

Queensland



ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 41 of 1985

An Act to provide for the grant of leases in perpetuity and other title in land to members of communities of Aborigines or Torres Strait Islanders and for related purposes and to amend the Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982-1984 in certain particulars

[ASSENTED TO 24TH APRIL, 1985]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

2. Commencement. (1) Section 1 and this section and Part VI shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as is provided by subsection (1), the provisions of this Act shall commence on a date to be appointed by Proclamation.

3. Arrangement. This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-4);

PART II—APPLICATION FOR LEASES (ss. 5-11);

PART III—PROVISIONS CONCERNING LEASES (ss. 12-20);

PART IV—FORFEITURE OF LEASES (ss. 21-27);

PART V—GENERAL PROVISIONS (ss. 28-33);

PART VI—AMENDMENT OF THE LAND ACT
(ABORIGINAL AND ISLANDER LAND GRANTS)
AMENDMENT ACT (ss. 34-35).

4. Interpretation. (1) In this Act, except where a contrary intention appears—

“Aboriginal Council” means an Aboriginal Council constituted as a body corporate by the *Community Services (Aborigines) Act 1984*;

“Aborigine” means a person who is a descendant of an indigenous inhabitant of Australia other than the Torres Strait Islands;

“Island Council” means an Island Council constituted as a body corporate by the *Community Services (Torres Strait) Act 1984*;

“Islander” means a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands;

“Minister” means the Minister for Northern Development and Aboriginal and Island Affairs or other Minister of the Crown charged with the administration of this Act and includes any Minister of the Crown for the time being performing the duties of the Minister;

“qualified person” means—

- (a) an Aborigine or other person who is authorized by the *Community Services (Aborigines) Act 1984* to enter upon, be in and reside in a trust area as a member of the community of Aborigines resident in the area and who, in the opinion of the Aboriginal Council in which the

trust area is vested or under whose control the trust area is, is a resident of that community;

and

- (b) an Islander or other person who is authorized by the *Community Services (Torres Strait) Act 1984* to enter upon, be in and reside in a trust area as a member of the community of Islanders resident in the area and who, in the opinion of the Island Council in which the trust area is vested or under whose control the trust area is, is a resident of that community,

and includes a body corporate or other incorporated body comprised of qualified persons only;

“trust area” means land granted in trust by the Governor in Council for the benefit of Aboriginal inhabitants or Islander inhabitants or reserved and set apart by the Governor in Council for the benefit of Aborigines or Islanders under the provisions of law relating to Crown lands;

“Trustee Council” means, in relation to an application for a tenure of land—

- (a) where the land in question is situated within a trust area that is vested in or under the control of an Aboriginal Council, that Aboriginal Council;
- (b) where the land in question is situated within a trust area that is vested in or under the control of an Island Council, that Island Council;
- (c) where the land in question is situated within a trust area that is vested in or under the control of any other council, that council;
- (d) where the land in question is situated within a trust area that is vested in or under the control of two or more councils, such as are referred to in paragraph (a) or (b)—
 - (i) if the land is acknowledged among the communities resident in the trust area to be land available for occupation by Aborigines, an Aboriginal Council;
 - (ii) if the land is acknowledged among the communities resident in the trust area to be land available for occupation by Islanders, an Island Council,

and, if pursuant to subparagraphs (i) and (ii) there be more than one Trustee Council, the council whose members are most closely associated with the land in question;

“visiting justice” means—

- (a) in respect of a trust area within the meaning of the *Community Services (Aborigines) Act 1984*, the visiting justice provided for by that Act;

or

(b) in respect of a trust area within the meaning of the *Community Services (Torres Strait) Act 1984*, the visiting justice provided for by that Act.

(2) Where pursuant to this Act an Appeal Tribunal has classified a person as a qualified person the definition "qualified person" shall be construed as if the opinion required to satisfy that definition were that of the Appeal Tribunal in lieu of the opinion therein referred to.

