

Queensland



Subordinate Legislation 1991 No. 219

Torres Strait Islander Land Act 1991

**TORRES STRAIT ISLANDER LAND
REGULATION 1991**

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PART 1—PRELIMINARY

Short title

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

Interpretation

2. In this regulation—

“application for incorporation” means an application under Division 1 of Part 2;

“Association” means a Torres Strait Islander Land Claim Association incorporated under this regulation;

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

“grantee”, in relation to a Land Trust, means—

- (a) the grantee who, under this regulation, forms the Land Trust; or
- (b) one of the grantees who, under this regulation, forms the Land Trust;

“land claim” means a claim under the Act for claimable land;

“land claim purposes”, in relation to a group of Torres Strait Islanders who make a claim under section 4.02 of the Act, means—

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

“Land Trust” means a Land Trust formed under Part 3 by the incorporation of grantees;

“proposed association”, in relation to an application for incorporation, means the Torres Strait Islander Land Claim Association that the applicants propose to constitute by their incorporation under this regulation;

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

“rules”, in relation to an Association, means the rules of the Association as amended from time to time;

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

“trust property”, in relation to grantees or a Land Trust, includes—

(a) income derived from Torres Strait Islander land held or leased by the grantees or the Land Trust; and

(b) amounts paid in relation to—

(i) the grant of an interest in the land; or

(ii) the creation of a mining interest in the land; or

(iii) an agreement entered into in respect of the land; and

(c) amounts paid by any person or governmental authority; and

(d) any other property;

that is received or acquired by the grantees or the Land Trust.

PART 2 —LAND CLAIMANTS MAY BE INCORPORATED

Division 1—Application for incorporation

Land claimants may apply for incorporation

3.(1) The following persons may apply to the Land Claims Registrar for incorporation under this Part as a Torres Strait Islander Land Claim

Association—

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

(2) This Part—

- (a) is to be read so as to provide the benefits of incorporation to persons who may make a claim under section 4.02 of the Act and apply for incorporation under this regulation; and
- (b) is not to be read so as to limit section 4.02 of the Act.

Application for incorporation—form and content

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

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

- (a) the names and addresses of the applicants for incorporation;
- (b) if applicable and to the extent practicable—the names and addresses of the Torres Strait Islanders on whose behalf the applicants are applying for incorporation;
- (c) the objects of the proposed association;
- (d) the place where the activities of the proposed association are to be conducted;
- (e) the name of the proposed association;
- (f) a copy of the rules of the proposed association by which its affairs are to be regulated.

(3) The name of the proposed association—

- (a) is to include the words “Torres Strait Islander Land Claim Association”; and
- (b) is to be a name that is available under the Corporations Law.

Rules for proposed association to provide for certain things

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

- (a) the qualifications of the members of the proposed association;
- (b) the constitution and functions of the committee primarily responsible for the proposed association's management;
- (c) the process for decision making by the proposed association and its committees;
- (d) the position of public officer;
- (e) the creation of its executive offices and the procedure for filling them;
- (f) the procedure for settling disputes between the proposed association and its members;
- (g) the procedure for the conduct of meetings of the proposed association and its committees;
- (h) the way in which the proposed association's funds are to be managed;
- (i) the procedure for amending the proposed association's objects;
- (j) the procedure for amending the proposed association's rules, whether by making new rules or by varying or rescinding rules in force;
- (k) the procedure for the dissolution or winding-up of the proposed association;
- (l) the appointment of a person to act in the position of a member of the committee primarily responsible for the management of the proposed association, the public officer or an executive officer when the member or officer is, or is to be, absent;
- (m) the distribution of the assets, or the discharge of the liabilities, of the proposed association on its dissolution or winding-up;
- (n) the requirements for affixing the common seal to documents.

(2) The proposed rules—

- (a) may provide for any other thing not contrary to law; and

- (b) may be based on Island custom; and
- (c) are subject to this regulation.

