



Property Law Act 2023

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Queensland

Property Law Act 2023

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Property Law Act 2023

An Act to consolidate and provide for the law relating to property

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Property Law Act 2023*.

2 Commencement

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

Division 2 Application of Act

3 Act binds all persons

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

4 Act applies to land, property and documents

This Act applies to—

- (a) land in Queensland; and
- (b) property, other than land, whether in or outside Queensland, to the extent the general law of Queensland applies to the property; and
- (c) documents, whether executed in or outside Queensland, to the extent the general law of Queensland applies to the documents.

5 Relationship with other Acts

- (1) This Act applies subject to the following Acts—
 - (a) the *Land Act 1994*;
 - (b) the *Land Title Act 1994*;
 - (c) the *Mineral and Energy Resources (Common Provisions) Act 2014*;
 - (d) each Resource Act.
- (2) If this Act is inconsistent with an Act mentioned in subsection (1), unless this Act or the Act mentioned in subsection (1) expressly provides otherwise, the Act mentioned in subsection (1) prevails to the extent of the inconsistency.

Division 3 Interpretation

6 Dictionary

The dictionary in schedule 2 defines particular words used in this Act.

Note—

The *Acts Interpretation Act 1954*, schedule 1 defines particular words used in this Act, including, for example—

- property
- land

- interest
- estate
- mortgage
- lease
- transfer
- transmission
- document
- proceeding
- corporation

Part 2 General rules affecting property

Division 1 Requirement for writing

7 Contracts for disposition of land not enforceable unless in writing

A contract for the disposition of land is not enforceable by action in a proceeding unless—

- (a) the contract is in writing or some memorandum or note of the contract is recorded in writing; and
- (b) the contract or the memorandum or note of the contract is signed by the party against whom the contract is sought to be enforced.

8 Writing required for creation of particular interests in land

- (1) The creation of a legal or equitable interest in land must be in writing and signed by the person creating the interest.
- (2) A trust relating to land must be created or declared in writing and signed by the person creating or declaring the trust.

9 Nature of interest in land created by parol

- (1) An interest in land created by parol, and not put in writing and signed by the person creating the interest, has the effect of an interest at will only.
- (2) Subsection (1) applies despite any consideration given for the interest.

10 Particular matters not affected

- (1) This division does not affect—
 - (a) the creation of a short lease; or
 - (b) the application of the law relating to part performance; or
 - (c) the creation or operation of a resulting, implied or constructive trust; or
 - (d) the making or operation of a will; or
 - (e) the disposition of land by operation of law; or
 - (f) the disposition of land by order of any court.
- (2) To remove any doubt, it is declared that a short lease created by parol takes effect when the lessee has an immediate entitlement to possession.

Division 2 Other rules

11 Transfer or lease to self and others

A person may transfer or lease property to the person's self, or to the person's self and others.

12 Merger of estate

An estate does not merge by operation of law with another estate unless the person acquiring both estates intends the estates to merge.

Part 3 Freehold estates

13 Freehold estates capable of creation

The following estates of freehold are capable of being created and subsisting in land—

- (a) an estate in fee simple;
- (b) a life estate.

14 Abolition of obsolete estates and rules

- (1) The following estates can not be created—
 - (a) an estate tail;
 - (b) a quasi-entail.
- (2) In a document, words that, apart from this section, would have created an estate tail are taken to create an estate in fee simple.
- (3) The rule known as the rule in *Shelley's Case* is abolished.

15 Abolition of incidents of tenure for benefit of State

A tenure created by the State on granting an estate in fee simple is in free and common socage without any incident of tenure for the benefit of the State.

16 Abolition of quit rent

If quit rent issues to the State out of land, or the residue of quit rent issues to the State out of land in relation to which quit

rent has been apportioned or redeemed, the land is released from quit rent.

17 Abolition of escheat for dissolved corporation

If a corporation is dissolved or otherwise ceases to exist, subject to the Corporations Act, the State is entitled to take as *bona vacantia* any of the corporation's property that would have been liable to escheat if escheat had not been abolished.

18 Waiver by State of any remaining rights to property by escheat

- (1) This section applies if a person believes the State may have a right to property by escheat, devolution or *bona vacantia* on the death intestate of a person.
- (2) The person may apply to the Minister to waive the State's rights.
- (3) The Minister may waive the State's rights on terms the Minister considers appropriate.
- (4) The Minister must publish in the gazette the details of a waiver under this section.
- (5) The Minister may delegate the Minister's functions or powers under this section to an appropriately qualified public service employee.
- (6) In this section—
right includes a supposed right.

19 Voluntary waste or equitable waste by life tenant

- (1) A life tenant who commits voluntary or equitable waste in relation to land, other than under subsection (3) or (4), is liable in damages to the person entitled, immediately after the life estate ends, to the fee simple interest in remainder in the land (the *remainder person*).

- (2) If the interest of the life tenant is an equitable interest, the trustee for the remainder person may bring a proceeding for the damages on behalf of the remainder person.
- (3) A life tenant may commit voluntary waste in relation to land if an express or implied term in the document creating the life estate permits the waste.
- (4) A life tenant may commit equitable waste in relation to land if an express term in the document creating the life estate permits the waste.

20 Recovery of property when life estate ends

- (1) This section applies if—
 - (a) a life estate ends; and
 - (b) a person (the *remainder person*) is entitled, immediately after the life estate ends, to an interest in the property; and
 - (c) a person, other than the remainder person (the *third person*), continues in possession of, or receives rent or profits in relation to, the remainder person's interest in the property.
- (2) The remainder person may apply to the court for any or all of the following in relation to the interest in the property—
 - (a) possession;
 - (b) damages;
 - (c) an account of rent or profits.
- (3) If the life tenant or third person has been absent for at least 7 years, the court may presume the life tenant or third person has died.
- (4) The presumption mentioned in subsection (3) is rebuttable.
- (5) The court may hear and decide the application and make the orders it considers appropriate.

- (6) If, after the court has decided the application, a life tenant or third person presumed dead by the court is proved to be alive—
- (a) a person with an interest in the property may apply to the court for any or all of the following in relation to the property—
 - (i) possession;
 - (ii) damages;
 - (iii) an account of rent or profits; and
 - (b) the court may hear and decide the application and make the orders it considers appropriate.

21 Penalty for holding over possession after life estate ends

- (1) This section applies if—
- (a) a life estate ends; and
 - (b) a person (the *remainder person*) is entitled, immediately after the life estate ends, to an interest in remainder in the land; and
 - (c) another person (the *third person*) holds over possession of the remainder person's interest in remainder in the land; and
 - (d) the remainder person gives the third person a notice asking for possession of the remainder person's interest in remainder in the land; and
 - (e) the third person does not give the remainder person possession of the remainder person's interest in remainder in the land within 30 days after the notice mentioned in paragraph (d) has been given.
- (2) The third person is liable to the remainder person for the market rent for the remainder person's interest in remainder in the land for the period—
- (a) starting on the day the life estate ends; and

- (b) ending on the day the remainder person is given possession of the land.
- (3) The remainder person may recover the market rent for the remainder person's interest in remainder in the land as a debt due to the remainder person.

Part 4 Future interests

22 Creation of future interests in land

- (1) If a future interest in land is created, it takes effect as an equitable and not a legal interest.
- (2) Despite the *Land Title Act 1994*, an interest in remainder must not be registered in the freehold land register.
- (3) In this section—
future interest means—
 - (a) a legal contingent remainder; or
 - (b) a legal executory interest.

23 Creation and disposition of interests in property

- (1) Each interest in property that can be created or disposed of may be created or disposed of by an individual—
 - (a) during the individual's lifetime; or
 - (b) by will.
- (2) However, subsection (1) does not make a joint tenancy severable by will.

24 When gift over stops being capable of taking effect

- (1) This section applies if—

- (a) a person (the ***first person***) is entitled to an interest in property; and
 - (b) the interest in property is subject to a gift over to another person if the first person has no child, or no child of a stated class, whether at any stated time or within any stated period.
- (2) The gift over stops being capable of taking effect when the first person has a child, or a child of the stated class, who attains 18 years.
 - (3) Subsection (2) applies even if the child dies after attaining 18 years.
 - (4) For this section, a gift over includes a gift over expressed to take effect on the ending of an interest preceding that of the person whose interest is the subject of the gift over.
 - (5) In this section—
child, of a person, has the meaning given by the *Succession Act 1981*, section 5A.

Part 5 Co-ownership of property

Division 1 General rules

25 Forms of co-ownership

Property may be held by 2 or more persons—

- (a) as joint tenants; or
- (b) as tenants in common.

26 Corporation may hold property as joint tenant

- (1) A corporation may acquire and hold property in joint tenancy in the same way as if it were an individual.

- (2) If a corporation and an individual, or 2 or more corporations, become entitled to property under circumstances or because of a document that would, if the corporation or corporations had been individuals, have created a joint tenancy, the corporation and the individual, or the 2 or more corporations, are entitled to the property as joint tenants.
- (3) However, the acquisition and holding of property by a corporation in joint tenancy is subject to the same conditions and restrictions as attach to the acquisition and holding of property by a corporation in severalty.
- (4) If a corporation is a joint tenant of property and the corporation is dissolved or otherwise ceases to exist, the property devolves on the other joint tenant.

27 Liability of co-owners to account

If a co-owner of property receives more than the co-owner's just or proportionate share according to the co-owner's interest in the property, the co-owner is liable to account to each other co-owner of the property.

28 Construction of disposition of property to 2 or more persons

- (1) A disposition of an equitable interest in property, whether with or without a legal interest in the property, to 2 or more persons together beneficially takes effect as a disposition to the persons as tenants in common, and not as joint tenants.
- (2) Subsection (1) does not apply to—
 - (a) a disposition to 2 or more persons that provides the persons are to take as joint tenants; or
 - (b) a disposition to 2 or more persons as administrators, executors, mortgagees or trustees; or
 - (c) a disposition to 2 or more persons carrying on business in partnership for partnership purposes.

- (3) Subject to the *Partnership Act 1891* or any agreement to the contrary, a disposition of property to 2 or more persons carrying on business in partnership for partnership purposes takes effect as—
 - (a) a disposition of the legal interest, if any, in the property to the persons as joint tenants; and
 - (b) a disposition of the equitable interest, if any, in the property to the persons as tenants in common.
- (4) In this section—

disposition includes a disposition that is wholly or partly oral.

29 Tenants in common of equitable interest who become entitled to legal interest

- (1) This section applies if 2 or more persons holding property—
 - (a) are entitled beneficially as tenants in common to an equitable interest in the property; and
 - (b) are or become entitled in their own right, whether as joint tenants or tenants in common, to a legal interest in the property equal to and coextensive with their equitable interest in the property.
- (2) Subject to any agreement to the contrary, both the legal and equitable interests in the property are held by the persons as tenants in common.

Division 2 Sale and division of co-owned property

Subdivision 1 Preliminary

30 Definitions for division

In this division—

property does not include a future or contingent legal or equitable interest in real or personal property.

security interest—

- (a) means an interest in property by way of security for the payment of a debt or other pecuniary obligation; and
- (b) in relation to land—includes a mortgage and a lien, whether or not registered under the *Land Title Act 1994*.

31 Other forms of severance not affected

Nothing in this division affects or prevents the severing of a joint tenancy under—

- (a) a provision of this Act other than this division; or
- (b) another Act or law.

32 Security interests not affected

Despite anything to the contrary appearing in a document creating or related to a security interest, the severing of a joint tenancy under this division—

- (a) does not constitute a breach of the terms of the document; and
- (b) does not affect any existing powers, rights or interests of a person who holds a security interest over the property to which the severance relates.

Subdivision 2 Sale and division

33 Application to court for sale or division of co-owned property

- (1) A co-owner of property may apply to the court for an order under this subdivision to be made in relation to the property.
- (2) The application may request—

- (a) the sale of the property and the division of the proceeds among the co-owners; or
 - (b) the physical division of the property among the co-owners; or
 - (c) a combination of the actions mentioned in paragraphs (a) and (b).
- (3) The applicant must, within 30 days after making the application, give a copy of the application to each person who holds a security interest over the property.

34 Orders court may make

- (1) In the proceeding, the court may make any order that the nature of the case requires to ensure a just and fair sale or division of the property.
- (2) Without limiting subsection (1), the court may make any of the following orders—
- (a) an order for the sale of the property and the division of the proceeds among the co-owners;
 - (b) an order for the physical division of the property among the co-owners;
 - (c) an order for a combination of the actions mentioned in paragraphs (a) and (b).

35 Sale and division of proceeds to be preferred

- (1) If the court decides to make an order for the sale or division of the property, the court must make an order under section 34(2)(a) unless the court considers an order under section 34(2)(b) or (c) would be more just and fair.
- (2) In deciding whether an order under section 34(2)(b) or (c) would be more just and fair, the court must consider—

- (a) the use being made of the property, including, for example, any use of the property for residential or business purposes; and
 - (b) whether the property is able to be divided and the practicality of dividing the property; and
 - (c) any particular links with or attachment to the property, including, for example, whether the property is unique or has a special value to 1 or more of the co-owners.
- (3) Subsection (2) does not limit or otherwise affect the matters the court may consider.

36 Order varying entitlements to property

In making an order under section 34, the court may order that—

- (a) the property be physically divided into parcels or shares that differ from the entitlements of each of the co-owners; and
- (b) compensation be paid by a stated co-owner to another stated co-owner to compensate for any difference in the value of the parcels or shares when the property is physically divided under paragraph (a).

37 Order appointing trustee

- (1) In the proceeding, if the court considers the appointment of a trustee for the sale or physical division of the property is necessary or desirable, the court may order—
- (a) the appointment of a trustee; or
 - (b) the removal of a trustee.
- (2) In an order appointing a trustee for the sale of the property, the court may make any order that the nature of the case requires, including, for example, any of the following orders—

- (a) an order directing the trustee as to the terms and conditions on which the sale is to be carried out;
 - (b) an order directing the distribution of the proceeds of the sale in a way stated by the court;
 - (c) an order that the remuneration of the trustee be paid from the proceeds of the sale.
- (3) In an order appointing a trustee for the physical division of the property, the court may make any order that the nature of the case requires, including, for example, any of the following orders—
- (a) an order directing the trustee as to the way in which the division is to be carried out;
 - (b) an order that the remuneration of the trustee be paid by the parties to the proceeding.
- (4) If the property is held by joint tenants, an order of the court appointing a trustee for the sale of the property does not of itself sever the joint tenancy.
- (5) Subject to an order of the court, if the property is land held by co-owners, an order of the court appointing a trustee for the sale of the land converts the interest of each co-owner into an interest in the proceeds of the sale of the land.
- (6) Subject to an order of the court, a trustee appointed by the court may pay the following amounts out of income generated by the property or the proceeds of the sale of the property—
- (a) costs, expenses and other outgoings relating to the property;
 - (b) costs and expenses relating to the sale of the property.

38 Vesting of property in trustee

- (1) If the court orders the appointment of a trustee for the sale or physical division of the property, the order is taken to vest the property in the trustee in the same way as a vesting order under the *Trusts Act 1973*, section 90.

- (2) If the property is subject to a security interest affecting the entirety, the property vests in the trustee subject to the security interest.
- (3) If the property is subject to a security interest affecting an undivided share of the property—
 - (a) the property vests in the trustee free of the security interest; and
 - (b) the interest of the person entitled to the benefit of the security interest is converted to an equitable interest in the proceeds of sale.

39 Other orders court may make

- (1) In the proceeding, the court may also make any other order the court considers appropriate, including, for example, any of the following orders—
 - (a) an order that the property be sold by private sale or at auction;
 - (b) an order that the co-owners may purchase the property at the sale or auction mentioned in paragraph (a);
 - (c) for a private sale—an order that the sale be at market value as determined by an independent valuation;
 - (d) for an auction—an order that the reserve price be the reserve price set by the court;
 - (e) an order that an independent valuation of the property take place;
 - (f) an order that a sale be completed within a stated time;
 - (g) an order that the costs of the sale be paid—
 - (i) by 1 or more of the co-owners; or
 - (ii) from the proceeds of the sale;
 - (h) an order that the sale and division of the proceeds of sale or the physical division of the property be subject to stated terms and conditions;

- (i) an order that any document be produced or other thing done that is necessary to enable an order to be carried out effectively.
- (2) This section does not limit or otherwise affect section 34 or 37.

40 Orders for compensation and accounting

- (1) In the proceeding, the court may order that—
- (a) a co-owner pay compensation or make a reimbursement to another co-owner; or
 - (b) a co-owner account to another co-owner under section 27; or
 - (c) a co-owner’s interest in the property be adjusted to take account of amounts payable by the co-owners to each other during the co-ownership.
- (2) In deciding whether to make an order under subsection (1), the court must consider the following matters—
- (a) amounts reasonably spent by a co-owner in improving the property;
 - (b) costs reasonably incurred by a co-owner in the maintenance or insurance of the property;
 - (c) damage caused by the unreasonable use of the property by a co-owner;
 - (d) the payment by a co-owner of more than that co-owner’s proportionate share of rates, mortgage repayments, purchase money, instalments or other outgoings in relation to the property for which 1 or more of the other co-owners are liable;
 - (e) for land—whether or not a co-owner who has occupied the land should pay an amount equivalent to rent to a co-owner who did not occupy the land;
 - (f) for property other than land—whether or not a co-owner who has used the property should pay an amount

equivalent to rent to a co-owner who did not use the property.

- (3) The court must not make an order requiring a co-owner who has occupied land (the *occupying co-owner*) to pay an amount equivalent to rent to a co-owner who did not occupy the land (the *non-occupying co-owner*) unless—
 - (a) the occupying co-owner seeks compensation, reimbursement or an accounting for money expended by the occupying co-owner in relation to the land; or
 - (b) the non-occupying co-owner has been excluded from occupation of the land; or
 - (c) the non-occupying co-owner has suffered a detriment because it was not practicable for the non-occupying co-owner to occupy the land with the occupying co-owner.
- (4) The court must not make an order requiring a co-owner who has used property other than land (the *using co-owner*) to pay an amount equivalent to rent to a co-owner who did not use the property (the *non-using co-owner*) unless—
 - (a) the using co-owner seeks compensation, reimbursement or an accounting for money expended by the using co-owner in relation to the property; or
 - (b) the non-using co-owner has been excluded from using the property; or
 - (c) the non-using co-owner has suffered a detriment because it was not practicable for the non-using co-owner to use the property with the using co-owner.
- (5) This section applies despite any other Act or law.

Subdivision 3 Accounting of amounts received by co-owners

41 Application to court for accounting

- (1) A co-owner of property may apply to the court for an order for an accounting under section 42.
- (2) An application under subsection (1) may be made whether or not an application is made under subdivision 2.

42 Orders court may make

- (1) In the proceeding, the court may make any order that the nature of the case requires to ensure a just and fair accounting of amounts received by the co-owners in relation to the property.
- (2) Without limiting subsection (1), the court may make an order that a co-owner, who has received more than the share of rent or other payments from a third party in respect of the property to which that co-owner is entitled, account for that rent or those other payments to the other co-owners.

Subdivision 4 Miscellaneous matters

43 Adjournment or stay of co-ownership proceeding—family law proceeding

- (1) The court may adjourn or stay a proceeding under subdivision 2 or 3 in relation to property at any time before it has made a final order if a co-owner starts, or has started, a family law proceeding in relation to the property.
- (2) Also, the court may adjourn a proceeding under subdivision 2 or 3 in relation to property at any time before it has made a final order to allow a co-owner of the property to start a family law proceeding.

(3) This section does not limit or otherwise affect the power of the court to grant or refuse an adjournment or stay in relation to a proceeding.

(4) In this section—

family law proceeding means a proceeding under the *Family Law Act 1975* (Cwlth).

Part 6 Deeds and covenants

Division 1 Deeds

Subdivision 1 Preliminary

44 Definitions for division

In this division—

copy, of an electronic document, means a reproduction of the document in either electronic or hard copy form.

counterpart, for a document, see section 45.

director, of a corporation, means—

- (a) if the corporation is established under an Act of the Commonwealth or a State—a director under that Act; or
- (b) if the corporation is established under a constitution or another governing document—a director under that constitution or governing document; or
- (c) otherwise—a member of the board of directors, council or other governing body of the corporation.

document means a record of information however recorded and includes—

- (a) a physical document; and

(b) an electronic document.

information includes information in the form of data, text or images.

seal, of a corporation, includes a common seal of the corporation.

secretary, of a corporation, means the clerk, secretary or other permanent officer of the corporation.

sign, a document, means—

- (a) for a physical document—physically sign the document;
or
- (b) for an electronic document—electronically sign the document.

45 What is a *counterpart* for a document

- (1) A **counterpart**, for a document, is a copy of the document that includes the entire content of the document.
- (2) Despite subsection (1), a counterpart need not include—
 - (a) the signatures of all persons who have signed, or are to sign, the document; or
 - (b) if a seal is, or is to be, fixed to the document—the seal.

46 Division does not apply to enduring documents

This division does not apply to an enduring document under the *Powers of Attorney Act 1998*.

47 Application of division to powers of attorney

- (1) Each of the following documents made by an individual must be a physical document that is signed by the individual in the presence of a witness—
 - (a) a general power of attorney made under the *Powers of Attorney Act 1998*;

- (b) a power of attorney given under a deed.
- (2) However, a document containing a power of attorney given by an individual under a deed may be an electronic document that is electronically signed by the individual if—
 - (a) the document is part of a commercial or other arms-length transaction; and
 - (b) the power of attorney is given for the purpose of the commercial or other arms-length transaction.

Example of a document that may be electronically signed—

a document containing a power of attorney given by an individual under a deed as security for a proprietary interest of another party to the document or the performance of an obligation owed by the individual

- (3) To remove any doubt, it is declared that—
 - (a) subsection (2) applies to a document even if the document is executed at a different time from, and is separate to, other documents that form part of the transaction; and
 - (b) a power of attorney given by an individual under a deed under subsection (2) may be signed under subsection (2) whether or not in the presence of a witness.
- (4) This section applies—
 - (a) subject to section 53; and
 - (b) despite another provision of this division.
- (5) In this section—

individual includes an individual in the individual's capacity as a sole trader.

48 Execution of documents under other Acts

This division does not limit or otherwise affect the way in which documents are validly executed under the *Land Act 1994* or the *Land Title Act 1994*.

Subdivision 2 Form and execution

49 How deed is made generally

- (1) A document takes effect as a deed if the document—
 - (a) is in writing; and
 - (b) contains a clear statement that the document is a deed; and
 - (c) is executed under this division; and
 - (d) is delivered in accordance with section 56.
- (2) A document takes effect as a deed under subsection (1) even if—
 - (a) it is not written on paper or parchment; or
 - (b) it is not an indenture or stated to be an indenture; or
 - (c) it is not sealed or stated to be sealed.

50 Electronic document and electronic signing

A document that is to have effect as a deed may be in the form of an electronic document and may be electronically signed.

51 Execution by individual

- (1) An individual may execute a document that is to have effect as a deed by signing the document.
- (2) An individual may sign a document under subsection (1) whether or not in the presence of a witness.

52 Execution by corporation

- (1) A corporation may execute a document that is to have effect as a deed, without using a seal, if the document is signed by—
 - (a) 2 directors of the corporation; or

- (b) 1 director and 1 secretary of the corporation; or
 - (c) for a proprietary company that has a sole director—that director, if—
 - (i) the director is also the sole company secretary; or
 - (ii) the company does not have a company secretary;or
 - (d) a lawfully authorised agent or attorney of the corporation, whether or not the agent or attorney is appointed under seal or under a deed.
- (2) A corporation with a common seal may execute a document that is to have effect as a deed if the seal is fixed to the document and the fixing of the seal is witnessed by—
- (a) 2 directors of the corporation; or
 - (b) 1 director and 1 secretary of the corporation; or
 - (c) for a proprietary company that has a sole director—that director, if—
 - (i) the director is also the sole company secretary; or
 - (ii) the company does not have a company secretary.
- (3) Despite subsections (1) and (2), a corporation sole or statutory corporation may execute a document that is to have effect as a deed, without using a seal, if the document is signed by a person, or in a way, authorised by the Act or another document under which the corporation is established, incorporated or registered.
- (4) For a corporation with a common seal executing a document that is to have effect as a deed, or a corporation sole or statutory corporation using a seal, the fixing of the seal to the document is taken to have been witnessed by a person if—
- (a) the person observes the fixing of the seal by audio visual link; and
 - (b) the person signs the document; and

- (c) the document includes a statement that the person observed the fixing of the seal by audio visual link.
- (5) A corporation that is not incorporated under a law of the Commonwealth or a State may execute a document that is to have effect as a deed if the document is signed by a person, or in a way, authorised by the law of the place in which the corporation is incorporated.
- (6) A document that is to have effect as a deed may be signed under this section whether or not in the presence of a witness.
- (7) If a person signs a document that is to have effect as a deed for a corporation as a lawfully authorised agent or attorney for the corporation, the person must—
 - (a) sign the document in a way that indicates the person is signing as a lawfully authorised agent or attorney; and
 - (b) if the person is an individual—sign the document under section 51; and
 - (c) if the person is a corporation—sign the document under this section.
- (8) This section does not limit or otherwise affect the ways in which a document that is to have effect as a deed for a corporation may be executed by the corporation.
- (9) In this section—

attorney, for a corporation, means a person acting under the authority of a power of attorney given by the corporation under a deed, a general power of attorney made under the *Powers of Attorney Act 1998*, or another law.

audio visual link means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places and includes videoconferencing.

statutory corporation means an entity established, incorporated or registered under an Act of the Commonwealth or a State, that is not a corporation registered under the Corporations Act.

