

Queensland



**LAND AND RESOURCES
TRIBUNAL BILL 1998**

Queensland



**LAND AND RESOURCES TRIBUNAL
BILL 1998**

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1998

A BILL

FOR

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

The Parliament of Queensland enacts— 1

PART 1—PRELIMINARY 2

Short title 3

1. This Act may be cited as the *Land and Resources Tribunal Act 1998*. 4

Commencement 5

2. This Act commences on a day to be fixed by proclamation. 6

Dictionary 7

3. The dictionary in schedule 4 defines particular words used in this Act. 8

**PART 2—ESTABLISHMENT AND MEMBERSHIP OF
TRIBUNAL** 9
10

Division 1—Establishment 11

Land and Resources Tribunal 12

4. The Land and Resources Tribunal is established. 13

Tribunal not subject to direction 14

5. In exercising its jurisdiction conferred under this or another Act, the tribunal is not subject to the direction of the Minister. 15
16

Membership of tribunal	1
6. The “ members ” of the tribunal are—	2
(a) the presiding members of the tribunal; and	3
(b) the non-presiding members of the tribunal.	4
<i>Division 2—Presiding members</i>	5
Presiding members	6
7.(1) The “ presiding members ” of the tribunal are—	7
(a) the president; and	8
(b) 2 or more deputy presidents.	9
(2) Presiding members are to be appointed by the Governor in Council.	10
Eligibility for appointment as presiding member	11
8.(1) A person is eligible for appointment as a presiding member only if the person—	12
(a) is eligible for appointment as a Supreme Court judge; ¹ and	14
(b) has, in the opinion of the Governor in Council, particular knowledge or experience of indigenous issues and of 1 or more of the following—	15
(i) mining or petroleum issues;	16
(ii) land issues;	17
(iii) something else considered by the Governor in Council to have substantial relevance to the duties of a presiding member.	18
(2) In making an appointment of a presiding member, the Governor in Council must, to the extent it is practicable, make sure the eligibility for appointment of at least 1 of the presiding members holding appointment at	19
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¹ See *Supreme Court of Queensland Act 1991*, section 12 (Appointment of judges).

any time includes eligibility under subsection (1)(b)(i). 1

(3) The appointment of a person as a presiding member is not invalid 2
merely because of a failure of the Governor in Council to comply with 3
subsection (2) in making the appointment. 4

Retirement or resignation of presiding members 5

9.(1) A presiding member must retire on reaching 70 years of age. 6

(2) Despite subsection (1), a person who, before reaching 70 years, is a 7
presiding member included in a panel constituting the tribunal for a 8
proceeding, remains a presiding member to finish the proceeding. 9

(3) However, the president may give a direction further limiting the 10
extent to which the person remains a presiding member. 11

(4) Subsection (2) does not stop the filling of the presiding member's 12
office after the presiding member reaches 70 years. 13

(5) A person who is a presiding member may resign the person's office 14
of president or deputy president by signed notice of resignation given to the 15
Minister. 16

Salaries and allowances of presiding members 17

10.(1) The salary, allowances and rates of allowances payable to the 18
president are the salary, allowances and rates of allowances payable to a 19
Supreme Court judge. 20

(2) The salary, allowances and rates of allowances payable to a deputy 21
president are the salary, allowances and rates of allowances payable to a 22
District Court judge. 23

(3) The salaries and allowances payable under this section are payable out 24
of the consolidated fund, and the fund is appropriated accordingly. 25

Pension and leave of absence arrangements for presiding members 26

11.(1) The Judges Pensions Act applies to a person who is appointed as 27
president, including to a spouse or child of the person, as if the person's 28
appointment as president were an appointment as a Supreme Court judge. 29

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

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Conditions of appointment of presiding members

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12.(1) Presiding members are to be appointed under this Act, and not under the Public Service Act.

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(2) The office of a presiding member is not subject to any industrial award, industrial agreement or other industrial instrument or any decision or rule of an industrial tribunal.

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Termination of appointment of presiding member

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

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

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Acting presiding member

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

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20
21

(a) a person appointed as a presiding member is not available to carry out the person's duties as a presiding member; or

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23

(b) there is a vacancy in the position of a presiding member.

24

(2) The period stated in the instrument of appointment must not be longer than 1 year, but the appointment may be renewed at any time.

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(3) A person is eligible for appointment to act as a presiding member only if the person is eligible for appointment as a presiding member.

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28

Division 3—Non-presiding members**Non-presiding members**

15.(1) A person is a “**non-presiding member**” of the tribunal if the person is—

- (a) a Land Court non-presiding member; or
- (b) a Land Tribunal non-presiding member; or
- (c) an appointed non-presiding member; or
- (d) a referee non-presiding member.

(2) A person is a “**Land Court non-presiding member**” if the person is a member of the Land Court.

(3) A person is a “**Land Tribunal non-presiding member**” if the person is a member of a Land Tribunal.

(4) A person is an “**appointed non-presiding member**” if the person is appointed as an appointed non-presiding member.

(5) A person is a “**referee non-presiding member**” if the person is appointed as a referee non-presiding member.

Appointment of non-presiding members

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

(2) A referee non-presiding member is to be appointed as follows—

- (a) by the Governor in Council;
- (b) on the basis of full-time employment;
- (c) as a mining referee, a mediation referee or an indigenous issues referee.

Eligibility for appointment as appointed non-presiding member

17.(1) A person is eligible for appointment as an appointed non-presiding member only if the person—

Land and Resources Tribunal

-
- (a) has experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or an authority of a government; or 1
2
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4
- (b) has, in the opinion of the Governor in Council, particular knowledge or experience of 2 or more of the following— 5
6
- (i) Aboriginal or Torres Strait Islander communities; 7
- (ii) dispute resolution; 8
- (iii) valuation; 9
- (iv) mining or petroleum issues; 10
- (v) land use issues; 11
- (vi) indigenous issues; 12
- (vii) cultural heritage; 13
- (viii) the environment; 14
- (ix) industrial relations; 15
- (x) native title issues; 16
- (xi) something else considered by the Governor in Council to have substantial relevance to the duties of an appointed non-presiding member. 17
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- (2) A person is not ineligible for appointment as an appointed non-presiding member merely because the person holds an office under another Act. 20
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Eligibility for appointment as referee non-presiding member 23

- 18.(1)** A person is eligible for appointment as a mining referee only if the person— 24
25
- (a) is eligible for appointment as a Supreme Court judge; and 26
- (b) has, in the opinion of the Governor in Council, mining industry knowledge and experience, and 1 of the following— 27
28
- (i) land title and land use issues; 29

Land and Resources Tribunal

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| (ii) something else considered by the Governor in Council to have substantial relevance to the duties of a mining referee. | 1
2 |
| (2) A person is eligible for appointment as a mediation referee only if the person— | 3
4 |
| (a) is eligible for appointment as a Supreme Court judge; and | 5 |
| (b) has, in the opinion of the Governor in Council, a high level of knowledge or experience of 2 or more of the following— | 6
7 |
| (i) dispute resolution; | 8 |
| (ii) mediation; | 9 |
| (iii) land title and land use issues; | 10 |
| (iv) something else considered by the Governor in Council to have substantial relevance to the duties of a mediation referee. | 11
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13 |
| (3) A person is eligible for appointment as an indigenous issues referee only if— | 14
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| (a) the person— | 16 |
| (i) has experience, for not less than 5 years, in industry, commerce, public administration, the practice of a profession or the service of a government or an authority of a government; or | 17
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| (ii) has researched, and published in journals of high academic quality, in the field of anthropology, history, law, public administration or indigenous issues; and | 21
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23 |
| (b) the person has, in the opinion of the Governor in Council, a high level of knowledge or experience of 2 or more of the following— | 24
25 |
| (i) cross-cultural issues; | 26 |
| (ii) resolving cultural heritage issues; | 27 |
| (iii) indigenous issues; | 28 |
| (iv) something else considered by the Governor in Council to have substantial relevance to the duties of an indigenous issues referee. | 29
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31 |

Acting non-presiding member

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

- (a) a person appointed as an appointed non-presiding member is not available to carry out the person's duties as a non-presiding member; or
- (b) the Governor in Council considers it necessary or appropriate in the interests of the tribunal.

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

- (a) a person appointed as a referee non-presiding member is not available to carry out the person's duties as a referee non-presiding member; or
- (b) the Governor in Council considers it necessary or appropriate in the interests of the tribunal.

(3) The period stated in the instrument of appointment under subsection (1) or (2) must not be longer than 1 year, but the appointment may be renewed at any time.

(4) A person is eligible for appointment to act as a non-presiding member under this section only if the person is eligible to be appointed as the non-presiding member.

(5) A non-presiding member may carry out duties of his or her office even though the member has been appointed to act as another non-presiding member.

