Queensland

Aborigines and Torres Strait Islanders (Land Holding) Act 1985

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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

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Aborigines and Torres Strait Islanders (Land Holding) Act 1985

[as amended by all amendments that commenced on or before 15 March 2008]

An Act to provide for the grant of leases in perpetuity and other title in land to members of communities of Aborigines or Torres Strait Islanders and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

4 Interpretation

(1) In this Act—

Aborigine means a person who is a descendant of an indigenous inhabitant of Australia other than the Torres Strait Islands.

indigenous council means—

(a) an indigenous regional council under the *Local Government Act 1993*; or

(b) a community government under the *Local Government (Community Government Areas) Act 2004*.

indigenous council area means the local government area of an indigenous council.

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

qualified person means—

(a) an Aborigine or other person who is authorised by the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* to enter upon, be in and reside in a trust area as a member of the community of Aborigines resident in the area and who, in the opinion of the indigenous council in which the trust area is vested or under whose control the trust area is, is a resident of that community; and

(b) an Islander or other person who is authorised by the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* to enter upon, be in and reside in a trust area as a member of the community of Islanders resident in the area and who, in the opinion of the indigenous council in which the trust area is vested or under whose control the trust area is, is a resident of that community;

and includes a body corporate or other incorporated body comprised of qualified persons only.

trust area means land granted in trust by the Governor in Council for the benefit of Aboriginal inhabitants or Islander inhabitants or reserved and set apart by the Governor in Council for the benefit of Aborigines or Islanders under the provisions of law relating to Crown lands.

trustee council means, in relation to an application for a tenure of land—

(a) where the land in question is situated within a trust area that is vested in or under the control of an indigenous council—the indigenous council;

(b) where the land in question is situated within a trust area that is vested in or under the control of any other council—that council.

visiting justice means a visiting justice holding appointment under section 32A.

(2) Where pursuant to this Act an appeal tribunal has classified a person as a qualified person the definition "qualified person" shall be construed as if the opinion required to satisfy that

definition were that of the appeal tribunal in lieu of the opinion therein referred to.

(3) For the purposes of this Act—

prescribed person is the Crown in right of the State or of the Commonwealth and any statutory body acting in discharge of its statutory functions under an Act of the State or of the Commonwealth but does not include the Aboriginal and Islander Affairs Corporation in its capacity as a bare trustee of land.

Part 2 Application for leases

5 Application for tenure in trust area

(1) A qualified person who has attained the age of 18 years and who desires a tenure of land that is situated in a trust area may, subject to this Act, make application to the trustee council for its approval that a lease be granted to the applicant over the land to which the application relates.

(2) It is not competent to a qualified person to make application under subsection (1) in respect of—

(a) land that is occupied or used by a prescribed person; or

(b) land that is occupied or is, at the material time, used by a qualified person other than the person who is seeking the tenure; or

(c) land that exceeds 1 ha in area, in the case of an application for a lease in perpetuity.

(3) An application under subsection (1)—

(a) may be made by any number of qualified persons, to the intent that where there is more than 1 applicant the tenure of the land in question would be held by them as joint tenants or tenants in common; and

(b) shall identify the land to which it relates—

(i) by the surveyed description thereof (if any); or

(ii) by the metes and bounds description, if it is known; or

(iii) by such other means as may be appropriate in the circumstances; and

(c) shall be in or to the effect of the prescribed form.

(4) An application under subsection (1) shall not relate to more than 1 parcel of land.

6 Duty of trustee council concerning application

(1) A trustee council to which application under section 5 has been duly made—

(a) shall cause notice of the application to be plainly exhibited in a public place in the trust area for a period of 28 days and shall, within 10 days after the expiration of that period, determine whether the qualified person or persons who is or are seeking tenure of the land identified in the application should be granted the tenure; and

(b) shall, within 7 days after the determination under paragraph (a) is made, give notification in writing to the applicant of the determination and if it is a refusal of the application, notify the applicant in writing of the grounds for the refusal; and

(c) shall within 28 days after the determination under paragraph (a) is made, give notification in the prescribed form of the determination to the Minister who shall forthwith notify the Minister administering the *Land Act 1994*.

