

Queensland



**NATIVE TITLE  
(QUEENSLAND)  
AMENDMENT BILL 1994**

Queensland



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**1994**

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**A BILL**

**FOR**

**An Act to amend the *Native Title (Queensland) Act 1993***

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*Native Title (Queensland) Amendment*

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	<b>The Parliament of Queensland enacts—</b>	1
	<b>Short title</b>	2
Clause	<b>1.</b> This Act may be cited as the <i>Native Title (Queensland) Amendment Act 1994</i> .	3 4
	<b>Amended Act</b>	5
Clause	<b>2.</b> The <i>Native Title (Queensland) Act 1993</i> is amended in this Act.	6
	<b>Insertion of new s 144B</b>	7
Clause	<b>3.</b> Before section 145— <i>insert—</i>	8 9
	<b>‘Valid previous acts by State extinguish native title</b>	10
	<b>‘144B.(1)</b> In this section—	11
	<b>“previous act”</b> means an act attributable to the State—	12
	(a) that took place at any time before 1 January 1994; and	13
	(b) that, apart from the Commonwealth Native Title Act and this Act, is not invalid to any extent irrespective of the existence of native title.	14 15 16
	<b>‘(2)</b> To remove any doubt, native title for land or waters was extinguished by a previous act that was inconsistent with the continued existence, enjoyment or exercise of native title rights and interests for the land or waters.	17 18 19 20
	<i>Example of extinguishment of native title—</i>	21
	Issue of pastoral leases under and within the meaning of the <i>Pastoral Leases Act 1869, Crown Lands Act 1884, Land Act 1902, Land Act 1910 or Land Act 1962</i> .’.	22 23

<b>SCHEDULE 1</b>	1
<b>AMENDMENTS CONSEQUENTIAL ON</b>	2
<b>AMENDMENTS OF THE COMMONWEALTH</b>	3
<b>NATIVE TITLE BILL 1993 IN THE</b>	4
<b>COMMONWEALTH PARLIAMENT</b>	5
	section 2
	6
<b>1. Section 4, definitions “compensation application” and “registered native title holder”—</b>	7
	8
<i>omit.</i>	9
<b>2. Section 4—</b>	10
<i>insert—</i>	11
‘ <b>“compensation application”</b> means an application made under	12
section 29 (Native title and compensation applications) for the	13
determination of compensation.	14
<b>“registered native title body corporate”</b> means the relevant prescribed	15
body corporate whose name and address is registered on the Native	16
Title Register under section 137(4)(d)(iii).’.	17
<b>3. Section 4, definition “revised native title determination application”,</b>	18
<b>‘12(5)’—</b>	19
<i>omit, insert—</i>	20
‘13(5)’.	21
<b>4. Section 7(a), ‘18’—</b>	22
<i>omit, insert—</i>	23
‘19’.	24

## SCHEDULE 1 (continued)

<b>5. Sections 10(1) and 11(1) and (3), ‘214(4)’—</b>	1
<i>omit, insert—</i>	2
‘229(4)’.	3
<b>6. After section 13—</b>	4
<i>insert—</i>	5
<b>‘Effect of extinguishment (s 15(2) NTA)</b>	6
<b>‘13A.</b> An extinguishment under this Division does not by itself confer a	7
right to eject or remove any Aboriginal persons who may reside on or who	8
exercise access over land or waters covered by a pastoral lease the grant,	9
re-grant or extension of which is validated by this Division.’.	10
<b>7. Section 15(1), ‘16’—</b>	11
<i>omit, insert—</i>	12
‘17’.	13
<b>8. Section 15(3)—</b>	14
<i>omit, insert—</i>	15
<b>‘(3)</b> To the extent that they are relevant, the criteria for the determination	16
of compensation in section 51 of the Commonwealth Native Title Act apply	17
to the determination of compensation payable under this Act.’.	18
<b>9. Section 16, ‘197’—</b>	19
<i>omit, insert—</i>	20
‘212’.	21
<b>10. Section 18(2)—</b>	22
<i>omit.</i>	23

## SCHEDULE 1 (continued)

<b>11. After section 18—</b>	1
<i>insert—</i>	2
<b>‘Effect of confirmation under Part (s 212(3) NTA)</b>	3
<b>‘18A.</b> Under section 212(3) (Confirmation of ownership of natural resources, access to beaches etc.) of the Commonwealth Native Title Act, a confirmation under this Part does not extinguish or impair any native title rights and interests and does not affect any conferral of land or waters, or an interest in land or waters, under a law that confers benefits only on Aboriginal peoples or Torres Strait Islanders.’.	4 5 6 7 8 9
<b>12. Section 28—</b>	10
<i>omit, insert—</i>	11
<b>‘Prescribed bodies corporate and their functions (ss 55–60 NTA)</b>	12
<b>‘28.(1) If—</b>	13
(a) the Tribunal proposes to make an approved determination of native title; and	14 15
(b) the determination is that native title exists at the time of making the determination;	16 17
Part 2 (Native Title), Division 6 (Native title functions of prescribed bodies corporate and holding native title in trust) of the Commonwealth Native Title Act applies to the Tribunal as if it were the National Native Title Tribunal.	18 19 20 21
<b>‘(2)</b> Without limiting subsection (1), the Tribunal must make the same determinations, and must make them in the same way, as the National Native Title Tribunal would be required to make them under that Division if it were making the approved determination.	22 23 24 25
<b>‘(3)</b> On the making of the determinations, that Division applies to the native title, the common law holders and the prescribed body corporate as if the determinations had been made under that Division.	26 27 28
<b>‘(4)</b> Without limiting subsection (3), the prescribed body corporate has the same functions and powers as if the determinations were made under	29 30



## SCHEDULE 1 (continued)

that Division, and may be replaced by another prescribed body corporate at the initiative of the common law holders in accordance with the Commonwealth Native Title Act. 1  
2  
3

‘(5) This section applies subject to any regulation made for this section.’. 4

**13. Section 29(3)(a) and (4)(a), ‘holder’—** 5

*omit, insert—* 6

‘body corporate’. 7

**14. Section 32(1)—** 8

*omit, insert—* 9

‘**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— 10  
11  
12

(a) contain a description of the area over which the native title is claimed; and 13  
14

(b) contain all information known to the applicant about interests in relation to any of the land or waters concerned that are held by persons other than as native title holders; and 15  
16  
17

(c) be accompanied by a statutory declaration by the applicant that the applicant— 18  
19

(i) believes that native title has not been extinguished in relation to any part of the area; and 20  
21

(ii) believes that none of the area is covered by an entry in the Native Title Register about a determination; and 22  
23

(iii) believes that all of the statements made in the application are true; and 24  
25

(d) state the name and address of the person who will become the registered native title claimant.’. 26  
27

## SCHEDULE 1 (continued)

<b>15. Section 33—</b>	1
<i>omit, insert—</i>	2
<b>‘Action to be taken about applications (s 63 NTA)</b>	3
<b>‘33.(1) In this section—</b>	4
<b>“application requirement provisions” means the following sections—</b>	5
• section 29 (Native title and compensation applications)	6
• section 30 (Form and contents of applications)	7
• section 31 (Claims to hold title with other persons)	8
• section 32 (Material and fees to accompany applications).	9
<b>‘(2) If an application complies with the application requirement provisions, the Registrar must accept the application unless the Registrar is of the opinion—</b>	10
(a) that the application is frivolous or vexatious; or	13
(b) that prima facie the claim cannot be made out.	14
<b>‘(3) If the Registrar is of the opinion mentioned in paragraph (2)(a) or (b), the Registrar must refer the application to a presidential member.</b>	15
<b>‘(4) If the presidential member is of the same opinion as the Registrar, the presidential member must—</b>	17
(a) advise the applicant in writing of the fact and give the applicant a reasonable opportunity to satisfy the presidential member that the application is not frivolous or vexatious, or that a prima facie claim can be made out; and	19
(b) if the applicant satisfies the presidential member—direct the Registrar to accept the application; and	20
(c) if the applicant does not satisfy the presidential member—direct the Registrar not to accept the application.	21
	22
	23
	24
	25
	26
<b>‘(5) If the presidential member is not of the same opinion as the Registrar, the presidential member must direct the Registrar to accept the application.</b>	27
	28
	29