Division 2—Land Claims Registrar to deal with application

Land Claims Registrar to deal with application

6. When the Land Claims Registrar receives an application for incorporation, the Registrar must deal with the application under this Division.

Land Claims Registrar must issue certificate of incorporation unless grounds for refusal

7.(1) The Land Claims Registrar must issue a certificate of incorporation unless there are grounds for refusing the application.

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

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

Procedure if Land Claims Registrar refuses application

8.(1) If the Land Claims Registrar refuses to issue a certificate of incorporation, the Registrar must, in writing—

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

(2) The invitation is to set out—

- (a) the types of changes that are necessary; and
 - (b) the deadline for the making of the changes or for the applicants to notify the Registrar of the reasons for not making the changes.
- (3) The Registrar may provide assistance to the applicants so that they can change the application.

Division 3—Effects of incorporation

Effect of issue of certificate of incorporation

9.(1) If the Land Claims Registrar issues a certificate of incorporation, the applicants are incorporated under this regulation as a Torres Strait Islander Land Claim Association on the day the Registrar issues the certificate.

(2) The Association—

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

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

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

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

(6) All courts, judges and persons acting judicially must take notice of

the imprint of the common seal affixed to a document and must presume that the common seal was duly affixed.

Rules of Association on incorporation

10. The rules of an Association on its incorporation are the proposed rules at the time the Land Claims Registrar issues the certificate of incorporation (including any changes made before that time).

Membership of Association on incorporation

11.(1) The membership of an Association on its incorporation consists of—

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

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

Vesting of property in Torres Strait Islander Land Claim Associations

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

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

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

(3) This section—

- (a) applies subject to the terms of any trust, covenant, contract or liability affecting the property; and

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

Powers to borrow money and give securities

13.(1) An Association may—

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

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

Appointment of public officer and determination of official address

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

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

(2) The committee must, within 2 weeks of the appointment, notify the Land Claims Registrar of the name of the public officer and the official address.

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

(4) The committee must terminate the appointment of its public officer if the public officer becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounds with his or her creditors.

(5) Subsection (4) does not limit the power of an Association to

terminate the appointment of its public officer for any other reason.

Division 4—Amendment of the objects or rules

Amendment of objects or rules

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

(2) The public officer must, within 6 weeks after a resolution to amend the Association's objects or rules, file with the Land Claims Registrar a copy of the resolution.

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

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

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

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

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

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

Division 5—Dissolution or winding-up of Association

Dissolution

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

- (a) the Association's resolution not to make a claim for the land;
- (b) the refusal of the Land Claims Registrar to accept the land claim (or any amended land claim) made by the Association for the land;
- (c) the determination of the land claim.

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

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

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

(4) The public officer must, within 3 weeks after the resolution for the Association's dissolution, lodge with the Land Claims Registrar a copy of the resolution.

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

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

Application by Land Claims Registrar for winding-up of Association if it does not resolve to dissolve itself

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

Association has not resolved to dissolve itself.

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

(3) If—

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

the Registrar may petition the Supreme Court for an order to wind-up the Association.

Involuntary winding-up of Association by Supreme Court

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

- (a) the Association; or
- (b) a creditor of the Association; or
- (c) a member of the Association; or
- (d) the Land Claims Registrar.

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

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

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

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

(i) has, by written notice of demand on the public officer, required the Association to pay the amount; and

(ii) the Association has not, within 28 days after service of the demand, paid the amount or secured or compounded it to the reasonable satisfaction of the creditor; or

(b) execution or other process issued on a judgment, decree or order of a court in favour of a creditor of the Association is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the Supreme Court that, taking into account the contingent and prospective liabilities of the Association, the Association is unable to pay its debts.

(4) Without limiting the power of the Supreme Court to make orders in relation to the winding-up of incorporated bodies, the Court may make any order that it considers proper for—

(a) the payment of the Association's debts and liabilities; and

(b) the distribution of the Association's assets.

