



Queensland

Torres Strait Islander Land Regulation 2011

Subordinate Legislation 2011 No. 174

made under the

Torres Strait Islander Land Act 1991

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Torres Strait Islander Land Regulation 2011*.

2 Commencement

This regulation commences immediately after the commencement of the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*, section 188.

3 Definitions

The dictionary in the schedule defines particular words used in this regulation.

Part 2 Provisions about land trusts

Division 1 Members of land trusts

4 Payments to members

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

5 Land trust to indemnify members

A land trust must indemnify all its members 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 member without negligence under the Act; and
- (b) acts done, or omitted to be done, by the member in good faith and without negligence purportedly for the purposes of the Act or this regulation.

6 Immunity of members

- (1) A member—
 - (a) is chargeable only for amounts and securities actually received even though the member signed a receipt for the amount or security; and
 - (b) is answerable and accountable only for the member's own acts, receipts, neglects or defaults.
- (2) Without limiting subsection (1), a member is not answerable or accountable for—
 - (a) the acts, receipts, neglects or defaults of another member or the land trust; or
 - (b) the acts, receipts, neglects or defaults of a bank, broker or other person with whom trust property is deposited; or
 - (c) the insufficiency or deficiency of any securities or another loss unless the insufficiency, deficiency or loss happens because of the member's default.

7 Protection about notice when a person is a member of more than 1 land trust

A person who is a member of more than 1 land trust is not, in the absence of fraud, to be affected by notice of any instrument, fact or thing in relation to a particular land trust if the person receives the notice merely because of the person's membership of another land trust.

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8 Chairperson, deputy chairperson and secretary—appointment

A land trust must, under its rules, appoint—

- (a) a member as the chairperson of the land trust; and
- (b) if there is more than one member—a member as the deputy chairperson of the land trust; and
- (c) if there are more than 2 members—a member as the secretary of the land trust.

9 Acting as chairperson, secretary or in another executive office

- (1) 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, for any reason, can not perform the duties of the office of chairperson.
- (2) Any member of a land trust may act as the secretary during—
 - (a) a vacancy in the office of secretary; or
 - (b) any period when the secretary is absent from duty or from the State or, for any reason, can not perform the duties of the office of secretary.
- (3) Any member of a land trust may act in another executive office of the land trust during—
 - (a) a vacancy in the office; or
 - (b) any period when the holder of the office is absent from duty or from the State or, for any reason, can not perform the duties of the office.

10 Resignation of members

- (1) A member of a land trust may resign by signed notice of resignation given to the land trust.

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

Division 2 Rules of land trusts

Subdivision 1 Adoption of rules

11 Adoption of rules

- (1) A land trust must adopt rules governing the land trust (*adopted rules*).
- (2) A land trust must adopt its first rules as soon as practicable after it comes into existence.
- (3) Within 28 days after a land trust adopts its first rules, adopts changes to its adopted rules or adopts new rules, the land trust must give the chief executive a copy of its adopted rules.
- (4) If there is an inconsistency between subdivision 2, 3 or 4 and a land trust's adopted rules, the subdivision prevails to the extent of the inconsistency.

12 Content of adopted rules

- (1) The adopted rules of a land trust must include provision for the following—
- (a) the establishment, membership and functions of the land trust's executive committee;
 - (b) the process for decision making by the land trust and its committees;
 - (c) the creation of the land trust's executive offices and the procedure for filling the offices;
 - (d) the appointment of a person to act in the position of a member of the executive committee when the member is, or is to be, absent;

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- (e) the procedure for settling disputes between the land trust and its members;
 - (f) the frequency of meetings of the executive committee, and how the meetings are to be held;
 - (g) the way the land trust's general meetings are to be called and held;
 - (h) requirements for managing trust property, including requirements for the following—
 - (i) keeping records of the land trust's transactions;
 - (ii) procedures for authorising payments, and for making payments, out of the land trust's funds;
 - (iii) keeping control over trust property;
 - (iv) procedures for incurring liabilities by or for the land trust;
 - (i) the procedure for adopting changes to the adopted rules of the land trust and for adopting new rules.
- (2) The adopted rules of a land trust may include provision for the appointment, removal or suspension, by the land trust, of members of the land trust.
- (3) However, a rule providing for a matter mentioned in subsection (2) may be adopted by the land trust only if at least 75% of its members agree.

