

Queensland



NATIVE TITLE (QUEENSLAND) ACT 1993

Act No. 85 of 1993

Queensland



NATIVE TITLE (QUEENSLAND) ACT 1993

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Queensland



Native Title (Queensland) Act 1993

Act No. 85 of 1993

An Act about native title

[Assented to 17 December 1993]

Preamble—

(1) Before European settlement, land in what is now the State of Queensland had been occupied, used and enjoyed since time immemorial by Aboriginal people in accordance with Aboriginal tradition, and 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 Aboriginal people and Torres Strait Islanders.

(3) After European settlement many Aboriginal people were dispossessed and dispersed.

(4) However, some Aboriginal people and many Torres Strait Islanders have maintained their ancestors' traditional or customary affiliation with particular areas.

(5) The High Court of Australia has—

- rejected the doctrine that Australia was terra nullius (land belonging to no-one) at the time of European settlement; and
- held that the common law of Australia recognises native title rights of Australia's indigenous inhabitants.

(6) The Commonwealth Government has proposed legislation to provide a national scheme for the recognition and protection of native title and for its coexistence with the existing land management systems.

(7) It is the intention of the Parliament that Queensland should participate in the national scheme proposed by the Commonwealth Government.

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Native Title (Queensland) Act 1993*.

Commencement

2.(1) This Act (including subsections (3) and (4) of this section) commences on a day to be fixed by proclamation.

(2) Section 15C(1) of the *Acts Interpretation Act 1954* does not apply to subsections (3) and (4) of this section.

(3) The following sections are taken to have commenced immediately after the commencement of section 1.03 of the *Aboriginal Land Act 1991*—

- section 157 (Amended Act)
- section 158 (Amendment of s.1.03 (Definitions))
- section 159 (Insertion of new s.1.04A (Meaning of “native title interests”))
- section 160 (Amendment of s.2.13 (Lands that are available Crown land—general))
- section 161 (Amendment of s.3.06 (Existing interests))
- section 162 (Amendment of s.5.08 (Existing interests)).

(4) The following sections are taken to have commenced immediately after the commencement of section 1.04 of the *Torres Strait Islander Land Act 1991*—

- section 165 (Amended Act)
- section 166 (Amendment of s.1.04 (Definitions))
- section 167 (Insertion of new s.1.05A (Meaning of “native title interests”))
- section 168 (Amendment of s.2.10 (Lands that are available Crown land—general))

- section 169 (Amendment of s.3.06 (Existing interests))
- section 170 (Amendment of s.5.08 (Existing interests)).

Objects of Act

3.(1) The main objects of the Commonwealth Native Title Act are—

- (a) to provide for the recognition and protection of native title; and
- (b) to establish ways in which future dealings affecting native title may proceed and to set standards for the dealings; and
- (c) to establish a mechanism for determining claims to native title; and
- (d) to provide for, or permit, the validation of past acts invalidated because of the existence of native title.

(2) The main objects of this Act are—

- (a) in accordance with the Commonwealth Native Title Act, to validate past acts invalidated because of the existence of native title and to confirm certain rights; and
- (b) to ensure that Queensland law is consistent with standards set by the Commonwealth Native Title Act for future dealings affecting native title; and
- (c) to establish State-based mechanisms for deciding claims to native title that are complementary to, and consistent with, the mechanisms established by the Commonwealth Native Title Act.

Definitions

4. In this Act—

“accepted application” means an application accepted under section 33 (Action to be taken about applications);

“accepted application notice” means a notice given under section 35(2)(a) (Action to be taken about accepted applications);

“alternative provisions” means alternative provisions to the provisions of Part 2 (Native title), Division 3 (Future acts and native title),

Subdivision B (Right to negotiate) of the Commonwealth Native Title Act;

“claimant application” means a native title determination application made by a person or persons claiming to hold native title for an area;

“Commonwealth Native Title Act” means the *Native Title Act 1993* (Cwlth);¹

“compensation application” means an application under section 48 (Bodies that may determine application) of the Commonwealth Native Title Act;

“Land Tribunal” means the Land Tribunal established under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*;

“lawyer” means a legal practitioner of the High Court or the Supreme Court of the State, another State or a Territory;

“mediation conference” means a conference under section 41 (Mediation conference to be held);

“member” means a member of the Tribunal, and includes the President and a Deputy President;

“National Registrar” means the Native Title Registrar under the Commonwealth Native Title Act;

“native title determination application” means an application for a determination of native title for an area for which there is no approved determination of native title;

“Native Title Register” means the Queensland Native Title Register;

“non-claimant application” means a native title determination application that is not made by a person or persons claiming to hold native title for an area;

¹ At the time of the introduction of this Bill into the Legislative Assembly, the *Native Title Bill 1993* had been passed by the House of Representatives, but not by the Senate. Until the enactment of the Bill, a reference to the Commonwealth Native Title Act is a reference to the *Native Title Bill 1993* (Cwlth). To aid readers of this Bill, a copy of the Commonwealth Bill is attached to this Bill.

“**NTA**”, in a section heading, means the Commonwealth Native Title Act;

“**potentially affected person**” for an application means a person mentioned in section 35(2)(a) (Action to be taken about accepted applications);

“**President**” means the President of the Tribunal;

“**presidential member**” means a presidential member of the Tribunal;

“**registered native title holder**” includes a body corporate registered on the Native Title Register as a holder of native title;

“**Registrar**” means the Queensland Native Title Registrar;

“**revised native title determination application**” means an application to revoke or vary an approved determination of native title on a ground set out in section 12(5) (Approved determinations of native title) of the Commonwealth Native Title Act;

“**right to negotiate application**” means an application mentioned in section 44(2) or (3) (Right to negotiate applications);

“**special issue**” means an issue about which the State Minister has, under section 50 (Special inquiries), directed the Tribunal to hold an inquiry;

“**State Compulsory Acquisition Act**” means any of the following Acts—

- the *Acquisition of Land Act 1967*
- the *State Development and Public Works Organization Act 1971*
- an Act prescribed by regulation;

“**State Mining Act**” means any of the following Acts—

- the *Mineral Resources Act 1989*
- the *Petroleum Act 1923*
- an Act prescribed by regulation;

“**Tribunal**” means the Queensland Native Title Tribunal;

“**unopposed application**” means an application covered by either of the following sections—

- section 39 (Applications that are unopposed)
- section 40 (Power of Tribunal if parties reach agreement);

“**Wardens Court**” means a Wardens Court established under the *Mineral Resources Act 1989*.

Words and expressions used in Commonwealth Native Title Act

5.(1) Words and expressions used in the Commonwealth Native Title Act and this Act have the same meanings in this Act as they have in the Commonwealth Native Title Act.²

(2) Subsection (1) applies except so far as the context or subject matter otherwise indicates or requires.

(3) However, subsection (1) does not apply to a word or expression defined in section 4 (Definitions).

Act binds all persons

6. This Act binds all persons, including the State.

PART 2—VALIDATION AND ITS EFFECTS

Division 1—General

Object of Part

7. The object of this Part is to—

- (a) validate, under section 18 of the Commonwealth Native Title Act,

² Section 207 of the Commonwealth Native Title Act (“NTA”) sets out a list of definitions used in that Act.

- past acts attributable to the State;³ and
- (b) provide for the effects of the validation.

Validation of past acts attributable to State (NTA, s.18)

8. Every past act attributable to the State is valid, and is taken always to have been valid.

Application of remaining provisions of Part

9.(1) The remaining provisions of this Part apply to a past act attributable to the State that is validated by section 8.

- (2) Division 2 deals with the effect of the validation on native title.
- (3) Division 3 deals with other effects of the validation.

Division 2—Effect of validation on native title

Category A past acts that are not public works (NTA, ss.18 and 14(a))

10.(1) This section applies if the past act is a category A past act,⁴ but is not a category A past act to which section 214(4) (which deals with public works) of the Commonwealth Native Title Act applies.

- (2) The past act extinguishes native title.

³ An “**act**” is defined in s.211 NTA.
A “**past act**” is defined in s.213 NTA.
An act “**attributable**” to the State is defined in s.224 NTA.

⁴ “**Category A past act**” is defined in s.214 NTA. This category covers freehold grants, some leasehold grants (commercial, agricultural, pastoral and residential leases) and public works. “**Lease**” and the various types of leases are defined in ss.226 to 234 NTA. “**Public work**” is defined in s.238 NTA.

Category A past acts that are public works (NTA, ss.18 and 14(b))

11.(1) This section applies if the past act is a category A past act to which section 214(4) of the Commonwealth Native Title Act applies.

(2) The past act extinguishes native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated.

(3) If section 214(4)(a) (which deals with public works completed after 1 January 1994) of the Commonwealth Native Title Act applies to the past act, the extinguishment is taken to have happened on 1 January 1994.

Inconsistent category B past acts (NTA, ss.18 and 14(c))

12.(1) This section applies if the past act is a category B past act⁵ that is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests concerned.

(2) The past act extinguishes the native title to the extent of the inconsistency.

Category C and D past acts (NTA, ss.18 and 14(d))

13.(1) This section applies if the past act is a category C or D past act.⁶

(2) The non-extinguishment principle applies to the past act.⁷

⁵ “**Category B past act**” is defined in s.215 NTA. This category covers leasehold grants (other than leases that are category A past acts and mining leases).

⁶ “**Category C past act**” is defined in s.216 NTA. This category deals with the grant of mining leases. “**Mining lease**” is defined in s.230 NTA and “**mine**” in s.238 NTA.

