



Queensland

*Aboriginal Land Act 1991*

# Aboriginal Land Regulation 2011

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## Queensland

# Aboriginal Land Regulation 2011

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title .....	5
2	Commencement .....	5
3	Definitions .....	5
<b>Part 2</b>	<b>Provisions about land trusts</b>	
<b>Division 1</b>	<b>Members of land trusts</b>	
4	Payments to members .....	5
5	Land trust to indemnify members .....	6
6	Immunity of members .....	6
7	Protection about notice when a person is a member of more than 1 land trust .....	6
8	Chairperson, deputy chairperson and secretary—appointment .	7
9	Acting as chairperson, secretary or in another executive office .	7
10	Resignation of members .....	8
<b>Division 2</b>	<b>Rules of land trusts</b>	
<b>Subdivision 1</b>	<b>Adoption of rules</b>	
11	Adoption of rules .....	8
12	Content of adopted rules .....	8
<b>Subdivision 2</b>	<b>Rules about proxies</b>	
13	Definition for sdiv 2 .....	9
14	Application of sdiv 2 .....	10
15	Appointing proxy .....	10
16	When appointment of proxy is effective .....	10
17	Counting proxies for quorum .....	11
<b>Subdivision 3</b>	<b>Rule about filling executive offices</b>	
20	When election of members of executive committee must be held	11
<b>Division 3</b>	<b>Trust property</b>	

Contents

---

22	Property to be held on trust . . . . .	11
23	Powers in relation to trust property . . . . .	12
24	Funds to be invested under Trusts Act 1973 . . . . .	12
25	Staff and consultants, and members' expenses, to be paid from trust property . . . . .	12
26	Application of insurance money . . . . .	12
<b>Division 4</b>	<b>Accounts, annual financial statements and audit requirements</b>	
27	Accounts . . . . .	13
28	Annual financial statement . . . . .	13
29	Audit requirements . . . . .	13
<b>Division 5</b>	<b>General meetings</b>	
30	Holding general meetings . . . . .	14
31	Chief executive may call general meeting . . . . .	15
32	Material to be given to chief executive . . . . .	15
33	Land trust to keep minutes of meetings . . . . .	16
<b>Division 6</b>	<b>Dissolution of land trust and transfer of trust property</b>	
34	Dissolution of land trust if transferred land becomes granted land	17
35	Transfer of property if part of transferred land becomes granted land	17
<b>Part 4</b>	<b>Mining royalties</b>	
37	Prescribed percentage—Act, s 203 . . . . .	18
<b>Part 5</b>	<b>Appeals to Land Appeal Court</b>	
38	Application of pt 5 . . . . .	19
39	Starting appeal to Land Appeal Court . . . . .	19
40	Court may accept some noncompliance with s 39 . . . . .	20
41	Other parties may give notice of appearance . . . . .	20
42	Parties to prepare summary of arguments and of new evidence	20
43	Legal representation . . . . .	21
44	Forms for appeals . . . . .	21
<b>Part 6</b>	<b>Protected areas in Cape York Peninsula Region</b>	
48A	Prescribed protected areas—Act, s 173 . . . . .	21
<b>Part 7</b>	<b>Miscellaneous provisions</b>	
48AA	Available State land that is claimable land—Act, s 23 . . . . .	22
49	References to plans . . . . .	22
50	Application of provisions for particular land . . . . .	22
50B	Land for model freehold schedule . . . . .	22
<b>Part 8</b>	<b>Repeal and transitional provisions</b>	

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<b>Division 1</b>	<b>Repeal</b>	
51	Repeal . . . . .	23
<b>Division 2</b>	<b>Transitional provisions</b>	
52	Definition for div 2 . . . . .	23
53	Members of executive committee continue in office . . . . .	23
54	Land trust's adopted rules continue . . . . .	23
55	Continuing operation of particular provisions of repealed regulation	24
56	Chief executive may dissolve Aboriginal land claim associations	24
<b>Schedule 1</b>	<b>Prescribed protected areas</b> . . . . .	26
<b>Schedule 2</b>	<b>Available State land that is claimable land</b> . . . . .	27
<b>Schedule 3</b>	<b>Dictionary</b> . . . . .	28



# Aboriginal Land Regulation 2011

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Aboriginal Land Regulation 2011*.

