendments to section 50 to reflect amendments made elsewhere to the *Aboriginal Land Regulation 2011*.

Insertion of new s 50B

Clause 30 inserts a new section 50B into Part 7 of the *Aboriginal Land Regulation 2011*.

New section 50B – Land for model freehold schedule

New section 50B prescribes the type of land that can be included in a model freehold schedule. This type of land is freehold option land where there is an interest holder on the commencement of this section.

Part 3 Amendment of Land Act 1994

Act amended

Clause 31 provides that this part amends the *Land Act 1994* and notes that amendments to the *Land Act 1994* are also included in Chapter 3 and schedule 1, Part 1.

Amendment of s 14 (Governor in Council may grant land)

Clause 32 amends section 14 to amend subsection (1) to provide that the Governor in Council may also grant approved land in fee simple.

The clause also amends section 14 to insert two new subsections to provide that a grant of approved land by the Governor in Council in fee simple can only be made to the applicant for that land. Approved land in this instance means land subject to an approved application for the grant of freehold under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

Part 4 Amendment of Torres Strait Islander Land Act 1991

Act amended

Clause 33 provides that this part amends the *Torres Strait Islander Land Act 1991*.

Amendment of s 9 (Lands that are transferable lands)

Clause 34 amends section 9 to clarify when Torres Strait Islander land is no longer transferable land. Torres Strait Islander land ceases to be transferable land if the land is available land for freehold and is the subject of an allocation notice where there is no interest holder for the land.

Torres Strait Islander land also ceases to be transferable land if the land is available land for freehold and is the subject of an offer to allocate where there is an interest holder for that land. The land ceases to be transferable land while the offer to allocate is in force.

Insertion of new pt 2A

Clause 35 inserts a new Part 2A into this Act to for new provisions for providing freehold on Torres Strait Islander land.

New Part 2A Providing freehold

New Division 1 Preliminary

New section 28A – Overview

New section 28A provides an overview of the content of new Part 2A. The new part provides that available land may be granted in freehold under the *Land Act 1994* and the steps and

processes the trustee for the available land must carry out to allocate land for the granting of freehold.

New Division 2 Basic concepts

New section 28B – Definitions for pt 2A

New section 28B introduces new definitions to clarify and explain the provisions in new part 2A that provide freehold under the *Torres Strait Islander Land Act 1991*.

New Division 3 Approval for grant of available land

New section 28C – Approval for grant of available land

New section 28C details the approval process and requirements when a trustee of freehold option applies to the chief executive for available land to be granted in fee simple under the *Land Act 1994*. The requirements ensure that there is a freehold instrument for the land and that the trustee has followed the appropriate allocation process for the land. The trustee must make their application on the approved form.

New section 28C also provides that the chief executive must be satisfied about of a number of matters before deciding the application. These include that agreements or arrangements have been entered into or are in place to address issues such as native title, social housing dwellings on the available land, and road access to the land.

The chief executive must also be satisfied that that there is a lot on plan description for the available land, and that if the available land is allocated under the prescribed process for allocation where there is no interest holder, the chief executive must also be satisfied that the probity advisor has certified the probity of the allocation process.

The chief executive may also consider any other matter the chief executive considers relevant, for example there may be an existing use or interest in the land that is not consistent with the proposed grant of freehold. The valid use of available land by the State is an example of where an allocation of freehold is not appropriate.

If the chief executive approves the trustee's application, the Governor in Council may then grant the land in fee simple under the *Land Act 1994*.

New Division 4 Freehold instruments

New Subdivision 1 Trustee may make freehold instrument

New section 28D – Trustee may make freehold instrument

New section 28D provides that a trustee can make a freehold instrument. The freehold instrument is made up of a freehold schedule and a freehold policy. A freehold schedule must clearly identify the land being made available for freehold applications. This identified land is known as *available land*.

If the freehold schedule only identifies freehold option land that is prescribed under a regulation, the freehold schedule is a *model freehold schedule*.

If a trustee makes a freehold schedule, they must at the same time also make a freehold policy in the approved form for the area covered by the freehold schedule. The freehold policy is designed to assist the trustee implement the freehold model and ensure certainty and transparency in trustee decision making.

New section 28D also details the information that must be included in the freehold policy.

New section 28E – Trustee may have only 1 freehold instrument

New section 28E provides that a trustee may have only one freehold instrument unless the trustee is an Indigenous regional council (as defined in the *Local Government Act 2009*) in which case the trustee may have more than one freehold instrument, but only if the available land identified in the freehold instruments are separate blocks of land that do not overlap.

New Subdivision 2 Making, amending or repealing freehold instruments

New section 28F – Definition for sdiv 2

New section 28F explains that for the purposes of this division, the term *model freehold instrument* means a model freehold schedule and the freehold policy for the model freehold schedule.

New section 28G – Application of sdiv 2

New section 28G explains that new subdivision 2 states how a freehold instrument may be made, amended or repealed.

New section 28H – Minister to make and publish guideline

New section 28H provides that the Minister must make and publish a guideline on the department's website about the process the local government must follow in relation to attaching a freehold instrument to their planning scheme and making changes to or repealing a freehold instrument. This section sets out what the guideline must provide for.

New section 28I – Trustee to consult

New section 28I provides that the trustee must undertake consultation so that the trustee is reasonably satisfied that it is appropriate to grant land as freehold in their community.