“**Category D past act**” is defined in s.217 NTA. It is the residual category of past acts.

⁷ The effect of the “**non-extinguishment principle**” is set out in s.223 NTA.

Division 3—Other effects of validation**Preservation of beneficial reservations and conditions (NTA, ss.18 and 15)**

14.(1) This section applies if—

- (a) the past act contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (b) the doing of the past act would affect rights or interests of Aboriginal peoples or Torres Strait Islanders (whether arising under legislation, at common law or in equity and whether or not rights of usage).

(2) Section 8 (Validation of past acts attributable to State) does not affect a reservation or condition mentioned in paragraph (a) or rights or interests mentioned in paragraph (b).

Compensation (NTA, ss.19 and 16)

15.(1) Native title holders are entitled to compensation under this Act because of the validation of a past act attributable to the State if they would be entitled to compensation under section 16(1) or (2) (Entitlement to compensation) of the Commonwealth Native Title Act on the assumption that section 16 applies to acts attributable to the State.

(2) The compensation is payable by the State.

(3) Part 2 (Native title), Division 5 (Determination of compensation for acts affecting native title etc.) of the Commonwealth Native Title Act applies to the determination of the compensation payable.

(4) Under section 26(2) (Conferral of jurisdiction as recognised bodies allowed), jurisdiction may be conferred on the Native Title Tribunal and Wardens Courts to determine the compensation.

PART 3—CONFIRMATION OF CERTAIN RIGHTS

Object of Part

16. The object of this Part is to confirm, in accordance with section 197 (Confirmation of ownership of natural resources, access to beaches etc.) of the Commonwealth Native Title Act—

- (a) the ownership of natural resources and certain water and fishing access rights; and
- (b) public access to and enjoyment of beaches and certain other places.

Confirmation of ownership of natural resources etc. (NTA, s.197(1))

17.(1) The existing ownership of all natural resources owned by the State is confirmed.

(2) All existing rights of the State to use, control and regulate the flow of water are confirmed.

(3) All existing fishing access rights under State law are confirmed to prevail over other public or private fishing rights.

Examples for subsection (1)

Example 1—Minerals and petroleum

With the exception of minerals on certain freehold titles granted between 1860 and 1910, the State owns all minerals (e.g. bauxite, coal and gold) and petroleum in Queensland—see s.1.9 *Mineral Resources Act 1989* and earlier provisions and s.5 *Petroleum Act 1923*. This ownership is confirmed by subsection (1).

Example 2—Quarry material

The State owns quarry material on certain lands in Queensland, including all Crown lands—see s.45 *Forestry Act 1959*. This ownership is confirmed by subsection (1).

Example 3—Fauna

With limited exceptions, the State owns all indigenous fauna in Queensland—see s.7 *Fauna Conservation Act 1974*. This ownership is confirmed by subsection (1).

Confirmation of access to beaches etc. (NTA, s.197(2) and (3))

18.(1) Existing public access to and enjoyment of the following places is confirmed—

- (a) waterways;
- (b) beds and banks or foreshores of waterways;
- (c) coastal waters;
- (d) beaches;
- (e) areas that were public places at the end of 31 December 1993.

(2) Under section 197(3) (Confirmation of ownership of natural resources, access to beaches etc.) of the Commonwealth Native Title Act, the confirmation made by subsection (1) does not extinguish native title rights and interests and does not affect a conferral of land or an interest in land under a law that confers benefits only on Aboriginal peoples or Torres Strait Islanders.

PART 4—QUEENSLAND NATIVE TITLE TRIBUNAL AND REGISTRAR

Division 1—The Tribunal

Queensland Native Title Tribunal (NTA, s.100)

19. The Queensland Native Title Tribunal is established.

Functions (NTA, s.101)

20.(1) The Tribunal has the functions given to it under this Act and any functions given to it under another Act or the Commonwealth Native Title Act.

(2) The Tribunal may conduct research for the purpose of performing its functions.

(3) Without limiting subsection (2), the Tribunal may conduct research about—

- (a) the history of interests in land or waters within the jurisdictional limits of the State; or
- (b) relevant anthropological or linguistic issues.

Tribunal's way of operating (NTA, s.102)

21.(1) The Tribunal must pursue the objective of performing its functions in a fair, just, economical, informal and prompt way.

(2) In conducting inquiries, the Tribunal—

- (a) must take account of relevant cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders; and
- (b) is not bound by technicalities, legal forms or rules of evidence.

(3) The Tribunal may do everything necessary or convenient to be done for the purposes of an inquiry or making a determination about the matters covered by an inquiry.

Questions about native title in other courts

22.(1) If, in a proceeding in the Supreme Court, a District or Magistrates Court or another court (including a proceeding about a matter remitted or referred to the court), the existence, nature or extent of, or the persons holding, native title is in issue, the court may adjourn the proceeding to allow a native title determination application to be made to the Tribunal.

(2) The court may act under subsection (1) on its own initiative or on application by a party to the proceeding.

Division 2—The Registrar

Registrar (NTA, s.88(1))

23. There is a Queensland Native Title Registrar.

Functions of Registrar

24. The Registrar has the functions given to the Registrar under this Act

and any functions given to the Registrar under the Commonwealth Native Title Act.

PART 5—RECOGNISED AND ARBITRAL BODIES

Purpose of Part (NTA, esp. ss.236 and 26)

25. The purpose of this Part is to provide for the Tribunal and Wardens Courts to be recognised State/Territory bodies, and arbitral bodies, for Queensland.

Conferral of jurisdiction as recognised bodies allowed (NTA, esp. s.48(3))

26.(1) It is the intention of the Parliament that the Tribunal and Wardens Courts should be recognised State/Territory bodies.

(2) The Tribunal may have jurisdiction conferred on it as a recognised State/Territory body by the Commonwealth Native Title Act, including jurisdiction to determine compensation in accordance with Part 2, Division 5 of that Act.

(3) Wardens Courts may have jurisdiction conferred on them as recognised State/Territory bodies by the Commonwealth Native Title Act.

(4) Jurisdiction may be exercised by a Wardens Court only to determine compensation in accordance with Part 2, Division 5 of the Commonwealth Native Title Act for matters arising under or in relation to a State Mining Act.

Tribunal and Wardens Courts may be arbitral bodies (NTA, esp. s.26(1))

27.(1) The Tribunal and Wardens Courts may be arbitral bodies under Part 2, Division 3, Subdivision B of the Commonwealth Native Title Act for acts of the State, other than acts in relation to—

- (a) a Commonwealth place (within the meaning of the

Commonwealth Places (Application of Laws) Act 1970 (Cwlth));
or

(b) any place outside the jurisdictional limits of the State.

(2) However, a Wardens Court may be an arbitral body only for matters arising under or in relation to a State Mining Act.

PART 6—HOLDING OF NATIVE TITLE

Native title to be held by body corporate (NTA, s.53)

28.(1) If—

- (a) the Tribunal proposes to make an approved determination of native title; and
- (b) the determination is that native title exists at the time of making the determination;

the Tribunal must, at the same time as it makes the determination, determine the prescribed body corporate that will hold the rights and interests from time to time comprising the native title.

(2) The determination must be made in the same way as the National Native Title Tribunal would be required to make a similar determination under section 53 (Native title to be held by body corporate) of the Commonwealth Native Title Act.

(3) On the making of the determination, the prescribed body corporate holds the rights and interests from time to time comprising the native title, in accordance with the regulations under the Commonwealth Native Title Act, for the common law holders in the same way as the body corporate would be required to hold them if the determination had been made under the Commonwealth Native Title Act.

(4) Subsections (2) and (3) apply subject to any regulation made for this section.

(5) An agreement made by the body corporate about the native title binds the common law holders.

PART 7—APPLICATIONS ABOUT NATIVE TITLE

Division 1—Native title and compensation applications

Native title and compensation applications (NTA, s.55(1))

29.(1) This section sets out applications that may be made to the Registrar under this Division and the persons who may make the applications.

(2) A native title determination application may be made by—

- (a) a person or persons claiming to hold the native title either alone or with others; or
- (b) a person who holds an interest in the entire area for which the determination is sought; or
- (c) the Commonwealth Minister; or
- (d) the State Minister.

(3) A revised native title determination application may be made by—

- (a) the registered native title holder; or
- (b) the Commonwealth Minister; or
- (c) the State Minister; or
- (d) the National Registrar; or
- (e) the Registrar.

(4) A compensation application may be made by—

- (a) the registered native title holder (if any); or
- (b) a person or persons claiming to be entitled to the compensation either alone or with others.

(5) An application mentioned in subsection (2) or (3) may only be made to the Registrar about an area within the jurisdictional limits of the State.

(6) An application mentioned in subsection (4) may only be made to the Registrar about an act attributable to the State.

Form and contents of applications (NTA, s.55(2))

30.(1) An application under this Division must be in the form approved by the Registrar and be given to the Registrar.

(2) The application must contain the information about the matters to be determined as is prescribed by regulation.

Claims to hold title with other persons (NTA, s.55(3))

31.(1) An application under this Division made by a person or persons claiming to hold native title, or to be entitled to compensation, with others must describe or otherwise identify the others.

(2) However, it is not necessary to name them or to say how many there are.