(3) For the purposes of this Act a "prescribed person" is the Crown in right of the State or of the Commonwealth and any statutory body acting in discharge of its statutory functions under an Act of the State or of the Commonwealth but does not include The Corporation of the Under Secretary for Community Services in its capacity as a bare trustee of land.

PART II—APPLICATION FOR LEASES

5. Application for tenure in trust area. (1) A qualified person who has attained the age of 18 years and who desires a tenure of land that is situated in a trust area may, subject to this Act, make application to the Trustee Council for its approval that a lease be granted to the applicant over the land to which the application relates.

(2) It is not competent to a qualified person to make application under subsection (1) in respect of—

- (a) land that is occupied or used by a prescribed person;
or
- (b) land that is occupied or is, at the material time, used by a qualified person other than the person who is seeking the tenure;
or
- (c) land that exceeds one hectare in area, in the case of an application for a lease in perpetuity.

(3) An application under subsection (1)—

- (a) may be made by any number of qualified persons, to the intent that where there is more than one applicant the tenure of the land in question would be held by them as joint tenants or tenants-in-common;
 - (b) shall identify the land to which it relates—
 - (i) by the surveyed description thereof (if any);
 - (ii) by the metes and bounds description, if it is known;
or
 - (iii) by such other means as may be appropriate in the circumstances;
- and

(c) shall be in or to the effect of the prescribed form.

(4) An application under subsection (1) shall not relate to more than one parcel of land.

6. Duty of Trustee Council concerning application. (1) A Trustee Council to which application under section 5 has been duly made—

(a) shall cause notice of the application to be plainly exhibited in a public place in the trust area for a period of 28 days and shall, within 10 days after the expiration of that period, determine whether the qualified person or persons who is or are seeking tenure of the land identified in the application should be granted the tenure;

and

(b) shall, within 7 days after the determination under paragraph (a) is made, give notification in writing to the applicant of the determination and if it is a refusal of the application, notify the applicant in writing of the grounds for the refusal;

and

(c) shall within 28 days after the determination under paragraph (a) is made, give notification in the prescribed form of the determination to the Minister who shall forthwith notify the Minister within the meaning of the *Land Act 1962-1985*.

(2) A qualified person who is a resident of the community in the trust area where an application is made and any other person having, in the opinion of the Trustee Council, a bona fide interest in the matter of an application is entitled to object, orally or in writing, within the 28 days referred to in paragraph (a) of subsection (1) to the approval of the application and the Trustee Council shall have regard to every such objection duly made to it when it is determining the matter of the application.

(3) In making its determination referred to in paragraph (a) of subsection (1) a Trustee Council shall observe the following factors:—

security of tenure for qualified persons of land occupied or used or sought to be occupied or used by them;

the social and economic development of the trust area within which the land in question is situated and of the community of qualified persons therein;

and

the interest of the community of qualified persons resident in the trust area in the use made or to be made of land within the trust area,

giving to each factor such weight as the council considers proper in each case.

7. Remedy of person aggrieved. (1) A qualified person who is aggrieved by—

- (a) a determination by a Trustee Council of an application made to it under section 5;
- or
- (b) a failure by a Trustee Council to which an application has been made under section 5 to perform its duty under paragraph (a) or (b) of section 6 (1).

may appeal to the Appeal Tribunal constituted in accordance with this Act for the community within which is situated the land to which the application relates.

(2) An appeal under subsection (1) shall be instituted in the prescribed form and shall be disposed of by the Appeal Tribunal's considering *de novo* and determining the matter of the application as if it were the Trustee Council to which the application was made.

(3) For the purpose of its disposing of an appeal the Appeal Tribunal shall be given full and free access to the records of the Trustee Council to which was made the application to which the appeal relates and may take possession therefrom of the application and any other record relevant thereto.

(4) In disposing of an appeal the Appeal Tribunal is discharging an administrative function and may receive or gather evidence, written or oral, in such manner and form as it thinks fit.

(5) A person aggrieved by a determination of or a failure in respect of an application must be—

an applicant;

or

a person who has objected to the Trustee Council against the approval of the application.

