Queensland

Land Title Act 1994

Current as at 1 December 2014—revised version

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- The list of annotations endnote gives historical information at section level.

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Land Title Act 1994

[as amended by all amendments that commenced on or before 1 December 2014]

An Act to consolidate and reform the law about the registration of freehold land and interests in freehold land, and for other related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Land Title Act 1994*.

3 Object of Act

The object of this Act is to consolidate and reform the law about the registration of freehold land and interests in freehold land and, in particular—

(a) to define the rights of persons with an interest in registered freehold land; and

(b) to continue and improve the system for registering title to and transferring interests in freehold land; and

(c) to define the functions and powers of the registrar of titles; and

(d) to assist the keeping of the registers in the land registry, particularly by authorising the use of information technology.

4 Definitions—the dictionary

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

4A References

In a provision of this Act about a community titles scheme, a reference to—

(a) scheme land, is a reference to the scheme land for the scheme; and

(b) the body corporate, is a reference to the body corporate for the scheme; and

(c) common property, is a reference to common property for the scheme; and

(d) the community management statement, is a reference to the community management statement for the scheme.

5 Act binds all persons

This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth, the other States and the Territories.

Part 2 Administration

Division 1 General

6 Registrar of titles

(1) There is to continue to be a registrar of titles.

(2) The registrar has a seal of office.

(3) The registrar is to be employed under the *Public Service Act 2008*.

(4) Judicial notice must be taken of the signature, or the imprint of the seal, of the registrar appearing on a document and the document must be presumed to have been properly signed or sealed until the contrary is proved.

(5) In acting under this Act or another Act, the registrar is subject to the chief executive, but is not subject to any other officer or employee of the department.

7 Land registry

(1) The chief executive must keep a land registry.

(2) The land registry includes—

(a) the freehold land register; and

(b) registers about land required or permitted by an Act to be kept by the registrar; and

(c) registers about land prescribed by regulation; and

(d) other registers about land required or permitted by an Act to be included in the land registry.

(3) A regulation may prescribe—

(a) the locations of offices of the land registry or other places where documents may be lodged; and

(b) the particular documents that may, or may not, be lodged at a particular office of the land registry or other place for registration or recording in the appropriate register.

8 Form of registers

(1) A register kept by the registrar may be kept in the form (whether or not in a documentary form) the registrar considers appropriate.

(2) Without limiting subsection (1), the registrar may change the form in which a register or a part of a register is kept.

9 Delegation

The registrar may delegate the registrar's powers under this Act or another Act to an officer or employee of the department.

9A Land title practice manual

(1) The registrar may keep a manual of land title practice (by whatever name called) in the way the registrar considers appropriate, for the information and guidance of land registry staff and persons dealing with the land registry.

(2) The manual may include—

(a) directions given by the registrar under section 10(1)(b); and

(b) directions given by the chief executive under the *Land Act 1994*, section 287(1)(b); and

(ba) directions given by the chief executive under the *Forestry Act 1959*, section 61RW; and

(c) practices developed in the land registry, before or after the commencement of this section, for the depositing and lodging of instruments, including practices directed at ensuring that—

(i) there is consistency and efficiency in land registry processes; and

(ii) each register under this Act is an accurate, comprehensive and useable record; and

(iii) the integrity of the registers included in the land registry is supported and maintained to the greatest practicable extent.

(3) The manual may include statements about additional information a person may be required to produce, or additional instruments or documents a person may be required to deposit, under section 156.

(4) The manual may provide for the registrar's approval of the form of an electronic conveyancing document for the

Electronic Conveyancing National Law (Queensland), section 7(1)(a).

(5) The registrar must make the manual available to the public in the way the registrar considers appropriate.

(6) Without limiting subsection (5), the registrar must ensure an up-to-date copy of the manual is available to be read free of charge at each office of the land registry.

Division 2 General requirements for instruments in the freehold land register

10 Form of instruments

(1) An instrument lodged by a person or issued by the registrar must—

(a) be in the appropriate form; and

(b) comply with the directions of the registrar about—

(i) how the appropriate form must be completed; and

(ii) how information to be included in or given with the instrument must be included or given.

(2) An instrument required or permitted to be executed must be in the appropriate form when it is executed.

(3) However, the registrar may register an instrument that is not in the appropriate form if the registrar is satisfied it is not reasonable to require the instrument to have been executed in the appropriate form.

(4) Also, the registrar may register, or otherwise deal with, an instrument that does not comply with a direction mentioned in subsection (1)(b) if the registrar is satisfied it is reasonable to not require the compliance.

(5) Subsections (3) and (4) do not apply to an instrument that is an electronic conveyancing document.

11 Execution of certain instruments

(1) An instrument to transfer or create an interest in a lot must be executed by—

(a) the transferor or the person creating the interest; and

(b) the transferee or the person in whose favour the interest is to be created or a legal practitioner authorised by the transferee or the person.

(2) A total or partial discharge or release of mortgage need only be signed by the mortgagee.

(3) For an instrument that is an electronic conveyancing document, subsections (1) and (2) apply subject to the form approved for the instrument under the Electronic Conveyancing National Law (Queensland), section 7.

11A Original mortgagee to confirm identity of mortgagor

(1) This section applies to—

(a) the mortgaging of a lot or an interest in a lot; and

(b) an amendment of a mortgage mentioned in paragraph (a).

(2) Before the instrument of mortgage or amendment of mortgage is lodged for registration, the mortgagee under the instrument (the ***original mortgagee***) must take reasonable steps to ensure the person who is the mortgagor under the instrument is identical with the person who is, or who is about to become, the registered proprietor of the lot or the interest in a lot.

(2A) For subsection (2), a person is the mortgagor under an instrument of mortgage or amendment of mortgage if the person executes the instrument as mortgagor, including, if the instrument is an electronic conveyancing document, through a subscriber digitally signing the instrument under the Electronic Conveyancing National Law (Queensland).

(2B) Also, for subsection (2), a person is the mortgagor under an instrument of mortgage or amendment of mortgage if the instrument is an electronic conveyancing document and the

person signs, as mortgagor, a document that under the participation rules under the Electronic Conveyancing National Law (Queensland)—

(a) is required as a supporting document for the instrument of mortgage or amendment of mortgage; and

(b) is required to be kept by the original mortgagee.

(3) Without limiting subsection (2), the original mortgagee takes reasonable steps under the subsection if the original mortgagee complies with practices included in the manual of land title practice under section 9A(2)(c) for the verification of identification of mortgagors.

(4) The original mortgagee must, for 7 years after the instrument is registered, and whether or not there is registered a transfer of the interest constituted by the mortgage—

(a) keep, in the approved form, a written record of the steps taken under subsection (2); or

(b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the original mortgagee in complying with subsection (2).

Maximum penalty—20 penalty units.

(5) The registrar may, whether before or after the registration of the instrument, and whether or not there has been registered a transfer of the interest constituted by the mortgage, ask the original mortgagee—

(a) to advise the registrar about the steps taken by the original mortgagee under subsection (2); and

(b) to produce for the registrar's inspection the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).

(6) The original mortgagee must comply with a request under subsection (5) unless the original mortgagee has a reasonable excuse.

Maximum penalty—20 penalty units.

(7) This section applies to an instrument of mortgage only if it is executed after the commencement of this section.

11B Mortgage transferee to confirm identity of mortgagor

(1) This section applies to the transfer of the interest constituted by the mortgage of a lot or an interest in a lot.

(2) Before the instrument of transfer is lodged for registration, the transferee under the instrument of transfer (the ***mortgage transferee***) must take reasonable steps to ensure the person who was the mortgagor under the instrument of mortgage was identical with the person who, when the instrument of mortgage was registered, was the registered proprietor of the lot, or the interest in a lot.

(2A) For subsection (2), a person was the mortgagor under an instrument of mortgage if the person executed the instrument as mortgagor, including, if the instrument is an electronic conveyancing document, through a subscriber digitally signing the instrument under the Electronic Conveyancing National Law (Queensland).

(2B) Also, for subsection (2), a person was the mortgagor under an instrument of mortgage if the instrument is an electronic conveyancing document and the person signed, as mortgagor, a document that under the participation rules under the Electronic Conveyancing National Law (Queensland)—

(a) was required as a supporting document for the instrument of mortgage; and

(b) was required to be kept by the original mortgagee mentioned in section 11A(2).

(3) Without limiting subsection (2), the mortgage transferee takes reasonable steps under the subsection if the mortgage transferee complies with practices included in the manual of land title practice under section 9A(2)(c) for the verification of identification of mortgagors.

(4) The mortgagee transferee must, for 7 years after the instrument of transfer of the mortgage is registered, and

whether or not there is registered a further transfer of the interest constituted by the mortgage—

(a) keep, in the approved form, a written record of the steps taken under subsection (2); or

(b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the mortgage transferee in complying with subsection (2).

Maximum penalty—20 penalty units.

(5) The registrar may, whether before or after the registration of the instrument of transfer of the mortgage, and whether or not there has been registered a further transfer of the interest constituted by the mortgage, ask the mortgage transferee—

(a) to advise the registrar about the steps taken by the mortgage transferee under subsection (2); and

(b) to produce for the registrar's inspection the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).

(6) The mortgage transferee must comply with a request under subsection (5) unless the mortgage transferee has a reasonable excuse.

Maximum penalty—20 penalty units.

(7) This section applies to an instrument of transfer of a mortgage only if the instrument of transfer is executed after the commencement of this section.

(8) However, this section applies in relation to an instrument of mortgage whenever executed.

12 Giving consent for dealings

(1) Subject to subsections (2) to (4), if the consent of a person is required or permitted for a dealing with a lot, the consent must be—

(a) written on the instrument for the dealing (the ***relevant instrument***); or

(b) if the registrar considers it appropriate—deposited with the relevant instrument.

(2) If the relevant instrument is an electronic conveyancing document, the person is taken to have complied with subsection (1) if the consent—

(a) is in the form of an electronic conveyancing document; and

(b) is deposited with the relevant instrument.

(3) Subsection (4) applies if the relevant instrument is lodged or deposited in an electronic form by an electronic communication under—

(a) this Act or another law, other than the Electronic Conveyancing National Law (Queensland); and

(b) the *Electronic Transactions (Queensland) Act 2001*.

(4) The person is taken to have complied with subsection (1) if—

(a) a method is used to identify the person and to indicate the person's consent; and

(b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the consent was communicated; and

(c) the registrar consents to the requirement being met by using the method.

14 Offence not to use appropriate form

If there is an appropriate form for an instrument, a person must not knowingly use a form for the instrument that is not the appropriate form.

Maximum penalty—20 penalty units.

Division 2A Electronic conveyancing documents

14A Reference to a particular type of document includes its electronic conveyancing form

A reference in this Act to a document of a type that may be lodged or deposited under this Act includes a reference to the document in the form of an electronic conveyancing document.

14B What is an *electronic conveyancing document*

(1) An ***electronic conveyancing document*** is a document under the Electronic Conveyancing National Law (Queensland) that is lodged electronically under section 7 of that Law, in the land registry.

Note—

Under the Electronic Conveyancing National Law (Queensland), schedule 1, section 12(1), definition *document*, a document includes any record of information that exists in a digital form and is capable of being reproduced, transmitted, stored and duplicated by electronic means.

(2) Subsection (3) applies to a document that is lodged or deposited in an electronic form by an electronic communication under—

(a) this Act or another law, other than the Electronic Conveyancing National Law (Queensland); and

(b) the *Electronic Transactions (Queensland) Act 2001*.

(3) To remove any doubt, it is declared that the document is not an electronic conveyancing document.

14C Signing or executing an electronic conveyancing document

If this Act provides for a document to be signed or executed and the document is an electronic conveyancing document,

the document must be digitally signed as provided for under the Electronic Conveyancing National Law (Queensland).

Division 3 Powers of the registrar

15 Registrar may correct registers

(1) The registrar may correct any register kept by the registrar if the registrar is satisfied that—

(a) the register is incorrect; and

(b) the correction will not prejudice the rights of the holder of an interest recorded in the register.

(2) Without limiting subsection (1), the registrar may correct a register under the subsection if—

(a) the register is incorrect because the registrar has incorrectly recorded a particular or registered an instrument; or

(b) the registrar has held an inquiry under division 4, and has decided that the register is incorrect, including for example, because there has been fraud affecting the register.

(3) The registrar may correct a register kept by the registrar, whether or not the correction will prejudice the rights of the holder of an interest recorded in the register, if—

(a) the register to be corrected is the freehold land register, and the correction is to show, in relation to a lot, an easement the particulars of which have been omitted from, or misdescribed in, the register; or

(b) the Supreme Court has ordered the correction under section 26.

(4) Section 185(3), (4) and (6) applies for subsection (3)(a) in the same way it applies for section 185(1)(c).

(5) The registrar's power to correct a register includes power to correct a particular in the register or an instrument forming part of the register.

(6) If a register is corrected, the registrar must record in the register—

(a) the state of the register before the correction; and

(b) the time, date and circumstances of the correction.

(7) A register corrected by the registrar under this section has the same effect as if the relevant error had not been made.

(8) For subsection (1)(b), the rights of the holder of an interest recorded in the register are not prejudiced if the holder acquired or has dealt with the interest with actual or constructive knowledge that the register was incorrect and how it was incorrect.

16 Lot-on-plan description

The registrar may simplify the description of a lot registered in the freehold land register by amending the existing description to a lot-on-plan description.

17 Registrar may prepare and register caveat

(1) The registrar may prepare and register a caveat over a lot, or an interest in a lot, in favour of a person.

(2) The registrar may act under subsection (1) to prevent a dealing with the lot that may prejudice—

(a) the Commonwealth, a State or a local government; or

(b) a minor; or

(c) a person who is intellectually or mentally impaired or is incapable of managing the person's own affairs; or

(d) a person who is absent from the State; or

(e) a person because of—

(i) misdescription of the lot or its boundaries; or

(ii) fraud or forgery; or

(f) a person to whom a notice has been given, or has been required to be given, under section 30(3); or

(g) a person, other than a person mentioned in any of paragraphs (a) to (f), who has an interest in the lot.

(3) Also, the registrar may act under subsection (1) to prevent a dealing with a lot to give effect to an order of a court of competent jurisdiction directed to the registrar.

(4) Subsection (2)(g) applies only if the registrar is satisfied, because of the nature or urgency of particular circumstances, there is no practicable alternative to registering the caveat.

18 Registrar may require public notice to be given of certain proposed action

(1) This section applies if a person (the ***applicant***) asks the registrar to do any of the following things—

(a) register the person as an adverse possessor;

(b) register a transmission of a registered interest;

(c) dispense with production of an instrument.

(2) The registrar may, by written notice, require the applicant to give public notice of the request.

(3) However, if the applicant has asked the registrar to register the person as an adverse possessor, the registrar must require the applicant to give public notice of the request.

(4) The registrar may specify in the notice to the applicant—

(a) what is to be included in the public notice; and

(b) how many times the public notice is to be published; and

(c) how and when the public notice is to be published.

(5) The applicant must satisfy the registrar that the public notice has been given as required by the registrar.

18A Pre-examination of plans

(1) Nothing in this Act prevents the registrar from examining a plan of survey and related instruments deposited before the plan—

(a) is approved by a local government; or

(b) is lodged for registration.

(2) Section 156 applies to a plan and related instruments deposited under subsection (1).

Division 4 Inquiries

19 Registrar may decide to hold inquiry

The registrar may decide to hold an inquiry under this division—

(a) to decide whether a register should be corrected; or

(b) to consider whether a person has fraudulently or wrongfully—

(i) obtained, kept or procured an instrument affecting land in a register; or

(ii) procured a particular in a register or an endorsement on an instrument affecting land; or

(c) to consider whether a fraud affecting the land registry has otherwise been committed; or

(d) to otherwise consider an issue arising from the lodgement or registration of an instrument in the land registry; or

(e) in circumstances prescribed by regulation.

20 Registrar's duties on inquiry

When conducting the inquiry, the registrar—

(a) must observe natural justice; and

(b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

21 Registrar may decide procedures

(1) The registrar—

(a) is not bound by the rules of evidence; and

(b) may inform himself or herself in any way the registrar considers appropriate; and

(c) may decide the procedures to be followed at the inquiry.

(2) However, the registrar must comply with this division and the procedural rules that may be prescribed by regulation.

22 Registrar's powers on inquiry

(1) In conducting the inquiry, the registrar may—

(a) act in the absence of a person who has been given reasonable notice; and

(b) receive evidence on oath or affirmation or by statutory declaration; and

(c) adjourn the inquiry; and

(d) disregard a defect, error or insufficiency in a document; and

(e) permit or refuse to permit a person (including a legal practitioner) to represent someone at the inquiry.

(2) The registrar may administer an oath or affirmation to a person appearing as a witness before the inquiry.

23 Notice to witness

(1) The registrar may, by written notice given to a person, require the person to attend the inquiry at a specified time and place

as a witness to give evidence or produce specified documents or things.

(2) Without limiting subsection (1), any of the following persons may be required to attend the inquiry—

(a) a person who may have helped another person act fraudulently or wrongfully in a way mentioned in section 19(b);

(b) a person who is a party to a transaction that may have resulted in a fraud affecting the land registry;

(c) a person who may have contributed directly or indirectly to a fraud affecting the land registry.

(3) A person required to appear as a witness before the inquiry is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the registrar.

24 Offences by witnesses

(1) A person who is given a notice under section 23 must not—

(a) fail, without reasonable excuse, to attend as required by the notice; or

(b) fail, without reasonable excuse, to continue to attend at the inquiry as required by the registrar until excused from further attendance.

Maximum penalty—35 penalty units.

(2) A person appearing as a witness at the inquiry must not—

(a) fail to take an oath or make an affirmation when required by the registrar; or

(b) fail, without reasonable excuse, to answer a question the person is required to answer by the registrar; or

(c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 23.

Maximum penalty—35 penalty units.

(3) It is a reasonable excuse for a person to fail to answer a question or produce a document or thing if answering the question or producing the document or thing might tend to incriminate the person.

Division 5 Registrar may refer matter to the Supreme Court

25 Referral to Supreme Court from inquiry

(1) If, in an inquiry under division 4, a person—

(a) fails to attend as required by a notice given under section 23; or

(b) fails to continue to attend as required by the registrar; or

(c) fails to take an oath or make an affirmation when required by the registrar; or

(d) fails to answer a question the person is required to answer by the registrar; or

(e) fails to produce a document or thing the person is required to produce by a notice under section 23;

the registrar may apply to the Supreme Court for an order to compel the person to comply with the notice or requirement.

(2) The Supreme Court may make any order to assist the registrar in the registrar's conduct of the inquiry that the Supreme Court considers appropriate.

26 Other referrals by the registrar to the Supreme Court

In any matter under this Act, the registrar may—

(a) apply to the Supreme Court for directions; or

(b) state a case for decision by the Supreme Court; or

(c) refer a finding of an inquiry to the Supreme Court, seeking—

(i) an order for the registrar or another person to take a stated action, including for example an order for the registrar to correct a register; or

(ii) an order the court considers appropriate in the circumstances.

Part 3 Freehold land register

Division 1 General

27 Registrar must keep register

The registrar must keep a register of freehold land (the ***freehold land register***).

28 Particulars the registrar must record

(1) The registrar must record in the freehold land register the particulars necessary to identify—

(a) every lot brought under this Act; and

(b) every interest registered in the register; and

(c) the name of the person who holds, and the name of each person who has held, a registered interest; and

(d) if the person who holds a registered interest is a minor—the minor's date of birth; and

(e) all instruments registered in the register and when they were lodged and registered.

(2) The registrar must also record in the freehold land register anything else required to be recorded by this or another Act.

29 Particulars the registrar may record

(1) The registrar may record in the freehold land register anything that the registrar is permitted to record by this or another Act.

(2) The registrar may also record in the freehold land register anything that the registrar considers should be recorded to ensure that the register is an accurate, comprehensive and useable record of freehold land in the State.

30 Registrar must register instruments

(1) On lodgement of an instrument, the registrar must register the instrument if—

(a) the person who lodged it complies with the requirements of this Act for its registration; and

(b) the instrument is not inconsistent with another Act or law; and

(c) if the instrument is a plan of survey—it is not inconsistent with another plan of survey.

(2) However, subsection (1) does not prevent the person from withdrawing the instrument.

(3) If the instrument is a plan of survey and it is inconsistent with another plan of survey, the registrar may—

(a) give a written notice to a registered proprietor of a lot that may be affected by registration of the plan of survey; or

(b) require the person who lodged the instrument to give a written notice, in the way the registrar requires, to a person mentioned in paragraph (a).

31 Instruments form part of the freehold land register

On registration of an instrument in the freehold land register, the instrument forms part of the register.

32 Registrar's procedures on lodgement and registration of instrument

(1) When an instrument is lodged in the land registry, the registrar must note on the instrument—

(a) the date and time of lodgement; and

(b) an identifying reference.

(2) When the instrument is registered, the registrar must record the information mentioned in subsection (1)(a) and (b) in the appropriate register.

33 Separate part of the freehold land register for powers of attorney

The registrar must keep a separate part of the freehold land register for registered powers of attorney.

34 Other information not part of the freehold land register

(1) The registrar may keep separately from the freehold land register information that the registrar considers necessary or desirable for the effective or efficient operation of the register.

(2) The information may include information given to the registrar by another entity.

(3) A relevant entity is not civilly liable for an act done, or omission made, honestly and without negligence in relation to the giving or keeping of information under this section.

(4) Without limiting subsection (3), a relevant entity other than the registrar is not civilly liable in relation to the giving or keeping of inaccurate information under this section if the relevant entity did not give the information to the registrar for keeping under this section.

(5) In this section—

relevant entity means—

(a) the registrar; or

(b) the chief executive; or

(c) the Minister; or

(d) the State.

35 Entitlement to search register

(1) A person may, on payment of the fee prescribed under a regulation—

(a) search and obtain a copy of—

(i) the indefeasible title of a lot; or

(ii) a registered instrument; or

(iii) an instrument that has been lodged but is not registered (whether or not it has been cancelled); or

(iv) information kept under this Act; and

(b) obtain a copy of the indefeasible title of a lot, or a registered instrument, certified by the registrar to be an accurate copy.

(2) Subsection (1)(a)(iii) does not apply to an instrument that has been destroyed by the registrar.

(3) A search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, an office of the land registry during office hours on a day the land registry is open for business.

(4) Also, a search under subsection (1) may be carried out by, or a copy mentioned in subsection (1) obtained from, an entity engaged by the chief executive for allowing persons to search the land registry or obtain copies of indefeasible titles, registered or other instruments, or information, kept in the registry.

(5) The registrar may allow a person to carry out a search under subsection (1)(a) for—

(a) only part of an indefeasible title for a lot; or

(b) only part of an instrument; or

(c) only part of the information about an instrument.

(6) The registrar may enter into an arrangement with another department allowing the department to carry out a search, or obtain a copy, under this section without payment of the fee mentioned in subsection (1).

(7) However, the registrar may enter into an arrangement under subsection (6) only if the registrar is reasonably satisfied the information obtained from the search or the copy will not be—

(a) used for a commercial purpose, including, for example, the marketing or sale of the information or other information; or

(b) included in another database of information, in any form, other than with approval from the registrar.

35A Fee required to produce document under subpoena etc.

(1) This section applies if a fee is payable under section 35(1) for a person to obtain a copy of a document and—

(a) a subpoena requires the document to be produced; or

(b) a person has applied under the *Evidence Act 1977*, section 134A for the document to be produced for inspection.

(2) Despite any other law or rule of court, the registrar is not required to produce, or provide a copy of, the document until the fee mentioned in section 35(1) is paid.

(3) Subsection (2) does not apply if a department is not required to pay a fee for the document under an agreement mentioned in section 35(6).

36 Evidentiary effect of certified copies of documents

(1) A document purporting to be a certified copy of the indefeasible title of a lot obtained under section 35(1)(b) is evidence of the indefeasible title.

(2) A document purporting to be a certified copy of a registered instrument obtained under section 35(1)(b) is evidence of the registered instrument.

Division 2 Indefeasible title

37 Creation of indefeasible title

An indefeasible title for a lot is created on the recording of the particulars of the lot in the freehold land register.

