



Queensland

Aboriginal and Torres Strait Islander Land Holding Act 2013

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Aboriginal and Torres Strait Islander Land Holding Act 2013

Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	7
2	Commencement	7
3	Main object of Act	7
4	Achieving Act's main object	8
5	Approach adopted in applying ALA or TSILA	9
6	All rights under 1985 Land Holding Act to be dealt with under this Act	9
7	Act binds all persons	9
Division 2	Interpretation	
8	Definitions	10
9	Meaning of lease entitlement and holder of lease entitlement . . .	10
10	Meaning of trust area and trustee	11
Part 2	Transition from 1985 Land Holding Act to this Act	
Division 1	Adjustment of status of land affected by 1985 Land Holding Act	
11	Return of land previously divested under 1985 Land Holding Act	12
12	Continuation of 1985 Act granted leases	12
Division 2	Advice to Minister	
13	Establishment of Land Holding Act stakeholder reference panels	14
Part 3	Lease entitlements	
Division 1	Introduction	
14	Operation of pt 3	15
Division 2	Publication of lease entitlement notices	
15	Chief executive to publish lease entitlement notice	16
16	Requirements for lease entitlement notice	16
17	Replacement lease entitlement notice	16

Contents

Division 3	Trust area notice	
18	Chief executive to notify trustee about lease entitlements	17
19	Chief executive to notify trustee if no lease entitlements	17
20	Publication of trust area notice	18
Division 4	Addition to and replacement of lease entitlement notices	
21	Time limits for application under this division	18
22	Application for publication of lease entitlement notice	19
23	Appeal to Land Court against refusal to publish lease entitlement notice 20	
24	Application for replacement of lease entitlement notice	20
25	Appeal to Land Court about decision on application for replacement of lease entitlement notice	22
Division 5	Lease entitlement not established	
26	Hardship certificate	23
Division 6	Surrender of lease entitlement	
27	Surrender	25
Part 4	Identification of practical obstacles	
28	Operation of pt 4	25
29	What are practical obstacles	26
30	Minister refers lease entitlement notice to Land Holding Act stakeholder reference panel or reference entity	26
31	Minister advises of obstacles and gives statement of reasons . .	27
32	Application about statement of reasons (obstacles)	27
33	Refusal to amend statement of reasons (obstacles)	28
Part 5	Grants of leases to satisfy lease entitlements	
Division 1	Introduction	
34	Operation of pt 5	29
Division 2	Granting lease to satisfy lease entitlement if no obstacles to grant	
35	Minister may grant lease	30
Division 3	Application to proceed immediately with the grant of a lease	
36	Application to proceed immediately with the grant of a lease . . .	31
37	Consideration of application	32
38	Refusal to proceed immediately with grant of lease	33
Division 4	Granting lease to satisfy lease entitlement if obstacles to grant	
Subdivision 1	Deferred grants generally	
39	Minister may make deferred grant of lease	34
Subdivision 2	Consultation or agreement before deferred grant	

40	Purpose of sdiv 2	34
41	Minister may rely on advice	34
42	Reference to Land Holding Act stakeholder reference panel . . .	35
43	Persons to be consulted	35
44	Location of lease	35
45	Ownership of improvements	36
Subdivision 3	Agreed deferred grant	
46	Minister may make agreed deferred grant	36
Subdivision 4	Contested deferred grant	
47	Application to Land Court in absence of agreement	37
48	Decision of Land Court for contested deferred grant	38
49	Compensation for grantee in circumstances of contested deferred grant 39	
Division 5	New Act granted leases generally	
50	New Act granted leases	40
Part 6	Boundary relocations for particular 1985 Act granted leases	
Division 1	Introduction	
51	Operation of pt 6	41
Division 2	Consultation about boundary relocations	
52	Consultation about boundaries of lease	41
Division 3	Agreed boundary relocation	
53	Application to Land Court in case of agreement	42
54	Decision of Land Court for agreed boundary relocation	43
Division 4	Contested boundary relocation	
55	Application to Land Court in absence of agreement	44
56	Decision of Land Court for contested boundary relocation	44
57	Compensation for lessee in circumstances of contested boundary relocation	45
Division 5	Recording boundary relocation	
58	Recording of boundary relocation	46
Part 7	Ownership of structural improvements	
59	Ownership of improvements continues	47
60	Agreement or arrangement for 1985 Land Holding Act, s 15 . . .	47
61	Gazette notice for completed agreement or arrangement	48
62	Use of valuation methodology for social housing dwelling	48
Part 8	Conditions and requirements applying to leases	

Contents

Division 1	Conditions and requirements applying to leases other than term leases	
63	Operation of div 1	49
64	Dealings	50
65	Registration of dealings	50
66	Lease for residential purposes	50
67	Subleases	51
68	Surrenders	52
Division 2	Term leases	
69	Entitlement to apply for lease under ALA or TSILA	52
Division 3	Vesting of particular leases	
69A	Vesting of particular leases	53
69B	Expiry of division	55
Part 9	Application of provisions of ALA or TSILA	
Division 1	Applying ALA or TSILA	
70	ALA provisions	55
71	TSILA provisions	55
Division 2	Applying ALA	
Subdivision 1	All land	
73	Applying ALA, pt 10, div 4 (Home ownership leases)	56
Subdivision 2	Aboriginal land	
74	Applying ALA, pt 14 (Provisions about mortgages of leases over Aboriginal land)	57
Subdivision 3	Aboriginal trust land	
75	Definition for sdiv 3	57
76	Applying ALA, s 185 (Relationship with Land Act)	57
77	Applying ALA, s 187 (Amending trustee (Aboriginal) lease)	58
78	Applying ALA, s 188 (Mortgage of trustee (Aboriginal) lease) . .	58
Division 3	Applying TSILA	
Subdivision 1	All land	
80	Applying TSILA, pt 8, div 4 (Home ownership leases)	58
Subdivision 2	Torres Strait Islander land	
81	Applying TSILA, pt 10 (Provisions about mortgages of leases over Torres Strait Islander land)	59
Subdivision 3	Torres Strait Islander trust land	
82	Definition for sdiv 3	60
83	Applying TSILA, s 141 (Relationship with Land Act)	60

84	Applying TSILA, s 143 (Amending trustee (Torres Strait Islander) lease) 60	
85	Applying TSILA, s 144 (Mortgage of trustee (Torres Strait Islander) lease)	60
Part 10	Miscellaneous	
86	Plans of survey	61
87	Limitation on qualification requirement	61
88	Delegations	62
89	Application to Land Court if no interested persons identified . . .	62
90	Information Privacy Act does not stop sharing of information necessary for effective operation of this Act	63
91	Review of Act	64
92	Approval of forms	64
93	Regulation-making power	64
Part 11	Repeal and transitional provisions for Act No. 2 of 2013	
94	Repeal	64
95	Continuation of proceeding	64
Part 12	Transitional provision for Natural Resources and Other Legislation Amendment Act 2019	
96	Application of former s 69A to particular leases	65
Schedule	Dictionary	67

Aboriginal and Torres Strait Islander Land Holding Act 2013

An Act to make ongoing provision for particular matters arising under the Aborigines and Torres Strait Islanders (Land Holding) Act 1985 and to repeal that Act

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Aboriginal and Torres Strait Islander Land Holding Act 2013*.

2 Commencement

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- (a) part 12, division 2, subdivisions 1 and 2;
- (b) part 12, division 4;
- (c) part 12, division 10, subdivisions 1 and 2.

3 Main object of Act

The main object of this Act is—

- (a) to provide a framework for identifying and satisfying entitlements to grants of leases that are outstanding under the 1985 Land Holding Act, including by dealing

with practical obstacles to satisfying the entitlements;
and

- (b) to resolve boundary problems affecting particular 1985 Act granted leases; and
- (c) to the extent practicable, to apply the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991* to both 1985 Act granted leases and new Act granted leases.

4 Achieving Act's main object

- (1) Achieving this Act's main object includes the following—
 - (a) the identification of outstanding lease entitlements;
 - (b) consultation, negotiation and agreement aimed at resolving practical obstacles to satisfying lease entitlements;
 - (c) consultation, negotiation and agreement aimed at resolving boundary problems affecting some 1985 Act granted leases.
- (2) This Act allows for the deferral of the grant of a lease to satisfy a lease entitlement, having regard to the practical obstacles that may be identified.
- (3) The purpose of a deferral is not to diminish a right to the grant of the lease, but is intended—
 - (a) to allow the resolution of the obstacles by agreement or a decision of the Land Court; and
 - (b) to ensure the grant, when made, is not affected by the obstacles in the way that would otherwise happen if there was a grant of the lease without an attempt at resolution.

5 Approach adopted in applying ALA or TSILA

- (1) This Act provides for the continuation of 1985 Act granted leases and the granting of new Act granted leases, and for the conditions applying to the leases, in a way that—
 - (a) takes account of rights and obligations under the 1985 Land Holding Act; and
 - (b) to the extent practicable, adopts the regime governing land and tenure management under ALA and TSILA.
- (2) This Act also provides for the return to each trust area of land divested from the area under the 1985 Land Holding Act to ensure that land leased under the 1985 Land Holding Act or this Act can be—
 - (a) effectively administered as part of the trust area; and
 - (b) otherwise dealt with substantially under ALA or TSILA as may be applicable.
- (3) In providing for the continuation of 1985 Act granted leases and the granting of new Act granted leases, this Act provides for the application of ALA or TSILA to the leases to the extent practicable.

6 All rights under 1985 Land Holding Act to be dealt with under this Act

A right a person may have had under the 1985 Land Holding Act to be granted a lease under that Act may be satisfied only in the form of a grant to satisfy a lease entitlement as provided for under this Act.

7 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 liable to be prosecuted for an offence.