8. Notification of result of appeal. Where the Appeal Tribunal has approved an application the tribunal—

(a) shall, within 7 days after its determination, cause notification thereof to be given to the applicant;

and

(b) shall, within 28 days after its determination, cause notification thereof to be given to the Minister who shall forthwith notify the Minister within the meaning of the *Land Act 1962-1985*.

9. Nature of tenure and entitlement thereto. (1) The tenure that may be applied for under section 5 is—

(a) a lease in perpetuity where the land to which title is sought does not exceed one hectare in area;

(b) in any other case, a tenure that in the opinion of the Minister within the meaning of the *Land Act 1962-1985* is appropriate

to the use to be made of the land to which title is sought and is in accordance with this Act.

(2) Where an application under section 5 has been approved by the Trustee Council or upon appeal by the Appeal Tribunal—

(a) the person or persons specified in the application as seeking the tenure, being a qualified person or qualified persons competent to make an application under section 5 (1), shall be entitled to be granted in accordance with subsection (1) a lease in perpetuity or other appropriate lease of the land identified in the application;

and

(b) the Governor in Council is hereby authorized to grant to the person or persons referred to in paragraph (a) a lease in perpetuity or other appropriate lease of the land identified in the application pursuant to the *Land Act 1962-1985*.

10. Divesting and vesting of title to land. (1) Where the title to land in respect of which any person or persons is or are entitled to a lease pursuant to section 9 (2) is vested in an Aboriginal or Island Council the title shall, upon the approval referred to in section 9 (2), divest from the council and the land shall thereupon become and be Crown land within the meaning of the *Land Act 1962-1985*.

(2) Where land in respect of which any person or persons is or are entitled to a lease pursuant to section 9 (2) is land reserved and set apart for a public purpose and under the control of a trustee, the land shall, upon the approval referred to in section 9 (2), pass from the control of the council, cease to be land reserved and set apart and shall thereupon become and be Crown land within the meaning of the *Land Act 1962-1985*.

(3) The purpose for which land shall become and be Crown land under subsection (1) or (2) is the issue of a lease in perpetuity or other appropriate lease, in accordance with this Act, to the qualified person or persons approved by the appropriate Trustee Council and no other authority shall be exercised on behalf of the Crown in respect of the land unless that lease has been issued.

(4) Upon land becoming Crown land under subsection (1) or (2) it ceases to be part of the trust area within which it is situated but for the purposes of—

the discharge of the functions of local government within the trust area and the exercise of powers incidental thereto;

the making and levying of rates on and the charging of service charges in respect of the land;

and

the application of the *Community Services (Aborigines) Act 1984* or, as the case may be, the *Community Services (Torres Strait) Act 1984* in respect of the land,

the land shall be deemed to be part of the trust area and the Aboriginal Council or the Island Council in which the trust area is vested or in whose control the trust area is shall be deemed to be charged with the functions of local government in respect of the land.

11. Particular duty of Minister for Lands. (1) Within 28 days after notification has been given to him under paragraph (c) of section 6 (1) or paragraph (b) of section 8 the Minister within the meaning of the *Land Act 1962-1985* shall cause to be given to the applicant to whom the grant of a lease has been approved by a Trustee Council or, as the case may be, an Appeal Tribunal notification in writing that approval of his application has been recorded and that an appropriate lease is in the process of being issued.

(2) The Minister within the meaning of the *Land Act 1962-1985* shall cause to be clearly and prominently noted on the instrument of lease issued to an applicant the restrictions on holding the tenement under the lease prescribed by section 18 (4).

PART III—PROVISIONS CONCERNING LEASES

12. Commencement etc. of leases. (1) A lease provided for by section 9 (2)—

- (a) shall commence on the day it is executed by the Governor in Council;
- (b) shall identify the tenement by such means as the Minister within the meaning of the *Land Act 1962-1985* deems appropriate;
- (c) shall reserve an annual rent;
- and
- (d) shall contain such covenants and be subject to such conditions as are specified therein or are prescribed by this Act.

