



THOMSON REUTERS

# Update Summary

PLEASE CIRCULATE IMMEDIATELY!

**UPDATE 191**

**JUNE 2025**

## **PROPERTY LAW AND PRACTICE QUEENSLAND**

**Material Code 42609309**

**Print Post Approved PP255003/00335**

© Thomson Reuters (Professional) Australia Limited 2025

**Looseleaf Support Service**

You can now access the current list of page numbers at

<http://www.thomsonreuters.com.au/support/product-support.aspx?id=/mediaTree/58599>. If you have any questions or comments, or to order missing pages, please contact Customer Care LTA ANZ on 1300 304 195 Fax: 1300 304 196 Email: [Care.ANZ@thomsonreuters.com](mailto:Care.ANZ@thomsonreuters.com)

Bill Duncan has updated the following commentary:

## Section 11

Additional recent cases have been added to the commentary on s 11 relating to the requirements for the creation of an interest in land (*Lo v Huang* [2020] QCA 97), declarations of trusts of land (*Irwin v Pamplin (No 4)* [2024] NSWSC 73) and the exception of a resulting trust (*Vanta Pty Ltd v Mantovani* (2023) 72 VR 19; [2023] VSCA 53).

### [PLA.124.180] Form of Notice, length of Notice and signature of Notice

The decision of *Thistle Investment Pty Ltd v MXL Investment Pty Ltd* [2024] QSC 247 has been analysed with respect to the information required in a Form 7 Notice to Remedy Breach sufficient to satisfy s 124(2). In this case, the lessor attached a 105-page report which detailed issues to be addressed to satisfy the “make good” provisions rather than those that needed to be addressed to satisfy the works required to address the breach of the covenant to repair. The Form 7 was held invalid as being non-compliant with the court commenting that it was not the obligation of the lessee to sort out what was required from a very long list of issues, most irrelevant, and that the Notice had to be specific to what was only needed to meet the obligation to repair.

### [PLA 180.70] Applicant for order must describe nature of imposition with specificity and in terms that would be approved by local authority

The case of *M Salazar Properties Pty Ltd v Jeffs* [2024] QCA 257 has been incorporated into the text in a new section to include a discussion concerning the specificity of the relief for which an applicant must request under s 180. Ideally, the relief asked for should be very specific as to dimensions, location and area of the statutory form of user required, also ensuring that it meets local authority requirements so that the court also incorporates these into any following order given.

### [PLA.180.90] “reasonably necessary in the interests of effective use in a reasonable manner of any land”: subs (1)

The recent decision of *Greatrex v Murray* [2025] QSC 85 has been included where Kelly J said that the greater the burden of the imposition (of the statutory right of use), the stronger the case has to be to find “reasonable necessity”. In that case, the easement rights sought to be imposed on a neighbour’s land gave no reciprocal rights to the adjoining neighbour’s land which would have become the servient owner and would have reduced not only the neighbour’s frontage but also the value of the neighbour’s land considerably. Kelly J found that while the imposition of the driveway easement may have been “desirable or preferable” for the purported dominant owner in an inner city suburb when on-street parking may not be convenient, this was not sufficient to satisfy the test of “reasonable necessity” especially given the extent of the burden to the servient owner.

### [PLA.198A.30] Historical position of easements by prescription

The decision of *Greatrex v Murray* [2025] QSC 85 has been digested in respect of the imposition of easements by prescription. In holding that such an easement could not be created in this instance, Kelly J reviewed the law in relation to the very narrow situations

in which they might be imposed today. In this instance, the applicants failed to prove that there was long user prior to the relevant title being registered in 1947, nor was there any documentary evidence of the existence of an easement which might have been omitted from that title at that time.