Before the trustee starts making a freehold instrument, the trustee must decide how the consultation will be undertaken (the *decided way*). This decision by the trustee must comply with current requirements of section 135 of the *Torres Strait Islander Land Act 1991*.

New section 28I provides that the decided way must include consultation with native title holders for the land being proposed for freehold, include how the community will be notified about the freehold instrument, and ensure everyone consulted has an opportunity to express

their views. The trustee must also keep a record of their consultation to show it was undertaken in the way decided.

New section 28J – Trustee to give freehold instrument to Minister or local government

New section 28J explains what the trustee must do if the trustee decides to continue to make a freehold instrument after consultation on the freehold instrument.

If the trustee makes a model freehold instrument, the trustee must give the model freehold instrument to the Minister for approval.

If the trustee makes a freehold instrument that is not a model freehold instrument, the trustee must ask, by notice, the relevant local government for the area in which the proposed freehold option land in situated, to attach the freehold instrument to the local government's planning scheme. In this instance, proposed freehold option land means freehold option land proposed to be included in a freehold schedule.

New section 28K – Local government to follow process in guideline

New section 28K provides that if a local government receives a notice from a trustee asking it to attach the freehold instrument for the proposed freehold option land, the local government must follow the process in the guideline that is made by the Minister. Once this process is completed, the local government must give the freehold instrument to the Minister for approval.

This section does not apply to model freehold instruments.

New section 28L – Minister may approve

New section 28L provides that if the Minister is given a freehold instrument for approval, the Minister may either approve the freehold instrument; approve the freehold instrument subject to any amendments the Minister directs the local government or trustee to make; or refuse to approve the freehold instrument.

Section 28L sets out the issues that the Minister must consider before deciding to approve or refuse to approve a freehold instrument (other than a model freehold instrument). This is to ensure the Minister is satisfied that appropriate processes have been followed.

The Minister may approve a freehold instrument if reasonably satisfied that:

- for a model freehold instrument - the model freehold schedule only includes freehold option land of a type prescribed by a regulation;
- the trustee has consulted with native title holders for the freehold option land proposed to be included in the freehold schedule; and
- consultation was undertaken in the way decided under new section 28I.

The Minister must notify the trustee or local government about the decision on the freehold instrument. If the Minister approves the freehold instrument, the local government must attach the freehold instrument to its planning scheme and publish a notice about the freehold

instrument. This is to advise the community of the Minister's decision and to inform them that the freehold instrument is publicly available.

New section 28M – Amending or repealing freehold instrument

New section 28M provides that if a trustee needs to amend or repeal a freehold instrument attached to a local government's planning scheme, the trustee must follow the process stated in the guideline made by the Minister.

New Subdivision 3 Other provisions about freehold instruments

New section 28N – Effect of freehold instrument

New section 28N provides that a freehold instrument takes effect from the day the local government attaches the freehold instrument to its planning scheme.

New section 28O – Relationship with planning scheme

New section 28O clarifies the relationship between a freehold instrument and a planning scheme. Attaching a freehold instrument to a planning scheme is not an amendment to that planning scheme. Also, once attached to a planning scheme, the freehold instrument does not form part of the planning scheme and remains the responsibility of the trustee. If the planning scheme is amended, repealed or remade, the freehold instrument does not need to be amended before it is attached by the local government to the amended or repealed and remade planning scheme.

New Division 5 Allocation process for available land–interest holder

New section 28P – Application of div 5

New section 28P explains that new division 5 details the allocation process to be used if there is an interest holder for the available land.

New section 28Q – Application for available land

New section 28Q provides that a person who is an eligible person and an interest holder for the available land may apply, on the approved form, to the trustee of land for the land to be granted to them.

New section 28R – Dwelling on available land

New section 28R details the process to be followed when an application for available land is made where there is a dwelling on that land.

The trustee must give notice to the housing chief executive about the application. If the dwelling is a social housing dwelling, the housing chief executive must first approve that the social housing can be sold or whether it is more appropriate for the dwelling to remain as social housing. The chief executive has 28 days from receiving the initial notice from the trustee in which to advise the trustee of this decision (by a dwelling notice). Once approved,

the purchase price will be set by the trustee using a methodology agreed between the trustee and the housing chief executive. If a person asks for a copy of the valuation methodology, the housing chief executive must provide a copy.

New section 28S – Decision on application

New section 28S provides that the trustee must consider an application that is made and decide to approve or refuse the application. However, if there is a dwelling on this land, the trustee cannot make a decision until the trustee receives a notice from the housing chief executive approving the application.

The trustee may only approve the application if reasonably satisfied that:

- the applicant is an eligible person for the land being applied for;
- if there is an interest over the land then the interest holder is the applicant;
- if there is more than one interest holder for the land and all interest holders are eligible persons, then either all interest holders have made the application, or alternatively, all interest holders agree to the applicant making the application;
- if there is more than one interest holder for the land and all interest holders are not eligible persons, all interest holders have agreed to the applicant making the application; and
- if there is a mortgage over the available land, that the mortgagee has agreed to the application being made.

If the trustee refuses the application for the available land, the trustee must advise the applicant with an information notice. On receipt of an information notice, the applicant may appeal to the Land Court against the decision.

New section 28T – Offer to allocate available land

New section 28T provides that if the trustee approves the application they must then offer the available land to the applicant in writing. The trustee can only make the offer after any appeals in relation to the available land have been decided.