Termination of office of Land Court and Land Tribunal non-presiding members

20.(1) A person who is a Land Court non-presiding member stops holding that office if the person stops holding office as a member of the Land Court.

(2) A person who is a Land Tribunal non-presiding member stops

holding that office if the person stops holding office as a member of a Land Tribunal. 1
2

(3) Despite subsections (1) and (2), a non-presiding member who stops holding office as a member of the Land Court or a Land Tribunal, and who is included in a panel constituting the tribunal for a proceeding, remains a non-presiding member to finish the proceeding. 3
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(4) However, the president may give a direction further limiting the extent to which the person remains a non-presiding member under subsection (3). 7
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Termination of appointment of non-presiding member 10

21. The Governor in Council may terminate the appointment of an appointed or referee non-presiding member if the member— 11
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- (a) becomes incapable of performing the duties of a member because of physical or mental incapacity; or 13
14
- (b) is convicted of an indictable offence; or 15
- (c) commits misconduct of a kind that could justify dismissal from the public service if the member were a public service officer; or 16
17
- (d) for a non-presiding member who is appointed on the basis of full-time employment—is absent, without the president’s leave and without reasonable excuse, for 14 consecutive days or 28 days in a year. 18
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Term of appointment of appointed or referee non-presiding member 22

22.(1) Each appointed non-presiding member or referee non-presiding member is appointed for the term stated in the instrument of appointment of the non-presiding member. 23
24
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(2) The term stated in the instrument of appointment must not be more than 5 years. 26
27

(3) Despite subsection (1), a non-presiding member who, before the person’s appointment as a non-presiding member ends, constitutes the tribunal for a proceeding, or is included in a panel constituting the tribunal for a proceeding, remains a non-presiding member to finish the proceeding. 28
29
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31

(4) However, the president may give a direction further limiting the extent to which the person remains a non-presiding member. 1
2

Resignation of certain non-presiding members 3

23. An appointed or referee non-presiding member may resign by giving a signed notice of resignation to the Minister. 4
5

Conditions of appointment of non-presiding member 6

24.(1) The remuneration and allowances payable to each non-presiding member are the remuneration and allowances decided by the Governor in Council. 7
8
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(2) However, the remuneration and allowances of a non-presiding member appointed on basis of full-time employment must not be reduced. 10
11

(3) Each appointed non-presiding member or referee non-presiding member holds office as a non-presiding member on the conditions not provided for by this Act decided by the Governor in Council. 12
13
14

(4) Non-presiding members are to be appointed under this Act, and not under the Public Service Act. 15
16

(5) The office of a non-presiding member is not subject to any industrial award, industrial agreement or other industrial instrument or any decision or rule of an industrial tribunal. 17
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Division 4—General provisions about members 20

Leave of absence 21

25.(1) The Minister may give leave of absence, other than leave of absence provided for in the Judges Pensions Act, to the president on the terms the Minister considers appropriate. 22
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(2) The president may give leave of absence, other than leave of absence provided for in the Judges Pensions Act, to a deputy president on the terms the president considers appropriate. 25
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27

(3) The president may give leave of absence to a non-presiding member 28

appointed on the basis of full-time employment on the terms the president
considers appropriate. 1
2

Limitation on ownership of mining tenures 3

26.(1) A member must not hold, or be entitled, directly or indirectly, to
the benefits of an interest in, a mining tenure. 4
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(2) For subsection (1), a member is taken not to hold an interest in a
mining tenure (other than a prospecting permit) if the member holds, or
becomes entitled, directly or indirectly, to the benefits of, an interest in a
mining tenure only because the member— 6
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(a) is a beneficiary in a deceased estate; or 10

(b) is entitled to share in the profits of a public company. 11

(3) However, a member who has or acquires an entitlement or
expectation of entitlement in a way mentioned in subsection (2)(a) must, on
becoming aware of the entitlement or expectation, give written notice about
the entitlement or expectation to— 12
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(a) if the member is the president—the Minister; or 16

(b) if the member is not the president—the president. 17

Disclosure of interests 18

27.(1) If a member becomes aware that the member has a conflict of
interest about a proceeding before the tribunal, the member must disclose
the issues giving rise to the conflict— 19
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21

(a) for a member who is the president—to the Minister and the
parties to the proceeding; or 22
23

(b) for a member who is not the president—to the president and the
parties to the proceeding. 24
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(2) The member may take part in the proceeding, or exercise a power for
the proceeding, only if— 26
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(a) for a member who is the president—the Minister and the parties
agree; or 28
29

(b) for a member who is not the president—the president and the 30

parties agree.

(3) A member has a conflict of interest about a proceeding if the member has an interest, financial or otherwise, that could conflict with the proper performance of the member's functions for the proceeding.

Appointment to NNTT

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

PART 3—REGISTRAR AND DEPUTY REGISTRARS

Division 1—Registrar

Registrar of tribunal

29.(1) There is to be a registrar of the tribunal.

(2) The registrar is a member of the staff of the tribunal.

(3) Subject to the president, the registrar is to be responsible for managing the administrative affairs of the tribunal.

(4) The registrar may exercise the powers given to the registrar under this or another Act.

(5) The president may give the registrar a direction about the exercise of the registrar's powers, other than to the extent the direction would be inconsistent with the provisions of this or another Act about the registrar's powers.

Keeping and disclosure of records and information

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

(2) Without limiting subsection (1), the registrar must keep the records

of and information about proceedings before the tribunal, and must make the records and information available to the public.

(3) Despite subsections (1) and (2), the registrar must not make a record or information available to the public if the tribunal orders that the record or information must not be made available to the public.

Engagement of consultants

31.(1) The registrar may engage persons having suitable qualifications and experience as consultants to perform services for the tribunal.

(2) Without limiting subsection (1), the services a consultant may be engaged to perform include conducting research for the tribunal.

(3) An engagement under subsection (1) must be made for the State under a written agreement.

Delegation by registrar

32.(1) The registrar may delegate the registrar’s powers under this Act or another Act to an appropriately qualified member of the staff of the tribunal.

(2) In this section—

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

Example of standing—

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

Division 2—Deputy registrars

Deputy registrars of tribunal

33.(1) There may be deputy registrars of the tribunal.

(2) A deputy registrar is either—

(a) a member of the staff of the tribunal (a “**deputy registrar (tribunal)**”); or

(b) appointed under this Act to hold the office of a deputy registrar in

addition to another office or position the person already holds
other than under this Act (a “**deputy registrar (additional
office)**”).

(3) A deputy registrar (additional office) is to be appointed by the
Governor in Council.

(4) An appointment of a person as a deputy registrar (additional office)
may take the form of—

- (a) an appointment of a person by name; or
- (b) an appointment of the holder of a stated office, by reference to the
title of the office concerned.

(5) An appointment under subsection (4)(b) may include an appointment
of a person for the time being lawfully acting in the place of the holder of
the office.

Basis for appointment as deputy registrar (additional office)

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

Conditions of appointment of deputy registrar (additional office)

35.(1) The remuneration and allowances payable to a deputy registrar
(additional office) are the remuneration and allowances decided by the
Governor in Council.

(2) A deputy registrar (additional office) holds the office of a deputy
registrar on the conditions decided by the Governor in Council.

(3) Nothing in this Act requires the payment of remuneration or
allowances under this Act to a deputy registrar (additional office).

Deputy registrar (additional office) subject to direction of registrar

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

PART 4—ORGANISATION AND OPERATION OF TRIBUNAL 1
2

Division 1—Sitting of tribunal 3

Sittings of tribunal 4

37. The tribunal sits at the times and the places in Queensland the president directs. 5
6

Arrangement of business 7

38. The president may give directions about the arrangement of the business of the tribunal. 8
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General requirements for establishing panel for proceeding 10

39.(1) For a proceeding before the tribunal, the tribunal is to be constituted, under the direction of the president, by a single member, or a panel, as provided under this part. 11
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(2) A panel constituting the tribunal is to be formed by— 14

(a) 1 or more presiding members and 2 or more non-presiding members (a “**standard panel**”); or 15
16