## SCHEDULE 1 (continued)

‘(6) If the Registrar accepts the application under this section, it becomes an “accepted application”.	1 2
<b>‘Applications not complying with s 32 (s 64 NTA)</b>	3
‘33A.(1) If the Registrar considers that an application does not comply with the application requirement provisions mentioned in section 33(1), the Registrar must refer the application to a presidential member.	4 5 6
‘(2) If the presidential member also considers that the application does not comply with the application requirement provisions mentioned in section 33(1), the presidential member must—	7 8 9
(a) advise the applicant in writing of the fact and give the applicant a reasonable opportunity to satisfy the presidential member that the requirements are complied with; and	10 11 12
(b) if the applicant satisfies the presidential member—direct the Registrar to deal with the application under section 33 (Action to be taken about applications); and	13 14 15
(c) if the applicant does not satisfy the presidential member—direct the Registrar not to accept the application.	16 17
‘(3) If the presidential member considers the requirements are complied with, the presidential member must direct the Registrar to deal with the application under section 33.’.	18 19 20
<b>16. Section 35(2)(a)(iv), ‘holder’—</b>	21
<i>omit, insert—</i>	22
‘body corporate’.	23
<b>17. Section 36(1)—</b>	24
<i>omit, insert—</i>	25
<b>‘36.(1) If—</b>	26
(a) a claimant application for any part of the area covered by a	27

## SCHEDULE 1 (continued)

non-claimant application is given to—	1
(i) the Registrar within 2 months after the Registrar gave notice of the non-claimant application under section 35(1)(a); or	2 3
(ii) the National Registrar within 2 months after the National Registrar gave notice of the non-claimant application under section 66(1)(a) of the Commonwealth Native Title Act; and	4 5 6
(b) the claimant application is accepted (whether initially or on appeal and whether or not within the 2 month period);	7 8
then—	9
(c) if the non-claimant application is by the Commonwealth, the State or a statutory authority—the non-claimant application is taken to be dismissed; or	10 11 12
(d) in any other case—the non-claimant application is taken, for all purposes after the claimant application is given to the Registrar or the National Registrar, not to relate to the area covered by the claimant application.’.	13 14 15 16
<b>18. Section 40(1)(c) and (d)—</b>	17
<i>omit, insert—</i>	18
‘(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 appropriate in the circumstances.’.	19 20 21
<b>19. Section 41—</b>	22
<i>insert—</i>	23
‘(4) A person presiding over a conference may allow a person to take part by telephone, closed-circuit television or another form of communication.	24 25 26
‘(5) In a proceeding before the Tribunal or Land Appeal Court, evidence must not be given, and statements must not be made, about anything spoken or done at the mediation conference, unless the parties agree.’.	27 28 29

## SCHEDULE 1 (continued)

<b>20. Section 42(1)(c) and (d)—</b>	1
<i>omit, insert—</i>	2
‘(c) the Tribunal is satisfied that a determination in, or consistent with,	3
the agreed terms would be within the Tribunal’s powers and	4
would be appropriate in the circumstances.’	5
<b>21. Section 44(2), ‘31’—</b>	6
<i>omit, insert—</i>	7
‘32’.	8
<b>22. Section 44(3), ‘33’—</b>	9
<i>omit, insert—</i>	10
‘35’.	11
<b>23. Section 59(b), ‘a court or other entity’—</b>	12
<i>omit, insert—</i>	13
‘a court, tribunal, body or other entity’.	14
<b>24. Section 59(c)—</b>	15
<i>omit, insert—</i>	16
‘(c) adopt findings, reports, recommendations, decisions,	17
determinations or judgments of a court, tribunal, body or other	18
entity’.	19
<b>25. After section 61—</b>	20
<i>insert—</i>	21

## SCHEDULE 1 (continued)

<b>‘Power of Tribunal if applicant asks for dismissal of application (s 149 NTA)</b>	1 2
<b>‘61A.</b> The Tribunal may dismiss an application if—	3
(a) the applicant asks, in writing, that the application be dismissed; and	4 5
(b) the Tribunal is satisfied that it is appropriate to dismiss the application.’.	6 7
<b>26. Section 73—</b>	8
<i>omit, insert—</i>	9
<b>‘Determination that compensation is payable (s 161 NTA)</b>	10
<b>‘73.</b> If the Tribunal makes a determination that compensation is payable, the determination must state—	11 12
(a) the name of the person or persons entitled to the compensation or the method for deciding the person or persons entitled to the compensation; and	13 14 15
(b) any method for deciding the amount or kind of compensation to be given to each person; and	16 17
(c) the method for deciding a dispute about the entitlement of a person to an amount of the compensation.’.	18 19
<b>27. Section 74(3)(a), ‘35’—</b>	20
<i>omit, insert—</i>	21
‘37’.	22
<b>28. Section 109(1)(b)(i), ‘33(4)’—</b>	23
<i>omit, insert—</i>	24
‘33(3)’.	25

## SCHEDULE 1 (continued)

<b>29. Section 109(1)(b)(i), after ‘applications’—</b>	1
<i>insert—</i>	2
‘or 33A(1) (Applications not complying with s 32)’.	3
<b>30. Section 137(4)(d)—</b>	4
<i>omit, insert—</i>	5
‘(d) the matters decided, including—	6
(i) who the common law holders of the native title are; and	7
(ii) the name of any prescribed body corporate that holds the native title rights and interests on trust; and	8 9
(iii) the name and address of the prescribed body corporate determined—	10 11
(A) under section 28 (Prescribed bodies corporate and their functions); or	12 13
(B) under section 56 (Determination whether native title to be held in trust) or 57 (Determination of prescribed body corporate etc.) of the Commonwealth Native Title Act.’.	14 15 16 17
<b>31. Section 148(3)(b), after ‘native title holders’—</b>	18
<i>insert—</i>	19
‘(or their agents or representatives under the Commonwealth Native Title Act)’.	20 21
<b>32. Section 148(3)(d), ‘31’—</b>	22
<i>omit, insert—</i>	23
‘32’.	24

## SCHEDULE 1 (continued)

<b>33. Section 148(3)(e), ‘41(2)’—</b>	1
<i>omit, insert—</i>	2
‘43(2)’.	3
<b>34. Section 149—</b>	4
<i>omit, insert—</i>	5
<b>‘Effect of acquisition on native title (s 23(3)(a) and(b) NTA)</b>	6
<b>‘149.</b> For an acquisition of the whole or a part of any native title rights and interests under a State Compulsory Acquisition Act—	7 8
(a) the non-extinguishment principle applies to the acquisition; and	9
(b) nothing in this Act prevents any act that is done in giving effect to the purpose of the acquisition from extinguishing the native title rights and interests.’.	10 11 12
<b>35. Section 150(2)—</b>	13
<i>omit, insert—</i>	14
<b>‘(2)</b> To the extent that they are relevant, the criteria for the determination of compensation in section 51 of the Commonwealth Native Title Act apply to the determination of compensation payable for the acquisition’.	15 16 17
<b>36. Section 151(1), ‘72’—</b>	18
<i>omit, insert—</i>	19
‘79’.	20
<b>37. Section 151(2), ‘49(6)’—</b>	21
<i>omit, insert—</i>	22
‘51(6)’.	23



## SCHEDULE 1 (continued)

<b>38. Section 153(2)(c), ‘31’—</b>	1
<i>omit, insert—</i>	2
‘32’.	3
<b>39. Section 153(2)(d), ‘41(2)’—</b>	4
<i>omit, insert—</i>	5
‘43(2)’.	6
<b>40. Section 178—</b>	7
<i>omit, insert—</i>	8
<b>‘Insertion of new s 13A</b>	9
<b>178.</b> After section 13—	10
<i>insert—</i>	11
<b>‘Acts not to affect native title except by express provision</b>	12
<b>‘13A.(1)</b> An Act enacted after the commencement of this section affects native title only so far as the Act expressly provides.	13 14
<b>‘(2)</b> For the purposes of subsection (1), an Act affects native title if it extinguishes the native title rights and interests or it is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise.’.	15 16 17
	18

