

# **NATIVE TITLE (QUEENSLAND) BILL 1993**

## **EXPLANATORY NOTES**

This Bill is for an Act about Native Title

### **General Outline**

On 3 June 1992, the High Court of Australia held in *Mabo v State of Queensland (No.2)* (1992) 175 CLR 1 that the common law of Australia recognises a form of native title that reflects the entitlement of the indigenous inhabitants of Australia, in accordance with their laws and customs, to their traditional land. The purpose of this Bill is to participate in the national scheme proposed by the Commonwealth Government in the as yet unenacted Commonwealth *Native Title Bill 1993*. The purpose of the Commonwealth *Native Title Bill 1993* is to provide a national system for the recognition and protection of native title and to provide for its co-existence with the national land management system.

This Bill has been drafted on the assumption that the Commonwealth *Native Title Bill 1993* will be enacted by the Commonwealth Parliament, and will operate as the Commonwealth *Native Title Act 1993*. In that regard, clause 2 of this Bill contains provisions to enable its proclamation following the enactment of the Commonwealth *Native Title Bill 1993*. References to the Commonwealth *Native Title Act 1993* are made on the assumption that this Bill, if enacted, will be proclaimed and take effect following the enactment of the Commonwealth *Native Title Bill 1993*.

As noted above, the purpose of this Bill is to participate in the national scheme proposed by the Commonwealth Government, in the Commonwealth *Native Title Bill 1993*. Clauses 5 and 146 of this Bill contain provisions in relation to this matter. In addition, where appropriate, the headings of this Bill contain a reference to the relevant provision of the Commonwealth *Native Title Act 1993*. These Explanatory Notes draw upon Part B of the Explanatory Memorandum that accompanied the introduction of the Commonwealth *Native Title Bill 1993* into the House of Representatives on 16 November 1993. These Explanatory Notes should be read in conjunction with the Explanatory Memorandum to the extent they are relevant for the purposes of this Bill.

This Bill commences with a Preamble which refers to the High Court's decision in *Mabo*, the development of the Commonwealth *Native Title Act 1993* and the intention of the Parliament of Queensland to participate in the national scheme proposed by the Commonwealth Government.

The Bill is divided into 13 parts.

Part 1 of the Bill contains preliminary provisions.

Part 2 of the Bill contains provisions dealing with the validation of past acts and its effect.

Part 3 of the Bill contains provisions dealing with the confirmation of certain rights.

Part 4 of the Bill provides for the establishment of the Queensland Native Title Tribunal and the creation of the statutory office of the Queensland Native Title Registrar.

Part 5 of the Bill contains provisions which are intended to ensure that the Queensland Native Title Tribunal and the Mining Wardens Courts are recognised bodies and arbitral bodies for the purposes of the Commonwealth *Native Title Act 1993*.

Part 6 of the Bill contains provisions dealing with the holding of native title.

Part 7 of the Bill deals with applications for determination of native title and for compensation, and with applications to allow future acts to take place which may affect native title.

Part 8 of the Bill deals with inquiries and determinations by the Queensland Native Title Tribunal.

Part 9 of the Bill deals with the Queensland Native Title Tribunal, including its membership and its organisation.

Part 10 of the Bill deals with the creation and operation of the Queensland Native Title Register.

Part 11 of the Bill contains miscellaneous provisions.

Part 12 of the Bill contains interim provisions to ensure that Queensland law is consistent with the Commonwealth *Native Title Act 1993*.

Part 13 of the Bill contains amendments to the *Aboriginal Land Act 1991*, the *Torres Strait Islander Land Act 1991* and the *Land Act 1962*.

The Bill contains the following provisions:-

Preamble. This is self-explanatory.

## **PART 1—PRELIMINARY**

**1.** Contains the Short Title

**2.** The Bill, apart from the amendments to the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*, will commence on a day to be proclaimed.

**3.** Subclause 1 sets out the main objects of the Commonwealth *Native Title Act 1993*, which are:

- (a) to provide for the recognition and protection of native title; and
- (b) to establish ways in which future dealings affecting native title may proceed and to set standards for the dealings; and
- (c) to establish a mechanism for determining claims to native title; and
- (d) to provide for, or permit, the validation of past acts invalidated because of the existence of native title.