(b) the following (an “**NNTT panel**”)— 17

(i) 1 or more presiding members, 1 of whom is also an NNTT member; and 18
19

(ii) 2 or more non-presiding members ; or 20

(c) the following (also an “**NNTT panel**”)— 21

(i) 1 or more presiding members; and 22

(ii) 2 or more non-presiding members, 1 of whom is also an NNTT member; or 23
24

(d) the following (also an “**NNTT panel**”)— 25

(i) a standard panel; and 26

(ii) an NNTT member who is not also a member of the tribunal.	1
(3) A single member constituting the tribunal is to be—	2
(a) a presiding member, or a presiding member assisted by a single non-presiding member; or	3 4
(b) a Land Court non-presiding member; or	5
(c) a referee non-presiding member who has been appointed as a mining referee.	6 7
(4) In giving a direction under this section about how the tribunal must be constituted for a particular proceeding, the president must have regard to—	8 9 10
(a) the degree of public importance or complexity of the proceeding; and	11 12
(b) the need for the tribunal's affairs to be conducted promptly and efficiently; and	13 14
(c) the nature of the issues likely to be involved in the proceeding.	15
Specific requirements for constituting tribunal for proceeding	16
40.(1) The president must make sure that, for a proceeding, the tribunal is constituted as may be required under—	17 18
(a) an Act, including this Act, under which the tribunal is given jurisdiction for the proceeding; and	19 20
(b) schedule 1.	21
(2) When giving a direction about the constitution of the tribunal for a proceeding, the president must state the name or names of the member or members constituting the tribunal.	22 23 24
(3) If the tribunal is constituted by 2 or more presiding members that include the president, the president is the senior presiding member for the proceeding.	25 26 27
(4) If the tribunal is constituted by 2 or more presiding members other than the president, the president must designate 1 of the presiding members as the senior presiding member for the proceeding.	28 29 30

(5) If the tribunal is constituted by an NNTT panel, the president must designate the person who is the NNTT member for the proceeding. 1
2

Way in which questions are to be decided 3

41.(1) This section applies to a proceeding before the tribunal if, for the proceeding, the tribunal is constituted by a panel. 4
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(2) The decision on every question before the tribunal is to be made only by the presiding member or presiding members included in the panel, and not by the non-presiding member or non-presiding members included in the panel. 6
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(3) If there are 2 or more presiding members included in the panel, the decision of the panel on a question is to be— 10
11

(a) the opinion of the majority of the presiding members; or 12

(b) if the presiding members are equally divided in opinion, the opinion of the senior presiding member for the proceeding. 13
14

(4) The role of a non-presiding member included in the panel is as follows— 15
16

(a) to advise the presiding member or presiding members about matters within his or her knowledge or experience that are relevant to a question; 17
18
19

(b) to help the presiding member or presiding members in the conduct of the proceeding in a way the presiding member or presiding members consider appropriate. 20
21
22

Specific requirements for native title objection proceedings 23

42.(1) This section applies if— 24

(a) for a proceeding, the tribunal is constituted by an NNTT panel; and 25
26

(b) the NNTT member for the proceeding is not a presiding member. 27

(2) The presiding member or presiding members included in the panel constituted for the proceeding must, before making a relevant decision, consult with and consider the opinion of the NNTT member. 28
29
30

(3) In this section—	1
“ native title issues objection ” means an objection that requires a panel to be an NNTT panel rather than a standard panel.	2 3
“ relevant decision ” means a decision about a native title issues objection.	4
Reconstituting tribunal—single member	5
43.(1) This section applies if, for a proceeding, the tribunal is constituted by a single member who—	6 7
(a) stops being a member; or	8
(b) for any reason is not available for the proceeding.	9
(2) If the single member is a Land Court non-presiding member, the president may direct another Land Court non-presiding member to constitute the tribunal to continue and finish the proceeding.	10 11 12
(3) If the single member is a mining referee, the president may direct another mining referee to constitute the tribunal to continue and finish the proceeding.	13 14 15
(4) The tribunal as constituted under a direction under subsection (2) or (3) may, for continuing and finishing the proceeding, have regard to any record of the proceeding made by the tribunal as previously constituted.	16 17 18
Reconstituting tribunal—panel	19
44.(1) This section applies if, for a proceeding, the tribunal is constituted by a panel (the “ old panel ”), and a member included in the old panel—	20 21
(a) stops being a member; or	22
(b) for any reason is not available for the proceeding.	23
(2) The president may direct that, to continue and finish the proceeding—	24
(a) the tribunal be constituted by a new panel formed by the remaining members of the old panel; or	25 26
(b) the tribunal be constituted by a new panel formed by the remaining members of the old panel, together with another member or other members.	27 28 29

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- (3) Also, if the member mentioned in subsection (1) is the NNTT member for the proceeding, the president must—
- (a) if there is at least 1 other member included in the panel formed for the proceeding who is also an NNTT member—designate the member or 1 of the NNTT members as the NNTT member for the proceeding; or
 - (b) if there is no member included in the panel who is also an NNTT member—appoint a person who is an NNTT member to form part of the panel constituting the tribunal for the proceeding, and designate the person as the NNTT member for the proceeding.
- (4) The tribunal as constituted under subsection (2) must continue and finish the proceeding and may, for continuing and finishing the proceeding, have regard to any record of the proceeding made by the tribunal as constituted by the old panel.
- (5) Subsection (4) applies whether or not there has also been a designation under subsection (3).
- (6) In giving a direction under this section about how the tribunal must be constituted, the president must have regard to the need for the tribunal’s affairs to be conducted promptly and efficiently.

Reconstituting tribunal—designated NNTT member not a tribunal member

- 45.(1) This section applies if, for a proceeding, the tribunal is constituted by a panel (the “old panel”) and a person, who is not a member of the tribunal—
- (a) is included in the panel as the designated NNTT member for the proceeding; and
 - (b) becomes unavailable for the proceeding.
- (2) The president must—
- (a) appoint a person who is an NNTT member to form part of the panel constituting the tribunal for the proceeding; and
 - (b) designate the person as the NNTT member for the proceeding.
- (3) The person appointed by the president under subsection (2) may be a

member of the old panel if the member is also an NNTT member. 1

(4) The tribunal as constituted under subsection (2) must continue and 2
finish the proceeding and may, for continuing and finishing the proceeding, 3
have regard to any record of the proceeding made by the tribunal as 4
previously constituted. 5

(5) In appointing and designating a person under subsection (2), the 6
president must have regard to the need for the tribunal's affairs to be 7
conducted promptly and efficiently. 8

Division 2—Hearings 9

Application of div 2 10

46. This division has effect subject to the provisions of any Act under 11
which the tribunal is given jurisdiction for a proceeding. 12

Representation before tribunal 13

47. A party to a proceeding before the tribunal may appear in person or 14
be represented by a lawyer or someone else. 15

Hearings open to public 16

48.(1) A tribunal hearing is to be open to the public. 17

(2) Subsection (1) has effect subject to an order of the tribunal limiting 18
the extent to which the hearing is open to the public. 19

(3) An order under subsection (2) may be made only if the tribunal is 20
satisfied it is necessary to make the order— 21

(a) in the interests of justice; or 22

(b) to allow culturally sensitive issues to be appropriately dealt with. 23

Conduct of proceeding 24

49.(1) When conducting a tribunal hearing, the tribunal must— 25

(a) observe natural justice; and 26

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-
- (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it. 1
2
3
- (2)** In conducting the hearing, the tribunal— 4
- (a) is not bound by the rules of evidence; and 5
- (b) may inform itself of anything in the way it considers appropriate; and 6
7
- (c) may decide the procedures to be followed for the proceeding. 8
- (3)** However, the tribunal must comply with this division and the rules. 9
- (4)** Directions about the way a proceeding is to be conducted may be given at any time— 10
11
- (a) if the president has not yet given a direction about how the tribunal is to be constituted for the proceeding—by the tribunal as constituted by the president sitting alone, whether or not with a non-presiding member assisting; or 12
13
14
15
- (b) if the tribunal has been constituted for the proceeding, and the tribunal is constituted by a panel—by a presiding member included in the panel; or 16
17
18
- (c) if the tribunal has been constituted for the proceeding, and the tribunal is not constituted by a panel—by the tribunal as constituted. 19
20
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- Costs** 22
- 50.(1)** Each party to a proceeding before the tribunal must bear the party's own costs for the proceeding. 23
24
- (2)** However, the tribunal may award costs in a proceeding if the tribunal considers, in the special circumstances of the proceeding, an award of costs is appropriate. 25
26
27
- Examples of possible special circumstances—* 28
1. The proceeding was started merely to delay or obstruct. 29
2. The proceeding, or a part of the proceeding, has been frivolous or vexatious. 30
- (3)** If costs are awarded by the tribunal under subsection (2), the amount 31

of the costs is to be the amount the tribunal considers reasonable.

1

Division 3—Jurisdiction

2

General provisions about jurisdiction

3

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

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

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Exclusive jurisdiction for negotiated agreements

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52.(1) A party to a negotiated agreement may apply to the tribunal, and only to the tribunal, for an order—

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11

(a) for the enforcement of a negotiated agreement; or

12

(b) deciding a dispute arising under a negotiated agreement; or

13

(c) making a declaration about the interpretation of a negotiated agreement.

14

15

(2) The tribunal must hear and decide an application under subsection (1) and may make the order it considers appropriate.

16

17

(3) Subject to section 67,² the jurisdiction given to the tribunal under this section is exclusive of the jurisdiction of any other court or tribunal.