53 Execution by partnership or unincorporated association

- (1) An individual may execute a document that is to have effect as a deed on behalf of a partnership or unincorporated association by signing the document.
- (2) An individual may sign a document under subsection (1) whether or not in the presence of a witness.
- (3) If an individual signs a document under subsection (1), the individual must sign the document in a way that indicates the person is executing the document on behalf of the partnership or unincorporated association.
- (4) A reference in subsection (1) to a document includes a document containing a power of attorney for the partnership or unincorporated association.
- (5) This section does not limit or otherwise affect another law or document that requires or permits a document executed on behalf of a partnership or unincorporated association to be executed in a particular way.

Example—

This section does not affect a document that requires or permits a document executed on behalf of a partnership to be executed by a stated number of partners.

54 Execution by the State

- (1) A person who is authorised to execute a document that is to have effect as a deed for the State may execute the document by signing the document.
- (2) The person may sign the document under subsection (1) without using a seal and whether or not in the presence of a witness.
- (3) If a seal is used to execute a document that is to have effect as a deed for the State, the fixing of the seal to the document is taken to have been witnessed by a person who is authorised to witness the fixing of the seal if—

- (a) the person observes the fixing of the seal by audio visual link; and
 - (b) the person signs the document; and
 - (c) the document includes a statement that the person observed the fixing of the seal by audio visual link.
- (4) This section does not limit or otherwise affect—
- (a) section 52(3); or
 - (b) the State’s powers or legal capacity under another law.
- (5) In this section—
- State* includes a public sector unit and any other entity that represents the State.

55 Signing counterpart or true copy

- (1) A document that is to have effect as a deed for a person may be signed by or for the person by signing a counterpart or true copy of the document.
- (2) For subsection (1), if the counterpart or true copy is electronically signed by a person, the counterpart or true copy need not include any material included in the document about the method used for electronically signing the document.
- (3) In this section—
- person* includes a partnership, an unincorporated association and the State.

Subdivision 3 Miscellaneous matters

56 Delivery

- (1) The execution of a document in the form of a deed does not, of itself, constitute delivery of a deed, unless it appears the execution of the document was intended to constitute delivery of the document.

(2) Subject to subsection (1), delivery of a deed may be inferred from any fact or circumstance, including, for example, words or conduct, that indicates delivery.

(3) In this section—

delivery, of a deed, means an intention to be legally bound by the deed either immediately or subject to the fulfilment of 1 or more conditions.

57 Receipt in body of deed sufficient

(1) A receipt for consideration in the body of a deed or other document is a sufficient discharge for the consideration to the person giving the consideration without any further receipt for the consideration being endorsed on the deed or document.

(2) In this section—

consideration includes money and securities.

58 Deposit of deed in registry

(1) This section applies to a deed made under this division that is proposed to be deposited in a registry for the purpose of supporting another document lodged or deposited in the registry.

(2) If the deed is made in counterparts, each counterpart must be deposited in the registry for the purpose.

(3) If the deed or a counterpart of the deed is in the form of an electronic document, a printed copy of the deed or counterpart certified under subsection (4) must be deposited in the registry for the purpose.

(4) For subsection (3), the printed copy must be certified as a true copy of the original deed or counterpart—

(a) on a page of the printed copy; and

(b) by 1 of the following persons—

(i) 1 of the signatories;

- (ii) a lawyer;
 - (iii) a justice;
 - (iv) a commissioner for declarations;
 - (v) a notary public;
 - (vi) a trustee company under the *Trustee Companies Act 1968*;
 - (vii) a stockbroker.
- (5) In this section—
- registry** means—
- (a) the land registry; or
 - (b) the water allocations register under the *Water Act 2000*.

59 Protection for third parties

- (1) A person may assume that a document has been duly executed by a corporation if—
- (a) the document appears to have been signed under section 52(1) or (3); or
 - (b) for a corporation using a seal—
 - (i) the seal of the corporation appears to have been fixed to the document; and
 - (ii) the fixing of the seal appears to have been witnessed under section 52(2) or (4).
- (2) This section does not limit or otherwise affect any requirement to be satisfied that a person signing a document is a director, secretary, or lawfully authorised agent or attorney, of a corporation.

60 Abolition of rule in *Pigot's case*

- (1) The rule of law known as the rule in *Pigot's case* is abolished.

- (2) Accordingly, a material alteration to a deed does not, by itself, invalidate the deed or render it voidable, or limit or otherwise affect any obligation under the deed.

Division 2 Covenants

61 Construction of expressions used in deeds and other documents

- (1) In a deed, contract, will or other document, unless the context otherwise requires—
 - (a) the term *month* means calendar month; and
 - (b) the term *person* includes an individual and a corporation; and
 - (c) words indicating a gender include each other gender; and
 - (d) words in the singular include the plural and words in the plural include the singular.
- (2) A covenant, power or term implied in a deed, contract, will, or other document under this Act or another Act must be construed under subsection (1).

62 Implied covenants may be negated

- (1) A covenant, power or term implied, under this Act or another Act, in a document has the same effect, and may be enforced in the same way, as if the covenant, power or term had been expressed in the document.
- (2) However, the covenant, power or term implied in the document may be negated, varied or extended by the express terms of the document or another document.
- (3) This section is subject to this Act or another Act.

63 Covenants and agreements made by person with self and others

- (1) A covenant, whether express or implied, or agreement, entered into by a person with the person's self and 1 or more other persons, has the same effect, and may be enforced in the same way, as if the covenant or agreement had been entered into by the person with the other person or persons alone.
- (2) In this section—
implied includes implied under this Act or another Act.

64 Covenants relating to land bind successors

- (1) A covenant relating to land of a covenantee is taken to be made with each of the following—
 - (a) the covenantee;
 - (b) the covenantee's successors in title;
 - (c) each person deriving title from a person mentioned in paragraph (a) or (b).
- (2) A covenant relating to land of a covenantor, or land capable of being bound by a covenantor, is taken to be made by each of the following—
 - (a) the covenantor on behalf of the covenantor's self;
 - (b) the covenantor's successors in title;
 - (c) each person deriving title from a person mentioned in paragraph (a) or (b);
 - (d) for a restrictive covenant—the owners and occupiers for the time being of the land burdened by the covenant.
- (3) Subsection (2) extends to a covenant to do some act relating to the land, notwithstanding that the subject matter of the covenant may not be in existence when the covenant is made.
- (4) This section applies subject to any agreement to the contrary.

65 Particular covenants in registered easements bind successors

- (1) This section applies to a covenant contained in a registered easement over land (the *burdened land*).
- (2) If the covenant imposes an obligation, whether positive or negative, in relation to the use, ownership or maintenance of the burdened land, the covenant binds the grantor and the grantee of the easement, and each of their successors in title.
- (3) A covenant imposes an obligation in relation to the use, ownership or maintenance of the burdened land if the covenant imposes an obligation—
 - (a) to maintain or repair the burdened land; or
 - (b) to construct, maintain, repair or replace improvements or infrastructure on the burdened land used in connection with the easement; or
 - (c) to pay for or contribute to the performance of an obligation mentioned in paragraph (a) or (b); or
 - (d) to pay for or contribute to rates or taxes relating to the burdened land; or
 - (e) to indemnify a party to the easement in connection with the use of the easement; or
 - (f) to insure, pay for or contribute to insurance in connection with the use of the easement.
- (3A) Subsection (3) does not limit the covenants that may impose an obligation in relation to the use, ownership or maintenance of the burdened land.
- (4) Subsection (2) does not apply if the covenant is expressed to be personal to the grantor or the grantee of the easement.
- (5) This section does not limit or otherwise affect the *Land Title Act 1994*, part 6, division 4 or 4A.
- (6) To remove any doubt, it is declared that a registered easement under this section includes a registered easement in gross.

66 No right to register restrictive covenant

To remove any doubt, it is declared that this Act does not confer on any person a right to register a restrictive covenant.

Part 7 Contracts, sales of land, instalment contracts and seller disclosure for sales of lots

Division 1 Contracts

67 Effect of joint promises and liabilities

- (1) Subject to this Act and any other Act—
 - (a) a promise made by 2 or more persons takes effect, unless a contrary intention appears, as a promise made jointly and severally by each of those persons; and
 - (b) a joint liability is discharged, or a cause of action with respect to a joint liability is extinguished, by a fact, event or other thing only to the extent the liability would be discharged, or cause of action extinguished, by the fact, event or other thing if the liability were joint and several.
- (2) In this section—

promise includes—

 - (a) a promise, bond or other obligation under seal or under a deed; and
 - (b) a covenant, whether express or implied under this Act.

68 Contract containing promise for benefit of third party

- (1) This section applies if—

-
- (a) a person (the *promisor*) and another person (the *promisee*) enter into a contract; and
 - (b) the contract contains a promise that the promisor will do or refrain from doing an act for the benefit of another person who is not a party to the contract (the *third party*).
- (2) The promisor is subject to a duty enforceable by the third party to perform the promise.
 - (3) Subject to the terms of the contract, the contract or the promise may be terminated or modified by the agreement of the promisor and promisee before the third party accepts the benefit of the promise.
 - (4) If the third party accepts the benefit of the promise, either expressly or by conduct, an obligation imposed by the contract on the third party for the benefit of the promisor is enforceable by the promisor.
 - (5) The promise is enforceable by the third party in a proceeding brought in the third party's own name.
 - (6) If the third party brings a proceeding under subsection (5)—
 - (a) the third party must serve each party to the contract with a copy of the proceeding; and
 - (b) a defence that would have been available to the promisor had the third party been a party to the contract is available to the promisor.
 - (7) If the promise creates an interest in land, this section applies subject to part 2, division 1.
 - (8) In this section—

contract includes a deed or another document if the deed or other document provides for the giving of consideration.

third party includes—

 - (a) a person designated by name, description or class; and
 - (b) a person not in existence when a promise is made.

69 Guarantee not enforceable unless in writing

- (1) A guarantee is not enforceable in a proceeding unless—
 - (a) the guarantee is in writing or its terms are recorded in writing; and
 - (b) the guarantee or written record is signed by the party against whom the guarantee is sought to be enforced.
- (2) However, subsection (1) does not require the consideration given for the guarantee to appear in writing or by necessary inference from a written document.
- (3) Subject to the *National Consumer Credit Protection Act 2009* (Cwlth), a guarantee may comply with subsection (1) even if the guarantee is—
 - (a) an electronic document; or
 - (b) digitally signed.
- (4) In this section—

digitally sign, an electronic document, means sign the document using a method mentioned in the *Electronic Transactions (Queensland) Act 2001*, section 14.

guarantee includes an indemnity.

70 Effect of conclusive evidence provision

- (1) If a contract or other document provides that a certificate of a person is conclusive evidence of a fact, the certificate is evidence, but not conclusive evidence, of the fact.
- (2) However, subsection (1) does not apply to—
 - (a) a certificate of a person bound to act judicially, quasi-judicially or as an arbitrator in giving the certificate; or
 - (b) a certificate of an expert, including, for example, an architect or engineer, required to be independent and act fairly to the parties to the contract or other document in giving the certificate; or

- (c) a provision in a contract or other document agreed to after a dispute has arisen about the fact.
- (3) Subsection (1) applies—
 - (a) subject to any other Act; and
 - (b) despite any agreement to the contrary.
- (4) In this section—
 - certificate* includes a statement and an opinion.
 - fact* includes a circumstance, event, matter and state of affairs.

71 Effect on contract of non-compliance with statutory instrument

- (1) A statutory instrument, other than prescribed subordinate legislation, does not and can not—
 - (a) render voidable or unenforceable any contract or disposition concerning property that is made, entered into or effected contrary to the statutory instrument; or
 - (b) for a contract for the sale of land—give a party to the contract a right to terminate the contract for a failure by another party to the contract to comply with the statutory instrument.
- (2) In this section—
 - prescribed subordinate legislation* means subordinate legislation prescribed by regulation for this section.

72 Effect of statutory requirement for certificate

- (1) This section applies if an Act requires a certificate to be obtained or given before or when—
 - (a) entering a contract for the disposition of property; or
 - (b) making a disposition of property.

- (2) It is sufficient compliance with the requirement if the certificate is obtained or given before settlement of the contract or disposition.
- (3) Subsection (2) does not apply if this Act or another Act expressly provides otherwise.
- (4) In this section—
certificate includes an approval and a consent.
settlement, of a contract or disposition, means—
 - (a) for a sale—settlement of the sale; or
 - (b) for a lease—entry into possession under the lease by the lessee; or
 - (c) for a mortgage—the acceptance of liability under the mortgage by the mortgagor; or
 - (d) otherwise—the finalisation of the contract or disposition.

73 Stipulations not of essence of contract

- (1) This section applies to a stipulation in a contract, as to time or otherwise, that under the rules of equity is not of the essence of the contract.
- (2) The stipulation must be construed, and has effect at law, under the rules of equity.

Division 2 Sales of land

74 Definitions for division

In this division—

computer means all or part of a computer, computer system or computer network and includes, for example, all external devices connected to the computer in any way or capable of

communicating with each other as part of a system or network.

conveyancing transaction see the Electronic Conveyancing National Law (Queensland), section 3.

e-conveyance means a conveyancing transaction to be completed using e-conveyancing.

e-conveyancing means a system of land conveyancing that uses an ELN to lodge documents electronically for the purpose of land titles legislation.

electronic workspace, for an e-conveyance, means a shared electronic workspace within an ELN that allows the participating subscribers to the e-conveyance—

- (a) to lodge a document electronically under the Electronic Conveyancing National Law (Queensland); and
- (b) if relevant, to authorise or complete financial settlement of the e-conveyance.

ELN means an Electronic Lodgment Network under the Electronic Conveyancing National Law (Queensland).

financial settlement, of an e-conveyance, means the exchange of value, in an ELN, between financial institutions in accordance with the instructions of participating subscribers to the e-conveyance.

land titles legislation see the *Electronic Conveyancing National Law (Queensland) Act 2013*, section 6.

participating subscriber, to an e-conveyance, means a subscriber who is involved in the e-conveyance as a party to the e-conveyance or as a representative of a party.

sale, of land, includes an exchange for value.

subscriber see the Electronic Conveyancing National Law (Queensland), section 3.

75 Reference to settlement of sale of land using e-conveyancing

- (1) A reference in this Act or another Act to the settlement, however described, of the sale of land or a contract for the sale of land, using e-conveyancing, is a reference to the electronic workspace for the e-conveyance recording—
 - (a) financial settlement of the sale; or
 - (b) if there is no financial settlement of the sale—the acceptance by the registrar, for electronic lodgement, of the documents necessary to transfer title.
- (2) Subsection (1) does not apply if this Act or another Act expressly provides otherwise.

76 Implied conditions

- (1) The following conditions are implied in a contract for the sale of land—
 - (a) the seller must give the buyer, at the cost of the seller, a copy of each document, in relation to which a caveat is registered, that is in the possession of the seller;
 - (b) the seller must, at the cost of the seller, remove any objection to the registration of any document required to give effect to the contract unless—
 - (i) the objection arises from the buyer’s own act or omission; or
 - (ii) the objection may have been discovered by a reasonable person in the position of the buyer, and was not raised by the buyer, before settlement;
 - (c) if the seller is required under the contract to transfer the land free from encumbrances—the seller must, on settlement of the contract—
 - (i) discharge any encumbrances out of the purchase money payable under the contract by the buyer; and

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- (ii) for an encumbrance registered on the title to the land—give the buyer a release of the encumbrance in registrable form.
 - (2) Also, if a sale of land is not an e-conveyance, the following conditions are implied in the contract for the sale of the land—
 - (a) payment or tender of money payable under the contract may be made by a cheque drawn on a financial institution;
 - (b) settlement of the contract must take place at—
 - (i) the office of the land registry at which the document relating to the sale may be lodged; or
 - (ii) if there is more than 1 office under subparagraph (i)—the office of the land registry nearest the land.
 - (3) This section applies subject to the terms of the contract for the sale of the land.

77 Buyer may rescind contract if residential dwelling unfit for occupation

- (1) This section applies if—
 - (a) parties enter into a contract for the sale of land; and
 - (b) the land contains or comprises a residential dwelling; and
 - (c) before the earlier of the following to happen, the residential dwelling is so damaged or destroyed as to be unfit for occupation as a residential dwelling—
 - (i) the settlement of the contract;
 - (ii) the buyer taking possession of the land under the contract or another document.

- (2) The buyer may rescind the contract by giving notice to the seller of the rescission before the earliest of the following to happen—
 - (a) the settlement of the contract;
 - (b) the buyer taking possession of the land under the contract or another document;
 - (c) the seller restoring the residential dwelling to the condition it was in immediately before it was so damaged or destroyed as to be unfit for occupation as a residential dwelling.
- (3) If the seller restores the residential dwelling to the condition it was in immediately before it was so damaged or destroyed as to be unfit for occupation as a residential dwelling, the seller must give notice to the buyer of the restoration as soon as practicable after the restoration.
- (4) The buyer may, after receiving notice under subsection (3) and giving reasonable notice to the seller, inspect the residential dwelling.
- (5) On rescission of the contract, an amount, if any, paid under the contract by the buyer must be refunded to the buyer.
- (6) This section applies despite any agreement to the contrary.
- (7) In this section—

residential dwelling—

 - (a) means a building or part of a building used, or currently designed for use, only as a single dwelling; and
 - (b) includes a residential dwelling that comprises—
 - (i) a lot included in a community titles scheme; or
 - (ii) a lot under the *Building Units and Group Titles Act 1980*; or
 - (iii) a leasehold building units lot under the *South Bank Corporation Act 1989*, section 97B; and

- (c) does not include a building or part of a building used, or currently designed for use, as temporary accommodation.

78 When day of settlement is next business day

- (1) This section applies if—
 - (a) parties enter into a contract for the sale of land; and
 - (b) the contract provides that the day of settlement of the contract is a day that is not a business day in—
 - (i) the place where the contract is to be settled; or
 - (ii) if the contract is to be settled electronically and the contract does not provide for a place where the contract is to be settled—the place where the land is located; and
 - (c) the contract does not designate the day mentioned in paragraph (b) as a Saturday, Sunday or public holiday.
- (2) Despite the terms of the contract, the day of settlement of the contract is—
 - (a) if the parties to the contract agree to another day of settlement—the day agreed; or
 - (b) otherwise—the next business day in the place mentioned in subsection (1)(b) after the day of settlement provided for in the contract.

79 Effect of inoperative computers in office of the land registry on day of settlement

- (1) This section applies if—
 - (a) parties enter into a contract for the sale of land; and
 - (b) the contract provides that time is of the essence; and
 - (c) the buyer, without default on the buyer's part, can not, on the day of settlement of the contract, verify the

seller's title because computers in the office of the land registry being used to verify the seller's title are inoperative.

- (2) Time stops being of the essence of the contract.
- (3) The seller is taken—
 - (a) not to have proved title to the land; and
 - (b) not to be in breach of the contract only because of the failure to prove title at that time.
- (4) The seller or buyer may give a notice to the other party to the contract to complete the contract.
- (5) The notice must state—
 - (a) that the computers are again fully operational; and
 - (b) the day, at least 3 business days but not more than 7 business days after the day the notice is given, for settlement of the contract.
- (6) The notice may not be given earlier than the day after the first continuous day of operation of the computers after the computers are again fully operational.
- (7) From a party's receipt of the notice, time is again of the essence of the contract.
- (8) This section applies subject to the terms of the contract for the sale of the land.

80 Effect of inoperative computers in particular entities on day of settlement

- (1) This section applies if—
 - (a) parties enter into a contract for the sale of land that is an e-conveyance; and
 - (b) the contract provides that time is of the essence; and
 - (c) the contract can not, on the day of settlement of the contract, be settled because computers used by any of

the following entities are inoperative, including, for example, because the entity is closed for business—

- (i) an office of the land registry;
 - (ii) an office of the Commissioner of State Revenue under the *Taxation Administration Act 2001*;
 - (iii) the Reserve Bank of Australia;
 - (iv) a financial institution;
 - (v) an ELN.
- (2) The parties to the contract are taken not to be in breach of the contract only because of the failure, on the day of settlement of the contract, to complete settlement of the contract.
 - (3) Time does not stop being of the essence of the contract.
 - (4) The day of settlement of the contract is taken to be the next business day.
 - (5) The parties must do everything required under the ELN to enable the contract to be settled on the next business day.
 - (6) This section applies subject to any agreement to the contrary.
 - (6A) To remove any doubt, it is declared that if, on the next business day mentioned in subsection (4), the contract again can not be settled because of the circumstances mentioned in subsection (1), this section again applies in relation to the circumstances.
 - (7) In this section—

business day means a day that is not—

 - (a) a Saturday or Sunday; or
 - (b) a public holiday in—
 - (i) the place where the contract is to be settled; or
 - (ii) if the contract is to be settled electronically and the contract does not provide for a place where the contract is to be settled—the place where the land is located; or

- (c) a day in the period starting on 27 December and ending on 31 December.

81 Effect of adverse event on day of settlement

- (1) This section applies if—
 - (a) parties enter into a contract for the sale of land; and
 - (b) the contract provides that time is of the essence; and
 - (c) a party to the contract (the *non-attending party*), because of an adverse event, can not, on the day and at the time of settlement of the contract, complete settlement of the contract.
- (2) Time stops being of the essence of the contract.
- (3) The non-attending party—
 - (a) must take reasonable steps to mitigate the effects of the adverse event on the settlement of the contract; and
 - (b) subject to compliance with paragraph (a)—is taken not to be in breach of the contract only because of the failure, on the day and at the time of settlement of the contract, to complete settlement of the contract.
- (4) Despite the terms of the contract, but subject to any right under the contract to nominate a new day and time of settlement of the contract, the day and time of settlement of the contract are—
 - (a) if the parties to the contract agree to another day and time—the day and time agreed; or
 - (b) otherwise—the day and time determined under subsections (5) to (8).
- (5) The non-attending party must—
 - (a) as soon as practicable after the adverse event, tell the other party of the adverse event and how the adverse event has caused the non-attending party to fail to complete settlement of the contract; and

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- (b) as soon as practicable after the adverse event stops preventing the non-attending party from completing settlement of the contract, give a notice to the other party to the contract to complete the contract.
- (6) The notice under subsection (5)(b) must state—
- (a) a day, at least 5 business days and not more than 10 business days after the day the notice is given, for settlement of the contract; and
- (b) a time for settlement of the contract.
- (7) From a party's receipt of a notice under subsection (5)(b) and (6), time is again of the essence of the contract.
- (8) If a notice is given under subsection (5)(b) by the buyer and the seller in relation to the same adverse event on the same day of settlement, the notice given by the seller prevails.
- (9) In this section—

adverse event means an event that causes serious disruption to a community, including, for example—

- (a) a cyclone, fire, flood, landslide, seismic event, storm, storm tide, tsunami or tornado; and
- (b) a public health emergency under the *Public Health Act 2005*; and
- (c) a requirement to comply with a lawful direction or order given by a government entity under a law of the Commonwealth or a State; and
- (d) an act of terrorism, activity related to war, civil commotion, public disturbance or riot; and
- (e) an explosion or sudden impact of an object, including, for example, an aircraft or object from space.

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday in—

- (i) the place where the contract is to be settled; or
 - (ii) if the contract is to be settled electronically and the contract does not provide for a place where the contract is to be settled—the place where the land is located; or
- (c) a day in the period starting on 27 December and ending on 31 December.

82 Direction for payment given by seller’s authorised agent sufficient discharge of buyer

- (1) A written direction given by a seller’s authorised agent to the buyer or the buyer’s authorised agent in relation to the payment of money under a contract for the sale of land is sufficient discharge of the buyer in relation to the payment of the money.
- (2) In this section—
authorised agent means—
- (a) a legal practitioner; or
 - (b) a manager of a financial institution.

