

Queensland



TORRES STRAIT ISLANDER LAND ACT 1991

**Reprinted as in force on 3 July 1992
(includes amendments up to Act No. 36 of 1992)**

Reprint No. 1

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Information about this reprint

This Act is reprinted as at 3 July 1992. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

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- use expressions consistent with current legislative drafting practice as permitted by section 29 of that Act;
- use format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- correct minor errors as permitted by section 44 of that Act.

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

Queensland



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TORRES STRAIT ISLANDER LAND ACT 1991

[as amended by all amendments that commenced before 3 July 1992²]

An Act providing for the grant, and the claim and grant, of land as Torres Strait Islander land, and for other purposes**WHEREAS—**

- (1) Before European settlement land in what is now the State of Queensland 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 Torres Strait Islanders;
- (3) After European settlement many Torres Strait Islanders maintained their ancestors' customary affiliation with particular areas of land;
- (4) Some Torres Strait Islanders have a historical association with particular areas of land based on them or their ancestors having lived on or used the land or neighbouring land;
- (5) Some Torres Strait Islanders have a requirement for land to ensure their economic or cultural viability;
- (6) Some land has been set aside for Torres Strait Islander reserves or for the benefit of Torres Strait Islanders and deeds of grant in trust are held on behalf of certain Torres Strait Islanders;
- (7) The Parliament is satisfied that Torres Strait Islander interests and responsibilities in relation to land have not been adequately and appropriately recognised by the law and that this has contributed to a general failure of previous policies in relation to Torres Strait Islanders;
- (8) The Parliament is further satisfied that special measures need to

be enacted for the purpose of securing adequate advancement of the interests and responsibilities of Torres Strait Islanders and to rectify the consequences of past injustices;

- (9) It is, therefore, the intention of the Parliament to make provision, by the special measures enacted by this Act, for the adequate and appropriate recognition of the interests and responsibilities of Torres Strait Islanders in relation to land and thereby to foster the capacity for self-development, and the self-reliance and cultural integrity, of Torres Strait Islanders;

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same as follows.

PART 1—PRELIMINARY

Short title

1.01 This Act may be cited as the *Torres Strait Islander Land Act 1991*³⁻⁶.

Commencement

1.02(1) Sections 1.01 and 1.03 and this section commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day or days to be fixed by proclamation.

Repeal of Queensland Coast Islands Declaratory Act

1.03 The *Queensland Coast Islands Declaratory Act 1985* is repealed.

Definitions

1.04 In this Act—

“**Aboriginal group**” means a group of Aboriginal people within the meaning of the *Aboriginal Land Act 1991*;

“**ancestor**” includes an ancestor under Island custom;

“**available Crown land**” has the meaning given by section 2.10;

“**bed and banks**” has the meaning given by section 1.4(1) of the *Water Resources Act 1989*;

“**city or town land**” has the meaning given by section 2.13;

“**claimable land**” has the meaning given by section 2.08;

“**coast**” has the meaning given by section 3 of the *Beach Protection Act 1968*;

“**Crown**”, in relation to the State or the Commonwealth, includes a person or body that represents the Crown;

“**descendant**” includes a descendant under Island custom;

“**Director**” means the Director of National Parks and Wildlife;

“**DOGIT land**” has the meaning given by section 2.06;

“**enactment day**” means the day on which this Act receives the Royal Assent;

“**forest products**” means all vegetable growth and material of vegetable origin (whether living or dead and whether standing or fallen);

“**granted land**” has the meaning given by section 2.08;

“**group**” includes a community;

“**group of Torres Strait Islanders**” includes—

- (a) the descendants of the group; and
- (b) if there is only 1 surviving member of a group of Torres Strait Islanders—that person;

“**interest**”, in relation to land, means—

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in relation to, the land;

and includes—

- (c) a permit or licence issued in relation to the land; and
- (d) a mining interest;

“interested person”, in relation to a claim under this Act for claimable land, means a person whose interests (whether pecuniary or otherwise) could be affected by the grant of the land as Torres Strait Islander land because of the claim;

“Island custom” has the meaning given by section 2.02;

“lake” has the meaning given by section 1.4(1) of the *Water Resources Act 1989*;

“land” includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, and whatever may be the interest in the land;

“Land Claims Registrar” means the chief executive of the department;

“Land Tribunal” means the Land Tribunal established for the purposes of this Act;

“management plan”, in relation to a National Park, means a statement of specific objectives and policies relating to the planning, use, development and management of the National Park;

“mineral” has the meaning given by section 1.8(1) of the *Mineral Resources Act 1989*;

“mining interest” means a lease, claim or other interest in, or a permit, licence or other right in relation to, land that is granted under—

- (a) the *Mineral Resources Act 1989* or the *Petroleum Act 1923*; or
- (b) another Act relating to mining for minerals, petroleum or natural gas;

“National Park” means land or waters set apart and declared under the *National Parks and Wildlife Act 1975* as a National Park;

“natural gas” has the meaning given by section 3 of the *Petroleum Act 1923*;

“non-presiding member”, in relation to the Land Tribunal, means a member of the Tribunal other than the Chairperson or a Deputy

Chairperson;

“**petroleum**” has the meaning given by section 3 of the *Petroleum Act 1923*;

“**presiding member**”, in relation to the Land Tribunal, means the Chairperson or a Deputy Chairperson of the Tribunal;

“**quarry material**” has the meaning given by section 5 of the *Forestry Act 1959*;

“**responsibilities**”, in relation to land, include—

- (a) responsibilities under Island custom for the land, including, for example, responsibilities for areas that are of particular significance under Island custom; and
- (b) responsibilities for the land that may affect neighbouring land, including, for example, responsibilities in relation to fire and vermin control;

“**road**” means a surveyed or unsurveyed road that is, under an Act, dedicated, notified or declared to be a road for public use;

“**sea**” includes waters within the ebb and flow of the tide;

