Aboriginal and Torres Strait Islander Land Holding Bill 2012

Explanatory Notes

Short title

The short title of the Bill is the *Aboriginal and Torres Strait Islander Land Holding Bill 2012.*

Policy objectives and the reasons for them

The *Aboriginal and Torres Strait Islander Land Holding Bill 2012* (the Bill) addresses issues arising from the implementation and operation of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* and the *Land Act 1994* to remove barriers to sustainable home ownership on certain Indigenous land in Queensland affected by the operation of those Acts; and the Bill amends the *Land Act 1994* to facilitate certainty for rural leaseholders and Indigenous people in relation to access and use of State rural leasehold land and assist in more timely resolution of native title claims over this land. The Bill also provides improvements to the operation of the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991.*

The policy objectives of the Bill are:

- To resolve leasing issues arising from the implementation and operation of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985.*

  The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* commenced on 24 April 1985. The principal policy objective of the Act was to provide a mechanism for residents of Indigenous Deeds of Grant in Trust (DOGIT) and Indigenous reserve land to be able to apply for perpetual leases for private home ownership and special leases for commercial purposes. The actual operation and grant of leases under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* was difficult largely due to the application, assessment and approval processes of applications under the Act

which required decision-making by Indigenous local governments and two State Government Ministers.

The two Ministers formerly responsible for administering the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* were the Minister for Aboriginal and Torres Strait Islander Partnerships and the Minister administering the *Land Act 1994*. Each Minister had different roles as defined in the Act. The administrative responsibility was subsequently reduced to one Minister in 2009 and the current responsible Minister is the Minister for Natural Resources and Mines.

In 1991 the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* commenced and became the principal legislation in Queensland for leasing on Indigenous lands. As such from 21 December 1991 applications for leases could no longer be made under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* – this came into effect with the inclusion of section 33A into the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

Searches by the Department of Natural Resources and Mines of records held by relevant State Government agencies and local governments has identified (as at 30 July 2012) 697 applications for leases made under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. Of these, 214 perpetual leases and 9 special leases were granted and 474 are unresolved applications, of which 222 are entitled to be granted a lease (lease entitlements) and 252 applications are invalid.

Where an application was properly made and approved under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* prior to 21 December 1991, the State is obliged to grant a lease over the area covered by the application. These outstanding applications must be resolved to give certainty to both the applicants and the State.

- To ensure Indigenous local governments have continued statutory access to those improvements from which they provide municipal services once the land is transferred, under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

  Statutory access currently only extends to the State and Commonwealth governments to provide access and use of land in an Indigenous community in order to continue to provide services such as for educational facilities, health facilities etc once that land is transferred.

The Bill better defines the area that can continue to be used by the State and the Commonwealth once the land is transferred such that the statutory access right ensures continued access, use, occupation and maintenance to the full extent of the existing facilities and previously reserved area in order for the State and Commonwealth to continue to provide services to the Indigenous community.

To provide a power under the *Land Act 1994* to subdivide Deed of Grant in Trust (DOGIT) land and thus facilitate development in Indigenous communities.

Almost all remote Indigenous communities are located on DOGIT land. Development of DOGIT land is currently managed by the trustee through leasing the land. A lease over DOGIT land does not have the effect of permanently subdividing the land which may result – even in the case of a lease over the same area for the same purpose – in triggering and re-triggering development assessment under the *Sustainable Planning Act 2009*.

There are a number of aspects to effective land management that would be facilitated by the subdivision of DOGIT land. Planning schemes could be more easily implemented if the DOGIT was made up of a number of separate discrete parcels, as well as allowing the trustees to implement differing land management regimes for separate and discrete parcels constituting the DOGIT.

- To provide a statutory framework for Indigenous land access on State rural leasehold land leased for agriculture or grazing by setting out in the *Land Act 1994* requirements for Indigenous Access and Use Agreements (IAUA) and Indigenous Land Use Agreements (ILUAs).

  Currently the *Land Act 1994* does not specifically define the requirements for the making, registration, notification, review, monitoring and continuity of an IAUA, nor does it specify that an ILUA must convey access and use rights to Indigenous people for traditional activities. The amendments in the Bill provide the statutory framework for rural leasehold land lessees and Indigenous parties for an area to enter into either an IAUA or an ILUA which supports Indigenous access to State rural leasehold land for traditional purposes and enabling the lessee to seek a longer lease term or an extension to their lease term.

As an additional incentive, the Bill introduces a five year 25 per cent rental concession for eligible State rural leasehold land lessees who enter into an IAUA or an ILUA to not be a respondent party in a native claim over the leasehold land, and to pay for public liability insurance under the IAUA or ILUA.

The inclusion of these amendments in the Bill provides certainty for rural leasehold land lessees and Indigenous Queenslanders in relation to access and use of rural leasehold land for traditional purposes, and assists in the more timely resolution of native title claims.

Rural leasehold land is State land that is leased for agriculture or grazing. It does not include lease land that is within a reserve, State forest, timber reserve, national park, conservation park, resources reserve or forest reserve.

Achievement of policy objectives

Resolving leasing issues arising from the Aborigines and Torres Strait Islanders (Land Holding) Act 1985

The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* only applies to Indigenous DOGIT or reserve land and only a qualified person could apply for a perpetual or other suitable lease for residential or commercial purposes, for example a farming, grazing or tourism lease. The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* does not provide for the creation of ordinary freehold.

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 DOGIT or reserve land under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (such as an authorised officer appointed under the local laws of the Indigenous Council).

Whilst no further applications could be made under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* from 21 December 1991, all other provisions of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* have remained substantially the same since that Act commenced and continue to apply to leases and applications for leases under the Act.

Searches by the Department of Natural Resources and Mines of relevant State agencies and local government records has identified as at 30 July 2012 there are 697 known applications under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. Of these known applications:

- 214 perpetual leases have been granted (for residential purposes);
- 9 special leases have been granted (for commercial purposes); and
- 474 applications remain unresolved.

Of the 474 unresolved applications:

- 222 applicants are entitled to be granted a lease; and
- 252 applications are invalid.

Granted leases under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* are 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, St Pauls (Moa) and Warraber.

The majority of 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.

The outstanding applications need to be resolved because where an application was properly made and approved by the Indigenous local government, the State is obliged to grant a lease over the area covered by the application.

The Bill has been developed to resolve the outstanding applications. In developing the Bill a broad range of current and historical issues were identified including:

- processes to resolve tenure anomalies with the applications in relation to the boundary description and encroachments;
- a legal resolution of circumstances where applicants with invalid applications have built infrastructure on the site applied for;
- a clear legal process to determine succession arrangements where applicants are deceased (based on the length of time to resolve these leasing issues it is considered likely that this issue will need to be

considered in respect to over 50 per cent of outstanding applications); and

- determining ownership of social housing dwellings and other infrastructure constructed on leases and outstanding application areas.

To address these significant issues, it is considered necessary to repeal the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985.* Therefore the Bill repeals that Act and introduces a new Act, the Aboriginal and Torres Strait Islander Land Holding Act. The new Act contains the necessary legislative provisions to provide the required processes and tools to resolve the granted and outstanding lease entitlements.

