Aboriginal and Torres Strait Islander Land Holding Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the *Aboriginal and Torres Strait Islander Land Holding Bill 2011*.

Policy objectives and the reasons for them

The *Aboriginal and Torres Strait Islander Land Holding Bill 2011* (the Bill) repeals the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* and introduces supporting amendments to the *Aboriginal Land Act 1991*, *Land Court Act 2000* and *Torres Strait Islander Land Act 1991*, and minor consequential amendments to the *Environmental Protection Act 1994*, *Mineral Resources Act 1989, Survey and Mapping Infrastructure Act 2003, Sustainable Planning Act 2009, Sustainable Planning Regulation 2009, Vegetation Management Act 1999 and Wild Rivers Regulation 2007*, to resolve a range of issues with Aboriginal and Torres Strait Islander perpetual and term leases on Indigenous land.

The Bill amends the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* to address separate cultural heritage matters.

In addition the Bill includes amendments to the *Land Act 1994* in relation to a number of State land administration matters and technical amendments to the *Foreign Ownership of Land Register Act 1988*, the *Water Act 2000* and the *Water Supply (Safety and Reliability) Act 2008*.

The policy objectives are to:

- Repeal the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* and introduce the new Aboriginal and Torres Strait Islander Land Holding Act to provide a framework to finalise leasing matters outstanding under the repealed Act. The Aboriginal and Torres Strait Islander Land Holding Act will apply the principal legislation for leasing on Aboriginal and Torres Strait Islander lands, namely the

Aboriginal Land Act 1991 and the *Torres Strait Islander Land Act 1991*, to the extent practicable. The Bill provides a number of mechanisms to facilitate resolution of issues in a manner that meets the needs and capacity of the individuals and trustees affected. Ultimately, the intention is to exhaust the operation of the Aboriginal and Torres Strait Islander Land Holding Act by resolving outstanding matters within five years, at which point the new Act could be repealed and leases could be continued under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*;

- Amend the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* to clarify and enhance processes that protect, manage and conserve Indigenous cultural heritage in Queensland;
- Amend the *Land Act 1994* to:
  - define requirements for Indigenous access and use agreements for the purposes of the Delbessie Agreement as the *Land Act 1994* is currently silent on this;
  - provide a head of power to grant a 25% rental concession from 1 July 2012 for pastoralists who enter into an Indigenous access and use agreement for their lease land, bear any costs of public liability insurance for access and use agreements, and withdraw as respondents from native title claim processes; and
  - provide for the subleasing of a lease for the construction of State infrastructure which is otherwise contrary to the purpose of the lease. This is required for cases where land is needed for purposes ancillary to constructing State infrastructure (such as a work camp site). This avoids the current requirements for the subject land to be surrendered from a grazing or agricultural lease and then leased to the constructor, for a short term, for the ancillary purpose.
- Amend the *Foreign Ownership of Land Register Act 1988* to exclude new types of secondary interests in land, such as the profit a prendre, the covenant, the plantation licence and the carbon abatement interest from the operation of that Act. This will ensure that the *Foreign Ownership of Land Register Act 1988* continues to meet its objective which relates to ownership of land by foreign persons;

- Amend the *Water Act 2000* to give effect to recent changes to the Administrative Arrangement Orders which have highlighted that some references to the Treasurer are no longer appropriate; and
- Amend the *Water Supply (Safety and Reliability) Act 2008* to provide a clear definition of dual reticulation for the purposes of the recycled water regulatory framework under the Act.

Achievement of policy objectives

Aborigines and Torres Strait Islanders (Land Holding) Act 1985

The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* commenced on 24 April 1985 to deliver private home ownership to Aborigines and Torres Strait Islanders residing on an Indigenous Deed of Grant in Trust or reserve land. The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* allowed residents of these lands (known as 'qualified persons') to apply for perpetual or other suitable leases for residential or commercial purposes (e.g. farming, grazing or tourism). The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* does not provide for the creation of ordinary freehold.

From 21 December 1991, applications under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* could no longer be made, following the introduction of the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* as the principal legislation for leasing on Aboriginal and Torres Strait Islander land. This was done by inserting section 33A into the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. However, all other provisions of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* have remained substantially the same since that Act commenced.

Two Ministers formerly administered the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* - the Minister for Aboriginal and Torres Strait Islander Partnerships and the Minister administering the Land Act. Each Minister had different roles as defined in the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

On 13 November 2009, administrative responsibility for the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* was transferred to the then Minister for Natural Resources, Mines and Energy and Minister for Trade. This effectively sees the two Ministerial roles under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* undertaken by a

single Minister, now the Minister for Finance, Natural Resources and The Arts.

The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* only applies to Indigenous Deed of Grant in Trust or reserve land and only a qualified person could apply for a lease (prior to 21 December 1991). A 'qualified person' is an Aboriginal or Torres Strait Islander resident or alternatively, a person who is authorised to enter and reside on the Indigenous Deed of Grant in Trust or reserve land under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (e.g. an authorised officer appointed under the local laws of the Indigenous council).

The trustee, who owned or controlled the land (usually the Aboriginal or Torres Strait Islander Council), determined whether or not to approve the application. Applications for a perpetual lease could only be made for land that did not exceed one hectare. In cases where an application was made for more than one hectare of land, the appropriate tenure had to be decided by the Minister administering the Land Act (e.g. a special lease for a term of 30 years).

Whilst the trustee had complete discretion in considering applications, certain criteria applied before approval could validly be given, including a 28 day notification period.

Where the trustee approved an application, the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* required:

- the trustee to send the approved application to the Minister administering the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (formerly the Minister for Aboriginal and Islander Affairs);
- that Minister to then send the approved application to the Minister administering the Land Act; and
- the Minister administering the Land Act to initiate the process of issuing the lease.

Once approved by the trustee, the applicant immediately became entitled to the lease, and the land ceased being Indigenous Deed of Grant in Trust or reserve land and became unallocated State land for the purpose of granting the lease. After the lease was granted, it was registered on the State's automated titles system.

The lease did not include any improvements on the land, such as housing. This means the owner of the improvements continued to own those improvements even if a lease was granted. The leaseholder was able to purchase those improvements on terms and conditions agreed with the owner and approved by the Governor. If this was not done or the purchase price was not paid, the leaseholder was required under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* to maintain the improvements, to pay rent to the owner of the improvements (again, as agreed with the owner and approved by the Governor) and to keep the improvements insured.

The Indigenous council determined rent for the leases. The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* also includes mechanisms allowing the State or the Indigenous council to take action for forfeiture where a leaseholder does not occupy or utilise the lease for two years or does not pay rent.

A leaseholder can sublease or transfer a lease but only to another qualified person. A lease can be mortgaged to any person but a mortgagee is only permitted to be in possession of the lease for 12 months before they must dispose of the lease to a qualified person.

Over 200 leases were granted under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* in the Aboriginal communities of Doomadgee, Kowanyama, Napranum, New Mapoon, Pormpuraaw, Yarrabah and Woorabinda and the Torres Strait communities of Badu, Bamaga, Hammond, Kubin (Moa), Mabuiag, Masig, Poruma, and Warraber.

A similar number of outstanding applications need to be resolved. Where an application was properly made and approved, the State is obliged under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* to grant a lease over the area covered by the application. These outstanding applications are within the Aboriginal communities of Doomadgee, Kowanyama, Lockhart River and Pormpuraaw and the Torres Strait communities of Badu, Boigu, Hammond, Kubin (Moa), Mabuiag, Masig, Poruma, Saibai, St Pauls (Moa), Ugar and Warraber.

As the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* does not require surveys or metes and bounds descriptions, the exact area of the outstanding application may be uncertain. The exact area of the application is important because the tenure of the land automatically changed from Indigenous Deed of Grant in Trust or reserve land to

unallocated State land once the application was approved. Under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* the lease can only be granted over the area that was approved. If the location is unclear, it is also possible that subsequent improvements may have been inadvertently built on unallocated State land. The same may have occurred over granted leases.

The Bill repeals the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* and refers to the repealed *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* as the "old Land Holding Act".

Administrative simplification

Under the old Land Holding Act the area of the land within the Indigenous Deed of Grant in Trust or reserve land affected by an application divested to immediately become unallocated State land when the application was approved. This is an anachronism which complicates the administration of the Indigenous Deed of Grant in Trust or reserve land and impacts on the administration of the old Land Holding Act. The old Land Holding Act requires a minimal rent to be paid to the Indigenous Shire Council and either the Council or the Minister can take forfeiture action for failure of the lessee to pay rent or occupy the lease.

The Bill simplifies administration and reinstates the underlying communal ownership by returning the divested land affected by approved applications or leases to the Indigenous Deed of Grant in Trust or reserve land.

The old Land Holding Act contains a number of restrictions or qualifications on holding the lease, occupation of the lease, rental and forfeiture. These are not consistent with the provisions of the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* and are outdated.

The Bill ensures that granted leases and entitlements under the old Land Holding Act continue to be perpetual or term leases (based on the original application) but in relation to administration, the Bill applies the relevant provisions of the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act* 1991 to the extent practicable, taking into account the rights and obligations under the old Land Holding Act.

The old Land Holding Act enabled the appointment of visiting justices and appeal tribunals to deal with certain matters. In the Government response to the report "Brokering Balance: A Public Interest Map for Queensland Government Bodies – An Independent Review of Queensland Government

Boards, Committees and Statutory Authorities", the Government supported the recommendation to abolish these tribunals which have not been operative since 1991.

It is likely there are a number of matters that will still require dispute resolution, and decisions that will require review. The Bill gives the Land Court, because of its specialist knowledge relating to Aboriginal and Torres Strait Islander matters and land administration, jurisdiction to review relevant decisions and resolve disputes.

Lease entitlements

As noted above, around 200 applications were approved but leases have not been granted ('lease entitlements'). Given the passage of time, and in the interests of natural justice, the Bill requires that the chief executive publish a notice in the gazette of any lease entitlements. The lease entitlement notice must: (a) identify the trust area for the lease entitlement; (b) include the identification number of the original application, if known; (c) identify the holder of the lease entitlement; (d) give a description of the lease entitlement land to the extent reasonably practicable and (e) identify if the holder of the lease entitlement is deceased, if known. If a person believes they hold evidence of an entitlement that has not been published, or that a lease entitlement notice is not accurate, they will be able to bring forward evidence to the chief executive who then must consider it.

There may be some instances where a person applied for a lease and they thought it was approved under the old Land Holding Act. Consequently, they may have relied upon that belief and may have built on the land. The Bill provides that where a person demonstrates this 'hardship' case, the chief executive must decide that the value or cost for the lease land is nil. This should assist facilitating the grant of a 99 year private residential lease by the trustee under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

Granting leases

The Bill maintains the Minister's obligation to grant the lease to satisfy the lease entitlement. The Bill restores the land to the Indigenous Deed of Grant in Trust or reserve land. It would not be the usual practice over such land for the Minister to grant leases because the trustee normally grants leases. Nevertheless, it is necessary to do so to ensure the obligations arising from the old Land Holding Act are satisfied.

Given the passage of time there may be a number of legal and practical obstacles to the grant of some leases. The Bill places an obligation on the Minister to identify and document in a statement of reasons any legal or practical obstacles that exist to the granting of a lease to satisfy the lease entitlement.

The Minister's statement of reasons will be assisted by the work done by a local advisory group, established by the Minister, for each affected community which includes the relevant government agencies and the trustee of the land (currently the Aboriginal or Torres Strait Islander Council). The local advisory group may invite persons likely to be affected to participate in the group's consideration of matters and will provide recommendations to the Minister.

In the interests of natural justice, individuals may bring forward a claim to the Minister requesting that the lease be granted because there are no legal or practical obstacles. The Minister will be required to consider the request. If the Minister refuses to grant the lease then this decision may be appealed to the Land Court.

Where the proposed grant of the lease to satisfy the lease entitlement is not affected by any legal or practical obstacles, the Bill allows the Minister to grant the lease.

Where the proposed grant of the lease to satisfy the lease entitlement is affected by any legal or practical obstacles, for example, community infrastructure is now located on the land, the intention will be to grant a lease based on agreements to be reached between the trustee, the applicant and any other party whose agreement will be required.

Before granting the lease, the Minister must apply to the Land Court to consider whether the Minister has met the requirements of the Act, including whether the Minister has all agreements necessary to support the making of the grant. If agreement cannot be reached, the Minister may apply to the Land Court to decide whether the proposed grant should be made.

The Bill will also permit the surrender of a lease entitlement for agreed consideration.

Boundaries and encroachments

To address issues with boundaries and encroachments, the Bill will permit the relocation of the boundary of a lease based on agreement with affected parties. The Minister must apply to the Land Court to consider whether the

Minister has met the requirements of the Act, including whether the Minister has all agreements necessary to support the boundary relocation. If agreement cannot be reached, the Minister may apply to the Land Court to decide whether the boundary relocation should occur.

The Bill will also permit the lessee to surrender a lease for agreed consideration.

Subleasing

The Bill will permit the lessee to enter into a sublease or other arrangement (e.g. easement) with the State, trustee or any other person. The Bill will require that subleasing and other arrangements need the consent of the trustee but that consent cannot be unreasonably withheld.

Ownership of social housing

Under the old Land Holding Act, the ownership of the lease was separated from the ownership of a dwelling until it was paid for under an instalment contract approved by the Governor. The aim of the Bill is to merge the ownership of the lease and the dwelling. Any existing contract or arrangement is continued in the Bill. If there is no existing contract or arrangement, the lessee or proposed lessee will be given the opportunity to purchase the dwelling.

The Bill also permits other options that would resolve the ownership of a dwelling, for example, affected parties may reach agreement about the relocation of the lease to a different area or a sublease may be agreed between the lessee or proposed lessee and the Indigenous Shire Council or the State.

Identifying beneficiaries

Sadly, due to the passage of time, a number of people who hold lease entitlements or leases are deceased. Where a will or letters of administration can be provided, the Minister may rely on that information to identify a personal representative or beneficiaries. However, where there is no will, the Bill permits the Minister to rely on a certificate identifying beneficiaries produced under section 60 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* by the chief executive administering that Act. This will reduce expenses for the potential beneficiaries as they would otherwise be required to seek letters of administration in the Supreme Court.

Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003

A review of the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* (the Review) commenced in September 2008 in line with statutory requirements to review the Acts five years after the legislation was implemented. The purpose of the Review was to assess the efficiency and efficacy of the Acts and to identify how the Acts could be improved.

The Review recognised that the fundamental purpose of the Acts is to provide effective recognition, protection and conservation of Indigenous cultural heritage, by establishing a duty of care obligation for people carrying out activities to take reasonable steps not to harm Indigenous cultural heritage and providing mechanisms for proponents and Indigenous parties to reach agreement on cultural heritage matters. In addition, the Review confirmed that in circumstances where there is a high risk of harm to cultural heritage arising from land use activities, the most effective way of managing this risk is by engaging Traditional Owners in the process.

Overall, the Review found that the Acts are working well to protect Indigenous cultural heritage in Queensland. However, clearer standards and processes are required to reduce ambiguity on the interpretation of the Acts and to enhance cultural heritage agreement-making. The Review also found that awareness of the Acts and capacity of proponents and Traditional Owner stakeholder groups to negotiate effective agreements about the management of cultural heritage is often limited.

A set of 28 final Review recommendations were made comprising legislative change and administrative actions. The Bill seeks to implement 13 recommendations arising from the Review that require amendments to clarify and enhance the operation of the legislation. An awareness and capacity-raising strategy is the main delivery mechanism for the 15 non-legislative recommendations arising from the Review.

The Bill clarifies the cultural heritage agreement-making process. The amendments in the Bill will clarify situations where there are multiple native title parties or where there are no native title parties for an area. The Bill also ensures that agreements established prior to the commencement of these changes will remain valid.