(2) A qualified person who is a resident of the community in the trust area where an application is made and any other person having, in the opinion of the trustee council, a bona fide interest in the matter of an application is entitled to object, orally or in writing, within the 28 days referred to in subsection (1)(a) to the approval of the application and the

trustee council shall have regard to every such objection duly made to it when it is determining the matter of the application.

(3) In making its determination referred to in subsection (1)(a) a trustee council shall observe the following factors—

(a) security of tenure for qualified persons of land occupied or used or sought to be occupied or used by them;

(b) the social and economic development of the trust area within which the land in question is situated and of the community of qualified persons therein;

(c) the interest of the community of qualified persons resident in the trust area in the use made or to be made of land within the trust area;

giving to each factor such weight as the council considers proper in each case.

7 Remedy of person aggrieved

(1) A qualified person who is aggrieved by—

(a) a determination by a trustee council of an application made to it under section 5; or

(b) a failure by a trustee council to which an application has been made under section 5 to perform its duty under section 6(1)(a) or (b);

may appeal to the appeal tribunal constituted in accordance with this Act for the community within which is situated the land to which the application relates.

(2) An appeal under subsection (1) shall be instituted in the prescribed form and shall be disposed of by the appeal tribunal's considering de novo and determining the matter of the application as if it were the trustee council to which the application was made.

(3) For the purpose of its disposing of an appeal the appeal tribunal shall be given full and free access to the records of the trustee council to which was made the application to which the appeal relates and may take possession therefrom of the application and any other record relevant thereto.

(4) In disposing of an appeal the appeal tribunal is discharging an administrative function and may receive or gather evidence, written or oral, in such manner and form as it thinks fit.

(5) A person aggrieved by a determination of or a failure in respect of an application must be—

(a) an applicant; or

(b) a person who has objected to the trustee council against the approval of the application.

8 Notification of result of appeal

Where the appeal tribunal has approved an application the tribunal—

(a) shall, within 7 days after its determination, cause notification thereof to be given to the applicant; and

(b) shall, within 28 days after its determination, cause notification thereof to be given to the Minister who shall forthwith notify the Minister administering the *Land Act 1994*.

9 Nature of tenure and entitlement thereto

(1) The tenure that may be applied for under section 5 is—

(a) a lease in perpetuity where the land to which title is sought does not exceed 1 ha in area;

(b) in any other case—a tenure that in the opinion of the Minister administering the *Land Act 1994* is appropriate to the use to be made of the land to which title is sought and is in accordance with this Act.

(2) Where an application under section 5 has been approved by the trustee council or upon appeal by the appeal tribunal—

(a) the person or persons specified in the application as seeking the tenure, being a qualified person or qualified persons competent to make an application under section 5(1), shall be entitled to be granted in accordance with subsection (1) a lease in perpetuity or other appropriate lease of the land identified in the application; and

(b) the Governor in Council is hereby authorised to grant to the person or persons referred to in paragraph (a) a lease in perpetuity or other appropriate lease of the land identified in the application pursuant to the *Land Act 1994*.

10 Divesting and vesting of title to land

(1) Where the title to land in respect of which any person or persons is or are entitled to a lease pursuant to section 9(2) is vested in an indigenous council the title shall, upon the approval referred to in section 9(2), divest from the council and the land shall thereupon become and be unallocated State land.

(2) Where land in respect of which any person or persons is or are entitled to a lease pursuant to section 9(2) is land reserved and set apart for a public purpose and under the control of a trustee, the land shall, upon the approval referred to in section 9(2), pass from the control of the council, cease to be land reserved and set apart and shall thereupon become and be unallocated State land.

(3) The purpose for which land shall become and be Crown land under subsection (1) or (2) is the issue of a lease in perpetuity or other appropriate lease, in accordance with this Act, to the qualified person or persons approved by the appropriate trustee council and no other authority shall be exercised on behalf of the Crown in respect of the land unless that lease has been issued.

