



Queensland

# Land and Resources Tribunal Act 1999

Reprinted as in force on 1 January 2005  
(includes commenced amendments up to 2004 Act No. 48)

Reprint No. 2H

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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

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

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

# Land and Resources Tribunal Act 1999

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	5
2	Commencement . . . . .	5
3	Dictionary . . . . .	5
<b>Part 2</b>	<b>Establishment and membership of tribunal</b>	
<b>Division 1</b>	<b>Establishment</b>	
4	Land and Resources Tribunal . . . . .	5
5	Tribunal not subject to direction . . . . .	6
6	Membership of tribunal . . . . .	6
<b>Division 2</b>	<b>Presiding members</b>	
7	Presiding members . . . . .	6
8	Eligibility for appointment as presiding member . . . . .	6
9	Retirement or resignation of presiding members . . . . .	7
10	Salaries and allowances of presiding members . . . . .	7
11	Pension and leave of absence arrangements for presiding members . . . . .	8
12	Conditions of appointment of presiding members . . . . .	8
13	Termination of appointment of presiding member . . . . .	8
14	Acting presiding member . . . . .	8
<b>Division 3</b>	<b>Non-presiding members</b>	
15	Non-presiding members . . . . .	9
16	Appointment of non-presiding members . . . . .	9
17	Eligibility for appointment as appointed non-presiding member . . . . .	10
18	Eligibility for appointment as referee non-presiding member . . . . .	11
19	Acting non-presiding member . . . . .	12
20	Termination of office of Land Court and Land Tribunal non-presiding members . . . . .	13
21	Termination of appointment of non-presiding member . . . . .	13

22	Term of appointment of appointed or referee non-presiding member . . . . .	14
23	Resignation of certain non-presiding members . . . . .	14
24	Conditions of appointment of non-presiding member. . . . .	14
<b>Division 4</b>	<b>General provisions about members</b>	
25	Leave of absence . . . . .	15
26	Limitation on ownership of mining tenements . . . . .	15
27	Disclosure of interests . . . . .	16
27A	Membership of other decision-making entity . . . . .	16
28	Appointment to NNTT. . . . .	17
<b>Part 3</b>	<b>Registrar and deputy registrars</b>	
<b>Division 1</b>	<b>Registrar</b>	
29	Registrar of tribunal . . . . .	17
30	Keeping and disclosure of records and information . . . . .	17
31	Engagement of consultants . . . . .	18
32	Delegation by registrar . . . . .	18
<b>Division 2</b>	<b>Deputy registrars</b>	
33	Deputy registrars of tribunal . . . . .	18
34	Basis for appointment as deputy registrar (additional office) . . . .	19
35	Conditions of appointment of deputy registrar (additional office) .	19
36	Deputy registrar (additional office) subject to direction of registrar . . . . .	20
<b>Part 4</b>	<b>Organisation and operation of tribunal</b>	
<b>Division 1</b>	<b>Sitting of tribunal</b>	
37	Sittings of tribunal. . . . .	20
38	Arrangement of business . . . . .	20
39	General requirements for constituting tribunal for proceeding . . .	20
40	Specific requirements for constituting tribunal for proceeding . . .	22
41	Way in which questions are to be decided . . . . .	22
42	Specific requirements for native title objection proceedings. . . . .	23
43	Reconstituting tribunal—single member. . . . .	23
44	Reconstituting tribunal—panel . . . . .	24
45	Reconstituting tribunal—designated NNTT member not a tribunal member . . . . .	25
<b>Division 2</b>	<b>Proceedings</b>	
46	Application of div 2 . . . . .	26
47	Representation before tribunal . . . . .	26
48	Hearings open to public . . . . .	26

---

49	Conduct of proceeding . . . . .	26
50	Costs . . . . .	27
<b>Division 3</b>	<b>Jurisdiction</b>	
51	General provisions about jurisdiction . . . . .	27
51A	Jurisdiction under Commonwealth Native Title Act . . . . .	28
51B	Jurisdiction of tribunal for registered indigenous land use agreements . . . . .	28
52	Exclusive jurisdiction for negotiated agreements . . . . .	29
53	Exclusive jurisdiction for certain cultural heritage matters . . . . .	29
53A	Exclusive jurisdiction for contract conditions . . . . .	31
<b>Division 4</b>	<b>Other supporting provisions</b>	
54	Tribunal a court of record . . . . .	32
55	Form of decisions of tribunal . . . . .	32
56	Supreme Court or District Court may transfer certain proceedings to tribunal . . . . .	32
57	Attendance of witnesses . . . . .	33
58	Witnesses appearing at tribunal hearing . . . . .	33
59	Protection . . . . .	34
60	Obstructing tribunal . . . . .	34
61	Allowances for witnesses . . . . .	34
62	Contempt of tribunal . . . . .	35
63	Punishment of contempt. . . . .	36
64	Conduct that is contempt and offence . . . . .	36
65	Powers of tribunal. . . . .	37
66	Enforcement of orders etc. . . . .	38
67	Appeal only on question of law . . . . .	38
68	Appeal not a stay of decision . . . . .	39
69	Question of law referred from presiding member (alternative), mining referee or Land Court non-presiding member . . . . .	40
70	Question of law referred from panel or presiding member . . . . .	40
70A	Tribunal constituted by presiding member (alternative) . . . . .	41
<b>Division 5</b>	<b>Mediation</b>	
71	Application of div 5 . . . . .	41
72	Mediated resolution agreement . . . . .	41
73	Mediators to maintain secrecy . . . . .	42
74	Ordinary protection and immunity allowed . . . . .	42
75	Admissions made to mediators . . . . .	43
76	Mediator precluded from tribunal hearing matter . . . . .	43

---

<b>Division 6</b>	<b>Other provisions</b>	
77	Finance and staffing of tribunal . . . . .	43
78	Annual report . . . . .	44
79	Delegation of powers by president . . . . .	44
<b>Part 5</b>	<b>Miscellaneous</b>	
80	Preservation of rights of non-presiding member . . . . .	44
81	Regulation-making power. . . . .	46
82	Rule-making power. . . . .	46
<b>Part 6</b>	<b>Transitional provisions</b>	
83	Proceeding not finished before commencement . . . . .	46
84	Proceeding about At Risk agreement not finished before commencement . . . . .	47
85	Warden . . . . .	47
86	Assumption by tribunal of role of warden and Wardens Court under certain Acts . . . . .	48
<b>Schedule 1</b>	<b>Requirements for constituting tribunal</b> . . . . .	50
<b>Schedule 2</b>	<b>Negotiated agreements</b> . . . . .	57
<b>Schedule 4</b>	<b>Dictionary</b> . . . . .	58
<b>Endnotes</b>		
1	Index to endnotes. . . . .	61
2	Date to which amendments incorporated. . . . .	61
3	Key . . . . .	62
4	Table of reprints . . . . .	62
5	List of legislation. . . . .	63
6	List of annotations . . . . .	64
7	List of forms notified or published in the gazette . . . . .	66
8	Information about retrospectivity . . . . .	66

# **Land and Resources Tribunal Act 1999**

[as amended by all amendments that commenced on or before 1 January 2005]

**An Act to establish the Land and Resources Tribunal, and for other purposes**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Land and Resources Tribunal Act 1999*.

### **2 Commencement**

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

### **3 Dictionary**

The dictionary in schedule 4 defines particular words used in this Act.

## **Part 2 Establishment and membership of tribunal**

### **Division 1 Establishment**

#### **4 Land and Resources Tribunal**

The Land and Resources Tribunal is established.

## **5 Tribunal not subject to direction**

In exercising its jurisdiction conferred under this or another Act, the tribunal is not subject to the direction of the Minister.

## **6 Membership of tribunal**

The *members* of the tribunal are—

- (a) the presiding members of the tribunal; and
- (b) the non-presiding members of the tribunal.

## **Division 2 Presiding members**

### **7 Presiding members**

- (1) The *presiding members* of the tribunal are—
  - (a) the president; and
  - (b) 2 or more deputy presidents.
- (2) Presiding members are to be appointed by the Governor in Council.
- (3) A presiding member's appointment continues until the presiding member retires or resigns under section 9 or the presiding member's appointment is terminated under section 13.

### **8 Eligibility for appointment as presiding member**

- (1) A person is eligible for appointment as a presiding member only if the person—
  - (a) is eligible for appointment as a Supreme Court judge;<sup>1</sup> and
  - (b) has, in the opinion of the Governor in Council, particular knowledge or experience of indigenous issues and of 1 or more of the following—
    - (i) mining or petroleum issues;

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<sup>1</sup> See the *Constitution of Queensland 2001*, section 59(1) (Appointment of judges).



- (ii) land issues;
  - (iii) something else considered by the Governor in Council to have substantial relevance to the duties of a presiding member.
- (2) In making an appointment of a presiding member, the Governor in Council must, to the extent it is practicable, make sure the eligibility for appointment of at least 1 of the presiding members holding appointment at any time includes eligibility under subsection (1)(b)(i).
- (3) The appointment of a person as a presiding member is not invalid merely because of a failure of the Governor in Council to comply with subsection (2) in making the appointment.

## **9 Retirement or resignation of presiding members**

- (1) A presiding member must retire when the presiding member would be required to retire if the presiding member were a Supreme Court judge.
- (2) Despite subsection (1), a person who, before reaching 70 years, is a presiding member included in a panel constituting the tribunal for a proceeding, remains a presiding member to finish the proceeding.
- (3) However, the president may give a direction further limiting the extent to which the person remains a presiding member.
- (4) A person who is a presiding member may resign the person's office of president or deputy president by signed notice of resignation given to the Minister.

