

Queensland



*Torres Strait Islander Land Act 1991*

# **TORRES STRAIT ISLANDER LAND REGULATION 1991**

**Reprinted as in force on 6 December 2002  
(includes amendments up to SL No. 331 of 2002)**

**Reprint No. 2B**

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

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- **when provisions commenced**
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Queensland



**TORRES STRAIT ISLANDER LAND  
REGULATION 1991**

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# TORRES STRAIT ISLANDER LAND REGULATION 1991

[as amended by all amendments that commenced on or before 6 December 2002]

## PART 1—PRELIMINARY

### 1 Short title

This regulation may be cited as the *Torres Strait Islander Land Regulation 1991*.

### 2 Definitions

In this regulation—

“**application for incorporation**” means an application under division 1 of part 2.

“**approved form**” means a form approved by the chief executive under section 134B<sup>1</sup> of the Act.

“**association**” means a Torres Strait Islander land claim association incorporated under this regulation.

“**disposition**”, in section 40, means a sale, lease, mortgage, surrender, release or another type of disposition.

“**executive committee**”, of a land trust, means the committee of the land trust primarily responsible for the management of the land trust.

“**general meeting**” means an annual general meeting or special general meeting.

“**grantee**”, in relation to a land trust, means—

- (a) the grantee who, under this regulation, forms the land trust; or
- (b) 1 of the grantees who, under this regulation, forms the land trust.

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<sup>1</sup> Section 134B (Approval of forms) of the Act

**“land claim”** means a claim under the Act for claimable land.

**“land claim purposes”**, in relation to a group of Torres Strait Islanders who make a claim under section 42<sup>2</sup> of the Act, means—

- (a) investigating if a land claim can be made under the Act by, or on behalf of, the members of the group; and
- (b) if a land claim can be made—preparing and making the land claim; and
- (c) doing all things necessary or convenient for the preparation and presentation of the land claim before the Land Tribunal; and
- (d) starting and conducting legal proceedings in connection with the land claim.

**“land trust”** means a land trust formed under part 3 by the incorporation of grantees.

**“proposed association”**, in relation to an application for incorporation, means the Torres Strait Islander land claim association that the applicants propose to constitute by their incorporation under this regulation.

**“public officer”**, in relation to an association, means the person appointed by the association as its public officer, or to act in the position of public officer.

**“rules”**, of an association or land trust, means the rules of the association or land trust as in force from time to time.

**“transaction”**, in section 40, means a purchase, investment, acquisition, retention, expenditure or another type of transaction.

**“trust property”**, in relation to grantees or a land trust, includes—

- (a) income derived from Torres Strait Islander land held or leased by the grantees or the land trust; and
- (b) amounts paid in relation to—
  - (i) the grant of an interest in the land; or
  - (ii) the creation of a mining interest in the land; or
  - (iii) an agreement entered into in respect of the land; and
- (c) amounts paid by any person or governmental authority; and

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2 Section 42 (Who may make a claim) of the Act



- (d) any other property;  
that is received or acquired by the grantees or the land trust.

## **PART 2—LAND CLAIMANTS MAY BE INCORPORATED**

### *Division 1—Application for incorporation*

#### **3 Land claimants may apply for incorporation**

(1) The following persons may apply to the land claims registrar for incorporation under this part as a Torres Strait Islander land claim association—

- (a) if members of a group of Torres Strait Islanders intend to make a land claim on their own behalf and on behalf of other Torres Strait Islanders in the group—the members of the group; or
- (b) in any other case—the group of Torres Strait Islanders who intend to make the claim.

(2) This part—

- (a) is to be read so as to provide the benefits of incorporation to persons who may make a claim under section 42<sup>3</sup> of the Act and apply for incorporation under this regulation; and
- (b) is not to be read so as to limit section 42 of the Act.

#### **4 Application for incorporation—form and content**

(1) An application for incorporation is to be in writing and signed by each of the applicants for incorporation.

(2) The application is to include all of the following things—

- (a) the names and addresses of the applicants for incorporation;

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3 Section 42 (Who may make a claim) of the Act

- (b) if applicable and to the extent practicable—the names and addresses of the Torres Strait Islanders on whose behalf the applicants are applying for incorporation;
  - (c) the objects of the proposed association;
  - (d) the place where the activities of the proposed association are to be conducted;
  - (e) the name of the proposed association;
  - (f) a copy of the rules of the proposed association by which its affairs are to be regulated.
- (3) The name of the proposed association—
- (a) is to include the words ‘Torres Strait Islander land claim association’; and
  - (b) is to be a name that is available under the Corporations Law.

## **5 Rules for proposed association to provide for certain things**

(1) The rules of the proposed association are to provide for all of the following things—

- (a) the qualifications of the members of the proposed association;
- (b) the constitution and functions of the committee primarily responsible for the proposed association’s management;
- (c) the process for decision making by the proposed association and its committees;
- (d) the position of public officer;
- (e) the creation of its executive offices and the procedure for filling them;
- (f) the procedure for settling disputes between the proposed association and its members;
- (g) the procedure for the conduct of meetings of the proposed association and its committees;
- (h) the way in which the proposed association’s funds are to be managed;
- (i) the procedure for amending the proposed association’s objects;

- (j) the procedure for amending the proposed association's rules, whether by making new rules or by varying or rescinding rules in force;
  - (k) the procedure for the dissolution or winding-up of the proposed association;
  - (l) the appointment of a person to act in the position of a member of the committee primarily responsible for the management of the proposed association, the public officer or an executive officer when the member or officer is, or is to be, absent;
  - (m) the distribution of the assets, or the discharge of the liabilities, of the proposed association on its dissolution or winding-up;
  - (n) the requirements for affixing the common seal to documents.
- (2) The proposed rules—
- (a) may provide for any other thing not contrary to law; and
  - (b) may be based on Island custom; and
  - (c) are subject to this regulation.

### *Division 2—Land claims registrar to deal with application*

## **6 Land claims registrar to deal with application**

When the land claims registrar receives an application for incorporation, the registrar must deal with the application under this division.