(4) Upon land within an indigenous council area becoming Crown land under subsection (1) or (2) it ceases to be part of the trust area within which it is situated but for the purposes of—

(a) the discharge of the functions of local government within the trust area and the exercise of powers incidental thereto; and

(b) the making and levying of rates on and the charging of service charges in respect of the land; and

(c) the application of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* in respect of the land;

the land shall be deemed to be part of the trust area and the indigenous council in which the trust area is vested or in whose control the trust area is shall be deemed to be charged with the functions of local government in respect of the land.

11 Particular duty of Minister for Lands

(1) Within 28 days after notification has been given under section 6(1)(c) or 8(b) the Minister administering the *Land Act 1994* shall cause to be given to the applicant to whom the grant of a lease has been approved by a trustee council or, as the case may be, an appeal tribunal notification in writing that approval of the applicant's application has been recorded and that an appropriate lease is in the process of being issued.

(2) The Minister administering the *Land Act 1994* shall cause to be clearly and prominently noted on the instrument of lease issued to an applicant the restrictions on holding the tenement under the lease prescribed by section 18(4).

Part 3 Provisions concerning leases

12 Commencement etc. of leases

(1) A lease provided for by section 9(2)—

(a) shall commence on the day it is executed by the Governor in Council; and

(b) shall identify the tenement by such means as the Minister administering the *Land Act 1994* deems appropriate; and

(c) shall reserve an annual rent; and

(d) shall contain such covenants and be subject to such conditions as are specified therein or are prescribed by this Act.

(2) The description of a tenement as directed by subsection (1)(b) by means deemed appropriate shall be sufficient in law for all purposes and shall be accepted and acted upon by all persons concerned.

13 Restriction on area to be held

No person shall hold land, which would, but for the existence of the lease, be within a trust area under a lease in perpetuity provided for by section 9(2) in excess of 1ha, either as a single tenement or in the aggregate except with the approval of the Governor in Council first had and obtained.

14 Rights of ingress etc. on adjacent land

(1) A holder of a tenement under a lease in perpetuity provided for by section 9(2) shall have such rights of ingress, egress and regress in, from and over land abutting or adjacent to the tenement as are determined from time to time by the trustee council to which was made application for tenure of land comprising the tenement.

(2) It is not competent to a trustee council to terminate or diminish a holder's rights, such as are hereinbefore referred to, had by the holder for the time being without the approval of the Minister and the Minister administering the *Land Act 1994* first had and obtained.

15 Structural improvements on tenement

(1) If—

(a) there are upon a tenement held under a lease provided for by section 9(2) structural improvements that are not the property of the lessee; and

(b) the owner of those structural improvements agrees to sell them to the lessee;

the lessee may purchase those improvements at a price and upon terms and conditions (including the giving of a mortgage in the owner's favour) agreed to by the owner and the lessee and approved by the Governor in Council.

(2) Where a lessee is not purchasing structural improvements as referred to in subsection (1) or a lessee is purchasing such structural improvements and the purchase price or any part thereof is outstanding, the lessee—

(a) shall maintain the improvements in the condition, order and repair they are in at the commencement of the lease, fair wear and tear and damage by fire or act of God excepted; and

(b) shall pay rent in respect of the improvements to the owner or vendor thereof in an amount agreed by the owner or vendor and approved by the Governor in Council; and

(c) shall keep the improvements insured to the full insurable value thereof with a licensed insurer approved by the owner or vendor thereof.

(3) Where the lessee is purchasing structural improvements any amounts paid as rent pursuant to subsection (2)(b) shall be set-off against the purchase price that is outstanding.

16 Assessment of rent

(1) The annual rent payable in respect of a lease provided for by section 9(2) shall be a sum equal to .5% of the amount of the annual general rate made and levied in respect of the land held under the lease by the indigenous council that is charged with the functions of local government in respect of the land.

(2) When at any time it is not possible to assess rent in accordance with subsection (1) in respect of a lease referred to therein, the rent payable in respect of the lease shall be a sum determined by the indigenous council charged with the functions of local government in respect of the land held under the lease until the rent can be assessed in accordance with subsection (1).