## **10 Salaries and allowances of presiding members**

- (1) The salary, allowances and rates of allowances payable to the president are the salary, allowances and rates of allowances payable to a Supreme Court judge.
- (2) The salary, allowances and rates of allowances payable to a deputy president are the salary, allowances and rates of allowances payable to a District Court judge.

- (3) The salaries and allowances payable under this section are payable out of the consolidated fund, and the fund is appropriated accordingly.

## **11 Pension and leave of absence arrangements for presiding members**

- (1) The Judges Pensions Act applies to a person who is appointed as president, including to a spouse or child of the person, as if the person's appointment as president were an appointment as a Supreme Court judge.
- (2) The Judges Pensions Act applies to a person who is appointed as a deputy president, including to a spouse or child of the person, as if the person's appointment as a deputy president were an appointment as a District Court judge.

## **12 Conditions of appointment of presiding members**

- (1) Presiding members are to be appointed under this Act, and not under the Public Service Act.
- (2) The office of a presiding member is not subject to any industrial award, industrial agreement or other industrial instrument or any decision or rule of an industrial tribunal.

## **13 Termination of appointment of presiding member**

- (1) The appointment of the president may be terminated for the same reason, and in the same way, the appointment of a Supreme Court judge may be terminated.
- (2) The appointment of a deputy president may be terminated for the same reason, and in the same way, the appointment of a District Court judge may be terminated.

## **14 Acting presiding member**

- (1) The Governor in Council may appoint a person to act as a presiding member, for the period stated in the instrument of appointment, if—

- (a) a person appointed as a presiding member is not available to carry out the person's duties as a presiding member; or
  - (b) there is a vacancy in the position of a presiding member.
- (2) The period stated in the instrument of appointment must not be longer than 6 months, but the appointment may be renewed at any time.
  - (3) A person is eligible for appointment to act as a presiding member only if the person is eligible for appointment as a presiding member.

### **Division 3                    Non-presiding members**

#### **15            Non-presiding members**

- (1) A person is a *non-presiding member* of the tribunal if the person is—
  - (a) a Land Court non-presiding member; or
  - (b) a Land Tribunal non-presiding member; or
  - (c) an appointed non-presiding member; or
  - (d) a referee non-presiding member.
- (2) A person is a *Land Court non-presiding member* if the person is a member of the Land Court.
- (3) A person is a *Land Tribunal non-presiding member* if the person is a member of a Land Tribunal.
- (4) A person is an *appointed non-presiding member* if the person is appointed as an appointed non-presiding member.
- (5) A person is a *referee non-presiding member* if the person is appointed as a referee non-presiding member.

#### **16            Appointment of non-presiding members**

- (1) An appointed non-presiding member is to be appointed by the Governor in Council.

- (2) A referee non-presiding member is to be appointed as follows—
- (a) by the Governor in Council;
  - (b) on the basis of full-time employment;
  - (c) as a mining referee, a mediation referee or an indigenous issues referee.

**17 Eligibility for appointment as appointed non-presiding member**

- (1) A person is eligible for appointment as an appointed non-presiding member only if the person—
- (a) has experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or an authority of a government; or
  - (b) has, in the opinion of the Governor in Council, particular knowledge or experience of 2 or more of the following—
    - (i) Aboriginal or Torres Strait Islander communities;
    - (ii) dispute resolution;
    - (iii) valuation;
    - (iv) mining or petroleum issues;
    - (v) land use issues;
    - (vi) indigenous issues;
    - (vii) cultural heritage;
    - (viii) the environment;
    - (ix) industrial relations;
    - (x) native title issues;
    - (xi) something else considered by the Governor in Council to have substantial relevance to the duties of an appointed non-presiding member.

- (2) A person is not ineligible for appointment as an appointed non-presiding member merely because the person holds an office under another Act.

**18 Eligibility for appointment as referee non-presiding member**

- (1) A person is eligible for appointment as a mining referee only if the person—
- (a) is eligible for appointment as a Supreme Court judge; and
  - (b) has, in the opinion of the Governor in Council, mining industry knowledge and experience, and 1 of the following—
    - (i) land title and land use issues;
    - (ii) something else considered by the Governor in Council to have substantial relevance to the duties of a mining referee.
- (2) A person is eligible for appointment as a mediation referee only if the person—
- (a) is eligible for appointment as a Supreme Court judge; and
  - (b) has, in the opinion of the Governor in Council, a high level of knowledge or experience of 2 or more of the following—
    - (i) dispute resolution;
    - (ii) mediation;
    - (iii) land title and land use issues;
    - (iv) something else considered by the Governor in Council to have substantial relevance to the duties of a mediation referee.
- (3) A person is eligible for appointment as an indigenous issues referee only if—
- (a) the person—
    - (i) has experience, for not less than 5 years, in industry, commerce, public administration, the

- practice of a profession or the service of a government or an authority of a government; or
- (ii) has researched, and published in journals of high academic quality, in the field of anthropology, history, law, public administration or indigenous issues; and
- (b) the person has, in the opinion of the Governor in Council, a high level of knowledge or experience of 2 or more of the following—
- (i) cross-cultural issues;
  - (ii) resolving cultural heritage issues;
  - (iii) indigenous issues;
  - (iv) something else considered by the Governor in Council to have substantial relevance to the duties of an indigenous issues referee.

## **19 Acting non-presiding member**

- (1) The Governor in Council may appoint a person to act as an appointed non-presiding member, for the period stated in the instrument of appointment, if—
- (a) a person appointed as an appointed non-presiding member is not available to carry out the person's duties as a non-presiding member; or
  - (b) the Governor in Council considers it necessary or appropriate in the interests of the tribunal.
- (2) The Governor in Council may appoint a person to act as a referee non-presiding member, for the period stated in the instrument of appointment, if—
- (a) a person appointed as a referee non-presiding member is not available to carry out the person's duties as a referee non-presiding member; or
  - (b) the Governor in Council considers it necessary or appropriate in the interests of the tribunal.

- (3) The period stated in the instrument of appointment under subsection (1) or (2) must not be longer than 1 year, but the appointment may be renewed at any time.
- (4) A person is eligible for appointment to act as a non-presiding member under this section only if the person is eligible to be appointed as the non-presiding member.
- (5) A non-presiding member may carry out duties of his or her office even though the member has been appointed to act as another non-presiding member.

## **20 Termination of office of Land Court and Land Tribunal non-presiding members**

- (1) A person who is a Land Court non-presiding member stops holding that office if the person stops holding office as a member of the Land Court.
- (2) A person who is a Land Tribunal non-presiding member stops holding that office if the person stops holding office as a member of a Land Tribunal.
- (3) Despite subsections (1) and (2), a non-presiding member who stops holding office as a member of the Land Court or a Land Tribunal, and who is included in a panel constituting the tribunal for a proceeding, remains a non-presiding member to finish the proceeding.
- (4) However, the president may give a direction further limiting the extent to which the person remains a non-presiding member under subsection (3).

## **21 Termination of appointment of non-presiding member**

The Governor in Council may terminate the appointment of an appointed or referee non-presiding member if the member—

- (a) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (b) is convicted of an indictable offence; or

- (c) commits misconduct of a kind that could justify dismissal from the public service if the member were a public service officer; or
- (d) for a non-presiding member who is appointed on the basis of full-time employment—is absent, without the president’s leave and without reasonable excuse, for 14 consecutive days or 28 days in a year.

## **22 Term of appointment of appointed or referee non-presiding member**

- (1) Each appointed non-presiding member or referee non-presiding member is appointed for the term stated in the instrument of appointment of the non-presiding member.
- (2) The term stated in the instrument of appointment must not be more than 5 years.
- (3) Despite subsection (1), a non-presiding member who, before the person’s appointment as a non-presiding member ends, constitutes the tribunal for a proceeding, or is included in a panel constituting the tribunal for a proceeding, remains a non-presiding member to finish the proceeding.
- (4) However, the president may give a direction further limiting the extent to which the person remains a non-presiding member.

## **23 Resignation of certain non-presiding members**

An appointed or referee non-presiding member may resign by giving a signed notice of resignation to the Minister.

## **24 Conditions of appointment of non-presiding member**

- (1) The remuneration and allowances payable to each non-presiding member are the remuneration and allowances decided by the Governor in Council.
- (2) However, the remuneration and allowances of a non-presiding member appointed on basis of full-time employment must not be reduced.



- (3) Each appointed non-presiding member or referee non-presiding member holds office as a non-presiding member on the conditions not provided for by this Act decided by the Governor in Council.
- (4) Non-presiding members are to be appointed under this Act, and not under the Public Service Act.
- (5) The office of a non-presiding member is not subject to any industrial award, industrial agreement or other industrial instrument or any decision or rule of an industrial tribunal.

## **Division 4                    General provisions about members**

### **25            Leave of absence**

- (1) The Minister may give leave of absence, other than leave of absence provided for in the Judges Pensions Act, to the president on the terms the Minister considers appropriate.
- (2) The president may give leave of absence, other than leave of absence provided for in the Judges Pensions Act, to a deputy president on the terms the president considers appropriate.
- (3) The president may give leave of absence to a non-presiding member appointed on the basis of full-time employment on the terms the president considers appropriate.

### **26            Limitation on ownership of mining tenements**

- (1) A member must not hold, or be entitled, directly or indirectly, to the benefits of an interest in, a mining tenement.
- (2) For subsection (1), a member is taken not to hold an interest in a mining tenement (other than a prospecting permit) if the member holds, or becomes entitled, directly or indirectly, to the benefits of, an interest in a mining tenement only because the member—
  - (a) is a beneficiary in a deceased estate; or
  - (b) is entitled to share in the profits of a public company.
- (3) However, a member who has or acquires an entitlement or expectation of entitlement in a way mentioned in

subsection (2)(a) must, on becoming aware of the entitlement or expectation, give written notice about the entitlement or expectation to—

- (a) if the member is the president—the registrar; or
- (b) if the member is not the president—the president.