PART 3—LAND TRUSTS

Division 1—Formation

Incorporation of grantees as Land Trust

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

(a) in the case of transferred land—Aboriginal people; or

(b) in the case of granted land—the group of Torres Strait Islanders for whose benefit the land was granted;

the grantees are incorporated under this Part as a Land Trust.

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

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

(3) A Land Trust may hold more than one area of land.

Nature of Land Trust—body corporate, etc.

20.(1) A Land Trust—

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

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

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

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

- (a) if the Land Trust consists of one grantee—the grantee; or
- (b) if the Land Trust consists of no more than 3 grantees—the Chairperson of the Land Trust and at least one other grantee; or
- (c) in any other case—
 - (i) the Chairperson and at least 2 other grantees; or
 - (ii) at least 3 grantees.

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

Function of Land Trust

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

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

(3) Without limiting subsection (2) and for the purposes of section 3.02(5) of the Act, a Land Trust may perform all the functions, and exercise all the powers, of a trustee under the *Trusts Act 1973*.

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

Land Trust to indemnify grantees

22. A Land Trust is to indemnify all grantees engaged in giving effect to the Act or this regulation against all proceedings and claims in relation to—

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

Dissolution of Land Trust if transferred land becomes granted land

23.(1) This section applies if—

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

(2) The Minister must, by Gazette notice, dissolve the Land Trust formed by the grantees of the transferred land.

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

Transfer of property to new Land Trust if part of transferred land becomes granted land

24.(1) This section applies if—

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

(2) The Minister must, by Gazette notice—

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

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

Division 2—Grantees**Composition of Land Trust**

25. A Land Trust for an area of land consists of all the grantees for the time being for the area of land.

Payments to grantees of Land Trust

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

Chairperson and Deputy Chairperson—appointment

27.(1) The grantees of a Land Trust must appoint—

- (a) a grantee as the Chairperson of the Land Trust; and
- (b) if there is more than one grantee—a grantee as the Deputy Chairperson of the Land Trust.

(2) The Deputy Chairperson may act as the Chairperson during—

- (a) a vacancy in the office of Chairperson; or
- (b) any period when the Chairperson is absent from duty or from the State or is, for any reason, unable to perform the duties of the office of Chairperson.

Resignation of grantees

28.(1) A grantee may resign by writing delivered to the Minister.

(2) The resignation does not take effect until it is accepted by the Minister.

Protection in regard to notice when a person is grantee of more than one area of land

29. A grantee who is appointed for the purpose of holding more than one deed of grant or lease of land under the Act is not, in the absence of fraud,

to be affected by notice of any instrument, fact or thing in relation to a particular deed of grant or lease of land if the grantee has obtained the notice merely because of acting or having acted as grantee in relation to another deed of grant or lease.

Immunity of grantees

30.(1) A grantee—

- (a) is chargeable only for money and securities actually received even though the grantee signed a receipt for the money or security; and
- (b) is answerable and accountable only for the grantee's own acts, receipts, neglects or defaults.

(2) Without limiting the generality of subsection (1), a grantee is not answerable or accountable for—

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

Division 3—Trust property

Property to be held on trust

31. A grantee or Land Trust is to hold, invest, use and distribute trust property—

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

Powers in respect of trust property

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

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

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

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

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

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

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

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

Application of insurance money

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

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

PART 4—POWERS OF SUPREME COURT

Jurisdiction of Supreme Court

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

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

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

Power of court to relieve grantee from personal liability

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

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

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

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

Court may order beneficiary to indemnify for certain breaches

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

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

Right of grantees or Land Trust to apply to court for directions

39.(1) A grantee or a Land Trust may apply to the Supreme Court for directions in relation to—

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

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

Court's jurisdiction to make orders conferring power on grantees or Land Trust

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

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

but—

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

(2) The Supreme Court may—

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

income of the trust property.