The offer may be subject to conditions. For example if there is a social housing dwelling on the land, the offer must include that the dwelling be purchased at the value decided by the trustee under new section 28R.

Any other conditions placed on the offer must be consistent with those detailed in the freehold instrument. If any conditions other than those in relation to purchasing the dwelling are included in the offer, the trustee must give notice about these conditions. The trustee must advise the chief executive about making an offer to allocate the available land. The land ceases to be transferable land once an offer to allocate is made - see amendments to section 9 of the *Torres Strait Islander Land Act 1991*.

New section 28U – Acceptance and refusal of offer

New section 28U provides that the person offered the available land has 45 days from receiving the offer to notify the trustee in writing of whether they will accept or refuse the offer. If notice of their decision is not given within this time, the person is taken to have

refused the offer and the trustee must advise the chief executive that the offer has been refused; the land will then be transferable land again.

New section 28V – Cooling-off period to apply to acceptance

New section 28V provides that a cooling-off period of 5 business days applies to accepting an offer to allocate available land. If the person offered the land proposes to accept the offer, they can shorten this cooling-off period or waive it entirely by written notice to the trustee.

A person who has not waived the cooling-off period may rescind or revoke their acceptance at any time during the cooling-off period by giving the trustee a signed notice of rescission or revocation. If the acceptance is rescinded or revoked, the trustee has 14 days in which to refund any deposit received under the acceptance. This amount may be recoverable from the trustee as a debt.

New section 28W – When offer ends

New section 28W provides a number of conditions under which the offer is considered to have ended. These include when the eligible person refuses the offer; rescinds or revokes the offer; dies; or no longer is an interest holder for the land. The offer itself may also include a condition about when the offer ends. The offer will end when the first of these conditions occur.

New section 28X – Allocation of available land to eligible person

New section 28X provides that once the applicant has complied with all conditions of the offer and notified the trustee, the trustee must allocate the land to the eligible person.

New Division 6 Allocation process for available land if no interest holder

New section 28Y – Application of div 6

New section 28Y explains that new division 6 details the allocation process for available land where there is no interest holder for the land.

New section 28Z – Public notice of intention to allocate available land

New section 28Z provides that before allocating the available land, the trustee must advertise the trustee's intention to allocate the land through an allocation notice and in a newspaper or other publication for the area in which the land is situated. This is to ensure that the whole community is aware of the intention to allocate the land.

There are preconditions to the trustee making the allocation notice, including that:

- there is a lot on plan description for the land;
- there is dedicated access to the land;
- native title over the land has been, or will be surrendered or extinguished; and
- the chief executive has been notified about the trustee's intention to allocate the land.

New section 28ZA – Information to be included in allocation notice

New section 28ZA provides that certain information must be included in the allocation notice. This information ensures that full details of the available land are provided to the community, including eligibility criteria, the purchase price and any deposit required, how and when the land will be allocated and the process for making applications. The name and contact details of the probity advisor to be appointed must also be included. The closing day for applications to participate in the allocation process must be at least 30 days after the allocation notice is gazetted.

New section 28ZB – Probity advisor

New section 28ZB provides that the trustee must appoint an independent and appropriately qualified probity advisor to monitor and advise the trustee on the probity of the allocation process. The probity advisor must prepare a report on the probity of the allocation process and certify if the allocation process was undertaken correctly.

New section 28ZC – Decision on application to participate in allocation process

New section 28ZC provides that as soon as practicable after the closing day, the trustee must advise applicants about whether or not they can participate in the allocation process. The trustee must exclude a person from participating if they are not an eligible person. The trustee must advise a person excluded from participating in the allocation process by an information notice.

New section 28ZD – Notice of allocation of available land

New section 28ZD provides that after the appeal period, the trustee must provide each person that is continuing to participate in the allocation process with a notice that details when the allocation process is to occur (allocation date) and when any deposit must be paid. The date for paying the deposit must be at least 30 days after the notice is given and before the allocation date. The applicant must advise the trustee in writing if they are no longer going to participate in the allocation process. If the applicant does not pay the required deposit by the due date, they can no longer participate in the process.

New section 28ZE – How and when trustee may allocate

New section 28ZE provides that the trustee may only allocate the available land after the end of the appeal period when any appeals about exclusion from participation in the allocation process are finalised. The trustee must use the allocation method (auction, ballot or tender) as detailed in the freehold instrument, the allocation notice and according to any advice provided by the probity advisor.

New section 28ZF – Allocation of available land

New section 28ZF provides that the trustee must allocate the available land to the winner of the allocation process.

New section 28ZG – Deposits

New section 28ZG provides that the trustee must refund the deposits of any unsuccessful applicants after the land has been allocated.

New Division 7 Miscellaneous

New section 28ZH – Continuation of mortgages and easements

New section 28ZH provides that all registered mortgages and easements that applied to the available land before it was approved to be granted under a deed of grant in fee simple still apply.

New section 28ZI – Cancellation of deeds of grant in trust, reserves etc

New section 28ZI provides that if available land approved to be granted in fee simple is the subject of certain 'old tenures' and a deed of grant in fee simple for the available land is registered (which becomes a 'new tenure'), then the old tenure is cancelled to the extent of the new tenure. Old tenures can be any of the following: a deed of grant in trust; a reserve dedicated under the *Land Act 1994*; a townsite lease; or an interest held by an interest holder (other than an easement or mortgage).