## **27 Disclosure of interests**

- (1) If a member becomes aware that the member has a conflict of interest about a proceeding before the tribunal, the member must disclose the issues giving rise to the conflict—
  - (a) for a member who is the president—to the parties to the proceeding; or
  - (b) for a member who is not the president—to the president and the parties to the proceeding.
- (2) The member may take part in the proceeding, or exercise a power for the proceeding, only if—
  - (a) for a member who is the president—the parties agree; or
  - (b) for a member who is not the president—the president and the parties agree.
- (3) A member has a conflict of interest about a proceeding if the member has an interest, financial or otherwise, that could conflict with the proper performance of the member's functions for the proceeding.

## **27A Membership of other decision-making entity**

- (1) A person's appointment as a presiding member of the tribunal does not prevent the person's appointment to another decision-making entity.
- (2) However—
  - (a) the appointment to the other decision-making entity—
    - (i) must be on a part-time basis; and
    - (ii) must not represent a conflict of interest with the person's appointment to the tribunal; and

(b) the person must not receive any salary or allowances, other than expense reimbursement, for the performance of duties on the other decision-making entity.

(3) In this section—

*decision-making entity* means a tribunal or other entity established under an Act of the Commonwealth or a State for adjudicative, investigative or similar purposes.

## **28 Appointment to NNTT**

Nothing in this Act stops a member holding office as a member of the NNTT.

# **Part 3 Registrar and deputy registrars**

## **Division 1 Registrar**

### **29 Registrar of tribunal**

- (1) There is to be a registrar of the tribunal.
- (2) The registrar is a member of the staff of the tribunal.
- (3) Subject to the president, the registrar is to be responsible for managing the administrative affairs of the tribunal.
- (4) The registrar may exercise the powers given to the registrar under this or another Act.
- (5) The president may give the registrar a direction about the exercise of the registrar's powers, other than to the extent the direction would be inconsistent with the provisions of this or another Act about the registrar's powers.

### **30 Keeping and disclosure of records and information**

- (1) The registrar may keep the records and information the registrar considers appropriate, and may make the records and information available to the public.

- (2) Without limiting subsection (1), the registrar must keep the records of and information about proceedings before the tribunal, and must make the records and information available to the public.
- (3) Despite subsections (1) and (2), the registrar must not make a record or information available to the public if the tribunal orders that the record or information must not be made available to the public.

### **31 Engagement of consultants**

- (1) The registrar may engage persons having suitable qualifications and experience as consultants to perform services for the tribunal.
- (2) Without limiting subsection (1), the services a consultant may be engaged to perform include conducting research for the tribunal.
- (3) An engagement under subsection (1) must be made for the State under a written agreement.

### **32 Delegation by registrar**

- (1) The registrar may delegate the registrar's powers under this Act or another Act to an appropriately qualified member of the staff of the tribunal.
- (2) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person's seniority level within the staff of the tribunal.

## **Division 2 Deputy registrars**

### **33 Deputy registrars of tribunal**

- (1) There may be deputy registrars of the tribunal.
- (2) A deputy registrar is either—

- (a) a member of the staff of the tribunal (a *deputy registrar (tribunal)*); or
  - (b) appointed under this Act to hold the office of a deputy registrar in addition to another office or position the person already holds other than under this Act (a *deputy registrar (additional office)*).
- (3) A deputy registrar (additional office) is to be appointed by the Governor in Council.
- (4) An appointment of a person as a deputy registrar (additional office) may take the form of—
- (a) an appointment of a person by name; or
  - (b) an appointment of the holder of a stated office, by reference to the title of the office concerned.
- (5) An appointment under subsection (4)(b) may include an appointment of a person for the time being lawfully acting in the place of the holder of the office.

#### **34 Basis for appointment as deputy registrar (additional office)**

A person may be appointed as a deputy registrar (additional office) if, having regard to the nature of the other office or position the person already holds, it would be convenient or appropriate for the administration of this or another Act for the person also to be a deputy registrar.

#### **35 Conditions of appointment of deputy registrar (additional office)**

- (1) The remuneration and allowances payable to a deputy registrar (additional office) are the remuneration and allowances decided by the Governor in Council.
- (2) A deputy registrar (additional office) holds the office of a deputy registrar on the conditions decided by the Governor in Council.
- (3) Nothing in this Act requires the payment of remuneration or allowances under this Act to a deputy registrar (additional office).

**36 Deputy registrar (additional office) subject to direction of registrar**

In performing the functions of a deputy registrar, a deputy registrar (additional office) is subject to the direction of the registrar.

## **Part 4 Organisation and operation of tribunal**

### **Division 1 Sitting of tribunal**

**37 Sittings of tribunal**

The tribunal sits at the times and the places in Queensland the president directs.

**38 Arrangement of business**

The president may give directions about the arrangement of the business of the tribunal.

**39 General requirements for constituting tribunal for proceeding**

- (1) For a proceeding before the tribunal, the tribunal is to be constituted, under the direction of the president, by a single member, or a panel, as provided under this part.
- (2) A panel constituting the tribunal is to be formed by—
  - (a) 1 or more presiding members and 2 or more non-presiding members (a *standard panel*); or
  - (aa) 2 or more presiding members (also a *standard panel*); or
  - (ab) 1 or more presiding members and a referee non-presiding member who has been appointed as a mining referee (also a *standard panel*); or

- (b) the following (an *NNTT panel*)—
    - (i) 1 or more presiding members, 1 of whom is also an NNTT member; and
    - (ii) 2 or more non-presiding members; or
  - (c) the following (also an *NNTT panel*)—
    - (i) 1 or more presiding members; and
    - (ii) 2 or more non-presiding members, 1 of whom is also an NNTT member; or
  - (d) the following (also an *NNTT panel*)—
    - (i) a standard panel; and
    - (ii) an NNTT member who is not also a member of the tribunal.
- (3) A single member constituting the tribunal is to be—
- (a) a presiding member, or a presiding member assisted by a single non-presiding member; or
  - (b) a Land Court non-presiding member; or
  - (c) a referee non-presiding member who has been appointed as a mining referee.
- (4) In giving a direction under this section about how the tribunal must be constituted for a particular proceeding, the president must have regard to—
- (a) the degree of public importance or complexity of the proceeding; and
  - (b) the need for the tribunal's affairs to be conducted promptly and efficiently; and
  - (c) the nature of the issues likely to be involved in the proceeding.
- (5) In subsections (2) and (3)(a)—
- non-presiding member* does not include a Land Court non-presiding member.

**40 Specific requirements for constituting tribunal for proceeding**

- (1) The president must make sure that, for a proceeding, the tribunal is constituted as may be required under—
  - (a) an Act, including this Act, under which the tribunal is given jurisdiction for the proceeding; and
  - (b) schedule 1.
- (2) When giving a direction about the constitution of the tribunal for a proceeding, the president must state the name or names of the member or members constituting the tribunal.
- (3) If the tribunal is constituted by a panel that includes 2 or more presiding members including the president, the president is the senior presiding member for the proceeding.
- (4) If the tribunal is constituted by a panel that includes 2 or more presiding members but does not include the president, the president must designate 1 of the presiding members as the senior presiding member for the proceeding.
- (5) If the tribunal is constituted by an NNTT panel, the president must designate the person who is the NNTT member for the proceeding.

**41 Way in which questions are to be decided**

- (1) This section applies to a proceeding before the tribunal if, for the proceeding, the tribunal is constituted by a panel.
- (2) The decision on every question before the tribunal is to be made only by the presiding member or presiding members included in the panel, and not by the non-presiding member or non-presiding members included in the panel.
- (3) If there are 2 or more presiding members included in the panel, the decision of the panel on a question is to be—
  - (a) the opinion of the majority of the presiding members; or
  - (b) if the presiding members are equally divided in opinion, the opinion of the senior presiding member for the proceeding.
- (4) The role of a non-presiding member included in the panel is as follows—



- (a) to advise the presiding member or presiding members about matters within his or her knowledge or experience that are relevant to a question;
  - (b) to help the presiding member or presiding members in the conduct of the proceeding in a way the presiding member or presiding members consider appropriate.
- (5) Subsections (2) to (4) have effect subject to any requirement in section 42 for the presiding member or presiding members included in an NNTT panel to allow the NNTT member to participate in the making of a decision.

#### **42 Specific requirements for native title objection proceedings**

- (1) This section applies if—
- (a) for a proceeding, the tribunal is constituted by an NNTT panel; and
  - (b) the NNTT member for the proceeding is not a presiding member.
- (2) The presiding member or presiding members included in the panel constituted for the proceeding must allow the NNTT member to participate in the making of a relevant decision.
- (3) In this section—

*native title issues objection* means an objection that requires a panel to be an NNTT panel rather than a standard panel.

*relevant decision* means a decision about a native title issues objection.

#### **43 Reconstituting tribunal—single member**

- (1) This section applies if, for a proceeding, the tribunal is constituted by a single member who—
- (a) stops being a member; or
  - (b) for any reason is not available for the proceeding.
- (2) If the single member is a Land Court non-presiding member, the president may direct another Land Court non-presiding

member to constitute the tribunal to continue and finish the proceeding.

- (3) If the single member is a mining referee, the president may direct another mining referee to constitute the tribunal to continue and finish the proceeding.
- (4) The tribunal as constituted under a direction under subsection (2) or (3) may, for continuing and finishing the proceeding, have regard to any record of the proceeding made by the tribunal as previously constituted.