18

19

(4) In this section—

20

“negotiated agreement” means an agreement listed in schedule 2.

21

Exclusive jurisdiction for certain cultural heritage matters

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53.(1) A group, or a member of a group, may apply to the tribunal, and only to the tribunal, for an injunction under this section to stop the doing of an act.

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² Section 67 (Appeal only on question of law)

-
- (2) The tribunal must hear and decide an application under subsection (1) and may grant the injunction only if the tribunal is satisfied that—
- (a) the person against whom the injunction is sought is doing the act, or there are reasonable grounds for concluding that the person is likely to do the act; and
 - (b) the act is a relevant act; and
 - (c) the applicant has standing to make the application; and
 - (d) it is necessary to grant the injunction to stop the person doing the act.
- (3) For this section, a group or member of a group has standing to make an application if the group has a traditional, historic or custodial interest in—
- (a) if the relevant act is a contravention of section 56 of the Cultural Record Act—the item of the Queensland Estate to which the contravention relates; or
 - (b) if paragraph (a) does not apply—an item, place or area of cultural significance that may be adversely affected by the doing of the act the subject of the application.
- (4) Subject to section 67,³ the jurisdiction given to the tribunal under this section is exclusive of the jurisdiction of any other court or tribunal.
- (5) In this section—
- “Cultural Record Act”** means the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*.
- “group”** means a group of Aboriginal people or Torres Strait Islanders.
- “relevant act”** means an act that is a contravention of—
- (a) section 56⁴ of the Cultural Record Act; or
 - (b) a provision of another Act providing for the protection, preservation of, or access to items, places or areas of cultural significance to Aboriginal people or Torres Strait Islanders.

³ Section 67 (Appeal only on question of law)

⁴ Section 56 (Offences concerning Queensland Estate) of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*.

<i>Division 4—Other supporting provisions</i>	1
Tribunal a court of record	2
54.(1) The tribunal is a court of record.	3
(2) The tribunal must have a seal.	4
(3) The seal must be kept under the direction of the president.	5
(4) The seal must be judicially noticed.	6
Form of decisions of tribunal	7
55. A decision or order of the tribunal made at a tribunal hearing—	8
(a) must be in writing; and	9
(b) must state fully the facts found by the tribunal; and	10
(c) must state the decision, and the reasons for the decision, on each relevant question of law raised at the tribunal hearing; and	11
(d) must be published if the tribunal hearing is open to the public; and	13
(e) may be given at a place other than where the tribunal hearing took place.	14
	15
Supreme Court or District Court may transfer certain proceedings to tribunal	16
	17
56.(1) This section applies to a proceeding if the proceeding—	18
(a) is pending in either the Supreme Court or the District Court; and	19
(b) could have been brought before the tribunal.	20
(2) The court, on its own initiative or on the application of a party to the proceeding, may order the transfer of the proceeding to the tribunal.	21
	22
(3) If the court orders a proceeding to be transferred to the tribunal, the registrar of the court must give the registrar of the tribunal—	23
	24
(a) a copy of the order; and	25
(b) all documents filed by the parties in the registry of the court for	26

the proceeding.	1
(4) A proceeding transferred to the tribunal must be dealt with as if the proceeding had been started in the tribunal.	2 3
(5) The costs of the parties for a proceeding transferred to the tribunal are, to the extent the costs are incurred before the order is made, in the court's discretion.	4 5 6
Attendance of witnesses	7
57.(1) This section applies if, under the rules, a person is notified to attend as a witness at a tribunal hearing.	8 9
(2) The person must attend at the time and place notified.	10
Maximum penalty—20 penalty units or 14 days imprisonment.	11
(3) If the person does not attend at the time and place notified, the tribunal may—	12 13
(a) issue a warrant directed to all police officers to bring the person at the time, and to the place, stated in the warrant to give evidence at the hearing; and	14 15 16
(b) adjourn the hearing to the time and place mentioned in paragraph (a) on terms as to costs the tribunal considers appropriate.	17 18 19
(4) A warrant issued under subsection (3) is sufficient authority for a police officer to execute it according to its terms.	20 21
Witnesses appearing at tribunal hearing	22
58. A person appearing as a witness at a tribunal hearing must not, without reasonable excuse—	23 24
(a) refuse to be sworn or to make an affirmation; or	25
(b) refuse to answer a question the tribunal requires the person to answer; or	26 27

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

Maximum penalty—20 penalty units.

Protection

59.(1) A member has, in the performance of the member's duties as a member, the same protection and immunity as a judge of the Supreme Court acting as a judge.

(2) A person representing a party before the tribunal has the same protection and immunity as a lawyer has in appearing for a party in a proceeding in the Supreme Court.

(3) A person notified to attend the tribunal, or appearing at a tribunal hearing as a witness, has the same protection as a witness in a proceeding in the Supreme Court.

Obstructing tribunal

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

Maximum penalty—40 penalty units.

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

Maximum penalty—40 penalty units.

Allowances for witnesses

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

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

Contempt of tribunal	1
62.(1) A person is in contempt of the tribunal if the person—	2
(a) insults a tribunal member or a member of the tribunal staff at a tribunal hearing, or in going to or returning from the tribunal hearing; or	3 4 5
(b) deliberately interrupts a tribunal hearing, or otherwise misbehaves at a tribunal hearing; or	6 7
(c) at a tribunal hearing, contravenes a provision of this Act about the hearing; or	8 9
(d) creates or continues, or joins in creating or continuing, a disturbance in or near a place where a tribunal hearing is being conducted; or	10 11 12
(e) obstructs or assaults a person attending a tribunal hearing; or	13
(f) without lawful excuse, disobeys a lawful order or direction of the tribunal made or given at a tribunal hearing; or	14 15
(g) does anything at a tribunal hearing or otherwise that would be contempt of court if the tribunal were a judge acting judicially.	16 17
(2) The tribunal may order that a person who contravenes subsection (1) at a tribunal hearing be excluded from the place where the hearing is being conducted.	18 19 20
(3) A member of the tribunal staff, acting under the tribunal’s order, may, using necessary and reasonable help and force, exclude the person from the place.	21 22 23
(4) In this section—	24
“member of the tribunal staff” includes a deputy registrar (additional office).	25 26
“tribunal member” includes an NNTT member for a proceeding.	27
Punishment of contempt	28
63.(1) Without limiting the tribunal’s power to punish for contempt, a person’s contempt of the tribunal may be punished under this section.	29 30
(2) The president may certify the contempt in writing to the Supreme	31

Court (the “court”).	1
(3) For subsection (2), it is enough for the president to be satisfied there is evidence of contempt.	2 3
(4) The president may issue a warrant directed to a police officer or all police officers for the arrest of the person to be brought before the Supreme Court to be dealt with according to law.	4 5 6
(5) The <i>Bail Act 1980</i> applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence.	7 8
(6) The court must inquire into the alleged contempt.	9
(7) The court must hear—	10
(a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and	11 12
(b) any statement given by the person in defence.	13
(8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in relation to proceedings in the court.	14 15 16
(9) The Rules of the Supreme Court apply to the court’s investigation, hearing and power to punish with necessary changes.	17 18
(10) The president’s certificate of contempt is evidence of the matters contained in the certificate.	19 20
Conduct that is contempt and offence	21
64.(1) If conduct of an offender is both contempt of the tribunal and an offence, the offender may be proceeded against for the contempt or for the offence, but the offender is not liable to be punished twice for the same conduct.	22 23 24 25
(2) In this section—	26
“offender” means a person guilty, or alleged to be guilty, of contempt of the tribunal.	27 28

Powers of tribunal

65.(1) The tribunal has, for exercising jurisdiction conferred under this or another Act, all the powers of the Supreme Court, and may in a proceeding before the tribunal, in the same way and to the same extent as may be done by the Supreme Court in a similar proceeding—

- (a) grant any relief or remedy; and
- (b) make any order, including an order for attachment or committal because of disobedience to an order; and
- (c) give effect to every ground of defence or matter of set-off, whether equitable or legal.

(2) Without limiting subsection (1), the tribunal has, in a proceeding before it, power to grant relief—

- (a) under a declaration of rights of the parties; or
- (b) under an injunction, whether interim, interlocutory or final, in the proceeding; or
- (c) by staying the proceeding or a part of the proceeding; or
- (d) by appointing a receiver including an interim receiver.

(3) The tribunal may order that a record of or information about a proceeding before the tribunal must not be made available to the public.

(4) Without limiting the things the tribunal may have regard to in deciding whether to make an order under subsection (3), the tribunal may have regard to Aboriginal tradition and Island custom.

(5) The practice and procedure of the tribunal in exercising its jurisdiction in particular matters, including enforcing its judgments and orders, must as far as practicable be the same as the practice and procedure of the Supreme Court in similar matters.