“**tidal land**” means land that is ordinarily covered and uncovered by the flow and ebb of the tide at spring tides;

“**Torres Strait area**” has the meaning given by section 2.17;

“**Torres Strait Island Council**” means an Island Council constituted under the *Community Services (Torres Strait) Act 1984*;

“**Torres Strait Islander**” has the meaning given by section 2.01;

“**Torres Strait Islander land**” has the meaning given by section 2.03;

“**Torres Strait Islander lease**” means a lease prepared under section 5.02;

“**Torres Strait Islander (non-transferred land) lease**” means a lease prepared under section 5.02(1)(d);

“**Torres Strait Islander reserve land**” has the meaning given by section 2.07;

“**Torres Strait Islander (transferred land) lease**” means a lease prepared under section 5.02(1)(c);

“Torres Strait Treaty” has the meaning given by section 6(1) of the *Torres Strait Fisheries Act 1984*, being the treaty a copy of which is set out in the Schedule to that Act;

“township land” has the meaning given by section 2.14;

“transferable land” has the meaning given by section 2.04;

“transferred land” has the meaning given by section 2.04;

“Tribunal” means the Land Tribunal;

“watercourse” has the meaning given by section 1.4(1) of the *Water Resources Act 1989*.

Torres Strait Islanders particularly concerned with land etc.

1.05(1) For the purposes of this Act, a Torres Strait Islander is particularly concerned with land if the Torres Strait Islander—

- (a) has a particular connection with the land under Island custom; or
- (b) lives on or uses the land or neighbouring land.

(2) For the purposes of this Act, Torres Strait Islanders are particularly concerned with land if—

- (a) they are members of a group that has a particular connection with the land under Island custom; or
- (b) they live on or use the land or neighbouring land.

Crown bound

1.06 This Act binds the Crown.

PART 2—BASIC CONCEPTS

Division 1—Torres Strait Islanders and their customs

Meaning of Torres Strait Islander

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

Meaning of Island custom

2.02 Island custom, known in the Torres Strait as Ailan Kastom, is the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

Division 2—Torres Strait Islander land

Meaning of Torres Strait Islander land

2.03(1) Torres Strait Islander land is—

- (a) transferred land, that is, transferable land that is granted under this Act for the benefit of Torres Strait Islanders without a claim being made under this Act for the land; or
- (b) granted land, that is, claimable land that has been claimed, and is granted under this Act to, a Torres Strait Islander or a group of Torres Strait Islanders.

(2) Torres Strait Islander land also includes land that is the subject of a Torres Strait Islander lease.

(3) Torres Strait Islander land includes land that was transferred land and has subsequently become granted land.

Division 3—Transferable and transferred land**Meaning of transferable and transferred land**

2.04(1) Transferable land is land that is to be granted under this Act for the benefit of Torres Strait Islanders without a claim being made under this Act for the land.

(2) Transferred land is land that is granted under this Act for the benefit of Torres Strait Islanders without a claim being made under this Act for the land.

Lands that are transferable lands

2.05 The following lands are transferable lands—

- (a) DOGIT land;
- (b) Torres Strait Islander reserve land.

DOGIT land

2.06 DOGIT land is land (other than a road) that, at the beginning of the enactment day, is—

- (a) granted in trust under the *Land Act 1962* for the benefit of Torres Strait Islander inhabitants or for the purpose of a Torres Strait Islander reserve; or
- (b) within the external boundaries of an area of such land and—
 - (i) is reserved and set apart for, or dedicated to, a public purpose under the *Land Act 1962*; or
 - (ii) is land that has become Crown land by way of resumption for a public purpose within the meaning of the *Land Act 1962*; or
 - (iii) is subject to a lease granted by the Crown under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*; or
 - (iv) is subject to a special lease granted by the Crown under the *Land Act 1962*;

and includes land within those external boundaries that has, since the enactment day, ceased to be a road if the Governor in Council declares, by order in council, that the land is transferable land.

Torres Strait Islander reserve land

2.07 Torres Strait Islander reserve land is land that, at the beginning of the enactment day, is—

- (a) reserved and set apart under the *Land Act 1962* for a Torres Strait Islander reserve or for the benefit of Torres Strait Islander inhabitants; or
- (b) within the external boundaries of an area of such land and subject to a lease granted by the Crown under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*;

and includes land reserved and set apart under the *Land Act 1962* for any other public purpose if the Governor in Council declares, by order in council, that the land was, or included land that was, at the beginning of the enactment day, being used as a Torres Strait Islander reserve or for the benefit of Torres Strait Islanders.

Division 4—Claimable and granted land

Meaning of claimable and granted land

2.08(1) Claimable land is land that may be claimed by, and granted under this Act to, a Torres Strait Islander or a group of Torres Strait Islanders.

(2) Granted land is land that has been claimed by, and is granted under this Act to, a Torres Strait Islander or a group of Torres Strait Islanders.

Lands that are claimable lands

2.09(1) Subject to subsection (3), claimable land is—

- (a) available Crown land that the Governor in Council has declared, by Gazette notice, is claimable land for the purposes of this Act; or

(b) Torres Strait Islander land that is transferred land.

(2) A declaration under subsection (1)(a) may describe the available Crown land concerned in any way that the Governor in Council considers appropriate, including, for example, describing the land as land included in a specified area of the State.

(3) The Governor in Council may, by order in council, declare that an area of transferred land is not claimable land.

(4) The Governor in Council must not make a declaration under subsection (3) unless the Governor in Council is satisfied that—

- (a) the land is primarily used or occupied by Torres Strait Islanders for residential or community purposes; or
- (b) the Minister has consulted with the 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.