#### **44 Reconstituting tribunal—panel**

- (1) This section applies if, for a proceeding, the tribunal is constituted by a panel (the *old panel*), and a member included in the old panel—
  - (a) stops being a member; or
  - (b) for any reason is not available for the proceeding.
- (2) The president may direct that, to continue and finish the proceeding—
  - (a) the tribunal be constituted by a new panel formed by the remaining members of the old panel; or
  - (b) the tribunal be constituted by a new panel formed by the remaining members of the old panel, together with another member or other members.
- (3) Also, if the member mentioned in subsection (1) is the NNTT member for the proceeding, the president must—
  - (a) if there is at least 1 other member included in the panel formed for the proceeding who is also an NNTT member—designate the member or 1 of the NNTT members as the NNTT member for the proceeding; or
  - (b) if there is no member included in the panel who is also an NNTT member—appoint a person who is an NNTT member to form part of the panel constituting the tribunal for the proceeding, and designate the person as the NNTT member for the proceeding.
- (4) The tribunal as constituted under subsection (2) must continue and finish the proceeding and may, for continuing and

finishing the proceeding, have regard to any record of the proceeding made by the tribunal as constituted by the old panel.

- (5) Subsection (4) applies whether or not there has also been a designation under subsection (3).
- (6) In giving a direction under this section about how the tribunal must be constituted, the president must have regard to the need for the tribunal's affairs to be conducted promptly and efficiently.

#### **45 Reconstituting tribunal—designated NNTT member not a tribunal member**

- (1) This section applies if, for a proceeding, the tribunal is constituted by a panel (the *old panel*) and a person, who is not a member of the tribunal—
  - (a) is included in the panel as the designated NNTT member for the proceeding; and
  - (b) becomes unavailable for the proceeding.
- (2) The president must—
  - (a) appoint a person who is an NNTT member to form part of the panel constituting the tribunal for the proceeding; and
  - (b) designate the person as the NNTT member for the proceeding.
- (3) The person appointed by the president under subsection (2) may be a member of the old panel if the member is also an NNTT member.
- (4) The tribunal as constituted under subsection (2) must continue and finish the proceeding and may, for continuing and finishing the proceeding, have regard to any record of the proceeding made by the tribunal as previously constituted.
- (5) In appointing and designating a person under subsection (2), the president must have regard to the need for the tribunal's affairs to be conducted promptly and efficiently.

## **Division 2                      Proceedings**

### **46            Application of div 2**

This division has effect subject to the provisions of any Act under which the tribunal is given jurisdiction for a proceeding.

### **47            Representation before tribunal**

A party to a proceeding before the tribunal may appear in person or be represented by a lawyer or someone else.

### **48            Hearings open to public**

- (1) A tribunal hearing is to be open to the public.
- (2) Subsection (1) has effect subject to an order of the tribunal limiting the extent to which the hearing is open to the public.
- (3) An order under subsection (2) may be made only if the tribunal is satisfied it is necessary to make the order—
  - (a) in the interests of justice; or
  - (b) to allow culturally sensitive issues to be appropriately dealt with.

### **49            Conduct of proceeding**

- (1) When conducting a proceeding, the tribunal must—
  - (a) observe natural justice; and
  - (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it.
- (2) For the proceeding, the tribunal—
  - (a) is not bound by the rules of evidence; and
  - (b) may inform itself of anything in the way it considers appropriate; and
  - (c) may decide the procedures to be followed for the proceeding.

- (3) However, the tribunal must comply with this division and the rules.
- (4) Directions about the way a proceeding is to be conducted may be given at any time—
  - (a) if the president has not yet given a direction about how the tribunal is to be constituted for the proceeding—by the tribunal as constituted by the president sitting alone, whether or not with a non-presiding member assisting; or
  - (b) if the tribunal has been constituted for the proceeding, and the tribunal is constituted by a panel—by a presiding member included in the panel; or
  - (c) if the tribunal has been constituted for the proceeding, and the tribunal is not constituted by a panel—by the tribunal as constituted.

## **50 Costs**

- (1) Each party to a proceeding before the tribunal must bear the party's own costs for the proceeding.
- (2) However, the tribunal may award costs in a proceeding if the tribunal considers, in the special circumstances of the proceeding, an award of costs is appropriate.

*Examples of possible special circumstances—*

- 1 The proceeding was started merely to delay or obstruct.
  - 2 The proceeding, or a part of the proceeding, has been frivolous or vexatious.
- (3) If costs are awarded by the tribunal under subsection (2), the amount of the costs is to be the amount the tribunal considers reasonable.

## **Division 3 Jurisdiction**

### **51 General provisions about jurisdiction**

- (1) The tribunal has the jurisdiction conferred on it under this and other Acts.

- (2) The jurisdiction of the tribunal can not be ousted merely because a proceeding before it is about claims or interests of an equitable nature or involves making a decision about title to land.

### **51A Jurisdiction under Commonwealth Native Title Act**

- (1) This section applies if, under the Commonwealth Native Title Act—
- (a) a claimant or body corporate objects to the doing of an act; and
  - (b) the State is required to ensure that the objection to the doing of the act is heard by an independent person or body.
- (2) The tribunal has jurisdiction to hear the objection.

### **51B Jurisdiction of tribunal for registered indigenous land use agreements**

- (1) This section applies if—
- (a) there is a registered indigenous land use agreement under the Commonwealth Native Title Act; and
  - (b) the State is a party to the agreement; and
  - (c) the agreement provides for a matter arising under the agreement to be referred to the tribunal for—
    - (i) mediation of the matter; or
    - (ii) the making of a recommendation about the matter; or
    - (iii) the making of a decision about the matter.
- (2) The tribunal has jurisdiction—
- (a) if subsection (1)(c)(i) applies—to mediate the matter under part 4, division 5; or
  - (b) if subsection (1)(c)(ii) applies—to make a recommendation about the matter; or
  - (c) if subsection (1)(c)(iii) applies—to make a decision about the matter.

**52 Exclusive jurisdiction for negotiated agreements**

- (1) A party to a negotiated agreement may apply to the tribunal, and only to the tribunal, for an order—
  - (a) for the enforcement of a negotiated agreement; or
  - (b) deciding a matter arising under a negotiated agreement; or
  - (c) making a declaration about the interpretation of a negotiated agreement.
- (2) The tribunal must hear and decide an application under subsection (1) and may make the order it considers appropriate.
- (3) Subject to section 67,<sup>2</sup> the jurisdiction given to the tribunal under this section is exclusive of the jurisdiction of any other court or tribunal.
- (4) In this section—

*negotiated agreement* means an agreement listed in schedule 2.

**53 Exclusive jurisdiction for certain cultural heritage matters**

- (1) A group, or a member of a group, may apply to the tribunal, and only to the tribunal, for an injunction under this section to stop the doing of an act.
- (2) The tribunal must hear and decide an application under subsection (1) and may grant the injunction only if the tribunal is satisfied that—
  - (a) the person against whom the injunction is sought is doing the act, or there are reasonable grounds for concluding that the person is likely to do the act; and
  - (b) the act is a relevant act; and
  - (c) the applicant has standing to make the application; and
  - (d) it is necessary to grant the injunction to stop the person doing the act.

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2 Section 67 (Appeal only on question of law)

- (3) For this section, a group or member of a group has standing to make an application if the group has a traditional, historic or custodial interest in—
- (a) if the relevant act is a contravention of an Aboriginal cultural heritage protection provision—the Aboriginal cultural heritage to which the contravention relates; or
  - (b) if the relevant act is a contravention of a Torres Strait Islander cultural heritage protection provision—the Torres Strait Islander cultural heritage to which the contravention relates; or
  - (c) if neither paragraph (a) nor paragraph (b) applies—an item, place or area of cultural significance that may be adversely affected by the doing of the act the subject of the application.
- (4) Subject to section 67, the jurisdiction given to the tribunal under this section is exclusive of the jurisdiction of any other court or tribunal.
- (5) In this section—

***Aboriginal cultural heritage protection provision*** means the *Aboriginal Cultural Heritage Act 2003*, section 24(1), 25(1) or 26(1).<sup>3</sup>

***group*** means a group of Aboriginal people or Torres Strait Islanders.

***relevant act*** means an act that is a contravention of—

- (a) an Aboriginal cultural heritage protection provision; or
- (b) a Torres Strait Islander cultural heritage protection provision; or
- (c) a provision of another Act providing for the protection, preservation of, or access to items, places or areas of cultural significance to Aboriginal people or Torres Strait Islanders.

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<sup>3</sup> *Aboriginal Cultural Heritage Act 2003*, section 24 (Unlawful harm to Aboriginal cultural heritage), 25 (Prohibited excavation, relocation and taking away) or 26 (Unlawful possession of Aboriginal cultural heritage)



***Torres Strait Islander cultural heritage protection provision*** means the *Torres Strait Islander Cultural Heritage Act 2003*, section 24(1), 25(1) or 26(1).<sup>4</sup>

### **53A Exclusive jurisdiction for contract conditions**

- (1) A relevant person may apply to the tribunal, and only to the tribunal, for an order—
  - (a) for the enforcement of contract conditions; or
  - (b) to decide a matter under contract conditions; or
  - (c) making a declaration about the interpretation of contract conditions.
- (2) The tribunal must hear and decide an application under subsection (1) and may make the order it considers appropriate.
- (3) Subject to section 67, the jurisdiction given to the tribunal under this section is exclusive of the jurisdiction of any other court or tribunal.
- (4) In this section—

***contract conditions*** means contract conditions under the relevant provision, as applying in relation to—

- (a) a mining lease; or
- (b) another mining tenement, because of the application of the *Mineral Resources Act 1989*, part 17, division 4 to the mining tenement.

