



Queensland

This is a draft provided for consultation purposes. It is subject to review following the results of consultation.

Property Law Bill 2022

Contents

	Page
Part 1	Preliminary [pt 1]
Division 1	Introduction
1	Short title 16
2	Commencement 16
Division 2	Purposes and application of Act
3	Main purposes [new] 17
4	How main purposes are achieved [new] 17
5	Act binds all persons [s 2; QUT, rec 2] 17
6	Act applies to land, property and documents [s 5; NZ, s 8; QUT, rec 4] 17
7	Relationship with other Acts [s 5; QUT, rec 4] 18
Division 3	Interpretation
8	Dictionary [s 3; QUT, rec 232] 18
Part 2	General rules affecting property [pt 2]
Division 1	Requirement for writing
9	Contracts for disposition of land not enforceable unless in writing [ss 6, 59; NZ, s 24; QUT, recs 8-12] 19
10	Writing required for creation of particular interests in land [ss 6, 11; NZ, s 25; QUT, recs 8-12] 19
11	Nature of interest in land created by parol [s 12(1); QUT, recs 9-12] 19
12	Particular matters not affected [ss 6, 12(2); NZ, s 25; QUT, recs 8-12] 19
Division 2	Other rules
13	Transfer or lease to self and others [s 14; QUT, rec 16] 20

Consultation draft - September 2022

Property Law Bill 2022

Contents

14	Merger of estate [s 17; QUT, rec 20]	20
Part 3	Freehold estates [pt 3]	
15	Freehold estates capable of creation [s 19; QUT, rec 22]	20
16	Abolition of obsolete estates and rules [ss 22, 23, 28; NZ, s 58; QUT, rec 28]	21
17	Abolition of incidents of tenure for benefit of State [s 20; QUT, rec 23]	21
18	Abolition of quit rent [s 20; QUT, rec 23]	21
19	Abolition of escheat for dissolved corporation [s 20; QUT, rec 23]	21
20	Waiver by State of any remaining rights to property by escheat [s 20 and sch 1; QUT, recs 23, 210]	21
21	Voluntary waste or equitable waste by life tenant [ss 24, 25; NZ, s 68; QUT, rec 25]	22
22	Recovery of property when life estate ends [s 26; QUT, rec 26]	23
23	Penalty for holding over possession after life estate ends [s 27; QUT, rec 27]	24
Part 4	Future interests [pt 4]	
24	Creation of future interests in land [s 30; QUT, rec 30]	25
25	Creation and disposition of interests in property [s 31; NZ, s 62; QUT, rec 31]	25
26	When gift over to another person if first person has no child stops being capable of taking effect [s 32; NZ, s 64; QUT, rec 32]	25
Part 5	Co-ownership of property [pt 5]	
Division 1	General rules [pt 5, div 1]	
27	Forms of co-ownership [s 33(1); QUT, rec 33]	26
28	Corporation may hold property as joint tenant [s 34; QUT, rec 34]	26
29	Liability of co-owners to account [s 43; Vic, s 28A; QUT, rec 39]	27
30	Construction of disposition of property to 2 or more persons [s 35; QUT, rec 35]	27
31	Tenants in common of equitable interest who become entitled to legal interest [s 36; QUT, rec 36]	28
Division 2	Sale and division of co-owned property [pt 5, div 2]	
Subdivision 1	Preliminary	
32	Definitions for division [s 37; Vic, s 222; QUT, rec 37]	28
33	Other forms of severance not affected [s 38; Vic, s 223; QUT, rec 39]	29
34	Security interests not affected [s 38; Vic, s 224; QUT, rec 39]	29
Subdivision 2	Sale and division	

35	Application to court for order for sale or division of co-owned property [ss 38, 41; Vic, ss 225, 226; QUT, rec 39]	29
36	Orders court may make [ss 38 and 41; Vic, s 228; QUT, rec 39]	30
37	Sale and division of proceeds to be preferred [s 38; Vic, s 229; QUT, rec 39]	30
38	Order varying entitlements to property [s 38; Vic, s 230; QUT, rec 39]	31
39	Order appointing trustee [ss 38 and 41; Vic, s 231; QUT, rec 39]	31
40	Vesting of property in trustee [s 38; Vic, s 231; QUT, rec 39] ...	32
41	Other orders court may make [s 38; Vic, s 232; QUT, rec 39] ..	33
42	Orders for compensation and accounting [s 38; Vic, s 233; QUT, rec 39]	34
Subdivision 3	Accounting of amounts received	
43	Application to court for order for accounting [s 38; Vic, s 234; QUT, rec 39]	36
44	Orders court may make [s 38; Vic, s 234B; QUT, rec 39]	36
Subdivision 4	Miscellaneous matters	
45	Adjournment or stay of co-ownership proceeding—family law proceeding [s 38; Vic, s 227; QUT, rec 39]	36
Part 6	Deeds and covenants [pt 6]	
Division 1	Deeds	
Subdivision 1	Preliminary	
46	Definitions for division [s 44; QUT, rec 46]	37
47	What is a counterpart for a document [s 45]	39
48	Division does not apply to enduring documents [s 46]	39
49	Application of division to powers of attorney [s 46A]	39
50	Execution of documents under other Acts [s 46B]	40
Subdivision 2	Form and execution	
51	How deed is made generally [s 46C; QUT, rec 46]	41
52	Electronic document and electronic signing [s 46D]	41
53	Execution by individual [s 46E; QUT, rec 47]	41
54	Execution by corporation [s 46F; QUT, rec 48]	41
55	Execution by partnership or unincorporated association [s 46G]	44
56	Execution by the State [s 46GA]	44
57	Signing counterpart or true copy [s 46H]	45
Subdivision 3	Miscellaneous matters	
58	Delivery [s 47; NZ, s 9(9); QUT, rec 49]	45

Property Law Bill 2022

Contents

59	Receipt in body of deed sufficient [s 51; QUT, rec 53]	46
60	Deposit of deed in registry [s 53A]	46
61	Protection for third parties [s 53B]	47
62	Abolition of rule in Pigot's case [Conveyancing Act 1919 (NSW), s 184]	48
Division 2	Covenants	
63	Construction of expressions used in deeds and other documents [s 48; NZ, s 279; Vic, s 61; QUT, rec 50]	48
64	Implied covenants may be negated [s 49; NZ, s 279; QUT, rec 51]	48
65	Covenants and agreements made by person with self and others [s 50; Vic, s 82; QUT, rec 52]	49
66	Covenants relating to land bind successors [s 53; Vic, ss 78 and 79; QUT, rec 55]	49
67	Particular covenants in registered easements bind successors [new, s 4; NSW, s 88BA; QUT, rec 56]	50
68	No right to register restrictive covenant [s 4; QUT, rec 3]	50
Part 7	Contracts, sales of land and instalment contracts for sale of land [pt 6]	
Division 1	Contracts [pt 6, div 2]	
69	Effect of joint promises and liabilities [s 54; QUT, rec 57]	51
70	Contract containing promise for benefit of third party [s 55; WA, s 11; QUT, rec 58]	51
71	Guarantee not enforceable unless in writing [s 56; QUT, rec 59]	52
72	Effect of conclusive evidence provision [s 57; QUT, rec 60]	53
73	Effect on contract of non-compliance with statutory instrument [s 57A(1), QUT, rec 61]	54
74	Effect of statutory requirement for certificate [s 57A(2); QUT, rec 61]	54
75	Stipulations not of the essence of the contract [s 62; QUT, rec 67]	55
Division 2	Sales of land [pt 6, div 3]	
76	Definitions for division [ss 58A; QUT, rec 63]	55
77	Reference to settlement of sale of land using e-conveyancing [ss 58B; QUT, rec 64]	56
78	Implied conditions [s 61; QUT, rec 66]	57
79	Buyer may rescind contract if residential dwelling unfit for occupation [s 64; Vic, s 34; QUT, rec 69]	58
80	When day of settlement is next business day [s 61(3) and (3A); QUT, rec 66-67]	59
81	Effect of inoperative computers in land registry office on day of settlement [s 70A; QUT, rec 78]	60

82	Effect of adverse event on day of settlement [new; QUT, rec 66]	61
83	Direction for payment given by seller's authorised agent sufficient discharge of buyer [s 66; QUT, rec 71]	63
84	Buyer may recover damages if defective title [s 68; NSW, s 54B; QUT, rec 74]	63
85	Buyer may recover deposit and instalments if defective title but no rescission [s 69; NSW, s 55; QUT, rec 76]	64
86	Seller may forfeit deposit of no more than 20 percent if buyer breaches contract for sale of proposed lot [s 68A; QUT, rec 75]	64
87	When statutory right of termination on settlement ends if e-conveyance [s 67A; QUT, rec 73]	65
Division 3	Instalment contracts for sale of land [pt 6, div 4]	
88	Definitions for division [s 71; QUT, rec 80]	65
89	Application of division [s 71A; QUT, rec 81]	66
90	What is an instalment contract [s 71; QUT, rec 80]	67
91	When buyer must give seller notice to constitute contract an instalment contract [s 71A(2); QUT, rec 81]	67
92	Restriction on seller's right to termination if buyer defaults on payment of instalment [s 72; QUT, rec 82]	67
93	Seller can not sell or mortgage land [s 73; QUT, rec 83]	68
94	Buyer may lodge caveat [s 74; QUT, rec 84]	69
95	Buyer not in default may require transfer of land [s 75; QUT, rec 85]	69
Part 8	Mortgages [pt 7]	
Division 1	Preliminary	
96	Definition for part [s 77; QUT, rec 87]	70
97	Application of part [s 77A; QUT, rec 88]	70
Division 2	General rules	
98	Variation of mortgage [s 79; QUT, rec 90]	70
99	Effect of advance out of joint account [s 93; QUT, rec 104]	71
100	Mortgages lodged electronically [s 78A]	72
Division 3	Powers and rights of mortgagees	
101	Implied powers of mortgagee [s 83; QUT, rec 94]	72
102	Restriction on exercise of power of sale [s 84; QUT, rec 95]	73
103	Power of sale if disclaimer of onerous property [s 84A; QUT, rec 95]	74
104	Duty to sell at market value [s 85; QUT, rec 96]	75
105	Protection of buyer [s 87; NZ, s 184; QUT, rec 98]	76
106	Application of proceeds of sale [s 88; QUT, rec 99]	77
107	Other matters relating to power of sale [s 89; QUT, rec 100]	77

Property Law Bill 2022

Contents

108	Receipt of mortgagee sufficient discharge [s 90; QUT, rec 101] .	78
109	Insurance of mortgaged property [s 91; QUT, rec 102]	78
110	Appointment of receiver [s 92; QUT, rec 103]	80
111	Judgment debt does not permit seizure [s 97; QUT, rec 108] . . .	82
112	Subsequent mortgage does not affect first mortgage [s 80(4), (6); QUT, rec 91]	82
113	When further advance ranks in priority to subsequent mortgage [s 82; QUT, rec 93]	83
Division 4	Obligations and rights of mortgagors	
114	Contracting out prohibited	83
115	Implied obligations of mortgagor [s 78; QUT, rec 89]	83
116	Right to obtain copy of documents in possession of mortgagee [s 80(1)-(2); NSW, s 96; QUT, rec 91]	84
117	Right to relief against payment of accelerated sum [s 95; QUT, rec 106]	84
118	Right to relief against payment of overdue principal amount if payment of interest accepted [s 96; NZ, s 118; QUT, rec 107]	86
119	Right to require transfer of mortgage instead of discharge [s 94; QUT, rec 105]	87
120	Abolition of consolidation of mortgages [s 98; QUT, rec 109] . . .	87
Division 5	Proceedings	
121	Court may order sale of mortgaged property in proceeding for redemption or foreclosure [s 99; QUT, rec 110]	88
122	Realisation of equitable mortgage of land [s 100; QUT, rec 111]	89
123	Facilitation of redemption in case of absent or unknown mortgagees [s 101; NSW, s 98; QUT, rec 112]	90
Part 9	Leases [pt 8]	
Division 1	Preliminary	
124	Definition for part	92
Division 2	General rules	
125	Lease for term of years may take effect without entry into possession [s 102; QUT, rec 113]	92
126	Implied terms [s 104-109; sch 3; NZ, s 283; QUT, recs 115, 116, 117 and 119]	93
Division 3	Transfer of reversion of lease [pt 8, div 2]	
127	Effect of transfer of reversion of lease by lessor [ss 117 and 118; NZ, s 231; QUT, recs 126, 127 and 130]	93
128	Payment of rent or other amount without notice of transfer of reversion [s 114; NZ, s 237; QUT, rec 123]	95

Division 4	Dealings with leases [pt 8, div 2]	
129	Effect of requirement in lease for consent of lessor to assign lease or take other action [s 121; NZ, ss 226-228; QUT, rec 129]	95
130	Effect of assignment of lease by lessee to assignee [new; Landlord and Tenant (Covenants) Act 1995 (UK), s 3; QUT, rec 130]	97
131	Effect of assignment of lease by transferee to subsequent transferee [new; Landlord and Tenant (Covenants) Act 1995 (UK), s 5; QUT, rec 130]	98
132	Effect of surrender or merger of lease [s 115; NZ, s 230; QUT, rec 124]	98
133	Effect of reconfiguration of land [s 116; NZ, s 235; QUT, rec 125]	99
134	Head lease may be surrendered and new head lease granted without affecting other rights and obligations [s 113; QUT rec 122]	99
135	Involuntary transmission not breach of lease [s 122; QUT, rec 131]	100
Division 5	Relief [pt 8, div 3]	
Subdivision 1	Preliminary	
136	Definition for division [s 123; QUT, rec 132]	100
137	Application of division [s 124(6)(a); QUT, rec 133]	100
138	Contracting out prohibited [s 124(9); QUT, rec 133]	101
Subdivision 2	Relief against forfeiture for breach of term of lease	
139	Definitions for subdivision [s 124; QUT, rec 132]	102
140	Lessor must give lessee notice to remedy breach [s 124; NZ, ss 245, 247; QUT, rec 134]	102
141	Lessor must give copy of notice to remedy breach to designated persons [s 124; NZ, s 249; QUT, rec 134]	103
142	Acceptance of rent paid by lessee in possession not waiver of lessor's rights [s 124; NZ, s 250; QUT, rec 134]	104
143	Notice to remedy breach not required if lessee has given up possession [s 124; NZ, ss 245, 247; QUT, rec 134]	104
144	How lessor may exercise right of re-entry [s 124; NZ, s 244 and 245(2); QUT, rec 134]	105
145	Powers of court in making order for possession [s 124; NZ, s 251; QUT, rec 134]	105
146	Lessor's claim for damages not affected [s 124; NZ, s 252; QUT, rec 134]	106
147	Proceedings for relief against forfeiture [s 124; NZ, ss 253, 254; QUT, recs 134 and 135]	106
148	Application for relief against forfeiture not admission [s 124; NZ, s 255; QUT, rec 134]	106
149	Powers of court in making order for relief against forfeiture [s 124; NZ, s	

Contents

	258-260; QUT, recs 134-135]	107
Subdivision 3	Relief against refusal to renew, or extend term of, or sell reversion of, lease	
150	Definitions for subdivision [QUT, rec 132]	108
151	When lessor may refuse to renew, or extend term of, or sell reversion of, lease [s 128; NZ, ss 261, 263; QUT, rec 138]	108
152	Lessor must give copy of notice to designated persons [new; QUT, rec 138]	110
153	Proceedings for relief against refusal [new; NZ, s 262; QUT, rec 138]	110
154	Powers of court in making order for relief against refusal [new; NZ, s 264; QUT, rec 138]	111
Division 6	Apportionment of rent [pt 17]	
155	Apportionment in respect of time [ss 231-233; NZ, s 45; QUT, rec 197]	112
156	Payment and recovery of apportioned part of rent [ss 231-233; NZ, s 46; QUT, rec 197]	112
Division 7	Termination of particular leases [pt 8, div 4]	
157	Definitions for division [s 130; QUT, rec 140]	113
158	Contracting out permitted [ss 132-137; QUT, recs 142-147]	113
159	Meaning of lease terminable at will [s 129; NZ, s 210; QUT, rec 139]	113
160	What is a termination notice [s 131; QUT, rec 141]	114
161	Termination of lease terminable at will [s 129; QUT, rec 139]	114
162	Termination of periodic tenancy [ss 133-137; QUT, recs 143-147]	114
163	Termination of other tenancies [s 137; QUT, rec 147]	115
Division 8	Miscellaneous matters	
164	Effect of waiver [ss 119 and 120; NZ, s 273; QUT, rec 128]	116
165	Limitation on award of damages for breach of obligation to repair [s 112; QUT, rec 121]	116
Part 10	Neighbouring land	
Division 1	Support for land	
166	Duty of care in relation to support for land [PLA, s 179; NSW, s 177; QUT, rec 157]	117
Division 2	Easements and rights of use [pt 10]	
167	Definitions for division	118
168	Power of court to impose statutory right of use [s 180; NSW, s 88K(1), QUT, rec 158]	119

169	Power of court to modify or extinguish easement or covenant [s 181; NT, s 177; QUT, rec 159]	120
170	No interest created by prescription [s 198A; QUT, recs 154-156]	123
Division 3	Encroachment of buildings [pt 11, div 1]	
171	Definitions for division [s 182; QUT, rec 160]	123
172	Relationship with other Acts [s 183; QUT, rec 160]	124
173	Proceedings for relief [ss 184-194; QUT, rec 160]	124
174	Minimum compensation [s 186; QUT, rec 160]	125
Division 4	Improvements under mistake of title [pt 11, div 2]	
175	Definition for division [new; QUT, rec 161]	126
176	Relationship with other Acts [s 195; QUT, rec 161]	126
177	Proceedings for relief [ss 196-198; QUT, rec 161]	126
Part 11	Transactions	
Division 1	Assignment of debts or things in action [pt 12]	
178	Definitions for division [new; NZ, s 48; QUT, rec 162]	129
179	Assignment of debt or legal thing in action [s 199; NZ, s 50(1) to (4); QUT, rec 162]	129
180	Discharge of debt or legal thing in action when no actual notice of assignment [s 199; NZ, s 51; QUT, rec 162]	130
181	Assignment in equity [s 200; NZ, s 50(5)-(8); QUT, rec 163] ...	131
Division 2	Dispositions to defraud creditors [pt 16]	
182	Disposition with intent to defraud creditor void [s 228; QUT, rec 194]	131
Part 12	Powers of appointment [pt 13]	
183	When exercise of power of appointment valid [s 202; NZ, s 16; QUT, rec 165]	132
184	Appointment among 2 or more objects [s 203; QUT, rec 166] ..	133
185	Protection of buyer if invalid appointment [s 204; QUT, rec 167] ..	133
186	Release and disclaimer of power [s 205; NZ, s 73; QUT, rec 168] ..	134
Part 13	Perpetuities [pt 14]	
Division 1	Preliminary	
187	Definitions for part [s 206; QUT rec 171]	135
188	When disposition in will made [s 206A, rec 172]	136
Division 2	General rules	
189	Abolition of rule against perpetuities [NZ, s 16(3); QUT rec 169] ..	136
190	What is the perpetuity period [s 209(1); NZ, s 16; QUT rec 169, 176]	136

Property Law Bill 2022

Contents

191	Vesting of trust property [QUT rec 169]	137
192	Wait and see rule [s 210; QUT, rec 177]	137
Division 3	Trust saving devices	
193	Reduction of age to ensure disposition within perpetuity period [s 213(1)-(2); QUT, rec 180]	137
194	Exclusion of class members to ensure disposition within perpetuity period [ss 206B, 213(3); UK, s 8; QUT, recs 173, 180]	138
195	Acceleration of prior disposition to ensure subsequent disposition within perpetuity period [s 215; UK, s 9; QUT, rec 182]	139
Division 4	Ambit of perpetuity period	
196	Non-charitable purpose trust [s 221; QUT, rec 188]	139
197	Powers of appointment [s 208; UK Act, s 11; QUT, rec 175]	139
198	Conditions precedent and conditions subsequent [s 219(1)(c); UK Act, s 1; QUT, rec 186]	140
199	Determinable interests [s 219(1)(a) and (b); UK Act, ss 1(7), 10; QUT, rec 186]	141
200	Accumulation of income [s 222; NZ, s 18; QUT, rec 189]	142
201	Particular trusts, powers and funds [s 220; NZ, s 16(6); QUT rec 187]	142
202	Commercial arrangements [s 218; Perpetuities Act (NSW), s 15; UK Act, s 2; QUT recs 183-185]	143
203	Gift-over from charity to charity [s 219(2); QUT, rec 186]	143
204	Particular matters relating to land [s 217; QUT, rec 184]	143
Division 5	Variation of vesting date	
205	Variation of trust to opt-in to 125 year perpetuity period if trustee has power of variation [new; QUT, rec 174]	144
206	Variation of trust to opt-in to 125 year perpetuity period if trustee does not have power of variation [new; QUT, rec 174]	144
Division 6	Applications to court	
207	Application to court for declaration of validity [s 211; QUT, rec 178]	144
208	Application to court to opt-in to 125 year perpetuity period [s 211; QUT, rec 178]	145
Part 14	Unregistered land [pt 18]	
209	Registrar must give public notice if request to register unregistered land [ss 250-254; QUT, rec 201]	145
210	Registrar must give public notice if registrar believes land unregistered [QUT, rec 201]	146
211	Registrar may hold inquiry [QUT, rec 201]	147
212	Obligations of registrar [QUT, rec 201]	147

Part 15	General [pt 20]	
Division 1	Service	
213	Application of division [s 347; QUT, rec 205]	148
214	Relationship of division with other matters [s 347; QUT, rec 205]	148
215	General requirements for service [s 347; QUT, rec 205]	148
216	Individual absent from State or deceased [QUT, rec 205]	149
217	Electronic communication [s 347; QUT, rec 205]	149
Division 2	Miscellaneous	
218	Approved forms [s 350; QUT, rec 208]	151
219	Regulation-making power [s 351; QUT, rec 209]	151
220	Transitional regulation-making power	151
Part 16	Repeal	
221	Repeal of Property Law Act 1974	152
Part 17	Savings and transitional provisions	
Division 1	Preliminary	
222	Application of Acts Interpretation Act 1954	152
223	Definitions for part	152
Division 2	Savings provisions	
224	Saving of abolition or modification of common law provided for in repealed Act	152
225	Saving of abolition of common law rule that alien can not take, give, buy or sell property	155
226	Particular provisions do not apply in relation to matters happening before 1 December 1975	155
Division 3	Transitional provisions	
227	Waiver of State's right to property by escheat on death of person before commencement	157
228	Liability of co-owner of property to account for interest in property created before commencement	157
229	Covenants and agreements made by person with self and others [ss 4, 53; QUT, rec 56]	158
230	Abolition of rule in Pigot's case	158
231	Particular covenants in registered easements created before commencement [ss 4, 53; QUT, rec 56]	158
232	Effect of inoperative computers on day of settlement on contract entered into before commencement	158
233	Effect of adverse event on day of settlement on contract entered into before commencement	159
234	Mortgagee's power of sale in relation to disclaimed property mortgaged	

Property Law Bill 2022

Contents

	before commencement	159
235	Court may order sale of mortgaged property in action started before commencement	159
236	Realisation of equitable mortgages in proceeding started before commencement	159
237	Dealings with leases entered into before commencement	159
238	Relief against forfeiture for leases entered into before commencement	160
239	No interest created by prescription before commencement	160
240	Disposition with intent to defraud creditor before commencement	160
241	Powers of appointment over property created before commencement	160
242	Maximum duration of trusts created before commencement [NZ, sch 1, s 3]	160
Part 18	Amendment of Acts	
Division 1	Amendment of this Act	
243	Act amended	161
244	Amendment of long title	161
Division 2	Amendment of Land Title Act 1994	
245	Act amended	162
246	Amendment of s 54E (Amending a building management statement)	162
247	Amendment of s 54H (Extinguishing a building management statement)	162
Division 3	Amendment of Limitation of Actions Act 1974	
248	Act amended [QUT, rec 45]	163
249	Amendment of s 10 (Actions of contract and tort and certain other actions)	163
Division 4	Amendment of Property Occupations Act 2014	
250	Act amended	164
251	Insertion of new s 229A [s 60; QUT, rec 65]	164
	229A Disclosure of seller's right to bid at auction	164
Division 5	Minor and consequential amendments	
252	Acts amended	164
Schedule 1	Implied terms [QUT, rec 211]	166
3	Maintain and leave the premises in good repair	166
4	Abatement of rent if premises is destroyed or damaged	167

Contents

5	Assignment of the lease	168
6	Noxious or offensive acts or things	168
7	Commission of waste [QUT, rec 114]	168
8	Lessee entitled to quiet enjoyment	169
9	Change of use	169
10	Power to inspect premises	169
11	Power to terminate lease for non-payment of rent or other breach	169
12	Lessee may remove lessee's fixtures	170
Schedule 2	Dictionary [QUT, recs 216-232]	171

2021

A Bill

for

An Act to consolidate and provide for the law relating to property, to repeal the *Property Law Act 1974*, and to amend this Act, the *Land Title Act 1994*, the *Limitation of Actions Act 1974* and the *Property Occupations Act 2014* for particular purposes

Consultation draft - September 2022

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary [pt 1]

Note for consultation—

The information in square brackets for each section refers to the following legislation:

- 1) s, div, pt: *Property Law Act 1974* (Qld)
- 2) NZ: *Property Law Act 2007* (NZ)
- 3) Vic: *Property Law Act 1958* (Vic)
- 4) NSW: *Conveyancing Act 1919* (NSW)
- 5) WA: *Property Law Act 1969* (WA)
- 6) NT: *Law of Property Act 2000* (NT)
- 7) UK: *Perpetuities and Accumulations Act 2009* (UK)

The square brackets also contain a reference to the relevant recommendation in the ‘Property Law Review Final Report *Property Law Act 1974*’, Commercial and Property Law Research Centre QUT Law, 2018.