(6) Without limiting subsection (5), the appropriate officer of the tribunal must, in addition to duties otherwise imposed on the officer, discharge—

- (a) any duty an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in similar circumstances; and
- (b) any duty imposed on the officer by an order of the tribunal.

(7) For subsection (6), the appropriate officer of the tribunal has the powers of the relevant officer of the Supreme Court.	1 2
(8) Subsections (1) and (5) have effect subject to—	3
(a) another provision of this Act; and	4
(b) a provision of another Act under which jurisdiction is conferred on the tribunal; and	5 6
(b) the rules.	7
Enforcement of orders etc.	8
66. Each warrant, order or other process of the tribunal may be directed to, and may be served or executed or put into effect by—	9 10
(a) the registrar; or	11
(b) the staff of the tribunal acting under the direction of the registrar.	12
Appeal only on question of law	13
67.(1) A party to a proceeding before the tribunal may appeal against a decision of the tribunal, but only on a question of law.	14 15
(2) The appeal is to—	16
(a) if the tribunal is constituted by a Land Court non-presiding member or a mining referee—the tribunal as constituted by the president sitting alone (the “ appellate body ”), but only with the president’s leave; or	17 18 19 20
(b) if the tribunal is constituted by a panel or the president sitting alone—the Court of Appeal (also the “ appellate body ”).	21 22
(3) On the appeal, the appellate body may—	23
(a) dismiss the appeal; or	24
(b) allow the appeal and—	25
(i) set aside the decision appealed against and substitute the decision it considers should have been made; or	26 27
(ii) amend, as it considers appropriate, the decision appealed against; or	28 29

(iii) suspend the operation of the decision appealed against and remit the proceeding, with or without directions, to the tribunal to act according to law.

(4) The appeal must be started within 28 days after the decision being appealed against is given.

(5) An appeal to the Court of Appeal is to be made under the rules of practice and procedure governing that court.

(6) However, if the rules do not provide for the appeal, the rules of practice and procedure governing appeals from the Supreme Court to the Court of Appeal apply to the appeal with necessary changes.

Appeal not a stay of decision

68.(1) An appeal from a decision of the tribunal does not stay the decision.

(2) However, the decision is stayed if the stay is ordered by—

- (a) the tribunal as constituted when making the decision; or
- (b) the appellate body.

(3) The tribunal as constituted when making the decision or the appellate body may, as well as making the order staying the decision, make an order for securing the effectiveness of the appeal, including, for example, the following—

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

Question of law referred from single member

69.(1) This section applies if, for a proceeding, the tribunal is constituted by a mining referee or Land Court non-presiding member.

(2) The tribunal may, on its own initiative or if asked by a party, refer a question of law arising in the proceeding to the tribunal as constituted by the

- president sitting alone for an opinion. 1
- (3) The tribunal, as constituted by the president sitting alone, may in turn, 2
on its own initiative or if asked by a party, refer the question of law to the 3
Court of Appeal for an opinion. 4
- (4) If the question of law is referred under subsection (2) or 5
subsections (2) and (3), the tribunal, as constituted in the way mentioned in 6
subsection (1), must not, in the proceeding— 7
- (a) give a decision to which the question is relevant while the 8
reference is pending; or 9
 - (b) proceed in a way, or make a decision, inconsistent with the 10
opinion given on the question. 11

Question of law referred from panel 12

- 70.(1)** This section applies if, for a proceeding, the tribunal is constituted 13
by a panel. 14
- (2) The tribunal may, on its own initiative or if asked by a party, refer a 15
question of law arising in the proceeding to the Court of Appeal for an 16
opinion. 17
- (3) If the question of law is referred under subsection (2), the tribunal 18
must not, in the proceeding— 19
- (a) give a decision to which the question is relevant while the 20
reference is pending; or 21
 - (b) proceed in a way, or make a decision, inconsistent with the 22
opinion given on the question. 23

Division 5—Mediation 24

Application of div 5 25

- 71.** This division applies to persons (“**mediation participants**”)— 26
- (a) for whom the tribunal conducts or provides mediation in relation 27
to a matter; or 28

- (b) for whom mediation is provided in relation to a matter by a mediator chosen by the tribunal. 1
2

Mediated resolution agreement 3

72.(1) If, at the mediation, the mediation participants negotiate an agreement about the matter or part of the matter, the agreement must be written down and signed by or for each mediation participant and by the mediator. 4
5
6
7

- (2) The agreement has the same effect as any other compromise. 8

Mediators to maintain secrecy 9

73.(1) The mediator must not, without reasonable excuse, disclose information about the matter coming to the mediator's knowledge during the mediation. 10
11
12

Maximum penalty—40 penalty units. 13

(2) It is a reasonable excuse to disclose information if the disclosure is made— 14
15

- (a) with the agreement of all the mediation participants; or 16
(b) for this Act; or 17
(c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or 18
19
(d) for an inquiry or proceeding about an offence happening during the mediation; or 20
21
(e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the mediation; or 22
23
(f) under a requirement imposed under an Act. 24

Ordinary protection and immunity allowed 25

74.(1) In performing the functions of mediator, the mediator has the same protection and immunity as a judge performing the functions of a judge. 26
27
28

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(2) A mediation participant in a mediation has the same protection and immunity the participant would have if the mediation were a dispute being heard before the Supreme Court. 1
2
3

(3) A document produced at, or used for, a mediation has the same protection during the mediation it would have if produced before the Supreme Court. 4
5
6

(4) In subsection (2)— 7
“mediation participant” includes a participant’s lawyer or agent. 8

Admissions made to mediators 9

75.(1) Evidence of anything done or said, or an admission made, at a mediation about the matter is admissible in a proceeding before the tribunal or elsewhere only if all mediation participants agree. 10
11
12

(2) In subsection (1)— 13
“proceeding” does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the mediation. 14
15

Mediator precluded from tribunal hearing matter 16

76. If the matter is the subject of a proceeding before the tribunal, the tribunal, as constituted for the proceeding, must not include the mediator. 17
18

Division 6—Other provisions 19

Finance and staffing of tribunal 20

77.(1) The tribunal is part of the department for the purposes of the *Financial Administration and Audit Act 1977*. 21
22

(2) The staff of the tribunal, including the registrar and any deputy registrar (tribunal), are to be appointed and employed under the Public Service Act. 23
24
25

(3) However, a person is eligible for appointment as the registrar only if the person— 26
27

-
- (a) is a lawyer; and 1
 - (b) has particular knowledge and experience of— 2
 - (i) public administration; or 3
 - (ii) something else with substantial relevance to the duties of the 4
 registrar. 5

Annual report 6

78.(1) The president of the tribunal must, within 4 months after the end 7
 of each financial year, prepare and give to the Minister a report on the 8
 operations of the tribunal for the year. 9

(2) The Minister must cause a copy of the report to be tabled in the 10
 Legislative Assembly within 14 days after its receipt by the Minister. 11

Delegation of powers by president 12

79. The president may delegate the president's administrative powers 13
 under this or another Act, including the power to give a direction about how 14
 the tribunal is to be constituted for a proceeding, to another presiding 15
 member. 16

PART 5—MISCELLANEOUS 17

Preservation of rights of non-presiding member 18

80.(1) This section applies to a person who is appointed as an appointed 19
 non-presiding member on the basis of full-time employment or as a referee 20
 non-presiding member if— 21

- (a) immediately before the appointment as a non-presiding member, 22
 the person was a public service officer; or 23
- (b) the person— 24
 - (i) was at some time before the appointment as a non-presiding 25
 member, a public service officer; and 26

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-
- (ii) from when the person stopped being a public service officer until immediately before the appointment as a non-presiding member, has continuously been the holder of a statutory office. 1
2
3
4
- (2) The person keeps the rights the person has accrued because of employment as a public service officer, or that would accrue in the future to the person, as if service as a non-presiding member were a continuation of service as a public service officer. 5
6
7
8
- (3) If the person's term of appointment as a non-presiding member ends or the person resigns— 9
10
- (a) the person has the right to be employed as a public service officer— 11
12
- (i) in the department that is the nearest practical equivalent to the department in which the person was employed as a public service officer immediately before the person last stopped being a public service officer; and 13
14
15
16
- (ii) at the classification level at which the person was employed as a public service officer immediately before the person last stopped being a public service officer; and 17
18
19
- (iii) on the remuneration payable to a public service officer on the classification level mentioned in subparagraph (ii); and 20
21
- (iv) for duties appropriate to the classification level mentioned in subparagraph (ii); and 22
23
- (b) the person's service as a non-presiding member is taken to be service as a public service officer for working out the person's rights as a public service officer. 24
25
26

(4) In this section— 1
 “statutory office” see section 108⁵ of the Public Service Act. 2

Regulation-making power 3

81. The Governor in Council may make regulations under this Act. 4

Rule-making power 5

82. The Governor in Council may make rules for the practice and 6
 procedure of the tribunal. 7

PART 6—TRANSITIONAL PROVISIONS 8

Proceeding not finished before commencement 9

83.(1) This section applies to a proceeding if, immediately before the 10
 commencement of this section— 11

(a) the proceeding was a proceeding under the *Mineral Resources* 12
Act 1989 or the *Fossicking Act 1994*; and 13

(b) the Wardens Court had jurisdiction for the proceeding; and 14

(c) the proceeding was not finished. 15

(2) The tribunal has jurisdiction to finish the proceeding as if the 16
 proceeding had been started after the commencement of this Act. 17

(3) The president may give any necessary directions about how the 18

⁵ *Public Service Act 1996*, section 108 reads—

‘What is a “statutory office”

‘108.(1) A “statutory office” is an office established under an Act to which a person may only be appointed by the Governor in Council or a Minister.