Amendment of s 64 (Power to deal with Torres Strait Islander land)

Clause 36 amends section 64 to clarify that this section also relates to the new freehold provisions of Part 2A. This clause also provides that a lessee of a townsite lease on Torres Strait Islander land may grant a licence for the use of all or a part of the lease land.

Replacement of pt 7, div 1, hdg (Trustee's power to deal with Torres Strait Islander land and Ministerial consent)

Clause 37 replaces the heading for Part 7, division 1 to remove reference to Ministerial consent from the heading and to correct a typographical error.

Omission of s 65 and 66

Clause 38 omits section 65 as the requirements for consultation are dealt with under the new provisions providing freehold in new Part 2A. This clause also removes section 66 as the Minister's consent is only required for the grant of a townsite lease and this is dealt with in new section 113.

Omission of pt 7, div 3 (Grant of licences)

Clause 39 removes Part 7, division 3 which deals with the grant of licences under the *Torres Strait Islander Land Act 1991* as these provisions are no longer required.

Amendment of s 82 (Particular dealings in Torres Strait Islander land void)

Clause 40 amends section 82(1) to clarify that this section now refers to new freeholding provisions of new Part 2A and amended leasing provisions in Part 8.

Replacement of pt 8 (Leasing of Torres Strait Islander Land)

Clause 41 replaces the previous Part 8 with a new Part 8 which amends provisions dealing with the leasing of Torres Strait Islander land.

New Part 8 Leasing of Torres Strait Islander land

New Division 1 Definitions

New section 84 – Definitions for pt 8

New section 84 introduces new definitions to clarify and explain new provisions in relation to the leasing of Torres Strait Islander land.

New Division 2 Grant of leases for Torres Strait Islander land

New section 85 – Grant of leases by trustee of Torres Strait Islander land

New section 85 provides for the trustee of Torres Strait Islander land to grant the following types of leases:

- Townsite perpetual leases
- Home ownership leases; and
- Leases for not more than 99 years.

The section also details specific terms, conditions or restrictions that apply to each particular lease type.

New section 86 – Grant of lease by lessee of townsite lease

New section 86 provides that the lessee of a townsite lease may grant leases of up to, and including 99 year terms over all or a part of the lease land. The lessee of a townsite lease may also grant a home ownership lease.

New Division 3 Common provisions for part 8 leases

New section 87 – General conditions for particular leases

New section 87 provides that particular conditions may be applied to particular leases, other than townsite leases. If a lease contains the following conditions – that the lease must not be transferred without the lessor's prior written consent, or that an interest other than a mortgage must not be created without the lessor's prior written consent - the lessor is not permitted to unreasonably withhold consent to the transfer or creation of an interest under the lease.

Section 87 also provides that leases other than townsite leases may be mortgaged without the lessor's consent and can be subject to conditions other than those stated above.

New section 88 – Option to renew particular lease

New section 88 provides that a lease granted for 99 years over all or a part of the land or a townsite lease granted for 99 years over all or a part of the land, may include an option to renew only if the term of the renewed lease is not more than the initial term of the lease.

New section 89 – Transfer of lease

New section 89 provides that a Part 8 lease must not be transferred to a person who would not have been originally entitled to a grant of a lease under the *Torres Strait Islander Land Act 1991*.

New section 90 – Lease etc. to be registered

New section 90 provides that the lessee of a Part 8 lease must register the lease and any amendment, surrender or transfer of the lease, and include a plan of survey identifying the lease land. A plan of survey is not required if the lease applies to an area entirely within a building.

New Division 4 Home ownership leases

New subdivision 1 Conditions and requirements

New section 91 – General conditions and requirements

New section 91 provides that a home ownership lease is subject to the following mandatory conditions and requirements:

- an annual rent, decided by the lessor of not more than $1;
- a consideration payable for the lease, as a lump sum, equal to the value of the lease land decided by the lessor using either a valuation methodology decided by the chief executive, or a benchmark price prescribed in a regulation for land in the part of the State where the lease is situated;
- the land must be used primarily for residential use;
- if there is no dwelling for residential use on the lease when granted, a dwelling must be built on the land within 8 years after the lease is granted.

The lessor may only grant a home ownership lease once the consideration payable for the lease has been paid. The value of the lease land must be taken to be nil if the lessee is the recipient of a hardship certificate under the *Aboriginal and Torres Strait Islander Land Holding Act 2013*, and if the certificate has not previously been used, whether or not it has been used for the lease land.

This section also provides that the chief executive must give a person a copy of the valuation methodology if requested and make the valuation methodology available of the department's website.

New section 92 – Additional requirement if dwelling situated on land

New section 92 applies in situations where a lessor proposes to grant a home ownership lease where there is a dwelling on the lease land. The lessor must notify the housing chief executive of their intention to grant the lease, and must not grant the lease until notified by the housing chief executive as to whether or not the dwelling is a social housing dwelling. This provision does not limit the general conditions and requirements that must be applied to home ownership leases.

New section 93 – Additional conditions and requirements for social housing dwelling

New section 93 sets out the conditions that apply where the housing chief executive has notified the lessor that the dwelling on lease land is a social housing dwelling.