Division 1 Introduction

1 Short title

This Act may be cited as the *Property Law Act 2022*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Division 2 Purposes and application of Act

3 Main purposes [new]

Note for consultation—

This section and the next will be drafted at the end of the drafting process, i.e., when the substance of the new Bill is settled.

4 How main purposes are achieved [new]

5 Act binds all persons [s 2; QUT, rec 2]

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence against this Act.

6 Act applies to land, property and documents [s 5; NZ, s 8; QUT, rec 4]

This Act applies to—

- (a) land in Queensland; and
- (b) property, other than land, whether in or outside Queensland, to the extent the general law of Queensland applies to the property; and
- (c) documents, whether executed in or outside Queensland, to the extent the general law of Queensland applies to the documents.

[s 7]

7 Relationship with other Acts [s 5; QUT, rec 4]

- (1) This Act applies subject to the following Acts—
 - (a) the *Land Act 1994*;
 - (b) the *Land Title Act 1994*;
 - (c) the *Mineral and Energy Resources (Common Provisions) Act 2014*;
 - (d) each Resource Act.
- (2) If this Act is inconsistent with an Act mentioned in subsection (1), unless this Act or the Act mentioned in subsection (1) expressly provides otherwise, the Act mentioned in subsection (1) prevails to the extent of the inconsistency.

Division 3 Interpretation

8 Dictionary [s 3; QUT, rec 232]

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

Note—

The *Acts Interpretation Act 1954*, schedule 1 defines particular words used in this Act, including, for example—

- property
- land
- interest
- estate
- mortgage
- lease
- transfer
- transmission
- document
- proceeding
- corporation

Part 2 General rules affecting property [pt 2]

Division 1 Requirement for writing

9 Contracts for disposition of land not enforceable unless in writing [ss 6, 59; NZ, s 24; QUT, recs 8-12]

A contract for the disposition of land is not enforceable by action in a proceeding unless—

- (a) the contract is in writing or its terms are recorded in writing; and
- (b) the contract or written record is signed by the party against whom the contract is sought to be enforced.

10 Writing required for creation of particular interests in land [ss 6, 11; NZ, s 25; QUT, recs 8-12]

- (1) The creation of a legal or equitable interest in land must be in writing and signed by the person creating the interest.
- (2) A trust relating to land must be created in writing and signed by the person creating the trust.

11 Nature of interest in land created by parol [s 12(1); QUT, recs 9-12]

- (1) An interest in land created by parol, and not put in writing and signed by the person creating the interest, has the effect of an interest at will only.
- (2) Subsection (1) applies despite any consideration given for the interest.

12 Particular matters not affected [ss 6, 12(2); NZ, s 25; QUT, recs 8-12]

- (1) This division does not affect—

[s 13]

- (a) the creation of a short lease; or
 - (b) the operation of the law relating to part performance; or
 - (c) the creation or operation of a resulting, implied or constructive trust; or
 - (d) the making or operation of a will; or
 - (e) the disposition of land by operation of law; or
 - (f) the disposition of land by order of any court.
- (2) To remove any doubt, it is declared that a short lease created by parol takes effect when the lessee has an immediate entitlement to possession.

Division 2 Other rules

13 Transfer or lease to self and others [s 14; QUT, rec 16]

A person may transfer or lease property to the person's self, or to the person's self and others.

14 Merger of estate [s 17; QUT, rec 20]

An estate does not merge by operation of law with another estate unless the person acquiring both estates intends the estates to merge.

Part 3 Freehold estates [pt 3]

15 Freehold estates capable of creation [s 19; QUT, rec 22]

The following estates of freehold are capable of being created and subsisting in land—

- (a) an estate in fee simple;
- (b) a life estate.

-
- 16 Abolition of obsolete estates and rules [ss 22, 23, 28; NZ, s 58; QUT, rec 28]**
- (1) The following estates can not be created—
- (a) an estate tail;
 - (b) a quasi-entail.
- (2) In a document, words that, apart from this section, would have created an estate tail are taken to create an estate in fee simple.
- (3) The rule known as the rule in *Shelley's Case* is abolished.
- 17 Abolition of incidents of tenure for benefit of State [s 20; QUT, rec 23]**
- A tenure created by the State on granting an estate in fee simple is in free and common socage without any incident of tenure for the benefit of the State.
- 18 Abolition of quit rent [s 20; QUT, rec 23]**
- If quit rent issues to the State out of land, or the residue of quit rent issues to the State out of land in relation to which quit rent has been apportioned or redeemed, the land is released from quit rent.
- 19 Abolition of escheat for dissolved corporation [s 20; QUT, rec 23]**
- If a corporation is dissolved or otherwise ceases to exist, subject to the Corporations Act, the State is entitled to take as *bona vacantia* any of the corporation's property that would have been liable to escheat if escheat had not been abolished.
- 20 Waiver by State of any remaining rights to property by escheat [s 20 and sch 1; QUT, recs 23, 210]**
- (1) This section applies if a person believes the State may have a right to property by escheat on the death intestate of a person.

[s 21]

- (2) The person may apply to the Minister to waive the State's rights.
- (3) The Minister may waive the State's rights on terms the Minister considers appropriate.
- (4) The Minister must publish in the gazette the details of a waiver under this section.
- (5) The Minister may delegate the Minister's functions or powers under this section to an appropriately qualified public service employee.
- (6) In this section—
right includes a supposed right.

Query for consultation—

Given that the above clause relates to intestacy, should consideration be given to including the clause in the *Succession Act 1981* rather than the Property Law Bill?

21 Voluntary waste or equitable waste by life tenant [ss 24, 25; NZ, s 68; QUT, rec 25]

- (1) A life tenant who commits voluntary or equitable waste in relation to land, other than under subsection (3) or (4), is liable in damages to the person entitled, immediately after the life estate ends, to the fee simple interest in remainder in the land (the *remainder person*).
- (2) If the interest of the life tenant is an equitable interest, the trustee for the remainder person may bring a proceeding for the damages on behalf of the remainder person.
- (3) A life tenant may commit voluntary waste in relation to land if an express or implied term in the document creating the life estate permits the waste.
- (4) A life tenant may commit equitable waste in relation to land if an express term in the document creating the life estate permits the waste.

22 Recovery of property when life estate ends [s 26; QUT, rec 26]

- (1) This section applies if—
 - (a) a life estate ends; and
 - (b) a person (the *remainder person*) is entitled, immediately after the life estate ends, to an interest in the property; and
 - (c) a person, other than the remainder person, (the *third person*) continues in possession of, or receives rent or profits in relation to, the remainder person's interest in the property.
- (2) The remainder person may apply to the court for any or all of the following in relation to the interest in the property—
 - (a) possession;
 - (b) damages;
 - (c) an account of rent or profits.
- (3) If the life tenant or third person has been absent for at least 7 years, the court may presume the life tenant or third person has died.
- (4) The presumption mentioned in subsection (3) is rebuttable.
- (5) The court may hear and decide the application and make the orders it considers appropriate.
- (6) If, after the court has decided an application under subsection (5), a life tenant or third person presumed dead by the court is proved to be alive—
 - (a) a person with an interest in the property may apply to the court for any or all of the following in relation to the property—
 - (i) possession;
 - (ii) damages;
 - (iii) an account of rent or profits; and

[s 23]

- (b) the court may hear and decide the application and make the orders it considers appropriate.

23 Penalty for holding over possession after life estate ends
[s 27; QUT, rec 27]

- (1) This section applies if—
 - (a) a life estate ends; and
 - (b) a person (the *remainder person*) is entitled, immediately after the life estate ends, to an interest in remainder in the land; and
 - (c) another person (the *third person*) holds over possession of the remainder person's interest in remainder in the land; and
 - (d) the remainder person gives the third person a notice asking for possession of the remainder person's interest in remainder in the land; and
 - (e) the third person does not give the remainder person possession of the remainder person's interest in remainder in the land within 30 days after the notice mentioned in paragraph (d) is given.
- (2) The third person is liable to the remainder person for the market rent for the remainder person's interest in remainder in the land for the period—
 - (a) starting on the day the life estate ends; and
 - (b) ending on the day the remainder person is given possession of the land.
- (3) The remainder person may recover the market rent for the remainder person's interest in remainder in the land as a debt due to the remainder person.

Part 4 Future interests [pt 4]

24 **Creation of future interests in land [s 30; QUT, rec 30]**

- (1) If a future interest in land is created, it takes effect as an equitable and not a legal interest.
- (2) Despite the *Land Title Act 1994*, an interest in remainder must not be registered in the freehold land register.
- (3) In this section—
 future interest means—
 - (a) a legal contingent remainder; or
 - (b) a legal executory interest.

25 **Creation and disposition of interests in property [s 31; NZ, s 62; QUT, rec 31]**

- (1) Each interest in property that can be created or disposed of may be created or disposed of by an individual—
 - (a) during the individual's lifetime; or
 - (b) by will.
- (2) However, subsection (1) does not make a joint tenancy severable by will.

26 **When gift over to another person if first person has no child stops being capable of taking effect [s 32; NZ, s 64; QUT, rec 32]**

- (1) This section applies if—
 - (a) a person (the *first person*) is entitled to an interest in property; and
 - (b) the interest in property is subject to a gift over to another person if the first person has no child, or no child of a stated class, whether at any stated time or within any stated period.

[s 27]

- (2) The gift over stops being capable of taking effect when the first person has a child, or a child of the stated class, who attains 18 years.
- (3) Subsection (2) applies even if the child dies after attaining 18 years.
- (4) For this section, a gift over includes a gift over expressed to take effect on the ending of an interest preceding the interest in property mentioned in subsection (1)(a).
- (5) In this section—
child, of a person, has the meaning given by the *Succession Act 1981*, section 5A.

Part 5 Co-ownership of property [pt 5]

Division 1 General rules [pt 5, div 1]

27 Forms of co-ownership [s 33(1); QUT, rec 33]

Property may be held by 2 or more persons—

- (a) as joint tenants; or
- (b) as tenants in common.

28 Corporation may hold property as joint tenant [s 34; QUT, rec 34]

- (1) A corporation may acquire and hold property in joint tenancy in the same way as if it were an individual.
- (2) If a corporation and an individual, or 2 or more corporations, become entitled to property under circumstances or because of a document that would, if the corporation or corporations had been individuals, have created a joint tenancy, the corporation and the individual, or the 2 or more corporations, are entitled to the property as joint tenants.

- (3) However, the acquisition and holding of property by a corporation in joint tenancy is subject to the same conditions and restrictions as attach to the acquisition and holding of property by a corporation in severalty.
- (4) If a corporation is a joint tenant of property and the corporation is dissolved or otherwise ceases to exist, the property devolves on the other joint tenant.

29 Liability of co-owners to account [s 43; Vic, s 28A; QUT, rec 39]

If a co-owner of property receives more than the co-owner's just or proportionate share according to the co-owner's interest in the property, the co-owner is liable to account to each other co-owner of the property.

30 Construction of disposition of property to 2 or more persons [s 35; QUT, rec 35]

- (1) A disposition of an equitable interest in property, whether with or without a legal interest in the property, to 2 or more persons together beneficially takes effect as a disposition to the persons as tenants in common, and not as joint tenants.
- (2) Subsection (1) does not apply to—
 - (a) a disposition to 2 or more persons that provides the persons are to take as joint tenants; or
 - (b) a disposition to 2 or more persons as administrators, executors, mortgagees or trustees; or
 - (c) a disposition to 2 or more persons carrying on business in partnership for partnership purposes.
- (3) Subject to the *Partnership Act 1891* or any agreement to the contrary, a disposition of property to 2 or more persons carrying on business in partnership for partnership purposes takes effect as—
 - (a) a disposition of the legal interest, if any, in the property to the persons as joint tenants; and

[s 31]

- (b) a disposition of the equitable interest, if any, in the property to the persons as tenants in common.
- (4) In this section—
disposition includes a disposition that is wholly or partly oral.

31 Tenants in common of equitable interest who become entitled to legal interest [s 36; QUT, rec 36]

- (1) This section applies if 2 or more persons holding property—
 - (a) are entitled beneficially as tenants in common to an equitable interest in the property; and
 - (b) are or become entitled in their own right, whether as joint tenants or tenants in common, to a legal interest in the property equal to and coextensive with their equitable interest in the property.
- (2) Subject to any agreement to the contrary, both the legal and equitable interests in the property are held by the persons as tenants in common.

Division 2 Sale and division of co-owned property [pt 5, div 2]

Subdivision 1 Preliminary

32 Definitions for division [s 37; Vic, s 222; QUT, rec 37]

In this division—

property does not include a future or contingent legal or equitable estate or interest in real or personal property.

security interest—

- (a) means an interest in property by way of security for the payment of a debt or other pecuniary obligation; and

- (b) in relation to land—includes a mortgage and a lien, whether or not registered under the *Land Title Act 1994*.

33 Other forms of severance not affected [s 38; Vic, s 223; QUT, rec 39]

Nothing in this division affects or prevents the severing of a joint tenancy under—

- (a) a provision of this Act other than this division; or
- (b) another Act or law.

34 Security interests not affected [s 38; Vic, s 224; QUT, rec 39]

Despite anything to the contrary appearing in a document creating or related to a security interest, the severing of a joint tenancy under this division—

- (a) does not constitute a breach of the terms of the document; and
- (b) does not affect any existing powers, rights or interests of the holder of a security interest over the property to which the severance relates.

Subdivision 2 Sale and division

35 Application to court for order for sale or division of co-owned property [ss 38, 41; Vic, ss 225, 226; QUT, rec 39]

- (1) A co-owner of property may apply to the court for an order under this subdivision to be made in relation to the property.
- (2) The application may request—
 - (a) the sale of the property and the division of the proceeds among the co-owners; or

[s 36]

- (b) the physical division of the property among the co-owners; or
- (c) a combination of the actions mentioned in paragraphs (a) and (b).
- (3) The applicant must, within 30 days after making the application, give a copy of the application to each holder of a security interest over the property.

36 Orders court may make [ss 38 and 41; Vic, s 228; QUT, rec 39]

- (1) In the proceeding, the court may make any order the court considers the nature of the case requires to ensure a just and fair sale or division of the property.
- (2) Without limiting subsection (1), the court may make any of the following orders—
 - (a) an order for the sale of the property and the division of the proceeds among the co-owners; or
 - (b) an order for the physical division of the property among the co-owners; or
 - (c) an order for a combination of the actions mentioned in paragraphs (a) and (b).

37 Sale and division of proceeds to be preferred [s 38; Vic, s 229; QUT, rec 39]

- (1) If the court decides to make an order for the sale or division of the property, the court must make an order under section 36(2)(a) unless the court considers an order under section 36(2)(b) or (c) would be more just and fair.
- (2) In deciding whether an order under section 36(2)(b) or (c) would be more just and fair, the court must consider—
 - (a) the use being made of the property, including, for example, any use of the property for residential or business purposes; and

- (b) whether the property is able to be divided and the practicality of dividing the property; and
- (c) any particular links with or attachment to the property, including, for example, whether the property is unique or has a special value to 1 or more of the co-owners.
- (3) Subsection (2) does not limit or otherwise affect the matters the court may consider.

38 Order varying entitlements to property [s 38; Vic, s 230; QUT, rec 39]

In making an order under section 36, the court may order that—

- (a) the property be physically divided into parcels or shares that differ from the entitlements of each of the co-owners; and
- (b) compensation be paid by a stated co-owner to another stated co-owner to compensate for any difference in the value of the parcels or shares when the property is physically divided under paragraph (a).

39 Order appointing trustee [ss 38 and 41; Vic, s 231; QUT, rec 39]

- (1) In the proceeding, if the court considers the appointment of a trustee for the sale or physical division of the property is necessary or desirable, the court may order—
 - (a) the appointment of a trustee; or
 - (b) the removal of a trustee.
- (2) In an order appointing a trustee for the sale of the property, the court may make any order the court considers the nature of the case requires, including, for example, any of the following orders—
 - (a) an order directing the trustee as to the terms and conditions on which the sale is to be carried out;

[s 40]

- (b) an order directing the distribution of the proceeds of the sale in a way stated by the court;
 - (c) an order that the remuneration of the trustee is to be paid from the proceeds of the sale.
- (3) In an order appointing a trustee for the physical division of the property, the court may make any order the court considers the nature of the case requires, including, for example, any of the following orders—
 - (a) an order directing the trustee as to the way in which the division is to be carried out;
 - (b) an order that the remuneration of the trustee is to be paid by the parties to the proceeding.
- (4) If the property is held by joint tenants, an order of the court appointing a trustee for the sale of the property does not of itself sever the joint tenancy.
- (5) Subject to an order of the court, if the property is land held by co-owners, an order of the court appointing a trustee for the sale of the land converts the interest of each co-owner into an interest in the proceeds of the sale of the land.
- (6) Subject to an order of the court, a trustee appointed by the court may pay the following amounts out of income generated by the property or the proceeds of the sale of the property—
 - (a) costs, expenses and other outgoings relating to the property;
 - (b) costs and expenses relating to the sale of the property.

40 Vesting of property in trustee [s 38; Vic, s 231; QUT, rec 39]

- (1) If the court orders the appointment of a trustee for the sale or physical division of property, the order is taken to vest the property in the trustee in the same way as a vesting order under the *Trusts Act 1973*, section 90.

- (2) If the property is subject to a security interest affecting the entirety, the property vests in the trustee subject to the security interest.
- (3) If the property is subject to a security interest affecting an undivided share of the property—
 - (a) the property vests in the trustee free of the security interest; and
 - (b) the interest of the person entitled to the benefit of the security interest is converted to an equitable interest in the proceeds of sale.

41 Other orders court may make [s 38; Vic, s 232; QUT, rec 39]

- (1) In the proceeding, the court may also make any other order the court considers appropriate, including, for example, any of the following orders—
 - (a) an order that the property be sold by private sale or at auction;
 - (b) an order that the co-owners may purchase the property at the sale or auction mentioned in paragraph (a);
 - (c) for a private sale—an order that the sale be at market value as determined by an independent valuation;
 - (d) for an auction—an order that the reserve price be the reserve price set by the court;
 - (e) an order that an independent valuation of the property take place;
 - (f) an order that a sale be completed within a stated time;
 - (g) an order that the costs of the sale be met—
 - (i) by 1 or more of the co-owners; or
 - (ii) from the proceeds of the sale;
 - (h) an order that the sale and division of the proceeds of sale or the physical division of the property be subject to stated terms and conditions;

[s 42]

- (i) an order that any document be produced or other thing done that is necessary to enable an order to be carried out effectively.
- (2) This section does not limit or otherwise affect section 36 or 39.

42 Orders for compensation and accounting [s 38; Vic, s 233; QUT, rec 39]

- (1) In the proceeding, the court may order—
 - (a) that a co-owner pay compensation or make a reimbursement to another co-owner; or
 - (b) that a co-owner account to another co-owner under section 29; or
 - (c) that a co-owner's interest in the property be adjusted to take account of amounts payable by the co-owners to each other during the co-ownership.
- (2) In deciding whether to make an order under subsection (1), the court must consider the following matters—
 - (a) an amount a co-owner has reasonably spent in improving the property;
 - (b) costs reasonably incurred by a co-owner in the maintenance or insurance of the property;
 - (c) the payment by a co-owner of more than that co-owner's proportionate share of rates, mortgage repayments, purchase money, instalments or other outgoings in relation to the property for which 1 or more of the other co-owners are liable;
 - (d) for land—damage caused by the unreasonable use of the property by a co-owner;
 - (e) for land—whether or not a co-owner who has occupied the land should pay an amount equivalent to rent to a co-owner who did not occupy the land;
 - (f) for property other than land—whether or not a co-owner who has used the property should pay an amount

equivalent to rent to a co-owner who did not use the property.

- (3) The court must not make an order requiring a co-owner who has occupied land (the *occupying co-owner*) to pay an amount equivalent to rent to a co-owner who did not occupy the land (the *non-occupying co-owner*) unless—
 - (a) the occupying co-owner seeks compensation, reimbursement or an accounting for money expended by the occupying co-owner in relation to the land; or
 - (b) the non-occupying co-owner has been excluded from occupation of the land; or
 - (c) the non-occupying co-owner has suffered a detriment because it was not practicable for the non-occupying co-owner to occupy the land with the occupying co-owner.
- (4) The court must not make an order requiring a co-owner who has used property other than land (the *using co-owner*) to pay an amount equivalent to rent to a co-owner who did not use the property (the *non-using co-owner*) unless—
 - (a) the using co-owner seeks compensation, reimbursement or an accounting for money expended by the using co-owner in relation to the property; or
 - (b) the non-using co-owner has been excluded from using the property; or
 - (c) the non-using co-owner has suffered a detriment because it was not practicable for the non-using co-owner to use the property with the using co-owner.
- (5) This section applies despite another Act or law.

Subdivision 3 Accounting of amounts received

- 43 Application to court for order for accounting [s 38; Vic, s 234; QUT, rec 39]**
- (1) A co-owner of property may apply to the court for an order for an accounting under section 44.
 - (2) An application under subsection (1) may be made whether or not an application is made under subdivision 2.
- 44 Orders court may make [s 38; Vic, s 234B; QUT, rec 39]**
- (1) In the proceeding, the court may make any order the court considers appropriate to ensure a just and fair accounting of amounts received by the co-owners in relation to the property.
 - (2) Without limiting subsection (1), the court may make an order that a co-owner, who has received more than the share of rent or other payments from a third party in respect of the property to which that co-owner is entitled, account for that rent or other payments to the other co-owners.

Subdivision 4 Miscellaneous matters

- 45 Adjournment or stay of co-ownership proceeding—family law proceeding [s 38; Vic, s 227; QUT, rec 39]**
- (1) The court may adjourn or stay a proceeding under subdivision 2 or 3 in relation to property at any time before it has made a final order if—
 - (a) a family law proceeding in relation to the property is started; or
 - (b) a co-owner of the property intends to start a family law proceeding.
 - (2) This section does not limit or otherwise affect the power of the court to grant or refuse an adjournment or stay in relation to a proceeding.

(3) In this section—

family law proceeding means a proceeding under the *Family Law Act 1975* (Cwlth).

Part 6 Deeds and covenants [pt 6]

Note for consultation—

Please see the amendment in part 18, division 3 of the Bill to the *Limitation of Actions Act 1974* to reduce the limitation period for a deed from 12 years to 6 years.

Division 1 Deeds

Subdivision 1 Preliminary

46 Definitions for division [s 44; QUT, rec 46]

In this division—

accepted method, for electronically signing a document, means a method that—

- (a) identifies the signatory for the document and the signatory's intention in relation to the contents of the document; and
- (b) is either—
 - (i) as reliable as appropriate for the purposes for which the document is made or signed, having regard to all the circumstances, including any relevant agreement; or

- (ii) proven in fact to have fulfilled the functions mentioned in paragraph (a), by itself or together with further evidence; and

- (c) is consented to by each other signatory to the document.

consent, of a person, includes consent that can reasonably be inferred from the conduct of the person, but does not include consent given subject to conditions unless the conditions are complied with.

copy, of an electronic document, means a reproduction of the document in either electronic or hard copy form.

counterpart, for a document, see section 47.

director, of a corporation, means a member of the board of directors, council or other governing body of the corporation.

document means any record of information however recorded and includes—

- (a) anything on which there is writing; and
- (b) anything on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) any record of information that exists in digital form and is capable of being reproduced, transmitted, stored or duplicated by electronic means.

electronically sign, a document, means sign the document using an accepted method.

electronic document means—

- (a) a record of information reproduced from a thing mentioned in definition *document*, paragraph (c); or
- (b) a document of a type mentioned in definition *document*, paragraph (d).

information includes information in the form of data, text or images.

physical document means a document of a type mentioned in definition *document*, paragraph (a) or (b).

seal, of a corporation, includes a common seal of the corporation.

secretary, of a corporation, means the clerk, secretary or other permanent officer of the corporation.

sign, a document, means—

- (a) for a physical document—physically sign the document; or
- (b) for an electronic document—electronically sign the document.

47 What is a *counterpart* for a document [s 45]

- (1) A ***counterpart***, for a document, is a copy of the document that includes the entire contents of the document.
- (2) Despite subsection (1), a counterpart need not include—
 - (a) the signatures of the other persons who are to sign the document; or
 - (b) if a seal is fixed to the document—the seal.

48 Division does not apply to enduring documents [s 46]

This division does not apply to an enduring document under the *Powers of Attorney Act 1998*.

49 Application of division to powers of attorney [s 46A]

- (1) Each of the following documents made by an individual must be a physical document that is signed by the individual in the presence of a witness—
 - (a) a general power of attorney made under the *Powers of Attorney Act 1998*;
 - (b) a power of attorney given under a deed.

- (2) However, a document containing a power of attorney given by an individual under a deed may be an electronic document that is electronically signed by the individual if—

- (a) the document is part of a commercial or other arms-length transaction; and
- (b) the power of attorney is given for the purpose of the commercial or other arms-length transaction.

Example of a document that may be electronically signed under subsection (2)—

A document containing a power of attorney given by an individual under a deed as security for a proprietary interest of another party to the document or the performance of an obligation owed by the individual.

- (3) To remove any doubt, it is declared that—
- (a) subsection (2) applies to a document even if the document is executed at a different time from, and is separate to, other documents that form part of the transaction; and
 - (b) a power of attorney given by an individual under a deed under subsection (2) may be signed under subsection (2) whether or not in the presence of a witness.
- (4) This section applies—
- (a) subject to section 55; and
 - (b) despite another provision of this division.
- (5) In this section—

individual includes an individual in the individual's capacity as a sole trader.