Subclause 2 sets out the main objects of the Bill, which are:

- (a) in accordance with the Commonwealth *Native Title Act 1993*, to validate past grants invalidated because of the existence of native title and to confirm certain rights; and
- (b) to ensure that Queensland law is consistent with standards set by the Commonwealth *Native Title Act 1993* for future dealings affecting native title; and
- (c) to establish State-based mechanisms for deciding claims to native title that are complementary to, and consistent with, the mechanisms established by the Commonwealth *Native Title Act 1993*.

**4.** Some of the terms used in the Bill are defined. Other terms are defined in other parts of the Bill.

**5.** Words and expressions used in the Commonwealth *Native Title Act*

1993 and this Bill have the same meanings in this Bill as they have in the Commonwealth *Native Title Act 1993*.

6. This Bill will bind all persons, including the State.

## **PART 2—VALIDATION AND ITS EFFECT**

The Commonwealth *Native Title Act 1993* does not unilaterally validate past acts of the State which are invalid because of the existence of native title and any law. This must be done by the Government which did the acts. Section 18 of the Commonwealth *Native Title Act 1993* allows a State to pass laws validating past acts attributable to a State, provided these laws do so on the same basis as the Commonwealth has validated its past acts under sections 14 and 15 of the Commonwealth *Native Title Act 1993*. This Part is concerned to validate past acts in a way that is consistent with the Commonwealth *Native Title Act 1993*.

### ***Division 1—General***

7. This clause sets out the objects of this Part, which are to:

- (a) validate, in accordance with Section 18 of the Commonwealth *Native Title Act 1993*, past acts attributable to the State; and
- (b) provide for the effects of the validation.

8. This clause provides that if a past act is an act attributable to the State the act is valid. This will remedy any invalidity due to the existence of native title.

9. This clause is self-explanatory.

### ***Division 2—Effect of Validation on Native Title***

10. This clause sets out the effect of the validation of a Category A past act (which is defined by Section 214 of the Commonwealth *Native Title Act 1993*) other than a public work. When validated, the native title is taken to have been extinguished.

**11.** This clause sets out the effect of the validation of a Category A past act which is a public work. In respect of a public work where the land has something constructed on it, the native title is taken to have been extinguished in respect of the land taken up by the construction. If construction is incomplete, or establishment is incomplete, then in respect of the land required for the construction native title is taken to be extinguished as of 1 January 1994.

**12.** This clause sets out the effect of validation of a Category B past act (which is defined by clause 215 of the Commonwealth *Native Title Act 1993*). When validated, native title is taken to have been extinguished by the act to the extent of the inconsistency with the rights and interests comprising the native title.

**13.** This clause sets out the effect of validation of a Category C past act (which is defined by Section 216 of the Commonwealth *Native Title Act 1993*) or a Category D past act (which is defined by Section 217 of the Commonwealth *Native Title Act 1993*). This validation does not extinguish the native title, rather the non-extinguishment principle applies to the act (this is defined in clause 223 of the Commonwealth *Native Title Act 1993*).

### ***Division 3—Other Effects of Validation***

**14.** This clause provides that if an act contains a reservation or condition for the benefit of Aboriginal people or Torres Strait Islanders then that reservation or condition is preserved. This clause also states that if the doing of the act would affect any other rights or interests (other than a native title right or interest) held by Aboriginal people or Torres Strait Islanders (whether these arise under statute, common law or equity) then the validation of the act does not affect that right or interest.

**15.** Subclause 1 creates an entitlement to compensation in the case of extinguishment arising from a Category A past act or a Category B past act, as well as setting out an entitlement to compensation for the validation of an act that is other than a Category A past act or Category B past act, if the native title holders would be entitled to compensation under section 16(1) or (2) of the Commonwealth *Native Title Act 1993*. Subclause 2 provides that the compensation payable to native title holders is payable by the State. Subclauses 3 and 4 provide that jurisdiction to determine the compensation payable to native title holders may be conferred on the Queensland Native Title Tribunal and Mining Wardens Courts.