Before the lease is granted, the lessor must decide on the value of the dwelling by using a valuation methodology agreed with the housing chief executive. The consideration payable for the lease must be a lump sum payment equal to the agreed value of the dwelling.

The lessor may only grant the lease if the housing executive approves that the grant may include the sale of the dwelling and the consideration payable has been paid. If the lease is granted, the lessor must give the housing chief executive notice, within 28 days of the lease being registered, that the lease has been registered and the names of the parties to the lease. Evidence of payment of the consideration for the lease must also be provided to the housing chief executive.

New Subdivision 2 Forfeiture

New section 94 – Grounds for forfeiture

New section 94 details the situations under which a home ownership lease may be forfeited. A home ownership lease may be forfeited if the lessee breaches either of the following conditions and fails to remedy the breach within 6 months of being notified of the breach:

- if the lessee does not build a dwelling for residential use on the lease within 8 years after the lease is granted if there was no dwelling for residential use on the lease when granted; or
- the lessee breaches any of the other conditions applied to the lease if the lessor considers the breach serious enough to warrant forfeiture.

A home ownership lease may also be forfeited if the lease was acquired by fraud.

New section 95 – Referral to Land Court for forfeiture

New section 95 provides that a home ownership lease cannot be forfeited before the proposed forfeiture is referred to the Land Court for a decision. The lessor must give notice of the proposed forfeiture to the lessee and any mortgagee at least 28 days before referring the forfeiture to the Land Court. The notice must state the grounds for the proposed forfeiture and a copy of the notice must be filed in court by the lessor.

The Land Court must give regard to the grounds stated for the forfeiture and if there has been a breach of any of the conditions of the lease, whether the breach is serious enough to warrant forfeiture. If the Land Court decides that a lease may be forfeited, the Land Court may set conditions on the forfeiture.

New section 96 – Lessor's options if Land Court decides lease may be forfeited

New section 96 provides three alternatives for the lessor if the Land Court decides the lease may be forfeited. The lessor can either go ahead and forfeit the lease, or if the proposed forfeiture is subject to conditions, forfeit the lease if the conditions of forfeiture are met; or if the proposed forfeiture is due to a breach of a lease condition, decide not to forfeit and instead allow the lease to continue while the lease is amended to include conditions agreed between the lessor and lessee.

New section 97 – Notice and effect of forfeiture

News section 97 provides that if a lessor decides to forfeit a home ownership lease after the Land Court's decision, they have 60 days to give notice of the forfeiture to the lessee and any mortgagee of the lease and to the registrar of titles.

The forfeiture must be recorded on an appropriate register. Once recorded, the forfeiture takes effect and the lease ends, and the lessee is divested of any interest in the lease and any person occupying the lease land must vacate the land immediately.

New section 98 – Extension of term of lease if proposed forfeiture

New section 98 applies to a home ownership lease if the proposed forfeiture has been referred to the Land Court but the Land Court has not made a decision before the lease is due to end. In this situation the term of the lease continues until the forfeiture takes effect or until the end of the 60 days after the Land Court makes its decision. The extension of the lease under this section applies despite provisions of the lease and any other provisions under the *Torres Strait Islander Land Act 1991*.

New Subdivision 3 Renewal

New section 99 – Application to renew lease

New section 99 provides that the lessee under a home ownership lease may apply in writing to the lessor to renew the lease. The application must state the name of the lessee and include information that can identify the lease.

New section 100 – Notice of expiry of lease

New section 100 applies if the lessee under a home ownership lease has not applied for renewal of the lease at least 2 years before the lease is due to end. In this situation, the lessor must notify the lessee of the day the lease ends and how the lessee may apply for renewal of the lease. This notice must be given at least one year before the lease ends.

New section 101 – Lessor to consider and decide application

New section 101 provides that the lessor has 6 months in which to make a decision to renew or not to renew a home ownership lease if the application to renew was made under section 99.

New section 102 – Decision to renew lease

New section 102 provides that if the lessor decides to renew the home ownership lease, the lessor must give the lessee a notice of the decision and a copy of the renewed lease. The renewed lease takes effect immediately after the replaced lease ends and is subject to all conditions that applied to the replaced lease before it ended. There is no consideration payable for the renewed lease.

New section 103 – Lessor may decide not to renew lease

New section 103 provides that the lessor may decide not to renew the home ownership lease only if they are satisfied the lease land is not being used primarily for residential use, or that the lessee acquired the lease by fraud.

New section 104 – Notice about decision not to renew lease

New section 104 provides that if the lessor decides not to renew the home ownership lease, they must give an information notice to the lessee.

New section 105 – Extension of term of lease if application for renewal

New section 105 applies to a home ownership lease if the lessee has applied to renew the lease but the term of the lease ends before the lessor has made a decision about the application. If this occurs, the term of the lease is taken to continue until the lessor has given their decision to the lessee, irrespective of any provisions of the lease or other provisions under the *Torres Strait Islander Land Act 1991*.

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

New section 106 – Right to remove improvements if lease forfeited or not renewed

New section 106 provides that if the lessor forfeits or decides not to renew a home ownership lease, the lessee must be allowed to remove any improvements on the lease land that they have made. The lessor must allow at least 28 days for this to occur. If improvements are not removed within this time, they become the property of the lessor.