38 Meaning of *indefeasible title*

The ***indefeasible title*** for a lot is the current particulars in the freehold land register about the lot.

39 Single indefeasible title for 2 or more lots

(1) The registrar may create a single indefeasible title for 2 or more lots that have the same registered owner by including a single set of particulars for the lots in the freehold land register.

(2) The registrar may act under this section if the registrar considers that, in the special circumstances of the case, it is appropriate for the lots to have a single indefeasible title.

(3) Without limiting subsection (2), the registrar may act under this section if the lots—

(a) share a common boundary; or

(b) have a boundary that adjoins the same part of a road or watercourse.

40 Separation of single indefeasible title for 2 or more lots

(1) If the registrar has created a single indefeasible title for 2 or more lots, the registrar may create separate indefeasible titles for any of the lots by cancelling the single set of particulars for the lots in the freehold land register and including separate particulars for the lots.

(2) This section does not prevent the registrar from also acting under section 39 for 2 or more of the lots.

41 Transfer of land forming part of indefeasible title

If the registrar registers an instrument of transfer for only part of the land in the indefeasible title of a lot, the registrar must create separate indefeasible titles for the part of the land that is transferred, and the part that is not transferred, by cancelling the particulars for the lot in the freehold land register and including separate particulars for each of the parts in the register.

Division 2A Indefeasible title for common property

41A Creation of indefeasible title for common property

When a community titles scheme is established, the registrar must create an indefeasible title for the common property for the scheme.

41B Meaning of *indefeasible title* for common property

The ***indefeasible title*** for common property is the current particulars in the freehold land register about the common property.

41BA Ownership of common property

(1) Common property for a community titles scheme is owned by the owners of the lots included in the scheme, as tenants in common, in shares proportionate to the interest schedule lot entitlements of their respective lots.

(2) Subsection (1) applies even though, under section 41A, the registrar creates an indefeasible title for the common property.

(3) An owner's interest in a lot is inseparable from the owner's interest in the common property.

Examples for subsection (3)—

1 A dealing affecting the lot affects, without express mention, the interest in the common property.

2 An owner can not separately deal with or dispose of the owner's interest in the common property.

41C Application of provisions of Act to common property

(1) In this Act, a reference to a lot is taken to include a reference to common property.

(2) However, subsection (1) has effect only to the extent necessary to allow for the registration, and appropriate recognition under this Act, of dealings that—

(a) affect common property (including dealings affecting interests in common property); and

(b) are consistent with the BCCM Act.

(3) In particular, subsection (1) has effect subject to the following principles—

- there can be no certificate of title issued for common property
- there can be no registered owner for common property (although the body corporate for the community titles scheme that includes the common property is taken to be the registered owner for dealings affecting the fee simple interest in the common property)
- the fee simple interest in the common property for a community titles scheme can not be the subject of sale or transfer (although a part of the common property might be the subject of transfer after the registration of an appropriate plan of subdivision and the recording of a new community management statement)
- the fee simple interest in common property can not be the subject of a mortgage (although a lesser interest able to be created over common property, for example, a lease, might be the subject of a mortgage).

(4) Without limiting subsections (2) and (3), subsection (1) has no application for the purpose of the following provisions—

- this Act's definition of *lot*
- division 2.

Division 3 Certificates of title

42 Issuing of certificates of title

(1) The registrar may issue a certificate containing the indefeasible title for a lot (the ***certificate of title***) if asked in writing by the registered owner.

(2) However, if the lot is subject to a registered mortgage, the registrar may issue the certificate of title only if the mortgagee consents to the issue of the certificate.

(3) Also, if an instrument has been lodged to register an interest in the lot, the registrar may refuse to issue the certificate of title until the instrument has been registered.

(4) If the registrar issues a certificate of title, the registrar must give the certificate of title to the person stated in the owner's request.

43 Certification to be included in certificate of title

The certificate must be certified by the registrar as an accurate statement of the current particulars in the freehold land register about the lot.

44 Record of issue of certificate of title etc.

If the registrar issues a certificate of title for a lot, the registrar—

(a) must record in the particulars for the lot in the freehold land register that the certificate has been issued; and

(b) may issue a second certificate only if the first certificate is cancelled.

45 Cancellation of certificate of title on deposit

Unless the registrar otherwise directs, a certificate of title that is deposited in the land registry is cancelled, whether or not a note of the cancellation is made on it.

46 Evidentiary effect of certificate of title

A certificate of title of a lot is conclusive evidence of the indefeasible title for the lot when it is issued—

(a) other than in the circumstances described in sections 184(3)(b) and 185(1)(c) to (g); or

(b) except as far as the particulars specified in the certificate in fact differ from the indefeasible title.

Part 4 Registration of land

Division 1 Alienation of State land

47 Alienated State land to be registered

(1) As soon as practicable after land is alienated from the State—

(a) if the deed of grant for the land takes effect on delivery to the grantee—notice that the deed has been delivered to the grantee must be given to the registrar; or

Note—

See the *Aboriginal Land Act 1991*, section 44 and the *Torres Strait Islander Land Act 1991*, section 40 for examples of deeds of grant that take effect on delivery of the deed to the grantee.

(b) otherwise—the deed of grant for the land must be lodged in the land registry.

(2) The registrar must register the deed of grant by recording the particulars of the grant in the freehold land register.

(3) On the registration of the deed of grant, an indefeasible title is created for the relevant lot.

Division 2 Land held by State

48 Land held by the State

The State may, under this Act, acquire, hold and deal with lots.

Division 2A Format of plans of survey

48A Available formats for plans

(1) A plan of survey may be in a standard, building or volumetric format.

(2) The format to be used in the plan depends on how the plan is to define the land to which it relates.

48B Standard format plan

A ***standard format*** plan of survey defines land using a horizontal plane and references to marks on the ground.

Example of marks—

posts in the ground

48C Building format plan

(1) A ***building format*** plan of survey defines land using the structural elements of a building, including, for example, floors, walls and ceilings.

(2) For subsection (1)—

structural elements, of a building, includes projections of, and references to, structural elements of the building.

Example of projections as structural elements of a building—

Projections might be used to define a lot that includes a balcony, courtyard, roof garden or other area not bounded, or completely bounded, by a floor, walls and a ceiling.

48D Volumetric format plan

A ***volumetric format*** plan of survey defines land using 3 dimensionally located points to identify the position, shape and dimensions of each bounding surface.

Division 2B Explanatory format plans

48E Explanatory format plan

(1) The registrar may approve the lodging of a plan relating to an interest in land other than a plan of survey in standard, building or volumetric format (an ***explanatory format plan***) if the registrar is satisfied the land to which the interest relates may be accurately defined using—

(a) information already held in the land registry; or

(b) other information giving a high level of accuracy about the extent of the interest.

(2) Lodging an explanatory format plan, approved under this section, is sufficient compliance with a requirement under this Act to lodge a plan of survey in standard, building or volumetric format.

Division 3 Plans of subdivision

49 Meaning of *plan of subdivision*

A ***plan of subdivision*** is a plan of survey providing for 1 or more of the following—

(a) division of 1 or more lots;

(b) amalgamation of 2 or more lots to create a smaller number of lots;

(c) dedication of land to public use;

(d) redefinition of a lot on a resurvey.

49A Plan of subdivision may be registered

(1) A plan of subdivision may be registered.

(2) A lot defined in the plan is created as a lot when the plan is registered.

49B Standard format plan of subdivision

(1) This section applies to a standard format plan of subdivision.

(2) Common property for a community titles scheme may be created under the plan, but only if—

(a) the plan also creates 2 or more lots; or

(b) the common property created is additional to common property already existing under the community titles scheme.

(3) The plan may create a lot from common property, other than common property created under—

(a) a building format plan of subdivision, and within structural elements of a building; or

(b) a volumetric format plan of subdivision.

49C Building format plan of subdivision

(1) This section applies to a building format plan of subdivision.

(2) Common property for a community titles scheme must be created under the plan unless the plan divides a lot, or amalgamates 2 or more lots, on an existing registered building format plan of subdivision.

(3) Two or more lots must be created under the plan unless—

(a) the plan amalgamates 2 or more lots on an existing registered building format plan of subdivision; or

(b) common property for a community titles scheme is created under the plan, and the common property created is additional to common property already existing under the community titles scheme.

(4) Except to the extent permitted under a direction given by the registrar under section 10(1)(b), the boundary of a lot created under the plan, and separated from another lot or common property by a floor, wall or ceiling, must be located at the centre of the floor, wall or ceiling.

49D Volumetric format plan of subdivision

(1) This section applies to a volumetric format plan of subdivision.

(2) Common property for a community titles scheme may be created under the plan, but only if—

(a) the plan also creates 2 or more lots; or

(b) the common property created is additional to common property already existing under the community titles scheme.

(3) The plan may divide a lot on a standard, building or volumetric format plan of subdivision.

49DA Creation of common property

(1) This section applies if—

(a) the community management statement for a community titles scheme provides for the progressive subdivision of scheme land; and

(b) under the scheme, the scheme land is to be subdivided by a plan of subdivision to create common property under sections 49B to 49D.

(2) The registration of the plan and recording of the new community management statement for the scheme operate, without anything further, to create the common property.

49E Division of lot on standard format plan of subdivision

(1) This section applies if a building or volumetric format plan of subdivision divides a standard format lot, creating 2 or more lots.

(2) If, after the division, a created lot continues to be defined using a horizontal plane and references to marks on the ground, the created lot is a standard format lot.

50 Requirements for registration of plan of subdivision

(1) A plan of subdivision must—

(a) distinctly show all roads, parks, reserves and other proposed lots that are to be public use land; and

(b) include a statement agreeing to the plan and dedicating the public use land by—

(i) the registered owner; or

(ii) if the mortgagee of the registered owner is in possession—the mortgagee in possession; and

(c) show all proposed lots marked with separate and distinct numbers; and

(d) distinctly show all proposed common property; and

(e) show all proposed easements marked with separate and distinct letters; and

(f) comply with the *Survey and Mapping Infrastructure Act 2003*; and

(g) be certified as accurate by a cadastral surveyor within the meaning of the *Surveyors Act 2003*; and

(h) have been approved by the relevant planning body, unless the plan of subdivision provides only for—

(i) the amalgamation of 2 or more lots to create a smaller number of lots; or

(ii) the redefinition of a lot on a resurvey; or

(iii) under the BCCM Act, chapter 2, part 3, division 2, the incorporation of a lot with common property or conversion of lessee common property within the meaning of that Act; and

(i) if the plan of subdivision provides for the division of 1 or more lots, or the dedication of land to public use—have been approved by the relevant planning body; and

(j) be consented to by all registered mortgagees of each lot the subject of the plan and all other registered proprietors whose interests are affected by the plan.

(2) If the plan of subdivision is to give effect to a surrender under the *Land Act 1994*, section 55, of all or part of land contained in a deed of grant in trust, the plan of subdivision—

(a) must be endorsed with or accompanied by the written approval of the Minister under that section; and

(b) need not have been approved by the relevant planning body as would otherwise be required under subsection (1)(h) or (i).

(3) Subsection (1)(h) and (i) does not apply to a plan of subdivision that, other than for this subsection, would have been required to have been approved by the relevant planning body if—

(a) for a plan that would have required approval by MEDQ—the plan is not a plan for which assessment for

compliance is required under the *Economic Development Act 2012*, section 104; or

(b) for a plan that would have required approval by the relevant local government—the plan does not require compliance assessment under a regulation under the *Sustainable Planning Act 2009*, section 397.

(4) Also, subsection (1)(h) and (i) does not apply to a plan of subdivision that, under a provision of another Act, is a plan that is not required to be approved by the relevant planning body.

(5) If the approval of a plan of subdivision for subsection (1)(h) or (i) is in the form of a compliance certificate given under the *Sustainable Planning Act 2009* or that Act as applied under the *Economic Development Act 2012*, section 104, the plan of subdivision must be lodged for registration within 6 months after the compliance certificate is given.

(6) In this section—

relevant planning body means—

(a) if the proposed lots are in a priority development area—MEDQ; or

(aa) if the proposed lots are in a State development area and the subdivision is regulated by an approved development scheme—the Coordinator-General; or

(b) otherwise—the relevant local government.

51 Dedication of public use land in plan

(1) The dedication of a lot to public use in a plan of subdivision must be of the registered proprietor's whole interest in the lot.

(2) On registration of the plan, without anything further—

(a) if the dedication is for a road—the road is opened for the *Land Act 1994*; or

(b) if the dedication is for a non-tidal watercourse or a lake—the plan is taken to be the source material for the

land for the *Survey and Mapping Infrastructure Act 2003*, section 99; or

Note—

The *Survey and Mapping Infrastructure Act 2003*, section 99 defines when a boundary of land is a non-tidal boundary (watercourse) or non-tidal boundary (lake). See the *Land Act 1994*, section 13A for provisions about the ownership of land on the watercourse side or lake side of one of these boundaries.

(c) if the dedication is for an identified community purpose under the *Land Act 1994* and the plan is consented to by the Minister administering the *Land Act 1994*—the lot is dedicated as a reserve for the community purpose; or

(d) otherwise—the lot becomes unallocated State land under the *Land Act 1994*.

(3) Subsection (4) applies to an easement over a lot if—

(a) the easement is an easement for providing access or a right of way, including a public thoroughfare easement; and

(b) the lot or a part of the lot is dedicated for a road under subsection (2).

(4) The easement is extinguished to the extent it is over the lot or the part of the lot dedicated for the road.

51A Access for public use land

A plan of subdivision providing for the dedication of a lot to public use, other than as a road, non-tidal watercourse or a lake, may be registered only if—

(a) on registration, access to the lot will be available through a road or a public thoroughfare easement; or

(b) the Minister administering the *Land Act 1994* has approved that the plan of subdivision may be registered without access to the lot being available.

52 Particulars to be recorded on registration of plan

In registering a plan of subdivision, the registrar must record in the freehold land register particulars of—

(a) each proposed lot that is not public use land; and

(b) to the extent that it is practicable—common property created under the plan.

53 Lodged plan that is withdrawn and relodged

If a plan of subdivision is lodged within 6 months after it is approved as mentioned in section 50(1)(h) or (i) and is withdrawn and re-lodged under section 159, it must be treated for the purposes of sections 175 and 178 to have been lodged when it was first lodged.

53A Division excluding road or watercourse

(1) A lot may be divided by a plan of subdivision, even though there is a road or watercourse within the boundaries of the lot that is not part of the lot.

(2) However, the road or watercourse is not included in any lot created by the plan of subdivision, even though it may be within the boundaries of the lot.

Division 3A Dedication of road by notice

54 Dedication of road by notice

(1) The registered owner of a lot may dedicate the lot as a road for public use by the registration of a dedication notice.

(2) Part of a lot may not be dedicated as a road for public use under this section.

(3) A dedication notice must have been approved by the relevant planning body.

(4) On the day the dedication notice is registered—

(a) the dedication of the lot as a road for public use takes effect; and

(b) the land is opened for public use as a road.

(5) This section does not apply if the dedication notice is for the land to be dedicated as a road under the *Acquisition of Land Act 1967*, section 12B.

Note—

A dedication notice for land taken under the *Acquisition of Land Act 1967* to be dedicated as a road is registered under section 12B of that Act.

(6) In this section—

dedication notice means a notice in the approved form requesting the registrar to register a dedication of land as a road.

relevant planning body means—

(a) if the lot is in a priority development area—MEDQ; or

(aa) if the lot is in a State development area—the Coordinator-General; or

(b) otherwise—the local government.

Division 4 Building management statements

54A Building management statement may be registered

(1) A building management statement may be registered.

(2) A ***building management statement*** is an instrument that—

(a) identifies lots to which it applies; and

(b) contains provisions benefiting and burdening the lots to which it applies; and

(c) otherwise complies with the requirements of this division for a building management statement.

(3) Each lot to which a building management statement applies must be a lot entirely or partly contained in, or entirely or partly containing, 1 or more buildings.

(4) However, a building management statement that otherwise complies with subsection (3) may also apply to a lot that is not entirely or partly contained in, and does not entirely or partly contain, 1 or more buildings if the lot is the subject of a building development approval.

(5) If a lot to which a building management statement applies is the subject of a plan of subdivision, the statement applies to each lot created by the registration of the plan.

(6) In this section—

building development approval means a development approval or compliance permit, under the *Sustainable Planning Act 2009*, for development relating to a proposed building or buildings.

54AA Single area for lots to which building management statement applies

(1) The lots to which a building management statement applies must form a single, continuous area of land.

(2) A number of lots are taken to form a single, continuous area of land even if there is a road or watercourse within the external boundaries of the area comprising of the lots.

(3) Despite subsection (1), a building management statement may apply to lots that do not form a single, continuous area of land if the registrar is satisfied, on reasonable grounds, that all the lots are located within an area that is sufficiently limited to ensure the effective and efficient application of the provisions of this division.

54B Circumstances under which building management statement may be registered

(1) A building management statement may be registered only if it is signed by the registered owners of all lots to which the statement applies.

(2) The lots to which a building management statement applies must comprise—

(a) 2 or more volumetric format lots; or

(b) 1 or more volumetric format lots, and 1 or more standard format lots.

(3) In this section, a reference to standard format lot or volumetric format lot is taken to include a reference to common property, if the common property is created on registration of—

(a) a building format plan of subdivision; or

(b) a volumetric format plan of subdivision.

54C Content of building management statement

(1) A building management statement must contain provisions about the following—

(a) the supply of services to lots;

(b) rights of access to lots;

(c) rights of support and shelter;

(d) insurance arrangements.

(2) A building management statement may contain provisions about the following—

(a) establishment and operation of a management group;

(b) imposition and recovery of levies, how levy amounts are to be kept and how levy amounts are to be spent;

(c) property maintenance;

(d) architectural and landscaping standards;

(e) dispute resolution;

(f) rules for common services and facilities;

(g) administrative arrangements;

(h) arrangements for accomplishing the extinguishment of the statement;

(i) proposed future development.

(3) To avoid doubt, it is declared that a right of access, support or shelter, or other right in the nature of an easement, under a building management statement may operate according to its terms, and may be effective, despite the absence of a formal registered easement establishing the right.

(4) A dispute resolution provision under a building management statement may operate to require the referral of a dispute arising under the building management statement other than to a court, but the provision is ineffective to the extent that it purports to operate to stop final determination of the dispute in a court of competent jurisdiction.

54D Registration of building management statement

(1) When registering a building management statement, the registrar must record a reference to the statement on the indefeasible title for each lot to which the statement relates.

(2) However the registrar is not obliged to examine, but may examine, a building management statement for its validity, including, in particular, its consistency with any plan of subdivision, or its compliance with the requirements for a building management statement.

54DA When building management statement taken not to be registered

(1) A registered building management statement is taken not to be registered under this Act to the extent it includes a prohibition, requirement or restriction that, under the *Building Act 1975*, chapter 8A, part 2, has no force or effect.

Editor's note—

Building Act 1975, chapter 8A, part 2 (Provisions to support sustainable housing)

(2) Subsection (1) has effect only for a building management statement registered after the commencement of this section.

(3) The registrar may refuse to register an instrument purporting to be a building management statement if the registrar is satisfied it includes a prohibition, requirement or restriction that, under the *Building Act 1975*, chapter 8A, part 2, has no force or effect.

54E Amending a building management statement

(1) A building management statement may be amended by registering an instrument of amendment of the building management statement.

(2) The instrument of amendment must be signed by the registered owner of all lots to which the building management statement applies.

(3) The instrument of amendment must not change the lots to which it applies.

54F Building management statement if lots owned by 1 registered owner

A building management statement may be registered even if all the lots to which it applies have the one registered owner.

54G One person becoming registered owner of all lots

If the one person becomes the registered owner of all lots to which a building management statement applies, the building management statement is extinguished only if the registered owner asks the registrar to extinguish it.

54H Extinguishing a building management statement

(1) A building management statement may be extinguished by registering an instrument of extinguishment of the building management statement.

(2) A building management statement may be extinguished in part to remove a lot that is not contained in, or does not contain, a building or a part of a building, by registering an instrument of partial extinguishment of the building management statement.

(3) The instrument of extinguishment or partial extinguishment must be signed by the registered owners of all lots to which the building management statement applies.

(4) However, a building management statement may be extinguished or partially extinguished only if—

(a) for a partial extinguishment—all registered mortgagees of a lot to be removed consent to the partial extinguishment; or

(b) otherwise—all registered mortgagees of lots to which the building management statement applies consent to the extinguishment.

54I Lots constituted by community titles schemes

(1) For the operation of this division—

(a) a lot could be constituted by the scheme land for a community titles scheme; and

(b) for the signing of the statement, or an amendment, extinguishment or partial extinguishment of the statement, by the registered owner of the lot, the body corporate for the scheme is taken to be the registered owner.

(2) To remove any doubt, it is declared that if a building management statement applies to scheme land for a community titles scheme, the building management statement is binding on the community titles scheme.

(3) Also, if the building management statement provides for the establishment and operation of a management group, a decision made by the management group under the building management statement is binding on the community titles scheme.

(4) Subsections (2) and (3) have effect despite section 97 of the BCCM Act.

(5) To remove any doubt, it is declared that if a building management statement applies to scheme land for a community titles scheme, registration of the building management statement does not, and can not, give the body corporate of the community titles scheme an interest in any particular lot included in the scheme.

54J Building management statement affecting freehold and non-freehold land

(1) If a building management statement benefits or burdens both freehold and non-freehold land, the building management statement must be registered in the appropriate registers.

(2) Further dealings affecting the building management statement must also be registered in the appropriate registers.

(3) If a lot subject to a building management statement, including a lot over which a lease is issued under the *Land Act 1994*, is surrendered to the State to be dealt with under the *Land Act 1994*, the building management statement continues over the resulting unallocated State land only if the Minister approves the continuation.

(4) In considering whether to approve the continuation of the building management statement, the Minister may consider if it is reasonably necessary to benefit the lots, including the unallocated State land, the subject of the building management statement.

(5) In this section—

Minister means the Minister administering the *Land Act 1994*.

Part 5 Joint holders in a lot

55 Registering life interests and remainders

The registrar may record in the freehold land register an interest in a lot for life and an interest in remainder in the way the registrar considers appropriate.

56 Registering co-owners

(1) In registering an instrument transferring an interest to co-owners, the registrar must also register the co-owners as holding their interests as tenants in common or as joint tenants.

(2) If the instrument does not show whether co-owners are to hold as tenants in common or as joint tenants, the registrar must register the co-owners as tenants in common.

57 Separate indefeasible titles for tenants in common

(1) If a lot is, or is to be held, by 2 or more registered owners as tenants in common, the registrar may create a separate indefeasible title for the interest of each owner by including a separate set of particulars in the freehold land register for the interest of each owner.

(2) The registrar may act under this section at the request of an owner.

58 Time share schemes

If a registered owner of a lot subject to a time share scheme proposes to transfer to each participant in the scheme an interest as tenant in common with other participants, the registrar may create in the name of the registered owner—

(a) separate indefeasible titles for each interest by including a separate set of particulars in the freehold land register for each interest; or

(b) a single indefeasible title for several interests by including a single set of particulars in the freehold land register for the interests.

59 Severing joint tenancy

(1) A registered owner of a lot subject to a joint tenancy may unilaterally sever the joint tenancy by registration of a transfer executed by the registered owner.

(2) However, the registrar may register the instrument of transfer only if the registrar is satisfied the registered owner has given, or made a reasonable attempt to give, each other joint tenant the following—

(a) if the instrument is an electronic conveyancing document—written notice of the registered owner's intention to sever the joint tenancy under subsection (1);

(b) otherwise—a copy of the instrument.

(3) On registration of the instrument of transfer, the registered owner becomes entitled as a tenant in common with the other registered owners.

(4) If there are more than 2 joint tenants of the lot, the joint tenancy of the other registered owners is not affected.

Part 6 Dealings directly affecting lots

Division 1 Transfers

60 Registering a transfer

(1) A lot or an interest in a lot may be transferred by registering an instrument of transfer for the lot or interest.

(2) To remove any doubt, part of a lot may not be transferred.