17 Payment of rent

(1) The annual rent reserved by a lease provided for by section 9(2) shall be payable in advance to the indigenous council that is charged with the functions of local government in respect of the land held under the lease on or before 31 December in each year in respect of the next following year.

(1A) However where, upon the commencement of a lease, the rent payable in respect of the lease would be as provided by section 16(2) the rent shall be payable, by 1 payment or by instalments as determined by the Minister administering the *Land Act 1994* and specified in the instrument of lease, such payment or the first of such instalments being payable on or before the commencement of the lease in respect of the period until the rent can be assessed in accordance with section 16(1) and becomes payable as provided by subsection (1).

(2) Subject to subsection (3), rent payable in respect of a lease provided for by section 9(2) shall be the property of the council to which it is payable under subsection (1) to be used by it for the purposes of the local government of the trust area under its control or otherwise for the benefit of that trust area.

(3) Rent payable in respect of a lease provided for by section 9(2) that is not paid and any penalties accrued in respect of arrears of rent shall be a debt due and owing to Her Majesty and may be recovered as such in any court of competent jurisdiction.

18 Dealings with leases

(1) Subject to this Act, the lessee under a lease provided for by section 9(2) may at any time transfer, mortgage or sublease the tenement and may grant or take an easement that affects the tenement.

(2) Subject to this Act, a sublessee of a tenement held under a lease provided for by section 9(2) may enter into a sub-sublease of the tenement.

(3) A tenement held under a lease provided for by section 9(2) is a lease under the *Land Act 1994* and the provisions of that Act relating to transfers, mortgages, subleases and sub-subleases

of leases or to easements affecting leases apply in respect of such a tenement.

(3A) However—

(a) the expression ***qualified person*** used in those provisions means a person who is a qualified person within the meaning of this Act; and

(b) a reference in those provisions to the approval of the Minister shall be construed as a reference to the approval of the Minister within the meaning of that Act and of the Minister within the meaning of this Act.

(4) Notwithstanding the provisions of any other Act or rule or practice of law, it is not competent to any person who is not a qualified person to hold land or an interest in land in respect of which an indigenous council is charged with the functions of local government, without prejudice however to the powers and authorities conferred by law on mortgagees of such land, and any provision, whether of a testamentary instrument or of an instrument inter vivos, that purports to dispose of such land or an interest in such land (other than by way of a mortgage charge) to a person who is not a qualified person is void.

19 Restrictions on mortgagee's powers

A mortgagee of a tenement under a lease provided for by section 9(2) who is in possession thereof for the purpose of realising the mortgagee's entitlements under the mortgage is entitled to remain in possession for such period only as is reasonably necessary to permit the mortgagee's disposal of the tenement to a qualified person and in no case shall the mortgagee remain in possession thereof for longer than 12 months.

20 Registers

(1) Registers kept under the *Land Act 1994* in respect of leases under that Act shall be the registers in respect of leases that are tenements held under leases provided for by section 9(2) and all entries that pursuant to those provisions are required or permitted to be made in those registers shall be or may be

made therein in respect of tenements held under leases provided for by section 9(2).

(2) The Minister may establish and keep registers at such places as the Minister thinks fit for the purpose of recording therein particulars of leases, such as are provided for by section 9(2), that have been granted and of dealings therewith, of records concerning such leases and of such other particulars as are prescribed by the regulations.

(2A) Where appropriate, entries in such registers shall be made so as to record the priority of registration of the dealing in question.

(3) Registers kept pursuant to subsection (2) shall be open to inspection by the public at all reasonable times during office hours.

Part 4 Forfeiture of leases

21 Forfeiture upon default in rent

(1) If—

(a) default is made by a lessee under a lease provided for by section 9(2) in the payment of rent in respect of 2 successive years; and

(b) a notification of the default has been given to the lessee either personally or by registered post addressed to the lessee at his or her place of residence last known to the indigenous council that is charged with the functions of local government in respect of the tenement and the lessee has not responded to the notification within 30 days after it is given to the lessee; and

(c) a notice of a prescribed size has been exhibited in a prominent position on the tenement, at or near the entrance thereto, that the tenement is liable to be forfeited and such notice has been so exhibited for a period of 30 days at the least;

the lease shall, at the option of the Crown, be forfeited.