The Bill also makes consequential minor amendments to the *Environmental Protection Act 1994*, the *Land Court Act 2000*, the *Mineral Resources Act 1989*, the *Survey and Mapping Infrastructure Act 2003*, the *Sustainable Planning Act 2009,* the *Sustainable Planning Regulation 2009,* the *Vegetation Management Act 1999* and the *Wild Rivers Regulation 2007* to change references in those Acts from the repealed Act to the new Aboriginal and Torres Strait Islander Land Holding Act.

Administrative process to grant a lease and lease conditions under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*

The trustee, who owned or controlled the land (usually the Aboriginal or Torres Strait Islander Council), determined whether or not to approve an application made by an authorised person under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. The Trustee could only approve applications for a perpetual lease 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 1994* (for example granting a special lease for a term of 30 years).

Whilst the trustee had complete discretion in considering applications, the Act defined certain criteria that had to be considered and applied before approval could validly be given. This included a 28 day notification period.

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

- the trustee had to send the approved application to the Minister administering the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985;*
- that Minister then had to send the approved application to the Minister administering the *Land Act 1994* who had to initiate the process of issuing the lease.

The applicant immediately became entitled to the lease as soon as the trustee approved the application. At this time land ceased being Indigenous DOGIT 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.

Leases issued under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* did not include any improvements on the land, such as housing. The owner of any improvements on land with a valid lease approval 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 did not occur or the purchase price was not paid, the leaseholder is 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 the annual rent payable in respect of the leases. The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* 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 their rent.

A leaseholder could also sublease or transfer their lease but only to another qualified person under the Act. A lease could 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.

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 applications may be uncertain. The exact area of the application is important because the tenure of the land automatically changed from Indigenous DOGIT 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 area of the land within the Indigenous DOGIT or reserve land affected by an application divested to immediately become unallocated State land when the application was approved. This unnecessarily complicates the administration of the Indigenous DOGIT or reserve land and has impacted on the administration of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

Achievement of administrative simplification

The Bill simplifies administration and reinstates the underlying communal ownership by returning the divested land affected by approved applications or leases to the Indigenous DOGIT or reserve land. This provision does not impact on the ownership of any improvements on the affected land.

In addition to this, the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* contains a number of restrictions or qualifications on holding the lease, occupation of the lease, rental and forfeiture. These provisions 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 *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* continue to be perpetual or term leases (based on the original application) but in relation to their administration the Bill applies 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 Act.

The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* includes provisions which enables the appointment of visiting justices and appeal tribunals to deal with certain matters in relation to the Indigenous DOGIT or reserve land. In 2009 a report "Brokering Balance: A Public Interest Map for Queensland Government Bodies – An Independent Review of Queensland Government Boards, Committees and Statutory Authorities" was released and recommended these particular tribunals be abolished. It is considered appropriate to abolish these tribunals as they have not been operative since 1991 and as such are not continued in the Bill.

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

Identifying lease entitlements

Under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985,* based on information available to the Department of Natural Resources and Mines, 222 applications were approved by the trustee; however, the leases were not granted by the State.

The applicants for these leases (lease entitlements) are entitled to a granted lease as per the provisions of the Act.

Given the passage of time, and in the interests of natural justice, the Bill includes provisions requiring the chief executive to publish on the department's website a notice of lease entitlements.

This lease entitlement notice must:

- identify the trust area for the lease entitlement;
- include the identification number of the original application, if known;
- identify the holder of the lease entitlement; and
- give a description of the lease entitlement land to the extent reasonably practicable.

Where a person believes they hold evidence of a lease 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 this evidence.

There may also be some instances where a person applied for a lease and they thought it was approved by the trustee. Consequently, they may have relied upon that belief and may have built on the land. To ensure that these applicants are not unduly impacted, the Bill provides that where a person demonstrates this 'hardship' case, the chief executive must decide that the value or cost of the land for the purposes of a lease under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* 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 lease entitlements

The Bill maintains the Minister's obligation to grant the lease to satisfy the lease entitlement the applicant had under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. The Bill restores the land to the Indigenous DOGIT 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 in the case of these lease entitlements to ensure the obligations arising from the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* are finally satisfied.

Given the ability to apply for leases ceased in December 1991, and the length of time since then, there may be a number of practical obstacles to the grant of some lease entitlements. To ensure any matters are dealt with, the Bill places an obligation on the Minister to identify and document in a statement of reasons any practical obstacles that exist to the granting of a lease to satisfy the lease entitlement. To assist the Minister in preparing the statement of reasons, advice will be sought from the Community Reference Panel.

The Minister may establish a Community Reference Panel for a particular affected trust area community and may include representatives of relevant government agencies and the trustee of the land (currently the Aboriginal or Torres Strait Islander Council). The Community Reference Panel may invite persons likely to be affected by the Minister's decision to grant a lease entitlement to participate in the group's consideration of matters and will provide recommendations to the Minister.

In the interests of natural justice, individuals may also bring forward a claim to the Minister requesting that the lease be granted because there are no practical obstacles. The provisions in the Bill require that the Minister must consider the request. If the Minister refuses to grant the lease then this decision may be appealed to the Land Court by the applicant.

Where the proposed grant of the lease to satisfy the lease entitlement is not affected by any 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 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.

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

Resolution of boundary and encroachment issues

To address issues with boundaries and encroachments, the Bill permits the relocation of the boundary of a lease based on agreement with affected parties. 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 an agreed consideration.

Continuation of subleasing

The Bill permits the lessee to enter into a sublease or other arrangement (such as an easement) with the State, trustee or any other person. The Bill requires that subleasing and other arrangements need the consent of the trustee but that consent cannot be unreasonably withheld.

Ownership of social housing dwellings

Under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*, 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.

To assist with removing barriers to sustainable home ownership on Indigenous land in Queensland the aim of the Bill is to merge the ownership of the lease and the dwelling. Any existing contract to purchase the dwelling is continued, the Bill does not change the content or provisions of that existing contract.

However, if there is no existing contract to purchase the dwelling, the Bill provides that the lessee or the 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, a sublease may be agreed between the lessee or proposed lessee and the Indigenous Shire Council or the State.

Identifying beneficiaries

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 to the lease or lease entitlement.

Where there is no will, the Bill expressly 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 is included in the Bill to reduce expenses for the potential beneficiaries who otherwise would be required to seek letters of administration in the Supreme Court.

Indigenous Local Government continued access and use of municipal facilities and services on transferred land

The Bill amends the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to provide local government continued statutory access to those improvements from which they provide municipal services once the land is transferred. This resolves an otherwise contentious issue as the local government, as the current trustee of the land, will often not support the transfer of the land until they have a lease or other arrangement in place with the proposed new trustee ensuring their continued use and access of the land. However, the proposed new trustee is not able to grant the lease until after the transfer, and a lease can not be put in place prior to transfer as the local government, as trustee, can not grant itself a lease.

