

Land and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Land and Other Legislation Amendment Bill 2016.

Policy objectives and the reasons for them

The policy objective of the Bill is to improve administration of the *Land Act 1994* (Land Act) and the *Land Title Act 1994* (Land Title Act) by implementing a number of miscellaneous amendments. The Bill will:

- Make a number of minor amendments to the Land Act and the Land Title Act that will reduce duplication, clarify existing arrangements, streamline administration, remedy inconsistencies, remove redundant regulatory requirements and improve the customer's experience by reducing red tape.
- Enable more appropriately managed State land by allowing for the dedication of non-tidal boundary watercourse or non-tidal boundary lake land as a reserve for community purposes in particular circumstances.
- Improving the process for resignation and replacement of a trustee of trust land.
- Effectively deal with documents that impede or delay legitimate legal action taken by other parties (for example registered mortgagees) in accordance with the Land Title Act and mirror provisions in the Land Act.
- Improve the operation of the Land Title Act and mirror provisions of the Land Act in relation to registering the interests of trustees for sale and beneficiaries of deceased estates and withdrawing certain instruments from the register.
- Implement in Queensland a nationally consistent priority notice in place of the current settlement notice.
- Encourage the uptake of electronic conveyancing (eConveyancing) by expanding the circumstances in which the Registrar of Titles may dispense with production of a paper certificate of title.

The amendments to the Land Act have been identified as a result of internal departmental review of administrative processes. In many cases the amendments have been triggered by on ground cases and the proposed changes will help to improve the relevance of the Act in today's circumstances.

Amendments to the Land Act for which the objective is to reduce duplication, clarify existing arrangements, streamline administration and remove redundant regulatory requirements relate to:

- the granting of land by the State to the Commonwealth;
- clarifying the use of covenants over non-freehold land;
- clarifying the extension of rolling term leases;
- streamlining the subdivision of indigenous deeds of grant in trust (DOGITs);
- simplifying the transfer of a road licence tied with freehold land;
- simplifying standard terms for registrable documents; and
- streamlining the continuation of an easement when a State lease expires.

The *Major Sports Facilities and Other Legislation Amendment Act 2016* amended the Land Act to provide for the leasing of a functioning non-tidal boundary watercourse or lake to the State under the Land Act. Further policy development by the department identified that the capacity to dedicate as reserve non-tidal boundary watercourse or lake land would provide further flexibility in the management of land for community purposes. Specifically, the ability to establish a reserve in this situation will address local government's concerns about being able to effectively manage these areas because of shortcomings in current legislation.

Currently, where a trustee of trust land resigns there may be a considerable period before a suitable replacement trustee is appointed. This situation leaves the State responsible for the operational management of the trust land. Amending the resignation and replacement process will allow for the smooth transition to the new trustee and mitigate against delays in replacing a trustee.

Most of the Land Title Act amendments and where relevant, mirror provisions in the Land Act, have been identified as a result of internal review of the legislation. A number of issues have been identified in the provisions and operation of the titling legislation, including where particular provisions have not achieved their original intent, where amendment of provisions is necessary to allow for improvement in titles registry practices or greater flexibility for titles registry customers and where minor inconsistencies exist.

The streamlining and improvement initiatives for the Land Title Act relate to:

- the registration of interests of trustees for sale;
- compensation for improper caveats;
- the caveat lapsing provisions;
- recognition of a beneficiary under a will;

- the power of the Registrar of Titles to withdraw lodged instruments before registration; and
- dispensing with the production of a paper certificate of title.

The amendments relating to the introduction of the priority notice mechanism support harmonisation of titling processes across jurisdictions, which in turn supports the implementation of a nationally consistent eConveyancing system.

Achievement of policy objectives

To achieve the policy objectives, the Bill:

- Allows for the establishment of reserves on non-tidal boundary watercourses or non-tidal boundary lakes owned by the State only with the consent of an adjacent owner and the chief executive of the *Water Act 2000* (Water Act). This amendment improves the ability of the State to authorise local governments to manage use of functioning non-tidal watercourse or non-tidal lake land.
- Provides the Governor in Council with the power to grant a deed and the Minister to grant a lease to the Commonwealth.
- Removes the requirement for Ministerial consent to transfer a road licence where the road licence is tied by covenant to freehold land, and both the road licence and freehold land are being transferred to the same person.
- Amends the provisions of a rolling term lease for a significant tourism development on a regulated island to include adjacent leases seaward of the tidal boundary, e.g. a jetty or marina, which support the operation. This enables the adjacent lease to be approved as a rolling term lease to align with and be tied to the existing rolling term lease so that they can be managed together.
- Clarifies when a rolling term lease can be renewed and the term for which renewal may be sought.
- Allows for the continuation of a public utility easement after a State lease over a reserve expires.
- Clarifies that covenants granted by the State are applicable over non-freehold land under the Land Act, other than for a road for which a person does not hold a road licence, but including reserves, unallocated state land and occupation licences.
- Removes the need for Ministerial approval under the Land Act for subdivisions of Indigenous DOGIT land under the *Aboriginal Land Act 1991* (Aboriginal Land Act) or the *Torres Strait Islander Land Act 1991* (Torres Strait Islander Land Act) so that the subdivision of indigenous DOGIT land occurs only under the Aboriginal Land Act or Torres Strait Islander Land Act.

