

Queensland



TORRES STRAIT ISLANDER LAND ACT 1991

**Reprinted as in force on 2 October 1998
(includes amendments up to Act No. 30 of 1998)**

Warning—see last endnote for uncommenced amendments

Reprint No. 4

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Information about this reprint

This Act is reprinted as at 2 October 1998. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Queensland



**TORRES STRAIT ISLANDER LAND ACT
1991**

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	8
3	Definitions	8
4	Torres Strait Islanders particularly concerned with land etc.	12
5	Meaning of “native title interests”	12
6	Crown bound	12
PART 2—BASIC CONCEPTS		
<i>Division 1—Torres Strait Islanders and their customs</i>		
7	Meaning of Torres Strait Islander	13
8	Meaning of Island custom	13
<i>Division 2—Torres Strait Islander land</i>		
9	Meaning of Torres Strait Islander land	13
<i>Division 3—Transferable and transferred land</i>		
10	Meaning of transferable and transferred land	14
11	Lands that are transferable lands	14
12	DOGIT land	14
13	Torres Strait Islander reserve land	15
<i>Division 4—Claimable and granted land</i>		
14	Meaning of claimable and granted land	15
15	Lands that are claimable lands	16
16	Lands that are available Crown land—general	16
17	Beds and banks of watercourses and lakes	17
18	Tidal land	17

Torres Strait Islander Land Act 1991

19	Meaning of city or town land	17
20	Meaning of township land	17
21	National parks	18
22	Lands that are not available Crown land	18
23	Torres Strait area	18
	<i>Division 5—Application of laws to Torres Strait Islander land</i>	
24	Application of laws	18
	PART 3—GRANT OF TRANSFERABLE LAND AS TORRES STRAIT ISLANDER LAND	
	<i>Division 1—Grant of land</i>	
25	Deeds of grant to be prepared	19
26	Minister to appoint trustees	19
27	Minister to act as soon as possible	20
28	Authority to grant fee simple in transferable land	20
29	Inclusion of additional areas in deed of grant	21
30	Deed of grant takes effect on delivery	21
31	Existing interests	21
32	Interests to be endorsed on deed	22
33	Cancellation of deed of grant in trust	22
34	Registrar of titles must take action etc. to resolve difficulties	23
35	Land Court may resolve difficulties	23
	<i>Division 2—Dealing with transferred land</i>	
36	Permitted dealings with transferred land	24
37	Other dealings void	25
38	No resumption of transferred land etc.	25
	<i>Division 3—Reservations</i>	
39	Reservations of minerals and petroleum	26
40	Reservations of forest products and quarry material etc.	26
	PART 4—CLAIMS FOR CLAIMABLE LAND	
	<i>Division 1—Requirements for claims</i>	
41	Duly made claims	27
42	Who may make a claim	27
43	Grounds on which claim may be made	27

44	How claim is to be made	28
45	Time limit for making of claims	28

Division 2—Determination of claims

46	Registrar to determine whether claim duly made	28
47	Tribunal to notify making of claims	29
48	Joint hearing of claims	30
49	Repeat claims	31
50	Establishment of claim on ground of customary affiliation	31
51	Establishment of claim on ground of historical association	32
52	Establishment of claim on ground of economic or cultural viability	32
53	Claim may be established for only part of land claimed	32
54	Claim may be established on more than 1 ground	32
55	Time at which it is to be determined whether land is claimable land	33
56	Amendment of claim	33
57	Recommendation to Minister	33
58	Resolution of conflicting claims	34
59	Notification of parties	35

**PART 5—GRANT OF CLAIMABLE LAND AS TORRES STRAIT
ISLANDER LAND**

Division 1—Grant of land

60	Deeds of grant to be prepared	35
61	Leases to be prepared	36
62	Minister to appoint trustees	37
63	Authority to grant fee simple in, or lease of, claimable land	38
64	Inclusion of additional areas in deed of grant	38
65	Signing of lease etc.	38
66	Deed of grant takes effect on delivery	39
67	Lease commences on delivery	39
68	Existing interests	40
69	Interests to be endorsed on deed	40
70	Cancellation of existing deed of grant	40
71	Registrar of titles must take action etc. to resolve difficulties	41
72	Land Court may resolve difficulties	41

<i>Division 2—Dealing with granted land</i>	
73	Permitted dealings with granted land 42
74	Other dealings void 43
75	No resumption of granted land etc. 43
76	Devolution of granted land 44
<i>Division 3—Reservations</i>	
77	Reservations of minerals and petroleum 45
78	Reservations of forest products and quarry material etc. 45
<i>Division 4—Access to coastal land</i>	
79	Rights of access preserved 46
<i>Division 5—National parks</i>	
80	National park subject to lease to State etc. 46
PART 6—OCCUPATION AND USE OF FORMER CROWN LAND BY THE CROWN	
81	Crown’s use of Islander land preserved 48
82	No rent payable by Crown 48
83	Access to land used by Crown 48
PART 7—MINING	
84	Application of Mineral Resources Act 49
85	Royalties in relation to mining on Torres Strait Islander land 51
PART 8—THE LAND TRIBUNAL	
<i>Division 1—Establishment and membership</i>	
86	Land Tribunal 52
87	Appointment of members 52
88	Qualifications for appointment 52
89	Term of appointment 53
90	Terms and conditions of appointment 53
91	Preservation of rights 53
92	Leave of absence 54
93	Resignation 54
94	Disclosure of interests 54
95	Termination of appointment 55
96	Acting chairperson 55

Division 2—Organisation of tribunal

97	Arrangement of business	55
98	Constitution of tribunal	56
99	Member presiding	57
100	Member of tribunal ceasing to be available	57
101	Sitting places	58

Division 3—Conduct of proceedings before tribunal

102	Parties to proceeding before tribunal	58
103	Tribunal to determine who are interested persons	58
104	Representation before tribunal	58
105	Procedure of tribunal	59
106	Conferences	60
107	Hearings to be in public except in special circumstances	60
108	Opportunity to make submissions	61
109	Particular powers of tribunal	62
110	Manner in which questions to be decided	62
111	Power of tribunal to dismiss claim or strike out party	63
112	General powers	63
113	Reasons to be given by tribunal	63
114	Appeals to Land Appeal Court from decisions of tribunal	63
115	Reference of questions of law to Land Appeal Court	65
116	Evidence and other findings in other proceedings	65
117	Protection of members etc.	66
118	Continuing authority of member	66
119	Failure of witness to attend	66
120	Refusal of witness to be sworn or to answer questions	67
121	Obstructing tribunal etc.	67
122	Allowances for witnesses	67

Division 4—Miscellaneous

123	Management of administrative affairs of tribunal	68
124	Staff of tribunal employed under Public Service Act	68
125	Consultants to tribunal	68

126	Annual report	68
127	Delegation of powers by chairperson	69

PART 9—MISCELLANEOUS

128	Creation of interests in transferable and claimable land	69
129	Rights of access to interests preserved	70
130	Persons and bodies representing Crown	71
131	Delegation by Minister	71
132	Delegation by land claims registrar	71
133	Amendment of description of land	71
134	Survey costs etc. to be paid by State	72
134A	Application of Financial Administration and Audit Act 1977	72
134B	Approval of forms	72
135	Regulations	72

ENDNOTES

1	Index to endnotes	74
2	Date to which amendments incorporated	74
3	Key	75
4	Table of earlier reprints	75
5	Tables in earlier reprints	76
6	List of legislation	76
7	List of annotations	77
8	Tables of renumbered provisions	81
9	Provisions that have not commenced and are not incorporated into reprint	86

TORRES STRAIT ISLANDER LAND ACT 1991

[as amended by all amendments that commenced on or before 2 October 1998]

**An Act providing for the grant, and the claim and grant, of land as
Torres Strait Islander land, and for other purposes**

WHEREAS—

1. Before European settlement land in what is now the State of Queensland was occupied, used and enjoyed by Torres Strait Islanders in accordance with Island custom.

2. Land is of spiritual, social, historical, cultural and economic importance to Torres Strait Islanders.

3. After European settlement many Torres Strait Islanders maintained their ancestors' customary affiliation with particular areas of land.

4. Some Torres Strait Islanders have a historical association with particular areas of land based on them or their ancestors having lived on or used the land or neighbouring land.

5. Some Torres Strait Islanders have a requirement for land to ensure their economic or cultural viability.

6. Some land has been set aside for Torres Strait Islander reserves or for the benefit of Torres Strait Islanders and deeds of grant in trust are held on behalf of certain Torres Strait Islanders.

7. The Parliament is satisfied that Torres Strait Islander interests and responsibilities in relation to land have not been adequately and appropriately recognised by the law and that this has contributed to a general failure of previous policies in relation to Torres Strait Islanders.

8. The Parliament is further satisfied that special measures need to be enacted for the purpose of securing adequate advancement of the interests and responsibilities of Torres Strait Islanders and to rectify the consequences of past injustices.

9. It is, therefore, the intention of the Parliament to make provision, by the special measures enacted by this Act, for the adequate and appropriate recognition of the interests and responsibilities of Torres Strait Islanders in relation to land and thereby to foster the capacity for self-development, and the self-reliance and cultural integrity, of Torres Strait Islanders.

PART 1—PRELIMINARY

Short title

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

Definitions

3. In this Act—

“**Aboriginal group**” means a group of Aboriginal people within the meaning of the *Aboriginal Land Act 1991*.

“**ancestor**” includes an ancestor under Island custom.

“**available Crown land**” has the meaning given by section 16.

“**bed and banks**” has the meaning given by the *Water Resources Act 1989*, section 2.

“**city or town land**” has the meaning given by section 19.

“**claimable land**” has the meaning given by section 14.

“**coast**” has the meaning given by the *Beach Protection Act 1968*, section 3.

“**Crown**”, in relation to the State or the Commonwealth, includes a person or body that represents the Crown.

“**descendant**” includes a descendant under Island custom.

“DOGIT land” has the meaning given by section 12.

“enactment day” means the day on which this Act receives the Royal Assent.

“forest products” means all vegetable growth and material of vegetable origin (whether living or dead and whether standing or fallen).

“granted land” has the meaning given by section 14.

“group” includes a community.

“group of Torres Strait Islanders” includes—

- (a) the descendants of the group; and
- (b) if there is only 1 surviving member of a group of Torres Strait Islanders—that person.

“interest”, in relation to land, means—

- (a) a legal or equitable estate or interest in the land; or
 - (b) a right, power or privilege over, or in relation to, the land;
- and includes—
- (c) a permit or licence issued in relation to the land; and
 - (d) a mining interest.

“interested person”, in relation to a claim under this Act for claimable land, means a person whose interests (whether pecuniary or otherwise) could be affected by the grant of the land as Torres Strait Islander land because of the claim.

“Island custom” has the meaning given by section 8.

“lake” has the meaning given by the *Water Resources Act 1989*, section 2.

“land claims registrar” means the chief executive of the department.

“Land Tribunal” means the Land Tribunal established for the purposes of this Act.

“land trust” means an entity formed through the incorporation, under a regulation, of the grantees of Torres Strait Islander land.

“management plan”, in relation to a national park, means a statement of specific objectives and policies relating to the planning, use,

development and management of the national park.

“mineral” has the meaning given by the *Mineral Resources Act 1989*, section 5.

“mining interest” means a lease, claim or other interest in, or a permit, licence or other right in relation to, land that is granted under—

- (a) the *Mineral Resources Act 1989* or the *Petroleum Act 1923*; or
- (b) another Act relating to mining for minerals, petroleum or natural gas.

“national park” means an area dedicated under the *Nature Conservation Act 1992* as a national park.

“native title interests” has the meaning given by section 5 (Meaning of “native title interests”).

“natural gas” has the meaning given by the *Petroleum Act 1923*, section 2.

“non-presiding member”, in relation to the Land Tribunal, means a member of the tribunal other than the chairperson or a deputy chairperson.

“petroleum” has the meaning given by the *Petroleum Act 1923*, section 2.

“presiding member”, in relation to the Land Tribunal, means the chairperson or a deputy chairperson of the tribunal.

“quarry material” has the meaning given by the *Forestry Act 1959*, section 5.

“registrar of titles”, for a matter for which the chief executive under the *Land Act 1994* has responsibility, means the chief executive.

“responsibilities”, in relation to land, include—

- (a) responsibilities under Island custom for the land, including, for example, responsibilities for areas that are of particular significance under Island custom; and
- (b) responsibilities for the land that may affect neighbouring land, including, for example, responsibilities in relation to fire and vermin control.

“road” means a surveyed or unsurveyed road that is, under an Act, dedicated, notified or declared to be a road for public use.

“**sea**” includes waters within the ebb and flow of the tide.

“**tidal land**” means land that is ordinarily covered and uncovered by the flow and ebb of the tide at spring tides.

“**Torres Strait area**” has the meaning given by section 23.

“**Torres Strait Island council**” means an Island council constituted under the *Community Services (Torres Strait) Act 1984*.