Material and fees to accompany applications (NTA, s.56)

32.(1) A native title determination application by a person or persons claiming to hold the native title for an area (a “**claimant application**”) must—

- (a) be accompanied by a declaration by the applicant that the applicant—
 - (i) has conducted searches of all official title registers, including the Native Title Register, that are relevant to title in the land or waters; and
 - (ii) believes that native title has not been extinguished for part of the area; and
 - (iii) believes that none of the area is covered by an entry in the Native Title Register; and
- (b) contain a list of all official title registers searched; and
- (c) state the name and address of the person who will become the registered native title claimant.

(2) An application under this Division must also be accompanied by the documents and fee prescribed by regulation.

Action to be taken about applications (NTA, s.57)

33.(1) In this section—

“application requirement provisions” means the following sections—

- section 29 (Native title and compensation applications)
- section 30 (Form and contents of applications)
- section 31 (Claims to hold title with other persons)
- section 32 (Material and fees to accompany applications).

(2) If an application complies with the application requirement provisions, the Registrar must accept the application unless the Registrar considers that—

- (a) for a claimant application—native title for part of the area covered by the application (the **“application area”**) has been extinguished; or
- (b) for a native title determination application—part of the application area is covered by an entry in the Native Title Register dealing with a determination or decision; or
- (c) for a claimant application or compensation application—the application does not contain enough information about a physical connection, that may be required by the common law concept of native title, to exist or to have existed between the applicant or the applicant’s ancestors and the application area; or
- (d) for a non-claimant application—the application area is covered by an entry in the Native Title Register dealing with a claim; or
- (e) the geographical boundaries of the application area are not sufficiently described in the application; or
- (f) the application is frivolous or vexatious.

(3) If the Registrar accepts the application, it becomes an **“accepted application”**.

(4) If the Registrar does not accept an application, the Registrar must give the application to a presidential member of the Tribunal.

(5) The presidential member must accept the application unless the presidential member considers that a paragraph of subsection (2) applies to

the application.

(6) If a presidential member accepts the application, it becomes an **“accepted application”**.

General application powers (NTA, s.58)

34.(1) In this section—

“general powers provisions” means the following sections—

- section 67 (Tribunal may prohibit disclosure of evidence etc.)
- section 68 (Powers of Tribunal to take evidence)
- section 69 (Tribunal may authorise someone else to take evidence)
- section 70 (Interpreters)
- section 71 (Retention and copying of documents etc.).

(2) The Registrar may, with the President’s approval, exercise powers under the general powers provisions in relation to an application.

(3) A presidential member may also exercise powers under the general powers provisions in relation to an application.

Action to be taken about accepted applications (NTA, s.59)

35.(1) If an application becomes an accepted application, the Registrar must—

- (a) give notice of the application to all persons whose interests may be affected by a determination on the application; and
- (b) for a claimant application—record details of the application in the Native Title Register.

(2) The Registrar is taken to have given notice to all persons whose interests may be affected by a determination on the application if the Registrar—

- (a) gives notice (an **“accepted application notice”**) containing details of the application to the following persons (the **“potentially affected persons”**)—

- (i) any registered native title claimant for the area covered by the application;
 - (ii) the Commonwealth Minister;
 - (iii) the State Minister;
 - (iv) any registered native title holder for the area;
 - (v) any representative Aboriginal/Torres Strait Islander body for the area;
 - (vi) anyone else whose interests may be affected by a determination on the application and of whom the Registrar is aware; and
- (b) notifies the public of the application in the way prescribed by regulation.

(3) An application notice must also state that—

- (a) if the application is a non-claimant application—the application will be taken to be unopposed unless a claimant application for part of the area covered by the non-claimant application is given to the Registrar within 2 months after the application notice is given; or
- (b) in any other case—a person who wants to be a party to the application must give the Registrar written notice within 2 months after the application notice is given.

(4) If accepted application notices for an application are given on different days, each notice is taken to have been given on the day the last notice for the application is given.

Special procedure for non-claimant applications (NTA, s.60)

36.(1) A non-claimant application is taken to have been dismissed if—

- (a) a claimant application for part of the area covered by the non-claimant application is given to the Registrar within 2 months after the Registrar gave the accepted application notices for the non-claimant application; and
- (b) the claimant application is accepted (whether initially or on appeal and whether or not within the 2 month period).

(2) If a claimant application is given to the Registrar, all reasonable steps must be taken, within 1 month after the application is given, to decide whether to accept the application.

(3) If the non-claimant application is not taken to have been dismissed under subsection (1), the application is taken to be unopposed for section 39 (Applications that are unopposed).

Parties (NTA, s.61)

37.(1) The applicant is a party to an application under this Division.

(2) Someone else is a party to the application if—

- (a) the person is a potentially affected person or the person's interests may be affected by a determination on the application; and
- (b) within 2 months after the Registrar gave the accepted application notices for the application, the person gives the Registrar written notice that the person wants to be a party to the application.

Tribunal to decide persons whose interests may be affected (NTA, s.62)

38.(1) If it is necessary for this Division to decide whether the interests of a person may be affected by a determination, the issue is to be decided by the Tribunal and, if the Tribunal decides that the interests of a person may be affected, the decision of the Tribunal is conclusive.

(2) In making a decision under subsection (1), the Tribunal must be constituted by a presidential member.

Applications that are unopposed (NTA, s.63)

39.(1) If an accepted application is unopposed, the Tribunal may make a determination in, or consistent with, the terms sought by the applicant if—

- (a) the Tribunal is satisfied that the applicant has made out a prima facie case for a determination in the terms sought; and
- (b) the Tribunal considers that the determination is just and equitable in all the circumstances.

(2) The application is “**unopposed**” if—

- (a) at the end of 2 months after the Registrar gave the accepted application notices for the application, the applicant is the only party; or
- (b) each party gives the Tribunal written notice that the party does not oppose the application; or
- (c) the application is taken to be unopposed by section 36(3) (Special procedure for non-claimant applications).

(3) An application mentioned in subsection (1) is an “**unopposed application**”.

Power of Tribunal if parties reach agreement (NTA, s.64)

40.(1) This section applies if—

- (a) at the end of 2 months after the Registrar gave the accepted application notices for the application, the parties inform the Tribunal that they have reached agreement about the terms of a determination of the Tribunal on the application; and
- (b) the terms of the agreement, in writing signed by or for the parties, are given to the Tribunal; and
- (c) the Tribunal is satisfied that a determination in, or consistent with, the agreed terms would be within the Tribunal’s powers and would be just and equitable in all the circumstances; and
- (d) the Tribunal is satisfied that the applicant has made out a prima facie case for a determination in, or consistent with, the agreed terms.

(2) If this section applies, the Tribunal must make a determination in accordance with, or consistent with, the agreed terms.

(3) An application mentioned in subsection (1) is also an “**unopposed application**”.

Mediation conference to be held (NTA, s.65)

41.(1) If an accepted application is not an unopposed application, the

President must direct the holding of a conference (the “**mediation conference**”) of the parties or their representatives to help in resolving the matter.

(2) The mediation conference must be presided over by a member or an assessor.

(3) If a member presides over the mediation conference, the member must not take further part in proceedings about the application without the agreement of the parties.

Power of Tribunal if parties reach agreement after mediation conference (NTA, s.66)

42.(1) This section applies if—

- (a) at the end of a mediation conference the parties inform the Tribunal that they have reached agreement about the terms of a determination of the Tribunal on the application; and
- (b) the terms of the agreement, in writing signed by or for the parties, are given to the Tribunal; and
- (c) the Tribunal is satisfied that a determination in, or consistent with, the agreed terms would be within the Tribunal’s powers and would be just and equitable in all the circumstances; and
- (d) the Tribunal is satisfied that the applicant has made out a prima facie case for a determination in, or consistent with, the agreed terms.

(2) If this section applies, the Tribunal must make a determination in, or consistent with, the agreed terms.

Applications not settled are to be heard by Tribunal (NTA, s.67)

43. The Tribunal must hear an accepted application if the Tribunal does not make a determination under any of the following sections—

- section 39 (Applications that are unopposed)
- section 40 (Power of Tribunal if parties reach agreement)

- section 42 (Power of Tribunal if parties reach agreement after mediation conference).

Division 2—Right to negotiate applications

Right to negotiate applications (NTA, s.68(1))

44.(1) This section sets out the applications that may be made to the Registrar under this Division and the persons who may make the applications.

(2) An objection under section 31 (Expedited procedure) of the Commonwealth Native Title Act to inclusion of a statement that an act is an act attracting expedited procedure, or an equivalent objection under any alternative provisions made by a State law, may be made by a native title party.

(3) An application for a future act determination under section 33 (Application for determination) of the Commonwealth Native Title Act, or an equivalent application under any alternative provisions made by a State law, may be made by a negotiation party.

(3) An application mentioned in subsection (2) or (3) is a “**right to negotiate application**”.

Form and contents of applications (NTA, s.68(2))

45.(1) A right to negotiate application must be in the form approved by the Registrar and be given to the Registrar.

(2) The application must contain the information about the matters to be determined as is prescribed by regulation.

Material and fees to accompany applications (NTA, s.69)

46. A right to negotiate application must be accompanied by the documents and fee prescribed by regulation.

Action to be taken about applications (NTA, s.70)

47.(1) In this section—

“**application requirement provisions**” means the following sections—

- section 44 (Right to negotiate applications)
- section 45 (Form and contents of applications)
- section 46 (Material and fees to accompany applications).

(2) If an application complies with the application requirement provisions, the Registrar must accept the application.⁸

Division 3—Miscellaneous**Assistance to potential applicants (NTA, s.71)**

48.(1) The Registrar may give reasonable assistance to help people prepare applications and accompanying material.