### 2 Commencement

This regulation commences immediately after the commencement of the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011*, section 90.

### 3 Definitions

The dictionary in schedule 3 defines particular words used in this regulation.

## Part 2 Provisions about land trusts

### Division 1 Members of land trusts

#### 4 Payments to members

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

## **5 Land trust to indemnify members**

A land trust must indemnify all its members engaged in giving effect to the Act or this regulation against all proceedings and claims in relation to—

- (a) acts done, or omitted to be done, by the member without negligence under the Act; and
- (b) acts done, or omitted to be done, by the member in good faith and without negligence purportedly for the purposes of the Act or this regulation.

## **6 Immunity of members**

(1) A member—

- (a) is chargeable only for amounts and securities actually received even though the member signed a receipt for the amount or security; and
- (b) is answerable and accountable only for the member's own acts, receipts, neglects or defaults.

(2) Without limiting subsection (1), a member is not answerable or accountable for—

- (a) the acts, receipts, neglects or defaults of another member or the land trust; or
- (b) the acts, receipts, neglects or defaults of a bank, broker or other person with whom trust property is deposited; or
- (c) the insufficiency or deficiency of any securities or another loss unless the insufficiency, deficiency or loss happens because of the member's default.

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

A person who is a member of more than 1 land trust is not, in the absence of fraud, to be affected by notice of any instrument, fact or thing in relation to a particular land trust if



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the person receives the notice merely because of the person's membership of another land trust.

## **8 Chairperson, deputy chairperson and secretary—appointment**

A land trust must appoint—

- (a) a member as the chairperson of the land trust; and
- (b) if there is more than 1 member—a member as the deputy chairperson of the land trust; and
- (c) if there are more than 2 members—a member as the secretary of the land trust.

## **9 Acting as chairperson, secretary or in another executive office**

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

## **10 Resignation of members**

- (1) A member of a land trust may resign by signed notice of resignation given to the land trust.
- (2) The resignation does not take effect until it is accepted by the land trust.

## **Division 2 Rules of land trusts**

### **Subdivision 1 Adoption of rules**

#### **11 Adoption of rules**

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

#### **12 Content of adopted rules**

The adopted rules of a land trust must include provision for the following—

- (a) the establishment, membership and functions of the land trust's executive committee;
- (b) the process for decision-making by the land trust and its committees;
- (c) the creation of the land trust's executive offices and the procedure for filling the offices;

- (d) the appointment of a person to act in the position of a member of the executive committee when the member is, or is to be, absent;
- (e) the procedure for settling disputes between the land trust and its members;
- (f) the frequency of meetings of the executive committee, and how the meetings are to be held;
- (g) the way the land trust's general meetings are to be called and held;
- (h) requirements for managing trust property, including requirements for the following—
  - (i) keeping records of the land trust's transactions;
  - (ii) procedures for authorising payments, and for making payments, out of the land trust's funds;
  - (iii) keeping control over trust property;
  - (iv) procedures for incurring liabilities by or for the land trust;
- (i) the procedure for adopting changes to the adopted rules of the land trust and for adopting new rules.

## **Subdivision 2      Rules about proxies**

### **13      Definition for sdiv 2**

In this subdivision—

*meeting*, of a land trust, means—

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

## 14 Application of sdiv 2

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

## 15 Appointing proxy

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

***individual*** means an individual who is—

  - (a) a member of the land trust; or
  - (b) an Aboriginal person particularly concerned with the land held by the land trust.

## 16 When appointment of proxy is effective

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

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## **17 Counting proxies for quorum**

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

## **Subdivision 3 Rule about filling executive offices**

### **20 When election of members of executive committee must be held**

- (1) This section applies to a land trust if the land trust's total income from all sources for a financial year is more than \$20,000.
- (2) The land trust must, within 2 years after the end of the financial year, hold an election of members of the land trust to elect the members of its executive committee.