Division 2 Interpretation

8 Definitions

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

9 Meaning of lease entitlement and holder of lease entitlement

- (1) A ***lease entitlement*** is an entitlement to be granted a lease to satisfy an entitlement under the 1985 Land Holding Act.
- (2) A lease entitlement exists if all of the following circumstances apply—
 - (a) a person made an application under the 1985 Land Holding Act, section 5 to be granted a lease under the authority of that Act within a trust area (the ***trust area*** for the lease entitlement);
 - (b) the application for the lease was made on or after 15 June 1985 but on or before 20 December 1991;
 - (c) the application for the lease was exhibited in the way, and for the period, required under the 1985 Land Holding Act, section 6(1)(a);
 - (d) either of the following has happened—
 - (i) the trustee council for the application approved the granting of the lease, whether or not notification of the approval was given under the 1985 Land Holding Act, section 6(1)(b);
 - (ii) the appeal tribunal approved the granting of the lease;
 - (e) the lease was never granted under the 1985 Land Holding Act.
- (3) The ***holder*** of a lease entitlement is the person who, when the granting of the lease was approved under the 1985 Land Holding Act, was the applicant under that Act for the grant.

(4) In this section—

appeal tribunal means an appeal tribunal as constituted under the 1985 Land Holding Act.

10 Meaning of trust area and trustee

- (1) A *trust area* is land that was at any time a trust area under the 1985 Land Holding Act.
- (2) The *trustee*, of a trust area, is the entity that is—
 - (a) to the extent land in the trust area is the subject of a deed of grant in trust or a reserve under the Land Act—the land’s trustee under that Act; or
 - (b) to the extent land in the trust area is transferred land under ALA or TSILA—the entity that, under ALA or TSILA, holds the land.
- (3) In a provision of this Act about a lease, or about a lease entitlement or a lease entitlement notice—
 - (a) a reference to the trustee of the trust area is taken to be a reference to the trustee of the trust area, or the part of the trust area, in which the lease land is located or in which the land the subject of the lease entitlement or lease entitlement notice is located; and
 - (b) a reference to a trust area is taken to be a reference to the trust area, or the part of the trust area, in which the lease land is located or in which the land the subject of the lease entitlement or lease entitlement notice is located.

Part 2 **Transition from 1985 Land Holding Act to this Act**

Division 1 **Adjustment of status of land affected by 1985 Land Holding Act**

11 **Return of land previously divested under 1985 Land Holding Act**

- (1) On the commencement of this section, land within a trust area that, under the 1985 Land Holding Act, section 10(1) or (2) divested from, or passed from the control of, an entity, becomes vested in the entity that is currently the trustee of the trust area, or the part of the trust area, in which the land is located in the same way it would have been vested if it had not been divested.

Example—

If the external boundaries of the trust area are the external boundaries of a deed of grant in trust under the Land Act, the land vested under this section becomes part of the deed of grant in trust land.

- (2) The vesting of land under subsection (1) does not affect—
- (a) the continuation of any 1985 Act granted lease granted over the land; or
 - (b) the ownership of a structural improvement located on that land.

Note—

See also section 12 and part 7.

- (3) The chief executive, or, if appropriate, the registrar, must make any necessary change in the appropriate register to record the operation of subsection (1).

12 **Continuation of 1985 Act granted leases**

- (1) This section applies if—

-
- (a) a lease was granted, or purportedly granted, in a trust area before the commencement of the section; and
 - (b) the grant was, or purported to be, under the authority of—
 - (i) the 1985 Land Holding Act; or
 - (ii) another Act, but with reference being made to the 1985 Land Holding Act; or
 - (iii) the 1985 Land Holding Act and another Act; and

Example for paragraph (b)(iii)—

The wording of an instrument issued for the grant of a lease may have indicated that the lease was granted under both the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* and the Land Act.

- (c) the lease was still in force, or purportedly still in force, immediately before the repeal of the 1985 Land Holding Act.

Example for paragraph (c)—

The lease was not surrendered before the repeal of the 1985 Land Holding Act.

- (2) For this Act, the lease is a ***1985 Act granted lease***.
- (3) A 1985 Act granted lease—
 - (a) is taken to have been a validly granted lease from when it was granted or purportedly granted until the repeal of the 1985 Land Holding Act; and
 - (b) for all purposes is taken to have been granted solely under the authority of the 1985 Land Holding Act; and
 - (c) continues in force despite the repeal of the 1985 Land Holding Act.
- (4) From the commencement of this section, the lessor of a 1985 Act granted lease is taken to be—
 - (a) the trustee of the trust area; or

[s 13]

- (b) if the lease land is also the subject of a townsite lease under ALA or TSILA—the lessee under the townsite lease.
- (5) If, under the 1985 Land Holding Act, a 1985 Act granted lease was granted as a lease in perpetuity, the lease continues as a lease granted in perpetuity and for the same purpose as the purpose for which the 1985 Act granted lease was granted.
- (6) If, under the 1985 Land Holding Act, a 1985 Act granted lease was granted as a lease for a term of years, the lease continues as a lease granted for the same term of years, and for the same purpose, as the term and purpose for which the 1985 Act granted lease was granted.
- (7) A 1985 Act granted lease—
 - (a) continues to be subject to conditions recorded on the instrument of lease for the 1985 Act granted lease, other than, for a lease granted in perpetuity, any conditions providing, or purporting to provide, for the rent payable under the lease; and
 - (b) as a continuing lease, is subject to—
 - (i) the conditions provided for under part 8; and
 - (ii) the provisions of ALA or TSILA as provided for under part 9.
- (8) The chief executive, or if appropriate, the registrar, may make any necessary change in the appropriate register to record the operation of this section, including to record this Act as the authority for the continuation of a 1985 Act granted lease.

Division 2 Advice to Minister

13 Establishment of Land Holding Act stakeholder reference panels

- (1) The Minister may establish a Land Holding Act stakeholder reference panel for a trust area to give information and advice to the Minister as provided for under this Act.

(2) A Land Holding Act stakeholder reference panel may include any of the following—

- (a) the chief executive;
- (b) any other chief executive having responsibilities in relation to the trust area;

Examples for paragraph (b)—

- the housing chief executive
- the chief executive of the department in which the *Local Government Act 2009* is administered

(c) any trustee of the trust area.

(3) A member of a Land Holding Act stakeholder reference panel may be represented at a meeting of the panel by a person nominated by the member.

(4) A Land Holding Act stakeholder reference panel may invite persons, or representatives of persons, likely to be affected by issues for consideration by the panel to participate in the panel's consideration of the matters.

Examples for subsection (4)—

- native title parties
- the local government with responsibility for the trust area

Part 3 Lease entitlements

Division 1 Introduction

14 Operation of pt 3

This part establishes a process for—

- (a) the chief executive to publish information about lease entitlements; and
- (b) persons to apply to the chief executive to publish or replace published information about lease entitlements.

Division 2 Publication of lease entitlement notices

15 Chief executive to publish lease entitlement notice

The chief executive must publish a notice (a *lease entitlement notice*) for each lease entitlement within a trust area of which the chief executive is aware.

16 Requirements for lease entitlement notice

- (1) A lease entitlement notice for a lease entitlement must be published on the department's website.
- (2) The lease entitlement notice must include all information about the lease entitlement reasonably able to be included in the notice.
- (3) Without limiting subsection (2), the notice must—
 - (a) identify the trust area for the lease entitlement; and
 - (b) include the identification number of the original application for the lease entitlement, if known; and
 - (c) identify the holder of the lease entitlement; and
 - (d) to the extent reasonably practicable, give a description of the lease entitlement land; and
 - (e) state the date of the notice.
- (4) The chief executive may publish a lease entitlement notice for a lease entitlement only if the chief executive is satisfied about the existence of the lease entitlement.

17 Replacement lease entitlement notice

The chief executive may publish a lease entitlement notice to replace a lease entitlement notice currently in force on the basis of further or more accurate information obtained by the chief executive.

Division 3 Trust area notice

18 Chief executive to notify trustee about lease entitlements

- (1) This section applies if the chief executive is satisfied that substantially all of the lease entitlement notices for a trust area have been published.
- (2) The chief executive may give a written notice to the trustee of the trust area (a *trust area notice*) to advise the trustee of all lease entitlement notices that have been published for lease entitlements for the trust area.
- (3) The trust area notice must—
 - (a) identify the trust area; and
 - (b) include a copy of all lease entitlement notices that have been published for the trust area; and
 - (c) state the date of the notice; and
 - (d) include a statement that a person has 18 months from the date of the notice to apply to the chief executive to publish—
 - (i) a lease entitlement notice for a lease entitlement not included in the trust area notice; or
 - (ii) a replacement lease entitlement notice for a lease entitlement notice that is included in the trust area notice but that is incorrect.

19 Chief executive to notify trustee if no lease entitlements

- (1) The chief executive may give a written notice to the trustee of a trust area (also a *trust area notice*) if the chief executive is satisfied that no lease entitlements exist for the trust area.
- (2) The trust area notice must—
 - (a) identify the trust area; and
 - (b) state the date of the notice; and

- (c) include a statement that a person has 18 months from the date of the notice to apply to the chief executive to publish a lease entitlement notice for the trust area.

20 Publication of trust area notice

- (1) The chief executive must publish a trust area notice on the department's website.
- (2) The chief executive may ask the trustee of a trust area—
 - (a) to display a copy of a trust area notice in a prominent location in a trust area for a stated period; and
 - (b) to keep a copy of the notice available for inspection at a suitable location in the trust area for a stated period.

Division 4 Addition to and replacement of lease entitlement notices

21 Time limits for application under this division

- (1) This division provides for a person to apply to the chief executive to publish or replace a lease entitlement notice for a trust area.
- (2) Subject to subsection (3), an application under this division can not be made later than 18 months after the date of the trust area notice for the trust area.
- (3) However, a person may apply to the chief executive under this division at any time if no trust area notice for the trust area has been given by the chief executive.
- (4) The period stated under subsection (2) applies whether or not the trust area notice has been displayed by the trustee in compliance with a request from the chief executive under section 20.