50 Execution of documents under other Acts [s 46B]

This division does not affect the way in which documents are validly executed under the *Land Act 1994* or the *Land Title Act 1994*.

Subdivision 2 Form and execution

51 How deed is made generally [s 46C; QUT, rec 46]

- (1) A document takes effect as a deed if the document—
 - (a) is in writing; and
 - (b) contains a clear statement that the document is a deed; and
 - (c) is executed under this division; and
 - (d) is delivered in accordance with section 58.
- (2) A document takes effect as a deed under subsection (1) even if—
 - (a) it is not written on paper or parchment; or
 - (b) it is not an indenture or stated to be an indenture; or
 - (c) it is not sealed or stated to be sealed.

52 Electronic document and electronic signing [s 46D]

A document that is to have effect as a deed may be in the form of an electronic document and may be electronically signed.

53 Execution by individual [s 46E; QUT, rec 47]

- (1) An individual may execute a document that is to have effect as a deed by signing the document.
- (2) An individual may sign a document under subsection (1) whether or not in the presence of a witness.

54 Execution by corporation [s 46F; QUT, rec 48]

- (1) A corporation may execute a document that is to have effect as a deed, without using a seal, if the document is signed by—
 - (a) for a corporation that has directors—
 - (i) 2 directors of the corporation; or

[s 54]

- (ii) 1 director and 1 secretary of the corporation; or
 - (b) for a proprietary company that has a sole director—that director, if—
 - (i) the director is also the sole company secretary; or
 - (ii) the company does not have a company secretary; or
 - (c) a lawfully authorised agent or attorney of the corporation, whether or not the agent or attorney is appointed under seal.
- (2) A corporation with a common seal may execute a document that is to have effect as a deed if the seal is fixed to the document and the fixing of the seal is witnessed by—
- (a) for a corporation that has directors—
 - (i) 2 directors of the corporation; or
 - (ii) 1 director and 1 secretary of the corporation; or
 - (b) for a proprietary company that has a sole director—that director, if—
 - (i) the director is also the sole company secretary; or
 - (ii) the company does not have a company secretary.
- (3) Despite subsections (1) and (2), a corporation sole or statutory corporation may execute a document that is to have effect as a deed, without using a seal, if the document is signed by a person, or in a way, authorised by the Act or another document under which the corporation is established, incorporated or registered.
- (4) For a corporation with a common seal executing a document that is to have effect as a deed, or a corporation sole or statutory corporation using a seal, the fixing of the seal to the document is taken to have been witnessed by a person if—
- (a) the person observes the fixing of the seal by audio visual link; and
 - (b) the person signs the document; and

-
- (c) the document includes a statement that the person observed the fixing of the seal by audio visual link.
 - (5) A corporation that is not incorporated under a law of the Commonwealth or a State may execute a document that is to have effect as a deed if the document is signed by a person, or in a way, authorised by the law of the place in which the corporation is incorporated.
 - (6) A document that is to have effect as a deed may be signed under this section whether or not in the presence of a witness.
 - (7) If a person signs a document that is to have effect as a deed for a corporation as a lawfully authorised agent or attorney for the corporation, the person must—
 - (a) sign the document in a way that indicates the person is signing as a lawfully authorised agent or attorney; and
 - (b) if the person is an individual—sign the document under section 53; and
 - (c) if the person is a corporation—sign the document under this section.
 - (8) This section does not limit or otherwise affect the ways in which a document that is to have effect as a deed for a corporation may be executed by the corporation.
 - (9) In this section—

attorney, for a corporation, means a person acting under the authority of a power of attorney given by the corporation under a deed, a general power of attorney made under the *Powers of Attorney Act 1998*, or another law.

audio visual link means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places and includes videoconferencing.

statutory corporation means an entity established, incorporated or registered under an Act of the Commonwealth or a State, that is not a corporation registered under the Corporations Act.

[s 55]

**55 Execution by partnership or unincorporated association
[s 46G]**

- (1) An individual may execute a document that is to have effect as a deed on behalf of a partnership or unincorporated association by signing the document.
- (2) An individual may sign a document under subsection (1) whether or not in the presence of a witness.
- (3) If an individual signs a document under subsection (1), the individual must sign the document in a way that indicates the person is executing the document on behalf of the partnership or unincorporated association.
- (4) A reference in subsection (1) to a document includes a document containing a power of attorney for the partnership or unincorporated association.
- (5) This section does not limit or otherwise affect another law or document that requires or permits a document executed on behalf of a partnership or unincorporated association to be executed in a particular way.

Example—

This section does not affect a document that requires or permits a document executed on behalf of a partnership to be executed by a stated number of partners.

56 Execution by the State [s 46GA]

- (1) A person who is authorised to execute a document that is to have effect as a deed for the State may execute the document by signing the document.
- (2) The person may sign the document under subsection (1) without using a seal and whether or not in the presence of a witness.
- (3) If a seal is used to execute a document that is to have effect as a deed for the State, the fixing of the seal to the document is taken to have been witnessed by a person who is authorised to witness the fixing of the seal if—

- (a) the person observes the fixing of the seal by audio visual link; and
 - (b) the person signs the document; and
 - (c) the document includes a statement that the person observed the fixing of the seal by audio visual link.
- (4) This section is subject to section 54(3).
- (5) This section does not limit or otherwise affect the State's powers or legal capacity under another law.
- (6) In this section—
- State* includes a public sector unit and any other entity that represents the State.

57 Signing counterpart or true copy [s 46H]

- (1) A document that is to have effect as a deed for a person may be signed by or for the person by signing a counterpart or true copy of the document.
- (2) For subsection (1), if the counterpart or true copy is electronically signed by a person, the counterpart or true copy need not include any material included in the document about the method used for electronically signing the document.
- (3) In this section—
- person* includes a partnership, an unincorporated association and the State.

Subdivision 3 Miscellaneous matters

58 Delivery [s 47; NZ, s 9(9); QUT, rec 49]

- (1) The execution of a document in the form of a deed does not, of itself, constitute delivery of a deed, unless it appears the execution of the document was intended to constitute delivery of the document.

[s 59]

- (2) Subject to subsection (1), delivery of a deed may be inferred from any fact or circumstance, including, for example, words or conduct, that indicates delivery.
- (3) In this section—
delivery, of a deed, means an intention to be legally bound by the deed either immediately or subject to the fulfilment of 1 or more conditions.

59 Receipt in body of deed sufficient [s 51; QUT, rec 53]

- (1) A receipt for consideration in the body of a deed or other document is a sufficient discharge for the consideration to the person giving the consideration without any further receipt for the consideration being endorsed on the deed or document.
- (2) In this section—
consideration includes money and securities.

60 Deposit of deed in registry [s 53A]

- (1) This section applies to a deed made under this division that is proposed to be deposited in a registry in support of another document lodged or deposited in the registry.

Note for consultation—

The PLA 1974(1)(b) has not been retained due to the changes to the PLA 1974, part 18, as reflected in part 14 of the Bill.

- (2) If the deed is made in counterparts, each counterpart must be deposited in the registry for the purpose.
 - (3) If the deed or a counterpart of the deed is in the form of an electronic document, a printed copy of the deed or counterpart certified under subsection (4) must be deposited in the registry for the purpose.
 - (4) For subsection (3), the printed copy must be certified as a true copy of the original deed or counterpart—
-

- (a) on a page of the printed copy; and
 - (b) by 1 of the following persons—
 - (i) 1 of the signatories;
 - (ii) a lawyer;
 - (iii) a justice;
 - (iv) a commissioner for declarations;
 - (v) a notary public;
 - (vi) a trustee company under the *Trustee Companies Act 1968*;
 - (vii) a stockbroker.
- (5) In this section—
- registry** means—
- (a) the land registry; or
 - (b) the water allocations register under the *Water Act 2000*.

61 Protection for third parties [s 53B]

- (1) A person may assume that a document has been duly executed by a corporation if—
 - (a) the document appears to have been signed under section 54(1); or
 - (b) both of the following apply—
 - (i) the common seal of the corporation appears to have been fixed to the document under section 54(2);
 - (ii) the fixing of the common seal as mentioned in subparagraph (i) appears to have been witnessed under section 54(2).
- (2) This section does not limit or otherwise affect any requirement to be satisfied that a person signing a document is a director, secretary, or lawfully authorised agent or attorney, of a corporation.

[s 62]

62 Abolition of rule in *Pigot's case* [Conveyancing Act 1919 (NSW), s 184]

- (1) The rule of law known as the rule in *Pigot's case* is abolished.
- (2) Accordingly, a material alteration to a deed does not, by itself, invalidate the deed or render it voidable, or limit or otherwise affect any obligation under the deed.

Division 2 Covenants

63 Construction of expressions used in deeds and other documents [s 48; NZ, s 279; Vic, s 61; QUT, rec 50]

- (1) In a deed, contract, will or other document, unless the context otherwise requires—
 - (a) the term *month* means calendar month; and
 - (b) the term *person* includes an individual and a corporation; and
 - (c) words indicating a gender include each other gender; and
 - (d) words in the singular include the plural and words in the plural include the singular.
- (2) A covenant, power or term implied in a deed, contract, will, or other document under this Act or another Act must be construed under subsection (1).

64 Implied covenants may be negated [s 49; NZ, s 279; QUT, rec 51]

- (1) A covenant, power or term implied, under this Act or another Act, in a document has the same effect, and may be enforced in the same way, as if the covenant, power or term had been expressed in the document.
- (2) However, the covenant, power or term implied in the document may be negated, varied or extended by the express terms of the document or another document.

- (3) This section is subject to this Act or another Act.

65 Covenants and agreements made by person with self and others [s 50; Vic, s 82; QUT, rec 52]

- (1) A covenant, whether express or implied, or agreement, entered into by a person with the person's self and 1 or more other persons, has the same effect, and may be enforced in the same way, as if the covenant or agreement had been entered into by the person with the other person or persons alone.
- (2) In this section—
implied includes implied under this Act or another Act.

66 Covenants relating to land bind successors [s 53; Vic, ss 78 and 79; QUT, rec 55]

- (1) A covenant relating to land of a covenantee is taken to be made with each of the following—
- (a) the covenantee;
 - (b) the covenantee's successors in title;
 - (c) each person deriving title from a person mentioned in paragraph (a) or (b).
- (2) A covenant relating to land of a covenantor, or land capable of being bound by a covenantor, is taken to be made by each of the following—
- (a) the covenantor on behalf of the covenantor's self;
 - (b) the covenantor's successors in title;
 - (c) each person deriving title from a person mentioned in paragraph (a) or (b);
 - (d) for a restrictive covenant—the owners and occupiers for the time being of the land burdened by the covenant.
- (3) Subsection (2) extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

[s 67]

- (4) This section applies subject to any agreement to the contrary.

67 Particular covenants in registered easements bind successors [new, s 4; NSW, s 88BA; QUT, rec 56]

- (1) This section applies to a covenant contained in a registered easement over land (the *burdened land*) for the benefit of other land.
- (2) If the covenant imposes an obligation, whether positive or negative, in relation to the use, ownership or maintenance of the burdened land, the covenant binds the grantor and the grantee of the easement, and each of their successors in title.
- (3) Without limiting subsection (2), a covenant imposes an obligation in relation to the use, ownership or maintenance of the burdened land if the covenant imposes an obligation relating to any of the following matters—
- (a) maintenance or repair;
 - (b) payment of rates or taxes;
 - (c) building, maintenance or repair of infrastructure used in connection with the easement.
- (4) Subsection (2) does not apply if the covenant is expressed to be personal to the grantor or the grantee of the easement.
- (5) This section does not limit or otherwise affect the *Land Title Act 1994*, part 6, divisions 4 or 4A.

68 No right to register restrictive covenant [s 4; QUT, rec 3]

To remove any doubt, it is declared that this Act does not confer on any person a right to register a restrictive covenant.

Part 7 Contracts, sales of land and instalment contracts for sale of land [pt 6]

Division 1 Contracts [pt 6, div 2]

69 Effect of joint promises and liabilities [s 54; QUT, rec 57]

- (1) Subject to this Act and any other Act—
- (a) a promise made by 2 or more persons takes effect, unless a contrary intention appears, as a promise made jointly and severally by each of those persons; and
 - (b) a joint liability is discharged, or a cause of action with respect to a joint liability is extinguished, by a fact, event or other thing only to the extent the liability would be discharged, or cause of action extinguished, by the fact, event or other thing if the liability were joint and several.
- (2) In this section—
- promise* includes—
- (a) a promise, bond or other obligation under seal or under a deed; and
 - (b) a covenant, whether express, or implied under this Act.

70 Contract containing promise for benefit of third party [s 55; WA, s 11; QUT, rec 58]

- (1) This section applies if—
- (a) a person (the *promisor*) and another person (the *promisee*) enter into a contract; and
 - (b) the contract contains a promise to do or refrain from doing an act for the benefit of another person who is not a party to the contract (the *third party*).

[s 71]

- (2) The promisor is subject to a duty enforceable by the third party to perform the promise.
- (3) Subject to the terms of the contract, the contract may be terminated or modified by the agreement of the promisor and promisee before the third party accepts the benefit of the promise.
- (4) If the third party accepts the benefit of the promise, either expressly or by conduct, an obligation imposed by the contract on the third party for the benefit of the promisor is enforceable by the promisor.
- (5) The promise is enforceable by the third party in a proceeding brought in the third party's own name.
- (6) If the third party brings a proceeding under subsection (5)—
 - (a) each party to the contract must be joined as a party to the proceeding; and
 - (b) a defence that would have been available to the promisor had the third party been a party to the contract is available to the promisor.
- (7) If the promise creates an interest in land, this section applies subject to part 2, division 1.
- (8) In this section—

contract includes a promise contained in a deed or another document.

third party includes—

 - (a) a person designated by name, description or class; and
 - (b) a person not in existence when a promise is made.

71 Guarantee not enforceable unless in writing [s 56; QUT, rec 59]

- (1) A guarantee is not enforceable in a proceeding unless—
 - (a) the guarantee is in writing or its terms are recorded in writing; and

- (b) the guarantee or written record is signed by the party against whom the guarantee is sought to be enforced.
- (2) However, subsection (1) does not require the consideration given for the guarantee to appear in writing or by necessary inference from a written document.
- (3) Subject to the *National Consumer Credit Protection Act 2009* (Cwlth), a guarantee may comply with subsection (1) even if the guarantee—
 - (a) is an electronic document; or
 - (b) is digitally signed.
- (4) In this section—

digitally sign, an electronic document, means sign the document using a method mentioned in the *Electronic Transactions (Queensland) Act 2001*, section 14.

guarantee includes an indemnity.

72 Effect of conclusive evidence provision [s 57; QUT, rec 60]

- (1) If a contract or other document provides that a certificate of a person is conclusive evidence of a fact, the certificate is evidence, but not conclusive evidence, of the fact.
- (2) However, subsection (1) does not apply to—
 - (a) a certificate of a person bound to act judicially, quasi-judicially or as an arbitrator in giving the certificate; or
 - (b) a certificate of an expert, including, for example, an architect or engineer, required to be independent and act fairly to the parties to the contract or other document in giving the certificate; or
 - (c) a provision agreed to after a dispute has arisen about the fact.
- (3) Subsection (1) applies—
 - (a) subject to any other Act; and

[s 73]

(b) despite any agreement to the contrary.

(4) In this section—

certificate includes a statement and an opinion.

fact includes a circumstance, event, matter and state of affairs.

73 Effect on contract of non-compliance with statutory instrument [s 57A(1), QUT, rec 61]

(1) A statutory instrument, other than prescribed subordinate legislation, does not and can not—

(a) render void or unenforceable any contract or disposition concerning property that is made, entered into or effected contrary to the statutory instrument; or

(b) for a contract for the sale of land—give a party to the contract a right to terminate the contract for a failure by another party to the contract to comply with the statutory instrument.

(2) In this section—

prescribed subordinate legislation means subordinate legislation prescribed by regulation for this section.

74 Effect of statutory requirement for certificate [s 57A(2); QUT, rec 61]

(1) This section applies if an Act requires a certificate to be obtained or given before or when—

(a) entering a contract for the disposition of property; or

(b) making a disposition of property.

(2) It is sufficient compliance with the requirement if the certificate is obtained or given before settlement of the contract or disposition.

(3) Subsection (2) does not apply if this Act or another Act expressly provides otherwise.

(4) In this section—

certificate includes an approval and a consent.

settlement, of a contract or disposition, means—

- (a) for a sale—settlement of the sale; or
- (b) for a lease—entry into possession under the lease by the lessee; or
- (c) for a mortgage—the acceptance of liability under the mortgage by the mortgagor; or
- (d) otherwise—the finalisation of the contract or disposition.

75 Stipulations not of the essence of the contract [s 62; QUT, rec 67]

- (1) This section applies to a stipulation in a contract, as to time or otherwise, that under the rules of equity is not of the essence of the contract.
- (2) The stipulation must be construed, and has effect at law, under the rules of equity.

Division 2 Sales of land [pt 6, div 3]

76 Definitions for division [ss 58A; QUT, rec 63]

In this division—

conveyancing transaction see the National Law, section 3.

e-conveyance means a conveyancing transaction to be completed using e-conveyancing.

e-conveyancing means a system of land conveyancing that uses an ELN to lodge documents electronically for the purpose of land titles legislation.

electronic workspace, for an e-conveyance, means a shared electronic workspace within an ELN that allows the participating subscribers to the e-conveyance—

- (a) to lodge a document electronically under the National Law; and
- (b) if relevant, to authorise or complete financial settlement of the e-conveyance.

ELN means an Electronic Lodgment Network under the National Law.

financial settlement, of an e-conveyance, means the exchange of value, in an ELN, between financial institutions in accordance with the instructions of participating subscribers to the e-conveyance.

land titles legislation see the *Electronic Conveyancing National Law (Queensland) Act 2013*, section 6.

National Law means the Electronic Conveyancing National Law (Queensland).

participating subscriber, to an e-conveyance, means a subscriber who is involved in the e-conveyance as a party to the e-conveyance or as a representative of a party.

sale, of land, includes an exchange for value.

subscriber see the National Law, section 3.

77 **Reference to settlement of sale of land using e-conveyancing [ss 58B; QUT, rec 64]**

- (1) A reference in this Act or another Act to the settlement, however described, of the sale of land, or a contract for the sale of land, using e-conveyancing, is a reference to the electronic workspace for the e-conveyance recording—
 - (a) financial settlement of the sale; or
 - (b) if there is no financial settlement of the sale—the acceptance by the registrar, for electronic lodgment, of the documents necessary to transfer title.
- (2) Subsection (1) does not apply if this Act or another Act expressly provides otherwise.

78 Implied conditions [s 61; QUT, rec 66]

- (1) The following conditions are implied in a contract for the sale of land—
 - (a) the seller must give the buyer, at the cost of the seller, a copy of each document, in relation to which a caveat is registered, that is in the possession of the seller;
 - (b) the seller must, at the cost of the seller, remove any objection to the registration of any document required to give effect to the contract unless—
 - (i) the objection arises from the buyer's own act or omission; or
 - (ii) the objection may have been discovered by a reasonable person in the position of the buyer, and was not raised by the buyer, before settlement;
 - (c) if the seller is required under the contract to transfer the land free from encumbrances—the seller must, on settlement of the contract—
 - (i) discharge any encumbrances out of the purchase money payable under the contract by the buyer; and
 - (ii) for an encumbrance registered on the title to the land—give the buyer a release of the encumbrance in registrable form.
- (2) Also, if a sale of land is not an e-conveyance, the following conditions are implied in the contract for the sale of the land—
 - (a) payment or tender of money payable under the contract may be made by a cheque drawn on a financial institution; and
 - (b) settlement of the contract must take place at—
 - (i) the office of the land registry at which the document relating to the sale may be lodged; or
 - (ii) if there is more than 1 office under sub-paragraph (i)—the office of the land registry nearest the land.

[s 79]

- (3) This section applies subject to the terms of the contract for the sale of the land.

79 Buyer may rescind contract if residential dwelling unfit for occupation [s 64; Vic, s 34; QUT, rec 69]

- (1) This section applies if—
 - (a) parties enter into a contract for the sale of land; and
 - (b) the land contains or comprises a residential dwelling; and
 - (c) before the earlier of the following to happen, the residential dwelling is so damaged or destroyed as to be unfit for occupation as a residential dwelling—
 - (i) the settlement of the contract;
 - (ii) the buyer taking possession of the land under the contract or another document.
- (2) The buyer may rescind the contract by giving notice to the seller of the rescission before the earlier of the following to happen—
 - (a) the settlement of the contract;
 - (b) the buyer taking possession of the land under the contract or another document;
 - (c) the seller restoring the residential dwelling to the condition it was in immediately before it was so damaged or destroyed as to be unfit for occupation as a residential dwelling.
- (3) If the seller restores the residential dwelling to the condition it was in immediately before it was so damaged or destroyed as to be unfit for occupation as a residential dwelling, the seller must give notice to the buyer of the restoration as soon as practicable after the restoration.
- (4) On rescission of the contract, an amount, if any, paid under the contract by the buyer must be refunded to the buyer.
- (5) This section applies despite any agreement to the contrary.

(6) In this section—

residential dwelling—

- (a) means a building or part of a building used, or currently designed for use, only as a single dwelling; and
- (b) includes a residential dwelling that comprises—
 - (i) a lot under the *Body Corporate and Community Management Act 1997*; or
 - (ii) a lot under the *Building Units and Group Titles Act 1980*; or
 - (iii) a leasehold building units lot under the *South Bank Corporation Act 1989*, section 97B; and
- (c) does not include a building or part of a building used, or currently designed for use, as temporary accommodation.

80 When day of settlement is next business day [s 61(3) and (3A); QUT, rec 66-67]

(1) This section applies if—

- (a) parties enter into a contract for the sale of land; and
- (b) the contract provides that the day of settlement of the contract is a day that is not a business day in—
 - (i) the place where the contract is to be settled; or
 - (ii) if the contract is to be settled electronically and the contract does not provide for a place where the contract is to be settled—the place where the land is located; and
- (c) the contract does not designate the day mentioned in paragraph (b) as a Saturday, Sunday or public holiday.

(2) Despite the terms of the contract, the day of settlement of the contract is—

- (a) if the parties to the contract agree to another day of settlement—the day agreed; or

[s 81]

- (b) otherwise—the next business day after the day of settlement provided for in the contract.

81 Effect of inoperative computers in land registry office on day of settlement [s 70A; QUT, rec 78]

- (1) This section applies if—
 - (a) parties enter into a contract for the sale of land; and
 - (b) the contract provides that time is of the essence; and
 - (c) the buyer, without default on the buyer's part, can not, on the day of settlement of the contract, verify the seller's title because computers in the relevant office of the land registry under the *Land Title Act 1994* are inoperative.
- (2) Time stops being of the essence of the contract.
- (3) The seller is taken—
 - (a) not to have proved title to the land; and
 - (b) not to be in breach of the contract only because of the failure to prove title at that time.
- (4) The seller or buyer may give a notice to the other party to the contract to complete the contract.
- (5) The notice must state—
 - (a) that the computers are again fully operational; and
 - (b) the day, at least 2 business days but not more than 7 business days after the day the notice is given, for settlement of the contract.
- (6) The notice may be given not earlier than the day after the first continuous day of operation of the computers after the computers are again fully operational.
- (7) From a party's receipt of the notice, time is again of the essence of the contract.
- (8) This section applies subject to the terms of the contract for the sale of the land.

- (9) In this section—

computer means all or part of a computer, computer system or computer network and includes, for example, all external devices connected to the computer in any way or capable of communicating with each other as part of a system or network.

82 Effect of adverse event on day of settlement [new; QUT, rec 66]

- (1) This section applies if—
- (a) parties enter into a contract for the sale of land; and
 - (b) the contract provides that time is of the essence; and
 - (c) a party to the contract (the **non-attending party**), because of an adverse event, can not, on the day and at the time of settlement of the contract, complete settlement of the contract.
- (2) Time stops being of the essence of the contract.
- (3) The non-attending party—
- (a) must take reasonable steps to mitigate the effects of the adverse event on the settlement of the contract; and
 - (b) subject to compliance with paragraph (a)—is taken not to be in breach of the contract only because of the failure, on the day and at the time of settlement of the contract, to complete settlement of the contract.
- (4) Despite the terms of the contract, but subject to any right under the contract to nominate a new day and time of settlement of the contract, the day and time of settlement of the contract are—
- (a) if the parties to the contract agree to another day and time—the day and time agreed; or
 - (b) otherwise—the day and time determined under subsections (5) to (8).
- (5) The non-attending party must—

-
- (a) as soon as practicable after the adverse event, tell the other party of the adverse event and how the adverse event has caused the non-attending party to fail to complete settlement of the contract; and
 - (b) as soon as practicable after the adverse event stops preventing the non-attending party from completing settlement of the contract, give a notice to the other party to the contract to complete the contract.
- (6) The notice under subsection (5)(b) must state—
- (a) a day, at least 5 business days and not more than 10 business days after the day the notice is given, for settlement of the contract; and
 - (b) a time for settlement of the contract.
- (7) From a party's receipt of a notice under subsection (5)(b) and (6), time is again of the essence of the contract.
- (8) If a notice is given under subsection (5)(b) by the buyer and the seller in relation to the same adverse event on the same day of settlement, the notice given by the seller prevails.
- (9) In this section—
- adverse event*** means an event that causes serious disruption to a community, including, for example—
- (a) a cyclone, fire, flood, landslide, seismic event, storm, storm tide, tsunami or tornado; and
 - (b) a public health emergency under the *Public Health Act 2005*; and
 - (c) a requirement to comply with a lawful direction or order given by a government entity under a law of the Commonwealth or a State; and
 - (d) an act of terrorism, activity related to war, civil commotion, public disturbance or riot; and
 - (e) an explosion or sudden impact of an object, including, for example, an aircraft or object from space.

