



Queensland

# Torres Strait Islander Land Act 1991

Reprinted as in force on 25 March 2005  
(includes commenced amendments up to 2004 Act No. 25)

Reprint No. 5D

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This Act is reprinted as at 25 March 2005. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

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

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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## Queensland

# Torres Strait Islander Land Act 1991

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## **Torres Strait Islander Land Act 1991**

[as amended by all amendments that commenced on or before 25 March 2005]

### **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

### 1 Short title

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

### 3 Definitions

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 Act 2000*, schedule 4.

**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.

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***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; and
- (e) a geothermal exploration permit under the *Geothermal Exploration Act 2004*.

***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 Act 2000*, schedule 4.

***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*, the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*; 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.

**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** means petroleum under the *Petroleum and Gas (Production and Safety) Act 2004*.

**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

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- (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 Act 2000*, schedule 4.

#### **4 Torres Strait Islanders particularly concerned with land etc.**

- (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.

#### **5 Meaning of *native title interests***

- (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.

**6 Crown bound**

This Act binds the Crown.

**Part 2 Basic concepts****Division 1 Torres Strait Islanders and their customs****7 Meaning of Torres Strait Islander**

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

**8 Meaning of Island custom**

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****9 Meaning of Torres Strait Islander land**

(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**

### **10            Meaning of transferable and transferred land**

- (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.

### **11            Lands that are transferable lands**

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.

### **12            DOGIT land**

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 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.

### **13 Torres Strait Islander reserve land**

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**

### **14            Meaning of claimable and granted land**

- (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.

### **15            Lands that are claimable lands**

- (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.

**16 Lands that are available Crown land—general**

- (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.

**17 Beds and banks of watercourses and lakes**

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.

**18 Tidal land**

- (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.

**19 Meaning of city or town land**

- (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.

**20 Meaning of township land**

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

**21 National parks**

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

**22 Lands that are not available Crown land**

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*.

**23 Torres Strait area**

- (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**

### **24            Application of laws**

- (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**

#### **25            Deeds of grant to be prepared**

- (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.

## **26 Minister to appoint trustees**

- (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.

## **27 Minister to act as soon as possible**

- (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.

## **28 Authority to grant fee simple in transferable land**

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

## **29 Inclusion of additional areas in deed of grant**

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.

## **30 Deed of grant takes effect on delivery**

- (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.

**31 Existing interests**

- (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.

**32 Interests to be endorsed on deed**

- (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.

### **33 Cancellation of deed of grant in trust**

- (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.

**34 Registrar of titles must take action etc. to resolve difficulties**

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.

**35 Land Court may resolve difficulties**

- (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****36 Permitted dealings with transferred land**

- (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

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- (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 husband or wife, or former husband or wife, 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.

### **37 Other dealings void**

- (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.

### **38 No resumption of transferred land etc.**

- (1) An interest in transferred land can not 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**

### **39 Reservations of minerals and petroleum**

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.

### **40 Reservations of forest products and quarry material etc.**

- (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**

#### **41            Duly made claims**

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

- (a) section 42;
- (b) section 43;

- (c) section 44;
- (d) section 45.

#### **42 Who may make a claim**

- (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.

#### **43 Grounds on which claim may be made**

- (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.

#### **44 How claim is to be made**

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.

#### **45 Time limit for making of claims**

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

### **Division 2 Determination of claims**

#### **46 Registrar to determine whether claim duly made**

- (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.

#### **47 Tribunal to notify making of claims**

- (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.

#### **48 Joint hearing of claims**

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.

**49 Repeat claims**

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.

**50 Establishment of claim on ground of customary affiliation**

- (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.

**51 Establishment of claim on ground of historical association**

- (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.

**52 Establishment of claim on ground of economic or cultural viability**

- (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.

**53 Claim may be established for only part of land claimed**

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.

**54 Claim may be established on more than 1 ground**

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

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

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.

**56 Amendment of claim**

- (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.

**57 Recommendation to Minister**

- (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.
- (6) In this section—

*Minister* means the Minister administering the *Land Act 1994*.

## **58 Resolution of conflicting claims**

- (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.

- (3) In this section—

*Minister* means the Minister administering the *Land Act 1994*.