22 Application for publication of lease entitlement notice

- (1) A person (the *applicant*) may apply to the chief executive to publish a lease entitlement notice for a lease entitlement in a trust area.
- (2) The applicant must give the chief executive information and documents in the applicant's possession to identify the details of the lease entitlement, including its holder.
- (3) If the applicant and the person identified as the holder of the lease entitlement are not the same person, the applicant must include with the application information to satisfy the chief executive that it is reasonable in the circumstances for the applicant to be making the application.
- (4) The chief executive may ask the applicant to provide further information to support the application within a stated reasonable period.
- (5) The chief executive must decide the application, and advise the applicant of the decision, within—
 - (a) 6 months after the application was made; or
 - (b) 6 months after the application was made together with any time the chief executive reasonably requires to deal with additional information given by the applicant.
- (6) The chief executive may decide the application if the applicant does not provide additional information within the stated period.
- (7) The chief executive may grant the application only if the chief executive is satisfied about the existence of the lease entitlement as identified in the application.
- (8) If the chief executive grants the application, the chief executive must—
 - (a) publish the lease entitlement notice on the department's website; and
 - (b) give a copy of the lease entitlement notice to the trustee of the trust area.

[s 23]

- (9) If the chief executive refuses the application, the chief executive must give a notice to the applicant advising of the refusal and include the chief executive's reasons for the decision to refuse.

23 Appeal to Land Court against refusal to publish lease entitlement notice

- (1) This section applies if the chief executive refuses an application to publish a lease entitlement notice.
- (2) The applicant may appeal to the Land Court against the decision.
- (3) The appeal must be started within 28 days after the applicant is given notice of the chief executive's decision to refuse the application.
- (4) The parties to the appeal are—
 - (a) the applicant; and
 - (b) the chief executive.
- (5) If the Land Court decides that the lease entitlement notice should be published, the Land Court's decision must include the details of the lease entitlement to be included in the notice.
- (6) It is not necessary for the details mentioned in subsection (5) to be consistent in every respect with the details included in the application as dealt with by the chief executive.

24 Application for replacement of lease entitlement notice

- (1) A person (the *applicant*) may apply to the chief executive to publish a lease entitlement notice to replace a lease entitlement notice currently in force for a trust area because the lease entitlement notice does not accurately state the details of a lease entitlement.
- (2) The applicant must give the chief executive information and documents in the applicant's possession to identify the details of the notice applied for.

- (3) If the applicant and the person identified, or proposed to be identified, as the holder of the lease entitlement under the replacement notice are not the same person, the applicant must include with the application information to satisfy the chief executive that it is reasonable in the circumstances for the applicant to be making the application.
- (4) The chief executive may ask the applicant to provide further information to support the application within a stated reasonable period.
- (5) The chief executive must decide the application, and advise the applicant of the decision, within—
 - (a) 6 months after the application was made; or
 - (b) 6 months after the application was made together with any time the chief executive reasonably requires to deal with additional information given by the applicant.
- (6) The chief executive may decide the application if the applicant does not provide additional information within the stated period.
- (7) If the chief executive decides to grant the application, it is not necessary for the decision to provide for a replacement lease entitlement notice that is consistent in every respect with the details included in the application.
- (8) However, the chief executive must be satisfied about the existence of the lease entitlement as identified in the replacement lease entitlement notice as proposed by the chief executive.
- (9) If the chief executive grants the application, the chief executive must publish a lease entitlement notice on the department's website to replace the existing lease entitlement notice.
- (10) If the chief executive refuses the application, or if the application is granted but the chief executive's decision provides for a replacement notice inconsistent with the application, the chief executive must give a notice to the applicant advising of the decision and include the chief executive's reasons for the decision.

[s 25]

- (11) If, under this section, the chief executive decides to publish a replacement lease entitlement notice, the chief executive must give a copy of the replacement lease entitlement notice, and the chief executive's reasons for the decision, to—
- (a) the trustee of the trust area; and
 - (b) any person the chief executive reasonably considers to be an affected person for the decision, including, for example, a person named in the lease entitlement notice proposed to be replaced.

25 Appeal to Land Court about decision on application for replacement of lease entitlement notice

- (1) This section applies if, under section 24, the chief executive decides an application from a person to publish a lease entitlement notice replacing a lease entitlement notice currently in force.
- (2) The applicant may appeal to the Land Court against the decision if—
- (a) the decision is to refuse the application; or
 - (b) the decision is to grant the application but in a way mentioned in section 24(10).
- (3) An affected person who was notified of the decision by the chief executive may appeal to the Land Court against the decision if—
- (a) the decision is to grant the application; or
 - (b) the decision is to grant the application but in a way mentioned in section 24(10).
- (4) An appeal by the applicant or an affected person must be started within 28 days after the applicant or affected person is given notice of the chief executive's decision on the application.
- (5) The parties to the appeal are—
- (a) the applicant; and

-
- (b) the trustee for the trust area; and
 - (c) any affected person for the decision who was notified by the chief executive; and
 - (d) the chief executive.
- (6) If the appeal is by the applicant, the chief executive must advise the applicant and the Land Court of each person mentioned in subsection (5)(c) to ensure that each person may be served.
- (7) If the Land Court decides that a replacement lease entitlement notice should be published, the Land Court's decision must include the details of the lease entitlement to be included in the replacement lease entitlement notice.
- (8) It is not necessary for the details mentioned in subsection (7) to be consistent in every respect with the details included in the application as dealt with by the chief executive or in the chief executive's decision granting the application.
- (9) If the Land Court decides a replacement lease entitlement notice should be published, the chief executive must give a copy of the replacement lease entitlement notice to—
- (a) the trustee of the trust area; and
 - (b) any person the chief executive reasonably considers to be an affected person for the decision.

Division 5 Lease entitlement not established

26 Hardship certificate

- (1) The chief executive may give a person a certificate (a *hardship certificate*) under this section if the chief executive is satisfied all of the following circumstances apply—
- (a) an application for a lease was made by an applicant under the 1985 Land Holding Act, section 5 on or after 15 June 1985 but on or before 20 December 1991;

[s 26]

- (b) the trustee council for the application advised the applicant, or otherwise gave the applicant to understand, that the trustee council had approved the granting of the lease to the applicant, whether or not notification of the approval was given, or purportedly given, under the 1985 Land Holding Act, section 6(1)(b);
 - (c) either of the following acted in reliance on the advice of the approval—
 - (i) the applicant;
 - (ii) if the applicant is deceased—an interested person in the estate of the deceased applicant;
 - (d) despite paragraph (b), the trustee council never lawfully approved, under the 1985 Land Holding Act, the granting of the lease;
 - (e) if the trustee council had lawfully approved the granting of the lease, the chief executive would be authorised under this Act to publish a lease entitlement notice of a lease entitlement for the lease applied for.
- (2) The hardship certificate must—
- (a) identify the person who was the applicant; and
 - (b) to the extent reasonably practicable, give a description of the land that would have been the subject of the lease entitlement; and
 - (c) include the identification number of the original application for the lease entitlement, if known; and
 - (d) identify the person who is the recipient of the hardship certificate.

Note—

Under ALA, section 126(4) and TSILA, section 91(4), the existence of a hardship certificate means the value of the lease land must be taken to be nil.

- (3) The chief executive may identify a person as the recipient of the hardship certificate if the chief executive is satisfied that the recipient would currently be entitled to be the lessee if the application had been lawfully approved and the lease granted.

- (4) In identifying the recipient, the chief executive may have regard to the laws of succession.

Division 6 Surrender of lease entitlement

27 Surrender

- (1) A lease entitlement may be surrendered—
- (a) completely; or
 - (b) to the extent of a part of the lease entitlement land.
- (2) The surrender may be on the basis of the payment of an agreed consideration for the surrender.
- (3) If the holder is deceased, the chief executive may accept a surrender from persons who are interested persons in the estate of the deceased holder.
- (4) If a lease entitlement is surrendered, the chief executive must publish on the department's website the cancellation of the lease entitlement notice for the lease entitlement.
- (5) The publication of the notice ends the lease entitlement and no further action may be taken under this Act to satisfy the entitlement.

Part 4 Identification of practical obstacles

28 Operation of pt 4

This part establishes a process for examining each lease entitlement to identify practical obstacles that need to be resolved before a lease can be granted to satisfy the lease entitlement.

29 What are practical obstacles

- (1) Without limiting what practical obstacles to satisfying a lease entitlement may be identified under this Act, the following could be expected to be identified as obstacles—
 - (a) that the location of the area of the lease entitlement land can not be clearly identified;
 - (b) that the ownership of improvements on the lease entitlement land needs to be resolved;
 - (c) that competing interests in the lease entitlement land need to be dealt with.
- (2) However, the identification, or the need to obtain the agreement, of an interested person in the estate of a deceased holder of a lease entitlement is not a practical obstacle under this Act.

30 Minister refers lease entitlement notice to Land Holding Act stakeholder reference panel or reference entity

- (1) As soon as practicable after a lease entitlement notice is published for a lease entitlement in a trust area, the Minister must refer the notice to—
 - (a) if there is a Land Holding Act stakeholder reference panel for the trust area—the Land Holding Act stakeholder reference panel; or
 - (b) otherwise—the reference entity for the lease entitlement.
- (2) The Land Holding Act stakeholder reference panel or reference entity may, within 3 months after the notice is referred to it—
 - (a) identify to the Minister any practical obstacles it considers to exist to satisfying the lease entitlement; and
 - (b) give the Minister any advice or recommendation it considers appropriate about satisfying the lease entitlement.