### **PART 3—CONFIRMATION OF CERTAIN RIGHTS**

Section 197 of the Commonwealth *Native Title Act 1993* allows a State to confirm the ownership of natural resources and certain water and fishing access rights and to confer public access to an enjoyment of certain areas. This Part is intended to confirm those matters in a way that is consistent with the Commonwealth *Native Title Act 1993*.

**16.** This clause sets out the object of this Part which is to confirm:

- (a) the ownership of natural resources and certain water and fishing access rights; and
- (b) public access to and enjoyment of beaches and certain other places.

**17.** Subclause 1 confirms the existing ownership of all natural resources owned by the State. Subclause 2 confirms existing rights of the State to use, control and regulate the flow of water. Subclause 3 confirms that existing fishing access rights under State law prevail over any other public or private fishing rights.

For the purposes of subclause 1, examples are provided of the confirmation of ownership of natural resources, including minerals and petroleum, quarry material and fauna.

**18.** This clause confirms public access to and enjoyment of waterways, beds and banks or foreshores of waterways, coastal waters, beaches and areas that are public places at the end of 31 December 1993. This clause also provides that the confirmation of existing public access to and enjoyment of those areas does not extinguish any native title rights and interests and does not affect any conferral of land or other interest in land under a law that confers benefit only on Aboriginal people or Torres Strait Islanders.

### **PART 4—QUEENSLAND NATIVE TITLE TRIBUNAL AND REGISTRAR**

This Part provides for the establishment of the Queensland Native Title Tribunal and the establishment of the Registrar of the Queensland Native Title Tribunal.

***Division 1—The Tribunal***

**19.** This clause establishes the Queensland Native Title Tribunal.

**20.** Subclause 1 formally gives the functions attributed to the Queensland Native Title Tribunal by this Bill. Subclauses 2 and 3 deal with the Tribunal's power to research relevant matters so as to better carry out its functions. Some of the possible areas of research are listed in subclause 3.

**21.** Subclause 1 provides that the Queensland Native Title Tribunal must pursue the objective of carrying out its function in a fair, just, economical, informal and prompt way. Subclause 2 provides that in conducting inquiries, the Queensland Native Title Tribunal:

- (a) must take account of relevant helpful and customary concerns for Aboriginal people and Torres Strait Islanders; and
- (b) is not bound by technicalities, legal forms or rules of evidence.

These objectives will ensure that the processes of the Queensland Native Title Tribunal are accessible, efficient and as sensitive as possible to the needs of native title claimants while not compromising the overriding objective of deciding disputes fairly.

**22.** Subclause 1 allows a Court to adjourn a proceeding if in the course of that proceeding, the existence, nature or extent of, or the person(s) holding, native title is in issue, to allow a native title determination application to be made to the Queensland Native Title Tribunal. Subclause 2 allows the Court to adjourn a proceeding on its own initiative or on an application by a party to the proceeding.

***Division 2—The Registrar***

**23.** This clause establishes the statutory office of the Queensland Native Title Registrar.

**24.** This clause provides that the Registrar has the functions given to the Registrar under this Bill and any other functions given to the Registrar under the Commonwealth *Native Title Act 1993*.

## **PART 5—RECOGNISED AND ARBITRAL BODIES**

Section 236 of the Commonwealth *Native Title Act 1993* gives the relevant Commonwealth Minister the power to decide whether a particular Court, Office, Tribunal or body set up under a State law and nominated by that State will be a “recognised State/Territory body” for the purposes of the Commonwealth *Native Title Act 1993*. This Part of the *Native Title (Queensland) Bill 1993* establishes that it is the intention of the Parliament of Queensland to nominate the Queensland Native Title Tribunal and the Mining Wardens Courts as recognised State/Territory bodies for the purposes of the Commonwealth *Native Title Act 1993*. Section 26 of the Commonwealth *Native Title Act 1993* allows a recognised State/Territory body to also be an “arbitral body” for the purposes of the “right to negotiate” provisions of the Commonwealth *Native Title Act 1993*. This Part of the *Native Title (Queensland) Bill 1993* establishes that it is the intention of the Parliament of Queensland that the Queensland Native Title Tribunal and the Mining Wardens Courts be arbitral bodies for the purposes of the Commonwealth *Native Title Act 1993*.