“**Torres Strait Islander**” has the meaning given by section 7.

“**Torres Strait Islander land**” has the meaning given by section 9.

“**Torres Strait Islander land claim association**” means an entity formed through the incorporation, under a regulation, of—

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

“**Torres Strait Islander lease**” means a lease prepared under section 61.

“**Torres Strait Islander (non-transferred land) lease**” means a lease prepared under section 61(1)(d).

“**Torres Strait Islander reserve land**” has the meaning given by section 13.

“**Torres Strait Islander (transferred land) lease**” means a lease prepared under section 61(1)(c).

“**Torres Strait treaty**” has the meaning given by the *Torres Strait Fisheries Act 1984*, section 6(1), being the treaty a copy of which is set out in the schedule to that Act.

“**township land**” has the meaning given by section 20.

“**transferable land**” has the meaning given by section 10.

“**transferred land**” has the meaning given by section 10.

“**tribunal**” means the Land Tribunal.

“**watercourse**” has the meaning given by the *Water Resources Act 1989*, section 2.

Torres Strait Islanders particularly concerned with land etc.

4.(1) For the purposes of this Act, a Torres Strait Islander is particularly concerned with land if the Torres Strait Islander—

- (a) has a particular connection with the land under Island custom; or
- (b) lives on or uses the land or neighbouring land.

(2) For the purposes of this Act, Torres Strait Islanders are particularly concerned with land if—

- (a) they are members of a group that has a particular connection with the land under Island custom; or
- (b) they live on or use the land or neighbouring land.

Meaning of “native title interests”

5.(1) In this Act—

“**native title interests**” means the communal, group or individual rights and interests of Torres Strait Islanders in land or waters if—

- (a) the rights and interests are possessed under Island custom; and
- (b) the Torres Strait Islanders, by Island custom, have a connection with the land or waters; and
- (c) the rights and interests are recognised by the common law of Australia.

(2) Without limiting subsection (1), rights and interests in that subsection include hunting, gathering or fishing rights and interests.

Crown bound

6. This Act binds the Crown.

PART 2—BASIC CONCEPTS

Division 1—Torres Strait Islanders and their customs

Meaning of Torres Strait Islander

7. A Torres Strait Islander is a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands.

Meaning of Island custom

8. Island custom, known in the Torres Strait as Ailan Kastom, is the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

Division 2—Torres Strait Islander land

Meaning of Torres Strait Islander land

9.(1) Torres Strait Islander land is—

- (a) transferred land, that is, transferable land that is granted under this Act for the benefit of Torres Strait Islanders without a claim being made under this Act for the land; or
- (b) granted land, that is—
 - (i) claimable land that has been claimed by, and is granted under this Act to, a Torres Strait Islander or a group of Torres Strait Islanders; or
 - (ii) claimable land that, under section 64, has been included in a deed of grant or lease.

(2) Torres Strait Islander land also includes land that is the subject of a Torres Strait Islander lease.

(3) Torres Strait Islander land includes land that was transferred land and has subsequently become granted land.

Division 3—Transferable and transferred land

Meaning of transferable and transferred land

10.(1) Transferable land is land that is to be granted under part 3 for the benefit of Torres Strait Islanders without a claim being made under this Act for the land.

(2) Transferred land is land that is granted under part 3 for the benefit of Torres Strait Islanders without a claim being made under this Act for the land.

Lands that are transferable lands

11. The following lands are transferable lands—

- (a) DOGIT land;
- (b) Torres Strait Islander reserve land;
- (c) available Crown land declared by regulation to be transferable land.

DOGIT land

12. DOGIT land is land (other than a road) that, at the beginning of the enactment day, is—

- (a) granted in trust under the *Land Act 1962* for the benefit of Torres Strait Islander inhabitants or for the purpose of a Torres Strait Islander reserve; or
- (b) within the external boundaries of an area of such land and—
 - (i) is reserved and set apart for, or dedicated to, a public purpose under the *Land Act 1962*; or
 - (ii) is land that has become Crown land by way of resumption for a public purpose within the meaning of the *Land*

Torres Strait Islander Land Act 1991

Act 1962; or

- (iii) is subject to a lease granted by the Crown under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*; or
- (iv) is subject to a special lease granted by the Crown under the *Land Act 1962*;

and includes land within those external boundaries that has, since the enactment day, ceased to be a road if the land is declared by regulation to be transferable land.

Torres Strait Islander reserve land

13. Torres Strait Islander reserve land is land that, at the beginning of the enactment day, is—

- (a) reserved and set apart under the *Land Act 1962* for a Torres Strait Islander reserve or for the benefit of Torres Strait Islander inhabitants; or
- (b) within the external boundaries of an area of such land and subject to a lease granted by the Crown under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*;

and includes land reserved and set apart under the *Land Act 1962* for any other public purpose if the land is declared by regulation to be land that was, or included land that was, at the beginning of the enactment day, being used as a Torres Strait Islander reserve or for the benefit of Torres Strait Islanders.

Division 4—Claimable and granted land**Meaning of claimable and granted land**

14.(1) Claimable land is land that may be claimed by, and granted under this Act to, a Torres Strait Islander or a group of Torres Strait Islanders.

(2) Granted land is—

- (a) claimable land that has been claimed by, and granted under this

Act to, a Torres Strait Islander or a group of Torres Strait Islanders; or

- (b) claimable land that, under section 64, has been included in a deed of grant or lease.

Lands that are claimable lands

15.(1) Subject to subsection (3), claimable land is—

- (a) available Crown land declared by regulation to be claimable land for this Act; or
- (b) Torres Strait Islander land that is transferred land.

(2) A declaration under subsection (1)(a) may describe the available Crown land concerned in any way, including, for example, describing the land as land included in a stated area of the State.

(3) A regulation may declare that an area of transferred land is not claimable land.

(4) A declaration under subsection (3) may be made only if—

- (a) the land is primarily used or occupied by Torres Strait Islanders for residential or community purposes; or
- (b) the Minister has consulted with Torres Strait Islanders particularly concerned with the land and a substantial majority of the Torres Strait Islanders are opposed to the land being claimable land.

Lands that are available Crown land—general

16.(1) Subject to sections 17 and 18, available Crown land is land in which no person other than the Crown has an interest, other than—

- (a) land outside the Torres Strait area; or
- (b) city or town land or township land; or
- (c) a reserve under the *Land Act 1994*; or
- (d) land that is set apart and declared as a State forest or timber reserve under the *Forestry Act 1959*; or
- (e) a road; or

- (f) land that has become Crown land if a person has a right, other than under this Act, against the Crown to the grant of an interest in that land.

(2) In this section—

“**interest**” means a legal or equitable interest in the land, but does not include native title interests or a mining interest.

Beds and banks of watercourses and lakes

17. Available Crown land includes the bed and banks of a watercourse or lake only if the bed and banks are—

- (a) within the external boundaries of land that is otherwise available Crown land; and
- (b) capable of being owned in fee simple by a person other than the Crown.

Tidal land

18.(1) Available Crown land includes tidal land only if the particular tidal land is declared by regulation to be available Crown land.

(2) Subject to subsection (1), this Act applies to tidal land as if it were not tidal land.

Meaning of city or town land

19.(1) Subject to subsection (2), city or town land is land that is, at the beginning of the enactment day, within the boundaries of a city or town constituted under the *Local Government Act 1993*.

(2) A regulation may change the boundaries of a city or town.

(3) A regulation under subsection (2) has effect only for this Act.

Meaning of township land

20. A regulation may declare that land is township land for this Act.

National parks

21. To allay any doubt, it is declared that available Crown land includes any national park.

Lands that are not available Crown land

22. To allay any doubt, it is declared that the following lands are not available Crown lands—

- (a) the waters of the sea, and the seabed (other than tidal land that is available Crown land under a declaration under section 18);
- (b) freehold land;
- (c) land subject to a permit, licence or lease under the *Land Act 1994*.

Torres Strait area

23.(1) The Torres Strait area is—

- (a) the area the boundaries of which are described in the Torres Strait treaty, annex 9; and
- (b) any other area declared by regulation to be included in the Torres Strait area.

(2) An area declared under subsection (1)(b) may be described in any way.

Division 5—Application of laws to Torres Strait Islander land**Application of laws**

24.(1) To allay any doubt, it is declared that, except as provided by this Act or any other Act, the laws of the State apply to Torres Strait Islander land, persons and things on Torres Strait Islander land, and acts and things done on Torres Strait Islander land, to the same extent, and in the same way, as if the land were not Torres Strait Islander land.

(2) Without limiting subsection (1), to allay any doubt it is declared that this Act has effect subject to the following Acts—

- (a) *Fisheries Act 1994*;
- (b) *Torres Strait Fisheries Act 1984*.

PART 3—GRANT OF TRANSFERABLE LAND AS TORRES STRAIT ISLANDER LAND

Division 1—Grant of land

Deeds of grant to be prepared

25.(1) The registrar of titles must prepare such deeds of grant in fee simple as the Minister considers necessary and directs over transferable lands.

(2) Transferable land need not be surveyed but may be described in a deed of grant in such manner as the Minister directs, and the registrar of titles must enrol and issue the deed of grant accordingly.

(3) The deeds of grant must show that the land is held by the grantees for the benefit of Torres Strait Islanders and their ancestors and descendants.

(4) The Minister may direct the registrar of titles to specify in a deed of grant responsibilities that Torres Strait Islanders particularly concerned with the relevant land have agreed to assume in relation to the land.

(5) Subsections (2), (3) and (4) have effect despite any other Act or any rule of law or practice.

Minister to appoint trustees

26.(1) The Minister must appoint such persons as the Minister considers necessary to be the grantees, as trustees for the benefit of Torres Strait Islanders, of the land the subject of each deed of grant prepared under section 25.

(2) The Minister may—

- (a) remove or suspend trustees appointed under subsection (1); or

(b) appoint other persons as trustees.

(3) Before exercising powers under this section, the Minister must consult with, and consider the views of, Torres Strait Islanders particularly concerned with the land.

(4) In exercising powers under this section, the Minister must, as far as practicable, act in a way that is consistent with any Island custom applicable to the land concerned.

(5) Despite subsection (4), the Minister may appoint the trustees of transferable land to be the grantees of a deed of grant over the land, or part of the land, if—

- (a) a declaration is in force under section 15(3) in relation to the land; or
- (b) the Minister considers that in all the circumstances it is appropriate to do so.

(6) The *Trusts Act 1973* (“**the Act**”) applies to trusts created for the purposes of this division, and to the trustees of such trusts, only to the extent (if any) that the regulations provide that the Act is to apply and, to the extent that the Act does apply, it applies with such modifications (if any) as are prescribed.

Minister to act as soon as possible

27.(1) The Minister must, as soon as practicable after the commencement of sections 25 and 26, give all necessary directions under section 25, and make all necessary appointments under section 26, in relation to land that is transferable land on the enactment day.

(2) If, under section 11(c) or 13, land becomes transferable land after the enactment day, the Minister must, as soon as practicable after the land becomes transferable land, give all necessary directions under section 25, and make all necessary appointments under section 26, in relation to the land.

Authority to grant fee simple in transferable land

28. The Governor in Council may, under this Act and the *Land Act 1994*, grant transferable land in fee simple.

Inclusion of additional areas in deed of grant

29. An additional area of transferable land may be included in a deed of grant under section 28 if the Minister has consulted with Torres Strait Islanders particularly concerned with the land and a substantial majority of them agree that the additional area should be included in the deed of grant.

Deed of grant takes effect on delivery

30.(1) A deed of grant issued under section 25 takes effect on the delivery of the deed to the grantees.

(2) On delivery of the deed of grant to the grantees, the land the subject of the deed becomes Torres Strait Islander land that is transferred land.

(3) Subsection (1) has effect despite any other Act or any rule of law or practice.

Existing interests

31.(1) If transferable land was, immediately before becoming Torres Strait Islander land under this division, subject to an interest, the interest continues in force.

(2) Without limiting subsection (1), if transferable land was, immediately before becoming Torres Strait Islander land under this division, the subject of—

- (a)** a lease granted by the Crown under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*; or
- (b)** a lease under the *Land Act 1994*;

the grantees of the land are, by operation of this section, substituted for the Crown as a party to the lease.

(3) The terms of a lease mentioned in subsection (2) are not affected by the operation of this section, section 32 or any other provision of this Act and, for the purposes of those terms, the *Land Act 1994* continues to apply to a lease under that Act, with all necessary modifications and such modifications as are prescribed, as if the lease continued to be such a lease and the grantees of the land were the Crown.

(4) In this section—

“**interest**” includes native title interests, but does not include an interest in favour of the State or Commonwealth.

Interests to be endorsed on deed

32.(1) If—

- (a) land the subject of a deed of grant prepared under section 25 is, at the beginning of the enactment day, subject to, or subsequently becomes subject to, an interest (other than an interest in favour of the Crown); and
- (b) the interest is created or registered under the *Land Act 1994*;

the chief executive of the department must, as soon as practicable after being requested so to do by the registrar of titles, give to the registrar the original or an office copy of the instrument under which the interest arose.