31 Minister advises of obstacles and gives statement of reasons

- (1) The Minister must consider any information, advice or recommendation given to the Minister by the Land Holding Act stakeholder reference panel or reference entity under section 30 and prepare a statement (a *statement of reasons (obstacles)*) about satisfying the lease entitlement.
- (2) The statement of reasons (obstacles) must—
 - (a) identify, to the extent known—
 - (i) the practical obstacles that exist to the granting of a lease to satisfy the lease entitlement; and
 - (ii) the affected persons for the obstacles; and
 - (b) explain the Minister's reasons for identifying the obstacles and affected persons.
- (3) The Minister's statement of reasons (obstacles) may, if appropriate, state that no practical obstacles exist to satisfying the lease entitlement.
- (4) The Minister must give the statement of reasons (obstacles) to the reference entity for the lease entitlement.
- (5) The chief executive must take reasonable steps to publish on the department's website information about statements of reasons (obstacles) that are in effect from time to time.

32 Application about statement of reasons (obstacles)

- (1) This section applies if—
 - (a) a statement of reasons (obstacles) is currently in effect for a lease entitlement; and
 - (b) the statement identifies practical obstacles; and
 - (c) a person (the *relevant person*) claims that there are no practical obstacles to the grant of a lease to satisfy the lease entitlement; and
 - (d) the relevant person is a proper applicant for the lease.

[s 33]

- (2) The relevant person may apply to the Minister for the statement of reasons (obstacles) to be amended to state that there are no practical obstacles to the granting of a lease to satisfy the lease entitlement.
- (3) The Minister may ask the relevant person for further information to support the application within a stated reasonable period.
- (4) The Minister must decide the application, and advise the relevant person of the decision, within—
 - (a) 28 days after the application was made; or
 - (b) 28 days after the application was made together with any time the Minister reasonably requires to deal with additional information given by the applicant.
- (5) The Minister may decide the application if the applicant does not provide additional information within the stated period.

33 Refusal to amend statement of reasons (obstacles)

- (1) If the Minister refuses to amend the statement of reasons (obstacles) in the way mentioned in section 32—
 - (a) the notice to the relevant person advising of the decision must include the Minister’s reasons for the decision to refuse; and
 - (b) the relevant person may appeal to the Land Court against the decision; and
 - (c) the relevant person must, in starting the appeal, give the Land Court a copy of the Minister’s reasons; and
 - (d) the Minister must advise the reference entity for the lease entitlement the subject of the application of the starting of the appeal and give the reference entity a copy of the reasons mentioned in paragraph (a).
- (2) The appeal must be started within 28 days after the relevant person is given advice of the decision.

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- (3) In deciding the appeal, the court may order the Minister to change the statement of reasons (obstacles) in the way the court considers appropriate.
 - (4) If the court orders the Minister to change the statement of reasons (obstacles), the Minister must give a copy of the changed statement of reasons (obstacles) to—
 - (a) the relevant person; and
 - (b) the reference entity for the lease entitlement.
 - (5) The parties to the appeal are—
 - (a) the relevant person; and
 - (b) the Minister; and
 - (c) the reference entity for the lease entitlement.

Part 5 **Grants of leases to satisfy lease entitlements**

Division 1 **Introduction**

34 **Operation of pt 5**

- (1) This part establishes a process for satisfying a lease entitlement by the granting of a lease.
- (2) If there are no practical obstacles identified, the Minister may grant a lease to satisfy the lease entitlement under division 2.
- (3) If a person applies to the Minister to proceed immediately with the grant of a lease and the application is granted under division 3, the Minister may grant a lease to satisfy the lease entitlement under division 2.
- (4) If there are practical obstacles identified, the Minister may grant a lease to satisfy the lease entitlement under division 4.

Division 2 Granting lease to satisfy lease entitlement if no obstacles to grant

35 Minister may grant lease

- (1) The Minister may grant a lease in a trust area if—
 - (a) the lease is to satisfy a lease entitlement included in a lease entitlement notice currently in force; and
 - (b) the lease is granted to—
 - (i) the holder of the lease entitlement as identified in the lease entitlement notice whether or not the holder is deceased; or
 - (ii) if the holder is deceased, an interested person in the estate of the deceased holder; and
 - (c) either—
 - (i) a statement of reasons (obstacles) stating that there are no practical obstacles to granting the lease was given to the reference entity for the lease entitlement as required under part 4; or
 - (ii) after the Minister has complied with the requirements of division 4, subdivision 2, the Minister considers that there are no practical obstacles to granting the lease.
- (2) The lease must be—
 - (a) if the lease entitlement relates to land of not more than 1ha—a lease in perpetuity for a purpose decided by the Minister; or
 - (b) otherwise—a lease for a term decided by the Minister for a purpose decided by the Minister.
- (3) In deciding a purpose or a term under subsection (2), the Minister must have regard to the lease entitlement notice.
- (4) Before granting a lease under this division, the Minister must notify the person to whom the Minister intends to grant the lease to satisfy the lease entitlement.

- (5) If the proposed grantee is deceased, the notice under subsection (4), must, to the extent practicable, be given to interested persons in the estate of the deceased holder.
- (6) The granting of the lease satisfies the lease entitlement and the lease entitlement notice ceases to be a lease entitlement notice currently in force.
- (7) The chief executive may publish on the department's website that the lease entitlement notice has been satisfied by the grant of a lease.

Division 3 Application to proceed immediately with the grant of a lease

36 Application to proceed immediately with the grant of a lease

- (1) This section applies if—
 - (a) a person considers that the Minister may, under section 35, grant a lease to satisfy a lease entitlement included in a lease entitlement notice currently in force; and
 - (b) the Minister has not yet taken action to grant the lease; and
 - (c) there is currently no appeal before the Land Court under section 33 in relation to the lease entitlement; and
 - (d) the person is a proper applicant for the lease.
- (2) The person may apply to the Minister to proceed immediately with the grant of the lease.
- (3) If there is no statement of reasons (obstacles) currently in effect for the lease entitlement, the Minister must, within 28 days after the Minister receives the application, take action under part 4 for the preparation of a statement of reasons (obstacles).

[s 37]

- (4) If there is a statement of reasons (obstacles) currently in effect for the lease entitlement, the Minister must give the applicant a copy of the statement.
- (5) If there is a statement of reasons (obstacles) currently in effect for the lease entitlement and the statement does not identify practical obstacles, the Minister must—
 - (a) advise the applicant that the Minister intends to grant the lease; and
 - (b) grant the lease as soon as practicable under section 35.

37 Consideration of application

- (1) This section applies to the Minister's consideration of an application under section 36.
- (2) The Minister may ask the applicant for further information to support the application within a stated reasonable period.
- (3) The Minister must decide the application, and advise the applicant of the decision, within—
 - (a) 28 days after the application was made; or
 - (b) 28 days after the application was made together with any time the Minister reasonably requires to deal with additional information given by the applicant; or
 - (c) if action is required to be taken for the preparation of a statement of reasons (obstacles) for the lease entitlement, 28 days after—
 - (i) the period for appealing against the correctness of the statement ends; or
 - (ii) if the statement is appealed—the finalisation of the appeal.
- (4) The Minister may decide the application if the applicant does not provide additional information within the stated period.

38 Refusal to proceed immediately with grant of lease

- (1) If the Minister refuses an application to proceed immediately with the grant of a lease under this division—
 - (a) the notice to the applicant advising of the decision must include the Minister’s reasons for the decision to refuse; and
 - (b) the applicant may appeal to the Land Court against the decision; and
 - (c) the applicant must, in starting the appeal, give the Land Court a copy of the Minister’s reasons; and
 - (d) the Minister must advise the reference entity for the lease entitlement the subject of the application of the starting of the appeal and give the reference entity a copy of the reasons mentioned in paragraph (a).
- (2) The appeal must be started within 28 days after the applicant is given notice of the decision.
- (3) If the appeal is successful, the Minister must proceed to grant the lease—
 - (a) in compliance with the order of the Land Court; and
 - (b) subject to paragraph (a)—under section 35.
- (4) The parties to the appeal are—
 - (a) the applicant; and
 - (b) the Minister; and
 - (c) the reference entity for the lease entitlement.

Division 4 Granting lease to satisfy lease entitlement if obstacles to grant

Subdivision 1 Deferred grants generally

39 Minister may make deferred grant of lease

- (1) The Minister may under this division make a grant (a *deferred grant*) of a lease in a trust area to satisfy a lease entitlement included in a lease entitlement notice currently in force if, because of practical obstacles stated in a statement of reasons (obstacles), the Minister can not make a grant under section 35 to satisfy the lease entitlement.
- (2) The granting of the lease satisfies the lease entitlement and the lease entitlement notice ceases to be a lease entitlement notice currently in force.
- (3) Other provisions of this division state requirements for making a deferred grant.

Subdivision 2 Consultation or agreement before deferred grant

40 Purpose of sdiv 2

This subdivision states requirements that must be complied with before the Minister may make a deferred grant to satisfy a lease entitlement included in a lease entitlement notice currently in force.

41 Minister may rely on advice

The Minister may rely on advice from a Land Holding Act stakeholder reference panel about its consultation with a person to satisfy the Minister's obligations under this subdivision to consult with the person or seek the person's agreement.

42 Reference to Land Holding Act stakeholder reference panel

- (1) This section applies if there is a Land Holding Act stakeholder reference panel for the trust area for the lease entitlement.
- (2) The Minister must refer to the panel, for its consideration, the statement of reasons (obstacles) about satisfying the lease entitlement.
- (3) The panel may consult with any person and give the Minister any advice or recommendation it considers appropriate about satisfying the lease entitlement, having regard to the statement of reasons (obstacles).
- (4) The Minister must, to the extent necessary for the giving of advice or a recommendation under subsection (3), give the panel access to copies of information and documents used in preparing the lease entitlement notice for the lease entitlement.

43 Persons to be consulted

- (1) This section applies if the Minister is satisfied that there is a person who ought to be consulted about, or whose agreement is required, to the grant of a lease to satisfy the lease entitlement.
- (2) Without limiting subsection (1), a person who ought to be consulted includes the holder of the lease entitlement or, if the holder is deceased, any interested person in the estate of the deceased holder.
- (3) The Minister must consult with the person, or seek the person's agreement, before making the deferred grant.