(2) Without limiting subsection (1), the assistance may include—

- (a) providing research services; or
- (b) conducting searches of official title registers, including the Native Title Register.

Requests for non-monetary compensation (NTA, s.72)

49. If, during negotiations about an application under this Part (whether or not during a mediation conference), a person or persons who may be entitled to compensation ask that the whole or part of the compensation should be in a form other than money, the other person or persons involved in the negotiations—

- (a) must consider the request; and

⁸ The procedure to be followed for right to negotiate applications is set out in Part 2, Division 3, Subdivision B of the Commonwealth Native Title Act.

- (b) must negotiate in good faith about the request.

Example of non-monetary compensation—

The transfer of property or the supply of goods or services.

PART 8—INQUIRIES AND DETERMINATIONS BY THE TRIBUNAL

Division 1—Special inquiries

Special inquiries (NTA, s.130)

50.(1) The State Minister may, by written notice, direct the Tribunal to hold an inquiry about a particular native title issue.

(2) Without limiting subsection (1), the issues that an inquiry may cover include—

- (a) the effect on Aboriginal peoples and Torres Strait Islanders of the validation of particular past acts; and
- (b) alternative forms of compensation that could be provided for acts covered by this Act; and
- (c) action that could be taken to help Aboriginal peoples and Torres Strait Islanders if native title has been extinguished.

(3) An issue mentioned in subsection (1) is a “**special issue**”.

Notice (NTA, s.131)

51. The Registrar must notify the public of the inquiry in the way prescribed by regulation.

Division 2—Inquiries generally**Inquiries (NTA, s.132)**

52. The Tribunal must hold an inquiry into unopposed applications, right to negotiate applications and special issues.

Inquiries may cover more than 1 matter (NTA, s.133)

53. An inquiry may cover more than 1 application or issue.

Parties (NTA, s.134)

54.(1) The parties to an inquiry about an unopposed application are the persons who are the parties under section 37 (Parties).

(2) The parties to an inquiry about a right to negotiate application are the Government party, the native title parties and the grantee parties.

(3) The parties to an inquiry about a special matter are the State Minister and, with the Tribunal's leave, anyone else who gives the Tribunal written notice before the start of the inquiry that the person wants to be a party.

(4) A regulation may make provision about the granting or refusing of leave under subsection (3).

Opportunity to make submissions about evidence (NTA, s.135)

55.(1) The Tribunal must ensure that every party is given a reasonable opportunity—

- (a)** to present a case and, in particular, to inspect a document to which the Tribunal proposes to have regard in making a determination in the inquiry; and
- (b)** to make submissions about the documents.

(2) Subsection (1) is subject to the following sections—

- section 66 (Inquiries to be held in public other than in special circumstances)
- section 67 (Tribunal may prohibit disclosure of evidence etc.).

Representation before Tribunal (NTA, s.136)

56. A party may appear in person or may be represented by someone else.

Way in which questions are to be decided (NTA, s.137)

57.(1) If the members constituting the Tribunal for a particular proceeding are divided in opinion about the decision to be made on a question—

- (a) if there is a majority of the same opinion—the question must be decided according to the opinion of the majority; or
- (b) if there is not a majority of the same opinion—the question must be decided according to the opinion of the presiding member

(2) However, a question of law arising in an inquiry (including the question whether a particular question is a question of law) must be decided in accordance with the opinion of the presiding member.

Reference of questions of law to Land Appeal Court (NTA, s.138)

58.(1) The Tribunal may, of its own initiative or at the request of a party, refer a question of law arising in an inquiry to the Land Appeal Court for a decision.

(2) A question of law may be referred only if the presiding member agrees.

(3) If a question of law arising in an inquiry has been referred to the Land Appeal Court, the Tribunal must not, in the inquiry—

- (a) give a determination to which the question is relevant while the reference is pending; or
- (b) proceed in a way, or make a determination, that is inconsistent with the Land Appeal Court's opinion on the question.

Evidence and findings in other proceedings (NTA, s.139)

59. In an inquiry, the Tribunal may—

- (a) receive into evidence the transcript of evidence in another

proceeding before—

- (i) a court; or
- (ii) the Tribunal; or
- (iii) the National Native Title Tribunal; or
- (iv) a Land Tribunal; or
- (v) a recognised State/Territory body; or
- (vi) another entity;

and draw conclusions of fact from the transcript; and

- (b) receive into evidence a document or other thing introduced into evidence in another proceeding before a court or other entity and draw conclusions from the document or thing; and
- (c) adopt findings, decisions, determinations or judgments of a court or other entity.

Power of Tribunal if proceeding is frivolous or vexatious (NTA, s.140)

60.(1) The Tribunal may dismiss an application if the Tribunal is satisfied the application is frivolous or vexatious.

(2) The application may be dismissed at any stage of the inquiry.

Power of Tribunal if prima facie case not made out (NTA, s.141)

61.(1) The Tribunal may dismiss an application if it is satisfied that the applicant cannot make out a prima facie case on the application.

(2) The application may be dismissed at any stage of the inquiry.

Division 3—Conferences and hearings

Conferences (NTA, s.142)

62.(1) The President may direct the holding of a conference of the parties or their representatives to help in resolving issues.

(2) The conference must be presided over by a member, an assessor or

an officer of the Tribunal.

(3) At a hearing before the Tribunal, evidence must not be given, and statements must not be made, about anything said or done at a conference unless the parties otherwise agree.

(4) Unless the parties otherwise agree, a member who presides over a conference is not entitled to be a member of the Tribunal as constituted for the inquiry.

Hearings (NTA, s.143)

63. The Tribunal may hold hearings for an inquiry.

Right of appearance (NTA, s.144)

64.(1) A party to an inquiry has the right to appear at hearings and conferences held for the inquiry.

(2) Subsection (1) is subject to section 66 (Inquiries to be held in public other than in special circumstances).

Taking part by telephone etc. (NTA, s.145)

65. A person presiding over a conference under section 62 (Conferences), and the Tribunal in a hearing for an inquiry, may allow a person to take part by telephone, closed-circuit television or another form of communication.

Inquiries to be held in public other than in special circumstances (NTA, s.146)

66.(1) An inquiry must be held in public.

(2) If, when a hearing is in public, a person takes part by a form of communication allowed under section 65 (Taking part by telephone etc.), the Tribunal must take the steps reasonably necessary to ensure the public nature of the hearing is preserved.

(3) However, the Tribunal may, of its own initiative or on the application of a party, direct that an inquiry, or a part of an inquiry, be held in private,

and give directions about the persons who may be present.

(4) In deciding whether an inquiry or part of an inquiry should be held in private, the Tribunal must have proper regard to relevant cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

Tribunal may prohibit disclosure of evidence etc. (NTA, s.147)

67.(1) The Tribunal may direct that evidence given before it, or the contents of a document or other thing produced to it, must not be disclosed, or must not be disclosed other than in the way, and to the persons, that the Tribunal specifies.

(2) The Tribunal may make the direction of its own initiative or on application by a party.

(3) This section does not limit the Tribunal's powers under section 66 (Inquiries to be held in public other than in special circumstances).

Powers of Tribunal to take evidence (NTA, s.148)

68.(1) The Tribunal may take evidence on oath or affirmation and, for the purpose of taking evidence, a member of the Tribunal may administer an oath or affirmation.

(2) A member of the Tribunal may summon a person to appear before the Tribunal to give evidence and to produce a document or other thing specified in the summons.

(3) A party may call witnesses.

(4) A person appearing as a witness before the Tribunal may be examined.

(5) A person appearing as a witness before the Tribunal may be cross-examined or re-examined only with the Tribunal's leave.

(6) If a person takes part by a form of communication allowed under section 65 (Taking part by telephone etc.), the Tribunal may make arrangements for administering an oath or affirmation to the person.

Tribunal may authorise someone else to take evidence (NTA, s.149)

69.(1) The Tribunal may authorise an assessor, or another appropriate person, (the “**authorised person**”) to take evidence for it.

(2) Subject to any limitations specified by the Tribunal, in taking the evidence the authorised person has all of the Tribunal’s powers under section 68 (Powers of Tribunal to take evidence).

(3) If the authorised person takes the evidence on oath or affirmation, the authorised person must make a written record of the evidence and send it to the Tribunal.

(4) This Act applies to the authorised person in taking the evidence as if a reference to the Tribunal included a reference to the authorised person.

Interpreters (NTA, s.150)

70. The Tribunal may allow evidence to be given, or submissions to be made, with the help of an interpreter.

Retention and copying of documents etc. (NTA, s.151)

71.(1) The Tribunal may keep for a reasonable time, and may make copies of or take extracts from, documents produced to the Tribunal in an inquiry or hearing.

(2) The Tribunal may keep for a reasonable time other things produced to the Tribunal in an inquiry or hearing.

*Division 4—Determinations and reports***Determination of Tribunal—native title and compensation applications (NTA, s.152)**

72.(1) After holding an inquiry about an application made under section 29 (Native title and compensation applications), the Tribunal must make a determination about the matters covered by the inquiry.

(2) The Tribunal must state in the determination findings of fact on which the determination is based.

Determination that compensation is payable (NTA, s.153)

73. If the Tribunal makes a determination that compensation is payable, the determination must specify—

- (a) if the compensation must be paid to a body corporate in accordance with section 54 (Compensation to be held by body corporate etc.) of the Commonwealth Native Title Act—the body corporate’s name; or
- (b) in any other case—
 - (i) the person or persons entitled to the compensation or the method for deciding the person or persons entitled to the compensation; and
 - (ii) any method for deciding the amount or kind of compensation to be given to each person; and
 - (iii) the method for deciding a dispute about the entitlement of a person to an amount of the compensation.