83 Buyer may recover damages if defective title

- (1) The rule of law known as the rule in *Bain v Fothergill* is abolished in relation to a contract for the sale or other disposition of land.
- (2) The court may award damages for loss of bargain against a seller who can not perform a contract for the sale or other disposition of land because of a defect in the seller’s title.
- (3) This section does not affect a right, power or remedy available to a buyer under a contract for the sale or other disposition of land in relation to a defect in the seller’s title, or a failure of the seller to perform the contract, that is available under a law other than this section.

- (4) This section applies despite any agreement to the contrary.

84 Buyer may recover deposit and instalments if defective title but no rescission

- (1) This section applies if a seller is not entitled to specific performance of a contract for the sale of land against a buyer because of a defect in the seller's title but the defect does not entitle the buyer to rescind the contract.
- (2) The buyer may recover the buyer's deposit and any instalments under the contract and is relieved from all liability under the contract, unless the contract discloses the defect and contains a term precluding the buyer from objecting to the defect.
- (3) If the defect was known, or should reasonably have been known, to the seller at the date of the contract the buyer may also recover the buyer's expenses of investigating the title.
- (4) Also, without being limited by subsection (1), in any proceeding in which the court refuses to order specific performance of a contract, or in which the buyer seeks return of the deposit or any instalments under a contract, the court may order the repayment of the deposit and any instalments.
- (5) This section applies despite any agreement to the contrary.

85 Seller may forfeit deposit of no more than 20 per cent if buyer breaches contract for sale of proposed lot

- (1) This section applies in relation to a contract for the sale of a proposed lot.
- (2) The contract may provide for a sum of not more than 20% of the purchase price of the proposed lot that is paid under the contract as a deposit, whether paid in 1 or more amounts, to be forfeited and retained by the seller in the event of a breach of the contract by the buyer.

- (3) However, the sum mentioned in subsection (2) may only be forfeited or retained by the seller if the breach of the contract by the buyer results in termination of the contract.
- (4) The sum mentioned in subsection (2) is not, either at law or in equity, a penalty if the sum is forfeited or retained by the seller under subsection (3).

86 When statutory right of termination on settlement ends if e-conveyance

- (1) This section applies if—
 - (a) an Act provides for a right of termination, however described, in relation to a sale of land or a contract for the sale of land; and
 - (b) the right is expressed to end on settlement; and
 - (c) the sale is completed using e-conveyancing.
- (2) The right of termination—
 - (a) ends on settlement; and
 - (b) may not be exercised during any period the electronic workspace for the e-conveyance is locked for the purpose of settlement.
- (3) In this section—

locked, in relation to an electronic workspace for an e-conveyance, means the ELN for the workspace does not allow a participating subscriber to the e-conveyance to change a document or instruction in the workspace.

Division 3 Instalment contracts for sale of land

87 Definitions for division

In this division—

buyer, in relation to an instalment contract, includes a person deriving an interest under the contract from the original buyer.

contract, for the sale of land, includes—

- (a) an agreement for the sale of land; and
- (b) an option to purchase land.

deposit, in relation to a contract for the sale of land, means a sum of not more than the prescribed percentage of the purchase price of the land that is payable by the buyer in 1 or more amounts, and refundable to the buyer if the seller breaches the contract or does not fulfil a contingent condition of the contract.

instalment, in relation to a contract for the sale of land, does not include—

- (a) an option fee relating to the land; or
- (b) an amount paid by the buyer, after the contract was entered into and before settlement of the contract, in relation to any of the following—
 - (i) maintenance of the land;
 - (ii) rent and outgoings relating to the land;
 - (iii) rates and taxes relating to the land;
 - (iv) interest on any part of the purchase price under the contract for the land;
 - (v) an extension of time to complete the contract.

instalment contract see section 89.

option fee, relating to land, means an amount paid for the grant or exercise of an option to purchase the land.

prescribed percentage, of the purchase price of land, means—

- (a) if the land is a proposed lot—20%; or
- (b) otherwise—10%.

seller, in relation to an instalment contract, includes a person to whom the rights of the seller under the contract have been assigned with the consent under section 92 of the buyer.

88 Application of division

- (1) This division applies in relation to an instalment contract despite any agreement to the contrary.
- (2) However, despite section 3, this division does not bind the State, the Commonwealth or the other States.
- (3) To remove any doubt, it is declared that this division does not apply in relation to a contract for the sale of land by the public trustee.
- (4) In this section—
public trustee see the *Public Trustee Act 1978*, section 6.

89 What is an instalment contract

An *instalment contract* is a contract for the sale of land under which the buyer is bound to make 1 or more payments by instalment of the purchase price of the land, other than a deposit, and is not entitled to receive a transfer of the title to the land in exchange for the payments.

90 When buyer must give seller notice to constitute contract an instalment contract

- (1) This section applies if a contract for the sale of land may, at the election of the buyer, be performed in a way that would constitute the contract an instalment contract.
- (2) The contract is not an instalment contract unless and until the buyer gives the seller a notice stating that the buyer elects to perform the contract in a way that will constitute the contract an instalment contract.

91 Restriction on seller's right to termination if buyer defaults on payment of instalment

- (1) The seller under an instalment contract may not terminate the contract because of default by the buyer in payment of an instalment of the purchase price of the land, or in payment of any other sum of money, other than a deposit, until 30 days after the seller gives the buyer a notice in the approved form about the default.
- (2) If a buyer receives a notice under subsection (1) about a default by the buyer in payment of an instalment or sum of money mentioned in subsection (1), the buyer may, within 30 days after the seller gives the notice to the buyer, pay the outstanding instalment or sum to the seller.
- (3) If a buyer pays the outstanding instalment or sum to the seller under subsection (2), any right or power of the seller to terminate the contract because of the default ends and the buyer is taken not to be in default under the instalment contract.

92 Seller can not sell or mortgage land

- (1) The seller under an instalment contract must not without the consent of the buyer sell or mortgage the land the subject of the contract.
- (2) The buyer may give consent under subsection (1) only by giving the seller a notice stating that—
 - (a) the buyer has received a notice from the seller stating the terms of the sale or mortgage; and
 - (b) the buyer consents to the sale or mortgage on the stated terms.
- (3) If land is sold or mortgaged in contravention of subsection (1), the instalment contract is voidable by the buyer before settlement of the contract.

- (4) If the buyer elects to render the instalment contract void under subsection (3), the buyer may recover as a debt a deposit or instalment paid to the seller under the contract.
- (5) This section does not limit or otherwise affect—
 - (a) a right or remedy of the buyer under a law other than this section; or
 - (b) a right of another person who buys from the seller in good faith, for value and without notice of the instalment contract.
- (6) In this section—

consent, to a sale or mortgage, means consent to the stated terms of the sale or mortgage.

93 Buyer may lodge caveat

- (1) The buyer under an instalment contract may, by a caveat under the *Land Title Act 1994* that is stated to be lodged under this section, forbid the registration of any document affecting the land the subject of the contract until settlement of the contract.
- (2) The caveat is taken, for the *Land Title Act 1994*, to have been lodged other than under part 7, division 2 of that Act.
- (3) The caveat may, on the application of any person interested, be removed on proof to the satisfaction of the registrar or of the court that—
 - (a) the buyer has consented to removal of the caveat; or
 - (b) the instalment contract has been rescinded or terminated or discharged by performance or otherwise; or
 - (c) the caveat should be removed on another ground.
- (4) This section does not limit or otherwise affect the powers of the registrar in relation to caveats under the *Land Title Act 1994*.

94 Buyer not in default may require seller to transfer land

- (1) A buyer not in default under an instalment contract may give a notice to the seller requiring the seller to transfer the land on a stated day (the *day of settlement*) in exchange for payment of the balance of the purchase money owing at the day of settlement.
- (2) The notice must—
 - (a) make time of the essence of the contract, if time is not already of the essence of the contract; and
 - (b) be given to the seller at least 3 months before the day of settlement.

Division 4 Seller disclosure for sales of lots

Subdivision 1 Preliminary

95 Definitions for division

In this division—

buyer, under a contract for the sale of a lot, means—

- (a) if the contract is an option—
 - (i) for a call option—the grantee of the option; or
 - (ii) for a put option—the grantor of the option; or
 - (iii) for a put and call option—a person who is the grantee of the call option or grantor of the put option; or
- (b) otherwise—the person who is bound under the contract, absolutely or conditionally, to buy the lot.

call option, for the sale of a lot, means an agreement or promise under which the grantor of the option agrees or promises to sell the lot to the grantee of the option if requested by the grantee.

contract, for the sale of a lot, includes—

- (a) an agreement or promise for the sale of the lot; and
- (b) an option for the sale of the lot.

disclosure documents, for a lot, means the documents required to be given by the seller of the lot to the buyer of the lot under section 99.

disclosure statement, for a lot, see section 99(1)(a).

listed corporation see the Corporations Act, section 9.

lot—

- (a) has the meaning given by the *Land Title Act 1994*; and
- (b) does not include a proposed lot.

option, for the sale of a lot, means—

- (a) a put option for the sale of the lot; or
- (b) a call option for the sale of the lot; or
- (c) a put and call option for the sale of the lot.

prescribed certificate, applicable to a lot, see section 99(1)(b).

put and call option, for the sale of a lot, means a contract under which there is a call option for the sale of the lot and a put option for the sale of the lot.

put option, for the sale of a lot, means an agreement or promise under which the grantor of the option agrees or promises to purchase the lot from the grantee of the option if requested by the grantee.

related, for a buyer of a lot and a seller of a lot, see section 96.

seller, under a contract for the sale of a lot, means—

- (a) if the contract is an option—
 - (i) for a call option—the grantor of the option; or
 - (ii) for a put option—the grantee of the option; or

- (iii) for a put and call option—a person who is the grantor of the call option or grantee of the put option; or
- (b) otherwise—the person who is bound under the contract, absolutely or conditionally, to sell the lot.

statutory body—

- (a) has the meaning given by the *Financial Accountability Act 2009*; and
- (b) includes—
 - (i) an entity of the Commonwealth or another State that is equivalent to a statutory body under the *Financial Accountability Act 2009*; and
 - (ii) an entity prescribed by regulation to be a statutory body for this definition; and
- (c) does not include an entity prescribed by regulation not to be a statutory body for this definition.

96 When buyer and seller are *related*

- (1) The buyer of a lot and the seller of a lot are *related* if—
 - (a) for a seller who is an individual—
 - (i) the buyer is a relative of the seller; or
 - (ii) the buyer is in a partnership under the *Partnership Act 1891* with the seller; or
 - (iii) the buyer is a corporation of which the seller is a director or member; or
 - (iv) the buyer is a related body corporate of a corporation of which the seller is a director or member; or
 - (b) for a seller that is a corporation—
 - (i) the buyer is a related body corporate; or

- (ii) if the seller is a corporation other than a listed corporation—the buyer is a director or member of the corporation or of a related body corporate.

(2) In this section —

related body corporate see the Corporations Act, section 9.

relative, of a seller, means—

- (a) a parent, step-parent or grandparent of the seller; or
- (b) a sibling, half-sibling or step-sibling of the seller; or
- (c) an uncle, aunt, nephew, niece or cousin of the seller; or
- (d) a child, step-child or grandchild of the seller; or
- (e) a spouse of the seller; or
- (f) if the seller has a spouse—a person who is a relative, of the type mentioned in any of paragraphs (a) to (d), of the seller’s spouse; or
- (g) if the seller is an Aboriginal person or Torres Strait Islander—a person who is a relative, of the type mentioned in any of paragraphs (a) to (f), of the seller under Aboriginal tradition or Island custom.

97 References to things done by or in relation to buyer or seller

- (1) This section applies in relation to a provision of this division that refers to—
 - (a) a thing required or permitted to be done by or in relation to a buyer of a lot or a seller of a lot; or
 - (b) a thing having been done by or in relation to a buyer of a lot or a seller of a lot.
- (2) The thing may be done, or the thing may have been done, by or in relation to the buyer of the lot or seller of the lot either—
 - (a) personally; or

- (b) by an agent who is authorised to act for the buyer or seller in relation to the thing.

Examples—

- 1 A seller of a lot may sign a disclosure statement for the lot personally or by an agent authorised to act for the seller.
- 2 A seller of a lot may give to the buyer of the lot a disclosure statement for the lot personally or by an agent authorised to act for the seller.

98 Contracting out prohibited

This division applies despite any agreement to the contrary.

Subdivision 2 Disclosure requirement

99 Seller must give buyer disclosure documents

- (1) Before a contract for the sale of a lot is signed by the buyer, the seller must give the buyer—
- (a) a statement (a ***disclosure statement***) for the lot; and
 - (b) each document prescribed by regulation (each a ***prescribed certificate***) applicable to the lot.

Note—

See section 97 in relation to acting by an agent.

- (2) The disclosure statement must—
- (a) be in the approved form; and
 - (b) include the information prescribed by regulation; and
 - (c) be completed with the information that is true at the time the statement is given to the buyer; and
 - (d) be signed by the seller.
- (3) The approved form must contain, in appropriate places on the form, the warnings and other statements prescribed by regulation.

- (4) A prescribed certificate may be a document that is required to be given to the buyer under another Act.

Examples of prescribed certificates—

- 1 a document relating to the lot issued under another Act
 - 2 a document in which the seller of the lot certifies a stated thing has been done under another Act in relation to the lot
 - 3 a document containing information about the lot in a register kept under another Act
- (5) For a contract under which there are 2 or more sellers of a lot, a reference in subsection (1) to the seller of a lot giving a disclosure statement or prescribed certificate is a reference to any of the sellers giving the statement or certificate.
- (6) For a contract under which there are 2 or more buyers of a lot—
- (a) a reference in subsection (1) to the seller of a lot giving a disclosure statement or prescribed certificate to a buyer of the lot is a reference to giving the statement or certificate to any of the buyers; and
 - (b) a reference in subsection (1) to the time the buyer of the lot signed the contract is a reference to the time the first buyer signed the contract.
- (7) To remove any doubt, it is declared that a disclosure statement may be an electronic document and may be electronically signed.

100 Exceptions to requirement

The seller of a lot is not required to comply with section 99 if—

- (a) both of the following apply—
 - (i) the buyer of the lot and the seller of the lot are related, or if there is more than 1, all of the buyers and all of the sellers are related;

- (ii) before the buyer of the lot signs the contract for the sale of the lot, the buyer gives the seller of the lot, or if there is more than 1, any of the sellers, a notice waiving compliance with section 99; or

Example—

A seller is selling a lot to a parent and a person who is not related to the seller. The buyer who is the seller's parent gives the seller a notice waiving compliance with section 99. The exception under paragraph (a) does not apply in relation to the contract because not all of the buyers are related to the seller.

- (b) the buyer of the lot is—
 - (i) the State, the Commonwealth or another State; or
 - (ii) a local government or a local government, however described, of another State; or
 - (iii) a constructing authority under the *Acquisition of Land Act 1967*; or
 - (iv) a statutory body; or
 - (v) a listed corporation; or
 - (vi) a subsidiary of a listed corporation; or
- (c) the seller of the lot is the Brisbane City Council or another local government and—
 - (i) the contract gives effect to the exercise of a power under the *City of Brisbane Act 2010* or the *Local Government Act 2009* to sell land to recover overdue rates or charges; and
 - (ii) before the contract for the sale of the lot is signed by the buyer of the lot, the seller gives the buyer, or if there is more than 1, any of the buyers, a notice stating that—
 - (A) the buyer needs to make the buyer's own enquiries about matters affecting the property; and

- (B) the seller is not required to comply with section 99; or
- (d) the seller of the lot is the State and—
 - (i) the buyer of the lot was a tenant of the lot for at least 3 years immediately before entering the contract; and
 - (ii) before the contract for the sale of the lot is signed by the buyer of the lot, the seller gives the buyer, or if there is more than 1, any of the buyers, a notice stating that—
 - (A) the buyer needs to make the buyer's own enquiries about matters affecting the property; and
 - (B) the seller is not required to comply with section 99; or
- (e) the seller of the lot and the buyer of the lot are co-owners of the lot and the contract provides for the acquisition by 1 or more co-owners of the whole or part of the interest of another co-owner; or
- (f) the seller of the lot and the buyer of the lot are owners of adjoining land and the contract provides for the adjustment of a common boundary; or
- (g) the contract gives effect to—
 - (i) a court order; or
 - (ii) an enforcement warrant under the *Supreme Court of Queensland Act 1991*; or
 - (iii) a financial agreement or a part VIIIAB financial agreement under the *Family Law Act 1975* (Cwlth); or
- (h) the contract gives effect to—
 - (i) the transmission of an interest in the lot, because of the death of an owner of the lot, to the owner's personal representative; or

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- (ii) the transfer or transmission of an interest in the lot, because of the death of an owner of the lot, to a person under the owner's will, the rules of intestacy or a court order under the *Succession Act 1981*, part 4; or
 - (i) the contract is for the sale of a lot under the *Acquisition of Land Act 1967*, section 41; or
 - (j) all of the following apply—
 - (i) the contract for the sale of the lot arises from the exercise of an option for the sale of the lot;
 - (ii) the buyer under the contract for the sale of the lot and the option for the sale of the lot are the same;
 - (iii) the seller of the lot complied with section 99 in relation to the option for the sale of the lot; or
 - (k) both of the following apply—
 - (i) the sale price under the contract is more than—
 - (A) the amount prescribed by regulation for this subparagraph; or
 - (B) if no amount is prescribed for this subparagraph—\$10m including GST;
 - (ii) before the contract for the sale of the lot is signed by the buyer of the lot, the buyer gives the seller of the lot, or if there is more than 1, any of the sellers, a notice waiving compliance with section 99.

101 How disclosure documents to be given

- (1) A seller of a lot may give a buyer of the lot the disclosure documents for the lot in a way mentioned in—
 - (a) section 231(1)(a)(i) or (ii) or (b)(i); or
 - (b) section 102.
- (2) If the lot is sold by auction—

- (a) for section 99(1), the contract for the sale of the lot is taken to be signed by the buyer of the lot at the completion of the auction; and
 - (b) if the buyer of the lot was registered as a bidder before the start of the auction, the seller of the lot is taken to have given the buyer the disclosure documents before the completion of the auction only if the seller gave the buyer the disclosure documents before the start of the auction; and
 - (c) if the buyer of the lot was not registered as a bidder until after the start of the auction and was not given the disclosure documents under subsection (1) before the start of the auction, the seller of the lot is taken to have given the buyer the disclosure documents before the completion of the auction only if the seller complies with section 103.
- (3) The seller of a lot has the onus of proving that the seller gave the buyer of the lot the disclosure documents.
- (4) To remove any doubt, it is declared that—
- (a) this section does not limit or otherwise affect—
 - (i) the *Acts Interpretation Act 1954*, section 39; or
 - (ii) the *Electronic Transactions (Queensland) Act 2001*; and
 - (b) a seller of a lot may give a buyer of the lot the disclosure documents by separate or different communications and modes of communications and is not required to give the disclosure documents in a singular communication.
- (5) In this section—
- completion**, of an auction for a lot, means the time at which the auctioneer announces the completion of the sale of the lot by the fall of the hammer or in another customary way.

102 Electronic communication of disclosure documents

- (1) A seller of a lot may give a buyer of the lot the disclosure documents for the lot by giving the buyer a separate physical document (a *communication*) stating that—
 - (a) the disclosure documents can be viewed by using an electronic link; and
 - (b) the buyer may ask the seller for a copy of the disclosure documents.
- (2) Also, if the buyer has consented to the disclosure documents being sent to an electronic address, the seller may give the buyer the disclosure documents by sending an electronic communication (also a *communication*) to the electronic address that—
 - (a) attaches the disclosure documents; or
 - (b) includes the content of the disclosure documents; or
 - (c) includes an electronic link that allows the person to view and obtain a copy of the disclosure documents.
- (3) For subsections (1)(a) and (2)(c), the buyer is taken to have received the disclosure documents only if, by using the electronic link, the buyer would have been able to view and obtain a copy of the disclosure documents—
 - (a) at the time the communication was given or sent (the *sending time*); and
 - (b) for a reasonable period after the sending time.
- (4) Subsection (3) applies whether or not the buyer used the electronic link.
- (5) Unless otherwise agreed between the seller of the lot and the buyer of the lot, a communication under subsection (1) or (2) is taken to be received by the buyer—
 - (a) for a physical document—

- (i) if the communication is given to the buyer personally—when the communication is given to the buyer personally; or
 - (ii) if the communication is sent to the buyer by post—7 business days after the communication was sent unless the actual time the document was received by post is proven; or
- (b) for an electronic communication—
 - (i) if the communication is sent to the buyer at an electronic address designated by the buyer—when the communication becomes capable of being retrieved by the buyer at the address; or
 - (ii) if the communication is sent to the buyer at another electronic address of the buyer—when both of the following are satisfied—
 - (A) the buyer becomes aware that the communication has been sent to the address;
 - (B) the communication becomes capable of being retrieved by the buyer at the address.
- (6) Unless otherwise agreed between the seller of the lot and the buyer of the lot, an electronic communication is taken to be capable of being retrieved by the buyer at the electronic address of the buyer when the communication reaches the address.
- (7) Subsection (8) applies if the buyer of a lot is given a communication under subsection (1) and asks the seller of the lot for a copy of the disclosure documents.
- (8) The seller is taken to have given the buyer the disclosure documents only if, before the contract for the sale of the lot is signed by the buyer, the seller gives the buyer a copy of the disclosure documents in hard copy or electronic form.
- (9) In this section—

consent, to disclosure documents being sent to an electronic address—

- (a) includes consent that can reasonably be inferred from the conduct of the buyer of the lot; and
- (b) does not include consent given subject to conditions unless the conditions are complied with.

103 Giving of disclosure documents to buyer who is not registered as bidder until after start of auction

- (1) This section applies if—
 - (a) a lot is sold by auction; and
 - (b) the buyer of the lot was not registered as a bidder until after the start of the auction; and
 - (c) the buyer of the lot was not given the disclosure documents under section 101(1) before the start of the auction.
- (2) The seller is taken to have given the buyer the disclosure documents for the lot before the completion of the auction if—
 - (a) for an auction conducted in person, either of the following documents was displayed at the place of the auction from the start of the auction until the completion of the auction—
 - (i) a physical copy of the disclosure documents;
 - (ii) a physical document stating the disclosure documents could be viewed by using a stated electronic link; or
 - (b) for an auction conducted electronically, either of the following documents was made available in the same electronic medium being used to conduct the auction from the start of the auction until the completion of the auction—
 - (i) a copy of the disclosure documents;

- (ii) a document stating the disclosure documents could be viewed, and a copy obtained, by using a stated electronic link.
- (3) However, if subsection (2)(a)(ii) applies and the buyer of the lot asks the seller of the lot for a physical copy of the disclosure documents, the seller is taken to have given the buyer the disclosure documents for the lot before the completion of the auction only if the seller—
 - (a) gives the buyer a physical copy of the disclosure documents; or
 - (b) displays at the place of auction a physical copy of the disclosure documents.
- (4) For subsections (2)(a)(ii) and (b)(ii), the buyer of the lot is taken to have received the disclosure documents only if, by using the stated electronic link, the buyer would have been able to view and obtain a copy of the disclosure documents for the period—
 - (a) starting at the time the document containing the electronic link was displayed or sent; and
 - (b) ending at the completion of the auction.
- (5) Subsection (4) applies whether or not the buyer of the lot used the electronic link.

Subdivision 3 Termination by buyer

104 Buyer may terminate contract if seller fails to disclose or makes inaccurate disclosure

- (1) This section applies if—
 - (a) the seller of a lot fails to give the buyer of the lot a disclosure statement for, or prescribed certificate applicable to, the lot before the contract for the sale of the lot is signed by the buyer of the lot; or

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- (b) the seller of a lot gives the buyer of the lot a disclosure statement for, or prescribed certificate applicable to, the lot before the contract for the sale of the lot is signed by the buyer of the lot and all of the following apply—
- (i) the statement or certificate is inaccurate or incomplete in relation to a material matter affecting the lot at the time it is given to the buyer;
 - (ii) at the time the contract is signed by the buyer, the buyer is not aware of the correct state of affairs concerning the matter;
 - (iii) if the buyer had been aware of the correct state of affairs concerning the matter, the buyer would not have signed the contract.
- (2) The buyer of the lot may terminate the contract for the sale of the lot by giving a notice (a *termination notice*) to the seller terminating the contract.
- (3) The termination notice may be given at any time before settlement of the contract for the sale of the lot.
- (4) However, subsection (2) does not apply if—
- (a) the seller's failure to give the disclosure statement or prescribed certificate, or the giving of the inaccurate or incomplete statement or certificate, is also a failure to comply with another Act; and
 - (b) the other Act provides a consequence to the seller for the failure, or for the giving of the inaccurate or incomplete statement or certificate, including, for example, a remedy to the buyer.