- Prescribes terms under which the Minister may accept the resignation of a trustee to ensure the smooth transition to an appropriate trustee.
- Replaces Mandatory Standard Term Documents for certain land dealings such as subleases with terms prescribed in a regulation. This will increase accessibility to prescribed terms, streamline administration and improve transparency of those dealings.
- Allows the Registrar of Titles to register a person appointed by court order as trustee for the sale of land or an interest in the land, without the need to obtain a vesting order. This will remove expense and delay as an additional court order will no longer be required.
- Enables the recognition of a beneficiary of a will, in situations where the deceased person's estate has been granted probate elsewhere in Australia, the UK or New Zealand, so saving time and costs. This will reduce time and expense and the stress on the deceased person's family.
- Provides the Registrar of Titles with the power to withdraw instruments that cannot be given legal effect under Queensland law. This will prevent certain documents being used as a pseudo legal technique to avoid a person meeting legal obligations.
- Clarifies that any compensation arising from the improper use of a caveat is to be paid by the person claiming an interest in the land, not a legal practitioner lodging the caveat on that person's behalf. This will ensure that the appropriate person is liable for compensation.
- Ensures that caveats are used appropriately when lodged by a registered owner in dispute with a mortgagee so that the mortgagee is not hindered in undertaking legitimate activities.
- Replaces the current settlement notice mechanism with a nationally consistent priority notice which can be lodged through the eConveyancing platform. In addition, the Bill extends the use of priority notices to other dealings such as leases and allows a 30 day extension of the notice's effect.
- Dispenses with the need for a paper certificate of title to be produced if the Registrar of Titles is satisfied it is held by a legal practitioner.

While miscellaneous in nature, these minor amendments will streamline titling processes and the administration of State land, reduce regulatory burden and improve the customer's experience.

Alternative ways of achieving policy objectives

The Land Act and the Land Title Act specifically deal with the matters the subject of the policy objectives of the Bill.

Section 30 of the *Constitution Act 1867* recognised that Queensland legislature must make a law “for regulating the sale, letting, disposal and occupation of the waste lands of the Crown” in the State. Non-tidal watercourse land and non-tidal lake land is part of the “waste lands of the Crown”. The Land Act must be amended to enable the dedication of functioning non-tidal watercourse or lake.

The current land legislation framework is enshrined in legislation and may only be altered by amending legislation. There is no alternative way to achieve the identified policy objectives.

Estimated cost for government implementation

The implementation of the amendments will occur within existing budget allocations.

Current departmental fact sheets, web content, application forms and work processes and systems will be amended where appropriate to take into account the proposed changes.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* and is consistent with these provisions. However, some provisions in the Bill may be seen as departures from the FLPs. A potential breach of FLPs is addressed below.

Whether legislation has sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(2)(a)

Dedication of non-tidal boundary watercourses and lakes as reserve under the Land Act

The amendment to the Land Act by clauses 4-6 expands on amendments made to the Land Act by the *Major Sports Facilities and Other Legislation Amendment Act 2016* in relation to the use and occupation of non-tidal boundary watercourse land and non-tidal boundary lake land. Those amendments enabled the leasing of such land with the consent of adjoining owners and the chief executive under the Water Act.

The explanatory material for that Act included discussion of whether that proposal may be seen as impacting on the rights of an owner whose land adjoins a non-tidal boundary watercourse or lake.

Similarly, in relation to the dedication of non-tidal boundary watercourse land and non-tidal boundary lake land it is necessary to explore whether the Bill may impact on FLPs.

Under section 13A(1) of the Land Act, the beds and banks of a non-tidal boundary watercourse or lake are the property of the State. The owners of land adjoining a non-tidal boundary watercourse or lake have certain 'riparian rights' under section 13A(4) of the Land Act. Under that subsection, the owner of land adjoining a non-tidal boundary watercourse or lake may exercise a right of access over part of the watercourse or lake that adjoins the owner's land (adjacent area) and exercise a right of grazing for the person's stock over the adjacent area. The owner may also bring action against a person who trespasses on the adjacent area as if the owner of land owned the non-tidal boundary watercourse or lake.

However, the riparian rights provided by section 13A are restricted when the adjacent area is being used by a person authorised under the Water Act.

Under the proposed amendment, exercise of the riparian rights provided by section 13A(4) will also be restricted with regards to a reserve over a non-tidal boundary watercourse or lake.

In recognition of the possible impact on an adjoining owner's riparian rights, the dedication of a reserve over non-tidal boundary watercourse or lake land cannot occur without the consent of the adjoining owner. If the reserve covers more than the area adjacent to the owner's land, the reservation cannot occur without the consent of the adjoining owner on both sides of the non-tidal boundary watercourse or lake.

Consultation

The Local Government Association of Queensland (LGAQ) was consulted on the Bill. LGAQ were generally supportive but expressed concerns regarding the provisions relating to the resignation of a trustee. DNRM will continue to consult with the LGAQ with regards to implementation of this provision.