61 Requirements of instrument of transfer

(1) An instrument of transfer for a lot or an interest in a lot must—

(a) be validly executed; and

(b) include particulars sufficient to identify—

(i) the lot to be transferred; or

(ii) the lot to which the interest applies; and

(c) include an acknowledgement of the amount paid or details of other consideration; and

(d) for an interest in a lot—include a description sufficient to identify the interest to be transferred.

(2) Subsection (1) does not limit the matters that the appropriate form for an instrument of transfer may require to be included in the instrument.

62 Effect of registration of transfer

(1) On registration of an instrument of transfer for a lot or an interest in a lot, all the rights, powers, privileges and liabilities of the transferor in relation to the lot vest in the transferee.

(2) Without limiting subsection (1), the registered transferee of a registered mortgage is bound by and liable under the mortgage to the same extent as the original mortgagee.

(3) Without limiting subsection (1), the registered transferee of a registered lease is bound by and liable under the lease to the same extent as the original lessee.

(4) In this section—

rights, in relation to a mortgage or lease, includes the right to sue on the terms of the mortgage or lease and to recover a debt or enforce a liability under the mortgage or lease.

63 Dealing with mortgaged lot

(1) If a lot, or an interest in a lot, subject to a registered mortgage is transferred, the transferee is liable—

(a) to comply with the terms of the mortgage and the terms implied by an Act; and

(b) to indemnify the transferor against liability under the mortgage and under this or another Act.

(2) If a mortgagee of a lot becomes the registered owner of the lot, the registrar must register the mortgagee as registered owner released from the mortgage.

(3) The registrar must act under subsection (2) unless the mortgagee asks the registrar not to act under the subsection.

Division 2 Leases

64 Registering a lease

A lot or part of a lot may be leased by registering an instrument of lease for the lot or part.

65 Requirements of instrument of lease

(1) An instrument of lease for a lot or part of a lot must—

(a) be validly executed; and

(b) include a description sufficient to identify the lot or part of the lot to be leased; and

(c) include an acknowledgement of the amount paid or details of other consideration.

(2) If the instrument of lease is for part of the lot, the instrument must also include—

(a) a sketch plan identifying the part of the lot drawn to a standard to the registrar's satisfaction; or

(b) if required by the registrar—a plan of survey identifying the part of the lot.

(3) However, the registrar may allow the part of the lot to be identified by a description alone if the registrar is satisfied the part of a lot is sufficiently identified by the description in the instrument.

(3A) If the instrument of lease (other than a lease of all or part of a building) is for the reconfiguration of a lot within the meaning of the *Sustainable Planning Act 2009*, the instrument must have been approved by—

(a) if the lot is in a priority development area—MEDQ; or

(aa) if the lot is in a State development area and the reconfiguration is regulated by an approved development scheme—the Coordinator-General; or

(b) otherwise—the relevant local government.

(4) This section does not limit the matters that the appropriate form for an instrument of lease may require to be included in the instrument.

66 Validity of lease or amendment of lease against mortgagee

A lease or amendment of a lease executed after registration of a mortgage of a lot is valid against the mortgagee only if the mortgagee consents to the lease or amendment before its registration.

67 Amending a lease

(1) A registered lease may be amended by registering an instrument of amendment of the lease.

(2) However, the instrument of amendment must not—

(a) increase or decrease the area leased; or

(b) add or remove a party to a lease; or

(c) be lodged after the lease's term has ended.

(3) The ***term*** of a registered lease includes a period of possession under the lease because—

(a) an option to renew in the lease has been exercised, whether or not an instrument of amendment has been registered to extend the term of the lease for the option period; or

(b) otherwise—an instrument of amendment extending the term of the lease has been registered.

(4) However, subsection (3)(a) applies to a second or subsequent option to renew in a lease only if, before the end of the option period for the previous option, an instrument of amendment was registered to extend the term of lease for that previous option period.

(5) The procedure for amendment specified in this section is in addition to other rights that are not inconsistent with this Act.

(6) In this section—

option period, for an option to renew in a lease, means the period for which the term of a lease is, or will be, extended by the exercise of the option.

68 Re-entry by lessor

(1) If a lessor under a registered lease of a lot or part of a lot lawfully re-enters and takes possession under the lease, the lessor may lodge a request for the registrar to register the re-entry.

(2) The interest of the lessee ends on the registration of the request for the re-entry.

69 Surrendering a lease

(1) A registered lease may be wholly or partly surrendered by operation of law or by registering an instrument of surrender of the lease executed by the lessor and the lessee.

(2) However, a registered lease may be surrendered by registering an instrument of surrender only with the consent of every mortgagee and sublessee of the lessee.

(3) If an instrument of surrender of lease is lodged, the registrar may register the instrument and record the date of surrender specified in the instrument in the freehold land register.

(4) On registration of an instrument of surrender of a registered lease, the interest of the lessee vests in the lessor.

(5) This section does not apply to a surrender or disclaimer under a law about bankruptcy.

70 Disclaimer in bankruptcy

The registrar may register a disclaimer of a lease or other interest in a lot under a law about bankruptcy only if notice of the disclaimer and a request to register it is lodged.

71 Validity of unregistered lease

An unregistered lease of a lot or part of a lot is not invalid merely because it is unregistered.

Division 3 Mortgages

72 Mortgaging lot etc. by registration

(1) A lot or an interest in a lot may be mortgaged by registering an instrument of mortgage for the lot or interest.

(2) However, a mortgage is not an interest in a lot that can be mortgaged.

73 Requirements of instrument of mortgage

(1) An instrument of mortgage must—

(a) be validly executed; and

(b) include a description sufficient to identify the lot to be mortgaged; and

(c) include a description of the debt or liability secured by the mortgage; and

(d) include a description sufficient to identify the interest to be mortgaged.

(2) If the mortgagor is registered as a trustee, a document specifying the details of the trust, or the document creating the trust, must be deposited with the mortgage unless—

(a) a document has already been deposited with an instrument of transfer under section 110(3); and

(b) the details of the trust have not since changed.

(3) Subsection (1) does not limit the matters that the appropriate form for an instrument of mortgage may require to be included in the form.

74 Effect of registration of a mortgage

A registered mortgage of a lot or an interest in a lot operates only as a charge on the lot or interest for the debt or liability secured by the mortgage.

75 Equitable mortgage

(1) An equitable mortgage of a lot may be created by leaving a certificate of title with the mortgagee.

(2) Subsection (1) does not affect the ways in which an equitable mortgage may be created.

76 Amending a mortgage

(1) A registered mortgage may be amended by registering an instrument of amendment of the mortgage.

(2) However, the instrument of amendment must not—

(a) increase or decrease the area of land charged by the mortgage; or

(b) add or remove a party to the mortgage.

77 Amending priority of mortgages

(1) The priority of registered mortgages may be amended by registering an instrument amending priority.

(2) The instrument amending priority must—

(a) specify the order of priority of all affected registered mortgages; and

(b) be executed by all mortgagees affected by the amendment.

(3) On registration of the instrument amending priority, the mortgages have priority in the order specified in the instrument.

78 Powers of mortgagee

(1) A registered mortgagee of a lot has the powers and liabilities of a mortgagee under the *Property Law Act 1974*, part 7.

(2) Without limiting subsection (1), but subject to the terms of the mortgage, if the mortgagor defaults under a registered mortgage, the mortgagee may—

(a) take possession of the mortgaged lot in a way that does not contravene the Criminal Code, section 70; or

(b) enter into possession of the mortgaged lot by receiving rents and profits; or

(c) by a proceeding in a court of competent jurisdiction—

(i) obtain possession of the mortgaged lot; or

(ii) foreclose the right of the mortgagor to redeem the mortgaged lot; or

(iii) obtain an order of the court for the sale of the mortgaged lot.

(3) The powers in this section are in addition to other powers exercisable by the mortgagee.

79 Effect of transfer after sale by mortgagee

If an instrument of transfer executed by a registered mortgagee after the exercise of the power of sale under the mortgage is registered, registration of the instrument vests in the transferee the mortgagor's interest that is transferred, free from liability under the mortgage and any other mortgage registered after it.

80 Liability of mortgagee in possession of leased lot

(1) A mortgagee of a leasehold interest in a lot who enters into possession under the lease (whether by taking the rents or profits or in another way) is liable under the lease to the same extent as the lessee was liable under the lease before the mortgagee entered into possession.

(2) However, the liability of the mortgagee under the lease is limited to the amount of rents, profits or other benefits received by the mortgagee during the mortgagee's possession.

81 Releasing a mortgage

(1) On lodgement of an instrument releasing a mortgage, the registrar may register the release to the extent shown in the instrument of release.

(2) The instrument of release may release the debt or liability secured for—

(a) all or part of the mortgage; or

(b) 1 or more of the mortgagors.

(3) On registration of the instrument of release, the mortgage is discharged, and the lot is released from the mortgage, to the extent shown in the instrument of release.

Division 4 Easements

81A Definitions for div 4

In this division—

cane railway easement see the *Sugar Industry Act 1999*, section 63(5).

full supply level see the *Water Supply (Safety and Reliability) Act 2008*, schedule 3.

mill owner see the *Sugar Industry Act 1999*, schedule.

public thoroughfare easement means a public utility easement provided for under section 89(3).

public utility easement means an easement in favour of a public utility provider.

public utility provider means—

(a) the State or another entity representing the State; or

(b) the Commonwealth or another entity representing the Commonwealth; or

(c) a local government; or

(d) a person authorised by law to provide a public utility service; or

(e) a person authorised under an Act to provide a particular public utility service;

Examples for paragraph (e)—

a special approval holder under the *Electricity Act 1994* or a service provider for a registered service under the *Water Supply (Safety and Reliability) Act 2008*

(f) an entity approved by the Minister as suitable to provide infrastructure for use by another entity in the provision of a particular public utility service;

Example for paragraph (f)—

a relevant infrastructure owner as defined under the *Water Supply (Safety and Reliability) Act 2008* whose infrastructure may be used by another entity authorised to supply a water or sewerage service under that Act

(g) a person approved by the Minister as suitable to provide a particular public utility service; or

(h) a mill owner, but only for the registration of a cane railway easement.

82 Creation of easement by registration

(1) An easement over a lot or part of a lot may only be created by registering an instrument of easement.

(2) An easement over a registered lease of a lot may only be created by registering an instrument of easement.

(3) The instrument must state—

(a) the nature of the easement and its terms; and

(b) the land to be benefited, and the land to be burdened, by the easement; and

(c) for a high-density development easement—the purposes under division 4AA for which the easement is created.

(4) For subsection (3)(a), the terms of a high-density development easement are set out in division 4AA.

(5) A public utility easement for water storage may be created only for water storage—

(a) for a weir—on land upstream of the weir and within or outside the storage area at full supply level; or

(b) for a dam—on land upstream of the barrier of the dam and outside the storage area at full supply level.

(6) The instrument creating the easement must show the part of the land over which water may be stored.

83 Registration of easement

(1) An instrument of easement may be registered only if—

(a) for an easement, other than a high-density development easement, over a part of a lot—a plan of survey designating the easement is registered; and

(b) it is signed by—

(i) the registered owner of the lot or lessee of the registered lease to be burdened; and

(ii) if the easement benefits another lot—the registered owner of the lot; and

(iii) if the easement benefits a registered lease—the lessee; and

(iv) if the easement benefits non-freehold land—the lessee or other person entitled to the land; and

(v) if the easement is a public utility easement—the public utility provider.

(2) If, under the *Sustainable Planning Act 2009*, the creation of an easement giving access to a lot from a constructed road is the reconfiguring of a lot, the plan of survey must be approved by—

(a) if the lot is in a priority development area—MEDQ; or

(aa) if the lot is in a State development area and the reconfiguration is regulated by an approved development scheme—the Coordinator-General; or

(b) otherwise—the relevant local government.

(3) Subsection (2)(a) does not apply to a plan of survey if the plan is not a plan for which assessment for compliance is required under the *Economic Development Act 2012*, section 104.

(4) Subsection (2)(b) does not apply to a plan of survey if the plan does not require compliance assessment under a regulation under the *Sustainable Planning Act 2009*, section 397.

83A Registration of plan showing proposed easement

(1) A plan designating a proposed easement, other than a high-density development easement, may be registered only if the designation includes the words 'proposed easement'.

(2) The designation—

(a) does not create an easement; and

(b) is not evidence of a present intention to create an easement.

84 Limitation of easements

An easement, other than a high-density development easement, may be limited wholly or partly in height, depth or both.

85 Instrument affecting freehold and non-freehold land

(1) If an easement benefits or burdens both freehold and non-freehold land, the easement must be registered in the appropriate registers.

(2) Further dealings affecting the easement must also be registered in the appropriate registers.

(3) If a lot subject to an easement is surrendered to the State to be dealt with under the *Land Act 1994*, the easement continues over the resulting unallocated State land only if—

(a) the easement is in favour of a public utility provider; and

(b) the Minister approves continuation of the easement.

(4) If an easement continues over unallocated State land, the continuation must be recorded in the appropriate registers.

85A Particulars to be registered

(1) When an easement is registered, the following particulars must be recorded in the appropriate registers—

(a) the lot burdened by the easement;

(b) any lot benefited by the easement;

(c) any registered lease benefited or burdened by the easement;

(d) if non-freehold land is benefited or burdened by the easement—any registered sublease or sub-sublease benefited or burdened by the easement.

(2) A public utility easement for water storage burdens the whole of the land any part of which may be affected by the storage.

85B Rights and liabilities created on registration of instrument

(1) On registration of the instrument creating an easement, the easement is created and, without anything further, vests in the person entitled to the benefit of it.

(2) If the easement is in favour of a public utility provider and is not a public thoroughfare easement, the registered owner of a lot burdened by the easement may recover from the public utility provider a reasonable contribution towards the cost of keeping the part of the lot affected by the easement in a condition appropriate for enjoyment of the easement.

(3) The liability to contribute may be amended or excluded by agreement.

86 Easement benefiting and burdening same registered owner's lots

An instrument of easement may be registered even if—

(a) the lot benefited and the lot burdened by the easement have, or are to have, the same registered owner; or

(b) the owner of the lot benefited by the easement holds an interest in the lot burdened by the easement.

87 Same person becoming registered owner of benefited and burdened lots

If the same person becomes the registered owner of the lot benefited and the lot burdened by an easement, the easement is extinguished only if—

(a) the registered owner asks the registrar to extinguish the easement; or

(b) the registrar creates a single indefeasible title for the lots.

88 Owner of benefited land acquiring interest in burdened land

An easement is not extinguished merely because the owner of the lot benefited by the easement acquires an interest, or a greater interest, in the lot burdened by the easement.

89 Easements for public utility providers

(1) Despite section 82(3), it is not necessary to state the land to be benefited in a public utility easement that is not attached to, or used or enjoyed with, other land.

(2) However, a public utility easement mentioned in subsection (1)—

(a) may be registered only for the following—

(i) a right of way;

(ii) drainage or sewerage;

(iii) the supply of water, gas, electricity, telecommunication facilities or another public utility service;

(iv) water storage;

(v) an infrastructure corridor;

(vi) a purpose mentioned in the *State Development and Public Works Organisation Act 1971*, section 125(1);

(vii) in the case of a cane railway easement in favour of a mill owner—a purpose for which a cane railway easement may be granted under the *Sugar Industry Act 1999*; and

(b) may be registered in favour of a person mentioned in section 81A, definition *public utility provider*, paragraph (g), only if the easement is for the public utility service mentioned in the paragraph.

(3) Further, a public utility easement mentioned in subsection (1) may be registered for a right of way for the public only if—

(a) the public utility provider under the easement is the State or a local government; and

(b) use of the easement is limited to the following—

(i) pedestrians;

(ii) cyclists;

(iii) vehicles reasonably necessary for the building and maintenance of the easement.

(4) A registered public thoroughfare easement is taken not to be registered under this Act to the extent it—

(a) is inconsistent with the relevant provisions for the easement; or

(b) purports to provide other than for a public thoroughfare easement.

(5) Subsection (4) has effect only in relation to public utility easements registered after the commencement of this subsection.

(6) The registrar may refuse to register an instrument of easement purporting to be a public thoroughfare easement if the registrar is satisfied it—

(a) is to any extent inconsistent with the relevant provisions for the easement; or

(b) purports to any extent to provide other than for a public thoroughfare easement.

(7) In this section—

infrastructure corridor means an infrastructure corridor under the *State Development and Public Works Organisation Act 1971*, section 82(8).

pedestrian includes—

(a) anyone who is a pedestrian within the meaning of the *Transport Operations (Road Use Management) Act 1995*; and

(b) anyone or anything else whose use of an area is commonly associated with pedestrian use of the area.

Example for paragraph (b)—

a child being pushed in a pram, an animal being taken on a leash

relevant provisions, for a public thoroughfare easement, means the provisions about public thoroughfare easements included in—

(a) if the public utility provider under the easement is a local government—the *Local Government Act 2009*; or

(b) if the public utility provider under the easement is the State—the *Transport Infrastructure Act 1994*.

90 Surrendering an easement

(1) A registered easement may be wholly or partly surrendered by registering an instrument of surrender of the easement.

(2) The instrument of surrender may be signed by—

(a) the owner of the lot, or the lessee of the lease, burdened by the easement and the owner of the lot benefited by the easement; or

(b) only the owner of the lot, or the lessee of the lease, benefited by the easement; or

(c) only the public utility provider in whose favour the easement is registered.

(3) However, a registered easement may be surrendered only if all registered mortgagees and lessees of the lot, or all registered mortgagees and sublessees of the lease, benefited by the easement consent to the surrender.

(4) Subsection (3) does not apply to a lessee of the lot, or a sublessee of the lease, who does not receive a benefit from the easement.

(5) In this section—

lessee, of a lease, means—

(a) the registered lessee of the lease; or

(b) if the mortgagee of the lease is in possession—the mortgagee in possession.

owner, of a lot, means—

(a) the registered owner of the lot; or

(b) if the mortgagee of the lot is in possession—the mortgagee in possession.

90A When easement over registered lease ends

(1) A registered easement, to the extent it benefits or burdens a registered lease, ends when the lease ends.

(2) If a registered lease is surrendered in part, to the extent a registered easement benefits or burdens the part of the lease that was surrendered, the easement ends.

(3) The registrar may remove an easement that has ended from the freehold land register.

91 Amending an easement

(1) A registered easement, other than a high-density development easement, may be amended by registering an instrument of amendment of the easement.

(2) However, the instrument of amendment must not—

(a) change the location of the easement; or

(b) increase or decrease the area of land affected by the easement; or

(c) change a party to the easement.

92 Application of Property Law Act 1974, s 181

The *Property Law Act 1974*, section 181 applies to a registered easement.

Division 4AA High-density development easements

93 Application of div 4AA

(1) This division applies if an easement registered under section 82 is a high-density development easement.

(2) A reference in this division to a lot is a reference to a lot the subject of the easement.

94 Meaning of *high-density development easement*

(1) A ***high-density development easement*** is an easement created for 1 or more of the following purposes—

(a) support;

(b) shelter;

(c) projections;

(d) maintenance;

(e) roof water drainage.

(2) A high-density development easement may be created only over 2 small, adjoining lots, and only if—

(a) any of the following applies—

(i) a wall of a building situated on 1 of the adjoining lots is also a wall of a building situated on the other

adjoining lot, and the wall is on the common boundary of the 2 adjoining lots;

(ii) a wall of a building situated on 1 of the adjoining lots is adjacent to a wall of a building situated on the other adjoining lot, each wall is constructed on the same foundation and the foundation is on the common boundary of the 2 adjoining lots;

(iii) a wall of a building situated on 1 of the adjoining lots is adjacent to a wall of a building situated on the other adjoining lot, each wall is constructed on a separate foundation and each foundation is adjacent to the common boundary of the 2 adjoining lots; or

(b) a relevant development approval, under which a requirement for a circumstance mentioned in paragraph (a)(i), (ii) or (iii) applies as a condition, applies to both adjoining lots.

(3) Each lot to which a high-density development easement relates is benefitted and burdened by the easement to the extent necessary to give effect to the purposes for which the easement is created.

(4) In this section—

relevant development approval means—

(a) a development approval under the *Sustainable Planning Act 2009* for any of the following as mentioned in section 7 of that Act—

(i) carrying out building work;

(ii) reconfiguring a lot;

(iii) making a material change of use of premises; or

(b) a PDA development approval under the *Economic Development Act 2012* for any of the following as mentioned in section 33(2) of that Act—

(i) carrying out building work;

(ii) reconfiguring a lot;

(iii) making a material change of use of premises.

small, for a lot, means the lot has an area of 300m^2 or less.

95 Easement for support

(1) This section applies if a high-density development easement is created for support.

(2) An easement of lateral or subadjacent support exists in favour of 1 lot (the ***benefitted lot***) against the other lot (the ***burdened lot***) if the burdened lot is capable of supplying lateral or subadjacent support to the benefitted lot.

(3) An easement of common wall support exists in favour of the benefitted lot against the burdened lot when a building on the burdened lot is supplying common wall support to a building on the benefitted lot.

(4) For subsection (3), a building (***building A***) supplies common wall support to another building (***building B***) if a wall (the ***common wall***) of building A that is necessary to ensure the general safety and structural integrity of building B—

(a) is also a wall of building B; or

(b) is constructed on the same foundation as, and adjacent to, a wall of building B.

(5) An easement under subsection (2) or (3) entitles the owner of the benefitted lot to enter the burdened lot under the easement to maintain or replace any support.

(6) The owner of the benefitted lot and the owner of the burdened lot are each liable to contribute equally to the cost of maintaining or replacing any support.

(7) The owner of the burdened lot—

(a) must maintain any structures on the burdened lot that provide support; and

(b) must insure, to the extent practicable, any structures on the burdened lot that provide support for—

(i) the full replacement value of the structure; and

(ii) public risk; and

(c) must not remove, change or otherwise interfere with any support, other than as required under paragraph (a), without the written consent of the owner of the benefitted lot.

96 Easement for shelter

(1) This section applies if a high-density development easement is created for shelter.

(2) An easement exists in favour of 1 lot (the ***benefitted lot***) against the other lot (the ***burdened lot***) entitling the owner of the benefitted lot to have the lot sheltered by the parts of a building situated on the burdened lot that are necessary to supply the shelter.

(3) The easement under subsection (2) entitles the owner of the benefitted lot to enter the burdened lot under the easement to maintain or replace the shelter.

(4) The owner of the burdened lot—

(a) must maintain the parts of the building that supply the shelter; and

(b) must insure, to the extent practicable, any parts of the building that supply the shelter for—

(i) the full replacement value of the structure; and

(ii) public risk; and

(c) must not remove, change or otherwise interfere with any of the parts of the building that supply the shelter, other than as required under paragraph (a), without the written consent of the owner of the benefitted lot.

96A Easements for projections

(1) This section applies if a high-density development easement is created for projections.

(2) An easement exists in favour of 1 lot (the ***benefitted lot***) against the other lot (the ***burdened lot***) to permit parts of a building situated on the benefitted lot, including, for example, eaves, guttering, awnings and window sills, to project over the boundaries of the burdened lot.

(3) The easement entitles the owner of the benefitted lot to enter the burdened lot to maintain or replace the building parts.

(4) The owner of the benefitted lot—

(a) is solely liable for the costs of maintaining or replacing the building parts; and

(b) must insure, to the extent practicable, the building parts for—

(i) their full replacement value; and

(ii) public risk.

(5) The owner of the burdened lot must not remove, change or otherwise interfere with any projection without the written consent of the owner of the benefitted lot.

96B Easement for maintenance of building close to boundary

(1) This section applies if a high-density development easement is created for maintenance.

(2) An easement exists in favour of 1 lot (the ***benefitted lot***) against the other lot (the ***burdened lot***) entitling the owner of the benefitted lot to enter the burdened lot to carry out maintenance or replacement of a building that is—

(a) on the boundary of the benefitted lot; or

(b) so close to the boundary of the benefitted lot that maintenance or replacement of the building is not able to be carried out without entering the burdened lot.

96C Easement for roof water drainage

(1) This section applies if a high-density development easement is created for roof water drainage.