## **Division 3 Trust property**

### **22 Property to be held on trust**

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

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

**23 Powers in relation to trust property**

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

**24 Funds to be invested under Trusts Act 1973**

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

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

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

**26 Application of insurance money**

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

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## **Division 4                      Accounts, annual financial statements and audit requirements**

### **27            Accounts**

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

### **28            Annual financial statement**

- (1) A land trust must, by 30 September each year, prepare and adopt an annual financial statement for the financial year most recently ended, if the land trust's total income from all sources for that financial year is more than \$20,000.
- (2) If a land trust prepares and adopts an annual financial statement under subsection (1), the land trust must, by 31 December in the year it is adopted, give the chief executive—
  - (a) a copy of the statement; and
  - (b) a declaration, in the approved form, about the financial operation of the land trust for the financial year.
- (3) Each annual financial statement prepared under this section must include the following—
  - (a) a balance sheet;
  - (b) a profit and loss statement;
  - (c) other information or documents the land trust considers relevant to the financial operation of the land trust.

### **29            Audit requirements**

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

[s 30]

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- (b) a member of The Institute of Chartered Accountants in Australia who is entitled to use the letters ‘CA’ or ‘FCA’; or
  - (c) a member of the Institute of Public Accountants who is entitled to use the letters ‘MIPA’ or ‘FIPA’; or
  - (d) a person approved in writing by the chief executive as having the necessary skills and experience for conducting the audit.
- (2) The land trust must ensure the audit is completed, and it receives the audit report, by 30 November in the financial year after the financial year for which the accounts are audited.
  - (3) The land trust must give the chief executive a copy of the audit report by 31 December in the financial year after the financial year for which the accounts are audited.
  - (4) Despite subsections (1) to (3), a land trust is not required to have its accounts audited for a financial year if the land trust’s total income from all sources for the financial year is not more than \$20,000.

## **Division 5                      General meetings**

### **30            Holding general meetings**

- (1) A land trust must hold an annual general meeting as soon as practicable after the end of each financial year.
- (2) However, a land trust need not hold a meeting under subsection (1) if—
  - (a) the land trust’s total income from all sources for the financial year is not more than \$20,000; and
  - (b) the land trust was not required, under its rules, to hold an election in the financial year for members of its executive committee; and
  - (c) the executive committee of the land trust considers there are no items of business for an annual general meeting.



- (3) A land trust may hold a special general meeting at any time.
- (4) A general meeting must be called and held in the way required under the rules of the land trust.
- (5) Subsection (4) is subject to section 31.

### **31 Chief executive may call general meeting**

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

### **32 Material to be given to chief executive**

- (1) As soon as practicable after a land trust holds an annual general meeting after the end of a financial year, it must give the chief executive—
  - (a) a copy of the minutes of the meeting; and
  - (b) a compliance statement for the financial year; and

[s 33]

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

*compliance statement*, for a financial year, means a statement in the approved form about a land trust's compliance in the financial year with the obligations imposed on it under the Act and the rules of the land trust.

### **33 Land trust to keep minutes of meetings**

A land trust must keep minutes of its general meetings.

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## Division 6                      Dissolution of land trust and transfer of trust property

### 34            **Dissolution of land trust if transferred land becomes granted land**

- (1) This section applies if—
  - (a) the whole of an area of transferred land becomes granted land; and
  - (b) a land trust was formed to hold the transferred land; and
  - (c) the Minister appoints an entity other than the land trust to hold the deed of grant for the granted land.
- (2) The Minister must, by gazette notice, dissolve the land trust formed to hold the transferred land.
- (3) When the land trust is dissolved, all its property, rights and liabilities become the property, rights and liabilities of the entity that holds the granted land.

### 35            **Transfer of property if part of transferred land becomes granted land**

- (1) This section applies if—
  - (a) a part of transferred land becomes granted land; and
  - (b) a land trust was formed to hold the transferred land; and
  - (c) the Minister appoints an entity other than the land trust (the *new entity*) to hold the deed of grant for the granted land.
- (2) The Minister must by gazette notice—
  - (a) set out the description of the land as set out in the deed of grant held by the new entity; and
  - (b) state the property, rights and liabilities of the land trust that are to become the property, rights or liabilities of the new entity.

- (3) On publication of the gazette notice, the stated property, rights and liabilities of the land trust become the property, rights and liabilities of the new entity.