The Queensland Law Society was consulted during the development of the policy informing the amendments to the Land Title Act and mirror provisions of the Land Act and were supportive.

In relation to the Land Title Act amendment the Queensland Productivity Commission (QPC) was consulted regarding the regulatory impact statement system. The QPC advised that based on the amendments not being a change in policy direction but an improvement to the current legislation, the proposed Bill would not benefit from further analysis and assessment under the regulatory impact statement system. Similar advice was received from the Office of Best Practice Regulation in relation to the Land Act amendments.

The amendments included in this Bill were also consulted upon with the Stock Route Network Management Bill 2016 (the Stock Route Bill). Consultation on the Stock Route Bill was undertaken widely across government and with key stakeholders.

During this time, no significant issues were raised concerning the amendments in this Bill.

Consistency with legislation of other jurisdictions

Land tenure legislation is in place in every Australian jurisdiction and whilst it has some similarities the legislation also reflects the unique attributes of the jurisdiction and the corresponding government policy. All jurisdictions are streamlining, improving the relevance and transparency of land legislation dealing with crown land and titling legislation.

The legislative amendments to the Land Act and Land Title Act relate to streamlining administration and improving efficiency in how the legislation is applied, rather than changes in government direction. Therefore, comparisons to other jurisdictions are not relevant in most cases, except where detailed below.

The amendments to the Land Title Act relating to priority notices are consistent with legislation in Victoria, New South Wales, Western Australia and Tasmania to the extent possible, in accordance with an agreement of the Australian Registrars' National Electronic Conveyancing Council (ARNECC). Most jurisdictions represented on ARNECC either currently have a similar mechanism, called a "priority notice", or intend to introduce one.

The general intent of provisions for ensuring that existing easements continue as a burden on a reserve when a State lease ends are consistent with arrangements in New South Wales and South Australia, where easements continue.

In regards to the transferring of licences, in South Australia, some licences to occupy Crown land are connected to privately owned land. When this land is sold the licence is transferred with the land. This arrangement is generally similar to the intent of the proposed reform to remove the need for Ministerial consent for transfer of a road licence if the road licence is tied by covenant to freehold land benefited by the road licence and both the freehold land and road licence are being transferred to the same person.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that the short title of the Act, when made, is the Land and Other Legislation Amendment Act 2016.

Commencement

Clause 2 provides for specified provisions to commence by proclamation, particularly part 2, division 3, part 3 division 3 and schedule 1, part 2. All other provisions will commence on assent.

Part 2 Amendment of Land Act 1994

Division 1 Preliminary

Act amended

Clause 3 provides that Part 2 amends the *Land Act 1994*.

Division 2 Amendments commencing on assent

Amendment of s 13A (Land adjacent to non-tidal boundary (watercourse) or non-tidal (lake) owned by State)

Clause 4 amends section 13A to insert a new subsection (6) which confirms the rights provided to an owner of adjacent land under subsection (4) may not be exercised to an extent that they interfere with the performance of the functions or duties of the trustee of the reserve land. This is consistent with the protections provided in relation to a lessee's rights and interests under a lease granted under section 13AB.

In addition, new subsection (6) limits the right of an owner to bring an action of trespass under section 13A against the trustee or other person authorised to use the reserve land.

The clause also updates a cross reference to a provision in the Water Act.

Amendment of s 13AA (Power to deal with non-tidal watercourse land and non-tidal lake land)

Clause 5 amends section 13AA to provide authority to the Minister to dedicate land in a non-tidal boundary watercourse (non-tidal watercourse land) or non-tidal boundary lake (non-tidal lake land) as a reserve as if the land were unallocated State land. Section 13AA already provides authority for the Minister to lease to the State non-tidal watercourse land and non-tidal lake land.

The authority to dedicate non-tidal watercourse land or non-tidal lake land as a reserve is limited by new section 13AC.

Insertion of new 13AC

Clause 6 inserts new section 13AC which provides the authority for, and restrictions on the dedication of non-tidal watercourse land or non-tidal lake land as reserve.

To ensure the rights of adjacent owners are taken into account in relation to the dedication of non-tidal watercourse land or non-tidal lake land, dedication of this land as reserve will only be possible where an adjacent owner has consented to the dedication. "Adjacent owner" is defined in section 8A of the Land Act.

Additionally, for non-tidal watercourse land or non-tidal lake land to be dedicated as a reserve the chief executive under the Water Act must consent to the dedication. The chief executive must consider whether, and to what extent, the dedication will interfere with the State's control or use of the non-tidal watercourse land or non-tidal lake land or interfere with a right of the State or a person to take or use water under the Water Act in deciding whether to consent to the dedication.

The chief executive under the Water Act may condition the consent to the dedication. In this circumstance the land may only be dedicated as a reserve if those conditions have been satisfied or are conditions of the appointment of a trustee of the reserve.

Amendment of s 17 (Granting land to the State)

Clause 7 amends section 17 to clarify that unallocated State land can be granted, in fee simple, or leased for a term of years or in perpetuity, to the Commonwealth of Australia as well as the State of Queensland.