(2) Before the registrar of titles issues the deed of grant, the registrar must endorse on the deed, in the proper order of priority—

- (a) the instruments given to the registrar under subsection (1) before the issue of the deed; and
- (b) if the land was previously held under a deed of grant in trust—any existing instruments that were endorsed on the deed of grant in trust.

(3) An instrument endorsed on the deed of grant under subsection (2) has effect as a registered instrument on the deed under the *Land Title Act 1994*.

(4) If the registrar of titles is given notice of the creation of an interest after the issue of the deed of grant, the registrar of titles must make an appropriate note in the register.

Cancellation of deed of grant in trust

33.(1) If—

- (a) a Torres Strait Island council holds title to land under a deed of grant in trust under the *Land Act 1994*; and
- (b) a deed of grant (the “**new deed**”) over the whole or a part of the

land takes effect under section 30;

the deed of grant in trust is cancelled, to the extent of the new deed, by operation of this section.

(2) If the deed of grant in trust is cancelled only in relation to part of the land, the registrar of titles must prepare and issue to the grantees of the deed a deed of grant in trust under the *Land Act 1994* over the remaining part of the land.

(3) The Minister must cause written notice to be given to the registrar of titles of the day of delivery of the new deed to the grantees, and the registrar must note the cancellation of the deed of grant in trust in the register accordingly.

(4) The Torres Strait Island council must, on receipt of written notice by the Minister so to do, deliver the deed of grant in trust to the registrar of titles within such reasonable time as is specified in the notice.

Registrar of titles must take action etc. to resolve difficulties

34. If a difficulty arises in the application of this division by the registrar of titles, the registrar must take such action and give such directions as the registrar considers necessary to resolve the difficulty.

Land Court may resolve difficulties

35.(1) If a difficulty arises in—

- (a) the application of this division to a particular matter; or
- (b) the application, to a particular matter, of a provision of another Act because of the operation of this division;

the Land Court may, on the application of the registrar of titles or an interested person, make such order as it considers proper to resolve the difficulty.

(2) An order made under subsection (1) has effect despite anything contained in this division or in an Act in force immediately before the commencement of this section.

Division 2—Dealing with transferred land**Permitted dealings with transferred land**

36.(1) An interest in transferred land may be transferred, granted or otherwise created by the grantees only in accordance with this section.

(2) Subject to subsections (3) and (5), the grantees of transferred land may—

- (a) grant a lease or licence over the whole or a part of the land to—
 - (i) a Torres Strait Islander particularly concerned with the land;
or
 - (ii) the Crown in right of the State or the Commonwealth; or
 - (iii) another person—
 - (A) for a period of less than 10 years; or
 - (B) with the prior written consent of the Minister; or
- (b) consent to the creation of a mining interest in the land; or
- (c) grant an easement over the land; or
- (d) surrender the whole or any part of the land to the Crown in right of the State.

(3) A lease or licence under subsection (2)(a)(i) must be subject to the condition that an interest may be created under that lease or licence in favour of a person who is not a Torres Strait Islander particularly concerned with the land only if—

- (a) the interest is in favour of the spouse or former spouse of such a Torres Strait Islander or of such a Torres Strait Islander who is deceased; or
- (b) the interest is—
 - (i) for a period of less than 10 years; or
 - (ii) created with the prior written approval of the Minister.

(4) Subject to subsection (5), the grantees of transferred land may enter into an agreement with the Crown in right of the State or the Commonwealth in relation to the getting and sale of forest products or

quarry material above, on and below the land.

(5) The grantees of transferred land must not grant an interest in the land, consent to the creation of a mining interest in the land, or enter into an agreement under subsection (4), unless—

- (a) they have explained to the Torres Strait Islanders particularly concerned with the land the nature, purpose and effect of the proposed grant, consent or agreement; and
- (b) the Torres Strait Islanders are given adequate opportunity to express their views on, and are generally in agreement with, the grant, consent or agreement; and
- (c) they have subsequently given the Torres Strait Islanders notice of not less than 1 month of their intention to make the grant, give the consent or enter into the agreement.

(6) Contravention of subsection (5) does not invalidate the interest or agreement concerned.

Other dealings void

37.(1) A transfer, grant or other creation of an interest in transferred land that is not permitted by section 36 is void.

(2) This section has effect despite any other Act.

No resumption of transferred land etc.

38.(1) An interest in transferred land cannot be resumed, taken or otherwise compulsorily acquired, sold or dealt with except by an Act that expressly provides for the resumption of the land and the payment of just compensation for the land.

(2) Subsection (1) has effect despite any other Act (whether enacted before or after the enactment of this section).

Division 3—Reservations**Reservations of minerals and petroleum**

39. A deed of grant of transferred land must contain a reservation to the Crown of—

- (a) all minerals; and
- (b) all petroleum;

on and below the surface of the land.

Reservations of forest products and quarry material etc.

40.(1) A deed of grant of transferred land may contain a reservation to the State of forest products or quarry material above, on or below the surface of the land only if it is declared by regulation that—

- (a) the forest products or quarry material is of vital State interest; and
- (b) the rights in the forest products or quarry material is reserved to the State.

(2) If a deed of grant of transferred land does not contain a reservation of particular forest products or quarry material above, on or below the land, a regulation may declare that—

- (a) the forest products or quarry material are of vital State interest; and
- (b) rights in the forest products or quarry material are acquired by the Crown.

(3) If a regulation is made under subsection (1) or (2), the grantees of the land are entitled to be paid by the State such reasonable compensation because of the reservation or acquisition as is agreed between the State and the grantees or, failing agreement, as is determined by the Land Court.

(4) Despite subsection (1), a permit, lease, licence, agreement or contract granted or made under the *Forestry Act 1959*, before the day on which land became transferred land, in relation to the getting and selling of forest products or quarry material above, on or below the surface of the land, continues in force as if this section had not been enacted.

PART 4—CLAIMS FOR CLAIMABLE LAND

Division 1—Requirements for claims

Duly made claims

41. A claim for claimable land must comply with the following provisions in order to be duly made—

- (a) section 42 (Who may make a claim);
- (b) section 43 (Grounds on which claim may be made);
- (c) section 44 (How claim is to be made);
- (d) section 45 (Time limit for making of claims).

Who may make a claim

42.(1) A Torres Strait Islander or a group of Torres Strait Islanders may make a claim for an area of claimable land.

(2) A claim may be made by members of a group of Torres Strait Islanders on behalf of those Torres Strait Islanders and other Torres Strait Islanders who are members of the group.

Grounds on which claim may be made

43.(1) A claim under this Act may only be made on 1 or more of the following grounds—

- (a) customary affiliation;
- (b) historical association;
- (c) economic or cultural viability.

(2) Land in a national park may not be claimed on the ground of economic or cultural viability.

(3) Land that was, immediately before becoming claimable land, DOGIT land may not be claimed on the ground of economic or cultural viability.

(4) An individual Torres Strait Islander may make a claim only on the ground of customary affiliation.

How claim is to be made

44. A claim under this Act must—

- (a) be made by written application to the land claims registrar; and
- (b) be in the appropriate form made available by the land claims registrar; and
- (c) include—
 - (i) a description of the land claimed and a map showing clearly the location of the land; and
 - (ii) a statement of the ground on which the claim is made; and
 - (iii) if the claim is made by a group of Torres Strait Islanders—a description of the group; and
 - (iv) a statement of the responsibilities in relation to the land that the claimant or claimants agree to assume if the land is granted because of the claim; and
 - (v) if the claim is made on the ground of economic or cultural viability—a statement of the specific proposal for the use of the land claimed.

Time limit for making of claims

45. A claim under this Act must be made not later than 15 years after the commencement of section 42.

Division 2—Determination of claims

Registrar to determine whether claim duly made

46.(1) If a claim is made to the land claims registrar, the registrar must determine whether the claim appears to be duly made.

(2) If the registrar is satisfied that the claim appears to be duly made, the

registrar must accept the application and refer the claim to the Land Tribunal.

(3) If the registrar is not satisfied, the registrar must refuse to accept the application.

(4) The registrar must notify the claimants, in writing, of his or her decision.

(5) If the registrar refuses to accept the application, the registrar must also notify the claimants, in writing, of his or her reasons for refusing to accept the application.

(6) If the registrar refuses to accept the application, the claimant or claimants may ask the chairperson of the Land Tribunal to decide whether the claim is duly made.

(7) If the chairperson decides that the claim is duly made, the chairperson must direct the registrar to accept the application under subsection (2).

(8) If the chairperson decides that a claim is not duly made, the chairperson must notify the claimant or claimants, in writing, of his or her reasons for refusing to accept the application.

(9) Despite subsection (1), if a recommendation has been made to the Minister under section 57 for a grant in fee simple or for the grant of a lease, another claim may not be duly made over the same land.

(10) Nothing in this section prevents the registrar from accepting an application if—

- (a) a claim (the “**repeat claim**”) has been made to the registrar under section 44 and it appears to the registrar that the land to which the claim relates is completely or partly the same as land that has previously been claimed (the “**previous claim**”); and
- (b) no recommendation was made to the Minister under section 57 about the previous claim.

Tribunal to notify making of claims

47.(1) As soon as practicable after a claim is referred to the Land Tribunal, the tribunal must comply with this section.

(2) The tribunal must cause copies of the application to be made available

for public inspection at offices of the tribunal during ordinary working hours and at such other places as it considers appropriate.

(3) The tribunal must publish notice of the claim in the gazette, a newspaper circulating throughout the State and such regional newspapers as the tribunal considers appropriate.

(4) The tribunal must give notice of the claim, by letter or such other means as it considers more effective, to each person that it is aware is or may be an interested person.

(5) A notice under subsection (3) or (4) must include a statement to the effect that—

- (a) copies of the application are available for public inspection at places, and during times, specified in the notice; and
- (b) interested persons may, within the period specified in the notice, apply to the tribunal to be made a party to the proceeding for the hearing of the claim; and
- (c) any other Torres Strait Islanders may, within that period, make a claim for the whole or part of the land the subject of the claim or for such an area and additional area of claimable land.

(6) The period specified in a notice for the purposes of subsection (5)(a) must be a period of not less than 60 days after the publication of notice of the claim in the gazette.

Joint hearing of claims

48. If—

- (a) a claim (the “**first claim**”) is duly made under this Act by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land; and
- (b) a claim (the “**subsequent claim**”) is duly made under this Act by another Torres Strait Islander or group of Torres Strait Islanders for the whole or a part of the area of claimable land (whether or not an additional area of claimable land is also claimed); and
- (c) the subsequent claim is referred to the Land Tribunal within the period specified in the notice published under section 47 in

relation to the first claim or before the hearing of the first claim has started;

then—

- (d) the first claim and the subsequent claim are to be heard and determined together; and
- (e) if the subsequent claim does not include an additional area of claimable land—section 47 does not apply to the subsequent claim.

Repeat claims

49. If a repeat claim mentioned in section 46(10) has been referred to the Land Tribunal, the tribunal may hear the repeat claim only if a presiding member is satisfied that the repeat claim could be established on 1 or more grounds mentioned in sections 50 to 52 because—

- (a) the basis on which the repeat claim is made is substantially different to the basis on which the previous claim was made; or
- (b) information has become available to the tribunal that was not previously available and, if the information had been available to the tribunal, it may have affected the decision of the tribunal on the previous claim.

Establishment of claim on ground of customary affiliation

50.(1) A claim by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land on the ground of customary affiliation is established if the Land Tribunal is satisfied that the Torres Strait Islander has a connection, or that the members of the group have a common connection, with the land based on spiritual or other associations with, rights in relation to, and responsibilities for, the area of land under Island custom.

(2) In determining the claim, the tribunal must consult with, and consider the views of, any relevant Torres Strait Island council and the persons recognised under Island custom as the relevant elders of Torres Strait Islanders.

Establishment of claim on ground of historical association

51.(1) A claim by a group of Torres Strait Islanders for an area of claimable land on the ground of historical association is established if the Land Tribunal is satisfied that the group has an association with the land based on them or their ancestors having, for a substantial period, lived on or used—

- (a) the land; or
- (b) land in the district or region in which the land is located.

(2) Without limiting subsection (1), the claim may be established whether or not all or a majority of the members of the group have themselves lived on or used such land.

(3) In determining the claim, the tribunal must consult with, and consider the views of, any relevant Torres Strait Island council and the persons recognised under Island custom as the relevant elders of Torres Strait Islanders.

Establishment of claim on ground of economic or cultural viability

52.(1) A claim by a group of Torres Strait Islanders for an area of claimable land on the ground of economic or cultural viability is established if the Land Tribunal is satisfied that granting the claim would assist in restoring, maintaining or enhancing the capacity for self-development, and the self-reliance and cultural integrity, of the group.

(2) In determining the claim, the tribunal must have regard to the proposal made in the claim for the use of the land.