## **7 Land claims registrar must issue certificate of incorporation unless grounds for refusal**

(1) The land claims registrar must issue a certificate of incorporation unless there are grounds for refusing the application.

(2) The registrar must refuse to issue a certificate if the registrar is satisfied that—

- (a) the application does not comply with sections 4 and 5; or
- (b) the rules of the proposed association are not reasonable; or
- (c) the proposed association is to be formed for a purpose other than land claim purposes.

## **8 Procedure if land claims registrar refuses application**

(1) If the land claims registrar refuses to issue a certificate of incorporation, the registrar must, in writing—

- (a) inform the applicants for incorporation of the refusal and the reasons for it; and
- (b) invite the applicants to change such part of the application for incorporation as is necessary before the registrar must issue a certificate of incorporation.

(2) The invitation is to set out—

- (a) the types of changes that are necessary; and
- (b) the deadline for the making of the changes or for the applicants to notify the registrar of the reasons for not making the changes.

(3) The registrar may provide assistance to the applicants so that they can change the application.

### *Division 3—Effects of incorporation*

## **9 Effect of issue of certificate of incorporation**

(1) If the land claims registrar issues a certificate of incorporation, the applicants are incorporated under this regulation as a Torres Strait Islander land claim association on the day the registrar issues the certificate.

(2) The association—

- (a) is a body corporate with perpetual succession; and
- (b) is to have a common seal; and
- (c) may acquire, hold and dispose of personal property (including a lease); and
- (d) may borrow, receive and spend money; and
- (e) may sue and be sued in its corporate name; and
- (f) may employ such staff and engage such consultants as are necessary for its land claim purposes.

(3) The association may not acquire, hold or dispose of any interest in real property (other than a lease).

(4) The association's name is the name set out in its certificate of incorporation.

(5) The common seal is effective only if the association's name is inscribed on the seal in legible characters, but the seal may include other words.

(6) All courts, judges and persons acting judicially must take notice of the imprint of the common seal affixed to a document and must presume that the common seal was duly affixed.

## **10 Rules of association on incorporation**

The rules of an association on its incorporation are the proposed rules at the time the land claims registrar issues the certificate of incorporation (including any changes made before that time).

## **11 Membership of association on incorporation**

(1) The membership of an association on its incorporation consists of—

- (a) if the applicants for incorporation intend to make a land claim on their own behalf and on behalf of other Torres Strait Islanders who are members of the group—the applicants for incorporation; or
- (b) in any other case—all of the applicants.

(2) A person who is not a Torres Strait Islander, or the spouse of a Torres Strait Islander, is not entitled to become a member of an association.

## **12 Vesting of property in Torres Strait Islander land claim associations**

(1) Subject to subsection (3), this section applies if a person holds personal property (in trust or otherwise) for or on behalf of—

- (a) the applicants for incorporation, as members of a group of Torres Strait Islanders; or
- (b) all or some of the group of Torres Strait Islanders on whose behalf the applicants have made the application, as members of the group of Torres Strait Islanders.

(2) The person may vest the property in the association.

(3) This section—

- (a) applies subject to the terms of any trust, covenant, contract or liability affecting the property; and
- (b) does not apply to personal property consisting of an estate or interest in land; and
- (c) does not apply to personal property held on a basis unconnected with the fact that the people on whose behalf the property is held are Torres Strait Islanders or their membership of the group of Torres Strait Islanders.

### **13 Powers to borrow money and give securities**

(1) An association may—

- (a) raise or borrow money on such terms, and in such way, as it considers appropriate; and
- (b) secure the payment of money raised or borrowed, or the discharge of the association's liabilities, by giving a mortgage, charge or other security on or over all or part of the association's property (other than an interest in land).

(2) This section is subject to this regulation and the association's rules.

### **14 Appointment of public officer and determination of official address**

(1) The committee primarily responsible for the management of an association must, within 3 weeks after the association comes into existence—

- (a) appoint a person to be the association's public officer; and
- (b) determine an official address for the public officer.

(2) The committee must, within 2 weeks of the appointment, notify the land claims registrar of the name of the public officer and the official address.

(3) When the public officer resigns, the resignation does not take effect until it is accepted by the committee.

(4) The committee must terminate the appointment of its public officer if the public officer becomes bankrupt, applies to take the benefit of a law for

the relief of bankrupt or insolvent debtors or compounds with his or her creditors.

(5) Subsection (4) does not limit the power of an association to terminate the appointment of its public officer for any other reason.

#### *Division 4—Amendment of the objects or rules*

### **15 Amendment of objects or rules**

(1) This section applies when an association resolves to amend its objects or rules.

(2) The public officer must, within 6 weeks after a resolution to amend the association's objects or rules, file with the land claims registrar a copy of the resolution.

(3) The registrar must consider the resolution and must—

- (a) if satisfied that it is proper to do so—approve the amendment; or
- (b) if not so satisfied—refuse to approve the amendment.

(4) The registrar must notify the public officer, in writing, of—

- (a) the approval; or
- (b) the refusal and the reasons for it.

(5) The resolution does not take effect until the registrar approves of it.

(6) An amendment of the objects or rules of an association does not affect a right or obligation of the association or of another person, or a legal proceeding, existing or pending immediately before the amendment is approved by the registrar.

#### *Division 5—Dissolution or winding-up of association*

### **16 Dissolution**

(1) If an association has been incorporated for land claim purposes for only 1 area of land, the association must, before the end of 6 months after any of the following, resolve to dissolve itself—

- (a) the association's resolution not to make a claim for the land;

- (b) the refusal of the land claims registrar to accept the land claim (or any amended land claim) made by the association for the land;
- (c) the determination of the land claim.

(2) If an association has been incorporated for land claim purposes for 2 or more areas of land and the association has made claims for all the areas of land for which the association was incorporated, the association must, before the end of 6 months after the determination of the last one of the land claims, resolve to dissolve itself.