Subdivision 2 Rules about proxies

13 Definition for sdiv 2

In this subdivision—

meeting, of a land trust, means—

- (a) a general meeting of the land trust; or
- (b) a meeting of the executive committee of the land trust.

14 Application of sdiv 2

This subdivision applies to a land trust unless, under its adopted rules, the appointment of proxies for a meeting of the land trust is not permitted.

15 Appointing proxy

- (1) A person who is entitled to attend and cast a vote at a meeting of the land trust may appoint an individual to attend and vote for the person at the meeting.
- (2) An appointment of a proxy is valid if—
 - (a) it is signed by the person making the appointment, or otherwise authenticated in a way the land trust considers appropriate; and
 - (b) it includes the following information—
 - (i) the person's name;
 - (ii) the proxy's name;
 - (iii) the meeting at which the appointment may be used.
- (3) An appointment may state the way the proxy is to vote on a particular resolution.
- (4) In this section—

individual means an individual who is—

 - (a) a member of the land trust; or
 - (b) a Torres Strait Islander particularly concerned with the land held by the land trust.

16 When appointment of proxy is effective

The appointment of a proxy for a meeting of the land trust is effective only if the proxy's appointment is received by the land trust before the meeting starts.

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17 Counting proxies for quorum

- (1) In deciding whether a quorum is present at a meeting of the land trust, an individual attending the meeting as a proxy is counted.
- (2) However, if a person has appointed more than 1 proxy for a particular meeting, only 1 of the proxies is counted.
- (3) If an individual is attending a particular meeting both as a member of the land trust and as a proxy for 1 or more persons, the individual is counted only twice.
- (4) If an individual who is not a member of the land trust is attending a particular meeting as a proxy for 1 or more persons, the individual is counted only once.

Subdivision 3 Rule about resolutions of executive committee without meetings

18 Application of sdiv 3

This subdivision applies to a land trust unless, under its adopted rules, a resolution of its executive committee may not be passed other than at a meeting of the committee.

19 Resolution of executive committee without meeting

A resolution of the executive committee of a land trust is validly made by the committee, even if it is not passed at a meeting of the committee, if—

- (a) notice of the proposed resolution is given, under procedures approved by the committee, to all members of the committee entitled to vote on the resolution (the *voting members*); and
- (b) all voting members vote on the resolution; and
- (c) a majority of the voting members give written agreement to the resolution.

Subdivision 4 Rule about filling executive offices

20 When election of members of executive committee must be held

- (1) This section applies to a land trust if the land trust's total income from all sources for a financial year is more than \$20000.
- (2) The land trust must, within 2 years after the end of the financial year, hold an election of members of the land trust to elect the members of its executive committee.

Division 3 Land trust to give particular information to chief executive

21 Information about appointment, removal or resignation of members

- (1) This section applies to a land trust if—
 - (a) the land trust appoints a person as a member of the land trust or removes a member from the land trust; or
 - (b) a member of the land trust resigns.
- (2) As soon as practicable after the appointment, removal or resignation has effect, the land trust must give the chief executive written notice of the appointment, removal or resignation.

Division 4 Trust property

22 Property to be held on trust

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

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

23 Powers in relation to trust property

- (1) The land trust may exercise the powers that an owner of real or personal property can exercise in relation to the owner's real or personal property.
- (2) Subsection (1) is subject to the Act and this regulation.

24 Funds to be invested under Trusts Act 1973

- (1) A land trust may invest trust property only under the *Trusts Act 1973*, section 21.
- (2) All trust property is to be invested in the name of the land trust.