44 Location of lease

- (1) This section applies if the statement of reasons (obstacles) identifies as an obstacle that the location of the lease entitlement land is unclear.

[s 45]

- (2) The Minister must seek to identify clear boundaries of a lease to be granted to satisfy the lease entitlement, and seek the agreement to the identified boundaries of any other person whose agreement is needed for the grant of a lease with those boundaries.

45 Ownership of improvements

- (1) This section applies if the statement of reasons (obstacles) identifies as an obstacle that the ownership of an improvement on the lease entitlement land needs to be resolved.
- (2) The Minister must consult with any person having an interest in the improvement and seek to ensure that the grant of a lease to satisfy the lease entitlement, and that affects an interest in the improvement, happens with the agreement of any person having an interest in the improvement.
- (3) An agreement under subsection (2) may be an agreement to transfer an improvement that is a social housing dwelling.

Note for subsection (3)—

Section 62 states requirements for deciding the value of the social housing dwelling for the transfer.

Subdivision 3 Agreed deferred grant

46 Minister may make agreed deferred grant

- (1) The Minister may make a deferred grant of a lease (an *agreed deferred grant*) in a trust area if—
 - (a) the lease is to satisfy a lease entitlement included in a lease entitlement notice currently in force; and
 - (b) the Minister has complied with the requirements of subdivision 2; and
 - (c) the Minister considers all agreements necessary to support the making of the grant (the *relevant agreements*) have been entered into.

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- (2) The Minister may grant the lease subject to conditions that are consistent with the relevant agreements.
 - (3) Before granting a lease, the Minister must—
 - (a) prepare a statement explaining the proposed approach to satisfying the lease entitlement; and
 - (b) notify the person to whom the Minister intends to grant the lease to satisfy the lease entitlement and give the person a copy of the statement mentioned in paragraph (a).
 - (4) The granting of the lease satisfies the lease entitlement and the lease entitlement notice ceases to be a lease entitlement notice currently in force.
 - (5) The chief executive may publish on the department’s website that the lease entitlement notice has been satisfied by the grant of a lease.

Subdivision 4 Contested deferred grant

47 Application to Land Court in absence of agreement

- (1) The Minister may apply to the Land Court to make a deferred grant of a lease (a *contested deferred grant*) to satisfy a lease entitlement if the Minister considers that not all agreements necessary to support the making of the grant have been entered into.
- (2) The application must include the following—
 - (a) details of the lease entitlement;
 - (b) details of the proposed contested deferred grant, including—
 - (i) the proposed grantee of the lease; and
 - (ii) the proposed boundaries of the lease;
 - (c) a copy of the statement of reasons (obstacles) currently in effect for the lease entitlement;

[s 48]

- (d) a record of the consultation about the lease entitlement that took place under this division;
 - (e) copies of any agreements that have been entered into to support the making of the grant;
 - (f) details about proposed conditions that are—
 - (i) to be complied with before the lease is granted; or
 - (ii) to be imposed on the lease when it is granted;
 - (g) a statement of reasons (*statement of reasons (contested deferred grant)*) explaining the proposed approach to satisfying the lease entitlement.
- (3) The statement of reasons (contested deferred grant) must include details of the persons whose agreement has not been obtained, but would be required, for the making of the proposed grant as an agreed deferred grant rather than as a contested deferred grant.

48 Decision of Land Court for contested deferred grant

- (1) The Land Court must decide the application.
- (2) In deciding the application, the court must decide—
 - (a) whether the requirements of this division have been complied with; and
 - (b) whether it is reasonable that the application be granted.
- (3) The court may—
 - (a) grant the application, whether or not subject to conditions; or
 - (b) refuse the application; or
 - (c) make any order the court considers appropriate.
- (4) The parties to the proceeding before the Land Court are—
 - (a) the Minister; and
 - (b) the proposed grantee under the proposed contested deferred grant; and

- (c) each party to an agreement supporting the making of the proposed contested deferred grant; and
 - (d) all persons identified by the Minister in the statement of reasons (contested deferred grant) as persons whose agreement has not been obtained; and
 - (e) the reference entity for the lease entitlement.
- (5) The Minister must make a contested deferred grant as decided by the Land Court.
 - (6) The granting of the lease satisfies the lease entitlement and the lease entitlement notice ceases to be a lease entitlement notice currently in force.
 - (7) The chief executive may publish on the department's website that the lease entitlement notice has been satisfied by the grant of a lease.

49 Compensation for grantee in circumstances of contested deferred grant

- (1) If an order of the Land Court, in a decision on an application for a contested deferred grant, provides for the granting of a lease over land that is to any extent different in area or location from the lease entitlement land, and the contested deferred grant will operate to the detriment of the proposed grantee, the proposed grantee (the *applicant*) may apply to the Land Court for an order that the State pay an amount of compensation.
- (2) The Land Court must decide the application.
- (3) The amount of compensation the court may order must be only the amount reasonably necessary to compensate the applicant for—
 - (a) the extent to which the value of the applicant's interest in land or improvements has been decreased without a compensating increase in the value of the applicant's interest in land or improvements; and

[s 50]

- (b) expenses to be incurred by the applicant in taking practical measures needed because of the contested deferred grant.
- (4) The application must be made within 28 days, or a longer period approved by the court, after the court decides the application to make the contested deferred grant.
- (5) The parties to the proceeding before the Land Court are—
 - (a) the Minister; and
 - (b) the proposed grantee under the proposed contested deferred grant.

Division 5 New Act granted leases generally

50 New Act granted leases

- (1) The lessor of a new Act granted lease is—
 - (a) the trustee of the trust area; or
 - (b) if the lease land is also the subject of a townsite lease under ALA or TSILA—the lessee under the townsite lease.
- (2) A new Act granted lease is subject to—
 - (a) conditions recorded on the instrument of lease on the granting of the lease; and
 - (b) the conditions provided for under part 8; and
 - (c) the provisions of ALA or TSILA as provided for under part 9.

Part 6 **Boundary relocations for particular 1985 Act granted leases**

Division 1 **Introduction**

51 **Operation of pt 6**

This part establishes a process for the Minister to—

- (a) identify boundary problems affecting some 1985 Act granted leases; and
- (b) obtain advice from a Land Holding Act stakeholder reference panel or reference entity about resolving the boundary problems; and
- (c) relocate the boundaries of 1985 Act granted leases in compliance with a decision of the Land Court under division 3 or 4.

Division 2 **Consultation about boundary relocations**

52 **Consultation about boundaries of lease**

- (1) This section applies if the Minister considers that it is not practicable for a 1985 Act granted lease to continue to have its boundaries in their current location, having regard to circumstances that have arisen since the lease was originally granted.
- (2) The Minister must advise the lessee and the reference entity for the lease of the reasons the Minister considers it is not practicable for the 1985 Act granted lease to continue to have its boundaries in their current location.
- (3) The Minister must consult with—

- (a) the lessee; and
 - (b) the reference entity; and
 - (c) any person who, in the Minister's opinion, is required to agree to a relocation of the lease boundaries.
- (4) If there is a Land Holding Act stakeholder reference panel for the trust area where the lease is located, the Minister must refer the boundaries of the lease to the panel.
- (5) The Land Holding Act stakeholder reference panel may—
- (a) consult with the lessee; and
 - (b) consult with any other person it considers appropriate; and
 - (c) give the Minister any advice or recommendation it considers appropriate.
- (6) The Minister may rely on advice from the panel about its consultation with a person to satisfy the Minister's obligations under this section to consult with the person.

Division 3 Agreed boundary relocation

53 Application to Land Court in case of agreement

- (1) The Minister may apply to the Land Court for the relocation of the boundaries of a 1985 Act granted lease (an *agreed boundary relocation*) if the Minister considers all agreements necessary to support the boundary relocation have been entered into.
- (2) The application must include the following—
- (a) details of the lease as currently granted;
 - (b) details of the proposed agreed boundary relocation, including—
 - (i) the boundaries of the lease as currently located; and
 - (ii) the proposed boundaries of the lease;

- (c) a record of the consultation that took place under this part about the boundaries of the lease;
- (d) copies of all agreements that have been entered into, and that are the agreements necessary, to support the boundary relocation;
- (e) details about conditions that are to be complied with before or after the boundary relocation;
- (f) a statement of reasons explaining the proposed approach to relocating the lease boundaries by agreement.

54 Decision of Land Court for agreed boundary relocation

- (1) The Land Court must decide the application.
- (2) In deciding the application, the court must decide whether—
 - (a) the requirements of this part have been complied with; and
 - (b) all agreements necessary to support the boundary relocation have been entered into.
- (3) The court may—
 - (a) grant the application; or
 - (b) refuse the application; or
 - (c) refer the application back to the Minister with any order the court considers appropriate.
- (4) The parties to the proceeding before the Land Court are—
 - (a) the Minister; and
 - (b) the lessee of the lease; and
 - (c) the lessor of the lease; and
 - (d) each party to an agreement supporting the proposed agreed boundary relocation.

Division 4 Contested boundary relocation

55 Application to Land Court in absence of agreement

- (1) The Minister may apply to the Land Court for the relocation of the boundaries of a 1985 Act granted lease (a *contested boundary relocation*) if the Minister considers that not all agreements necessary to support the boundary relocation have been entered into.
- (2) The application must include the following—
 - (a) details of the lease as currently granted;
 - (b) details of the proposed contested boundary relocation, including—
 - (i) the boundaries of the lease as currently located; and
 - (ii) the proposed boundaries of the lease;
 - (c) a record of the consultation that took place under this part about the boundaries of the lease;
 - (d) copies of any agreements that have been entered into to support the boundary relocation;
 - (e) details about conditions that are to be complied with before or after the boundary relocation;
 - (f) a statement of reasons (*statement of reasons (contested boundary relocation)*) explaining the proposed approach to relocating the lease boundaries.
- (3) The statement of reasons (contested boundary relocation) must include details of the persons whose agreement has not been obtained, but would be required, to relocate the boundaries as proposed as an agreed boundary relocation rather than as a contested boundary relocation.