(2) The description of a tenement as directed by paragraph (b) of subsection (1) by means deemed appropriate shall be sufficient in law for all purposes and shall be accepted and acted upon by all persons concerned.

13. Restriction on area to be held. No person shall hold land, which would, but for the existence of the lease, be within a trust area under a lease in perpetuity provided for by section 9 (2) in excess of one hectare, either as a single tenement or in the aggregate except with the approval of the Governor in Council first had and obtained.

14. Rights of ingress etc. on adjacent land. (1) A holder of a tenement under a lease in perpetuity provided for by section 9 (2) shall have such rights of ingress, egress and regress in, from and over land abutting or adjacent to the tenement as are determined from time to time by the Trustee Council to which was made application for tenure of land comprising the tenement.

(2) It is not competent to a Trustee Council to terminate or diminish a holder's rights, such as are hereinbefore referred to, had by him for the time being without the approval of the Minister and the Minister within the meaning of the *Land Act 1962-1985* first had and obtained.

15. Structural improvements on tenement. (1) If—

(a) there are upon a tenement held under a lease provided for by section 9 (2) structural improvements that are not the property of the lessee;

and

(b) the owner of those structural improvements agrees to sell them to the lessee,

the lessee may purchase those improvements at a price and upon terms and conditions (including the giving of a mortgage in the owner's favour) agreed to by the owner and the lessee and approved by the Governor in Council.

(2) Where a lessee is not purchasing structural improvements as referred to in subsection (1) or a lessee is purchasing such structural improvements and the purchase price or any part thereof is outstanding, the lessee—

(a) shall maintain the improvements in the condition, order and repair they are in at the commencement of the lease, fair wear and tear and damage by fire or act of God excepted; and

(b) shall pay rent in respect of the improvements to the owner or vendor thereof in an amount agreed by the owner or vendor and approved by the Governor in Council; and

(c) shall keep the improvements insured to the full insurable value thereof with a licensed insurer approved by the owner or vendor thereof.

(3) Where the lessee is purchasing structural improvements any amounts paid as rent pursuant to paragraph (b) of subsection (2) shall be set-off against the purchase price that is outstanding.

16. Assessment of rent. (1) The annual rent payable in respect of a lease provided for by section 9 (2) shall be a sum equal to .5 per centum of the amount of the annual general rate made and levied in respect of the land held under the lease by the Aboriginal Council or the Island Council that is charged with the functions of local government in respect of the land.

(2) When at any time it is not possible to assess rent in accordance with subsection (1) in respect of a lease referred to therein, the rent payable in respect of the lease shall be a sum determined by the Aboriginal Council or the Island Council charged with the functions of local government in respect of the land held under the lease until the rent can be assessed in accordance with subsection (1).

17. Payment of rent. (1) The annual rent reserved by a lease provided for by section 9 (2) shall be payable in advance to the Aboriginal Council or the Island Council that is charged with the functions of local government in respect of the land held under the lease on or before 31 December in each year in respect of the next following year:

Provided that where, upon the commencement of a lease, the rent payable in respect of the lease would be as provided by section 16 (2) the rent shall be payable, by one payment or by instalments as determined by the Minister charged with the administration of the *Land Act 1962-1985* and specified in the instrument of lease, such payment or the first of such instalments being payable on or before the commencement of the lease in respect of the period until the rent can be assessed in accordance with section 16 (1) and becomes payable as provided by the preceding paragraph of this subsection.

(2) Subject to subsection (3), rent payable in respect of a lease provided for by section 9 (2) shall be the property of the council to which it is payable under subsection (1) to be used by it for the purposes of the local government of the trust area under its control or otherwise for the benefit of that trust area.

(3) Rent payable in respect of a lease provided for by section 9 (2) that is not paid and any penalties accrued in respect of arrears of rent shall be a debt due and owing to Her Majesty and may be recovered as such in any court of competent jurisdiction.