To date, the Land Act has not had explicit provisions that enable the grant or lease of unallocated State land to the Commonwealth. This amendment provides an explicit power to deal with the Commonwealth under the Land Act.

Amendment of s 103 (Issue of road licence)

Clause 8 amends section 103 to authorise the Minister to issue a road licence over a temporarily closed road to either an adjoining owner or to a person to allow that person to make structural improvements which benefit land of which the person is registered owner, lessee or trustee.

Where the Minister issues a road licence over a temporarily closed road, the chief executive under the Land Act is required to register a covenant over the land of the road licence and the adjoining land or other benefited land.

Clause 8 supplements clause 17 which amends section 373A to authorise the creation of a covenant over land the subject of a road licence ensuring that the tied land will be transferred to the same person(s).

Amendment of s 164 (What is a *rolling term lease*)

Clause 9 amends section 164 to provide for an additional category of rolling term lease. The new rolling term lease is a term lease the area of which includes tidal water land and which is tied by covenant to a rolling term lease used for tourism purposes on a regulated island. This would typically involve land used for, or occupied by, facilities and services that are integral to the operation of an adjoining major tourism resort.

For example, where a jetty which is used for the purposes of an island resort is located on a term lease, this amendment will allow the jetty lease to be approved by the Minister as a rolling term lease consistent with the rolling term lease on which the resort is located.

To qualify as a lease within the additional rolling term lease category the lease must include tidal water land which is defined for the purpose of section 164.

Amendment of s 164A (Approval of lease as a rolling term lease)

Clause 10 amends section 164A to insert a new subsection (1) which enables the Minister to approve a lease as a rolling term lease if the Minister is satisfied the improvements on the lease are part of a significant development and the lease facilitates the tourism purposes of the tied tourism lease.

Together with the amendment of section 164 (clause 9) this will enable term leases over tidal water land which provide infrastructure or services considered essential to the operation of an adjoining tourism resort on regulated islands to be declared rolling term leases.

Amendment of s 164C (Making extension application or giving expiry advice)

Clause 11 amends section 164C to clarify that an extension application may be made once during each term of the lease. That is, once during the original term of the rolling term lease and once during the term of each extension of the lease.

No application to extend the term of a rolling term lease may be made until the lease is within the last 20 years of its term.

Amendment of s 164E (Length of extension)

Clause 12 amends section 164E to provide that the length of the extension granted for a rolling term lease must not be longer than the original term granted. For example, a lessee of a lease with a current term of five years may apply for extension of the term of lease for up to an additional five years.

Clause 12 also corrects a typographical error in subsection 164E(2)(a).

Amendment of s 288 (Certain document must be signed)

Clause 13 amends section 288 to replace 'lawyer' with 'legal practitioner' to align with changes made to section 11 of the Land Title Act by the *Land, Water and Other Legislation Amendment Act 2013*.

Amendment of s 308 (Withdrawing lodged document before registration)

Clause 14 amends section 308 to clarify that the chief executive's power to withdraw a document, or permit a document to be withdrawn, includes the power to withdraw a document that cannot be given legal effect. An example of a document that cannot be given legal effect is included, being a power of attorney that names the same person as principal and attorney. This amendment is similar to the amendment made to section 159 of the Land Title Act by clause 37.

Amendment of s 322 (Requirements for transfers)

Clause 15 amends section 322 to remove the requirement for the Minister to approve a transfer of a road licence over a temporarily closed road to a person where all of the following apply:

- the road licence is held by an owner of freehold land;
- there is a covenant attached to the road licence land so that it can only be transferred with the freehold land;
- the freehold land is also being transferred;

- all charges on the licence which are owed to the State are paid before the transfer is lodged;
- the person must be an adult (if it is an individual); and
- a statutory declaration is provided which states that the person is aware of the conditions of the licence and also states any other matters prescribed by regulation.

Clause 15 clarifies that where the Minister's approval is required it may include a condition that the lodgement of the transfer be accompanied by a statutory declaration signed by the incoming lessee or licensee stating that the incoming lessee or licensee is aware that if the transfer is to be registered the land would be subject to an indigenous cultural interest. Clause 15 also updates cross referencing in section 322 rendered obsolete by previous amendments to the Land Act.

Amendment of s 372 (End and continuation of easements)

Clause 16 amends section 372 to provide for, subject to the Minister's written approval, the continuation of a public utility easement as a burden on a reserve if the easement burdens a State lease and the State lease ends.

Clause 16 also amends subsection 372(5) to require that if a public utility easement continues over a reserve then the continuation must be recorded in the appropriate register.

This makes consistent the continuation of public utility easements on reserves and unallocated State land and streamlines the administration of State land by introducing a cross tenure approach to dealing with public utility easements.

Amendment of s 373A (Covenant by registration)

Clause 17 amends section 373A to clarify that all non-freehold land (other than road that is not subject to a road licence) may be the subject of a covenant. However, where there is a trustee lease, a sublease of a trustee lease or sublease of a lease on non-freehold land a covenant cannot be registered over that land without the consent of the trustee, lessee or sublessee.