56 Decision of Land Court for contested boundary relocation

- (1) The Land Court must decide the application.

- (2) In deciding the application, the court must decide whether—
 - (a) the requirements of this part have been complied with; and
 - (b) it is reasonable that the application be granted.
- (3) The court may—
 - (a) grant the application, whether or not subject to conditions; or
 - (b) refuse the application; or
 - (c) make any order the court considers appropriate.
- (4) The parties to the proceeding before the Land Court are—
 - (a) the Minister; and
 - (b) the lessee of the lease; and
 - (c) the lessor of the lease; and
 - (d) each party to an agreement supporting the proposed contested boundary relocation; and
 - (e) all persons identified by the Minister in the statement of reasons (contested boundary relocation) as persons whose agreement has not been obtained.

57 Compensation for lessee in circumstances of contested boundary relocation

- (1) If an order of the Land Court, in a decision on an application for a contested boundary relocation, provides for a boundary relocation that will operate to the detriment of the lessee of the 1985 Act granted lease, the lessee may apply to the Land Court for an order that the State pay an amount of compensation.
- (2) The Land Court must decide the application.
- (3) The amount of compensation the court may order must be only the amount reasonably necessary to compensate the applicant for—

[s 58]

- (a) the extent to which the value of the lessee's interest in land or improvements has been decreased without a compensating increase in the value of the lessee's interest in land or improvements; and
 - (b) expenses to be incurred by the lessee in taking practical measures needed because of the contested boundary relocation.
- (4) The application must be made within 28 days, or a longer period approved by the court, after the court decides the application to make the contested boundary relocation.
- (5) The parties to the proceeding before the Land Court are—
- (a) the Minister; and
 - (b) the lessee.

Division 5 Recording boundary relocation

58 Recording of boundary relocation

- (1) The Minister must ensure that a plan of survey, capable of registration in a register kept under the Land Act or Land Title Act, is prepared and registered for the relocation of the boundaries of the lease as provided for in the order of the Land Court on an application under section 53 or 55.
- (2) The chief executive, or, as appropriate, the registrar, must make any necessary change in the appropriate register to record—
- (a) the relocation of the boundaries of the lease; and
 - (b) the amendment of any other interest as provided for in the order of the Land Court under section 54 or 56.
- (3) On the registration of the plan of survey—
- (a) the lessee's interest in any land that is not included within the relocated boundaries ceases; and

- (b) the lease land for the 1985 Act granted lease is the land within the relocated boundaries.

Part 7 Ownership of structural improvements

59 Ownership of improvements continues

- (1) This section applies to a structural improvement that is located on land that—
 - (a) on the commencement of the section, is lease land for a 1985 Act granted lease; or
 - (b) immediately before the commencement of the section, was the subject of an approval, under the 1985 Land Holding Act, capable of forming the basis of a lease entitlement.
- (2) The ownership of the improvement is not affected by the repeal of the 1985 Land Holding Act or the commencement of this Act.

60 Agreement or arrangement for 1985 Land Holding Act, s 15

- (1) This section applies if, immediately before the commencement of the section, an agreement or arrangement for the purposes of the 1985 Land Holding Act, section 15(1) existed for the purchase of an improvement.
- (2) For subsection (1), it does not matter—
 - (a) whether the price and the terms and conditions of the purchase were approved by the Governor in Council under the 1985 Land Holding Act, section 15(1); or
 - (b) whether the improvement is located on lease land for a 1985 Act granted lease or on lease entitlement land.
- (3) The agreement or arrangement continues in force.

61 Gazette notice for completed agreement or arrangement

- (1) The housing chief executive may by gazette notice declare that—
 - (a) the purchaser under an agreement or arrangement mentioned in section 60 has no obligation to pay any further amount under the agreement or arrangement; and
 - (b) the agreement or arrangement may be taken to be completed; and
 - (c) the purchaser is the owner of the improvement stated in the notice.
- (2) The housing chief executive may publish a gazette notice under subsection (1) only with the agreement of each of the following—
 - (a) the purchaser under the agreement or arrangement, or, if the purchaser is deceased, some or all of the persons who are interested persons in the estate of the deceased purchaser;
 - (b) the owner of the improvement the subject of the notice.
- (3) The declaration has effect on the publication of the gazette notice.
- (4) It is not necessary that the improvement the subject of the gazette notice be the same as the improvement the subject of the agreement or arrangement mentioned in section 60.

62 Use of valuation methodology for social housing dwelling

- (1) This section applies if—
 - (a) a social housing dwelling is located on the lease land for a 1985 Act granted lease, a new Act granted lease or a proposed new Act granted lease; and
 - (b) the owner of the dwelling is—
 - (i) the State; or

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- (ii) the trustee of the trust area, or the part of the trust area, where the dwelling is located; or
 - (iii) if the lease land is also the subject of a townsite lease under ALA or TSILA—the lessee under the townsite lease.
 - (2) The owner of the dwelling may transfer the dwelling to a person who is or is to become the lessee under the lease.
 - (3) The value of the dwelling for the transfer is—
 - (a) if in the trust area there is in operation a valuation methodology agreed under ALA, section 128(2) or TSILA, section 93(2)—the value decided by using the methodology; or
 - (b) otherwise—the value decided by using the valuation methodology decided by the housing chief executive.
 - (4) Subsection (3) does not apply if the value is decided by the Land Court in deciding an application for—
 - (a) a contested deferred grant; or
 - (b) an agreed boundary relocation; or
 - (c) a contested boundary relocation.

Part 8 **Conditions and requirements applying to leases**

Division 1 **Conditions and requirements applying to leases other than term leases**

63 **Operation of div 1**

This division states standard conditions and other requirements that apply to 1985 Act granted leases and new Act granted leases, other than leases granted for a term of years.

64 Dealings

- (1) A lease may be transferred only to—
 - (a) an Aborigine or Torres Strait Islander; or
 - (b) a person who is not an Aborigine or Torres Strait Islander if the person is the spouse, or former spouse, of an Aborigine or Torres Strait Islander or of an Aborigine or Torres Strait Islander who is deceased.
- (2) A lease may be transferred only with the lessor's prior written consent.
- (3) An interest under a lease, other than a mortgage of the lease, but including a sublease, may be created only with the lessor's prior written consent.
- (4) The lessor must not unreasonably withhold consent under subsection (2) or (3).
- (5) A lease may be mortgaged without the consent of the Minister or the lessor.

65 Registration of dealings

- (1) All leases and any sublease of a lease, and any transfer, amendment or surrender of a lease or sublease, must be registered in the appropriate register.
- (2) Despite the Land Title Act, section 65(2), an instrument of lease for a new Act granted lease, or a sublease of a 1985 Act granted lease or new Act granted lease, must include a plan of survey identifying the land subject to the lease or sublease.
- (3) Subsection (2) does not apply to a sublease entered into only for an area completely within a building.

66 Lease for residential purposes

- (1) This section applies if, under a lease, land must be used primarily for residential purposes.

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- (2) If, on the commencement of this section, there is no private residential premises on the land, the lessee must ensure a private residential premises is built on the land—
 - (a) for a 1985 Act granted lease—within 8 years after the commencement of this section; or
 - (b) for a new Act granted lease—within 8 years after the lease is granted.
 - (3) The annual rental for the lease is the amount, of not more than \$1, decided by the lessor.

67 Subleases

- (1) A sublease of a lease may be transferred only with the prior written consent of the lessor and lessee of the lease.
- (2) The lessor and lessee must not unreasonably withhold consent under subsection (1).
- (3) A sublease of a lease may be amended only with the prior written consent of the lessor of the lease.
- (4) The lessor must not unreasonably withhold consent under subsection (3).
- (5) An amendment of a sublease must not—
 - (a) increase or decrease the area subleased; or
 - (b) add or remove a party to the sublease; or
 - (c) be lodged for registration after the sublease's term has ended.
- (6) A sublease of a lease executed after the registration of a mortgage over the lease is valid as against the mortgagee only if the mortgagee agreed to the sublease before its registration.
- (7) An amendment of a sublease of a lease executed after the registration of a mortgage over the lease is valid as against the mortgagee only if the mortgagee agreed to the amendment before the registration of the document of amendment.
- (8) An obligation applying to the lessee under a lease continues to apply to the lessee even if the lease is subleased.

- (9) Subsection (8) does not stop the sublessee from agreeing, under the sublease, to fulfil the obligation for the lessor.

Example for subsections (8) and (9)—

A lessee's obligation to ensure a private residential premises is built on lease land continues as the lessee's obligation. However, the lessee and a sublessee may agree that the sublessee will build the premises.

68 Surrenders

- (1) The lessee of a lease may surrender all or part of the lease only if each of the following has given written agreement to the surrender—
- (a) the mortgagee of a registered mortgage of the lease or of an interest under the lease;
 - (b) the holder of a sublease under the lease.
- (2) The lessee must notify the holder of a registered interest under the lease of the lessee's intention to surrender the lease at least 28 days before the surrender takes effect.
- (3) The surrender of a lease may be on the basis of the payment of an agreed consideration for the surrender.