18. Dealings with leases. (1) Subject to this Act, the lessee under a lease provided for by section 9 (2) may at any time transfer, mortgage or sublease the tenement and may grant or take an easement that affects the tenement.

(2) Subject to this Act, a sub-lessee of a tenement held under a lease provided for by section 9 (2) may enter into a sub-sublease of the tenement.

(3) A tenement held under a lease provided for by section 9 (2) is a holding within the meaning of the *Land Act 1962-1985* and the provisions of that Act relating to transfers, mortgages, subleases and sub-subleases of holdings or to easements affecting holdings apply in respect of such a tenement:

Provided that—

(a) the expression “qualified person” used in those provisions means a person who is a qualified person within the meaning of this Act;

and

(b) a reference in those provisions to the approval of the Minister shall be construed as a reference to the approval of the Minister within the meaning of that Act and of the Minister within the meaning of this Act.

(4) Notwithstanding the provisions of any other Act or rule or practice of law, it is not competent to any person who is not a qualified

person to hold land or an interest in land in respect of which an Aboriginal Council or an Island Council is charged with the functions of local government, without prejudice however to the powers and authorities conferred by law on mortgagees of such land, and any provision, whether of a testamentary instrument or of an instrument *inter vivos*, that purports to dispose of such land or an interest in such land (other than by way of a mortgage charge) to a person who is not a qualified person is void.

19. Restrictions on mortgagee's powers. A mortgagee of a tenement under a lease provided for by section 9 (2) who is in possession thereof for the purpose of realising his entitlements under the mortgage is entitled to remain in possession for such period only as is reasonably necessary to permit his disposal of the tenement to a qualified person and in no case shall he remain in possession thereof for longer than 12 months.

20. Registers. (1) Registers kept under the *Land Act 1962-1984* in respect of holdings under that Act shall be the registers in respect of holdings that are tenements held under leases provided for by section 9 (2) and all entries that pursuant to those provisions are required or permitted to be made in those registers shall be or may be made therein in respect of tenements held under leases provided for by section 9 (2).

(2) The Minister may establish and keep registers at such places as he thinks fit for the purpose of recording therein particulars of leases, such as are provided for by section 9 (2), that have been granted and of dealings therewith, of records concerning such leases and of such other particulars as are prescribed by the regulations.

Where appropriate, entries in such registers shall be made so as to record the priority of registration of the dealing in question.

(3) Registers kept pursuant to subsection (2) shall be open to inspection by the public at all reasonable times during office hours.

PART IV—FORFEITURE OF LEASES

21. Forfeiture upon default in rent. (1) If—

- (a) default is made by a lessee under a lease provided for by section 9 (2) in the payment of rent in respect of two successive years;
 - (b) a notification of the default has been given to the lessee either personally or by registered post addressed to him at his place of residence last known to the Aboriginal Council or the Island Council that is charged with the functions of local government in respect of the tenement and the lessee has not responded to the notification within 30 days after it is given to him;
- and
- (c) a notice of a prescribed size has been exhibited in a prominent position on the tenement, at or near the entrance thereto.

that the tenement is liable to be forfeited and such notice has been so exhibited for a period of 30 days at the least, the lease shall, at the option of the Crown, be forfeited.

(2) Forfeiture under subsection (1) may be defeated by the payment, within 90 days after the last day on which the rent is payable under this Act, of the full amount of the rent together with such sum by way of penalty as the Minister within the meaning of the *Land Act 1962-1985* may impose.

(3) If the full amount of rent and penalty (if any) is not paid on or before 31 March next following the last day on which the rent is payable under this Act, the lease shall, at the option of the Crown without any inquiry or other process be forfeited:

Provided that the Minister within the meaning of the *Land Act 1962-1985* may waive the forfeiture and reinstate the lessee on payment of the arrears of rent due and the accrued penalty (if any).

(4) The mere acceptance by an Aboriginal Council or an Island Council of rent or penalty in respect of any lease shall not be held to operate as a waiver by the Crown or by the Minister aforesaid of any forfeiture or liability to forfeiture of the lease.