<b>SCHEDULE 2</b>	1
<b>OTHER MINOR AMENDMENTS</b>	2
section 2	3
<b>1. Preamble, clause (5)—</b>	4
<i>omit, insert—</i>	5
‘(5) The High Court of Australia has—	6
• rejected the doctrine that Australia was terra nullius (land	7
belonging to no-one) at the time of European settlement; and	8
• held that the common law of Australia recognises native title	9
rights of Australia’s indigenous inhabitants; and	10
• held that native title is extinguished by valid government acts that	11
are inconsistent with the continued existence of native title rights	12
and interests, such as the grant of freehold or leasehold estates.’	13
<b>2. Section 4, definition “alternative provisions”—</b>	14
<i>omit.</i>	15
<b>3. Section 4—</b>	16
<i>insert—</i>	17
<b>“registered native title claimant”</b> , for land or waters, means a person	18
whose name appears in an entry (other than an entry amended under	19
section 140 to include details of a determination or decision) on the	20
Queensland Native Title Register for the land or waters.’	21
<b>4. Section 14(1)(b), after ‘rights or interests’—</b>	22
<i>insert—</i>	23
‘(other than native title rights and interests)’	24

## SCHEDULE 2 (continued)

<b>5. Section 14(2)—</b>	1
<i>omit, insert—</i>	2
‘(2) Division 2 (Effect of validation of native title) does not affect a reservation or condition mentioned in subsection (1)(a) or rights or interests mentioned in subsection (1)(b)’.	3 4 5
<b>6. Section 22(1), after ‘Tribunal’—</b>	6
<i>insert—</i>	7
‘or the National Native Title Tribunal’.	8
<b>7. Section 25—</b>	9
<i>omit, insert—</i>	10
<b>‘Purpose of Part (see esp. ss 27 and 251 NTA)</b>	11
‘25. The purpose of this Part is to provide for the Tribunal and Wardens Courts to be recognised State/Territory bodies, and for the Tribunal to be an arbitral body, for Queensland.’	12 13 14
<b>8. Section 26—</b>	15
<i>omit, insert—</i>	16
<b>‘Conferral of jurisdiction as recognised bodies allowed</b>	17
‘26.(1) It is the intention of the Parliament that the Tribunal and Wardens Courts should be recognised State/Territory bodies.	18 19
‘(2) If the Commonwealth Minister determines under section 251(1) (Recognised State/Territory body) of the Commonwealth Native Title Act that the Tribunal is a recognised State/Territory body under that Act, the Tribunal has jurisdiction, as a recognised State/Territory body, to determine native title determination applications, revised native title determination applications and compensation applications (other than compensation applications for matters arising under or in relation to a State Mining Act).	20 21 22 23 24 25 26
‘(3) If the Commonwealth Minister determines under section 251(1) of	27

## SCHEDULE 2 (continued)

the Commonwealth Native Title Act that the Wardens Courts are recognised State/Territory bodies under that Act, each Wardens Court has jurisdiction, as a recognised State/Territory body, to determine compensation applications for matters arising under or in relation to a State Mining Act.’

**9. Section 27—**

*omit, insert—*

**‘Tribunal may be arbitral body (see esp. s 27(1) NTA)**

‘**27.(1)** The Tribunal may be an arbitral body 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, the Tribunal is not an arbitral body for matters arising under or in relation to a State Mining Act.’

**10. Section 29—**

*insert—*

‘**(7)** An application mentioned in subsection (4) may not be made for a matter arising under or in relation to a State Mining Act, including a matter arising under this Part 2 (Validation and its effects).’

**11. Section 35(2)(a)(vi), before ‘interest’—**

*insert—*

‘proprietary’.

## SCHEDULE 2 (continued)

<b>12. Section 35(3)(a)—</b>	1
<i>omit, insert—</i>	2
‘(a) if the application is a non-claimant application—the application	3
will be taken to be unopposed unless a claimant application for	4
part of the area covered by the non-claimant application is given	5
to—	6
(i) the Registrar within 2 months after the Registrar gave the	7
notice of the non-claimant application under section 35(1)(a);	8
or	9
(ii) the National Registrar within 2 months after the National	10
Registrar gave notice of the non-claimant application under	11
section 66(1)(a) of the Commonwealth Native Title Act;’.	12
 <b>13. Section 37(2)(b)—</b>	13
<i>omit, insert—</i>	14
‘(b) within 2 months after the Registrar gives notice of the application	15
under section 35(1)(a), the person gives the Registrar written	16
notice that the person wants to be a party to the application.’.	17
 <b>14. Section 43, heading, after ‘heard’—</b>	18
<i>insert—</i>	19
‘and determined’.	20
 <b>15 Section 43, after ‘hear’—</b>	21
<i>insert—</i>	22
‘and determine’.	23
 <b>16. Section 44(2) and (3), from ‘, or an equivalent’ to ‘a State law,’—</b>	24
<i>omit.</i>	25

## SCHEDULE 2 (continued)

**17. After section 47—***insert—***‘Compensation held in trust under “right to negotiate” procedures  
(s 52 NTA)**

**‘47A.(1)** This section applies if compensation (the **“negotiated compensation”**) for a proposed act is held in trust under section 41(3) (Effect of determination) or 42(5)(b) (Overruling of determinations) of the Commonwealth Native Title Act and any of the following happens—

- (a) an approved determination of native title is made to the effect that there is no native title for the area concerned immediately before the act takes place;
- (b) the Government party informs the trustee in writing that it no longer proposes to do the act;
- (c) the following requirements are satisfied—
  - (i) an approved determination of native title is made to the effect that the native title parties concerned are (disregarding any holding of the native title in trust under section 28 (Prescribed bodies corporate and their functions)) the native title holders for the area affected by the act;
  - (ii) the registered native title body corporate advises the trustee that it wishes to accept the negotiated compensation instead of any compensation to which the native title holders may be entitled for the future act;
- (d) a determination is made, on a claim for compensation for the act under section 29 (Native title and compensation applications) or on just terms under a Compulsory Acquisition Act, that a person is entitled to compensation or that no compensation is payable to a person;
- (e) none of paragraphs (a) to (d) applies and the Tribunal decides, on application by a person, that it would be just and equitable in all the circumstances to pay the negotiated compensation to the person or someone else.

## SCHEDULE 2 (continued)

- ‘(2) In a subsection (1)(a) or (b) case, the trustee must— 1
- (a) repay the negotiated compensation to the person who paid it to the trustee; or 2  
3
- (b) if the person no longer exists—apply to the Tribunal for a direction about the payment of the negotiated compensation. 4  
5
- ‘(3) In a subsection (1)(c) case— 6
- (a) the trustee must pay the negotiated compensation to the body corporate; and 7  
8
- (b) there is no entitlement to compensation for the future act. 9
- ‘(4) In a subsection (1)(d) case, if the determination is that a person is entitled to an amount of monetary compensation and— 10  
11
- (a) if the negotiated compensation is the same as the amount determined—the trustee must pay the negotiated compensation to the person; or 12  
13  
14
- (b) if the negotiated compensation is less than the amount determined—the trustee must pay the negotiated compensation to the person and the Government party must pay the shortfall to the person; or 15  
16  
17  
18
- (c) if the negotiated compensation is more than the amount determined—the trustee must— 19  
20
- (i) pay the person so much of the negotiated compensation as equals the amount determined; and 21  
22
- (ii) refund the excess to the person who paid the negotiated compensation to the trustee or, if the person no longer exists, apply to the Tribunal for a direction about its payment. 23  
24  
25
- ‘(5) In a subsection (1)(d) case, if the transfer of property or the provision of goods or services forms some or all of the compensation, the trustee must apply to the Tribunal for a direction about the payment of the negotiated compensation. 26  
27  
28  
29
- ‘(6) In a subsection (1)(d) case, if the determination is that no compensation is payable or to be given to anyone, the trustee must repay the negotiated compensation to the person who paid it to the trustee or, if the 30  
31  
32