Other specific matters addressed in the Bill include two amendments to the Minister's powers. The decision-making powers of the Minister to approve or refuse cultural heritage management plans and cultural heritage studies following the hearing of an objection or referral under the Acts will be

transferred to the Land Court of Queensland. This means that the Land Court's decision will be final.

The Bill provides for the Land Court to assume an expanded role to mediate cultural heritage disputes between cultural heritage parties. The Land Court will now manage disputes that fall outside the cultural heritage management plan process. This mediation role will provide accessible and structured mediation services to cultural heritage parties.

Other minor amendments included in the Bill will clarify a range of administrative aspects of the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003*, including requiring all signatories to cultural heritage agreements to be over 18 years of age.

Land Act 1994

Indigenous Access and Use Agreements

The requirement for Indigenous access and use agreements apply only to State leases affected by the Delbessie Agreement (State policy), that is, leases with a term of 20 years or more that have been issued for grazing, agricultural or pastoral purposes and whose area is 100 hectares or greater. There are approximately 1,800 Delbessie leases.

The *Land Act 1994* is silent on the requirements for Indigenous access and use agreements making implementation of this key component of the Delbessie Agreement problematic. Amendments to the *Land Act 1994* are required to resolve:

- confusion over the term 'Indigenous access and use agreement' where its acronym IAUA is used in both the generic form and to describe a specific type of agreement (i.e. a contractual agreement);
- the parties to a contractual agreement;
- defining 'traditional activities';
- security and longevity of agreements; and
- public liability insurance.

The Bill introduces amendments to the *Land Act 1994* to specify the requirements for the making, registration, notification, review, monitoring and continuity of Indigenous access and use agreements.

The generic term 'Indigenous access and use agreement' (or IAUA as it is has come to be known) has led to confusion where the legislative definition

provides that an IAUA can be either an Indigenous Land Use Agreement (ILUA) or a contractual agreement between a lessee and Aboriginal people or Torres Strait Islanders (which is also commonly referred to as an IAUA).

An ILUA is made under the *Native Title Act 1993* (Cth) and specifically deals with native title rights and interests, yet a (contractual, negotiated) IAUA is made under the *Land Act 1994* and cannot deal with native title rights and interests, so the reference to an agreement bearing the same name requires interpretation each time it is used to clarify its nature and purpose.

There is currently no definitive guidance under the *Land Act 1994* about who might be an appropriate party to enter into an IAUA over a pastoral lease under the current framework. The Bill provides for the necessary provisions to clarify and define this.

While it is clear under the Delbessie Agreement and the *Land Act 1994* that the intent of Indigenous access and use agreements, in particular IAUAs (contractual agreements), is to recognise access and use rights for Indigenous people for traditional purposes, the precise requirements of such agreements are unclear for the purposes of a 50 year or 75 year lease term under section 155 or a lease extension under sections 155B or 155BA of the *Land Act 1994*.

While there is guidance on ILUAs under the *Native Title Act 1993* (Cth), there is no guidance on the structure and content of an IAUA. The *Land Act 1994* is also silent on the necessity for ILUAs made under the *Native Title Act 1993* (Cth) to include provisions which recognise access and use rights and this requires clarification.

This lack of differentiation and detail has created some confusion about the purpose and scope of the different types of access and use agreements. Therefore the Bill clarifies:

- the contents of an IAUA or ILUA;
- what IAUAs and ILUAs can and cannot authorise;
- what constitutes an acceptable IAUA or ILUA; and
- the preferred type of access and use agreement for different circumstances (e.g. where either a negotiated IAUA or ILUA is possible under sections 155(5)(c)(ii) and 155B(1)(b)(ii) of the *Land Act 1994*).

This will also provide clarity to the provisions of sections 155(5)(d)(ii), 155(6)(f)(ii), 155B(3)(d)(ii) and 155BA(3)(e)(ii) of the *Land Act 1994* which allow the Minister to issue a longer lease term or lease extension with regard to the terms of any Indigenous access and use agreement.

There are presently no provisions in the *Land Act 1994* to ensure that an IAUA will survive the transfer of a lease, or to prevent it otherwise coming to an unintended premature end, for example, if the lease is transferred, subdivided or amalgamated. This has raised concerns about certainty and security of the agreement, in particular for Indigenous parties. The Bill provides the necessary provisions to ensure the continuity of access and use agreements. This essentially involves the creation of a new interest in lease land under the *Land Act 1994*, the Indigenous cultural interest, where an IAUA or an ILUA is approved by the Minister for registration in the appropriate register. The registered Indigenous cultural interest is akin to a common interest but with special requirements governing approved agreements. The nature of the rights under the interest is defined by the terms of the approved agreement. Changes to the registered interest will be governed by normal rules. The interest is relevant only to certain rural leases (i.e. Delbessie leases) for the purposes of sections 155(5) to (6), 155B, 155BA and new section 188A which deals with a limited rental concession.

Although the *Land Act 1994* states that an ILUA may be an IAUA, it does not specifically address the intended nature of inclusions of an ILUA for the purposes of seeking the maximum term or extension benefits available in the *Land Act 1994*. The Delbessie Agreement (State policy) provides that ILUAs for these purposes are required to allow access and use by Indigenous people for the traditional purposes defined in the Delbessie Agreement as camping, fishing, gathering and hunting, performing rites or other ceremonies, and visiting sites of significance.

An ILUA which does not allow access and use by Indigenous people for traditional purposes would therefore be inconsistent with the State policy. The Bill provides for the necessary legislative requirements for this.

The Bill also clarifies that while an ILUA may be an IAUA (if it satisfies the intended access and use provisions for traditional purposes), an IAUA cannot become an ILUA. This is because an IAUA was never intended to resolve native title issues and therefore is not required to be compliant with the *Native Title Act 1993* (Cth) and *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth). However, the Bill provides that lessees may use an Indigenous access and use agreement, or Indigenous land use agreement, made for the purposes of the Delbessie Agreement as

an alternative mechanism to address their interests in a native title claim. Similarly, a non-extinguishing Indigenous land use agreement which resolves native title may be used for the purposes of the Delbessie Agreement if it satisfies specific requirements under the *Land Act 1994*. In both these instances, the lessee is required to withdraw as a respondent to the native title claim while ensuring that the lessee's interests under the agreement (i.e. Indigenous access and use agreement or Indigenous land use agreement), the lease and a determination of native title are protected. This approach takes into account the fact that:

- around 70% of Delbessie leases are within native title claim areas; and
- of the more than 100 outstanding native title claims, around 60% include pastoralists as respondent parties.

The Bill also provides guidance as to how the Minister's statutory discretion might be exercised, and what criteria might be relied upon by the Minister to make the following decisions regarding IAUAs or ILUAs, that is:

- under what circumstances would the Minister consider it appropriate for there to be an IAUA (and nature conservation agreement or covenant) for the grant of a maximum term lease or extension under sections 155(5) and (6), 155B and 155BA;
- how would the Minister determine which type of Indigenous access and use agreement is appropriate, and its content, where it is possible for the agreement to be either an IAUA or ILUA;
- what constitutes an acceptable agreement, e.g. what minimum inclusions would be required to satisfy the Minister under sections 155(5) and (6), 155B and 155BA; and
- what should the Minister take into account in exercising the authority where the Minister 'may' reduce the term of a lease or extension under section 155D if an IAUA or ILUA ceases to be in existence.

The Indigenous access and use agreement policy framework is consistent with the spirit and intent of Indigenous access and use agreements under the Delbessie Agreement—namely, that IAUAs and ILUAs are voluntary yet essential if a lessee is seeking the maximum lease term or extension of a lease over pastoral land for which native title may still exist. It is also consistent with the Queensland Government policy to negotiate agreements rather than Court determinations for Indigenous access and use arrangements over pastoral leases.

In addition, the Bill provides for a head of power to grant a 25% rental concession for Delbessie lease lessees who enter into an IAUA or ILUA and remove themselves as respondents to native title claims. This financial incentive is to encourage pastoral lessees to resolve their interests in native title claims while at the same time advancing the access and use initiative component of the Delbessie Agreement.

The 25% rental concession framework, as defined in the Bill, will:

- apply to standard format IAUAs and ILUAs;
- apply only to Delbessie leases; and
- be provided only once per lease.

Lessees must apply for the concession by 30 June 2017. No new concessions are to be issued after 2016-17 i.e. no new applications will be considered after 30 June 2017.

Concessions issued are to run for a maximum of 5 consecutive years from the date of the original grant starting on 1 July 2012 or the start of the next full rental period following the day of approval, whichever is later.

The three key conditions for the grant are:

- the lessee withdraws from the native title claims process (current or future);
- the lessee accepts all responsibilities for any payment for any public liability insurance under the access and use agreement; and
- the agreement becomes a registered Indigenous cultural interest in the lease land.

Construction Subleases for State Approved Projects

The *Land Act 1994* currently provides for the leasing of trust land for construction of State transport infrastructure, but does not provide for the subleasing of a lease for the construction of State infrastructure which is contrary to the purpose of the lease (e.g. an infrastructure facility under the *State Development and Public Works Organisation Act 1971*).

Land needed for purposes ancillary to constructing State infrastructure (such as a work camp site) needs to be surrendered from a grazing or agricultural lease and then leased to the constructor, for a short term, for the ancillary purpose. Following construction of the infrastructure, the 'ancillary purpose' lease will be surrendered and the resulting unallocated

State land offered to the lessee of the grazing or agricultural lease as a re-inclusion in their lease.

The amendments in the Bill will permit the lessee of the grazing or agricultural lease to sublease part of the lease to the constructor. Under the terms of the sublease, the lessee will receive the rent for occupation and use of the land and, at termination of the sublease, the sublessee will need to leave the land in a state capable of being used for grazing or agricultural purposes. These changes will provide a much simpler and streamlined process for all parties.

Foreign Ownership of Land Register Act 1988

The Bill makes minor amendment to the *Foreign Ownership of Land Register Act 1988* which will exclude specific interests in land introduced since 1988 from the operation of that Act.

At the time of enactment, the *Foreign Ownership of Land Register Act 1988* applied only to acquisition of freehold land, long-term leases of freehold land, leases of State land and certain other interests giving exclusive possession of State land. The Act specifically excluded other types of interests that do not give long-term exclusive possession or control of land, such as mortgages and easements.

Since the *Foreign Ownership of Land Register Act 1988* was passed, Queensland legislation has been amended to introduce four new types of registrable interest in land, none of which give long-term exclusive possession or control of land, namely:

- the profit a prendre – where a landholder grants a right to another person for a specified period to enter land and take something from the land, such as gravel or timber;
- the covenant – where a landholder by agreement places a restriction on the use of land or undertakes an obligation, such as preserving a natural habitat on the land;
- the plantation licence – where the State grants to another person rights to establish, maintain and harvest timber on State land. A plantation licence gives greater rights than the profit a prendre interest and was introduced in 2010 by amendment to the *Forestry Act 1959* to facilitate the sale of the State's commercial forest plantation business; and
- the carbon abatement interest – where the owner of land or, for certain State lands, a person who holds the rights to carbon abatement product

in trees and living biomass on those lands, grants to another person an interest in these rights.

The amendments to the Bill will exclude these interests from being recorded in the Register under the *Foreign Ownership of Land Register Act 1988*. This is consistent with the exclusion of other types of interests that do not give long-term exclusive possession or control of land.

Water Act 2000

The Bill includes amendments to remove unnecessary reference to the Treasurer in the *Water Act 2000*.

Water Supply (Safety and Reliability) Act 2008

The *Water Supply (Safety and Reliability) Act 2008* regulates recycled water schemes, including dual reticulation schemes. Dual reticulation involves the supply of high quality recycled water into premises through a separate network of pipes for toilet flushing, and in residential premises the cold water supply to washing machines, irrigation of lawns or gardens, or for external wash down. More rigorous requirements apply for dual reticulation schemes given the potential for misuse and cross connection, in order to ensure that public health is protected.

The *Water Supply (Safety and Reliability) Act 2008* does not currently contain a definition of dual reticulation for the purposes of the recycled water regulatory framework under the Act and contains a broad reference to these types of recycled water schemes in a number of provisions. There are a large number of schemes which supply recycled water for uses such as for irrigation of sporting fields, golf courses and agricultural land, which may be inadvertently caught by this broad reference. Recycled water providers have recently raised concerns that they will be inadvertently caught by these dual reticulation provisions.

In order to ensure that there is no inadvertent broad capture of schemes as dual reticulation schemes, the Bill inserts a definition for dual reticulation into the *Water Supply (Safety and Reliability) Act 2008.* The definition will ensure that schemes are only captured where a network of pipes allows drinking water and recycled water to be supplied to premises from separate pipes and recycled water is provided for any of the following purposes: (a) toilet flushing; and (b) in residential premises, connection to a cold water laundry tap for a washing machine, irrigation of lawns or gardens, or for external wash down.

The amendment included in the Bill means that schemes will be able to apply for an exemption from having a recycled water management plan as they will no longer be inadvertently caught as dual reticulation schemes. This will remove barriers to entry and increase the uptake of water recycling by service providers. Appropriate safeguards will continue to apply to the inadvertently caught schemes and to dual reticulation schemes.

Alternative ways of achieving policy objectives

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

Estimated cost for government implementation

The agencies primarily affected by the repeal of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* and its replacement are the Department of Environment and Resource Management and the Department of Communities. These agencies will bear costs from existing budget allocations. Other agencies may also need to bear certain costs if they have an interest or asset constructed on land affected by a lease or lease entitlement.

However, the financial implications will be reduced by the work already undertaken by the Remote Indigenous Land and Infrastructure Program Office, Department of Communities, to establish a road and infrastructure survey network and in assisting the Aboriginal and Torres Strait Islander Councils in land use planning. Additionally, it is intended that implementation of the Bill will be done in tandem with other work of the Department of Environment and Resource Management in progressing transfers of Aboriginal and Torres Strait Islander land under the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991*.

The introduction of the 25% rental concession under the *Land Act 1994* for Delbessie leaseholders will result in reduced rental amounts received by Government. However, as the concession will be for five years only, this is a limited loss of revenue over a short period. This loss of revenue is expected to be off set through savings made by the State through the progression of native title claims as the lessee will no longer be a respondent party to the claim thereby reducing the State's costs and time in managing the native title claim.

All other proposals will not have any significant resource, financial or implementation implications. Any additional resourcing required will be

sourced from within current allocations of the Department of Environment and Resource Management.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles and has sufficient regard to the rights and liberties of individuals.

New sections 645 and 646 of the *Water Supply (Safety and Reliability) Act 2008* operate retrospectively. However, both new sections operate beneficially to ensure that entities responsible for schemes inadvertently caught by provisions of the Act (namely those which are "a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines" but do not fall within the new definition of "dual reticulation") will not be in breach of provisions that have always been intended to apply to certain schemes including dual reticulation schemes.

In relation to the amendments to the *Land Act 1994* permitting the grant of a limited rental concession, there will be no appeal rights for a refusal to grant the 25% rental concession. This is consistent with Schedule 2 (Original decisions) of the *Land Act 1994* which excludes decisions relating to the grant or revocation of rental concessions from being reviewed.

The Bill will not otherwise adversely affect rights and liberties, or impose obligations, retrospectively. In relation to the repeal of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*, the lease entitlements and leases under that Act are clearly identified and protected by the Bill and the relocation of lease or lease entitlement areas can only occur by agreement or, if agreement cannot be reached, based on a decision by the Land Court with appropriate compensation.

Although the Bill permits the grant of a lease to be deferred, this is not to diminish the right to the grant of the lease. Instead, this allows the resolution of obstacles prior to the grant and means the lessee receives a lease that is not burdened by legal or practical problems. In cases where the original holder of the lease entitlement is deceased, the need to identify or obtain the agreement of a person interested in the estate is clearly excluded from being a legal or practical obstacle to the grant of a lease.