Lands that are available Crown land—general

2.10(1) Subject to sections 2.11 and 2.12, available Crown land is land in which no person other than the Crown has an interest, other than—

- (a) land outside the Torres Strait area; or
- (b) city or town land or township land; or
- (c) land that is reserved and set apart for, or is dedicated to, a public purpose under the *Land Act 1962*; or
- (d) land that is set apart and declared as a State Forest or Timber Reserve under the *Forestry Act 1959*; or
- (e) a road; or
- (f) land that has become Crown land if a person has a right, other than under this Act, against the Crown to the grant of an interest in that land; or
- (g) land that has become Crown land as part of a process by which—
 - (i) another interest in the land will be granted; or
 - (ii) the land will be reserved and set apart for, or dedicated to, a

public purpose;

if the Minister issues a certificate in relation to the land specifying—

- (iii) if subparagraph (i) applies—the interest concerned and the period within which the interest will be granted; or
- (iv) if subparagraph (ii) applies—the public purpose concerned and the period within which the land will be reserved and set apart or dedicated.

(2) In this section—

“**interest**” means a legal or equitable interest in the land, but does not include a mining interest.

Beds and banks of watercourses and lakes

2.11 Available Crown land includes the bed and banks of a watercourse or lake only if the bed and banks are—

- (a) within the external boundaries of land that is otherwise available Crown land; and
- (b) capable of being owned in fee simple by a person other than the Crown.

Tidal land

2.12(1) Available Crown land includes tidal land only if the Governor in Council declares, by order in council, that the tidal land should be so included.

(2) Subject to subsection (1), but despite section 79(2) of the *Harbours Act 1955*, this Act applies to tidal land as if it were not tidal land.

Meaning of city or town land

2.13(1) Subject to subsection (2), city or town land is land that is, at the beginning of the enactment day, within the boundaries of a city or town constituted under the *Local Government Act 1936*.

(2) The Governor in Council may, by order in council, vary the

boundaries of a city or town.

(3) An order in council under subsection (2) has effect for the purposes of this Act, and not otherwise.

Meaning of township land

2.14(1) The Governor in Council may, by order in council, declare that land is township land for the purposes of this Act.

(2) The Governor in Council may, by order in council, vary or revoke an order in council made under subsection (1).

National Parks

2.15 To allay any doubt, it is declared that available Crown land includes any National Park.

Lands that are not available Crown land

2.16 To allay any doubt, it is declared that the following lands are not available Crown lands—

- (a) the waters of the sea, and the seabed (other than tidal land that is available Crown land under a declaration under section 2.12);
- (b) freehold land;
- (c) land subject to a permit, licence or lease granted by the Crown under the *Land Act 1962*.

Torres Strait area

2.17(1) The Torres Strait area is—

- (a) the area the boundaries of which are described in Annex 9 of the Torres Strait Treaty; and
- (b) any other area that the Governor in Council, by order in council, declares is included in the Torres Strait area.

(2) An area declared under subsection (1)(b) may be described in any way that the Governor in Council considers appropriate.

Division 5—Application of laws to Torres Strait Islander land**Application of laws**

2.18(1) To allay any doubt, it is declared that, except as provided by this Act or any other Act, the laws of the State apply to Torres Strait Islander land, persons and things on Torres Strait Islander land, and acts and things done on Torres Strait Islander land, to the same extent, and in the same way, as if the land were not Torres Strait Islander land.

(2) Without limiting subsection (1), to allay any doubt it is declared that this Act has effect subject to the following Acts—

- (a) *Fisheries Act 1976*;
- (b) *Fishing Industry Organization and Marketing Act 1982*;
- (c) *Torres Strait Fisheries Act 1984*.

**PART 3—GRANT OF TRANSFERABLE LAND AS
TORRES STRAIT ISLANDER LAND*****Division 1—Grant of land*****Deeds of grant to be prepared**

3.01(1) The Registrar of Titles must prepare such deeds of grant in fee simple as the Minister considers necessary and directs over transferable lands.

(2) Transferable land need not be surveyed but may be described in a deed of grant in such manner as the Minister directs, and the Registrar of Titles must enrol and issue the deed of grant accordingly.

(3) The deeds of grant must show that the land is held by the grantees for the benefit of Torres Strait Islanders and their ancestors and descendants.

(4) The Minister may direct the Registrar of Titles to specify in a deed of grant responsibilities that Torres Strait Islanders particularly concerned with

the relevant land have agreed to assume in relation to the land.

(5) Subsections (2), (3) and (4) have effect despite any other Act or any rule of law or practice.

Minister to appoint trustees

3.02(1) The Minister must appoint such persons as the Minister considers necessary to be the grantees, as trustees for the benefit of Torres Strait Islanders, of the land the subject of each deed of grant prepared under section 3.01.

(2) The Minister may—

- (a) remove or suspend trustees appointed under subsection (1); or
- (b) appoint other persons as trustees.

(3) Before exercising powers under this section, the Minister must consult with, and consider the views of, the Torres Strait Islanders particularly concerned with the land.

(4) In exercising powers under this section, the Minister must, as far as practicable, act in a way that is consistent with any Island custom applicable to the land concerned.

(4A) Despite subsection (4), the Minister may appoint the trustees of transferable land to be the grantees of a deed of grant over the land, or part of the land, if—

- (a) a declaration is in force under section 2.09(3) in relation to the land; or
- (b) the Minister considers that in all the circumstances it is appropriate to do so.

(5) The *Trusts Act 1973* (in this subsection called “**the Act**”) applies to trusts created for the purposes of this Division, and to the trustees of such trusts, only to the extent (if any) that the regulations provide that the Act is to apply and, to the extent that the Act does apply, it applies with such modifications (if any) as are prescribed.

Minister to act as soon as possible

3.03(1) The Minister must, as soon as practicable after the commencement of sections 3.01 and 3.02, give all necessary directions under section 3.01, and make all necessary appointments under section 3.02, in relation to land that is transferable land on the enactment day.

(2) If land becomes transferable land after the enactment day, the Minister must, as soon as practicable after the land becomes transferable land, give all necessary directions under section 3.01, and make all necessary appointments under section 3.02, in relation to the land.