Example of a consequence to the seller—

- 1 a requirement for the seller to remedy the failure or the inaccurate or incomplete statement or certificate

Examples of a remedy to the buyer—

- 1 the contract of sale is of no effect
- 2 the buyer may terminate the contract of sale

- 3 the seller is taken to have given the buyer a contractual warranty about a particular matter
- (5) For subsection (4)(b), the other Act is taken not to provide a consequence to the seller for the failure, or for the giving of the inaccurate or incomplete statement or certificate, only because the failure, or the giving of the inaccurate or incomplete statement or certificate, is an offence under that Act.
- (6) In this section—
- material matter*, affecting a lot, does not include a matter prescribed by regulation not to be a material matter for this section.

105 Seller must repay amounts to buyer on termination

- (1) This section applies if a buyer of a lot terminates a contract for the sale of the lot under section 104.
- (2) The seller of the lot must, within 14 days after the termination, repay to the buyer—
- (a) any amount paid, towards the purchase of the lot, to—
- (i) the seller or the seller’s agent; or
- (ii) another entity to whom the amount is paid under the contract; and
- (b) any interest that accrued on the amount while it was held by the seller, seller’s agent or other entity.
- (3) The buyer may recover an amount repayable under subsection (2) as a debt.
- (4) To remove any doubt, it is declared that the seller of a lot is not required to repay an amount that is collateral to the purchase of the lot and for which the buyer receives consideration separate to the purchase.

Examples of amounts—

- 1 occupation rent

2 contribution for rates and maintenance

106 No other remedy if prescribed certificate contains inaccurate information given by body corporate or other entity

- (1) This section applies if—
- (a) the seller of a lot gives the buyer of the lot a prescribed certificate applicable to the lot; and
 - (b) the certificate contains a true and complete copy of information given to the seller by a body corporate or other entity; and
 - (c) the information given to the seller by the body corporate or other entity is inaccurate.

- (2) The buyer's sole remedy against the seller in relation to the inaccurate information is under this division.

Note—

See section 104.

- (3) To remove any doubt, it is declared that a reference in subsection (1) to information given to a seller by a body corporate includes a reference to information given to a seller by a body corporate manager or another person who is authorised to give the information for the body corporate.
- (4) This section does not limit the *Body Corporate and Community Management Act 1997*, chapter 5, part 3.
- (5) In this section—

body corporate means—

- (a) a body corporate created under the *Body Corporate and Community Management Act 1997* for a community titles scheme; or
- (b) a body corporate under the *Building Units and Group Titles Act 1980*, section 7(1).

body corporate manager means—

- (a) a body corporate manager under the *Body Corporate and Community Management Act 1997*, section 14 for a community titles scheme; or
- (b) a body corporate manager under the *Building Units and Group Titles Act 1980*, section 7(1).

Subdivision 4 Miscellaneous matters

107 Original owner of lot in community titles scheme must give statement describing power of attorney

- (1) This section applies in relation to a contract for the sale of a lot included in a community titles scheme if—
 - (a) the seller is an original owner for the scheme; and
 - (b) the buyer gives the seller a power of attorney to act for the buyer.
- (2) The power of attorney may be exercised only if, before the power is given, the seller gives the buyer a statement that includes a detailed description of the circumstances in which the power may be exercised.
- (3) The power of attorney may be exercised only in ways, and only for purposes, disclosed in the statement.
- (4) The power of attorney expires 1 year after it is given, unless it expires earlier other than under this subsection.
- (5) In this section—

original owner, for a community titles scheme, means an original owner for the scheme under the *Body Corporate and Community Management Act 1997*, section 13.

Part 8 Mortgages

Division 1 Preliminary

108 Definition for part

In this part—

term, to the extent the context permits, includes agreement, condition and covenant.

109 Application of part

- (1) This part applies to a mortgage over land subject to any of the following Acts—
 - (a) the *Land Act 1994*;
 - (b) the *Land Title Act 1994*;
 - (c) the *Housing Act 2003*;
 - (d) a Resource Act;
 - (e) another Act.
- (2) Subject to this Act or another Act, this part also applies to a mortgage over the following property—
 - (a) land other than land mentioned in subsection (1);
 - (b) property other than land.

Division 2 General rules

110 Variation of mortgage

- (1) A mortgage over land evidenced by an instrument of mortgage may be varied by an instrument of variation.
- (2) The instrument of variation may do any of the following—

- (a) increase or reduce the rate of interest payable in relation to the debt or obligation secured by the mortgage;
 - (b) increase or reduce the amount secured by the mortgage;
 - (c) shorten, extend or renew the term of the mortgage;
 - (d) vary a term of the instrument of mortgage.
- (3) An instrument of variation relating to a mortgage registered under the *Land Act 1994* may be registered under section 343 of that Act if it complies with the requirements of that Act relating to registration.
- (4) An instrument of variation relating to land subject to the *Land Title Act 1994* may be registered under that Act if it complies with the requirements of that Act relating to registration.
- (5) This section does not limit or otherwise affect a power of, or procedure for, variation or amendment of a mortgage under another law.

111 Effect of advance out of joint account

- (1) This section applies in relation to—
- (a) a mortgage under which an amount is expressed to be advanced by 2 or more persons (the *mortgagees*) out of money belonging to them on a joint account; or
 - (b) a mortgage to 2 or more persons (also the *mortgagees*) jointly.
- (2) An amount owing under the mortgage belongs to the mortgagees on a joint account.
- (3) The receipt, for an amount paid under the mortgage, given in writing by the survivors or last survivor of the mortgagees is a complete discharge for the amount, despite any notice to the mortgagor of a severance of the joint account.
- (4) This section applies subject to any agreement to the contrary.
- (5) In this section—
mortgage includes—

- (a) an obligation to pay money; and
- (b) a transfer of a mortgage; and
- (c) a transfer of an obligation to pay money.

112 Mortgages lodged electronically

- (1) This section applies in relation to a mortgage under this Act or another law if—
 - (a) the mortgage is lodged under the Electronic Conveyancing National Law (Queensland), section 7; and
 - (b) the mortgagee holds a document that grants a mortgage by the mortgagor that—
 - (i) is on the same terms as the lodged mortgage; and
 - (ii) complies with section 8.
- (2) If the mortgage is required to be given, produced or used for any purpose, the document mentioned in subsection (1)(b) may be—
 - (a) given, produced or used for the purpose; and
 - (b) relied on as evidence of the mortgage.
- (3) Subsection (2) applies whether or not the document mentioned in subsection (1)(b)—
 - (a) was signed by or for the mortgagor or mortgagee in the presence of a witness; or
 - (b) was electronically signed by or for the mortgagor or mortgagee.

Division 3 Powers and rights of mortgagees

113 Implied powers of mortgagee

- (1) A mortgagee under a mortgage over land, or over land and other property, has the following powers—
 - (a) a power to sell, or concur with another seller in selling, or bid at an auction of, the mortgaged property, or any part of the mortgaged property, on terms the mortgagee considers appropriate;
 - (b) a power to insure the mortgaged property, or any part of the mortgaged property, against loss or damage;
 - (c) a power to appoint a receiver of the mortgaged property, or any part of the mortgaged property;
 - (d) a power to grant an easement, right or privilege in relation to the mortgaged property, or any part of the mortgaged property;
 - (e) a power, if the mortgagee is in possession, to—
 - (i) cut and sell timber on the mortgaged property, or any part of the mortgaged property; or
 - (ii) enter into a contract for the cutting and selling of timber on the mortgaged property, or any part of the mortgaged property, provided the contract is to be completed within 12 months after the contract is made;
 - (f) a power to sell any mines or minerals apart from the surface of the mortgaged property, or any part of the mortgaged property, to the extent the mines or minerals are not vested in the State;
 - (g) a power to do whatever is necessary or convenient in relation to the exercise of a power under paragraphs (a) to (f).
- (2) A power under subsection (1) takes effect as a term of the mortgage.

- (3) If a mortgagee exercises a power under subsection (1)(b), the premiums paid for the insurance are a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money.
- (4) This section applies subject to any agreement to the contrary.
- (5) To remove any doubt, it is declared that the power to sell land under subsection (1)(a) includes—
 - (a) the power to vary or rescind a contract for the sale of the land; and
 - (b) the power to sell a fixture on the land.
- (6) In this section—

timber does not include trees for shelter or ornament.

114 Restriction on exercise of power of sale

- (1) A mortgagee under a mortgage over property must not exercise a power to sell the property unless and until—
 - (a) a default has happened under the mortgage; and
 - (b) the mortgagee has given the mortgagor a notice that—
 - (i) states the nature of the default; and
 - (ii) requires the default to be remedied within 30 days after the notice is given to the mortgagor; and

Note—

If the chief executive has approved a form for this paragraph under section 234, the notice may, but need not, be in the approved form.

 - (c) the default has not been remedied within the period mentioned in paragraph (b)(ii).
- (2) This section applies despite any agreement to the contrary.
- (3) This section does not apply to the exercise by a mortgagee of a power of sale given under the *Land Act 1994*.

115 Power of sale if disclaimer of onerous property

- (1) This section applies if—
 - (a) a trustee in bankruptcy disclaims under the *Bankruptcy Act 1966* (Cwlth), section 133(1) freehold land that is subject to a registered mortgage; and
 - (b) notice of the disclaimer is given under the *Bankruptcy Act 1966* (Cwlth), section 133(3).
- (2) Also, this section applies if—
 - (a) a liquidator disclaims under the Corporations Act, section 568(1) freehold land that is subject to a registered mortgage; and
 - (b) notice of the disclaimer is given to each person who appears to the liquidator to have, or to claim to have, an interest in the property under the Corporations Act, section 568A; and
 - (c) the disclaimer takes effect under the Corporations Act, section 568C.
- (3) Despite the disclaimer, the mortgagee under the registered mortgage may exercise a power to sell the land if—
 - (a) the mortgagee has given a notice in the approved form to each person who appears to the mortgagee to be an interested person for the land stating—
 - (i) the property has been disclaimed by a trustee in bankruptcy under the *Bankruptcy Act 1966* (Cwlth) or by a liquidator under the Corporations Act; and
 - (ii) the mortgagee intends to exercise a power of sale in relation to the land on or after a day (the ***notified day***) at least 30 days after the day the notice is given; and
 - (b) on the day, on or after the notified day, that the power to sell is exercised—
 - (i) any application under the *Bankruptcy Act 1966* (Cwlth), section 133(9) or the Corporations Act,

section 568E or 568F in relation to the land has been finally dealt with or withdrawn; and

- (ii) no order, under the *Bankruptcy Act 1966* (Cwlth), section 133(9) or the Corporations Act, section 568F, vesting the land in another person, has been made.
- (4) The mortgagee may exercise a power to sell the land under subsection (3) even if the mortgagee has not complied with section 114.
- (5) In this section—
- interested person*, for land, means—
- (a) the registrar; or
 - (b) a person who has an interest in the land.

116 Duty to sell at market value

- (1) This section applies if a mortgagee exercises a power of sale given under an instrument of mortgage, or this Act or another Act, in relation to property.
- (2) The mortgagee must take reasonable care to ensure the property is sold at the market value of the property.
- (3) Also, if the mortgage is a prescribed mortgage, the mortgagee must, unless the mortgagee has a reasonable excuse—
 - (a) adequately advertise the sale; and
 - (b) obtain reliable evidence of the property's value; and
 - (c) maintain the property, including, for example, by undertaking reasonable repairs; and
 - (d) sell the property by auction, unless it is appropriate to sell it in another way; and
 - (e) do anything else prescribed by regulation.

Maximum penalty—

- (a) if the contravention relates only to paragraph (e)—20 penalty units; or
 - (b) otherwise—200 penalty units.
- (4) Within 28 days after the sale of the property, the mortgagee must give the mortgagor a notice in the approved form about the sale, unless the mortgagee has a reasonable excuse.

Maximum penalty—2 penalty units.

- (5) This section applies despite any agreement to the contrary.
- (6) This section does not limit or otherwise affect a law relating to the duty of a mortgagee to account to a mortgagor.
- (7) Section 113(1)(a), 119(4) or 123(2) do not limit or otherwise affect a duty imposed on a mortgagee under this section.
- (8) In this section—

mortgagee includes a person exercising a power of sale under a mortgage, including, for example, a receiver.

prescribed mortgage means a mortgage of a type prescribed by regulation.

117 Protection of buyer

- (1) This section applies if a mortgagee exercises a power of sale given under an instrument of mortgage, or this Act or another Act, in relation to property.
- (2) The buyer—
 - (a) is not answerable for the loss, misapplication or non-application of the purchase money paid for the property; and
 - (b) need not inquire whether the power of sale was properly exercised, including, for example, whether notice of the sale was given, or leave of the court, if required, was obtained.
- (3) A person who incurs loss or damage because of a breach of the mortgagee's duty under section 116, or an unauthorised or

improper exercise of the mortgagee's power of sale, may claim compensation for the loss or damage from the mortgagee.

(4) In this section—

mortgagee includes a person exercising a power of sale under a mortgage, including, for example, a receiver.

118 Application of proceeds of sale

- (1) This section applies if a mortgagee exercises a power of sale given under an instrument of mortgage, or this Act or another Act, in relation to property.
- (2) The proceeds of sale must be held by the mortgagee in trust to be applied in payment of the following amounts in the following order—
 - (a) the reasonable expenses incurred in selling the property;
 - (b) the following amounts—
 - (i) if the property has only 1 mortgage—the principal amount, interest and other amounts owing under the mortgage;
 - (ii) if the property has more than 1 mortgage—the principal amount, interest and other amounts owing under the mortgages in order of the priority of the amounts;
 - (c) the balance to the owner of the property.
- (3) However, if the property is disclaimed property mentioned in section 115, the mortgagee must pay into court the balance mentioned in subsection (2)(c).
- (4) A person claiming an amount paid into court under subsection (3) may apply to the court for an order dealing with the amount.

119 Other matters relating to power of sale

- (1) This section applies to a power of sale given under this Act.
- (2) The power of sale may be exercised by a person entitled to receive and give a discharge for the mortgage.
- (3) The power of sale does not affect the right of foreclosure.
- (4) The person exercising the power of sale is not answerable for any involuntary loss relating to the exercise of the power.
- (5) The person exercising the power of sale under a mortgage may obtain from a person, other than a person having an interest in priority to the mortgage, any document that a purchaser under the power of sale would be entitled to obtain from the person.

120 Receipt of mortgagee sufficient discharge

- (1) The receipt in writing of a mortgagee is sufficient discharge for—
 - (a) any money arising from a sale under the power of sale given by this Act; or
 - (b) any money or securities comprised in, or arising under, the mortgagee's mortgage.
- (2) A person paying or transferring money or securities mentioned in subsection (1) is not required to—
 - (a) ask whether any money remains due under the mortgage; or
 - (b) ensure the money or securities are properly applied.
- (3) Money received by a mortgagee under the mortgagee's mortgage or from the proceeds of securities comprised in the mortgagee's mortgage must be applied as if—
 - (a) the money were money received by the mortgagee under a power of sale under this Act; and
 - (b) a reference in section 118(2)(a) to the reasonable expenses incurred in selling the property were a

reference to the reasonable expenses incurred in recovering and receiving the money or securities, or of converting the securities into money.

121 Insurance of mortgaged property

- (1) This section applies in relation to the insurance against loss or damage of mortgaged property.
- (2) The mortgagee may not insure the property for an amount of more than—
 - (a) if the mortgage states an amount for which the property may be insured—the amount stated; or
 - (b) otherwise—the lesser of the following amounts—
 - (i) the full insurable value of the buildings and improvements on the property;
 - (ii) the amount owing to the mortgagee under the mortgage.
- (3) Despite section 113(1)(b), the mortgagee may not insure the property if—
 - (a) the mortgage states that no insurance is required; or
 - (b) the mortgagor insures the property as required under the mortgage; or
 - (c) the mortgagor insures the property with the consent of the mortgagee.
- (4) Also, the mortgagee may not require a mortgagor to insure the property for the reinstatement value of the property if—
 - (a) it is not possible to effect the reinstatement of the property; or
 - (b) it is not lawful to use the property in the way in which the property was used before the reinstatement of the property.

122 Application of insurance money

- (1) This section applies if money is received under an insurance of mortgaged property.
- (2) The mortgagee may require that the money be applied towards reinstatement of the property.
- (3) The mortgagor may require that the money be applied towards reinstatement of the property only if—
 - (a) the mortgage expressly states the money may be applied towards reinstatement of the property; or
 - (b) the mortgagor insured the property for the reinstatement value of the property—
 - (i) to comply with a requirement under the mortgage to insure the property for the reinstatement value; or
 - (ii) with the consent of the mortgagee.
- (4) The mortgagee may require that the money be applied towards discharge of the mortgage money only if—
 - (a) the mortgagee insured the property; and
 - (b) the mortgage expressly states the money may be applied towards discharge of the mortgage money.
- (5) The right of the mortgagor under subsection (3) overrides any right of the mortgagee under subsection (4).
- (6) This section applies despite any agreement to the contrary.
- (7) In this section—

reinstatement includes replacement.

123 Appointment of receiver

- (1) This section applies if a mortgagee under a mortgage over property is entitled to take or enter into possession of the property.

- (2) The mortgagee may appoint an appropriately qualified person as receiver of the property.
- (3) The appointment must be in the approved form.
- (4) The receiver is the agent of the mortgagor.
- (5) The receiver may take or enter into possession of the property.
- (6) As soon as practicable after taking or entering into possession of the property, the receiver must give a receipt for the property to the person from whom the property was taken or who held possession of the property.
- (7) The receiver may take or enter into possession of the property despite a lien or other security over the property claimed by another person.
- (8) However, the taking or entry into possession does not affect the other person's claim to the lien or other security against a person other than the receiver.
- (9) The receiver may deal with the property in the same way as the mortgagor may have lawfully dealt with the property if the receiver had not taken or entered into possession of the property, including, for example, claiming or receiving an amount owing in relation to the property.
- (10) The receiver may insure the property, and deal with money received under an insurance of the property, to the extent the mortgagee is authorised under section 121 to insure the property or under section 122 to deal with the money.
- (11) The receiver is entitled to remuneration—
 - (a) if an amount of remuneration, of not more than 5% of the gross amount of all money received by the receiver, is stated in the appointment—in the amount stated in the appointment; or
 - (b) if no amount of remuneration is stated in the appointment—in the amount of 5% of the gross amount of all money received by the receiver; or

- (c) if the receiver makes an application to the court to decide the amount of remuneration—in the amount decided by the court.
- (12) The receiver must apply money received by the receiver in payment of the following amounts in the following order—
- (a) rents, taxes, rates, and outgoings relating to the property;
 - (b) amounts owing on other mortgages over the property having priority to the mortgage, including, for example, instalments of the principal amount, and interest on the principal amount, owing under those mortgages;
 - (c) the receiver’s remuneration under subsection (11);
 - (d) premiums for insurance of the property under section 121, if any;
 - (e) repairs of the property authorised by the mortgagee, if any;
 - (f) interest on the principal amount owing under the mortgage;
 - (g) the principal amount owing under the mortgage, if authorised by the mortgagee;
 - (h) amounts owing under other mortgages over the property;
 - (i) the balance to the owner of the property.
- (13) However, if the property is disclaimed property mentioned in section 115, the mortgagee must pay into court the balance mentioned in subsection (12)(i).
- (14) A person claiming an amount paid into court under subsection (13) may apply to the court for an order dealing with the amount.
- (15) In this section—
- remuneration** includes costs, charges, expenses and commission.

124 Judgment debt does not permit seizure

- (1) This section applies if a court gives judgment to a claimant for the payment of a debt secured by a mortgage over property.
- (2) The interest of the mortgagor in the property, or any other property over which the mortgagor has granted a mortgage to the claimant, may not be taken in execution of the judgment.
- (3) This section applies despite any agreement to the contrary.
- (4) This section does not limit or otherwise affect a power of a mortgagee under section 113(1)(a).
- (5) In this section—
debt includes a liquidated demand.

125 Subsequent mortgage does not affect first mortgage

- (1) A mortgagor under a mortgage over property (the *first mortgage*) may grant a second or subsequent mortgage over the property.
- (2) The granting of the second or subsequent mortgage does not—
 - (a) constitute a breach of a term of, or proviso for re-entry contained in, the first mortgage or second or subsequent mortgage; or
 - (b) occasion any forfeiture or penalty; or
 - (c) make payable or accelerate the time for payment of an amount that, if the second or subsequent mortgage had not been granted, would not have been payable or would not have been payable at that time.
- (3) This section applies despite any agreement to the contrary.

126 When further advance ranks in priority to subsequent mortgage

- (1) A mortgagee (the *prior mortgagee*) may make a further advance to rank in priority to a subsequent mortgage granted by the mortgagor to another person (the *subsequent mortgagee*) only if—
 - (a) the subsequent mortgagee agrees to the further advance; or
 - (b) the prior mortgagee has no actual notice, when the further advance is made, of the mortgage to the subsequent mortgagee; or
 - (c) the prior mortgagee is required under the terms of the mortgage, immediately before the creation of the subsequent mortgage, to make the further advance.
- (2) This section does not affect the right of the prior mortgagee to rank in priority to a subsequent mortgagee in relation to expenses reasonably incurred in preserving the mortgaged property.
- (3) For subsection (1)(b), and despite any other Act, the registration of the subsequent mortgage is not of itself actual notice to the prior mortgagee of the subsequent mortgage.

Division 4 Obligations and rights of mortgagors

127 Contracting out prohibited

This division, other than section 128, applies despite any agreement to the contrary.

128 Implied obligations of mortgagor

- (1) The mortgagor under a mortgage over property has the following obligations—

- (a) to pay the principal amount and interest secured by the mortgage according to the terms of the mortgage without deduction;
 - (b) if the property is land—
 - (i) to keep buildings and other improvements on the land in as good and substantial repair as the buildings and other improvements were in when the mortgage was entered into; and
 - (ii) to permit the mortgagee, when reasonably convenient, to enter the land to view and inspect the state of repair of buildings and other improvements on the land.
- (2) An obligation under subsection (1) takes effect as a term of the mortgage.
 - (3) If the mortgage is under a deed, an obligation under subsection (1) takes effect as a covenant by the mortgagor.
 - (4) This section applies subject to any agreement to the contrary.

129 Right to obtain copy of documents in possession of mortgagee

- (1) A mortgagor under a mortgage over property may ask the mortgagee to give the mortgagor a copy of, or allow the mortgagor to inspect at a reasonable time, each document in the possession of the mortgagee that relates to the property.
- (2) The mortgagee must comply with the request if the mortgagor pays the mortgagee's reasonable costs and expenses of complying with the request.

130 Right to relief against payment of accelerated sum

- (1) This section applies in relation to a mortgage over land if—
 - (a) the mortgagor defaults under the mortgage—

- (i) in payment of an instalment of the principal amount or interest secured by the mortgage; or
 - (ii) in the performance of an obligation or covenant under the mortgage; and
 - (b) under the terms of the mortgage the whole or part of the principal amount or interest secured by the mortgage other than the instalment mentioned in subsection (1)(a)(i) (the *accelerated sum*) is, or may become, payable because of—
 - (i) the default; or
 - (ii) the exercise on the default of an option or election under the mortgage.
- (2) The mortgagor can not be required to pay the accelerated sum if the mortgagor, before the mortgagee exercises a power of sale or starts a proceeding to enforce the mortgagee's rights—
- (a) for a default mentioned in subsection (1)(a)(i)—pays to the mortgagee—
 - (i) the amount of the instalment or interest; and
 - (ii) the reasonable expenses, if any, incurred by the mortgagee because of the default; or
 - (b) for a default mentioned in subsection (1)(a)(ii)—performs the obligation or covenant.
- (3) The mortgagor may, in a proceeding brought by the mortgagee to enforce the mortgagee's rights or in a proceeding brought by the mortgagor, apply to the court for an order for relief against payment of the accelerated sum (a *relief order*).
- (4) The court may make the relief order if the court is satisfied that making the order is appropriate in the circumstances.
- (5) In considering whether or not to make the relief order, the court must take into account—
- (a) the conduct of the parties to the proceeding; and

- (b) anything else the court considers relevant.
- (6) The court may also make any other order it considers appropriate, including, for example—
 - (a) an order for the stay of a proceeding brought by the mortgagee; or
 - (b) an order removing a stay of a proceeding if the mortgagor fails to comply with an undertaking given to the court.