(3) The Supreme Court may—

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

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

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

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

Protection of grantees or Land Trust while acting under direction of court

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

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

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

Power of Supreme Court to make orders in absence of grantee

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

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

the Court may hear and determine the proceeding and give judgment against

the grantee as if the grantee had been duly served or had entered an appearance in the action, and had also appeared by counsel or solicitor at the hearing.

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

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

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

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

Power of Supreme Court to charge costs on trust property

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

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

PART 5—DECISION MAKING PROCESS

Determining agreement of Torres Strait Islanders

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

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

- (a) if there is a particular process of decision making that, under the Island custom of those Torres Strait Islanders, must be complied with in relation to decisions of that kind—the decision was made in

accordance with the process; or

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

Decision making by grantees

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

(2) The grantees must—

(a) as far as practicable, act in a way that is consistent with any Island custom, in relation to the decisions of that kind, of the Torres Strait Islanders on whose behalf the grantees were appointed; or

(b) if there is no relevant Island custom—make the decision in accordance with a process of decision making agreed to and adopted by the grantees in relation to the decision or in relation to decisions of that kind.

Code of conduct regarding mining leases

46.(1) This section applies if—

(a) the proposed conditions of a mining interest that is to be created in relation to Torres Strait Islander land include a code of conduct; or

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

(2) The grantees of transferred land or granted land, for the purposes of section 3.11(5) or 5.13(6) of the Act, must—

(a) explain to the Torres Strait Islanders particularly concerned with the land, the nature, purpose and effect of the specified code of conduct; and

- (b) give the Torres Strait Islanders adequate opportunity to express views about the creation of a mining interest subject to the code.

Declarations by grantees regarding dealings

47.(1) This section applies if—

- (a) the grantees of transferred land exercise the power under section 3.11(2) or (4) of the Act; or
- (b) the grantees of granted land exercise a power under section 5.13(2), (4) or (5) of the Act; or
- (c) the grantees of land agree on a route under section 6.03(2)(b) of the Act; or
- (d) the grantees of Torres Strait Islander land agree on a route for the purpose of gaining access under section 9.02 of the Act.

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

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

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

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

PART 6—APPEALS TO LAND APPEAL COURT

Part made for purposes of s.8.29 of the Act

48. This Part is made for the purposes of section 8.29 of the Act.

Institution of appeal to Land Appeal Court

49.(1) A party to a proceeding before the Land Tribunal may appeal, or

seek leave to appeal, against a decision of the Tribunal mentioned in section 8.29 of the Act, by giving a written notice of appeal—

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

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

(3) If there are—

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

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

Court may accept some non-compliance with section 49

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

- (a) the party complies with the section (other than subsection (2)) no later than 70 days after the Tribunal's decision was given to the party and the Land Appeal Court is satisfied that the party's explanation for the failure to comply is reasonable; or
- (b) if the notice of appeal was defective—the Land Appeal Court decides that the defect does not result in a detriment to the person on whom it was served and does not mislead the Registrar of the Land Appeal Court;

the party is taken to have complied with the section.

Other parties may lodge notice of appearance

51. A person who—

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

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

Parties to prepare summary of arguments and of new evidence

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

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

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

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

Legal representation

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

Forms set out in Land Appeal Court Rules

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

PART 7—MINING ROYALTIES

Prescribed percentages for the purposes of section 7.02

55. For the purposes of section 7.02(2) and (3) of the Act, the percentage of the royalty amount that grantees and the chief executive are each entitled to receive is—

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

Guidelines for application by chief executive of royalty amount

56.(1) This section applies when the chief executive must apply the prescribed percentage of a royalty amount received under section 7.02 of the Act.

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

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

1. Made by the Governor in Council on 19 December 1991
2. Published in the Gazette on 21 December 1991
3. Laid before the Legislative Assembly on . . .
4. The administering agencies are the Department of Lands and Department of Family Services and Aboriginal and Islander Affairs.