***relevant person*** means a consultation and negotiation party under the relevant provision.

***relevant provision*** means the *Mineral Resources Act 1989*, section 675(1)(b)(ii).

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<sup>4</sup> *Torres Strait Islander Cultural Heritage Act 2003*, section 24 (Unlawful harm to Torres Strait Islander cultural heritage), 25 (Prohibited excavation, relocation and taking away) or 26 (Unlawful possession of Torres Strait Islander cultural heritage)

## **Division 4                      Other supporting provisions**

### **54            Tribunal a court of record**

- (1) The tribunal is a court of record.
- (2) The tribunal must have a seal.
- (3) The seal must be kept under the direction of the president.
- (4) The seal must be judicially noticed.

### **55            Form of decisions of tribunal**

A decision or order of the tribunal made at a tribunal hearing—

- (a) must be in writing; and
- (b) must state fully the facts found by the tribunal; and
- (c) must state the decision, and the reasons for the decision, on each relevant question of law raised at the tribunal hearing; and
- (d) must be published if the tribunal hearing is open to the public; and
- (e) may be given at a place other than where the tribunal hearing took place.

### **56            Supreme Court or District Court may transfer certain proceedings to tribunal**

- (1) This section applies to a proceeding if the proceeding—
  - (a) is pending in either the Supreme Court or the District Court; and
  - (b) could have been brought before the tribunal.
- (2) The court, on its own initiative or on the application of a party to the proceeding, may order the transfer of the proceeding to the tribunal.
- (3) If the court orders a proceeding to be transferred to the tribunal, the registrar of the court must give the registrar of the tribunal—

- (a) a copy of the order; and
  - (b) all documents filed by the parties in the registry of the court for the proceeding.
- (4) A proceeding transferred to the tribunal must be dealt with as if the proceeding had been started in the tribunal.
- (5) The costs of the parties for a proceeding transferred to the tribunal are, to the extent the costs are incurred before the order is made, in the court's discretion.

## **57 Attendance of witnesses**

- (1) This section applies if, under the rules, a person is notified to attend as a witness at a tribunal hearing.
- (2) The person must attend at the time and place notified.  
Maximum penalty—20 penalty units or 14 days imprisonment.
- (3) If the person does not attend at the time and place notified, the tribunal may—
- (a) issue a warrant directed to all police officers to bring the person at the time, and to the place, stated in the warrant to give evidence at the hearing; and
  - (b) adjourn the hearing to the time and place mentioned in paragraph (a) on terms as to costs the tribunal considers appropriate.
- (4) A warrant issued under subsection (3) is sufficient authority for a police officer to execute it according to its terms.
- (5) Despite subsection (2), the tribunal may at any time excuse a person for failing to attend at the time and place notified.

## **58 Witnesses appearing at tribunal hearing**

A person appearing as a witness at a tribunal hearing must not, without reasonable excuse—

- (a) refuse to be sworn or to make an affirmation; or
- (b) refuse to answer a question the tribunal requires the person to answer; or

- (c) fail to produce a document, if the person was notified under the rules to produce the document at the tribunal hearing.

Maximum penalty—20 penalty units.

## **59 Protection**

- (1) A member has, in the performance of the member's duties as a member, including in the performance or exercise of an administrative function or power conferred on the member under an Act, the same protection and immunity as a judge of the Supreme Court acting as a judge.
- (2) A person representing a party before the tribunal has the same protection and immunity as a lawyer has in appearing for a party in a proceeding in the Supreme Court.
- (3) A person notified to attend the tribunal, or appearing at a tribunal hearing as a witness, has the same protection as a witness in a proceeding in the Supreme Court.

## **60 Obstructing tribunal**

- (1) A person must not obstruct or improperly influence the conduct of a tribunal hearing, or try to do so.

Maximum penalty—40 penalty units.

- (2) A person must not contravene an order of the tribunal limiting the extent to which a tribunal hearing is open to the public.

Maximum penalty—40 penalty units.

## **61 Allowances for witnesses**

A witness notified to appear at a tribunal hearing has the right to be paid the allowances and expenses—

- (a) prescribed under a regulation; or
- (b) if no allowances and expenses are prescribed—decided by the tribunal.

**62 Contempt of tribunal**

- (1) A person is in contempt of the tribunal if the person—
  - (a) insults a tribunal member or a member of the tribunal staff at a tribunal hearing, or in going to or returning from the tribunal hearing; or
  - (b) deliberately interrupts a tribunal hearing, or otherwise misbehaves at a tribunal hearing; or
  - (c) at a tribunal hearing, contravenes a provision of this Act about the hearing; or
  - (d) creates or continues, or joins in creating or continuing, a disturbance in or near a place where a tribunal hearing is being conducted; or
  - (e) obstructs or assaults a person attending a tribunal hearing; or
  - (f) without lawful excuse, disobeys a lawful order or direction of the tribunal made or given at a tribunal hearing; or
  - (g) does anything at a tribunal hearing or otherwise that would be contempt of court if the tribunal were a judge acting judicially.
- (2) The tribunal may order that a person who under subsection (1) is in contempt of the tribunal at a tribunal hearing be excluded from the place where the hearing is being conducted.
- (3) A member of the tribunal staff, acting under the tribunal's order, may, using necessary and reasonable help and force, exclude the person from the place.
- (4) In this section—

*member of the tribunal staff* includes a deputy registrar (additional office).

*tribunal member* includes an NNTT member for a proceeding.

**63 Punishment of contempt**

- (1) Without limiting the tribunal's power to punish for contempt, a person's contempt of the tribunal may be punished under this section.
- (2) The president may certify the contempt in writing to the Supreme Court (the *court*).
- (3) For subsection (2), it is enough for the president to be satisfied there is evidence of contempt.
- (4) The president may issue a warrant directed to a police officer or all police officers for the arrest of the person to be brought before the Supreme Court to be dealt with according to law.
- (5) The *Bail Act 1980* applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence.
- (6) The court must inquire into the alleged contempt.
- (7) The court must hear—
  - (a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and
  - (b) any statement given by the person in defence.
- (8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in relation to proceedings in the court.
- (9) The Rules of the Supreme Court apply to the court's investigation, hearing and power to punish with necessary changes.
- (10) The president's certificate of contempt is evidence of the matters contained in the certificate.

**64 Conduct that is contempt and offence**

- (1) If conduct of an offender is both contempt of the tribunal and an offence, the offender may be proceeded against for the contempt or for the offence, but the offender is not liable to be punished twice for the same conduct.
- (2) In this section—

*offender* means a person guilty, or alleged to be guilty, of contempt of the tribunal.

## **65 Powers of tribunal**

- (1) The tribunal has, for exercising jurisdiction conferred under this or another Act, all the powers of the Supreme Court, and may in a proceeding before the tribunal, in the same way and to the same extent as may be done by the Supreme Court in a similar proceeding—
  - (a) grant any relief or remedy; and
  - (b) make any order, including an order for attachment or committal because of disobedience to an order; and
  - (c) give effect to every ground of defence or matter of set-off, whether equitable or legal.
- (2) Without limiting subsection (1), the tribunal has, in a proceeding before it, power to grant relief—
  - (a) under a declaration of rights of the parties; or
  - (b) under an injunction, whether interim, interlocutory or final, in the proceeding; or
  - (c) by staying the proceeding or a part of the proceeding; or
  - (d) by appointing a receiver including an interim receiver.
- (3) The tribunal may order that a record of or information about a proceeding before the tribunal must not be made available to the public.
- (4) Without limiting the things the tribunal may have regard to in deciding whether to make an order under subsection (3), the tribunal may have regard to Aboriginal tradition and Island custom.
- (5) To the extent that the practice and procedure of the tribunal in exercising its jurisdiction in particular matters, including enforcing its judgments and orders, are not provided for in the rules, they must as far as practicable be the same as the practice and procedure of the Supreme Court in similar matters.

- (6) Without limiting subsection (5), the appropriate officer of the tribunal must, in addition to duties otherwise imposed on the officer, discharge—
- (a) any duty an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in similar circumstances; and
  - (b) any duty imposed on the officer by an order of the tribunal.
- (7) For subsection (6), the appropriate officer of the tribunal has the powers of the relevant officer of the Supreme Court.
- (8) Subsections (1) and (5) have effect subject to—
- (a) another provision of this Act; and
  - (b) a provision of another Act under which jurisdiction is conferred on the tribunal.

## **66 Enforcement of orders etc.**

Each warrant, order or other process of the tribunal may be directed to, and may be served or executed or put into effect by—

- (a) the registrar; or
- (b) the staff of the tribunal acting under the direction of the registrar.

## **67 Appeal only on question of law**

- (1) A party to a proceeding before the tribunal may appeal against a decision of the tribunal, but only on a question of law.
- (2) The appeal is to—
- (a) if the tribunal is constituted by a presiding member (alternative), mining referee or Land Court non-presiding member—the tribunal as constituted by the president sitting alone (the *appellate body*), but only with the president's leave; or
  - (b) if the tribunal is not constituted by a presiding member (alternative), mining referee or Land Court



non-presiding member—the Court of Appeal (also the *appellate body*).

- (3) On the appeal, the appellate body may—
  - (a) dismiss the appeal; or
  - (b) allow the appeal and—
    - (i) set aside the decision appealed against and substitute the decision it considers should have been made; or
    - (ii) amend, as it considers appropriate, the decision appealed against; or
    - (iii) suspend the operation of the decision appealed against and remit the proceeding, with or without directions, to the tribunal to act according to law.
- (4) The appeal must be started within 28 days after the decision being appealed against is given.
- (5) An appeal to the Court of Appeal is to be made under the rules of practice and procedure governing that court.
- (6) However, if the rules do not provide for the appeal, the rules of practice and procedure governing appeals from the Supreme Court to the Court of Appeal apply to the appeal with necessary changes.