(2) An easement exists in favour of 1 lot (the ***benefitted lot***) against the other lot (the ***burdened lot***) to permit a roof water drainage structure that is part of a building situated on the benefitted lot to—

(a) project over the boundaries of the burdened lot; or

(b) be situated on the burdened lot; or

(c) also be part of a building situated on the burdened lot.

(3) For subsection (2), a ***roof water drainage structure*** is a structure—

(a) used for collecting rainwater from the roof of a building and conveying the rainwater to a drain or the ground, including, for example, guttering, a downpipe, a drainpipe or a box drain; and

(b) only to the extent the structure is visible and not concealed underground.

(4) The easement entitles the owner of the benefitted lot to enter the burdened lot to maintain or replace the roof water drainage structure.

(5) The owner of the benefitted lot—

(a) is solely liable for the costs of maintaining or replacing the roof water drainage structure; and

(b) must insure, to the extent practicable, the roof water drainage structure for—

(i) its full replacement value; and

(ii) public risk.

(6) The owner of the burdened lot must not, without the written consent of the owner of the benefitted lot—

(a) remove, change or otherwise interfere with the roof water drainage structure; or

(b) obstruct or otherwise interfere with the flow of water through the structure.

(7) However, the owner of the burdened lot may, without the written consent of the owner of the benefitted lot, interfere with the roof water drainage structure to the extent necessary to ensure water flows freely through the structure, including, for example, by removing from the structure a thing that is obstructing the flow of water.

96D Insurance requirements

(1) A policy of insurance for the full replacement value of a structure required to be taken out under this division—

(a) must cover—

(i) damage; and

(ii) costs incidental to the reinstatement or replacement of the structure, including the cost of taking away debris and the fees of engineers and other professional advisors; and

(b) must provide for the reinstatement of the structure to its condition when new.

(2) A policy of public risk insurance of a structure required to be taken out under this division must cover amounts for—

(a) compensation for death, illness and bodily injury; and

(b) damage to property.

(3) In this section—

damage, for coverage under insurance required to be put in place under this division, means—

(a) earthquake, explosion, fire, lightning, storm, tempest and water damage; and

(b) glass breakage; and

(c) damage from impact, malicious act and riot.

96E Notice of entry

(1) This section applies if, under this division, the owner of a lot benefitted by a high-density development easement is entitled to enter the lot burdened by the easement to maintain or replace a structure, part of a structure or another thing.

(2) Before exercising the right of entry, the owner of the benefitted lot must give the owner of the burdened lot reasonable notice in writing of the owner's intention to enter the burdened lot and details of the maintenance or replacement to be carried out.

(3) However, if the structure or other thing is damaged or destroyed and, in the circumstances, urgent maintenance or replacement is required and it is impractical to give a notice under subsection (2)—

(a) the owner of the benefitted lot may exercise the right of entry without giving the notice to carry out the urgent maintenance or replacement; and

(b) as soon as practicable after the entry, the owner of the benefitted lot must give the owner of the burdened lot written notice of the entry and details of the maintenance or replacement carried out.

Division 4A Covenants

97A Covenant by registration

(1) A lot may be made the subject of a covenant by the registration of an instrument of covenant under this division.

(2) An instrument of covenant may be registered under this division only if the covenantee under the instrument is the State or another entity representing the State, or a local government.

(2A) An instrument of covenant may be registered even if the covenantor under the instrument is the same entity as the covenantee.

(3) The covenant must—

(a) relate to the use of—

(i) the lot or part of the lot; or

(ii) a building, or building proposed to be built, on the lot; or

(b) be aimed directly at preserving—

(i) a native animal or plant; or

(ii) a natural or physical feature of the lot that is of cultural or scientific significance; or

(c) be for ensuring that the lot may be transferred to a person only if there is also transferred to the person—

(i) another lot that is also the subject of the covenant; or

(ii) non-freehold land that, under the *Land Act 1994*, is the subject of the covenant; or

(iii) a lot mentioned in subparagraph (i) together with non-freehold land mentioned in subparagraph (ii); or

(iv) a registered lease for another lot or part of a lot.

(4) The covenant—

(a) may be a positive covenant or a negative covenant; and

(b) is binding on the covenantor and the covenantor's successors in title.

(5) The covenant must not prevent a person from—

(a) registering an interest under this Act; or

(b) exercising the person's rights under a registered interest; or

(c) releasing or surrendering a registered interest.

(6) The covenant must not—

(a) secure the payment of money or money's worth payable under a condition of a development approval,

compliance permit or an infrastructure agreement under the *Sustainable Planning Act 2009*; or

Note—

See also, the *Sustainable Planning Act 2009*, sections 87 and 349.

(b) provide for anything capable of being the subject of an instrument of easement.

(7) For subsection (3)(a), the covenant relates to the use of the lot, a part of the lot, a building on the lot or a building proposed to be built on the lot, only if it provides for—

(a) a purpose for which the lot, the part or the building must be used; or

Examples of covenants for paragraph (a)—

- that a building on the lot must be used for educational purposes
- that the lot must be used for noise attenuation purposes

(b) a purpose that is the only purpose for which the lot, the part or the building may be used; or

Examples of covenants for paragraph (b)—

- that a building on the lot may be used only for residential purposes
- that the lot may be used only for organic farming

(c) a purpose for which the lot, the part or the building must not be used.

Examples of covenants for paragraph (c)—

- that a building on the lot must not be used for a stated commercial purpose
- that the lot must not be used for industrial purposes

(8) For subsection (3)(a), the covenant does not relate to the use of the lot, a part of the lot, a building on the lot or a building proposed to be built on the lot, to the extent it provides for—

(a) an architectural, construction or landscaping standard for the lot or building; or

(b) a statement, acknowledgement or obligation relating to the use of land other than the lot; or

Examples—

- an acknowledgement that the lot is in the vicinity of other land and that the other land is used for industrial purposes
- a statement that the occupier of other land can not be made the subject of any proceedings relating to the occupier's use of that land

(c) a condition that must be complied with before the lot can be used for a stated purpose or any purpose; or

Example—

a condition that a residence can not be built on the lot until stated utility services are connected

(d) regulation of the conduct of the owner of the lot, if the conduct is unrelated to, or is ancillary to, use of the lot.

Examples for paragraph (d)—

- an obligation not to start proceedings in relation to activities happening on land other than the lot
- an obligation not to use the lot for residential purposes unless a rainwater tank is installed

97AA Compliance with s 97A

(1) A registered instrument of covenant is taken not to be registered under this Act to the extent it is inconsistent with section 97A.

(2) Subsection (1) has effect only in relation to instruments of covenant registered after the commencement of this section.

(3) The registrar may refuse to register an instrument purporting to be an instrument of covenant if the registrar is satisfied it is to any extent inconsistent with section 97A.

97B Requirements of instrument of covenant

(1) An instrument of covenant must—

(a) be validly executed; and

(b) include a description sufficient to identify the land to be the subject of the covenant; and

(c) include a description of the covenant.

(2) Subsection (1) does not limit the matters that the appropriate form for an instrument of covenant may require to be included in the form.

97C Amending an instrument of covenant

(1) A covenant may be amended by registering an instrument of amendment of the covenant.

(2) The instrument of amendment may be registered only if it is validly executed.

(3) However, the instrument of amendment must not—

(a) increase or decrease the area of land the subject of the covenant; or

(b) add or remove a party to the covenant.

97D Releasing a covenant

(1) A registered covenant may be wholly or partly discharged by registering an instrument releasing the covenant.

(2) The instrument must be signed by the covenantee.

(3) On lodgement of the instrument, the registrar may register the release to the extent shown in the instrument.

(4) On registration of the instrument, the covenant is discharged, and the lot is released from the covenant, to the extent shown in the instrument.

97DA Application of Property Law Act 1974, s 181

The *Property Law Act 1974*, section 181, applies to a registered covenant.

Division 4B Profits a prendre

97E Profit a prendre by registration

A lot may be made the subject of a profit a prendre by the registration of an instrument of profit a prendre under this division over the lot.

97EA Profit a prendre affecting a lot and non-freehold land

(1) This section applies if an instrument of profit a prendre is registered under section 97E in relation to a lot and the profit a prendre also—

(a) benefits another lot; or

(b) benefits non-freehold land; or

(c) burdens another lot; or

(d) burdens non-freehold land; or

(e) has effect in any combination of paragraphs (a) to (d).

(2) The instrument must be registered in the appropriate registers.

(3) Further dealings affecting the profit a prendre must also be registered in the appropriate registers.

97F Requirements of instrument of profit a prendre

(1) An instrument of profit a prendre must—

(a) be validly executed; and

(b) include a description sufficient to identify the lot to be the subject of the profit a prendre; and

(c) include a description of the profit a prendre to which the lot is to be subject, including the period for which the profit a prendre is to be enjoyed.

(2) Subsection (1) does not limit the matters that the appropriate form for an instrument of profit a prendre may require to be included in the form.

97G Particulars to be registered

When registering an instrument of profit a prendre, the registrar must record particulars of the following in the freehold land register—

(a) the lot burdened by the profit a prendre;

(b) any lot benefited by the profit a prendre;

(c) any lease of non-freehold land benefited or burdened by the profit a prendre.

97H Profit a prendre benefiting and burdening same registered owner's lots

If a lot is to be benefited by a profit a prendre, the instrument of profit a prendre may be registered even if—

(a) the lot benefited and the lot burdened by the profit a prendre have, or are to have, the same registered owner; or

(b) the owner of the lot benefited by the profit a prendre holds an interest in the lot burdened by the profit a prendre.

97I Same person becoming registered owner of benefited and burdened lots

If a lot is benefited by a profit a prendre, and the same person becomes the registered owner of the lot benefited and the lot burdened by the profit a prendre, the profit a prendre is extinguished only if—

(a) the registered owner asks the registrar to extinguish the profit a prendre; or

(b) the registrar creates a single indefeasible title for the lots.

97J Owner of benefited land acquiring interest in burdened land

If a lot is benefited by a profit a prendre, the profit a prendre is not extinguished merely because the owner of the lot benefited by the profit a prendre acquires an interest, or a greater interest, in the lot burdened by the profit a prendre.

97K Amending an instrument of profit a prendre

(1) A profit a prendre may be amended by registering an instrument of amendment of the profit a prendre.

(2) However, the instrument of amendment must not—

(a) increase or decrease the area of land the subject of the profit a prendre; or

(b) add or remove a party to the profit a prendre.

97L Releasing or removing a profit a prendre

(1) On lodgement of an instrument releasing a profit a prendre to which a lot is subject, the registrar may register the release to the extent shown in the instrument of release.

(2) On registration of the instrument of release, the profit a prendre is discharged, and the lot is released from the profit a prendre, to the extent shown in the instrument of release.

(3) Also, the registrar may remove a profit a prendre from the indefeasible title for a lot if a request to remove the profit a prendre is lodged, and it is clearly established that—

(a) the period of time for which the profit a prendre was intended to subsist has ended; or

(b) the event upon which the profit a prendre was intended to end has happened.

97M Effect of surrender of lot on profit a prendre

(1) If a lot subject to a profit a prendre is surrendered to the State, other than absolutely, the profit a prendre is a transaction that

must be recorded on the new deed of grant under the *Land Act 1994*, section 358(5).

(2) If a lot subject to a profit a prendre is surrendered absolutely, the profit a prendre is an interest that, under the *Land Act 1994*, section 331(2), is extinguished from the day the surrender is registered.

Division 4C Carbon abatement interests

Subdivision 1 Preliminary

97N Definitions for div 4C

In this division—

carbon abatement interest, for land, means an interest in the land consisting of the exclusive right to the economic benefits associated with carbon sequestration on the land.

carbon abatement product means all or any of the following—

(a) living biomass;

(b) dead organic matter;

(c) soil;

(d) carbon sequestration by, and carbon stored in, a carbon abatement product mentioned in paragraphs (a) to (c).

carbon sequestration, by living biomass, dead organic matter or soil, includes—

(a) the process by which the biomass, matter or soil removes and stores carbon dioxide from the atmosphere; or

(b) the use of the biomass, matter or soil to avoid, reduce or eliminate greenhouse gas emissions.

Subdivision 2 Creation and registration

97O Creation only by registration

(1) A carbon abatement interest over a lot—

(a) is created by registering an instrument of carbon abatement interest for the lot; and

(b) can not be created other than under this division.

(2) An instrument of carbon abatement interest must—

(a) be validly executed; and

(b) include—

(i) a description sufficient to identify the lot the subject of the interest; and

(ii) the terms of the interest; and

(iii) the period for which the interest is granted.

(3) If the carbon abatement interest relates to a part of a lot, the instrument may only be registered if—

(a) a plan of survey has been registered, designating the part of the lot as being the subject of a carbon abatement interest; and

(b) the instrument includes a description identifying the part of the lot designated on the registered plan of survey.

(4) This section does not limit the matters that the appropriate form for an instrument of carbon abatement interest may require to be included in the instrument.

97P Requirements for registration

The registrar may register an instrument creating a carbon abatement interest for a lot only if—

(a) the proposed grantor of the interest is the registered owner of the lot; and

(b) the registrar is satisfied the registered owner is the holder of the right to deal with the carbon abatement product for the lot; and

(c) all holders of a registered interest in the land whose interest may be affected by the proposed carbon abatement interest consent to the proposed grant; and

(d) there are no existing carbon abatement interests registered for the part of the lot to which the proposed carbon abatement interest relates.

97Q Grantor and grantee may be the same

A carbon abatement interest may be registered even though the proposed grantor and proposed grantee of the interest are the same.

97R Particular interests not to be registered

(1) This section applies in relation to land in the area of a specified national park.

(2) The registrar must not register a carbon abatement interest for the land in the freehold land register.

Subdivision 3 Amendments and dealings

97S Amending interest

(1) A carbon abatement interest may be amended by registering an instrument of amendment of the carbon abatement interest.

(2) However, the amendment can not—

(a) increase or decrease the area of land the subject of the interest; or

(b) add or remove a party to the interest.

97U Surrendering or removing an interest

(1) On lodgement of an instrument surrendering a carbon abatement interest to which a lot is subject, the registrar may register the surrender to the extent shown in the instrument of surrender.

(2) On registration of the instrument of surrender the interest is surrendered to the extent shown in the document.

(3) Also, the registrar may remove a carbon abatement interest from the indefeasible title of a lot if—

(a) a request to remove the carbon abatement interest is lodged, and the request establishes that—

(i) the period of time for which the carbon abatement interest was intended to exist has ended; or

(ii) an event upon which the carbon sequestration was intended to end has happened; or

(b) the registrar receives a request to remove the interest under an Act of the Commonwealth.

Division 5 Application by adverse possessor

98 Application may not be made about particular matters

(1) An application may not be made under this division if the application—

(a) relates to only a part of a lot; or

(b) is for a lot that may be created in the future by the registration of a plan of subdivision; or

(c) is for a lot the registered owner of which is—

(i) the State or another entity representing the State; or

(ii) a local government; or

(d) relates to possession arising out of an encroachment.

(2) In this section—

encroachment means—

(a) an encroachment within the meaning of the *Property Law Act 1974*, part 11, division 1; or

(b) the enclosure of a part of a lot with another lot, if—

(i) the enclosure is established by the use of a wall, fence, hedge, ditch, garden bed or other way of marking the boundary between the lots; and

(ii) the wall, fence, hedge, ditch, garden bed or other way of marking the boundary is not on the true boundary between the lots as shown on a registered plan of subdivision.

99 Application for registration

(1) A person (the ***applicant***) may apply to be registered as owner of a lot by lodging an application under this division.

(2) The application must be accompanied by—

(a) the documents of title for the lot that are in the possession or under the control of the applicant; and

(b) the names and addresses, for service of notices, of all registered proprietors and occupiers of lots adjoining the lot.

100 Withdrawal of application

(1) The applicant may withdraw the application at any time before the applicant is registered as owner of the lot under this division.

(2) If the applicant withdraws the application, the registrar must, if asked by the applicant, return all documents lodged or deposited in support of the application.

101 Right to make application not affected by death etc.

(1) If a person who may apply to be registered as owner of a lot by lodging an application under this division dies without making the application, the application may be made in the person's name by the person's legal personal representative.

(2) If the applicant dies before the application has been dealt with under this division, the application may be continued, and any necessary steps taken, in the person's name by the person's legal personal representative.

102 Refusal of application

The registrar may refuse to register the applicant as owner of the lot if the registrar is not satisfied that the information and documents in support of the application establish that the applicant is an adverse possessor.

103 Notice of application

(1) Before registering the applicant as an adverse possessor, the registrar must, to the extent the registrar considers practicable, give written notice of the application to—

(a) all registered proprietors of the lot and adjoining lots; and

(b) anyone else the registrar considers may have an interest in the lot.

(2) The notice is in addition to the public notice that the applicant must give under section 18(3).

(3) The notice must include a statement to the effect that the applicant will be registered as the owner of the lot if a caveat is not lodged by a specified day.

(4) The specified day must be at least 2 months and not more than 6 months from the day public notice is last required to be given.

104 Objecting by caveat

A person who claims an interest in the lot may lodge a caveat over the lot at any time before the applicant is registered as owner of the lot.

105 Lapsing of caveat

(1) If the registrar—

(a) is not satisfied that the caveator has an interest in the lot; or

(b) is satisfied that any interest that the caveator has in the lot has been extinguished under the *Limitation of Actions Act 1974*;

the registrar must, by written notice given to the caveator, require the caveator to start a proceeding to recover the lot in the Supreme Court within 6 months after the notice is given.

(2) The caveat lapses unless, within the required time, the caveator—

(a) starts a proceeding in the Supreme Court to recover the lot; and

(b) gives written notice, in the way the registrar requires, to the registrar that the proceeding has started.

(3) The caveat also lapses if—

(a) the proceeding is withdrawn or dismissed; or

(b) judgment in the proceeding is given against the caveator and the time for appealing against the judgment expires without an appeal being lodged; or

(c) if the judgment in the proceeding is given against the caveator and the judgment is appealed—the appeal is dismissed or withdrawn.

(4) In this section—

required time means—

(a) the 6 months mentioned in subsection (1); or

(b) if the registrar proposes to act under section 107(1)(b)—the time allowed under section 107(3).

106 Further caveat

While the applicant's application as adverse possessor is still current, a further caveat of the caveator can never be lodged in relation to the interest claimed on the same, or substantially the same, grounds unless the leave of the Supreme Court to lodge the further caveat has been granted.

107 Refusing or compromising application

(1) If the registrar is satisfied that the caveator has an interest in the lot that has not been extinguished under the *Limitation of Actions Act 1974*, the registrar may—

(a) refuse to register the applicant as owner of the lot; or

(b) register the applicant as the holder of a lesser interest in the lot that the registrar considers appropriately reflects—

(i) the use made of the lot by the applicant; and

(ii) the period that the applicant has used the lot.

(2) If the caveator does not agree to the registration of the applicant for a lesser interest in the lot, the caveator may start a proceeding in the Supreme Court to recover the lot.

(3) The proceeding must be started within 1 month of receiving written notice from the registrar of the registrar's intention to register the applicant as holder of a lesser interest in the lot.

(3A) Also, the caveator must, within the 1 month mentioned in subsection (3), give written notice, in the way the registrar requires, to the registrar that the proceeding has started.

(4) If the caveator does not start a proceeding within 1 month, the registrar may register the applicant as the holder of a lesser interest in the lot.

108 Registering adverse possessor as owner

The registrar may register the applicant as owner of all or part of the lot if the registrar is satisfied that the applicant is an adverse possessor of the lot or part of it and—

(a) no caveat has been lodged by the day specified under section 103; or

(b) if a caveat is lodged by the day specified under section 103—

(i) the caveat has lapsed or has been withdrawn, cancelled or removed; and

(ii) a further caveat has not been lodged under section 106.

108A Requirements for part of a lot

(1) If, under section 108, the registrar proposes to register the applicant as owner of only a part (the ***relevant part***) of the lot (the ***relevant lot***), the registrar may require the applicant to lodge a plan of subdivision for the relevant lot, subdividing the relevant lot into the following lots—

(a) a lot made up of the relevant part;

(b) a lot made up of the remainder of the relevant lot.

(2) The applicant may sign the plan of subdivision as if the applicant were the registered owner of the relevant lot.

(3) However—

(a) the plan of subdivision must comply with section 50; and

(b) despite the outcome of the applicant's application as an adverse possessor, the registrar can not proceed under section 108 to register the applicant as owner of the relevant part if section 50 can not be complied with.

(4) The registrar may require that the giving of public notice under section 18(3) and the giving of written notice under section 103(1) be delayed until the applicant satisfies the

registrar that the applicant will be able to lodge a plan of subdivision complying with section 50.

108B Consequences of registration

If, under section 108, the registrar registers the applicant as owner of the lot or a part of the lot, the registrar must—

(a) cancel the registration of the person previously registered as the owner of the lot or the part of the lot; and

(b) create in the applicant's name an indefeasible title free from all other interests in the lot or the part, other than the following—

(i) any estate, interest, claim, encumbrance or notice registered in favour of an entity that is a public utility provider under division 4;

(ii) any easement or profit a prendre registered over the lot when the application was made under section 99;

(iii) any covenant that, under division 4A, was registered over the lot when the application was made under section 99.

Division 6 Trusts, deceased estates and bankruptcy

109 How interest as trustee may be registered

A person may be registered as trustee of an interest in a lot only by the registration of—

(a) an instrument transferring the interest to, or creating the interest in favour of, the person as trustee; or

(b) a request to vest the interest in the person as trustee.

110 Instrument of transfer to trustee

(1) An instrument of transfer may be lodged—

(a) to transfer an interest in a lot to a trustee; or

(b) by the registered owner to declare that the registered owner holds the interest in a lot as trustee.

(2) The registrar may register the instrument of transfer.

(3) A certified copy of a document stating details of the trust, or creating the trust, must be deposited with the instrument of transfer.

(4) The document deposited with the instrument of transfer does not form part of the freehold land register.

110A Instrument to vest in trustee

(1) A request to vest may be lodged to vest an interest in a lot in a trustee.

(2) A request to vest must give effect to an order (the ***vesting order***) made under the *Trusts Act 1973* or another Act.

(3) The registrar may register the request to vest.

(4) The vesting order, and all other documents (the ***other documents***) stating details of the trust subject to which the interest is vested in the trustee, must be deposited with the request to vest.

(5) The other documents do not form part of the freehold land register.

(6) The registrar must keep certified copies of the other documents and return the originals to the person who deposited them.

111 Registering personal representative

(1) A person may lodge an application to be registered as personal representative for a registered proprietor of a lot or an interest in a lot who has died.

(2) The registrar may register the lot or the interest in the lot in the name of the person as personal representative only if—

(a) if the person has obtained a grant of representation, or the resealing of a grant of representation, in Queensland—the grant or resealing, or an office copy of the grant or resealing issued by the Supreme Court, is deposited; or

(b) if paragraph (a) does not apply and the registered proprietor died without a will—

(i) letters of administration of the deceased person's estate have not been granted in Queensland within 6 months after the death; and

(ii) the gross value of the deceased person's Queensland estate at the date of death was no more than the amount prescribed by regulation or, if no amount is prescribed, $300,000; and

(iii) the registrar is of the opinion that the person would succeed in an application for a grant of representation; or

(c) if paragraph (a) does not apply and the registered proprietor died leaving a will—

(i) the person is or is entitled to be the deceased's personal representative; or

(ii) the registrar considers the person would succeed in an application for a grant of representation; or

(iii) the person has obtained a grant of representation other than in Queensland and the registrar considers the person would succeed in an application for the resealing of the grant in Queensland.

(3) A person registered under this section without a grant of representation has the same rights, powers and liabilities as if a grant of representation had been made to the person.

(4) The validity of an act done or payment made in good faith by a person registered under this section is not affected by a later grant of representation.

(5) If the grantee of a grant of representation is different from the person registered under subsection (2), the person registered must—

(a) account to the grantee for all property of the deceased person controlled by the person before the grant; and

(b) take all action necessary to divest from the person and vest in the grantee all property of the deceased person remaining under the person's control.

112 Registering beneficiary

(1) A person who is beneficially entitled under a will to a lot or an interest in a lot of a deceased registered proprietor may apply to the registrar to be registered as proprietor of the lot.