(3) If an association has been incorporated for land claim purposes for 2 or more areas of land but has not made claims for all areas of land for which the association was incorporated, the association must, before the end of 6 months after any of the following, resolve to dissolve itself—

- (a) the determination of all the land claims which the association has made and the association's resolution not to make any more land claims;
- (b) the determination of all the land claims which the association has made and the refusal of the land claims registrar to accept a land claim (or an amended land claim) for the only area of land not yet the subject of a land claim.

(4) The public officer must, within 3 weeks after the resolution for the association's dissolution, lodge with the land claims registrar a copy of the resolution.

(5) The registrar must, within 3 weeks after the lodging of the copy of the resolution, publish in the gazette, a notice of the passing of the resolution to which the notice relates.

(6) The association is dissolved on the day the notice is published in the gazette or a later day specified in the notice.

## **17 Application by land claims registrar for winding-up of association if it does not resolve to dissolve itself**

(1) If the land claims registrar considers that an association has not resolved to dissolve itself as required by section 16(1) or (2), the registrar may request the committee primarily responsible for the association's management to give to the registrar a written explanation as to why the association has not resolved to dissolve itself.



(2) The request is to be made by written notice to the public officer and is to include the deadline for the receipt by the registrar of the written explanation.

(3) If—

- (a) the committee fails to give the registrar a written explanation; or
- (b) the registrar considers that an explanation given by the committee is not satisfactory;

the registrar may petition the Supreme Court for an order to wind-up the association.

### **18 Involuntary winding-up of association by Supreme Court**

(1) An association may be wound-up by an order of the Supreme Court on the petition of—

- (a) the association; or
- (b) a creditor of the association; or
- (c) a member of the association; or
- (d) the land claims registrar.

(2) The petition is to contain at least 1 of the following grounds—

- (a) the association has, in accordance with its rules, resolved that it be wound-up by the Supreme Court;
- (b) the association has not, within 1 year after its incorporation, taken any substantial action to achieve the land claim purposes for which it was incorporated;
- (c) the association is unable to pay its debts;
- (d) the members of the committee primarily responsible for the management of the association have acted in the association's affairs in a way that is unfair or unjust to the members of the group of Torres Strait Islanders on whose behalf the application for incorporation was made;
- (e) it is just and equitable that the association be wound-up.

(3) The association is to be taken to be unable to pay its debts if—

- (a) a creditor, by assignment or otherwise, to whom the association is indebted for an amount of more than \$1 000—

- (i) has, by written notice of demand on the public officer, required the association to pay the amount; and
  - (ii) the association has not, within 28 days after service of the demand, paid the amount or secured or compounded it to the reasonable satisfaction of the creditor; or
  - (b) execution or other process issued on a judgment, decree or order of a court in favour of a creditor of the association is returned unsatisfied in whole or in part; or
  - (c) it is proved to the satisfaction of the Supreme Court that, taking into account the contingent and prospective liabilities of the association, the association is unable to pay its debts.
- (4) Without limiting the power of the Supreme Court to make orders in relation to the winding-up of incorporated bodies, the court may make any order that it considers proper for—
- (a) the payment of the association's debts and liabilities; and
  - (b) the distribution of the association's assets.

## **PART 3—LAND TRUSTS**

### *Division 1—Formation*

#### **19 Incorporation of grantees as land trust**

(1) When a deed of grant or a lease of land is granted under the Act for the benefit of—

- (a) in the case of transferred land—Aboriginal people; or
- (b) in the case of granted land—the group of Torres Strait Islanders for whose benefit the land was granted;

the grantees are incorporated under this part as a land trust.

(2) As soon as possible after the grantees are incorporated, the Minister must, by gazette notice, specify—

- (a) the name of the land trust; and

- (b) the description of the land as set out in the deed of grant or lease held by the grantees; and
- (c) an address for service of documents on the land trust.

(3) The name of a land trust must include the words ‘land trust’ as the last 2 words of its name.

(4) A land trust may hold more than 1 area of land.

## **20 Nature of land trust—body corporate, etc.**

(1) A land trust—

- (a) is a body corporate with perpetual succession; and
- (b) is to have a common seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may borrow, receive and spend money; and
- (e) may sue and be sued in its corporate name; and
- (f) may employ such staff and engage such consultants as are necessary for the performance of its function.

(2) The common seal is effective only if the land trust’s name is inscribed on the seal in legible characters, but the seal may include other words.

(3) The common seal is to be kept by a person who is authorised by the land trust for that purpose.

(4) The common seal may be affixed to a document only with the written authority signed by—

- (a) if the land trust consists of 1 grantee—the grantee; or
- (b) if the land trust consists of no more than 3 grantees—the chairperson of the land trust and at least 1 other grantee; or
- (c) in any other case—
  - (i) the chairperson and at least 2 other grantees; or
  - (ii) at least 3 grantees.

(5) All courts, judges and persons acting judicially must take notice of the imprint of the common seal affixed to a document and must presume that the common seal was duly affixed.

## **21 Function of land trust**

(1) The function of a land trust is to provide a legal entity by which the grantees of transferred land or granted land may, in accordance with the Act and this regulation, perform their functions.

(2) A land trust may exercise all powers necessary or convenient to perform its function.

(3) Without limiting subsection (2) and for the purposes of section 26(6)<sup>4</sup> of the Act, a land trust may perform all the functions, and exercise all the powers, of a trustee under the *Trusts Act 1973*.

(4) Subsection (3) is subject to any contrary intention in the Act or this regulation.

## **21A Adoption of rules**

(1) A land trust must adopt rules governing the land trust.

(2) A land trust must adopt its first rules as soon as practicable after it comes into existence.

(3) Within 28 days after a land trust adopts its first rules, adopts changes to its rules or adopts new rules, the land trust must give the land claims registrar a copy of its rules.