New section 107 – Payment by lessor if lease forfeited or not renewed

New section 107 provides that the lessor is required to pay the lessee a certain amount of money if they forfeit the lease or decide not to renew the lease. The amount payable (known as the *required amount*) is the combined value of the lease land on the day the lease is

forfeited or ends, plus the value of the lessee's improvements on the land that become the property of the lessor (maximum amount) – less any money owing to the lessor or mortgagee (as set out in section 109 below). The value of the lease land must be decided by the lessor using the valuation methodology used previously to set the consideration payable. The value of improvements must be set as the market value of the improvements in a sale of a lease of the same term and conditions. Once the amount is decided, the lessor must give the person an information notice for the decision.

New section 108 – Unclaimed amount

New section 108 provides that the required amount is forfeited to the lessor if the lessor cannot find the person entitled to this money or the person entitled to it does not claim it within 9 years after the lease is forfeited or not renewed.

New section 109 – Amount owing to lessor or mortgagee

New section 109 establishes what amount the lessor can deduct from the maximum amount the lessor is required to pay to the lessee under section 101.

New section 110 – Payment of amount to mortgagee in discharge of mortgage

New section 110 establishes the amount payable by the lessor if money is owed by the lessee under a mortgage of the lease at the time the lessor forfeits or decides not to renew a lease. The lessor must pay this amount within 28 days of the day appeals to the Land Court about the required amount can be made, if no appeal is made. Alternatively, if an appeal is made, the payment must be made within 28 days after the appeal is decided. The mortgagee must use any money received by the lessor in the discharge of the mortgage.

New Subdivision 5 Miscellaneous

New section 111 – Exemption from fees and charges

New section 111 provides that there is no fee or charge payable for lodging and registering an instrument of lease for a home ownership lease in the land registry or for any other service provided by the registrar of titles as part of lodging and registering an instrument.

New section 112 – Beneficiary to home ownership lease

New section 112 provides that a beneficiary under a will to a home ownership lease may ask the lessor for a notice confirming their entitlement to the grant of the lease, or in the case where the lease may not be transferred without the lessor's consent, for notice of the lessor's consent to the transfer. The lessor must comply with such a request as soon as they are able to.

New Division 5 Townsite leases

New Subdivision 1 Restriction on grant

New section 113 – Minister's consent for grant of townsite lease

New section 113 provides that a townsite lease must be granted with the Minister's prior written consent. This consent may only be given if the Minister is satisfied that any existing interests in the lease are consistent with the lease and that the lease is over an entire lot as shown on an appropriate register.

New Subdivision 2 Requirements for Minister's consent

New section 114 – General requirements for Minister's consent.

New section 114 provides that certain information or documents must be provided to the Minister when seeking the Minister's prior consent to the grant of a townsite lease to enable the Minister to decide whether to give consent.

As well as considering this information, the Minister must also be satisfied that the Torres Strait Islanders concerned with the lease are in general agreement with the grant of the lease. The Minister must also be satisfied that the grant of the lease will allow continued operation of a township on the lease land and will not prevent residents from continuing to live on and access the land, and to obtain tenure over the land under the *Torres Strait Islander Land Act 1991*.

New Subdivision 3 Provisions about dealing with townsite leases

New section 115 – Transfer or amendment of townsite lease

New section 115 provides that a townsite lease may be transferred or amended only with the agreement of both the trustee and lessee of the land, and with the Minister's prior written consent. Information or documents relevant to the proposed transfer or amendment must be provided to the Minister when seeking the Minister's consent.

The Minister must consider the transferee's capacity to comply with lease conditions when considering to consent to a transfer. A transfer must not be made to a person who would not be entitled to a grant of a townsite lease under the *Torres Strait Islander Land Act 1991*.

The Minister may consent to an amendment of a townsite lease if satisfied the amendment does not significantly change the conditions of the lease nor diminish its purpose.

New section 116 – Surrender of townsite lease

New section 116 provides that the Minister's prior written consent must be sought before a townsite lease is surrendered.

New section 117 – No forfeiture of townsite lease

New section 117 provides that a townsite lease cannot be forfeited.

New Subdivision 4 Effect of townsite lease on existing interests

New section 118 – Lessee of townsite lease taken to be lessor of existing leases

New section 118 provides the circumstances in which a lessee of a townsite lease is taken to be a lessor of an existing lease, which becomes known as a continued lease after the grant of the townsite lease.

This section also provides that on the grant of a townsite lease, the continued lease continues in force for the same term the continued lease was granted and is taken to be a home ownership lease if the lease is primarily for residential use.

Amendment of s 135 (Decision-making by trustee)

Clause 42 amends section 135(1) to provide that this section also applies to decisions by the trustee in relation to consultation about the making of a freehold instrument.

Amendment of s 136 (Definitions for pt 10)

Clause 43 amends section 136 to provide new definitions for lease and lessor for Part 10.

Amendment of s 138 (Provision about entering into possession, and selling, lease)

Clause 44 amends section 138(9) to clarify the meaning of lessee for a lease granted under a townsite lease or for another lease.

Amendment of s 142 (Trustee (Torres Strait Islander) leases)

Clause 45 makes a number of minor and consequential amendments to section 142 to reflect amendments made in Part 11 in relation to the leasing of Torres Strait Islander land.

Omission of pt 11, div 3 (Other matters)

Clause 46 omits Part 11, division 3 which deals with other matters in relation to the leasing of Torres Strait Islander trust land as these provisions are no longer required.