‘(2) It is immaterial whether an appointment may only be made after a recommendation or other process.’.

proceeding is to be dealt with by the tribunal instead of by the Wardens Court. 1
2

(4) Despite anything in schedule 1, the president is not stopped from directing that, for continuing the proceeding, the tribunal be constituted by a mining referee rather than a panel. 3
4
5

(5) Despite subsection (2), if anything done by the Wardens Court before the commencement of this section was the subject of an appeal, the appeal must be finished as if this Act had not been enacted. 6
7
8

Warden

 9

84.(1) This section applies to a person who, immediately before the commencement of this section, is a warden under the *Mineral Resources Act 1989*. 10
11
12

(2) On the commencement of this section, the person becomes a referee non-presiding member, and more particularly, is a mining referee. 13
14

(3) However, the provisions of this Act about the term of a non-presiding member's appointment, and the conditions of the appointment, do not apply to the person. 15
16
17

(4) The following provisions of the *Mineral Resources Act 1989* continue to apply to the person as if this Act had not been enacted— 18
19

- section 345(2) 20
- section 346 21
- section 347 22
- section 351.⁶ 23

(5) Also, the *Judges (Salaries and Allowances) Act 1967* continues to apply to the warden as if this Act had not been enacted. 24
25

⁶ *Mineral Resources Act 1989*, sections 345 (Appointment of wardens), 346 (Terms and conditions of employment), 347 (Preservation of rights) and 351 (Tenure of office)

Continuing role for warden and wardens court under certain Acts

85.(1) The relevant mining Act provisions are taken to continue to have effect as if this Act had not been enacted, but only to the extent necessary for giving full effect to the relevant designated Act provisions.

(2) However, a reference in a relevant designated Act provision to a warden is taken to be a reference to the tribunal as constituted by a person who, under this Act, is a mining referee.

(3) In this section—

“designated Acts” means the following Acts—

- the *Alcan Queensland Pty. Limited Agreement Act 1965*
- the *Aurukun Associates Agreement Act 1975*
- the *Central Queensland Coal Associates Agreement Act 1968*
- the *Coal Mining Act 1925*
- the *Mines Regulation Act 1964*
- the *Petroleum Act 1923*
- the *Queensland Nickel Agreement Act 1970*
- the *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*.

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

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

**PART 7—CONSEQUENTIAL AND OTHER
AMENDMENTS**

1

2

Amendments—sch 3

3

86. Schedule 3 amends the Acts it mentions.

4

SCHEDULE 1

1

REQUIREMENTS FOR CONSTITUTING TRIBUNAL

2

section 40(1)(b)

3

FOSSICKING ACT 1994

4

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

5

6

MINERAL RESOURCES ACT 1989

7

8

Sections conferring jurisdiction**Nature of proceeding****Constitution of tribunal**

9

Prospecting permits

10

38 to 42

appeal about a prospecting permit

mining referee

Mining claims

11

53(6)(b)

application about the area the subject of a mining claim

mining referee

70(1)

application by attending party for costs

mining referee

SCHEDULE 1 (continued)

77	hearing about application for mining claim unless, under this schedule, the tribunal must be constituted by a panel	mining referee
85	hearing about compensation	mining referee or Land Court non-presiding member
86	appeal about compensation	panel
101	proceeding about a caveat	mining referee
116	appeal about a decision about a mining claim mentioned in the section unless, under this schedule, the tribunal must be constituted by a panel	mining referee
125	hearing about access	mining referee
452	application for surface alluvium (gold or tin) mining claim	panel
Exploration permits		
145	recovery of compensation for damage or injury	panel
156	proceeding about a caveat	mining referee

SCHEDULE 1 (continued)

174(1)	application to the tribunal by attending party for costs	mining referee
--------	--	----------------

497	hearing of objections on high impact exploration permit	panel
-----	---	-------

Mineral development licences

1

191	recovery of compensation for damage or injury	panel
-----	---	-------

194A	proceeding about At Risk agreement	panel
------	------------------------------------	-------

203	proceeding about a caveat	mining referee
-----	---------------------------	----------------

222(1)	application by attending party for costs	mining referee
--------	--	----------------

544	hearing of objections on high impact mineral development licence	panel
-----	--	-------

Mining leases

2

250	appeal against rejection of application for grant of mining lease unless, under this schedule, the tribunal must be constituted by a panel—	
-----	---	--

SCHEDULE 1 (continued)

	(a) if applicant does not ask for the tribunal to be constituted by a panel; or	mining referee
	(b) if applicant asks for the tribunal to be constituted by a panel	panel
259(1)	application to the tribunal by attending party for costs	mining referee
268	hearing of application for grant of mining lease unless, under this schedule, the tribunal must be constituted by a panel—	
	(a) if all parties ask for the tribunal to be constituted by the mining referee, and the president agrees to the request; or	mining referee
	(b) if paragraph (a) does not apply	panel

SCHEDULE 1 (continued)

271(1)	remission of matter by the minister to tribunal for reconsideration	tribunal to be constituted in the same way as the tribunal was constituted for deciding its recommendation about the grant of the mining lease
278A	proceeding about At Risk agreement	panel
281	hearing about compensation	mining referee or Land Court non-presiding member
282	appeal about compensation	panel
299	application for order declaring land to be adjoining land for the section	mining referee
305	proceeding about a caveat	mining referee
317	hearing about access	mining referee
578	application for surface alluvium (gold or tin) mining lease	panel

Interim order by remote means

364	interim order by remote means	presiding member
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SCHEDULE 1 (continued)

Compensation				1
653	decision	about	panel	
	compensation			
657	decision	about	panel	
	compensation			
658	decision about amount		panel	
	held in trust for			
	compensation			
General				2
1.(1)	This section applies if, for a proceeding before the tribunal, the tribunal will be required to make—			3 4
(a)	a decision about the granting, variation or renewal of, or another act concerning, a mining tenure, including a proposed tenure, under the non-native title (mining) provisions; and			5 6 7
(b)	a decision concerning the tenure under the native title (mining) provisions.			8 9
(2)	For the proceeding, the tribunal is to be constituted by a panel.			10
(3)	However, if the proceeding includes the hearing of an objection of a native title notification party for land the subject of the proceeding, the panel must be an NNTT panel.			11 12 13

SCHEDULE 2	1
NEGOTIATED AGREEMENTS	2
section 52	3
MINERAL RESOURCES ACT 1989	4
The following agreements mentioned in the <i>Mineral Resources Act 1989</i>	5
are negotiated agreements—	6
• a consultation agreement under part 14 (Native title provisions for mining claims)	7 8
• an agreement about an exploration permit under section 495 (Process for consultation—agreement with or without conditions) or 496 (Process for consultation—agreement with conditions)	9 10 11
• an agreement about a mineral development licence under section 542 (Process for consultation—agreement with or without conditions) or 543 (Process for consultation—agreement with conditions)	12 13 14 15
• a consultation agreement under part 17 (Native title provisions for mining leases), division 2 (Surface alluvium (gold or tin) mining leases)	16 17 18
• a negotiated agreement under part 17 (Native title provisions for mining leases), division 3 (Other mining leases on alternative provision areas)	19 20 21
• a negotiated agreement under part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas)	22 23 24
• an agreement about payment of compensation mentioned in section 653 (Native title holders compensation).	25 26

SCHEDULE 3

1

AMENDMENT OF OTHER ACTS

2

section 86

3

ACTS INTERPRETATION ACT 1954

4

1. Section 36—

5

insert—

6

- ‘ **“Land and Resources Tribunal”** means the Land and Resources Tribunal established under the *Land and Resources Tribunal Act 1998*.’

7

8

9

FOSSICKING ACT 1994

10

1. Section 3, definition “Wardens Court”—

11

omit.

12

2. Section 3—

13

insert—

14

- ‘ **“tribunal”** means the Land and Resources Tribunal.’

15

3. Section 8(1), entry for ‘Wardens Court’—

16

omit.