The Bill also amends the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to better define the area that can continued to be used by the State and the Commonwealth once the land is transferred such that the statutory access right ensures continued access, use, occupation and maintenance to the full extent of the existing facilities and previously reserved area in order to continue to deliver and provide services to the Indigenous community.

This statutory access right remains available until such time as a lease or other suitable arrangement is in place.

Subdivision of a Deed of Grant in Trust (DOGIT) land to facilitate development on DOGIT land

The Bill amends the *Land Act 1994* to insert a power enabling the trustee of a DOGIT to subdivide the DOGIT, with the approval of the Minister and subject to a covenant to ensure that all the separate parcels that together constitute the DOGIT are held in the same ownership.

Statutory framework for Indigenous land access on State rural leasehold land

The *Land Act 1994* provides for Indigenous access and use agreements linked to the grant of longer lease terms and lease extensions. These agreements are voluntary. If an agreement is established, it enables a lessee to seek the maximum lease term or extension of lease over pastoral land where native title may still exist. The framework for access and use agreements applies to State leases that have a term of 20 years or more and have been issued for grazing, agricultural or pastoral purposes and whose area is 100 hectares or greater. There are approximately 1,800 such leases covering some 50% of the State.

The *Land Act 1994* is silent on the requirements for Indigenous access and use agreements in general and amendments to the *Land Act 1994* are required to define this. 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.

Clarification of agreements (IAUA or ILUA)

The generic term 'Indigenous access and use agreement' (or IAUA as it is has come to be known) has led to confusion where the current legislative definition provides that an IAUA can be either:

(a) an Indigenous Land Use Agreement (ILUA); or

(b) 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 Commonwealth *Native Title Act 1993* and specifically deals with native title rights and interests, and does not necessarily confer access and use rights to Indigenous people for traditional purposes.

An IAUA is made under the *Land Act 1994* and does not 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.

While it is clear 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 on State rural leasehold land, the precise requirements for such agreements are not defined. The *Land Act 1994* is also silent on the necessity for ILUAs, when used for the purposes of seeking the maximum term or extension benefits available under the *Land Act 1994*, to include provisions which recognise Indigenous access and use rights. This requires clarification.

The nature of inclusions in ILUAs made under the Commonwealth *Native Title Act 1993* are only provided for in the State's policy which provides that ILUAs for these purposes are required to allow access and use by Indigenous people for traditional purposes defined as camping, fishing, gathering and hunting, performing rites or other ceremonies, and visiting sites of significance.

To remove any doubt, when an ILUA is being used in place of IAUA, the Bill provides that only an ILUA which includes specific access and use arrangements may be used for the purposes of seeking maximum term or extension benefits for State rural leasehold land.

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 is not compliant with the *Native Title Act 1993* and *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth).

Ministerial decision making – lease terms and agreement content

The Bill 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 under the *Land Act 1994* regarding IAUAs or ILUAs:

- 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;

- who is an appropriate party to enter into an IAUA or ILUA over a pastoral lease for the purposes of 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 and terms 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 Bill provides the Minister with powers to fix the terms (mandatory terms) and set formats for IAUAs and ILUAs used for the purposes of State rural leasehold lease renewal and lease extension processes under the State Rural Leasehold Land Strategy and the *Land Act 1994*. This is necessary to:

- facilitate agreement-making between the relevant parties;
- set standards for agreement-making and benchmark agreements to their reasonableness and workability (i.e. ensuring that IAUAs and ILUAs are balanced, practical and enduring) while allowing flexibility for lessees and Indigenous parties to adapt certain parts of a standard form or agreement templates to suit their specific needs; and
- ensure that dealings with IAUAs and ILUAs under the *Land Act 1994* are consistent and objective.

The Bill provides that the mandatory terms of an agreement may not be inconsistent with the minimum requirements prescribed under new Schedule 3. This provides a legislative basis for the existing *Pastoral Indigenous Land Use Agreement template* and *Guide to the Pastoral ILUA template* - published in November 2011 (developed jointly by the North Queensland Land Council, Queensland South Native Title Services, AgForce Queensland and the Queensland Government with the assistance of the National Native Title Tribunal).

This Schedule will also provide guidance and clarity for any future template agreements and guides which may be developed.

Registration of interests and continuity of agreements

The Bill creates a new interest in lease land under the *Land Act 1994*, the Indigenous cultural interest. Where an IAUA or an ILUA is entered into, the Minister can now approve the interest 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. The interest is relevant only to certain rural leases for the purposes of sections 155(5) to (6), 155B, 155BA and new section 188A.

The purpose of the interest is to allow approved IAUAs and ILUAs to travel with the land, that is, the agreement remains in place even if the lease is transferred, subdivided or amalgamated; or the lease is converted to another non-freehold tenure. This provision provides certainty of the agreement, particularly for Indigenous parties, and ensures the security of the agreement.

Native title and the indigenous land access initiative

The Bill provides that lessees may use an IAUA or an ILUA, made for the purposes of the State Rural Leasehold Land Strategy as an alternative mechanism to address their interests in a native title claim.

Similarly, a non-extinguishing ILUA which resolves native title may be used for the purposes of the State Rural Leasehold Land Strategy 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. IAUA or ILUA), the lease and a determination of native title are protected. This approach takes into account the fact that:

- around 70% of State rural leasehold land 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 fact that a single access and use agreement may be used for multiple purposes (i.e. access by Indigenous people to State rural leasehold land for traditional activities; the lessees ability to gain a more favourable lease term; quicker resolution of native title) and survive non-freehold land dealings reduces red tape and costs for all parties.

Introduction of a limited life rental concession

The Bill includes a new provision to provide for a head of power to grant a limited life 25 per cent rental concession for a State rural leasehold land lessee who enters into an IAUA or ILUA and removes themselves as a respondent to any native title claim. This financial incentive is to encourage a pastoral lessee to resolve their interest in any native title claim while at the same time addressing public liability insurance impediments which have hindered access to and use of State rural leasehold land leases by traditional owners, advancing the access and use initiative component of the State Rural Leasehold Land Strategy.

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

- apply to standard format IAUAs and ILUAs;
- apply only to State rural leasehold land;
- be provided only once per lease; and
- only be in place for five years.

Lessees must apply for the concession by 30 June 2018. No new concessions will be granted from 1 July 2018. To remove any doubt, no new applications for the rental concession will be considered after 30 June 2018.

Concessions issued are to run for a maximum of 5 consecutive years from the date of the original grant starting on 1 July 2013 or the start of the next full rental period following the day of approval, whichever is the later.

There are three key conditions for the concession to be granted. They 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.

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

Resolving leasing issues arising from the Aborigines and Torres Strait Islanders (Land Holding) Act 1985; Indigenous Local Government continued access and use of municipal facilities and services on transferred land; and Subdivision of a Deed of Grant in Trust (DOGIT) land to facilitate development on DOGIT land

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 Housing and Public Works, the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, and the Department of Natural Resources and Mines. 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.