## SCHEDULE 2 (continued)

person no longer exists, apply to the Tribunal for a direction about its payment.	1 2
‘(7) In a subsection (1)(e) case, the trustee must pay the negotiated compensation as required by the decision of the Tribunal mentioned in the paragraph.’.	3 4 5
<b>18. Section 52, ‘unopposed applications’—</b>	6
<i>omit, insert—</i>	7
‘applications under section 29’.	8
<b>19. Section 54(1), ‘unopposed application’—</b>	9
<i>omit, insert—</i>	10
‘application under section 29’.	11
<b>20. Section 54(3), ‘matter’—</b>	12
<i>omit, insert—</i>	13
‘issue’.	14
<b>21. After section 61A, in Part 8, Division 2—</b>	15
<i>insert—</i>	16
<b>‘Power of Tribunal if parties reach agreement during an inquiry</b> <b>(see s 87 NTA)</b>	17 18
‘ <b>61B.(1)</b> If, at any stage of an inquiry—	19
(a) agreement is reached between the parties on the terms of an order of the Tribunal about—	20 21
(i) the proceedings of the inquiry; or	22
(ii) a part of the proceedings of the inquiry; or	23
(iii) a matter arising out of the proceedings of the inquiry; and	24



## SCHEDULE 2 (continued)

- (b) the terms of the agreement are— 1
- (i) in writing signed by or for the parties; and 2
- (ii) lodged with the Tribunal; and 3
- (c) the Tribunal is satisfied that an order in, or consistent with, the 4  
terms would be within the Tribunal’s powers and appropriate; 5
- the Tribunal may act under this section. 6
- ‘(2) If the agreement is in the terms of an order of the Tribunal about the 7  
proceedings of the inquiry, the Tribunal may make a determination in, or 8  
consistent with, the terms without holding a hearing or, if a hearing has 9  
started, without finishing the hearing. 10
- ‘(3) If the agreement is about a part of the proceedings of the inquiry or a 11  
matter arising out of the proceedings, the Tribunal may in its determination 12  
give effect to the terms of the agreement without, if it has not already done 13  
so, dealing at the hearing with the part of the proceedings or the matter 14  
arising out of the proceedings to which the agreement relates.’. 15
- 22. Section 74(3)—** 16
- omit, insert—* 17
- ‘(3) This section is subject to section 37 (No determination if agreement) 18  
of the Commonwealth Native Title Act.’. 19
- 23. Section 77—** 20
- omit, insert—* 21
- ‘Decision or determination conclusive (see s 165 NTA)** 22
- ‘77. A decision or determination of the Tribunal or a Wardens Court is 23  
final and conclusive of the matters decided subject to— 24
- (a) a decision made on appeal from a decision or determination of the 25  
Tribunal or Wardens Court; or 26
- (b) a decision of the State Minister acting under section 42 27

## SCHEDULE 2 (continued)

(Overruling of determinations) of the Commonwealth Native Title Act.’.	1 2
<b>24. Section 90—</b>	3
<i>insert—</i>	4
‘(4A) This section does not apply to a person who gives evidence, or who produces a document or thing, to a court for the purpose of a prosecution of an offence against section 85(2) (Contravention of direction prohibiting disclosure of evidence).’.	5 6 7 8
<b>25. Section 122(1)—</b>	9
<i>omit, insert—</i>	10
‘Assessors	11
‘122.(1) There are to be assessors to help the Tribunal and Land Appeal Court in the exercise of their jurisdiction under this Act.	12 13
‘(2) In helping the Tribunal, an assessor is under the Tribunal’s control and direction.	14 15
‘(3) In helping the Land Appeal Court, an assessor is under the Court’s control and direction.	16 17
‘(4) A regulation may provide for assessors to help and to take part in the decision making process of Wardens Courts in their roles as recognised State/Territory bodies under the Commonwealth Native Title Act.’.	18 19 20
<b>26. Section 137(3)(a), ‘approved native title determinations’—</b>	21
<i>omit, insert—</i>	22
‘approved determinations of native title’.	23
<b>27. Section 141, ‘established under the <i>Real Property Act 1861</i>’—</b>	24
<i>omit.</i>	25

## SCHEDULE 2 (continued)

<b>28. After section 144—</b>	1
<i>insert—</i>	2
<b>‘No multiple compensation for essentially same act (s 49 NTA)</b>	3
<b>‘144A.</b> Despite anything in Part 2, 5 or 11—	4
(a) compensation is only payable once under this Act for acts that are essentially the same; and	5 6
(b) the court, person or body determining compensation under this Act must take into account any compensation awarded under a law of a State or the Commonwealth, for essentially the same act.’.	7 8 9 10
<b>29. Section 146, heading, ‘Attachment’—</b>	11
<i>omit, insert—</i>	12
<b>‘Section headings and attachment’.</b>	13
<b>30. Section 146—</b>	14
<i>insert—</i>	15
<b>‘(4)</b> A reference in a section heading to a provision of the Commonwealth Native Title Act does not form part of this Act.’.	16 17
<b>31. Section 148(3)(c)—</b>	18
<i>omit, insert—</i>	19
<b>‘(c)</b> acts under the State Compulsory Acquisition Act may be excluded from the coverage of section 26(2) (which deals with acts subject to the right to negotiate) of the Commonwealth Native Title Act in appropriate cases; and’.	20 21 22 23

## SCHEDULE 2 (continued)

<b>32. Section 150(1), after ‘compensation’—</b>	1
<i>insert—</i>	2
‘on just terms’.	3
<b>33. Section 152(2), after ‘land’—</b>	4
<i>insert—</i>	5
‘(other than the additional rights of consent provided by a State Mining Act to the owners of reserves).	6
	7
<i>Example—</i>	8
The consent rights under section 3.2(2)(c)(ii) of the <i>Mineral Resources Act 1989</i> .’	9
<b>34. Section 153(2)(a), ‘and arbitral bodies’—</b>	10
<i>omit.</i>	11
<b>35. Section 153(2)(b)—</b>	12
<i>omit, insert—</i>	13
‘(b) that acts under the State Mining Act may be excluded from the	14
coverage of section 26(2) (which deals with acts subject to the	15
right to negotiate) of the Commonwealth Native Title Act in	16
appropriate cases; and’.	17
<b>36. Section 155(3), ‘Chapter’—</b>	18
<i>omit, insert—</i>	19
‘Part’.	20
<b>37. Section 160—</b>	21
<i>omit, insert—</i>	22



## SCHEDULE 2 (continued)

<i>omit, insert—</i>	1
‘land is declared by regulation to be land that’.	2
<b>Amendment of s 2.11 (Meaning of claimable and granted land)</b>	3
<b>160E.</b> Section 2.11(2)—	4
<i>omit, insert—</i>	5
‘(2) Granted land is—	6
(a) claimable land that has been claimed by, and granted under this Act to, a group of Aboriginal people; or	7 8
(b) claimable land that, under section 5.04A, has been included in a deed of grant or lease.’.	9 10
<b>Replacement of s 2.12 (Lands that are claimable lands)</b>	11
<b>160F.</b> Section 2.12—	12
<i>omit, insert—</i>	13
<b>‘Lands that are claimable lands</b>	14
<b>‘2.12.(1)</b> Subject to subsection (3), claimable land is—	15
(a) available Crown land declared by regulation to be claimable land for this Act; or	16 17
(b) Aboriginal land that is transferred land.	18
<b>‘(2)</b> A declaration under subsection (1)(a) may describe the available Crown land concerned in any way, including, for example, describing the land as land included in a stated area of the State.	19 20 21
<b>‘(3)</b> A regulation may declare that an area of transferred land is not claimable land.	22 23
<b>‘(4)</b> A declaration under subsection (3) may be made only if—	24
(a) the land is primarily used or occupied by Aboriginal people for residential or community purposes; or	25 26