22. Action upon non-occupation. (1) Where the Aboriginal Council or the Island Council that is charged with the functions of local government in respect of a particular tenement held under a lease provided for by section 9 (2) has reason to believe that—

the tenement has been unoccupied by or on account of the lessee for a continuous period of two years;

or

the lessee is no longer a qualified person,

the council may cause to be given to the lessee, either personally or by registered post addressed to him at his place of residence last known to the council a notice calling on him to show cause to the council at a time and place specified in the notice why the lease should not be forfeited.

(2) If at the time and place so specified or at such other time and place to which the matter may be adjourned cause is not shown to the satisfaction of the council, it may cause to be given to the lessee, in a manner referred to in subsection (1), a notice that directs the lessee to either—

occupy the tenement (personally or by another qualified person) on a continuing basis;

or

dispose of the tenement to a qualified person,

within a period of 12 months after the issue of the notice.

(3) If upon the expiration of the period of 12 months neither of the directions contained in the notice has been complied with, the lease of the tenement in question shall be liable to be forfeited.

23. Action upon non-utilization. (1) Where the Aboriginal Council or the Island Council that is charged with the functions of local government in respect of a particular tenement held under a lease provided for by section 9 (2) and that is issued for the purpose of farming, grazing, commercial fishing, tourism or other commercial purpose has reason to believe that no or insufficient development work or utilization of a commercial or productive nature has occurred in respect of the tenement for a continuous period of two years, the council may cause to be given to the lessee, either personally or by registered post addressed to him at the tenement or at his place of residence last known to the council a notice calling on him to show cause to the council at a time and place specified in the notice why the lease should not be forfeited.

(2) If at the time and place so specified or at such other time and place to which the matter may be adjourned cause is not shown to the satisfaction of the council, it may cause to be given to the lessee, in a manner referred to in subsection (1), a notice that directs the lessee to effect significant development work in respect of the tenement or, as the case may require, to utilize the tenement in a commercial or productive way (as permitted by the lease) within a period of 12 months after the issue of the notice.

(3) If upon the expiration of the period of 12 months the direction contained in the notice has not been complied with, the lease of the tenement in question shall be liable to be forfeited.

24. Forfeiture for any other cause. (1) A lease provided for by section 9 (2) that has been acquired by evasion or fraud on this Act shall be liable to be forfeited.

(2) Where in respect of a lease provided for by section 9 (2) there exists—

(a) a breach of any covenant or condition of the lease contained in the instrument of lease other than in relation to the payment of rent;

(b) a breach of any provision of this Act, other than in relation to the payment of rent;

or

(c) a breach of any provision of the *Land Act 1962-1985* by reason of any transfer, mortgage, subletting of or other dealing with the lease,

the lease shall be liable to be forfeited.

25. Procedure for forfeiture. (1) If at any time—

an Aboriginal Council or an Island Council concerned with the lease in question,

the Minister,

or

the Minister within the meaning of the *Land Act 1962-1985*

suspects on reasonable grounds that a lease provided for by section 9 (2) is liable to be forfeited for any cause other than default in payment of rent, the council or, as the case may be, the Minister in question may cause to be given to the lessee, either personally or by registered post addressed to him at the tenement or his place of residence last known to the council or, as the case may be the Minister in question, a notice in writing—

specifying the alleged cause of forfeiture;

and

calling on the lessee to appear before the visiting justice upon his attendance in the trust area in which the tenement in question would, but for the existence of the lease, be situated next following the expiration of 30 days after the notice is given to the lessee.

and if the notice is so given the council or, as the case may be, the Minister in question shall cause a notice of a prescribed size to be exhibited in a prominent position on the tenement, at or near the entrance thereto, for a period of 30 days at the least, that the tenement is liable to be forfeited.