## Part 4 Mining royalties

### 37 Prescribed percentage—Act, s 203

- (1) For section 203(2) of the Act, the percentage of the royalty amount received in a financial year is—
- (a) 100% of each \$1 of the royalty amount up to and including, but not more than, the threshold amount for paragraph (a); and
  - (b) 50% of each \$1 of the royalty amount that is more than the threshold amount for paragraph (a) but not more than the threshold amount for paragraph (b); and
  - (c) 33.32% of each \$1 of the royalty amount that is more than the threshold amount for paragraph (b) but not more than the threshold amount for paragraph (c); and
  - (d) 20% of each \$1 of the royalty amount that is more than the threshold amount for paragraph (c) but not more than the threshold amount for paragraph (d); and
  - (e) 10% of each \$1 of the royalty amount that is more than the threshold amount for paragraph (d).
- (2) In this section—

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

*threshold amount*—

- (a) for the financial year ending 30 June 2011—
  - (i) for paragraph (a), means \$100,000; and
  - (ii) for paragraph (b), means \$200,000; and
  - (iii) for paragraph (c), means \$500,000; and

- (iv) for paragraph (d), means \$1,000,000; and
- (b) for a later financial year—for paragraphs (a), (b), (c) and (d), means the threshold amount for the particular paragraph for the financial year immediately preceding the later financial year (the *previous financial year*) increased by the consumer price index for the previous financial year.

## Part 5 Appeals to Land Appeal Court

### 38 Application of pt 5

This part applies for section 233 of the Act.

### 39 Starting appeal to Land Appeal Court

- (1) A party to a proceeding before the Land Tribunal may appeal, or seek leave to appeal, against a decision of the tribunal mentioned in section 233 of the Act, by giving a written notice of appeal—
  - (a) to the registrar of the Land Appeal Court; and
  - (b) to all other parties to the proceeding before the tribunal or a party's authorised agent; and
  - (c) to the registrar of the tribunal.
- (2) The notice must be given no later than 42 days after the tribunal's decision was given to the party.
- (3) If—
  - (a) more than 5 Aboriginal people made the land claim the subject of the decision that is appealed against; or
  - (b) more than 5 other people have a common interest in the appeal;

the registrar of the Land Appeal Court may, on application by the party who is appealing, provide for substituted service as the registrar considers reasonable.

#### **40 Court may accept some noncompliance with s 39**

- (1) This section applies if a party to a proceeding before the Land Tribunal—
  - (a) complies with section 39, other than section 39(2), no later than 70 days after the tribunal’s decision was given to the party and the Land Appeal Court is satisfied the party’s reasons for the noncompliance are reasonable; or
  - (b) does not comply with section 39 because the party’s notice of appeal is defective and the Land Appeal Court decides the defect does not result in a detriment to the person on whom it was served and does not mislead the registrar of the Land Appeal Court.
- (2) The party is taken to have complied with section 39 for the proceeding.

#### **41 Other parties may give notice of appearance**

A person who—

- (a) is given a notice of appeal; and
- (b) is interested in the appeal;

may become a party to the appeal by giving the registrar of the Land Appeal Court a written notice of appearance no later than 30 days after the person was given the notice of appeal.

#### **42 Parties to prepare summary of arguments and of new evidence**

- (1) A party to an appeal must give the registrar of the Land Appeal Court, and any other party who has given a written notice of appearance, a written summary of—
  - (a) the arguments the party intends to make at the hearing of the appeal; and
  - (b) any new evidence the party intends to produce at the hearing of the appeal; and

- (c) the names, addresses and occupations of the witnesses through whom it is proposed to adduce any new evidence.
- (2) The written summary must be given at least 7 days before the day on which the hearing of the appeal is to start.
- (3) Evidence not included in the summary under subsection (1) may be adduced at the hearing of the appeal only with the consent of the Land Appeal Court given on the terms as to costs and adjournments, and the conditions, the court considers appropriate.

#### **43 Legal representation**

A party to an appeal may be represented by the party's lawyer or agent.

#### **44 Forms for appeals**

If a form for a type of court document is approved for use under the *Land Court Rules 2000*, a party to an appeal must use the form, with necessary changes, when the party is required to give a form of that type.

## **Part 6 Protected areas in Cape York Peninsula Region**

#### **48A Prescribed protected areas—Act, s 173**

For section 173(4) of the Act, definition *prescribed protected area*, paragraph (b), a resources reserve stated in schedule 1 is prescribed.

*Note—*

Section 174 of the Act provides that prescribed protected areas in the Cape York Peninsula Region are transferable land.