**25.** This clause provides that the purpose of this Part is to provide for the Queensland Native Title Tribunal and the Mining Wardens Courts to each be a recognised State/Territory body, and arbitral body, for Queensland.

**26.** This clause provides that it is the intention of Parliament that the Queensland Native Title Tribunal and the Mining Wardens Courts should be recognised State/Territory bodies, and have the relevant jurisdiction to perform that function.

**27.** Subclause 1 provides that the Queensland Native Title Tribunal and the Mining Wardens Courts should be arbitral bodies for the purposes of the Commonwealth *Native Title Act 1993*, and have the relevant jurisdiction to perform that function. Subclause 2 limits the Mining Wardens Courts to be arbitral bodies only in relation to the Mining Acts of Queensland.

## **PART 6—HOLDING OF NATIVE TITLE**

Section 53 of the Commonwealth *Native Title Act 1993* makes provision for native title to be held on behalf of the native title holders by a suitable body corporate. Section 53 is designed to provide a mechanism for



efficient dealings with native title land and is consistent with existing systems under special legislation to provide land for the benefit of Aboriginal people and Torres Strait Islanders.

28. This clause is consistent with section 53 of the Commonwealth *Native Title Act 1993*, and reference should be made to the comparable provisions of Part B of the Explanatory Memorandum of the Commonwealth *Native Title Bill 1993*.

## **PART 7—APPLICATIONS ABOUT NATIVE TITLE**

Part 3 of the Commonwealth *Native Title Act 1993* contains provisions about what sorts of applications can be made under the Commonwealth *Native Title Act 1993*. They are:

- (a) applications for the determination of native title and for compensation; and
- (b) applications to allow future acts to take place which may effect native title.

Part 3 of the Commonwealth *Native Title Act 1993* sets out the mechanism for commencing the process leading to a determination. Part 3 of the Commonwealth *Native Title Act 1993* also sets out what an application must contain and which applications can be dealt with by the National Native Title Tribunal and which must be referred to the Federal Court. As noted above, clause 19 establishes the Queensland Native Title Tribunal, whose function it is under clause 20 to essentially perform the functions of the National Native Title Tribunal and the Federal Court envisaged by the Commonwealth *Native Title Act 1993*. This Part gives effect to Part 3 of the Commonwealth *Native Title Act 1993* insofar as the Queensland Native Title Tribunal is concerned.

### ***Division 1—Native title and compensation applications***

### ***Division 2—Right to negotiate applications***

### ***Division 3—Miscellaneous***

29-49. These clauses provide that applications may be made to the Queensland Native Title Tribunal in the same manner that applications may

be made to the National Native Title Tribunal and the Federal Court. They are consistent with sections 55-72 of the Commonwealth *Native Title Act 1993*, and reference should be made to the comparable provisions of Part B of the Explanatory Memorandum of the Commonwealth *Native Title Bill 1993*.

## **PART 8—INQUIRIES AND DETERMINATIONS BY THE TRIBUNAL**

Under the Commonwealth *Native Title Act 1993*, the Federal Court will have jurisdiction to determine contested claims to native title and contested claims to compensation which are referred to it by the National Native Title Tribunal. All applications made under the Commonwealth *Native Title Act 1993* must be lodged with the National Native Title Tribunal, which will to the extent possible, assist the parties to settle the matter. Where a matter is unable to be settled, the National Native Title Tribunal will refer the matter to the Federal Court for determination by the Federal Court. The Federal Court will only have jurisdiction to hear applications which are referred to it by the National Native Title Tribunal. As noted above, in Queensland, it is the intention of the Parliament of Queensland that the Queensland Native Title Tribunal perform the function which both the National Native Title Tribunal and the Federal Court will perform under the Commonwealth *Native Title Act 1993*. This Part contains clauses which provide for inquiries and determinations by the Queensland Native Title Tribunal, which for the purposes of the Commonwealth *Native Title Act 1993* would be performed by the National Native Title Tribunal or the Federal Court.