Claim may be established for only part of land claimed

53. A claim by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land may be established for a part only of the land.

Claim may be established on more than 1 ground

54. A claim by a group of Torres Strait Islanders for an area of claimable land may be established on more than 1 ground.

Time at which it is to be determined whether land is claimable land

55. The question whether land claimed under this Act is claimable land is to be determined as at the beginning of the day on which the relevant claim for the land was made to the land claims registrar.

Amendment of claim

56.(1) A claim under this Act may be amended with the leave of the Land Tribunal.

(2) If a claim is amended to include land that was not claimed in the original claim, section 47 applies as if a separate claim had been made for that land and the claim had been referred to the tribunal.

Recommendation to Minister

57.(1) Subject to section 58, if a claim by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land is established, the Land Tribunal must recommend to the Minister—

- (a)** if the claim is established on the ground of customary affiliation or historical association—that the land be granted in fee simple to the Torres Strait Islander or the group; or
- (b)** if the claim is established on the ground of economic or cultural viability—that the land be granted to the group by way of a lease in perpetuity, or a lease for a specified term of years, on specified terms and conditions.

(2) In deciding the terms of a recommendation under subsection (1)(b), the tribunal must have regard to the proposal made in the relevant claim for the use of the land concerned.

(3) When the tribunal makes a recommendation under subsection (1), the tribunal must also make recommendations to the Minister as to the persons who should be appointed to be the grantees of the land as trustees for the benefit of the Torres Strait Islander or group of Torres Strait Islanders concerned.

(4) In making recommendations under subsection (3), the tribunal must, unless it is satisfied that exceptional circumstances exist that require it to do otherwise, act in a manner that is consistent with—

- (a) any Island custom applicable to the land; and
- (b) the views of the Torres Strait Islander or group of Torres Strait Islanders concerned so far as they are not inconsistent with any such Island custom.

(5) When the tribunal makes a recommendation under subsection (1), the tribunal must advise the Minister, in writing, in relation to each of the following matters—

- (a) the number of Torres Strait Islanders who will be advantaged by a grant of the land, and the nature and extent of the advantage that will accrue to them;
- (b) the responsibilities in relation to the land that the Torres Strait Islander or group of Torres Strait Islanders concerned agree to assume if the land is granted because of the claim, and how those responsibilities should be expressed in any deed of grant or lease granted in relation to the land;
- (c) the detriment to persons or communities (including other Torres Strait Islanders and Aboriginal groups) that might result from a grant of the land;
- (d) the effect (if any) that a grant of the land is likely to have on the existing and proposed patterns of land usage in the region of the land.

Resolution of conflicting claims

58.(1) Subject to subsection (2), if claims by 2 or more Torres Strait Islanders, 2 or more groups of Torres Strait Islanders or a combination of Torres Strait Islanders and groups for the same area of claimable land are established on the same ground, the Land Tribunal must recommend to the Minister that the land be granted jointly to the Torres Strait Islanders, the groups or the Torres Strait Islanders and groups.

(2) If more than 1 claim is established and each of the competing claims is established on 1 or more grounds—

- (a) if 1 or more of the claims is established on the ground of customary affiliation—a recommendation must not be made in favour of any other group on the ground of historical association

or on the ground of economic or cultural viability; and

- (b) if 1 or more of the claims is established on the ground of historical association—a recommendation must not be made in favour of any other group on the ground of economic or cultural viability.

Notification of parties

59.(1) If a claim by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land is established on 1 or more grounds, the Land Tribunal must notify each party to the proceeding, in writing—

- (a) that the claim has been so established; and
- (b) of the recommendations (if any) made to the Minister in relation to the claim.

(2) If a claim by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land is not established on 1 or more grounds, the Land Tribunal must notify each party to the proceeding, in writing, that the claim has not been so established.

PART 5—GRANT OF CLAIMABLE LAND AS TORRES STRAIT ISLANDER LAND

Division 1—Grant of land

Deeds of grant to be prepared

60.(1) If—

- (a) the Land Tribunal recommends to the Minister that an area of land be granted in fee simple to a Torres Strait Islander or a group of Torres Strait Islanders; and
- (b) the Minister is satisfied that the land, or a part of the land, should be so granted to the Torres Strait Islander or group of Torres

Strait Islanders;

the Minister must direct the registrar of titles to prepare a deed of grant in fee simple over the land or that part of the land.

(2) The land need not be surveyed but may be described in the deed of grant in such manner as the Minister directs, and the registrar of titles must enrol and issue the deed of grant accordingly.

(3) The deed of grant must show that the land is held by the grantees for the benefit of—

- (a) the Torres Strait Islander and his or her ancestors and descendants; or
- (b) the group of Torres Strait Islanders and their ancestors and descendants.

(4) The deed of grant must specify—

- (a) the ground on which the Land Tribunal recommended that the land be granted; and
- (b) the responsibilities that the Torres Strait Islander or group of Torres Strait Islanders have agreed to assume in relation to the land.

(5) Subsections (2), (3) and (4) have effect despite any other Act or any rule of law or practice.

Leases to be prepared

61.(1) If—

- (a) the Land Tribunal recommends to the Minister that an area of land be granted to a group of Torres Strait Islanders by way of a lease in perpetuity or a lease for a specified term of years; and
- (b) the Minister is satisfied that the land, or a part of the land, should be so granted to the group;

the Minister must—

- (c) if the land is, or is part of, an area of transferred land—direct the registrar of titles to prepare the lease in registrable form, subject to the terms and conditions determined by the Minister; or

Torres Strait Islander Land Act 1991

- (d) if paragraph (c) does not apply—direct the registrar of titles to prepare the lease under the *Land Act 1994*, subject to the terms and conditions determined by the Minister.

(2) In determining the terms and conditions to which the lease is to be subject, the Minister is to have regard to the terms and conditions recommended by the Land Tribunal.

(3) The land need not be surveyed but may be described in the lease in such manner as the Minister directs, and—

- (a) if subsection (1)(c) applies—the registrar of titles is to register the lease accordingly; or
- (b) if subsection (1)(d) applies—the registrar of titles is to cause particulars of the lease to be recorded in the appropriate register maintained under the *Land Act 1994* accordingly.

(4) The lease must—

- (a) show that the land is held by the grantees for the benefit of the group of Torres Strait Islanders and their descendants; and
- (b) specify the specific purpose for which the land is to be used; and
- (c) specify the responsibilities that the group of Torres Strait Islanders have agreed to assume in relation to the land.

(5) Subsections (3) and (4) have effect despite any other Act or any rule of law or practice.

Minister to appoint trustees

62.(1) The Minister must appoint such persons as the Minister considers necessary to be the grantees, as trustees for the benefit of the Torres Strait Islander or group of Torres Strait Islanders concerned, of the land the subject of each deed of grant prepared under section 60 and each lease prepared under section 61.

(2) The Minister may—

- (a) remove or suspend trustees appointed under subsection (1); or
- (b) appoint other persons as trustees.

(3) Before exercising powers under this section, the Minister must

consult with the Torres Strait Islander or group of Torres Strait Islanders concerned and, unless the Minister is satisfied that exceptional circumstances exist that require the Minister to do otherwise, must act in a way that is consistent with—

- (a) any Island custom applicable to the land; and
- (b) the views of the Torres Strait Islander or group so far as they are not inconsistent with any such Island custom.

(4) The *Trusts Act 1973* (“**the Act**”) applies to trusts created for the purposes of this division, and to the trustees of such trusts, only to the extent (if any) that the regulations provide that the Act is to apply and, to the extent that the Act does apply, it applies with such modifications (if any) as are prescribed.

Authority to grant fee simple in, or lease of, claimable land

63. The Governor in Council may, under this Act and the *Land Act 1994*—

- (a) grant claimable land in fee simple; or
- (b) lease claimable land in perpetuity or for a term of years.

Inclusion of additional areas in deed of grant

64. An additional area of claimable land may be included in a deed of grant or lease made under section 63 if—

- (a) the Minister has consulted with the Torres Strait Islander or Torres Strait Islanders particularly concerned with each area of land; and
- (b) the Torres Strait Islander or a substantial majority of the Torres Strait Islanders agree that the additional area should be included in the deed of grant or lease.

Signing of lease etc.

65.(1) If a Torres Strait Islander (transferred land) lease is prepared, the grantees of the transferred land concerned must on receipt of a written

notice to do so by the registrar of titles—

- (a) sign the lease and deliver it to the registrar; and
- (b) deliver the relevant deed of grant to the registrar;

within the reasonable period specified in the notice.

(2) Consent is not required to the lease despite anything to the contrary in any instrument creating an interest in the transferred land or in any Act.

(3) When the lease has been registered, the registrar must return the relevant deed of grant to the grantees of the transferred land.

(4) If—

- (a) the grantees fail to comply with the notice to sign the lease—the Minister is authorised to sign the lease on behalf of the grantees; or
- (b) the grantees fail to comply with the notice to deliver the deed of grant to the registrar—the registrar must, without further authority apart from this paragraph, register the lease.

(5) Subsection (4)(b) applies despite—

- (a) any other Act or any rule of law or practice; and
- (b) the nonproduction of the deed of grant.

Deed of grant takes effect on delivery

66.(1) A deed of grant issued under section 60 takes effect on the delivery of the deed to the grantees.

(2) On delivery of the deed of grant to the grantees, the land the subject of the deed becomes granted land and, if the land is not already Torres Strait Islander land, becomes Torres Strait Islander land.

(3) Subsection (1) has effect despite any other Act or any rule of law or practice.

Lease commences on delivery

67.(1) The term of a Torres Strait Islander lease commences on the day of delivery of the lease to the grantees unless the lease specifies another

commencement day (whether before or after the day of delivery).

(2) On the commencement of the lease, the land the subject of the lease becomes granted land and, if the land is not already Torres Strait Islander land, becomes Torres Strait Islander land.

(3) Subsection (1) has effect despite any other Act or any rule of law or practice.

Existing interests

68.(1) If granted land was, immediately before becoming Torres Strait Islander land under this division, subject to an interest, the interest continues in force.

(2) In this section—

“interest” includes native title interests, but does not include an interest in favour of the State or Commonwealth.

Interests to be endorsed on deed

69. If land the subject of a deed of grant prepared under section 60 (the **“new deed”**)—

- (a) is held by grantees under a deed of grant issued under part 3; and
- (b) is subject to interests created by instruments endorsed on the deed of grant held by those grantees and the interests relate to the land;

the registrar of titles must endorse the instruments on the new deed, in the proper order of priority, before issuing the new deed.

Cancellation of existing deed of grant

70.(1) If—

- (a) land is the subject of a deed of grant issued under part 3 (the **“existing deed”**); and
- (b) a deed of grant (the **“new deed”**) over the whole or a part of the land takes effect under section 66;

the existing deed is cancelled, to the extent of the new deed, by operation of

this section.

(2) The Minister must cause written notice to be given to the registrar of titles of the day of delivery of the new deed to the grantees and the registrar is to note the cancellation of the existing deed in the register accordingly.

(3) The grantees of the existing deed must, on receipt of written notice by the Minister so to do, deliver the existing deed to the registrar of titles within such reasonable period, as is specified in the notice.

(4) If the existing deed is cancelled only in relation to part of the land, the registrar of titles must prepare and issue to the grantees of the deed a deed of grant under the *Land Act 1994* (the “**replacement deed**”) over the remaining part of the land.

(5) The replacement deed is, for the purposes of this Act, taken to be a deed of grant prepared and issued under part 3.

(6) The registrar of titles must endorse on the replacement deed, in the proper order of priority, the instruments under which existing relevant interests arose.

Registrar of titles must take action etc. to resolve difficulties

71. If a difficulty arises in the application of this division by the registrar of titles, the registrar must take such action and give such directions as the registrar considers necessary to resolve the difficulty.

Land Court may resolve difficulties

72.(1) If a difficulty arises in—

- (a) the application of this division to a particular matter; or
- (b) the application, to a particular matter, of a provision of another Act because of the operation of this division;

the Land Court may, on the application of the registrar of titles or an interested person, make such order as it considers proper to resolve the difficulty.

(2) An order made under subsection (1) has effect despite anything contained in this part or in an Act in force immediately before the commencement of this section.

Division 2—Dealing with granted land**Permitted dealings with granted land**

73.(1) An interest in granted land may be transferred, granted or otherwise created by the grantees only in accordance with this section.

(2) Subject to subsections (3) and (6), the grantees of granted land may—

- (a) grant a lease or licence over the whole or a part of the land to—
 - (i) a Torres Strait Islander particularly concerned with the land;
or
 - (ii) the Crown in right of the State or the Commonwealth; or
 - (iii) another person—
 - (A) for a period of less than 10 years; or
 - (B) with the prior written consent of the Minister; or
- (b) consent to the creation of a mining interest in the land; or
- (c) grant an easement over the land; or
- (d) surrender the whole or any part of the land to the Crown in right of the State.