The amendment will enable restricted use and preservation covenants to be made over all State land under the Land Act (except road), including a reserve, unallocated state land or occupation licence on State land.

Clause 17 also amends section 373A to provide for a covenant for ensuring road licence land and adjoining or other benefitting freehold land are transferred to the same person. This complements clause 8 which amends section 103 to provide that

where the Minister issues a road licence over a temporarily closed road, the chief executive is required to register a covenant over the road licence land and the adjoining land or benefited land.

Amendment of s 374A Interests held in trust must be registered)

Clause 18 amends section 374A to provide for a person appointed as trustee for sale by a court order to be recorded on title regardless of whether or not the court has also made an order specifically vesting the property in the trustee. This amendment is similar to the amendment made to section 109 of the Land Title Act (clause 32).

Amendment of s 375A (Document to vest in trustee)

Clause 19 amends section 375A to broaden the scope of a vesting order from an “order made under the *Trusts Act 1973* or another Act” to any order of a court. This amendment is similar to the amendment made to section 110A of the Land Title Act (clause 33).

Amendment of s 379 (Registering beneficiary)

Clause 20 amends section 379 to align with section 377 and to operate in a similar way to section 112 of the Land Title Act, as amended by this Bill (clause 34). It is intended that any person that the chief executive may register as a personal representative under section 377(2) may consent to the registration of a person beneficially entitled under a will to a lease, sublease or licence of a deceased lessee, sublessee or licensee to be registered as lessee, sublessee or licensee under section 379(2).

Amendment of 420C (Requirements for making an application)

Clause 21 amends section 420C to replace ‘lawyer’ with ‘legal practitioner’ to align with changes made to the Land Title Act by the *Land, Water and Other Legislation Amendment Act 2013*.

Amendment of sch 6 (Dictionary)

Clause 22 amends the definitions of designated officer so that the defined term may be applied in relation to new provisions about prescribed terms for registered documents in new chapter 6, part 3 division 3. The definition is expanded to apply to documents more broadly than just leases, licences or permits. Under the new section 321A the definition will operate to make the chief executive the designated officer for the other type of document.

Clause 22 inserts a definition of legal practitioner to align with the definition inserted in Schedule 2 of the Land Title Act by the *Land, Water and Other Legislation Amendment Act 2013*.

Clause 22 also consequentially amends the definition of conservation covenant to align with the renumbering of section 373A.

Division 3 Amendments commencing on proclamation

Amendment of s 34P (Subdivision of DOGIT land)

Clause 23 amends section 34P to clarify that DOGIT land may be subdivided by the registration of a plan of subdivision and to remove the requirement for the Minister administering the Land Act to approve plans of subdivision for DOGIT land under the Aboriginal Land Act and Torres Strait Islander Land Act.

This amendment enables the subdivision of indigenous DOGIT land to be regulated solely under the Aboriginal Land Act and the Torres Strait Islander Land Act.

Amendment of s 50 (Vacation of office by trustee)

Clause 24 amends section 50 to insert a new subsection (2) to provide for the circumstances in which the Minister may accept the resignation of a trustee.

Currently a trustee of trust land is taken to have vacated office where the trustee resigns by notice of resignation given to the Minister. This can give rise to a situation where there is a significant period of time between the resignation taking effect and when the trustee is replaced.

Clause 24 amends section 50 to provide for the trustee of trust land to resign only if the Minister is satisfied:

- another entity can perform the functions of trustee, fulfil the trustee's duty of care and is willing to be appointed trustee;
- the resignation of the trustee is in the interests of the State; or
- the trustee cannot perform the trustee's functions or fulfil the duty of care for the trust land.

For example, the Minister may be satisfied the trustee cannot perform the trustee's functions or fulfil the duty of care for the trust land if the trustee has lost capacity.

This amendment seeks to minimise disruption in the management of trust land by enabling a smooth transition to an appropriately qualified replacement.

Omission of s 318A (Minister may lodge mandatory standard terms document)

Clause 25 omits section 318A. This amendment removes the ability of the Minister to impose mandatory standard terms documents over land administered under the Land Act and supports implementation of clause 27, which includes new provisions for prescribing terms to apply to a registered document.

Omission of s 320A (Conflict with mandatory standard terms document)

Clause 26 removes section 320A of the Land Act which confirms that the terms of a mandatory standard terms document override the terms of any contrary condition in a registered document. Currently section 320A prescribes that the terms of a mandatory standard terms document become the terms of a registered document only if the registered document states it is subject to the terms of the mandatory standard terms document.

This amendment supports implementation of clause 27, which provides new provisions for prescribing terms to apply to a registered document.

Insertion of new ch 6, pt 3, div 3

Clause 27 introduces new provisions where, by regulation, prescribed terms may be applied to a registerable document and a framework for the operation of those prescribed terms.

Division 3 Prescribed terms for registered documents

Subdivision 1 Prescribed terms

New section 321A Regulation may prescribe terms

New section 321A authorises the making of a regulation which applies prescribed terms for certain registered documents. The application of prescribed terms to a registered document will ensure that the document includes terms considered necessary for the tenure or dealing, (such as a trustee lease, sublease or covenant) and essential to protect the States interest in the land.