It is expected that the financial implications will be reduced by the work already undertaken by the Remote Indigenous Land and Infrastructure Program Office, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, 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 Natural Resources and Mines in progressing transfers of Aboriginal and Torres Strait Islander land under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

Statutory framework for Indigenous land access on State rural leasehold land

The introduction of the 25 per cent rental concession under the *Land Act 1994* for State rural leasehold land lessees will result in reduced rental amounts received by the State Government. As the concession is a limited life concession and will only be for five years, this is a limited loss of revenue over a short period.

The loss of revenue is expected to be offset through savings made by the State Government through the quicker progression of native title claims as the State rural land lessee will no longer be a respondent party to the native

title claim thereby reducing the State's costs and time in managing the native title claim.

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.

Whether legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is **sufficiently defined** and subject to appropriate review—*Legislative Standards Act 1992*, s 4(3)(a)

- The *Land Act 1994* amendments provide for a new type of registered interest, an Indigenous cultural interest. Registration of this interest is dependent on the Minister's approval. One criterion for granting the approval is a requirement that a required agreement complies with a template set by the Minister. Although the template is set by the Minister, the amendments fix in the Act the most important rights and obligation of the parties under the required agreement.

Whether legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and **subject to appropriate review**—*Legislative Standards Act 1992*, s 4(3)(a).

- In relation to the amendments to the *Land Act 1994* that provide that an application seeking a discount of 25 percent on the rent payable for a period of five years can be made to the Minster, there will be no appeal rights for a refusal to grant the discount. 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.
- In relation to the repeal of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*, lease entitlements and leases granted under that Act are protected by the Bill. Where relocation of a lease or lease entitlement area is required, this can only occur by agreement or, if agreement cannot be reached, based on a decision of the Land Court (including appropriate compensation).
- Before granting a lease, the Minister must identify and resolve any identified practical obstacles. If no obstacles are identified, the Minister can grant a lease over land that is owned by another entity, that is, either the trustee, or, where a townsite lease exists the townsite lessee. This land is owned by the entity and not the State because the

Bill returns State land affected by the lease entitlements and leases to the trustee's ownership (and the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* allows the land to be the subject of a townsite lease).

- The Bill requires the Minister to consult with the entity but does not allow the entity to appeal the Minister's decision that there are no practical obstacles. In contrast, other decisions made by the chief executive or Minister under the Bill may be appealed to the Land Court. It is important to note that leases to satisfy the lease entitlements should have already been granted under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. Also, the purpose of identifying practical obstacles is to ensure that the lessee is not granted a lease burdened with problems rather than to address any other concerns the entity has about the lease entitlement.
- Whilst the Bill permits the grant of a lease to be deferred, this is not to diminish the obligation to the grant of the lease. Instead, this allows the resolution of those obstacles prior to the grant and means the lessee receives a lease that is not burdened by any 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 practical obstacle to the grant of a lease.

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

- The Bill is consistent with the principles of natural justice because individuals: can apply to the chief executive to have their application considered as a lease entitlement; can receive a hardship certificate where they had reason to believe their application had been approved, and acted on that basis; and can appeal a decision of the Minister that there are practical obstacles to the grant of a lease. Additionally, the Minister must provide reasons for decisions and the decisions may be appealed to the Land Court.

The Bill will not otherwise adversely affect rights and liberties, or impose obligations, retrospectively.

The Bill has sufficient regard to Aboriginal tradition and Island custom by ensuring that community reference panels, which may be established to assist and provide recommendations about how practical obstacles can be resolved, include the trustee and persons affected by those obstacles.

Consultation

Resolving leasing issues arising from the 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. The paper outlined proposals to change how leases are granted and their ongoing conditions.

The discussion paper was provided to the following key stakeholders:

- 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 then Department of Environment and Resource Management's 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 then Mayors of all the Aboriginal and Torres Strait Islander Councils and Cape York Regional Organisations.

The Department of Natural Resources and Mines has consulted with other State Government departments throughout the development of this Bill.

There has otherwise been no community or stakeholder consultation on the specific Indigenous Leasing initiative contained in the Bill.

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.

Indigenous Local Government continued access and use of municipal facilities and services on transferred land

No consultation was undertaken on this initiative and amendments as these amendments are considered to be technical in nature.

Subdivision of a Deed of Grant in Trust (DOGIT) land to facilitate development on DOGIT land

No consultation was undertaken on these initiatives and amendments as these amendments are considered to be technical in nature.

Statutory framework for Indigenous land access on State rural leasehold land

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, North Queensland Land Council and Queensland South Native Title Services on the Pastoral ILUA and rental concession which were facilitated by the National Native Title Tribunal. North Queensland Land Council and Queensland South Native Title Services cover more than 80% of the State's rural leasehold estate, so are major stakeholders.

Consistency with legislation of other jurisdictions

The Bill is consistent with the requirements of the Commonwealth *Native Title Act 1993*. Leases under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* extinguish native title, unless section 47A of the Commonwealth *Native Title Act 1993* 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 Commonwealth *Native Title Act 1993*.

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

Notes on Provisions

Aboriginal and Torres Strait Islander Land Holding Bill 2012

Part 1 Preliminary

Division 1 Introduction

Short title

Clause 1 provides for the short title of the Act.

Commencement

Clause 2 provides that part 12, division 2, subdivisions 1 and 2; part 12, division 4; and part 12, division 10, subdivisions 1 and 2 of the Act commence automatically and the remaining parts of the Act commence by proclamation.

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 *Aborigines and Torres Strait Islander (Land Holding) Act 1985* (defined as 'the 1985 Land Holding Act'), to resolve boundary problems affecting 1985 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 1985 Act granted leases. This clause clarifies that the Act allows the grant of a lease to be deferred where practical obstacles are identified. The purpose of the deferral is to resolve those obstacles and does not 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 1985 Land Holding Act.

Under the 1985 Land Holding Act, when an application for a lease was approved the land divested to become unallocated State land 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 confirms that the Act continues 1985 Act granted leases, provides for the granting of new Act granted leases, and applies the ALA or TSILA to these leases to the extent practicable.

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

Clause 6 confirms that the only way to satisfy a right to a lease that arose under the repealed 1985 Land Holding Act is the grant of a lease under this 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 for the Act.

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 1985 Land Holding Act that resulted in the right to be granted a lease under the 1985 Land Holding Act. The definition of holder confirms that entitlements to a lease arising under the 1985 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 1985 Land Holding Act, whether the land is held under the *Land Act 1994* or transferred under the ALA or TSILA.

Part 2 Transition from 1985 Land Holding Act to this Act

Division 1 Adjustment of status of land affected by 1985 Act

Return of land previously divested under 1985 Land Holding Act

Clause 11 ensures that land which divested to unallocated State land under the 1985 Land Holding Act 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 reflect this. Revesting the land into the trust area does not change the ownership of the improvements.

Continuation of 1985 Act granted leases

Clause 12 continues and validates any leases granted under the 1985 Land Holding Act 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 1985 Land Holding Act.

For greater consistency with the ALA and the TSILA, this clause ensures the trustee of the trust area or the townsite lessee is taken to be the lessor of a 1985 Act granted lease. The clause also confirms that the 1985 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 8 of the Act. The leases are also subject to the ALA or the TSILA as provided for under Part 9 of the Act.