## 59 Notification of parties

- (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.

- (3) In this section—

*Minister* means the Minister administering the *Land Act 1994*.



**61 Leases to be prepared**

- (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
  - (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.

## **62 Minister to appoint trustees**

- (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.

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

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.

#### **64 Inclusion of additional areas in deed of grant**

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.

#### **65 Signing of lease etc.**

- (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.

## **66 Deed of grant takes effect on delivery**

- (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.

## **67 Lease commences on delivery**

- (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.

## **68 Existing interests**

- (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.

**69 Interests to be endorsed on deed**

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.

**70 Cancellation of existing deed of grant**

(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.

**71 Registrar of titles must take action etc. to resolve difficulties**

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.

**72 Land Court may resolve difficulties**

- (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**

**73 Permitted dealings with granted land**

- (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—

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- (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 husband or wife, or former husband or wife, 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.

#### **74 Other dealings void**

- (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.

#### **75 No resumption of granted land etc.**

- (1) An interest in granted land (other than land granted on the ground of economic or cultural viability) can not 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).

#### **76 Devolution of granted land**

- (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**

### **77            Reservations of minerals and petroleum**

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.

### **78            Reservations of forest products and quarry material etc.**

- (1) A deed of grant of granted land that was transferred land, and a Torres Strait Islander (transferred land) lease, may contain a



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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—
- (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**

### **79        Rights of access preserved**

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**

### **80        National park subject to lease to State etc.**

- (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.
- (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.

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- (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*.



- (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

### 84 Application of Mineral Resources Act

- (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 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

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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.

## **85 Royalties in relation to mining on Torres Strait Islander land**

- (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 and Gas (Production and Safety) Act 2004*, 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**

#### **86                      Land Tribunal**

- (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.

#### **87                      Appointment of members**

- (1) The members of the tribunal are to be appointed by the Governor in Council.
- (2) The chairperson is to be appointed on a part-time or 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*.

#### **88                      Qualifications for appointment**

- (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.

## **89 Term of appointment**

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.

## **90 Terms and conditions of appointment**

- (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.

## **91 Preservation of rights**

- (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.

## **92 Leave of absence**

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

## **93 Resignation**

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

## **94 Disclosure of interests**

- (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.

## **95 Termination of appointment**

- (1) The Governor in Council may terminate the appointment of a member of the Land Tribunal if the member—
  - (a) becomes mentally or physically incapable of satisfactorily performing the member's duties; 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.

## **96 Acting chairperson**

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**

### **97                      Arrangement of business**

- (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.

**98 Constitution of tribunal**

- (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.

**99 Member presiding**

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.

**100 Member of tribunal ceasing to be available**

- (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.

### **101 Sitting places**

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**

### **102 Parties to proceeding before tribunal**

- (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.

### **103 Tribunal to determine who are interested persons**

- (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.

### **104 Representation before tribunal**

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

### **105 Procedure of tribunal**

- (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.

## **106 Conferences**

- (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.

- (5) In this section—

*Minister* means the Minister administering the *Land Act 1994*.

## **107 Hearings to be in public except in special circumstances**

- (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.

## **108 Opportunity to make submissions**

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.

## **109 Particular powers of tribunal**

- (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.

### **110 Manner in which questions to be decided**

- (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.

### **111 Power of tribunal to dismiss claim or strike out party**

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.

## **112 General powers**

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.

## **113 Reasons to be given by tribunal**

- (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.
- (4) In this section—

*Minister* means the Minister administering the *Land Act 1994*.

## **114 Appeals to Land Appeal Court from decisions of tribunal**

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

*Torres Strait Islander Land Act 1991*

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- (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.
- (9) In this section—
- Minister** means the Minister administering the *Land Act 1994*.

### **115 Reference of questions of law to Land Appeal Court**

- (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.

### **116 Evidence and other findings in other proceedings**

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

(iv) a recognised State/Territory body within the meaning of the *Native Title Act 1993* (Cwlth); or

(v) 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.

### **117 Protection of members etc.**

(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.

### **118 Continuing authority of member**

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.

### **119 Failure of witness to attend**

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.

## **120 Refusal of witness to be sworn or to answer questions**

- (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.