## **21B Content of rules**

The rules of a land trust must include provision for the following—

- (a) the constitution and functions of the land trust's executive committee;
- (b) the process for decision making by the land trust and its committees;
- (c) the creation of the land trust's executive offices and the procedure for filling the offices;
- (d) the appointment of a person to act in the position of a member of the executive committee when the member is, or is to be, absent;
- (e) the procedure for settling disputes between the land trust and the individual grantees forming the land trust;

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4 Section 26 (Minister to appoint trustees) of the Act

- (f) a requirement for quarterly, or more frequent, meetings of the executive committee, and how the meetings are to be held;
- (g) the way the land trust's general meetings are to be called and held;
- (h) requirements for managing trust property, including requirements for the following—
  - (i) keeping records of the land trust's transactions;
  - (ii) procedures for authorising payments, and for making payments, out of the land trust's funds;
  - (iii) keeping control over trust property;
  - (iv) procedures for incurring liabilities by or for the land trust;
- (i) the procedure for adopting changes to the rules of the land trust and for adopting new rules.

## **22 Land trust to indemnify grantees**

A land trust is to indemnify all grantees engaged in giving effect to the Act or this regulation against all proceedings and claims in relation to—

- (a) acts done, or omitted to be done, by the grantee without negligence under the Act; and
- (b) acts done, or omitted to be done, by the grantee in good faith and without negligence purportedly for the purposes of the Act or this regulation.

## **23 Dissolution of land trust if transferred land becomes granted land**

(1) This section applies if—

- (a) the whole of an area of transferred land becomes granted land; and
- (b) a land trust was formed by the grantees of the transferred land; and
- (c) the Minister appoints different grantees to hold the deed of grant or lease of the granted land.

(2) The Minister must, by gazette notice, dissolve the land trust formed by the grantees of the transferred land.

(3) When the land trust is dissolved, all its property, rights and liabilities become the property, rights and liabilities of the land trust formed by the grantees of the granted land.

## **24 Transfer of property to new land trust if part of transferred land becomes granted land**

(1) This section applies if—

- (a) a part of transferred land becomes granted land; and
- (b) a land trust was formed by the grantees of the transferred land; and
- (c) the Minister appoints different grantees to hold the deed of grant or lease of the granted land.

(2) The Minister must, by gazette notice—

- (a) set out the description of the land as set out in the deed of grant or lease, held by the grantees of the granted land; and
- (b) specify the property, rights and liabilities of the grantees of the transferred land and the land trust formed by them that are to become the property, rights or liabilities of the grantees of the granted land or the land trust formed by them.

(3) On publication of the gazette notice, the specified property, rights and liabilities of the grantees of the transferred land and the land trust formed by them become the property, rights and liabilities of the grantees of the granted land and the land trust formed by them.

### *Division 2—Grantees*

## **25 Composition of land trust**

A land trust for an area of land consists of all the grantees for the time being for the area of land.

## **26 Payments to grantees of land trust**

A grantee may be paid an amount equal to expenses reasonably incurred, or to be incurred, in relation to the performance of the grantee's functions under the Act or this regulation.

**27 Chairperson and deputy chairperson—appointment**

- (1) The grantees of a land trust must appoint—
  - (a) a grantee as the chairperson of the land trust; and
  - (b) if there is more than one grantee—a grantee as the deputy chairperson of the land trust.
- (2) The deputy chairperson may act as the chairperson during—
  - (a) a vacancy in the office of chairperson; or
  - (b) any period when the chairperson is absent from duty or from the State or is, for any reason, unable to perform the duties of the office of chairperson.

**28 Resignation of grantees**

- (1) A grantee may resign by writing delivered to the Minister.
- (2) The resignation does not take effect until it is accepted by the Minister.

**29 Protection in regard to notice when a person is grantee of more than 1 area of land**

A grantee who is appointed for the purpose of holding more than 1 deed of grant or lease of land under the Act is not, in the absence of fraud, to be affected by notice of any instrument, fact or thing in relation to a particular deed of grant or lease of land if the grantee has obtained the notice merely because of acting or having acted as grantee in relation to another deed of grant or lease.

**30 Immunity of grantees**

- (1) A grantee—
  - (a) is chargeable only for money and securities actually received even though the grantee signed a receipt for the money or security; and
  - (b) is answerable and accountable only for the grantee's own acts, receipts, neglects or defaults.
- (2) Without limiting the generality of subsection (1), a grantee is not answerable or accountable for—

- (a) the acts, receipts, neglects or defaults of another grantee or the land trust; or
- (b) the acts, receipts, neglects or defaults of a bank, broker or other person with whom trust property may be deposited; or
- (c) the insufficiency or deficiency of any securities or another loss unless the insufficiency, deficiency or loss happens through the grantee's default.

### *Division 3—Trust property*

#### **31 Property to be held on trust**

A grantee or land trust is to hold, invest, use and distribute trust property—

- (a) for the benefit of the Torres Strait Islanders for whose benefit the grantee or the land trust holds the trust property; and
- (b) in accordance with the Act and this regulation.

#### **32 Powers in respect of trust property**

(1) The land trust may exercise the powers that an owner of real or personal property can exercise in relation to the owner's real or personal property.

(2) Subsection (1) is subject to the Act and this regulation.

#### **33 Funds to be invested in accordance with *Trusts Act 1973***

(1) A land trust may invest trust property only in accordance with section 21 of the *Trusts Act 1973*.

(2) All trust property is to be invested in the name of the land trust.

#### **34 Staff and consultants, and grantees' expenses, to be paid from trust property**

(1) The cost of employing staff or engaging consultants to assist the grantees or a land trust may be paid out of the trust property of the land trust.



(2) Amounts to be paid to grantees under section 26 may be paid out of the trust property of the land trust.

### **35 Application of insurance money**

(1) Money received or receivable under a policy of insurance for the loss or damage to property held, owned or leased by grantees or a land trust is part of the capital of the trust property.

(2) The whole or a part of the money received or receivable may also be applied by the grantees or the land trust (and is to be applied if ordered by the Supreme Court) in rebuilding, reinstating, replacing or repairing the property lost or damaged.

## ***Division 4—Accounts, annual financial statements and audit requirements***

### **35A Accounts**

(1) A land trust must establish the accounts necessary or convenient for its operation as a land trust.

(2) The land trust must make sure its accounts are kept properly.