131 Right to relief against payment of overdue principal amount if payment of interest accepted

- (1) This section applies in relation to a mortgage over land if—
 - (a) the term of the mortgage has expired; and
 - (b) the principal amount secured by the mortgage has not been repaid; and
 - (c) the mortgagee has, after the end of the term, accepted interest on the principal amount, other than by entering into possession of the property or appointing a receiver, for at least 3 months after the end of the term; and
 - (d) the mortgagor has performed all obligations or covenants under the mortgage other than the obligation or covenant to repay the principal amount on the due date.
- (2) The mortgagee must not call up as payable the principal amount unless—
 - (a) the mortgagee has given the mortgagor notice of the mortgagee's intention to call up the amount at the end of the period stated in the notice (the *notice period*); and
 - (b) the notice period has expired.
- (3) The notice period must be at least 3 months starting on the day the mortgagee gives the notice to the mortgagor.
- (4) In this section—

term, of a mortgage, includes a period for which the original term has been renewed or extended.

132 Right to require transfer of mortgage instead of discharge

- (1) This section applies if a mortgagor is entitled to discharge a mortgage over property.
- (2) The mortgagor may require the mortgagee (the *first mortgagee*), instead of discharging the mortgage, to transfer the mortgage to another person as directed by the mortgagor.
- (3) Also, if the property is subject to another mortgage, the mortgagee under that mortgage (the *subsequent mortgagee*), may require the first mortgagee, instead of discharging the mortgage, to transfer the mortgage to another person as directed by the subsequent mortgagee.
- (4) The transfer is on the terms on which the first mortgagee would be required to discharge the mortgage.
- (5) However, a requirement may not be made under subsection (2) or (3) if—
 - (a) a mortgagee is in possession of the property; or
 - (b) the mortgage contains an enforceable condition in favour of a mortgagee in restraint of the trade or business of the mortgagor or any other collateral benefit or advantage in favour of a mortgagee.
- (6) If a requirement of a mortgagor under subsection (2) is inconsistent with a requirement of a subsequent mortgagee under subsection (3), the requirement of the subsequent mortgagee under subsection (3) prevails.
- (7) Also, if more than 1 requirement of a subsequent mortgagee is made under subsection (3), the requirement of the subsequent mortgagee under whichever of the subsequent mortgages is earlier prevails.

133 Abolition of consolidation of mortgages

A mortgagor seeking to discharge a mortgage over property (the *primary mortgage*) is entitled to the discharge without paying any money due under another mortgage made by the mortgagor over property other than the property the subject of the primary mortgage.

Division 5 Proceedings

134 Court may order sale of mortgaged property in proceeding for redemption or foreclosure

- (1) The court may order the sale of mortgaged property if a person entitled to redemption of the mortgaged property brings a proceeding for either or both of the following in relation to the property—
 - (a) sale;
 - (b) redemption.
- (2) Also, the court may order the sale of mortgaged property if—
 - (a) a person brings a proceeding for any of the following in relation to the property—
 - (i) sale;
 - (ii) redemption;
 - (iii) foreclosure;
 - (iv) the raising or payment in any way of mortgage money; and
 - (b) the mortgagee, or another person interested in the mortgage money or right of redemption, requests the sale of the property.
- (3) Subsection (2) applies even if—
 - (a) another person dissents; or

- (b) the mortgagee, or another person interested in the mortgage money or right of redemption, does not appear in the proceeding.
- (4) In making an order under subsection (2), the court is not required to allow time for redemption or for payment of any mortgage money.
- (5) Without limiting subsection (1) or (2), the court may also make any of the following orders—
 - (a) an order that the mortgagee deposit in court a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the terms of sale;
 - (b) an order giving the conduct of the sale to a respondent in the proceeding;
 - (c) an order vesting the mortgaged property in a buyer;
 - (d) for an equitable mortgage—an order creating and vesting a legal interest in the mortgagee to enable the mortgagee to carry out the sale as if the mortgage were a legal mortgage.
- (6) The court may order a sale of mortgaged property under subsection (1) or (2) without previously determining the priorities of mortgages.
- (7) In this section—

mortgaged property includes the interest the mortgagee would have power to transfer if the power of sale under this Act were applicable.

135 Realisation of equitable mortgage of land

- (1) This section applies if the court makes an order for sale in relation to an equitable mortgage of land.
- (2) Without limiting section 134 or another power of the court, the court may make any of the following orders—

- (a) an order creating and vesting a legal interest in the mortgagee to enable the mortgagee to carry out the sale as if the equitable mortgage were a legal mortgage;
 - (b) an order appointing a person to conduct the sale as if the equitable mortgage were a legal mortgage;
 - (c) an order vesting the land in a buyer as if the equitable mortgage were a legal mortgage.
- (3) An order made by a court in relation to an equitable mortgage of land is without prejudice to any mortgage having priority to the equitable mortgage unless the mortgagee consents to the sale.

136 Facilitation of redemption in case of absent or unknown mortgagee

- (1) This section applies if land is subject to a mortgage and the person entitled to receive, or alleged to have received, payment of any money secured by the mortgage—
- (a) is out of the jurisdiction; or
 - (b) is not known or can not be found; or
 - (c) is deceased and no personal representative is administering the deceased person's estate; or
 - (d) is uncertain in identity.
- (2) The court may, on the application of the person entitled to redeem the land, order—
- (a) the amount of the debt secured by the mortgage to be determined in the way the court considers appropriate; and
 - (b) the amount of any outstanding debt under the mortgage, if any, to be paid into court.
- (3) If an order is made under subsection (2), and the person entitled to redeem the land pays the amount of any outstanding debt under the mortgage into court, the registrar of the court must give the person a certificate stating that—

- (a) an order has been made under subsection (2); and
 - (b) no amount remains payable under the mortgage.
- (4) The certificate operates to discharge the mortgage debt.
- (5) However, as between the mortgagor and another person entitled to the mortgage debt, any amount shown by the other person entitled to the mortgage debt to have been in fact due or payable over the amount determined by the court under subsection (2)(a), or paid into court under subsection (2)(b), continues to be a debt due under the mortgage.
- (6) If an amount is paid into court under subsection (2)(b), the court must, on the application of the person entitled to the amount, order the amount to be paid to that person.
- (7) However, subsection (6) applies only if—
- (a) an instrument releasing the mortgage, capable of registration under the *Land Act 1994*, section 342 or the *Land Title Act 1994*, section 81, is given to the person who paid the amount into court; or
 - (b) the court is satisfied the mortgage has been discharged.
- (8) The certificate mentioned in subsection (3)—
- (a) for a mortgage registered under the *Land Act 1994*—is capable of registration under the *Land Act 1994*, section 342 as a release of mortgage; and
 - (b) for a mortgage registered under the *Land Title Act 1994*—is capable of registration under the *Land Title Act 1994*, section 81 as an instrument releasing the mortgage; and
 - (c) for a mortgage under a Resource Act or another Act—has effect under that Act as a document signed by the mortgagee to the effect that the debt secured by the mortgage has been paid.
- (9) For the purpose of effecting registration under subsection (8)(b), the registrar may dispense with the

publication of any notice or the doing of any other act required under the *Land Title Act 1994*.

- (10) This section does not limit or otherwise affect the *Public Trustee Act 1978*, section 61.

Part 9 Leases

Division 1 Preliminary

137 Definition for part

In this part—

term, to the extent the context permits, includes agreement, condition and covenant.

Division 2 General rules

138 Lease for term of years may take effect without entry into possession

- (1) A lease of land for a term of years is capable of taking effect at law or in equity from the start of the term, without entry into possession of the land.
- (2) This section—
 - (a) does not affect the right of a person to recover rent or to take advantage of a term of the lease; and
 - (b) does not limit or otherwise affect section 10(2).
- (3) In this section—

term of years includes a term for less than a year, or for 1 or more years or from year to year.

139 Implied terms

- (1) A lease of land includes the standard terms.
- (2) This section is subject to—
 - (a) this Act and any other Act; and
 - (b) any agreement to the contrary.
- (3) In this section—

standard terms means the terms stated in schedule 1.

Division 3 Transfer of reversion of lease

140 Effect of transfer of reversion of lease by lessor

- (1) This section applies in relation to a lease of land if the lessor transfers the reversion of the lease to another person (the *transferee*).
- (2) Each right conferred under the terms of the lease on the lessor—
 - (a) runs with the reversion of the lease; and
 - (b) may be exercised by the transferee, whether or not the lessee has acknowledged that person as the lessor of the land.
- (3) Each obligation imposed under the terms of the lease on the lessor—
 - (a) runs with the reversion of the lease; and
 - (b) may be enforced by the lessee against the transferee.
- (4) Also, the transferee is—
 - (a) bound by each term of the lease to the extent the lessor was bound by the term immediately before the transfer; and

- (b) entitled to the benefit of each term of the lease to the extent the lessor was entitled to the benefit of the term immediately before the transfer.
- (5) Subsection (4) applies whether or not the term—
 - (a) touches and concerns the land the subject of the lease; or
 - (b) is express, implied or imposed by law.
- (6) Subsections (2), (3) and (4) do not apply in relation to a term of the lease to the extent—
 - (a) the lease expressly provides the term is personal; or
 - (b) the lease expressly excludes the operation of the subsection in relation to the term; or
 - (c) the lessor and the transferee expressly agree in writing that the benefit of the term remains with the lessor.
- (7) Also, the lessor remains liable for a breach of a term of the lease committed by the lessor.
- (8) If a term of the lease restricts the use of the land, the reference to the transferee in subsection (4) also includes a reference to any person who is the owner of the land to which the term relates.
- (9) This section applies despite the *Land Title Act 1994*, section 62.
- (10) In this section—

right, conferred under the terms of a lease, includes a right to—

 - (a) receive the rent payable under the lease; and
 - (b) enforce a term of the lease, whether or not the subject matter of the term was in existence when the lease was made; and
 - (c) enforce a guarantee of the performance of a term mentioned in paragraph (b); and
 - (d) give a notice under the lease; and

- (e) take advantage of a term of the lease; and
- (f) re-enter, or apply for an order for possession of, the land; and
- (g) terminate the lease.

transfer, of a reversion of a lease, includes the passing of the reversion including by transmission.

141 Payment of rent or other amount without notice of transfer of reversion

- (1) This section applies in relation to a lease of land if—
 - (a) the lessor transfers the reversion of the lease to another person; and
 - (b) the lessee pays rent or another amount to the lessor, without actual notice of the transfer.
- (2) The lessee is discharged from liability to pay the rent or other amount to the extent the rent or other amount has been paid under subsection (1)(b).
- (3) For subsection (1)(b), and despite any other Act, the registration of the transfer of the reversion of the lease is not of itself actual notice to the lessee of the transfer.

Division 4 Dealings with leases

142 Effect of requirement in lease for consent of lessor to assign lease or take other action

- (1) This section applies if a lessee is required under a lease of land to obtain the lessor's consent to—
 - (a) assign the lease; or
 - (b) enter into a sublease; or
 - (c) part with or share possession of the leased premises; or

- (d) change the use of the leased premises from a use that is permitted under the lease; or
 - (e) create a mortgage over the lessee's interest in the land; or
 - (f) make an alteration or carry out works in relation to the leased premises; or
 - (g) act under paragraph (a), (b), (c), (d), (e) or (f) in relation to a part of the leased premises or for a period of the term of the lease.
- (2) The lessee may give the lessor a notice (a **proposal notice**), containing any information required under the lease, asking for consent.
- (3) The lessor must not unreasonably withhold consent.
- (4) If the lessor considers the information given in the proposal notice is not sufficient to enable the lessor to make a decision, the lessor may give the lessee a notice requiring the further information the lessor considers is required to make the decision.
- (5) The lessor must give the lessee a notice (the **decision notice**) stating the lessor's decision within 1 month after receiving full particulars of the lessee's proposal.
- (6) The decision notice must also state—
- (a) if the lessor gives consent—the conditions, if any, attached to the consent and the reasons for the conditions; and
 - (b) if the lessor withholds consent—the reasons for the decision.
- (7) The lessor and lessee may, within the period mentioned in subsection (5), agree to extend the period for the giving of the decision notice.
- (8) The lessee may apply to the court to make a decision about the lessee's proposal if—

- (a) the lessee believes the lessor has unreasonably withheld consent; or
 - (b) the lessee believes a condition attached to the lessor's consent is unreasonable, unnecessary or onerous; or
 - (c) the lessor fails to give the lessee a decision notice under subsection (5).
- (9) The court may hear and decide the application and make the orders it considers appropriate.
- (10) If the lessee makes an alteration or carries out work in relation to the leased premises without the consent of the lessor, the lessee must restore the premises to the condition the premises were in immediately before the alteration or the carrying out of the work.
- (11) This section applies despite any agreement to the contrary.

143 Effect of assignment of lease by lessee to assignee

- (1) This section applies in relation to a lease of land if the lessee assigns the lease to another person (the *assignee*).
- (2) On and from the assignment, the assignee is—
- (a) bound by each term of the lease to the extent the lessee was bound by the term immediately before the assignment; and
 - (b) entitled to the benefit of each term of the lease to the extent the lessee was entitled to the benefit of the term immediately before the assignment.
- (3) Subsection (2) applies whether or not the term—
- (a) touches and concerns the land the subject of the lease; or
 - (b) is express, implied or imposed by law.
- (4) Subsection (2) does not apply in relation to a term of the lease to the extent—
- (a) the lease expressly provides the term is personal; or

- (b) the lease expressly excludes the operation of subsection (2) in relation to the term; or
 - (c) the lessee and the assignee expressly agree in writing that the benefit of the term remains with the lessee and either—
 - (i) the benefit of the term accrued to the lessee before the assignment; or
 - (ii) the lessor consents to the benefit of the term remaining with the lessee.
- (5) If a term of the lease restricts the use of the land, the reference to the assignee in subsections (2) and (4) also includes a reference to any person who is the occupier of the land to which the term relates.
- (6) This section—
- (a) applies despite the *Land Title Act 1994*, section 62; and
 - (b) is subject to any agreement to the contrary; and
 - (c) does not limit or otherwise affect rights and liabilities that have accrued between the lessee and the lessor before the assignment.

144 Effect of assignment of lease by transferee to subsequent transferee

- (1) This section applies in relation to a lease of land if—
 - (a) the lessee assigns the lease to another person (the *assignee*); and
 - (b) after the assignment of the lease, the assignee assigns the lease to another person (the *subsequent assignee*).
- (2) The lessee, and any guarantor of the lessee, is released from liability to the lessor for a breach of the lease by the subsequent assignee.
- (3) Subsection (2) applies despite any agreement to the contrary.

145 Effect of surrender or merger of lease

- (1) This section applies in relation to a lease of land if—
 - (a) the lease is surrendered; or
 - (b) the lease is merged in another interest in the land, including, for example, a future interest.
- (2) The person entitled, on the surrender or merger, to the reversion of the lease has the same rights and obligations in relation to the lease as the person who, but for the surrender or merger, would have been entitled to the reversion.

146 Effect of reconfiguration of land

- (1) This section applies in relation to a lease of land if the land is reconfigured and 2 or more persons become entitled to the income of the land.
- (2) The rights and obligations under the lease—
 - (a) must be apportioned between the persons entitled to the land under the reconfiguration; and
 - (b) to the extent required by the apportionment under paragraph (a), are attached to the land under the reconfiguration and bind successors in title.
- (3) In this section—

reconfigure, land, includes subdivide, amalgamate, and reconfigure the boundaries of, the land.

147 Head lease may be surrendered and new head lease granted without affecting other rights and obligations

If a head lease is surrendered in order to be renewed, and another head lease (the *new head lease*) is granted during the term of a sublease and the parties to the surrendered head lease and the new head lease are the same—

- (a) the new head lease takes effect as if any sublease were surrendered; and

- (b) any sublease remains valid; and
- (c) the lessor under the new head lease, any parties to any sublease and any guarantor, have the same rights and obligations against each other as if the surrendered head lease had not been surrendered.

148 Involuntary transmission not breach of lease

- (1) This section applies if a term of a lease of land—
 - (a) prohibits the lessee from transferring the lease; or
 - (b) grants the lessee a right to transfer the lease with the consent of the lessor.
- (2) A transmission of the lease by the lessee does not cause a breach of the term of the lease.
- (3) This section applies despite any agreement to the contrary.

Division 5 Relief

Subdivision 1 Preliminary

149 Definition for division

In this division—

lease includes an agreement for a lease.

150 Application of division

- (1) This division applies to a lease of land other than any of the following leases—
 - (a) a housing lease;
 - (b) a residential tenancy;
 - (c) a resources lease;

- (d) a State land lease.
- (2) In relation to a lease of land of not more than 1 year, this division applies only in relation to—
 - (a) an option to renew the lease; or
 - (b) an option to purchase the reversion of the lease.

- (3) In this section—

housing lease—

- (a) means a lease of housing under the *Housing Act 2003*; and
- (b) does not include a sublease of a lease mentioned in paragraph (a).

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

resources lease—

- (a) means any of the following leases—
 - (i) a mining lease under the *Mineral Resources Act 1989*;
 - (ii) a petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004*;
 - (iii) a lease under the *Petroleum Act 1923*;
 - (iv) a geothermal production lease under the *Geothermal Energy Act 2010*;
 - (v) a GHG lease under the *Greenhouse Gas Storage Act 2009*; and
- (b) does not include a sublease of a lease mentioned in paragraph (a).

State land lease—

- (a) means a lease of land from the State under the *Land Act 1994*; and

- (b) does not include a sublease of a lease mentioned in paragraph (a).

151 Contracting out prohibited

This division applies despite any agreement to the contrary.

Subdivision 2 Relief against forfeiture for breach of term of lease

152 Definitions for subdivision

In this subdivision—

breach, of a term of a lease, includes the happening of an event of default that under the terms of the lease gives the lessor a right to forfeit the lease.

designated person, for a lease of land, means—

- (a) a mortgagee or receiver of a lessee's interest in the land; or
- (b) a guarantor under the lease; or
- (c) a sublessee under the lease; or
- (d) a mortgagee or receiver of a sublessee's interest in the land; or
- (e) if the lease has been assigned—an assignor under the lease, or a guarantor of an assignor, who has not been released from liability under the lease.

notice to remedy breach see section 153(1)(a).

reasonable compensation, for a breach of a term of a lease, means an amount in payment of reasonable costs and expenses reasonably incurred by the lessor in—

- (a) preparing and giving a notice to remedy breach in relation to the breach; or

- (b) obtaining legal or other professional advice about the nature and extent of the breach; or
- (c) doing any other reasonable thing in relation to the breach, including, for example, mitigating the loss or damage arising from the breach.

153 Lessor must give lessee notice to remedy breach

- (1) A lessor may exercise a right to re-enter land under a term of the lease for breach of a term of the lease only if—
 - (a) the lessor has given the lessee a notice in the approved form (a *notice to remedy breach*) stating—
 - (i) the nature and extent of the breach; and
 - (ii) if the breach is capable of being remedied by the lessee—
 - (A) that the lessee is required to remedy the breach; and
 - (B) a reasonable period within which the lessee is required to remedy the breach; and
 - (iii) if the lessor claims an amount of reasonable compensation for the breach—
 - (A) the amount claimed and how the amount is calculated; and
 - (B) a reasonable period within which the lessee is required to pay the amount; and
 - (iv) that the lessor intends to terminate the lease if the breach is not remedied, or the amount is not paid, within the reasonable period; and
 - (b) at the end of the reasonable period stated in the notice, the breach has not been remedied or the amount of reasonable compensation has not been paid.

- (2) For subsection (1)(a)(ii)(B) and (iii)(B), a period is reasonable only if it is reasonable having regard to all of the circumstances, including, for example—
 - (a) the nature and the extent of the breach; and
 - (b) for subsection (1)(a)(ii)(B)—the nature of the thing, if any, the lessee must do or stop doing to remedy the breach.

154 Lessor must give copy of notice to designated persons

- (1) If a lessor gives a notice to remedy breach to a lessee, the lessor must also give a copy of the notice to each designated person for the lease whose name and address is known to the lessor.
- (2) To remove any doubt, it is declared that the lessor's failure to comply with subsection (1) does not prevent the lessor from exercising a right to terminate the lease, re-enter land under a term of the lease, or make an application to the court for any form of relief in relation to the lease.

155 Acceptance of rent paid by lessee in possession not waiver of lessor's rights

- (1) This section applies if a lessor accepts rent, or another amount, after the lessor gives the lessee a notice to remedy breach.
- (2) The lessor's acceptance of the rent, or other amount, does not operate as a waiver of the lessor's right to forfeit the lease because of the breach.
- (3) Subsection (2) applies subject to any agreement to the contrary.

156 Notice to remedy breach not required if lessee has given up possession

- (1) Despite section 153, a lessor of land may exercise a right to re-enter the land under a term of the lease for breach of a term of the lease if the lessor reasonably believes the lessee has given up possession of the land.
- (2) A lessor exercising a right of re-entry under subsection (1) is not required to—
 - (a) give the lessee a notice to remedy breach; or
 - (b) apply to the court for recovery of possession of the land.
- (3) As soon as practicable after exercising a right of re-entry under subsection (1), the lessor must give each designated person for the lease whose name and address is known to the lessor a notice stating the lessor has exercised the right of re-entry.

157 How lessor may exercise right of re-entry

- (1) This section applies if a lessee of land fails to remedy a breach or pay an amount of reasonable compensation required under a notice to remedy breach given to the lessee.
- (2) The lessor may exercise a right to re-enter the land under a term of the lease for breach of a term of the lease by—
 - (a) peaceably re-entering the land; or
 - (b) if the lessor can not peaceably re-enter the land—making a written demand for possession of the land; or
 - (c) if the lessee refuses to give up possession of the land after a written demand under paragraph (b)—applying to the court for recovery of possession of the land.

158 Powers of court in making order for possession

- (1) This section applies if a lessor of land applies to the court for recovery of possession of the land in exercise of a right to forfeit the lease because of a breach by the lessee of a term of the lease.
- (2) The court may make any order that the nature of the case requires, including, for example, any of the following orders—
 - (a) an order for possession of the land;
 - (b) an order forfeiting the lease;
 - (c) an order that the lessee pay to the lessor an amount owed under the lease;
 - (d) an order that the lessee pay to the lessor an amount of reasonable compensation for the breach;
 - (e) an order imposing a condition on the lessee or lessor.

159 Lessor's claim for damages not affected

This subdivision does not limit or otherwise affect a claim by a lessor for damages for a breach of a term of the lease or another obligation owed by the lessee to the lessor.

160 Proceedings for relief against forfeiture

- (1) The lessee or a designated person for the lease may apply to the court for relief against the forfeiture, or proposed forfeiture, of the lease because of a breach by the lessee of a term of the lease.
- (2) The application may be—
 - (a) an originating process; or
 - (b) made in a proceeding brought by the lessor for recovery of possession of the land.

- (3) An application mentioned in subsection (2)(b) must be made—
 - (a) if the lessor has re-entered the land under section 156 or 157(2)(a)—within 1 month after the re-entry; or
 - (b) if the lessor has applied to the court for recovery of possession of the land—before an order for possession of the land is made by the court.
- (4) The court may extend the period in which the lessee or designated person may bring an application under subsection (3)(a) if the court considers it appropriate.

161 Application for relief against forfeiture not admission

- (1) An application under section 160 is not an admission by the lessee or designated person for the lease that—
 - (a) the lessee has breached a term of the lease; or
 - (b) the lessor has a right to forfeit the lease; or
 - (c) a notice to remedy breach has been given; or
 - (d) a period for remedying the breach has ended.
- (2) A court may order relief against the forfeiture, or proposed forfeiture, of a lease without deciding a matter mentioned in subsection (1).

162 Powers of court in making order for relief against forfeiture

- (1) This section applies if the lessee or a designated person for the lease applies under section 160 to the court.
- (2) The court may make any order that the nature of the case requires, including, for example, any of the following orders—
 - (a) an order for relief against the forfeiture, or proposed forfeiture, of the lease;

- (b) an order that the lessee pay to the lessor an amount owed under the lease;
 - (c) an order that the lessee pay to the lessor an amount of reasonable compensation for the breach;
 - (d) if the applicant is a sublessee—an order that the lessor enter into a lease of the land, or a part of the land, with the sublessee;
 - (e) an order imposing a condition on the lessee, lessor or designated person.
- (3) The court may make an order that the lessor enter into a lease of the land, or a part of the land, with a sublessee only if the lease—
- (a) starts on a day not earlier than—
 - (i) the day the lessor re-enters the land under section 156 or 157(2)(a); or
 - (ii) the day the lessor recovers possession of the land after making a written demand for possession of the land or under an order of the court; and
 - (b) ends on a day not later than the day the sublease would have ended but for the forfeiture of the lease.
- (4) In making an order under subsection (3), the court must take into account the terms of the sublease.