The affected land will be returned to Indigenous Deed of Grant in Trust or reserve land for Aboriginal or Torres Strait Islander purposes but this is a correction of a legal anomaly rather than a substantive change. This land

has been treated for practical and administrative purposes as if it were Indigenous Deed of Grant in Trust or reserve land and the State is the only entity that could be prejudiced by this action.

The Bill is consistent with the principles of natural justice because individuals can bring forward a claim to the Chief Executive to have their application considered as a lease entitlement or a hardship case and to bring forward to the Minister a challenge that there are legal or practical obstacles to the grant of a lease. The Minister must provide reasons for decisions and the decisions may be appealed to the Land Court.

The Bill has sufficient regard to Aboriginal tradition and Island custom in ensuring that local advisory groups established to provide recommendations about how legal and practical obstacles can be resolved include the trustee and persons affected by those obstacles.

Consultation

Aborigines and Torres Strait Islanders (Land Holding) Act 1985

Public consultation occurred between 8 December 2010 and 28 February 2011 based on a discussion paper for the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

The discussion paper highlighted that over 200 leases were granted but there are also unprocessed, approved applications for leases ("entitlements"). The paper outlined proposals to change how leases are granted and their ongoing conditions.

The discussion paper was sent directly to the following key stakeholders:

- all 14 Indigenous Councils;
- State and Federal Members whose electorates include the affected Indigenous communities;
- Queensland Native Title Representative Bodies;
- Cape York Institute for Policy and Leadership;
- World Vision Australia;
- Queensland Indigenous Working Group;
- Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs; and
- affected Queensland Government agencies.

The discussion paper was also released on the Department of Environment and Resource Management website and on the Queensland Government's Get Involved website.

Four submissions were received which were taken into account in developing the Bill.

In addition, more detailed consultation occurred with key stakeholders between March and October 2011, including the Mayors of all the Aboriginal and Torres Strait Islander Councils and Cape York Regional Organisations.

There is general support for the intent of the Bill to grant outstanding entitlements and establish processes to resolve practical problems affecting leases and entitlements.

Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003

Extensive community consultation has been undertaken as part of the Review process. A Consultative Committee comprising representative members from Traditional Owner, resource industry, and other stakeholder groups, was established to provide expert input into the review due to their extensive stakeholder networks and experience in cultural heritage management. Consultative Committee members were engaged to develop the initial consultation strategy; promote submissions from their representative groups; and provide expert input into how the operation of the Acts could be improved.

Community submissions were invited throughout the review, including submissions on:

- an initial review paper in September 2008;
- the 'Key issues and draft recommendations' paper in November 2009; and
- the exposure draft of the *Indigenous Cultural Heritage Acts Amendment Bill 2011* released in October 2010 with comments received up to February 2011.

An inter-departmental steering committee was established to guide the Review. Consultation has also occurred with state government departments and local governments. The following State agencies were consulted in 2011 on changes to the Bill following release of the exposure draft:

- the Department of the Premier and Cabinet;

- the Department of Justice and Attorney-General; and
- the Land Court of Queensland.

Land Act 1994

The Indigenous access and use agreement framework is a result of advice from the State Rural Leasehold Land Ministerial Advisory Committee and the Queensland Indigenous Working Group, and discussions between AgForce, Northern Queensland Land Council and Queensland South Native Title Services and was facilitated by the National Native Title Tribunal. Northern Queensland Land Council and Queensland South Native Title Services cover more than 80% of the State's rural leasehold estate, so are major stakeholders.

All Other Amendments

No consultation was undertaken because of the technical nature of the amendments.

Consistency with legislation of other jurisdictions

The Bill is consistent with the requirements of the *Native Title Act 1993* (Cth). Leases under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* extinguish native title, unless section 47A of the *Native Title Act 1993* (Cth) applies. Entitlements under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* may be granted as pre-existing right-based acts under section 24IB of the *Native Title Act 1993* (Cth).

An Indigenous Land Use Agreement may be required under the *Native Title Act 1993* (Cth) in certain circumstances where the proposed action affects native title and is not otherwise covered by another future act provision of the *Native Title Act 1993* (Cth).

Notes on Provisions

Aboriginal and Torres Strait Islander Land Holding Bill 2011

Part 1 Preliminary

Division 1 Introduction

Short title

Clause 1 provides for the short title of the Act.

Commencement

Clause 2 provides that certain provisions are to commence by proclamation. These are the substantive provisions of the *Aboriginal and Torres Strait Islander Land Holding Act 2011*.

Main object of Act

Clause 3 describes the main object of the Act, which is to provide a framework for satisfying lease entitlements under the old Land Holding Act, to resolve boundary problems affecting old Act granted leases and ensure that the *Aboriginal Land Act 1991* (defined as 'ALA') or *Torres Strait Islander Land Act 1991* (defined as 'TSILA') is applied to leases to the extent practicable.

Achieving Act's main object

Clause 4 outlines the processes for achieving the Act's main object, which are to identify lease entitlements, and to consult, negotiate and reach agreement to satisfy those entitlements and resolve boundary problems with old Act granted leases. This clause also clarifies that the Act allows the grant of a lease to be deferred where legal or practical obstacles are identified. The purpose of the deferral is to resolve those obstacles and is not to diminish the right to be granted a lease.

Approach adopted in applying ALA or TSILA

Clause 5 explains the approach adopted to establish the relationship between the Act and the ALA and TSILA. The Act adopts the regime for land and tenure management under the ALA and TSILA to the extent that is practicable, taking into account the rights and obligations under the old Land Holding Act.

Under the old Land Holding Act, land divested to unallocated State land when an application for a lease was approved, which created holes within the external boundaries of the trust area. This clause confirms that the Act provides for the return of that land to the trust area to ensure the trust area can be effectively administered and substantially dealt with under the ALA or TSILA.

This clause also confirms that the Act continues old Act granted leases and, provides for the granting of new Act granted leases, and applies the ALA or TSILA to those leases to the extent practicable.

Operation of Act

Clause 6 confirms that the grant of a lease under this Act is the only way to satisfy a right to a lease that arose under the repealed, old Land Holding Act.

Act binds all persons

Clause 7 confirms that the Act binds all persons, including the State, but does not make the State liable to be prosecuted for an offence.

Division 2 Interpretation

Definitions

Clause 8 establishes a dictionary in the schedule.

Meaning of *lease entitlement* and *holder* of lease entitlement

Clause 9 defines a 'lease entitlement' and the 'holder' of a lease entitlement. The definition of a lease entitlement is based on the essential requirements under the old Land Holding Act that resulted in the right to be

granted a lease under the old Land Holding Act. The definition of holder confirms that entitlements to a lease arising under the old Land Holding Act are continued in the name of the person who made the application.

Meaning of *trust area* and *trustee*

Clause 10 defines the 'trust area' and 'trustee' by reference to the trust area under the old Land Holding Act, whether the land is held under the *Land Act 1994* or transferred under the ALA or TSILA.

Part 2 Granted leases and lease entitlements

Division 1 Change of unallocated State land status

Revesting of unallocated State land

Clause 11 ensures that land which divested to unallocated State land is returned to the trust area (revested) and ceases to be unallocated State land. The chief executive or registrar is required to make any necessary change in the appropriate register to record this.

Division 2 Continuation of granted leases

Continuation of old Act granted leases

Clause 12 continues and validates any leases granted under the old Land Holding Act (defined as an 'old Act granted lease'), despite that Act's repeal or any potential uncertainty arising from the way in which those leases were granted. This is to avoid any potential doubt about the validity of those leases and to ensure their continuation despite the repeal of the old Land Holding Act.

For greater consistency with ALA and TSILA, this clause ensures the trustee of the trust area or the townsite lessee is taken to be the lessor of an

old Act granted lease. The clause also confirms that the old Act granted leases continue in perpetuity or for their term and for the purpose for which they were granted. These leases are subject to the conditions recorded on the lease instrument and the conditions in Part 4 of the Act. The leases are also subject to the ALA or TSILA as provided for under Part 5 of the Act.

The chief executive or registrar must make any necessary change in the appropriate register.

Division 3 Establishing lease entitlements

Chief executive to publish lease entitlement notice

Clause 13 requires the chief executive to publish notices in the gazette of any known lease entitlements within a trust area. The clause outlines the requirements for publishing those notices. The chief executive is permitted to publish further notices to correct or replace an existing notice, as more accurate information is obtained. The chief executive must take reasonable steps to make information about lease entitlement notices publicly available.

Application for publication of a lease entitlement notice

Clause 14 allows a person to apply to the chief executive to publish a lease entitlement notice. The clause outlines the requirements for that application. This includes satisfying the chief executive that there is a lease entitlement as defined in the Act and that it is reasonable for the applicant to be making the application. The chief executive must decide the application within 3 months or such further time that the applicant takes to provide any additional information requested. The chief executive must publish a lease entitlement notice if satisfied a lease entitlement exists. The chief executive must provide notice and reasons to the applicant if the application is refused.

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

Clause 15 allows an applicant to appeal to the Land Court against the decision of the chief executive to refuse to publish a lease entitlement

notice. The appeal must be started within 28 days of the chief executive's decision.

Application for correction or replacement of a lease entitlement notice

Clause 16 allows a person to apply to the chief executive to correct or replace a lease entitlement notice and outlines the requirements for that application. This includes satisfying the chief executive that the correction or replacement meets the definition of a lease entitlement in the Act and that it is reasonable for the applicant to be making the application. The chief executive must decide the application within 3 months or such further time that the applicant takes to provide any additional information requested.

The chief executive must publish a correction or replacement to the lease entitlement notice if the application is approved or may publish a correction or replacement to the lease entitlement notice that is not consistent with the application. The chief executive must provide notice and reasons to the applicant and any person reasonably considered to be affected.

Appeal to Land Court against refusal to publish a lease entitlement notice correcting or replacing a notice

Clause 17 allows an applicant or an affected person to appeal to the Land Court against a decision of the chief executive to publish a correction or replacement to the lease entitlement notice. The appeal must be started within 28 days of the decision.

Hardship cases

Clause 18 provides that the chief executive may give a person a hardship certificate if they applied for a lease under the old Land Holding Act, were advised or otherwise given to understand that the application was approved by the trustee and the person acted in reliance on that approval, but the application was in fact never lawfully approved. The hardship certificate entitles the person to have the lease land cost to be valued at nil if the trustee approves the grant of a private residential lease under the ALA or TSILA.

Surrenders

Clause 19 allows a holder to surrender their lease entitlement. The surrender may be on the basis of agreed consideration. If a holder is deceased, the chief executive may accept surrender with the agreement of interested persons in the estate, defined to include beneficiaries or a personal representative. If a lease entitlement is surrendered, the chief executive must end the lease entitlement by a cancellation notification in the gazette.

Part 3 Grants of leases to satisfy lease entitlements

Division 1 Introduction

Operation of pt 3

Clause 20 outlines the process established under Part 3 for satisfying lease entitlements. Each lease entitlement is examined to determine whether there are any legal or practical obstacles to the grant of a lease. If no obstacles are identified, the Minister can proceed to grant a lease.

If obstacles are identified, the Minister may only grant the lease in accordance with a decision of the Land Court.

Division 2 Identifying obstacles to grant

What are legal or practical obstacles

Clause 21 provides guidance on what a legal or practical obstacle may be, but does not limit what may be identified as an obstacle. An obstacle could include that the lease entitlement land cannot be clearly identified or the ownership of improvements needs to be resolved.

The clause clarifies that the need to identify or obtain the agreement of interested persons in the estate of a deceased person is not a legal or practical obstacle.

Minister refers lease entitlement notice to local advisory group or reference entity

Clause 22 requires the Minister to refer each lease entitlement notice to a local advisory group, if established, or otherwise a reference entity (defined as the trustee or townsite lessee of the area). This allows the local advisory group or reference entity to provide any advice or recommendations about legal or practical obstacles and ways to satisfy the lease entitlements.

Minister advises of obstacles and gives statement of reasons

Clause 23 requires the Minister to consider any information, advice or recommendation given by the local advisory group or reference entity and prepare a statement of reasons (obstacles). The purpose of the statement of reasons (obstacles) is to identify any known obstacles, the nature of the obstacles and the affected persons whose agreement will be sought. The statement of reasons (obstacles) may identify that there are no obstacles to the grant of a lease. The statement of reasons (obstacles) must be given to the reference entity and reasonable steps must be taken to make those statements publicly available.

Reference entity may appeal to Land Court

Clause 24 applies where the statement of reasons (obstacles) identifies no legal or practical obstacles. The reference entity may appeal to the Land Court against the Minister's statement of reasons (obstacles) within 28 days. If an appeal is made, the Minister is required to take reasonable steps to notify the holder of the lease entitlement or interested persons in the estate if the holder is deceased and advise the Court they are a party.

Application about statement of reasons (obstacles)

Clause 25 allows a person, who could reasonably be expected to be a lessee, to apply to the Minister to amend the statement of reasons (obstacles) if the person believes there are no legal or practical obstacles to the grant of a lease.

The Minister must decide the application within 28 days or such further time that the applicant takes to provide any additional information requested. If the Minister refuses to amend the statement of reasons (obstacles) the person may appeal to the Land Court within 28 days.

Division 3 Granting lease to satisfy lease entitlement if no obstacles to grant

Clause 26 allows the Minister to grant a lease to a holder or an interested person in the estate to satisfy a lease entitlement. This can occur without a decision of the Land Court where the Minister is satisfied there are no legal or practical obstacles to the grant, as outlined in the statement of reasons (obstacles). The period for appealing against a statement of reasons (obstacles) must have ended or the obstacles must have been already decided by the Land Court on appeal.

The Minister must grant a lease in perpetuity for any land that does not exceed 1 hectare or a lease for a term for land greater than 1 hectare. These requirements are based on the requirements for an application under the old Land Holding Act. The Minister must notify the proposed grantee or interested persons in the estate of a deceased holder, prior to granting a lease. The grant of the lease satisfies the lease entitlement.

Application for grant of lease

Clause 27 allows a person, who could reasonably be expected to be a lessee, to apply for the grant of a lease if the Minister has not yet taken action to grant the lease.

If there is a current statement of reasons (obstacles) identifying legal or practical obstacles, the Minister must refuse the application. If the statement of reasons (obstacles) does not identify any obstacles, the Minister must advise the applicant that the Minister intends to grant the lease as soon as practicable.

If a statement of reasons has not been prepared, the Minister must take the action required under division 2 to prepare a statement of reasons (obstacles).

Consideration of application for grant of lease

Clause 28 allows the Minister to ask the applicant for additional information to support their application for the grant of a lease under the division. The Minister has 28 days to decide the application or such further time that the applicant takes to provide any additional information requested. If the Minister had to take action to prepare a statement of

reasons (obstacles), the time period for the Minister's decision does not commence until after the Minister has prepared a statement of reasons (obstacles) and the appeal period for that process has ended or any appeal has been finalised.

Refusal to grant lease

Clause 29 allows an applicant to appeal to the Land Court against the Minister's refusal of their application for the grant of a lease under this division. The Minister must notify the applicant and provide reasons if their application is refused. The appeal must be started within 28 days of the applicant being notified of the refusal. An applicant cannot appeal a decision where the Land Court has already considered and made a decision about the statement of reasons (obstacles).

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

Subdivision 1 Deferred grants generally

Minister may make deferred grant of lease

Clause 30 establishes the meaning of a deferred grant. This clause allows the Minister to make a deferred grant of a lease to satisfy a lease entitlement if there are legal or practical obstacles, as identified in a statement of reasons (obstacles). A deferred grant may only be made in accordance with a decision of the Land Court. Granting a lease satisfies the lease entitlement.