(2) However, the registrar may register the person only if—

(a) written consent is given by—

(i) the person who is or is entitled to be the deceased's personal representative; or

(ii) a person who, in the registrar's opinion, would succeed in an application for a grant of representation; and

(b) the person satisfies the registrar that the person is beneficially entitled to the lot or the interest in the lot.

113 Form of application

An application under section 111 or 112 must state—

(a) the lot to which the application refers; and

(b) the interest for which registration is sought; and

(c) the nature of other interests in the lot known to the applicant.

114 Applying for Supreme Court order

(1) This section applies to—

(a) the Attorney-General; or

(b) a trustee or beneficiary under a trust; or

(c) a personal representative, a devisee or anyone else interested in—

(i) a lot of a deceased registered proprietor; or

(ii) a trust involving a lot of a deceased registered proprietor.

(2) A person to whom this section applies may apply to the Supreme Court for an order that a named person be registered as proprietor of a lot.

(3) The Supreme Court may make 1 or more of the following orders—

(a) that a person be registered as proprietor of the lot;

(b) that a person be removed from the freehold land register as proprietor of the lot;

(c) that a caveat be lodged to protect a person's interest in the lot;

(d) that a person advertise in a specified form, content or way;

(e) that costs be paid by any person or out of any property.

(4) The registrar must register particulars of an order if a request to register the order is lodged and an office copy of the order is deposited.

(5) An order does not vest an interest in the lot until it is registered.

115 Transmission on bankruptcy

The registrar may register a transmission of an interest in a lot under a law about bankruptcy only if a request to register the transmission is lodged.

Part 6A Community titles schemes

Division 1 Preliminary

115A Basic concept for pt 6A—community titles scheme

(1) A community titles scheme is the basic concept for this part.

(2) A community titles scheme can only be over freehold land.

115B Meaning of *community titles scheme*

(1) A ***community titles scheme*** is—

(a) a single community management statement recorded by the registrar identifying land (the ***scheme land***); and

(b) the scheme land.

(2) Land may be identified as scheme land if it consists of—

(a) 2 or more lots; and

(b) other land (the ***common property*** for the community titles scheme) that is not included in a lot mentioned in paragraph (a).

(3) Land can not be common property for more than 1 community titles scheme.

(4) For each community titles scheme, there must be—

(a) at least 2 lots; and

(b) common property; and

(c) a single body corporate; and

(d) a single community management statement.

(5) A community titles scheme is a ***basic scheme*** if all the lots mentioned in subsection (2)(a) are lots under this Act.

(6) However, under this part, a lot may be, for its inclusion in a community titles scheme other than a basic scheme, another community titles scheme.

Note—

BCCM Act, schedule 1 (Illustrations) contains examples of possible structures of community titles schemes.

115C Meaning of *layered arrangement of community titles schemes*

(1) A ***layered arrangement of community titles schemes*** is a grouping of community titles schemes—

(a) in which there is 1 community titles scheme (the ***principal scheme***) that—

Note—

See BCCM Act, schedule 1, parts 2 and 3 for examples of layered arrangements of community titles schemes.

(i) is not a lot included in another community titles scheme; and

(ii) is made up of—

(A) the scheme land for all other community titles schemes in the grouping; and

(B) its own common property; and

(C) each lot, if any, that is not a community titles scheme, but that is included in the scheme; and

(b) in which there is at least 1 basic scheme; and

(c) in which there may or may not be 1 or more community titles schemes located between the principal scheme and each basic scheme.

(2) Each community titles scheme, other than the principal scheme, in a layered arrangement of community titles schemes—

(a) is a subsidiary scheme for the principal scheme; and

(b) unless it is a lot included in the principal scheme, may also be a subsidiary scheme for another community titles scheme forming part of the layered arrangement.

(3) A ***subsidiary scheme***, for a community titles scheme (***scheme A***), is a community titles scheme the scheme land for which forms part of the scheme land for scheme A.

(4) In this Act, the expression ***included in***, if used in the context of the inclusion of a lot in a community titles scheme—

(a) establishes the relationship the lot has to the scheme; and

(b) in general terms, is used to establish that the lot is directly a part of the scheme, rather than only indirectly a part of the scheme.

(5) The diagram and notes in the BCCM Act, schedule 1, part 3 illustrate more comprehensively how the expression 'included in' is used.

115D Provisions about lots that are community titles schemes

If a community titles scheme (***scheme A***) includes a lot that is another community titles scheme (***scheme B***)—

(a) a reference in this Act to the owner of the lot is a reference to the body corporate for scheme B; but

(b) a reference in this Act to a lot included in scheme A does not include a reference to scheme B if the provision is about—

(i) the subdivision of a lot; or

(ii) the indefeasible title for a lot; or

(iii) a lease or mortgage of a lot; or

(iv) the occupier or registered proprietor of a lot.

Division 2 Names of community titles schemes

115E Names of community titles schemes

(1) The registrar may refuse to record a community management statement for a community titles scheme if the scheme's identifying name shown in the statement is—

(a) the identifying name in the community management statement for another community titles scheme; or

(b) a name reserved under this division, other than a name reserved by the person seeking to record the community management statement; or

(c) a name reserved under the *Building Units and Group Titles Act 1980*, section 120; or

(d) a name reserved under the *South Bank Corporation Act 1989*; or

Note—

See the *South Bank Corporation Act 1989*, schedule 4, section 9(3A).

(e) in the registrar's opinion formed on reasonable grounds, undesirable.

(2) The registrar must allocate a unique identifying number for a scheme when the first community management statement is recorded for the scheme.

115F Reservation of name

(1) The registrar may, on application, reserve a name stated in the application as the identifying name to be shown in the community management statement for a proposed community titles scheme.

(2) The reservation must identify the proposed scheme land for the proposed scheme.

(3) The registrar must reserve the name unless satisfied he or she would refuse to record a community management statement showing the name.

115G Period of reservation

(1) The reservation of an identifying name for a proposed community titles scheme is for an initial period of 2 years and may be extended by the registrar, but only once, for an additional period of 1 year.

(2) The extension may be given only on an application made, within the initial period, by the person for whom the name is reserved.

(3) However, the reservation ends if—

(a) the person withdraws the reservation; or

(b) a community titles scheme is established and the reserved name is the identifying name shown in the community management statement for the scheme.

Division 3 Scheme land

115H Single area for scheme land

(1) Scheme land for a community titles scheme must be made up of a single, continuous area of land.

(2) Scheme land is taken to be made up of a single, continuous area of land even if—

(a) a lot is subdivided under section 53A; or

(b) if paragraph (a) does not apply—there is nevertheless a road or watercourse within the external boundaries of the scheme land.

(3) However, a community titles scheme may be established with scheme land not made up of a single, continuous area of land if all lots that become the scheme land are—

(a) created under a single plan of subdivision; or

(b) in the opinion of the registrar formed on reasonable grounds, located within an area that is sufficiently limited to ensure the scheme can be administered under the BCCM Act efficiently and effectively as a single scheme.

(4) Nevertheless, if subsection (3) applies, and the scheme is later changed to include additional lots or common property, each of the additional lots or common property must form a single, continuous area of land with a part of the scheme land in existence for the scheme immediately before the inclusion of the additional lots or common property.

115I Enlarging the number of lots through progressive subdivision

(1) This section applies to a basic scheme for which—

(a) an application for development approval or a request for compliance assessment of development is made under the *Sustainable Planning Act 2009*; or

(b) an application for development approval was made under the repealed *Integrated Planning Act 1997* on or after 4 March 2003.

(2) The number of lots included in the scheme may be increased through the progressive subdivision of lots to create further lots included in the scheme.

Note—

BCCM Act, schedule 1 (Illustrations), part 4 (Example of progressive subdivision for creating more lots in a scheme) gives an example of the operation of this section.

(3) Subject to subsection (4), the lots may be subdivided by plans of subdivision of a different format from the plan of subdivision that created the original lots if the subdivision is to create a layered arrangement of community titles schemes.

(4) The lots may be subdivided by plans of subdivision of a different format from the plan of subdivision that created the

original lots, without creating a layered arrangement of community titles schemes, if each of the following apply to the scheme—

(a) the community management statement states that the lots included in the scheme are to be subdivided by different format plans of subdivision;

(b) the lots are subdivided by different format plans of subdivision;

(c) the contribution schedule lot entitlements equitably reflect the difference in the maintenance requirements of the standard format lots, building format lots and volumetric format lots.

Division 4 Community management statements

115J Lodging request to record a new statement

(1) A request to record a new community management statement for a community titles scheme must be lodged when a new plan of subdivision affecting the scheme (including affecting a lot in, or the common property for, the scheme) is lodged.

(2) A request to record a new community management statement for a community titles scheme may be lodged, and the new statement may be recorded for the scheme, even though a plan of subdivision is not lodged, if all plans of subdivision relating to the scheme, and the new statement, will still be consistent after the new statement is recorded.

115K Recording community management statements

(1) The registrar may record a community management statement if—

(a) a request to record the statement is lodged; and

(b) the statement is deposited with the request; and

(c) the statement complies with—

(i) section 115H; and

(ii) the requirements of the BCCM Act for a community management statement; and

(d) for a new community management statement—the body corporate's consent to the recording of the new statement is endorsed on the statement.

(2) A community management statement is not an instrument under this Act.

(3) However, a request to record a community management statement is an instrument, and is lodged, under this Act.

(4) An interest created under a community management statement recorded under subsection (1) does not have effect as a registered interest.

115L When registrar records community management statement

(1) When the registrar records a community management statement for a community titles scheme, the registrar must—

(a) give the statement a unique identifying number; and

(b) record a reference to the community management statement, including its unique identifying number, on—

(i) the indefeasible title for each lot that is scheme land; and

(ii) the indefeasible title for any common property that is scheme land.

(2) However—

(a) the registrar is not obliged to examine, but may examine, a community management statement for its validity, including, in particular, its—

(i) consistency with any plan of subdivision; or

(ii) compliance with the requirements for a community management statement; and

(b) it must not be presumed that a community management statement is valid or enforceable, including, for example, that the by-laws for the scheme included in the statement are valid and enforceable, because the registrar records it; and

(c) neither the validity nor the enforceability of a community management statement, as recorded by the registrar, is guaranteed by the State.

(3) The community management statement takes effect when it is recorded by the registrar as the community management statement for the scheme.

Division 5 Statutory easements

115M Application of div 5

(1) This division provides for easements for lots included in, and common property for, a community titles scheme.

(2) However, subject to subsection (3), this division applies to the scheme only if the lots included in the scheme are lots on—

(a) a building format plan of subdivision; or

(b) a volumetric format plan of subdivision; or

(c) a standard format plan of subdivision registered under this Act on or after 13 July 1997.

(3) If a lot is a standard format lot in a community titles scheme intended to be developed progressively and there are no buildings on the lot, this division applies for the lot.

(4) This division has effect for the scheme subject to the provisions of an easement established under another part of this Act.

115N Easements for support

(1) An easement of lateral or subjacent support exists—

(a) in favour of a lot against another lot capable of supplying lateral or subjacent support; and

(b) in favour of a lot against common property capable of supplying lateral or subjacent support; and

(c) in favour of common property against a lot capable of supplying lateral or subjacent support; and

(d) in favour of common property against other common property capable of supplying lateral or subjacent support.

(2) An easement of common wall support exists—

(a) in favour of a lot (***lot X***) against another lot when a building on the other lot is supplying common wall support to a building on lot X; and

(b) in favour of a lot against common property when a building on the common property is supplying common wall support to a building on the boundary of the lot; and

(c) in favour of common property against a lot when a building on the lot is supplying common wall support to a building on the boundary of the common property; and

(d) in favour of common property against other common property when a building on the other common property is supplying common wall support to a building on the boundary of the common property.

(3) For subsection (2), a building (***building A***) supplies common wall support to another building (***building B***) if a wall (the ***common wall***) of building A is also a wall of building B and the common wall is necessary to ensure the general safety and structural integrity of building A.

(4) An easement for support under subsection (1) or (2)—

(a) entitles the owner of a lot (***lot X***) to enter a lot or common property supplying support to lot X under the easement to maintain or replace any support; and

(b) entitles the body corporate to enter a lot or common property supplying support to common property under the easement to maintain or replace any support.

(5) An easement for support under subsection (1) or (2) subsists until the scheme no longer exists.

115O Easements in favour of lots for utility services and utility infrastructure

(1) An easement exists in favour of a lot and against other lots and common property for supplying utility services to the lot and establishing and maintaining utility infrastructure reasonably necessary for supplying the utility services.

(2) However, the exercise of rights under the easement must not interfere unreasonably with the use or enjoyment of the lot or part of common property against which the easement lies.

115P Easements for utility services and utility infrastructure

(1) An easement exists in favour of common property and against the lots for supplying utility services to the common property and establishing and maintaining utility infrastructure reasonably necessary for supplying utility services to the common property.

(2) However, the exercise of rights under the easement must not interfere unreasonably with the use or enjoyment of the lots against which the easement lies.

115Q Easements for shelter

(1) An easement entitling the owner of a lot to have the lot sheltered by parts of a building within scheme land necessary to supply shelter exists against the lots or parts of common property where the relevant parts of the building are situated.

(2) The easement for shelter under subsection (1) entitles the owner of the lot to enter a lot or common property supplying shelter under the easement to maintain or replace the shelter.

115R Easements for projections

(1) If eaves, guttering, drainpipes, awnings, window sills, or other minor parts of a building within a lot (***lot A***) project over the boundaries of another lot (***lot B***) or common property, an easement exists in favour of lot A and against the part of lot B or common property over which the projection lies, permitting the projection.

(2) The easement entitles the owner of lot A to enter lot B or the common property to maintain or replace the building parts.

115S Easement for maintenance of building close to boundary

(1) If a building is on the boundary of a lot (***lot A***) or so close to the boundary of lot A that maintenance or replacement of the building is not able to be carried out without entering another lot (***lot B***) or common property, an easement exists in favour of lot A and against lot B or the common property.

(2) The easement entitles the owner of lot A to enter lot B or common property to carry out the maintenance or replacement.

Division 6 Changes to community titles schemes under reinstatement process

115T Registration for changes to scheme under approved reinstatement process

(1) If an approved reinstatement process provides for a change to a community titles scheme, the body corporate must lodge—

(a) if appropriate, having regard to the approved reinstatement process, or a community management statement mentioned in paragraph (b)—a plan of subdivision reflecting the approved reinstatement process; and

(b) if appropriate, having regard to the approved reinstatement process, or a plan of subdivision mentioned in paragraph (a)—a request to record a new community management statement; and

(c) a true copy of the approved reinstatement process.

(2) If an approved reinstatement process provides for a change to subdivisional arrangements (not including a change to a community titles scheme), the owners of lots the subject of the approved reinstatement process must lodge—

(a) if appropriate, having regard to the approved reinstatement process—a plan of subdivision reflecting the approved reinstatement process; and

(b) a true copy of the approved reinstatement process.

(3) In this section—

approved reinstatement process means a process, approved under the BCCM Act, section 72 or 74, for reinstating a building.

Division 7 Terminating community titles schemes

115U Instruments required for terminating scheme

(1) If a community titles scheme is to be terminated, a plan cancelling the lots in the scheme must be lodged.

(2) The plan must be lodged by or for—

(a) the body corporate; or

(b) if the District Court made an order under the BCCM Act, section 78(2), for terminating the scheme—a person on whose application the court made the order.

(3) The plan must be accompanied by, as well as any other instrument required under this Act, a copy of—

(a) if the scheme is terminated under a resolution of the body corporate—the resolution to terminate the scheme, and any agreement entered into about termination issues; or

(b) if the scheme is terminated under an order of the District Court—the order.

(4) In this section—

termination issues see the BCCM Act, schedule 6.

115V Recording termination of scheme

(1) If section 115U is complied with, the registrar must record the cancellation of the community management statement, and must also—

(a) register the termination in the freehold land register; and

(b) cancel the particulars (other than particulars of easements, covenants and other dealings capable of being maintained against scheme land after termination of the scheme) recorded in the freehold land register about scheme land.

(2) The termination takes effect when the registrar completes the action mentioned in subsection (1).

(3) On the termination of the scheme, the registrar must create 1 or more indefeasible titles for all land that, immediately before the termination, was scheme land.

(4) The registered owners for a title mentioned in subsection (3)—

(a) are the persons (***former owners***) who, immediately before the scheme's termination, were the owners of the scheme land; and

(b) must be recorded as tenants in common in the shares proportionate to their respective interest schedule lot entitlements immediately before the termination.

(5) If a lot included in the scheme was subject to a mortgage immediately before the scheme was terminated, the former owner's interest in the land as tenant in common is subject to the mortgage.

Division 8 Amalgamating community titles schemes

115W Request to record amalgamation of schemes

(1) A request to record the amalgamation of 2 or more community titles schemes (***scheme A*** and ***scheme B***) must be lodged.

(2) The request must be—

(a) signed by or for the body corporate for scheme A or scheme B; and

(b) lodged by or for—

(i) the bodies corporate for schemes A and B; or

(ii) if the District Court made an order under the BCCM Act, section 85(3), for amalgamating the schemes—a person on whose application the court made the order.

(3) The request must be accompanied by each of the following—

(a) a copy of each resolution, or the order, for the amalgamation of schemes A and B;

(b) the community management statement intended to be recorded for the single, newly established, community titles scheme formed, or to be formed from the

amalgamation (***scheme C***), showing the appropriate consents and notifications;

(c) if schemes A and B are lots included in another community titles scheme and the existing statement for the other scheme is not consistent with the amalgamation of schemes A and B—a new community management statement for the other scheme;

(d) any other instrument required under this Act.

115X Recording amalgamation of schemes

(1) If the request to record the amalgamation of schemes A and B complies with the BCCM Act (including with an order of the District Court made under that Act about the amalgamation), the registrar must—

(a) record the cancellation of the community management statements for schemes A and B; and

(b) record the community management statement for scheme C and any other community management statement accompanying the request; and

(c) register the amalgamation in the freehold land register.

(2) The amalgamation takes effect when the registrar completes the action mentioned in subsection (1).

Division 9 Creating a layered arrangement of community titles schemes from basic schemes

115Y Request to record creation of layered arrangement

(1) A request to record the creation of a layered arrangement of community titles schemes from 2 or more basic schemes (***scheme A*** and ***scheme B***) must be lodged.

(2) The request must be—

(a) signed by or for the body corporate for scheme A or scheme B; and

(b) lodged by or for—

(i) the bodies corporate for schemes A and B; or

(ii) if the District Court made an order under the BCCM Act, section 91(2), for creating the layered arrangement—a person on whose application the court made the order.

(3) The request must be accompanied by each of the following—

(a) a copy of each resolution, or the order, for the creation of the layered arrangement;

(b) the community management statements intended to be recorded for schemes A and B and the principal scheme in the layered arrangement, showing the body corporate consents required under the BCCM Act, section 62 and the community management statement notations required under that Act, section 60;

(c) new community management statements for schemes A and B if the statements will no longer be accurate after the layered arrangement is created;

(d) any other instrument required under this Act.

115Z Recording creation of layered arrangement

(1) If the request to record the creation of the layered arrangement complies with the BCCM Act (including with an order of the District Court made under that Act about the layered arrangement), the registrar must—

(a) record the community management statement for the principal scheme in the layered arrangement and any other community management statement accompanying the request; and

(b) register any instrument required, under this Act, to be registered for the layered arrangement.

(2) The creation of the layered arrangement takes effect when the registrar completes the action mentioned in subsection (1).

Part 7 Other dealings

Division 1 Writs of execution

116 Registering a writ of execution

The registrar may register a writ of execution only if a request to register it, and an office copy of it, is lodged.

117 Effect of registering a writ of execution

For purchasers, lessees, mortgagees and creditors, a writ of execution—

(a) can not, until registered, bind or affect registered lots, whether or not there is actual or constructive notice of the writ; and

(b) binds or affects registered lots only if the writ is executed and put in force within—

(i) 6 months of its lodgement; or

(ii) the extended time allowed by the court where the writ is filed and notified to the registrar.

118 Cancellation of registration

Registration of a writ of execution may be cancelled if—

(a) a request to cancel it is lodged; and

(b) the registrar is satisfied that the time, or extended time, for executing and putting the writ into force has ended.

119 Discharging or satisfying writ of execution

Discharge or satisfaction of a writ of execution may be registered if a request to register it is lodged.

120 Transfer of lots sold in execution

(1) If a lot is sold under a registered writ of execution, the sheriff, registrar or clerk of the court of the relevant court may execute an instrument of transfer to the purchaser.

(2) On registration of the transfer, the transferee becomes the registered owner of the lot subject to—

(a) registered interests; and

(b) equitable mortgages notified by caveat lodged before registration of the writ of execution.

120A Effect on writ of execution of transfer after sale by mortgagee

(1) Subsection (2) applies if—

(a) a mortgage is registered over a lot; and

(b) a writ of execution is later registered in relation to the lot.

(2) If the mortgagee of the lot signs a transfer of the lot after exercising power of sale under the mortgage—

(a) registration of the writ of execution does not prevent registration of the transfer; and

(b) on registration of the transfer, the registrar must cancel registration of the writ of execution.

Division 2 Caveats

121 Requirements of caveats

(1) A caveat must be signed by or for the caveator.

(2) The caveat must state—

(a) the name of the caveator; and

(b) an address where documents can be served on the caveator; and

(c) unless the registrar dispenses with it, the name and address of—

(i) the registered owner of the lot affected by the caveat; and

(ii) anyone else having the right to deal with the lot affected by the caveat; and

(d) the registered interest affected by the caveat; and

(e) if the caveat relates to only a part of a lot—a description of the affected part; and

(f) the interest claimed by the caveator; and

(g) the grounds on which the interest is claimed.

(3) This section applies to all caveats under this Act other than a caveat prepared and registered by the registrar under section 17.

122 Lodging a caveat

(1) A caveat may be lodged by any of the following—

(a) a person claiming an interest in a lot;

(b) the registrar under section 17;

(c) the registered owner of the lot;

(d) a person to whom an Australian court has ordered that an interest in a lot be transferred;

(e) a person who has the benefit of a subsisting order of an Australian court in restraining a registered proprietor from dealing with a lot.

(2) However a caveat may only be lodged by an equitable mortgagee if it is a caveat to which section 126 applies.

(3) To remove any doubt, it is declared that an interest in a lot does not include an interest in a proposed lot under the *Land Sales Act 1984* that a person obtains by agreeing to buy the lot under a contract for the sale of the lot.

123 Notifying caveat

The registrar must give written notice of lodgement of a caveat to each person whose interest or whose right to registration of an instrument is affected by the caveat.

124 Effect of lodging caveat

(1) A caveat prevents registration of an instrument affecting the lot over which the caveat is lodged from the date and time endorsed by the registrar on the caveat as the caveat's date and time of lodgement.

(1A) Subsection (1) has effect for a caveat until the caveat lapses or is cancelled, rejected, removed or withdrawn.

(2) However, lodgement of a caveat does not prevent registration of the following—

(a) an instrument specified in the caveat as an instrument to which the caveat does not apply;

(b) an instrument if the caveator consents to its registration;

(c) an instrument executed by a mortgagee whose interest was registered before lodgement of the caveat if—

(i) the mortgagee has power under the mortgage to execute the instrument; and

(ii) the caveator claims an interest in the lot as security for the payment of money or money's worth;

(d) an instrument of transfer of mortgage executed by a mortgagee whose interest was registered before lodgement of the caveat;

(e) another interest that, if registered, will not affect the interest claimed by the caveator.

(3) The exceptions mentioned in subsection (2)(c) and (d) do not apply to a caveat lodged by the registrar.

(4) The exception in subsection (2)(d) does not apply to a caveat lodged by the registered owner.

(5) Lodgement of a caveat does not create in the caveator a registrable interest in the lot affected by the caveat.

125 Withdrawing a caveat

A caveator may withdraw a caveat by lodging a request to withdraw it.

126 Lapsing of caveat

(1) This section does not apply to a caveat if—

(a) it is lodged by the registered owner; or

(b) the consent of the registered owner is deposited when the caveat is lodged; or

(c) an office copy of a court order mentioned in section 122(d) or (e) is deposited when the caveat is lodged; or

(d) it is lodged by the registrar under section 17; or

(e) it is lodged other than under this division.