Amendment of s 148 (Use of Torres Strait Islander land preserved)

Clause 47 amends section 148(5)(a) to reflect amendments made in Part 11 in relation to the leasing of Torres Strait Islander land.

Amendment of s 182 (Who may appeal)

Clause 48 makes a number of minor and consequential amendments to section 182 to reflect amendments made to the leasing of Torres Strait Islander land in Part 11. Section 182 is also amended to clarify that a person who is given or entitled to be given an information notice under the new freeholding provisions, may appeal to the Land Court against the decision.

Amendment of s 185 (Notice of appeal)

Clause 49 makes a number of minor and consequential amendments to section 185 to reflect amendments made elsewhere in Part 11 in relation to the leasing of Torres Strait Islander land.

Amendment of s 192 (Dealing with particular trust property)

Clause 50 makes a number of minor and consequential amendments to section 192 to reflect new provisions in new Part 2A for providing freehold. In particular, this clause clarifies that if a trustee receives an amount for a social housing dwelling on available land, the trustee must use this amount for housing services for Torres Strait Islanders concerned with the land held by the trustee.

Omission of s 193 (Application of Residential Tenancies and Rooming Accommodation Act 2008)

Clause 51 removes section 193 as it is no longer relevant following amendments to Part 10 in relation to the leasing of Torres Strait Islander land.

Insertion of new pt 19, div 4

Clause 52 inserts new Division 4 into the transitional provisions of Part 19 to provide a transitional provision for the Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014.

New section 205 – Definitions for div 4

New section 205 inserts definitions for this division

New section 206 – Provision for existing leases

New section 206 provides the transitional arrangements for existing leases or applications for a lease that were in force under the *Torres Strait Islander Land Act 1991* before the commencement of this section.

New section 207 – Provision for existing applications

New section 207 provides the transitional arrangements for applications that were in effect prior to the commencement of this section but had not been granted or refused.

Amendment of sch 1 (Dictionary)

Clause 53 removes existing definitions for decision-maker, lease, lessee, lessor, management plan, native title holder, residential lease, standard lease, townsite sublease and trustee from schedule 1 and inserts new definitions to reflect new freehold provisions of Part 2A and amendments to Part 11 for the leasing of Torres Strait Islander land.

Part 5 Amendment of Torres Strait Islander Land Regulation 2011

Regulation amended

Clause 54 provides that this part amends the *Torres Strait Islander Land Regulation 2011*.

Omission of pt 3 (Code of conduct about mining leases)

Clause 55 removes Part 3 of the *Torres Strait Islander Land Regulation 2011* which deals with consultation on a code of conduct for mining leases, this is consistent with the removal of consultation provisions on the granting of the interest itself.

Insertion of new pt 4B

Clause 56 inserts a new Part 4B into the *Torres Strait Islander Land Regulation 2011* .

New Part 4B Miscellaneous

New section 35B – Land for model freehold schedule

New section 35B prescribes the type of land that can be included in a model freehold schedule. This type of land is freehold option land where there is an interest holder on the commencement of this section.

Part 6 Repeal

Repeal

Clause 57 provides for the repeal of the *Aurukun and Mornington Shire Leases Act 1978.* This provision is to commence on a day to be fixed by proclamation.

Apart from a small area of Aurukun, all shire leases have been transferred to Aboriginal freehold under the *Aboriginal Land Act 1991*. Once the final part of Aurukun is transferred under the Aboriginal Land Act, the *Aurukun and Mornington Shire Leases Act 1978* is no longer required.

Part 7 Minor and consequential amendments

Legislation amended

Clause 58 provides that schedule 1 contains a list of minor and consequential amendments.

Chapter 3 Amendment of Land Act 1994

Act amended

Clause 59 provides that the Bill amends the *Land Act 1994*.

Amendment of s 13B (Power to declare and deal with former watercourse land)

Clause 60 omits the definition of "ambulatory boundary principles" from section 13B(11) as the amendments insert this definition into the Schedule 6 Dictionary.

Insertion of new ch 7, pt 3B

Clause 61 inserts a new Chapter 7, Part 3B consisting of sections 431O to 431Z, into the *Land Act 1994* which provides for the making of land available for public use as a beach.

New section 431O – Definitions

New section 431O provides definitions for the new Chapter 7, Part 3B.

New section 431P – References to a lot

New section 431P provides that new Chapter 7, Part 3B will apply to a lot irrespective of whether that lot has all right line boundaries (the location of which are fixed) or one or more tidal boundaries (which are ambulatory in nature and move by means of accretion and erosion).

New section 431Q – Regulation may declare area of seashore to be a declared beach area

New section 431Q provides for the making of a regulation to declare a part of a lot to be a declared beach area. The new section requires that the declared beach area be surveyed and a copy of the plan of survey be held by the chief executive and be available for inspection.

It is intended that the surveyed area be ambulatory so that the 'seashore', as it moves with accretion and erosion, remains open to public access. As with other ambulatory boundaries in Queensland, this will be achieved by surveying to a feature such as the top of a bank or the toe of a dune which is likely to be in a stable area immediately beyond the seashore.

The declared area will not take effect until it is registered in the appropriate register that relates to the particular lot. Registration may occur without the consent of the owner but only

where the plan of survey has been endorsed with the consent of the chief executive or the Minister.