Subdivision 2 Consultation or agreement before deferred grant

Purpose of sdiv 2

Clause 31 states that the subdivision outlines the requirements before the Minister can apply to the Land Court to make a deferred grant.

Reference to local advisory group

Clause 32 requires the Minister to refer a lease entitlement to the local advisory group, where established, for consideration and for any advice and recommendation it may offer about satisfying the lease entitlement. The Minister must give the local advisory group the statement of reasons (obstacles) and information about the lease entitlement.

Persons to be consulted

Clause 33 requires the Minister to consult with any person who ought to be consulted about, or whose agreement is required for, the deferred grant. This includes the holder of the lease entitlement or an interested person in the estate of a deceased holder.

Location of lease

Clause 34 applies if the statement of reasons (obstacles) identifies that the location of lease entitlement land is unclear. The Minister is required to seek to identify clear boundaries for a lease to be granted and the agreement of any other person whose agreement is needed.

Ownership of improvements

Clause 35 applies if the statement of reasons (obstacles) identifies that the ownership of improvements on the lease entitlement land needs to be resolved. The Minister is required to consult with any person who has an interest in those improvements in order to reach agreement with the owner of those improvements. This includes the housing chief executive if the improvements are social housing.

Subdivision 3 Application to Land Court

Application to Land Court in case of agreement

Clause 36 permits the Minister to apply to the Land Court to make a deferred grant if the Minister considers that all necessary agreements have been entered into (defined as an 'agreed deferred grant'). This clause outlines the information that must be provided in the application to the Land Court to support the grant. It includes a copy of the statement of

reasons (obstacles), a record of consultation that has occurred, copies of agreements and a statement of reasons explaining the proposed approach to satisfying the lease entitlement.

Decision of Land Court for agreed deferred grant

Clause 37 allows the Land Court to decide the Minister's application to make an agreed deferred grant. The Land Court must decide whether the Minister has complied with the requirements of the division.

The Land Court may grant or refuse the application or refer the application back to the Minister with any order it considers appropriate.

Application to Land Court in absence of agreement

Clause 38 permits the Minister to apply to the Land Court to make a deferred grant even though the Minister does not consider all necessary agreements have been entered into (defined as a 'contested deferred grant'). This clause outlines the information that must be provided in the application to the Land Court to support the grant. It includes a copy of the statement of reasons (obstacles), a record of consultation that has occurred, copies of any agreements that have been reached and a statement of reasons (contested deferred grant) explaining the proposed approach to satisfying the lease entitlement.

Decision of Land Court for contested deferred grant

Clause 39 allows the Land Court to decide the Minister's application to make a contested deferred grant. The Land Court must decide whether the Minister has complied with the requirements of the division and whether it is reasonable for the application to be granted.

The Land Court may grant the application (whether or not subject to conditions), refuse the application or make any order it considers appropriate.

Compensation for grantee in circumstances of contested deferred grant

Clause 40 allows the proposed grantee for a contested deferred grant (defined as the 'applicant') to apply to the Land Court for an order that the State pay an amount of compensation. This application must be made

within 28 days of the decision of the Land Court for a contested deferred grant or such longer period that the Court approves.

The amount of compensation is the amount reasonably necessary to compensate the applicant for a decrease in the value of the applicant's interest in land or improvements without a compensating increase in value. For example, the Court may order compensation for the difference in value where a lease is granted in a different location to the location of the lease entitlement. The Court may also order compensation for any expenses incurred by the applicant in taking practical measures as a result of the contested deferred grant.

Division 5 New Act granted leases generally

New Act granted leases

Clause 41 provides that the lessor for leases granted under the new Act (defined as a 'new Act granted lease') is the trustee or the townsite lessee, if the land is subject to a townsite lease. This clause also confirms that a new Act granted lease is subject to any conditions on the lease instrument, the conditions under Part 4 and the provisions of ALA and TSILA under Part 5.

Part 4 Conditions and requirements applying to leases

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

Operation of div 1

Clause 42 specifies that the division applies to old Act granted leases and new Act granted leases but not to term leases.

Dealings

Clause 43 outlines the conditions that apply to dealings for leases under the division. Clause 43(1) provides that a lease can only be transferred to an Aborigine or Torres Strait Islander or their spouse, which is equivalent to the ALA and TSILA requirement for private residential leases. Clause 43(3) to (4) allows the lessee to enter into dealings with any person to create other interests, including subleases, if they have the lessor's prior written consent. That consent must not be unreasonably withheld. Clause 43(5) permits a mortgage of the leased land without the consent of the Minister or lessor, which is equivalent to the ALA and TSILA requirement.

Registration of dealings

Clause 44 requires dealings relating to leases and subleases to be registered in the appropriate register and for a plan of survey to be included with any lease or sublease registered. This is equivalent to the ALA and TSILA requirement for standard leases.

Lease for residential purposes

Clause 45 requires residential premises to be built on land within 8 years if the lease is primarily for residential purposes. This clause also requires that the annual rental for the lease is not more than $1, which is equivalent to the ALA and TSILA requirement for private residential leases.

Subleases

Clause 46 outlines the conditions that apply to transferring and amending subleases. This clause also outlines the relationship between a sublease and a mortgage and continues the obligations upon the lessor to build on land within 8 years, although the lessor and a sublessee may agree that the sublessee will satisfy that obligation.

Surrenders

Clause 47 permits the lessee to surrender all or part of the lease, provided written agreement is given by any mortgagee and holder of a sublease. The lessee is required to notify the holder of any registered interest about the surrender by providing 28 days notice before the surrender takes effect. The surrender may be on the basis of agreed consideration.

Division 2 Term leases

Entitlement to apply for lease under ALA or TSILA

Clause 48 provides that the holder of an old Act granted lease or a new Act granted lease for a term of years may apply for a lease under the ALA or TSILA, prior to the expiry of the term lease. The trustee of the land or the townsite lessee may consider the application and grant a lease under the relevant provisions of the ALA or TSILA.

Part 5 Application of provisions of ALA or TSILA

Division 1 Applying ALA or TSILA

ALA provisions

Clause 49 applies the ALA to an old Act granted lease and a new Act granted lease (except for leases for a term) over Aboriginal trust land, transferred land or land subject to a townsite lease under the ALA. This clause also clarifies that Part 4 applies if the provisions of the ALA and Part 4 are equivalent in substance. Part 4 also applies if the provisions of the ALA are inconsistent with Part 4. The application of the ALA may also be varied under Division 2 of Part 5.

TSILA provisions

Clause 50 applies the TSILA to an old Act granted lease and a new Act granted lease (except for leases for a term) over Torres Strait Islander trust land, transferred land or land subject to a townsite lease under the TSILA. This clause also clarifies Part 4 applies if the provisions of the TSILA and Part 4 are equivalent in substance. Part 4 also applies if the provisions of the TSILA are inconsistent with Part 4. Division 3 of Part 5 may also vary the application of the TSILA.

Division 2 Applying ALA

Subdivision 1 All land

Non-application of ALA, s 98 (Requirement for consultation)

Clause 51 ensures that section 98 of the ALA, which outlines the consultation requirements for trustees to deal with land under the ALA, does not apply to leases under the division.

Applying ALA, pt 10, div 6 (Forfeiture and renewal of residential leases)

Clause 52 applies the forfeiture and renewal provisions in Part 10 of the ALA to leases under the division and applies appropriate variations to ensure that relevant references in the ALA apply to conditions and interests under this Act. This clause also ensures that the notice and the right to remove improvements, given to lessees under the ALA provisions, are also given to sublessees of the lease under the division.

Subdivision 2 Aboriginal land

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

Clause 53 applies the mortgaging provisions in Part 14 of the ALA to a lease under the division, if it was granted after the land became Aboriginal land under the ALA, and applies appropriate variations to ensure that relevant references in the ALA apply to persons under this Act.

Subdivision 3 Aboriginal trust land

Definition for sdiv 3

Clause 54 provides a definition for relevant lease for the subdivision.

Applying ALA, s 185 (Relationship with Land Act)

Clause 55 applies section 185 of the ALA to establish the relationship with the *Land Act 1994* for this Act in the same way as it applies to the ALA.

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

Clause 56 applies section 187 of the ALA to a relevant lease. Section 187 of the ALA provides that certain things must not be included in a document of amendment for a lease.

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

Clause 57 applies section 188 of the ALA to a relevant lease. Section 188 of the ALA allows a lessee to mortgage a lease.

Division 3 Applying TSILA

Subdivision 1 All land

Non-application of TSILA, s 65 (Requirement for consultation)

Clause 58 ensures that section 65 of the TSILA, which outlines the consultation requirements for trustees to deal with land under the TSILA, does not apply to leases under the division.

Applying TSILA, pt 8, div 6 (Forfeiture and renewal of leases for private residential purposes)

Clause 59 applies the forfeiture and renewal provisions in Part 8 of the TSILA to leases under the division and applies appropriate variations to ensure that relevant references in the TSILA apply to conditions and interests under this Act. This clause also ensures that the notice and the right to remove improvements, given to lessees under the TSILA provisions, are also given to sublessees of the lease under the division.

Subdivision 2 Torres Strait Islander land

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

Clause 60 applies the mortgaging provisions in Part 10 of the TSILA to a lease under the division, if it was granted after the land became Torres Strait Islander land under the TSILA, and applies appropriate variations to ensure that relevant references in the TSILA apply to persons under this Act.

Subdivision 3 Torres Strait Islander trust land

Definition for sdiv 3

Clause 61 provides a definition for relevant lease for the subdivision.

Applying TSILA, s 141 (Relationship with Land Act)

Clause 62 applies section 141 of the TSILA to establish the relationship with the *Land Act 1994* for this Act in the same way as it applies to the TSILA.

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

Clause 63 applies section 143 of the TSILA to a relevant lease. Section 143 of the TSILA provides that certain things must not be included in a document of amendment for a lease.

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

Clause 64 applies section 144 of the TSILA about mortgages to a relevant lease. Section 144 of the TSILA allows a lessee to mortgage a lease.

Part 6 Ownership of structural improvements

Ownership of improvements continues

Clause 65 confirms that the ownership of an improvement located on land the subject of an old Act granted lease or lease entitlement is not affected by the repeal of the old Land Holding Act.

Agreement or arrangement for old Land Holding Act, s 15

Clause 66 continues in force an agreement or arrangement for the purchase of an improvement entered into for the purposes of section 15 of the old Land Holding Act. For section 66(1), it does not matter whether or not the price and terms and conditions were approved by the Governor in Council under the old Land Holding Act or whether the improvement is located on lease land for an old Act granted lease or on lease entitlement land.

Gazette notice for completed agreement or arrangement

Clause 67 permits the chief executive to declare by gazette notice that an agreement or arrangement under section 66 has been completed and the improvement is owned by the purchaser, provided the chief executive has the agreement of the purchaser, the owner of the improvement and the housing chief executive if the improvement is social housing.

Use of valuation methodology for social housing dwelling

Clause 68 applies where a social housing dwelling is located on an old Act granted lease, a new Act granted lease or a proposed new Act granted lease. This clause allows the owner to sell the social housing dwelling to a lessee or proposed lessee. The value of the dwelling for the sale must be decided by using the valuation methodology decided under section 143(6) of the ALA or section 108(6) of the TSILA, if in force, or a valuation methodology decided by the housing chief executive, unless the value has been decided by the Land Court for a contested deferred grant.

Part 7 Boundary relocations for particular old Act granted leases

Application of pt 7

Clause 69 applies Part 7 to circumstances where it is not practicable for the boundaries of an old Act granted lease to remain the same.

Reference to local advisory group

Clause 70 requires the Minister to refer the boundaries of the old Act granted lease to the local advisory group, where established, for consideration, advice and recommendation. The local advisory group must consult with the lessee and may consult with any other person it considers appropriate.

Application to Land Court in case of agreement

Clause 71 permits the Minister to apply to the Land Court to relocate the boundaries of the old Act granted lease if the Minister considers that all necessary agreements have been entered into (defined as an 'agreed boundary relocation'). This clause outlines the information that must be provided in the application to the Land Court to support the relocation. It includes a record of consultation that has occurred, copies of agreements, any conditions to be complied with, and a statement of reasons explaining the proposed agreed boundary relocation.

Decision of Land Court for agreed boundary relocation

Clause 72 allows the Land Court to decide the Minister's application to relocate the boundaries. The Land Court must consider whether the Minister has complied with the requirements of the division.

The Land Court may grant or refuse the application or refer the application back to the Minister with any order it considers appropriate.

Application to Land Court in absence of agreement

Clause 73 permits the Minister to apply to the Land Court to relocate the boundaries of an old Act granted lease, even though the Minister does not consider all necessary agreements have been entered into (defined as a

'contested boundary relocation'). This clause outlines the information that must be provided in the application to the Land Court to support the relocation. It includes a record of consultation that has occurred, copies of any agreements that have been obtained and a statement of reasons (contested boundary relocation) that explains the proposed contested boundary relocation.

Decision of Land Court for contested boundary relocation

Clause 74 allows the Land Court to decide the Minister's application to relocate the boundaries. The Land Court must decide whether the Minister has complied with the requirements of the division and whether it is reasonable for the application to be granted.

The Land Court may grant the application (whether or not subject to conditions), refuse the application or make any order it considers appropriate.

Compensation for lessee in circumstances of contested boundary relocation

Clause 75 allows the lessee for a contested boundary relocation to apply to the Land Court for an order that the State pay an amount of compensation. This application must be made within 28 days of the decision of the Land Court for a contested boundary relocation or such longer period that the Court approves.

The amount of compensation is the amount reasonably necessary to compensate the lessee for a decrease in the value of the lessee's interest in land or improvements without a compensating increase in value. The Court may also order compensation for any expenses incurred by the lessee in taking practical measures as a result of the contested boundary relocation.

Recording of boundary relocation

Clause 76 requires the Minister to ensure a plan of survey is prepared and registered to show the boundaries of a lease to be relocated. The chief executive or registrar must ensure the boundary relocation is recorded in the appropriate register. This clause also ensures that the boundary relocation takes effect upon registration of the plan of survey.

Part 8 Local advisory groups

Establishment

Clause 77 permits the Minister to establish a local advisory group for a trust area. The local advisory group must include the chief executive, the housing chief executive and the trustee or their representatives. The local advisory group can invite those persons affected to participate in its consideration of matters.

Functions

Clause 78 outlines that the local advisory group has the functions given to it under the Act which includes collating information and providing recommendations about matters affecting lease entitlements and old Act granted leases.

Part 9 Miscellaneous

Plans of survey

Clause 79 requires the Minister to ensure a plan of survey is done to show the boundaries of a lease to be granted under the Act. This clause also permits the Land Court to direct the Minister or chief executive to prepare a plan of survey necessary for giving effect to a decision of the Court.

Limitation on qualification requirements

Clause 80 confirms that a qualification requirement under the old Land Holding Act has no effect on who may be the holder of a lease entitlement, or a continuing lessee of an old Act granted lease or who may be granted a new Act granted lease.

Delegations

Clause 81 permits the Minister and chief executive to delegate their powers to an appropriately qualified public service officer.

Application to Land Court if no interested persons identified

Clause 82 permits the Minister to apply to the Land Court if it has not been possible after making reasonable enquiries to identify any person who is an interested person in the estate of a deceased holder (for example, beneficiaries) for a lease entitlement or old Act granted lease. The Minister may seek an order that no beneficiaries can be identified after reasonable enquiries have been made and that the lease entitlement or lease is ended and converted into a right to compensation for its loss. Compensation can be claimed from the State by application to the Minister within 3 years or a later time approved by the Minister, if reasonable in the circumstances. This time period is consistent with requirements for making an application for compensation when land is taken under the *Acquisition of Land Act 1967*.