(2) Forfeiture under subsection (1) may be defeated by the payment, within 90 days after the last day on which the rent is payable under this Act, of the full amount of the rent together with such sum by way of penalty as the Minister administering the *Land Act 1994* may impose.

(3) If the full amount of rent and penalty (if any) is not paid on or before 31 March next following the last day on which the rent is payable under this Act, the lease shall, at the option of the Crown without any inquiry or other process be forfeited.

(3A) However, the Minister administering the *Land Act 1994* may waive the forfeiture and reinstate the lessee on payment of the arrears of rent due and the accrued penalty (if any).

(4) The mere acceptance by an indigenous council of rent or penalty in respect of any lease shall not be held to operate as a waiver by the Crown or by the Minister aforesaid of any forfeiture or liability to forfeiture of the lease.

22 Action upon nonoccupation

(1) Where the indigenous council that is charged with the functions of local government in respect of a particular tenement held under a lease provided for by section 9(2) has reason to believe that—

(a) the tenement has been unoccupied by or on account of the lessee for a continuous period of 2 years; or

(b) the lessee is no longer a qualified person;

the council may cause to be given to the lessee, either personally or by registered post addressed to the lessee at his or her place of residence last known to the council a notice calling on the lessee to show cause to the council at a time and place specified in the notice why the lease should not be forfeited.

(2) If at the time and place so specified or at such other time and place to which the matter may be adjourned cause is not shown to the satisfaction of the council, it may cause to be

given to the lessee, in a manner referred to in subsection (1), a notice that directs the lessee to either—

(a) occupy the tenement (personally or by another qualified person) on a continuing basis; or

(b) dispose of the tenement to a qualified person;

within a period of 12 months after the issue of the notice.

(3) If upon the expiration of the period of 12 months neither of the directions contained in the notice has been complied with, the lease of the tenement in question shall be liable to be forfeited.

23 Action upon nonutilisation

(1) Where the indigenous council that is charged with the functions of local government in respect of a particular tenement held under a lease provided for by section 9(2) and that is issued for the purpose of farming, grazing, commercial fishing, tourism or other commercial purpose has reason to believe that no or insufficient development work or utilisation of a commercial or productive nature has occurred in respect of the tenement for a continuous period of 2 years, the council may cause to be given to the lessee, either personally or by registered post addressed to the lessee at the tenement or at the lessee's place of residence last known to the council a notice calling on the lessee to show cause to the council at a time and place specified in the notice why the lease should not be forfeited.

(2) If at the time and place so specified or at such other time and place to which the matter may be adjourned cause is not shown to the satisfaction of the council, it may cause to be given to the lessee, in a manner referred to in subsection (1), a notice that directs the lessee to effect significant development work in respect of the tenement or, as the case may require, to utilise the tenement in a commercial or productive way (as permitted by the lease) within a period of 12 months after the issue of the notice.

(3) If upon the expiration of the period of 12 months the direction contained in the notice has not been complied with, the lease of the tenement in question shall be liable to be forfeited.

24 Forfeiture for any other cause

(1) A lease provided for by section 9(2) that has been acquired by evasion or fraud on this Act shall be liable to be forfeited.

(2) Where in respect of a lease provided for by section 9(2) there exists—

(a) a breach of any covenant or condition of the lease contained in the instrument of lease other than in relation to the payment of rent; or

(b) a breach of any provision of this Act, other than in relation to the payment of rent; or

(c) a breach of any provision of the *Land Act 1994* by reason of any transfer, mortgage, subletting of or other dealing with the lease;

the lease shall be liable to be forfeited.