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

Division 2 Advice to Minister

Establishment of community reference panels

Clause 13 provides that the Minister may establish a community reference panel for a trust area. The panel may include the chief executive, any other chief executive having responsibilities in relation to the trust area, and the trustee. The panel may invite other persons, or their representatives, likely to be impacted by matters to be considered by the panel to participate in the panel's considerations.

Part 3 Lease entitlements

Division 1 Introduction

Operation of pt 3

Clause 14 outlines that part 3 sets out the processes for the chief executive to publish lease entitlements and for persons to apply to the chief executive to publish or replace published information.

Division 2 Publication of lease entitlement notices

Chief executive to publish lease entitlement notice

Clause 15 requires the chief executive to publish a lease entitlement notice for each known lease entitlement in a trust area.

Requirements for lease entitlement notice

Clause 16 provides that the lease entitlement notice is published on the department's website and sets out the information to be included in the notice.

Replacement lease entitlement notice

Clause 17 provides for the publication of a replacement lease entitlement notice where further or more accurate information is obtained.

Division 3 Trust area notice

Chief executive to notify trustee about lease entitlements

Clause 18 provides that the chief executive gives a trust area notice to the trustee when substantially all of the lease entitlement notices have been given and what the trust area notice must contain. Importantly giving the trust area notice commences the 18 month period in which a person can apply to chief executive officer to publish a lease entitlement notice that was not included in the trust area notice or to apply to the chief executive to

publish a replacement lease entitlement notice for an incorrect lease entitlement notice.

Chief executive to notify trustee if no lease entitlements

Clause 19 provides that the chief executive also gives a trust area notice to the trustee where no lease entitlements exist for the trust area. Importantly giving the trust area notice commences the 18 month period in which a person can apply to chief executive to publish a lease entitlement notice.

Publication of trust area notice

Clause 20 provides that the trust area notice is published on the department's website and the trustee may be asked to prominently display a copy of the notice and keep a copy of the notice available for inspection.

Division 4 Addition to and replacement of lease entitlement notices

Time limits for application under this division

Clause 21 provides that a person has 18 months from the date of the trust area notice to apply to the chief executive to publish or replace a lease entitlement notice for that trust area.

Application for publication of lease entitlement notice

Clause 22 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 6 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 lease entitlement notice

Clause 23 allows an applicant to appeal to the Land Court against a 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 replacement of lease entitlement notice

Clause 24 allows a person to apply to the chief executive to 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 6 months or if further information is requested by the chief executive, a further period reasonably required by the chief executive to consider the additional material.

The chief executive must publish a replacement to the lease entitlement notice if the application is approved or may publish a replacement 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 about decision on application for replacement of replacement lease entitlement notice

Clause 25 allows an applicant, or an affected person, to appeal to the Land Court a decision of the chief executive to refuse an application for a replacement lease entitlement notice, or replace the notice inconsistent with the application. The appeal must be started within 28 days of the decision.

Division 5 Lease entitlement not established

Hardship certificate

Clause 26 provides that the chief executive may give a person a hardship certificate if they applied for a lease under the 1985 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 cost of lease land valued at nil if the trustee approves the grant of a private residential lease under the ALA or TSILA.

Division 6 Surrender of lease entitlement

Surrender

Clause 27 allows a holder to surrender their lease entitlement or part of their 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 on the department's website.

Part 4 Identification of practical obstacles

Operation of pt 4

Clause 28 outlines that part 4 establishes the process identifying any practical obstacles that need to be resolved before a lease may be granted.

What are practical obstacles

Clause 29 provides guidance on what a 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, the ownership of improvements needs to be resolved, or there are competing interests in the lease entitlement land that need to be dealt with.

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 practical obstacle.

Minister refers lease entitlement notice to community reference panel or reference entity

Clause 30 requires the Minister to refer each lease entitlement notice to a community reference panel, if established, or otherwise a reference entity (defined as the trustee or townsite lessee of the area). This allows the community reference panel or reference entity to provide any advice or recommendations to the Minister within 3 months about any practical obstacles and ways to satisfy the lease entitlements.

Minister advises of obstacles and gives statement of reasons

Clause 31 requires the Minister to consider any information, advice or recommendation given by the community reference panel 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 by the chief executive to publish on the department's website information about the statement of reasons (obstacles).

Application about statement of reasons (obstacles)

Clause 32 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 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.

Refusal to amend statement of reasons (obstacles)

Clause 33 provides how a person may appeal to the Land Court the decision of the Minister refusing to amend a statement of reasons (obstacles).

Part 5 Grants of leases to satisfy lease entitlements

Division 1 Introduction

Operation of pt 5

Clause 34 outlines that Part 5 sets out the processes for the Minister to grant leases to satisfy lease entitlements.

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

Minister may grant lease

Clause 35 allows the Minister to grant a lease to satisfy a lease entitlement. This can occur where the Minister is satisfied there are no practical obstacles to the grant, as outlined in the statement of reasons (obstacles).

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 1985 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.

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

Application to proceed immediately with the grant of a lease

Clause 36 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 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 part 4 to prepare a statement of reasons (obstacles).

Consideration of application

Clause 37 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 takes 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 proceed immediately with grant of lease

Clause 38 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.

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 39 provides for a deferred grant. This clause allows the Minister to make a deferred grant of a lease to satisfy a lease entitlement if there are practical obstacles, as identified in a statement of reasons (obstacles). Granting a lease satisfies the lease entitlement.

Subdivision 2 Consultation or agreement before deferred grant

Purpose of sdiv 2

Clause 40 states that the subdivision outlines the requirements to be satisfied before the Minister can make a deferred grant.

Minister may rely on advice

Clause 41 provides that the Minister may rely upon consultation undertaken by the community reference panel for the purposes of the Minister's consultation.

Reference to community reference panel

Clause 42 requires the Minister to refer the statement of reasons (obstacles) for the lease entitlement to the community reference panel, where established, for consideration and for any advice and recommendation about satisfying the lease entitlement. The panel may consult with any person. The Minister must give the community reference panel access to the information and documents used to prepare the lease entitlement notice.

Persons to be consulted

Clause 43 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 44 provides that where the statement of reasons (obstacles) identifies that the location of lease entitlement land is unclear then 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 45 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 dwellings.

Subdivision 3 Agreed deferred grant

Minister may make agreed deferred grant

Clause 46 permits the Minister to make a deferred grant where the Minister considers all necessary agreements have been entered into (defined as an 'agreed deferred grant'). The lease may be granted subject to conditions consistent with the agreements. The Minister must notify the proposed grantee and provide them with the statement about how the proposed approach satisfies the lease entitlement.

Subdivision 4 Contested deferred grant

Application to Land Court in absence of agreement

Clause 47 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 48 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 49 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 50 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 8 and the provisions of ALA and TSILA under Part 9.