## SCHEDULE 2 (continued)

(b) the Minister has consulted with Aboriginal people particularly concerned with the land and a substantial majority of the Aboriginal people are opposed to the land being claimable land.’.	1 2 3
<b>Amendment of s 2.13 (Lands that are available Crown land—general)</b>	4 5
<b>160G.(1)</b> Section 2.13(1)(i)—	6
<i>omit.</i>	7
<b>(2)</b> Section 2.13(1A)—	8
<i>omit, insert—</i>	9
‘ <b>(1A)</b> A regulation may declare land inside the Torres Strait area to be available Crown land if it is land in which no person, other than the State, has an interest.’.	10 11 12
<b>(3)</b> Section 2.13(2), definition “ <b>interest</b> ”, after ‘include’—	13
<i>insert—</i>	14
‘native title interests or’.	15
<b>Amendment of s 2.15 (Tidal land)</b>	16
<b>160H.</b> Section 2.15(1)—	17
<i>omit, insert—</i>	18
‘ <b>2.15(1)</b> Available Crown land includes tidal land only if the particular tidal land is declared by regulation to be available Crown land.’.	19 20
<b>Amendment of s 2.16 (Meaning of city or town land)</b>	21
<b>160I.(1)</b> Section 2.16(1), ‘ <i>Local Government Act 1936</i> ’—	22
<i>omit, insert—</i>	23
‘ <i>Local Government Act 1993</i> ’.	24
<b>(2)</b> Section 2.16(2) and (3)—	25

## SCHEDULE 2 (continued)

<i>omit, insert—</i>	1
‘(2) A regulation may change the boundaries of a city or town.’	2
‘(3) A regulation under subsection (2) has effect only for this Act.’.	3
<b>Replacement of s 2.17 (Meaning of township land)</b>	4
160J. Section 2.17—	5
<i>omit, insert—</i>	6
<b>‘Meaning of township land</b>	7
‘2.17 A regulation may declare that land is township land for this Act.’.	8
<b>Amendment of s 3.02 (Minister to appoint trustees)</b>	9
160K. Section 3.02(3), ‘the Aboriginal’—	10
<i>omit, insert—</i>	11
‘Aboriginal’.	12
<b>Amendment of s 3.03 (Minister to act as soon as possible)</b>	13
160L. Section 3.03(2), after ‘If’—	14
<i>insert—</i>	15
‘, under section 2.06(e) or 2.08,’.	16
<b>Insertion of new s 3.04A</b>	17
160M. After section 3.04—	18
<i>insert—</i>	19
<b>‘Inclusion of additional areas in deed of grant</b>	20
‘3.04A. An additional area of transferable land may be included in a deed	21
of grant under section 3.04 if the Minister has consulted with Aboriginal	22
people particularly concerned with each area of land and a substantial	23



## SCHEDULE 2 (continued)

majority of them agree that the additional area should be included in the deed of grant.’.’.	1 2
<b>38. After section 161—</b>	3
<i>insert—</i>	4
‘ <b>Amendment of s 3.07 (Interests to be endorsed on deed)</b>	5
<b>161A.</b> Section 3.07(3), ‘ <i>Real Property Act 1861</i> and the <i>Real Property Act 1877—</i>	6 7
<i>omit, insert—</i>	8
‘ <i>Land Title Act 1994</i> ’.	9
<b>Amendment of s 3.15 (Reservations of forest products and quarry material etc.)</b>	10 11
<b>161B.(1)</b> Section 3.15(1)—	12
<i>omit, insert—</i>	13
‘ <b>3.15(1)</b> A deed of grant of transferred land may contain a reservation to the State of forest products or quarry material above, on or below the surface of the land only if it is declared by regulation that—	14 15 16
(a) the forest products or quarry material is of vital State interest; and	17
(b) the rights in the forest products or quarry material is reserved to the State.	18 19
<b>(2)</b> Section 3.15(2), from ‘the Governor’ to ‘council,’—	20
<i>omit, insert—</i>	21
‘a regulation may’.	22
<b>(3)</b> Section 3.15(3), ‘an order in council’—	23
<i>omit, insert—</i>	24
‘a regulation’.	25

## SCHEDULE 2 (continued)

<b>Amendment of s 4.06 (Registrar to determine whether claim duly made)</b>	1 2
<b>161C.(1)</b> Section 4.06—	3
<i>insert—</i>	4
‘(6) If the Registrar refuses to accept the application, the claimants may ask the Chairperson of the Land Tribunal to decide whether the claim is duly made.	5 6 7
‘(7) If the Chairperson decides that the claim is duly made, the Chairperson must direct the Registrar to accept the application under subsection (2).	8 9 10
‘(8) If the Chairperson decides that a claim is not duly made, the Chairperson must notify the claimants, in writing, of his or her reasons for refusing to accept the application.	11 12 13
‘(9) Despite subsection (1), if a recommendation has been made to the Minister under section 4.16 for a grant in fee simple or for the grant of a lease, another claim may not be duly made over the same land.	14 15 16
‘(10) Nothing in this section prevents the Registrar from accepting an application if—	17 18
(a) a claim (the “ <b>repeat claim</b> ”) has been made to the Registrar under section 4.04 and it appears to the Registrar that the land to which the claim relates is completely or partly the same as land that has previously been claimed (the “ <b>previous claim</b> ”); and	19 20 21 22
(b) no recommendation was made to the Minister under section 4.16 about the previous claim.’.	23 24
 	25
<b>Amendment of s 4.08 (Joint hearing of claims)</b>	26
<b>161D.</b> Section 4.08(c), ‘made’—	27
<i>omit, insert—</i>	28
‘referred’.	29

## SCHEDULE 2 (continued)

<b>Insertion of new s 4.08A</b>	1
<b>161E.</b> After section 4.08—	2
<i>insert—</i>	3
<b>‘Repeat claims</b>	4
<b>‘4.08A.</b> If a repeat claim mentioned in section 4.06(10) has been referred	5
to the Land Tribunal, the Tribunal may hear the repeat claim only if a	6
presiding member is satisfied that the repeat claim could be established on 1	7
or more grounds mentioned in sections 4.09 to 4.11 because—	8
(a) the basis on which the repeat claim is made is substantially	9
different to the basis on which the previous claim was made; or	10
(b) information has become available to the Tribunal that was not	11
previously available and, if the information had previously been	12
available to the Tribunal, it may have affected the decision of the	13
Tribunal on the previous claim.’.	14
<b>Amendment of s 4.17 (Resolution of conflicting claims)</b>	15
<b>161F.</b> Section 4.17(2)—	16
<i>insert—</i>	17
<b>‘(2)</b> If more than 1 claim is established and each of the competing claims	18
is established on 1 or more grounds—	19
(a) if 1 or more of the claims is established on the ground of	20
traditional affiliation—a recommendation must not be made in	21
favour of any other group on the ground of historical association	22
or on the ground of economic or cultural viability; and	23
(b) if 1 or more of the claims is established on the ground of	24
historical association—a recommendation must not be made in	25
favour of any other group on the ground of economic or cultural	26
viability.’.	27

## SCHEDULE 2 (continued)

<b>Insertion of new s 5.04A</b>	1
<b>161G.</b> After section 5.04—	2
<i>insert—</i>	3
<b>‘Inclusion of additional areas in deed of grant</b>	4
<b>‘5.04A.</b> An additional area of claimable land may be included in a deed	5
of grant or lease under section 5.04 if the Minister has consulted with	6
Aboriginal people particularly concerned with each area of land and a	7
substantial majority of them agree that the additional area should be	8
included in the deed of grant or lease.’.	9
<b>39. After section 162—</b>	10
<i>insert—</i>	11
<b>‘Amendment of s 5.18 (Reservations of forest products and quarry</b>	12
<b>material etc.)</b>	13
<b>162A.(1)</b> Section 5.18(1)—	14
<i>omit, insert—</i>	15
<b>‘5.18(1)</b> A deed of grant of granted land that was transferred land, and an	16
Aboriginal (transferred land) lease, may contain a reservation to the State of	17
forest products or quarry material above, on or below the surface of the land	18
only if it is declared by regulation that—	19
(a) the forest products or quarry material is of vital State interest; and	20
(b) the rights in the forest products or quarry material is reserved to	21
the State.’.	22
<b>(2)</b> Section 5.18(4)—	23
<i>omit, insert—</i>	24
<b>‘(4)</b> If a deed of grant of granted land that was transferred land, or an	25
Aboriginal (transferred land) lease, does not contain a reservation of	26
particular forest products or quarry material above, on or below the land, a	27
regulation may declare that—	28
(a) the forest products or quarry material is of vital State interest; and	29