17

SCHEDULE 3 (continued)

4. Sections 99, heading, 100(4), 101(2) and (3), 102(2) and 103, ‘Wardens Court’—	1
	2
<i>omit, insert—</i>	3
‘tribunal’.	4
5. Sections 16(4)(b)(ii) and (5)(c), 20(4)(c) and 22(4)(b), ‘a Wardens Court’—	5
	6
<i>omit, insert—</i>	7
‘the tribunal’.	8
6. Section 94—	9
<i>omit, insert—</i>	10
‘Proceedings for offences	11
‘94. A proceeding for an offence against this Act may be instituted in a summary way under the <i>Justices Act 1886</i> .’.	12
	13
7. Section 95(1), ‘a Wardens Court’—	14
<i>omit, insert—</i>	15
‘the court convicting the person’.	16
8. Section 95(2), ‘a Wardens Court’—	17
<i>omit, insert—</i>	18
‘the court’.	19
9. Section 95(3), ‘A Wardens Court’—	20
<i>omit, insert—</i>	21
‘The court’.	22

SCHEDULE 3 (continued)

10. Section 95(4), ‘Wardens Court’s’—	1
<i>omit, insert—</i>	2
‘court’s’.	3
11. Section 99(1), after ‘appeal’—	4
<i>insert—</i>	5
‘to the tribunal’.	6
12. Section 99(3)—	7
<i>omit.</i>	8
13. Section 100, words before subsection (3)—	9
<i>omit, insert—</i>	10
‘Starting appeal	11
‘ 100.(1) An appeal is started by filing a written notice of appeal with the mining registrar for the mining district to which the licence or permit applied for relates.	12
	13
	14
‘ (2) The mining registrar must give a copy of the notice to the authorised officer who made the decision appealed against.’.	15
	16
14. Section 101(1), ‘A Wardens Court’—	17
<i>omit, insert—</i>	18
‘The tribunal’.	19
15. Section 102(2)(c)—	20
<i>omit.</i>	21

 SCHEDULE 3 (continued)

16. Section 103, heading, ‘Court—	1
<i>omit, insert—</i>	2
‘tribunal’.	3
17. Section 103(2), example, ‘Court’—	4
<i>omit, insert—</i>	5
‘tribunal’.	6
18. Section 104—	7
<i>omit.</i>	8
19. Sections 105 to 108—	9
<i>renumber</i> as sections 104 to 107.	10
JUDGES (SALARIES AND ALLOWANCES) ACT 1967	11
1. Part 4, heading, ‘and mining wardens’—	12
<i>omit.</i>	13
2. Section 4A—	14
<i>omit.</i>	15
3. Section 5(3)(f)—	16
<i>omit.</i>	17

SCHEDULE 3 (continued)

4. Section 12(1)(f)—	1
<i>omit.</i>	2
5. Section 12(7), ‘and wardens’—	3
<i>omit.</i>	4
6. Section 12(8), definition “relevant Minister”, paragraph (d)—	5
<i>omit.</i>	6
7. Section 13(2), ‘or warden’—	7
<i>omit.</i>	8
 MINERAL RESOURCES ACT 1989	9
 1. Section 5, definition “warden”—	10
<i>omit.</i>	11
 2. Sections 28(1), 38(1), 39(4), 40, 41(1), 42, 53(6)(b), 64(8), 70(1) to (3), 72(1), 75, 76, 77(1) to (7), 78(1), (2) and (5), 79(1), 80, 81(1)(p), (2) and (4)(b), 83(3) to (5) and (9), 85(1)(a), (2), (5), (6), (9) and (11) to (13), 87(1), 93(3)(a), 105(5), 107(4) and (5), 116(1) and (2), 117(4), 118, 119, 120, 125(3), (5), (6), (8) and (9)(a)(ii), 145(1), 162(3), 174(1) to (3), 191(1), 222(1) to (3), 250(4) to (7), 259(1) to (3), 264(7), 265(1), 267, 268(1) to (9), 269(1), 271(1)(c), 272, 279(1)(a) and (2), 279(5) (first and third mentions), 281, heading, 281(1), (2) and (5) to (7), 283(1), 299(3), 309(9), 317(3), (5), (6), (8) and (9)(a)(ii), 380 (third and fourth mentions), 381, heading, 406(1) to (7) and 409(1), (2) and (6), ‘Wardens Court’—	12
<i>omit, insert—</i>	23
‘tribunal’.	24

SCHEDULE 3 (continued)

3. Section 41(1)(c)—	1
<i>omit.</i>	2
4. Sections 70, 77, 174, 222, 259, 380 and 406, headings, ‘Wardens Court’—	3
<i>omit, insert—</i>	4
‘Tribunal’.	5
	6
5. Section 77(2)—	7
<i>omit.</i>	8
6. Section 77(3) to (8)—	9
<i>renumber as section 77(2) to (7).</i>	10
7. Sections 77(8), 250(7), 252(10), 264(7), 268(8), 269, 270, 272(2), 364(1) and (2), 364(4) (first mention), 378(1) and (2), 380(1), 406(4) and 409(2) and (6), ‘warden’—	11
<i>omit, insert—</i>	12
‘tribunal’.	13
	14
	15
8. Section 78, heading, ‘Wardens Court’s’—	16
<i>omit, insert—</i>	17
‘Tribunal’s’.	18
9. Sections 78(3) and (4), 268(10) and (11), 363(1) and (3), and 381(1), ‘A Wardens Court’—	19
<i>omit, insert—</i>	20
‘The tribunal’.	21
	22

SCHEDULE 3 (continued)

10. Sections 85(7), 116(3), 162(2), 281(3), 363(2)(first and second mentions), 363(7) and 404(c) and (d), ‘a Wardens Court’—	1
	2
<i>omit, insert—</i>	3
‘the tribunal’.	4
11. Section 85(10), from ‘The’ to ‘determination’—	5
<i>omit, insert—</i>	6
‘The tribunal’s determination’.	7
12. Sections 86 and 282, headings, ‘Wardens Court’s’—	8
<i>omit, insert—</i>	9
‘tribunal’s’.	10
13. Sections 86(1) and 282(1), ‘a Wardens Court’—	11
<i>omit, insert—</i>	12
‘the tribunal (the “tribunal at first instance”)’.	13
14. Sections 86(1), (4), (5), (6) and (8) and 282(1), (4), (5), (6) and (8), ‘Land Court’—	14
	15
<i>omit, insert—</i>	16
‘tribunal (appeal)’.	17
15. Section 86(2)(a) and 282(2)(a), ‘Land Court registry’—	18
<i>omit, insert—</i>	19
‘tribunal’.	20

SCHEDULE 3 (continued)

16. Section 86(2)(c) and 282(2)(c), ‘that court’—	1
<i>omit, insert—</i>	2
‘the tribunal’.	3
17. Sections 86(3) and 282(3)—	4
<i>omit.</i>	5
18. Sections 86(5) and (6) and 282 (5) and (6), ‘the Wardens Court’—	6
<i>omit, insert—</i>	7
‘the tribunal at first instance’.	8
19. Sections 86(7) and 282 (7), ‘a Wardens Court’—	9
<i>omit, insert—</i>	10
‘the tribunal at first instance’.	11
20. Sections 86(7) and 282(7), ‘A Land Court’—	12
<i>omit, insert—</i>	13
‘The tribunal (appeal)’.	14
21. Sections 86 and 282, subsections (4) to (8)—	15
<i>renumber</i> as subsections (3) to (7).	16
22. Sections 86 and 282—	17
<i>insert—</i>	18
‘(8) In this section—	19
“tribunal (appeal)” means the tribunal constituted in the way required	20

SCHEDULE 3 (continued)

under the <i>Land and Resources Tribunal Act 1998</i> for an appeal under this section.’.	1 2
23. Sections 99(2)(c), 100(b), 101(2) to (4), 154(2)(c), 155(b), 156(2) to (4), 201(2)(c), 202(b), 203(2) to (4), 303(2)(c), 304(b) and 305(2) to (4), ‘Wardens Court or another court of competent jurisdiction’—	3 4 5
<i>omit, insert—</i>	6
‘tribunal’.	7
24. Section 101(2), 156(2), 203(2), 305(2) and 409(1), ‘plaint’—	8
<i>omit, insert—</i>	9
‘application’.	10
25. Sections 101(3) (second mention), 156(3) (second mention), 203(3) (second mention), 259(3), 268(9), 305(3) (second mention) and 381(1), ‘court’—	11 12 13
<i>omit, insert—</i>	14
‘tribunal’.	15
26. Section 119(1)(c)—	16
<i>omit.</i>	17
27. Sections 194A and 278A, headings, ‘Land Court’s’—	18
<i>omit, insert—</i>	19
‘Tribunal’s’.	20

SCHEDULE 3 (continued)