Determination—right to negotiate applications (NTA, s.154)

74.(1) After holding an inquiry about a right to negotiate application, the Tribunal must make a determination about the matters covered by the inquiry.

(2) The Tribunal must state in the determination findings of fact on which the determination is based.

(3) This section is subject to—

- (a) section 35 (No determination if agreement) of the Commonwealth Native Title Act; and
- (b) an equivalent provision under any alternative provisions made by a State law.

Reports after special inquiries (NTA, s.155)

75.(1) After holding an inquiry about a special matter, the Tribunal must make a report about the matters covered by the inquiry.

(2) The Tribunal must state in the report findings of fact on which the report is based.

Determinations and reports to be in writing (NTA, s.156)

76. Determinations and reports by the Tribunal must be in writing and be given to each of the parties.

Decision or determination conclusive (see NTA, s.157)

77. Subject to a decision made on an appeal from a decision or determination of the Tribunal, the decision or determination is final and conclusive of the matters decided.

Division 5—Appeals

Appeals to Land Appeal Court from decisions and determinations of Tribunal (see NTA, s.161)

78.(1) A party to an inquiry about an application made under section 29 (Native title and compensation applications) may appeal to the Land Appeal Court, on a question of law or fact, from a decision or determination of the Tribunal in the inquiry.

(2) A party to an inquiry about a right to negotiate application before the Tribunal may appeal to the Land Appeal Court, on a question of law, from any decision or determination of the Tribunal in the inquiry.

(3) If a person gives an application to the Registrar under section 30 (Form and contents of applications), the person may appeal to the Land Appeal Court, on a question of fact or law, from a decision of a presidential member not to accept the application.

(4) If a person applies to the Tribunal to be made a party to an application, and the Tribunal decides that the interests of the person will not be affected by a determination on the application, the person may appeal to the Land Appeal Court, on a question of fact or law, from the Tribunal's decision.

(5) An appeal must be started—

- (a) within 28 days after the day notice of the Tribunal's decision or determination is given to the person or within the further time that the Court (whether before or after the end of the period) allows; and
- (b) in the way that may be prescribed by rules of court.

(6) The Court must hear the appeal and may make the order it considers appropriate because of its decision.

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

- (a) an order confirming or setting aside the decision or determination of the Tribunal; and
- (b) an order remitting the matter to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Court.

Operation and implementation of decision or determination subject to appeal (NTA, s.162)

79.(1) The starting of an appeal to the Land Appeal Court from a decision or determination of the Tribunal does not affect the operation of the decision or determination or prevent the taking of action to implement the decision or determination.

(2) However, the Court may, by order, stay a decision or determination of the Tribunal to secure the effectiveness of the appeal.

(3) A stay—

- (a) may be granted on conditions the Court considers appropriate; and
- (b) operates for the period specified by the Court; and
- (c) may be revoked or amended by the Court.

(4) The period of the stay specified by the Court must not extend past the time when the Court decides the appeal.

Land Appeal Court may prohibit disclosure of evidence etc. (see NTA, s.85)

80.(1) The Land Appeal Court may direct that evidence given before it, or the contents of or information provided by a document or other thing produced to it, in an appeal from the Tribunal must not be disclosed, or must not be disclosed other than in the way, and to the persons, that the Court specifies.

(2) The Court may make the direction of its own initiative or on application by a party.

Division 6—Offences**Failure of witness to attend (NTA, s.163)**

81. A person served, as prescribed by regulation, with a summons under this Act to appear as a witness before the Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear during the proceeding as required by the presiding member.

Maximum penalty—20 penalty units.

Refusal to be sworn or answer questions etc. (see NTA, ss.164 and 166)

82.(1) A person appearing as a witness before the Tribunal must not—

- (a) fail to be sworn or to make an affirmation; or
- (b) without reasonable excuse, fail to answer a question the person is required to answer by the presiding member; or
- (c) without reasonable excuse, fail to produce a document or other thing the person is required to produce by a summons under this Act served on the person as prescribed by regulation.

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.

Giving of false or misleading evidence (see NTA, s.165)

83.(1) A person appearing before the Tribunal to give evidence must not give evidence the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(2) A complaint against a person for an offence against subsection (1) is sufficient if it states the evidence given was false or misleading to the person's knowledge.

Producing false or misleading document etc. (see NTA, s.167)

84.(1) A person must not produce to the Tribunal a document or other thing containing or providing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to a person who, when producing the document or other thing—

- (a) informs the Tribunal, to the best of the person's ability, of how it is false, misleading or incomplete; and
- (b) gives the correct information in evidence to the Tribunal if the person has, or can reasonably obtain, the correct information.

(3) A complaint against a person for an offence against subsection (1) is sufficient if it states the document or other thing was false, misleading or incomplete to the person's knowledge.

Contravention of direction prohibiting disclosure of evidence (NTA, s.168)

85.(1) This section applies to a direction under either of the following sections—

- section 67 (Tribunal may prohibit disclosure of evidence etc.)
- section 80 (Land Appeal Court may prohibit disclosure of evidence etc.).

(2) A person must not disclose anything in contravention of a direction to which this section applies.

Maximum penalty—40 penalty units.

Contempt of Tribunal (NTA, s.169)

86. A person must not—

- (a) obstruct the Tribunal or a member in the performance of the Tribunal's functions; or
- (b) disrupt the taking of evidence by the Tribunal; or
- (c) do anything else that would be a contempt of court if the Tribunal were a court.

Maximum penalty—40 penalty units.

Division 7—Miscellaneous

Sending of documents to the Land Appeal Court (NTA, s.170)

87. If an appeal to the Land Appeal Court is made under section 78 (Appeals to Land Appeal Court from decisions and determinations of Tribunal), or a question of law is referred to the Land Appeal Court under section 58 (Reference of questions of law to Land Appeal Court)—

- (a) the Tribunal must send to the Court all documents and other things that were before the Tribunal for the relevant inquiry; and
- (b) at the end of the proceeding before the Court, the Court must return the documents and other things to the Tribunal.

Return of documents etc. at end of proceeding (NTA, s.171)

88.(1) If a proceeding before the Tribunal has ended and—

- (a) the time within which an appeal from the decision or determination of the Tribunal in the proceeding may be made has ended without an appeal being made; or
- (b) if that time has been extended—the period of the extension has ended without an appeal being made;

the Registrar may arrange for a document or anything else given to the Tribunal for the proceeding to be returned to the person who gave it to the Tribunal.

(2) If the Land Appeal Court returns a document or other thing to the Tribunal at the end of an appeal, the Registrar may arrange for the document to be returned to the person who gave it to the Tribunal.

Protection of members etc. (see NTA, s.172)

89.(1) A member has, in the performance of duties as a member, the same protection and immunity as a Judge of the Supreme Court.

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

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

Confidential information not to be disclosed (see NTA, s.173)

90.(1) This section applies to a person who is, or has been, a member, assessor or officer of the Tribunal or the Land Appeal Court, or the Registrar.

(2) A person to whom this section applies is not competent, and must not be required, to give evidence to a court about a matter if—

- (a) giving the evidence would be contrary to a direction (a “**non-disclosure direction**”)—
 - (i) of the Tribunal under section 67 (Tribunal may prohibit disclosure of evidence etc.); or
 - (ii) of the Land Appeal Court under section 80 (Land Appeal

Court may prohibit disclosure of evidence etc.); or

- (b) an application has been made to the Tribunal or Land Appeal Court for a non-disclosure direction about the matter to which the evidence would relate and the application has not been decided.

(3) A person to whom this section applies must not be required to produce in a court a document or other thing given to the Tribunal, Court or Registrar if—

- (a) producing the document or thing would be contrary to a non-disclosure direction; or
- (b) an application has been made to the Tribunal or Court for a non-disclosure direction about the document or thing and the application has not been decided.

(4) A person who is, or has been, a member of the Tribunal must not be required to give evidence to a court about a proceeding before the Tribunal.

(5) In this section—

“**court**” includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

“**produce**” includes permit access to.

Fees for persons giving evidence (NTA, s.174)

91.(1) A person, other than a party, summoned to appear before the Tribunal to give evidence is entitled to be paid, for attendance, fees and allowances for expenses that may be prescribed by regulation.

(2) The fees and allowances must be paid—

- (a) if the witness was summoned at a party’s request—by the party; or
- (b) in any other case—by the State.

PART 9—PROVISIONS ABOUT THE TRIBUNAL

Division 1—Membership

Members of the Tribunal (see NTA, s.103)

92. The Tribunal consists of the President and the number of Deputy Presidents and other members that are appointed under this Act.

Presidential and non-presidential members (see NTA, s.103)

93.(1) The President and Deputy Presidents are presidential members of the Tribunal.

(2) The other members are non-presidential members of the Tribunal.

Appointment of members of Tribunal (see NTA, s.104)

94.(1) The members are appointed by the Governor in Council.

(2) The President must be appointed on a full-time basis.

(3) A member (other than the President or a District Court Judge) must be appointed either as a full-time or part-time member.

Qualifications for appointment (see NTA, s.103)

95.(1) A person is eligible for appointment as a presidential member only if the person is—

- (a)** a District Court Judge; or
- (b)** the chairperson or a deputy chairperson of a Land Tribunal; or
- (c)** a presidential member of the National Native Title Tribunal; or
- (d)** a former Judge; or
- (e)** a lawyer of at least 5 years standing.