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

Clause 83 permits the disclosure of personal information if disclosure is reasonably necessary to facilitate a person participating in consultation or negotiation about matters arising under the Act.

Review of Act

Clause 84 requires the Minister to review the Act within 5 years of its commencement and provide a report to the Legislative Assembly.

Approval of forms

Clause 85 permits the chief executive to approve forms for use under the Act.

Regulation-making power

Clause 86 permits the Governor in Council to make regulations under the Act.

Part 10 Repeal and transitional provisions

Repeal

Clause 87 repeals the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

Continuation of proceeding

Clause 88 continues any proceedings commenced but not completed before the commencement of the section, and allows those proceedings to be completed under the old Land Holding Act.

Effect of regulation amendment

Clause 89 ensures that the amendment of a regulation under the Act does not affect the Governor in Council's power to further amend or replace a regulation.

Part 11 Amendment of Acts

Division 1 Amendment of this Act

Act amended

Clause 90 provides that division 1 amends this Act.

Amendment of long title

Clause 91 amends the long title of the new *Aboriginal and Torres Strait Islander Land Holding Act 2011* to remove references to other Acts amended.

Division 2 Amendment of Aboriginal Cultural Heritage Act 2003

Act amended

Clause 92 provides that division 2 amends the *Aboriginal Cultural Heritage Act 2003*.

Amendment of s 23 (Cultural heritage duty of care)

Clause 93 amends section 23 of the Act to reflect changes to the agreement-making process. The provision requires native title agreements to expressly include cultural heritage as being subject to the agreement.

This amendment seeks to better define the various agreements available to land users seeking to comply with the cultural heritage duty of care. The Act now requires a person to be acting under an "existing agreement", a "cultural heritage agreement", or a "native title agreement", as a means of meeting the cultural heritage duty of care.

The term "an Aboriginal party" has been removed from this section as the term lacked clarity in circumstances where more than one Aboriginal party could be identified for an area.

The meaning of "cultural heritage agreement" (section 51A) in turn clearly identifies the relevant Aboriginal parties to be consulted for developing an agreement to manage and protect cultural heritage.

Amendment of s 24 (Unlawful harm to Aboriginal cultural heritage)

Clause 94 amends section 24 of the Act to reflect changes to the agreement-making process in regards to unlawful harm to Aboriginal cultural heritage. The provision requires native title agreements to expressly include cultural heritage as being subject to the agreement.

This amendment seeks to better define the various agreements available to land users seeking to comply with the cultural heritage duty of care. The Act now requires a person to be acting under an "existing agreement", a "cultural heritage agreement", or a "native title agreement", as a means of meeting the cultural heritage duty of care.

The term "an Aboriginal party" has been removed from this section as the term lacked clarity in circumstances where more than one Aboriginal party could be identified for an area.

The meaning of "cultural heritage agreement" (section 51A) in turn clearly identifies the relevant Aboriginal parties to be consulted for developing an agreement to manage and protect cultural heritage.

Amendment of s 25 (Prohibited excavation, relocation and taking away)

Clause 95 amends section 25 of the Act to reflect changes to the agreement-making process in regards to prohibited excavation, relocation and taking away of cultural heritage. The provision requires native title agreements to expressly include cultural heritage as being subject to the agreement.

This amendment seeks to better define the various agreements available to land users seeking to comply with the cultural heritage duty of care. The Act now requires a person to be acting under an "existing agreement", a "cultural heritage agreement", or a "native title agreement", as a means of meeting the cultural heritage duty of care.

The term "an Aboriginal party" has been removed from this section as the term lacked clarity in circumstances where more than one Aboriginal party could be identified for an area.

The meaning of "cultural heritage agreement" (section 51A) in turn clearly identifies the relevant Aboriginal parties to be consulted for developing an agreement to manage and protect cultural heritage.

Amendment of s 26 (Unlawful possession of Aboriginal cultural heritage)

Clause 96 amends section 26 of the Act to reflect changes to the agreement-making process in regards to unlawful possession of cultural heritage. The provision requires native title agreements to expressly include cultural heritage as being subject to the agreement:

This amendment seeks to better define the various agreements available to land users seeking to comply with the cultural heritage duty of care. The Act now requires a person to be acting under an "existing agreement", a "cultural heritage agreement", or a "native title agreement", as a means of meeting the cultural heritage duty of care.

The term "an Aboriginal party" has been removed from this section as the term lacked clarity in circumstances where more than one Aboriginal party could be identified for an area.

The meaning of "cultural heritage agreement" (section 51A) in turn clearly identifies the relevant Aboriginal parties to be consulted for developing an agreement to manage and protect cultural heritage.

Insertion of new pt 3, div 5

Clause 97 inserts a new section 33A into the Act under the heading "Division 5 Mediation" regarding mediation of disputes about Aboriginal cultural heritage. A broad power is being inserted to allow the Land Court to mediate disputes relating to cultural heritage.

A party to the dispute may ask the Land Court to provide mediation of the dispute, with the agreement of the disputants i.e. it is intended to be a voluntary mediation service. This provision also allows the Land Court to decide if the dispute is suitable for the court to mediate. The Land Court will provide the mediation service free of charge.

This new provision does not apply to disputes arising from the development of a Part 7 cultural heritage management plan. Such disputes will continue to be dealt with in accordance with the defined process outlined in Part 7.

Amendment of s 34 (Native title party for an area)

Clause 98 amends section 34(1)(b)(i) of the Act to remove the word 'failed' from the description of a native title claim that has been removed from the Register of Native Title Claims.

The word 'failed' is unclear and will be replaced with 'been removed from the Register of Native Title Claims', to describe how the Act continues to recognise the previously registered native title claimant as the native title party for an area if there is currently no registered native title claimant.

Section 34(1)(b)(i)(A) is being amended by replacing the phrase "registered under" with "removed from" in order to correct an unintentional drafting error in 2010. This amendment reflects the operational policy of the department in situations where there are no other registered native title claimants for the area, and the last claim removed from the Register of Native Title Claims will continue to be recognised as the native title party for an area.

Insertion of new pt 5A

Clause 99 inserts three new sections into the Act. The first new section 51A defines the meaning of the term 'cultural heritage agreement'. This definition does not include agreements entered into prior to commencement of the Act on 16 April 2004, as they are already defined as 'existing agreements'. By way of transitional arrangements, section 51A also ensures that all agreements with 1 or more Aboriginal parties made prior to commencement of the Bill will remain valid and continue to provide a defence under the cultural heritage duty of care.

Section 51A requires that cultural heritage agreements entered into after commencement of the Bill must be made with all registered native title parties for an area—or, in the event that there are no native title parties as defined in section 34, the cultural heritage agreement must be made with at least one Aboriginal party as defined in section 35(7). This amendment aligns with the native title legislation, ensuring that those groups who have established a *prima facie* case that they may hold native title, continue to remain involved in managing cultural heritage through agreement-making. Ideally, while consultation should be undertaken with all Aboriginal parties for an area, it is virtually impossible and impractical to engage with *all* persons who assert to be traditional owners for an area, in the absence of a registered or previously registered native title claim. Proponents are encouraged to seek agreement with all relevant parties in the course of agreement-making.

This provision also clarifies that parties to cultural heritage agreements must be 18 years of age or older. The Act does not require sponsors to confirm an individual's age. If an individual is suspected to be less than 18 years of age, a commonsense approach is recommended e.g. sponsors may request documentary evidence of proof of age.

The second new section, section 51B, clarifies that section 51A(1)(d) does not prevent persons under 18 years of age from being consulted in developing a 'cultural heritage agreement'.

The third new section, section 51C, requires that the sponsor of a cultural heritage agreement must keep a record of certain aspects of the agreement, including: the general terms of agreement; the Aboriginal cultural heritage subject of the agreement; the identity of the party to the agreement; and acceptance of the agreement by a party to the agreement. Section 51C also requires that the record of agreement must be in written, audio or visual format. This new provision protects all parties to the agreement and

recognises the different formats that parties may wish to use to record an agreement.

Amendment of pt 6, div 5, hdg (Objections, hearing and recommendation)

Clause 100 amends the heading to Part 6, division 5 of the Act to reflect changes to the objections process regarding the recording of cultural heritage studies, which no longer requires the Land Court to provide the Minister with recommendations following the hearing of an objection. This amendment indicates that the Land Court will now make the final decision for an objection to a recording or to a refusal to record the findings of the cultural heritage study in the register.

Amendment of s 78 (Land Court's recommendation to Minister)

Clause 101 replaces the heading to section 78 of the Act to reflect changes in the objections process. To enhance the independence of decision-making under the Act, the powers of the Minister to record or refuse to record the findings of a study are being removed and transferred to the Land Court. As such, the Land Court will now make the decision for an objection to a recording of the findings of the cultural heritage study in the register or for an objection to a refusal to record the findings of the cultural heritage study in the register. Following the hearing of an objection, the Land Court will make a final decision as to the appropriate outcome.

The amendment also inserts a new subsection to the provision to describe the course of action that the Land Court must take to formalise the outcome or decision following the completion of the hearing of an objection concerned with a) recording the findings of the cultural heritage study on the register; or b) a refusal to record the findings of a cultural heritage study on the register.

Omission of pt 6, div 6 (Recording by Minister)

Clause 102 removes the division 6 to reflect the transfer of the Minister's decision-making powers to the Land Court under section 78 relating to recording or refusing to record findings of a cultural heritage study on the register.

Amendment of s 86 (Application of div 2)

Clause 103 amends section 86 of the Act and specifies that a cultural heritage management plan is not required for a project the subject of a native title agreement if Aboriginal cultural heritage is expressly 'included as' being subject to the agreement. This clarifies that native title agreements are only valid under the Act if the protection of Aboriginal cultural heritage is specifically addressed and reflects the amendments made to sections 23 to 26 of the Act.

Amendment of s 106 (Mediation)

Clause 104 amends the heading of section 106 of the Act 'Mediation of disputes that are delaying development of plan', as this mediation provision relates only to cultural heritage management plans under part 7.

This amendment ensures section 106 is distinguished from the new, broader mediation provision being inserted under section 33A.

Amendment of pt 7, div 6, hdg (Objection or referral, hearing and recommendation)

Clause 105 amends the heading of part 7, division 6 of the Act to reflect that the Land Court will now make a decision, rather than a recommendation to the Minister, to approve or refuse to approve a cultural heritage management plan after it is heard by the court following an objection or referral.

Amendment of s 115 (Substantive requirements for objection or referral)

Clause 106 amends section 115 of the Act to reflect that the sponsor of a cultural heritage management plan is now responsible for distributing a copy of the document given to the Land Court (required under section 115 subsection 1) to all parties to the objection or referral. The sponsor can affect this service by using the names and contact details of all other parties to an objection or referral, as required for identification under section 114(1). This removes the onus on the Land Court to distribute documents as it is an unusual requirement for a court and not required under other Queensland legislation.

Amendment of s 117 (Land Court's recommendation to Minister)

Clause 107 amends section 117 of the Act by replacing subsections 1 and 2 with a new decision-making power for the Land Court to approve or refuse to approve a cultural heritage management plan, following the hearing of an objection or referral. This reflects the transfer of the Minister's decision-making powers to the Land Court.

The Land Court currently makes a recommendation to the Minister to approve or refuse to approve a cultural heritage management plan for an objection or referral due to the previous role of the Land and Resources Tribunal under the Act. The Land and Resources Tribunal was confined to making a recommendation only and this jurisdiction was transferred to the Land Court in September 2007.

The Land Court will now decide whether a cultural heritage management plan is approved, rather than making a recommendation to the Minister, to align with the decision-making functions of a court and to enshrine the doctrine of the separation of powers.

Amendment of s 118 (Reaching the recommendation)

Clause 108 reflects the changes to section 117 of the Act.

Omission of s 119 (General time requirement for making recommendation)

Clause 109 amends section 119 of the Act by deleting references to the time requirements for making recommendations to the Minister. This consideration has become obsolete to the process as the Land Court will now decide the outcome of an objection or referral, rather than make a recommendation to the Minister.

The primary reason that courts do not have time parameters is the separation of powers doctrine that protects judicial independence. Another important reason is that court matters are sometimes delayed due to factors outside the control of the court, for example, protracted settlement negotiations between parties or the time required for the preparation of evidence in complex cases.

The court endeavours to provide timely hearings and decisions. Mechanisms are available to parties to speed up this process where necessary. For example, Rule 5 of the Uniform Civil Procedure Rules

outlines procedures regarding the request for hearing dates by consent of the parties or applications for urgent hearings.

Omission of pt 7, div 7 (Approval by Minister)

Clause 110 amends part 7, division 7 of the Act by removing this division from the Act as it has become obsolete. The jurisdiction for deciding to approve or refusing to approve a cultural heritage management plan under an objection or referral process has been transferred to the Land Court.

Amendment of s 157 (Review of Act)

Clause 111 amends section 157 of the Act to require a review of the effectiveness of the Act before 1 June 2022. The period of ten years before another review is undertaken is in accordance with other Queensland legislation and regulatory requirements.

Insertion of new pt 11, div 1, hdg

Clause 112 inserts the following new heading for the transitional provisions for this Bill: "Division 1 Transitional provisions for Act No. 79 of 2003".

Omission of s 164 (Existing agreement for carrying out activity)

Clause 113 removes section 164 of the Act. A transitional provision is no longer required to ensure that 'existing agreements', as defined in Schedule 2, remain valid and provide a defence under the cultural heritage protection provisions. Clauses 93 to 96 retain the intent of section 164 by including reference to 'existing agreement' directly in the cultural heritage protection provisions.

Insertion of new pt 11, div 2

Clause 114 introduces three transitional provisions for the Bill. The first provision clarifies that objections made to the Land Court before this Bill commences will be dealt with under the current Act without the changes contained in this Bill.

The second provision clarifies that referrals made to the Land Court before this Bill commences will be dealt with under the current Act without the changes contained in this Bill.

The third provision clarifies that recommendations made by the Land Court to the Minister before this Bill commences will be dealt with under the current application of the Act without the changes contained in this Bill. The Minister will deal with the issue as though no changes had been made to the Act.

Amendment of sch 2 (Dictionary)

Clause 115 amends schedule 2 of the Act to insert reference to 'cultural heritage agreements' as defined under section 51A. Definitions for 'post-amendment agreement' and 'pre-amendment agreement' have been inserted to ensure that native title agreements entered into before and after the commencement of these definitions remain valid.

This clause also reflects amendments that transfer the decision-making powers of the Minister to the Land Court for the approval of part 7 cultural heritage management plans. It omits reference to the Minister and inserts reference to the Land Court to define that an approved cultural heritage management plan is a cultural heritage management plan that has been approved by the chief executive or the Land Court under part 7.

The term 'existing agreement' is being amended to replace 'the commencement of this schedule' with the specific date the Act commenced i.e. '16 April 2004'. This change does not alter the meaning of the provision; the date the Act came into force is being used to make it clear that any form of agreement established prior to this date, and that is still in force, remains valid under the Act.

It also inserts a provision stating that a sponsor for a cultural heritage agreement means the person who accepts responsibility for the agreement.

Division 3 Amendment of Aboriginal Land Act 1991

Act amended

Clause 116 confirms that division 3 amends the *Aboriginal Land Act 1991*.

Amendment of s 45 (Existing interests)

Clause 117 amends section 45 of the Act to refer to old Act granted leases and new Act granted leases under the new Land Holding Act. This clause also confirms that subleases granted under the *Aurukun and Mornington Shire Leases Act 1978* continue under section 45.

Amendment of s 48 (Cancellation of leases over Aurukun and Mornington Shire lease lands)

Clause 118 confirms that subleases granted under the *Aurukun and Mornington Shire Leases Act 1978* continue despite the cancellation of the lease under that Act.