28. Sections 194A(1) and (2) and 278A(1) and (2) , ‘Land Court’—	1
<i>omit, insert—</i>	2
‘tribunal’.	3
29. Section 210(10), ‘and may be recovered by action in a Wardens Court’—	4
<i>omit.</i>	5
	6
30. Section 210(11), ‘to the Wardens Court’—	7
<i>omit.</i>	8
31. Section 268(2)—	9
<i>omit.</i>	10
32. Section 268(3) to (11)—	11
<i>renumber</i> as section 268(2) to (10).	12
33. Section 269, heading, ‘Warden’s’—	13
<i>omit, insert—</i>	14
‘Tribunal’s’.	15
34. Sections 269(1)(d) and (5), 270(1) and 406(6), ‘warden’s’—	16
<i>omit, insert—</i>	17
‘tribunal’s’.	18

SCHEDULE 3 (continued)

35. Sections 271(1), 392 and 409(5), ‘a warden’—	1
<i>omit, insert—</i>	2
‘the tribunal’.	3
36. Section 279(5)(b), ‘warden, or as the case may be, the Wardens Court’—	4
<i>omit, insert—</i>	5
‘tribunal’.	6
37. Section 281(6), ‘or the Land Court on appeal’—	7
<i>omit.</i>	8
38. Section 328(2), (5)(b) and (9), ‘Wardens Court’—	9
<i>omit, insert—</i>	10
‘court’.	11
39. Section 333, ‘in the Wardens Court or other court of competent jurisdiction’—	12
<i>omit, insert—</i>	13
‘as a debt’.	14
40. Section 339(3)—	15
<i>omit.</i>	16
41. Part 10, division 2, heading—	17
<i>omit, insert—</i>	18
‘ <i>Division 2—The tribunal</i> ’.	19
	20
	21

SCHEDULE 3 (continued)

42. Sections 344 to 362—	1
<i>omit.</i>	2
43. Section 363(2)(j)—	3
<i>omit.</i>	4
44. Section 363(4) to (6)—	5
<i>omit.</i>	6
45. Section 363(7)—	7
<i>renumber</i> as section 363(4).	8
46. Section 364(1), ‘of a Warden’s Court’—	9
<i>omit, insert—</i>	10
‘, under this Act, of the tribunal’.	11
47. Section 364(3)—	12
<i>omit, insert—</i>	13
‘(3) On the giving of the advice under subsection (2), the tribunal may	14
make any order it could have made had the application been made in its	15
presence.’.	16
48. Section 364(4), words after ‘mining registrar’ (second mention)—	17
<i>omit, insert—</i>	18
‘must, as soon as practicable, give each party a copy of the order.’.	19

 SCHEDULE 3 (continued)

49. Section 364(5)—	1
<i>omit, insert—</i>	2
‘(5) The order must state the day and place that the order was made.’.	3
50. Sections 365 to 369—	4
<i>omit.</i>	5
51. Sections 371 to 377—	6
<i>omit.</i>	7
52. Section 378(1), ‘before a Wardens Court’—	8
<i>omit, insert—</i>	9
‘, under this Act, before the tribunal’.	10
53. Section 378(1), ‘of the court of appeal’—	11
<i>omit, insert—</i>	12
‘on the appeal’.	13
54. Section 378(3), ‘warden or the Wardens Court’—	14
<i>omit, insert—</i>	15
‘tribunal’.	16
55. Section 378(3), ‘of the court on appeal’—	17
<i>omit, insert—</i>	18
‘on the appeal’.	19

 SCHEDULE 3 (continued)

56. Section 378(5) and (6)—	1
<i>omit.</i>	2
57. Section 379—	3
<i>omit.</i>	4
58. Section 380, ‘by a Wardens Court of a plaintiff’—	5
<i>omit, insert—</i>	6
‘for a proceeding, under this Act, in the tribunal’.	7
59. Section 382—	8
<i>omit.</i>	9
60. Part 10, division 3—	10
<i>omit.</i>	11
61. Sections 393(1)(a), 399(2) and 401, ‘warden’—	12
<i>omit, insert—</i>	13
‘tribunal’.	14
62. Section 404, heading, ‘warden’—	15
<i>omit, insert—</i>	16
‘bailiff’.	17
63. Sections 404(a), 411(1) and (2) and 413(2) and (3), ‘warden,’—	18
<i>omit.</i>	19

SCHEDULE 3 (continued)

64. Section 409(7), ‘appropriate court’—	1
<i>omit, insert—</i>	2
‘tribunal’.	3
65. Section 412(2)—	4
<i>omit, insert—</i>	5
‘(2) A proceeding for an offence against this Act may be instituted in a summary way under the <i>Justices Act 1886</i> .’.	6 7
66. Section 412(3), words from ‘by proceedings’—	8
<i>omit, insert—</i>	9
‘as a debt.’.	10
67. Section 412(4)—	11
<i>omit.</i>	12
68. Section 412(5)—	13
<i>renumber</i> as section 412(4).	14
69. Section 417(2)(i), ‘wardens,’—	15
<i>omit.</i>	16
70. Section 417(2)(l)—	17
<i>omit.</i>	18
71. Section 417(2)(m) to (p)—	19
<i>renumber</i> as section 417(2)(l) to (o).	20

SCHEDULE 3 (continued)

NATIVE TITLE (QUEENSLAND) ACT 1993

- | | |
|---|---|
| | 1 |
| 1. Section 4, definition “Wardens Court”— | 2 |
| <i>omit.</i> | 3 |
| 2. Section 4— | 4 |
| <i>insert—</i> | 5 |
| ‘ “tribunal” means the Land and Resources Tribunal.’. | 6 |
| 3. Section 153(2)(a)— | 7 |
| <i>omit, insert—</i> | 8 |
| ‘(a) that the tribunal becomes a recognised State/Territory body; and’. | 9 |

SCHEDULE 4	1
DICTIONARY	2
section 3	3
“appellate body” see section 67.	4
“appointed non-presiding member” see section 15(4).	5
“Commonwealth Native Title Act” means the <i>Native Title Act 1993</i> (Cwlth).	6 7
“decision” , of the tribunal, includes the following of the tribunal—	8
(a) determination;	9
(b) judgment;	10
(c) recommendation.	11
“deputy president” means a deputy president of the tribunal.	12
“deputy registrar” means a deputy registrar of the tribunal.	13
“deputy registrar (additional office)” see section 33(2)(b).	14
“deputy registrar (tribunal)” see section 33(2)(a).	15
“indigenous issues referee” see section 16(2)(c).	16
“Judges Pensions Act” means the <i>Judges (Pensions and Long Leave) Act 1957</i> .	17 18
“Land Tribunal” means—	19
(a) the Land Tribunal established under the <i>Aboriginal Land Act 1991</i> ; or	20 21
(b) the Land Tribunal established under the <i>Torres Strait Islander Land Act 1991</i> .	22 23
“Land Court non-presiding member” see section 15(2).	24
“Land Tribunal non-presiding member” see section 15(3).	25
“mediation referee” see section 16(2)(c).	26

SCHEDULE 4 (continued)

“members”, of the tribunal, see section 6.	1
“mining referee” see section 16(2)(c).	2
“mining tenure” means a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease under the <i>Mineral Resources Act 1989</i> .	3 4 5
“native title notification party” see the <i>Mineral Resources Act 1989</i> , section 421.	6 7
“native title (mining) provisions” means the <i>Mineral Resources Act 1989</i> , parts 12 to 18.	8 9
“NNTT” means the National Native Title Tribunal established under the Commonwealth Native Title Act.	10 11
“NNTT member” means—	12
(a) a member of the NNTT; and	13
(b) for a proceeding, means a person designated under section 40(5) as the NNTT member for the proceeding.	14 15
“NNTT panel” see section 39(2)(b), (c) and (d).	16
“non-native title (mining) provisions” means the <i>Mineral Resources Act 1989</i> , other than parts 12 to 18.	17 18
“non-presiding member” see section 15(1).	19
“panel” means panel of the tribunal.	20
“president” means the president of the tribunal.	21
“presiding members”, of the tribunal, see section 7.	22
“Public Service Act” means the <i>Public Service Act 1996</i> .	23
“referee non-presiding member” see section 15(5).	24
“registrar” means the registrar of the tribunal.	25
“rules” means the rules for the practices and procedures of the tribunal made by the Governor in Council under this Act.	26 27

SCHEDULE 4 (continued)

- “senior presiding member”**, for a proceeding, means the person who— 1
- (a) under section 40(3), is the senior presiding member for the 2
proceeding; or 3
 - (b) under section 40(4), is designated as the senior presiding member 4
for the proceeding. 5
- “standard panel”** see section 39(2)(a). 6
- “tribunal”** means the Land and Resources Tribunal established under this 7
Act. 8
- “tribunal hearing”** means the hearing for a proceeding before the tribunal. 9

10