25 Procedure for forfeiture

(1) If at any time—

(a) an indigenous council concerned with the lease in question; or

(b) the Minister; or

(c) the Minister administering the *Land Act 1994*;

suspects on reasonable grounds that a lease provided for by section 9(2) is liable to be forfeited for any cause other than default in payment of rent, the council or, as the case may be, the Minister in question may cause to be given to the lessee, either personally or by registered post addressed to the lessee at the tenement or the lessee's place of residence last known to the council or, as the case may be the Minister in question, a notice in writing—

(d) specifying the alleged cause of forfeiture; and

(e) calling on the lessee to appear before the visiting justice upon the visiting justice's attendance in the trust area in which the tenement in question would, but for the existence of the lease, be situated next following the expiration of 30 days after the notice is given to the lessee;

and if the notice is so given the council or, as the case may be, the Minister in question shall cause a notice of a prescribed size to be exhibited in a prominent position on the tenement, at or near the entrance thereto, for a period of 30 days at the least, that the tenement is liable to be forfeited.

(2) The visiting justice upon the occasion of the visiting justice's attendance in the trust area in question next following the expiration of the 30 days referred to in subsection (1) or at any adjournment of the proceedings, shall proceed to investigate the matter of the forfeiture of the lease and shall forward the evidence taken by the visiting justice together with his or her report and recommendations thereon to the Minister and to the Minister administering the *Land Act 1994*.

(3) The Minister administering the *Land Act 1994*, if the Minister is satisfied that liability to forfeiture has been established and that the lease in question should be forfeited, may recommend accordingly to the Governor in Council who may declare and notify the forfeiture as prescribed.

26 Mode of forfeiture

Every forfeiture of a lease provided for by section 9(2), whether on the ground of default in payment of rent or some other ground, shall be declared by the Governor in Council by notification published in the gazette and shall take effect on and from the date of publication of the notification.

27 Consequences of forfeiture

Upon forfeiture of a lease provided for by section 9(2)—

(a) if the trust area in which the land that, before the forfeiture, was the tenement would, but for the existence of the lease, have been situated is vested in an

indigenous council, the land shall revert to and vest in that council;

(b) if the trust area in which the land that, before the forfeiture, was the tenement would, but for the existence of the lease, have been situated is under the control of a trustee, the land shall revert to the control of that trustee;

and in either case the land shall become and be part of the trust area.

Part 5 General provisions

28 Appeal against classification as nonqualified person

(1) Where an indigenous council has classified any person as not being a qualified person, that person may appeal to the appeal tribunal constituted in accordance with this Act for the trust area that is vested in or under the control of the council that so classified that person.

(2) The provisions of section 7 (other than subsection (1) or (5)) shall apply in respect of the institution of any such appeal and the disposal of an appeal instituted.

29 Nomination of panels

(1) Each indigenous council shall furnish to the Minister and shall from time to time maintain with the Minister a panel of names of at least 3 qualified persons who are justices of the peace and who are authorised by the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* to enter upon, be in and reside in the trust area that is vested in or under the control of the council.

(2) The persons whose names appear in a panel furnished or maintained under this section shall not be members of an indigenous council.

30 Constitution of appeal tribunals

(1) An appeal tribunal constituted to consider and determine an appeal instituted to it pursuant to this Act shall consist of—

(a) the person who is visiting justice to the trust area in which the land to which the appeal relates is situated or would, but for the existence of a lease, be situated; and

(b) a person nominated by the Minister; and

(c) 3 persons, selected by the Minister, whose names are on the panel of names furnished and maintained under section 29 and who are authorised by law to enter upon, be in and reside in the trust area in which the land to which the appeal relates is situated or would, but for the existence of a lease, be situated.

(2) If at any time there are insufficient names on a panel furnished and maintained under section 29 from which to select the 3 persons referred to in subsection (1)(c), the Minister may select 1 person or 2 or 3 persons (as the case may require), who are authorised as required by that paragraph, and who is or are not a member or members of the relevant indigenous council, to be a member or members of an appeal tribunal and the person or persons so selected shall be deemed to have been duly selected and to be a member or members of the tribunal in accordance with this Act.

(3) Each member of an appeal tribunal other than the chairperson shall be entitled to a vote and the chairperson of the tribunal, who shall be the person referred to in subsection (1)(a), shall have a casting vote in the event of an equality of votes.