(3) A lease or licence under subsection (2)(a)(i) must be subject to the condition that an interest may be created under that lease or licence in favour of a person who is not a Torres Strait Islander particularly concerned with the land only if—

- (a) the interest is in favour of the spouse or former spouse of such a Torres Strait Islander or of such a Torres Strait Islander who is deceased; or
- (b) the interest is—
 - (i) for a period of less than 10 years; or
 - (ii) created with the prior written approval of the Minister.

(4) The grantees of land held under a Torres Strait Islander lease may—

- (a) with the prior written consent of the Minister, sublease or

mortgage their interest in the land on such terms and conditions as the Minister approves in writing; or

- (b) surrender the whole or any part of their interest in the land to the Crown in right of the State.

(5) Subject to subsection (6), the grantees of granted land may enter into an agreement with the Crown in right of the State or the Commonwealth in relation to the getting and sale of forest products or quarry material above, on and below the land.

(6) The grantees of granted land must not grant an interest in the land, consent to the creation of a mining interest in the land, or enter into an agreement under subsection (5), unless—

- (a) they have explained to the Torres Strait Islanders particularly concerned with the land the nature, purpose and effect of the proposed grant or consent; and
- (b) the Torres Strait Islanders are given adequate opportunity to express their views on, and are generally in agreement with, the grant, consent or agreement; and
- (c) they have subsequently given the Torres Strait Islanders notice of not less than 1 month of their intention to make the grant, give the consent or enter into the agreement.

(7) Contravention of subsection (6) does not invalidate the interest or agreement concerned.

Other dealings void

74.(1) A transfer, grant or other creation of an interest in granted land that is not permitted by section 73 is void.

- (2) This section has effect despite any other Act.

No resumption of granted land etc.

75.(1) An interest in granted land (other than land granted on the ground of economic or cultural viability) cannot be resumed, taken or otherwise compulsorily acquired, sold or dealt with except by an Act that expressly provides for the resumption of the land and payment of just compensation

for the land.

(2) Subsection (1) has effect despite any other Act (whether enacted before or after the enactment of this section).

Devolution of granted land

76.(1) If—

- (a) grantees hold granted land for the benefit of a Torres Strait Islander or a single group of Torres Strait Islanders; and
- (b) the Torres Strait Islander or the last surviving member of the group dies without leaving a descendant;

the grantees—

- (c) hold the land for the benefit of Torres Strait Islanders, unless the Minister determines, in writing, that they hold the land for a specified Torres Strait Islander or specified group of Torres Strait Islanders; and
- (d) must deliver the deed of grant or Torres Strait Islander lease to the registrar of titles who must cause the appropriate endorsement to be made on the deed or lease and in the relevant register.

(2) Before making a determination under subsection (1), the Minister must consult with the Torres Strait Islanders particularly concerned with the land and, unless the Minister is satisfied that exceptional circumstances exist that require the Minister to do otherwise, must act in a manner that is consistent with—

- (a) any Island custom applicable to the land; and
- (b) the views of the Torres Strait Islanders so far as they are not inconsistent with such Island custom.

(3) Subsection (1) applies despite any other Act.

Division 3—Reservations**Reservations of minerals and petroleum**

77. A deed of grant of granted land and a Torres Strait Islander lease must contain a reservation to the Crown of—

- (a) all minerals; and
- (b) all petroleum;

on and below the surface of the land.

Reservations of forest products and quarry material etc.

78.(1) A deed of grant of granted land that was transferred land, and a Torres Strait Islander (transferred land) lease, may contain a reservation to the State of forest products or quarry material above, on or below the surface of the land only if it is declared by regulation that—

- (a) the forest products or quarry material is of vital State interest; and
- (b) the rights in the stated forest products or quarry material is reserved to the State.

(2) A deed of grant of granted land that was not transferred land, and a Torres Strait Islander (non-transferred land) lease, must contain a reservation to the Crown of—

- (a) all forest products; and
- (b) all quarry material;

above, on and below the surface of the land.

(3) Despite subsection (1), a permit, lease, licence, agreement or contract granted or made under the *Forestry Act 1959*, before the day on which land that was transferred land became granted land, in relation to the getting and selling of forest products or quarry material above, on or below the surface of the land, continues in force as if this section had not been enacted.

(4) If a deed of grant of granted land that was transferred land, or a Torres Strait Islander (transferred land) lease, does not contain a reservation of particular forest products or quarry material above, on or below the land, a regulation may declare that—

Torres Strait Islander Land Act 1991

- (a) the forest products or quarry material is of vital State interest; and
- (b) the rights in the forest products or quarry material are acquired by the State.

(5) If a regulation is made under subsection (1) or (4), the grantees of the land are entitled to be paid by the State such reasonable compensation because of the reservation or acquisition as is agreed on between the State and the grantee or grantees or, failing agreement, as is determined by the Land Court.

*Division 4—Access to coastal land***Rights of access preserved**

79. If—

- (a) land that is an area of coast becomes Torres Strait Islander land because of a claim under this Act; and
- (b) a right of access to or across the area (whether by persons generally or particular persons) existed immediately before the land became claimable land;

the right of access continues in force as if the land had not become Torres Strait Islander land.

*Division 5—National parks***National park subject to lease to State etc.**

80.(1) If granted land is, or includes part of, a national park (the “national park land”), the grant of the national park land—

- (a) is subject to the condition that the grantees lease the national park land, in perpetuity, to the State for the purposes of the management of the national park land under the *Nature Conservation Act 1992*; and
- (b) is subject to the conditions prescribed under a regulation for the national park land or national park land generally.

Torres Strait Islander Land Act 1991

- (2) There is to be a board of management for the national park land.
- (3) Subject to subsection (4), the board of management is to be composed in the way approved by the Minister.
- (4) The Torres Strait Islanders particularly concerned with the national park land are to be represented on the board of management.
- (5) The Minister must, in cooperation with the board of management and before the grant of the land, prepare a management plan for the national park land.
- (6) The *Nature Conservation Act 1992* part 7 applies to the management plan as if it were a management plan required to be prepared under the part.
- (7) In the preparation of a management plan, the Minister must—
- (a) consult with, and consider the views of, the Torres Strait Islanders particularly concerned with the national park land; and
 - (b) as far as practicable, but subject to this section and the *Nature Conservation Act 1992*, act in a way that is consistent with any Island custom applicable to the national park land (including any tradition relating to activities on the national park land).
- (8) The lease of the national park land must be subject to the following conditions—
- (a) that the national park is to be managed in accordance with the management plan as in force from time to time;
 - (b) that the management plan is to be implemented by the board of management.
- (9) The grantees of the granted land must—
- (a) sign a lease of the national park land in registrable form containing the required conditions and such other terms and conditions as are agreed; and
 - (b) give the signed lease to the Minister before or at the time of delivery of the deed of grant issued under section 60 in relation to the land.
- (10) Nothing in this Act or a management plan or lease under this section is to result in a decrease, in the aggregate, in the public rights of access that existed in relation to the national park land immediately before the land

became claimable land.

(11) In this section—

“**Minister**” means the Minister administering the *Nature Conservation Act 1992*.

PART 6—OCCUPATION AND USE OF FORMER CROWN LAND BY THE CROWN

Crown’s use of Islander land preserved

81.(1) If, on the day land becomes Torres Strait Islander land, the land or any part of the land is being occupied or used by the Crown in right of the State or the Commonwealth, the Crown is entitled to continue to occupy or use it for such period as the land, or that part of the land, is required by the Crown.

(2) While the Crown is entitled to the occupation or use of land under subsection (1), the improvements on the land are the property of the Crown.

(3) This section ceases to apply to land on its being leased to the Crown under section 36 or 73.

No rent payable by Crown

82. The Crown is not liable to pay any amount in the nature of rent in relation to its occupation or use of land under section 81.

Access to land used by Crown

83.(1) While the Crown is entitled to the occupation or use of land under section 81, the officers, employees, agents and servants of the Crown and its licensees and invitees are entitled, with or without vehicles, machinery, plant and equipment (of any description), to enter and cross Torres Strait Islander land for the purpose of gaining access to the land.

(2) A person mentioned in subsection (1) must only cross Torres Strait

Islander land by—

- (a) the routes that were commonly used before the land became Torres Strait Islander land; or
- (b) other routes agreed on from time to time by the Crown and the grantees of the land.

(3) The grantees must not agree on a route for the purposes of subsection (2) unless—

- (a) they have explained to the Torres Strait Islanders particularly concerned with the land the purpose and effect of the proposed route; and
- (b) the Torres Strait Islanders are given adequate opportunity to express their views on, and are generally in agreement with, the proposed route; and
- (c) they have subsequently given the Torres Strait Islanders notice of not less than 1 month of their intention to enter into the agreement.

(4) Contravention of subsection (3) does not invalidate an agreement made for the purposes of subsection (2).

PART 7—MINING

Application of Mineral Resources Act

84.(1) To allay any doubt, it is declared that the *Mineral Resources Act 1989* applies to transferable land as if it were a reserve within the meaning of that Act.

(2) Subject to subsection (5), the *Mineral Resources Act 1989* applies to the following land as if it were a reserve, and the grantees of the land were the owners of the land, within the meaning of that Act—

- (a) Torres Strait Islander land that is or was transferred land;
- (b) Torres Strait Islander land (other than land that was transferred land) that was claimable land, but was not subject to a mining

Torres Strait Islander Land Act 1991

interest at the beginning of the day on which the relevant claim for the land was made to the land claims registrar, other than—

- (i) land subject to a Torres Strait Islander (non-transferred land) lease; or
- (ii) land that was acquired by or on behalf of Torres Strait Islanders if all interests in the land (other than interests in favour of the Crown) were surrendered to or acquired by the Crown before the land became claimable land; or
- (iii) any national park.

(3) To allay any doubt, it is declared that the *Mineral Resources Act 1989* applies to Torres Strait Islander land (other than land that was transferred land) that was claimable land and—

- (a) is subject to a Torres Strait Islander (non-transferred land) lease; or
- (b) was acquired by or on behalf of Torres Strait Islanders if all interests in the land (other than interests in favour of the Crown) were surrendered to or acquired by the Crown before the land became claimable land;

as if that land were not Torres Strait Islander land.

(4) If Torres Strait Islander land (other than land that was transferred land) was claimable land and was subject to a mining interest at the beginning of the day on which the relevant claim for the land was made to the lands claims registrar, then—

- (a) in relation to the mining interest and any associated interest—to allay any doubt, it is declared that the *Mineral Resources Act 1989* applies to the land as if the land were not Torres Strait Islander land; and
- (b) in relation to any other mining interest—subject to subsection (5), the *Mineral Resources Act 1989* applies to the land as if it were a reserve, and the grantees of the land were the owners of the land, within the meaning of that Act.

(5) Subsections (2) and (4)(b) do not apply in relation to the *Mineral Resources Act 1989*, sections 316 and 317.

(6) The holder of a mining lease must, before making application for a

mining lease under the *Mineral Resources Act 1989*, section 316 or a variation of a mining lease under section 317 of that Act, consult and endeavour to reach agreement with the Torres Strait Islanders particularly concerned with the land in relation to which the application is to be made about the route of the proposed access over the land.

(7) In this section—

“associated interest”, in relation to a mining interest, means—

- (a) any renewal or other continuance in force of the interest; or
- (b) any other mining interest derived through, or as a result of, the interest.

“relevant claim”, in relation to Torres Strait Islander land, means the claim because of which the land became Torres Strait Islander land.

Royalties in relation to mining on Torres Strait Islander land

85.(1) This section applies if the State receives an amount (the **“royalty amount”**), by way of royalty under the *Mineral Resources Act 1989* or the *Petroleum Act 1923*, in relation to land that is Torres Strait Islander land (other than land that is subject to a Torres Strait Islander (non-transferred land) lease).

(2) The grantees of the land are entitled to receive, out of money appropriated by the Parliament, the percentage prescribed for the purposes of this subsection of the royalty amount, and the grantees are to apply the amount received for the benefit of the Torres Strait Islanders for whose benefit they hold the land, particularly those that are affected by the activities to which the royalty amount relates.

(3) The chief executive of the department is entitled to receive, out of money appropriated by the Parliament, the percentage prescribed for the purposes of this subsection of the royalty amount and is to apply the amount received for the benefit of Torres Strait Islanders.

PART 8—THE LAND TRIBUNAL

Division 1—Establishment and membership

Land Tribunal

86.(1) A tribunal called the Land Tribunal is established for the purposes of this Act.

(2) The Land Tribunal consists of the chairperson and such number of deputy chairpersons and other members as are appointed under this Act.

Appointment of members

87.(1) The members of the tribunal are to be appointed by the Governor in Council.

(2) The chairperson is to be appointed on a full-time basis, and the deputy chairpersons and other members are to be appointed on a part-time basis.

(3) A member of the tribunal is to be appointed under this Act, and not under the *Public Service Act 1996*.

(4) Nothing in this Act prevents the chairperson also holding office as the chairperson or other member of the Land Tribunal established for the purposes of the *Aboriginal Land Act 1991*.