## **Part 7                      Miscellaneous provisions**

### **48AA Available State land that is claimable land—Act, s 23**

For section 23(1)(a) of the Act, the available State land described in schedule 2 is declared to be claimable land.

### **49 References to plans**

In schedules 1 and 2, a reference to a plan is a reference to a plan held by, and available for inspection in, the department.

### **50 Application of provisions for particular land**

- (1) This section applies to land that—
  - (a) is granted under part 4 of the Act; and
  - (b) is held for the benefit of Aboriginal people and Torres Strait Islanders particularly concerned with the land, and their ancestors and descendants.
- (2) Sections 15 and 22 apply in relation to the land—
  - (a) as if the reference in section 15(4), definition *individual* to an Aboriginal person particularly concerned with the land included a reference to a Torres Strait Islander particularly concerned with the land; and
  - (b) as if the reference in section 22(a) to Aboriginal people included a reference to Torres Strait Islanders.

### **50B Land for model freehold schedule**

For section 32D(4) of the Act, freehold option land for which there is an interest holder on the commencement of this section is prescribed as a type of freehold option land.



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## **Part 8                      Repeal and transitional provisions**

### **Division 1                Repeal**

#### **51            Repeal**

The Aboriginal Land Regulation 1991, SL No. 218 is repealed.

### **Division 2                Transitional provisions**

#### **52            Definition for div 2**

In this division—

*commencement* means the day this division commences.

#### **53            Members of executive committee continue in office**

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

#### **54            Land trust's adopted rules continue**

- (1) This section applies to a land trust in existence immediately before the commencement.
- (2) The adopted rules of the land trust under the repealed regulation are taken to be the land trust's adopted rules under this regulation.

## **55 Continuing operation of particular provisions of repealed regulation**

- (1) This section applies—
  - (a) to an Aboriginal land claim association incorporated under the repealed regulation and in existence immediately before the commencement; and
  - (b) until the day that is 3 years after the commencement; and
  - (c) despite the repeal of the repealed regulation.
- (2) The following provisions of the repealed regulation continue in force for the purpose of the dissolution or winding-up of the association—
  - (a) section 2, to the extent it includes the following definitions—
    - (i) association;
    - (ii) land claim;
    - (iii) land claim purposes;
    - (iv) public officer;
  - (b) sections 16 to 18.
- (3) If a provision that is continued in force under this section imposes an obligation on an entity or provides for an entity to take a particular action in relation to the dissolution or winding-up of an Aboriginal land claim association, while the provision is continued in force—
  - (a) the obligation continues to be imposed on the entity; and
  - (b) the entity may take the action.

## **56 Chief executive may dissolve Aboriginal land claim associations**

- (1) This section applies—

- (a) to an Aboriginal land claim association incorporated under the repealed regulation and in existence on the commencement; and
  - (b) until the day that is 3 years after the commencement; and
  - (c) if the chief executive is satisfied the association is no longer needed for land claim purposes.
- (2) The chief executive may give the association a written notice stating—
  - (a) the chief executive intends to dissolve the association; and
  - (b) the reason for the proposed dissolution; and
  - (c) that the association may make written representations to the chief executive about the proposed dissolution; and
  - (d) the reasonable period, of at least 3 months, in which the representations may be made.
- (3) The chief executive must consider all representations made under subsection (2).
- (4) If, after considering all representations made under subsection (2), the chief executive is satisfied the association is no longer needed for land claim purposes, the chief executive may, by gazette notice, dissolve the association.
- (5) The dissolution of the association has effect on the day the gazette notice is published.
- (6) If the association is dissolved under this section, the assets and liabilities of the association vest in the State.

## **Schedule 1      Prescribed protected areas**

section 48A

<b>Name</b>	<b>Description</b>
Endeavour River Resources Reserve	The part of lot 2 on CP867124 shown as lot 2 on SP344601 and lot 3 on CP867124, containing an area of about 37.689ha

## **Schedule 2 Available State land that is claimable land**

section 48AA

- 1 Land contained in lot 17 on plan NPW627 situated in the counties of Gregory, Mueller and Morstone, containing an area of about 282,000ha and known as Lawn Hill National Park.

## Schedule 3 Dictionary

### section 3

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

*commencement*, for part 8, division 2, see section 52.

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

*land claim* means a claim under the Act for claimable land.

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

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

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