Part 6 Boundary relocations for particular 1985 Act granted leases

Division 1 Introduction

Operation of pt 6

Clause 51 provides that Part 6 outlines the process to relocate boundaries of 1985 Act granted leases, including identifying problems and obtaining advice from the community reference panel about resolving boundary problems.

Division 2 Consultation about boundary relocations

Consultation about boundaries of lease

Clause 52 provides that where the Minister considers that it is not practicable for the boundaries of an 1985 Act granted lease to remain the same, then the Minister must advise the lessee and refer the boundaries of the granted lease to the community reference panel, where established, for consideration, advice and recommendation. The community reference panel may consult with the lessee and may consult with any other person it considers appropriate.

Division 3 Agreed boundary relocation

Application to Land Court in case of agreement

Clause 53 permits the Minister to apply to the Land Court to relocate the boundaries of the 1985 Act granted lease where 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 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 54 allows the Land Court to decide the Minister's application to relocate the boundaries of a 1985 Act granted lease. The Land Court must consider whether the Minister has complied with the requirements of Part 6 and that the necessary agreements have been entered into.

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

Division 4 Contested boundary relocation

Application to Land Court in absence of agreement

Clause 55 permits the Minister to apply to the Land Court to relocate the boundaries of a 1985 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 56 allows the Land Court to decide the Minister's application to relocate the boundaries of a 1985 Act granted lease. The Land Court must decide whether the Minister has complied with the requirements of Part 6 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 57 allows the lessee for a contested boundary relocation of a 1985 Act granted lease 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.

Division 5 Recording boundary relocation

Recording of boundary relocation

Clause 58 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 7 Ownership of structural improvements

Ownership of improvements continues

Clause 59 confirms that the ownership of an improvement located on land the subject of a 1985 Act granted lease or lease entitlement is not affected by the repeal of the 1985 Land Holding Act.

Agreement or arrangement for 1985 Land Holding Act, s 15

Clause 60 continues in force an agreement or arrangement for the purchase of an improvement entered into for the purposes of section 15 of the 1985 Land Holding Act. It does not matter whether or not the price and terms and conditions were approved by the Governor in Council under the 1985 Land Holding Act or whether the improvement is located on lease land for a 1985 Act granted lease or on lease entitlement land.

Gazette notice for completed agreement or arrangement

Clause 61 permits the housing chief executive to declare by gazette notice that an agreement or arrangement under section 60 is completed and the improvement is owned by the purchaser, provided the chief executive has the agreement of the purchaser and the owner of the improvement.

Use of valuation methodology for social housing dwelling

Clause 62 applies where a social housing dwelling is located on a 1985 Act granted lease, a new Act granted lease or a proposed new Act granted lease. This clause allows the owner to transfer the social housing dwelling to a lessee or proposed lessee. The value of the dwelling for the transfer 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, or an agreed or contested boundary relocation.

Part 8 Conditions and requirements applying to leases

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

Operation of div 1

Clause 63 specifies that division 1 of Part 8 applies to 1985 Act granted leases and new Act granted leases but not to term leases.

Dealings

Clause 64 outlines the conditions that apply to dealings for leases under the division. Clause 64(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 64(3) 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 64(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 65 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 6*6 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 67 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 68 permits the lessee to surrender all or part of the lease, provided written agreement has been provided 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 69 provides that the holder of a 1985 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 9 Application of provisions of ALA or TSILA

Division 1 Applying ALA or TSILA

ALA provisions

Clause 70 applies the ALA to a 1985 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 9 applies if the provisions of the ALA and Part 9 are equivalent in substance. Part 9 also applies if the provisions of the ALA are inconsistent with Part 9. The application of the ALA may also be varied under Division 2 of Part 9.

TSILA provisions

Clause 71 applies the TSILA to a 1985 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 9 applies if the provisions of the TSILA and Part 9 are equivalent in substance. Part 9 also applies if the provisions of the TSILA are inconsistent with Part 9. Division 3 of Part 9 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 72 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 73 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 74 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 75 provides a definition of a relevant lease for the subdivision.

Applying ALA, s 185 (Relationship with Land Act)

Clause 76 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 77 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 78 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 79 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 80 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 81 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 82 provides a definition of a relevant lease for the subdivision.

Applying TSILA, s 141 (Relationship with Land Act)

Clause 83 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 84 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 85 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 10 Miscellaneous

Plans of survey

Clause 86 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 requirement

Clause 87 confirms that a qualification requirement under the 1985 Land Holding Act has no effect on who may be the holder of a lease entitlement, or a continuing lessee of a 1985 Act granted lease or who may be granted a new Act granted lease.

Delegations

Clause 88 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 89 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 1985 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 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 90 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 91 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 92 permits the chief executive to approve forms for use under the Act.

Regulation-making power

Clause 93 permits the Governor in Council to make regulations under the Act.

Part 11 Repeal and transitional provisions

Repeal

Clause 94 repeals the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

Continuation of proceeding

Clause 95 continues any proceedings commenced but not completed before the commencement of the section, and allows those proceedings to be completed under the 1985 Land Holding Act.

Effect of regulation amendment

Clause 96 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 12 Amendment of Acts

Division 1 Amendment of this Act

Act amended

Clause 97 provides that division 1 amends this Act.

Amendment of long title

Clause 98 amends the long title of the new *Aboriginal and Torres Strait Islander Land Holding Act 2012* to remove references to other Acts amended.

Division 2 Amendment of Aboriginal Land Act 1991

Subdivision 1 Act amended

Act amended

Clause 99 confirms that division 2 amends the *Aboriginal Land Act 1991*.

Subdivision 2 Amendments for use of Aboriginal land

Amendment of s 45 (Existing interests)

Clause 100 inserts into section 45(7) that an interest includes a right of a local government to access, occupy, use or maintain a facility on the land. These interests continue once the land is transferred.

Insertion of new s 45A

Clause 101 inserts new section 45A which provides that the local government must use its best endeavours to obtain a registered interest for any existing interests it has under section 45 and must notify the trustee where it does not intend to continue to access, occupy or use or maintain a facility it has an existing interest in, under section 45.

Amendment of s 199 (Use of Aboriginal land preserved)

Clause 102 inserts new section 199(8) which defines, for the purposes of the *Aboriginal Land Act 1991*, that the area of land being used and occupied by the State or Commonwealth immediately before the transfer is the whole of the reserve area.

This provides that upon the transfer the State or Commonwealth may use and occupy the whole of the former reserve area.

Subdivision 3 Consequential amendments for new Land Holding Act

Amendment of s 45 (Existing interests)

Clause 103 amends section 45 of the *Aboriginal Land Act 1991* so as to include a lease granted under the 1985 Land Holding Act or a new Act granted lease as an existing interest.

Amendment of s 62, s 104 and s 120

Clauses 104 to 106 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 107 amends section 132 of the Act to refer to 1985 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 108 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 109 omits a comma from section 146 of the Act.

Amendment of s 147 (Definitions for div 6)

Clause 110 amends incorrect section references in the Act.

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

Clause 111 amends a minor grammatical mistake in the Act.

Amendment of s 202 hdg (Application of Mineral Resources Act)

Clause 112 corrects the title of the referenced Act in the heading.