For example a regulation may prescribe that a term requiring a sublessee to hold appropriate insurance be a term of all subleases.

Prescribed terms may apply to a registered document for lease land, licence land, permit land or trust land.

New section 321B Effect of prescribed terms

New section 321B provides for a prescribed term to become a term of the document when the document is registered. The prescribed terms is binding on each person who is a party to the transaction to which the document relates and any person who holds an interest in land created by the document, including successors in title.

Where a term of a registered document is inconsistent with a prescribed term then the prescribed term prevails to the extent of any inconsistency. Additionally, a prescribed term will have effect even though the prescribed term is not registered.

New section 321C Obligations relating to prescribed terms

New section 321C requires a person bound by a prescribed term to comply with that prescribed term. Compliance with a prescribed term must be to the satisfaction of the designated officer under the Land Act.

Where a prescribed term is to apply to a document when it is registered, the document must state that the prescribed term is a term of the document. However, if the document when it is registered does not state that a prescribed term is a term of the document, this will not invalidate or affect the application of the prescribed term or the document or the registration of the document. Where there is noncompliance with a prescribed term, but no action is taken in this regard, it is not a waiver of, authorisation of or excuse for the noncompliance.

New section 321D Registered document not affected by amendment or repeal of prescribed terms

New section 321D provides that the amendment or repeal of a prescribed term after a document has been registered does not affect the document or its terms and the prescribed term or terms will continue to apply as at the time of registration.

An amended prescribed term may be included in the document with the agreement of each person bound by the prescribed term and where the designated officer considers it appropriate. Similarly, a repealed prescribed term may be omitted from a document with the agreement of each person bound by the prescribed term.

Subdivision 2 Remedial action

New section 321E Notice to remedy

New section 321E provides for the designated officer to issue a notice to remedy if they are of the reasonable belief that a person has not complied, or is not complying with, a prescribed term.

The notice to remedy may be given to each person who is bound by the prescribed term.

A notice to remedy must include the following:

- a statement that the designated officer reasonably believes that a person has not complied, or is not complying, with the prescribed term;
- the facts and circumstances that have given rise to the belief that a person has not complied, or is not complying, with the prescribed term;
- the requirement that the noncompliance be remedied and the period within which that remedy must occur; and
- that noncompliance with a notice to remedy is an offence unless there is a reasonable excuse.

The reasonable steps the designated officer is satisfied are necessary to remedy the noncompliance and a requirement that the person provide a written report to the designated officer after the remedial steps are undertaken to the designated officer may also be stated in the notice to remedy.

The decision to give a notice to remedy is appealable by a person given a notice.

New section 321F Failure to comply with notice to remedy

New section 321F provides that failure to comply with a notice to remedy without reasonable excuse is an offence with a maximum penalty of 400 penalty units.

New section 321G Notice to cancel interest

New section 321G provides for the Minister to issue a notice of intention to cancel registration of a document if the Minister is satisfied of noncompliance with a notice to remedy.

A notice of intention to cancel notifies that the Minister intends to cancel registration of a document and that cancellation of the registration will end any interest in land. The person has 30 days to make written submissions to the Minister to demonstrate why the registration and interest in land should not be cancelled.

New section 321H Decision about cancellation

New section 321H provides the requirements for the Minister to make a decision about cancellation of the registration of a document and any interest in land created by the document's registration.

After considering all submissions made under section 321G(3)(c) the Minister may decide to cancel or not to cancel the registration of a document. Additionally, if the decision is not to cancel then the Minister may decide to impose conditions on the interest in land. When the Minister has made a decision under section 321H the Minister must notify each person, given a notice of intention to cancel, of the decision.

New section 321I Effect of decision

New section 321I requires the chief executive under the Land Act to record the decision of the Minister to cancel or condition under section 321H in the appropriate register.

New section 321J Removal of improvements on cancellation

New section 321J provides for the removal of improvements, with written Ministerial approval, in the event an interest in land is cancelled under section 321H. Where the Minister does not approve the removal of improvements or the improvements are not removed within the period stated, the improvements become the property of the State.

New section 321K Compensation

New section 321K provides for compensation for the cancellation of an interest in land for lawful improvements where those improvements become the property of the State under section 321J.

The compensation payable is decided by the Minister and is the value of the improvements on the day of the cancellation. The value is assessed as their market value in a sale of the interest in land as if the interest had not been cancelled.

The decision about the compensation payable is appealable by the person whose improvements became the property of the State.

The imposition of conditions on an interest in land does not give rise to a right to claim compensation from the Minister or the State.

Replacement of ch 9, pt 2 (Repeal)

Clause 28 provides transitional arrangements and inserts into the Land Act new sections 522, 523 and 524.

Part 2 Transitional provisions for Land and Other Legislation Amendment Act 2016

New section 522 Definition for part 2

New section 522 defines mandatory standard terms document, for the purpose of the transitional provisions.