Subdivision 3 Relief against refusal to renew, or extend term of, or sell reversion of, lease

163 Definitions for subdivision

In this subdivision—

breach notice see section 164(2)(a).

designated person, for a lease of land, means a mortgagee or receiver of a lessee's interest in the land.

164 When lessor may refuse to renew, or extend term of, or sell reversion of, lease

- (1) This section applies to a lease of land if—
 - (a) the lessor has agreed in writing with the lessee that at or before the end of the term of the lease, the lessee has an option—
 - (i) to renew, or extend the term of, the lease in relation to all or part of the land; or
 - (ii) to purchase the reversion of the lease; and
 - (b) the exercise of the option is conditional on 1 or more of the following matters—
 - (i) the fulfilment by the lessee of a condition precedent to the exercise of the option;
 - (ii) the performance by the lessee of the terms of the lease;
 - (iii) the lessee giving a notice exercising the option (an *option notice*); and
 - (c) 1 or more of the following apply (each a *breach*)—
 - (i) for paragraph (b)(i)—the lessee has not fulfilled the condition precedent;
 - (ii) for paragraph (b)(ii)—the lessee has not performed the terms of the lease;
 - (iii) for paragraph (b)(iii)—the lessee has not complied with a formal requirement in relation to the giving of the option notice.
- (2) The lessor may refuse to renew, or extend the term of, or sell the reversion of, the lease, only if—
 - (a) the lessor gives the lessee a notice in the approved form (a *breach notice*) stating the following matters—

- (i) that the lessor intends to refuse to renew, or extend the term of, or sell the reversion of, the lease, because of 1 or more breaches;
 - (ii) the details of the breach or breaches;
 - (iii) that the lessee or a designated person for the lease may apply to the court for relief against the refusal;
 - (iv) that an application to the court for relief against the refusal must be made within 1 month after the lessee receives the breach notice;
 - (v) that the lessee should seek independent legal advice about the refusal and its implications; and
 - (b) the lessee or a designated person for the lease does not apply to the court under section 166 within 1 month after the lessor gives the lessee the breach notice.
- (3) The lessor must give the lessee the breach notice—
- (a) within 10 business days after the giving of the option notice, if the breach relied on in the breach notice happened on or before the giving of the option notice; or
 - (b) within 10 business days after the breach relied on in the breach notice, if the breach happened after the giving of the option notice.
- (4) In this section—
- formal requirement***, in relation to the giving of an option notice—
- (a) means a requirement under the lease about—
 - (i) the form of the notice; or
 - (ii) the way in which the notice is to be given; or
 - (iii) the person to whom the notice is to be given; and
 - (b) does not include a requirement under the lease about the period within which the notice is to be given.

165 Lessor must give copy of notice to designated persons

- (1) This section applies if a lessor gives a lessee a breach notice.
- (2) The lessor must also give a copy of the breach notice to each designated person for the lease whose name and address is known to the lessor.
- (3) To remove any doubt, it is declared that the lessor's failure to comply with subsection (2) does not limit or otherwise affect any right of the lessor to refuse to renew, or extend the term of, or sell the reversion of, the lease.

166 Proceedings for relief against refusal

- (1) The lessee or a designated person for the lease may apply to the court for relief against the refusal to renew, or extend the term of, or sell the reversion of, the lease, because of 1 or more breaches mentioned in section 164(1)(c).
- (2) The application may be—
 - (a) an originating process; or
 - (b) made in a proceeding brought by the lessor for recovery of possession of the land.
- (3) If the lessor gives the lessee a breach notice relying on 1 or more breaches mentioned in subsection (1), the lessee, or designated person for the lease, must make the application under subsection (1) within 1 month after the giving of the breach notice to the lessee.

167 Powers of court in making order for relief against refusal

- (1) This section applies if the lessee or a designated person for the lease applies to the court under section 166.
- (2) In deciding whether to give the relief, the court may consider anything the court considers relevant, including, for example—

- (a) the nature of the breach or breaches relied on in the breach notice; and
 - (b) the extent to which the lessor has been prejudiced by the breach or breaches relied on in the breach notice; and
 - (c) the conduct of the lessor and the lessee, whether before or after the giving of the breach notice; and
 - (d) the rights relating to the lease of persons other than the lessor and the lessee, including, for example, a designated person for the lease.
- (3) The court may make any order that the nature of the case requires, including, for example, any of the following orders—
- (a) an order that the lessor renew the lease;
 - (b) an order that the lessor sell the reversion of the lease;
 - (c) an order imposing a condition on the lessor, lessee or designated person for the lease.
- (4) If the lease ends before the court makes an order under this section, the lease is taken to continue on the same terms that were in effect immediately before the application was made until the court makes an order under this section.

Division 6 Apportionment of rent

168 Apportionment in respect of time

- (1) This section applies to a payment of rent under a lease in relation to a fixed or ascertainable period, whether or not the payment is reserved or made payable under a document.
- (2) The payment—
 - (a) is to be regarded as accruing from day to day; and
 - (b) is apportionable in respect of time in relation to both the liability to make, and the right to receive, the payment.

- (3) This section is subject to any agreement to the contrary.

169 Payment and recovery of apportioned part of rent

- (1) An apportioned part of rent is payable and recoverable—
- (a) for a continuing right to payment—only when the entire payment becomes payable and recoverable; or
 - (b) for a right to payment the continuing right to which has stopped for a reason, including, for example, the death of a person or the re-entry of land—only when the entire payment would have become payable and recoverable had the continuing right not stopped.
- (2) A person entitled to an apportioned part of rent—
- (a) has, when the entire payment becomes payable, the same rights and remedies for recovering the apportioned part as would have been available in relation to the entire payment; and
 - (b) must bear a proportionate part of any allowance which would have been given in relation to the entire payment.

Division 7 Termination of particular leases

170 Definitions for division

In this division—

lease terminable at will see section 172.

party, to a lease, means a lessor or lessee under the lease.

termination notice see section 173.

171 Contracting out permitted

This division applies subject to any agreement to the contrary.

172 Meaning of *lease terminable at will*

A lease of land is a *lease terminable at will* if—

- (a) the lessee is in possession of the land, although the lessor and the lessee have not agreed, expressly or impliedly, to the duration of the term of the lease; or
- (b) the lessee remains in possession of the land with the lessor's consent, although the term of the lease has ended, and the lessor and the lessee have not agreed, expressly or impliedly, that the lessee may continue in possession for another period.

173 What is a *termination notice*

- (1) A *termination notice*, in relation to a lease, is a notice given by a party to the lease that—
 - (a) identifies the land subject to the lease; and
 - (b) states that the party is terminating the lease on a stated day; and
 - (c) is signed by the party.
- (2) The notice may, but need not, be in the approved form.
- (3) To remove any doubt, it is declared that this section does not limit or otherwise affect the ability of a party to sign by an agent.

174 Termination of *lease terminable at will*

A party to a lease terminable at will may terminate the lease on a stated day (the *termination day*) by giving a termination notice to the other party at least 20 business days before the termination day.

175 Termination of *periodic tenancy*

- (1) A party to a periodic tenancy may terminate the tenancy, on a stated day that is the last day of a period of the tenancy (the

termination day), by giving a termination notice to the other party—

- (a) for a weekly tenancy—at least 1 week before the termination day; or
 - (b) for a monthly tenancy—at least 1 month before the termination day; or
 - (c) for a yearly tenancy—at least 6 months before the termination day; or
 - (d) for a tenancy for a period other than a week, a month or a year—at least the required period for the tenancy before the termination day.
- (2) For subsection (1)(d), subject to any contrary agreement, the period of the tenancy is taken to start on the day on which rent under the tenancy is payable.

- (3) In this section—

required period, for a tenancy, means the lesser of the following periods—

- (a) the period of the tenancy;
- (b) 6 months.

176 Termination of other tenancies

- (1) This section applies to a tenancy other than—
- (a) a periodic tenancy; or
 - (b) a tenancy for a fixed term if the fixed term has not expired; or
 - (c) a tenancy for which a period of notice has expressly or impliedly been agreed to by the parties.
- (2) A party to the tenancy may terminate the tenancy on a stated day (the *termination day*) by giving a termination notice to the other party a reasonable period before the termination day.

- (3) For subsection (2), whether a period is reasonable depends on all of the circumstances, including, for example—
 - (a) the nature of the tenancy; and
 - (b) the circumstances surrounding the creation of the tenancy; and
 - (c) the terms of the tenancy; and
 - (d) any implications arising from the agreement of the parties.

Division 8 Miscellaneous matters

177 Effect of waiver

- (1) A waiver by a lessor of the benefit of a term of the lease—
 - (a) extends only to the instance or breach to which the waiver particularly relates; and
 - (b) is not to be taken as a general waiver.
- (2) This section applies subject to any agreement to the contrary.

178 Limitation on award of damages for breach of obligation to repair

- (1) This section applies if a lessor brings a proceeding against the lessee claiming damages for breach of an obligation to keep or put premises in good repair during the term of the lease or when the lease ends.
- (2) In making an award of damages for breach of the obligation, the court may not award more than the lesser of the following amounts—
 - (a) the amount, if any, by which the value of the reversion is diminished by the breach;
 - (b) the amount of the actual cost of remedying the breach.

- (3) Also, the court may not award damages for breach of the obligation if the lessee proves that on or after the termination of the lease—
 - (a) the premises have been, or will be, demolished; or
 - (b) structural alterations have been, or will be, made to the premises that would result in the cost of remedying the breach being of no value or of insufficient value to justify the cost.

Part 10 Neighbouring land

Division 1 Support for land

179 Duty of care in relation to support for land

- (1) For the common law of negligence—
 - (a) the owner of supporting land owes a duty of care to the owner of supported land not to do or omit to do anything that adversely affects the support provided by the supporting land to the supported land; and
 - (b) the owner of supported land owes a duty of care to the owner of supporting land not to do or omit to do anything that adversely affects the support provided by the supporting land to the supported land.
- (2) Subsection (1) applies—
 - (a) whether or not the supporting land and supported land share a common boundary; and
 - (b) to any support, whether from structures anywhere on the land or on a common boundary.
- (3) The duty of care may be excluded or modified by express agreement between a person on whom the duty lies and a person to whom the duty is owed.

- (4) If an agreement under subsection (3) is embodied in an easement registered under the *Land Title Act 1994*, the agreement binds the parties to the agreement and each of their successors in title.
- (5) The right at common law, if any, to bring a proceeding in nuisance in relation to acts or omissions that adversely affect the support provided by supporting land to supported land is abolished.
- (6) In this section—

adversely affect, support provided by supporting land to supported land, includes reduce or remove support.

owner, of supporting land or supported land, includes a mortgagee or receiver in possession of the land if the mortgagee or receiver has exclusive management and control of the land.

supported land means land, including a structure on the land, that is provided with support by supporting land.

supporting land means land, including each of the following aspects of the land, that provides support to supported land—

- (a) the natural surface of the land;
- (b) the subsoil of the land;
- (c) the water, if any, on or beneath the land;
- (d) a part of the land, if any, that has been reclaimed;
- (e) a structure on the land.

Division 2 Easements and rights of use

180 Power of court to impose statutory right of use

- (1) A person having an interest in land (the *benefited land*) may apply to the court for an order imposing a statutory right of use over other land (the *burdened land*) if the statutory right

of use is reasonably necessary for the effective use and development of the benefited land.

- (2) Also, a person having an interest in land (also the *benefited land*) may apply to the court for an order imposing a statutory right of use over other land (the *burdened land*), relating to a utility, in favour of the public utility provider providing the utility, if the statutory right of use is reasonably necessary for the effective use and development of the benefited land.
- (3) A statutory right of use imposed under subsection (1) may take any form, including, for example an easement or licence.
- (4) A statutory right of use imposed under subsection (2) must take the form of an easement in gross.
- (5) The court may make the order if the court is satisfied that—
 - (a) the statutory right of use is reasonably necessary for the effective use and development of the benefited land; and
 - (b) the statutory right of use is consistent with the operation of the *Planning Act 2016*, including, for example, the planning scheme under that Act that applies to the land affected by the statutory right of use; and
 - (c) the use or development of the benefited land is consistent with the public interest; and
 - (d) each person having an interest in the burdened land can be adequately compensated for any loss or disadvantage arising from the imposition of the statutory right of use; and
 - (e) the person applying to the court has made reasonable attempts to obtain the easement, or other statutory right of use, by agreement; and
 - (f) the attempts mentioned in paragraph (e) have been unsuccessful because—
 - (i) a person has refused to agree to the statutory right of use and the refusal is unreasonable in all the circumstances; or

- (ii) a person who has capacity to agree to the statutory right of use can not be located.
- (6) Also, for a statutory right of use imposed under subsection (2), the court may make the order only if the court is satisfied—
 - (a) the statutory right of use is able to be registered; and
 - (b) the public utility provider has agreed to the terms of the statutory right of use; and
 - (c) the local government in whose area the statutory right of use is located has agreed to the terms of the statutory right of use.
- (7) If the court makes the order, the court must state in the order—
 - (a) the nature of the statutory right of use, and its terms; and
 - (b) the land to be benefited, and the land to be burdened, by the statutory right of use.
- (8) However, for subsection (7)(b), the court is not required to state the land to be benefited if the statutory right of use is imposed under subsection (2).
- (9) Also, if the court makes the order, and is satisfied that a person having an interest in the burdened land will suffer loss or disadvantage arising from the imposition of the statutory right of use, the court must make an order that the applicant pay an amount to the person, considered by the court to be just in the circumstances, by way of compensation.
- (10) The court may make any order that the nature of the case requires, including, for example, any of the following orders—
 - (a) an order requiring a plan of survey, designating the area of the burdened land subject to the statutory right of use, to be prepared;
 - (b) an order imposing a condition on the applicant or a person having an interest in the burdened land.

- (11) If the court makes an order that creates an interest that may be registered—
- (a) the interest must be registered; and
 - (b) unless otherwise ordered by the court, the applicant must register the interest.
- (12) If an interest is registered under subsection (11), the order creating the interest binds all persons, including, for example, the parties to the proceeding and each of their successors in title.
- (13) The costs of a proceeding under this section are payable by the applicant unless special circumstances exist.
- (14) Despite section 3, this section does not bind the State, other than to the extent a public utility provider is bound to comply with a statutory right of use in the form of an easement in gross in favour of the public utility provider.
- (15) In this section—

public utility provider means a public utility provider under the *Land Act 1994*, schedule 6 or the *Land Title Act 1994*, section 81A.

statutory right of use, over land, includes—

- (a) a right of way over land; and
- (b) a right to access, enter or cross over land; and
- (c) a right to carry and place a utility on, over or under land.

utility includes—

- (a) electricity, gas, power, telecommunication, water, drainage, sewerage and other service pipes or lines; and
- (b) facilities and structures reasonably incidental to the service pipes or lines mentioned in paragraph (a).

181 Power of court to modify or extinguish easement or covenant

- (1) This section applies if land (the *burdened land*) is subject to the burden of—
 - (a) an easement or covenant benefiting other land (the *benefited land*); or
 - (b) an easement in gross.
- (2) A person having an interest in the burdened land may apply to the court for an order modifying or extinguishing the easement or covenant.
- (3) The court may make the order if the court is satisfied—
 - (a) the easement or covenant is obsolete because of—
 - (i) a change in the use of the benefited land; or
 - (ii) a change in the character of the area in the vicinity of the benefited land; or
 - (iii) other circumstances the court considers material; or
 - (b) the continued existence of the easement or covenant—
 - (i) would impede a reasonable use of the burdened land; or
 - (ii) would not provide a practical benefit of substantial value, utility or advantage to any person entitled to the benefit of the easement or covenant; or
 - (iii) would be contrary to the public interest; or
 - (c) for an easement or covenant under a building management statement—the modification or extinguishment of the easement or covenant—
 - (i) can not be obtained by an amendment of the statement under the *Land Act 1994*, section 294F or the *Land Title Act 1994*, section 54E because the signature of all persons required for the amendment can not be obtained; and

- (ii) is just and equitable in the circumstances; and
 - (iii) is reasonably necessary in the circumstances; or
 - (d) each person entitled to the benefit of the easement or covenant can reasonably be considered to have abandoned, by an act or omission, the easement or covenant; or
 - (e) each person entitled to the benefit of the easement or covenant has agreed to, or would not be substantially injured by, the modification or extinguishment of the easement or covenant.
- (4) However, the court may make an order under subsection (3)(c) only if the court is satisfied that each person who will suffer loss or other disadvantage from the modification or extinguishment of the easement or covenant can be paid an amount as adequate compensation for the loss or disadvantage.
- (5) In deciding whether to make an order under subsection (3)(a) or (b), the court—
- (a) must take into account the operation of the *Planning Act 2016*, including, for example, the planning scheme under that Act that applies to the benefited land and the burdened land; and
 - (b) may take into account any other matter the court considers appropriate.
- (6) The court may make any order that the nature of the case requires, including, for example, any of the following orders—
- (a) an order requiring the payment of an amount to a person mentioned in subsection (4);
 - (b) an order requiring the amendment of a document creating the easement or covenant to include a term relating to the use, repair or maintenance of the burdened land;

- (c) an order requiring the registration of a document necessary to give effect to an amendment mentioned in paragraph (b).

Note—

See the *Land Act 1994*, sections 294F and 294I and the *Land Title Act 1994*, sections 54E and 54H for the requirement to register an instrument of amendment or extinguishment of a building management statement.

- (7) In this section—

building management statement means a building management statement under the *Land Act 1994*, section 294B(2) or the *Land Title Act 1994*, section 54A(2).

covenant includes—

- (a) a covenant registered under the *Land Act 1994* or the *Land Title Act 1994* or arising under a contract or other arrangement; and
- (b) a covenant imposed under a building management statement.

easement includes—

- (a) a right of access, support or shelter, or other right in the nature of an easement, under a building management statement; and
- (b) an easement in gross.

extinguish means wholly or partially extinguish.

182 No interest created by prescription

No interest under the *Land Act 1994* or the *Land Title Act 1994* can be created by prescription or through the doctrine of lost modern grant.

Division 3 Encroachment of buildings

183 Definitions for division

In this division—

affected owner see section 185(2).

building—

- (a) means a substantial structure of a permanent character; and
- (b) includes a part of a structure mentioned in paragraph (a), including, for example, a wall.

encroaching owner see section 185(1).

encroachment means an encroachment by a building on to land and includes—

- (a) encroachment by overhang of the building on to the land; and
- (b) encroachment by intrusion of the building on or into, or under the soil of, the land.

184 Relationship with other Acts

This division applies despite any other Act.

185 Proceedings for relief

- (1) A person who has an interest in land from which an encroachment extends on to other land (an *encroaching owner*) may apply to the court for relief in relation to the encroachment.
- (2) A person who has an interest in land on to which an encroachment extends from other land (an *affected owner*) may apply to the court for relief in relation to the encroachment.

- (3) The court may make an order granting or refusing to grant the relief.
- (4) In deciding whether to make an order under subsection (3), the court may take into account the following matters—
 - (a) whether the application is made by an encroaching owner or an affected owner;
 - (b) the circumstances in which the encroachment was made;
 - (c) the nature and extent of the encroachment;
 - (d) the purposes for which the encroachment may be used;
 - (e) the situation and value of the land affected by the encroachment;
 - (f) the operation of the *Planning Act 2016*, including, for example, the planning scheme under that Act that applies to the land affected by the encroachment;
 - (g) the loss or damage, if any, that has been or will be incurred by the affected owner because of the encroachment;
 - (h) the loss or damage, if any, that would be incurred by the encroaching owner if the court required the encroachment to be removed;
 - (i) any other circumstance the court considers relevant.
- (5) The court may make any order that the nature of the case requires, including, for example, any of the following orders—
 - (a) an order that an affected owner transfer, lease, or grant an easement or another interest in, the land affected by the encroachment, to an encroaching owner;
 - (b) an order in relation to land reasonably required as curtilage and for access to the encroachment;

- (c) an order requiring a plan of survey, designating the boundary of land affected by the encroachment and any land mentioned in paragraph (b), to be prepared;
- (d) an order that an encroaching owner pay an amount to an affected owner as compensation for loss or other damage arising from the encroachment;
- (e) an order that the encroachment be modified or removed.

186 Minimum compensation

- (1) If the court makes an order under section 185(5)(d), the amount of compensation must be at least—
 - (a) if the encroaching owner satisfies the court that the encroachment was not intentional and did not arise from negligence—the market value of the interest in the land affected by the encroachment; or
 - (b) otherwise—3 times the market value of the interest in the land affected by the encroachment.
- (2) In deciding whether to make an order under section 185(5)(d) that is more than the minimum amount of compensation under subsection (1), the court must take into account—
 - (a) the value of the interest in the land affected by the encroachment; and
 - (b) the loss or damage, if any, that has been or will be incurred by the affected owner because of the encroachment and any order proposed to be made by the court in favour of the encroaching owner; and
 - (c) the circumstances in which the encroachment was made.

Division 4 Improvements under mistake of title

187 Relationship with other Acts

This division applies despite any other Act.

188 Proceedings for relief

- (1) This section applies to each of the following persons—
 - (a) a person (the *first person*) who makes a lasting improvement on land owned by someone else in the genuine but mistaken belief that the first person owns the land;
 - (b) a person who, on behalf of another person (the *second person*), makes a lasting improvement on land owned by someone else in the genuine but mistaken belief that the second person owns the land;
 - (c) a person who has an interest in land, or a lasting improvement, mentioned in paragraph (a) or (b);
 - (d) a local government within whose area any part of land, or a lasting improvement, mentioned in paragraph (a) or (b), is located.
- (2) The person may apply to the court for relief in relation to the lasting improvement.
- (3) The court may make an order granting or refusing to grant the relief.
- (4) In deciding whether to make an order under subsection (3), the court may take into account the following matters—
 - (a) whether the application is made by a person who held a mistaken belief about the ownership of the land on which the lasting improvement was made, or a person who has an interest in the land or lasting improvement;
 - (b) the circumstances in which the lasting improvement was made;
 - (c) the nature and extent of the lasting improvement;
 - (d) the purposes for which the lasting improvement may be used;
 - (e) the situation and value of the land affected by the lasting improvement;

- (f) the operation of the *Planning Act 2016*, including, for example, the planning scheme under that Act that applies to the land affected by the lasting improvement;
 - (g) the loss or damage, if any, that has been or will be incurred by a person because of the lasting improvement;
 - (h) the loss or damage, if any, that would be incurred by a person if the court required the lasting improvement to be removed;
 - (i) any other circumstance the court considers relevant.
- (5) Without limiting subsection (3), the court may make any of the following orders—
- (a) an order that a person transfer, lease, or grant an easement or another interest in, the land or any part of the land affected by the lasting improvement, to another person;
 - (b) an order declaring that an interest in the land or any part of the land affected by the lasting improvement is free from a mortgage, lease, easement or other interest affecting the land;
 - (c) an order varying, to the extent necessary in the circumstances, a mortgage, lease, easement, contract or other document affecting or relating to the land affected by the lasting improvement;
 - (d) an order in relation to land reasonably required as curtilage and for access to the lasting improvement;
 - (e) an order that a person pay an amount to another person as compensation for loss of the land, or other loss or damage arising from the lasting improvement;
 - (f) an order that the lasting improvement be modified or removed;
 - (g) an order requiring a plan of survey, designating the boundary of land affected by the lasting improvement

and any land mentioned in paragraph (d), to be prepared.

(6) In this section—

fence has the meaning given by the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

lasting improvement does not include a fence.

Part 11 Transactions

Division 1 Assignment of debts or things in action

189 Definitions for division

In this division—

absolute, in relation to an assignment, means—

- (a) not conditional; and
- (b) not by way of charge only.

debt includes part of a debt.

debtor means a person, including, for example, a trustee, who is under an obligation to discharge a debt.

thing in action includes part of a thing in action.

190 Assignment of debt or legal thing in action

- (1) The absolute assignment in writing of a debt or legal thing in action, signed by the assignor, passes to the assignee—
 - (a) all the rights of the assignor in relation to the debt or thing in action; and
 - (b) all the remedies of the assignor in relation to the debt or thing in action; and

- (c) a power to give a good discharge to the debtor, trustee or other person liable for the debt or thing in action without the agreement of the assignor.
- (2) However, subsection (1) applies only if the debtor, trustee or other person liable for the debt or thing in action is given actual notice of the assignment.
- (3) Also, an assignment under subsection (1) is subject to equities in relation to the debt or thing in action that—
 - (a) arose before the debtor, trustee or other person liable for the debt or thing in action was given notice of the assignment; and
 - (b) would, but for the assignment, have had priority over the rights of the assignor.