Authority to grant fee simple in transferable land

3.04 The Governor in Council may, under this Act and the *Land Act 1962*, grant transferable land in fee simple.

Deed of grant takes effect on delivery

3.05(1) A deed of grant issued under section 3.01 takes effect on the delivery of the deed to the grantees.

(2) On delivery of the deed of grant to the grantees, the land the subject of the deed becomes Torres Strait Islander land that is transferred land.

(3) Subsection (1) has effect despite any other Act or any rule of law or practice.

Existing interests

3.06(1) If transferable land was, immediately before becoming Torres Strait Islander land under this Division, subject to an interest (other than an interest in favour of the Crown), the interest continues in force.

(2) Without limiting subsection (1), if transferable land was, immediately before becoming Torres Strait Islander land under this Division, the subject of—

- (a) a lease granted by the Crown under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*; or
- (b) a special lease granted by the Crown under the *Land Act 1962*;

the grantees of the land are, by operation of this section, substituted for the Crown as a party to the lease.

(3) The terms of a lease mentioned in subsection (2) are not affected by the operation of this section, section 3.07 or any other provision of this Act and, for the purposes of those terms, the *Land Act 1962* continues to apply to a lease that was a special lease under that Act, with all necessary modifications and such modifications as are prescribed, as if the lease continued to be such a lease and the grantees of the land were the Crown.

Interests to be endorsed on deed

3.07(1) If—

- (a) land the subject of a deed of grant prepared under section 3.01 is, at the beginning of the enactment day, subject to, or subsequently becomes subject to, an interest (other than an interest in favour of the Crown); and
- (b) the interest is created or registered under the *Land Act 1962*;

the Secretary of the Land Administration Commission must, as soon as practicable after being requested so to do by the Registrar of Titles, give to the Registrar the original or an office copy of the instrument under which the interest arose.

(2) Before the Registrar of Titles issues the deed of grant, the Registrar must endorse on the deed, in the proper order of priority—

- (a) the instruments given to the Registrar under subsection (1) before the issue of the deed; and
- (b) if the land was previously held under a deed of grant in trust—any existing instruments that were endorsed on the deed of grant in trust.

(3) An instrument endorsed on the deed of grant under subsection (2) has effect as a registered instrument on the deed under the *Real Property Act 1861* and the *Real Property Act 1877*.

(4) If the Registrar of Titles is given notice of the creation of an interest after the issue of the deed of grant, the Registrar of Titles must make an appropriate note in the register.

Cancellation of deed of grant in trust**3.08(1)** If—

- (a) a Torres Strait Island Council holds title to land under a deed of grant in trust under the *Land Act 1962*; and
- (b) a deed of grant (in this section called the “**new deed**”) over the whole or a part of the land takes effect under section 3.05;

the deed of grant in trust is cancelled, to the extent of the new deed, by operation of this section.

(2) If the deed of grant in trust is cancelled only in relation to part of the land, the Registrar of Titles must prepare and issue to the grantees of the deed a deed of grant in trust under the *Land Act 1962* over the remaining part of the land.

(3) The Minister must cause written notice to be given to the Registrar of Titles of the day of delivery of the new deed to the grantees, and the Registrar must note the cancellation of the deed of grant in trust in the register accordingly.

(4) The Torres Strait Island Council must, on receipt of written notice by the Minister so to do, deliver the deed of grant in trust to the Registrar of Titles within such reasonable time as is specified in the notice.

Registrar of Titles must take action etc. to resolve difficulties

3.09 If a difficulty arises in the application of this Division by the Registrar of Titles, the Registrar must take such action and give such directions as the Registrar considers necessary to resolve the difficulty.

Land Court may resolve difficulties**3.10(1)** If a difficulty arises in—

- (a) the application of this Division to a particular matter; or
- (b) the application, to a particular matter, of a provision of another Act because of the operation of this Division;

the Land Court may, on the application of the Registrar of Titles or an

interested person, make such order as it considers proper to resolve the difficulty.

(2) An order made under subsection (1) has effect despite anything contained in this Division or in an Act in force immediately before the commencement of this section.

Division 2—Dealing with transferred land

Permitted dealings with transferred land

3.11(1) An interest in transferred land may be transferred, granted or otherwise created by the grantees only in accordance with this section.

(2) Subject to subsections (3) and (5), the grantees of transferred land may—

- (a) grant a lease or licence over the whole or a part of the land to—
 - (i) a Torres Strait Islander particularly concerned with the land; or
 - (ii) the Crown in right of the State or the Commonwealth; or
 - (iii) another person—
 - (A) for a period of less than 10 years; or
 - (B) with the prior written consent of the Minister; or
- (b) consent to the creation of a mining interest in the land; or
- (c) grant an easement over the land; or
- (d) surrender the whole or any part of the land to the Crown in right of the State.

(3) A lease or licence under subsection (2)(a)(i) must be subject to the condition that an interest may be created under that lease or licence in favour of a person who is not a Torres Strait Islander particularly concerned with the land only if—

- (a) the interest is in favour of the spouse or former spouse of such a Torres Strait Islander or of such a Torres Strait Islander who is deceased; or

(b) the interest is—

- (i) for a period of less than 10 years; or
- (ii) created with the prior written approval of the Minister.

(4) Subject to subsection (5), the grantees of transferred land may enter into an agreement with the Crown in right of the State or the Commonwealth in relation to the getting and sale of forest products or quarry material above, on and below the land.

(5) The grantees of transferred land must not grant an interest in the land, consent to the creation of a mining interest in the land, or enter into an agreement under subsection (4), unless—

- (a) they have explained to the Torres Strait Islanders particularly concerned with the land the nature, purpose and effect of the proposed grant, consent or agreement; and
- (b) the Torres Strait Islanders are given adequate opportunity to express their views on, and are generally in agreement with, the grant, consent or agreement; and
- (c) they have subsequently given the Torres Strait Islanders notice of not less than 1 month of their intention to make the grant, give the consent or enter into the agreement.