(3A) The decision of an appeal tribunal shall be by the unanimous or majority vote of its members.

(4) An appeal tribunal shall be duly constituted if a quorum of its members is present.

(5) A quorum shall consist of the 3 members of the appeal tribunal who are—

(a) the chairperson; and

(b) 2 of the persons selected as prescribed by subsection (1)(c) or, as the case may be, selected as prescribed by subsection (2).

31 Representations to council or appeals tribunal

In the matter of an application made to an indigenous council under this Act or in the matter of an appeal instituted to an appeals tribunal under this Act no party shall be represented by counsel or solicitor but may be represented by any other agent appointed in writing in that behalf.

32 Land deemed part of trust area for certain purposes

(1) Notwithstanding that land, or land and improvements, within an indigenous council area have been excluded from a grant in trust of a trust area, either expressly in the grant or by virtue of the *Land Act 1994*, for the purposes of—

(a) the discharge of the functions of local government within the trust area and the exercise of powers incidental thereto; and

(b) the charging of service charges in respect of the land or the land and improvements; and

(c) the application of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* in respect of the land or the land and improvements;

the land, or the land and improvements shall be deemed to be part of the trust area and the indigenous council in which the trust area is vested shall be deemed to be charged with the functions of local government in respect of the land or the land and improvements.

(2) Subsection (1) shall not be construed as authorising the making and levying of any rate on the land or the land and improvements referred to therein.

32A Visiting justices

The Governor in Council may appoint a justice to be a visiting justice to 1 or more trust areas for the purposes of sections 25 and 30.

33 Regulations

The Governor in Council may make regulations not inconsistent with this Act providing in respect of—

(a) applications to trustee councils for tenure of land and the manner of disposing of those applications, including permitting objections thereto and the manner of disposing of any objection made; and

(b) appeals to appeal tribunals by persons aggrieved by any determination of trustee councils in respect of applications for tenure of land; and

(c) forms to be used for the purposes of this Act and the purpose for which prescribed forms are to be used; and

(d) fees to be paid for the purposes of this Act and the purposes for which prescribed fees are to be paid; and

(e) all matters required or permitted by this Act to be prescribed; and

(f) all matters necessary or convenient to be prescribed for the proper administration of this Act or to achieve the objects and purposes of this Act.

33A Cessation of pt 2

An application may not be made for a lease under this Act after the commencement of this section.

33B Transitional

(1) This section applies to a lease of land under section 9(2) that is continued in force under—

(a) the *Aboriginal Land Act 1991*, section 33 or 71; or

(b) the *Torres Strait Islander Land Act 1991*, section 31 or 68.

(2) After the commencement of this section—

(a) a reference in sections 16(2), 17, 21, 22, 23 and 25 to an indigenous council in relation to land held under the lease; or

(b) a reference in a covenant or condition of the lease to an Aboriginal council or Island council;

is a reference to the grantees of the land.

(3) Section 27 does not apply to the lease.

(4) The lessee may appeal to the Land Court against an assessment of rent made by the grantees.

(5) An appeal—

(a) may only be made on the ground that the rent payable because of the assessment is unreasonable; and

(b) must be made under any applicable rules of court and regulations.

(6) The Land Court is to determine the amount of rent payable.

(7) In this section—

grantees, in relation to land, means the persons to whom the land is granted under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

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 15 March 2008. Future amendments of the Aborigines and Torres Strait Islanders (Land Holding) Act 1985 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

Key		Explanation	Key		Explanation
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
num	=	numbered	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
orig	=	original	SIA	=	Statutory Instruments Act 1992
p	=	page	SIR	=	Statutory Instruments Regulation 2002
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

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 to	Effective	Reprint date
1	1991 Act No. 76	21 December 1991	10 November 1995

Reprint No.	Amendments included	Effective	Notes
1A	2004 Act No. 37	1 January 2005	
1B	2007 Act No. 59	15 March 2008	