191 Discharge of debt or legal thing in action when no actual notice of assignment

- (1) This section applies if a debt or legal thing in action is assigned under section 190 or in equity.
- (2) If the debtor, trustee or other person liable for the debt or thing in action has actual notice of the assignment, the debt or legal thing in action is payable to the assignee.
- (3) If the debtor, trustee or other person liable for the debt or thing in action does not have actual notice of the assignment, and that person pays all or part of the debt or legal thing in action to the assignor, the payment discharges that person to the extent of the payment.
- (6) A debtor, trustee or other person liable for a debt or thing in action may interplead in any proceeding brought against that person for the payment of the debt or legal thing in action, or may apply to a court for an order determining the entitlement to any right in relation to the debt or thing in action, if that person has actual notice—

- (a) that an assignment of the debt or thing in action is disputed by the assignee or anyone claiming under the assignor; or
- (b) that there are other opposing or conflicting claims in relation to the debt or thing in action.

192 Assignment in equity

- (1) A voluntary assignment of property is taken to have been assigned in equity, whether the assignment is oral or in writing, if the assignment is complete.
- (2) For subsection (1), an assignment is complete when the assignor has done everything that needs to be done by the assignor to transfer to the assignee, whether absolutely, conditionally, or by way of charge, the rights of the assignor in relation to the property.
- (3) Subsection (2) applies even if a thing remains to be done, without the intervention or assistance of the assignor, to transfer to the assignee the rights of the assignor in relation to the property.
- (4) This section applies—
 - (a) despite any rule of equity to the contrary; and
 - (b) subject to sections 7 and 8.

Division 2 Dispositions to defraud creditors

193 Disposition with intent to defraud creditor voidable

- (1) A disposition of property by a person (the *transferor*) is voidable against the transferor, by a person prejudiced by the disposition, if the transferor made the disposition with intent to defraud the transferor's creditors.
- (2) A disposition is not voidable against the transferor under subsection (1) if the disposition was made to a person who—

- (a) became a party to the disposition in good faith; and
 - (b) at the time when the person became a party, had no notice of the transferor's intent to defraud the transferor's creditors; and
 - (c) provided valuable consideration.
- (3) A person whose interests are affected by a disposition of property voidable under subsection (1) may apply to the court for relief against the disposition.
- (4) The court may hear and decide the application and make the orders it considers appropriate.

Part 12 Powers of appointment

194 When exercise of power of appointment valid

- (1) This section applies if—
- (a) a document, other than a will, gives a person a power of appointment over property; and
 - (b) the power of appointment is exercised under—
 - (i) a deed; or
 - (ii) a document under the *Land Act 1994*; or
 - (iii) an instrument under the *Land Title Act 1994*.
- (2) The deed, document or instrument is validly executed for the purpose of the power of appointment if—
- (a) for a deed—the deed is executed under part 6; or
 - (b) for a document under the *Land Act 1994*—the document is executed under the *Land Act 1994*; or
 - (c) for an instrument under the *Land Title Act 1994*—the instrument is executed under the *Land Title Act 1994*.

- (3) Subsection (2) applies even if the document giving the person the power of appointment requires the deed, instrument or document to be executed in another way.
- (4) Subsection (2) does not affect either of the following requirements in a document, other than a will, giving a person a power of appointment over property—
 - (a) a requirement that the consent of another person be obtained for the power of appointment to be validly exercised;
 - (b) a requirement that an act, not related to the way in which a deed or other document is executed, be performed for the power of appointment to be validly exercised.
- (5) Also, subsection (2) does not prevent a person from executing a document in writing in a way allowed under the power of appointment.

195 Appointment among 2 or more objects

- (1) This section applies if a document gives a person a power of appointment over property among 2 or more objects.
- (2) An appointment of property made in exercise of the power is valid even if—
 - (a) 1 or more of the objects is excluded from the appointment; or
 - (b) 1 or more of the objects is appointed a nominal or illusory share in the property.
- (3) This section does not affect a term of the document that states the amount of a share of the property from which an object is not to be excluded.

196 Protection of buyer if invalid appointment

- (1) This section applies if—

- (a) a document gives a person (the **appointor**) a power of appointment over property; and
 - (b) the appointor invalidly appoints property to another person (the **appointee**) in purported exercise of the power; and
 - (c) another person (the **buyer**) purchases the invalidly appointed property from the appointee.
- (2) The buyer has a valid title to the property if—
- (a) the appointee is at least 25 years; and
 - (b) the appointee is a person, or member of a class of persons, entitled to the property in default of exercise of the power of appointment; and
 - (c) the buyer did not know, and could not reasonably be expected to have known, that the appointment of the property to the appointee was invalid; and
 - (d) the buyer gave valuable consideration for the purchase.
- (3) However, if the amount or value of the invalidly appointed property is more than the value of the appointee’s entitlement to the property immediately before the purported exercise of the power of appointment, the buyer has a valid title to the property only to the extent of the appointee’s entitlement to the property at that time.
- (4) For subsection (3), the appointee’s entitlement to the property immediately before the purported exercise of the power of appointment must be calculated taking into account—
- (a) any advance made to the appointee; and
 - (b) any hotchpot provision in the power of appointment.
- (5) In this section—
- hotchpot provision**, in a power of appointment, means a provision providing for the appointment of property to an object after taking into account advances of property already made to the object under the provision.

197 Release and disclaimer of power

- (1) This section—
 - (a) applies to a power to dispose of property whether or not the person who can exercise the power has an interest in the property; and
 - (b) does not apply to a power to dispose of property if the power is in the nature of a trust.
- (2) The person who can exercise the power may—
 - (a) release the power under a deed or contract; or
 - (b) disclaim the power under a deed.
- (3) The release of the power extinguishes the power.
- (4) If the power is disclaimed—
 - (a) the person who disclaimed the power may not exercise or join in the exercise of the power; but
 - (b) any other person who can exercise the power, and who has not disclaimed it, may continue to exercise the power.
- (5) Subsection (4)(b) applies subject to the terms of the document creating the power.

Part 13 Perpetuities

Division 1 Preliminary

198 Definitions for part

In this part—

disposition includes the conferring or exercise of—

- (a) a power of appointment; and
- (b) any other power to dispose of an interest in property.

perpetuity period, for a disposition of property under a trust, see section 201.

199 When disposition in will made

For the purpose of this part, a disposition in a will is made at the death of the testator.

Division 2 General rules

200 Abolition of rule against perpetuities

The common law rule known as the rule against perpetuities is abolished.

201 What is the *perpetuity period*

The *perpetuity period*, for a disposition of property under a trust, is—

- (a) 125 years starting on the day on which the disposition is made; or
- (b) if the terms of the trust state or imply a shorter period to be the perpetuity period for the disposition, including, for example, by stating a mechanism for determining the day on which the trust property will vest—the shorter period.

202 Vesting of trust property

- (1) This section applies to a disposition of property under a trust to a person.
- (2) The disposition is valid only if the property vests in the person before the end of the perpetuity period for the disposition.

203 Wait and see rule

A disposition of property under a trust to a person is not invalid under section 202 merely because the property may vest in the person after the end of the perpetuity period for the disposition provided it is possible the property may vest in the person before the end of the perpetuity period.

Division 3 Trust saving devices

204 Reduction of age to ensure disposition within perpetuity period

- (1) This section applies to a disposition of property under a trust if—
 - (a) the terms of the trust state or imply a mechanism for determining the day on which the property will vest in a person by reference to the person attaining a stated age of at least 18 years; and
 - (b) the reference to the stated age would cause the disposition to be invalid under section 202; and
 - (c) the disposition would be valid under section 202 if the stated age were 18 years.
- (2) The stated age is taken to be reduced to an age not less than 18 years to the extent necessary to cause the disposition to be valid under section 202.

205 Exclusion of class members to ensure disposition within perpetuity period

- (1) This section applies to a disposition of property under a trust if—
 - (a) the terms of the trust state or imply a mechanism for determining the day on which the trust property will vest in a class of persons; and

- (b) the inclusion of potential members of the class or of unborn persons who at birth would become members or potential members of the class (both *non-qualifying members*) would cause the disposition to be invalid under section 202; and
 - (c) the application of section 204 would not cause the disposition to be valid under section 202.
- (2) The non-qualifying members are taken to be excluded from the class to the extent necessary to cause the disposition to be valid under section 202.
 - (3) However, a non-qualifying member is not excluded under subsection (2) if the member's exclusion would exhaust the class.
 - (4) This section does not affect the validity of anything done in relation to the trust property before the disposition, including, for example, by way of advancement or application of intermediate income.
 - (5) In this section—
 - member*, of a class, means a person who satisfies all the conditions for being a member of the class.
 - potential member*, of a class, means a person who—
 - (a) satisfies 1 or more of the conditions for being a member of the class; and
 - (b) may in time satisfy all the conditions for being a member of the class.

206 Acceleration of prior disposition to ensure subsequent disposition within perpetuity period

- (1) This section applies in relation to a disposition of property under the terms of a trust (a *prior disposition*) if the prior disposition is invalid under section 202.
- (2) A disposition of property under the terms of the trust that is ulterior to and dependent on the prior disposition (a

subsequent disposition) may be accelerated so the subsequent disposition is valid under section 202.

Division 4 Ambit of perpetuity period

207 Non-charitable purpose trust

- (1) If a document creates a non-charitable purpose trust, or a trust for the benefit of a corporation that is not a charity, and the trust is not otherwise invalid, the property must be applied for the purposes of the trust before the end of the perpetuity period for the disposition of property under the trust.
- (2) To remove any doubt, it is declared that division 2 applies to a trust mentioned in subsection (1).

208 Powers of appointment

- (1) If a document creates a general power of appointment relating to property, the property must vest before the end of the perpetuity period.
- (2) For subsection (1), the perpetuity period starts when the property is appointed by the donee of the power.
- (3) If a document creates a special power of appointment relating to property, both of the following must happen before the end of the perpetuity period—
 - (a) the exercise of the power;
 - (b) the vesting of the property.
- (4) For subsection (3), the perpetuity period starts when the power is created.
- (5) In this section—

general power of appointment means—

- (a) a power of appointment exercisable under a document other than a will under which the person given the power—
 - (i) is the only person capable of exercising the power; and
 - (ii) may appoint the whole of the property to any person including the person's self without complying with any other condition; or
- (b) a power of appointment exercisable under a will under which the person given the power—
 - (i) is the only person capable of exercising the power; and
 - (ii) may appoint the whole of the property to any person including the person's personal representative without complying with any other condition.

special power of appointment means a power of appointment other than a general power of appointment.

209 Conditions precedent and conditions subsequent

- (1) If a document limits property in trust so as to create an interest in property subject to a condition precedent, the property must vest before the end of the perpetuity period for the disposition of the property.
- (2) If a document limits property in trust so as to create an interest in property subject to a condition subsequent—
 - (a) if the property is land—a right of re-entry exercisable if the condition subsequent is broken must be exercised before the end of the perpetuity period for the disposition of the property; or
 - (b) for property other than land—a right equivalent to a right of re-entry exercisable if the condition subsequent

is broken may only be exercised before the end of the perpetuity period for the disposition of the property.

- (3) If a right mentioned in subsection (2) is not exercised before the end of the perpetuity period for the disposition of the property, the interest in the property is no longer subject to the condition subsequent.

210 Determinable interests

- (1) This section applies if the terms of a trust allow the disposition of property under—
 - (a) a right of reverter on the determination of a determinable fee simple; or
 - (b) a resulting trust on the determination of a determinable interest in property.
- (2) If the property does not vest before the end of the perpetuity period for the disposition of the property—
 - (a) for subsection (1)(a)—the determinable fee simple becomes absolute; and
 - (b) for subsection (1)(b)—the determinable interest becomes absolute.
- (3) In this section—

determinable, interest in property, means an interest created under the terms of a disposition that, under the terms, is determinable on a contingency.

211 Accumulation of income

- (1) This section applies if property is held on trust the terms of which confer a power or impose a duty on the trustee to accumulate income of the property.
- (2) The power or duty is valid only to the extent the disposition of the accumulated income is valid under this part.
- (3) This section does not limit or otherwise affect—

- (a) a power of a person to terminate an accumulation of income from property that is for the person's benefit; or
- (b) a power of a court or trustee relating to an accumulation of income mentioned in paragraph (a).

212 Particular trusts, powers and funds

The perpetuity period does not apply in relation to any of the following matters—

- (a) a charitable trust;
- (b) the trusts of a superannuation fund or scheme;
- (c) the trusts of a pension fund or scheme;
- (d) a trust that is created under, or is subject to, another Act that allows the trust to continue indefinitely;
- (e) a trust that may continue indefinitely under common law or equity;
- (f) a trust or power to sell property, if a trust of the proceeds of sale is valid;
- (g) a trust or power to lease or exchange property, if the lease or exchange directed or authorised by the trust or power is ancillary to the carrying out of a valid trust;
- (h) a power that is ancillary to the carrying out of a valid trust or the giving effect to a valid disposition of property;
- (i) a provision for the remuneration of trustees.

213 Commercial arrangements

The perpetuity period does not apply in relation to any of the following dispositions of property—

- (a) an option to renew a lease of property;
- (b) an option to acquire the reversion of a lease of property;

- (c) an option to acquire an interest in property given for valuable consideration or in a will in relation to property;
- (d) a right of pre-emption given for valuable consideration or in a will in relation to property.

214 Gift over from charity to charity

The perpetuity period does not apply in relation to a gift over from 1 charity to another charity.

215 Particular matters relating to land

To remove any doubt, it is declared that the perpetuity period does not apply in relation to any of the following matters—

- (a) a power to take possession of land or the income of the land given by way of indemnity against a rent, whether or not the rent is payable in relation to the land;
- (b) the grant, or exercise of, a right, power or privilege in relation to land, including, for example, a right of entry or an easement relating to—
 - (i) mining; or
 - (ii) the removal of timber; or
 - (iii) the construction or repair of buildings; or
 - (iv) the construction or maintenance of infrastructure.

Division 5 Variation of vesting date

216 Variation of trust to opt in to 125-year perpetuity period if trustee has power of variation

- (1) This section applies if a trustee has power, under the terms of the trust, to vary the vesting date of a disposition of property under the trust.

- (2) The trustee may vary the vesting date to a date not later than the last day of the period of 125 years starting on the day of the disposition of the property under the trust.

217 Variation of trust to opt in to 125-year perpetuity period if trustee does not have power of variation

- (1) This section applies if a trustee does not have power, under the terms of the trust, to vary the vesting date of a disposition of property under the trust.
- (2) If all of the beneficiaries under the trust are adults and of full capacity, the beneficiaries may execute a deed to vary the vesting date to a date not later than the last day of the period of 125 years starting on the day of the disposition of the property under the trust.

Division 6 Applications to court

218 Application to court for declaration of validity

- (1) A person interested in a disposition of property may apply to the court for a declaration about the validity of the disposition under this part.
- (2) The court may hear and decide the application and make the orders it considers appropriate.

219 Application to court to opt in to 125-year perpetuity period

- (1) A person interested in a disposition of property under the terms of a trust, settled before the commencement, may apply to the court for an order that the property vest within 125 years after the creation of the trust.
- (2) The court may hear and decide the application and make the orders it considers appropriate.

- (3) Without limiting subsection (2), the court may make an order about the disposition of property that, under the terms of the trust, may have vested more than 125 years after the creation of the trust.

Part 14 **Corporations sole and particular bodies corporate**

220 Perpetual succession of corporation sole

A corporation sole—

- (a) is taken to be a body corporate with perpetual succession; and
- (b) may sue and be sued in its corporate name.

221 Constitution of corporation sole

A corporation sole is constituted by the person who holds the appointment to the office of the corporation sole.

222 Effect of transaction if temporary vacancy in particular bodies corporate

- (1) This section applies if—
- (a) either—
 - (i) the office of a corporation sole is vacant; or
 - (ii) the office of the head of a corporation aggregate is vacant; and
 - (b) before a successor to the office is appointed, the corporation sole or corporation aggregate purports to enter into a contract or other transaction, acquire an interest in property, or is appointed as a trustee.

- (2) The contract or other transaction, or acquisition of property, or appointment as trustee, takes effect as if the successor had already been appointed.
- (3) However, the successor may disclaim the contract or other transaction or acquisition of property, or renounce the appointment as trustee.

223 Powers of particular corporations

- (1) This section applies to a corporation other than—
 - (a) a corporation under the Corporations Act; or
 - (b) a corporation incorporated under another Act if the Act expressly provides for the way in which the corporation may do each of the things mentioned in subsection (2)(a) to (c).
- (2) The corporation has all the powers of an individual and may, for example—
 - (a) enter into contracts; and
 - (b) acquire, hold, dispose of, and deal with, property; and
 - (c) appoint agents and attorneys.
- (3) If a contract made by an individual is valid only if in writing signed by the individual, the contract may be made by the corporation in writing signed by a person acting under the express or implied authority of the corporation.
- (4) If a contract made by an individual is valid even if made by parol, the contract may be made by parol by the corporation by a person acting under the express or implied authority of the corporation.
- (5) In this section—

contract includes transaction.

224 Appointment of administrator if particular corporations incapable of acting

- (1) This section applies to a corporation, including, for example, a corporation incorporated under the *Associations Incorporation Act 1981*, the Corporations Act or another Act.
- (2) If the corporation is incapable of acting for any reason, including, for example, the death or incapacity of an officer or member of the corporation, a designated person for the corporation may apply to the court for the appointment of an administrator.
- (3) The court may order the appointment of an administrator if the court considers the appointment is necessary or desirable.
- (4) The court may make any order that the nature of the case requires, including, for example, any of the following orders—
 - (a) an order that the appointment be for an indefinite period, a fixed period or until the happening of a stated event;
 - (b) an order imposing conditions;
 - (c) an order that the remuneration of the administrator is to be paid from the assets of the corporation.
- (5) Subject to an order of the court, the administrator may—
 - (a) to the exclusion of the corporation and any officer or member of the corporation, exercise all the powers of the corporation; and
 - (b) delegate any of the powers exercisable by the administrator.
- (6) The court may, on the application of an administrator appointed under subsection (3), or a designated person for the corporation—
 - (a) give to the administrator directions relating to the powers of the administrator or the affairs of the corporation; or
 - (b) remove or replace the administrator.

- (7) If the court makes an order for the appointment, removal or replacement of an administrator in relation to a corporation incorporated under the Corporations Act, the order does not take effect until the order is lodged with ASIC.
- (8) The order mentioned in subsection (7) must be lodged with ASIC—
 - (a) within 7 days after the order is made; or
 - (b) if the court allows a longer period—within the longer period.
- (9) For subsection (2), a corporation is incapable of acting whether the corporation is incapable of acting—
 - (a) generally, or in relation to a particular transaction; or
 - (b) temporarily, or for an indefinite or other period.
- (10) In this section—

designated person, for a corporation, means—

 - (a) an officer or member of the corporation; or
 - (b) the personal representative of a person mentioned in paragraph (a); or
 - (c) a creditor or another person claiming against the corporation.

Part 15 Unregistered land

225 Registrar must give public notice if request to register unregistered land

- (1) This section applies if—
 - (a) a person asks the registrar to register an instrument relating to land; and
 - (b) the registrar believes the land is not included in the land registry.

- (2) The registrar must give public notice of the request.
- (3) The registrar may decide—
 - (a) what is to be included in the public notice; and
 - (b) how many times the public notice is to be published; and
 - (c) how and when the public notice is to be published.
- (4) The public notice must include an invitation to any person who claims an interest in the land to give notice of the person's claim to the registrar within 2 months after the public notice is published.

226 Registrar must give public notice if registrar believes land unregistered

- (1) This section applies if—
 - (a) the registrar believes land is not included in the land registry; and
 - (b) a request in relation to the land has not been made under section 225.
- (2) The registrar must give public notice of the registrar's intention to include the land in the land registry.
- (3) The registrar may decide—
 - (a) what is to be included in the public notice; and
 - (b) how many times the public notice is to be published; and
 - (c) how and when the public notice is to be published.
- (4) The public notice must include an invitation to any person who claims an interest in the land to give notice of the person's claim to the registrar within 2 months after the public notice is published.

227 Registrar may hold inquiry

- (1) If an issue arises in relation to land mentioned in section 225 or 226, the registrar may hold an inquiry under the *Land Title Act 1994*, part 2, division 4 to consider the issue.
- (2) To remove any doubt, it is declared that the *Land Title Act 1994*, part 2, division 5 applies in relation to the inquiry.

228 Obligations of registrar

- (1) This section applies—
 - (a) when the 2-month period provided for in a public notice under section 225 or 226 ends; or
 - (b) if an inquiry is held under the *Land Title Act 1994*, part 2, division 4—when the inquiry is finally ended.
- (2) The registrar must consider the following information—
 - (a) a request, if any, under section 225(1)(a);
 - (b) information, if any, provided by a person claiming an interest under section 225(4) or 226(4);
 - (c) information, if any, obtained under section 227;
 - (d) any other information the registrar considers appropriate.
- (3) After considering the information mentioned in subsection (2), the registrar must decide to record in the land registry the particulars relating to the land the registrar considers appropriate.
- (4) Without limiting subsection (3), the registrar may decide to—
 - (a) record the land as unallocated State land or freehold land; or
 - (b) record information, if any, provided by a person claiming an interest under section 225(4) or 226(4), including, for example, information relating to the use and possession of the land.

- (5) The registrar must give the applicant, and any person claiming an interest under section 225(4) or 226(4), notice of the decision.

Part 16 General

Division 1 Service

229 Application of division

This division applies if this Act, or an agreement or another document relating to property, authorises or requires a document to be served on a person.

230 Relationship of division with other matters

- (1) If this division is inconsistent with the *Acts Interpretation Act 1954*, part 10 or the *Electronic Transactions (Queensland) Act 2001*, this division prevails to the extent of the inconsistency.
- (2) This division is subject to this Act or an agreement to the contrary.
- (3) To remove any doubt, it is declared that this division does not limit or otherwise affect a power of a court relating to service of a document.

231 General requirements for service

- (1) The document may be served on the person—
 - (a) if the person is an individual—
 - (i) by delivering the document to the person personally; or
 - (ii) by leaving the document at, or by sending the document by post to, the address of the place of

- residence or place of business of the person last known to the person serving the document; or
- (iii) by electronic communication to an electronic address under section 233; or
- (b) if the person is a body corporate—
- (i) by leaving the document at, or sending the document by post to, the body corporate's—
 - (A) registered office; or
 - (B) principal office; or
 - (C) principal place of business in the State; or
 - (ii) by electronic communication to an electronic address under section 233.
- (2) If the document is sent by post, the document is taken to be served 7 business days after the document was sent unless the actual time the document was served by post is proven.
- (3) Despite subsection (1), the court may—
- (a) order that a document be served in a particular way; or
 - (b) dispense with the requirement to serve a document.
- (4) In this section—
- place of business* see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

232 Individual absent from State or deceased

- (1) This section applies if the person is an individual who is absent from the State or deceased.
- (2) The document may be served on the person's agent or personal representative in a way mentioned in section 231(1)(a).
- (3) If the person's agent or personal representative is not known, the document may be served under an order of a court.

233 Electronic communication

- (1) This section applies if the person has designated an electronic address for receiving the document.
- (2) The document may be served on the person by an electronic communication to the electronic address.
- (3) The electronic communication must—
 - (a) attach the document in the form required by the Act, agreement or other document relating to property; or
 - (b) include the content of the document, as required by the Act, agreement or other document relating to property; or
 - (c) include an electronic link that allows the person to view and obtain a copy of the document mentioned in paragraph (a), or the content mentioned in paragraph (b), for a reasonable period.
- (4) The time of receipt of the electronic communication is taken to be—
 - (a) if the communication is sent before 5p.m. on a business day—the business day; or
 - (b) if the communication is sent after 5p.m. on a business day—9a.m. on the next business day; or
 - (c) if the communication is sent on a day other than a business day—9a.m. on the next business day.
- (5) However, subsection (4)—
 - (a) is subject to any agreement to the contrary; and
 - (b) does not apply if the actual time the electronic communication became capable of being retrieved by the person at the electronic address designated by the person is proven.
- (6) To remove any doubt, it is declared that subsection (3)(c) is satisfied whether or not the person is required to take another step, including, for example, accepting terms and conditions

of the electronic link, to access, and obtain a copy of, the document mentioned in subsection (3)(a), or the content mentioned in subsection (3)(b).