### *Division 1—Special inquiries*

### *Division 2—Inquiries generally*

### *Division 3—Conferences and hearings*

### *Division 4—Determinations and reports*

**50-77.** These clauses provide for special inquiries, inquiries generally, conferences and hearings, and determinations and reports by the Queensland Native Title Tribunal. They are consistent with sections

130-157 of the Commonwealth *Native Title Act 1993*, and reference should be made to the comparable provisions of Part B of the Explanatory Memorandum of the Commonwealth *Native Title Bill 1993*.

### ***Division 5—Appeals***

**78.** This clause provides that appeals may be made to the Land Appeal Court from decisions and determinations of the Queensland Native Title Tribunal. The parties have 28 days, which can be extended, from the time they are told of the decision by the Queensland Native Title Tribunal in which to appeal. The Land Appeal Court can affirm or set aside the decision, and can remit the case for rehearing by the Queensland Native Title Tribunal either with or without directions.

**79.** This clause provides that decisions which are appealed still have effect and can be implemented while the appeal is heard, unless the Land Appeal Court orders otherwise, to protect the positions of the parties to appeal.

**80.** This clause allows the Land Appeal Court to place restrictions on publishing information or evidence given to the Land Appeal Court. The Land Appeal Court can do so on its own initiative, or on the application of a party.

### ***Division 6—Offences***

To ensure the Queensland Native Title Tribunal can operate effectively, this Division provides that the failure of a witness to attend, the refusal to be sworn or answer a question, the giving of false or misleading evidence, producing a false or misleading document, the contravention of a direction prohibiting the disclosure of evidence or the contempt of the Queensland Native Title Tribunal are criminal offences which attract a penalty.

**81-86.** These clauses contain the specific offence provisions. These clauses are consistent with sections 163-169 of the Commonwealth *Native Title Act 1993*, and reference should be made to the comparable provisions of Part B of the Explanatory Memorandum on the Commonwealth *Native Title Bill 1993*.

***Division 7—Miscellaneous***

**87.** This clause provides that, where a matter goes to the Land Appeal Court, all documents that were before the Queensland Native Title Tribunal must be sent to the Land Appeal Court. When the matter is dealt with the Land Appeal Court is to send back the documents.

**88.** This clause provides for the return of documents or any other thing at the completion of a proceeding in the Queensland Native Title Tribunal or at the end of an appeal to the Land Appeal Court.

**89.** This clause is designed to provide members of the Queensland Native Title Tribunal, persons representing a party and someone giving evidence before the Queensland Native Title Tribunal, similar protections to those that are provided for the Supreme Court.

**90.** This clause provides that existing or former members, assessors or officers of the Queensland Native Title Tribunal or Land Appeal Court, or the Registrar, cannot be called to give evidence in relation to matters which are covered by a direction of the Queensland Native Title Tribunal under clause 67 of the Bill or clause 80 of the Bill. Subclause 1 also provides for an application to be made to the Queensland Native Title Tribunal or to the Land Appeal Court for a non-disclosure direction. Subclause 2 provides a similar regime for documents given to the Tribunal. Subclause 3 provides that a member of the Queensland Native Title Tribunal cannot be called to give evidence to a Court about any proceeding before the Queensland Native Title Tribunal. Subclause 4 contains definitions for the purposes of this clause.

**91.** This clause provides for expenses for witnesses before the Queensland Native Title Tribunal to be paid as prescribed by regulations. Subclause 2 provides that if a person is called on behalf of a particular party that party must pay, otherwise the State pays.

**PART 9—PROVISIONS ABOUT THE TRIBUNAL**

This Part deals with matters relating to the Queensland Native Title Tribunal, including:

- (a) membership of the Queensland Native Title Tribunal;
- (b) provisions about District Court Judges;

- (c) provisions about other members;
- (d) the organisation of the Queensland Native Title Tribunal;
- (e) the Registrar and other officers and staff of the Queensland Native Title Tribunal;
- (f) assessors; and
- (g) miscellaneous and administrative matters.

### ***Division 1—Membership***

**92.** This clause provides that the Queensland Native Title Tribunal consists of the President, Deputy President and other members that are appointed.

**93.** This clause provides that the President and Deputy President are presidential members of the Queensland Native Title Tribunal and that other members are the non-presidential members of the Queensland Native Title Tribunal.