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday; or
- (c) a day in the period starting on 27 December and ending on 31 December.

83 Direction for payment given by seller's authorised agent sufficient discharge of buyer [s 66; QUT, rec 71]

- (1) A written direction given by a seller's authorised agent to the buyer or the buyer's authorised agent in relation to the payment of money under a contract for the sale of land is sufficient discharge of the buyer in relation to payment of the money.
- (2) In this section—
authorised agent means—
 - (a) a legal practitioner; or
 - (b) a manager of a financial institution.

84 Buyer may recover damages if defective title [s 68; NSW, s 54B; QUT, rec 74]

- (1) The rule of law known as the rule in *Bain v Fothergill* is abolished in relation to a contract for the sale or other disposition of land.
- (2) The court may award damages for loss of bargain against a seller who cannot perform a contract for the sale or other disposition of land because of a defect in the seller's title.
- (3) This section does not affect a right, power or remedy available to a buyer under a contract for the sale or other disposition of land in relation to a defect in the seller's title, or a failure of the seller to perform the contract, that is available under a law other than this section.
- (4) This section applies despite any agreement to the contrary.

85 Buyer may recover deposit and instalments if defective title but no rescission [s 69; NSW, s 55; QUT, rec 76]

- (1) This section applies if a seller is not entitled to specific performance of a contract for the sale of land against a buyer because of a defect in the seller's title but the defect does not entitle the buyer to rescind the contract.
- (2) The buyer may recover the buyer's deposit and any instalments under the contract and is relieved from all liability under the contract, unless the contract discloses the defect and contains a term precluding the buyer from objecting to the defect.
- (3) If the defect was known, or should reasonably have been known, to the seller at the date of the contract the buyer may also recover the buyer's expenses of investigating the title.
- (4) Also, without being limited by subsection (1), in any proceeding in which the court refuses to order specific performance of a contract, or in which the buyer seeks return of the deposit or any instalments under a contract, the court may order the repayment of the deposit and any instalments.
- (5) This section applies despite any agreement to the contrary.

86 Seller may forfeit deposit of no more than 20 percent if buyer breaches contract for sale of proposed lot [s 68A; QUT, rec 75]

- (1) This section applies in relation to a contract for the sale of a proposed lot.
- (2) The contract may provide for a sum of not more than 20% of the purchase price of the proposed lot that is paid under the contract as a deposit, whether paid in 1 or more amounts, to be forfeited and retained by the seller in the event of a breach of the contract by the buyer.
- (3) However, the sum mentioned in subsection (2) may only be forfeited or retained by the seller if the breach of the contract by the buyer results in termination of the contract.

- (4) The sum mentioned in subsection (2) is not, either at law or in equity, a penalty if the sum is forfeited and retained by the seller under subsection (3).

87 When statutory right of termination on settlement ends if e-conveyance [s 67A; QUT, rec 73]

- (1) This section applies if—
 - (a) an Act provides for a right of termination, however described, in relation to a sale of land or a contract for the sale of land; and
 - (b) the right is expressed to end on settlement; and
 - (c) the sale is completed using e-conveyancing.
- (2) The right of termination ends on settlement.
- (3) However, the right of termination may not be exercised during any period the electronic workspace for the e-conveyance is locked for the purpose of settlement.
- (4) In this section—

locked, in relation to an electronic workspace for an e-conveyance, means the ELN for the workspace does not allow a participating subscriber to the e-conveyance to change a document or instruction in the workspace.

Division 3 Instalment contracts for sale of land [pt 6, div 4]

88 Definitions for division [s 71; QUT, rec 80]

In this division—

buyer, in relation to an instalment contract, includes a person deriving an interest under the contract from the original buyer.

contract, for the sale of land, includes—

- (a) an agreement for the sale of land; and

- (b) an option to purchase land.

deposit, in relation to a contract for the sale of land, means a sum of not more than the prescribed percentage of the purchase price of the land that is payable by the buyer in 1 or more amounts, and refundable to the buyer if the seller breaches the contract or does not fulfil a contingent condition of the contract.

instalment, in relation to a contract for the sale of land, does not include—

- (a) an option fee relating to the land; or
- (b) an amount paid by the buyer, after the contract was entered into and before settlement of the contract, in relation to any of the following—
 - (i) maintenance of the land;
 - (ii) rent and outgoings relating to the land;
 - (iii) rates and taxes relating to the land;
 - (iv) interest on any part of the purchase price under the contract for the land;
- (v) an extension of time to complete the contract.

instalment contract see section 90.

option fee, relating to land, means an amount paid for the grant or exercise of an option to purchase the land.

prescribed percentage, of the purchase price of land, means—

- (a) if the land is a proposed lot—20%; or
- (b) otherwise—10%.

seller, in relation to an instalment contract, includes a person to whom the rights of the seller under the contract have been assigned with the consent under section 93 of the buyer.

89 Application of division [s 71A; QUT, rec 81]

- (1) This division applies in relation to an instalment contract despite any agreement to the contrary.

- (2) However, despite section 5, this division does not bind the State, the Commonwealth or the other States.
- (3) To remove any doubt, it is declared that this division does not apply in relation to a contract for the sale of land by the public trustee.
- (4) In this section—
public trustee see the *Public Trustee Act 1978*, section 6.

90 What is an *instalment contract* [s 71; QUT, rec 80]

An *instalment contract* is a contract for the sale of land under which the buyer is bound to make 1 or more payments by instalment of the purchase price of the land, other than a deposit, and is not entitled to receive a transfer of the title to the land in exchange for the payments.

91 When buyer must give seller notice to constitute contract an instalment contract [s 71A(2); QUT, rec 81]

- (1) This section applies if a contract for the sale of land may, at the election of the buyer, be performed in a way that would constitute the contract an instalment contract.
- (2) The contract is not an instalment contract unless and until the buyer gives the seller a notice stating that the buyer elects to perform the contract in a way that would constitute the contract as an instalment contract.

92 Restriction on seller's right to termination if buyer defaults on payment of instalment [s 72; QUT, rec 82]

- (1) The seller under an instalment contract can not terminate the contract because of default by the buyer in payment of an instalment of the purchase price of the land, or in payment of any other sum of money, other than a deposit, until 30 days after the seller gives the buyer a notice in the approved form about the default.

[s 93]

- (2) If a buyer receives a notice under subsection (1) about a default by the buyer in payment of an instalment or sum of money mentioned in subsection (1), the buyer may, within 30 days after the seller gives the notice to the buyer, pay the outstanding instalment or sum to the seller.
- (3) If a buyer pays the outstanding instalment or sum to the seller under subsection (2), any right or power of the seller to terminate the contract because of the default stops and the buyer is taken not to be in default under the instalment contract.

93 Seller can not sell or mortgage land [s 73; QUT, rec 83]

- (1) The seller under an instalment contract must not without the consent of the buyer sell or mortgage the land the subject of the contract.
- (2) The buyer may give consent under subsection (1) only by giving the seller a notice stating—
 - (a) the buyer has received a notice from the seller stating the terms of the sale or mortgage; and
 - (b) the buyer consents to the sale or mortgage on the stated terms.
- (3) If land is sold or mortgaged in contravention of subsection (1), the instalment contract is voidable by the buyer before settlement of the contract.
- (4) If the buyer terminates an instalment contract under subsection (3), the buyer may recover as a debt a deposit or instalment paid to the seller under the contract.
- (5) This section does not limit or otherwise affect—
 - (a) a right or remedy of the buyer under a law other than this section; or
 - (b) the rights of another person who buys from the seller in good faith, for value and without notice of the instalment contract.
- (6) In this section—

consent, to a sale or mortgage, means consent to the stated terms of the sale or mortgage.

94 Buyer may lodge caveat [s 74; QUT, rec 84]

- (1) The buyer under an instalment contract for the sale of land may, by a caveat under the *Land Title Act 1994* that is stated to be lodged under this section, forbid the registration of any document affecting the land the subject of the contract until settlement of the contract.
- (2) The caveat is taken, for the *Land Title Act 1994*, to have been lodged other than under part 7, division 2 of that Act.
- (3) The caveat may, on the application of any person interested, be removed on proof to the satisfaction of the registrar or of the court that—
 - (a) the buyer has consented to removal of the caveat; or
 - (b) the instalment contract has been rescinded or terminated or discharged by performance or otherwise; or
 - (c) the caveat should be removed on another ground.
- (4) This section does not limit or otherwise affect the powers of the registrar in relation to caveats under the *Land Title Act 1994*.

95 Buyer not in default may require transfer of land [s 75; QUT, rec 85]

- (1) A buyer not in default under an instalment contract may give the seller 3 month's notice of the buyer's intention to settle the contract by payment of the balance of the purchase money owing at the day of settlement in exchange for a transfer of the land.
- (2) The notice must state a day of settlement for the contract and make time of the essence of the contract, if time is not already of the essence of the contract.

Part 8 Mortgages [pt 7]

Division 1 Preliminary

96 Definition for part [s 77; QUT, rec 87]

In this part—

term, to the extent the context permits, includes agreement, condition and covenant.

97 Application of part [s 77A; QUT, rec 88]

- (1) This part applies to a mortgage over land subject to any of the following Acts—
 - (a) the *Land Act 1994*;
 - (b) the *Land Title Act 1994*;
 - (c) the *Housing Act 2003*;
 - (d) a Resource Act;
 - (e) another Act.
- (2) Subject to this Act or another Act, this part also applies to a mortgage over the following property—
 - (a) land other than land mentioned in subsection (1);
 - (b) property other than land.

Division 2 General rules

98 Variation of mortgage [s 79; QUT, rec 90]

- (1) A mortgage over land evidenced by an instrument of mortgage may be varied by an instrument of variation.
- (2) The instrument of variation may—

- (a) increase or reduce the rate of interest payable in relation to the debt or obligation secured by the mortgage; or
 - (b) increase or reduce the amount secured by the mortgage; or
 - (c) shorten, extend or renew the term of the mortgage; or
 - (d) vary a term of the instrument of mortgage.
- (3) An instrument of variation relating to land subject to the *Land Title Act 1994* may be registered under that Act if it complies with the requirements of that Act relating to registration.
- (4) This section does not limit or otherwise affect a power of, or procedure for, variation or amendment of a mortgage under another law.

99 Effect of advance out of joint account [s 93; QUT, rec 104]

- (1) This section applies in relation to—
- (a) a mortgage under which an amount is expressed to be advanced by 2 or more persons (the *mortgagees*) out of money belonging to them on a joint account; or
 - (b) a mortgage to 2 or more persons (also the *mortgagees*) jointly.
- (2) An amount owing under the mortgage belongs to the mortgagees on a joint account.
- (3) The receipt, for an amount paid under the mortgage, given in writing by the survivors or last survivor of the mortgagees is a complete discharge for the amount, despite any notice to the mortgagor of a severance of the joint account.
- (4) This section applies subject to any agreement to the contrary.
- (5) In this section—
- mortgage* includes—
- (a) an obligation to pay money; and
 - (b) a transfer of a mortgage; and
 - (c) a transfer of an obligation to pay money.

100 Mortgages lodged electronically [s 78A]

- (1) This section applies in relation to a mortgage under this Act or another law if—
 - (a) the mortgage is lodged under the Electronic Conveyancing National Law (Queensland), section 7; and
 - (b) the mortgagee holds a document that grants a mortgage by the mortgagor that—
 - (i) is on the same terms as the lodged mortgage; and
 - (ii) complies with section 10.
- (2) If the mortgage is required to be given, produced or used for any purpose, the document mentioned in subsection (1)(b) may be—
 - (a) given, produced or used for the purpose; and
 - (b) relied on as evidence of the mortgage.
- (3) Subsection (3) applies regardless of whether the document mentioned in subsection (1)(b)—
 - (a) was signed by or for the mortgagor or mortgagee in the presence of a witness; or
 - (b) was electronically signed by or for the mortgagor or mortgagee.
- (4) In this section—
electronically sign, a document, see section 46.

Division 3 Powers and rights of mortgagees

101 Implied powers of mortgagee [s 83; QUT, rec 94]

- (1) A mortgagee under a mortgage over land has the following powers—
 - (a) a power to sell, or concur with another seller in selling, the land on terms the mortgagee considers appropriate;

- (b) a power to insure the land against loss or damage;
 - (c) a power to appoint a receiver of the land;
 - (d) a power, if the mortgagee is in possession, to cut and sell timber on the land;
 - (e) a power to grant an easement, right or privilege in relation to the land;
 - (f) a power to do whatever is necessary or convenient for the exercise of a power under paragraphs (a) to (e).
- (2) A power under subsection (1) takes effect as a term of the mortgage.
 - (3) This section applies subject to any agreement to the contrary.
 - (4) To remove any doubt, it is declared that the power to sell land under subsection (1)(a) includes the power to sell a part of, or fixture on, the land.

102 Restriction on exercise of power of sale [s 84; QUT, rec 95]

- (1) A mortgagee under a mortgage over property must not exercise a power to sell the property unless and until—
 - (a) a default has happened under the mortgage; and
 - (b) the mortgagee has given the mortgagor a notice that—
 - (i) states the nature of the default; and
 - (ii) requires the default to be remedied within 30 days after the notice is given to the mortgagor; and
 - (c) the default has not been remedied within the period mentioned in paragraph (b)(ii).
- (2) A notice under subsection (1)(b) may be in the approved form.
- (3) This section applies despite any agreement to the contrary.
- (4) This section does not apply to the exercise by a mortgagee of a power of sale given under the *Land Act 1994*.

103 Power of sale if disclaimer of onerous property [s 84A; QUT, rec 95]

- (1) This section applies if—
 - (a) a trustee in bankruptcy disclaims under the *Bankruptcy Act 1966* (Cwlth), section 133(1) freehold land that is subject to a registered mortgage; and
 - (b) notice of the disclaimer is given under the *Bankruptcy Act 1966* (Cwlth), section 133(3).
- (2) Also, this section applies if—
 - (a) a liquidator disclaims under the Corporations Act, section 568(1) freehold land that is subject to a registered mortgage; and
 - (b) notice of the disclaimer is given to each person who appears to the liquidator to have, or to claim to have, an interest in the property under the Corporations Act, section 568A; and
 - (c) the disclaimer takes effect under the Corporations Act, section 568C.
- (3) Despite the disclaimer, the mortgagee under the registered mortgage may exercise a power to sell the land if—
 - (a) the mortgagee has given a notice in the approved form to each person who appears to the mortgagee to be an interested person for the land stating—
 - (i) the property has been disclaimed by a trustee in bankruptcy under the *Bankruptcy Act 1966* (Cwlth) or by a liquidator under the Corporations Act; and
 - (ii) the mortgagee intends to exercise a power of sale in relation to the land on a day at least 30 days after the day the notice is given; and
 - (b) after the end of the period mentioned in paragraph (a)(ii)—
 - (i) any application under the *Bankruptcy Act 1966* (Cwlth), section 133(9) or the Corporations Act,

section 568E or 568F in relation to the land has been finally dealt with or withdrawn; and

- (ii) no order, under the *Bankruptcy Act 1966* (Cwlth), section 133(9) or the Corporations Act, section 568F, vesting the land in another person, has been made.
- (4) The mortgagee may exercise a power to sell the land under subsection (3) even if the mortgagee has not complied with section 102.
- (5) In this section—
interested person, for land, means—
 - (a) the registrar of titles; or
 - (b) a person who has an interest in the land.

104 Duty to sell at market value [s 85; QUT, rec 96]

- (1) This section applies if a mortgagee exercises a power of sale given under an instrument of mortgage, or this Act or another Act, in relation to property.
- (2) The mortgagee must take reasonable care to ensure the property is sold at the market value of the property.
- (3) Also, if the mortgage is a prescribed mortgage, the mortgagee must, unless the mortgagee has a reasonable excuse—
 - (a) adequately advertise the sale; and
 - (b) obtain reliable evidence of the property's value; and
 - (c) maintain the property, including, for example, by undertaking reasonable repairs; and
 - (d) sell the property by auction, unless it is appropriate to sell it in another way; and
 - (e) do anything else prescribed by regulation.

Maximum penalty—

- (a) if the contravention relates only to paragraph (e)—20 penalty units; or

[s 105]

(b) otherwise—200 penalty units.

- (4) Within 28 days after the sale of the property, the mortgagee must give the mortgagor a notice in the approved form about the sale, unless the mortgagee has a reasonable excuse.

Maximum penalty—2 penalty units.

- (5) This section applies despite any agreement to the contrary.
- (6) This section does not limit or otherwise affect a law relating to the duty of a mortgagee to account to a mortgagor.
- (7) Sections 101(1)(a), 107(4) or 110(2) do not limit or otherwise affect a duty imposed on a mortgagee under this section.
- (8) In this section—

mortgagee includes a person exercising a power of sale under a mortgage, including, for example, a receiver.

prescribed mortgage means a mortgage of a type prescribed by regulation.

105 Protection of buyer [s 87; NZ, s 184; QUT, rec 98]

- (1) This section applies if a mortgagee exercises a power of sale given under an instrument of mortgage, or this Act or another Act, in relation to property.
- (2) The buyer—
- (a) is not answerable for the loss, misapplication, or non-application of the purchase money paid for the property; and
- (b) need not inquire whether the power of sale was properly exercised, including, for example, whether notice of the sale was given, or leave of the court, if required, was obtained.
- (3) A person who incurs loss or damage because of an unauthorised or improper exercise of the mortgagee's power of sale may claim compensation for the loss or damage from the mortgagee.
- (4) In this section—

mortgagee includes a person exercising a power of sale under a mortgage, including, for example, a receiver.

106 Application of proceeds of sale [s 88; QUT, rec 99]

- (1) This section applies if a mortgagee exercises a power of sale given under an instrument of mortgage, or this Act or another Act, in relation to property.
- (2) The proceeds of sale must be held by the mortgagee in trust to be applied in payment of the following amounts in the following order—
 - (a) reasonable expenses incurred in selling the property;
 - (b) the principal amount, interest and other amounts owing under the mortgage;
 - (c) amounts owing under other mortgages over the property;
 - (d) the balance to the owner of the property.
- (3) However, if the property is disclaimed property mentioned in section 103, the mortgagee must pay into court the balance mentioned in subsection (2)(d).
- (4) An amount paid into court under subsection (3) may be dealt with under an order of the court.

107 Other matters relating to power of sale [s 89; QUT, rec 100]

- (1) This section applies to a power of sale given under this Act.
- (2) The power of sale may be exercised by a person entitled to receive and give a discharge for the mortgage.
- (3) The power of sale does not affect the right of foreclosure.
- (4) The person exercising the power of sale is not answerable for any involuntary loss relating to the exercise of the power.

[s 108]

108 Receipt of mortgagee sufficient discharge [s 90; QUT, rec 101]

- (1) The receipt in writing of a mortgagee is sufficient discharge for—
 - (a) any money arising from a sale under the power of sale given by this Act; or
 - (b) any money or securities comprised in, or arising under, the mortgagee's mortgage.
- (2) A person paying or transferring money or securities mentioned in subsection (1) is not required to—
 - (a) ask whether any money remains due under the mortgage; or
 - (b) ensure the money or securities are properly applied.
- (3) Money received by a mortgagee under the mortgagee's mortgage or from the proceeds of securities comprised in the mortgagee's mortgage must be applied as if the money were money received by the mortgagee arising from a sale under the power of sale given by this Act.
- (4) However, for subsection (3), the costs, charges, and expenses payable include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of the costs, charges, and expenses incident to sale.

109 Insurance of mortgaged property [s 91; QUT, rec 102]

- (1) This section applies in relation to the insurance against loss or damage of mortgaged property.
- (2) The mortgagee may not insure the property for an amount of more than—
 - (a) if the mortgage states an amount for which the property may be insured—the amount stated; or
 - (b) otherwise—the lesser of the following amounts—

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- (i) the full insurable value of the buildings and improvements on the property;
 - (ii) the amount owing to the mortgagee under the mortgage.
 - (3) Despite section 101(1)(b), the mortgagee may not insure the property if—
 - (a) the mortgage states that no insurance is required; or
 - (b) the mortgagor insures the property as required under the mortgage; or
 - (c) the mortgagor insures the property with the consent of the mortgagee.
 - (4) The mortgagee may require that money received under an insurance of the mortgaged property be applied toward reinstatement of the property only if—
 - (a) the mortgage expressly states the money may be applied toward reinstatement of the land; or
 - (b) the insurance was effected by the mortgagor to comply with a requirement under the mortgage to insure the property for the reinstatement value; or
 - (c) the insurance was effected by the mortgagor to insure the property for the reinstatement value with the consent of the mortgagee.
 - (5) A mortgagee may not require a mortgagor to insure mortgaged property for the reinstatement value of the property if—
 - (a) it is not possible to effect the reinstatement of the property; or
 - (b) it is not lawful to use the mortgaged property in the way in which the property was used before the reinstatement of the property.
 - (6) The mortgagee may require that money received under an insurance of the mortgaged property be applied toward the discharge of the mortgage money only if—

[s 110]

- (a) the insurance was effected by the mortgagee; and
- (b) the mortgage expressly states the money may be applied toward the discharge of the mortgage money.
- (7) This section applies despite any agreement to the contrary.
- (8) In this section—
reinstatement includes replacement.

110 Appointment of receiver [s 92; QUT, rec 103]

- (1) This section applies if a mortgagee under a mortgage over property is entitled to take or enter into possession of the property.
- (2) The mortgagee may appoint an appropriately qualified person as receiver of the property.
- (3) The appointment must be in the approved form.
- (4) The receiver is the agent of the mortgagor.
- (5) The receiver may take or enter into possession of the property.
- (6) As soon as practicable after taking or entering into possession of the property, the receiver must give a receipt for the property to the person from whom the property was taken or who held possession of the property.
- (7) The receiver may take or enter into possession of the property despite a lien or other security over the property claimed by another person.
- (8) However, the taking or entry into possession does not affect the other person's claim to the lien or other security against a person other than the receiver.
- (9) The receiver may deal with the property in the same way as the mortgagor may have lawfully dealt with the property, including, for example, claiming or receiving an amount owing in relation to the property.
- (10) The receiver may insure the property to the extent the mortgagee is authorised under section 109 to insure the property.

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- (11) The receiver is entitled to remuneration—
- (a) if an amount of remuneration, of not more than 5% of the gross amount of all money received by the receiver, is stated in the appointment—in the amount stated in the appointment; or
 - (b) if no amount of remuneration is stated in the appointment—in the amount of 5% of the gross amount of all money received by the receiver; or
 - (c) if the receiver makes an application to the court to decide the amount of remuneration—in the amount decided by the court.
- (12) The receiver must apply money received by the receiver in payment of the following amounts in the following order—
- (a) rents, taxes, rates, and outgoings relating to the property;
 - (b) amounts owing on other mortgages over the property having priority to the mortgage;
 - (c) the receiver's remuneration under subsection (11);
 - (d) premiums for insurance of the property under section 109, if any;
 - (e) repairs of the property authorised by the mortgagee, if any;
 - (f) interest on the principal amount owing under the mortgage;
 - (g) the principal amount owing under the mortgage, if authorised by the mortgagee;
 - (h) amounts owing under other mortgages over the property;
 - (i) the balance to the owner of the property.
- (13) This section applies subject to the terms of the mortgage.
- (14) In this section—

[s 111]

remuneration includes costs, charges, expenses and commission.

111 Judgment debt does not permit seizure [s 97; QUT, rec 108]

- (1) This section applies if a court gives judgment to a claimant for the payment of a debt secured by a mortgage over property.
- (2) The interest of the mortgagor in the property, or any other property over which the mortgagor has granted a mortgage to the claimant, can not be taken in execution of the judgment.
- (3) This section applies despite any agreement to the contrary.
- (4) This section does not limit or otherwise affect a power of a mortgagee under section 101(1)(a).
- (5) In this section—
debt includes a liquidated demand.

112 Subsequent mortgage does not affect first mortgage [s 80(4), (6); QUT, rec 91]

- (1) A mortgagor under a mortgage over property (the *first mortgage*) may grant a second or subsequent mortgage over the property.
- (2) The granting of the second or subsequent mortgage does not—
 - (a) constitute a breach of a term of, or proviso for re-entry contained in, the first mortgage or second or subsequent mortgage; or
 - (b) occasion any forfeiture or penalty; or
 - (c) make payable or accelerate the time for payment of an amount that, if the second or subsequent mortgage had not been granted, would not have been payable or would not have been payable at that time.
- (3) This section applies despite any agreement to the contrary.

113 When further advance ranks in priority to subsequent mortgage [s 82; QUT, rec 93]

- (1) A mortgagee (the *prior mortgagee*) may make a further advance to rank in priority to a subsequent mortgage granted by the mortgagor to another person (the *subsequent mortgagee*) only if—
 - (a) the subsequent mortgagee agrees to the further advance; or
 - (b) the prior mortgagee has no notice, when the further advance is made, of the mortgage to the subsequent mortgagee; or
 - (c) the prior mortgagee is required under the terms of the mortgage, immediately before the creation of the subsequent mortgage, to make the further advance.
- (2) This section does not affect the right of the prior mortgagee to rank in priority to a subsequent mortgagee in relation to expenses reasonably incurred in preserving the mortgaged property.

Division 4 Obligations and rights of mortgagors

114 Contracting out prohibited

This division, other than section 115, applies despite any agreement to the contrary.