## SCHEDULE 2 (continued)

(b) the rights in the forest products or quarry material are acquired by the State.’.	1 2
(3) Section 5.18(5), ‘an order in council,’—	3
<i>omit, insert</i> —	4
‘a regulation’.	5
<b>Amendment of s 5.20 (National Park subject to lease to State etc.)</b>	6
<b>162B.(1)</b> Section 5.20(1)(b), from ‘the Governor’ to ‘council,’—	7
<i>omit, insert</i> —	8
‘are declared by regulation’.	9
(2) Section 5.20(7), from ‘the Governor’ to ‘council’—	10
<i>omit, insert</i> —	11
‘regulation’.	12
<b>Amendment of s 8.10 (Termination of appointment)</b>	13
<b>162C.</b> Section 8.10—	14
<i>insert</i> —	15
‘(2) Subsection (1)(c) applies only to a non-presiding member.’.	16
<b>Amendment of s 8.20 (Procedure of Tribunal)</b>	17
<b>162D.</b> Section 8.20(1)(b) and (c)—	18
<i>omit, insert</i> —	19
‘(b) the Tribunal must pursue the objective of performing its functions in a fair, just, economical, informal and prompt way; and	20 21
(c) the Tribunal must take account of relevant cultural and customary concerns of Aboriginal people; and	22 23
(d) the Tribunal is not bound by technicalities, legal forms or rules of	24

## SCHEDULE 2 (continued)

evidence but may inform itself on anything in any way that it considers appropriate.’.	1 2
<b>Amendment of s 8.24 (Particular powers of Tribunal)</b>	3
<b>162E.</b> Section 8.24(2), ‘a presiding member’—	4
<i>omit, insert—</i>	5
‘the Chairperson, a presiding member, or an officer of the Tribunal authorised in writing by the Chairperson or a presiding member.’.	6 7
<b>40. Section 163, inserted s 8.26A(3), after ‘reference to the Native Title Tribunal’—</b>	8 9
<i>insert—</i>	10
‘to hear and determine the claim’.	11
<b>41. After section 163—</b>	12
<i>insert—</i>	13
<b>‘Amendment of s 8.29 (Appeals to Land Appeal Court from decisions of Tribunal)</b>	14 15
<b>163A.(1)</b> Section 8.29—	16
<i>insert—</i>	17
‘ <b>(3A)</b> If the Chairperson of the Tribunal decides under section 4.06 that a claim is not duly made, the claimants may appeal to the Land Appeal Court.’.	18 19 20
<b>(2)</b> Section 8.29(6)(c)(ii), ‘Tribunal’—	21
<i>omit, insert—</i>	22
‘Land Appeal Court’.	23

## SCHEDULE 2 (continued)

<b>42. Section 164—</b>	1
<i>omit, insert—</i>	2
<b>‘Insertion of new s 8.30A</b>	3
<b>164. After section 8.30—</b>	4
<i>insert—</i>	5
<b>‘Evidence and other findings in other proceedings</b>	6
<b>‘8.30A. In a proceeding, the Land Tribunal may—</b>	7
(a) receive into evidence the transcript of evidence in another proceeding before—	8
(i) a court; or	9
(ii) the Land Tribunal; or	10
(iii) the National Native Title Tribunal; or	11
(iv) the Native Title Tribunal; or	12
(v) a recognised State/Territory body within the meaning of the <i>Native Title Act 1993</i> (Cwlth); or	13
(vi) another entity;	14
and draw conclusions of fact from the transcript; and	15
(b) receive into evidence a document or other thing introduced into evidence in another proceeding before a court, tribunal, body or other entity and draw conclusions from the document or thing; and	16
(c) adopt findings, reports, recommendations, decisions, determinations or judgements of a court, tribunal, body or other entity.’.	17
.’.	18
.’.	19
.’.	20
.’.	21
.’.	22
.’.	23
.’.	24
<b>43. After section 164—</b>	25
<i>insert—</i>	26

## SCHEDULE 2 (continued)

<b>‘Insertion of new s 8.31A</b>	1
<b>164A.</b> After section 8.31—	2
<i>insert—</i>	3
<b>‘Continuing authority of member</b>	4
<b>‘8.31A.</b> If a member’s appointment expires, the appointment continues	5
until the member finishes performing any function started, but not finished,	6
before the expiry of the appointment.’.	7
<b>Repeal of ss 9.05 and 9.09</b>	8
<b>164B.</b> Sections 9.05 and 9.09—	9
<i>omit.</i>	10
<b>Amendment of s 9.10 (Regulations)</b>	11
<b>164C.(1)</b> Section 9.10(1)—	12
<i>omit, insert—</i>	13
<b>‘9.10(1)</b> The Governor in Council may make regulations under this	14
Act.’.	15
<b>(2)</b> Section 9.10(2), ‘Without limiting subsection (1), the’—	16
<i>omit, insert—</i>	17
‘A’.	18
<b>Insertion of new s 9.11</b>	19
<b>164D.</b> After section 9.10—	20
<i>insert—</i>	21
<b>‘Numbering and renumbering of Act</b>	22
<b>‘9.11</b> Section 43 (Numbering and renumbering of provisions) of the	23
<i>Reprints Act 1992</i> must be used in the next reprint of this Act produced	24
under the <i>Reprints Act 1992</i> .’.	25



## SCHEDULE 2 (continued)

<b>44. Section 168—</b>	1
<i>omit, insert—</i>	2
<b>‘Amendment of s 2.03 (Meaning of Torres Strait Islander land)</b>	3
<b>168. Section 2.03(1)(b)—</b>	4
<i>omit, insert—</i>	5
‘(b) granted land, that is—	6
(i) claimable land that has been claimed by, and is granted	7
under this Act to, a Torres Strait Islander or a group of	8
Torres Strait Islanders; or	9
(ii) claimable land that, under section 5.04A, has been included	10
in a deed of grant or lease.’.	11
 <b>Amendment of s 2.04 (Meaning of transferable and transferred land)</b>	12
<b>168A. Section 2.04, after ‘granted under’—</b>	13
<i>insert—</i>	14
‘Part 3 of’.	15
 <b>Amendment of s 2.05 (Lands that are transferable lands)</b>	16
<b>168B. Section 2.05—</b>	17
<i>insert—</i>	18
‘(c) available Crown land declared by regulation to be transferable	19
land.’.	20
 <b>Amendment of s 2.06</b>	21
<b>168C. Section 2.06, from ‘Governor’ to ‘the land is’—</b>	22
<i>omit, insert—</i>	23
‘land is declared by regulation to be’.	24

## SCHEDULE 2 (continued)

<b>Amendment of s 2.07</b>	1
<b>168D.</b> Section 207, from ‘Governor’ to ‘that the land’—	2
<i>omit, insert—</i>	3
‘land is declared by regulation to be land that’.	4
<b>Amendment of s 2.08 (Meaning of claimable and granted land)</b>	5
<b>168E.</b> Section 2.08(2)—	6
<i>omit, insert—</i>	7
‘(2) Granted land is—	8
(a) claimable land that has been claimed by, and granted under this	9
Act to, a Torres Strait Islander or a group of Torres Strait	10
Islanders; or	11
(b) claimable land that, under section 5.04A, has been included in a	12
deed of grant or lease.’.	13
<b>Replacement of s 2.09 (Lands that are claimable lands)</b>	14
<b>168F.</b> Section 2.09—	15
<i>omit, insert—</i>	16
‘ <b>Lands that are claimable lands</b>	17
‘ <b>2.09(1)</b> Subject to subsection (3), claimable land is—	18
(a) available Crown land declared by regulation to be claimable land	19
for this Act; or	20
(b) Torres Strait Islander land that is transferred land.	21
‘(2) A declaration under subsection (1)(a) may describe the available	22
Crown land concerned in any way, including, for example, describing the	23
land as land included in a stated area of the State.	24
‘(3) A regulation may declare that an area of transferred land is not	25
claimable land.	26