## **68 Appeal not a stay of decision**

- (1) An appeal from a decision of the tribunal does not stay the decision.
- (2) However, the decision is stayed if the stay is ordered by—
  - (a) the tribunal as constituted when making the decision; or
  - (b) the appellate body.
- (3) The tribunal as constituted when making the decision or the appellate body may, as well as making the order staying the decision, make an order for securing the effectiveness of the appeal, including, for example, the following—
  - (a) an order in the nature of an injunction;

- (b) an order for the payment of money to the tribunal to wait for the outcome of the appeal;
- (c) another order the tribunal or appellate body considers to be appropriate in the circumstances.

**69 Question of law referred from presiding member (alternative), mining referee or Land Court non-presiding member**

- (1) This section applies if, for a proceeding, the tribunal is constituted by a presiding member (alternative), mining referee or Land Court non-presiding member.
- (2) The tribunal may, on its own initiative or if asked by a party, refer a question of law arising in the proceeding to the tribunal as constituted by the president sitting alone for an opinion.
- (3) The tribunal, as constituted by the president sitting alone, may in turn, on its own initiative or if asked by a party, refer the question of law to the Court of Appeal for an opinion.
- (4) If the question of law is referred under subsection (2) or subsections (2) and (3), the tribunal, as constituted in the way mentioned in subsection (1), must not, in the proceeding—
  - (a) give a decision to which the question is relevant while the reference is pending; or
  - (b) proceed in a way, or make a decision, inconsistent with the opinion given on the question.

**70 Question of law referred from panel or presiding member**

- (1) This section applies if, for a proceeding, the tribunal is constituted other than by a presiding member (alternative), mining referee or Land Court non-presiding member.
- (2) The tribunal may, on its own initiative or if asked by a party, refer a question of law arising in the proceeding to the Court of Appeal for an opinion.
- (3) If the question of law is referred under subsection (2), the tribunal must not, in the proceeding—
  - (a) give a decision to which the question is relevant while the reference is pending; or

- (b) proceed in a way, or make a decision, inconsistent with the opinion given on the question.

## **70A Tribunal constituted by presiding member (alternative)**

- (1) For a relevant provision, the tribunal is constituted by a presiding member (alternative) if—
  - (a) the tribunal is constituted by a presiding member other than the president; and
  - (b) in giving directions for constituting the tribunal, the president was required, under schedule 1, to choose—
    - (i) either a presiding member or a mining referee; or
    - (ii) a presiding member, a mining referee or a Land Court non-presiding member.
- (2) In this section—

*relevant provision* means—

  - (a) section 67(2); or
  - (b) section 69(1); or
  - (c) section 70(1).

## **Division 5 Mediation**

### **71 Application of div 5**

This division applies to persons (*mediation participants*)—

- (a) for whom the tribunal conducts or provides mediation in relation to a matter; or
- (b) for whom mediation is provided in relation to a matter by a mediator chosen by the tribunal.

### **72 Mediated resolution agreement**

- (1) If, at the mediation, the mediation participants negotiate an agreement about the matter or part of the matter, the

agreement must be written down and signed by or for each mediation participant and by the mediator.

- (2) The agreement has the same effect as any other compromise.

### **73 Mediators to maintain secrecy**

- (1) The mediator must not, without reasonable excuse, disclose information about the matter coming to the mediator's knowledge during the mediation.

Maximum penalty—40 penalty units.

- (2) It is a reasonable excuse to disclose information if the disclosure is made—
- (a) with the agreement of all the mediation participants; or
  - (b) for this Act; or
  - (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or
  - (d) for an inquiry or proceeding about an offence happening during the mediation; or
  - (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the mediation; or
  - (f) under a requirement imposed under an Act.

### **74 Ordinary protection and immunity allowed**

- (1) In performing the functions of mediator, the mediator has the same protection and immunity as a judge performing the functions of a judge.
- (2) A mediation participant in a mediation has the same protection and immunity the participant would have if the mediation were a dispute being heard before the Supreme Court.
- (3) A document produced at, or used for, a mediation has the same protection during the mediation it would have if produced before the Supreme Court.

- (4) In subsection (2)—

*mediation participant* includes a participant's lawyer or agent.

## **75 Admissions made to mediators**

- (1) Evidence of anything done or said, or an admission made, at a mediation about the matter is admissible in a proceeding before the tribunal or elsewhere only if all mediation participants agree.

- (2) In subsection (1)—

*proceeding* does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the mediation.

## **76 Mediator precluded from tribunal hearing matter**

If the matter is the subject of a proceeding before the tribunal, the tribunal, as constituted for the proceeding, must not include the mediator.

## **Division 6 Other provisions**

### **77 Finance and staffing of tribunal**

- (1) The tribunal is part of the department for the purposes of the *Financial Administration and Audit Act 1977*.
- (2) The staff of the tribunal, including the registrar and any deputy registrar (tribunal), are to be appointed and employed under the Public Service Act.
- (3) However, a person is eligible for appointment as the registrar only if the person—
- (a) is a lawyer; and
  - (b) has particular knowledge and experience of—
    - (i) public administration; or

- (ii) something else with substantial relevance to the duties of the registrar.

## **78 Annual report**

- (1) The president of the tribunal must, within 4 months after the end of each financial year, prepare and give to the Minister a report on the operations of the tribunal for the year.
- (2) The Minister must cause a copy of the report to be tabled in the Legislative Assembly within 14 days after its receipt by the Minister.

## **79 Delegation of powers by president**

The president may delegate the president's administrative powers under this or another Act, including the power to give a direction about how the tribunal is to be constituted for a proceeding, to another presiding member.

# **Part 5 Miscellaneous**

## **80 Preservation of rights of non-presiding member**

- (1) This section applies to a person who is appointed as an appointed non-presiding member on the basis of full-time employment or as a referee non-presiding member if—
  - (a) immediately before the appointment as a non-presiding member, the person was a public service officer; or
  - (b) the person—
    - (i) was at some time before the appointment as a non-presiding member, a public service officer; and
    - (ii) from when the person stopped being a public service officer until immediately before the appointment as a non-presiding member, has continuously been the holder of a statutory office.

- (2) The person keeps the rights the person has accrued because of employment as a public service officer, or that would accrue in the future to the person, as if service as a non-presiding member were a continuation of service as a public service officer.
- (3) If the person's term of appointment as a non-presiding member ends or the person resigns—
- (a) the person has the right to be employed as a public service officer—
- (i) in the department that is the nearest practical equivalent to the department in which the person was employed as a public service officer immediately before the person last stopped being a public service officer; and
- (ii) at the classification level at which the person was employed as a public service officer immediately before the person last stopped being a public service officer; and
- (iii) on the remuneration payable to a public service officer on the classification level mentioned in subparagraph (ii); and
- (iv) for duties appropriate to the classification level mentioned in subparagraph (ii); and
- (b) the person's service as a non-presiding member is taken to be service as a public service officer for working out the person's rights as a public service officer.
- (4) In this section—
- statutory office*** see section 108<sup>5</sup> of the Public Service Act.

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5 *Public Service Act 1996*, section 108—

**108 What is a *statutory office***

- (1) A ***statutory office*** is an office established under an Act to which a person may only be appointed by the Governor in Council or a Minister.
- (2) It is immaterial whether an appointment may only be made after a recommendation or other process.

**81 Regulation-making power**

The Governor in Council may make regulations under this Act.

**82 Rule-making power**

The Governor in Council may make rules for the practice and procedure of the tribunal.

**Part 6 Transitional provisions****83 Proceeding not finished before commencement**

- (1) This section applies to a proceeding if, immediately before the commencement of this section—
  - (a) the proceeding was a proceeding under the *Fossicking Act 1994*, the *Mineral Resources Act 1989* or the *Petroleum Act 1923*; and
  - (b) the Wardens Court had jurisdiction for the proceeding; and
  - (c) the proceeding was not finished.
- (2) The tribunal has jurisdiction to finish the proceeding as if the proceeding had been started after the commencement of this Act.
- (3) The president may give any necessary directions about how the proceeding is to be dealt with by the tribunal instead of by the Wardens Court.
- (4) Despite anything in schedule 1, the president is not stopped from directing that, for continuing the proceeding, the tribunal be constituted by a mining referee rather than a panel.
- (5) Despite subsection (2), if anything done by the Wardens Court before the commencement of this section was the subject of an appeal, the appeal must be finished as if this Act had not been enacted.



**84 Proceeding about At Risk agreement not finished before commencement**

- (1) This section applies to a proceeding if, immediately before the commencement of this section—
  - (a) the proceeding was a proceeding under the *Mineral Resources Act 1989*, section 194A or 278A; and
  - (b) the proceeding was not finished.
- (2) The Land Court is to hear and decide the proceeding as if this Act had not been enacted.