Amendment of s 62, s 104 and s 120

Clauses 119 to 121 correct minor mistakes in section references and grammatical errors in sections 62, 104 and 120 of the Act.

Amendment of s 132 (Lessee of townsite lease taken to be lessor of existing leases)

Clause 122 amends section 132 of the Act to refer to old Act granted leases and new Act granted leases under the new Land Holding Act.

Amendment of s 142 (Leases for private residential purposes-general conditions and requirements)

Clause 123 amends section 142 of the Act to ensure that the recipient of a hardship certificate under the new Land Holding Act may have the land valued at nil if applying for a lease for private residential purposes under the Act.

Amendment of s 146 (Lease, sublease and particular dealings to be registered)

Clause 124 omits a comma from section 146 of the Act.

Amendment of s 147 (Definition for div 6)

Clause 125 amends incorrect section references in the Act.

Amendment of pt 12, hdg (Provision about particular claimable land)

Clause 126 amends a minor grammatical mistake in the Act.

Amendment of sch 1 (Dictionary)

Clause 127 amends Schedule 1 (Dictionary) of the Act to refer to the new Land Holding Act instead of the repealed Act.

Division 4 Amendment of Environmental Protection Act 1994

Act Amended

Clause 128 provides that division 4 amends the *Environmental Protection Act 1994*.

Amended of s 38 (Who is an *affected person* for a project)

Clause 129 amends section 38 of the Act to update and correct references to the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* to define who is a person for those lands and for defining an "affected person for a project" for the purposes of the Act and taking into account the repeal of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

Amendment of s 579 (Compensation)

Clause 130 amends section 579 of the Act to correct the definition of "owner" for the purposes of the Act taking into account the repeal of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* by the Bill.

Division 5 Amendment of Foreign Ownership of Land Register Act 1988

Act amended

Clause 131 confirms that division 5 amends the *Foreign Ownership of Land Register Act 1988*.

Amendment of s 4 (Interpretation)

Clause 132 amends section 4 of the Act to exclude certain interests in land from being recorded in the Foreign Ownership of Land Register, namely a carbon abatement interest under the *Land Act 1994* or the *Land Title Act 1994*; a covenant under the *Land Act 1994* or the *Land Title Act 1994*; a plantation licence under the *Forestry Act 1959* and a profit a prendre under the *Land Act 1994* or the *Land Title Act 1994*.

Division 6 Amendment of Land Act 1994

Act amended

Clause 133 provides that division 6 amends the *Land Act 1994*.

Amendment of s 155 (Length of term leases)

Clause 134 amends subsections 5 and 6 of section 155 of the Act to require an indigenous access and use agreement or indigenous land use agreement used for the purpose of the grant of a term of 50 years or more to be approved for registration as an indigenous cultural interest in the lease. This is to allow approved access and use agreements to survive land dealings, therefore increasing certainty for Indigenous parties and lessees.

Currently, section 155(5) provides that an agreement for the grant of a term of up to 50 years may be either an indigenous access and use agreement or an indigenous land use agreement registered with the National Native Title Tribunal under the *Native Title Act 1993* (Cth). For a term of up to 75 years under section 155(6), the agreement must be a registered indigenous land use agreement. While these specific requirements have not changed, this Bill sets them out in the new Schedule 3.

Amendment of s 155B (Extensions for a term of up to 50 years)

Clause 135 amends section 155B of the Act to require an indigenous access and use agreement or indigenous land use agreement used for the purpose of extending the term of a lease for up to 50 years be approved as a registered interest in the lease. The purpose is to allow approved agreements to survive land dealings and increase certainty for both the Indigenous party and the lessee.

The current requirements relating to a conservation agreement or conservation covenant for the lease land remain unchanged.

The current requirement that an agreement for a lease to be extended under section 155B may be either an indigenous access and use agreement or an indigenous land use agreement registered with the National Native Title Tribunal under the *Native Title Act 1993* (Cth) also remain, but will now be incorporated in new Schedule 3.

Amendment of s 155BA (Extensions for a term of up to 75 years)

Clause 136 amends section 155BA of the Act to require an indigenous land use agreement used for the purpose of extending the term of a lease for up to 75 years be approved as a registered indigenous cultural interest in the lease. The current requirements relating to conservation agreements or conservation covenants have been retained.

The current requirement that the agreement for extension of a lease under section 155BA must be an indigenous land use agreement registered with the National Native Title Tribunal under the *Native Title Act 1993* (Cth) will be set out in new Schedule 3.

Amendment of s 155D (When Minister may reduce)

Clause 137 amends section 155D of the Act to take into account that indigenous access and use agreements and indigenous land use agreements will be registered as indigenous cultural interests in the lease.

Amendment of s 159 (General provisions for deciding application)

Clause 138 amends section 159 of the Act to take into account that indigenous access and use agreements and indigenous land use agreements will be registered as indigenous cultural interests in the lease.

Insertion of new s 188A

Clause 139 introduces a new section *188A Limited rent discount for particular leases* under chapter 5, part 1, division 2 of the Act which provides a head of power for the Minister to grant a conditional 25% rental concession for five years for a lease starting with the 2012-2013 financial year. No new concessions will be granted after 30 June 2017. The section also provides that the discount ends under certain circumstances.

Replacement of s 199A (Land may be used only for tenure's purpose)

Clause 140 amends section 199A of the Act:

- to allow part of lease land the subject of a construction sublease to be used for construction of infrastructure facilities, within the meaning of the *State Development and Public Works Organisation Act 1971*, section 125(16) or the provision of transport services; and
- to clarify that the use of rural leasehold land by native title parties for traditional activities under an approved indigenous access and use agreement or indigenous land use agreement which is registered as an indigenous cultural interest in the lease is not inconsistent with the purpose for which the lease has been issued.

Section 199A currently states that lease land may be used only for which the lease was issued. Subsection 2 further states that a term lease for pastoral purposes must be used only for agricultural or grazing purposes, or both. Therefore, this amendment will provide the lessee with certainty that the activities permitted under a construction sublease, or an approved indigenous access and use agreement or indigenous land use agreement, will not breach their lease conditions.

Insertion of new ss 202AA and 202AB

Clause 141 inserts two new sections into the Act.

Section 202AA requires a lessee whose lease land is subject to a registered indigenous cultural interest and who is transferring the lease to another party to give written notification to certain parties of:

- the transfer of the lease; and
- the effects of the transfer of the lease i.e. that the rights and responsibilities under the approved indigenous access and use agreement and indigenous land use agreement are also transferred to the transferee.

This ensures that the indigenous cultural interest and approved agreement continue with the land when a lease is transferred.

Section 202AB requires a lessee whose lease is subject to a registered indigenous cultural interest, and who is subleasing all or part of the lease, to give the sublessee a copy of the approved agreement for the interest, not less than 28 days before the start of the sublease. This is to ensure that the approved agreement continues to be implemented under subleasing arrangements.

Amendment of s 325 (Effect of registration of transfer)

Clause 142 repeals section 325(3) to (5) of the Act as the intent of these provisions are being included under the new section 202AA and new section 373ZJ in the new chapter 6, part 4, division 8D of the Act.

Amendment of s 332 (Subleases require Minister's approval)

Clause 143 amends section 332 of the Act to enable lease land to be subleased for purposes ancillary to the construction of infrastructure facilities, within the meaning of the *State Development and Public Works Organisation Act 1971*, section 125(16) or the provision of transport services, on other land acquired under an acquisition Act.

For example, the chief executive under the *Transport Planning and Coordination Act 1994* may acquire land for construction of a rail line and, during construction, may need other land for the temporary accommodation of workers. Adjacent to the acquired land is a grazing homestead perpetual lease. Under the amendment to section 322 of the *Land Act 1994*, the lessee may grant a construction sublease over part of a grazing homestead perpetual lease to the chief executive under the *Transport Planning and Coordination Act 1994*. As the construction sublease must be temporary in nature, the lessee will benefit from the

consideration for the grant of the sublease. On the ending of the construction sublease, the State and the lessee will benefit from the statutory requirement that the sublessee must return the lease land to its condition at the time of the grant of the sublease or to a condition which enhances the purpose of the lease.

Amendment of s 333 (General authority to lessee for particular dealings)

Clause 144 amends section 333 of the Act and provides for the Minister to issue a lessee a general authority to agree and give effect to the subleasing of the lease without seeking the Minister's approval. The amendment to section 333 confirms a general authority given under the section does not apply to a construction sublease for a purpose inconsistent with the purpose of the lease as originally issued or as changed under section 154.

Insertion of new ch 6, pt 4, div 8D

Clause 145 inserts a new division 8D into chapter 6, part 4 of the Act. Division 8D creates a new type of registered interest under the *Land Act 1994*, the 'indigenous cultural interest'. This is to ensure security and longevity of indigenous access and use agreements and indigenous land use agreements under the Land Act and provide lessees and indigenous parties with greater certainty. The registration of an indigenous cultural interest:

- applies specifically to term leases affected by the Delbessie Agreement (i.e. leases issued for agriculture, grazing or pastoral purposes with a term of 20 years or more and whose area is 100 hectares or more; and
- has no 'life' under other legislation.

This amendment inserts three new subdivisions to describe and govern the creation, registration and operation of an indigenous cultural interest.

Subdivision 1—Preliminary

Section 373ZB defines an indigenous cultural interest for land, registered under this division, as an interest in the land that consists of the right to access and use the land in accordance with an indigenous access and use agreement, or indigenous land use agreement which has been approved by the Minister (an 'approved agreement'), for the interest (if the registration of the interest has not ended, been surrendered or removed from the appropriate register).

The term 'indigenous access and use agreement' is also redefined to provide greater clarity on the differences between indigenous access and use agreements and indigenous land use agreements. The current definition in schedule 6 of the *Land Act 1994* has caused much confusion because the term indigenous access and use agreement and its acronym IAUA is used in both the generic form (to describe both a contractual indigenous access and use agreement and an indigenous land use agreement) and to describe a specific type of agreement (i.e. a contractual agreement). This Bill removes the generic term, meaning that a reference in the *Land Act 1994* (or in State policy) to an indigenous access and use agreement or to an IAUA will specifically mean the contractual indigenous access and use agreement.

An indigenous access and use agreement must allow the native title party to conduct traditional activities that include camping, fishing, gathering, or hunting; performing rites or other ceremonies; and visiting sites of significance. The amendment also provides for indigenous access and use agreements to include other activities that are incidental to the conduct of permissible traditional activities. Examples of these activities include controlling pests, teaching rites or other ceremonies and preserving sites of significance. This will also be a requirement for an indigenous land use agreement that is presented for recording as an indigenous cultural interest.

Subdivision 2—Creation and registration

Section 373ZC provides that an indigenous cultural interest in lease land can only be created under Division 8D of the *Land Act 1994* and its registration must be approved by the Minister. The Minister's approval to register an indigenous cultural interest may be subject to conditions.

The interest may only be registered if certain criteria, set out in Schedule 3, are met. The intent is to ensure that an indigenous access and use agreement, or indigenous land use agreement, presented for registration, or recording, as an indigenous cultural interest is to a certain standard, is with the right native title party for the area and does not extinguish native title. The reason that an agreement must be on the non-extinguishment principle is to ensure that the agreement is consistent with the objectives of the Delbessie Agreement of bringing Indigenous people back on country.

Section 373ZD relates to when the chief executive (registrar) may register the indigenous cultural interest. A document creating a registered indigenous cultural interest must be validly executed. Section 373ZD also outlines the documents that must be presented with an application to register an indigenous cultural interest. This section does not limit the

matters that the appropriate form for a document creating a registered indigenous cultural interest may require to be included in the document.

Subdivision 3—Amendments and dealings

Section 373ZE allows a registered indigenous cultural interest to be amended. However, any amendments to an approved indigenous access and use agreement or indigenous land use agreement—

- can not increase or decrease the area of the land the subject of the interest;
- can not add or remove a party to the interest;
- must be approved by the Minister before the amendment can be registered.

This is to ensure that the amended agreement still satisfies the requirements in the new schedule 3 and that any benefits (i.e. longer lease term, lease extension or rental concession) obtained as result of the registration of the agreement as an indigenous cultural interest in the lease can continue. The Minister may grant conditional approval to amend a registered indigenous cultural interest. The registered interest remains the same until the approved amendment to the agreement is registered in the appropriate register.

This also means that for substantial amendments to an approved agreement, the registered indigenous cultural interest would need to be surrendered or cancelled and the amended agreement would need to be approved for registration as a new interest. This is because the amendments have the potential to substantially affect the nature of the rights under the interest, lease terms and rental concession under the new section 188A.

Section 373ZF provides that a registered indigenous cultural interest for lease land ends if the approved agreement for the interest is amended or replaced without the Minister's approval. In this case, the chief executive must remove the interest from land as soon as the chief executive becomes aware of the interest ending. No compensation is payable by the State for removal of a registered indigenous cultural interest.

Section 373ZG provides that a registered indigenous cultural interest for land may be surrendered on lodgement of a document surrendering the interest with the Minister's approval. On registration of the document, the interest is surrendered to the extent shown in the document.

The chief executive may also remove an indigenous cultural interest in land from the appropriate register if an application is made for the interest to be removed because of an event or the chief executive receives a request to remove the interest under an Act of the Commonwealth. Examples of events which may trigger the surrender or removal of a registered indigenous cultural interest from the register include:

- the expiry of the lease;
- the surrender, resumption, forfeiture or termination of the lease;
- the removal of an approved indigenous land use agreement from the Commonwealth ILUA Register;
- a determination recognising the right to possession and occupation of the agreement area, to the exclusion of all others, being made to persons other than the native title party to the approved agreement; and
- a dispute concerning a substantial breach of the indigenous access and use agreement or indigenous land use agreement which is capable of being remedied and which has not been remedied.

Section 373ZH provides that the Minister must be notified when an approved agreement for a registered indigenous cultural interest ends. If the approved agreement is an indigenous access and use agreement, the notification period is within 10 business days of the agreement ending. If the agreement is an indigenous land use agreement and the agreement ends because of —

- a determination of native title, the notification period is within 28 business days of the determination; and
- other reasons, within 10 business days of the agreement ending.

Section 373ZI provides that the Minister may allow (in writing) a registered indigenous cultural interest in land to continue in certain circumstances, for example:

- the lease has expired but an application has been made for renewal or other action has been taken under the provisions of the *Land Act 1994* to extend the lease;
- land dealings on the lease in the form of additional areas or conversion to a perpetual tenure result in a new lease being issued; and

- the lease or part of the lease is converted to protected area tenure under the *Nature Conservation Act 1992* or to a State forest, timber reserve or forest entitlement area under the *Forestry Act 1959*.

If a registered indigenous cultural interest is continued under this section, with the State as a party to the agreement, the continuation must be recorded in the relevant register. For the purpose of the *Land Act 1994*, the State is then taken to be a party to the agreement in place of the lessee and the rights and responsibilities of the lessee under the agreement become the rights and responsibilities of the State.

The intent of this clause is to ensure that approved agreements do not fall over and to avoid the need to negotiate a new agreement (except if the new parties want to negotiate a new agreement or amend the approved agreement).

The registered indigenous cultural interest does not survive conversion of tenure to freehold.

Section 373ZJ gives effect to the previous section 325(3) to (4). When a lease that is subject to a registered indigenous cultural interest is transferred, the transferee is taken to be a party to the approved agreement for the registered indigenous cultural interest in place of the transferor. The rights and responsibilities of the transferor under the approved agreement become the rights and responsibilities of the transferee.

The purpose of this clause is to ensure that the approved agreement continues and to provide certainty for both the indigenous party and the transferee.

