



Queensland

Aboriginal Land Regulation 2011

Explanatory Notes for SL 2011 No. 175

made under the

Aboriginal Land Act 1991

General outline

Short title

Aboriginal Land Regulation 2011.

Authorising law

Section 294 of the *Aboriginal Land Act 1991* (ALA).

Policy objectives and the reasons for them

To make the *Aboriginal Land Regulation 2011* (the 2011 Regulation).

The 2011 Regulation supports the efficient delivery of the major policy objectives of the ALA, which are to provide for the grant of land to Aboriginal people and to enable them to use the land for cultural and/or economic purposes.

The *Aboriginal Land Regulation 1991* (the 1991 Regulation) is being repealed and re-made to meet the requirements of the *Statutory Instruments Act 1992* in that subordinate legislation expires after the 10th anniversary of the day of its making unless it is sooner repealed or expires, or a regulation is made exempting it from expiry.

Exemption from the expiry for the 1991 Regulation has been given on the grounds that a review of the ALA is being conducted. The review is inclusive of the 1991 Regulation.

On 23 August 2011 Parliament passed the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Bill 2010* (the Bill) which proposed amendments to the ALA. It is proposed to commence the resultant “new” Act by proclamation on 9 September 2011 with the 2011 Regulation being made simultaneously. Commencing the “new” Act and the 2011 Regulation together is a necessity as certain provisions from the 1991 Regulation are transferred into the ALA.

The review of the ALA will conclude when these things occur.

Achievement of policy objectives

The 2011 Regulation will support the efficient delivery of the policy objectives of the ALA, by providing for the following—

- the governance of Aboriginal land trusts (bodies that may hold land under the ALA) including in respect of matters concerning payments to, indemnifying and giving immunity to land trust members under certain circumstance, land trust structure, mandatory and adopted rules, dealing with trust property, meeting processes, and reporting requirements;
- dissolution of an Aboriginal land trust where a claim under the ALA for land granted under the Act is successful (the process to claim granted land enables a more discrete group of Aboriginal people to have their connection to land recognised);
- consultation requirements of an Aboriginal land trust that may arise in relation to a mining interest on land granted under the ALA (consultation is with those people for who they hold the land on behalf);
- prescribed percentages that will apply in relation to a royalty under the *Mineral Resources Act 1989* or the *Petroleum and Gas (Production and Safety) Act 2004* in relation mining that occurs on land granted under the ALA (if mining occurs on land granted under the ALA, the trustee of the land is entitled to receive a percentage of the royalty amount);

- the process for making appeals to the Land Appeal Court in respect of a decision of the Land Tribunal in relation to claimable land;
- description of land declared for purposes under the ALA, e.g. as transferable land for grant under the ALA;
- the reading of the terms ‘Aboriginal person particularly concerned with the land’, ‘Aboriginal people’ and ‘Aboriginal people particularly concerned with the land’ to include ‘Torres Strait Islander particularly concerned with the land’, ‘Torres Strait Islanders’ and ‘Torres Strait Islanders particularly concerned with the land’, respectively in certain sections of the 1991 Regulation if Aboriginal land is held for the benefit of both Aboriginal and Torres Strait Islanders people; and
- transitional provisions that sustain persons in appointed Aboriginal land trust positions and the adopted rules of an Aboriginal land trust which would otherwise have been voided by the making of the 2011 Regulation; continuing certain provisions from the repealed 1991 Regulation relating to land claim associations which provide for associations to be wound-up under an existing process or support that process occurring; and introduce a new process that may be used to wind-up these associations (the Association are required to wind up in the event of a claim under the ALA concluding or if the association is no longer perusing a claim).

Consistency with policy objectives of authorising law

The 2011 Regulation is consistent with the objects of the ALA, which are to provide for the grant of land to Aboriginal people and to enable them to use the land for cultural and/or economic purposes.

The 2011 Regulation primarily supports Aboriginal people through providing a governance structure for bodies that hold land on their behalf, the calculation of a financial benefit derived from mining on Indigenous held land, and a decision making appeal process.

Inconsistency with policy objectives of other legislation

The 2011 Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The 2011 Regulation essentially re-makes the 1991 Regulation. The State has existing dedicated resources allocated in respect of the administration of the ALA and the 1991 Regulation. These resources will not be affected by the making of the 2011 Regulation.

In regard to the payment of a royalty amount in respect of mining on land granted under the ALA, this is a carry over provision from the 1991 Regulation. It provides that an amount derived from relevant mining activities are provided to the trustee of land to use for the benefit of Aboriginal people. This long standing provision is modified in the 2011 Regulation. This is done by providing for the annual indexation of the threshold amount used to calculate the statutory amount following royalty payments to the State on granted land.

This appropriate adjustment to the statutory amount would be expected have a limited economic impact to the State as the payment is not made until the State has received royalties for any mining that may occur on land granted under the ALA. To date no land granted under the ALA has been subject to mining that would cause the payment of the statutory amount.

Consistency with fundamental legislative principles

The 2011 Regulation is consistent with fundamental legislative principles.

Consultation

Consultation was undertaken with relevant government agencies and Indigenous stakeholders in relation to the review of the ALA. That review is inclusive of the 1991 Regulation.

That consultation resulted in amendments being made to the ALA in 2008 and 2011, and to the 1991 Regulation in 2008; and the proposed amendments to the 1991 Regulation as advanced in the 2011 Regulation.

In 2004 an Issues Paper for the ALA (and *Torres Strait Islander Land Act 1991*) was released and a comprehensive round of consultations with Aboriginal people and communities, other stakeholders and key Government departments was undertaken.

In April 2005 a discussion paper for the ALA was released for stakeholder consultation and submissions, and further consultation followed.

An exposure draft of the Bill was released for comment in June 2010, with the period for making submissions closing 31 August 2010.

Meetings were held with several Native Title Representative Bodies and local authorities. Details of proposed key amendments were sent out for comment to all Native Title Representative Bodies, the Queensland Indigenous Working Group and other key stakeholders. Meetings were also held in relation to the specific amendments proposed for the communities of Seisia, Bamaga and Hammond Island. These meetings were held with community members, the traditional owners of those lands and the mayors of the respective local authorities.

A discussion paper was provided to relevant Government agencies. Those agencies support the proposed amendments.

Following the release of the exposure draft of the Bill in 2010, consultation continued with key stakeholders resulting in further fine tuning of the Bill before its submission to Parliament in November 2010.

In general, Indigenous stakeholders support the proposed amendments. However, a key stakeholder believes the amendments (to the ALA and 1991 Regulation) do not go far enough in certain areas.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Environment and Resource Management.