## SCHEDULE 2 (continued)

‘(4) A declaration under subsection (3) may be made only if—	1
(a) the land is primarily used or occupied by Torres Strait Islanders for residential or community purposes; or	2 3
(b) the Minister has consulted with Torres Strait Islanders particularly concerned with the land and a substantial majority of the Torres Strait Islanders are opposed to the land being claimable land.’.	4 5 6
<b>Amendment of s 2.10 (Lands that are available Crown land— general)</b>	7 8
<b>168G.(1)</b> Section 2.10(1)(g)—	9
<i>omit.</i>	10
<b>(2)</b> Section 2.10(2), definition “ <b>interest</b> ”, after ‘include’—	11
<i>insert—</i>	12
‘native title interests or’.	13
<b>Amendment of s 2.12 (Tidal land)</b>	14
<b>168H.</b> Section 2.12(1)—	15
<i>omit, insert—</i>	16
‘ <b>2.12(1)</b> Available Crown land includes tidal land only if the particular tidal land is declared by regulation to be available Crown land.’.	17 18
<b>Amendment of s 2.13 (Meaning of city or town land)</b>	19
<b>168I.(1)</b> Section 2.13(1), ‘ <i>Local Government Act 1936</i> ’—	20
<i>omit, insert—</i>	21
‘ <i>Local Government Act 1993</i> ’.	22
<b>(2)</b> Section 2.13(2) and (3)—	23
<i>omit, insert—</i>	24

## SCHEDULE 2 (continued)

‘(2) A regulation may change the boundaries of a city or town.	1
‘(3) A regulation under subsection (2) has effect only for this Act.’.	2
<b>Replacement of s 2.14 (Meaning of township land)</b>	3
<b>168J.</b> Section 2.14—	4
<i>omit, insert—</i>	5
‘ <b>Meaning of township land</b>	6
‘ <b>2.14</b> A regulation may declare that land is township land for this Act.’.	7
<b>Replacement of s 2.17 (Torres Strait area)</b>	8
<b>168K.</b> Section 2.17—	9
<i>omit, insert—</i>	10
‘ <b>Torres Strait area</b>	11
‘ <b>2.17(1)</b> The Torres Strait area is—	12
(a) the area the boundaries of which are described in Annex 9 of the Torres Strait Treaty; and	13
(b) any other area declared by regulation to be included in the Torres Strait area.	15
‘(2) An area declared under subsection (1)(b) may be described in any way.’.	17
	18
<b>Amendment of s 3.02 (Minister to appoint trustees)</b>	19
<b>168L.</b> Section 3.02(3), ‘the Torres Strait Islanders’—	20
<i>omit, insert—</i>	21
‘Torres Strait Islanders’.	22

## SCHEDULE 2 (continued)

<b>Amendment of s 3.03 (Minister to act as soon as possible)</b>	1
<b>168M.</b> Section 3.03(2), after ‘If’—	2
<i>insert—</i>	3
‘, under section 2.05(c) or 2.07,’.	4
<b>Insertion of new s 3.04A</b>	5
<b>168N.</b> After section 3.04—	6
<i>insert—</i>	7
<b>‘Inclusion of additional areas in deed of grant</b>	8
<b>‘3.04A.</b> An additional area of transferable land may be included in a deed	9
of grant under section 3.04 if the Minister has consulted with Torres Strait	10
Islanders particularly concerned with the land and a substantial majority of	11
them agree that the additional area should be included in the deed of	12
grant.’.’.	13
<b>45. After section 169—</b>	14
<i>insert—</i>	15
<b>‘Amendment of s 3.07 (Interests to be endorsed on deed)</b>	16
<b>169A.</b> Section 3.07(3), ‘ <i>Real Property Act 1861</i> and the <i>Real Property</i>	17
<i>Act 1877—</i>	18
<i>omit, insert—</i>	19
‘ <i>Land Title Act 1994</i> ’.	20
<b>Amendment of s 3.15 (Reservations of forest products and quarry</b>	21
<b>material etc.)</b>	22
<b>169B.(1)</b> Section 3.15(1)—	23
<i>omit, insert—</i>	24
<b>‘3.15(1)</b> A deed of grant of transferred land may contain a reservation to	25
the State of forest products or quarry material above, on or below the	26

## SCHEDULE 2 (continued)

surface of the land only if it is declared by regulation that—	1
(a) the forest products or quarry material is of vital State interest; and	2
(b) the rights in the forest products or quarry material is reserved to the State.’.	3 4
(2) Section 3.15(2), from ‘the Governor’ to ‘council,’—	5
<i>omit, insert—</i>	6
‘a regulation may’.	7
(3) Section 3.15(3), ‘an order in council’—	8
<i>omit, insert—</i>	9
‘a regulation’.	10
<b>Amendment of s 4.06 (Registrar to determine whether claim duly made)</b>	11 12
<b>169C.(1)</b> Section 4.06—	13
<i>insert—</i>	14
‘(6) If the Registrar refuses to accept the application, the claimants may ask the Chairperson of the Land Tribunal to decide whether the claim is duly made.	15 16 17
‘(7) If the Chairperson decides that the claim is duly made, the Chairperson must direct the Registrar to accept the application under subsection (2).	18 19 20
‘(8) If the Chairperson decides that a claim is not duly made, the Chairperson must notify the claimants, in writing, of his or her reasons for refusing to accept the application.	21 22 23
‘(9) Despite subsection (1), if a recommendation has been made to the Minister under section 4.16 for a grant in fee simple or for the grant of a lease, another claim may not be duly made over the same land.	24 25 26
‘(10) Nothing in this section prevents the Registrar from accepting an application if—	27 28
(a) a claim (the “repeat claim”) has been made to the Registrar	29

## SCHEDULE 2 (continued)

under section 4.04 and it appears to the Registrar that the land to which the claim relates is completely or partly the same as land that has previously been claimed (the “ <b>previous claim</b> ”); and	1 2 3
(b) no recommendation was made to the Minister under section 4.16 about the previous claim.’.	4 5
<b>Amendment of s 4.08 (Joint hearing of claims)</b>	6
<b>169D.</b> Section 4.08(c), ‘made’—	7
<i>omit, insert—</i>	8
‘referred’.	9
<b>Insertion of new s 4.08A</b>	10
<b>169E.</b> After section 4.08—	11
<i>insert—</i>	12
<b>‘Repeat claims</b>	13
<b>‘4.08A.(1)</b> If a repeat claim mentioned in section 4.06(10) has been referred to the Land Tribunal, the Tribunal may hear the repeat claim only if a presiding member is satisfied that the repeat claim could be established on 1 or more grounds mentioned in sections 4.09 to 4.11 because—	14 15 16 17
(a) the basis on which the repeat claim is made is substantially different to the basis on which the previous claim was made; or	18 19
(b) information has become available to the Tribunal that was not previously available and, if the information had been available to the Tribunal, it may have affected the decision of the Tribunal on the previous claim.’.	20 21 22 23
<b>Amendment of s 4.17 (Resolution of conflicting claims)</b>	24
<b>169F.</b> Section 4.17(2)—	25
<i>insert—</i>	26