Qualifications for appointment

88.(1) A person is not eligible for appointment as chairperson or deputy chairperson of the Land Tribunal unless the person is a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of the State, another State or a Territory of not less than 5 years standing.

(2) A person is not eligible for appointment as a non-presiding member of the Land Tribunal unless the person—

- (a)** has, in the opinion of the Governor in Council, suitable knowledge of Torres Strait Islanders or Island custom; or

- (b) has had 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.

Term of appointment

89. A member of the Land Tribunal is appointed for such term (not exceeding 7 years) as is specified in the instrument of appointment, but is eligible for re-appointment.

Terms and conditions of appointment

90.(1) A member of the Land Tribunal is to be paid such remuneration and allowances as are determined by the Governor in Council.

(2) A member of the Land Tribunal holds office on such terms and conditions not provided for by this Act as are determined by the Governor in Council.

Preservation of rights

91.(1) This section applies if an officer of the public service is appointed as the chairperson of the Land Tribunal.

(2) The person retains and is entitled to all rights that have accrued to the person because of employment as an officer of the public service, or that would accrue in the future to the person because of that employment, as if service as chairperson were a continuation of service as an officer of the public service.

(3) If the person has not attained 65 years of age at the time of the expiry of the person's term of office or resignation—

- (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the salary level, at that time, of an office equivalent to the one the person held before being appointed as chairperson; and
- (b) the person's service as chairperson is to be regarded as service in

the public service for the purpose of determining the person's rights as an officer of the public service.

Leave of absence

92. The Minister may grant leave of absence to the chairperson of the Land Tribunal on such terms and conditions as the Minister considers appropriate.

Resignation

93. A member of the Land Tribunal may resign by writing signed and delivered to the Governor.

Disclosure of interests

94.(1) If a member of the Land Tribunal is, or is to be, a member of the tribunal as constituted for the purposes of a proceeding and the member has or acquires an interest (whether pecuniary or otherwise) that could conflict with the proper performance of the member's functions in relation to the proceeding—

- (a) the member must disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all parties to the proceeding—the member must not take part in the proceeding or exercise any powers in relation to the proceeding.

(2) Where the chairperson of the Land Tribunal becomes aware that a member of the tribunal, who is, or is to be, a member of the tribunal as constituted for the purposes of a proceeding, has in relation to the proceeding an interest of the kind mentioned in subsection (1)—

- (a) if the chairperson considers that the member should not take part, or continue to take part, in the proceeding—the chairperson must direct the member accordingly; or
- (b) in any other case—the chairperson must cause the interest of the member to be disclosed to the parties to the proceeding if the interest has not already been disclosed to them.

Termination of appointment

95.(1) The Governor in Council may terminate the appointment of a member of the Land Tribunal if the member—

- (a) becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (b) is convicted of an indictable offence (whether in Queensland or elsewhere); or
- (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service; or
- (d) contravenes section 94 or a direction given under that section; or
- (e) in the case of the chairperson—is absent, without the Minister’s leave and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.

(2) Subsection (1)(c) applies only to a non-presiding member.

Acting chairperson

96. The Governor in Council may appoint a person to act as chairperson of the Land Tribunal—

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

Division 2—Organisation of tribunal**Arrangement of business**

97.(1) Subject to section 98, the chairperson of the Land Tribunal may give directions as to the arrangement of the business of the tribunal and as to the members who are to constitute the tribunal for the purposes of particular proceedings.

(2) If the chairperson gives a direction as to the members who are to

constitute the tribunal for the purposes of a particular proceeding, the chairperson may—

- (a) at any time after giving the direction and before the start of the hearing of the proceeding; or
- (b) if, in the case of a proceeding before the tribunal constituted by 3 members, 1 of those members ceases to be a member, or ceases to be available for the purposes of the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the matter to which the proceeding relates is determined—at any time after the member ceases to be a member or to be available;

revoke the direction and give a further direction under subsection (1) as to the persons who are to constitute the tribunal for the purposes of the proceeding.

(3) In giving a direction under this section as to the members who are to constitute the tribunal for the purposes of a particular proceeding, the chairperson must have regard to—

- (a) the degree of public importance or complexity of the matters to which the proceeding relates; and
- (b) the need for the tribunal's affairs to be conducted expeditiously and efficiently; and
- (c) the nature of the issues likely to be involved in the proceeding.

Constitution of tribunal

98.(1) Subject to section 100, the tribunal is to be constituted for the purposes of the hearing and determination of a proceeding by—

- (a) a presiding member; or
- (b) subject to subsection (2), a presiding member and 2 non-presiding members.

(2) If the tribunal is to be constituted as mentioned in subsection (1)(b)—

- (a) 1 of the non-presiding members must be a person who, in the opinion of the chairperson of the tribunal, has suitable knowledge of Torres Strait Islanders or Island custom; and

- (b) the other non-presiding member must have had 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.

(3) The tribunal may be constituted for the exercise of powers in relation to the hearing of a proceeding, or for the purposes other than the hearing and determination of a proceeding, by a presiding member.

Member presiding

99. At the hearing of a proceeding before the tribunal at which the tribunal is constituted for the purposes of the proceeding by more than 1 member, the presiding member is to preside unless another member is directed under section 100 to preside.

Member of tribunal ceasing to be available

100.(1) If the hearing of a proceeding has been commenced or completed by the Land Tribunal constituted by 3 members but, before the matter to which the proceeding relates has been determined, 1 of the members constituting the tribunal ceases to be a member, or ceases to be available for the purposes of the proceeding—

- (a) if the parties agree and the chairperson does not give a direction under section 97—the hearing and determination, or the determination, of the proceeding may be completed by the tribunal constituted by the remaining members or member; or
- (b) in any other case—the proceeding is to be reheard by the tribunal as reconstituted under section 98.

(2) If the member who ceases to be a member, or ceases to be available for the purposes of the proceeding, is the member who is, but for this subsection, to preside, the chairperson may, in writing, appoint 1 of the remaining members, or the remaining member, to preside.

(3) If a proceeding is reheard by the tribunal, the tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the tribunal as previously constituted, including any evidence taken in the proceeding.

Sitting places

101. Sittings of the Land Tribunal may be held from time to time as required at any place in the State.

Division 3—Conduct of proceedings before tribunal**Parties to proceeding before tribunal**

102.(1) Subject to section 111, the parties to a proceeding for the hearing of a claim under this Act are—

- (a) the claimant or claimants; and
- (b) the claimants of any other claim under this Act that is to be heard and determined with that claim; and
- (c) any other person who has been made a party to the proceeding by the tribunal on application by the person under subsection (2).

(2) An interested person may, within the period specified in the notice published under section 47 in relation to the claim or within such further period as the tribunal allows, apply, in writing, to the tribunal to be made a party to the proceeding and the tribunal may, by order, make the person a party to the proceeding.

Tribunal to determine who are interested persons

103.(1) If it is necessary for the purposes of this Act to decide whether a person is an interested person in relation to a claim under this Act, the matter is to be decided by the Land Tribunal.

(2) If the tribunal decides that a person is not an interested person in relation to a claim under this Act, the tribunal must give the person written reasons for its decision.

Representation before tribunal

104. At the hearing of a proceeding before the tribunal, a party to the proceeding may appear in person or be represented by an agent duly appointed in writing for the purpose but, unless the tribunal otherwise

orders, cannot be represented by counsel or a solicitor (enrolled in Queensland or elsewhere) engaged as counsel or solicitor for the proceeding.

Procedure of tribunal

105.(1) In a proceeding before the Land Tribunal—

- (a) the procedure of the tribunal is, subject to this Act, within the discretion of the tribunal; and
- (b) the tribunal must pursue the objective of performing its functions in a fair, just, economical, informal and prompt way; and
- (c) the tribunal must take account of relevant cultural and customary concerns of Torres Strait Islanders; and
- (d) the tribunal is not bound by technicalities, legal forms or rules of evidence but may inform itself on anything in any way that it considers appropriate.

(2) For the purposes of subsection (1), directions as to the procedure to be followed at or in connection with the hearing of a proceeding before the tribunal may be given—

- (a) if the hearing of the proceeding has not started—by the chairperson or by a presiding member authorised by the chairperson to give directions for the purposes of this paragraph; and
- (b) if the hearing of the proceeding has started—by the member presiding at the hearing or by another member authorised by the member presiding to give such directions.

(3) A direction may be varied or revoked by a member empowered to give the direction.

(4) An authorisation by the chairperson may be of general application or may relate to the hearing of a particular proceeding or class of proceedings.

(5) The chairperson may vary or revoke an authorisation.

Conferences

106.(1) If a claim is referred to the Land Tribunal, the chairperson may direct the holding of a conference of the parties presided over by a presiding member.

(2) If a conference is held under subsection (1) and—

- (a) at or after the conference, agreement is reached between the parties as to the terms of a decision of the tribunal in the proceeding that would be acceptable to the parties; and
- (b) the terms of the agreement are reduced to writing, signed by the parties and given to the tribunal; and
- (c) the tribunal is satisfied that—
 - (i) a decision in those terms would be within the powers of the tribunal; and
 - (ii) that it would be appropriate to make a decision in those terms;

the tribunal may, without holding a hearing, make a recommendation to the Minister in accordance with or based on those terms.

(3) At the hearing of a proceeding before the tribunal, unless the parties otherwise agree, evidence must not be given, and statements must not be made, about anything that happens at a conference held under subsection (1) in relation to the proceeding.

(4) If—

- (a) a conference held under subsection (1) in relation to a proceeding is presided over by a member of the tribunal; and
- (b) a party to the proceeding who was present at the conference notifies the tribunal before, or at the start of, the hearing that the party objects to the member participating in the hearing;

the member is not entitled to be a member of the tribunal as constituted for the purposes of the proceeding.

Hearings to be in public except in special circumstances

107.(1) Subject to this section, the hearing of a proceeding before the

Land Tribunal is to be in public.

(2) If the tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the tribunal may, by order—

- (a) direct that a hearing or part of a hearing is to take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the tribunal, whether in public or in private, or of matters contained in documents lodged with the tribunal or received in evidence by the tribunal; or
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the tribunal, or of matters contained in documents lodged with the tribunal or received in evidence by the tribunal.

(3) In considering—

- (a) whether the hearing of a proceeding should be held in private; or
- (b) whether publication, or disclosure to a party, of evidence, or of a matter contained in a document or received in evidence, should be prohibited or restricted;

the tribunal is to take as the basis of its consideration the principle that it is desirable that the hearing of a proceeding before the tribunal should be held in public and that evidence given before the tribunal and the contents of documents lodged with the tribunal or received in evidence by the tribunal should be made available to the public and to all the parties, but must pay due regard to any reasons given to the tribunal why the hearing should be held in private or why publication or disclosure of the evidence or matter should be prohibited or restricted, particularly if those reasons are based on any applicable Torres Strait Island custom.

Opportunity to make submissions

108. Subject to section 107, the Land Tribunal must ensure that every party to a proceeding before the tribunal is given a reasonable opportunity to present the party's case and, in particular, to inspect any documents to

which the tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to the documents.

Particular powers of tribunal

109.(1) For the purpose of a proceeding, the Land Tribunal may—

- (a) take evidence on oath or affirmation; or
- (b) proceed in the absence of a party who has had reasonable notice of the proceeding; or
- (c) adjourn the proceeding from time to time.

(2) For the purposes of the hearing of a proceeding, the chairperson, a presiding member, or an officer of the tribunal authorised in writing by the chairperson or a presiding member, may summon a person to appear before the tribunal to give evidence and to produce such documents (if any) as are specified in the summons.

(3) The member who presides at the hearing of a proceeding—

- (a) may require a person appearing before the tribunal to give evidence either to take an oath or to make an affirmation; and
- (b) may administer an oath or affirmation to a person so appearing before the tribunal.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give to questions asked of the person will be true.

Manner in which questions to be decided

110.(1) A question of law arising in a proceeding before the Land Tribunal at which a presiding member is presiding (including the question whether a particular question is one of law) is to be decided in accordance with the opinion of the member presiding.

(2) Subject to subsection (1), when the members constituting the tribunal for the purposes of a particular proceeding are divided in opinion as to the decision to be made on any question—

- (a) if there is a majority of the one opinion—the question is to be

decided according to the opinion of the majority; or

- (b) in any other case—the question is to be decided according to the opinion of the member presiding.

Power of tribunal to dismiss claim or strike out party

111. If a party to a proceeding before the Land Tribunal fails either to appear at a preliminary conference or at the hearing of the proceeding, the tribunal may—

- (a) if the party has made a claim under this Act to which the proceeding relates—dismiss the claim concerned; or
- (b) in any other case—direct that the person who failed to appear is to cease to be a party to the proceeding.

General powers

112. For the purpose of a proceeding in relation to a claim, the Land Tribunal may do all other things necessary or convenient to be done for or in connection with the hearing and determination of the claim.