Section 373ZK provides that the Minister may review approved agreements for registered interests to assess the compliance of the parties to the agreement with their obligations under the agreement or if the agreement has been changed or has ended. For this purpose, a lessee of leasehold land that is subject to a registered indigenous cultural interest must give the Minister a written report every 5 years from the creation of the interest. If the lessee has been granted a discount on the rent payable for the lease under the new section 188A, the Minister may request a report at any time.

This will assist the Minister in determining whether the benefits of longer lease terms, lease extensions or rental concessions granted under the relevant sections of the Act should be allowed to continue (or not, under section 155D).

Amendment of s 392 (Delegation by Minister)

Clause 146 makes minor technical amendments to section 392(4) of the Act.

Amendment of s 393 (Delegation by chief executive)

Clause 147 amends a technical error to section 393 of the *Land Act 1994* which provides for the delegation of the powers of the chief executive under the Act and limitations on such delegation.

Amendment of sch 1A (Provisions that include mandatory conditions for tenures)

Clause 148 amends schedule 1A of the Act by removing the reference to section 325(5). This is because the requirements will be incorporated in the new s 202AA under chapter 5, part 2 division 1 of the *Land Act 1994* which deals with imposed conditions.

Insertion of new sch 3

Clause 149 inserts a new schedule 3 into the Act which details specific requirements for approved agreements for registration of an indigenous cultural interest in a lease. The intent is to ensure that an indigenous access and use agreement, or indigenous land use agreement, to be registered as an indigenous cultural interest is for an eligible lease, is with the right native title party for the area, does not extinguish native title and is to an acceptable standard. It is in the State's, the lessee's and native title party's interests that approved agreements are practical, workable and provide a high degree of certainty.

Part 1 deals with the requirements for indigenous access and use agreements and part 2 deals with the requirements for indigenous land use agreements.

The detailed requirements in schedule 3 will ensure that dealings with indigenous access and use agreements and indigenous land use agreements under the *Land Act 1994* are consistent and impartial and that the administration of the Act in relation to access and use agreements for the purposes of the Delbessie Agreement is efficient, open and accountable.

Amendment of sch 6 (Dictionary)

Clause 150 amends the current definitions for 'indigenous access and use agreement' and 'ILUA register' and 'indigenous land use agreement' to provide greater clarity on the scope and nature of each of these agreements for the purposes of sections 155, 155A, 155B and 155BA of the *Land Act 1994*.

In addition, this clause introduces new definitions for:

- 'approved agreement' for an indigenous cultural interest
- 'Commonwealth ILUA Register'
- 'construction sublease'
- 'determination of native title'
- 'determined native title holders'
- 'indigenous cultural interest'
- 'indigenous land use agreement'
- 'indigenous party' in relation to both an indigenous access and use agreement and an indigenous land use agreement
- 'native title claim'
- 'native title claim area'
- 'native title'
- 'native title party'
- 'native title claim group'
- 'registered native title claimant'
- 'subject area' for a registered indigenous cultural interest
- 'shared country'.

Division 7 Amendment of Land Court Act 2000

Act amended

Clause 151 provides that division 7 amends the *Land Court Act 2000*.

Amendment of s 32A (Indigenous assessors)

Clause 152 amends section 32A of the Act to permit Indigenous assessors to perform functions in relation to prescribed proceedings.

Amendment of s 32C (Allocation of indigenous assessor for proceeding in the cultural heritage division)

Clause 153 amends section 32C of the Act to permit Indigenous assessors to perform functions in relation to prescribed proceedings.

Amendment of s 32D (Role of indigenous assessor for a proceeding)

Clause 154 amends section 32D of the Act to permit Indigenous assessors to perform functions in relation to prescribed proceedings.

Amendment of s 32J (Land Court has power of the Supreme Court for particular purposes)

Clause 155 amends section 32J of the Act to extend Land Court's ability to exercise the power of the Supreme Court to its jurisdiction pursuant to the new Land Holding Act.

Amendment of sch 2 (Dictionary)

Clause 156 amends schedule 2, dictionary, of the Act to include proceedings under the new Land Holding Act as prescribed proceedings.

Division 8 Amendment of Mineral Resources Act 1989

Act amended

Clause 157 provides that division 8 amends the *Mineral Resources Act 1989*

Amendments of sch 2 (Dictionary)

Clause 158 amends the dictionary to the Act to update and correct references to the *Aboriginal Land Act 1991* and *Torres Strait Islander Land*

Act 1991 for the purposes of defining who is an "owner" of land for the purposes of the Act and taking into account the repeal of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* by the Bill.

Division 9 Amendment of Survey and Mapping Infrastructure Act 2003

Act Amended

Clause 159 provides that division 9 amends the *Survey and Mapping Infrastructure Act 2003.*

Amendment of s 21 (Power to place a permanent survey mark)

Clause 160 amends section 21(3) of the Act to define freehold land as including indigenous land and leases or interests over that land. This will confirm that surveyors can access such land subject to the conditions outlined in sections 21 and 22.

Amendment of schedule (Dictionary)

Clause 161 amends the schedule (Dictionary) to allow the definition of indigenous land in Part 7 to apply to the whole of the Act.

Division 10 Amendment of Sustainable Planning Act 2009

Act Amended

Clause 162 provides that division 10 amends the *Sustainable Planning Act 2009.*

Amendment of sch 3 (Dictionary)

Clause 163 amends and updates the definition of "indigenous land" in the dictionary to the Act to take account of the repeal of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985.*

Division 11 Amendment of Sustainable Planning Regulation 2009

Regulation amended

Clause 164 provides that division 11 amends the *Sustainable Planning Regulation 2009*.

Amendment of sch 3 (Assessable development, self-assessable development and type of assessment)

Clause 165 amends Schedule 3, part 1, table 3, item 1, column 2 of the *Sustainable Planning Regulation 2009* to exclude a reconfiguration or plan of subdivision necessary for the implementation of the *Aboriginal and Torres Strait Islander Land Holding Act 2011* from being assessable development or self-assessable development. This confirms that these planning requirements do not apply to the satisfaction of lease entitlements or the resolution of boundary problems under the *Aboriginal and Torres Strait Islander Land Holding Act 2011*.

Amendment of sch 4 (Development that can not be declared to be development of a particular type - Act, section 232(2))

Clause 166 amends Schedule 4, table 3, item 2 of the *Sustainable Planning Regulation 2009* to exclude a reconfiguration or plan of subdivision necessary for the implementation of the *Aboriginal and Torres Strait Islander Land Holding Act 2011* from being declared to be self-assessable development, assessable development or development requiring compliance assessment. This confirms that these planning requirements can not be applied to the satisfaction of lease entitlements or the resolution of boundary problems under the *Aboriginal and Torres Strait Islander Land Holding Act 2011*.

Division 12 Amendment of Torres Strait Islander Cultural Heritage Act 2003

Act amended

Clause 167 provides that division 12 amends the *Torres Strait Islander Cultural Heritage Act 2003*.

Amendment of s 23 (Cultural heritage duty of care)

Clause 168 amends section 23 of the Act to reflect changes to the agreement-making process. The provision requires native title agreements to expressly include cultural heritage as being subject to the agreement.

This amendment seeks to better define the various agreements available to land users seeking to comply with the cultural heritage duty of care. The Act now requires a person to be acting under an "existing agreement", a "cultural heritage agreement", or a "native title agreement", as a means of meeting the cultural heritage duty of care.

The term "a Torres Strait Islander party" has been removed from this section as the term lacked clarity in circumstances where more than one Torres Strait Islander party could be identified for an area.

The meaning of cultural heritage agreement (section 51A) in turn clearly identifies the relevant Torres Strait Islander parties to be consulted for developing an agreement to manage and protect cultural heritage.

Amendment of s 24 (Unlawful harm to Torres Strait Islander cultural heritage)

Clause 169 amends section 24 of the Act, to reflect changes to the agreement-making process in regards to unlawful harm to Torres Strait Islander cultural heritage. The provision requires native title agreements to expressly include cultural heritage as being subject to the agreement.

This amendment seeks to better define the various agreements available to land users seeking to comply with the cultural heritage duty of care. The Act now requires a person to be acting under an "existing agreement", a "cultural heritage agreement", or a "native title agreement", as a means of meeting the cultural heritage duty of care.

The term "a Torres Strait Islander party" has been removed from this section as the term lacked clarity in circumstances where more than one Torres Strait Islander party could be identified for an area.

The meaning of "cultural heritage agreement" (section 51A) in turn clearly identifies the relevant Torres Strait Islander parties to be consulted for developing an agreement to manage and protect cultural heritage.

Amendment of s 25 (Prohibited excavation, relocation and taking away)

Clause 170 amends section 25 of the Act, to reflect changes to the agreement-making process in regards to prohibited excavation, relocation and taking away of cultural heritage. The provision requires native title agreements to expressly include cultural heritage as being subject to the agreement.

This amendment seeks to better define the various agreements available to land users seeking to comply with the cultural heritage duty of care. The Act now requires a person to be acting under an "existing agreement", a "cultural heritage agreement", or a "native title agreement", as a means of meeting the cultural heritage duty of care.

The term "a Torres Strait Islander party" has been removed from this section as the term lacked clarity in circumstances where more than one Torres Strait Islander party could be identified for an area.

The meaning of "cultural heritage agreement" (section 51A) in turn clearly identifies the relevant Torres Strait Islander parties to be consulted for developing an agreement to manage and protect cultural heritage.

Amendment of s 26 (Unlawful possession of Torres Strait Islander cultural heritage)

Clause 171 amends section 26 of the Act, to reflect changes to the agreement-making process in regards to unlawful possession of cultural heritage. The provision requires native title agreements to expressly include cultural heritage as being subject to the agreement.

This amendment seeks to better define the various agreements available to land users seeking to comply with the cultural heritage duty of care. The Act now requires a person to be acting under an "existing agreement", a "cultural heritage agreement", or a "native title agreement", as a means of meeting the cultural heritage duty of care.

The term "a Torres Strait Islander party" has been removed from this section as the term lacked clarity in circumstances where more than one Torres Strait Islander party could be identified for an area.

The meaning of "cultural heritage agreement" (s51A) in turn clearly identifies the relevant Torres Strait Islander parties to be consulted for developing an agreement to manage and protect cultural heritage.

Insertion of new pt 3, div 5

Clause 172 inserts a new section 33A with the heading "Division 5 Mediation" regarding mediation of disputes about Torres Strait Islander cultural heritage. A broad power is being inserted to allow the Land Court to mediate disputes relating to cultural heritage. A party to the dispute may ask the Land Court to provide mediation of the dispute, with the agreement of the disputants i.e. it is intended to be a voluntary mediation service.

This provision also allows the Land Court to decide if the dispute is suitable for the court to mediate. The Land Court will provide the mediation service free of charge.

This new provision does not apply to disputes arising from the development of a Part 7 cultural heritage management plan. Such disputes will continue to be dealt with in accordance with the defined process outlined in Part 7.

Amendment of s 34 (Native title party for an area)

Clause 173 amends the section 34(1)(b)(i) of the Act to remove the word 'failed' from the description of a native title claim that has been removed from the Register of Native Title Claims. The word 'failed' is unclear and will be replaced with 'been removed from the Register of Native Title Claims', to describe how the Act continues to recognise the previously registered native title claimant as the native title party for an area if there is currently no registered native title claimant.

Section 34(1)(b)(i)(A) is being amended by replacing the phrase "registered under" with "removed from" in order to correct an unintentional drafting error in 2010. This amendment reflects the operational policy of the department in situations where there are no other registered native title claimants for the area, and the last claim removed from the Register of Native Title Claims will continue to be recognised as the native title party for an area.

Insertion of new pt 5A

Clause 174 inserts three new sections into the Act.

The first new section 51A defines the meaning of the term 'cultural heritage agreement'. This definition does not include agreements entered into prior to commencement of the Act on 16 April 2004, as they are already defined as 'existing agreements'. By way of transitional arrangements, section 51A also ensures that all agreements with 1 or more Torres Strait Islander parties made prior to commencement of the Bill will remain valid and continue to provide a defence under the cultural heritage duty of care.

Section 51A requires that cultural heritage agreements entered into after commencement of the Bill must be made with all registered native title parties for an area—or, in the event that there are no native title parties as defined in section 34, the cultural heritage agreement must be made with at least one Torres Strait Islander party as defined in section 35(7). This amendment aligns with the native title legislation, ensuring that those groups who have established a *prima facie* case that they may hold native title, continue to remain involved in managing cultural heritage through agreement-making. Ideally, while consultation should be undertaken with all Torres Strait Islander parties for an area, it is virtually impossible and impractical to engage with *all* persons who assert to be traditional owners for an area, in the absence of a registered or previously registered native title claim. Proponents are encouraged to seek agreement with all relevant parties in the course of agreement making.

This provision also clarifies that parties to cultural heritage agreements must be 18 years of age or older. The Act does not require sponsors to confirm an individual's age. If an individual is suspected to be less than 18 years of age, a commonsense approach is recommended e.g. sponsors may request documentary evidence of proof of age.

The second new section, section 51B, clarifies that section 51A(1)(d) does not prevent persons under 18 years of age from being consulted in developing a 'cultural heritage agreement'.

The third new section, section 51C, requires that the sponsor of a cultural heritage agreement must keep a record of certain aspects of the agreement, including: the general terms of agreement; the Torres Strait Islander cultural heritage subject of the agreement; the identity of the party to the agreement; and acceptance of the agreement by a party to the agreement. Section 51C also requires that the record of agreement must be in written,

audio or visual format. This new provision protects all parties to the agreement and recognises the different formats that parties may wish to use to record an agreement.

Amendment of pt 6, div 5, hdg (Objections, hearing and recommendation)

Clause 175 amends the heading in part 6, division 5 of the Act to reflect changes to the objections process regarding the recording of cultural heritage studies, which no longer requires the Land Court to provide the Minister with recommendations following the hearing of an objection. This amendment indicates that the Land Court will now make the final decision for an objection to a recording or to a refusal to record the findings of the cultural heritage study in the register.

Amendment of s 78 (Land Court's recommendation to Minister)

Clause 176 amends the heading in section 78 and replaces the heading to reflect changes in the objections process. To enhance the independence of decision-making under the Act, the powers of the Minister to record or refuse to record the findings of a study are being removed and transferred to the Land Court. As such, the Land Court will now make the decision for an objection to a recording of the findings of the cultural heritage study in the register or for an objection to a refusal to record the findings of the cultural heritage study in the register. Following the hearing of an objection, the Land Court will make a final decision as to the appropriate outcome.

The amendment also inserts a new subsection to the provision to describe the course of action that the Land Court must take to formalise the outcome or decision following the completion of the hearing of an objection concerned with a) recording the findings of the cultural heritage study on the register; or b) a refusal to record the findings of a cultural heritage study on the register.

Omission of pt 6, div 6 (Recording by Minister)

Clause 177 amends part 6, division 6 of the Act by removing the part to reflect the transfer of the Minister's decision-making powers to the Land

Court under section 78 relating to recording or refusing to record findings of a cultural heritage study on the register.

Amendment of s 86 (Application of div 2)

Clause 178 amends section 86(b) of the Act to specify that a cultural heritage management plan is not required for a project the subject of a native title agreement if Torres Strait Islander cultural heritage is expressly 'included as' being subject to the agreement. This clarifies that native title agreements are only valid under the Act if the protection of Torres Strait Islander cultural heritage is specifically addressed and reflects the amendments made to sections 23-26 of the Act.

Amendment of s 106 (Mediation)

Clause 179 amends the heading of section 106 of the Act 'Mediation of disputes that are delaying development of plan', as this mediation provision relates only to cultural heritage management plans under part 7.

This amendment ensures section 106 is distinguished from the new, broader mediation provision being inserted under section 33A.