## **121 Obstructing tribunal etc.**

- (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.

## **122 Allowances for witnesses**

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**

### **123      Management of administrative affairs of tribunal**

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

### **124      Staff of tribunal employed under Public Service Act**

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

### **125      Consultants to tribunal**

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

### **126      Annual report**

- (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 publication, the report is taken to have been laid before the Legislative Assembly, and to have been ordered to be published by the Legislative Assembly, when it is given to the clerk.

**127 Delegation of powers by chairperson**

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****128 Creation of interests in transferable and claimable land**

- (1) Nothing in this Act prevents the creation of an interest in transferable land if—
  - (a) the interest is a mining interest or a geothermal exploration permit under the *Geothermal Exploration Act 2004*; 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 a geothermal exploration permit under the *Geothermal Exploration Act 2004*; 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.

## **129 Rights of access to interests preserved**

- (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).

### **130 Persons and bodies representing Crown**

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).

### **131 Delegation by Minister**

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).

### **132 Delegation by land claims registrar**

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.

### **133 Amendment of description of land**

- (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.

### **134 Survey costs etc. to be paid by State**

- (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) No fees or charges are payable for the preparation and registration of—
  - (a) a deed of grant in fee simple under this Act; or
  - (b) a Torres Strait Islander lease or lease prepared for section 80 or 133; or
  - (c) a surrender, under or for this Act, of a deed of grant or lease mentioned in paragraph (a) or (b).
- (3) This section has effect despite any other Act.

### **134A Application of Financial Administration and Audit Act 1977**

- (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.

### **134B Approval of forms**

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

**135 Regulation-making power**

- (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

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### 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 25 March 2005. 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

<b>Key</b>	<b>Explanation</b>	<b>Key</b>	<b>Explanation</b>
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Reprint date
1	to 1992 Act No. 36	2 July 1992	3 July 1992
2	to 1994 Act No. 81	27 January 1995	24 February 1995
3	to 1994 Act No. 81	1 July 1995	6 July 1995
3A	to 1995 Act No. 57	28 November 1995	16 August 1996
3B	to 1996 Act No. 37	1 December 1996	4 December 1996
3C	to 1998 Act No. 24	1 December 1996	13 July 1998
4	to 1998 Act No. 30	30 September 1998	2 October 1998
4A	to 1999 Act No. 19	30 April 1999	13 May 1999
4B	to 2000 Act No. 34	13 September 2000	20 September 2000
4C	to 2001 Act No. 33	7 June 2001	20 June 2001
4D	to 2001 Act No. 71	28 February 2002	28 February 2002
4E	to 2001 Act No. 71	1 March 2002	1 March 2002



Reprint No.	Amendments included	Effective	Reprint date
			(Column discontinued) Notes
4F	to 2003 Act No. 8	28 March 2003	
4G	to 2003 Act No. 8	1 April 2003	R4G withdrawn, see R5
5	to 2003 Act No. 8	1 April 2003	
5A	to 2003 Act No. 77	6 November 2003	
5B	to 2004 Act No. 4	6 May 2004	
5C	to 2004 Act No. 25	31 December 2004	
5D	to 2004 Act No. 25	25 March 2005	

## 5 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
Renumbered provisions	2

## 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)

amending legislation—

### **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 (this Act is amended, see amending legislation below)**

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)

s 171 never proclaimed into force and om 1998 No. 30 s 20

remaining provisions commenced 5 December 1994 (1994 SL No. 421)

amending legislation—

**Native Title (Queensland) Amendment Act 1994 No. 61 s 2 sch 2 (amends 1993 No. 85 above)**

date of assent 24 November 1994

commenced on date of assent

**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 (this Act is amended, see amending legislation below)**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

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

amending legislation—

**Statute Law Revision Act 1995 No. 57 ss 1, 4 sch 1 (amends 1994 No. 81 above)**

date of assent 28 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (see s 4 sch 1)

**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 (see 2(1) and 1998 SL No. 266)

**Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch**

date of assent 30 April 1999

commenced on date of assent

**Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2**

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions commenced 28 February 2002 (2002 SL No. 27) (provisions were to commence 8 June 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 46 s 2)))