Reasons to be given by tribunal

113.(1) Subject to this section and to section 107, the Land Tribunal must give written reasons for—

- (a) its recommendations to the Minister in relation to a claim; and
- (b) a claim being or not being established on 1 or more grounds.

(2) The reasons must include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

(3) The tribunal must cause a copy of its reasons to be given (in writing) to the Minister and each party to the proceeding.

Appeals to Land Appeal Court from decisions of tribunal

114.(1) A party to a proceeding before the Land Tribunal may—

Torres Strait Islander Land Act 1991

- (a) appeal to the Land Appeal Court against a decision of the tribunal—
 - (i) that an area of land is or is not claimable land; or
 - (ii) that a claim for an area of claimable land is or is not established on a particular ground; or
 - (iii) to make or not to make a particular recommendation to the Minister in relation to a claim; or
 - (iv) as to the terms of a particular recommendation to the Minister; and
- (b) appeal to the Land Appeal Court, with the leave of that court, against any other decision of the tribunal made in or in relation to the proceeding.

(2) If—

- (a) a person has applied to be made a party to a proceeding before the Land Tribunal; and
- (b) the tribunal decides that the person is not an interested person;

the person may appeal to the Land Appeal Court against the decision.

(3) An interested person who is dissatisfied with a determination of the Land Tribunal under section 129(2)(b) may appeal to the Land Appeal Court.

(4) If the chairperson of the tribunal decides under section 46 that a claim is not duly made, the claimant may appeal to the Land Appeal Court.

(5) An appeal, or application for leave to appeal, under this section must be made in accordance with any applicable rules of court and any regulations made for the purposes of this section.

(6) The Land Appeal Court must hear and determine the appeal, or application for leave to appeal, and may make such order as it considers appropriate.

(7) Without limiting subsection (6), the orders that may be made by the Land Appeal Court on an appeal include—

- (a) an order affirming a decision of the Land Tribunal; or
- (b) an order varying a decision of the Land Tribunal; or

- (c) an order setting aside a decision of the Land Tribunal and—
 - (i) making a decision in substitution for the decision set aside; or
 - (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Land Appeal Court.

(8) For the purposes of an appeal, the Land Appeal Court may exercise all the powers and discretions conferred on the Land Tribunal.

Reference of questions of law to Land Appeal Court

115.(1) The Land Tribunal may, of its own motion or at the request of a party, refer a question of law arising in a proceeding before the tribunal to the Land Appeal Court for decision, but a question is not to be referred without the agreement of the presiding member (if any) who is presiding or the chairperson of the tribunal.

(2) If a question of law arising in a proceeding before the Land Tribunal has been referred to the Land Appeal Court, the tribunal must not, in the proceeding—

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the decision of the Land Appeal Court on the question.

Evidence and other findings in other proceedings

116. In a proceeding, the Land Tribunal may—

- (a) receive into evidence the transcript of evidence in another proceeding before—
 - (i) a court; or
 - (ii) the Land Tribunal; or
 - (iii) the National Native Title Tribunal; or

- (v) a recognised State/Territory body within the meaning of the *Native Title Act 1993* (Cwlth); or
 - (vi) another entity;
- and draw conclusions of fact from the transcript; and
- (b) receive into evidence a document or other thing introduced into evidence in another proceeding before a court, tribunal, body or other entity; and
 - (c) adopt findings, reports, recommendations, decisions, determinations or judgements of a court, tribunal, body or other entity.

Protection of members etc.

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

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

(3) A person summoned to attend or appearing before the Land Tribunal as a witness has the same protection as a witness in a proceeding in the Supreme Court.

Continuing authority of member

118. If a member's appointment expires, the appointment continues until the member finishes performing any function started, but not finished, before the expiry of the appointment.

Failure of witness to attend

119. A person served, as prescribed, with a summons to appear as a witness before the Land Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear from time to time in the course of the proceeding as

required by the presiding member.

Maximum penalty—20 penalty units.

Refusal of witness to be sworn or to answer questions

120.(1) A person appearing as a witness at a hearing of the Land Tribunal must not, without reasonable excuse—

- (a) fail to be sworn or to make an affirmation; or
- (b) fail to answer a question that the person is required to answer by the presiding member; or
- (c) fail to produce a document that the person was required to produce by a summons under this Act served on the person as prescribed.

Maximum penalty—20 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question if answering the question may tend to incriminate the person.

(3) It is a reasonable excuse for a person to fail to produce a document if producing the document may tend to incriminate the person.

Obstructing tribunal etc.

121.(1) A person must not obstruct or improperly influence the conduct of a hearing of the Land Tribunal or attempt to do so.

(2) A person must not contravene an order under section 107.

Maximum penalty—40 penalty units.

Allowances for witnesses

122. A witness summoned to appear at a hearing of the Land Tribunal is entitled to be paid such allowances and expenses—

- (a) as are prescribed; or
- (b) as the chairperson of the tribunal determines in the absence of regulations.

Division 4—Miscellaneous**Management of administrative affairs of tribunal**

123. The chairperson of the Land Tribunal is responsible for managing the administrative affairs of the tribunal.

Staff of tribunal employed under Public Service Act

124. The staff of the Land Tribunal are to be employed under the *Public Service Act 1996*.

Consultants to tribunal

125. The Land Tribunal may, on behalf of the State, engage persons having suitable qualifications and experience as consultants to the tribunal.

Annual report

126.(1) The chairperson of the Land Tribunal must, not later than 4 months after the end of each financial year, prepare and give to the Minister a report on the operations of the tribunal during the year.

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

(3) If, at the time the Minister would otherwise be required to lay a copy of the report before the Legislative Assembly, the Legislative Assembly is not in session or not actually sitting, the Minister must give a copy of the report to the Clerk of the Parliament.

(4) The clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.

(5) For the purposes of its printing and publication, the report is taken to have been laid before the Legislative Assembly, and to have been ordered to be printed by the Legislative Assembly, when it is given to the clerk.

Delegation of powers by chairperson

127. The chairperson of the Land Tribunal may delegate his or her powers under this or any other Act to another presiding member of the tribunal.

PART 9—MISCELLANEOUS**Creation of interests in transferable and claimable land**

128.(1) Nothing in this Act prevents the creation of an interest in transferable land if—

- (a) the interest is a mining interest; or
- (b) in the case of another interest—the Minister, subject to subsection (2), consents to the creation of the interest.

(2) The Minister must not consent under subsection (1)(b) to the creation of the interest unless the Minister is satisfied that the creation of the interest is for the benefit of Torres Strait Islanders particularly concerned with the land.

(3) Nothing in this Act prevents the creation of an interest in claimable land that is not transferred land (whether or not a claim has been made under this Act for the land) if—

- (a) the interest is a mining interest; or
- (b) in the case of any other interest—the Minister, subject to subsection (4), consents to the creation of the interest.

(4) The Minister must not consent under subsection (3)(b) to the creation of the interest unless the Minister is satisfied that—

- (a) the creation of the interest is for the benefit of Torres Strait Islanders particularly concerned with the land; or
- (b) the interest will cease to have effect before, or if and when, the land becomes Torres Strait Islander land.

(5) Nothing in this Act prevents the creation of an interest in land that

may become transferable land or claimable land.

(6) This section has effect despite anything in any other Act.

Rights of access to interests preserved

129.(1) This section applies if—

- (a) a person has an interest in land (the “**person’s land**”); and
- (b) the person’s land is—
 - (i) surrounded by Torres Strait Islander land; or
 - (ii) in the vicinity of Torres Strait Islander land and the only practicable way of gaining access to the person’s land is across the Torres Strait Islander land.

(2) The person and the person’s officers, employees, agents, servants, licensees and invitees are entitled, with or without vehicles, machinery, plant and equipment (of any description), to enter and cross Torres Strait Islander land for the purpose of gaining access to the person’s land by a route—

- (a) that is agreed on from time to time by the grantees of the Torres Strait Islander land and the person; or
- (b) if the grantees and the person fail to agree within a reasonable time—that is determined by the Land Tribunal on application by the grantees or person.

(3) The grantees must not agree on a route for the purposes of subsection (2) unless—

- (a) they have explained to the Torres Strait Islanders particularly concerned with the land the purpose and effect of the proposed route; and
- (b) the Torres Strait Islanders are given an adequate opportunity to express their views on, and are generally in agreement with, the proposed route; and
- (c) they have subsequently given the Torres Strait Islanders notice of not less than 1 month of their intention to enter into the agreement.

(4) Contravention of subsection (3) does not invalidate an agreement made for the purposes of subsection (2).

Persons and bodies representing Crown

130. The regulations may declare that a person or body is to be treated for the purposes of this Act, or a particular provision of this Act, as representing, or as not representing, the Crown in right of the State or the Commonwealth (whether generally or in relation to a particular area or class of land).

Delegation by Minister

131. The Minister may, by signed writing, delegate to an officer of the public service all or any of the Minister's powers under or in relation to this Act (other than powers under section 25, 26, 60, 61 or 62).

Delegation by land claims registrar

132. The land claims registrar may, by signed writing, delegate to an officer of the public service all or any of the registrar's powers under or in relation to this Act.

Amendment of description of land

133.(1) If, at any time after a deed of grant under this Act or a Torres Strait Islander (non-transferred land) lease takes effect, greater certainty, by survey or otherwise, is obtained as to the boundaries of the land, the grantees must, on receipt of a written notice to do so by the registrar of titles, surrender to the Crown their deed to, or lease over, the land within such reasonable period as is specified in the notice.

(2) On surrender of the grantee's deed or lease, a new deed of grant or lease delineating the amended boundaries is to be issued to the grantees.

(3) The new deed of grant or lease is to be issued on the same ground (if any) as the surrendered deed of grant or lease.

(4) The registrar must endorse on the new deed of grant or lease, in the

proper order or priority, the instruments under which existing relevant interests arose.

Survey costs etc. to be paid by State

134.(1) Survey costs incurred in relation to the preparation of a deed of grant under section 25, 60 or 133 or a Torres Strait Islander lease are to be paid by the State.

(2) A deed of grant in fee simple under this Act, a Torres Strait Islander lease or a lease prepared for the purposes of section 80 or 133 is not liable to stamp duty, and no fees or charges are payable in relation to the preparation and registration of the deed or lease.

(3) A surrender of a deed or lease under or for the purposes of this Act is not liable to stamp duty, and no fees or charges are payable in relation to the surrender.

(4) This section has effect despite any other Act.

Application of Financial Administration and Audit Act 1977

134A.(1) A land trust is not a statutory body for the *Financial Administration and Audit Act 1977*.

(2) However, a land trust must, at all reasonable times—

- (a)** allow a suitably qualified person appointed by the land claims registrar to audit the accounts of the land trust; and
- (b)** give the person appointed to audit the accounts of the land trust the help the person reasonably requires for conducting the audit, including disclosing institution account details.

Approval of forms

134B. The chief executive may approve forms for use under this Act.

Regulations

135.(1) The Governor in Council may make regulations under this Act.

- (2) A regulation may make provision with respect to—
- (a) the incorporation of the grantees of land granted or leased, or to be granted or leased, under this Act; and
 - (b) requiring the grantees to become incorporated; and
 - (c) the indemnification of incorporated grantees from personal liability; and
 - (d) the procedure to be followed by the grantees in arriving at decisions in relation to land; and
 - (e) evidence of decisions made by the grantees; and
 - (f) the establishment and maintenance by the land claims registrar of a land trust register, including, for example, the information each land trust must give the land claims registrar for inclusion in the register; and
 - (g) rules for land trusts and Torres Strait Islander land claim associations, including, for example, the adoption of rules and the matters that must be included in the rules; and
 - (h) accounting requirements for land trusts, including, for example, maintaining accounts, preparing financial statements, auditing accounts and giving audit reports to the land claims registrar.