### **35B Annual financial statement**

A land trust must—

- (a) by 30 September each year, prepare and adopt an annual financial statement for the financial year most recently ended; and
- (b) within 28 days after adopting the statement, give a copy of it to the land claims registrar.

### **35C Audit requirements**

(1) A land trust must have its accounts audited for each financial year by a person who is—

- (a) a member of the Australian Society of Certified Practising Accountants; or

- (b) a member of the Institute of Chartered Accountants in Australia; or
- (c) a person approved in writing by the land claims registrar as having the necessary skills and experience for conducting the audit.

(2) The land trust must make sure the audit is completed, and it receives the audit report, by 30 November in the financial year after the financial year for which the accounts are audited.

(3) The land trust must give the land claims registrar a copy of the audit report within 28 days after the land trust receives it.

(4) Despite subsections (1) to (3), a land trust is not required to have its accounts audited for a financial year (the “**latest financial year**”) if—

- (a) the land trust’s total income from all sources for the latest financial year is \$10 000 or less; and
- (b) the land trust’s accounts were audited for either of the last 2 financial years before the latest financial year.

### *Division 5—General meetings*

#### **35D Holding of general meetings**

(1) A land trust must hold an annual general meeting as soon as practicable after the end of each financial year.

(2) A land trust may hold a special general meeting at any time.

(3) General meetings of a land trust must be called and conducted in the way required under the rules of the land trust.

(4) A land trust must make sure full and accurate minutes are taken of each general meeting.

#### **35E Material to be given to land claims registrar after annual general meeting**

(1) As soon as practicable after a land trust holds an annual general meeting after the end of a financial year, it must give the land claims registrar—

- (a) a copy of the minutes of the meeting; and

- (b) a compliance statement for the financial year; and
- (c) a list stating the names and addresses of the current members of the land trust's executive committee; and
- (d) the names and addresses of all the grantees for the time being forming the land trust.

(2) In this section—

**“compliance statement”**, for a financial year, means a statement in the approved form about a land trust's compliance in the financial year with the obligations imposed on it under the Act and the rules of the land trust.

### *Division 6—Land trust register*

#### **35F Land trust register**

(1) The land claims registrar must establish and maintain a land trust register.

(2) The land claims registrar must include in the land trust register the following information about each land trust—

- (a) the land trust's name;
- (b) the address for service of documents;
- (c) the names and addresses of all the grantees for the time being forming the land trust;
- (d) the names and addresses of the persons who are the members of the land trust's executive committee;
- (e) a description of all the land for which the land trust is formed;
- (f) copies of annual financial statements and audit reports the land claims registrar has received from the land trust;
- (g) a copy of the rules of the land trust.

(3) A land trust must give the land claims registrar all the information the land claims registrar reasonably requires it to give for making sure the information in the land trust register about the land trust is accurate and up-to-date.

## **PART 4—POWERS OF SUPREME COURT**

### **36 Jurisdiction of Supreme Court**

(1) Subject to subsection (2), the jurisdiction of the Supreme Court under the *Trusts Act 1973* includes matters arising under the Act.

(2) The powers of the Supreme Court under the *Trusts Act 1973* are to be exercised—

- (a) if provision is made in this regulation concerning a matter—in accordance with this regulation; or
- (b) in any other case—in a way that is consistent with, and best achieves, the purposes of the Act and this regulation.

### **37 Power of court to relieve grantee from personal liability**

(1) This section applies if it appears to the Supreme Court that a grantee is or may be personally liable for a breach of trust by the grantee, another grantee or the land trust.

(2) If it appears to the court that the grantee—

- (a) has acted honestly and reasonably; and
- (b) ought fairly to be excused for the breach of trust or for omitting to obtain the directions of the court in the matter in which the grantee, the other grantee or the land trust committed the breach;

the court may relieve the grantee wholly or partly from personal liability for the breach.

### **38 Court may order beneficiary to indemnify for certain breaches**

(1) This section applies if a grantee or a land trust commits a breach of trust at the instigation or request of, or with the written consent of, a beneficiary.

(2) The Supreme Court may, as it considers just, order that all or part of the interest of the beneficiary in the trust property is impounded to indemnify the grantee, the land trust or persons claiming through the grantee or land trust.

**39 Right of grantees or land trust to apply to court for directions**

(1) A grantee or a land trust may apply to the Supreme Court for directions in relation to—

- (a) the trust property or its management or administration; or
- (b) the exercise of a power of the grantees or the land trust.

(2) The application is to be served on, and the hearing of the application may be attended by, all persons interested in the application or such of them (or their representatives) as the court considers appropriate.

**40 Court's jurisdiction to make orders conferring power on grantees or land trust**

(1) This section applies if, in the Supreme Court's opinion, a disposition or transaction—

- (a) is expedient for the management or administration of trust property by the grantees or a land trust; or
- (b) would be in the best interest of the Torres Strait Islanders, or a majority of the Torres Strait Islanders, for whose benefit the property is held;

but—

- (c) it is inexpedient, difficult or impractical to effect the disposition or transaction without the assistance of the Supreme Court; or
- (d) the grantees or the land trust do not have power under the Act to effect the disposition or transaction.

(2) The Supreme Court may—

- (a) confer on the grantees or the land trust the necessary power for the purpose of effecting the disposition or transaction (other than a power to sell or mortgage Torres Strait Islander land), on such terms and subject to any conditions, as the court considers appropriate; and
- (b) direct the way that—
  - (i) any money authorised to be spent, and the costs of the disposition or transaction, are to be paid or borne from trust property; and

- (ii) the money is to be apportioned between the capital and income of the trust property.

(3) The Supreme Court may—

- (a) rescind or vary an order under this section; or
- (b) make a new or further order.

(4) The rescision or variation of an order does not affect anything done by a person relying on the order before the person became aware of the application to the court to rescind or vary the order.

(5) An application to the court under this section may be made by—

- (a) a grantee; or
- (b) a land trust; or
- (c) a person for whose benefit the property is held.