Division 2 Term leases

69 Entitlement to apply for lease under ALA or TSILA

- (1) Subsections (2) and (3) apply to a 1985 Act granted lease or a new Act granted lease, granted for a term of years, if the lease is—
- (a) over Aboriginal trust land in a trust area; or
 - (b) over transferred land under ALA in a trust area; or
 - (c) in force as a sublease of a townsite lease under ALA in a trust area.
- (2) Before the term of the lease has expired, the holder of the lease may apply to the following person to be granted a lease

under ALA over the lease land for the 1985 Act granted lease or new Act granted lease—

- (a) if subsection (1)(a) or (b) applies—the trustee of the trust area;
 - (b) if subsection (1)(c) applies—the lessee of the townsite lease.
- (3) The application may be considered, and a lease may be granted, under ALA.
- (4) Subsections (5) and (6) apply to a 1985 Act granted lease or a new Act granted lease, granted for a term of years, if the lease is—
- (a) over Torres Strait Islander trust land in a trust area; or
 - (b) over transferred land under TSILA in a trust area; or
 - (c) in force as a sublease of a townsite lease under TSILA in a trust area.
- (5) Before the term of the lease has expired, the holder of the lease may apply to the following person to be granted a lease under TSILA over the lease land for the 1985 Act granted lease or new Act granted lease—
- (a) if subsection (4)(a) or (b) applies—the trustee of the trust area;
 - (b) if subsection (4)(c) applies—the lessee of the townsite lease.
- (6) The application may be considered, and a lease may be granted, under TSILA.

Division 3 Vesting of particular leases

69A Vesting of particular leases

- (1) This section applies in relation to a 1985 Act granted lease or a new Act granted lease if—
- (a) the holder of the lease has died intestate; and

- (b) there is no personal representative of the deceased holder; and
 - (c) there is no grant of representation, and no application has been made for a grant of representation, for the deceased holder; and
 - (d) a person (the *entitled successor*) is identified in a JLOMA section 60 certificate as being entitled to succeed to either—
 - (i) the whole estate of the deceased holder; or
 - (ii) a part of the estate of the deceased holder that includes, or consists of, the deceased holder's interest in the lease (the *relevant interest*); and
 - (e) the entitled successor, or an agent of the entitled successor, gives the registrar a notice (a *vesting notice*), in a way required by the registrar, asking the registrar to record in the appropriate register the vesting of the relevant interest in the entitled successor in accordance with the JLOMA section 60 certificate.
- (2) The registrar must, on receiving the vesting notice, record in the appropriate register the vesting of the relevant interest in the entitled successor.
- (3) Despite any other law, the relevant interest vests in the entitled successor, in accordance with the JLOMA section 60 certificate, when the vesting of the interest is recorded under subsection (2).
- (4) Despite the *Land Act 1994* and the *Land Title Act 1994*, no fee is payable in relation to, or to give effect to, the recording of the vesting of the relevant interest.
- (5) In this section—
- holder*, of a new Act granted lease, includes a person to whom a new Act granted lease is granted after the person's death.

Note—

See section 35(1)(b)(i).

69B Expiry of division

This division expires on 30 June 2022.

**Part 9 Application of provisions of
ALA or TSILA**

Division 1 Applying ALA or TSILA

70 ALA provisions

- (1) This section and division 2 apply to a 1985 Act granted lease or a new Act granted lease, other than a lease granted for a term of years, if the lease is—
 - (a) over Aboriginal trust land; or
 - (b) over transferred land under ALA; or
 - (c) in force as a sublease of a townsite lease under ALA.
- (2) ALA applies to the lease as provided for in division 2.
- (3) Despite subsection (2), a provision of ALA does not apply to the lease if it is in substance equivalent to, or inconsistent with, a provision of part 8 of this Act.
- (4) If a provision of ALA is changed under division 2, the provision applies to the lease in the way changed.

71 TSILA provisions

- (1) This section and division 3 apply to a 1985 Act granted lease or a new Act granted lease, other than a lease granted for a term of years, if the lease is—
 - (a) over Torres Strait Islander trust land; or
 - (b) over transferred land under TSILA; or
 - (c) in force as a sublease of a townsite lease under TSILA.
- (2) TSILA applies to the lease as provided for in division 3.

[s 73]

- (3) Despite subsection (2), a provision of TSILA does not apply to the lease if it is in substance equivalent to, or inconsistent with, a provision of part 8 of this Act.
- (4) If a provision of TSILA is changed under division 3, the provision applies to the lease in the way changed.

Division 2 Applying ALA

Subdivision 1 All land

73 Applying ALA, pt 10, div 4 (Home ownership leases)

- (1) ALA, part 10, division 4, subdivisions 2 and 4 apply to a lease to which this division applies as if the lease were a home ownership lease under ALA.
- (2) Subsection (1) applies to the lease even if it is not granted for residential use.
- (3) For applying ALA, section 129, a relevant condition is any condition of the lease as provided for in part 8 of this Act if the lessor reasonably considers a breach of the condition is of a serious nature and warrants forfeiture of the lease.
- (4) For applying ALA, sections 130(2) and 132(1)(a), written notice must be given additionally to any person holding a sublease over the lease.
- (5) ALA, part 10, division 4, subdivision 4 must be applied not only to improvements of the lessee but also to the holder, and improvements of the holder, of any sublease over the lease, and for that purpose, a reference in the subdivision to the lease land is a reference to the land the subject of the sublease.
- (6) Also, for applying ALA, part 10, division 4, subdivision 4, references to renewal of a lease may be ignored.
- (7) For ALA, section 142(3), the value of the lease land is the amount decided by the chief executive under this Act.

Subdivision 2 **Aboriginal land**

74 **Applying ALA, pt 14 (Provisions about mortgages of leases over Aboriginal land)**

- (1) ALA, part 14 applies to a lease to which this division applies if it is over Aboriginal land and was granted after the land became Aboriginal land.
- (2) For applying ALA, part 14, the lease is taken to be—
 - (a) if the lease is granted for residential use—a home ownership lease under ALA; or
 - (b) otherwise—a lease granted under ALA, section 120(1) or 121(1).
- (3) For applying ALA, section 182(7), the reference to a person who would be entitled to a grant of the lease is taken to be a reference to a person to whom, under this Act, the lease may be transferred.

Subdivision 3 **Aboriginal trust land**

75 **Definition for sdiv 3**

In this subdivision—

relevant lease means a lease to which this division applies, but does not include a lease that, when it was granted, was granted over transferred land under ALA.

76 **Applying ALA, s 185 (Relationship with Land Act)**

ALA, section 185 applies for establishing—

- (a) the relationship between the Land Act and this Act in relation to Aboriginal trust land and a relevant lease; and
 - (b) the status under the Land Act of a relevant lease;
- in the same way it applies for establishing—

[s 77]

- (c) the relationship between the Land Act and ALA in relation to Aboriginal trust land and a trustee (Aboriginal) lease; and
- (d) the status under the Land Act of a trustee (Aboriginal) lease.

77 Applying ALA, s 187 (Amending trustee (Aboriginal) lease)

ALA, section 187 applies to a relevant lease as if the lease were a registered trustee (Aboriginal) lease.

78 Applying ALA, s 188 (Mortgage of trustee (Aboriginal) lease)

ALA, section 188 applies to a relevant lease as if—

- (a) the lease were a trustee (Aboriginal) lease; and
- (b) the reference in ALA, section 188(2)(a)(iii) to a person entitled under ALA to a grant of a lease were a reference to a person to whom, under this Act, the lease may be transferred.

Division 3 Applying TSILA

Subdivision 1 All land

80 Applying TSILA, pt 8, div 4 (Home ownership leases)

- (1) TSILA, part 8, division 4, subdivisions 2 and 4 apply to a lease to which this division applies as if the lease were a home ownership lease under TSILA.
- (2) Subsection (1) applies to the lease even if it is not granted for residential use.
- (3) For applying TSILA, section 94, a relevant condition is any condition of the lease as provided for in part 8 of this Act if

the lessor reasonably considers a breach of the condition is of a serious nature and warrants forfeiture of the lease.

- (4) For applying TSILA, sections 95(2) and 97(1)(a), written notice must be given additionally to any person holding a sublease over the lease.
- (5) TSILA, part 8, division 4, subdivision 4 must be applied not only to improvements of the lessee but also to the holder, and improvements of the holder, of any sublease over the lease, and for that purpose, a reference in the subdivision to the lease land is a reference to the land the subject of the sublease.
- (6) Also, for applying TSILA, part 8, division 4, subdivision 4, references to renewal of a lease may be ignored.
- (7) For TSILA, section 107(3), the value of the lease land is the amount decided by the chief executive under this Act.

Subdivision 2 Torres Strait Islander land

81 Applying TSILA, pt 10 (Provisions about mortgages of leases over Torres Strait Islander land)

- (1) TSILA, part 10 applies to a lease to which this division applies if it is over Torres Strait Islander land and was granted after the land became Torres Strait Islander land.
- (2) For applying TSILA, part 10, the lease is taken to be—
 - (a) if the lease is granted for residential use—a home ownership lease under TSILA; or
 - (b) otherwise—a lease granted under TSILA, section 85(1) or 86(1).
- (3) For applying TSILA, section 138(7), the reference to a person who would be entitled to a grant of the lease is taken to be a reference to a person to whom, under this Act, the lease may be transferred.

Subdivision 3 Torres Strait Islander trust land

82 Definition for sdiv 3

In this subdivision—

relevant lease means a lease to which this division applies, but does not include a lease that, when it was granted, was granted over transferred land under TSILA.

83 Applying TSILA, s 141 (Relationship with Land Act)

TSILA, section 141 applies for establishing—

- (a) the relationship between the Land Act and this Act in relation to Torres Strait Islander trust land and a relevant lease; and
 - (b) the status under the Land Act of a relevant lease;
- in the same way it applies for establishing—
- (c) the relationship between the Land Act and TSILA in relation to Torres Strait Islander trust land and a trustee (Torres Strait Islander) lease; and
 - (d) the status under the Land Act of a trustee (Torres Strait Islander) lease.

84 Applying TSILA, s 143 (Amending trustee (Torres Strait Islander) lease)

TSILA, section 143 applies to a relevant lease as if the lease were a registered trustee (Torres Strait Islander) lease.

85 Applying TSILA, s 144 (Mortgage of trustee (Torres Strait Islander) lease)

TSILA, section 144 applies to a relevant lease as if—

- (a) the lease were a trustee (Torres Strait Islander) lease; and

- (b) the reference in TSILA, section 144(2)(a)(iii) to a person entitled under TSILA to a grant of a lease were a reference to a person to whom, under this Act, the lease may be transferred.