115 Implied obligations of mortgagor [s 78; QUT, rec 89]

- (1) The mortgagor under a mortgage over property has the following obligations—
 - (a) to pay the principal amount and interest secured by the mortgage according to the terms of the mortgage without deduction;
 - (b) if the property is land—

[s 116]

- (i) to keep buildings and other improvements on the land in as good and substantial repair as the buildings and other improvements were in when the mortgage was entered into;
 - (ii) to permit the mortgagee, when reasonably convenient, to enter the land to view and inspect the state of repair of buildings and other improvements on the land.
- (2) An obligation under subsection (1) takes effect as a term of the mortgage.
- (3) If the mortgage is by deed, an obligation under subsection (1) takes effect as a covenant by the mortgagor.
- (4) This section applies subject to any agreement to the contrary.

116 Right to obtain copy of documents in possession of mortgagee [s 80(1)-(2); NSW, s 96; QUT, rec 91]

- (1) A mortgagor under a mortgage over land may ask the mortgagee to give the mortgagor a copy of, or allow the mortgagor to inspect at a reasonable time, each document in the possession of the mortgagee that relates to the land.
- (2) The mortgagee must comply with the request if the mortgagor pays the mortgagee's reasonable costs and expenses of complying with the request.

117 Right to relief against payment of accelerated sum [s 95; QUT, rec 106]

- (1) This section applies in relation to a mortgage over land if—
 - (a) the mortgagor defaults under the mortgage—
 - (i) in payment of an instalment of the principal amount or interest secured by the mortgage; or
 - (ii) in the performance of an obligation or covenant under the mortgage; and

-
- (b) under the terms of the mortgage the whole or part of the principal amount or interest secured by the mortgage other than the instalment mentioned in subsection (1)(a)(i) (the *accelerated sum*) is, or may become, payable because of—
 - (i) the default; or
 - (ii) the exercise on the default of an option or election under the mortgage.
 - (2) The mortgagor can not be required to pay the accelerated sum if the mortgagor, before the mortgagee exercises a power of sale or starts proceedings to enforce the mortgagee's rights—
 - (a) for a default mentioned in subsection (1)(a)(i)—pays to the mortgagee—
 - (i) the amount of the instalment or interest; and
 - (ii) the reasonable expenses, if any, incurred by the mortgagee because of the default; and
 - (b) for a default mentioned in subsection (1)(a)(ii)—performs the obligation or covenant.
 - (3) The mortgagor may, in a proceeding brought by the mortgagee to enforce the mortgagee's rights or in a proceeding brought by the mortgagor, apply to the court for an order for relief against payment of the accelerated sum (a *relief order*).
 - (4) The court may make the relief order if the court is satisfied that making the order is appropriate in the circumstances.
 - (5) In considering whether or not to make the relief order, the court must have regard to—
 - (a) the conduct of the parties to the proceeding; and
 - (b) anything else the court considers relevant.
 - (6) The court may also make any other order it considers appropriate, including, for example—
 - (a) an order for the stay of proceedings brought by the mortgagee; or
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[s 118]

- (b) an order removing a stay of proceedings if the mortgagor fails to comply with an undertaking given to the court.

118 Right to relief against payment of overdue principal amount if payment of interest accepted [s 96; NZ, s 118; QUT, rec 107]

- (1) This section applies in relation to a mortgage over land if—
 - (a) the term of the mortgage has expired; and
 - (b) the principal amount secured by the mortgage has not been repaid; and
 - (c) the mortgagee has, after the end of the term, accepted interest on the principal amount, other than by entering into possession of the property or appointing a receiver, for at least 3 months after the end of the term; and
 - (d) the mortgagor has performed all obligations or covenants under the mortgage other than the obligation or covenant to repay the principal amount on the due date.
- (2) The mortgagee must not call up as payable the principal amount unless—
 - (a) the mortgagee has given the mortgagor notice of the mortgagee's intention to call up the amount at the end of the period stated in the notice (the *notice period*); and
 - (b) the notice period has expired.
- (3) The notice period must be at least 3 months starting on the day the mortgagee gives the notice to the mortgagor.
- (4) In this section—

term, of a mortgage, includes a period for which the original term has been renewed or extended.

119 Right to require transfer of mortgage instead of discharge [s 94; QUT, rec 105]

- (1) This section applies if a mortgagor is entitled to discharge a mortgage over property.
- (2) The mortgagor may require the mortgagee (the *first mortgagee*), instead of discharging the mortgage, to transfer the mortgage to another person as directed by the mortgagor.
- (3) Also, if the property is subject to another mortgage, the mortgagee under that mortgage (the *subsequent mortgagee*), may require the first mortgagee, instead of discharging the mortgage, to transfer the mortgage to another person as directed by the subsequent mortgagee.
- (4) The transfer is on the terms on which the first mortgagee would be required to discharge the mortgage.
- (5) However, a requirement can not be made under subsection (2) or (3) if—
 - (a) a mortgagee is in possession of the property; or
 - (b) the mortgage contains an enforceable condition in favour of a mortgagee in restraint of the trade or business of the mortgagor or any other collateral benefit or advantage in favour of a mortgagee.
- (6) If a requirement of a mortgagor under subsection (2) is inconsistent with a requirement of a subsequent mortgagee under subsection (3), the requirement of the subsequent mortgagee under subsection (3) prevails.
- (7) Also, if more than 1 requirement of a subsequent mortgagee is made under subsection (3), the requirement of the subsequent mortgagee under whichever of the subsequent mortgages is earlier prevails.

120 Abolition of consolidation of mortgages [s 98; QUT, rec 109]

A mortgagor seeking to discharge a mortgage over land (the *primary mortgage*) is entitled to the discharge without paying any money due under another mortgage made by the

[s 121]

mortgagor over property other than the land the subject of the primary mortgage.

Division 5 Proceedings

121 **Court may order sale of mortgaged property in proceeding for redemption or foreclosure [s 99; QUT, rec 110]**

- (1) The court may order the sale of mortgaged property if a person entitled to redemption of the mortgaged property brings a proceeding for either or both of the following—
 - (a) sale of the property;
 - (b) redemption of the property.
- (2) Also, the court may order the sale of mortgaged property if—
 - (a) a person brings a proceeding for any of the following in relation to the mortgaged property—
 - (i) sale;
 - (ii) redemption;
 - (iii) foreclosure;
 - (iv) the raising or payment in any way of mortgage money; and
 - (b) the mortgagee, or another person interested in the mortgage money or right of redemption, requests the sale of the property.
- (3) Subsection (2) applies even if—
 - (a) another person dissents; or
 - (b) the mortgagee, or another person interested in the mortgage money or right of redemption, does not appear in the proceeding.
- (4) In making an order under subsection (2), the court is not required to allow time for redemption or for payment of any mortgage money.

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- (5) Without limiting subsection (1) or (2), the court may also make the following orders—
- (a) an order that the mortgagee deposit in court a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the terms of sale;
 - (b) an order giving the conduct of the sale to a defendant in the proceeding;
 - (c) an order vesting the mortgaged property in a buyer;
 - (d) for an equitable mortgage—an order creating and vesting a legal interest in the mortgagee to enable the mortgagee to carry out the sale as if the mortgage were a legal mortgage.
- (6) The court may order a sale of mortgaged property under subsection (1) or (2) without previously determining the priorities of encumbrances.
- (7) In this section—
- mortgaged property* includes the interest the mortgagee would have power to transfer if the statutory power of sale were applicable.

122 Realisation of equitable mortgage of land [s 100; QUT, rec 111]

- (1) This section applies if the court makes an order for sale in relation to an equitable mortgage of land.
- (2) Without limiting section 121 or another power of the court, the court may make the following orders—
- (a) an order creating and vesting a legal interest in the mortgagee to enable the mortgagee to carry out the sale as if the equitable mortgage were a legal mortgage;
 - (b) an order appointing a person to conduct the sale as if the equitable mortgage were a legal mortgage;
 - (c) an order vesting the land in a buyer as if the equitable mortgage were a legal mortgage.

[s 123]

- (3) An order made by a court in relation to an equitable mortgage of land is without prejudice to any mortgage having priority to the equitable mortgage unless the mortgagee consents to the sale.

123 Facilitation of redemption in case of absent or unknown mortgagees [s 101; NSW, s 98; QUT, rec 112]

- (1) This section applies if land is subject to a mortgage and the person entitled to receive, or alleged to have received, payment of any money secured by the mortgage—
 - (a) is out of the jurisdiction; or
 - (b) can not be found or is unknown; or
 - (c) is dead and no personal representative is administering the deceased person's estate; or
 - (d) is uncertain.
- (2) The court may, on the application of the person entitled to redeem the land, order—
 - (a) the amount of the debt secured by the mortgage to be determined in the way the court considers appropriate; and
 - (b) the amount of any outstanding debt under the mortgage, if any, to be paid into court.
- (3) If an order is made under subsection (2), and the person entitled to redeem the land pays the amount of any outstanding debt under the mortgage into court, the registrar of the court must give the person a certificate stating that—
 - (a) an order has been made under subsection (2); and
 - (b) no amount remains payable under the mortgage.
- (4) The certificate operates to discharge the mortgage debt.
- (5) However, as between the mortgagor and another person entitled to the mortgage debt, any amount shown by the other person entitled to the mortgage debt to have been in fact due or payable over the amount determined by the court under

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- subsection (2), or paid into court under subsection (2)(b), continues to be a debt due under the mortgage.
- (6) If an amount is paid into court under subsection (2)(b), the court must, on the application of the person entitled to the amount, order the amount to be paid to that person.
- (7) However, subsection (6) applies only if—
- (a) an instrument releasing the mortgage, capable of registration under the *Land Title Act 1994*, section 81 is given to the person who paid the amount into court; or
 - (b) the court is satisfied the mortgage has been discharged.
- (8) The certificate mentioned in subsection (3)—
- (a) for a mortgage registered under the *Land Title Act 1994*—is capable of registration under the *Land Title Act 1994*, section 81 as an instrument releasing the mortgage; and
 - (b) for a mortgage registered under the *Land Act 1994*—is capable of registration under the *Land Act 1994*, section 342 as a release of mortgage; and
 - (c) for a mortgage under a Resource Act or another Act—has effect under the Resource Act or other Act as a document signed by the mortgagee to the effect that the debt secured by the mortgage has been paid.
- (9) For the purpose of effecting registration under subsection (8)(a), the registrar may dispense with the publication of any notice or the doing of any other act required under the *Land Title Act 1994*.
- (10) This section does not limit or otherwise affect the *Public Trustee Act 1978*, section 61.

[s 124]

Part 9 Leases [pt 8]

Division 1 Preliminary

124 Definition for part

In this part—

term, to the extent the context permits, includes agreement, condition and covenant.

Division 2 General rules

125 Lease for term of years may take effect without entry into possession [s 102; QUT, rec 113]

- (1) A lease of land for a term of years is capable of taking effect at law or in equity from the start of the term, without entry into possession of the land.
- (2) This section does not affect—
 - (a) the right of a person to recover rent or to take advantage of a term of the lease; or
 - (b) section 12(2).
- (3) In this section—

term of years includes a term for less than a year, or for 1 or more years or from year to year.

Note for consultation—

Please see clauses 224(3)(j) and 226(3)(j) below for the transitional provisions for this clause. This Bill does not include a transitional for repealed s 103 of the PLA 1974 because the section was repealed by the Statute Law (Miscellaneous Provisions) (No. 2) No. 68, 1992, not by this Bill.

126 Implied terms [s 104-109; sch 3; NZ, s 283; QUT, recs 115, 116, 117 and 119]

- (1) A lease of land includes the standard terms.
- (2) This section is subject to—
 - (a) this Act and any other Act; and
 - (b) any agreement to the contrary.
- (3) In this section—
standard terms means the terms mentioned in schedule 1.

Division 3 Transfer of reversion of lease [pt 8, div 2]

127 Effect of transfer of reversion of lease by lessor [ss 117 and 118; NZ, s 231; QUT, recs 126, 127 and 130]

- (1) This section applies in relation to a lease of land if the lessor transfers the reversion of the lease to another person (the *transferee*).
- (2) Each right conferred under the terms of the lease on the lessor—
 - (a) runs with the reversion of the lease; and
 - (b) may be exercised by the transferee, whether or not the lessee has acknowledged that person as the lessor of the land.
- (3) Each obligation imposed under the terms of the lease on the lessor—
 - (a) runs with the reversion of the lease; and
 - (b) may be enforced by the lessee against the transferee.
- (4) Also, the transferee is—
 - (a) bound by each term of the lease to the extent the lessor was bound by the term immediately before the transfer; and

- (b) entitled to the benefit of each term of the lease to the extent the lessor was entitled to the benefit of the term immediately before the transfer, whether or not the term—
 - (i) touches and concerns the land the subject of the lease; or
 - (ii) is express, implied or imposed by law.
- (5) However, subsections (2), (3) and (4) do not apply in relation to a term of the lease to the extent—
 - (a) the lease expressly provides the term is personal; or
 - (b) the lease expressly excludes the operation of subsection (2), (3) or (4) in relation to the term; or
 - (c) the lessor and the transferee expressly agree in writing that the benefit of the term remains with the lessor.
- (6) Also, the lessor remains liable for a breach of a term of the lease committed by the lessor.
- (7) If a term of the lease restricts the use of the land, the reference to the transferee in subsection (4) also includes a reference to any person who is the owner of the land to which the term relates.
- (8) This section applies despite the *Land Title Act 1994*, section 62.
- (9) In this section—

right, conferred under the terms of a lease, includes a right to—

 - (a) receive the rent payable under the lease; or
 - (b) enforce a term of the lease, whether or not the subject matter of the term was in existence when the lease was made; or
 - (c) enforce a guarantee of the performance of a term mentioned in paragraph (b); or
 - (d) give a notice under the lease; or

- (e) take advantage of a term of the lease; or
- (f) re-enter, or apply for an order for possession of, the land; or
- (g) terminate the lease.

transfer, of a reversion of a lease, includes the passing of the reversion including by transmission.

128 Payment of rent or other amount without notice of transfer of reversion [s 114; NZ, s 237; QUT, rec 123]

- (1) This section applies in relation to a lease of land if—
 - (a) the lessor transfers the reversion of the lease to another person; and
 - (b) the lessee pays rent or another amount to the lessor, without actual notice of the transfer.
- (2) The lessee is discharged from liability to pay the rent or other amount.
- (3) For subsection (1)(b), and despite any other Act, the registration of the transfer of the reversion of the lease is not of itself actual notice to the lessee of the transfer.

Division 4 Dealings with leases [pt 8, div 2]

129 Effect of requirement in lease for consent of lessor to assign lease or take other action [s 121; NZ, ss 226-228; QUT, rec 129]

- (1) This section applies if a lessee is required under a lease of land to obtain the lessor's consent to—
 - (a) assign the lease; or
 - (b) enter into a sublease; or
 - (c) part with or share possession of the leased premises; or
 - (d) change the use of the leased premises from a use that is permitted under the lease; or

- (e) create a mortgage over the lessee's interest in the land; or
 - (f) make an alteration or carry out works in relation to the leased premises; or
 - (g) act under paragraph (a), (b), (c), (d), (e) or (f) in relation to a part of the leased premises or for a period of the term of the lease.
- (2) The lessee may give the lessor a notice (the *proposal notice*) asking for consent.
- (3) The proposal notice must contain—
 - (a) any information required under the lease; and
 - (b) any other information about the lessee's proposal that the lessor may reasonably require to enable the lessor to decide whether to give consent.
- (4) The lessor must not unreasonably withhold consent.
- (5) If the lessor considers the information given in the proposal notice is not sufficient to enable the lessor to make a decision, the lessor may give the lessee a notice requiring further information about the lessee's proposal.
- (6) The lessor must give the lessee a notice (the *decision notice*) stating the lessor's decision—
 - (a) within 30 business days after receiving the proposal notice; or
 - (b) if the lessor requires further information under subsection (5)—within 1 month after receiving the further information.
- (7) The decision notice must also state—
 - (a) if the lessor gives consent—the conditions, if any, attached to the consent and the reasons for the conditions; and
 - (b) if the lessor withholds consent—the reasons for the decision.

- (8) The lessor and lessee may, within the period mentioned in subsection (6), agree to extend the period for the giving of the decision notice.
- (9) The lessee may apply to the court to make a decision about the lessee's proposal if—
 - (a) the lessee believes the lessor has unreasonably withheld consent; or
 - (b) the lessee believes a condition attached to the lessor's consent is unreasonable, unnecessary or onerous; or
 - (c) the lessor fails to give the lessee a decision notice.
- (10) The court may hear and decide the application and make the orders it considers appropriate.
- (11) If the lessee makes an alteration or carries out work in relation to the leased premises without the consent of the lessor, the lessee must restore the premises to the condition the premises were in immediately before the alteration or the carrying out of the work.
- (12) This section applies despite any agreement to the contrary.

130 Effect of assignment of lease by lessee to assignee [new; Landlord and Tenant (Covenants) Act 1995 (UK), s 3; QUT, rec 130]

- (1) This section applies in relation to a lease of land if the lessee assigns the lease to another person (the *assignee*).
- (2) The assignee is—
 - (a) bound by each term of the lease to the extent the lessee was bound by the term immediately before the assignment; and
 - (b) entitled to the benefit of each term of the lease to the extent the lessee was entitled to the benefit of the term immediately before the assignment, whether or not the term—
 - (i) touches and concerns the land the subject of the lease; or

[s 131]

- (ii) is express, implied or imposed by law.
- (3) However, subsection (2) does not apply in relation to a term of the lease to the extent—
 - (a) the lease expressly provides the term is personal; or
 - (b) the lease expressly excludes the operation of subsection (2) in relation to the term; or
 - (c) the lessee and the assignee expressly agree in writing that the benefit of the term remains with the lessee.
- (4) If a term of the lease restricts the use of the land, the reference to the assignee in subsection (2) also includes a reference to any person who is the occupier of the land to which the term relates.
- (5) This section applies despite the *Land Title Act 1994*, section 62.

131 Effect of assignment of lease by transferee to subsequent transferee [new; Landlord and Tenant (Covenants) Act 1995 (UK), s 5; QUT, rec 130]

- (1) This section applies in relation to a lease of land if—
 - (a) the lessee assigns the lease to another person (the *assignee*); and
 - (b) after the assignment of the lease, the assignee assigns the lease to another person (the *subsequent assignee*).
- (2) The lessee, and any guarantor of the lessee, is released from liability to the lessor for a breach of the lease by the subsequent assignee.
- (3) Subsection (2) applies despite any agreement to the contrary.

132 Effect of surrender or merger of lease [s 115; NZ, s 230; QUT, rec 124]

- (1) This section applies in relation to a lease of land if—
 - (a) the lease is surrendered; or

- (b) the lease is merged in another interest in the land, including, for example, a future interest.
- (2) The person entitled, on the surrender or merger, to the reversion of the lease has the same rights and obligations in relation to the lease as the person who, but for the surrender or merger, would have been entitled to the reversion.

133 Effect of reconfiguration of land [s 116; NZ, s 235; QUT, rec 125]

- (1) This section applies in relation to a lease of land if the land is reconfigured and 2 or more persons become entitled to the income of the land.
- (2) The rights and obligations under the lease—
 - (a) must be apportioned between the persons entitled to the land under the reconfiguration; and
 - (b) to the extent required by the apportionment under paragraph (a), are attached to the land under the reconfiguration and bind successors in title.
- (3) In this section—
reconfigure, land, includes subdivide, amalgamate, or reconfigure the boundaries of, the land.

134 Head lease may be surrendered and new head lease granted without affecting other rights and obligations [s 113; QUT rec 122]

If a head lease is surrendered in order for a new head lease to be granted during the term of a sublease—

- (a) the new head lease takes effect as if any sublease was surrendered; and
- (b) the lessor under the new head lease, any parties to any sublease and any guarantor, have the same rights and obligations against each other as if the surrendered head lease had not been surrendered.

[s 135]

135 Involuntary transmission not breach of lease [s 122; QUT, rec 131]

- (1) This section applies if a term of a lease of land—
 - (a) prohibits the lessee from transferring the lease; or
 - (b) grants the lessee a right to transfer the lease with the consent of the lessor.
- (2) A transmission of the lease by the lessee does not cause a breach of the term of the lease.
- (3) This section applies despite any agreement to the contrary.

Division 5 Relief [pt 8, div 3]

Subdivision 1 Preliminary

136 Definition for division [s 123; QUT, rec 132]

In this division—

lease includes an agreement for a lease.

137 Application of division [s 124(6)(a); QUT, rec 133]

- (1) This division applies to a lease of land other than any of the following leases—
 - (a) a housing lease;
 - (b) a residential tenancy;
 - (c) a resources lease;
 - (d) a State land lease.
- (2) In relation to a lease of land of not more than 1 year, this division applies only in relation to—
 - (a) an option to renew the lease; or
 - (b) an option to purchase the reversion of the lease.

(3) In this section—

housing lease—

- (a) means a lease of housing under the *Housing Act 2003*; and
- (b) does not include a sublease of a lease mentioned in paragraph (a).

residential tenancy means a residential tenancy under the *Residential Tenancies and Rooming Accommodation Act 2008*.

resources lease—

- (a) means any of the following leases—
 - (i) a mining lease under the *Mineral Resources Act 1989*;
 - (ii) a petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004*;
 - (iii) a lease under the *Petroleum Act 1923*;
 - (iv) a geothermal production lease under the *Geothermal Energy Act 2010*;
 - (v) a GHG lease under the *Greenhouse Gas Storage Act 2009*; and
- (b) does not include a sublease of a lease mentioned in paragraph (a).

State land lease—

- (a) means a lease of land from the State under the *Land Act 1994*; and
- (b) does not include a sublease of a lease mentioned in paragraph (a).

138 Contracting out prohibited [s 124(9); QUT, rec 133]

This division applies despite any agreement to the contrary.

Subdivision 2 Relief against forfeiture for breach of term of lease

139 Definitions for subdivision [s 124; QUT, rec 132]

In this subdivision—

breach, of a term of a lease, includes the happening of an event of default that under the terms of the lease gives the lessor a right to forfeit the lease.

designated person, for a lease of land, means—

- (a) a mortgagee or receiver of a lessee's interest in the land; or
- (b) a sublessee under the lease; or
- (c) a mortgagee or receiver of a sublessee's interest in the land.

notice to remedy breach see section 140(1)(a).

reasonable compensation, for a breach of a term of a lease, means an amount in payment of reasonable costs and expenses reasonably incurred by the lessor in—

- (a) preparing and giving a notice to remedy breach in relation to the breach; or
- (b) obtaining legal or other professional advice about the nature and extent of the breach; or
- (c) doing any other reasonable thing in relation to the breach, including, for example, mitigating the loss or damage arising from the breach.

140 Lessor must give lessee notice to remedy breach [s 124; NZ, ss 245, 247; QUT, rec 134]

- (1) A lessor may exercise a right to re-enter land under a term of the lease for breach of a term of the lease only if—
 - (a) the lessor has given the lessee a notice in the approved form (a ***notice to remedy breach***) stating—

- (i) the nature and extent of the breach; and
 - (ii) if the breach is capable of being remedied by the lessee—
 - (A) that the lessee is required to remedy the breach; and
 - (B) a reasonable period within which the lessee is required to remedy the breach; and
 - (iii) if the lessor claims an amount of reasonable compensation for the breach—
 - (A) the amount claimed and how the amount is calculated; and
 - (B) a reasonable period within which the lessee is required to pay the amount; and
 - (iv) that the lessor intends to terminate the lease if the breach is not remedied or the amount is not paid, within the reasonable period; and
 - (b) at the end of the reasonable period stated in the notice, the breach has not been remedied or the amount of reasonable compensation paid.
- (2) For subsection (1)(a)(ii)(B) and (iii)(B), a period is reasonable only if it is reasonable having regard to all of the circumstances, including, for example—
- (a) the nature and the extent of the breach; and
 - (b) for subsection (1)(a)(ii)(B)—the nature of the thing, if any, the lessee must do or stop from doing to remedy the breach.

141 Lessor must give copy of notice to remedy breach to designated persons [s 124; NZ, s 249; QUT, rec 134]

- (1) If a lessor gives a notice to remedy breach to a lessee, the lessor must also give a copy of the notice to each designated person for the lease whose name and address is known to the lessor.

[s 142]

- (2) To remove any doubt, it is declared that the lessor's failure to comply with subsection (1) does not prevent the lessor from exercising a right to terminate the lease, re-enter land under a term of the lease, or make an application to the court for any form of relief in relation to the lease.

142 Acceptance of rent paid by lessee in possession not waiver of lessor's rights [s 124; NZ, s 250; QUT, rec 134]

- (1) This section applies if a lessor accepts rent, or another amount, after the lessor gives the lessee a notice to remedy breach.
- (2) The lessor's acceptance of the rent, or other amount, does not operate as a waiver of the lessor's right to forfeit the lease because of the breach.
- (3) Subsection (2) applies subject to any agreement to the contrary.

143 Notice to remedy breach not required if lessee has given up possession [s 124; NZ, ss 245, 247; QUT, rec 134]

- (1) Despite section 140, a lessor of land may exercise a right to re-enter the land under a term of the lease for breach of a term of the lease if the lessor reasonably believes the lessee has given up possession of the land.
- (2) A lessor exercising a right of re-entry under subsection (1) is not required to—
 - (a) give the lessee a notice to remedy breach; or
 - (b) apply to the court for recovery of possession of the land.
- (3) As soon as practicable after exercising a right of re-entry under subsection (1), the lessor must give each designated person for the lease whose name and address is known to the lessor a notice stating the lessor has exercised the right of re-entry.