(2) A person is eligible for appointment as a non-presidential member only if—

- (a) the person is—
 - (i) a non-presiding member of a Land Tribunal; or
 - (ii) a non-presidential member of the National Native Title Tribunal; or
 - (iii) a member of a recognised State/Territory body; or
- (b) the person has, in the Governor in Council's opinion, special knowledge about—
 - (i) Aboriginal or Torres Strait Islander societies; or
 - (ii) land management; or
 - (iii) dispute resolution; or
 - (iv) anything else considered by the Governor in Council to have substantial relevance to the duties of a non-presidential member.

Appointment as member of Land Tribunal not affected

96. Nothing in this or another Act prevents a member (including the President) also holding office as the chairperson or other member of a Land Tribunal.

Acting member

97.(1) The Governor in Council may appoint a qualified person to act as the President during—

- (a) a vacancy, or all vacancies, in the office; or
- (b) a period, or all periods, when the President is absent from duty or Australia or cannot perform the office's duties for another reason.

(2) The Governor in Council may appoint a qualified person to act as a member of the Tribunal (other than the President).

Division 2—Provisions about District Court Judges**Application of Division**

98. This Division applies to a presidential member who is a District Court Judge.

Appointment of District Court Judge as member not to affect tenure etc.

99. The appointment of the Judge as a presidential member, or service by the Judge as a presidential member, does not affect—

- (a) the Judge's tenure of office as a District Court Judge; or
- (b) the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of the Judge's office as a District Court Judge.

Termination of office

100.(1) The member ceases to hold office if the member ceases to hold office as a District Court Judge.

(2) The member may resign the office by written resignation given to the Governor.

(3) The resignation does not affect the member's appointment as a District Court Judge.

Disclosure of interests

101. Section 107 (Disclosure of interests) applies to the member in the same way as it applies to a member who is not a District Court Judge.

Division 3—Provisions about other members**Application of Division**

102. This Division applies to a member who is not a District Court Judge.

Duration of appointment (NTA, s.108(1))

103. The member is appointed for the term (not longer than 5 years) specified in the instrument of appointment.

Terms of appointment (NTA, ss.107 and 108(4))

104.(1) The member is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(2) The member holds office on the terms not provided by this Act that are decided by the Governor in Council.

Leave of absence (see NTA, s.110)

105.(1) The Minister may grant leave of absence to the President on the terms the Minister considers appropriate.

(2) The President may grant leave of absence to a full-time member on the terms the President considers appropriate.

Resignation (NTA, s.111)

106. A member may resign by giving a signed notice of resignation to the Governor.

Disclosure of interests (NTA, s.115)

107.(1) If the member has a conflict of interest about an application or inquiry, the member must disclose the matters giving rise to the conflict—

(a) if the member is the President—to the Minister and the parties; or

(b) if the member is not the President—to the President and the parties.

(2) The member may take part in the inquiry, or exercise a power for the application or inquiry, only if—

(a) for a member who is the President—the State Minister and the parties agree; or

(b) for a member who is not the President—the President and the parties agree.

(3) A member has a conflict of interest about an application or inquiry if the member has an interest (financial or otherwise) that could conflict with the proper performance of the member's functions for the application or inquiry.

Termination of appointment (see NTA, s.112)

108. The Governor in Council may terminate the appointment of a member if the member—

(a) becomes a patient within the meaning of the *Mental Health Act 1974*; or

(b) is convicted of an indictable offence; or

(c) for a member who is a non-presidential member—commits misconduct of a kind that could justify dismissal from the public service if the member were an officer of the public service; or

(d) contravenes section 107 (Disclosure of interests); or

(e) for a member who is the President—is absent, without the State Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in a year; or

(f) for a member who is a full-time member—is absent, without the President's leave and without reasonable excuse, for 14 consecutive days or 28 days in a year.

Division 4—Organisation of Tribunal**Arrangement of business (NTA, s.116)**

109.(1) The President may give directions about the following—

- (a) the arrangement of the Tribunal's business;
- (b) the presidential member who—
 - (i) is to consider a particular application under section 33(4) (Action to be taken about applications); or
 - (ii) is to constitute the Tribunal for making a decision under section 38(1) (Tribunal to decide persons whose interests may be affected);
- (c) the members who are to constitute the Tribunal for a particular inquiry;
- (d) the places where the Tribunal is to sit;
- (e) the Tribunal's procedure at a particular place and generally.

(2) In giving a direction about the members who are to constitute the Tribunal for a particular inquiry, the President must have regard to the degree of public importance or complexity of the matters to which the inquiry relates.

Constitution of Tribunal for exercise of powers (NTA, s.117)

110.(1) The Tribunal for a particular inquiry must be constituted by—

- (a) a member; or
- (b) 3 members of whom only 1 is a presidential member.

(2) If the Tribunal is constituted by 3 members, the President must, as far as is reasonably practicable, ensure that the Tribunal includes at least 1 member with special knowledge about Aboriginal or Torres Strait Islander societies.

(3) This section is subject to section 38 (Tribunal to decide persons whose interests may be affected).

Reconstitution of Tribunal (NTA, s.118)

111.(1) This section applies if a member (the “**unavailable member**”) who constitutes the Tribunal, or who is 1 of the members who constitutes the Tribunal, for a particular inquiry—

- (a) ceases to be a member; or
- (b) for another reason is not available for the inquiry.

(2) If the unavailable member constitutes the Tribunal, the President must direct another member or members to constitute the Tribunal to finish the inquiry.

(3) If the unavailable member is 1 of the members who constitute the Tribunal, the President must direct that the Tribunal is constituted to finish the inquiry by—

- (a) the remaining member or members; or
- (b) the remaining member or members and another member or members.

(4) For subsections (2) and (3), a member who ceases to be a member and at a later time becomes a member again is taken, from the later time, to be another member.

(5) The Tribunal as constituted in accordance with a direction under subsection (2) or (3) must continue and finish the inquiry, and may have regard to the record of the proceeding of the inquiry made by the Tribunal as previously constituted.

Member presiding (NTA, s.119)

112. The President must give a direction about the member who is to be the presiding member for a particular inquiry.

Places of sitting (NTA, s.120)

113. Sittings of the Tribunal are to be held at the places where the Tribunal’s registries are established, but the Tribunal may sit anywhere else in or outside Queensland.

Division 5—Registrar and other officers and staff of Tribunal**Appointment of Registrar (see NTA, s.88)**

114.(1) The Registrar must be appointed under the *Public Service Management and Employment Act 1988*.

(2) A person is eligible to be appointed as Registrar only if the person is a lawyer of at least 5 years standing.

Powers of Registrar—helping the President (NTA, s.89)

115.(1) The Registrar may do everything necessary or convenient to be done to help the President manage the Tribunal's administrative affairs.

(2) In particular, the Registrar may act for the President in managing the Tribunal's administrative affairs.

(3) The President may give the Registrar directions about the exercise of the Registrar's powers under this Part.

Powers of Registrar—applications (NTA, s.90)

116. The Registrar has powers under Part 7 (Applications about native title).

Powers of Registrar—Native Title Register (NTA, s.91)

117. The Registrar also has powers under Part 10 (Native title register).

Delegation by Registrar (NTA, s.92)

118. The Registrar may delegate the Registrar's powers under this Act to a Deputy Registrar or member of the Tribunal's staff.

Disclosure of interests by Registrar (NTA, s.99)

119. The Registrar must give written notice to the President of all direct or indirect financial interests the Registrar has or acquires in a business or a corporation carrying on a business.

Deputy Registrars and staff of the Tribunal (NTA, s.123)

120.(1) As well as the Registrar, there are to be the Deputy Registrars and staff of the Tribunal that are necessary.

(2) The Deputy Registrars and the staff of the Tribunal are to be persons appointed or employed under the *Public Service Management and Employment Act 1988*.

(3) The Deputy Registrars and the staff of the Tribunal have the duties and powers that are given by this Act or the President.

Engagement of consultants etc. (NTA, s.125)

121.(1) The Registrar may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Tribunal.

(2) Without limiting subsection (1), the services that a consultant may be engaged to perform include conducting research for the Tribunal.

(3) An engagement under subsection (1) must be made for the State by a written agreement.

Division 6—Assessors**Assessors (see NTA, s.76)**

122.(1) There are to be assessors to help the Tribunal in the exercise of its jurisdiction under this Act.

(2) In helping the Tribunal, an assessor is subject to the control and direction of the Tribunal.

(3) A regulation may provide for assessors to help Wardens Courts in their roles as recognised State/Territory bodies and arbitral bodies under the Commonwealth Native Title Act.

Appointment of assessors (see NTA, s.203)

123.(1) The assessors are appointed by the Governor in Council.

(2) An assessor must be appointed either as a full-time or part-time

assessor.

(3) As far as practicable, persons appointed as assessors are to be Aborigines or Torres Strait Islanders.

Qualifications for appointment (see NTA, s.203)

124. A person may be appointed as an assessor only if the person has, in the Governor in Council's opinion, special knowledge about—

- (a) Aboriginal or Torres Strait Islander societies; or
- (b) land management; or
- (c) dispute resolution; or
- (d) anything else considered by the Governor in Council to have substantial relevance to the duties of an assessor.

Duration of appointment (see NTA, s.203)

125. An assessor is appointed for the term (not longer than 5 years) specified in the instrument of appointment.

Terms of appointment (see NTA, s.203)

126.(1) An assessor is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(2) An assessor holds office on the terms not provided by this Act that are decided by the Governor in Council.