**94.** This clause provides that members are to be appointed by the Governor-in-Council. The President must be appointed on a full-time basis, and a member (other than the President or District Court Judge) must be appointed either as a full-time member or a part-time member.

**95.** This clause sets out the qualifications for appointment as a presidential member of the Queensland Native Title Tribunal, which are:

- (a) a District Court Judge;
- (b) the chairperson or deputy chairperson of a Land Tribunal;
- (c) a presidential member of the National Native Title Tribunal;
- (d) a former Judge; or
- (e) a lawyer of a least 5 years standing.

A person is eligible for appointment as a non-presidential member of the Queensland Native Title Tribunal if he or she is:

- (a) a non-presiding member of a Land Tribunal; or

a non-presidential member of the National Native Title Tribunal;  
or

a member of a recognised State/Territory body; or

(b) has special knowledge in relation to:

- Aboriginal and Torres Strait Islander societies;
- land management;
- dispute resolution; and
- anything else considered to have substantial relevance to the duties of a non-presidential member.

**96.** This clause provides that nothing in this Bill or any other Act prevents a member (including the President) also holding office as the chairperson or other member of a Land Tribunal.

**97.** This clause provides for the Governor-in-Council to appoint a qualified person to act as the President, or to act as a member of the Tribunal.

### ***Division 2—Provisions about District Court Judges***

**98-101.** These clauses apply to a presidential member or the District Court Judge. They provide that the appointment of a District Court Judge as a member does not effect the tenure of that District Court Judge as a District Court Judge. They provide for their termination of office as a member. Finally, they require that a District Court Judge complies with the same requirements in respect of the disclosure of interests as any other member.

### ***Division 3—Provisions about other Members***

**102-108.** These clauses apply to a member who is not a District Court Judge. They provide that a member may be appointed for a period not longer than 5 years. They provide for the terms of appointment of a member, the leave of absence of a member, the resignation of a member, the requirement to make a disclosure of an interest and for termination of appointment as a member.

***Division 4—Organisation of Tribunal***

This Division provides that the President of the Queensland Native Title Tribunal is responsible for managing the business of the Queensland Native Title Tribunal.

**109-113.** These clauses are consistent with sections 116-120 of the Commonwealth *Native Title Act 1993*, and reference should be made to the comparable provisions of Part B of the Explanatory Memorandum on the Commonwealth *Native Title Bill 1993*.

***Division 5—Registrar and other officers and staff of Tribunal***

This Division provides for the appointment of the Queensland Native Title Registrar, and the powers of the Queensland Native Title Registrar in respect of the business of the Queensland Native Title Tribunal and the administrative affairs of the Queensland Native Title Tribunal.

**114-121.** These clauses provide that the Queensland Native Title Registrar is to be appointed under the *Public Service Management and Employment Act 1988*. The person is eligible to be appointed as Registrar only if the person is a lawyer of at least 5 years standing. The Registrar has powers to assist the President to do everything necessary or convenient to manage the administrative affairs of the Queensland Native Title Tribunal. The Registrar has the powers set out in Part 7 of the Bill in relation to applications. The Registrar has the powers set out in Part 10 of the Bill in relation to the Native Title Register. The Registrar may delegate the Registrar's power to a Deputy-Registrar or members of the Queensland Native Title Tribunal staff. The Registrar must give written notice to the President of all direct or indirect financial interests the Registrar has or acquires in any business or any body corporate carrying on a business. In addition to the Registrar, there are to be Deputy Registrars and staff of the Queensland Native Title Tribunal that are necessary, who are to be persons appointed or employed under the *Public Service Employment and Management Act 1988*. The Registrar may engage consultants to perform services for the Queensland Native Title Tribunal.

***Division 6—Assessors***

This Division provides for assessors to assist the Queensland Native Title Tribunal in relation to proceedings, and sets out the qualifications, terms and conditions of appointment of assessors.

**122-130.** These clauses are consistent with sections 76 and 203 of the Commonwealth *Native Title Act 1993*, and reference should be made to the comparable provisions of Part B of the Explanatory Memorandum of the Commonwealth *Native Title Bill 1993*.