#### **41 Protection of grantees or land trust while acting under direction of court**

(1) If a grantee or land trust acts under direction of the Supreme Court, the grantee or the land trust is to be taken to have discharged the duty as trustee in the subject matter of the direction.

(2) Subsection (1) applies even if the direction is subsequently declared invalid, overruled, set aside or otherwise rendered of no effect or varied.

(3) This section does not indemnify a grantee or land trust in relation to an act done in accordance with a direction of the court obtained by the grantee or land trust by fraud, wilful concealment or misrepresentation or in acquiescence in the fraud, wilful concealment or misrepresentation.

#### **42 Power of Supreme Court to make orders in absence of grantee**

(1) If, in a proceeding under this regulation, the Supreme Court is satisfied that—

- (a) a diligent search has been made for a grantee who is named as a party in an action; and
- (b) the grantee can not be found to serve the grantee with a process of the court;

the court may hear and determine the proceeding and give judgment against the grantee as if the grantee had been duly served or had entered an appearance in the action, and had also appeared by counsel or solicitor at the hearing.

(2) Subsection (1) applies without prejudice to any interest the grantee may have in the matter in question in the proceeding in any other capacity.

(3) If a grantee, at the time of the proceeding—

- (a) is not within the jurisdiction; or
- (b) is under a disability; or
- (c) can not be found;

the court may appoint a person to represent the grantee and may proceed in the absence of the grantee, and all orders made in the proceeding are as binding on the grantee as if the grantee had been present and of full capacity.

#### **43 Power of Supreme Court to charge costs on trust property**

The Supreme Court may order the cost and expenses of, and incidental to, an application for an order or direction under this regulation—

- (a) to be paid or raised out of such trust property (other than Torres Strait Islander land) as the court considers appropriate; or
- (b) to be borne and paid in such way and by such persons as the court considers just.

### **PART 5—DECISION MAKING PROCESS**

#### **44 Determining agreement of Torres Strait Islanders**

(1) This section applies if the Act provides that Torres Strait Islanders be generally in agreement with a grant, consent or agreement about land.

(2) The agreement of the Torres Strait Islanders is taken to have been given—

- (a) if there is a particular process of decision making that, under the Island custom of those Torres Strait Islanders, must be complied

with in relation to decisions of that kind—the decision was made in accordance with the process; or

- (b) in any other case—the decision was made in accordance with the process of decision making agreed to and adopted by those Torres Strait Islanders in relation to the decision or in relation to the decisions of that kind.

#### **45 Decision making by grantees**

(1) This section applies if the Act provides that the grantees of land are required to make a decision in relation to the land (including a decision whether to grant an interest in the land, consent to the creation of a mining interest in the land or enter into an agreement in relation to the land).

(2) The grantees must—

- (a) as far as practicable, act in a way that is consistent with any Island custom, in relation to the decisions of that kind, of the Torres Strait Islanders on whose behalf the grantees were appointed; or
- (b) if there is no relevant Island custom—make the decision in accordance with a process of decision making agreed to and adopted by the grantees in relation to the decision or in relation to decisions of that kind.

#### **46 Code of conduct regarding mining leases**

(1) This section applies if—

- (a) the proposed conditions of a mining interest that is to be created in relation to Torres Strait Islander land include a code of conduct; or
- (b) a term of the grantee's consent to the creation of a mining interest in Torres Strait Islander land is, or is to be, that the conditions to which the mining interest will be subject include a code of conduct.

(2) The grantees of transferred land or granted land, for the purposes of section 36(5) or 73(6)<sup>5</sup> of the Act, must—

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5 Section 36 (Permitted dealings with transferred land) or 73 (Permitted dealings with granted land) of the Act



- (a) explain to the Torres Strait Islanders particularly concerned with the land, the nature, purpose and effect of the specified code of conduct; and
- (b) give the Torres Strait Islanders adequate opportunity to express views about the creation of a mining interest subject to the code.

#### **47 Declarations by grantees regarding dealings**

(1) This section applies if—

- (a) the grantees of transferred land exercise the power under section 36(2) or (4)<sup>6</sup> of the Act; or
- (b) the grantees of granted land exercise a power under section 73(2), (4) or (5)<sup>7</sup> of the Act; or
- (c) the grantees of land agree on a route under section 83(2)(b)<sup>8</sup> of the Act; or
- (d) the grantees of Torres Strait Islander land agree on a route for the purpose of gaining access under section 129<sup>9</sup> of the Act.

(2) The grantees must give a signed statutory declaration—

- (a) if an interest is granted—to each person who is granted such an interest; or
- (b) if an agreement is entered into—to every other party to the agreement;

and make a copy of the declaration available for inspection by the Torres Strait Islanders concerned with the land.

(3) The statutory declaration is to state that the grantees have complied with the section of the Act under which they exercised the power.

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6 Section 36 (Permitted dealings with transferred land) of the Act

7 Section 73 (Permitted dealings with granted land) of the Act

8 Section 83 (Access to land used by Crown) of the Act

9 Section 129 (Rights of access to interests preserved) of the Act

## **PART 6—APPEALS TO LAND APPEAL COURT**

### **48 Part made for purposes of s 114 of the Act**

This part is made for the purposes of section 114<sup>10</sup> of the Act.

### **49 Institution of appeal to Land Appeal Court**

(1) A party to a proceeding before the Land Tribunal may appeal, or seek leave to appeal, against a decision of the tribunal mentioned in section 114 of the Act, by giving a written notice of appeal—

- (a) to the registrar of the Land Appeal Court; and
- (b) to all other parties to the proceeding before the tribunal or a party's authorised agent; and
- (c) to the registrar of the Land Tribunal.

(2) The notice must be given no later than 42 days after the tribunal's decision was given to the party.

(3) If there are—

- (a) more than 5 Torres Strait Islanders who made the land claim the subject of the decision that is appealed against; or
- (b) more than 5 other people who have a common interest in the appeal;

the registrar of the Land Appeal Court (on application by the party who is appealing) may provide for such substituted service as the registrar considers reasonable.