144 How lessor may exercise right of re-entry [s 124; NZ, s 244 and 245(2); QUT, rec 134]

- (1) This section applies if a lessee of land fails to remedy a breach or pay an amount of reasonable compensation required under a notice to remedy breach given to the lessee.
- (2) The lessor may exercise a right to re-enter the land under a term of the lease for breach of a term of the lease by—
 - (a) peaceably re-entering the land; or
 - (b) if the lessor can not peaceably re-enter the land—making a written demand for possession of the land; or
 - (c) if the lessee refuses to give up possession of the land after a written demand under paragraph (b)—applying to the court for recovery of possession of the land.

145 Powers of court in making order for possession [s 124; NZ, s 251; QUT, rec 134]

- (1) This section applies if a lessor of land applies to the court for recovery of possession of the land in exercise of a right to forfeit the lease because of a breach by the lessee of a term of the lease.
- (2) The court may make any order that the nature of the case requires, including, for example, any of the following—
 - (a) an order for possession of the land;
 - (b) an order forfeiting the lease;
 - (c) an order that the lessee pay to the lessor an amount owed under the lease;
 - (d) an order that the lessee pay to the lessor an amount of reasonable compensation for the breach;
 - (e) an order imposing a condition on the lessee or lessor.

[s 146]

146 Lessor's claim for damages not affected [s 124; NZ, s 252; QUT, rec 134]

This subdivision does not limit or otherwise affect a claim by a lessor for damages for a breach of a term of the lease or another obligation owed by the lessee to the lessor.

147 Proceedings for relief against forfeiture [s 124; NZ, ss 253, 254; QUT, recs 134 and 135]

- (1) The lessee or a designated person for a lease may apply to the court for relief against the forfeiture, or proposed forfeiture, of the lease because of a breach by the lessee of a term of the lease.
- (2) The application may be—
 - (a) an originating process; or
 - (b) made in a proceeding brought by the lessor for recovery of possession of the land.
- (3) An application mentioned in subsection (2)(b) must be made—
 - (a) if the lessor has re-entered the land under section 143 or 144(2)(a)—within 1 month after the re-entry; or
 - (b) if the lessor has applied to the court for recovery of possession of the land—before an order for possession of the land is made by the court.
- (4) The court may extend the period in which the lessee or designated person may bring an application under subsection (3)(a) if the court considers it appropriate.

148 Application for relief against forfeiture not admission [s 124; NZ, s 255; QUT, rec 134]

- (1) An application under section 147 is not an admission by the lessee or designated person that—
 - (a) the lessee has breached a term of the lease; or
 - (b) the lessor has a right to forfeit the lease; or

- (c) a notice to remedy breach has been given; or
 - (d) a period for remedying the breach has ended.
- (2) A court may order relief against the forfeiture, or proposed forfeiture, of a lease without deciding a matter mentioned in subsection (1).

149 Powers of court in making order for relief against forfeiture [s 124; NZ, s 258-260; QUT, recs 134-135]

- (1) This section applies if the lessee or a designated person for a lease applies under section 147 to the court.
- (2) The court may make any order that the nature of the case requires, including, for example, any of the following—
 - (a) an order for relief against the forfeiture, or proposed forfeiture, of the lease;
 - (b) an order that the lessee pay to the lessor an amount owed under the lease;
 - (c) an order that the lessee pay to the lessor an amount of reasonable compensation for the breach;
 - (d) if the applicant is a sublessee—an order that the lessor enter into a lease of the land, or a part of the land, with the sublessee;
 - (e) an order imposing a condition on the lessee, lessor or designated person.
- (3) The court may make an order that the lessor enter into a lease of the land, or a part of the land, with a sublessee only if the lease—
 - (a) starts on a day not earlier than—
 - (i) the day the lessor re-enters the land under section 143 or 144(2)(a); or
 - (ii) the day the lessor recovers possession of the land after making a written demand for possession of the land or under an order of the court; and

[s 150]

- (b) ends on a day not later than the day the sublease would have ended but for the forfeiture of the lease.
- (4) In making an order under subsection (3), the court must have regard to the terms of the sublease.

Subdivision 3 Relief against refusal to renew, or extend term of, or sell reversion of, lease

150 Definitions for subdivision [QUT, rec 132]

In this subdivision—

breach notice see section 151.

designated person, for a lease of land, means—

- (a) a mortgagee or receiver of a lessee's interest in the land; or
- (b) a guarantor under the lease.

151 When lessor may refuse to renew, or extend term of, or sell reversion of, lease [s 128; NZ, ss 261, 263; QUT, rec 138]

- (1) This section applies to a lease of land if—
 - (a) the lessor has agreed in writing with the lessee that at or before the end of the term of the lease, the lessee has an option—
 - (i) to renew, or extend the term of, the lease in relation to all or part of the land; or
 - (ii) to purchase the reversion of the lease; and
 - (b) the exercise of the option is conditional on 1 or more of the following matters—
 - (i) the fulfilment by the lessee of a condition precedent to the exercise of the option;

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- (ii) the performance by the lessee of the terms of the lease;
 - (iii) the lessee giving a notice (an *option notice*), within a stated period or in a stated way, of the lessee's intention to exercise the option; and
 - (c) the matter or matters mentioned in paragraph (b) have not been satisfied.
- (2) The lessor may refuse to renew, or extend the term of, or sell the reversion of, the lease, only if—
- (a) the lessor gives the lessee a notice in the approved form (a *breach notice*) stating the following matters—
 - (i) that the lessor intends to refuse to renew, or extend the term of, or sell the reversion of, the lease, because the lessee has—
 - (A) breached a condition precedent to the exercise of the option; or
 - (B) breached the terms of the lease; or
 - (C) given an option notice to the lessor within the stated period but not in the stated way;
 - (ii) the details of the matter mentioned in subparagraph (i);
 - (iii) that the lessee or a designated person for the lease may apply to the court for relief against the refusal;
 - (iv) that an application to the court for relief against the refusal must be made within 1 month after the lessee receives the breach notice;
 - (v) that the lessee should seek independent legal advice about the refusal and its implications; and
 - (b) the lessee or a designated person for the lease does not apply to the court under section 153 within 1 month after the lessor gives the lessee the breach notice.
- (3) The lessor must give the lessee the breach notice—

[s 152]

- (a) within 14 days after the giving of the option notice, if the breach relied on in the breach notice happened on or before the giving of the option notice; or
- (b) within 14 days after the breach relied on in the breach notice, if the breach happened after the giving of the option notice.

152 Lessor must give copy of notice to designated persons [new; QUT, rec 138]

- (1) This section applies if a lessor gives a lessee a breach notice.
- (2) The lessor must also give a copy of the breach notice to each designated person for the lease whose name and address is known to the lessor.
- (3) To remove any doubt, it is declared that the lessor's failure to comply with subsection (2) does not limit or otherwise affect any right of the lessor to refuse to renew, or extend the term of, or sell the reversion of, the lease.

153 Proceedings for relief against refusal [new; NZ, s 262; QUT, rec 138]

- (1) The lessee or a designated person for a lease may apply to the court for relief against the refusal to renew, or extend the term of, or sell the reversion of, the lease, because the lessee has—
 - (a) breached a condition precedent to the exercise of the option; or
 - (b) breached the terms of the lease; or
 - (c) given an option notice to the lessor within the stated period but not in the stated way.
- (2) The application may be—
 - (a) an originating process; or
 - (b) made in a proceeding brought by the lessor for recovery of possession of the land.

- (3) If the lessor gives the lessee a breach notice relying on a matter mentioned in subsection (1), the lessee must make the application under subsection (1) within 1 month after the giving of the breach notice.
- (4) If the lessor gives the designated person a breach notice relying on a matter mentioned in subsection (1), the designated person must make the application under subsection (1) within 1 month after the giving of the breach notice.

154 Powers of court in making order for relief against refusal [new; NZ, s 264; QUT, rec 138]

- (1) This section applies if the lessee or a designated person for a lease applies to the court under section 153.
- (2) In deciding whether to give the relief, the court may consider anything the court considers relevant, including, for example—
 - (a) the nature of the breach relied on in the breach notice; and
 - (b) the extent to which the lessor has been prejudiced by the breach relied on in the breach notice; and
 - (c) the conduct of the lessor and the lessee, whether before or after the giving of the breach notice; and
 - (d) the rights relating to the lease of persons other than the lessor and the lessee, including, for example, a designated person for the lease.
- (3) The court may make any order the nature of the case requires, including, for example, any of the following—
 - (a) an order that the lessor renew the lease;
 - (b) an order that the lessor sell the reversion of the lease;
 - (c) an order imposing a condition on the lessor, lessee or designated person for the lease.
- (4) If the lease ends before the court makes an order under this section, the lease is taken to—

[s 155]

- (a) continue on the same terms that were in effect immediately before the application was made; and
- (b) end only when the court makes an order under this section.

Division 6 Apportionment of rent [pt 17]

155 Apportionment in respect of time [ss 231-233; NZ, s 45; QUT, rec 197]

- (1) This section applies to a payment of rent under a lease in relation to a fixed or ascertainable period, whether or not the payment is reserved or made payable under a document.
- (2) The payment—
 - (a) is to be regarded as accruing from day to day; and
 - (b) is apportionable in respect of time in relation to both the liability to make, and the right to receive, the payment.
- (3) This section is subject to any agreement to the contrary.

156 Payment and recovery of apportioned part of rent [ss 231-233; NZ, s 46; QUT, rec 197]

- (1) An apportioned part of rent is payable and recoverable—
 - (a) for a continuing right to payment—only when the entire payment becomes payable and recoverable; or
 - (b) for a right to payment the continuing right to which has stopped for a reason including, for example, death or re-entry of land—only when the entire payment would have become payable and recoverable had the continuing right not stopped.
- (2) A person entitled to an apportioned part of rent—
 - (a) has, when the entire payment becomes payable, the same rights and remedies for recovering the apportioned

[s 157]

part as would have been available in relation to the entire payment; and

- (b) must bear a proportionate part of any allowance which would have been given in relation to the entire payment.

Division 7 Termination of particular leases [pt 8, div 4]

157 Definitions for division [s 130; QUT, rec 140]

In this division—

lease terminable at will see section 159.

party, to a lease, means a lessor or lessee under the lease.

termination day see section 160(1)(b).

termination notice see section 160.

158 Contracting out permitted [ss 132-137; QUT, recs 142-147]

This division applies subject to any agreement to the contrary.

159 Meaning of *lease terminable at will* [s 129; NZ, s 210; QUT, rec 139]

A lease of land is a *lease terminable at will* if—

- (a) the lessee is in possession of the land, although the lessor and the lessee have not agreed, expressly or impliedly, on the duration of the term of the lease; or
- (b) the lessee remains in possession of the land with the lessor's consent, although the term of the lease has ended and the lessor and the lessee have not agreed, expressly or impliedly, that the lessee may continue in possession for another period.

[s 160]

160 What is a *termination notice* [s 131; QUT, rec 141]

- (1) A *termination notice*, in relation to a lease, is a notice given by a party to the lease that—
 - (a) identifies the land subject to the lease; and
 - (b) states that the party is terminating the lease on—
 - (i) for a lease terminable at will—a stated day (the *termination day*); or
 - (ii) for a periodic tenancy—a stated day that is the last day of a period of the tenancy (also the *termination day*); and
 - (c) is signed by the party.
- (2) The notice may, but need not, be in the approved form.
- (3) To remove any doubt, it is declared that this section does not limit or otherwise affect the ability of a party to sign by an agent.

161 Termination of lease terminable at will [s 129; QUT, rec 139]

- (1) A lease terminable at will may be terminated at any time by a party to the lease giving a termination notice to the other party to the lease.
- (2) The termination notice must be given at least 20 business days before the termination day stated in the notice.

162 Termination of periodic tenancy [ss 133-137; QUT, recs 143-147]

- (1) A periodic tenancy may be terminated on the last day of a period of the tenancy by a party to the tenancy giving a termination notice to the other party to the tenancy.
- (2) The termination notice must be given—
 - (a) if the period of the tenancy is a week—at least 1 week before the termination day stated in the notice; or

- (b) if the period of the tenancy is a month—at least 1 month before the termination day stated in the notice; or
 - (c) if the period of the tenancy is a year—at least 6 months before the termination day stated in the notice; or
 - (d) if the period of the tenancy is a period other than a period mentioned in paragraph (a), (b) or (c)—at least 1 period before the termination day stated in the notice.
- (3) For subsection (2)(d), subject to any contrary agreement, the period of the tenancy is taken to start on the day on which rent under the tenancy is payable.

163 Termination of other tenancies [s 137; QUT, rec 147]

- (1) A tenancy, other than a periodic tenancy or a tenancy for which a period of notice has expressly or impliedly been agreed to by the parties, may be terminated at any time by a party to the tenancy giving a termination notice to the other party to the tenancy.
- (2) The termination notice must be given to the other party a reasonable period before the termination day stated in the notice.
- (3) For subsection (2), whether a period is reasonable depends on all of the circumstances, including, for example—
 - (a) the nature of the tenancy; and
 - (b) the circumstances surrounding the creation of the tenancy; and
 - (c) the terms of the tenancy; and
 - (d) any implications arising from the agreement of the parties.

Division 8 Miscellaneous matters

164 Effect of waiver [ss 119 and 120; NZ, s 273; QUT, rec 128]

- (1) A waiver by a lessor of the benefit of a term of a lease—
 - (a) extends only to the instance or breach to which the waiver particularly relates; and
 - (b) is not to be taken as a general waiver.
- (2) This section applies subject to any agreement to the contrary.

165 Limitation on award of damages for breach of obligation to repair [s 112; QUT, rec 121]

- (1) This section applies in relation to a lease if the lessor brings a proceeding against the lessee claiming damages for breach of an obligation to keep or put premises in good repair during the term of the lease or when the lease ends.
- (2) In making an award of damages for breach of the obligation, the court may not award more than the lesser of the following amounts—
 - (a) the amount, if any, by which the value of the reversion is diminished by the breach;
 - (b) the amount of the actual cost of remedying the breach.
- (3) Also, the court may not award damages for breach of the obligation if the lessee proves that on or after the termination of the lease—
 - (a) the premises have, or will be, demolished; or
 - (b) structural alterations have been, or will be, made to the premises that would result in the cost of remedying the breach being of no value or of insufficient value to justify the cost.

Part 10 Neighbouring land

Division 1 Support for land

166 Duty of care in relation to support for land [PLA, s 179; NSW, s 177; QUT, rec 157]

- (1) For the common law of negligence—
 - (a) the owner of supporting land owes a duty of care to the owner of supported land not to do or omit to do any thing that adversely affects the support provided by the supporting land to the supported land; and
 - (b) the owner of supported land owes a duty of care to the owner of supporting land not to do or omit to do any thing that adversely affects the support provided by the supporting land to the supported land.
- (2) Subsection (1) applies—
 - (a) whether or not the supporting land and supported land share a common boundary; and
 - (b) to any support, whether from structures anywhere on the land or on a common boundary.
- (3) The duty of care may be excluded or modified by express agreement between a person on whom the duty lies and a person to whom the duty is owed.
- (4) If an agreement under subsection (3) is embodied in a registered easement under the *Land Title Act 1994*, the agreement binds the parties to the agreement, and each of their successors in title.
- (5) The right at common law, if any, to bring a proceeding in nuisance in relation to acts or omissions that adversely affect the support provided by supporting land to supported land is abolished.
- (6) In this section—

[s 167]

adversely affect, support provided by supporting land to supported land, includes reduce or remove support.

owner, of supporting land or supported land, includes a mortgagee in possession of the land if the mortgagee has exclusive management and control of the land.

supported land means land, including a structure on the land, provided with support by supporting land.

supporting land means land, including each of the following aspects of the land, that provides support to supported land—

- (a) the natural surface of the land;
- (b) the subsoil of the land;
- (c) the water, if any, on or beneath the land;
- (d) a part of the land, if any, that has been reclaimed;
- (e) a structure on the land.

Division 2 Easements and rights of use [pt 10]

167 Definitions for division

In this division—

statutory right of use, over land, includes—

- (a) a right of way over land; and
- (b) a right to access, enter or cross over land; and
- (c) a right to carry and place a utility on, over or under land.

utility includes—

- (a) electricity, gas, power, telecommunication, water, drainage, sewerage and other service pipes or lines; and
- (b) facilities and structures reasonably incidental to the pipes or lines mentioned in paragraph (a).

168 Power of court to impose statutory right of use [s 180; NSW, s 88K(1), QUT, rec 158]

- (1) A person having an interest in land (the *benefited land*) may apply to the court for an order imposing a statutory right of use over other land (the *burdened land*) if the statutory right of use is reasonably necessary for the effective use and development of the benefited land.
- (2) A statutory right of use imposed under subsection (1) may take the form of an easement, a licence or another form.
- (3) The court may make the order if the court is satisfied that—
 - (a) the statutory right of use is reasonably necessary for the effective use and development of the benefited land; and
 - (b) the statutory right of use is consistent with the operation of the *Planning Act 2016*, including, for example, the planning scheme under that Act applying to the land affected by the statutory right of use; and
 - (c) the use or development of the benefited land is consistent with the public interest; and
 - (d) each person having an interest in the burdened land can be adequately compensated for any loss or disadvantage arising from the imposition of the statutory right of use; and
 - (e) the person applying to the court has made reasonable attempts to obtain the easement, or other right of use, by agreement; and
 - (f) the attempts mentioned in paragraph (d) have been unsuccessful because—
 - (i) a person has unreasonably refused to agree to the statutory right of use; or
 - (ii) a person who has capacity to agree to the statutory right of use can not be located.
- (4) If the court makes the order, the court must state in the order—
 - (a) the nature of the statutory right of use, and its terms; and

- (b) the land to be benefited, and the land to be burdened, by the statutory right of use.
- (5) Also, if the court makes the order, and is satisfied that a person having an interest in the burdened land will suffer loss or disadvantage arising from the imposition of the statutory right of use, the court must make an order that the applicant pay an amount to the person, considered by the court to be just in the circumstances, by way of compensation.
- (6) The court may make any order that the nature of the case requires, including, for example, any of the following orders—
 - (a) an order requiring a plan of survey designating the statutory right of use to be prepared; or
 - (b) an order imposing a condition on the applicant or a person having an interest in the burdened land.
- (7) If the court makes an order that creates an interest that may be registered—
 - (a) the interest must be registered unless the court otherwise orders; and
 - (b) if registered under paragraph (a), the order binds all persons, including, for example, the parties to the proceeding, and each of their successors in title.
- (8) The court may not make an order that the costs of a proceeding under this section are payable by the owner of burdened land unless special circumstances exist.
- (9) Despite section 5, this section does not bind the State.

169 Power of court to modify or extinguish easement or covenant [s 181; NT, s 177; QUT, rec 159]

- (1) This section applies if land (the *burdened land*) is subject to the burden of—
 - (a) an easement or covenant benefiting other land (the *benefited land*); or
 - (b) an easement in gross.

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- (2) A person having an interest in the burdened land may apply to the court for an order modifying or extinguishing the easement or covenant.
- (3) The court may make the order if the court is satisfied—
- (a) the easement or covenant is obsolete because of—
 - (i) a change in the use of the benefited land; or
 - (ii) a change in the character of the area in the vicinity of the benefited land; or
 - (iii) other circumstances the court considers material; or
 - (b) the continued existence of the easement or covenant—
 - (i) would impede a reasonable use of the burdened land; or
 - (ii) would not provide a practical benefit of substantial value, utility or advantage to any person entitled to the benefit of the easement or covenant; or
 - (iii) would be contrary to the public interest; or
 - (c) for an easement or covenant under a building management statement—the modification or extinguishment of the easement or covenant—
 - (i) cannot be obtained by an amendment of the statement under the *Land Act 1994*, section 294F or the *Land Title Act 1994*, section 54E because the signature of all persons required for the amendment cannot be obtained; and
 - (ii) is just and equitable in the circumstances; and
 - (iii) is reasonably necessary in the circumstances; or
 - (d) each person entitled to the benefit of the easement or covenant can reasonably be considered to have abandoned, by an act or omission, the easement or covenant; or
 - (e) each person entitled to the benefit of the easement or covenant has agreed to, or would not be substantially

injured by, the modification or extinguishment of the easement or covenant.

- (4) However, the court may make an order under subsection (3)(c) only if the court is satisfied that each person who will suffer loss or other disadvantage from the modification or extinguishment of the easement or covenant can be paid an amount as adequate compensation for the loss or disadvantage.
- (5) In deciding whether to make an order under subsection (3)(a) or (b), the court—
 - (a) must take into account the operation of the *Planning Act 2016*, including, for example, the planning scheme under that Act applying to the benefited land and the burdened land; and
 - (b) may take into account any other matter the court considers appropriate.
- (6) The court may make any order that the nature of the case requires, including, for example, any of the following orders—
 - (a) an order requiring the payment of an amount to a person mentioned in subsection (4);
 - (b) an order requiring the amendment of a document creating the easement or covenant to include a term relating to the use, repair or maintenance of the burdened land;
 - (c) an order requiring the registration of a document necessary to give effect to an amendment mentioned in paragraph (b).

Note—

See the *Land Title Act 1994*, sections 54E(1) and 54H(1) for the requirement to register an instrument of amendment or extinguishment of a building management statement.

- (7) In this section—

building management statement means a building management statement under the *Land Act 1994*, section 294B or the *Land Title Act 1994*, section 54A.

covenant includes—

- (a) a covenant registered under the *Land Title Act 1994* or arising under a contract or other arrangement; or
- (b) a restriction imposed under a building management statement.

easement includes—

- (a) a right of access, support or shelter, or other right in the nature of an easement, under a building management statement; and
- (b) an easement in gross.

extinguish means wholly or partially extinguish.

170 No interest created by prescription [s 198A; QUT, recs 154-156]

No interest under the *Land Act 1994* or the *Land Title Act 1994* can be created by prescription or through the doctrine of lost modern grant.

Division 3 Encroachment of buildings [pt 11, div 1]

171 Definitions for division [s 182; QUT, rec 160]

In this division—

affected owner see section 173(2).

building—

- (a) means a substantial structure of a permanent character; and

[s 172]

- (b) includes a part of a structure mentioned in paragraph (a), including, for example, a wall.

encroaching owner see section 173(1).

encroachment means an encroachment by a building on to land and includes—

- (a) encroachment by overhang of the building on to the land; and
- (b) encroachment by intrusion of the building on or into, or under the soil of, the land.

172 Relationship with other Acts [s 183; QUT, rec 160]

This division applies despite any other Act.

173 Proceedings for relief [ss 184-194; QUT, rec 160]

- (1) A person who has an interest in land from which an encroachment extends on to other land (an ***encroaching owner***) may apply to the court for relief in relation to the encroachment.
- (2) A person who has an interest in land on to which an encroachment extends from other land (an ***affected owner***) may apply to the court for relief in relation to the encroachment.
- (3) The court may make an order granting or refusing to grant the relief.
- (4) In deciding whether to make an order under subsection (3), the court may take into account the following matters—
 - (a) whether the application is made by an encroaching owner or an affected owner;
 - (b) the circumstances in which the encroachment was made;
 - (c) the nature and extent of the encroachment;
 - (d) the purposes for which the encroachment may be used;

- (e) the situation and value of the land affected by the encroachment;
 - (f) the operation of the *Planning Act 2016*, including, for example, the planning scheme under that Act applying to the land affected by the encroachment; and
 - (g) the loss or damage, if any, that has been or will be incurred by the affected owner because of the encroachment;
 - (h) the loss or damage, if any, that would be incurred by the encroaching owner if the court required the encroachment to be removed;
 - (i) any other circumstance the court considers relevant.
- (5) The court may make any order that the nature of the case requires, including, for example, any of the following orders—
- (a) an order that an affected owner transfer, lease, or grant an easement or another interest in, the land affected by the encroachment, to an encroaching owner;
 - (b) an order in relation to land reasonably required as curtilage and for access to the encroachment;
 - (c) an order requiring a plan of survey, identifying land mentioned in paragraph (a) or (b), to be prepared;
 - (d) an order that an encroaching owner pay an amount to an affected owner as compensation for loss or other damage arising from the encroachment;
 - (e) an order that the encroachment be modified or removed.

174 Minimum compensation [s 186; QUT, rec 160]

- (1) If the court makes an order under section 173, the amount of compensation must be at least—
- (a) if the encroaching owner satisfies the court that the encroachment was not intentional and did not arise from

[s 175]

- negligence—the market value of the interest in the land affected by the encroachment; or
- (b) otherwise—3 times the market value of the interest in the land affected by the encroachment.
- (2) In deciding whether to make an order under section 173 that is more than the minimum amount of compensation under subsection (1), the court must have regard to—
- (a) the value of the interest in the land affected by the encroachment; and
- (b) the loss or damage, if any, that has been or will be incurred by the affected owner because of the encroachment and under the orders proposed to be made by the court in favour of the encroaching owner; and
- (c) the circumstances in which the encroachment was made.

Division 4 Improvements under mistake of title [pt 11, div 2]

175 Definition for division [new; QUT, rec 161]

In this division—

fence has the meaning given by the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

176 Relationship with other Acts [s 195; QUT, rec 161]

This division applies despite any other Act.