***Division 7—Miscellaneous Administrative Matters***

**131.** This clause provides that the President is responsible for managing the administrative affairs of the Queensland Native Title Tribunal, and is to be assisted by the Registrar in that regard.

**132.** This clause is self-explanatory.

**133.** This clause requires the President to give the relevant Minister an annual report on the operations of the Queensland Native Title Tribunal, which must be tabled within 14 days after receipt.

**134.** This clause provides that any proceedings arising out of the administration of the Queensland Native Title Tribunal may be taken by or against Queensland.

**PART 10—NATIVE TITLE REGISTER**

This Part establishes a Queensland Native Title Register to record native title claims and determinations of native title. This Part provides for the contents of the Queensland Native Title Register, how it may be inspected by the public, that some parts of it may be confidential and how it is to be kept. Under this Part, the Queensland Native Title Registrar has powers to:

- (a) establish and keep the Queensland Native Title Register;
- (b) record details of native title claims and determinations and decision;



- (c) provide for the inspection of the Register; and
- (d) determine the confidentiality of parts of the Register.

**135-140.** These clauses are broadly consistent with Parts 7 and 8 of the Commonwealth *Native Title Act 1993*, and reference should be made to the comparable provisions of Part B of the Explanatory Memorandum of the Commonwealth *Native Title Bill 1993*.

**141.** This clause provides that the Queensland Native Title Register may be located in the Land Registry under the *Real Property Act 1861*.

**142.** This clause requires officers from other Courts in Queensland to notify the Queensland Native Title Registrar of native title claims and determinations made by the relevant Court.

**143.** This clause requires the Queensland Native Title Registrar to inform the National Native Title Registrar of all native title applications and determinations by recognised State/Territory Bodies for Queensland.

## **PART 11—MISCELLANEOUS**

**144.** This clause provides a right to compensation if the Bill operates to extinguish native title and the payment of compensation is not otherwise provided for by law. Such compensation is payable on just terms, and in the absence of agreement will be decided by the Queensland Native Title Tribunal.

**145.** This clause allows the Governor in Council to make regulations under this Bill.

**146.** This clause clarifies the relationship between the Bill and the Commonwealth *Native Title Act 1993*. The Commonwealth *Native Title Act 1993* does not form part of this Bill, but is attached to the Bill to assist in an understanding of the Bill. To remove any doubt, the copy of the Commonwealth *Native Title Bill 1993* which is attached to the Bill may be revised so that it is an accurate copy of the Commonwealth *Native Title Act 1993* as enacted and as amended from time to time.

## **PART 12—INTERIM PROVISIONS**

Because of the operation of the Commonwealth *Native Title Act 1993*, it is essential that the compulsory acquisition laws of Queensland contain provisions to allow compulsory acquisition of native title. The payment of compensation for such compulsory acquisition must be in accordance with the Commonwealth *Native Title Act 1993*. Because of the operation of the Commonwealth *Native Title Act 1993* it is also necessary that the Mining Acts of Queensland treat native title in a racially non-discriminatory way. This Part is designed to achieve those objectives.

### ***Division 1—Objective Part***

**147.** This clause sets out that the object of this Part is to make, and permit the making of various interim provisions, pending a full review of Queensland law, to ensure:

- (a) Queensland law is consistent with standards set by the Commonwealth *Native Title Act 1993* for future dealings affecting native title; and
- (b) that claims to native title can be dealt with by a State-based mechanism that is complementary to, and consistent with, the mechanism established by the Commonwealth *Native Title Act 1993*.

### ***Division 2—Compulsory Acquisition***

**148.** This clause provides that native title rights and interests may be compulsorily acquired under the compulsory acquisition laws of Queensland in the same way as other interests in land may be compulsorily acquired.

**149.** This clause provides that if the compulsory acquisition is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, compulsory acquisition extinguishes native title to the extent of the inconsistency.

**150.** This clause provides that every compulsory acquisition law of

Queensland is taken to provide for the payment of compensation on the same terms as the Commonwealth *Native Title Act 1993*.

**151.** This clause provides that every compulsory acquisition law of Queensland is taken to provide provisions to the same effect as section 72 of the Commonwealth *Native Title Act 1993*. Section 72 deals with a situation where a person entitled to monetary compensation prefers to receive that compensation by way of the transfer of land or the provision of goods or services.