New section 523 Chief executive must cancel registered mandatory terms documents

New section 523 requires the chief executive to cancel a registered standard terms document that on commencement was a mandatory standard term document.

This provision supports the discontinuation of mandatory standard terms for new registered documents and the introduction of prescribed terms by regulation.

New section 524 Documents containing mandatory standard terms document not affected

New section 524 is a transitional provision which provides for the continuation of certain mandatory standard terms forming part of a document that was a registered document prior to the commencement of the *Land and Other Legislation Amendment Act 2016* or was executed within 7 days of the commencement of the Act.

In those circumstances the mandatory standard terms continue to form a part of the document notwithstanding the repeal of section 318A or the cancellation of the mandatory standard terms document.

New section 524 also deals with a conflict between the mandatory standard terms and the document containing the mandatory standard terms or another relevant document, in which case the mandatory standard terms document prevails. New section 524(3) applies despite section 320(2).

Section 320(2) of the Land Act provides that if there is a conflict between the standard terms document and terms included in another document, the other document prevails.

Amendment of sch 2 (Original decisions)

Clause 29 amends schedule 2 to provide for decisions about the giving of a notice to remedy, cancelling the registration of a document, imposing conditions on an interest in land, and the value of improvements to be original decisions for section 423, to enable application to the Minister for a review of the decision.

Amendment of sch 6 (Dictionary)

Clause 30 amends the dictionary to remove the definition of “mandatory standard terms document” to support the implementation of the discontinuation of mandatory standard terms. Clause 30 also inserts definitions of “notice of intention to cancel”, “notice to remedy” and “prescribed term”.

Part 3 Amendment of Land Title Act 1994

Division 1 Preliminary

Act amended

Clause 31 provides for the amendment of the *Land Title Act 1994*.

Division 2 Amendments commencing on assent

Amendment of s 109 (How interest as trustee may be registered)

Clause 32 amends section 109 to provide for a person appointed as trustee for sale by a court order to be recorded on title regardless of whether or not the court has also made an order specifically vesting the property in the trustee.

Amendment of s 110A (Instrument to vest in trustee)

Clause 33 amends section 110A to broaden the scope of a vesting order from an “order made under the *Trusts Act 1973* or another Act” to any order of a Court. This amendment is similar to the amendment made to section 375A of the Land Act.

Amendment of s 112 (Registering beneficiary)

Clause 34 amends section 112 to align with amendments made to section 111 by the *Land and Other Legislation Amendment Act 2014* to allow the Registrar to register a lot or interest in a lot in the name of a person as personal representative if they have obtained a grant of representation other than in Queensland and the Registrar

considers the person would succeed in an application for the resealing of the grant in Queensland.

Amendment of s 126 (Lapsing of caveat)

Clause 35 amends section 126 so that a registered owner who lodges a caveat over their lot is required, in order to prevent the caveat from lapsing, to commence proceedings in a Court of competent jurisdiction to establish the interest claimed under the caveat within the timeframes prescribed by section 126 where:

- the lot is subject to a mortgage; and
- the grounds stated in the caveat relate to the actions of the mortgagee in relation to the registration of the mortgage or the mortgagee's power of sale.

This clause also amends section 126 to clarify that where the consent of the registered owner is deposited under section 126(1)(b), the consent must be in the appropriate form and to amend cross referencing in that section.

Amendment of s 130 (Compensation for improper caveat)

Clause 36 amends section 130 to clarify that the caveator is liable to pay compensation for lodging or continuing an improper caveat, rather than the person who lodges the caveat, which could be a legal practitioner or lodging agent.

Amendment of s 159 (Withdrawing lodged instrument before registration)

Clause 37 amends section 159 to clarify that the Registrar's power to withdraw an instrument, or permit an instrument to be withdrawn includes the power to withdraw an instrument that cannot be given legal effect. An example of an instrument that cannot be given legal effect is included, being a power of attorney that names the same person as principal and attorney.

Amendment of s 164 (Dispensing with production of paper instrument)

Clause 38 amends section 164 to provide a specific example of when the Registrar may dispense with the production of a certificate of title, namely when the Registrar is satisfied that the certificate of title is held by a legal practitioner. An example of how this amendment may operate in practice is for the Registrar to dispense with the production of a paper certificate of title and accordingly permit solicitors who are subscribers to an electronic lodgement network (ELN) to lodge instruments via the ELN without first returning the paper certificate of title for cancellation under section 154.

Division 3 Amendments commencing on proclamation

Replacement of pt 7A (Settlement notice)

Clause 39 provides for the replacement of part 7A to permit a priority notice mechanism to replace the current settlement notice mechanism to implement the ARNECC agreement to introduce a nationally consistent priority notice.

In accordance with the *Acts Interpretation Act 1954*, the 30, 60 and 90 day periods will be calculated by excluding the day the priority notice is deposited and by the period ending on the 30th, 60th or 90th day, where the excluded day is day zero. Where the relevant provision requires a request to be deposited, for example, an extension request, this must occur during the business hours of the titles registry.

An equivalent to the existing section 146 has not been included in the replaced provisions in order to implement the ARNECC agreement to permit the deposit of a second or subsequent priority notice.