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

- (1) The cost of employing staff or engaging consultants to assist a land trust may be paid out of the trust property of the land trust.
- (2) Amounts to be paid to members under section 4 may be paid out of the trust property of the land trust.

26 Application of insurance money

- (1) An amount received or receivable under a policy of insurance for the loss or damage to trust property held, owned or leased by a land trust is part of the capital of the trust property.
- (2) The whole or a part of the amount received or receivable may also be applied by the land trust (and must be applied if ordered by the Supreme Court) in rebuilding, reinstating, replacing or repairing the property lost or damaged.

Division 5 Accounts, annual financial statements and audit requirements

27 Accounts

- (1) A land trust must establish the accounts necessary or convenient for its operation as a land trust.
- (2) The land trust must ensure its accounts are kept properly.

28 Annual financial statement

- (1) A land trust must, by 30 September each year, prepare and adopt an annual financial statement for the financial year most recently ended, if the land trust's total income from all sources for that financial year is more than \$20000.
- (2) If a land trust prepares and adopts an annual financial statement under subsection (1), the land trust must, by 31 December in the year it is adopted, give the chief executive—
 - (a) a copy of the statement; and
 - (b) a declaration, in the approved form, about the financial operation of the land trust for the financial year.
- (3) Each annual financial statement prepared under this section must include the following—
 - (a) a balance sheet;
 - (b) a profit and loss statement;
 - (c) other information or documents the land trust considers relevant to the financial operation of the land trust.

29 Audit requirements

- (1) A land trust must have its accounts audited for each financial year by a person who is—
 - (a) a member of CPA Australia who is entitled to use the letters 'CPA' or 'FCPA'; or

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- (b) a member of The Institute of Chartered Accountants in Australia who is entitled to use the letters ‘CA’ or ‘FCA’; or
 - (c) a member of the National Institute of Accountants who is entitled to use the letters ‘MNIA’, ‘FNIA’, ‘PNA’ or ‘FPNA’; or
 - (d) a person approved in writing by the chief executive as having the necessary skills and experience for conducting the audit.
- (2) The land trust must ensure the audit is completed, and it receives the audit report, by 30 November in the financial year after the financial year for which the accounts are audited.
 - (3) The land trust must give the chief executive a copy of the audit report by 31 December in the financial year after the financial year for which the accounts are audited.
 - (4) Despite subsections (1) to (3), a land trust is not required to have its accounts audited for a financial year if the land trust’s total income from all sources for the financial year is not more than \$20000.

Division 6 General meetings

30 Holding of general meetings

- (1) A land trust must hold an annual general meeting as soon as practicable after the end of each financial year.
- (2) However, a land trust need not hold a meeting under subsection (1) if—
 - (a) the land trust’s total income from all sources for the financial year is not more than \$20000; and
 - (b) the land trust was not required, under its rules, to hold an election in the financial year for members of its executive committee; and

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- (c) the executive committee of the land trust considers there are no items of business for an annual general meeting.
 - (3) A land trust may hold a special general meeting at any time.
 - (4) A general meeting must be called and held in the way required under the rules of the land trust.
 - (5) Subsection (4) is subject to section 31.

31 Chief executive may call general meeting

- (1) This section applies if—
 - (a) at least 3 members of a land trust ask the chief executive in writing to call a general meeting of the land trust; and
 - (b) the chief executive is satisfied—
 - (i) the holding of the meeting is for a purpose relevant to the land trust; and
 - (ii) it is appropriate in the circumstances to hold the meeting.
- (2) The chief executive may, by written notice given to the land trust and each member of the land trust, call a general meeting of the land trust.
- (3) The chief executive, or another person approved by the chief executive, is the chairperson of the meeting.
- (4) The quorum for the meeting is—
 - (a) the number of members, decided by the chief executive before the meeting is held, that the chief executive considers appropriate in the circumstances; or
 - (b) if paragraph (a) does not apply—3 members.