(6) Contravention of subsection (5) does not invalidate the interest or agreement concerned.

Other dealings void

3.12(1) A transfer, grant or other creation of an interest in transferred land that is not permitted by section 3.11 is void.

(2) This section has effect despite any other Act.

No resumption of transferred land etc.

3.13(1) An interest in transferred land cannot be resumed, taken or otherwise compulsorily acquired, sold or dealt with except by an Act that expressly provides for the resumption of the land and the payment of just compensation for the land.

(2) Subsection (1) has effect despite any other Act (whether enacted before or after the enactment of this section).

Division 3—Reservations

Reservations of minerals and petroleum

3.14 A deed of grant of transferred land must contain a reservation to the Crown of—

- (a) all minerals; and
- (b) all petroleum;

on and below the surface of the land.

Reservations of forest products and quarry material etc.

3.15(1) A deed of grant of transferred land must not contain a reservation to the Crown of—

- (a) forest products; or
- (b) quarry material;

above, on or below the surface of the land unless the Governor in Council has, by order in council—

- (c) declared that specified forest products or quarry material above, on or below, as the case may be, the land are of vital State interest; and
- (d) reserved to the Crown the rights in the specified forest products or quarry material.

(2) If a deed of grant of transferred land does not contain a reservation of particular forest products or quarry material above, on or below the land, the Governor in Council may, by order in council, declare that—

- (a) the forest products or quarry material are of vital State interest; and
- (b) rights in the forest products or quarry material are acquired by the Crown.

(3) If an order in council is made under subsection (1) or (2), the grantees of the land are entitled to be paid by the State such reasonable compensation because of the reservation or acquisition as is agreed between the State and the grantees or, failing agreement, as is determined by the Land Court.

(4) Despite subsection (1), a permit, lease, licence, agreement or contract granted or made under the *Forestry Act 1959*, before the day on which land became transferred land, in relation to the getting and selling of forest products or quarry material above, on or below the surface of the land, continues in force as if this section had not been enacted.

PART 4—CLAIMS FOR CLAIMABLE LAND

Division 1—Requirements for claims

Duly made claims

4.01 A claim for claimable land must comply with the following provisions in order to be duly made—

- (a) section 4.02 (Who may make a claim);
- (b) section 4.03 (Grounds on which claim may be made);
- (c) section 4.04 (How claim is to be made);
- (d) section 4.05 (Time limit for making of claims).

Who may make a claim

4.02(1) A Torres Strait Islander or a group of Torres Strait Islanders may make a claim for an area of claimable land.

(2) A claim may be made by members of a group of Torres Strait Islanders on behalf of those Torres Strait Islanders and other Torres Strait Islanders who are members of the group.

Grounds on which claim may be made

4.03(1) A claim under this Act may only be made on 1 or more of the following grounds—

- (a) customary affiliation;
- (b) historical association;
- (c) economic or cultural viability.

(2) Land in a National Park may not be claimed on the ground of economic or cultural viability.

(3) Land that was, immediately before becoming claimable land, DOGIT land may not be claimed on the ground of economic or cultural viability.

(4) An individual Torres Strait Islander may make a claim only on the ground of customary affiliation.

How claim is to be made

4.04 A claim under this Act must—

- (a) be made by written application to the Land Claims Registrar; and
- (b) be in the appropriate form made available by the Land Claims Registrar; and
- (c) include—
 - (i) a description of the land claimed and a map showing clearly the location of the land; and
 - (ii) a statement of the ground on which the claim is made; and
 - (iii) if the claim is made by a group of Torres Strait Islanders—a description of the group; and
 - (iv) a statement of the responsibilities in relation to the land that the claimant or claimants agree to assume if the land is granted because of the claim; and
 - (v) if the claim is made on the ground of economic or cultural viability—a statement of the specific proposal for the use of the land claimed.

Time limit for making of claims

4.05 A claim under this Act must be made not later than 15 years after the commencement of section 4.02.

Division 2—Determination of claims**Registrar to determine whether claim duly made**

4.06(1) If a claim is made to the Land Claims Registrar, the Registrar must determine whether the claim appears to be duly made.

(2) If the Registrar is satisfied that the claim appears to be duly made, the Registrar must accept the application and refer the claim to the Land Tribunal.

(3) If the Registrar is not satisfied, the Registrar must refuse to accept the application.

(4) The Registrar must notify the claimants, in writing, of his or her decision.

(5) If the Registrar refuses to accept the application, the Registrar must also notify the claimants, in writing, of his or her reasons for refusing to accept the application.

Tribunal to notify making of claims

4.07(1) As soon as practicable after a claim is referred to the Land Tribunal, the Tribunal must comply with this section.

(2) The Tribunal must cause copies of the application to be made available for public inspection at offices of the Tribunal during ordinary working hours and at such other places as it considers appropriate.

(3) The Tribunal must publish notice of the claim in the Gazette, a newspaper circulating throughout the State and such regional newspapers as the Tribunal considers appropriate.

(4) The Tribunal must give notice of the claim, by letter or such other means as it considers more effective, to each person that it is aware is or may be an interested person.

(5) A notice under subsection (3) or (4) must include a statement to the effect that—

- (a) copies of the application are available for public inspection at places, and during times, specified in the notice; and
- (b) interested persons may, within the period specified in the notice, apply to the Tribunal to be made a party to the proceeding for the hearing of the claim; and
- (c) any other Torres Strait Islanders may, within that period, make a claim for the whole or part of the land the subject of the claim or for such an area and additional area of claimable land.

(6) The period specified in a notice for the purposes of subsection (5)(a) must be a period of not less than 60 days after the publication of notice of the claim in the Gazette.