5 Tables in earlier reprints

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

6 List of legislation

Aborigines and Torres Strait Islanders (Land Holding) Act 1985 No. 41
date of assent 24 April 1985
ss 1–2, pt 6 commenced on date of assent (see s 2(1))
remaining provisions commenced 15 June 1985 (see s 2(2) and proc pubd gaz 15 June 1985 p 1247)

amending legislation—

Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 3 pts B–C
date of assent 14 November 1990
s 3 sch 3 pt C commenced 1 December 1990 (see s 2(6) and s 5 sch 5 of 1991 Act No. 97)
remaining provisions commenced on date of assent (see s 2(1))

Aboriginal and Torres Strait Islander Land (Consequential Amendments) Act 1991 No. 76 pts 1, 3
date of assent 21 November 1991
ss 1–2 commenced on date of assent
remaining provisions commenced 21 December 1991 (see s 2 and 1991 SL No. 223)

Local Government (Community Government Areas) Act 2004 No. 37 ss 1–2, 86 sch 1
date of assent 27 October 2004
ss 1–2 commenced on date of assent
remaining provisions commenced 1 January 2005 (2004 SL No. 266)

Local Government and Other Legislation (Indigenous Regional Councils) Amendment Act 2007 No. 59 pts 1, 3
date of assent 22 November 2007
ss 1–2 commenced on date of assent
remaining provisions commenced 15 March 2008 (2007 SL No. 336)

7 List of annotations

Title amd R1 (see amending provision omitted by RA ss 7(1)(k) and 40)

Commencement
s 2 om R1 (see RA s 37)

Arrangement
s 3 om R1 (see RA s 36)

Interpretation
s 4 amd 1990 No. 80 s 3 sch 3 pt C
def **"Aboriginal council"** sub 2004 No. 37 s 86 sch 1
om 2007 No. 59 s 48(1)
def **"council area"** ins 2004 No. 37 s 86 sch 1
om 2007 No. 59 s 48(1)
def **"indigenous council"** ins 2007 No. 59 s 48(2)
def **"indigenous council area"** ins 2007 No. 59 s 48(2)
def **"Island council"** om 2007 No. 59 s 48(1)
def **"Minister"** sub 1990 No. 80 s 3 sch 3 pt B
om R1 (see RA s 39)
def **"qualified person"** amd 2004 No. 37 s 86 sch 1; 2007 No. 59 s 48(3)–(6)
def **"trustee council"** amd 2007 No. 59 s 48(7)–(10)
def **"visiting justice"** sub 2007 No. 59 s 48(1)–(2)

Divesting and vesting of title to land
s 10 amd 2004 No. 37 s 86 sch 1; 2007 No. 59 s 49

Assessment of rent
s 16 amd 2007 No. 59 s 50

Payment of rent
s 17 amd 2007 No. 59 s 51

Dealings with leases
s 18 amd 2007 No. 59 s 52

Forfeiture upon default in rent
s 21 amd 2007 No. 59 s 53

Action upon nonoccupation
s 22 amd 2007 No. 59 s 54

Action upon nonutilisation
s 23 amd 2007 No. 59 s 55

Procedure for forfeiture
s 25 amd 2007 No. 59 s 56

Consequences of forfeiture
s 27 amd 2007 No. 59 s 57

Appeal against classification as nonqualified person
s 28 amd 2007 No. 59 s 58

Nomination of panels
s 29 amd 2004 No. 37 s 86 sch 1; 2007 No. 59 s 59

Constitution of appeal tribunals
s 30 amd 2007 No. 59 s 60

Representations to council or appeals tribunal
s 31 amd 2007 No. 59 s 61

Land deemed part of trust area for certain purposes
s 32 amd 2004 No. 37 s 86 sch 1; 2007 No. 59 s 62

Visiting justices
s 32A ins 2007 No. 59 s 63

Cessation of pt 2
s 33A ins 1991 No. 76 s 13

Transitional
s 33B ins 1991 No. 76 s 13
amd 2007 No. 59 s 64

PART 6—AMENDMENT OF LAND ACT (ABORIGINAL AND ISLANDER LAND GRANTS) AMENDMENT ACT
pt 6 (ss 34–35) om R1 (see RA s 40)

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