**85 Warden**

- (1) This section applies to a person who, immediately before the commencement of this section, is a warden under the *Mineral Resources Act 1989*.
- (2) The *Judges (Salaries and Allowances) Act 1967* continues to apply to the person as if this Act had not been enacted.
- (3) The relevant mining Act provisions are taken to continue to have effect as if this Act had not been enacted, to the extent necessary for keeping in place—
  - (a) the person's appointment as a warden; and
  - (b) the Wardens Court.
- (4) The relevant mining Act provisions are also taken to continue to have effect as if this Act had not been enacted, to the extent necessary for giving full effect to the relevant designated Act provisions.
- (5) However, if the person's appointment as a warden ends and there is no other person whose appointment as warden is kept in place under this section, a reference in a relevant mining Act provision or relevant designated Act provision to a warden or the Wardens Court is taken to be a reference to the tribunal.
- (6) In this section—

**designated Acts** means the following Acts—

  - the *Coal Mining Act 1925*
  - the *Coal Mining Safety and Health Act 1999*

- the *Mines Regulation Act 1964*
- the *Mining and Quarrying Safety and Health Act 1999*.

***relevant designated Act provisions*** means the provisions of the designated Acts that mention a warden or the Wardens Court.

***relevant mining Act provisions*** means the provisions of the *Mineral Resources Act 1989* that, immediately before the schedule commencement, mentioned, directly or indirectly, a warden or the Wardens Court.

***schedule commencement*** means the commencement of schedule 3, amendments of the *Mineral Resources Act 1989*.

## **86 Assumption by tribunal of role of warden and Wardens Court under certain Acts**

- (1) The relevant mining Act provisions are taken to continue to have effect as if this Act had not been enacted, but only to the extent necessary for giving full effect to the relevant designated Act provisions.
- (2) A reference in a relevant mining Act provision or relevant designated Act provision to a warden or the Wardens Court is taken to be a reference to the tribunal.
- (3) In subsection (4), definition *designated Acts*, a reference to an Act includes a reference to any instrument—
  - (a) that has been made or entered into under the Act; and
  - (b) that the reference to the Act does not otherwise include.
- (4) In this section—

***designated Acts*** means the following Acts—

- the *Alcan Queensland Pty. Limited Agreement Act 1965*
- the *Central Queensland Coal Associates Agreement Act 1968*
- the *Offshore Minerals Act 1998*
- the *Petroleum Act 1923*
- the *Queensland Nickel Agreement Act 1970*
- the *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*.

***relevant designated Act provisions*** means the provisions of the designated Acts that mention a warden or the Wardens Court.

***relevant mining Act provisions*** means the provisions of the *Mineral Resources Act 1989* that, immediately before the commencement of this section, mentioned, directly or indirectly, a warden or the Wardens Court.

## **Schedule 1      Requirements for constituting tribunal**

section 40(1)(b)

### **Environmental Protection Act 1994**

For all matters within the tribunal's jurisdiction, the tribunal is to be constituted by a presiding member.

### **Fossicking Act 1994**

For all appeals to the tribunal, the tribunal is to be constituted by a presiding member or mining referee.

### **Mineral Resources Act 1989**

<b>Sections conferring jurisdiction</b>	<b>Nature of proceeding</b>	<b>Constitution of tribunal</b>
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#### **Prospecting permits**

38 to 42	appeal about a prospecting permit	presiding member or mining referee
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#### **Mining claims**

53(6)(b)	application about the area the subject of a mining claim	presiding member or mining referee
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## Schedule 1 (continued)

<b>Sections conferring jurisdiction</b>	<b>Nature of proceeding</b>	<b>Constitution of tribunal</b>
70(1)	application by attending party for costs	presiding member or mining referee
77	hearing about application for mining claim unless, under this schedule, the tribunal must be constituted by a panel	presiding member or mining referee
85	hearing about compensation	presiding member, mining referee or Land Court non-presiding member
86	appeal about compensation	panel
101	proceeding about a caveat	presiding member or mining referee
116	appeal about a decision about a mining claim mentioned in the section unless, under this schedule, the tribunal must be constituted by a panel	presiding member or mining referee
125	hearing about access	presiding member or mining referee
<b>Exploration permits</b>		
145	recovery of compensation for damage or injury	panel
156	proceeding about a caveat	presiding member or mining referee

## Schedule 1 (continued)

<b>Sections conferring jurisdiction</b>	<b>Nature of proceeding</b>	<b>Constitution of tribunal</b>
174(1)	application to the tribunal by attending party for costs	presiding member or mining referee
<b>Mineral development licences</b>		
191	recovery of compensation for damage or injury	panel
194A	proceeding about At Risk agreement	Land Court non-presiding member
203	proceeding about a caveat	presiding member or mining referee
222(1)	application by attending party for costs	presiding member or mining referee
<b>Mining leases</b>		
250	appeal against rejection of application for grant of mining lease unless, under this schedule, the tribunal must be constituted by a panel—	
	(a) if applicant does not ask for the tribunal to be constituted by a panel; or	presiding member or mining referee
	(b) if applicant asks for the tribunal to be constituted by a panel	panel

## Schedule 1 (continued)

<b>Sections conferring jurisdiction</b>	<b>Nature of proceeding</b>	<b>Constitution of tribunal</b>
259(1)	application to the tribunal by attending party for costs	presiding member or mining referee
268	hearing of application for grant of mining lease unless, under this schedule, the tribunal must be constituted by a panel—	
	(a) if all parties ask for the tribunal to be constituted other than by a panel, and the president agrees to the request; or	presiding member or mining referee
	(b) if paragraph (a) does not apply	panel
271(1)	remission of matter by the minister to tribunal for reconsideration	tribunal to be constituted in the same way as the tribunal was constituted for deciding its recommendation about the grant of the mining lease
278A	proceeding about At Risk agreement	Land Court non-presiding member
281	hearing about compensation	presiding member, mining referee or Land Court non-presiding member
282	appeal about compensation	panel

## Schedule 1 (continued)

<b>Sections conferring jurisdiction</b>	<b>Nature of proceeding</b>	<b>Constitution of tribunal</b>
299	application for order declaring land to be adjoining land for the section	presiding member or mining referee
305	proceeding about a caveat	presiding member or mining referee
317	hearing about access	presiding member or mining referee

**Substantive jurisdiction**

363	actions, suits and proceedings of the kind mentioned in the section	presiding member
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**Interim order by remote means**

364	interim order by remote means	presiding member
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**Mining leases under part 17, division 4 and other mining tenements to which part 17, division 4 is applied**

669	native title issues decision	panel
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**Compensation**

318I	Deciding mining tenement holder's compensation liability to road authority	presiding member
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## Schedule 1 (continued)

<b>Sections conferring jurisdiction</b>	<b>Nature of proceeding</b>	<b>Constitution of tribunal</b>
318K	Review of original compensation	presiding member
706 to 722	Decision about compensation	panel
<b>Directions or requirements</b>		
406	Review of direction or requirement	presiding member

**1 General**

- (1) This section applies if, for a proceeding before the tribunal, the tribunal will be required to make a decision concerning a mining tenement, including a proposed mining tenement, under the native title (mining) provisions.
- (2) For the proceeding, the tribunal is to be constituted by a panel.
- (3) However, the panel must be an NNTT panel if the proceeding includes the hearing of an objection of a native title notification party for land the subject of the proceeding.

**Petroleum Act 1923**

For all matters within the tribunal's jurisdiction, the tribunal is to be constituted by a presiding member.

## Schedule 1 (continued)

**Petroleum and Gas (Production and Safety) Act  
2004**

For all matters within the tribunal's jurisdiction, the tribunal is to be constituted by a presiding member.

## **Schedule 2      Negotiated agreements**

section 52

### **Mineral Resources Act 1989**

- 1 The following agreements mentioned in the *Mineral Resources Act 1989* are negotiated agreements—
  - an access agreement under part 13 (Native title provisions for prospecting permits), part 15 (Native title provisions for exploration permits), division 2 (Low impact exploration permits), or part 16 (Native title provisions for mineral development licences), division 2 (Low impact mineral development licences)
  - a negotiated agreement under part 17 (Native title provisions for mining leases), division 4 (Mining Leases)
  - an agreement about payment of compensation mentioned in part 18 (Compensation provisions).
- 2 A reference in item 1 to a provision of the *Mineral Resources Act 1989* includes a reference to the provision as applied by another provision, or other provisions, of the native title (mining) provisions.

### **Native Title Act 1993 (Cwlth)**

- 3 An agreement obtained under the Commonwealth Native Title Act, section 31(1)(b) (Normal negotiation procedure) is a negotiated agreement.

## Schedule 4      Dictionary

### section 3

*appellate body* see section 67.

*appointed non-presiding member* see section 15(4).

*Commonwealth Native Title Act* means the *Native Title Act 1993* (Cwlth).

*decision*, of the tribunal, includes the following of the tribunal—

- (a) determination;
- (b) judgment;
- (c) recommendation.

*deputy president* means a deputy president of the tribunal.

*deputy registrar* means a deputy registrar of the tribunal.

*deputy registrar (additional office)* see section 33(2)(b).

*deputy registrar (tribunal)* see section 33(2)(a).

*indigenous issues referee* see section 16(2)(c).

*Judges Pensions Act* means the *Judges (Pensions and Long Leave) Act 1957*.

*Land Court non-presiding member* see section 15(2).

*Land Tribunal* means—

- (a) the Land Tribunal established under the *Aboriginal Land Act 1991*; or
- (b) the Land Tribunal established under the *Torres Strait Islander Land Act 1991*.

*Land Tribunal non-presiding member* see section 15(3).

*mediation referee* see section 16(2)(c).

*members*, of the tribunal, see section 6.

*mining referee* see section 16(2)(c).

## Schedule 4 (continued)

**mining tenement** means a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease under the *Mineral Resources Act 1989*.

**native title (mining) provisions** means the *Mineral Resources Act 1989*, parts 12 to 18 and part 19, divisions 2 and 5.

**native title notification party** see the *Mineral Resources Act 1989*, section 422.

**NNTT** means the National Native Title Tribunal established under the Commonwealth Native Title Act.

**NNTT member** means—

- (a) a member of the NNTT; and
- (b) for a proceeding, means a person designated under section 40(5) as the NNTT member for the proceeding.