Joint hearing of claims

4.08 If—

- (a) a claim (in this subsection called the “**first claim**”) is duly made under this Act by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land; and
- (b) a claim (in this subsection called the “**subsequent claim**”) is duly made under this Act by another Torres Strait Islander or group of Torres Strait Islanders for the whole or a part of the area of claimable land (whether or not an additional area of claimable land is also claimed); and
- (c) the subsequent claim is made to the Land Tribunal within the period specified in the notice published under section 4.07 in relation to the first claim or before the hearing of the first claim has started;

then—

- (d) the first claim and the subsequent claim are to be heard and determined together; and
- (e) if the subsequent claim does not include an additional area of claimable land—section 4.07 does not apply to the subsequent claim.

Establishment of claim on ground of customary affiliation

4.09(1) A claim by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land on the ground of customary affiliation is established if the Land Tribunal is satisfied that the Torres Strait Islander has a connection, or that the members of the group have a common connection, with the land based on spiritual or other associations with, rights in relation to, and responsibilities for, the area of land under Island custom.

(2) In determining the claim, the Tribunal must consult with, and consider the views of, any relevant Torres Strait Island Council and the persons recognised under Island custom as the relevant elders of Torres Strait Islanders.

Establishment of claim on ground of historical association

4.10(1) A claim by a group of Torres Strait Islanders for an area of claimable land on the ground of historical association is established if the Land Tribunal is satisfied that the group has an association with the land based on them or their ancestors having, for a substantial period, lived on or used—

- (a) the land; or
- (b) land in the district or region in which the land is located.

(2) Without limiting subsection (1), the claim may be established whether or not all or a majority of the members of the group have themselves lived on or used such land.

(3) In determining the claim, the Tribunal must consult with, and consider the views of, any relevant Torres Strait Island Council and the persons recognised under Island custom as the relevant elders of Torres Strait Islanders.

Establishment of claim on ground of economic or cultural viability

4.11(1) A claim by a group of Torres Strait Islanders for an area of claimable land on the ground of economic or cultural viability is established if the Land Tribunal is satisfied that granting the claim would assist in restoring, maintaining or enhancing the capacity for self-development, and the self-reliance and cultural integrity, of the group.

(2) In determining the claim, the Tribunal must have regard to the proposal made in the claim for the use of the land.

Claim may be established for only part of land claimed

4.12 A claim by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land may be established for a part only of the land.

Claim may be established on more than 1 ground

4.13 A claim by a group of Torres Strait Islanders for an area of claimable land may be established on more than 1 ground.

Time at which it is to be determined whether land is claimable land

4.14 The question whether land claimed under this Act is claimable land is to be determined as at the beginning of the day on which the relevant claim for the land was made to the Land Claims Registrar.

Amendment of claim

4.15(1) A claim under this Act may be amended with the leave of the Land Tribunal.

(2) If a claim is amended to include land that was not claimed in the original claim, section 4.07 applies as if a separate claim had been made for that land and the claim had been referred to the Tribunal.

Recommendation to Minister

4.16(1) Subject to section 4.17, if a claim by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land is established, the Land Tribunal must recommend to the Minister—

- (a) if the claim is established on the ground of customary affiliation or historical association—that the land be granted in fee simple to the Torres Strait Islander or the group; or
- (b) if the claim is established on the ground of economic or cultural

viability—that the land be granted to the group by way of a lease in perpetuity, or a lease for a specified term of years, on specified terms and conditions.

(2) In deciding the terms of a recommendation under subsection (1)(b), the Tribunal must have regard to the proposal made in the relevant claim for the use of the land concerned.

(3) When the Tribunal makes a recommendation under subsection (1), the Tribunal must also make recommendations to the Minister as to the persons who should be appointed to be the grantees of the land as trustees for the benefit of the Torres Strait Islander or group of Torres Strait Islanders concerned.

(4) In making recommendations under subsection (3), the Tribunal must, unless it is satisfied that exceptional circumstances exist that require it to do otherwise, act in a manner that is consistent with—

- (a) any Island custom applicable to the land; and
- (b) the views of the Torres Strait Islander or group of Torres Strait Islanders concerned so far as they are not inconsistent with any such Island custom.

(5) When the Tribunal makes a recommendation under subsection (1), the Tribunal must advise the Minister, in writing, in relation to each of the following matters—

- (a) the number of Torres Strait Islanders who will be advantaged by a grant of the land, and the nature and extent of the advantage that will accrue to them; and
- (b) the responsibilities in relation to the land that the Torres Strait Islander or group of Torres Strait Islanders concerned agree to assume if the land is granted because of the claim, and how those responsibilities should be expressed in any deed of grant or lease granted in relation to the land; and
- (c) the detriment to persons or communities (including other Torres Strait Islanders and Aboriginal groups) that might result from a grant of the land; and
- (d) the effect (if any) that a grant of the land is likely to have on the existing and proposed patterns of land usage in the region of the land.

Resolution of conflicting claims

4.17(1) Subject to subsection (2), if claims by 2 or more Torres Strait Islanders, 2 or more groups of Torres Strait Islanders or a combination of Torres Strait Islanders and groups for the same area of claimable land are established on the same ground, the Land Tribunal must recommend to the Minister that the land be granted jointly to the Torres Strait Islanders, the groups or the Torres Strait Islanders and groups.

(2) If a claim is, or 2 or more claims are, established on more than 1 ground for the same area of claimable land, the following rules apply—

- (a) if a claim is or claims are established on the ground of customary affiliation—a recommendation must not be made to the Minister based on other grounds;
- (b) if a claim is or claims are established on the ground of historical association, but not on the ground of customary affiliation—a recommendation must not be made to the Minister based on the ground of economic or cultural viability.

Notification of parties

4.18(1) If a claim by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land is established on 1 or more grounds, the Land Tribunal must notify each party to the proceeding, in writing—

- (a) that the claim has been so established; and
- (b) of the recommendations (if any) made to the Minister in relation to the claim.