(2) A caveatee of a caveat to which this section applies may serve on the caveator a notice requiring the caveator to start a proceeding in a court of competent jurisdiction to establish the interest claimed under the caveat.

(3) The caveatee must notify the registrar, in the way the registrar requires, within 14 days of service of the notice on the caveator.

(4) If a caveator does not want a caveat to which this section applies to lapse, the caveator must—

(a) start a proceeding in a court of competent jurisdiction to establish the interest claimed under the caveat—

(i) if a notice under subsection (2) is served on the caveator—within 14 days after the notice is served on the caveator; or

(ii) if a notice under subsection (2) is not served on the caveator—within 3 months after the lodgement of the caveat; and

(b) notify the registrar, in the way the registrar requires, within the 14 days or the 3 months that a proceeding has been started and identify the proceeding.

(5) If the caveator does not comply with subsection (4), the caveat lapses.

(6) The caveator is taken to have complied with subsection (4)(a) if, before the caveat was lodged—

(a) a proceeding has been started in a court of competent jurisdiction to establish the interest claimed under the caveat; and

(b) the proceeding has not been decided, discontinued or withdrawn.

(7) The registrar may remove a caveat that has lapsed from the freehold land register.

127 Removing a caveat

(1) A caveatee may at any time apply to the Supreme Court for an order that a caveat be removed.

(2) The Supreme Court may make the order whether or not the caveator has been served with the application, and may make the order on the terms it considers appropriate.

128 Cancelling a caveat

(1) The registrar may cancel a caveat if a request to cancel the caveat is lodged and the registrar is satisfied that—

(a) the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn; or

(b) the claim of the caveator has been settled by agreement or otherwise satisfied; or

(c) the nature of the interest claimed does not entitle the caveator to prevent registration of an instrument that has been lodged.

(2) The registrar must notify the caveator of the registrar's intention to cancel the caveat at least 7 days before cancelling it.

(3) The registrar may remove a caveat immediately before registering an instrument that has been lodged if the instrument—

(a) will, on registration, give full effect to an interest claimed in the caveat; or

(b) is an instrument of transfer and the registrar is satisfied section 124(2)(c) applies to allow the registration of the instrument.

129 Further caveat

(1) This section applies if a caveat (the ***original caveat***) is lodged in relation to an interest.

(2) A further caveat with the same caveator can never be lodged in relation to the interest on the same, or substantially the same, grounds as the grounds stated in the original caveat unless the leave of a court of competent jurisdiction to lodge the further caveat has been granted.

(3) However, subsection (2) does not apply if the original caveat is a caveat prepared and registered by the registrar under section 17.

130 Compensation for improper caveat

(1) A person who lodges or continues a caveat without reasonable cause must compensate anyone else who suffers loss or damage as a result.

(2) In a proceeding for compensation under subsection (1), a court of competent jurisdiction may include in a judgment for compensation a component for exemplary damages.

(3) In a proceeding for compensation under subsection (1), it must be presumed that the caveat was lodged or continued without reasonable cause unless the person who lodged or continued it proves that it was lodged or continued with reasonable cause.

(4) Subsection (1) does not apply to the registrar in relation to a caveat prepared and registered under section 17.

131 Notices to the caveator

(1) A notice to a caveator under this division is sufficiently served if left at or sent to the address mentioned in section 121(2)(b).

(2) If the registrar is satisfied that a notice under this division will not reach the caveator if served in the way mentioned in subsection (1), the notice may be served in a way specified in a written direction by the registrar.

(3) If the registrar is informed in writing, and is satisfied, that the name or address of the caveator has changed, the registrar must note on the caveat details of the new name or address.

(4) A new name or address noted under subsection (3) becomes the name or address for service of a notice on the caveator.

Division 3 Powers of attorney and disabilities

132 Instrument not registered until power of attorney registered

An instrument executed under the authority of a power of attorney may be registered only if the power of attorney is registered under this division.

133 Registering power of attorney

(1) The registrar must keep a register of powers of attorney (the ***power of attorney register***).

(2) The registrar may register a power of attorney by recording particulars of it in the power of attorney register if a request to register it is lodged and the power of attorney is deposited with the request.

(3) The registrar must keep a copy of the registered power of attorney and return the power of attorney to the person who deposited it.

(4) In this section—

power of attorney includes a copy of a power of attorney that has been certified under the *Powers of Attorney Act 1988*, section 14 or 45.

134 Effect of registering a power of attorney

(1) An act done by the donee under and in accordance with the terms of a registered power of attorney has the same effect as if the act were done by the donor.

(2) A registered power of attorney is evidence that the donee is authorised to do anything within the terms of the power of attorney.

(3) The registrar may register an instrument executed under a registered power of attorney without being satisfied that the power of attorney has not been revoked.

(4) The registrar must not register an instrument executed under a registered power of attorney if the instrument became effective after—

(a) registration of an instrument of revocation or disclaimer of the power of attorney; or

(b) someone else is registered as owner of the relevant lot after the death or bankruptcy of the donor.

135 Revoking or disclaiming a power of attorney

(1) A registered power of attorney may be revoked by registering an instrument of revocation or disclaimer.

(2) This section also applies to enduring powers of attorney.

136 Act for a minor

(1) This section applies if—

(a) this Act requires or permits an act to be done by or in relation to a person (the ***relevant person***); and

(b) the relevant person is a minor; and

(c) no person has authority under this or another Act to act for the relevant person for the act.

(2) A person suitably authorised by a court of competent jurisdiction may act for the relevant person for the act.

137 Act for other person lacking capacity

(1) This section applies if—

(a) this Act requires or permits an act to be done by or in relation to a person (the ***relevant person***); and

(b) the relevant person is not a minor; and

(c) the relevant person does not have capacity for the act.

(2) Subject to the operation of the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*, a qualified person may act for the relevant person for the act.

(3) In this section—

capacity, for the relevant person for the act, means the relevant person is capable of—

(a) understanding the nature and effect of decisions about the act; and

(b) freely and voluntarily making decisions about the act; and

(c) communicating the decisions in some way.

qualified person means—

(a) an administrator for the relevant person appointed under the *Guardianship and Administration Act 2000*; or

(b) a person suitably authorised by the relevant person under an enduring power of attorney under the *Powers of Attorney Act 1998*.

Part 7A Settlement notice

138 Definitions for part

In this part—

affected person, for a particular lot, means—

(a) a registered proprietor of the lot or an interest in the lot; or

(b) a person (other than the transferee) who has an interest in the lot.

transferee means—

(a) a purchaser for valuable consideration of an interest in a lot that is capable of registration by an instrument of transfer; or

(b) a person who is entitled to an interest in a lot under an instrument of transfer or an instrument of mortgage.

139 Requirements of settlement notice

(1) A settlement notice must be in the approved form and must be signed by or for the transferee.

(2) The settlement notice must specify—

(a) the type of transaction to which the settlement notice relates and the parties to the transaction; and

(b) the name of the transferee; and

(c) the description of the lot the subject of the transaction; and

(d) all instruments directly related to the transaction; and

(e) an address where documents can be served on the transferee; and

(f) the registered interest affected by the settlement notice.

140 Depositing settlement notice

(1) A settlement notice, in the approved form, may be deposited by or for a transferee in relation to a transaction.

(2) The registrar must record the information in the settlement notice under section 34.

Note—

Under section 34 the registrar may keep information separately from the freehold land register.

141 Effect of settlement notice

(1) The deposit of a settlement notice prevents registration of an instrument affecting the lot or an interest in the lot until the notice lapses or is withdrawn, removed or cancelled.

(2) However, a settlement notice does not prevent registration of—

(a) an instrument specified in the settlement notice as an instrument to which the notice does not apply; or

(b) an instrument if the transferee consents to its registration; or

(c) an instrument of transfer of mortgage executed by a mortgagee whose interest was registered before lodgement of the notice; or

(d) another interest that, if registered, will not affect the interest the subject of the notice; or

(e) an instrument lodged before the notice.

142 Withdrawing settlement notice

A transferee may withdraw a settlement notice by depositing a request to withdraw it.

143 Lapsing of settlement notice

A settlement notice lapses—

(a) 2 months after it is deposited; or

(b) when all instruments directly related to the transaction, and specified in the settlement notice, have been lodged;

whichever happens first.

144 Removing settlement notice

(1) An affected person may at any time apply to the Supreme Court for an order that a settlement notice be removed.

(2) The Supreme Court may make the order whether or not the transferee has been served with the application, and may make the order on the terms it considers appropriate.

145 Cancelling settlement notice

(1) The registrar may cancel a settlement notice if a request to cancel the notice is deposited and the registrar is satisfied that—

(a) the transferee's interest in the transaction specified in the notice has ceased, or has been abandoned or withdrawn; or

(b) the transferee's interest has been settled by agreement or otherwise satisfied; or

(c) the nature of the transferee's interest does not entitle the transferee to prevent registration of an instrument that has been lodged.

(2) The registrar must notify the transferee of the registrar's intention to cancel the settlement notice at least 7 days before cancelling it.

146 Further settlement notice

(1) This section applies if, under section 140, a settlement notice is deposited by or for a transferee in relation to a transaction.

(2) A further settlement notice can never be deposited in relation to the same transaction unless the leave of a court of competent jurisdiction to deposit the further settlement notice has been granted.

147 Compensation for improper settlement notice

(1) A person who deposits or continues a settlement notice without reasonable cause must compensate anyone else who suffers loss or damage as a result.

(2) In a proceeding for compensation under subsection (1)—

(a) the Supreme Court may include in a judgment for compensation a component for exemplary damages; and

(b) proof that a settlement notice was not deposited or was not continued without reasonable cause rests on the person who lodged or continued the notice.

148 Notices to the transferee

A notice under this part to a transferee is sufficiently served if left at or sent to the address specified in the settlement notice.

149 Registrar may withdraw instrument

(1) The registrar may withdraw an instrument that has been lodged but prevented from being registered by a settlement notice.

(2) However, the registrar must notify the person who lodged the instrument of the registrar's intention to withdraw the instrument at least 14 days before withdrawing it.

(3) An instrument withdrawn by the registrar under subsection (1) is taken to have been withdrawn under section 159(1).

Note—

Under section 159(1) the registrar may withdraw an instrument. An instrument that is withdrawn loses its priority.

150 Priority of instruments

Instruments lodged, but prevented from being registered by a settlement notice, are taken to have been lodged (in the order in which they were lodged) immediately after lodgement of the directly related instruments specified in the notice.

151 Effect of settlement notice on caveat

A person's right to lodge a caveat is not affected by a settlement notice.

152 Minor correction of settlement notice

On receiving a written request from the transferee specified in a settlement notice, the registrar may make a correction in the notice if the registrar is satisfied that it is minor.

Part 8 Instruments

Division 1 General

153 When instrument capable of registration

The registrar may register an instrument only if—

(a) it complies with this Act; and

(b) it appears on its face to be capable of registration.

154 Returning certificate of title for cancellation

(1) An instrument may be registered for a lot only if any certificate of title for the lot is returned for cancellation.

(2) However, a certificate of title need not be returned for cancellation with any of the following—

(a) an instrument transferring or otherwise dealing with the interest of a lessee under a registered lease that is lodged without the lessor's consent;

(b) a request to register a writ of execution;

(c) any caveat;

(d) a request to register a power of attorney;

(e) a request to register a charge created under an Act;

(f) a request to register an instrument of amendment, extinguishment or partial extinguishment of a building management statement, if the request is accompanied by the evidence the registrar reasonably requires to allow the registration of the instrument;

Example of evidence the registrar might require—

a certified copy of the notice of a meeting and a certified copy of the minutes of the meeting, including a record of a resolution agreed to at the meeting

(g) a request to record the vesting of a lot, or of an interest in a lot, if the vesting is in favour of the State or another entity representing the State;

(h) an instrument for which the registrar has dispensed with production of the certificate of title;

(i) a request to register a dealing under the *State Development and Public Works Organisation Act 1971*, part 6, division 8;

(j) an instrument affecting the public utility provider as the registered proprietor of a public utility easement;

(k) an instrument affecting the registered proprietor of the following interests in land—

(i) a registered profit a prendre, if the profit a prendre does not benefit any lot;

(ii) a registered carbon abatement interest.

(3) For subsection (2)(j) and (k), an instrument affects the registered proprietor of an interest in land if the registration of the instrument would result in—

(a) a change in the registered proprietor of the interest, including, for example, because the interest has been transferred or a person beneficially entitled under a will to the interest has been registered as proprietor of the interest; or

(b) a change in the registered proprietor's name.

155 Correcting unregistered instruments

(1) The registrar may correct an obvious error in a lodged plan of survey that is in paper form by—

(a) drawing a line through the error without making the original words illegible; and

(b) writing in the correct information; and

(c) dating and initialling the correction.

(2) The registrar may correct an obvious error in a lodged instrument (other than a plan of survey) by noting the correction—

(a) on the instrument; or

(b) if the instrument is in electronic form—in the appropriate register.

(3) The registrar may correct an obvious error in a lodged instrument only if the registrar is satisfied that the instrument is incorrect and the correction will not prejudice the rights of a person.

(4) An instrument corrected by the registrar under this section has the same effect as if the relevant error had not been made.

156 Requisitions

(1) The registrar may, by written notice (the ***requisition***) given to a person who has lodged or deposited an instrument or other document, or to another person who reasonably appears to the registrar to be relevantly associated with the instrument or other document require a person—

(a) to re-execute, complete or correct the instrument or document if it appears to the registrar to be wrong, incomplete or defective; or

(b) to produce to the registrar specified information, or deposit a specified instrument or document, in support of the application to register the instrument.

(2) The registrar may require the instrument, document or information to be verified by statutory declaration or affidavit.

(3) The requisition may—

(a) state when, and where, it must be complied with; and

(b) if it relates to an electronic conveyancing document, be accompanied by a copy of the document.

(4) The registrar may extend the time for complying with the requisition.

(5) The registrar may refuse to deal with the instrument or document lodged or deposited (and any instrument that depends on it for registration) until the requisition is complied with.

156A Electronic communication of statutory declaration or affidavit

(1) A person is taken to have complied with a requirement under section 156(2) to give the registrar a statutory declaration or affidavit (the ***verifying document***) if the person gives a signed

electronic form of the verifying document by electronic communication and—

(a) having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the verifying document provided a reliable way of maintaining the integrity of the information it contained; and

(b) when the communication was sent, it was reasonable to expect the information contained in the electronic form of the verifying document would be readily accessible so as to be useable for subsequent reference; and

(c) the registrar consents to the electronic form of the verifying document being given by electronic communication.

(2) The person is taken to have signed the electronic form of the verifying document if—

(a) a method is used to identify the person and to indicate the person's approval of the information communicated; and

(b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and

(c) the registrar consents to the electronic form of the verifying document being signed by using the method mentioned in paragraph (a).

157 Rejecting instrument or document for failure to comply with requisition

(1) If a requisition under section 156 is not complied with by a person within the time specified or extended by the registrar, the registrar may reject the instrument or document to which the requisition relates and any instrument that depends on it for registration.

(2) An instrument rejected under subsection (1) loses its priority under section 178.

(3) If the registrar rejects an instrument or document under subsection (1) the registrar must—

(a) give a written notice of the rejection to the person to whom the registrar gave the requisition for the instrument or document; and

(b) if the instrument or document is in paper form—return the instrument or document to the person who lodged or deposited it.

(4) A memorandum recording the rejection of an instrument under subsection (1) may be endorsed on the rejected instrument or recorded in a separate record kept in the land registry.

(5) An electronic conveyancing document that has been rejected under subsection (1) can not be relodged.

(6) Subject to subsection (5), this section does not prevent relodgement of a rejected instrument after the requisition has been complied with.

158 Borrowing lodged or deposited instrument before registration

(1) The registrar may permit any of the following persons to borrow an instrument lodged or deposited in paper form before the instrument is registered or used for the purpose for which it was deposited—

(a) the person who lodged or deposited the instrument;

(b) a person for whom the instrument was lodged or deposited;

(c) an agent of a person mentioned in paragraph (a) or (b).

(2) The person must return the instrument to the land registry within the time specified by the registrar.

(3) The registrar may extend the time for returning the instrument.

(4) A person must not fail to return the instrument to the land registry within the time specified or extended by the registrar, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

159 Withdrawing lodged instrument before registration

(1) The registrar may withdraw an instrument, or permit an instrument to be withdrawn, if the registrar is satisfied—

(a) the instrument will not give effect to the intention expressed in it or a related instrument because of the order in which the instrument has been lodged in relation to other instruments; or

(b) the instrument should not have been lodged.

(2) An instrument that is withdrawn by the registrar under subsection (1) remains in the land registry, unless the instrument is an instrument that should not have been lodged.

(3) The registrar may relodge an instrument that has been withdrawn by the registrar.

(4) On receiving a written application, the registrar may relodge an instrument that the registrar has permitted to be withdrawn.

(5) An instrument withdrawn under subsection (1) loses its priority and is taken to have been lodged on the date and at the time endorsed on it by the registrar at the time of its relodgement.

(6) Subsection (5) does not apply to a plan of subdivision mentioned in section 53.

160 Registrar may call in instrument for correction or cancellation

The registrar may require a person to deposit an instrument for correction or cancellation.

161 Execution and proof

(1) For a corporation, an instrument is validly executed if—

(a) it is executed in a way permitted by law; or

(b) the instrument is sealed with the corporation's seal in accordance with the *Property Law Act 1974*, section 46.

(2) For an individual, an instrument is validly executed if—

(a) it is executed in a way permitted by law; and

(b) the execution is witnessed by a person mentioned in schedule 1.

(3) However, the registrar may, in exceptional circumstances, register an instrument executed by an individual even though the execution was not witnessed or was not witnessed by a person mentioned in schedule 1.

(3A) If an instrument is executed by a legal practitioner authorised by a transferee or a person in whose favour an interest is created, the execution need not be witnessed.

(4) The witnessing of an instrument may be proved in any way permitted by law.

(5) This section does not apply to a plan of survey.

Note—

Under the Electronic Conveyancing National Law (Queensland), section 9(3)(b), if a registry instrument is digitally signed in accordance with the participation rules applicable to the instrument, the requirements of any other Queensland law relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied.

162 Obligations of witness for individual

A person who witnesses an instrument executed by an individual must—

(a) first take reasonable steps to ensure that the individual is the person entitled to sign the instrument; and

(b) have the individual execute the instrument in the presence of the person; and

(c) not be a party to the instrument.

164 Dispensing with production of paper instrument

(1) The registrar may dispense with the production of a paper instrument.

(2) The registrar may require evidence that a person seeking to deal with a relevant lot is the registered proprietor, and that the instrument—

(a) has been lost or no longer exists; and

(b) is not deposited as security or for safe custody.

(3) Also, the registrar may dispense with the production of a certificate of title of a lot if the registrar is satisfied the certificate of title is held by a registered mortgagee of the lot.

(4) The registrar must record in the freehold land register that production of the instrument has been dispensed with and the date production of it was dispensed with.

165 Requiring plan of survey to be lodged

(1) The registrar may require a registered proprietor of a lot who proposes to transfer, lease or otherwise deal with all or part of the lot to lodge a plan of survey of the lot.

(2) The plan of survey must comply with the *Survey and Mapping Infrastructure Act 2003* and must be certified as accurate by a cadastral surveyor within the meaning of the *Surveyors Act 2003*.

166 Destroying instrument in certain circumstances

(1) The registrar may destroy a part of the freehold land register or an instrument held in the land registry if the part of the register or the instrument—

(a) is not evidence of an existing interest; or

(b) is evidence of an existing interest of which there is accurate evidence in another part of the register; or

(c) will not be required for registering the effect of a transaction.

(2) The registrar may authorise a person to destroy an instrument held in a place other than an office of the department if the instrument—

(a) was lodged at the place for evidencing, in the land registry, an interest; and

(b) is evidence of an existing interest for which there is accurate evidence in the land registry.

(3) Before destroying a part of the register or an instrument under subsection (1), the registrar must copy it in whatever way the registrar considers appropriate.

(4) However, the registrar, or person acting under an authority given under subsection (2), must not destroy an original will.

(5) Subsection (3) does not apply to a certificate of title issued on or after 24 April 1994.

(6) The registrar may give a cancelled deed of grant or certificate of title to a person if—

(a) the person asks for it; and

(b) the registrar is reasonably satisfied it is appropriate for it to be given to the person.

(7) However, a cancelled deed of grant or certificate of title may be destroyed under subsection (1) if it has not been given to a person under subsection (6) within 1 year after its cancellation.

(8) The registrar's powers under subsections (1) and (2) are subject to the *Public Records Act 2002*.

167 Transferor must do everything necessary etc.

A person who, for valuable consideration, executes an instrument to transfer or create an interest in a lot must do everything necessary to give effect to the terms and other matters stated in the instrument or implied by this or another Act.

Division 2 Standard terms documents forming part of instruments

168 Meaning of *standard terms document* in div 2

In this division—

standard terms document means a document containing provisions that are treated as terms of an instrument to which the document is to apply or applies.

168A References to registered standard terms document

In sections 170 and 171, a reference to a registered standard terms document includes a standard terms document that has been, or is taken to be, registered under the *Land Act 1994*.

169 Standard terms document to which instrument refers may be registered

(1) The registrar or another person may lodge a standard terms document and may amend the standard terms document by lodging a further standard terms document.

(2) The lodged standard terms document must be given a distinguishing reference and must be registered.

170 Standard terms document that is part of an instrument

All or part of a registered standard terms document, or an amended registered standard terms document, forms part of an instrument if the instrument—

(a) says it forms part of the instrument; and

(b) belongs to a class identified in the standard terms document as an instrument to which the standard terms document applies.

171 Instrument not limited to that contained in standard terms document

(1) In addition to the provisions in a registered standard terms document, an instrument may include a provision incorporating other terms into the instrument.

(2) If there is a conflict between the standard terms document and the terms in an instrument, the instrument prevails.

172 Withdrawal or cancellation of standard terms document

(1) The registrar may withdraw a registered standard terms document if asked to withdraw it by the person who lodged it.

(2) The registrar may cancel a registered standard terms document lodged by the registrar after giving 1 month's notice in the gazette.

(3) The registrar must keep and, if asked, produce for inspection a copy of a standard terms document cancelled or withdrawn under this section.

(4) Withdrawal or cancellation of a standard terms document, under this section or the *Land Act 1994*, does not affect an instrument already registered or executed within 7 days after its withdrawal or cancellation.

Part 9 Registration of instruments and its effect

Division 1 Registration of instruments

173 How an instrument is registered

The registrar registers an instrument in the freehold land register by recording in the freehold land register the particulars necessary to identify the instrument.

174 When an instrument is registered

An instrument is registered when the particulars are recorded in the freehold land register.

175 Time from when instrument forms part of register etc.

A registered instrument forms part of the freehold land register from when it is lodged.

176 Registered instrument operates as a deed

A registered instrument operates as a deed.

177 Order of registration of instruments

(1) Instruments affecting a lot, including instruments affecting or creating an interest in the lot, must be registered in the order in which they are lodged.

(2) Subsection (1) is subject to section 159.

(3) Despite subsection (1), if an instrument (***instrument 2***) affecting a lot is lodged after another instrument (***instrument 1***) affecting the lot, instrument 2 may be registered before instrument 1 if the registration of instrument 2 can not affect any interest that a person might claim under instrument 1.

Example for subsection (3)—

An instrument of easement over a lot (***instrument 1***) is lodged for registration. Subsequently, an instrument releasing a mortgage of the lot (***instrument 2***) is lodged for registration. However, the registrar has given the person who lodged instrument 1 a requisition relating to instrument 1, and instrument 1 can not yet be registered. The registrar could register instrument 2 even though instrument 1 has not been registered.

178 Priority of registered instruments

(1) Registered instruments have priority according to when each of them was lodged and not according to when each of them was executed.

(2) An instrument is taken to be lodged on the date and at the time endorsed on the instrument by the registrar as the date and time of the lodgement unless the contrary is proved.

(3) Subsection (1) is not affected by actual, implied or constructive notice.