177 Proceedings for relief [ss 196–198; QUT, rec 161]

- (1) This section applies to each of the following persons—
- (a) a person (the *first person*) who makes a lasting improvement on land owned by someone else in the genuine but mistaken belief that the first person owns the land;

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- (b) a person who, on behalf of another person (the ***second person***), makes a lasting improvement on land owned by someone else in the genuine but mistaken belief that the second person owns the land;
 - (c) a person who has an interest in land, or a lasting improvement, mentioned in paragraph (a) or (b);
 - (d) the local government within whose area the land or improvement or any part of the land or improvement is situated.
- (2) The person may apply to the court for relief in relation to the lasting improvement.
 - (3) The court may make an order granting or refusing to grant the relief.
 - (4) In deciding whether to make an order under subsection (3), the court may take into account the following matters—
 - (a) whether the application is made by a person who held a mistaken belief about the ownership of the land on which the lasting improvement was made, or a person who has an interest in the land or lasting improvement;
 - (b) the circumstances in which the lasting improvement was made;
 - (c) the nature and extent of the lasting improvement;
 - (d) the purposes for which the lasting improvement may be used;
 - (e) the situation and value of the land affected by the lasting improvement;
 - (f) the operation of the *Planning Act 2016*, including, for example, the planning scheme under that Act applying to the land affected by the lasting improvement; and
 - (g) the loss or damage, if any, that has been or will be incurred by a person because of the lasting improvement;

[s 177]

- (h) the loss or damage, if any, that would be incurred by a person if the lasting improvement were required to be removed;
 - (i) any other circumstance the court considers relevant.
- (5) Without limiting subsection (3), the court may make any of the following orders—
 - (a) an order that a person transfer, lease, or grant an easement or another interest in, the land or any part of the land affected by the lasting improvement, to another person;
 - (b) an order declaring that an interest in the land or any part of the land affected by the lasting improvement is free from a mortgage, lease, easement or other encumbrance; or
 - (c) an order varying, to the extent necessary in the circumstances, a mortgage, lease, easement, contract or other document affecting or relating to the land affected by the lasting improvement;
 - (d) an order in relation to land reasonably required as curtilage and for access to the lasting improvement;
 - (e) an order that a person pay an amount to another person as compensation for loss of the land, or other loss or damage arising from the lasting improvement;
 - (f) an order that the lasting improvement be modified or removed;
 - (g) an order requiring a plan of survey, designating the boundary of land affected by the lasting improvement, to be prepared.
- (6) In this section—
lasting improvement does not include a fence.

Part 11 Transactions

Division 1 Assignment of debts or things in action [pt 12]

178 Definitions for division [new; NZ, s 48; QUT, rec 162]

In this division—

absolute, in relation to an assignment, means—

- (a) not conditional; and
- (b) not by way of charge only.

debt includes part of a debt.

debtor means a person, including a trustee, who is under an obligation to discharge a debt.

thing in action includes part of a thing in action.

179 Assignment of debt or legal thing in action [s 199; NZ, s 50(1) to (4); QUT, rec 162]

- (1) The absolute assignment in writing of a debt or legal thing in action, signed by the assignor, passes to the assignee—
 - (a) all the rights of the assignor in relation to the debt or thing in action; and
 - (b) all the remedies of the assignor in relation to the debt or thing in action; and
 - (c) a power to give a good discharge to the debtor, trustee or other person liable for the debt or thing in action, without the agreement of the assignor.
- (2) However, subsection (1) applies only if the debtor, trustee or other person liable for the debt or thing in action, is given actual notice of the assignment.
- (3) Also, an assignment under subsection (1) is subject to equities in relation to the debt or thing in action that—

[s 180]

- (a) arose before the debtor, trustee or other person liable for the debt or thing in action, was given notice of the assignment; and
- (b) would, but for the assignment, have had priority over the rights of the assignor.

180 Discharge of debt or legal thing in action when no actual notice of assignment [s 199; NZ, s 51; QUT, rec 162]

- (1) This section applies if a debt or legal thing in action is assigned under section 179 or in equity.
- (2) Payment of all or part of the debt or legal thing in action to the assignor by a debtor, trustee or other person liable for the debt or thing in action, who does not have actual notice of the assignment discharges the debtor, trustee or other person liable for the debt or thing in action, to the extent of the payment.
- (3) The debt or legal thing in action owing by the debtor, trustee or other person liable for the debt or thing in action, who has actual notice of the assignment is payable to the assignee.
- (4) However, the debt or legal thing in action is payable to another assignee if before making the payment, the debtor, trustee or other person liable for the debt or thing in action, receives actual notice of the assignment of the same debt or legal thing in action to the other assignee.
- (5) If subsection (4) applies, the rights of the other assignee in relation to the debt or legal thing in action have priority over the rights of the earlier assignee.
- (6) A debtor, trustee or other person liable for a debt or thing in action, may interplead in any proceeding brought against the debtor, trustee or other person liable for the debt or thing in action, for the payment of the debt or legal thing in action, or apply to a court for an order determining the entitlement to any right in relation to a debt or thing in action, if the debtor trustee or other person liable for the debt or thing in action, has actual notice—

- (a) that an assignment of the debt or thing in action is disputed by the assignee or anyone claiming under the assignor; or
- (b) that there are other opposing or conflicting claims in relation to the debt or thing in action.

181 Assignment in equity [s 200; NZ, s 50(5)-(8); QUT, rec 163]

- (1) A voluntary assignment of property is taken to have been assigned in equity, whether the assignment is oral or in writing, if the assignment is complete.
- (2) For subsection (1), an assignment is complete—
 - (a) when the assignor has done everything that needs to be done by the assignor to transfer to the assignee, whether absolutely, conditionally, or by way of charge, the rights of the assignor in relation to the property; and
 - (b) even if a thing remains to be done, without the intervention or assistance of the assignor, to transfer to the assignee the rights of the assignor in relation to the property.
- (3) This section applies—
 - (a) despite any rule of equity to the contrary; and
 - (b) subject to sections 9 and 10.

**Division 2 Dispositions to defraud creditors
[pt 16]**

182 Disposition with intent to defraud creditor void [s 228; QUT, rec 194]

- (1) A disposition of property by a person (the *transferor*) is voidable against the transferor, by a person prejudiced by the disposition, if the transferor made the disposition with intent to defraud the transferor's creditors.

[s 183]

- (2) However, the disposition is not voidable against the transferor if the disposition was made for valuable consideration and in good faith to a person who did not have, when the disposition was made, notice of the transferor's intent to defraud the transferor's creditors.
- (3) A person whose interests are affected by a disposition of property voidable under subsection (1) may apply to the court for relief against the disposition.
- (4) The court may hear and decide the application and make the orders it considers appropriate.

Part 12 Powers of appointment [pt 13]

183 When exercise of power of appointment valid [s 202; NZ, s 16; QUT, rec 165]

- (1) This section applies if—
 - (a) a document, other than a will, gives a person a power of appointment over property; and
 - (b) the power of appointment is exercised by—
 - (i) a deed; or
 - (ii) an instrument under the *Land Title Act 1994*; or
 - (iii) a document under the *Land Act 1994*.
- (2) The deed, instrument or document is validly executed for the purpose of the power of appointment if—
 - (a) for a deed—the deed is executed under part 6; or
 - (b) for an instrument under the *Land Title Act 1994*—the instrument is executed under the *Land Title Act 1994*; or
 - (c) for a document under the *Land Act 1994*—the document is executed under the *Land Act 1994*.
- (3) Subsection (2) applies even if the document giving the person the power of appointment requires the deed, instrument or document to be executed in another way.

- (4) Subsection (2) does not affect any of the following requirements in a document, other than a will, giving a person a power of appointment over property—
 - (a) a requirement that the consent of another person be obtained for the power of appointment to be validly exercised;
 - (b) a requirement that an act, not related to the way in which a deed or other document is executed, be performed for the power of appointment to be validly exercised.

184 Appointment among 2 or more objects [s 203; QUT, rec 166]

- (1) This section applies if a document gives a person a power of appointment over property among 2 or more objects.
- (2) An appointment of property made in exercise of the power is valid even if—
 - (a) 1 or more of the objects is excluded from the appointment; or
 - (b) 1 or more of the objects is appointed a nominal or illusory share in the property.
- (3) This section does not affect a term of the document that states the amount of a share of the property from which an object is not to be excluded.

185 Protection of buyer if invalid appointment [s 204; QUT, rec 167]

- (1) This section applies if—
 - (a) a document gives a person (the *appointor*) a power of appointment over property; and
 - (b) the appointor invalidly appoints property to another person (the *appointee*) in purported exercise of the power; and

[s 186]

- (c) another person (the *buyer*) purchases the invalidly appointed property from the appointee.
 - (2) The buyer has a valid title to the property if—
 - (a) the appointee is at least 25 years; and
 - (b) the appointee is a person, or member of a class of persons, entitled to the property in default of exercise of the power of appointment; and
 - (c) the buyer did not know, and should not have reasonably known, that the appointment of the property to the appointee was invalid; and
 - (d) the buyer gave valuable consideration for the purchase.
 - (3) However, if the amount or value of the invalidly appointed property is more than the value of the appointee's entitlement to the property immediately before the purported exercise of the power of appointment, the buyer has a valid title to the property only to the extent of the appointee's entitlement to the property at that time.
 - (4) For subsection (3), the appointee's entitlement to the property immediately before the purported exercise of the power of appointment must be calculated taking into account—
 - (a) any advance made to the appointee; and
 - (b) any hotchpot provision in the power of appointment.
 - (5) In this section—

hotchpot provision, in a power of appointment, means a provision providing for the appointment of property to an object after taking into account advances of property already made to the object under the provision.

186 Release and disclaimer of power [s 205; NZ, s 73; QUT, rec 168]

- (1) This section—

- (a) applies to a power to dispose of property whether or not the person who can exercise the power has an interest in the property to which the power relates; but
 - (b) does not apply to a power mentioned in paragraph (a) if the power is in the nature of a trust.
- (2) The person who can exercise a power may—
 - (a) release the power by deed or contract; or
 - (b) disclaim the power by deed.
- (3) The release of a power extinguishes the power.
- (4) If a power is disclaimed—
 - (a) the person who disclaimed the power may not exercise or join in the exercise of the power; but
 - (b) any other person who can exercise the power, and who has not disclaimed it, may continue to exercise the power.
- (5) Subsection (4)(b) applies subject to the terms of the document creating the power.

Part 13 Perpetuities [pt 14]

Query for consultation—

Should this part be included in the *Trusts Act 1973* rather than the Property Law Bill 2022?

Division 1 Preliminary

187 Definitions for part [s 206; QUT rec 171]

In this part—

[s 188]

disposition includes—

- (a) the conferring or exercise of—
 - (i) a power of appointment; or
 - (ii) any other power to dispose of an interest in property; and
- (b) any other disposition of an interest in property.

perpetuity period, for a disposition of property, see section 190.

188 When disposition in will made [s 206A, rec 172]

For the purpose of this part, a disposition in a will is made at the death of the testator.

Division 2 General rules

189 Abolition of rule against perpetuities [NZ, s 16(3); QUT rec 169]

The common law rule known as the rule against perpetuities is abolished.

190 What is the *perpetuity period* [s 209(1); NZ, s 16; QUT rec 169, 176]

The *perpetuity period*, for a disposition of property under a trust, is—

- (a) 125 years starting on the day on which the disposition is made; or
- (b) if the terms of the trust state or imply a shorter period to be the perpetuity period for the disposition, including, for example, by stating a mechanism for determining the day on which the trust property will vest—the shorter period.

191 Vesting of trust property [QUT rec 169]

- (1) This section applies to a disposition of property under a trust to a person.
- (2) The disposition is valid only if the property vests in the person before the end of the perpetuity period for the disposition.

192 Wait and see rule [s 210; QUT, rec 177]

A disposition of property under a trust to a person is not invalid under section 191 merely because the property may vest in the person after the end of the perpetuity period for the disposition provided it is possible the property may vest in the person before the end of the perpetuity period.

Division 3 Trust saving devices

193 Reduction of age to ensure disposition within perpetuity period [s 213(1)-(2); QUT, rec 180]

- (1) This section applies to a disposition of property under a trust if—
 - (a) the terms of the trust state or imply a mechanism for determining the day on which the property will vest in a person by reference to the person attaining a stated age of at least 18 years; and
 - (b) the reference to the stated age would cause the disposition to be invalid under section 191; and
 - (c) the disposition would be valid under section 191 if the stated age were 18 years.
- (2) The stated age is taken to be reduced to an age not less than 18 years to the extent necessary to cause the disposition to be valid under section 191.

[s 194]

**194 Exclusion of class members to ensure disposition within
perpetuity period [ss 206B, 213(3); UK, s 8; QUT, recs 173,
180]**

- (1) This section applies to a disposition of property under a trust if—
 - (a) the terms of the trust state or imply a mechanism for determining the day on which the trust property will vest in a class of persons; and
 - (b) the inclusion of potential members of the class or of unborn persons who at birth would become members or potential members of the class (both *non-qualifying members*) would cause the disposition to be invalid under section 191; and
 - (c) the application of section 193 would not cause the disposition to be valid under section 191.
- (2) The non-qualifying members are taken to be excluded from the class to the extent necessary to cause the disposition to be valid under section 191.
- (3) However, a non-qualifying member is not excluded under subsection (2) if the member's exclusion would exhaust the class.
- (4) In this section—

member, of a class, means a person who satisfies all the conditions for being a member of the class.

potential member, of a class, means a person who—

 - (a) satisfies 1 or more of the conditions for being a member of the class; and
 - (b) may in time satisfy all the conditions for being a member of the class.

- 195 Acceleration of prior disposition to ensure subsequent disposition within perpetuity period [s 215; UK, s 9; QUT, rec 182]**
- (1) This section applies in relation to a disposition of property under the terms of a trust (a *prior disposition*) if the prior disposition is invalid under section 191.
 - (2) A disposition of property under the terms of the trust that is ulterior to and dependent on the prior disposition (a *subsequent disposition*) may be accelerated so the subsequent disposition is valid under section 191.

Division 4 Ambit of perpetuity period

- 196 Non-charitable purpose trust [s 221; QUT, rec 188]**
- (1) If a document creates a non-charitable purpose trust, or a trust for the benefit of a corporation that is not a charity, and the trust is not otherwise invalid, the property must be applied for the purposes of the trust before the end of the perpetuity period for the disposition of property under the trust.
 - (2) To remove any doubt, it is declared that division 2 applies to a trust mentioned in subsection (1).
- 197 Powers of appointment [s 208; UK Act, s 11; QUT, rec 175]**
- (1) If a document creates a general power of appointment relating to property, the property must vest before the end of the perpetuity period.
 - (2) For subsection (1), the perpetuity period starts when the property is appointed by the donee of the power.
 - (3) If a document creates a special power of appointment relating to property, both of the following must happen before the end of the perpetuity period—
 - (a) the exercise of the power;
 - (b) the vesting of the property.

[s 198]

(4) For subsection (3), the perpetuity period starts when the power is created.

(5) In this section—

general power of appointment means—

(a) a power of appointment exercisable under a document other than a will under which the person given the power—

(i) is the only person capable of exercising the power; and

(ii) may appoint the whole of the property to any person including the person's self without complying with any other condition; or

(b) a power of appointment exercisable under a will under which the person given the power—

(i) is the only person capable of exercising the power; and

(ii) may appoint the whole of the property to any person including the person's personal representative without complying with any other condition.

special power of appointment means a power of appointment other than a general power of appointment.

198 Conditions precedent and conditions subsequent [s 219(1)(c); UK Act, s 1; QUT, rec 186]

(1) If a document limits property in trust so as to create an interest in property subject to a condition precedent, the property must vest before the end of the perpetuity period for the disposition of the property.

(2) If a document limits property in trust so as to create an interest in property subject to a condition subsequent—

(a) if the property is land—a right of re-entry exercisable if the condition subsequent is broken must be exercised

before the end of the perpetuity period for the disposition of the property; or

- (b) for property other than land—a right equivalent to a right of re-entry exercisable if the condition subsequent is broken may only be exercised before the end of the perpetuity period for the disposition of the property.
- (3) If a right mentioned in subsection (2) is not exercised before the end of the perpetuity period for the disposition of the property, the interest in the property is no longer subject to the condition subsequent.

199 Determinable interests [s 219(1)(a) and (b); UK Act, ss 1(7), 10; QUT, rec 186]

- (1) This section applies if the terms of a trust allow the disposition of property under—
 - (a) a right of reverter on the determination of a determinable fee simple; or
 - (b) a resulting trust on the determination of a determinable interest in property.
- (2) If the property does not vest before the end of the perpetuity period for the disposition of the property—
 - (a) for subsection (1)(a)—the determinable fee simple becomes absolute; and
 - (b) for subsection (1)(b)—the determinable interest becomes absolute.
- (3) In this section—

determinable, interest in property, means an interest created under the terms of a disposition that, under the terms, is determinable on a contingency.

[s 200]

200 Accumulation of income [s 222; NZ, s 18; QUT, rec 189]

- (1) This section applies if property is held on trust the terms of which confer a power or impose a duty on the trustee to accumulate income of the property.
- (2) The power or duty is valid only to the extent the disposition of the accumulated income is valid under this part.
- (3) This section does not limit or otherwise affect—
 - (a) a power of a person to terminate an accumulation of income from property that is for the person's benefit; or
 - (b) a power of a court or trustee relating to an accumulation of income mentioned in paragraph (a).

201 Particular trusts, powers and funds [s 220; NZ, s 16(6); QUT rec 187]

The perpetuity period does not apply in relation to any of the following matters—

- (a) a charitable trust;
 - (b) the trusts of a superannuation fund or scheme;
 - (c) the trusts of a pension fund or scheme;
 - (d) a trust that is created under, or is subject to, another Act that allows the trust to continue indefinitely;
 - (e) a trust that may continue indefinitely under common law or equity;
 - (f) a trust or power to sell property, if a trust of the proceeds of sale is valid;
 - (g) a trust or power to lease or exchange property, if the lease or exchange directed or authorised by the trust or power is ancillary to the carrying out of a valid trust;
 - (h) a power that is ancillary to the carrying out of a valid trust or the giving effect to a valid disposition of property;
 - (i) a provision for the remuneration of trustees.
-

202 Commercial arrangements [s 218; Perpetuities Act (NSW), s 15; UK Act, s 2; QUT recs 183-185]

The perpetuity period does not apply in relation to any of the following dispositions of property—

- (a) an option to renew a lease of property;
- (b) an option to acquire the reversion of a lease of property;
- (c) an option to acquire an interest in property given for valuable consideration or in a will in relation to property;
- (d) a right of pre-emption given for valuable consideration or in a will in relation to property.

203 Gift-over from charity to charity [s 219(2); QUT, rec 186]

The perpetuity period does not apply in relation to a gift over from 1 charity to another charity.

204 Particular matters relating to land [s 217; QUT, rec 184]

To remove any doubt, it is declared that the perpetuity period does not apply in relation to any of the following matters—

- (a) a power to take possession of land or the income of the land given by way of indemnity against a rent, whether or not the rent is payable in relation to the land;
- (b) the grant, or exercise of, a right, power or privilege in relation to land, including, for example, a right of entry or an easement relating to—
 - (i) mining;
 - (ii) the removal of timber;
 - (iii) the construction or repair of buildings;
 - (iv) the construction or maintenance of infrastructure.

Division 5 Variation of vesting date

205 Variation of trust to opt-in to 125 year perpetuity period if trustee has power of variation [new; QUT, rec 174]

- (1) This section applies if a trustee has power, under the terms of the trust, to vary the vesting date of a disposition of property under the trust.
- (2) The trustee may vary the vesting date to a date not later than the last day of the period of 125 years starting on the day of the disposition of the property under the trust.

206 Variation of trust to opt-in to 125 year perpetuity period if trustee does not have power of variation [new; QUT, rec 174]

- (1) This section applies if a trustee does not have power, under the terms of the trust, to vary the vesting date of a disposition of property under the trust.
- (2) If all of the beneficiaries under the trust are adults and of full capacity, the beneficiaries may execute a deed to vary the vesting date to a date not later than the last day of the period of 125 years starting on the day of the disposition of the property under the trust.

Division 6 Applications to court

207 Application to court for declaration of validity [s 211; QUT, rec 178]

- (1) A person interested in a disposition of property may apply to the court for a declaration about the validity of the disposition under this part.
- (2) The court may hear and decide the application and make the orders it considers appropriate.

208 Application to court to opt-in to 125 year perpetuity period [s 211; QUT, rec 178]

- (1) A person interested in a disposition of property under the terms of a trust, settled before the commencement, may apply to the court for an order that the property vest within 125 years after the creation of the trust.
- (2) The court may hear and decide the application and make the orders it considers appropriate.
- (3) Without limiting subsection (2), the court may make an order about the disposition of property that, under the terms of the trust, may have vested more than 125 years after the creation of the trust.

Query for consultation—

The QUT Report recommended that the PLA 1974, part 15 (Corporations) be retained with modernised language. It has not been included in the consultation draft. Subsequent to the QUT Report, views have been expressed that the part is unnecessary and can be removed. Views are sought about whether it is necessary to retain any provisions in the part.

Part 14 Unregistered land [pt 18]

Query for consultation—

The views of stakeholders to date have favoured locating the provisions of this part in the *Land Title Act 1994*. This is under further consideration.

209 Registrar must give public notice if request to register unregistered land [ss 250-254; QUT, rec 201]

- (1) This section applies if—

[s 210]

- (a) a person asks the registrar to register an instrument relating to land; and
 - (b) the registrar believes the land is not included in the land registry.
- (2) The registrar must give public notice of the request.
- (3) The registrar may decide—
 - (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.
- (4) The public notice must include an invitation to any person who claims an interest in the land to give notice of the person's claim to the registrar within 2 months after the public notice is published.

210 Registrar must give public notice if registrar believes land unregistered [QUT, rec 201]

- (1) This section applies if—
 - (a) the registrar believes land is not included in the land registry; and
 - (b) a request in relation to the land has not been made under section 209.
- (2) The registrar must give public notice of the registrar's intention to include the land in the land registry.
- (3) The registrar may decide—
 - (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.
- (4) The public notice must include an invitation to any person who claims an interest in the land to give notice of the person's claim to the registrar within 2 months after the public notice is published.

211 Registrar may hold inquiry [QUT, rec 201]

- (1) If an issue arises in relation to land mentioned in section 209 or 210, the registrar may hold an inquiry under the *Land Title Act 1994*, part 2, division 4 to consider the issue.
- (2) To remove any doubt, it is declared that the *Land Title Act 1994*, part 2, division 5 applies in relation to the inquiry.

212 Obligations of registrar [QUT, rec 201]

- (1) This section applies—
 - (a) when the 2 month period provided for in a public notice under section 209 or 210 ends; or
 - (b) if an inquiry is held under the *Land Title Act 1994*, part 2, division 4—when the inquiry is finally ended.
- (2) The registrar must consider the following information—
 - (a) a request, if any, under section 209(1)(a);
 - (b) information, if any, provided by a person claiming an interest under section 209(4) or 210(4);
 - (c) information, if any, obtained under section 211;
 - (d) any other information the registrar considers appropriate.
- (3) After considering the information mentioned in subsection (2), the registrar must decide to record in the land registry the particulars relating to the land the registrar considers appropriate.
- (4) Without limiting subsection (3), the registrar may decide to—
 - (a) record the land as unallocated State land or freehold land; or
 - (b) record information, if any, provided by a person claiming an interest under section 209(4) or 210(4), including, for example, information relating to the use and possession of the land.

[s 213]

- (5) The registrar must give the applicant, and any person claiming an interest under section 209(4) or 210(4), notice of the decision.

Part 15 General [pt 20]

Division 1 Service

213 Application of division [s 347; QUT, rec 205]

This division applies if this Act, or an agreement or another document relating to property, authorises or requires a document to be served on a person.

214 Relationship of division with other matters [s 347; QUT, rec 205]

- (1) If this division is inconsistent with the *Acts Interpretation Act 1954*, part 10 or the *Electronic Transactions (Queensland) Act 2001*, this division prevails to the extent of the inconsistency.
- (2) This division is subject to this Act or an agreement to the contrary.
- (3) To remove any doubt, it is declared that this division does not limit or otherwise affect a power of a court relating to service of a document.

215 General requirements for service [s 347; QUT, rec 205]

- (1) The document may be served on the person—
 - (a) if the person is an individual—
 - (i) by delivering the document to the person personally; or
 - (ii) by leaving the document at, or by sending the document by post to, the address of the place of

residence or place of business of the person last known to the person serving the document; or

- (b) if the person is a body corporate—by leaving the document at, or sending the document by post to, the body corporate’s—
 - (i) registered office;
 - (ii) principal office; or
 - (iii) principal place of business in the State.
- (2) If the document is sent by post, the document is taken to be served 7 business days after the document was sent unless the actual time the document was served by post is proven.
- (3) Despite subsection (1), the court may—
 - (a) order that a document be served in a particular way; or
 - (b) dispense with the requirement to serve a document.
- (4) In this section—

place of business see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

216 Individual absent from State or deceased [QUT, rec 205]

- (1) This section applies if the person is an individual who is absent from the State or deceased.
- (2) The document may be served on the person’s agent or personal representative in the way mentioned in section 215(1).
- (3) If the person’s agent or personal representative is not known, the document may be served under an order of a court.

217 Electronic communication [s 347; QUT, rec 205]

- (1) This section applies if the person has designated an electronic address for receiving the document.