### **50 Court may accept some non-compliance with s 49**

If a party to a proceeding before the Land Tribunal does not comply with section 49 but—

- (a) the party complies with the section (other than subsection (2)) no later than 70 days after the tribunal's decision was given to the party and the Land Appeal Court is satisfied that the party's explanation for the failure to comply is reasonable; or

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<sup>10</sup> Section 114 (Appeals to Land Appeal Court from decisions of tribunal) of the Act

- (b) if the notice of appeal was defective—the Land Appeal Court decides that the defect does not result in a detriment to the person on whom it was served and does not mislead the registrar of the Land Appeal Court;

the party is taken to have complied with the section.

### **51 Other parties may lodge notice of appearance**

A person who—

- (a) is given a notice of appeal; and
- (b) is interested in the appeal;

may become a party to the appeal by giving the registrar of the Land Appeal Court a written notice of appearance no later than 30 days after the person was given the notice of appeal.

### **52 Parties to prepare summary of arguments and of new evidence**

(1) A party to an appeal must give to the registrar of the Land Appeal Court, and any other party who has given a written notice of appearance, a written summary of—

- (a) the arguments that the party intends to make at the hearing of the appeal; and
- (b) any new evidence that the party intends to produce at the hearing of the appeal; and
- (c) the names, addresses and occupations of the witnesses through whom it is proposed to adduce any new evidence.

(2) The written summary must be given at least 7 days before the day on which the hearing of the appeal is set down to start.

(3) Evidence not included in the summary under subsection (1) may be adduced at the hearing of the appeal only with the consent of the Land Appeal Court given on such terms as to costs and adjournments, and such conditions, as the court considers appropriate.

### **53 Legal representation**

A party to an appeal may be represented by the party's counsel or solicitor (enrolled in Queensland or elsewhere) or the party's agent.

**54 Forms set out in Land Appeal Court Rules**

If a form for a type of court document is set out in the Land Appeal Court Rules, a party to an appeal must use the form (with necessary changes) when the party is required to give a form of that type.

**PART 7—MINING ROYALTIES****55 Prescribed percentages for the purposes of s 85 of the Act**

For the purposes of section 85(2) and (3)<sup>11</sup> of the Act, the percentage of the royalty amount that grantees and the chief executive are each entitled to receive is—

- (a) 50% of each \$1 of the royalty amount up to and including, but not more than, \$100 000; and
- (b) 25% of each \$1 of the royalty amount that is more than \$100 000 but not more than \$200 000; and
- (c) 16.66% of each \$1 of the royalty amount that is more than \$200 000 but not more than \$500 000; and
- (d) 10% of each \$1 of the royalty amount that is more than \$500 000 but not more than \$1 000 000; and
- (e) 5% of each \$1 of the royalty amount that is more than \$1 000 000.

**56 Guidelines for application by chief executive of royalty amount**

(1) This section applies when the chief executive must apply the prescribed percentage of a royalty amount received under section 85<sup>12</sup> of the Act.

(2) If Torres Strait Islanders are affected by mining activity to which the royalty amount relates or are particularly concerned with the land affected by the activity, the chief executive must, before applying the amount, determine—

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11 Section 85 (Royalties in relation to mining on Torres Strait Islander land) of the Act

12 Section 85 (Royalties in relation to mining on Torres Strait Islander land) of the Act

- (a) the nature and extent of the effect of the mining activity on the Torres Strait Islanders; and
- (b) the part of the amount (if any) that the chief executive considers should be applied for the benefit of those Torres Strait Islanders.

## **PART 8—DECLARATIONS**

### **57 Transferred land that is not claimable land—Act, s 15(3)**

(1) The transferred land described in the schedule is not claimable land.

(2) In the schedule, a reference to a plan is a reference to a plan held by and available for inspection in any office of the department.

## **PART 9—TRANSITIONAL**

### **58 First rules for land trust already in existence**

A land trust in existence at the commencement of this section must adopt its first rules under sections 21A and 21B<sup>13</sup> as soon as practicable after the commencement.

### **59 First financial year for applying pt 3, divs 4 and 5**

(1) The first financial year to which sections 35B, 35C(1), 35D and 35E<sup>14</sup> apply is the 1998–1999 financial year.

(2) To avoid doubt about the application of section 35C(4) for the 1998–1999 and 1999–2000 financial years, it is declared that—

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13 Sections 21A (Adoption of rules) and 21B (Content of rules)

14 Sections 35B (Annual financial statement), 35C (Audit requirements), 35D (Holding of general meetings) and 35E (Material to be given to land claims registrar after annual general meeting)

*Torres Strait Islander Land Regulation 1991*

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- (a) a land trust is not required to have its accounts audited for the 1998–1999 financial year if the land trust’s total income from all sources for the 1998–1999 financial year is \$10 000 or less; and
- (b) a land trust is not required to have its accounts audited for the 1999–2000 financial year if the land trust’s total income from all sources for the 1999–2000 financial year is \$10 000 or less, whether or not the land trust was required to have its accounts audited for the 1998–1999 financial year.

**SCHEDULE****TRANSFERRED LAND THAT IS NOT  
CLAIMABLE LAND**

section 57

1. Lot 45 on SP104564, County of Torres, Parish of Umaga,<sup>15</sup> area of about 58 ha.
2. Lot 3 on TS171, County of Torres, Parish of Adolphus,<sup>16</sup> area of about 16 ha.
3. Lot 5 on TS171, County of Torres, Parish of Adolphus,<sup>17</sup> area of about 8.97 ha.
4. Lot 46 on TS205, County of Torres, Parish of Umaga,<sup>18</sup> area of about 46.9 ha.
5. Lot 41 on TS217, County of Torres, Parish of Giaka,<sup>19</sup> area of about 40.6 ha.
6. Lot 24 on TS232, County of Torres, Parish of Adolphus,<sup>20</sup> area of about 23 ha.
7. Lot 42 on TS216, County of Torres, Parish of Giaka,<sup>21</sup> area of about 53.2 ha.
8. Lot 43 on TS216, County of Torres, Parish of Giaka,<sup>22</sup> area of about 348 ha.