179 Evidentiary effect of recording particulars in the freehold land register

In all proceedings, the particulars of a registered instrument recorded in the freehold land register are conclusive evidence of—

(a) the registration of the instrument; and

(b) the contents of the instrument; and

(c) all terms stated or implied in it by this or another Act; and

(d) when the instrument was lodged and registered.

Division 2 Consequences of registration

Subdivision A General

180 Benefits of registration

The benefits of this division apply to an instrument whether or not valuable consideration has been given.

181 Interest in a lot not transferred or created until registration

An instrument does not transfer or create an interest in a lot at law until it is registered.

182 Effect of registration on interest

On registration of an instrument that is expressed to transfer or create an interest in a lot, the interest—

(a) is transferred or created in accordance with the instrument; and

(b) is registered; and

(c) vests in the person identified in the instrument as the person entitled to the interest.

183 Right to have interest registered

A person to whom an interest is to be transferred or in whom an interest has been created has a right to have the instrument transferring or creating the interest registered if—

(a) the instrument has been executed; and

(b) the person lodges the instrument and any documents required by the registrar to effect registration of the instrument; and

(c) the person has otherwise complied with this Act in relation to the registration of the instrument.

Subdivision B Indefeasibility

184 Quality of registered interests

(1) A registered proprietor of an interest in a lot holds the interest subject to registered interests affecting the lot but free from all other interests.

(2) In particular, the registered proprietor—

(a) is not affected by actual or constructive notice of an unregistered interest affecting the lot; and

(b) is liable to a proceeding for possession of the lot or an interest in the lot only if the proceeding is brought by the registered proprietor of an interest affecting the lot.

(3) However, subsections (1) and (2) do not apply—

(a) to an interest mentioned in section 185; or

(b) if there has been fraud by the registered proprietor, whether or not there has been fraud by a person from or through whom the registered proprietor has derived the registered interest.

185 Exceptions to s 184

(1) A registered proprietor of a lot does not obtain the benefit of section 184 for the following interests in relation to the lot—

(a) an equity arising from the act of the registered proprietor;

(b) the interest of a lessee under a short lease;

(c) the interest of a person entitled to the benefit of an easement if its particulars have been omitted from, or misdescribed in, the freehold land register;

(d) the interest of a person who, on application, would be entitled to be registered as owner of the lot because the person is an adverse possessor;

(e) the interest of another registered proprietor making a valid claim under an earlier existing indefeasible title for all or part of the lot;

(f) the interest of another registered owner if there are 2 indefeasible titles for the same interest in the lot and the inconsistency has arisen through failure on transfer to cancel, wholly or partly, the indefeasible title of the first registered owner;

(g) the interest of another registered proprietor if the lot described in the indefeasible title wrongly includes land in which the other registered proprietor has an interest;

(h) the interest of a petroleum authority holder under the *Petroleum and Gas (Production and Safety) Act 2004* under an access agreement under that Act that—

(i) was made before the registered proprietor became the registered proprietor of the lot; and

(ii) under that Act, binds the registered proprietor;

(i) the interest of a GHG authority holder under the *Greenhouse Gas Storage Act 2009* under an access agreement under that Act that—

(i) was made before the registered proprietor became the registered proprietor of the lot; and

(ii) under that Act, binds the registered proprietor;

(j) the interest of a geothermal tenure holder under the *Geothermal Energy Act 2010* under an access agreement under that Act that—

(i) was made before the registered proprietor became the registered proprietor of the lot; and

(ii) under that Act, binds the registered proprietor.

Note—

For when an access agreement mentioned in paragraph (h), (i) or (j) binds the registered proprietor, see the following—

- for the *Petroleum and Gas (Production and Safety) Act 2004*—sections 507 and 509 of that Act
- for the *Greenhouse Gas Storage Act 2009*—sections 292 and 294 of that Act
- for the *Geothermal Energy Act 2010*—sections 225 and 226 of that Act.

(1A) A registered proprietor of a lot (the ***relevant mortgagee***) who is recorded in the freehold land register as a mortgagee of the lot or an interest in the lot does not obtain the benefit of section 184 for the relevant mortgagee's interest as mortgagee if—

(a) the relevant mortgagee—

(i) in relation to the instrument of mortgage or amendment of mortgage, failed to comply with section 11A(2); or

(ii) in relation to a transfer of the instrument of mortgage, failed to comply with section 11B(2); and

(b) the person who was the mortgagor under the instrument of mortgage or amendment of mortgage was not the person who was, or who was about to become, the registered proprietor of the lot or the interest in a lot for which the instrument was registered.

(1B) For subsection (1A)(b), a person was the mortgagor under an instrument of mortgage or amendment of mortgage if the person executed the instrument as mortgagor, including, if the instrument is an electronic conveyancing document, through a subscriber digitally signing the instrument under the Electronic Conveyancing National Law (Queensland).

(1C) Also, for subsection (1A)(b), a person was the mortgagor under an instrument of mortgage or amendment of mortgage if the instrument is an electronic conveyancing document and the person signed, as mortgagor, a document that under the

participation rules under the Electronic Conveyancing National Law (Queensland)—

(a) was required as a supporting document for the instrument of mortgage or amendment of mortgage; and

(b) was required to be kept by the original mortgagee mentioned in section 11A(2).

(2) The interest of the lessee under subsection (1)(b) does not include—

(a) a right to acquire the fee simple or other reversionary interest on or after ending of the short lease; or

(b) a right to renew or extend the term of the short lease beyond 3 years from the beginning of the original term.

(3) For subsection (1)(c), the particulars of an easement (the ***easement particulars***) are taken to have been omitted from the freehold land register only if—

(a) the easement was in existence when the lot burdened by it was first registered, but the easement particulars have never been recorded in the freehold land register against the lot; or

(b) the easement particulars have previously been recorded in the freehold land register, but the current particulars in the freehold land register about the lot do not include the easement particulars, other than because the easement has been extinguished in relation to the lot; or

(c) the instrument providing for the easement was lodged for registration but, because of an error of the registrar, has never been registered.

(4) Subsection (3) applies whether or not the lot has at any time been transferred or otherwise dealt with.

(5) If an issue arises in a proceeding as to whether a person registered as a mortgagee does not obtain the benefit of section 184 because of subsection (1A), proof that the person complied with section 11A(2) or 11B(2) rests on the person.

(6) In subsection (3)(b)—

extinguished includes surrendered.

186 Action to correct wrong inclusion of a lot

(1) If the registrar is satisfied that section 185(1)(g) applies to an indefeasible title, the registrar may correct the indefeasible title.

(2) A person affected by the correction may apply to the Supreme Court for an order that the correction be amended or set aside.

(3) The application must be made within 1 month after the person receives written notice of the correction.

187 Orders by Supreme Court about fraud and competing interests

(1) If there has been fraud by the registered proprietor or section 185(1)(c), (d), (e), (f) or (g) or (1A) applies, the Supreme Court may make the order it considers just.

(2) Without limiting subsection (1), the Supreme Court may, by order, direct the registrar—

(a) to cancel or correct the indefeasible title or other particulars in the freehold land register; or

(b) to cancel, correct, execute or register an instrument; or

(c) to create a new indefeasible title; or

(d) to issue a new instrument; or

(e) to do anything else.

Subdivision C Compensation

188 Compensation for deprivation of lot or interest in lot

(1) This section applies if a person (the ***claimant***) is deprived of a lot, or an interest in a lot, because of—

(a) the fraud of another person; or

(b) the incorrect creation of an indefeasible title in the name of another person; or

(c) incorrect registration; or

(d) an error in an indefeasible title or in the freehold land register; or

(e) tampering with the freehold land register; or

(f) loss, destruction or improper use of a document deposited or lodged at the land registry or held by the land registry for safe custody; or

(g) an omission, mistake, breach of duty, negligence or misfeasance of or by the registrar or a member of the staff in the land registry; or

(h) the exercise by the registrar of a power in relation to an application or dealing with which the person had no connection.

(2) The claimant is entitled to compensation from the State for the deprivation.

188A Compensation for loss or damage

(1) This section applies if a person (the ***claimant***) suffers loss or damage because of—

(a) the incorrect creation of an indefeasible title in the name of another person; or

(b) incorrect registration; or

(c) an error in an indefeasible title or in the freehold land register; or

(d) reliance on the incorrect state of the freehold land register; or

(e) loss, destruction or improper use of a document deposited or lodged at the land registry or held by the land registry for safe custody; or

(f) omission, mistake, breach of duty, negligence or misfeasance of or by the registrar or a member of the staff of the land registry; or

(g) the exercise by the registrar of a power in relation to an application or dealing of which the person had no connection.

(2) The claimant is entitled to compensation from the State for the loss or damage.

(3) Despite anything in subsection (1) or (2), the claimant is not entitled to compensation under this section for loss or damage caused by the incorrectness of a register kept by the registrar if the registrar may correct the register under section 15.

(4) Subsection (3) does not limit the claimant's rights to compensation otherwise than under subsections (1) and (2).

188AA Compensation for which claim may not be made

(1) The compensation to which a claimant is entitled under section 188 or 188A does not include compensation for personal injury.

(2) In subsection (1)—

personal injury includes loss of income, including loss of income claimed to arise from personal injury, and psychological and psychiatric injury.

188B Order by Supreme Court about deprivation, loss or damage

(1) For section 188 or 188A, a claimant may apply to the Supreme Court for an order—

(a) for compensation to be paid by the State; or

(b) directing the registrar to take stated action.

(2) The court may make the order it considers just.

(3) Without limiting subsection (2), the court may by order direct the registrar to—

(a) cancel or correct an indefeasible title or other particulars in the freehold land register; or

(b) create a new indefeasible title; or

(c) issue a new instrument; or

(d) do anything else.

(4) The court may join any other person it considers appropriate in a proceeding under this section.

188C Time limit for claim

A person applying to the Supreme Court under section 188B for compensation under section 188 or 188A must make the application—

(a) within 12 years after the person becomes aware, or ought reasonably to have become aware, of the circumstances giving rise to the entitlement to compensation; or

(b) within a longer period the court considers just.

188D No right of subrogation for insurers

(1) An insurer can not be subrogated to another person in relation to the other person's entitlement to claim compensation under section 188 or 188A.

(2) In this section—

insurer means a person who carries on an insurance business within the meaning of the *Insurance Act 1973* (Cwlth).

189 Matters for which there is no entitlement to compensation

(1) A person is not entitled to compensation from the State for deprivation, loss or damage—

(a) because of a breach of a trust or fiduciary duty (whether express, implied or constructive) including a breach of

duty arising in the administration of the estate of a deceased person; or

(ab) if the deprivation, loss or damage can fairly be attributed to the person's failure, as original mortgagee under section 11A, or as mortgage transferee under section 11B, to take the steps required under section 11A(2) or 11B(2); or

(b) if the person, a person acting as agent for the person, or an indemnified legal practitioner acting or purporting to act for the person, caused or substantially contributed to the deprivation, loss or damage by fraud, neglect or wilful default, including, for example, failure to take reasonable steps in response to a notice that the registrar intended to create a new indefeasible title for the relevant lot; or

(d) suffered by a corporation through the improper use of its seal or by an act of an authorised signatory of the corporation who exceeds the signatory's authority; or

(e) caused when the registrar corrected an indefeasible title that mistakenly included the person's land, unless the person suffered loss or damage under section 188A(1)(d); or

(f) because of an error in the location of a lot's boundaries or in a lot's area; or

(g) because of an excess or shortage in area of a lot according to a plan lodged in the land registry; or

(h) if the loss, damage or deprivation arises out of a matter about which the registrar is by an Act or law, either expressly or by necessary implication, excused from inquiring; or

(i) because of the registrar's lodgement or continuation of a caveat prepared and registered under section 17; or

(j) because the particulars of an easement over a lot have been omitted from the freehold land register; or

(k) because of the misdescription of the particulars of an easement in the freehold land register; or

(l) because of the recording or keeping of information or anything else under section 28(2), 29 or 34, if—

(i) the information or thing, as recorded or kept, is incorrect; and

(ii) the information or thing was given to the registrar for recording or keeping by another entity; and

(iii) the incorrectness was not because of an error of the registrar in the recording or keeping.

(1A) A failure to obtain a certificate of title for a lot may not be taken into account in considering whether, under subsection (1)(b), a person, or a person acting as agent for the person, or an indemnified legal practitioner acting or purporting to act for the person, caused or substantially contributed to the deprivation of the lot or an interest in the lot.

(1B) Section 185(3), (4) and (6) applies for subsection (1)(j) in the same way it applies for section 185(1)(c).

(2) In this section—

indemnified legal practitioner means a legal practitioner covered by indemnity insurance (however described) under the *Legal Profession Act 2007* or a law of another jurisdiction that corresponds to the provisions about indemnity insurance under that Act.

189A Limit on amounts recoverable by mortgagee

(1) This section applies if—

(a) a person (the ***mortgagee***) is recorded in the freehold land register as a mortgagee of a lot, or an interest in a lot, under an instrument of mortgage; and

(b) the execution of the instrument of mortgage involved, or was associated with, fraud against a person (the ***defrauded person***) who is or was a registered proprietor of the lot; and

Examples—

1 A person engages in fraud by executing the instrument of mortgage, pretending to be the registered proprietor.

2 A person executes the instrument of mortgage as registered proprietor, having first engaged in fraud by executing an instrument of transfer, pretending to be the registered proprietor.

(c) the mortgagee is entitled to—

(i) if the lot or interest is sold—any proceeds of the sale; or

(ii) payment of an amount under the mortgage, if the mortgage is otherwise discharged; and

(d) if the position of the defrauded person in relation to the lot or interest is not otherwise rectified, the defrauded person will be entitled to compensation under section 188 for deprivation of the lot or interest.

(2) Subsections (3) and (4)—

(a) apply to limit the interest and costs components of the proceeds of sale or an amount that the mortgagee is entitled to under the mortgage; and

(b) apply despite anything to the contrary in the instrument of mortgage (including any associated document).

(3) The rate of interest to be applied for calculating the interest component for any particular day for which the instrument of mortgage was in effect must not exceed—

(a) if the rate of interest provided for under the instrument of mortgage for the day is less than or equal to the official cash rate for the day plus 2%—the rate of interest provided for under the instrument; or

(b) if the rate of interest provided for under the instrument of mortgage for the day is greater than the official cash rate for the day plus 2%—the total of the following—

(i) the official cash rate for the day;

(ii) 2%.

(4) The costs component must be limited to the costs incurred by the mortgagee in directly protecting the mortgagee's interest as mortgagee of the lot or the interest in a lot, to the extent the costs were reasonably incurred.

Examples of costs incurred in directly protecting the mortgagee's interest—

insurance premiums, rates, land taxes

Examples of costs not incurred in directly protecting the mortgagee's interest—

costs of entry into possession, costs of exercising power of sale

(5) In this section—

costs component means costs incurred by the mortgagee in relation to the mortgage.

official cash rate, for a day, means the Reserve Bank of Australia's official cash rate for the day.

Editor's note—

The Reserve Bank of Australia's official cash rate is published on the bank's website at <www.rba.gov.au>.

190 State's right of subrogation

(1) On payment of any compensation under section 188 or 188A, the State is subrogated to the rights of the claimant against any other person, in relation to the deprivation, loss or damage under the section.

(2) If the State, in exercising its rights under subsection (1), receives an amount that is more than the amount it paid to the claimant, the State must pay the difference to the claimant after deduction of the State's costs.

Part 10 Liens

191 Vendor does not have equitable lien

A vendor of a lot does not have an equitable lien on the lot because of the purchaser's failure to pay all or part of the purchase price for the lot.

Part 11 Miscellaneous

192 Words and expressions used in instruments under Act

(1) Words and expressions used in instruments made or executed under this Act and also in this Act have the same respective meanings in the instruments as they have in this Act.

(2) The application of subsection (1) to an instrument may be displaced, wholly or partly, by a contrary intention appearing in the instrument.

193 Protection from liability

(1) This section applies to the registrar and land registry staff.

(2) A person to whom this section applies is not civilly liable for an act or omission done honestly and without negligence under this Act.

(3) If subsection (2) prevents civil liability attaching to a person, the liability attaches instead to the State.

194 Chief executive may approve forms

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

195 Reference to instrument is reference to instrument completed in appropriate form

In this Act, a reference to a particular type of instrument is a reference to the instrument completed in the appropriate form.

196 References in instruments to a person with an interest in a lot includes personal representatives etc.

(1) In an instrument made or executed under this Act, a reference to a person as proprietor, transferor, transferee, mortgagor, mortgagee, lessor, lessee, trustee or as having an interest in a lot includes a reference to the person's personal representatives, successors and assigns.

(2) The application of this section may be displaced, wholly or partly, by a contrary intention appearing in the instrument.

196A Publication of particular public notices on department's website

(1) This section applies if an official is required under this Act to give a public notice, unless the notice is a gazette notice.

(2) This section applies even if this Act provides for a particular way in which the notice must be given.

(3) The official must publish the notice on the department's website for a total of at least 10 business days.

(4) The 10 business days may be, but need not necessarily be, consecutive.

(5) Subsection (3) does not prevent the official from also giving the notice in another way the official considers appropriate.

(6) In deciding to give the notice in another way, the official must consider the intended audience for the notice.

(7) In this section—

give, for a notice, includes advertising it.

notice includes an advertisement.

official means—

(a) the chief executive; or

(b) the registrar; or

(c) a person performing functions or exercising powers under this Act for the chief executive or the registrar.

public notice means a notice of a public nature that is not required only to be given, or only intended for, a particular person or group of persons.

197 Service

(1) A notice required or permitted to be served on a person under this Act (a ***land title notice***) may be served on the person's agent.

(2) The Supreme Court may order that a land title notice required or permitted be served on a person under this Act be served in the way directed by the Supreme Court.

(3) The Supreme Court may make an order under subsection (2) if, for example, the person—

(a) is not known; or

(b) can not be found and has no known agent; or

(c) is dead and has no personal representative.

(4) The Supreme Court may dispense with service of a land title notice if it is satisfied that it is appropriate to dispense with service of the notice.

198 Delivery of paper documents

(1) This section applies if the registrar is required or permitted to return—

(a) a document that has been lodged or deposited in paper form; or

(b) a document in paper form that is a representation of an electronic conveyancing document.

(2) The registrar may return the document by leaving it at a place designated for the purpose in the land registry.

198A Supply of statistical data

(1) The registrar may enter into an agreement to supply statistical data derived from instruments or information kept in the land registry.

(2) If the registrar supplies statistical data under subsection (1)—

(a) the fees and charges applying for the supply of the data are the fees and charges agreed to in the agreement; and

(b) without limiting paragraph (a), the agreement may also state—

(i) how the fees and charges are to be calculated; and

(ii) how payment of the fees and charges is to be made.

(3) Without limiting subsection (1), an agreement for the supply of statistical data may limit the use to which the data supplied may be put.

(4) An agreement for the supply of statistical data must include—

(a) a provision allowing the registrar to exclude particulars from data supplied under the agreement, if the registrar is satisfied, on reasonable grounds, that inclusion of the particulars may result in the particulars being inappropriately disclosed or used; and

(b) a provision allowing the registrar to prohibit disclosure, or to limit distribution or use, of data supplied under the agreement.

(5) An agreement under this section must not provide for the obtaining of information or anything else that may be obtained under a search under section 35, other than section 35(1)(a)(iv).

(6) The registrar must exclude land particulars and personal information from data supplied under the agreement.

(7) Subsection (6) applies despite anything in the agreement.

(8) In this section—

land particulars means particulars from any instrument or information kept by the registrar that may allow a person to identify a lot to which the instrument or information relates.

personal information means a particular from any instrument or information kept by the registrar that may allow a person to identify a person to whom the instrument or information relates.

199 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about the following matters—

(a) how instruments may be lodged;

(b) fees, to be paid in relation to—

(i) the lodgement and registration of instruments in the land registry; or

(ii) the provision of other services by the registrar;

(c) how fees are to be paid and may be recovered, including the provision of credit facilities to persons approved by the registrar;

(d) the size, type and quality of paper on which a form may be printed;

(e) the size and nature of the type to be used in both the printing and completion of a form;

(f) the ink or other substance to be used for printing or completing a form;

(g) additional information to be supplied with a form;

(h) transitional arrangements if a new form is approved;

(i) the execution of instruments;

(j) requirements for particular formats of plans of survey;

(k) anything else about a form or instrument;

(l) recording of a community management statement.

(3) A regulation may create offences and prescribe penalties of not more than 5 penalty units for the offences.

Part 12 Savings and transitional provisions

Division 1 Savings and transitional provisions for Act No. 11 of 1994

200 Things made under repealed Acts

(1) In this section—

done includes issued, recorded, entered, kept, granted, declared, registered, lodged, deposited, produced, transferred, created, served, given, acquired, required, executed, removed, noted, sealed, imprinted, witnessed, advertised and anything else prescribed by regulation for this definition.

(2) Everything done under an Act repealed by this Act, is as effective as if it had been done under this Act.

Editor's note—

The Acts repealed by this Act included the following—

- *Real Property Act 1861*
- *Real Property Act 1877*
- *Real Property (Commonwealth Titles) Act 1924*
- *Real Property (Commonwealth Defence Notification) Act 1929*.

201 Interests and certificates of title under repealed Acts

(1) On the commencement of this section—

(a) each interest in freehold land held by a person immediately before the commencement, and recorded under an Act repealed by this Act, is taken to be an interest held by the person in the freehold land register; and

(b) each certificate of title, duplicate certificate of title or deed of grant (other than a deed of grant prescribed by regulation) issued under an Act repealed by this Act before the commencement is taken to be a certificate of title issued under this Act.

(2) The registrar must do everything necessary or desirable to ensure that the particulars of each interest mentioned in subsection (1) are fully and accurately recorded in the freehold land register.

203 Effect of repeal by this Act

The repeal of the following sections is limited in the following way—

(a) the *Real Property Act 1877*, section 11 continues to apply to a lease granted before this Act commenced;

(b) the *Real Property Acts and Other Acts Amendment Act 1986*, section 5 continues to apply to a bill of encumbrance and memorandum of transfer-and-charge registered or executed before this Act commenced;

(c) the *Real Property Act 1861*, sections 126 to 129 and section 135 continue to apply to claims for compensation for—

(i) deprivation of an interest in a lot; and

(ii) loss or damage caused by an error, breach of duty or wrongdoing by the registrar;

that happened before this Act commenced;

(d) the *Real Property Act 1861*, section 119A continues to apply to plans mentioned in section 83A of this Act that were lodged or registered before this Act commenced.

204 Registration of instrument lodged before commencement of this Act

(1) If—

(a) an instrument is lodged before the commencement of this Act, but is not registered before the commencement; and

(b) the registrar had power to register the instrument when it was lodged;

the registrar may register the instrument after the commencement of this Act.

(2) When registering an instrument under subsection (1), the registrar must exercise the powers the registrar had at the time when the instrument was lodged.

205 Reference to registrar-general etc.

(1) A reference to the registrar-general or master of titles in an Act or document about the registration of instruments under an Act repealed by this Act is taken to be a reference to the registrar.

(2) Subsection (1) does not affect the application of the *Acts Interpretation Act 1954,* section 14H.

(3) The application of subsection (1) to a reference is not displaced, wholly or partly, merely because the reference is accompanied by a reference to an Act repealed by this Act, or a provision of an Act repealed by this Act, as amended from time to time or as in force at a particular time.

206 References to office of registrar of titles

A reference in any Act or document to the office of the registrar of titles (either in those words or in words to the same effect) is taken to be a reference to the land registry.

207 Reference to Act repealed by this Act

In an Act or document, a reference to an Act repealed by this Act, or to a group of Acts repealed by this Act (whether or not as the 'Real Property Acts'), is taken to be a reference to this Act.

Division 2 Transitional provision for Act No. 57 of 1995

208 References to registrar of dealings

In an Act or document, a reference to the registrar of dealings may, if the context permits, be taken to be a reference to the registrar of titles.

Division 3 Transitional provision for Guardianship and Administration Act 2000

209 Authorisation under repealed s 136 continues for 1 year

An authorisation under section 136 that is in force immediately before the repeal of the section continues to have effect for 1 year after the repeal as if the section had not been repealed.