## SCHEDULE 2 (continued)

‘(2) If more than 1 claim is established and each of the competing claims is established on 1 or more grounds—	1 2
(a) if 1 or more of the claims is established on the ground of customary affiliation—a recommendation must not be made in favour of any other group on the ground of historical association or on the ground of economic or cultural viability; and	3 4 5 6
(b) if 1 or more of the claims is established on the ground of historical association—a recommendation must not be made in favour of any other group on the ground of economic or cultural viability.’.	7 8 9 10
<b>Insertion of new s 5.04A</b>	11
<b>169G.</b> After section 5.04—	12
<i>insert—</i>	13
<b>‘Inclusion of additional areas in deed of grant</b>	14
<b>‘5.04A.</b> An additional area of claimable land may be included in a deed of grant or lease made section 5.04 if—	15 16
(a) the Minister has consulted with the Torres Strait Islander or Torres Strait Islanders particularly concerned with each area of land; and	17 18 19
(b) the Torres Strait Islander or a substantial majority of the Torres Strait Islanders agree that the additional area should be included in the deed of grant or lease.’.	20 21 22
<b>46. After section 170—</b>	23
<i>insert—</i>	24
<b>‘Amendment of s 5.18 (Reservations of forest products and quarry material etc.)</b>	25 26
<b>170A.(1)</b> Section 5.18(1)—	27
<i>omit, insert—</i>	28



## SCHEDULE 2 (continued)

‘5.18(1) A deed of grant of granted land that was transferred land, and a Torres Strait Islander (transferred land) lease, may contain a reservation to the State of forest products or quarry material above, on or below the surface of the land only if it is declared by regulation that—	1 2 3 4
(a) the forest products or quarry material is of vital State interest; and	5
(b) the rights in the stated forest products or quarry material is reserved to the State.	6 7
(2) Section 5.18(4)—	8
<i>omit, insert—</i>	9
‘(4) If a deed of grant of granted land that was transferred land, or a Torres Strait Islander (transferred land) lease, does not contain a reservation of particular forest products or quarry material above, on or below the land, a regulation declare that—	10 11 12 13
(a) the forest products or quarry material is of vital State interest; and	14
(b) the rights in the forest products or quarry material are acquired by the State.	15 16
(3) Section 5.18(5), ‘an order in council’—	17
<i>omit, insert—</i>	18
‘a regulation’.	19
<b>Amendment of s 5.20 (National Park subject to lease to State etc.)</b>	20
170B.(1) Section 5.20(1)(b), from ‘the Governor’ to ‘council,’—	21
<i>omit, insert—</i>	22
‘are declared by regulation’.	23
(2) Section 5.20(7), from ‘the Governor’ to ‘council’—	24
<i>omit, insert—</i>	25
‘regulation’.	26

## SCHEDULE 2 (continued)

<b>Amendment of s 8.10 (Termination of appointment)</b>	1
<b>170C.</b> Section 8.10—	2
<i>insert—</i>	3
‘(2) Subsection (1)(c) applies only to a non-presiding member.’	4
<b>Amendment of s 8.20 (Procedure of Tribunal)</b>	5
<b>170D.</b> Section 8.20(1)(b) and (c)—	6
<i>omit, insert—</i>	7
(b) the Tribunal must pursue the objective of performing its functions in a fair, just, economical, informal and prompt way; and	8 9
(c) the Tribunal must take account of relevant cultural and customary concerns of Torres Strait Islanders; and	10 11
(d) the Tribunal is not bound by technicalities, legal forms or rules of evidence but may inform itself on anything in any way that it considers appropriate.’	12 13 14
<b>Amendment of s 8.24 (Particular powers of Tribunal)</b>	15
<b>170E.</b> Section 8.24(2), ‘a presiding member’—	16
<i>omit, insert—</i>	17
‘the Chairperson, a presiding member, or an officer of the Tribunal authorised in writing by the Chairperson or a presiding member,’.	18 19
<b>47. Section 171, inserted s 8.26A(3), after ‘reference to the Native Title Tribunal’—</b>	20 21
<i>insert—</i>	22
‘to hear and determine the claim’.	23

## SCHEDULE 2 (continued)

<b>48. After section 171—</b>	1
<i>insert—</i>	2
<b>‘Amendment of s 8.29 (Appeals to Land Appeal Court from decisions of Tribunal)</b>	3
<b>171A.(1) Section 8.29—</b>	5
<i>insert—</i>	6
<b>‘(3A) If the Chairperson of the Tribunal decides under section 4.06 that a claim is not duly made, the claimant may appeal to the Land Appeal Court.’.</b>	7
<b>(2) Section 8.29(6)(c)(ii), ‘Tribunal’—</b>	10
<i>omit, insert—</i>	11
<b>‘Land Appeal Court’.</b>	12
<b>49. Section 172—</b>	13
<i>omit, insert—</i>	14
<b>‘Insertion of new s 8.30A—</b>	15
<b>172. After section 8.30—</b>	16
<i>insert—</i>	17
<b>‘Evidence and other findings in other proceedings</b>	18
<b>‘8.30A. In a proceeding, the Land Tribunal may—</b>	19
(a) receive into evidence the transcript of evidence in another proceeding before—	20
(i) a court; or	21
(ii) the Land Tribunal; or	22
(iii) the National Native Title Tribunal; or	23
(iv) the Native Title Tribunal; or	24
(v) a recognised State/Territory body within the meaning of the <i>Native Title Act 1993</i> (Cwlth); or	25
	26
	27

## SCHEDULE 2 (continued)

(vi) another entity;	1
and draw conclusions of fact from the transcript; and	2
(b) receive into evidence a document or other thing introduced into evidence in another proceeding before a court, tribunal, body or other entity; and	3 4 5
(c) adopt findings, reports, recommendations, decisions, determinations or judgements of a court, tribunal, body or other entity.’.	6 7 8
<b>Insertion of new s 8.31A</b>	9
<b>172A.</b> After section 8.31—	10
<i>insert—</i>	11
<b>‘Continuing authority of member</b>	12
<b>‘8.31A.</b> If a member’s appointment expires, the appointment continues until the member finishes performing any function started, but not finished, before the expiry of the appointment.’.	13 14 15
<b>Repeal of ss 9.05 and 9.09</b>	16
<b>172B.</b> Sections 9.05 and 9.09—	17
<i>omit.</i>	18
<b>Amendment of s 9.10 (Regulations)</b>	19
<b>172C.(1)</b> Section 9.10(1)—	20
<i>omit, insert—</i>	21
<b>‘9.10(1)</b> The Governor in Council may make regulations under this Act.’.	22 23
<b>(2)</b> Section 9.10(2), ‘Without limiting subsection (1), the’—	24
<i>omit, insert—</i>	25
<b>‘A’.</b>	26

## SCHEDULE 2 (continued)

<b>Insertion of new s 9.11</b>	1
<b>172D.</b> After section 9.10—	2
<i>insert—</i>	3
<b>‘Renumbering of Act</b>	4
<b>‘9.11</b> Section 43 (Numbering and renumbering of provisions) of the <i>Reprints Act 1992</i> must be used in the next reprint of this Act produced under the <i>Reprints Act 1992.</i> ’.	5 6 7
<b>51. Section 176—</b>	8
<i>omit, insert—</i>	9
<b>‘Amendment of s 44</b>	10
<b>176.</b> Section 44—	11
<i>insert—</i>	12
<b>‘(1E)</b> 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 each of whom is a presidential member, or is eligible for appointment as a presidential member, of the Tribunal, including (if practicable) at least 1 member of the Tribunal (other than a member who constituted the Tribunal that made the decision appealed against).	13 14 15 16 17 18
<b>‘(1F)</b> 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 each of whom is a presidential member, or is eligible for appointment as a presidential member, of the Tribunal, including (if practicable) at least 1 member of the Tribunal and may include the member who constituted the Tribunal that referred the question of law.	19 20 21 22 23 24 25
<b>‘(1G)</b> 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).	26 27 28 29
<b>‘(1H)</b> The President of the Native Title Tribunal may recommend that	30

## SCHEDULE 2 (continued)

the President should sit in the appeal or reference.	1
‘(1I) In this section—	2
“ <b>Native Title Tribunal</b> ” means the Native Title Tribunal established under the <i>Native Title (Queensland) Act 1993</i> .’.	3 4
<b>52. After section 181—</b>	5
<i>insert—</i>	6
<b>‘PART 14—RENUMBERING OF ACT</b>	7
<b>‘Renumbering of Act</b>	8
‘ <b>182.</b> Section 43 (Numbering and renumbering of provisions) of the <i>Reprints Act 1992</i> must be used in the next reprint of this Act produced under the <i>Reprints Act 1992</i> .’.	9 10 11 12