32 Material to be given to chief executive

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

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- (a) a copy of the minutes of the meeting; and
 - (b) a compliance statement for the financial year; and
 - (c) the names and addresses of all the current members of the land trust; and
 - (d) the name of each member of the land trust's executive committee, and the position held by the member; and
 - (e) a contact telephone number for the chairperson and secretary of the land trust; and
 - (f) the land trust's address for the service of documents and a contact telephone number for the land trust.
- (2) If, under section 30(2) a land trust need not hold an annual general meeting after the end of a financial year, the land trust must as soon as practicable after the end of the financial year give the chief executive—
- (a) a compliance statement for the financial year; and
 - (b) the names and addresses of all the current members of the land trust; and
 - (c) the name of each member of the land trust's executive committee, and the position held by the member; and
 - (d) a contact telephone number for the chairperson and secretary of the land trust; and
 - (e) the land trust's address for the service of documents and a contact telephone number for the land trust.
- (3) In this section—
- compliance statement***, for a financial year, means a statement in the approved form about a land trust's compliance in the financial year with the obligations imposed on it under the Act and the rules of the land trust.

33 Land trust to keep minutes of meeting

A land trust must keep minutes of its general meetings.

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- (b) 50% of each \$1 of the royalty amount that is more than the threshold amount for paragraph (a) but not more than the threshold amount for paragraph (b); and
 - (c) 33.32% of each \$1 of the royalty amount that is more than the threshold amount for paragraph (b) but not more than the threshold amount for paragraph (c); and
 - (d) 20% of each \$1 of the royalty amount that is more than the threshold amount for paragraph (c) but not more than the threshold amount for paragraph (d); and
 - (e) 10% of each \$1 of the royalty amount that is more than the threshold amount for paragraph (d).
- (2) In this section—

consumer price index means the all groups consumer price index for Brisbane published by the Australian Statistician.

threshold amount—

- (a) for the financial year ending 30 June 2011—
 - (i) for paragraph (a), means \$100000; and
 - (ii) for paragraph (b), means \$200000; and
 - (iii) for paragraph (c), means \$500000; and
 - (iv) for paragraph (d), means \$1000000; and
- (b) for a later financial year—for paragraphs (a), (b), (c) and (d), means the threshold amount for the particular paragraph for the financial year immediately preceding the later financial year (the *previous financial year*) increased by the consumer price index for the previous financial year.

Part 5 **Repeal and transitional provisions**

Division 1 **Repeal**

36 **Repeal**

The Torres Strait Islander Land Regulation 1991, SL No. 219 is repealed.

Division 2 **Transitional provisions**

37 **Members of executive committee continue in office**

- (1) This section applies to a person who is the chairperson, deputy chairperson, secretary or other office holder on the executive committee of a land trust immediately before the commencement of this section.
- (2) On the commencement, the person continues as the chairperson, deputy chairperson, secretary or other office holder on the executive committee of the land trust.

38 **Land trust's adopted rules continue**

- (1) This section applies to a land trust in existence immediately before the commencement of this section.
- (2) The rules of the land trust adopted under the repealed *Torres Strait Islander Land Regulation 1991*, and in force immediately before the commencement, are taken to be the land trust's adopted rules under this regulation.

Schedule Dictionary

section 3

adopted rules, of a land trust, see section 11(1).

general meeting means an annual general meeting or special general meeting.

meeting, for part 2, division 2, subdivision 2, see section 13.

rules, of a land trust, means the rules of the land trust as in force from time to time.

total income, for a land trust in a financial year, does not include any amount it receives by way of a grant, if expenditure of the grant is accounted for by the land trust under financial reporting and acquittance requirements provided for under the terms of the grant.

ENDNOTES

- 1 Made by the Governor in Council on 8 September 2011.
- 2 Notified in the gazette on 9 September 2011.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Environment and Resource Management.

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