Leave of absence (see NTA, s.203)

127. The Registrar may grant leave of absence to a full-time assessor on the terms the Registrar considers appropriate.

Resignation (NTA, s.203)

128. An assessor may resign by giving a signed notice of resignation to the Governor.

Disclosure of interests (NTA, s.203)

129.(1) If an assessor has a conflict of interest about an application or inquiry, the assessor must disclose the matters giving rise to the conflict to the President and the parties.

(2) The assessor may take part in the inquiry, or help in the exercise of powers for the application or inquiry, only if the President and the parties agree.

(3) An assessor has a conflict of interest about an application or inquiry if the member has an interest (financial or otherwise) that could conflict with the proper performance of the assessor's duties for the application or inquiry.

Termination of appointment (see NTA, s.203)

130. The Governor in Council may terminate the appointment of an assessor if the assessor—

- (a) becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (b) is convicted of an indictable offence; or
- (c) commits misconduct of a kind that could justify dismissal from the public service if the assessor were an officer of the public service; or
- (d) contravenes section 129 (Disclosure of interests); or
- (e) for an assessor who is a full-time assessor—is absent without the Registrar's leave and without reasonable excuse, for 14 consecutive days or 28 days in a year.

*Division 7—Miscellaneous administrative matters***Management of administrative affairs of Tribunal (NTA, ss.121(1) and 122)**

131.(1) The President is responsible for managing the Tribunal's administrative affairs.

(2) The Native Title Registrar helps the President to manage the Tribunal's administrative affairs.

Delegation by President to members (NTA, s.106)

132. The President may delegate the President's powers under this Act to 1 or more of the members.

Annual report (see NTA, s.126)

133.(1) Within 4 months after the end of each financial year, the President must give the Minister a report on the Tribunal's operations during the year.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

Proceedings arising out of administration of Tribunal (NTA, s.129)

134. A judicial or other proceeding about a matter arising out of the management of the Tribunal's administrative affairs (including a proceeding about anything done by the President or Registrar in the management of the Tribunal's administrative affairs) may be taken by or against the State.

PART 10—NATIVE TITLE REGISTER

Meaning of "claim" (NTA, s.176)

135. In this Part—

"claim" means an assertion in an application given to the Registrar, or the National Registrar, that a person or persons hold native title for a specified area of land or waters within the jurisdictional limits of the State.

Native Title Register (NTA, ss.177 and 184)

136.(1) The Registrar must establish and keep the Queensland Native Title Register.

(2) The register may be kept by computer.

(3) The register may consist of 2 or more registers, each containing the part of the information that must be entered into the register as the Registrar decides.

Contents of the register (NTA, ss.178 and 185)

137.(1) The Native Title Register must contain the following information for each claim—

- (a) whether the claim was made to the Registrar, the National Registrar or another entity;
- (b) the entity to whom the claim was made;
- (c) the date when the claim was made;
- (d) the name and address for service of the person who is taken to be the claimant;
- (e) the area of land or waters covered by the claim;
- (f) a description of the persons who it is claimed hold the native title.

(2) The Registrar may include in the register the other details about the claim the Registrar considers appropriate.

(3) The register must contain the information mentioned in subsection (4) about the following determinations and decisions—

- (a) approved native title determinations about areas of land or waters within the jurisdictional limits of the State; and
- (b) other determinations and decisions by courts and tribunals about native title to areas of land or waters within the jurisdictional limits of the State.

(4) The register must contain the following information about each determination or decision—

- (a) the name of the entity that made the determination or decision;

- (b) the date when the determination or decision was made;
- (c) the area of land or waters covered by the determination or decision;
- (d) the matters decided, including the name and address of the body corporate that is to hold the native title rights and interests under section 28 (Native title to be held by body corporate) of this Act or section 53 (Native title to be held by body corporate) of the Commonwealth Native Title Act.

(5) The Registrar may include in the register the other details about the determination or decision the Registrar considers appropriate.

Inspection of the register (NTA, ss.179 and 186)

138.(1) The Registrar must ensure that the Native Title Register is available for inspection by members of the public during normal business hours.

(2) A person may inspect the register if the person pays the fee prescribed by regulation.

(3) If the register is kept wholly or partly by computer, subsection (1) is taken to be complied with, so far as the register is kept by computer, by giving members of the public access to a computer terminal they can use to inspect the register, either by viewing a screen display or by obtaining a computer print-out.

Parts of the register may be kept confidential (NTA, ss.180 and 187)

139.(1) Section 138 (Inspection of the register) does not apply to a part of the Native Title Register if the Registrar is satisfied that it would not be in the public interest for information in the part of the register to be available to the public.

(2) Section 138 does not apply to the part of the register that consists of names or addresses of persons who it is claimed hold native title, other than the name and address for service of a person who is taken to be a claimant.

(3) In deciding whether it would or would not be in the public interest for information in a part of the register to be available to the public, the

Registrar must have proper regard to relevant cultural and customary concerns of Aboriginal people and Torres Strait Islanders.

Keeping the register (NTA, ss.182 and 189)

140. As soon as practicable after becoming aware of the details of a claim, or a determination or decision about native title to land or waters within the jurisdictional limits of the State, the Registrar must include the details in the Native Title Register.

Register may be located in land registry

141. The Native Title Register may be located in the land registry established under the *Real Property Act 1861*.

Proper officer to notify Registrar

142.(1) The proper officer of a court must, as soon as practicable, notify the Registrar of—

- (a) the details of a claim contained in an application given to the court; and
- (b) the details of a determination or decision made by the court about a claim.

(2) In subsection (1)—

“proper officer” means—

- (a) for the Supreme Court or a District Court—the registrar; or
- (b) for a Magistrates Court—the clerk of the court.

Registrar to inform National Registrar of applications etc. (NTA, s.236(2)(i))

143.(1) This section applies to a body that is a recognised State/Territory body for Queensland.

(2) The Registrar must inform the National Registrar of—

- (a) all applications for a decision, order or judgment of the body

- involving an approved determination of native title; and
- (b) the making of an approved determination of native title by the body.

PART 11—MISCELLANEOUS

Compensation

144. If this Act operates to extinguish native title, either wholly or partly, and payment of compensation to the native title holders is not otherwise provided by law, the native title holders are entitled to the compensation on just terms because of the operation of this Act that is agreed between the native title holders and the State or, failing agreement, that is decided by the Native Title Tribunal.

Regulation making power

145. The Governor in Council may make regulations under this Act.

Attachment—Commonwealth Native Title Act

146.(1) Attached to this Act is a copy of the Commonwealth Native Title Act.

(2) The attachment does not form part of this Act.

(3) To remove doubt, it is declared that the copy of the Commonwealth Native Title Act in the attachment may be revised so that it is an accurate copy of the Commonwealth Native Title Act as enacted and as amended from time to time.

PART 12—INTERIM PROVISIONS

Division 1—Object of Part

Object

147. The object of this Part is to make, and permit the making of, various interim provisions, pending a full review of Queensland law, to ensure—

- (a) that Queensland law is consistent with standards set by the Commonwealth Native Title Act for future dealings affecting native title; and
- (b) that claims to native title can be dealt with by State-based mechanisms that are complementary to, and consistent with, the mechanisms established by the Commonwealth Native Title Act.

Division 2—Compulsory acquisition

Native title rights and interests may be acquired (NTA, s.22(3), (5) and (6))

148.(1) The whole or a part of native title rights and interests may be acquired under a State Compulsory Acquisition Act in the same way that other interests in land may be acquired.

(2) However, the State Compulsory Acquisition Act applies to native title with changes that may be prescribed by regulation and subject to the following provisions—

- section 149 (Effect of acquisition on native title)
- section 150 (Acquisition to be on just terms)
- section 151 (Requests for non-monetary compensation).

(3) Without limiting subsection (2), the State Compulsory Acquisition Act applies to native title with any changes prescribed by regulation that, in the Governor in Council's opinion, are necessary or convenient to ensure that—

- (a) if an acquisition is made at someone's request, the person is liable

- to pay the compensation; and
- (b) native title holders have the same procedural rights as the holders of ordinary title; and
 - (c) the State Compulsory Acquisition Act may be excluded from the coverage of section 25(2) (which deals with acts excluded from the right to negotiate) of the Commonwealth Native Title Act in appropriate cases; and
 - (d) the expedited procedure in section 31 of the Commonwealth Native Title Act may apply in appropriate cases; and
 - (e) the State Compulsory Acquisition Act may comply with section 41(2) (which deals with alternative right to negotiate provisions) of the Commonwealth Native Title Act; and
 - (f) the State Compulsory Acquisition Act is otherwise consistent with and gives effect to the objects and provisions of the Commonwealth Native Title Act.

Effect of acquisition on native title (NTA, s.22(3)(a))

149. If acquisition of native title under a State Compulsory Acquisition Act is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the acquisition extinguishes native title to the extent of the inconsistency.

Acquisition to be on just terms (NTA, ss.238 (definition “Compulsory Acquisition Act”) and 22(3)(b))

150.(1) Every State Compulsory Acquisition Act is taken to provide for payment of compensation, in accordance with the Commonwealth Native Title Act, to native title holders for the acquisition under the Act of the whole or a part of their native title rights and interests.

(2) Part 2, Division 5 of the Commonwealth Native Title Act applies to the determination of the compensation payable for the acquisition.