**Water Act 2000 No. 34 ss 1–2, 1145 sch 3**

date of assent 13 September 2000

commenced on date of assent (see s 2(2))

**Natural Resources Legislation Amendment Act 2001 No. 33 pts 1, 9**

date of assent 7 June 2001

commenced on date of assent

**Duties Act 2001 No. 71 ss 1–2(1), 551 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 10)

**Discrimination Law Amendment Act 2002 No. 74 ss 1–2, 90 sch**

date of assent 13 December 2002

ss 1–2 commenced on date of assent

s 90 commenced 31 March 2003 (2003 SL No. 51)

remaining provisions commenced 1 April 2003 (2003 SL No. 51)

**Parliament of Queensland Amendment Act 2003 No. 8 ss 1, 17 sch**

date of assent 28 March 2003

commenced on date of assent

**Justice and Other Legislation Amendment Act 2003 No. 77 ss 1, 2(2), pt 26**

date of assent 6 November 2003

commenced on date of assent (see s 2(2))

**Natural Resources and Other Legislation Amendment Act 2004 No. 4 ss 1, 57 sch**

date of assent 6 May 2004

commenced on date of assent

**Geothermal Exploration Act 2004 No. 12 ss 1–2, ch 8 pt 8**

date of assent 31 May 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 25 March 2005 (2005 SL No. 43)

**Petroleum and Gas (Production and Safety) Act 2004 No. 25 ss 1, 2(2), 1038-1040  
(prev ss 978-980)**

date of assent 12 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 31 December 2004 (2004 SL No. 308)

## 7 List of annotations

**This reprint has been renumbered—see table 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 “**bed and banks**” amd 2000 No. 34 s 1145 sch 3
  - def “**director**” om R3 (see RA s 39)
  - def “**interest**” amd 2004 No. 12 s 161
  - def “**lake**” amd 2000 No. 34 s 1145 sch 3
  - def “**land**” om R2 (see RA s 39)
  - def “**land trust**” ins 1998 No. 24 s 12
  - def “**mining interest**” amd 2004 No. 25 s 1039(2)
  - def “**national park**” amd 1992 No. 20 s 159 sch 2
  - def “**native title interests**” ins 1993 No. 85 s 166  
amd 2004 No. 4 s 57 sch
  - def “**petroleum**” sub 2004 No. 25 s 1039
  - def “**Registrar of Titles**” ins 1994 No. 81 s 527 sch 5 (amd 1995 No. 57 s 4  
sch 1)
  - def “**Torres Strait Islander land claim association**” ins 1998 No. 24 s 12
  - def “**watercourse**” amd 2000 No. 34 s 1145 sch 3

**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 (amd 1994 No. 61 s 2 sch 2)**Meaning of transferable and transferred land****s 10** amd 1993 No. 85 s 168A (amd 1994 No. 61 s 2 sch 2)**Lands that are transferable lands****s 11** amd 1993 No. 85 s 168B (amd 1994 No. 61 s 2 sch 2)**DOGIT land****s 12** amd 1993 No. 85 s 168C (amd 1994 No. 61 s 2 sch 2)

**Torres Strait Islander reserve land**

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**Lands that are available Crown land—general**

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

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

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s 50            amd 1991 No. 76 s 49

**Recommendation to Minister**

s 57            amd 2003 No. 77 s 122

**Resolution of conflicting claims**

s 58            amd 1993 No. 85 s 169F (amd 1994 No. 61 s 2 sch 2); 2003 No. 77 s 123

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s 59            amd 2003 No. 77 s 124

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

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**Interests to be endorsed on deed**

s 69            amd 1992 No. 36 s 1 sch 2

**Permitted dealings with granted land**

s 73            amd 2002 No. 74 s 90 sch

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

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div hdg       sub 1992 No. 20 s 159 sch 2

**National park subject to lease to State etc.**

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

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s 5.21        om 1992 No. 20 s 159 sch 2

**Royalties in relation to mining on Torres Strait Islander land**

s 85            amd 2004 No. 25 s 1040

**Appointment of members**

s 87            amd 1991 No. 76 s 51; 1996 No. 37 s 147 sch 2; 2001 No. 33 s 35

**Termination of appointment**

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