(2) If a claim by a Torres Strait Islander or a group of Torres Strait Islanders for an area of claimable land is not established on 1 or more grounds, the Land Tribunal must notify each party to the proceeding, in writing, that the claim has not been so established.

PART 5—GRANT OF CLAIMABLE LAND AS TORRES STRAIT ISLANDER LAND

Division 1—Grant of land

Deeds of grant to be prepared

5.01(1) If—

- (a) the Land Tribunal recommends to the Minister that an area of land be granted in fee simple to a Torres Strait Islander or a group of Torres Strait Islanders; and
- (b) the Minister is satisfied that the land, or a part of the land, should be so granted to the Torres Strait Islander or group of Torres Strait Islanders;

the Minister must direct the Registrar of Titles to prepare a deed of grant in fee simple over the land or that part of the land.

(2) The land need not be surveyed but may be described in the deed of grant in such manner as the Minister directs, and the Registrar of Titles must enrol and issue the deed of grant accordingly.

(3) The deed of grant must show that the land is held by the grantees for the benefit of—

- (a) the Torres Strait Islander and his or her ancestors and descendants; or
- (b) the group of Torres Strait Islanders and their ancestors and descendants.

(4) The deed of grant must specify—

- (a) the ground on which the Land Tribunal recommended that the land be granted; and
- (b) the responsibilities that the Torres Strait Islander or group of Torres Strait Islanders have agreed to assume in relation to the land.

(5) Subsections (2), (3) and (4) have effect despite any other Act or any rule of law or practice.

Leases to be prepared**5.02(1)** If—

- (a) the Land Tribunal recommends to the Minister that an area of land be granted to a group of Torres Strait Islanders by way of a lease in perpetuity or a lease for a specified term of years; and
- (b) the Minister is satisfied that the land, or a part of the land, should be so granted to the group;

the Minister must—

- (c) if the land is, or is part of, an area of transferred land—direct the Registrar of Titles to prepare the lease in registrable form, subject to the terms and conditions determined by the Minister; or
- (d) if paragraph (c) does not apply—direct the Registrar of Titles to prepare the lease under the *Land Act 1962*, subject to the terms and conditions determined by the Minister.

(2) In determining the terms and conditions to which the lease is to be subject, the Minister is to have regard to the terms and conditions recommended by the Land Tribunal.

(3) The land need not be surveyed but may be described in the lease in such manner as the Minister directs, and—

- (a) if subsection (1)(c) applies—the Registrar of Titles is to register the lease accordingly; or
- (b) if subsection (1)(d) applies—the Registrar of Titles is to cause particulars of the lease to be recorded in the appropriate register maintained under the *Land Act 1962* accordingly.

(4) The lease must—

- (a) show that the land is held by the grantees for the benefit of the group of Torres Strait Islanders and their descendants; and
- (b) specify the specific purpose for which the land is to be used; and
- (c) specify the responsibilities that the group of Torres Strait Islanders have agreed to assume in relation to the land.

(5) Subsections (3) and (4) have effect despite any other Act or any rule of law or practice.

Minister to appoint trustees

5.03(1) The Minister must appoint such persons as the Minister considers necessary to be the grantees, as trustees for the benefit of the Torres Strait Islander or group of Torres Strait Islanders concerned, of the land the subject of each deed of grant prepared under section 5.01 and each lease prepared under section 5.02.

(2) The Minister may—

- (a) remove or suspend trustees appointed under subsection (1); or
- (b) appoint other persons as trustees.

(3) Before exercising powers under this section, the Minister must consult with the Torres Strait Islander or group of Torres Strait Islanders concerned and, unless the Minister is satisfied that exceptional circumstances exist that require the Minister to do otherwise, must act in a way that is consistent with—

- (a) any Island custom applicable to the land; and
- (b) the views of the Torres Strait Islander or group so far as they are not inconsistent with any such Island custom.

(4) The *Trusts Act 1973* (in this subsection called “**the Act**”) applies to trusts created for the purposes of this Division, and to the trustees of such trusts, only to the extent (if any) that the regulations provide that the Act is to apply and, to the extent that the Act does apply, it applies with such modifications (if any) as are prescribed.

Authority to grant fee simple in, or lease of, claimable land

5.04 The Governor in Council may, under this Act and the *Land Act 1962*—

- (a) grant claimable land in fee simple; or
- (b) lease claimable land in perpetuity or for a term of years.

Signing of lease etc.

5.05(1) If a Torres Strait Islander (transferred land) lease is prepared, the grantees of the transferred land concerned must on receipt of a written notice

to do so by the Registrar of Titles—

- (a) sign the lease and deliver it to the Registrar; and
- (b) deliver the relevant deed of grant to the Registrar;

within the reasonable period specified in the notice.

(2) Consent is not required to the lease despite anything to the contrary in any instrument creating an interest in the transferred land or in any Act.

(3) When the lease has been registered, the Registrar must return the relevant deed of grant to the grantees of the transferred land.

(4) If—

- (a) the grantees fail to comply with the notice to sign the lease—the Minister is authorised to sign the lease on behalf of the grantees; or
- (b) the grantees fail to comply with the notice to deliver the deed of grant to the Registrar—the Registrar must, without further authority apart from this paragraph, register the lease.

(5) Subsection (4)(b) applies despite—

- (a) any other Act or any rule of law or practice; and
- (b) the non-production of the deed of grant.

Deed of grant takes effect on delivery

5.06(1) A deed of grant issued under section 5.01 takes effect on the delivery of the deed to the grantees.

(2) On delivery of the deed of grant to the grantees, the land the subject of the deed becomes granted land and, if the land is not already Torres Strait Islander land, becomes Torres Strait Islander land.

(3) Subsection (1) has effect despite any other Act or any rule of law or practice.