ENDNOTES**1 Index to endnotes**

	Page
2 Date to which amendments incorporated	74
3 Key	75
4 Table of earlier reprints	75
5 Tables in earlier reprints	76
6 List of legislation	76
7 List of annotations	77
8 Tables of renumbered provisions	81
9 Provisions that have not commenced and are not incorporated into reprint . .	86

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 October 1998. Future amendments of the Torres Strait Islander Land Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 36 of 1992	3 July 1992
2	to Act No. 81 of 1994	24 February 1995
3	to Act No. 81 of 1994	6 July 1995
3A	to Act No. 57 of 1995	16 August 1996
3B	to Act No. 37 of 1996	4 December 1996
3C	to Act No. 24 of 1998	13 July 1998

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	3
Changed names and titles	3
Corrected minor errors	1, 2, 3
Obsolete and redundant provisions	2, 3

6 List of legislation

Torres Strait Islander Land Act 1991 No. 33

date of assent 12 June 1991

ss 1–3 commenced on date of assent

remaining provisions commenced 21 December 1991 (1991 SL No. 222)

as amended by—

Aboriginal and Torres Strait Islander Land (Consequential Amendments) Act 1991 No. 76 pts 1, 10

date of assent 21 November 1991

commenced on date of assent

Nature Conservation Act 1992 No. 20 ss 1–2, 159 sch 2

date of assent 22 May 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 19 December 1994 (1994 SL No. 472)

Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 2

date of assent 2 July 1992

commenced on date of assent

Lands Legislation Amendment Act 1992 No. 64 ss 1–3 sch 1

date of assent 7 December 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 1992 (1992 SL No. 448)

Native Title (Queensland) Act 1993 No. 85 ss 1–2(2), (4) pt 13 div 2 (as amd 1994 No. 61 s 2 sch 2 (as from 24 November 1994))

date of assent 17 December 1993

ss 1–2(2) commenced on date of assent

ss 2(4), 170A–170E, 171A and 172–172D commenced 28 November 1994 (1994 SL No. 408)

ss 165–168, 169 and 170 commenced 21 December 1991 (see s 2(1), (4), 1994 SL No. 408 and 1991 SL No. 222)

ss 168A–168N and 169A–169G commenced 5 December 1994 (1994 SL No. 421)

s 171 not yet proclaimed into force

Fisheries Act 1994 No. 37 ss 1–2, 244 sch 2

date of assent 8 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 27 January 1995 (1995 SL No. 9)

Transport Infrastructure Amendment Act (No. 2) 1994 No. 49 ss 1–2, 6 sch 2

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 18 November 1994 (1994 SL No. 399)

Land Act 1994 No. 81 ss 1–2, 527 sch 5 (as amd 1995 No. 57 ss 1, 4 sch 1 (as from 1 July 1995))

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (1995 SL No. 185)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Natural Resources Legislation Amendment Act 1998 No. 24 pts 1, 4

date of assent 14 May 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1998 (1998 SL No. 242)

Native Title (Queensland) State Provisions Act 1998 No. 30 ss 1–2, 21 sch

date of assent 3 September 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 30 September 1998 (1998 SL No. 266 *but see also s 2(1)(a)*)

7 List of annotations

This reprint has been partly renumbered—see tables of renumbered provisions in endnote 8

Repeal of Queensland Coast Islands Declaratory Act

s 1.03 om R2 (see RA s 40)

Commencement

s 2 om R3 (see RA s 37)

Definitions

- s 3** def “**director**” om R3 (see RA s 39)
 def “**land**” om R2 (see RA s 39)
 def “**land trust**” ins 1998 No. 24 s 12
 def “**national park**” amd 1992 No. 20 s 159 sch 2
 def “**native title interests**” ins 1993 No. 85 s 166
 def “**Registrar of Titles**” ins 1994 No. 81 s 527 sch 5 (as amd 1995 No. 57 s 4 sch 1)
 def “**Torres Strait Islander land claim association**” ins 1998 No. 24 s 12

Meaning of “native title interests”

- s 5** ins 1993 No. 85 s 167

Meaning of Torres Strait Islander land

- s 9** amd 1993 No. 85 s 168 (as sub 1994 No. 61 s 2 sch 2)

Meaning of transferable and transferred land

- s 10** amd 1993 No. 85 s 168A (as ins 1994 No. 61 s 2 sch 2)

Lands that are transferable lands

- s 11** amd 1993 No. 85 s 168B (as ins 1994 No. 61 s 2 sch 2)

DOGIT land

- s 12** amd 1993 No. 85 s 168C (as ins 1994 No. 61 s 2 sch 2)

Torres Strait Islander reserve land

- s 13** amd 1993 No. 85 s 168D (as ins 1994 No. 61 s 2 sch 2)

Meaning of claimable and granted land

- s 14** amd 1993 No. 85 s 168E (as ins 1994 No. 61 s 2 sch 2)

Lands that are claimable lands

- s 15** amd 1991 No. 76 s 45; 1995 No. 57 ss 1–2, 4, sch 1
 sub 1993 No. 85 s 168F (as ins 1994 No. 61 s 2 sch 2)

Lands that are available Crown land—general

- s 16** amd 1993 No. 85 s 168G (as ins 1994 No. 61 s 2 sch 2); 1995 No. 57 s 4 sch 1

Tidal land

- s 18** amd 1993 No. 85 s 168H (as ins 1994 No. 61 s 2 sch 2); 1994 No. 49 s 6 sch 2; 1994 No. 81 s 527 sch 5

Meaning of city or town land

- s 19** amd 1993 No. 85 s 168I (as ins 1994 No. 61 s 2 sch 2)

Meaning of township land

- s 20** sub 1993 No. 85 s 168J (as ins 1994 No. 61 s 2 sch 2)

Lands that are not available Crown land

- s 22** amd 1994 No. 81 s 527 sch 5

Torres Strait area

- s 23** sub 1993 No. 85 s 168K (as ins 1994 No. 61 s 2 sch 2)

Application of laws

s 24 amd 1994 No. 37 s 244 sch 2

Minister to appoint trustees

s 26 amd 1991 No. 76 s 46; 1993 No. 85 s 168L (as ins 1994 No. 61 s 2 sch 2)

Minister to act as soon as possible

s 27 amd 1993 No. 85 s 168M (as ins 1994 No. 61 s 2 sch 2)

Inclusion of additional areas in deed of grant

s 29 ins 1993 No. 85 s 168N (as ins 1994 No. 61 s 2 sch 2)

Existing interests

s 31 amd 1991 No. 76 s 47; 1993 No. 85 s 169; 1994 No. 81 s 527 sch 5

Interests to be endorsed on deed

s 32 amd 1992 No. 64 s 3 sch 1; 1993 No. 85 s 169A (as ins 1994 No. 61 s 2 sch 2)

Reservations of forest products and quarry material etc.

s 40 amd 1991 No. 76 s 48; 1993 No. 85 s 169B (as ins 1994 No. 61 s 2 sch 2)

Registrar to determine whether claim duly made

s 46 amd 1993 No. 85 s 169C (as ins 1994 No. 61 s 2 sch 2)

Joint hearing of claims

s 48 amd 1993 No. 85 s 169D (as ins 1994 No. 61 s 2 sch 2)

Repeat claims

s 49 ins 1993 No. 85 s 169E (as ins 1994 No. 61 s 2 sch 2)

Establishment of claim on ground of customary affiliation

s 50 amd 1991 No. 76 s 49

Resolution of conflicting claims

s 58 amd 1993 No. 85 s 169F (as ins 1994 No. 61 s 2 sch 2)

Inclusion of additional areas in deed of grant

s 64 ins 1993 No. 85 s 169G (as ins 1994 No. 61 s 2 sch 2)

Existing interests

s 68 amd 1993 No. 85 s 170

Interests to be endorsed on deed

s 69 amd 1992 No. 36 s 1 sch 2

Reservations of forest products and quarry material etc.

s 78 amd 1991 No. 76 s 50; 1993 No. 85 s 170A (as ins 1994 No. 61 s 2 sch 2)

Division 5—National parks

div hdg sub 1992 No. 20 s 159 sch 2

National park subject to lease to State etc.

s 80 sub 1992 No. 20 s 159 sch 2

 amd 1993 No. 85 s 170B (as ins 1994 No. 61 s 2 sch 2); 1995 No. 57 s 4 sch 1

Park remains National Park

s 5.21 om 1992 No. 20 s 159 sch 2
(incorrectly numbered as s 81 in R2)

Appointment of members

s 87 amd 1991 No. 76 s 51; 1996 No. 37 s 147 sch 2

Termination of appointment

s 95 amd 1992 No. 36 s 2 sch 2; 1993 No. 85 s 170C (as ins 1994 No. 61 s 2 sch 2)

Procedure of tribunal

s 105 amd 1993 No. 85 s 170D (as ins 1994 No. 61 s 2 sch 2)

Particular powers of tribunal

s 109 amd 1993 No. 85 s 170E (as ins 1994 No. 61 s 2 sch 2)

Tribunal must refer certain matters to Native Title Tribunal

s 8.26A ins 1993 No. 85 s 171 (as amd 1994 No. 61 s 2 sch 2)

Appeals to Land Appeal Court from decisions of tribunal

s 114 amd 1993 No. 85 s 171A (as ins 1994 No. 61 s 2 sch 2)

Evidence and other findings in other proceedings

s 116 ins 1993 No. 85 s 172 (as sub 1994 No. 61 s 2 sch 2)
amd 1998 No. 30 s 21 sch

Continuing authority of member

s 118 ins 1993 No. 85 s 172A (as ins 1994 No. 61 s 2 sch 2)

Staff of tribunal employed under Public Service Act

s 124 sub 1996 No. 37 s 124 sch 2

Delegation by Registrar of Titles

s 9.05 om 1993 No. 85 s 172B (as ins 1994 No. 61 s 2 sch 2)

Application of Financial Administration and Audit Act 1977

s 134A ins 1998 No. 24 s 13

Approval of forms

s 134B ins 1998 No. 24 s 13

Orders in council to be tabled and disallowable

s 9.09 om 1993 No. 85 s 172B (as ins 1994 No. 61 s 2 sch 2)

Regulations

s 135 amd 1993 No. 85 s 172C (as ins 1994 No. 61 s 2 sch 2); 1998 No. 24 s 14

Renumbering of Act

s 9.11 ins 1993 No. 85 s 172D (as ins 1994 No. 61 s 2 sch 2)
om R2 (see RA s 40)

8 Tables of renumbered provisions

TABLE OF RENUMBERED PROVISIONS (Reprint No. 2)
under the Reprints Act 1992 s 43 as required by Nature Conservation Act 1993
s 172D

Previous	Renumbered as
1.01	1
1.02	2
1.04	3
1.05	4
1.05A	5
1.06	6
2.01	7
2.02	8
2.03	9
2.04	10
2.05	11
2.06	12
2.07	13
2.08	14
2.09	15
2.10	16
2.11	17
2.12	18
2.13	19
2.14	20
2.15	21
2.16	22
2.17	23
2.18	24
3.01	25
3.02	26
3.02(4A)	26(5)
3.02(5)	26(6)
3.03	27
3.04	28
3.04A	29
3.05	30
3.06	31
3.07	32
3.08	33
3.09	34
3.10	35
3.11	36

3.12	37
3.13	38
3.14	39
3.15	40
4.01	41
4.02	42
4.03	43
4.04	44
4.05	45
4.06	46
4.07	47
4.08	48
4.08A	49
4.09	50
4.10	51
4.11	52
4.12	53
4.13	54
4.14	55
4.15	56
4.16	57
4.17	58
4.18	59
5.01	60
5.02	61
5.03	62
5.04	63
5.04A	64
5.05	65
5.06	66
5.07	67
5.08	68
5.09	69
5.10	70
5.11	71
5.12	72
5.13	73
5.14	74
5.15	75
5.16	76
5.17	77
5.18	78
5.19	79
5.20	80
5.21	81
6.01	82

6.02	83
6.03	84
7.01	85
7.02	86
8.01	87
8.02	88
8.03	89
8.04	90
8.05	91
8.06	92
8.07	93
8.08	94
8.09	95
8.10	96
8.11	97
8.12	98
8.13	99
8.14	100
8.15	101
8.16	102
8.17	103
8.18	104
8.19	105
8.20	106
8.21	107
8.22	108
8.23	109
8.24	110
8.25	111
8.26	112
8.27	113
8.28	114
8.29	115
8.29(3A)	115(4)
8.29(4)	115(5)
8.29(5)	115(6)
8.29(6)	115(7)
8.29(7)	115(8)
8.30	116
8.30A	117
8.31	118
8.31A	119
8.32	120
8.33	121
8.34	122
8.35	123

Torres Strait Islander Land Act 1991

8.36	124
8.37	125
8.38	126
8.39	127
8.40	128
9.01	129
9.02	130
9.03	131
9.04	132
9.06	133
9.07	134
9.08	135
9.10	136

TABLE OF RENUMBERED PROVISIONS (Reprint No. 3)
under the Reprints Act 1992 s 43 as required by the Nature Conservation Act 1993
s 172D

Previous	Renumbered as
82	81
83	82
84	83
85	84
86	85
87	86
88	87
89	88
90	89
91	90
92	91
93	92
94	93
95	94
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132	131
133	132
134	133
135	134
136	135

9 Provisions that have not commenced and are not incorporated into reprint

The following provision is not incorporated in this reprint because it had not commenced before the reprint date (see Reprints Act 1992 s 5(c)).

Native Title (Queensland) Act 1993 No. 85 s 171 (as amended by Native Title (Queensland) Amendment Act 1994 No. 61 s 2 sch 2) reads as follows—

Insertion of new s 8.26A

171. After section 8.26—

insert—

‘Tribunal must refer certain matters to Native Title Tribunal

‘8.26A.(1) This section applies if—

- (a) native title interests are claimed to exist for an area claimed under this Act; or
- (b) the question of native title interests arises about an area claimed under this Act.

‘(2) The Tribunal must refer the claim to the Native Title Tribunal for hearing.

‘(3) The Native Title Tribunal is the Land Tribunal for the purposes of the claim and a reference in this Act to the Land Tribunal is a reference to the Native Title Tribunal to hear and determine the claim.’.