Requests for non-monetary compensation (NTA, s.238 (definition “Compulsory Acquisition Act”))

151.(1) Every State Compulsory Acquisition Act is taken to contain provisions to the same effect as section 72 of the Commonwealth Native Title Act for the determination of the compensation to which native title holders are entitled for the acquisition under the Compulsory Acquisition Act of the whole or a part of their native title rights and interests.

(2) Similar provision is made in section 49(6) of the Commonwealth Native Title Act and section 49 of this Act.

Division 3—Mining**Native title holders are owners for State Mining Acts**

152.(1) For the purposes of every State Mining Act, the owners of land include the holders of native title for the land.

(2) Without limiting subsection (1), the native title holders are entitled to every right and privilege of other owners of land.

(3) This section does not limit by implication the rights and interests of native title holders.

State Mining Acts apply with prescribed changes

153.(1) To ensure that a State Mining Act is consistent with and gives effect to the objects and provisions of the Commonwealth Native Title Act, the State Mining Act applies to native title with the changes prescribed by regulation.

(2) Without limiting subsection (1), the State Mining Act applies to native title with any changes prescribed by regulation that, in the Governor in Council’s opinion, are necessary or convenient to ensure—

- (a)** that Wardens Courts become recognised State/Territory bodies and arbitral bodies; and
- (b)** that the State Mining Act may be excluded from the coverage of section 25(2) (which deals with acts excluded from the right to negotiate) of the Commonwealth Native Title Act in appropriate

cases; and

- (c) that the expedited procedure in section 31 of the Commonwealth Native Title Act may apply in appropriate cases; and
- (d) that the State Mining Act may comply with section 41(2) (which deals with alternative right to negotiate provisions) of the Commonwealth Native Title Act.

Division 4—Other interim provisions

Native title holders are owners

154.(1) For the purposes of an Act prescribed by regulation, the owners of land include the holders of native title for the land.

(2) Without limiting subsection (1), the native title holders are entitled to every right and privilege of other owners of the land.

(3) This section does not limit by implication the rights or interests of native title holders.

Interim regulation making power

155.(1) A regulation may make provision with respect to a matter necessary or convenient to be prescribed for carrying out or giving effect to the objects and provisions of this Act or the Commonwealth Native Title Act (with or without changes).

(2) Without limiting subsection (1), the regulation may declare that it has effect despite any Act, or a particular Act, passed before the commencement of this Act.

(3) A regulation mentioned in subsection (2) expires 1 year after it is made or on the expiry of this Chapter, whichever is the earlier, unless it is earlier repealed.

Expiry of Part

156. This Part expires 2 years after it commences.

PART 13—AMENDMENT OF ACTS

Division 1—Amendment of Aboriginal Land Act 1991

Amended Act

157. The *Aboriginal Land Act 1991* is amended as set out in this Division.

Amendment of s.1.03 (Definitions)

158. Section 1.03—

insert—

‘**“native title interests”** has the meaning given by s.1.04A (Meaning of “native title interests”);’.

Insertion of new s.1.04A

159. After section 1.04—

insert—

‘Meaning of “native title interests”

‘1.04A.(1) In this Act, **“native title interests”** means the communal, group or individual rights and interests of Aboriginal people in land or waters if—

- (a) the rights and interests are possessed under Aboriginal tradition; and
- (b) the Aboriginal people, by Aboriginal tradition, 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.’.

Amendment of s.2.13 (Lands that are available Crown land—general)

160. Section 2.13(2), after ‘include’—
insert ‘native title interests or’.

Amendment of s.3.06 (Existing interests)

161.(1) Section 3.06(1)—
omit ‘(other than an interest in favour of the Crown)’.

(2) Section 3.06—
insert—

‘**(4)** In this section—

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

Amendment of s.5.08 (Existing interests)

162.(1) Section 5.08—
omit ‘(other than an interest in favour of the Crown)’.

(2) Section 5.08—
insert—

‘**(2)** In this section—

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

Insertion of new s.8.26A

163. After section 8.26—
insert—

‘Tribunal must refer certain matters to Native Title Tribunal

‘8.26A.(1) This section applies if—

- (a) native title interests are claimed to exist for an area claimed under this Act; or

- (b) the question of native title interests arises about an area claimed under this Act.

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

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

Insertion of new s.8.30A

164. After section 8.30—

insert—

‘Evidence and other findings in other proceedings

‘8.30A. 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 National Native Title Tribunal; or
 - (iii) the 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 or other entity and draw conclusions from the document or thing; and
- (c) adopt findings, decisions, determinations or judgments of a court or other entity.’.

Division 2—Amendment of Torres Strait Islander Land Act 1991**Amended Act**

165. The *Torres Strait Islander Land Act 1991* is amended as set out in this Division.

Amendment of s.1.04 (Definitions)

166. Section 1.04—

insert—

‘**“native title interests”** has the meaning given by section 1.05A (Meaning of “native title interests”);’.

Insertion of new s.1.05A

167. After section 1.05—

insert—

‘Meaning of “native title interests”

‘1.05A.(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.’.

Amendment of s.2.10 (Lands that are available Crown land—general)

168. Section 2.10(2), after ‘include’—

insert ‘native title interests or’.

Amendment of s.3.06 (Existing interests)

169.(1) Section 3.06(1)—

omit ‘(other than an interest in favour of the Crown)’.

(2) Section 3.06—

insert—

‘**(4)** In this section—

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

Amendment of s.5.08 (Existing interests)

170.(1) Section 5.08—

omit ‘(other than an interest in favour of the Crown)’.

(2) Section 5.08—

insert—

‘**(2)** In this section—

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

Insertion of new s.8.26A

171. After section 8.26—

insert—

‘Tribunal must refer certain matters to Native Title Tribunal

‘8.26A.(1) This section applies if—

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

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

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

Insertion of new s.8.30A—

172. After section 8.30—

insert—

‘Evidence and other findings in other proceedings

‘8.30A. 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 National Native Title Tribunal; or
 - (iii) the 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 or other entity and draw conclusions from the document or thing; and
- (c) adopt findings, decisions, determinations or judgments of a court or other entity.’.

Division 3—Amendment of Land Act 1962

Amended Act

173. The *Land Act 1962* is amended as set out in this Division.

Amendment of s.30

174. Section 30(1F)—

omit, insert—

‘(1F) The Governor in Council—

- (a) must appoint the President and Deputy Presidents of the Native Title Tribunal; and
- (b) may appoint other members of the Native Title Tribunal;

as members of the Land Court.

‘(1G) A member of the Native Title Tribunal (other than a District Court Judge) appointed to the Land Court must be appointed—

- (a) if the member is the President or a full-time member—on a full-time basis; and
- (b) if the member is a part-time member—on a part-time basis.

‘(1H) A member of the Native Title Tribunal (other than a District Court Judge) who is appointed to the Land Court ceases to be a member of the Land Court if the person ceases to be a member of the Native Title Tribunal.

‘(1I) Subsections (1E) and (1H) do not prevent the reappointment of the person mentioned in the subsection as a member of the Land Court.’.

Replacement of s.33A (Non-application of certain provisions of Act to members of Land Tribunal)

175. Section 33A—

omit, insert—

‘Non-application of certain provisions of Act to members of Native Title and Land Tribunals

‘33A. Sections 31 to 34 do not apply to a member of the Court who is a member of the Native Title Tribunal or a Land Tribunal.’.

Amendment of s.44

176. Section 44(1)—

insert—

‘(1E) For hearing appeals from the Native Title Tribunal, the Land Appeal Court must consist of a Judge of the Supreme Court and 2 members of the Land Court, including (if practicable) at least 1 member of the Tribunal, other than the member who constituted the Tribunal that made the decision appealed against.

‘(1F) For deciding a question of law referred to it by the Native Title Tribunal, the Land Appeal Court must consist of a Judge of the Supreme Court and 2 members of the Land Court, including (if practicable) at least 1 presidential member of the Tribunal, and may include the member who constituted the Tribunal that referred the question of law.

‘(1G) The President of the Native Title Tribunal must recommend to the President of the Land Court the member or members of the Tribunal who should, in his or her opinion, sit as a member or members of the Land Appeal Court in an appeal or reference to it under subsection (1E) or (1F).

‘(1H) The President of the Native Title Tribunal may recommend that the President should sit in the appeal or reference.’.

Division 4—Amendment of Acts Interpretation Act 1954

Amended Act

177. The *Acts Interpretation Act 1954* is amended as set out in this Division.

Insertion of new s.13A

178. After section 13—

insert—

‘Acts not to affect native title except by express provision

‘**13A.(1)** An Act enacted after the commencement of this section affects native title only so far as the Act expressly provides.

‘**(2)** For the purposes of subsection (1), an Act affects native title if it is wholly or partly inconsistent with the continued existence, enjoyment or

exercise of the native title.’.

Amendment of s.36 (Meaning of commonly used words and expressions)

179. Section 36—

insert—

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

- (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal people or Torres Strait Islanders; and
- (b) the Aboriginal people or Torres Strait Islanders, by the laws and customs, have a connection with the land or waters; and
- (c) the rights and interests are recognised by the common law of Australia;

Examples of rights and interests

Hunting, gathering and fishing rights and interests.’.

Division 5—Amendment of Statutory Instruments Act 1992

Amended Act

180. The *Statutory Instruments Act 1992* is amended as set out in this Division.

Amendment of Schedule 1 (Provisions of Acts Interpretation Act 1954 that apply to Statutory Instruments)

181. Schedule 1—

insert ‘section 13A’.