[s 217]

- (2) The document may be served on the person by electronic communication to the electronic address.
- (3) The electronic communication must—
 - (a) attach the document in the form required by the Act, agreement or other document relating to property; or
 - (b) include the content of the document, as required by the Act, agreement or other document relating to property; or
 - (c) include an internet link that allows the person to access, and obtain a copy of, the document mentioned in paragraph (a), or the content mentioned in paragraph (b), for a reasonable period.
- (4) The time of receipt of the electronic communication is taken to be—
 - (a) if the communication is sent before 5p.m. on a business day—the business day;
 - (b) if the communication is sent after 5p.m. on a business day—9a.m. on the next business day;
 - (c) if the communication is sent on a day other than a business day—9a.m. on the next business day.
- (5) However, subsection (4)—
 - (a) is subject to any agreement to the contrary; and
 - (b) does not apply if the actual time the electronic communication became capable of being retrieved by the person at the electronic address designated by the person is proven.
- (6) To remove any doubt, it is declared that subsection (3)(c) is satisfied whether or not the person is required to take another step, including, for example, accepting terms and conditions of the internet link, to access, and obtain a copy of, the document mentioned in subsection (3)(a), or the content mentioned in subsection (3)(b).
- (7) In this section—

electronic communication see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

Division 2 Miscellaneous

218 **Approved forms [s 350; QUT, rec 208]**

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

219 **Regulation-making power [s 351; QUT, rec 209]**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) prescribe fees payable under the Act; and
 - (b) provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

220 **Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature about any matter—
 - (a) for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the repealed *Property Law Act 1974* to this Act; and
 - (b) for which this Act or a regulation does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 1 year after this section commences.

Part 16 Repeal

221 Repeal of Property Law Act 1974

The Property Law Act 1974, No. 76 is repealed.

Part 17 Savings and transitional provisions

Division 1 Preliminary

222 Application of Acts Interpretation Act 1954

This part does not limit or otherwise affect the *Acts Interpretation Act 1954*, section 20 or 20A.

223 Definitions for part

In this part—

corresponding provision, for a repealed provision, means a provision of this Act that is equivalent to, or substantially the same as, the repealed provision.

repealed provision means a provision of the repealed Act as in force immediately before the commencement.

repealed Act means the repealed *Property Law Act 1974*.

Division 2 Savings provisions

224 Saving of abolition or modification of common law provided for in repealed Act

- (1) This section applies if a repealed provision provided for the abolition or modification of a common law rule relating to a matter mentioned in the repealed provision.

- (2) To remove any doubt, it is declared that, whether or not there is a corresponding provision for the repealed provision, this Act does not affect the abolition or modification of the common law rule effected by the repealed provision.

- (3) Without limiting subsection (2)—

- (a) if a document taking effect after the commencement of the repealed Act contains words that would have created an estate tail, the document is taken to create an estate in fee simple;

Note—

See section 16 and repealed section 22.

- (b) if a tenure is created by the State on granting an estate in fee simple after the commencement of the repealed Act, the tenure is in free and common socage without any incident of tenure for the benefit of the State;

Note—

See section 17 and repealed section 20.

- (c) if quit rent, or the residue of quit rent, issues to the State out of land after the commencement of the repealed Act, the land is released from quit rent;

Note—

See section 18 and repealed section 20.

- (d) if a corporation is dissolved, or otherwise ceases to exist, after the commencement of the repealed Act, subject to the Corporations Act, the State is entitled to take as *bona vacantia* any of the corporation's property that would have been liable to escheat if escheat had not been abolished;

Note—

See section 19 and repealed section 20.

- (e) if a life tenant commits, after the commencement of the repealed Act, voluntary or equitable waste that is not permitted under the document creating the life estate, the life tenant is liable in damages to the person entitled,

[s 224]

immediately after the life estate ends, to the fee simple interest in the remainder in the land;

Note—

See section 21 and repealed section 25.

- (f) if 2 or more persons acquire land after the commencement of the repealed Act in circumstances in which they would have acquired the land as coparceners, the persons acquire the land as tenants in common and not as coparceners;

Note—

See section 27 and repealed section 33(3).

- (g) if a receipt for consideration is in the body of a deed or other document executed on or after the commencement of the repealed Act, the receipt is a sufficient discharge for the consideration without any further receipt for the consideration being endorsed on the deed or document;

Note—

See section 59 and repealed section 51.

- (h) if a seller can not perform a contract after the commencement of the repealed Act because of a defect in the seller's title, a court may award damages for loss of bargain against the seller;

Note—

See section 84 and repealed section 68.

- (i) for a mortgage entered into before or after the commencement of the repealed Act, other than in regard to the making of further advances as mentioned in repealed section 82(1), the right to tack is abolished;

Note—

See section 113 and repealed section 82.

- (j) a lease of land for a term of years entered into before or after the commencement of the repealed Act is capable of taking effect at law or in equity from the start of the term, without actual entry of the land;

Note—

See section 125 and repealed section 102.

- (k) an interest in land consisting of a right of way over land can not be created merely because of the enjoyment after the commencement of the repealed Act of the access or use.

Note—

See section 170 and repealed section 198A.

225 Saving of abolition of common law rule that alien can not take, give, buy or sell property

To remove any doubt, it is declared that the repeal of section 15A of the repealed Act does not affect the abolition of the common law rule that an alien can not take, give, buy or sell property.

226 Particular provisions do not apply in relation to matters happening before 1 December 1975

Note for consultation—

The *Acts Interpretation Act 1954*, s 20 and 20A will preserve the operation of repealed provisions of the PLA 1974 even if they are not listed below.

- (1) This section applies if a repealed provision provided that the provision applied only in relation to a matter happening after the commencement of the repealed Act.
- (2) To remove any doubt, it is declared that a corresponding provision for the repealed provision does not apply in relation to a matter mentioned in the corresponding provision happening before the commencement of the repealed Act.
- (3) Without limiting subsection (2), it is declared that this Act does not apply in relation to the following matters happening before the commencement of the repealed Act—
 - (a) the creation of a future interest in land;

Note—

See section 24 and repealed section 30.

- (b) the making of a document containing a limitation on a gift over to another person;

Note—

See section 26 and repealed section 32.

- (c) the acquisition or holding of property by a body corporate;

Note—

See section 28 and repealed section 34.

- (d) the disposition of an equitable interest in property to 2 or more persons together beneficially;

Note—

See section 30 and repealed section 35.

- (e) the making of a promise by 2 or more persons, or the creation of a joint liability or cause of action relating to a joint liability;

Note—

See section 69 and repealed section 54.

- (f) the making of a contract containing a promise to do or refrain from doing an act for the benefit of a third party;

Note—

See section 70 and repealed section 55.

- (g) the making of a contract or other document containing a provision that a certificate is conclusive evidence of a fact;

Note—

See section 72 and repealed section 57.

- (h) the creation of either of the following mortgages—
 - (i) a mortgage under which an amount of money is expressed to be advanced by 2 or more persons out of money belonging to them on a joint account;
 - (ii) a mortgage to 2 or more persons jointly;

Note—

See section 99 and repealed section 93.

- (i) the release or discharge of a mortgage;

Note—

See section 120 and repealed section 98.

- (j) an obligation imposed under an Act or another law in relation to a lease of land for a term of years.

Note—

See section 125 and repealed section 102.

Division 3 Transitional provisions

Note for consultation—

The below provisions relate to ‘new’ provisions in the new Bill (i.e., that were not in the repealed Act) that are to apply whether the relevant thing happened before or after the commencement. If there is no transitional about a new section in this division, the general rule applies, i.e., it applies prospectively from the commencement.

227 Waiver of State’s right to property by escheat on death of person before commencement

A person may apply under section 20 for the waiver of a right of the State to property by escheat on the death of a person whether the death happened before or after the commencement.

228 Liability of co-owner of property to account for interest in property created before commencement

A co-owner of property is liable to account under section 30 to another co-owner of the property whether the interest in the

[s 229]

property of the co-owners arose before or after the commencement.

229 Covenants and agreements made by person with self and others [ss 4, 53; QUT, rec 56]

- (1) Section 48 applies in relation to covenants and agreements entered into by a person with the person's self and 1 or more other persons, whether the covenant or agreement was entered into before or after the commencement.
- (2) However, section 48 does not apply in relation to an order of the court made before the commencement.

230 Abolition of rule in Pigot's case

- (1) Section 62 applies in relation to a material alteration of a deed whether the alteration was made before or after the commencement.
- (2) However, section 62 does not apply in relation to a proceeding started before the commencement.

231 Particular covenants in registered easements created before commencement [ss 4, 53; QUT, rec 56]

Section 67 applies in relation to a covenant contained in a registered easement over land for the benefit of other land whether the easement was created or registered before or after the commencement.

232 Effect of inoperative computers on day of settlement on contract entered into before commencement

Section 81 applies in relation to a contract for the sale of land whether the contract was entered into before or after the commencement.

233 Effect of adverse event on day of settlement on contract entered into before commencement

Section 82 applies in relation to a contract for the sale of land whether the contract was entered into before or after the commencement.

234 Mortgagee's power of sale in relation to disclaimed property mortgaged before commencement

A mortgagee may sell under section 103 land subject to a registered mortgage that has been disclaimed by a trustee in bankruptcy or a liquidator whether the registered mortgage was entered into, or the disclaimer happened, before or after the commencement.

235 Court may order sale of mortgaged property in action started before commencement

A court may order in a proceeding a sale of mortgaged property under section 121 whether the proceeding was started before or after the commencement.

236 Realisation of equitable mortgages in proceeding started before commencement

A court may make an order under section 122 in a proceeding brought in relation to an equitable mortgage whether the proceeding was brought before or after the commencement.

237 Dealings with leases entered into before commencement

- (1) Subject to subsection (2), part 9, division 4 applies in relation to a dealing with a lease if the dealing happens after the commencement, whether the lease was entered into before or after the commencement.
- (2) Section 131 applies only if the lease was entered into after the commencement.

[s 238]

238 Relief against forfeiture for leases entered into before commencement

Part 9, division 5 applies in relation to a lease as mentioned in section 137 whether the lease was entered into before or after the commencement.

239 No interest created by prescription before commencement

Section 170 applies whether the interest is alleged to have been created before or after the commencement.

240 Disposition with intent to defraud creditor before commencement

Section 182 applies whether the disposition of property by the transferor happened before or after the commencement.

241 Powers of appointment over property created before commencement

Part 12 applies in relation to a document giving a person a power of appointment over property, including, for example, an appointment, or purported appointment, of property under the document, whether the document, or the appointment or purported appointment, was made before or after the commencement.

242 Maximum duration of trusts created before commencement [NZ, sch 1, s 3]

- (1) This section applies to a trust if—
- (a) the trust was created before the commencement; and
 - (b) under the repealed Act, the rule against perpetuities applied to a disposition under the trust made before the commencement.

-
- (2) If the terms of the trust expressly state or imply a duration of the trust, the trust continues until the earlier of the following days—
 - (a) the day on which, under the terms of the trust as in effect on the commencement, the trust property will vest;
 - (b) the day on which, under a valid variation of the trust made after the commencement that extends the duration of the trust to a maximum of 125 years after the creation of the trust, the trust property will vest.
 - (3) If the terms of the trust do not expressly state or imply a duration but expressly state or imply a mechanism for determining the day on which the trust property will vest, the trust continues until the earlier of the following days—
 - (a) the day determined by the mechanism;
 - (b) the day that is 125 years after the creation of the trust.
 - (4) This section applies despite section 190.

Part 18 Amendment of Acts

Division 1 Amendment of this Act

243 Act amended

This division amends this Act.

244 Amendment of long title

Long title, from ‘, to repeal’—
omit.

[s 245]

Division 2 Amendment of Land Title Act 1994

245 Act amended

This division amends the *Land Title Act 1994*.

246 Amendment of s 54E (Amending a building management statement)

(1) Section 54E—

insert—

(2A) Subsection (2) does not apply if the instrument of amendment relates to an order of the court under the *Property Law Act 2022*, section 169.

(2) Section 54E(2A) and (3)—

renumber as section 54E(3) and (4).

247 Amendment of s 54H (Extinguishing a building management statement)

(1) Section 54H—

insert—

(3A) Subsection (3) does not apply if the instrument of extinguishment or partial extinguishment relates to an order of the court under the *Property Law Act 2022*, section 169.

(2) Section 54H(3A) and (4)—

renumber as section 54E(4) and (5).

Note for consultation—

Please note that an amendment to the *Land Title Act 1994*, section 161 may be required and is under consideration.

**Division 3 Amendment of Limitation of Actions
Act 1974**

248 Act amended [QUT, rec 45]

This division amends the *Limitation of Actions Act 1974*.

**249 Amendment of s 10 (Actions of contract and tort and
certain other actions)**

- (1) Section 10(1)(c), from ‘, where’ to ‘seal’—
omit.
- (2) Section 10(3), ‘specialty’—
omit, insert—
deed
- (3) Section 10(3), ‘12 years’—
omit, insert—
6 years
- (4) Section 10(6)(b), after ‘contract’—
insert—
or deed

Drafting note—

The Bill will include a transitional provision to provide that a variation of a deed subject to the 12 year limitation period will not change the limitation period for the deed.

[s 250]

Division 4 Amendment of Property Occupations Act 2014

250 Act amended

This division amends the *Property Occupations Act 2014*.

251 Insertion of new s 229A [s 60; QUT, rec 65]

Before section 230—

omit, insert—

229A Disclosure of seller's right to bid at auction

- (1) This section applies if—
 - (a) property is to be, may be or is being, offered for sale by auction; and
 - (b) the seller wishes to reserve the seller's right to bid at the auction.
- (2) The seller may bid at the auction, and the auctioneer may accept a bid of the seller, only if the conditions of sale for the auction include a condition that the sale is subject to the seller's right to bid at the auction.
- (3) If property is sold in contravention of subsection (2), the contract is voidable by the buyer before settlement of the contract.
- (4) To remove any doubt, it is declared that a bid of the seller includes a bid on behalf of the seller.

Division 5 Minor and consequential amendments

252 Acts amended

Schedule 3 amends the Acts it mentions.

Note for consultation—

Schedule 3 will be drafted at the end of the drafting process, i.e., when the substance of the new Bill is settled.

Schedule 1 Implied terms [QUT, rec 211]

section 126

1 Payment of rent

The lessee must pay the rent payable under the lease when it is due.

2 Payment of taxes, rates and other assessments

The lessee must pay all taxes, rates and assessments of any kind that are charged or chargeable on the land or the lessor, in relation to the leased premises for the term of the lease in the proportion that the area of the leased premises bears to the land subject to the assessment.

3 Maintain and leave the premises in good repair

- (1) The lessee must—
 - (a) at all times during the term of the lease, keep the leased premises in the same condition that they were in at the start of the term of the lease; and
 - (b) at the termination of the lease, yield the leased premises in that condition.
- (2) However, the lessee is not bound to repair any damage to the leased premises caused by—
 - (a) reasonable wear and tear; or
 - (b) any of the following—
 - (i) fire, flood, or explosion, whether or not the fire, flood, or explosion is caused or contributed to by the lessee's negligence;
 - (ii) lightning, storm or earthquake; or
 - (iii) any other cause the risk for which the lessor has insured the premises.

(3) Despite subclause (2)(b), the lessee is not excused from liability to repair any damage caused by any of the events mentioned in that paragraph if, and to the extent that, any insurance moneys that would otherwise have been payable to the lessor for the destruction of or damage to the leased premises cannot be recovered because of an act or omission of—

- (a) the lessee;
- (b) the lessee's agent, contractor, or invitee; or
- (c) any other person under the lessee's direction or control.

4 Abatement of rent if premises is destroyed or damaged

(1) If the leased premises or any part of them are destroyed or damaged by a relevant cause to the extent that they become unfit for occupation and use by the lessee, the rent and any contribution payable by the lessee to the outgoings on those premises abates, in fair and just proportion to the destruction or damage, until the premises or part of them—

- (a) have been repaired and reinstated; and
- (b) are again fit for occupation and use by the lessee.

(2) Despite subclause (1), the lessee is not entitled to the abatement referred to in that subclause if, and to the extent that, any insurance moneys that would otherwise have been payable to the lessor for the destruction of or damage to the leased premises cannot be recovered because of an act or omission of—

- (a) the lessee;
- (b) the lessee's agent, contractor, or invitee; or
- (c) any other person under the lessee's direction or control.

(3) In this clause—

relevant cause means—

- (a) fire, flood, or explosion, whether or not the fire, flood or other inundation of water, or explosion is caused, or contributed to, by the lessee's negligence;

- (b) lightning, storm or earthquake; or
- (c) any other cause the risk for which the lessor has insured the premises.

5 Assignment of the lease

- (1) The lessee must not assign the lease without first obtaining the lessor's written consent.
- (2) The lessor's written consent must not be unreasonably withheld.

6 Noxious or offensive acts or things

- (1) The lessee must not do, or permit to be done, on the leased premises a prohibited thing to—
 - (a) the lessor; or
 - (b) the other lessees of the lessor; or
 - (c) the owners or occupiers of neighbouring properties.
- (2) Subsection (1) does not apply to a prohibited thing contemplated under the lease.
- (3) In this section—

prohibited thing means—

 - (a) any noxious or offensive act or thing; or
 - (b) any act or thing that is, or is likely to be, a nuisance or that causes, or is likely to cause, any nuisance, damage, or disturbance.

7 Commission of waste [QUT, rec 114]

The lessee must not commit, or permit any of the lessee's agents, contractors, or invitees to commit, voluntary waste in relation to the leased premises.

8 Lessee entitled to quiet enjoyment

- (1) The lessee and all persons claiming under the lessee must be able quietly to enjoy the leased premises without disturbance by—
 - (a) the lessor;
 - (b) the lessor's agent, contractor or invitee; or
 - (c) any other person under the lessor's direction or control.
- (2) The lessor must not derogate from the lease.

9 Change of use

- (1) The lessee must not use the premises for any purpose other than the purpose permitted under the lease unless the lessor consents to the change of use.
- (2) The lessor must not unreasonably withhold consent to a request from the lessee for a change in use of the premises.

10 Power to inspect premises

- (1) The lessor may at all reasonable times, either personally or by the lessor's agent, enter the leased premises for the purpose of—
 - (a) inspecting their state of repair; or
 - (b) carrying out repairs; or
 - (c) complying with the requirements of—
 - (i) any Act or other law; or
 - (ii) any notice given by a competent authority.
- (2) The lessor must not unreasonably interfere with the lessee's occupation and use of the leased premises in the exercise of the power conferred by subclause (1).

11 Power to terminate lease for non-payment of rent or other breach

- (1) The lessor may terminate the lease if—

- (a) any rent is unpaid for 1 month after the due date for payment, whether or not a demand for payment has been made to the lessee by written notice signed by the lessor or the lessor's agent; or
 - (b) the lessee has failed, for a period of 2 months, to observe or perform any other covenant, condition, or stipulation on the part of the lessee expressed or implied in the lease.
- (2) The lessee is not released from liability for the payment of any unpaid rent or for the breach or non-observance of any other covenant, condition, or stipulation mentioned in subclause (1) if the lessor terminates the lease.
- (3) Subclause (1) is subject to part 9, division 5.

12 Lessee may remove lessee's fixtures

- (1) Before or at the end of the lease, whether by expiration of the lease term or otherwise, the lessee must remove and take away from the premises all fixtures, fittings, plant, machinery, utensils, shelving, counters, safes and other items owned by the lessee.
- (2) The lessee must repair any damage caused to the premises by the removal of the items mentioned in subclause (1).
- (3) If the lessee does not comply with subclause (1) or (2) within 1 month after the expiry of the lease term then the items mentioned in subclause (1) are taken to be abandoned items and the lessor is entitled to remove, sell or otherwise dispose of the abandoned items.
- (4) The lessor may recover from the lessee any loss or damages incurred in exercising its rights under subclause (3).

Schedule 2 Dictionary [QUT, recs 216-232]**section 8**

absolute, in relation to an assignment, for part 11, division 1, see section 178.

accepted method, for electronically signing a document, for part 6, division 1, see section 46.

affected owner, for part 10, division 3, see section 171.

approved form means a form approved under section 218.

bankruptcy means a proceeding under a law about bankruptcy, insolvency or the liquidation of corporations.

boundary means the boundary line between contiguous parcels of land.

breach, of a term of a lease, for part 9, division 5, subdivision 2, see section 139.

building, for part 10, division 3, see section 171.

buyer means a buyer for valuable consideration, and includes a lessee, mortgagee, or other person who for valuable consideration acquires an interest in property.

consent, for part 6, division 1, see section 46.

contract, for the sale of land, for part 7, division 3, see section 88.

conveyancing transaction, for part 7, division 2, see section 76.

co-owner, of property, means a person who has an interest in the property with 1 or more other persons as—

- (a) joint tenants, whether at law or in equity; or
- (b) tenants in common, whether at law or in equity.

copy, of an electronic document, for part 6, division 1, see section 46.

counterpart, for a document, for part 6, division 1, see section 47.

court means the Supreme Court.

debt, for part 11, division 1, see section 178.

debtor, for part 11, division 1, see section 178.

deed means a document that has under this Act or another Act the effect of a deed.

deposit, in relation to a contract for the sale of land, for part 7, division 3, see section 88.

designated person—

- (a) for a lease of land, for part 9, division 5, subdivision 2—see section 139; or
- (b) for a lease of land, for part 9, division 5, subdivision 3—see section 150.

digitally sign, an electronic document, means sign the document using a method mentioned in the *Electronic Transactions (Queensland) Act 2001*, section 14.

director, of a corporation, for part 6, division 1, see section 46.

discharge, a mortgage, includes redeem or release the mortgage.

disposition—

- 1. Other than for part 13, *disposition*—
 - (i) includes the following—
 - (A) a sale;
 - (B) a mortgage;
 - (C) a transfer;
 - (D) a grant;
 - (E) a partition;
 - (F) an exchange;
 - (G) a lease;

- (H) an assignment;
 - (I) a vesting instrument;
 - (J) a declaration of trust;
 - (K) a surrender, disclaimer or release;
 - (L) the creation of an interest in property, including, for example, an easement or profit a prendre;
 - (M) the assurance of an interest in property by a document; and
- (ii) does not include the following—
- (A) a will;
 - (B) a devise;
 - (C) a bequest;
 - (D) an appointment by will in relation to property.

2. *Disposition*, for part 13, see section 187.

document, for part 6, division 1, see section 46.

e-conveyance, for part 7, division 2, see section 76.

electronic document, for part 6, division 1, see section 46.

electronically sign, a document, for part 6, division 1, see section 46.

e-conveyancing, for part 7, division 2, see section 76.

encroachment for part 9, division 3, see section 171.

electronic workspace, for part 7, division 2, see section 76.

ELN, for part 7, division 2, see section 76.

encroaching owner, for part 10, division 3, see section 173(1).

fence, for part 10, division 4, see section 175.

financial settlement, of an e-conveyance, for part 7, division 2, see section 76.

income, in relation to land, includes rents and profits from the land.

information, for part 6, division 1, see section 46.

instalment contract, for part 7, division 3, see section 88.

intestate see the *Succession Act 1981*, section 5.

land registry see the *Land Act 1994*, section 275.

land titles legislation, for part 7, division 2, see section 76.

lease, for part 9, division 5, see section 136.

mortgagee includes a person deriving title to the mortgage from the original mortgagee.

mortgage money means money or money's worth secured by a mortgage.

mortgagor includes a person entitled to discharge a mortgage under the original mortgagor.

participating subscriber, to an e-conveyance, for part 7, division 2, see section 76.

National Law, for part 7, division 2, see section 76.

notice means written notice.

notice to remedy breach, for part 9, division 5, subdivision 2, see section 139.

notice of intention to refuse, in relation to a refusal to renew a lease, or transfer the reversion of a lease, for part 9, division 4, subdivision 3, see section 151.

participating subscriber, for part 7, division 2, see section 76.

party, to a lease, for part 9, division 5, see section 157.

perpetuity period, for part 14, see section 190.

physical document, for part 6, division 1, see section 46.

place, of settlement of a contract, means the place provided for under the contract.

possession, in relation to land, includes the receipt of income from the land.

power of appointment, over property, means a discretionary power to create or transfer a beneficial interest in the property without the provision of valuable consideration.

prescribed percentage, of the purchase price of land, for part 7, division 3, see section 88.

property, for part 5, division 2, subdivision 1, see section 32.

proposed lot means—

- (a) a proposed lot within the meaning of the *Land Sales Act 1984*; or
- (b) a proposed lot within the meaning of the *Body Corporate and Community Management Act 1997*; or
- (c) land that will be shown as a lot on a building units plan or group titles plan registered under the *Building Units and Group Titles Act 1980*; or

Note—

There is limited scope for the registration of new building units plans and group titles plans under the *Building Units and Group Titles Act 1980*—see section 5A of that Act.

- (d) a proposed lot within the meaning of the *South Bank Corporation Act 1989*, section 97B.

reasonable compensation, for a breach of a term of a lease, for part 9, division 5, subdivision 2, see section 139.

register, a document, an interest, land or another thing, means to record the particulars of the thing in the appropriate register in the land registry.

registered land means land under the provisions of the *Land Title Act 1994*.

registrar means the registrar of titles under the *Land Title Act 1994*, section 6.

rent includes rent payable in advance.

Resource Act see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 9.

sale—

- (a) means a transfer for valuable consideration; or

(b) of land, for part 7, division 2, see section 76.

seal, of a corporation, for part 6, division 1, see section 46.

secretary, of a corporation, for part 6, division 1, see section 46.

security interest, for part 5, division 2, see section 32.

short lease means—

(a) a lease for a term of not more than 3 years, including, for example, a lease created by parol taking effect in possession; or

(b) a tenancy from year to year or a shorter period.

sign, a document, for part 6, division 1, see section 46.

standard terms, of a lease, see section 126.

statutory right of use, for part 10, division 2, see section 167.

subscriber, for part 7, division 2, see section 76.

successor includes a personal representative and an assign.

term—

(a) for part 8, see section 96; or

(b) for part 9, see section 124.

termination day, for part 9, division 5, see section 157.

termination notice, for part 9, division 5, see section 157.

thing in action, for part 11, division 1, see section 178.

time, of settlement of a contract, means the time provided for under the contract.

unregistered land means land that has been granted in fee simple and is not registered land or land granted in trust under the *Land Act 1994*.

utility, for part 10, division 2, see section 167.

valuable consideration does not include a nominal consideration in money.