Division 2 Miscellaneous

234 **Approved forms**

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

235 **Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) prescribe fees payable under the Act; and
 - (b) provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

236 **Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature about any matter—
 - (a) for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the repealed *Property Law Act 1974* to this Act; and
 - (b) for which this Act or a regulation does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.

- (4) This section and any transitional regulation expire 2 years after this section commences.

Part 17 **Repeal**

237 **Repeal of Property Law Act 1974**

The Property Law Act 1974, No. 76 is repealed.

Part 18 **Savings and transitional provisions**

Division 1 **Preliminary**

238 **Application of Acts Interpretation Act 1954**

This part does not limit or otherwise affect the *Acts Interpretation Act 1954*, section 20 or 20A.

239 **Definitions for part**

In this part—

corresponding provision, for a repealed provision, means a provision of this Act that is equivalent to, or substantially the same as, the repealed provision.

repealed Act means the repealed *Property Law Act 1974*.

repealed provision means a provision of the repealed Act as in force immediately before the commencement.

Division 2 Savings provisions

239A Express references to general law of agency

- (1) This section applies if—
 - (a) a repealed provision contained an express reference to the signing of a document by a lawfully authorised agent of a person; and
 - (b) a corresponding provision for the repealed provision omits the express reference mentioned in paragraph (a).

Note—

See sections 7, 8 and 9 and the repealed Act, sections 11, 12 and 59.

- (2) To remove any doubt, it is declared that the omission of the express reference mentioned in subsection (1)(a) does not limit or otherwise affect the application of the general law of agency in relation to the corresponding provision.

240 Saving of abolition or modification of common law provided for in repealed Act

- (1) This section applies if a repealed provision provided for the abolition or modification of a common law rule about a matter.
- (2) To remove any doubt, it is declared that, whether or not there is a corresponding provision for the repealed provision, this Act does not affect the abolition or modification of the common law rule effected by the repealed provision.
- (3) Without limiting subsection (2), it is declared that—
 - (a) if a document taking effect after the commencement of the repealed Act contains words that would have created an estate tail, the document is taken to create an estate in fee simple; and

Note—

See section 14 and the repealed Act, section 22.

- (b) if a tenure is created by the State on granting an estate in fee simple after the commencement of the repealed Act, the tenure is in free and common socage without any incident of tenure for the benefit of the State; and

Note—

See section 15 and the repealed Act, section 20.

- (c) if quit rent, or the residue of quit rent, issues to the State out of land after the commencement of the repealed Act, the land is released from quit rent; and

Note—

See section 16 and the repealed Act, section 20.

- (d) if a corporation is dissolved, or otherwise ceases to exist, after the commencement of the repealed Act, subject to the Corporations Act, the State is entitled to take as *bona vacantia* any of the corporation's property that would have been liable to escheat if escheat had not been abolished; and

Note—

See section 17 and the repealed Act, section 20.

- (e) if a life tenant commits, after the commencement of the repealed Act, voluntary or equitable waste that is not permitted under the document creating the life estate, the life tenant is liable in damages to the person entitled, immediately after the life estate ends, to the fee simple interest in remainder in the land; and

Note—

See section 19 and the repealed Act, sections 24 and 25.

- (f) if 2 or more persons acquire land after the commencement of the repealed Act in circumstances in which they would have acquired the land as coparceners, the persons acquire the land as tenants in common and not as coparceners; and

Note—

See section 25 and the repealed Act, section 33.

- (g) if a receipt for consideration is in the body of a deed or other document executed on or after the commencement of the repealed Act, the receipt is a sufficient discharge for the consideration to the person giving the consideration without any further receipt for the consideration being endorsed on the deed or document; and

Note—

See section 57 and the repealed Act, section 51.

- (h) if a seller can not perform a contract for the sale or other disposition of land, after the commencement of the repealed Act, because of a defect in the seller's title, the court may award damages for loss of bargain against the seller; and

Note—

See section 83 and the repealed Act, section 68.

- (i) for a mortgage entered into before or after the commencement of the repealed Act, other than in regard to the making of further advances as mentioned in the repealed Act, section 82(1), the right to tack is abolished; and

Note—

See section 126 and the repealed Act, section 82.

- (j) a lease of land for a term of years entered into before or after the commencement of the repealed Act is capable of taking effect at law or in equity from the start of the term, without entry into possession of the land; and

Note—

See section 138 and the repealed Act, section 102.

- (k) no interest under the *Land Act 1994* or the *Land Title Act 1994* can be created, after the commencement of the repealed Act, by prescription or through the doctrine of lost modern grant.

Note—

See section 182 and the repealed Act, section 198A.

241 Saving of abolition of common law rule that alien can not take, give, buy or sell property

To remove any doubt, it is declared that the repeal of the repealed Act, section 15A does not affect the abolition of the common law rule that an alien can not take, give, buy or sell property.

242 Particular provisions do not apply in relation to matters that happened before 1 December 1975

- (1) This section applies if a repealed provision provided that the provision applied only in relation to a matter that happened after the commencement of the repealed Act.
- (2) To remove any doubt, it is declared that a corresponding provision for the repealed provision does not apply in relation to a matter for which the corresponding provision provides that happened before the commencement of the repealed Act.
- (3) Without limiting subsection (2), it is declared that a corresponding provision for the repealed provision does not apply in relation to the following matters that happened before the commencement of the repealed Act—
 - (a) the creation of a future interest in land;
Note—
See section 22 and the repealed Act, section 30.
 - (b) the making of a document containing an executory limitation on a gift over to another person;
Note—
See section 24 and the repealed Act, section 32.
 - (c) the acquisition or holding of property as a joint tenant by a body corporate;
Note—
See section 26 and the repealed Act, section 34.
 - (d) the disposition of an equitable interest in property to 2 or more persons together beneficially;

Note—

See section 28 and the repealed Act, section 35.

- (e) the making of a promise by 2 or more persons;

Note—

See section 67 and the repealed Act, section 54.

- (f) the making of a contract containing a promise to do or refrain from doing an act for the benefit of a third party;

Note—

See section 68 and the repealed Act, section 55.

- (g) the making of a contract or other document providing that a certificate of a person is conclusive evidence of a fact;

Note—

See section 70 and the repealed Act, section 57.

- (h) the creation of either of the following mortgages—

(i) a mortgage under which an amount is expressed to be advanced by 2 or more persons out of money belonging to them on a joint account;

(ii) a mortgage to 2 or more persons jointly;

Note—

See section 111 and the repealed Act, section 93.

- (i) the discharge of a mortgage.

Note—

See section 133 and the repealed Act, section 98.

Division 3 Transitional provisions

243 Waiver of State's rights to property by escheat on death intestate of person before commencement

A person may apply under section 18 for the waiver of the State's rights to property by escheat, devolution or *bona*

vacantia on the death intestate of a person whether the death happens before or after the commencement.

244 Liability of co-owner of property to account for interest in property arising before commencement

A co-owner of property is liable to account under section 27 to each other co-owner of the property whether the interest in the property of the co-owners arises before or after the commencement.

245 Abolition of rule in *Pigot's case*

- (1) Section 60 applies in relation to a material alteration of a deed whether the alteration is made before or after the commencement.
- (2) However, section 60 does not apply in relation to a proceeding started before the commencement.

246 Covenant or agreement made by person with self and others before commencement

- (1) Section 63 applies in relation to a covenant or agreement entered into by a person with the person's self and 1 or more other persons, whether the covenant or agreement is entered into before or after the commencement.
- (2) However, section 63 does not apply in relation to an order of the court made before the commencement.

247 Particular covenants in registered easements created before commencement

Section 65 applies in relation to a covenant contained in a registered easement over land for the benefit of other land whether the easement is created or registered before or after the commencement.

248 Effect of inoperative computers in office of the land registry on day of settlement on contract entered into before commencement

Section 79 applies in relation to a contract for the sale of land whether the contract is entered into before or after the commencement.

249 Effect of inoperative computers in particular entities on day of settlement on contract entered into before commencement

Section 80 applies in relation to a contract for the sale of land whether the contract is entered into before or after the commencement.

250 Effect of adverse event on day of settlement on contract entered into before commencement

Section 81 applies in relation to a contract for the sale of land whether the contract is entered into before or after the commencement.

251 Seller disclosure for sales of lots

- (1) Part 7, division 4 applies in relation to a contract for the sale of a lot only if the contract is entered into after the commencement.
- (2) If a contract for the sale of a lot arises from the exercise of an option, part 7, division 4 applies in relation to the contract only if the option is granted after the commencement.

252 Mortgagee's power of sale in relation to disclaimed property mortgaged before commencement

A mortgagee may sell under section 115 land subject to a registered mortgage that has been disclaimed by a trustee in bankruptcy or a liquidator whether the registered mortgage is

entered into, or the disclaimer happens, before or after the commencement.

253 Court may order sale of mortgaged property in proceeding for redemption or foreclosure started before commencement

The court may order in a proceeding a sale of mortgaged property under section 134 whether the proceeding is started before or after the commencement.

254 Realisation of equitable mortgage in proceeding started before commencement

The court may make an order under section 135 in a proceeding brought in relation to an equitable mortgage whether the proceeding is brought before or after the commencement.

255 Dealings with leases entered into before commencement

- (1) Subject to subsection (2), part 9, division 4 applies in relation to a dealing with a lease if the dealing happens after the commencement, whether the lease is entered into before or after the commencement.
- (2) Section 144 applies only if the lease is entered into after the commencement.

256 Relief in relation to leases entered into before commencement

Part 9, division 5 applies in relation to a lease as mentioned in section 150 whether the lease is entered into before or after the commencement.

257 No interest created by prescription before commencement

Section 182 applies whether the interest is alleged to have been created before or after the commencement.

258 Disposition with intent to defraud creditor before commencement

Section 193 applies in relation to the disposition of property whether the disposition happens before or after the commencement.

259 Powers of appointment over property created before commencement

Part 12 applies in relation to a document giving a person a power of appointment over property, including, for example, an appointment, or purported appointment, of property under the document, whether the document, or the appointment or purported appointment, is made before or after the commencement.

Schedule 1 Standard terms

section 139

1 **Payment of rent**

The lessee must pay the rent payable under the lease when it is due.

2 **Payment of taxes, rates and other assessments**

The lessee must pay all taxes, rates and assessments of any kind that are charged or chargeable on the land or the lessor, in relation to the leased premises for the term of the lease in the proportion that the area of the leased premises bears to the land subject to the assessment.

3 **Maintain and leave the premises in good repair**

- (1) The lessee must at all times during the term of the lease—
 - (a) keep the leased premises, including any improvements made to the leased premises by the lessee with the consent of the lessor, and excluding any structural elements of the leased premises, in good condition; and
 - (b) at the end of the lease, whether by expiration of the lease term or otherwise, surrender and yield up the leased premises to the lessor in at least the same repair and condition in which the premises were in at the start of the lease.
- (2) However, the lessee is not bound to repair any damage to the leased premises caused by—
 - (a) reasonable wear and tear; or
 - (b) any of the following—
 - (i) fire, flood, or explosion, whether or not the fire, flood, or explosion is caused or contributed to by the lessee's negligence;

- (ii) lightning, storm or earthquake;
 - (iii) any other cause the risk for which the lessor has insured the premises.
- (3) Despite subclause (2)(b), the lessee is not excused from liability to repair any damage caused by any of the events mentioned in that subclause if, and to the extent that, any insurance moneys that would otherwise have been payable to the lessor for the destruction of or damage to the leased premises can not be recovered because of an act or omission of—
 - (a) the lessee; or
 - (b) the lessee’s agent, contractor or invitee; or
 - (c) any other person under the lessee’s direction or control.

4 Abatement of rent if premises are destroyed or damaged

- (1) If the leased premises or any part of them are destroyed or damaged by a relevant cause to the extent that they become unfit for occupation and use by the lessee, the rent and any contribution payable by the lessee to the outgoings on those premises abates, in fair and just proportion to the destruction or damage, until the premises or part of them—
 - (a) have been repaired and reinstated; and
 - (b) are again fit for occupation and use by the lessee.
- (2) Despite subclause (1), the lessee is not entitled to the abatement referred to in that subclause if, and to the extent that, any insurance moneys that would otherwise have been payable to the lessor for the destruction of or damage to the leased premises can not be recovered because of an act or omission of—
 - (a) the lessee; or
 - (b) the lessee’s agent, contractor or invitee; or
 - (c) any other person under the lessee’s direction or control.
- (3) In this clause—

relevant cause means—

- (a) fire, flood, or explosion, whether or not the fire, flood or other inundation of water, or explosion is caused or contributed to by the lessee's negligence; or
- (b) lightning, storm or earthquake; or
- (c) any other cause the risk for which the lessor has insured the premises.

5 Assignment of the lease

- (1) The lessee must not assign the lease without first obtaining the lessor's written consent.
- (2) The lessor's written consent must not be unreasonably withheld.

6 Noxious or offensive acts or things

- (1) The lessee must not do, or permit to be done, on the leased premises a prohibited thing to—
 - (a) the lessor; or
 - (b) the other lessees of the lessor; or
 - (c) the owners or occupiers of neighbouring properties.
- (2) Subclause (1) does not apply to a prohibited thing contemplated under the lease.
- (3) In this clause—

prohibited thing means—

- (a) any noxious or offensive act or thing; or
- (b) any act or thing that is, or is likely to be, a nuisance or that causes, or is likely to cause, any nuisance, damage, or disturbance.

7 Commission of waste

The lessee must not commit, or permit any of the lessee's agents, contractors, or invitees to commit, voluntary waste in relation to the leased premises.

8 Lessee entitled to quiet enjoyment

- (1) The lessee and all persons claiming under the lessee must be able quietly to enjoy the leased premises without disturbance by—
 - (a) the lessor; or
 - (b) the lessor's agent, contractor or invitee; or
 - (c) any other person under the lessor's direction or control.
- (2) The lessor must not derogate from the lease.

9 Change of use

- (1) The lessee must not use the premises for any purpose other than the purpose permitted under the lease unless the lessor consents to the change of use.
- (2) The lessor must not unreasonably withhold consent to a request from the lessee for a change in use of the premises.

10 Power to inspect premises

- (1) The lessor may at all reasonable times, either personally or by the lessor's agent, enter the leased premises for the purpose of—
 - (a) inspecting their state of repair; or
 - (b) carrying out repairs; or
 - (c) complying with the requirements of—
 - (i) any Act or other law; or
 - (ii) any notice given by a competent authority.

-
- (2) The lessor must not unreasonably interfere with the lessee's occupation and use of the leased premises in the exercise of the power conferred by subclause (1).

11 Power to terminate lease for non-payment of rent or other breach

- (1) The lessor may terminate the lease if—
 - (a) any rent is unpaid for 1 month after the due date for payment, whether or not a demand for payment has been made to the lessee by written notice signed by the lessor or the lessor's agent; or
 - (b) the lessee has failed, for a period of 2 months, to observe or perform any other covenant, condition, or stipulation on the part of the lessee expressed or implied in the lease.
- (2) The lessee is not released from liability for the payment of any unpaid rent or for the breach or non-observance of any other covenant, condition, or stipulation mentioned in subclause (1) if the lessor terminates the lease.
- (3) Subclause (1) is subject to part 9, division 5, subdivision 2.

12 Lessee must remove lessee's fixtures

- (1) Before or at the end of the lease, whether by expiration of the lease term or otherwise, the lessee must remove and take away from the leased premises all fixtures, fittings, plant, machinery, utensils, shelving, counters, safes and other items owned by the lessee.
- (2) The lessee must repair any damage caused to the leased premises by the removal of the items mentioned in subclause (1).
- (3) If the lessee does not comply with subclause (1) or (2) within 1 month after the end of the lease term then the items mentioned in subclause (1) are taken to be abandoned items and the lessor is entitled to remove, sell or otherwise dispose of the abandoned items and to repair any damage caused to the leased premises by the removal of the items.

- (4) The lessor may recover from the lessee any loss or damages incurred in exercising its rights under subclause (3).

Schedule 2 Dictionary

section 6

absolute, in relation to an assignment, for part 11, division 1, see section 189.

accepted method, for electronically signing a document, means a method that—

- (a) identifies the signatory for the document and the signatory's intention in relation to the content of the document; and
- (b) is either—
 - (i) as reliable as appropriate for the purposes for which the document is made or signed, having regard to all the circumstances, including any relevant agreement; or
 - (ii) proven in fact to have fulfilled the functions mentioned in paragraph (a), by itself or together with further evidence; and
- (c) is consented to by each other signatory to the document.

affected owner, for part 10, division 3, see section 185(2).

approved form means a form approved under section 234.

boundary means the boundary line between contiguous parcels of land.

breach, of a term of a lease, for part 9, division 5, subdivision 2, see section 152.

breach notice, for part 9, division 5, subdivision 3, see section 164(2)(a).

building, for part 10, division 3, see section 183.

buyer—

- (a) means a buyer for valuable consideration, and includes a lessee, mortgagee, and other person who for valuable consideration acquires an interest in property; or
- (b) in relation to an instalment contract, for part 7, division 3, see section 87; or
- (c) under a contract for the sale of a lot, for part 7, division 4, see section 95.

call option, for the sale of a lot, for part 7, division 4, see section 95.

community titles scheme means a community titles scheme under the *Body Corporate and Community Management Act 1997*, section 10.

computer, for part 7, division 2, see section 74.

consent, to a method by a signatory to a document under the definition *accepted method*, paragraph (c)—

- (a) includes consent that can reasonably be inferred from the conduct of the signatory; and
- (b) does not include consent given subject to conditions unless the signatory complies with the conditions.

contract—

- (a) for the sale of land, for part 7, division 3, see section 87; or
- (b) for the sale of a lot, for part 7, division 4, see section 95.

conveyancing transaction, for part 7, division 2, see section 74.

co-owner, of property, means a person who has an interest in the property with 1 or more other persons as—

- (a) joint tenants, whether at law or in equity; or
- (b) tenants in common, whether at law or in equity.

copy, of an electronic document, for part 6, division 1, see section 44.

counterpart, for a document, for part 6, division 1, see section 45.

court means the Supreme Court.

debt, for part 11, division 1, see section 189.

debtor, for part 11, division 1, see section 189.

deed means a document that has under this Act or another Act the effect of a deed.

deposit, in relation to a contract for the sale of land, for part 7, division 3, see section 87.

designated person—

- (a) for a lease of land, for part 9, division 5, subdivision 2, see section 152; or
- (b) for a lease of land, for part 9, division 5, subdivision 3, see section 163.

director, of a corporation, for part 6, division 1, see section 44.

discharge, a mortgage, includes redeem and release the mortgage.

disclosure documents, for a lot, for part 7, division 4, see section 95.

disclosure statement, for a lot, for part 7, division 4, see section 99(1)(a).

disposition—

- (a) of property—
 - (i) includes the following—
 - (A) a sale of property;
 - (B) a mortgage of property;
 - (C) a transfer of property;
 - (D) a grant of property;
 - (E) a partition of property;
 - (F) an exchange of property;
 - (G) a lease of property;
 - (H) an assignment of property;

- (I) an instrument that vests property;
- (J) a declaration of a trust of property;
- (K) a surrender, disclaimer or release of property;
- (L) the creation of an interest in property, including, for example, an easement or profit a prendre;
- (M) the assurance of an interest in property by a document; and

(ii) does not include the following—

- (A) a will;
- (B) a devise of property;
- (C) a bequest of property;
- (D) an appointment by will in relation to property; and

(b) for part 13, see section 198.

document, for part 6, see section 44.

e-conveyance, for part 7, division 2, see section 74.

e-conveyancing, for part 7, division 2, see section 74.

electronic address includes an email address, internet protocol address, digital mailbox address and mobile telephone number.

electronically sign, a document, means sign the document using an accepted method.

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

electronic document means a record of information that is—

- (a) a thing from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (b) a record of information reproduced from a thing mentioned in paragraph (a); or

- (c) a record of information that exists in digital form and is capable of being reproduced, transmitted, stored or duplicated by electronic means.

electronic link includes a link to—

- (a) a website; and
(b) a file hosting service; and
(c) a digital repository, including, for example, a drop box cloud storage platform; and
(d) another electronic medium.

electronic workspace, for an e-conveyance, for part 7, division 2, see section 74.

ELN, for part 7, division 2, see section 74.

encroaching owner, for part 10, division 3, see section 185(1).

encroachment, for part 9, division 3, see section 183.

financial settlement, of an e-conveyance, for part 7, division 2, see section 74.

income, in relation to land, includes rents and profits from the land.

information, for part 6, see section 44.

instalment, for part 7, division 3, see section 87.

instalment contract, for part 7, division 3, see section 89.

intestate see the *Succession Act 1981*, section 5.

land registry means the land register under the *Land Act 1994*, section 275.

land titles legislation, for part 7, division 2, see section 74.

lease, for part 9, division 5, see section 149.

lease terminable at will, for part 9, division 7, see section 172.

listed corporation, for part 7, division 4, see section 95.

lot, for part 7, division 4, see section 95.

mortgagee, for a mortgage, includes a person who derives title to the mortgage from another person who was a mortgagee for the mortgage.

mortgage money means money or money's worth secured by a mortgage.

mortgagor, for a mortgage, includes a person who derives title to the mortgage from another person who was a mortgagor for the mortgage.

National Law, for part 7, division 2, see section 74.

notice means written notice.

notice to remedy breach, for part 9, division 5, subdivision 2, see section 153(1)(a).

office of the land registry has the meaning given by the *Land Title Act 1994*.

Note—

See also the *Land Title Act 1994*, section 9(4).

option, for the sale of a lot, for part 7, division 4, see section 95.

option fee, relating to land, for part 7, division 3, see section 87.

participating subscriber, to an e-conveyance, for part 7, division 2, see section 74.

party, to a lease, for part 9, division 7, see section 170.

perpetuity period, for a disposition of property under a trust, for part 13, see section 201.

physical document means a record of information that is—

- (a) a thing on which there is writing; or
- (b) a thing on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them.

possession, in relation to land, includes the receipt of income from the land.

power of appointment, over property, means a discretionary power to create or transfer a beneficial interest in the property without the provision of valuable consideration.

prescribed certificate, applicable to a lot, for part 7, division 4, see section 99(1)(b).

prescribed percentage, of the purchase price of land, for part 7, division 3, see section 87.

property, for part 5, division 2, see section 30.

proposed lot means—

- (a) a proposed lot within the meaning of the *Land Sales Act 1984*; or
- (b) a proposed lot within the meaning of the *Body Corporate and Community Management Act 1997*; or
- (c) land that will be shown as a lot on a building units plan or group titles plan registered under the *Building Units and Group Titles Act 1980*; or

Note—

There is limited scope for the registration of new building units plans and group titles plans under the *Building Units and Group Titles Act 1980*—see section 5A of that Act.

- (d) a proposed lot within the meaning of the *South Bank Corporation Act 1989*, section 97B.

put and call option, for the sale of a lot, for part 7, division 4, see section 95.

put option, for the sale of a lot, for part 7, division 4, see section 95.

reasonable compensation, for a breach of a term of a lease, for part 9, division 5, subdivision 2, see section 152.

register, a document, an interest, land or another thing, means record the particulars of the thing in the appropriate register in the land registry.

registrar means the registrar of titles under the *Land Title Act 1994*, section 6.

related, for a buyer of a lot and a seller of a lot, for part 7, division 4, see section 96.

rent includes rent payable in advance.

Resource Act see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 9.

sale—

- (a) means a transfer for valuable consideration; or
- (b) of land, for part 7, division 2, see section 74.

seal, of a corporation, for part 6, division 1, see section 44.

secretary, of a corporation, for part 6, division 1, see section 44.

security interest, for part 5, division 2, see section 30.

seller—

- (a) in relation to an instalment contract, for part 7, division 3, see section 87; or
- (b) under a contract for the sale of a lot, for part 7, division 4, see section 95.

short lease means—

- (a) a lease for a term of not more than 3 years, including, for example, a lease created by parol taking effect in possession; or
- (b) a tenancy from year to year or a shorter period.

sign, a document, for part 6, division 1, see section 44.

standard terms, of a lease, see section 139.

statutory body, for part 7, division 4, see section 95.

subscriber, for part 7, division 2, see section 74.

successor includes a personal representative and an assign.

term—

- (a) for part 8, see section 108; or
- (b) for part 9, see section 137.

termination notice, for part 9, division 7, see section 173.

thing in action, for part 11, division 1, see section 189.

time, of settlement of a contract, means the time provided for under the contract.

unregistered land means land that has been granted in fee simple and is not land under the provisions of the *Land Title Act 1994* or land granted in trust under the *Land Act 1994*.

valuable consideration does not include a nominal consideration in money.