Part 10 Miscellaneous

86 Plans of survey

- (1) The Minister must ensure that a plan of survey, capable of registration in a register kept under the Land Act or Land Title Act, is prepared to show the identified, and as appropriate, the agreed, boundaries of any lease proposed to be granted under this Act.
- (2) In a proceeding under this Act in the Land Court, the Land Court may order the Minister or the chief executive to prepare a plan of survey, capable of registration in a register kept under the Land Act or Land Title Act, necessary for giving effect to a decision of the court.

87 Limitation on qualification requirement

- (1) The qualification requirement has no effect in relation to any of the following—
 - (a) who may be the holder of a lease entitlement;
 - (b) who may continue to be the holder of a 1985 Act granted lease;
 - (c) who may be the grantee of a new Act granted lease.
- (2) In this section—

qualification requirement means any provision under the 1985 Land Holding Act having the effect of requiring residency for any period in a trust area.

88 Delegations

- (1) The Minister may delegate the Minister's powers under this Act as the Minister to the chief executive.
- (2) A delegation of the Minister's power to the chief executive may permit the subdelegation of the power to an appropriately qualified public service officer.
- (3) The chief executive may delegate the chief executive's powers under this Act as the chief executive to an appropriately qualified public service officer.
- (4) In this section—
appropriately qualified, for a person to whom a power under this Act may be delegated or subdelegated, includes having the qualifications, experience or standing appropriate to exercise the power.

89 Application to Land Court if no interested persons identified

- (1) This section applies if the Minister is satisfied that—
 - (a) either of the following is deceased—
 - (i) the holder of a lease entitlement included in a lease entitlement notice currently in force;
 - (ii) the lessee of a 1985 Act granted lease; and
 - (b) it has not been possible, after making enquiries that are reasonable in the circumstances, to identify any interested person in the estate of the deceased holder or lessee.
- (2) The Minister may apply to the Land Court for an order that—
 - (a) the Minister has made all enquiries that are reasonable in the circumstances to identify interested persons; and
 - (b) the lease entitlement or lease is ended, and converted into a right to compensation for its loss.

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- (3) Compensation mentioned in subsection (2)(b) may be claimed from the State, commenced by an application to the Minister, within—
 - (a) 3 years after the court's order under the subsection; or
 - (b) a later time approved by the Minister if the Minister considers an extension of time is reasonable in the circumstances.
 - (4) If the Minister and a person claiming compensation can not agree on the amount of compensation, the claimant may apply to the Land Court and the court may decide the amount of the compensation.
 - (5) For a lease entitlement, the compensation is the value of the lease, as at the date the claim is made to the Minister, that would have been granted to satisfy the lease entitlement if the holder had not been deceased.
 - (6) For a 1985 Act granted lease, the compensation is the value of the lease, as at the date the claim is made to the Minister, if the lease had not ended.

90 Information Privacy Act does not stop sharing of information necessary for effective operation of this Act

- (1) IPA does not operate to stop the disclosure of personal information to the extent its disclosure is reasonably necessary to allow a person to participate effectively in consultation or negotiation about—
 - (a) the identification of a lease entitlement; or
 - (b) satisfying a lease entitlement; or
 - (c) relocating the boundaries of a 1985 Act granted lease; or
 - (d) the ownership of improvements on land the subject of a lease entitlement or a 1985 Act granted lease.
- (2) In this section—

disclose, personal information, see IPA, section 23.

IPA means the *Information Privacy Act 2009*.

personal information means personal information under IPA.

91 Review of Act

- (1) The Minister must, within 10 years after the commencement of this section, carry out a review of the operation and effectiveness of the Act.
- (2) The Minister must, as soon as practicable after the review is completed, cause a report on the outcome to be laid before the Legislative Assembly.

92 Approval of forms

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

93 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may provide for fees payable under this Act and for matters for which they are payable.

Part 11 Repeal and transitional provisions for Act No. 2 of 2013

94 Repeal

The Aborigines and Torres Strait Islanders (Land Holding) Act 1985, No. 41 is repealed.

95 Continuation of proceeding

- (1) This section applies if a proceeding was commenced under the 1985 Land Holding Act, but not completed, before the commencement of this section.

- (2) The proceeding may be completed under the 1985 Land Holding Act as if this Act had not commenced.

Part 12 **Transitional provision for Natural Resources and Other Legislation Amendment Act 2019**

96 **Application of former s 69A to particular leases**

- (1) This section applies on and from 1 July 2022 in relation to a 1985 Act granted lease or a new Act granted lease if—
- (a) before the expiry of former part 8, division 3, the holder of the lease died intestate; and
 - (b) the circumstances mentioned in former section 69A(1)(b) to (e) apply in relation to the deceased holder or the entitled successor; and
 - (c) before the expiry of former part 8, division 3, the vesting of the relevant interest in the entitled successor had not been recorded under former section 69A(2).
- (2) For subsection (1)(b), it does not matter whether the JLOMA section 60 certificate under which the vesting of the relevant interest is sought was signed by the chief executive before or after the expiry of former part 8, division 3.
- (3) Former section 69A(2) to (4) continues to apply in relation to the vesting of the relevant interest as if the section had not expired.
- (4) In this section—
- entitled successor* has the meaning given under former section 69A(1)(d).
- former*, in relation to a provision of this Act, means as in force immediately before the expiry of the provision.

holder, of a new Act granted lease, includes a person to whom a new Act granted lease is granted after the person's death.

Note—

See section 35(1)(b)(i).

relevant interest has the meaning given under former section 69A(1)(d)(ii).

Schedule Dictionary

section 8

1985 Act granted lease see section 12(2).

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

Aboriginal land means Aboriginal land under ALA.

Aboriginal trust land means Aboriginal trust land under ALA.

affected person means—

- (a) for a decision—a person whose interests are reasonably likely to be directly affected by the decision; or
- (b) for a practical obstacle to the granting of a lease to satisfy a lease entitlement—a person whose interests may be affected by how the obstacle is resolved.

agreed boundary relocation see section 53(1).

agreed deferred grant see section 46(1).

ALA means the *Aboriginal Land Act 1991*.

appropriate register means—

- (a) for freehold land—the freehold land register; or
- (b) for other land—the appropriate register for the land under the Land Act.

beneficiary, of a deceased person—

- (a) means a person entitled to share in the estate of the deceased person; and
- (b) includes a person entitled to share in the estate of the deceased person through the estate of another person who is also deceased.

contested boundary relocation see section 55(1).

contested deferred grant see section 47(1).

deferred grant, of a lease to satisfy a lease entitlement, see section 39(1).

hardship certificate see section 26(1).

holder, of a lease entitlement, see section 9(3).

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

interested person, in the estate of a deceased person (the **identified person**), means a person who has an interest in the estate, or in the administration of the estate, of the identified person, and who is 1 or more of the following, having regard to the laws of succession—

- (a) a beneficiary of the identified person;
- (b) a personal representative of the identified person or of any other person who is deceased, as provided for in a will or in a grant of probate or letters of administration;
- (c) a person identified in a JLOMA section 60 certificate.

JLOMA means the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

JLOMA section 60 certificate means a certificate under JLOMA, section 60(3).

Land Act means the *Land Act 1994*.

Land Holding Act stakeholder reference panel, for a trust area, means the Land Holding Act stakeholder reference panel established for the trust area under section 13.

Land Title Act means the *Land Title Act 1994*.

lease boundaries, in relation to a lease, means the boundaries of the land the subject of the lease.

lease entitlement see section 9(1).

lease entitlement land means the land the subject of a lease entitlement.

lease entitlement notice, for a lease entitlement, see section 15.

lease land, in a provision about a lease, means the land the subject of the lease.

new Act granted lease means a lease granted under this Act.

proper applicant, for a lease, means a person who could reasonably be expected to be a grantee, whether or not the only grantee, of the lease if the lease were to be granted.

recipient, of a hardship certificate, means the person identified in the certificate as its recipient.

reference entity means—

- (a) for a lease entitlement, either—
 - (i) the trustee of the trust area; or
 - (ii) if some or all of the lease entitlement land is the subject of a townsite lease under ALA or TSILA—the lessee of the townsite lease; or
- (b) for a 1985 Act granted lease, either—
 - (i) the trustee of the trust area; or
 - (ii) if some or all of the lease land is the subject of a townsite lease under ALA or TSILA—the lessee of the townsite lease.

registered, in relation to a new Act granted lease or a 1985 Act granted lease, or an interest over a new Act granted lease or 1985 Act granted lease, means registered under the Land Act or Land Title Act.

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

relocation, of the boundaries of a 1985 Act granted lease, is a change, within the trust area for the lease, to the boundaries of the lease land, including, for example, a relocation of all the boundaries of the lease to another location in the trust area.

social housing means housing being used to provide subsidised housing for residential use.

social housing dwelling means a dwelling that the housing chief executive reasonably considers to be social housing.

statement of reasons (contested boundary relocation) see section 55(2).

statement of reasons (contested deferred grant) see section 47(2).

statement of reasons (obstacles) see section 31(1).

Torres Strait Islander land means Torres Strait Islander land under TSILA.

Torres Strait Islander trust land means Torres Strait Islander trust land under TSILA.

trust area—

(a) generally—see section 10(1); or

(b) for a lease entitlement—see section 9(2).

trust area notice see sections 18(2) and 19(1).

trustee, of a trust area, see section 10(2).

trustee (Aboriginal) lease means a trustee (Aboriginal) lease under ALA.

trustee council, for an application made under the 1985 Land Holding Act, section 5, means the entity to which the application was made.

trustee (Torres Strait Islander) lease means a trustee (Torres Strait Islander) lease under TSILA.

TSILA means the *Torres Strait Islander Land Act 1991*.