Amendment of pt 7, div 6, hdg (Objection or referral, hearing and recommendation)

Clause 180 amends the heading in part 7, division 6 of the Act to reflect that the Land Court will now make a decision, rather than a recommendation to the Minister, to approve or refuse to approve a cultural heritage management plan after it is heard by the court following an objection or referral.

Amendment of s 115 (Substantive requirements for objection or referral)

Clause 181 amends section 115 of the Act to reflect that the sponsor of a cultural heritage management plan is now responsible for distributing a copy of the document given to the Land Court (required under section 115 (1)) to all parties to the objection or referral. The sponsor can affect this service by using the names and contact details of all other parties to an objection or referral, as required for identification under section 114(1). This removes the onus on the Land Court to distribute documents as it is an

unusual requirement for a court and not required under other Queensland legislation.

Amendment of s 117 (Land Court's recommendation to Minister)

Clause 182 amends section 117 of the Act by replacing subsections 1 and 2 with a new decision-making power for the Land Court to approve or refuse to approve a cultural heritage management plan, following the hearing of an objection or referral. This reflects the transfer of the Minister's decision-making powers to the Land Court.

The Land Court currently makes a recommendation to the Minister to approve or refuse to approve a cultural heritage management plan for an objection or referral due to the previous role of the Land and Resources Tribunal under the Act. The Land and Resources Tribunal was confined to making a recommendation only and this jurisdiction was transferred to the Land Court in September 2007.

The Land Court will now decide whether a cultural heritage management plan is approved, rather than making a recommendation to the Minister, to align with the decision-making functions of a court and to enshrine the doctrine of the separation of powers.

Amendment of s 118 (Reaching the recommendation)

Clause 183 amends section 118 of the Act to reflect the changes made to section 117 of the Act.

Omission of s 119 (General time requirement for making recommendation)

Clause 184 amends section 119 of the Act by deleting references to the time requirements for making recommendations to the Minister. This consideration has become obsolete to the process as the Land Court will now decide the outcome of an objection or referral, rather than make a recommendation to the Minister.

The primary reason that Courts do not have time parameters is the separation of powers doctrine that protects judicial independence. Another important reason is that court matters are sometimes delayed due to factors outside the control of the court, for example, protracted settlement

negotiations between parties or the time required for the preparation of evidence in complex cases.

The Land Court endeavours to provide timely hearings and decisions. Mechanisms are available to parties to speed up this process where necessary. For example, Rule 5 of the Uniform Civil Procedure Rules outlines procedures regarding the request for hearing dates by consent of the parties or applications for urgent hearings.

Omission of pt 7, div 7 (Approval by Minister)

Clause 185 amends part 7, division 7 of the Act by removing this division from the Act as it has become obsolete. The jurisdiction for deciding to approve or refusing to approve a cultural heritage management plan under an objection or referral process has been transferred to the Land Court.

Amendment of s 157 (Review of Act)

Clause 186 amends section 157 of the Act to require a review of the effectiveness of the Act before 1 June 2022. The period of ten years before another review is undertaken is in accordance with other Queensland legislation and regulatory requirements.

Insertion of new pt 10, div 1, hdg

Clause 187 inserts a new heading into the Act for the transitional provisions for this Bill.

Omission of s 162 (Existing agreement for carrying out activity)

Clause 188 omits section 162 of the Act. A transitional provision is no longer required to ensure that 'existing agreements', as defined in Schedule 2, remain valid and provide a defence under the cultural heritage protection provisions. Clauses 168 to 171 retain the intent of section 162 by including reference to 'existing agreement' directly in the cultural heritage protection provisions.

Insertion of new pt 10, div 2

Clause 189 introduces three transitional provisions for the Act. The first provision clarifies that objections made to the Land Court before this Act

commences will be dealt with under the current Act without the changes contained in this Bill.

The second provision clarifies that referrals made to the Land Court before this Act commences will be dealt with under the current Act without the changes contained in this Bill.

The third provision clarifies that recommendations made by the Land Court to the Minister before this Act commences will be dealt with under the current application of the Act without the changes contained in this Bill. The Minister will deal with the issue as though no changes had been made to the Act.

Amendment of schedule (Dictionary)

Clause 190 amends the schedule 2 (Dictionary) of the Act to insert reference to cultural heritage agreements as defined under section 51A. Definitions for post-amendment agreement and pre-amendment agreement have been inserted to ensure that native title agreements entered into before and after the commencement of these definitions remain valid.

This clause also reflects amendments that transfer the decision-making powers of the Minister to the Land Court for the approval of part 7 cultural heritage management plans. It omits reference to the Minister and inserts reference to the Land Court to define that an approved cultural heritage management plan is a cultural heritage management plan that has been approved by the chief executive or the Land Court under part 7.

The term 'existing agreement' is being amended to replace 'the commencement of this schedule' with the specific date the Act commenced i.e. '16 April 2004'. This change does not alter the meaning of the provision; the date the Act came into force is being used to make it clear that any form of agreement established prior to this date, and that is still in force, remains valid under the Act.

It also inserts a provision stating that a sponsor for a cultural heritage agreement means the person who accepts responsibility for the agreement.

Division 13 Amendment of Torres Strait Islander Land Act 1991

Act amended

Clause 191 provides that the division 13 amends the *Torres Strait Islander Land Act 1991*.

Amendment of s 41 (Existing interests)

Clause 192 amends section 41 of the Act to refer to old Act granted leases and new Act granted leases under the new Land Holding Act.

Amendment of s 97 (Lessee of townsite lease taken to be lessor of existing leases)

Clause 193 amends section 97 of the Act to refer to old Act granted leases and new Act granted leases under the new Land Holding Act.

Amendment of s 107 (Leases for private residential purposes-general conditions and requirements)

Clause 194 amends section 107 of the Act to ensure that the recipient of a hardship certificate under the new Land Holding Act may have the land valued at nil if applying for a lease for private residential purposes under the *Torres Strait Islander Land Act 1991*.

Amendment of s 111 (Particular dealings to be registered)

Clause 195 amends section 111 of the Act to omit a comma.

Amendment of s 112 (Definitions for div 6)

Clause 196 amends section 112 of the Act to correct a minor grammatical mistake.

Amendment of sch 1 (Dictionary)

Clause 197 amends Schedule 1, the Dictionary, of the Act to refer to the new Land Holding Act instead of the repealed Act.

Division 14 Amendment of Vegetation Management Act 1999

Act Amended

Clause 198 provides that division 14 amends the *Vegetation Management Act 1999.*

Amendment of schedule (Dictionary)

Clause 199 omits a reference to the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* from the definition of "indigenous land" for the purposes of the *Vegetation Management Act 1999.*

Division 15 Amendment of Water Act 2000

Act amended

Clause 200 provides that division 15 amends the *Water Act 2000.*

Amendment of s 609 (Removal of board)

Clause 201 omits section 609(c) of the Act. Section 609(c) empowers the Governor in Council to remove all the directors of a water authority's board from office if the board does not comply with a joint direction given to it by the Minister and Treasurer under the Act. Previously, section 677 of the Act enabled the Minister and the Treasurer to issue a joint direction to a category 1 water authority. However, this provision expired in 2003. As a result, subsection 609(c) is now obsolete.

Amendment of ch 4, pt 6 hdg (Reserve powers of Minister and Treasurer)

Clause 202 amends the heading of chapter 4, part 6 of the Act (Reserve powers of Minister and Treasurer) by omitting reference to the Treasurer. This reference is obsolete. This part of the Act contains this heading but the content of the Chapter makes no reference to the Treasurer or any such reserve powers.

Amendment of s 999 (Minister's and Treasurer's power to give joint directions to corporatised entity)

Clause 203 amends section 999 of the Act (Minister's and Treasurer's power to give joint directions to corporatised entity). This reference requires the Administering Minister and Treasurer to give a corporatised entity (i.e. SunWater) a written joint direction in relation to specific matters, where considered necessary. The requirement for both the Administering Minister and Treasurer to issue these Directions is considered unnecessary because:

- any directions issued under these sections are underpinned by policy decisions which, if they have financial implications for the State, will have been previously been considered and approved by the Cabinet Budget Review Committee or Cabinet; and
- there are similar joint directions powers over these entities available to the Minister for Finance (who, under the current administrative arrangements orders has taken over the responsibility previously held by the Treasurer for this section) under other legislation. In particular, a joint direction may be given to SunWater by its shareholding Ministers under the *Government Owned Corporations Act 1993* and a joint direction may also be given by responsible Ministers to any of the SEQ bulk water authorities under the *South East Queensland Water (Restructuring) Act 2007*.

Amendment of s 1013D (Minister's and Treasurer's power to give joint directions to new water entities)

Clause 204 amends section 1013D (Minister's and Treasurer's power to give joint directions to new water entities). This reference requires the Administering Minister and Treasurer to give a new water entity (i.e. the SEQ bulk water authorities) a written joint direction in relation to specific matters, where considered necessary. The requirement for both the Administering Minister and Treasurer to issue these Directions is considered unnecessary because:

- any directions issued under these sections are underpinned by policy decisions which, if they have financial implications for the State, will have been previously been considered and approved by the Cabinet Budget Review Committee or Cabinet; and
- there are similar joint directions powers over these entities available to the Minister for Finance (who, under the current administrative

arrangements orders, has taken over the responsibility previously held by the Treasurer for this section) under other legislation. In particular, a joint direction may be given to SunWater by its shareholding Ministers under the *Government Owned Corporations Act 1993* and a joint direction may also be given by responsible Ministers to any of the SEQ bulk water authorities under the *South East Queensland Water (Restructuring) Act 2007*.

Amendment of sch 4 (Dictionary)

Clause 205 amends the definition of *'community service obligations'* (of a category 1 water authority) in schedule 4 (Dictionary) to the Act by omitting reference in paragraph (b)(i) to a joint direction by the Minister and Treasurer. Previously, section 677 of the Act enabled the Minister and the Treasurer to issue a joint direction to a category 1 water authority. However, this provision expired in 2003. Accordingly, subsection (b)(i) of Schedule 4 is now obsolete.

Division 16 Amendment of Water Supply (Safety and Reliability) Act 2008

Act amended

Clause 206 provides that division 16 amends the *Water Supply (Safety and Reliability) Act 2008.*

Amendment of s 201 (Preparing particular plans)

Clause 207 amends section 201(5) of the Act, which provides for the things which a recycled water management plan prepared by a recycled water provider, scheme manager or other declared entities, must state or include. The amendment will remove the current broad reference to schemes which supply recycled water by way of "a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines" and replace this with reference to the new definition of 'dual reticulation'.

Amendment of s 250 (Application for exemption)

Clause 208 amends section 250(2)(b) of the Act to remove the current broad reference to schemes which supply recycled water by way of "a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines" and replaces this with reference to the new definition of 'dual reticulation'.

Amendment of s 274 (Public reporting requirement)

Clause 209 amends section 274(1)(c) of the Act to remove the current broad reference to schemes which supply recycled water by way of "a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines" and replaces this with reference to the new definition of 'dual reticulation'.

Amendment of s 301 (Making declaration)

Clause 210 amends section 301(2)(c) of the Act to remove the current broad reference to schemes which supply recycled water by way of "a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines" and replaces this with reference to the new definition of 'dual reticulation'.

Amendment of s 340 (Ch 4 does not apply to particular dams)

Clause 211 amends section 340 of the Act (Ch 4 does not apply to particular dams) to correct a minor drafting error. The word 'a' is inserted before 'weir'.

Amendment of s 434 (Power to require information or documents)

Clause 212 amends section 434(4) of the Act (Power to require information or documents) to correct a minor drafting error. A reference in the section to subsection (3)(b) should be to subsection (3).

Amendment of s 631 (Application of particular provisions – existing schemes)

Clause 213 amends section 631 of the Act, which is a transitional provision that sets out timeframes by which certain existing recycles water schemes

must comply with certain requirements under the Act. The amendment is consequential to the insertion of a new section 645 of the Act by this Bill. It will ensure that schemes inadvertently caught by provisions of the Act (namely those which are "a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines" but do not fall within the definition of "dual reticulation"), will be covered by the timeframes for having an approved recycled water management plan or an exemption under s 646, rather than those under s 631 and 632.

Amendment of s 632 (Application of particular provisions – schemes supplying recycled water for particular purposes)

Clause 214 amends section 632 of the Act, which is a transitional provision that sets out timeframes by which certain recycled water schemes must comply with certain requirements under the Act. The amendment is consequential to the insertion of a new section 645 of the Act by this Bill. It will ensure that schemes inadvertently caught by provisions of the Act (namely those which are "a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines" but do not fall within the definition of "dual reticulation"), will be covered by the timeframes for having an approved recycled water management plan or exemption under s 646, rather than those under s 631 and 632.

Insertion of new ch 10, pt 5

Clause 215 inserts a new chapter 10, part 5 into the Act that provides for transitional provisions inserted under the *Aboriginal and Torres Strait Islander Land Holding Act 2011.*

New section 644 - Definition for pt 5. Inserts a new definition of 'relevant recycled water scheme' for the new chapter 10, part 5 of the Act. The definition covers schemes inadvertently caught by provisions of the Act (namely those which are "a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines" but do not fall within the definition of "dual reticulation").

New section 645 - Sections 631 and 632 do not apply to a relevant recycled water scheme. Inserts a new section 645 into the Act that provides that sections 631 and 632 do not apply and are taken never to have applied, to schemes inadvertently caught by provisions of the Act (namely

those which are "a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines" but do not fall within the definition of "dual reticulation").

New section 646 Application of s 633 to a relevant recycled water scheme. Inserts a new section 646 into the Act. The new section provides that sections 633(2) and (3) apply to schemes inadvertently caught by provisions of the Act (namely those which are "a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines" but do not fall within the definition of "dual reticulation"). That is because section 633 has always been intended to provide the requirements for certain schemes including for the inadvertently caught schemes.

The effect of the new section 646 will be that:

- those schemes that supply before 1 July 2008 will have until 1 July 2013 to have an approval (consistent with s 633(2)).
- those schemes that supply on or after 1 July 2008 will have until 1 July 2013 or "the day that is 1 year after the day recycled water is first supplied under the scheme" which ever is later, to have an approval. This amendment is necessary because the current deadline under section 633(3)(b) is 1 July 2009 and, unless this date is changed, it is possible that some entities responsible for relevant schemes would be in breach of the section as a result of the introduction of this clause. The provision will also ensure that schemes that commence supply after 1 July 2013 will get 1 year before they have to have an approval.

Amendment of sch 3 (Dictionary)

Clause 216 amends the dictionary to the Act at schedule 3. The clause amends some existing definitions and inserts new definitions, in particular to insert a new definition of 'dual reticulation'. The new definition ensures that schemes are only captured where a network of pipes allows drinking water and recycled water to be supplied to premises from separate pipes and recycled water is provided for any of the following purposes:- a) toilet flushing; and b) in residential premises, connection to a cold water laundry tap for a washing machine, irrigation of lawns or gardens, or for external wash down.

The new definition of 'dual reticulation' means that schemes will be able to apply for an exemption from having a recycled water management plan as they will no longer be inadvertently caught as dual reticulation schemes.

Appropriate safeguards will continue to apply to these schemes. This will remove barriers to entry and increase the uptake of water recycling by service providers. Appropriate safeguards will continue to also apply to dual reticulation schemes.

Division 17 Amendment of Wild Rivers Regulation 2007

Regulation amended

Clause 217 provides that division 17 amends the *Wild Rivers Regulation 2007*

Amendment of s 3 (Specified works-other infrastructure (Act, s 48))

Clause 218 amends section 3(2) of the *Wild Rivers Regulation 2007* which provides the definition of "indigenous land" for the purposes of the regulation and updates that definition.

Schedule Dictionary

The Schedule defines particular words used in the *Aboriginal and Torres Strait Islander Land Holding Bill 2011*.