Land in a declared beach area ceases to be declared beach area if the registrar, on a request from the chief executive, in the approved form, cancels the registration of the declaration.

New section 431R – Declared beach area and lot boundaries

New section 431R requires that where an ambulatory natural feature represents the limit of the declared beach area, that natural feature and the ambulatory area must be shown on the plan of survey.

It is intended that wherever practicable the ambulatory boundary principles will apply to the natural feature representing the limit of the declared beach area.

The existence of the declared beach area does not affect any external boundaries of the affected lot.

New section 431S – Compensation not payable for declared beach area

New section 431S explicitly excludes any relief or entitlement to compensation to any person arising out of a part of a lot becoming a declared beach area. The exclusion of compensation applies only in relation to the imposition of the declared beach area, not events which may occur on the land after the land has become declared beach area.

New section 431T – Management of declared beach area and conditions of use

New section 431T provides for the identification of the manager of a declared beach area as either the State or relevant local government, the conditions of use applicable to the declared beach area, and the penalties for contravening the conditions of use of a declared beach area.

In addition to application of conditions on a case by case basis, this provision also allows for the prescription of standard conditions to apply to more than one declared beach area either by the declared beach area regulation or by local laws.

This provision also allows for a wide range of conditions of use to be prescribed ensuring that the available access is appropriate in the circumstances.

New section 431U – Notice to owner before making of regulation

New section 431U requires the Minister to advise the owner of a lot over which a declared beach area is intended to be declared of that intention and the approximate boundary of the proposed declared beach area.

The owner of a lot must be advised prior to the Minister recommending that the Governor in Council make the declared beach area regulation.

New section 431V – Consultation before registration of declaration and plan of survey

New section 431V requires that the Minister consult with the relevant local government about the proposed declared beach area before the registration of the declaration.

Where the local government wishes to be manager of the proposed declared beach area the local government must take reasonable steps to consult with the owner and the public about appropriate conditions of use.

Where the State is to be the manager of the proposed declared beach area the Minister must take reasonable steps to consult with the owner and the public about appropriate conditions of use.

New section 431W – Status of declared beach area

New section 431W provides the public with a right of conditional use of a declared beach area. Additionally the manager of a declared beach area is provided control of the area and is obliged to maintain the area in a safe condition. As the land the subject of a declared beach area is beach and by its very nature subject to change the obligation to maintain the area in a safe condition extends only as far as is practicable and reasonable.

New section 431W also relieves the owner of a lot which includes a declared beach area of:

- maintaining the declared beach area; and
- civil liability where the risk or incident on the declared beach area was not the result of the actions or omissions of the owner of the declared beach area provided there was no dishonesty or negligence on the part of the owner.

Effectively, and subject to the actions of the landowner, where a right of access is created, the State will assume the landowner's occupier's liability for the area over which the right of access is created.

New section 431X – Exemption from contravention of use condition

New section 431X provides an exemption from use conditions on declared beach areas for police officers acting in an official capacity or other persons acting in the performance of functions or powers under an Act. This exemption extends to a person acting in the performance of functions or powers as authorised or directed by the manager of the declared beach area.

Additionally new section 431X confirms that a use condition may provide for circumstances under which a person may not be in contravention of a condition.

New section 431Y – Obstruction of use or enjoyment

New section 431Y makes the obstruction of a person exercising the right of public use of a declared beach area an offence and punishable by payment of a penalty.

It is also an offence to obstruct a person in the performance of their functions or powers in a declared beach area.

New section 431Z – Other Acts not affected

New section 431Z provides that the provisions dealing with declared beach areas do not affect the operation of any other Act or the operation of any provision of the *Land Act 1994*.

Activities occurring in the declared beach area are still subject to other provisions of the *Land Act 1994* and any other Act. For example, laws relating to the use of a motor vehicle will apply to the declared beach area.

Amendment of sch 6 (Dictionary)

Clause 62 amends the Dictionary provided in schedule 6 of the Act to insert new defined terms and to amend existing defined terms.

Chapter 4 Amendment of Land Valuation Act 2010

Act amended

Clause 63 provides that this Chapter amends the *Land Valuation Act 2010*.

Insertion of new s 262

Clause 64 inserts new section 262 into the Act.

New section 262 provides that the Act will not apply to an Indigenous local government area until 30 June 2016. Despite this, on or before 30 June 2016 the valuer-general may do all things necessary to be done for the purposes of applying the Act to an Indigenous local government on or after 30 June 2016 and complying with a requirement of the Act that takes effect on and after 30 June 2016. This may include carrying out statutory valuations and establishing Indigenous government areas on the valuation roll.

New section 262 also provides a definition of an Indigenous local government area.

Amendment of schedule (Dictionary)

Clause 65 replaces the existing definition of local government area with a new definition. The new definition does not exclude an Indigenous local government area. This will allow valuations to be carried out in Indigenous local government areas and for the Act to apply to those areas subject to new section 262.

Schedule 1 Minor and consequential amendments

Schedule 1 lists the minor and consequential amendments that are needed as a result of amendments proposed in this Bill. Part 1 of the schedule commences on 1 January 2015. Part 2 of the schedule commences by proclamation.

The minor and consequential amendments in Part 2 are consequential on the repeal of the *Aurukun and Mornington Shire Leases Act 1978*. The amendments will commence by proclamation at the same time as the *Aurukun and Mornington Shire Leases Act 1978* is repealed.