**NNTT panel** see section 39(2)(b), (c) and (d).

**non-native title (mining) provisions** means the *Mineral Resources Act 1989*, other than parts 12 to 18 and part 19, division 2.

**non-presiding member** see section 15(1).

**panel** means panel of the tribunal.

**president** means the president of the tribunal.

**presiding members**, of the tribunal, see section 7.

**Public Service Act** means the *Public Service Act 1996*.

**referee non-presiding member** see section 15(5).

**registrar** means the registrar of the tribunal.

**rules** means the rules for the practices and procedures of the tribunal made by the Governor in Council under this Act.

**senior presiding member**, for a proceeding, means the person who—

- (a) under section 40(3), is the senior presiding member for the proceeding; or

## Schedule 4 (continued)

- (b) under section 40(4), is designated as the senior presiding member for the proceeding.

*standard panel* see section 39(2)(a).

*tribunal* means the Land and Resources Tribunal established under this Act.

*tribunal hearing* means the hearing for a proceeding before the tribunal.

## Endnotes

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated. . . . .	.61
3 Key . . . . .	.62
4 Table of reprints . . . . .	.62
5 List of legislation . . . . .	.63
6 List of annotations . . . . .	.64
7 List of forms notified or published in the gazette . . . . .	.66
8 Information about retrospectivity. . . . .	.66

### 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 1 January 2005. Future amendments of the Land and Resources Tribunal Act 1999 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	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

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

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

Reprint No.	Amendments included	Effective	Reprint date
1	none	21 April 2000	5 May 2000
2	to 2000 Act No. 37	18 September 2000	6 October 2000
2AA	to 2002 Act No. 34	14 May 2002	14 May 2002
(Column discontinued)			
Notes			
2A 2nd rv	to 2002 Act No. 34	16 August 2002	
2B	to 2003 Act No. 77	6 November 2003	
2C	to 2003 Act No. 77	15 November 2003	
2D	to 2003 Act No. 79	16 April 2004	
2E	to 2004 Act No. 5	13 May 2004	
2F	to 2004 Act No. 43	3 December 2004	
2G	to 2004 Act No. 43	31 December 2004	
2H	to 2004 Act No. 48	1 January 2005	



## **5 List of legislation**

### **Land and Resources Tribunal Act 1999 No. 7**

date of assent 18 March 1999

ss 1–2 commenced on date of assent

s 3, pts 2–3, ss 38, 54, pt 4 div 6, pt 5, pt 7 sch 3 (amdt of the Acts Interpretation Act 1954), sch 4 commenced 30 April 1999 (1999 SL No. 71)

ss 37, 39–51, 53, 55–76 commenced 21 April 2000 (2000 SL No. 64)

remaining provisions commenced 18 September 2000 (2000 SL No. 244) (proposed commenced 19 March 2001 (automatic commencement under AIA s 15DA(2) (2000 SL No. 34 s 2)))

amending legislation—

### **Native Title (Queensland) State Provisions Amendment Act 1999 No. 35 pts 1, 3**

date of assent 29 July 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 29 July 2000 (automatic commencement under AIA s 15DA(2))

### **Native Title Resolution Act 2000 No. 36 pts 1–2, s 18 sch 1, s 19 sch 2**

date of assent 13 September 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 18 September 2000 (2000 SL No. 245)

### **Land and Resources Tribunal Amendment Act 2000 No. 37**

date of assent 13 September 2000

commenced on date of assent

### **Justice and Other Legislation (Miscellaneous Provisions) Act 2002 No. 34 ss 1, 2(2), pt 10**

date of assent 16 August 2002

ss 1–2 commenced on date of assent

s 34 commenced 14 May 2002 (see s 2(2))

remaining provisions commenced on date of assent

### **Mineral Resources and Other Legislation Amendment Act 2002 No. 63 pts 1, 3**

date of assent 14 November 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 15 November 2003 (automatic commencement under AIA s 15DA(2))

### **Justice and Other Legislation Amendment Act 2003 No. 77 ss 1, 2(2), pt 18**

date of assent 6 November 2003

commenced on date of assent (see s 2(2))

### **Aboriginal Cultural Heritage Act 2003 No. 79 ss 1–2, 170 sch 1**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 16 April 2004 (2004 SL No. 36)

**Aurukun Associates Agreement Repeal Act 2004 No. 5 ss 1, 8 sch**

date of assent 13 May 2004  
 commenced on date of assent

**Geothermal Exploration Act 2004 No. 12 ss 1–2, ch 8 pt 4**

date of assent 31 May 2004  
 ss 1–2 commenced on date of assent  
 remaining provisions not yet proclaimed into force (see s 2)

**Petroleum and Gas (Production and Safety) Act 2004 No. 25 ss 1, 2(2), ch 16 pt 17**

date of assent 12 October 2004  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 31 December 2004 (2004 SL No. 308)

**Justice and Other Legislation Amendment Act 2004 No. 43 ss 1–2, pt 13**

date of assent 18 November 2004  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 3 December 2004 (2004 SL No. 263)

**Environmental Protection and Other Legislation Amendment Act 2004 No. 48  
 pts 1, 5**

date of assent 18 November 2004  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 January 2005 (2004 SL No. 315)

## **6 List of annotations**

**Retirement or resignation of presiding members**

**s 9** amd 2002 No. 34 s 31

**Limitation on ownership of mining tenements**

**prov hdg** amd 1999 No. 35 s 6(1)  
**s 26** amd 1999 No. 35 s 6(2)

**Membership of other decision-making entity**

**s 27A** ins 2003 No. 77 s 91  
 amd 2004 No. 43 s 58

**Appointment to NNTT**

**s 28** amd 2002 No. 34 s 32

**General requirements for constituting tribunal for proceeding**

**prov hdg** amd 2000 No. 37 s 3  
**s 39** amd 2002 No. 34 s 33  
 amd 2004 No. 43 s 59

**Specific requirements for constituting tribunal for proceeding**

**s 40** amd 2000 No. 37 s 4

**Way in which questions are to be decided**

**s 41** amd 1999 No. 35 s 7

**Division 2—Proceedings****div hdg** sub 2000 No. 36 s 4**Conduct of proceeding****s 49** amd 2000 No. 36 s 5**Jurisdiction under Commonwealth Native Title Act****s 51A** ins 1999 No. 35 s 8**Jurisdiction of tribunal for registered indigenous land use agreements****s 51B** ins 2000 No. 36 s 6**Exclusive jurisdiction for negotiated agreements****s 52** amd 2000 No. 36 s 18 sch 1**Exclusive jurisdiction for certain cultural heritage matters****s 53** amd 2003 No. 79 s 170 sch 1**Exclusive jurisdiction for contract conditions****s 53A** ins 2003 No. 77 s 92**Protection****s 59** amd 2000 No. 37 s 5**Contempt of tribunal****s 62** amd 2000 No. 37 s 6**Appeal only on question of law****s 67** amd 2000 No. 37 s 7**Question of law referred from presiding member (alternative), mining referee or  
Land Court non-presiding member****prov hdg** sub 2000 No. 37 s 8(1)**s 69** amd 2000 No. 37 s 8(2)**Question of law referred from panel or presiding member****prov hdg** sub 2000 No. 37 s 9(1)**s 70** amd 2000 No. 37 s 9(2)**Tribunal constituted by presiding member (alternative)****s 70A** ins 2000 No. 37 s 10**Proceeding not finished before commencement****s 83** amd 2000 No. 36 s 7**Warden****s 85** amd 2000 No. 37 s 11**Assumption by tribunal of role of warden and Wardens Court under certain Acts****prov hdg** sub 2000 No. 37 s 12(1)**s 86** amd 2000 No. 37 s 12(2)–(4); 2002 No. 34 s 34 (retro); 2004 No. 5 s 8 sch**PART 7—CONSEQUENTIAL AND OTHER AMENDMENTS****pt 7 (s 87)** om R2 (see RA s 40)**SCHEDULE 1—REQUIREMENTS FOR CONSTITUTING TRIBUNAL**

amd 1999 No. 35 s 9; 2000 No. 36 s 18 sch 1; 2000 No. 37 s 13; 2002 No. 34 s 35; 2002 No. 63 s 9; 2004 No. 25 s 942; 2004 No. 48 s 148

**SCHEDULE 2—NEGOTIATED AGREEMENTS**

amd 1999 No. 35 s 10; 2000 No. 36 s 18 sch 1, s 19 sch 2; 2003 No. 77 s 93

**SCHEDULE 3—AMENDMENT TO OTHER ACTS**

om R2 (see RA s 40)

**SCHEDULE 4—DICTIONARY**

def “**mining tenement**” amd 1999 No. 35 s 11(1)

def “**native title (mining) provisions**” amd 1999 No. 35 s 11(2); 2003 No. 77 s 94

def “**native title notification party**” amd 1999 No. 35 s 11(3)

def “**non-native title (mining) provisions**” amd 1999 No. 35 s 11(4)

## **7 List of forms notified or published in the gazette**

**Form 1 Version 1—Title**

pubd gaz 12 May 2000 p 123

**Form 2 Version 2—Application to start proceedings**

pubd gaz 19 May 2000 p 213

**Form 3 Version 2—Response**

pubd gaz 19 May 2000 p 213

**Form 4 Version 2—Application in a proceeding**

pubd gaz 19 May 2000 p 213

## **8 Information about retrospectivity**

Retrospective amendments that have been consolidated are noted in the list of legislation and list of annotations. Any retrospective amendment that has not been consolidated is noted in footnotes to the text.