Division 4 Transitional provision for the Legal Profession Act 2004

210 Continuation of particular exclusion of entitlement under s 189

(1) This section applies to conduct that, apart from the repeal of the *Queensland Law Society Act 1952*, section 24A (the ***repealed section***), would constitute unlawful conduct in relation to an excluded mortgage, as mentioned in the repealed section.

(2) Despite the repeal, the repealed section and section 189(1)(c) continue to have effect to exclude conduct happening on or after 16 May 1996 or after the commencement of this section, that would have constituted unlawful conduct in relation to an excluded mortgage under the repealed section had that section not been repealed.

Division 5 Transitional provision for Natural Resources and Other Legislation Amendment Act 2010

211 Continuing application of no compensation provision

(1) The repealed section 191F continues to apply after the repeal of part 10A in relation to the operation of that part.

(2) In this section—

repealed section 191F means section 191F as in force immediately before the commencement of this section.

Schedule 1 Witnesses to instruments

section 161

Place of execution of instrument	Persons who can witness execution
at any place in Australia or outside Australia	• a notary public • a justice of the peace • a commissioner for declarations • a lawyer • a licensed conveyancer from another State • another person approved by the registrar
at any place outside Australia	• a person prescribed by regulation

Schedule 2 Dictionary

section 4

action to recover a lot includes an action to redeem a mortgage of the lot.

adverse possessor of a lot means a person—

(a) against whom the time for bringing an action to recover the lot has expired under the *Limitation of Actions Act 1974*; and

(b) who, apart from this Act, is entitled to remain in possession of the lot.

appropriate form, for an instrument, means—

(a) the form that is the approved form for the instrument; or

(b) if a form is approved or prescribed for the instrument under another Act—that form; or

(c) if the chief executive has given consent for an electronic form of the instrument under section 156A(1) or the *Electronic Transactions (Queensland) Act 2001*—the electronic form.

approved development scheme see the *State Development and Public Works Organisation Act 1971*, schedule 2.

approved form means—

(a) for an electronic conveyancing document—a form approved by the registrar under the Electronic Conveyancing National Law (Queensland), section 7; or

(b) otherwise—a form approved by the chief executive under section 194 for use under this Act.

area includes the volume of a lot on a volumetric format plan of subdivision.

bankruptcy includes a proceeding under a law about bankruptcy, insolvency or the liquidation of corporations.

basic scheme see section 115B(5).

BCCM Act means the *Body Corporate and Community Management Act 1997*.

body corporate see BCCM Act, schedule 6.

building means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a part of a building.

building format see section 48C.

building format lot means a lot on a building format plan of survey.

building management statement see section 54A(2).

cane railway easement, for part 6, division 4, see section 81A.

carbon abatement interest, for part 6, division 4C, see section 97N.

carbon abatement product, for part 6, division 4C, see section 97N.

carbon sequestration, for part 6, division 4C, see section 97N.

caveatee, for a lot over which a caveat has been lodged, means—

(a) a registered proprietor of the lot; or

(b) someone (other than the caveator) who has an interest in the lot.

caveator, for a lot over which a caveat has been lodged, means a person in whose favour the caveat is lodged.

certificate of title means a certificate issued by the registrar under section 42.

commissioner for declarations see the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 3.

common property see section 115B(2)(b).

community management statement see the BCCM Act, section 12.

community titles scheme see section 115B(1).

contribution schedule lot entitlement see the BCCM Act, section 46.

copy, of a document, if the document is an electronic conveyancing document, means—

(a) a representation of the document in paper form; or

(b) a reproduction or representation of the document in digital form.

correct includes correct by addition, omission or substitution.

deed of grant means an instrument evidencing the grant of land by the State.

deposit means file in the land registry other than for registration.

Note—

For filing an electronic conveyancing document, see the definition *file*.

electronic communication means a communication of information in the form of data, text or images by guided or unguided electromagnetic energy.

electronic conveyancing document see section 14B.

Electronic Conveyancing National Law (Queensland) see the *Electronic Conveyancing National Law (Queensland) Act 2013*, section 4.

endorse, in relation to endorsing information on a document, if the document is an electronic conveyancing document, means record the information in electronic form as part of the document in such a way that it is reasonable to expect the information will be readily accessible as part of the document so as to be useable for subsequent reference.

enforcement warrant means an enforcement warrant under—

(a) the *Civil Proceedings Act 2011*, section 90; or

(b) the *State Penalties Enforcement Act 1999*, section 63.

error includes an error by omission.

explanatory format plan see section 48E.

fee includes tax.

file, a document, if the document is an electronic conveyancing document, means lodge the document electronically under the Electronic Conveyancing National Law (Queensland), section 7.

freehold land register means the freehold land register kept under this Act.

full supply level, for part 6, division 4, see section 81A.

high-density development easement see section 94.

included in, in the context of the inclusion of a lot in a community titles scheme, see section 115C(4).

indefeasible title see sections 38 and 41B.

instrument includes—

(a) a deed of grant or certificate of title; and

(b) a will, grant of representation, or exemplification of a will, that may be used to deal with a lot; and

(c) a deed that relates to or may be used to deal with a lot; and

(d) a power of attorney that may be used to deal with a lot; and

(e) a request, application or other document that deals with a lot and may be registered under this Act; and

(f) a map or plan of survey that may be lodged; and

(g) another document that may be deposited; and

(h) an electronic conveyancing document.

interest schedule lot entitlement see the BCCM Act, section 46.

justice of the peace see the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 3.

lake see the *Survey and Mapping Infrastructure Act 2003*, section 62.

land registry means the land registry kept under this Act.

lawyer means an Australian lawyer as defined under the *Legal Profession Act 2007*, section 5(1).

layered arrangement of community titles schemes see section 115C.

legal practitioner means—

(a) an Australian legal practitioner as defined under the *Legal Profession Act 2007*, section 6(1); or

(b) a government legal officer engaged in government work as defined under the *Legal Profession Act 2007*, section 12(1) and (2).

lodge means file in the land registry for registration.

Note—

For filing an electronic conveyancing document, see the definition *file*.

lot means a separate, distinct parcel of land created on—

(a) the registration of a plan of subdivision; or

(b) the recording of particulars of an instrument;

and includes a lot under the *Building Units and Group Titles Act 1980*.

MEDQ means MEDQ under the *Economic Development Act 2012*.

mill owner, for part 6, division 4, see section 81A.

mortgage includes a charge on a lot or an interest in a lot for securing money or money's worth.

new plan of subdivision, for part 10A, see section 191B.

non-tidal watercourse means a watercourse in which the water that flows is not subject to tidal influence.

note, in relation to noting particular information on a document, if the document is an electronic conveyancing document, means record the information in electronic form as part of the document in such a way that it is reasonable to expect the information will be readily accessible as part of the document so as to be useable for subsequent reference.

plan of subdivision see section 49.

plan of survey includes a plan that the registrar requires the registered proprietor of a lot to lodge.

principal scheme see section 115C(1)(a).

priority development area means a priority development area under the *Economic Development Act 2012*.

profit a prendre includes a profit a prendre under the *Forestry Act 1959*, section 61J.

proprietor of a lot means a person entitled to an interest in a lot, whether or not the person is in possession.

Example—

A lessee or mortgagee of a lot is a proprietor of the lot.

public thoroughfare easement, for part 6, division 4, see section 81A.

public thoroughfare easement see section 81A.

public use land means land dedicated to public use by a plan of subdivision.

public utility easement, for part 6, division 4, see section 81A.

public utility provider, for part 6, division 4, see section 81A.

register a lot, interest, instrument or other thing means record the particulars of the thing in the freehold land register.

registered owner of a lot means the person recorded in the freehold land register as the person entitled to the fee simple interest in the lot.

registered proprietor of a lot means a person recorded in the freehold land register as a proprietor of the lot.

registrar means the registrar of titles.

relevant local government, for a provision about a lot or proposed lot, means each local government in whose area the lot or proposed lot is located.

scheme land see section 115B(1)(a).

short lease means a lease—

(a) for a term of 3 years or less; or

(b) from year to year or a shorter period.

sketch plan means a drawing in an instrument of lease that shows the leased area and is not a plan of survey.

standard format see section 48B.

standard format lot means a lot on a standard format plan of survey.

State development area see the *State Development and Public Works Organisation Act 1971*, schedule 2.

subsidiary scheme see section 115C(3).

term includes covenant and condition.

term of a lease means the period beginning when the lessee is first entitled to possession of a lot or part of a lot under the lease and ending when the lessee is last entitled to possession, even if the lease consists of 2 or more discontinuous periods.

time share scheme means a scheme under which participants are to have exclusive possession of a lot or part of a lot for discontinuous periods.

utility infrastructure see the BCCM Act, schedule 6.

utility service see the BCCM Act, schedule 6.

volumetric format see section 48D.

volumetric format lot means a lot on a volumetric format plan of survey.

watercourse see the *Survey and Mapping Infrastructure Act 2003*, section 63.

writ of execution means a writ or warrant of execution after judgment in any court, and includes an enforcement warrant.

1 Index to endnotes

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7 Information about retrospectivity

2 Key

Key to abbreviations in list of legislation and annotations

Key		Explanation	Key		Explanation
AIA	=	**Acts Interpretation Act 1954**	**(prev)**	=	**previously**
amd	=	**amended**	**proc**	=	**proclamation**
amdt	=	**amendment**	**prov**	=	**provision**
ch	=	**chapter**	**pt**	=	**part**
def	=	**definition**	**pubd**	=	**published**
div	=	**division**	**R[X]**	=	**Reprint No. [X]**
exp	=	**expires/expired**	**RA**	=	**Reprints Act 1992**
gaz	=	**gazette**	**reloc**	=	**relocated**
hdg	=	**heading**	**renum**	=	**renumbered**
ins	=	**inserted**	**rep**	=	**repealed**
lap	=	**lapsed**	**(retro)**	=	**retrospectively**
notfd	=	**notified**	**rv**	=	**revised version**
num	=	**numbered**	**s**	=	**section**
o in c	=	**order in council**	**sch**	=	**schedule**
om	=	**omitted**	**sdiv**	=	**subdivision**
orig	=	**original**	**SIA**	=	**Statutory Instruments Act 1992**
p	=	**page**	**SIR**	=	**Statutory Instruments Regulation 2012**
para	=	**paragraph**	**SL**	=	**subordinate legislation**
prec	=	**preceding**	**sub**	=	**substituted**

Key		Explanation	Key		Explanation
pres	=	**present**	**unnum**	=	**unnumbered**
prev	=	**previous**			

3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the

Reprints Act 1992

used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Reprint No.	Amendments to	Effective	Reprint date
1	1994 Act No. 33	24 April 1994	27 July 1994
2	1994 Act No. 81	25 April 1995	28 April 1995
3	1994 Act No. 81	1 July 1995	7 July 1995
3A	1996 Act No. 37	1 December 1996	5 March 1997
4	1997 Act No. 28	13 July 1997	1 August 1997
4A	1997 Act No. 40	25 August 1997	16 October 1997
4B	1997 Act No. 78	5 December 1997	4 February 1998
4C	1998 Act No. 20	30 March 1998	2 July 1998
4D	1998 Act No. 31	30 March 1998	25 September 1998
5	1998 Act No. 31	12 October 1998	6 November 1998
5A	1998 Act No. 48	18 December 1998	18 December 1998

5B	2000 Act No. 2	8 March 2000	20 March 2000
5C	2000 Act No. 8	1 July 2000	7 July 2000
5D	2000 Act No. 8	27 November 2000	28 November 2000
6	2000 Act No. 8	27 November 2000	9 February 2001
6A	2001 Act No. 33	7 June 2001	8 June 2001
6B	2001 Act No. 57	1 October 2001	12 October 2001
6C	2001 Act No. 92	1 February 2002	8 February 2002

Reprint No.	Amendments included	Effective	Notes
6D	2002 Act No. 11	1 July 2002	
6E	2003 Act No. 6	4 March 2003	
6F	2003 Act No. 25	16 May 2003	R6F withdrawn, see R7
7	—	16 May 2003	
7A	2004 Act No. 4	6 May 2004	
7B	2004 Act No. 9	20 May 2004	
7C	2004 Act No. 11	1 July 2004	
7D	2003 Act No. 70 2003 Act No. 71	1 August 2004	
7E	2004 Act No. 25	31 December 2004	
7F	2005 Act No. 68	6 February 2006	R7F withdrawn, see R8
8	—	6 February 2006	
8A	2006 Act No. 54	7 December 2006	
Reprint No.	Amendments included	Effective	Notes
8B	2007 Act No. 19	18 May 2007	
8C	2007 Act No. 24	1 July 2007	
8D	2007 Act No. 41	21 September 2007	
8E	2007 Act No. 19 (amd 2007 Act No. 57)	1 January 2008	R8E withdrawn, see R9
9	—	1 January 2008	

9A	2008 Act No. 22 2008 Act No. 34	1 July 2008	
9B	2008 Act No. 58	13 November 2008	
9C	2009 Act No. 3	23 February 2009	
9D	2009 Act No. 25	2 November 2009	
9E	2009 Act No. 43	3 November 2009	
9F	2009 Act No. 36	18 December 2009	
9G	2009 Act No. 51	1 January 2010	
9H	2010 Act No. 12	26 March 2010	
9I	2010 Act No. 12	7 May 2010	
9J	2010 Act No. 21	23 May 2010	
9K	2009 Act No. 17	1 July 2010	
9L	2010 Act No. 12	30 October 2010	R9L withdrawn, see R10 rv
10 rv	—	30 October 2010	Revision notice issued for R10
10A	2010 Act No. 31	2 March 2012	
10B	2011 Act No. 31	29 October 2012	

Current as at	Amendments included	Notes
1 February 2013	2012 Act No. 43	
29 April 2013	2013 Act No. 17	
14 May 2013	2013 Act No. 23	
17 May 2013 rv	2013 Act No. 17	RA s 44
1 July 2013	2013 Act No. 23	
28 May 2014	2014 Act No. 29	
1 October 2014	2014 Act No. 40	
1 December 2014 rv	2014 Act No. 46	RA s 26

4 List of legislation

Land Title Act 1994 No. 11
date of assent 7 March 1994
ss 1–2 commenced on date of assent

remaining provisions commenced 24 April 1994 (1994 SL No. 132)
amending legislation—

Land Title Amendment Act 1994 No. 33
date of assent 30 June 1994
ss 1–2 commenced on date of assent
remaining provisions commenced 24 April 1994 (see s 2)

Building Units and Group Titles Act 1994 No. 69 ss 1–2, 229 sch 2
date of assent 1 December 1994
ss 1–2 commenced on date of assent
remaining provisions never proclaimed into force and rep 1995 No. 58 s 5(1) sch 7

Land Act 1994 No. 81 ss 1–2, 525 sch 3, 526 sch 4, 527 sch 5 (this Act is amended, see amending legislation below)
date of assent 1 December 1994
ss 1–2 commenced on date of assent
s 525 sch 3 commenced 24 April 1994 (see s 2(2))
s 526 sch 4 (other than amdts 1 and 3) commenced 6 February 1995 (1995 SL No. 19)
s 526 sch 4 amdts 1 and 3 commenced 25 April 1995 (1995 SL No. 107)
remaining provisions commenced 1 July 1995 (1995 SL No. 185)
amending legislation—

Transport Infrastructure Amendment (Rail) Act 1995 No. 32 s 23 sch (amends 1994 No. 81 above)
date of assent 14 June 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (see s 2(2), 1995 SL No. 162 ss 2(3), 19)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2
date of assent 28 November 1995
commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1
date of assent 28 November 1995
commenced on date of assent

Land Title Amendment Act 1996 No. 8
date of assent 9 May 1996
commenced on date of assent

Queensland Law Society Legislation Amendment Act 1996 No. 21 pts 1, 3
date of assent 15 August 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 16 May 1996 (see s 2)

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2
date of assent 22 October 1996
ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3
date of assent 22 May 1997
ss 1–2 commenced on date of assent
remaining provisions commenced 13 July 1997 (1997 SL No. 210)

Land Sales and Land Title Amendment Act 1997 No. 40 s 1 pt 3
date of assent 25 August 1997
commenced on date of assent

Natural Resources and Other Legislation Amendment Act 1997 No. 78 pts 1, 7
date of assent 5 December 1997
commenced on date of assent

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3), 191 sch
date of assent 23 March 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 30 March 1998 (1998 SL No. 55)

Civil Justice Reform Act 1998 No. 20 ss 1, 2(3), 27 sch 2
date of assent 1 May 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 1999 (automatic commencement under AIA s 15DA(2) (1999 SL No. 70 s 2(3)))

Integrated Planning and Other Legislation Amendment Act 1998 No. 31 ss 1, 2(5) pt 6
date of assent 3 September 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 12 October 1998 (1998 SL No. 270)

Valuation of Land and Other Legislation Amendment Act 1998 No. 48 pts 1, 3
date of assent 27 November 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 18 December 1998 (1998 SL No. 364)

State Penalties Enforcement Act 1999 No. 70 ss 1–2, 166 sch 1
date of assent 6 December 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 27 November 2000 (2000 SL No. 274)

Natural Resources and Other Legislation Amendment Act 2000 No. 2 pts 1, 4
date of assent 8 March 2000
commenced on date of assent

Guardianship and Administration Act 2000 No. 8 ss 1–2, 263 sch 3
date of assent 20 April 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2000 (2000 SL No. 125)

Local Government and Other Legislation Amendment Act 2001 No. 29 s 1 pt 4
date of assent 25 May 2001
commenced on date of assent

Natural Resources Legislation Amendment Act 2001 No. 33 pts 1, 8
date of assent 7 June 2001
commenced on date of assent

Forestry and Land Title Amendment Act 2001 No. 57 pts 1, 3
date of assent 16 August 2001
ss 1–2 commenced on date of assent
remaining provisions commenced 1 October 2001 (2001 SL No. 171)

Natural Resources and Other Legislation Amendment Act 2001 No. 92 ss 1, 2(2), pt 5
date of assent 10 December 2001
ss 1–2 commenced on date of assent
remaining provisions commenced 1 February 2002 (2002 SL No. 4)

Public Records Act 2002 No. 11 ss 1, 2(2), 62 sch 1
date of assent 24 April 2002
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2002 (2002 SL No. 115)

Body Corporate and Community Management and Other Legislation Amendment Act 2003 No. 6 s 1, pt 8
date of assent 4 March 2003
commenced on date of assent

Water and Other Legislation Amendment Act 2003 No. 25 pts 1, 4
date of assent 16 May 2003
commenced on date of assent

Surveyors Act 2003 No. 70 ss 1–2, 206 sch 2
date of assent 22 October 2003
ss 1–2 commenced on date of assent
remaining provisions commenced 1 August 2004 (2004 SL No. 127)

Survey and Mapping Infrastructure Act 2003 No. 71 ss 1–2, pt 9 div 1
date of assent 22 October 2003
ss 1–2 commenced on date of assent
remaining provisions commenced 1 August 2004 (2004 SL No. 129)

Legal Profession Act 2003 No. 97 ss 1, 2(2), 380 sch 1
date of assent 3 December 2003
ss 1–2 commenced on date of assent
remaining provisions never proclaimed into force and rep 2004 No. 11 s 642

Natural Resources and Other Legislation Amendment Act 2004 No. 4 s 1, pt 6, s 57 sch
date of assent 6 May 2004

commenced on date of assent

Transport and Other Legislation Amendment Act 2004 No. 9 s 1, pt 8
date of assent 20 May 2004
commenced on date of assent

Legal Profession Act 2004 No. 11 ss 1, 2(2), 596 sch 1
date of assent 31 May 2004
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2004 (2004 SL No. 106)

Petroleum and Gas (Production and Safety) Act 2004 No. 25 ss 1, 2(2), 1005–1006 (prev ss 945–946)
date of assent 12 October 2004
ss 1–2 commenced on date of assent
remaining provisions commenced 31 December 2004 (2004 SL No. 308)

Natural Resources and Other Legislation Amendment Act 2005 No. 68 pts 1, 4
date of assent 8 December 2005
ss 1–2 commenced on date of assent
remaining provisions commenced 6 February 2006 (2006 SL No. 6)

State Development and Other Legislation Amendment Act 2006 No. 54 pts 1, 6
date of assent 7 December 2006
commenced on date of assent

Land and Other Legislation Amendment Act 2007 No. 19 pts 1, 5 (this Act is amended, see amending legislation below)
date of assent 23 April 2007
ss 1–2 commenced on date of assent
ss 206–207 commenced 1 January 2008 (2007 SL No. 318)
remaining provisions commenced 18 May 2007 (2007 SL No. 88)
amending legislation—

Water and Other Legislation Amendment Act 2007 No. 57 ss 1, 16, 26 (amends 2007 No. 19 above)
date of assent 16 November 2007

commenced on date of assent

Legal Profession Act 2007 No. 24 ss 1–2, 770 sch 1
date of assent 28 May 2007
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2007 (2007 SL No. 151)

Urban Land Development Authority Act 2007 No. 41 ss 1–2, pt 10
date of assent 11 September 2007
ss 1–2 commenced on date of assent
remaining provisions commenced 21 September 2007 (2007 SL No. 235)

Primary Industries and Other Acts Amendment Act 2008 No. 22 pts 1, 5

date of assent 9 May 2008
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2008 (see s 2)

Water Supply (Safety and Reliability) Act 2008 No. 34 ss 1, 2(2), 751 sch 2
date of assent 21 May 2008
ss 1–2, 751 commenced on date of assent
remaining provision commenced 1 July 2008 (2008 SL No. 202)

Water (Commonwealth Powers) Act 2008 No. 58 ss 1, 33–34
date of assent 13 November 2008
commenced on date of assent

Greenhouse Gas Storage Act 2009 No. 3 s 1, ch 9 pt 15
date of assent 23 February 2009
commenced on date of assent

Local Government Act 2009 No. 17 ss 1, 2(4), 331 sch 1
date of assent 12 June 2009
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2010 (2010 SL No. 122)

Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009 No. 25 pt 1, s 83 sch
date of assent 11 August 2009
ss 1–2 commenced on date of assent
remaining provisions commenced 2 November 2009 (2009 SL No. 241)

Sustainable Planning Act 2009 No. 36 ss 1–2, 872 sch 2
date of assent 22 September 2009
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remaining provisions commenced 18 December 2009 (2009 SL No. 281)

Vegetation Management and Other Legislation Amendment Act 2009 No. 43 pts 1, 5
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Building and Other Legislation Amendment Act 2009 No. 51 ss 1, 2(3), pt 6
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Natural Resources and Other Legislation Amendment Act 2010 No. 12 ss 1, 2(1), pt 13
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s 199 commenced 30 October 2010 (2010 SL No. 293)
ss 200–202 commenced 7 May 2010 (2010 SL No. 78)
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Building and Other Legislation Amendment Act 2010 No. 21 pts 1, 3
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Geothermal Energy Act 2010 No. 31 ss 1–2(1), ch 10 pt 3 div 4
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Waste Reduction and Recycling Act 2011 No. 31 ss 1–2(2), ch 16 pt 6
date of assent 28 October 2011
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Economic Development Act 2012 No. 43 ss 1–2, 221 sch 1
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Electronic Conveyancing National Law (Queensland) Act 2013 No. 17 ss 1–2, pt 5 div 3
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remaining provisions commenced 17 May 2013 (2013 SL No. 67)

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Land Sales and Other Legislation Amendment Act 2014 No. 46 pt 1, s 75 sch 1
date of assent 26 September 2014
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remaining provisions commenced 1 December 2014 on the commencement of the Property Occupations Act 2014, part 7 (see s 2)

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def ***adverse possessor*** reloc from prev s 4 1997 No. 28 s 295 sch 3
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def ***explanatory format plan*** ins 2001 No. 33 s 33
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def ***indefeasible title*** amd 1994 No. 33 s 3(1) (retro)
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def ***public interest*** ins 2005 No. 68 s 112
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def ***public thoroughfare easement***, for part 6, ins 2013 No. 23 s 140(2)
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7 Information about retrospectivity

Retrospective amendments that have been consolidated are noted in the list of legislation and list of annotations. From mid-2013 any retrospective amendment that has not been consolidated is noted on the cover page.

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