New section 138 Definitions for part

New section 138 defines the new terms “extension request” (section 141(1)), “priority notice” (section 139(1)) and “related instrument” (section 139(2)(d)(ii)) and clarifies that in this part reference to an instrument includes a reference to a caveat.

New section 139 Depositing priority notice

New section 139 permits a priority notice to be deposited to reserve the priority of a wider range of instruments than a settlement notice which was, in effect, limited to instruments of transfer and mortgage. The section permits a person who is or will be a party to an instrument or caveat, that is to be lodged and will affect the lot or an interest in the lot, to deposit a priority notice.

New section 139(2) outlines the formal requirements for a priority notice which include: a sufficient description of each instrument to which the notice relates (each related instrument), which may include instruments to which the person who deposited the notice or for whom the notice was deposited is not a party; and stating the order in which the related instruments are intended to be lodged.

An example of how the new provisions could be used in practice is as follows. A purchaser of a freehold lot who will be a party to an instrument of transfer may deposit a priority notice for that lot listing the following instruments in the following order: a release of an existing mortgage; the transfer; a new mortgage; and a lease. The priority notice will operate in the manner outlined in the succeeding sections in Part 7A, for

example by preventing the registration of an instrument of transfer to a third party until the instruments specified in the priority notice are lodged or the priority notice otherwise lapses, is withdrawn, removed or cancelled.

It is not intended for a priority notice to be deposited in relation to an instrument which is not registered under the Land Title Act and accordingly to which Part 9 of the Land Title Act does not apply.

New section 140 Effect of priority notice

New section 140 reflects the terminology and other changes implemented by clause 39. A priority notice will operate in substantially the same manner as a settlement notice by preventing registration of an instrument affecting the lot or an interest in the lot until the notice lapses, or is withdrawn, removed or cancelled, subject to the exceptions listed in the new section 140(2).

To streamline the Part, new section 140 also incorporates the substance of existing section 151. The amendments are not intended to affect a person's right to lodge a caveat. The new section does not have an equivalent to the existing section 141(2)(a) for national consistency.

New section 141 Extending priority notice

New section 141 allows for a priority notice to be extended for one 30 day period by depositing an *extension request*. New section 141(2) outlines the formal requirements for an extension request which must be in the approved form, signed by or for the person for whom the priority notice was deposited and deposited within 60 days after the priority notice was deposited. New section 141(4) clarifies that an extension request continues the effect of the priority notice under the new section 140.

New section 142 Lapsing of priority notice

New section 142 provides for the lapsing of a priority notice either:

- 60 days after it is deposited;
- 90 days after it is deposited if an extension request for the notice has been deposited; or
- the day all related instruments have been lodged in the order stated in the notice.

New section 143 Withdrawing priority notice

New section 143 permits a priority notice to be withdrawn by depositing a request to withdraw in the appropriate form and signed by or for the person for whom the priority

notice was deposited.

New section 144 Removing priority notice

New section 144 relating to removal of a priority notice by court order, reflects the terminology and other minor changes implemented by clause 39 and incorporates the definition of “affected person”.

New section 145 Cancelling priority notice

New section 145 changes the grounds upon which the Registrar of Titles may cancel a priority notice. The existing section 145 appears to have been modelled on the procedure under section 128 for cancelling a caveat on certain grounds. As those grounds are not relevant to priority notices, new section 145 has been changed to provide that the Registrar may cancel a priority notice where the Registrar is satisfied that the instruments described in the notice are unlikely to be lodged before the notices lapses under new section 142.

New section 146 Compensation for improper priority notice

New section 146 reflects the terminology and other minor changes implemented by clause 39.

The person liable to pay compensation for depositing, extending or continuing a priority notice without reasonable cause is the person for whom the priority notice was deposited, being the person described in section 139(1), rather than the person who deposits the priority notice on their behalf which could be a legal practitioner or lodging agent.

New section 147 Registrar may withdraw instrument

New section 147 reflects the terminology and other minor changes implemented by clause 39.

New section 148 Priority of instruments

New section 148 reflects the terminology and other minor changes implemented by clause 39.

New section 149 Minor correction of priority notice

New section 149 reflects the terminology and other minor changes implemented by clause 39.

Insertion of new pt 12, div 6

Clause 40 inserts new part 12, division 6.

Division 6 Transitional provision for Land and Other Legislation Amendment Act 2016

New section 212 Existing settlement notices

New section 212 is a transitional provision to provide that the Land Title Act as in force before the commencement of the Land Legislation Amendment Act 2016 continues to apply in relation to a settlement notice that was deposited and has not lapsed or been cancelled or withdrawn before the commencement.

Amendment of sch 2 (Dictionary)

Clause 41 amends Schedule 2 (Dictionary) to include the definitions of “extension request”, “priority notice” and “related instrument” to reflect terminology changes implemented with the replacement of Part 7A by clause 39.

Part 4 Other amendments

Clause 42 provides for amendments of a minor and consequential nature to the Land Act, Land Title Act and the *Planning (Consequential) and Other Legislation Amendment Act 2016* in Schedule 1.