### ***Division 3—Mining***

**152.** Subclause 1 provides that for the purposes of every Mining Act of Queensland, the owners of land include the holders of native title in relation to the land. Subclause 2 provides that native title holders are entitled to every right and privilege of other owners of land.

**153.** This clause allows every Mining Act of Queensland to be amended by regulation to give effect to the objects and provisions of the Commonwealth *Native Title Act 1993*.

### ***Division 4—Other Interim Provisions***

**154.** Subclause 1 provides that for the purposes of an Act prescribed by regulation, the owners of land include the holders of native title in relation to land. Subclause 2 provides that the native title holders of land are entitled to every right and privilege of other owners of land. Subclause 3 provides that this clause is not intended by implication to limit any rights of native title holders.

**155.** This clause confers an interim Regulation making power to amend such Acts as are necessary or convenient, in order to carry out or give effect to the objects and provisions of this Bill or the Commonwealth *Native Title Act 1993* (with or without changes). Subclause 3 provides that a Regulation made under this clause expires one year after it is made or upon the expiry of this Part of the Bill.

**156.** Part 12 of the Bill expires 2 years after it commences.

## **PART 13—AMENDMENT OF ACTS**

This Part contains clauses which effect amendments to the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to:

- (a) remove any doubt that a grant made under either of those Acts does not operate to extinguish native title; and
- (b) allow the Land Tribunal created under either of those Acts to refer a claim to the Queensland Native Title Tribunal for hearing. When such a claim is referred to the Queensland Native Title Tribunal it is, for the purposes of the relevant Act, treated as the Land Tribunal.

### ***Division 1—Amendment of Aboriginal Land Act 1991***

**157.** This clause is self-explanatory.

**158.** This clause is self-explanatory.

**159.** This clause inserts a definition of native title interests into the *Aboriginal Land Act 1991*. This clause is consistent with section 208(1) and (2) of the Commonwealth *Native Title Act 1993*, and reference should be made to the comparable provisions of Part B of the Explanatory Memorandum of the Commonwealth *Native Title Bill 1993*.

**160.** This clause effects an amendment to Section 2.13(2) of the *Aboriginal Land Act 1991* and removes any doubt that land which is subject to native title may nonetheless be gazetted for claim under the *Aboriginal Land Act 1991*.

**161.** This clause amends section 3.06(1) of the *Aboriginal Land Act 1991* and removes any doubt that land which is transferred under the *Aboriginal Land Act 1991* does not extinguish any native title in the land.

**162.** This clause amends section 5.08 of the *Aboriginal Land Act 1991* and removes any doubt that land which is granted under the *Aboriginal Land Act 1991* does not extinguish native title.

**163.** This clause requires the Land Tribunal established by the *Aboriginal Land Act 1991* to refer any native title questions to the Queensland Native Title Tribunal. When a claim is referred to it, the Queensland Native Title Tribunal has all the powers and functions of the Land Tribunal.

**164.** This clause amends section 8.30 of the *Aboriginal Land Act 1991*, and has the same effect for the Land Tribunal as clause 59 of this Bill has for the Queensland Native Title Tribunal.

***Division 2—Amendment of Torres Strait Islander Land Act 1991***

**165-172.** These clauses make comparable amendments to the *Torres Strait Islander Land Act 1991* comparable to those that are made to the *Aboriginal Land Act 1991* in Division 1 above.

***Division 3—Amendment of Land Act 1962***

This Part contains clauses which amend the *Land Act 1962* insofar as it relates to the constitution of the Land Appeal Court following an appeal from the Queensland Native Title Tribunal.

**173.** This clause is self-explanatory.

**174-176.** In order to sit on appeals to the Land Appeal Court from the Queensland Native Title Tribunal, members of the Queensland Native Title Tribunal need to be members of the Land Court. These clauses amend the *Land Act 1962* and require the Governor in Council to appoint the President and Deputy Presidents of the Queensland Native Title Tribunal, to be members of the Land Court. They allow the Governor in Council to appoint other members of the Queensland Native Title Tribunal to be members of the Land Court.