Amendment of s 243 hdg (Staff of tribunal employed under Public Service Act)

Clause 113 corrects the title of the referenced Act in the heading.

Amendment of sch 1 (Dictionary)

Clause 114 amends Schedule 1 (Dictionary) of the Act to refer to the new Land Holding Act instead of the repealed Act.

Division 3 Amendment of Environmental Protection Act 1994

Act Amended

Clause 115 provides that division 3 amends the *Environmental Protection Act 1994*.

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

Clause 116 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 117 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*.

Division 4 Amendment of Land Act 1994

Subdivision 1 Act amended

Act amended

Clause 118 provides that division 4 amends the *Land Act 1994*.

Subdivision 2 Amendment for subdivision of DOGIT land

Clause 119 amends section 34P of the *Land Act 1994* to provide a specific head of power for DOGIT land to be subdivided by a plan of subdivision

creating two or more lots with the approval of the Minister to more effectively and efficiently manage the DOGIT land. The section already provides that a plan of subdivision must be accompanied by an instrument of covenant ensuring the lots are held by the same person.

Subdivision 3 Amendments for indigenous cultural interests

Amendment of s 155 (Length of term leases)

Clause 120 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 lease over State rural leasehold land for a term of up to 50 or 75 years respectively 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 such as lease transfers, subdivisions, amalgamations or conversion to a perpetual or other non-freehold tenure, therefore increasing certainty for Indigenous parties and lessees.

Currently, section 155(5) provides that an agreement for the grant of a lease term of up to 50 years may be either an indigenous access and use agreement (a negotiated contract) or an indigenous land use agreement registered with the National Native Title Tribunal under the Commonwealth *Native Title Act 1993.* For a lease 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, with amended section 155(5) and (6) simply reflecting that an indigenous cultural interest must be in place for the lease land.

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

Clause 121 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 by up to 10 years to a maximum of 50 years be approved and registered as an indigenous cultural interest in the lease. The purpose of the indigenous cultural interest is to allow approved agreements to survive dealings which result in the transfer of a lease or the

grant of a new non-freehold tenure, increasing 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 Commonwealth *Native Title Act 1993* also remain, but will now be incorporated in new Schedule 3, and amended section 155B will simply reflect the need for an indigenous cultural interest to be in place.

The purpose of the indigenous cultural interest is to allow approved agreements to travel with the land under a non-freehold tenure. This will increase certainty for both the Indigenous party and the lessee.

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

Clause 122 amends section 155BA of the Act to require an indigenous land use agreement used for the purpose of extending the term of a lease by up to 25 years to a maximum term of 75 years be approved for registration as an 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 Commonwealth *Native Title Act 1993* will be set out in new Schedule 3, whereas the amended section 155BA will simply reflect the need for an indigenous cultural interest to be in place.

The registration of an indigenous cultural interest will allow approved agreements to survive land dealings under a non-freehold tenure, providing greater certainty for both the Indigenous party and the lessee.

Amendment of s 155D (When Minister may reduce)

Clause 123 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 124 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 125 introduces a new section *188A Limited rent discount for particular leases* under chapter 5, part 1, division 2 of the Act. This section provides a head of power for the Minister to grant a conditional 25% rental concession for five (5) years for a lease starting with the 2013-2014 financial year. No new concessions will be granted after 30 June 2018. The section also provides that the discount ends under certain circumstances other than the expiry of the rental concession.

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

Clause 126 amends section 199A of the Act 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 an 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 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 127 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 will be 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 section also provides that where a sublease predates an Indigenous cultural interest, the lessee must give the sublessee a copy of the approved agreement for the interest at least 28 days before the Indigenous cultural interest is registered. Breaches under this section attract a maximum penalty of 50 penalty units. These amendments are to ensure that approved agreements continue to be implemented under subleasing arrangements.

Amendment of s 325 (Effect of registration of transfer)

Clause 128 repeals section 325(3) to (5) of the Act as the intent of these provisions is being included under the new section 202AA and new section 373ZJ in the new chapter 6, part 4, division 8D of the Act.

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

Clause 129 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 1994,* and provide lessees and indigenous parties with greater certainty. The registration of an Indigenous cultural interest:

- applies to certain term leases affected by the State Rural Leasehold Land Strategy, namely 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

- is specific to the purposes of the *Land Act 1994* and has no 'life' under other legislation.

This amendment inserts four (4) 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 an 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. the 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.

The right to conduct traditional activities (including camping, fishing, gathering, or hunting; performing rites or other ceremonies; visiting sites of significance; and incidental activities) will also be a requirement for an Indigenous land use agreement that is presented for recording as an Indigenous cultural interest.

Subdivision 2—Mandatory terms

Section 373ZC provides that the Minister may fix the terms (mandatory terms) and format for Indigenous access and use agreements and Indigenous land use agreements for an Indigenous cultural interest. The mandatory terms may be more prescriptive than but not inconsistent with the minimum requirements prescribed under new schedule 3 of the *Land Act 1994*. An approval of the Minister of the mandatory terms and set format under this section takes effect on the day notice of the approval is published in the gazette. This section also provides for the publication of the mandatory terms on the department's website.

The mandatory terms under the new section 373ZC are intended to provide further details on the content of Indigenous access and use agreements and Indigenous land use agreements to ensure that:

- the agreements are well-considered, balanced and workable in the interest of all parties; and
- dealings with such agreements under the *Land Act 1994* are consistent and objective.

The set format under section 373ZC is to provide for standard form agreements which are fully compliant with the mandatory terms and schedule 3. It is intended to cover the following:

- the native title resolving *Pastoral ILUA template* and *Guide to the Pastoral ILUA template* (published in November 2011 and developed jointly by the North Queensland Land Council, Queensland South Native Title Services, AgForce Queensland and the previous Queensland Government with the assistance of the National Native Title Tribunal);
- the standard IAUA and ILUA templates and guides (under development at the time of the introduction of this Bill); and
- any other directions the Minister may need to provide.

As such, section 373ZC will provide legislative support for, and nexus with, the standard agreement templates and guides developed to facilitate agreement-making and to benchmark agreements as to their reasonableness and workability.

Subdivision 3—Creation and registration

Section 373ZD provides that an Indigenous cultural interest in lease land can only be created under chapter 6, part 4, 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:

- the mandatory terms published under the new section 373ZC are included and set format requirements for agreements (also section 373ZC) are complied with; and
- the Minister is satisfied the conditions for the exercise of traditional activities under the agreement are appropriate having regard to the types of traditional activities allowed under the agreement; the size of the area to which the agreement applies; the reasonableness of any restrictions imposed; and another matter the Minister considers relevant.

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 intent of the State Rural Leasehold Land Strategy of bringing Indigenous people back on country.

Section 373ZE relates to when the chief executive (registrar) may register the Indigenous cultural interest. This section requires that a document creating a registered Indigenous cultural interest must be validly executed. Section 373ZE also outlines the documents that must be presented with an application to register an Indigenous cultural interest. The 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 4—Amendments and dealings

Section 373ZF 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 published under the new section 373ZC, 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 amendments have the potential to substantially affect the nature of the rights under the interest, the lease term (sections 155, 155B, 155BA, 155D) and eligibility for the rental concession (under the new section 188A).