(2) The visiting justice, upon the occasion of his attendance in the trust area in question next following the expiration of the 30 days referred to in subsection (1) or at any adjournment of the proceedings, shall proceed to investigate the matter of the forfeiture of the lease and shall forward the evidence taken by him together with his report and recommendations thereon to the Minister and to the Minister within the meaning of the *Land Act 1962-1985*.

(3) The Minister within the meaning of the *Land Act 1962-1985*, if he is satisfied that liability to forfeiture has been established and that the lease in question should be forfeited, may recommend accordingly to the Governor in Council who may declare and notify the forfeiture as prescribed.

26. Mode of forfeiture. Every forfeiture of a lease provided for by section 9 (2), whether on the ground of default in payment of rent or some other ground, shall be declared by the Governor in Council by notification published in the Gazette and shall take effect on and from the date of publication of the notification.

27. Consequences of forfeiture. Upon forfeiture of a lease provided for by section 9 (2)—

(a) if the trust area in which the land that, before the forfeiture, was the tenement would, but for the existence of the lease, have been situated is vested in an Aboriginal Council or an Island Council, the land shall revert to and vest in that council;

(b) if the trust area in which the land that, before the forfeiture, was the tenement would, but for the existence of the lease,

have been situated is under the control of a trustee, the land shall revert to the control of that trustee; and in either case the land shall become and be part of the trust area.

PART V—GENERAL PROVISIONS

28. Appeal against classification as non-qualified person. (1) Where an Aboriginal Council or an Island Council has classified any person as not being a qualified person, that person may appeal to the Appeal Tribunal constituted in accordance with this Act for the trust area that is vested in or under the control of the council that so classified that person.

(2) The provisions of section 7 (other than subsection (1) or (5) thereof) shall apply in respect of the institution of any such appeal and the disposal of an appeal instituted.

29. Nomination of panels. (1) Each Aboriginal Council shall furnish to the Minister and shall from time to time maintain with the Minister a panel of names of at least three qualified persons who are justices of the peace and who are authorized by the *Community Services (Aborigines) Act 1984* to enter upon, be in and reside in the trust area that is vested in or under the control of the council.

(2) The Island Co-ordinating Council constituted in accordance with the *Community Services (Torres Strait) Act 1984* shall furnish to the Minister and shall from time to time maintain with the Minister in respect of each trust area within the meaning of that Act a panel of names of at least three qualified persons who are justices of the peace and who are authorized by that Act to enter upon, be in and reside in the trust area.

(3) The persons whose names appear in a panel furnished or maintained under this section shall not be members of an Aboriginal Council or an Island Council.

30. Constitution of Appeal Tribunals. (1) An Appeal Tribunal constituted to consider and determine an appeal instituted to it pursuant to this Act shall consist of—

- (a) the person who is visiting justice to the trust area in which the land to which the appeal relates is situated or would, but for the existence of a lease, be situated;
- (b) a person nominated by the Minister;
and
- (c) three persons, selected by the Minister, whose names are on the panel of names furnished and maintained under section 29 and who are authorized by law to enter upon, be in and reside in the trust area in which the land to which the appeal relates is situated or would, but for the existence of a lease, be situated.

(2) If at any time there are insufficient names on a panel furnished and maintained under section 29 from which to select the three persons referred to in paragraph (c) of subsection (1), the Minister may select one person or two or three persons (as the case may require), who are authorized as required by that paragraph, and who is or are not a member or members of the relevant Aboriginal Council or Island Council, to be a member or members of an Appeal Tribunal and the person or persons so selected shall be deemed to have been duly selected and to be a member or members of the tribunal in accordance with this Act.

(3) Each member of an Appeal Tribunal other than the chairman shall be entitled to a vote and the chairman of the tribunal, who shall be the person referred to in paragraph (a) of subsection (1), shall have a casting vote in the event of an equality of votes.

The decision of an Appeal Tribunal shall be by the unanimous or majority vote of its members.

(4) An Appeal Tribunal shall be duly constituted if a quorum of its members is present.