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15 This land is in the vicinity of latitude 9°57'15" south, longitude 143°17'18" east.

16 This land is in the vicinity of latitude 10°8'51" south, longitude 142°49'9" east.

17 This land is in the vicinity of latitude 10°15'21" south, longitude 142°49'46" east.

18 This land is in the vicinity of latitude 9°45'57" south, longitude 143°15'39" east.

19 This land is in the vicinity of latitude 9°59'23" south, longitude 143°7'8" east.

20 This land is in the vicinity of latitude 10°10'15" south, longitude 142°40'36" east.

21 This land is in the vicinity of latitude 9°48'08" south, longitude 142°58'27" east.

22 This land is in the vicinity of latitude 9°46'00" south, longitude 142°38'05" east.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 December 2002. Future amendments of the Torres Strait Islander Land Regulation 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		



## 4 Table of earlier reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of earlier reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	21 December 1991	1 June 1992
1A	to SL No. 284 of 1997	29 August 1997	3 December 1997
1B	to SL No. 243 of 1998	1 September 1998	1 September 1998
2	to SL No. 209 of 1999	10 September 1999	29 September 1999
2A	to SL No. 190 of 2001	12 October 2001	26 October 2001

## 5 List of legislation

### **Torres Strait Islander Land Regulation 1991 SL No. 219**

made by the Governor in Council on 19 December 1991  
 pubd gaz 21 December 1991 pp 2337–65  
 commenced on date of publication  
exp 31 August 2003 (see SIA s 56(1)(b) and SIR s 5 sch 3)  
 amending legislation—

### **Torres Strait Islander Land Amendment Regulation (No. 1) 1997 SL No. 284**

notfd gaz 29 August 1997 pp 1987–9  
 commenced on date of notification

### **Natural Resources Legislation Amendment Regulation (No. 2) 1998 SL No. 243 pts 1, 3**

notfd gaz 28 August 1998 pp 2036–7  
 ss 1–2 commenced on date of notification  
 remaining provisions commenced 1 September 1998 (see s 2)

### **Aboriginal and Torres Strait Islander Land Legislation Amendment Regulation (No. 1) 1999 SL No. 209 pts 1, 3**

notfd gaz 10 September 1999 pp 180–3  
 commenced on date of notification

### **Aboriginal and Torres Strait Islander Land Amendment Regulation (No. 1) 2001 SL No. 190 pts 1, 3**

notfd gaz 12 October 2001 pp 492–3  
 commenced on date of notification

### **Aboriginal and Torres Strait Islander Land Amendment Regulation (No. 1) 2002 SL No. 331 pts 1, 3**

notfd gaz 6 December 2002 pp 1162–66  
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## **6 List of annotations**

### **Definitions**

- prov hdg** sub 1998 SL No. 243 s 10(1)  
**s 2** def “**approved form**” ins 1998 SL No. 243 s 10(3)  
 amd 2001 SL No. 190 s 5(1)  
 def “**executive committee**” ins 1998 SL No. 243 s 10(3)  
 def “**general meeting**” ins 1998 SL No. 243 s 10(3)  
 def “**land claim purposes**” amd 2001 SL No. 190 s 5(2)  
 def “**rules**” sub 1998 SL No. 243 s 10(2)–(3)

### **Land claimants may apply for incorporation**

- s 3** amd 2001 SL No. 190 s 6

### **Incorporation of grantees as land trust**

- s 19** amd 1998 SL No. 243 s 11

### **Function of land trust**

- s 21** amd 2001 SL No. 190 s 7

### **Adoption of rules**

- s 21A** ins 1998 SL No. 243 s 12

### **Content of rules**

- s 21B** ins 1998 SL No. 243 s 12

### **Division 4—Accounts, annual financial statements and audit requirements**

- div hdg** ins 1998 SL No. 243 s 13

#### **Accounts**

- s 35A** ins 1998 SL No. 243 s 13

#### **Annual financial statement**

- s 35B** ins 1998 SL No. 243 s 13

#### **Audit requirements**

- s 35C** ins 1998 SL No. 243 s 13

### **Division 5—General meetings**

- div hdg** ins 1998 SL No. 243 s 13

#### **Holding of general meetings**

- s 35D** ins 1998 SL No. 243 s 13

#### **Material to be given to land claims registrar after annual general meeting**

- s 35E** ins 1998 SL No. 243 s 13

### **Division 6—Land trust register**

- div hdg** ins 1998 SL No. 243 s 13

#### **Land trust register**

- s 35F** ins 1998 SL No. 243 s 13

### **Code of conduct regarding mining leases**

- s 46** amd 2001 SL No. 190 s 8

**Declarations by grantees regarding dealings**

s 47            amd 2001 SL No. 190 s 9

**Part made for purposes of s 114 of the Act**

pt hdg        amd 2001 SL No. 190 s 10(1)

s 48            amd 2001 SL No. 190 s 10(2)

**Institution of appeal to Land Appeal Court**

s 49            amd 2001 SL No. 190 s 11

**Prescribed percentages for the purposes of s 85 of the Act**

pt hdg        amd 2001 SL No. 190 s 12(1)

s 55            amd 2001 SL No. 190 s 12(2)

**Guidelines for application by chief executive of royalty amount**

s 56            amd 2001 SL No. 190 s 13

**PART 8—DECLARATIONS**

pt hdg        ins 1997 SL No. 284 s 3

**Transferred land that is not claimable land—Act, s 15(3)**

s 57            ins 1997 SL No. 284 s 3

amd 1999 SL No. 209 s 5

**PART 9—TRANSITIONAL**

pt hdg        ins 1998 SL No. 243 s 14

**First rules for land trust already in existence**

s 58            ins 1998 SL No. 243 s 14

**First financial year for applying pt 3, divs 4 and 5**

s 59            ins 1998 SL No. 243 s 14

**SCHEDULE—TRANSFERRED LAND THAT IS NOT CLAIMABLE LAND**

ins 1997 SL No. 284 s 3

amd 1999 SL No. 209 s 6; 2002 SL No. 331 s 6