The Minister may approve an amendment with conditions, and only if certain requirements under this section are met.

Section 373ZG provides that a registered Indigenous cultural interest for lease land ends if the approved agreement for the interest is amended or replaced and the Minister does not approve the change under section 373ZF. 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 373ZH 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.

Section 373ZH also provides that the chief executive may 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; and
- an approved IAUA for an indigenous cultural interest is terminated because it has been replaced by an ILUA recorded in the Commonwealth ILUA Register and approved by the Minister for registration as an Indigenous cultural interest in the lease.

Section 373ZI 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 373ZJ 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; 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 section 373ZJ, 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 following each new land dealing (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 373ZK 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 as well as the transferee.

Section 373ZL 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 when the Minister requests the report.

This section also provides for a written report to be submitted by the lessee every 10 years after either:

- the Minister's last request for a report; or
- the creation of the interest, if the Minister has not requested a report.

This report 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). Under current *Land Act 1994* provisions for longer lease terms and lease extensions, and provisions under this Bill for the 25% rental concession, these benefits may continue provided the conditions for

the grant (including access and use agreements) remain in place and are complied with.

Amendment of s 392 (Delegation by Minister)

Clause 130 makes minor technical amendments to section 392(4) of the Act.

Amendment of s 393 (Delegation by chief executive)

Clause 131 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 132 amends schedule 1A of the Act by removing the reference to section 325(5). This amendment is necessary because the provisions of section 325(5) (i.e. notice to transferee of an indigenous land use agreement) will be incorporated in the new section 202AA under chapter 5, part 2 division 1 of the *Land Act 1994* which deals with imposed conditions.

Insertion of new sch 3

Clause 133 inserts a new schedule 3 into the Act which details the minimum 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 minimum requirements for Indigenous access and use agreements and part 2 deals with the minimum requirements for Indigenous land use agreements. These minimum requirements, together with mandatory terms and set formats for approved agreements under the new section 373ZC, will ensure that dealings with Indigenous access and use agreements and Indigenous land use agreements under the *Land Act*

1994 are consistent and objective and that the administration of the Act in relation to access and use agreements for the purposes of the State Rural Leasehold Land Strategy is efficient, open and accountable.

Amendment of sch 6 (Dictionary)

Clause 134 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'
- 'determination of native title'
- 'determined native title holders'
- 'indigenous access and use agreement'
- '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
- 'mandatory terms' for approved indigenous access and use agreements and indigenous land use agreements
- 'native title'
- 'native title claim'
- 'native title claim area'
- 'native title claim group'
- 'native title party'
- 'registered native title claimant'
- 'set format' for approved indigenous access and use agreements and indigenous land use agreements
- 'shared country'

- 'subject area' for a registered indigenous cultural interest.

Division 5 Amendment of Land Court Act 2000

Act amended

Clause 135 provides that division 5 amends the *Land Court Act 2000*.

Amendment of s 32A (indigenous assessors)

Clause 136 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 a proceeding in the cultural heritage division)

Clause 137 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 138 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 139 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 140 amends schedule 2, dictionary, of the Act to include proceedings under the New Act as prescribed proceedings.

Division 6 Amendment of Mineral Resources Act 1989

Act amended

Clause 141 provides that division 6 amends the *Mineral Resources Act 1989*

Amendments of sch 2 (Dictionary)

Clause 142 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*.

Division 7 Amendment of Survey and Mapping Infrastructure Act 2003

Act amended

Clause 143 provides that division 7 amends the *Survey and Mapping Infrastructure Act 2003.*

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

Clause 144 amends section 21(3) of the Act to define freehold land as including indigenous land and leases or interests over that land. This confirms that surveyors can access such land subject to the conditions outlined in sections 21 and 22.

Amendment of schedule (Dictionary)

Clause 145 amends the schedule (Dictionary) to allow the definition of indigenous land in Part 7 to apply to the whole of the Act.

Division 8 Amendment of Sustainable Planning Act 2009

Act amended

Clause 146 provides that division 8 amends the *Sustainable Planning Act 2009.*

Amendment of sch 3 (Dictionary)

Clause 147 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 9 Amendment of Sustainable Planning Regulation 2009

Regulation amended

Clause 148 provides that division 9 amends the *Sustainable Planning Regulation 2009.*

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

Clause 149 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 2012* 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 2012*.

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

Clause 150 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 2012* 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 2012*.

Division 10 Amendment of Torres Strait Islander Land Act 1991

Subdivision 1 Act amended

Act amended

Clause 151 provides that division 10 amends the *Torres Strait Islander Land Act 1991*.

Subdivision 2 Amendments for use of Torres Strait Islander land

Amendment of s 41 (Existing interests)

Clause 152 inserts into section 41(7) that an interest includes a right of a local government to access, occupy, use or maintain a facility on the land. These interests continue once the land is transferred.

Insertion of new s 41A

Clause 153 inserts new section 41A which provides that the local government must use its best endeavours to obtain a registered interest for any existing interests it has under section 41 and must notify the trustee where it does not intend to continue to access, occupy or use or maintain a facility it has an existing interest in under section 41.

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

Clause 154 inserts new section 148(8) which defines, for the purposes of the *Torres Strait Islander Land Act 1991* that the area of land being used and occupied by the State or Commonwealth immediately before the transfer is the whole of the reserve area.

This provides that upon the transfer the State or Commonwealth may use and occupy the whole of the former reserve area.

Subdivision 3 Other amendments

Amendment of s 41 (Existing interests)

Clause 155 amends section 41 of the *Torres Strait Islander Land Act 1991* to refer to 1985 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 156 amends section 197 of the *Torres Strait Islander Land Act 1991* to refer to 1985 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 157 amends section 107 of the *Torres Strait Islander Land Act 1991* 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 158 amends section 111 of the *Torres Strait Islander Land Act 1991* to omit a comma.

Amendment of s 112 (Definitions for div 6)

Clause 159 amends section 112 of the *Torres Strait Islander Land Act 1991* to correct a minor grammatical mistake.

Amendment of s 60 (Trustee (Torres Strait Islander leases))

Clause 159 amends section 142(8) of the *Torres Strait Islander Land Act 1991* to remove an obsolete cross reference.

Amendment of sch 1 (Dictionary)

Clause 161 amends Schedule 1, the Dictionary, of the *Torres Strait Islander Land Act 1991* to refer to the new Land Holding Act instead of the repealed Act.

Division 11 Amendment of Vegetation Management Act 1999

Act amended

Clause 162 provides that division 11 amends the *Vegetation Management Act 1999.*

Amendment of schedule (Dictionary)

Clause 163 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 12 Amendment of Wild Rivers Regulation 2007

Regulation amended

Clause 164 provides that division 12 amends the *Wild Rivers Regulation 2007*

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

Clause 165 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 H olding Bill 2012*.