A quorum shall consist of the three members of the Appeal Tribunal who are—

the chairman:

and

two of the persons selected as prescribed by paragraph (c) of subsection (1) or, as the case may be, selected as prescribed by subsection (2).

31. Representations to council or Appeals Tribunal. In the matter of an application made to an Aboriginal Council or an Island Council under this Act or in the matter of an appeal instituted to an Appeals Tribunal under this Act no party shall be represented by counsel or solicitor but may be represented by any other agent appointed in writing in that behalf.

32. Land deemed part of trust area for certain purposes. (1) Notwithstanding that land or land and improvements have been excluded from a grant in trust of a trust area, either expressly in the grant or by virtue of the *Land Act 1962-1985*, for the purposes of—

the discharge of the functions of local government within the trust area and the exercise of powers incidental thereto;

the charging of service charges in respect of the land or the land and improvements;

and

the application of the *Community Services (Aborigines) Act 1984* or, as the case may be, the *Community Services (Torres*

Strait) Act 1984 in respect of the land or the land and improvements:

the land or the land and improvements shall be deemed to be part of the trust area and the Aboriginal Council or the Island Council in which the trust area is vested shall be deemed to be charged with the functions of local government in respect of the land or the land and improvements.

(2) Subsection (1) shall not be construed as authorizing the making and levying of any rate on the land or the land and improvements referred to therein.

33. Regulations. The Governor in Council may make regulations not inconsistent with this Act providing in respect of—

- (a) applications to Trustee Councils for tenure of land and the manner of disposing of those applications, including permitting objections thereto and the manner of disposing of any objection made;
- (b) appeals to Appeal Tribunals by persons aggrieved by any determination of Trustee Councils in respect of applications for tenure of land;
- (c) forms to be used for the purposes of this Act and the purpose for which prescribed forms are to be used;
- (d) fees to be paid for the purposes of this Act and the purposes for which prescribed fees are to be paid;
- (e) all matters required or permitted by this Act to be prescribed:
and
- (f) all matters necessary or convenient to be prescribed for the proper administration of this Act or to achieve the objects and purposes of this Act.

PART VI—AMENDMENT OF LAND ACT (ABORIGINAL AND ISLANDER LAND GRANTS) AMENDMENT ACT

34. Citation. (1) In this Part the *Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982-1984* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982-1985*.

(3) The *Land Act 1962-1985* as amended by the *Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982-1985* may be cited as the *Land Act 1962-1985*.

35. Amendment of s. 7. New ss. 334C, 334D and 334E. Section 7 of the Principal Act is amended by—

(a) inserting after the words “the subject of the grant” where they occur in paragraph (a) of section 334C (provided for by that section 7) the expression “;”;

(b) adding after the words “of the survey made.” at the end of section 334E (provided for by that section 7) the following section:—

“334F. Certain grants not to include land in actual use by Crown. A grant in trust of land for the benefit of Aboriginal or Islander inhabitants shall not include and shall not affect the ownership by a prescribed person of—

- (a) improvements within the boundaries of the land, the subject of the grant, which improvements are, at the time the grant is made, being used by or on behalf of a prescribed person for any purpose, together with the land on which the improvements stand and the land that is, at the time the grant is made, being used by or on behalf of a prescribed person in connexion with the use of those improvements other than land so used for pastoral or agricultural purposes;
- (b) land within the boundaries of the land, the subject of the grant, which land first-mentioned in this paragraph (b) is, at the time the grant is made, being used by or on behalf of a prescribed person for any purpose other than a pastoral or agricultural purpose; and
- (c) adequate means of ingress to and egress from the improvements and land referred to in paragraphs (a) and (b).

notwithstanding that such improvements and land have not been expressly excluded or reserved from the grant in trust, unless such improvements and land have been expressly included in the grant in trust.”.

In this section the expression “prescribed person” includes the Crown in right of the State or of the Commonwealth and any statutory body acting in discharge of its statutory functions under an Act of the State or of the Commonwealth but does not include The Corporation of the Under Secretary for Community Services in its capacity as a bare trustee of land.”.