Lease commences on delivery

5.07(1) The term of a Torres Strait Islander lease commences on the day of delivery of the lease to the grantees unless the lease specifies another

commencement day (whether before or after the day of delivery).

(2) On the commencement of the lease, the land the subject of the lease becomes granted land and, if the land is not already Torres Strait Islander land, becomes Torres Strait Islander land.

(3) Subsection (1) has effect despite any other Act or any rule of law or practice.

Existing interests

5.08 If granted land was, immediately before becoming Torres Strait Islander land under this Division, subject to an interest (other than an interest in favour of the Crown), the interest continues in force.

Interests to be endorsed on deed

5.09 If land the subject of a deed of grant prepared under section 5.01 (in this section called the “**new deed**”)—

- (a) is held by grantees under a deed of grant issued under Part 3; and
- (b) is subject to interests created by instruments endorsed on the deed of grant held by those grantees and the interests relate to the land;

the Registrar of Titles must endorse the instruments on the new deed, in the proper order of priority, before issuing the new deed.

Cancellation of existing deed of grant

5.10(1) If—

- (a) land is the subject of a deed of grant issued under Part 3 (in this section called the “**existing deed**”); and
- (b) a deed of grant (in this section called the “**new deed**”) over the whole or a part of the land takes effect under section 5.06;

the existing deed is cancelled, to the extent of the new deed, by operation of this section.

(2) The Minister must cause written notice to be given to the Registrar of Titles of the day of delivery of the new deed to the grantees and the Registrar is to note the cancellation of the existing deed in the register

accordingly.

(3) The grantees of the existing deed must, on receipt of written notice by the Minister so to do, deliver the existing deed to the Registrar of Titles within such reasonable period, as is specified in the notice.

(4) If the existing deed is cancelled only in relation to part of the land, the Registrar of Titles must prepare and issue to the grantees of the deed a deed of grant under the *Land Act 1962* (in this section called the “**replacement deed**”) over the remaining part of the land.

(5) The replacement deed is, for the purposes of this Act, taken to be a deed of grant prepared and issued under Part 3.

(6) The Registrar of Titles must endorse on the replacement deed, in the proper order of priority, the instruments under which existing relevant interests arose.

Registrar of Titles must take action etc. to resolve difficulties

5.11 If a difficulty arises in the application of this Division by the Registrar of Titles, the Registrar must take such action and give such directions as the Registrar considers necessary to resolve the difficulty.

Land Court may resolve difficulties

5.12(1) If a difficulty arises in—

- (a) the application of this Division to a particular matter; or
- (b) the application, to a particular matter, of a provision of another Act because of the operation of this Division;

the Land Court may, on the application of the Registrar of Titles or an interested person, make such order as it considers proper to resolve the difficulty.

(2) An order made under subsection (1) has effect despite anything contained in this Part or in an Act in force immediately before the commencement of this section.

Permitted dealings with granted land

5.13(1) An interest in granted land may be transferred, granted or otherwise created by the grantees only in accordance with this section.

(2) Subject to subsections (3) and (5), the grantees of granted land may—

- (a) grant a lease or licence over the whole or a part of the land to—
 - (i) a Torres Strait Islander particularly concerned with the land; or
 - (ii) the Crown in right of the State or the Commonwealth; or
 - (iii) another person—
 - (A) for a period of less than 10 years; or
 - (B) with the prior written consent of the Minister; or
- (b) consent to the creation of a mining interest in the land; or
- (c) grant an easement over the land; or
- (d) surrender the whole or any part of the land to the Crown in right of the State.

(3) A lease or licence under subsection (2)(a)(i) must be subject to the condition that an interest may be created under that lease or licence in favour of a person who is not a Torres Strait Islander particularly concerned with the land only if—

- (a) the interest is in favour of the spouse or former spouse of such a Torres Strait Islander or of such a Torres Strait Islander who is deceased; or
- (b) the interest is—
 - (i) for a period of less than 10 years; or
 - (ii) created with the prior written approval of the Minister.

(4) The grantees of land held under a Torres Strait Islander lease may—

- (a) with the prior written consent of the Minister—sublease or mortgage their interest in the land on such terms and conditions as the Minister approves in writing; or
- (b) surrender the whole or any part of their interest in the land to the Crown in right of the State.

(5) Subject to subsection (6), the grantees of granted land may enter into an agreement with the Crown in right of the State or the Commonwealth in relation to the getting and sale of forest products or quarry material above, on and below the land.

(6) The grantees of granted land must not grant an interest in the land, consent to the creation of a mining interest in the land, or enter into an agreement under subsection (5), unless—

- (a) they have explained to the Torres Strait Islanders particularly concerned with the land the nature, purpose and effect of the proposed grant or consent; and
- (b) the Torres Strait Islanders are given adequate opportunity to express their views on, and are generally in agreement with, the grant, consent or agreement; and
- (c) they have subsequently given the Torres Strait Islanders notice of not less than 1 month of their intention to make the grant, give the consent or enter into the agreement.

(7) Contravention of subsection (6) does not invalidate the interest or agreement concerned.

Other dealings void

5.14(1) A transfer, grant or other creation of an interest in granted land that is not permitted by section 5.13 is void.

(2) This section has effect despite any other Act.

No resumption of granted land etc.

5.15(1) An interest in granted land (other than land granted on the ground of economic or cultural viability) cannot be resumed, taken or otherwise compulsorily acquired, sold or dealt with except by an Act that expressly provides for the resumption of the land and payment of just compensation for the land.

(2) Subsection (1) has effect despite any other Act (whether enacted before or after the enactment of this section).

Devolution of granted land**5.16(1)** If—

- (a) grantees hold granted land for the benefit of a Torres Strait Islander or a single group of Torres Strait Islanders; and
- (b) the Torres Strait Islander or the last surviving member of the group dies without leaving a descendant;

the grantees—

- (c) hold the land for the benefit of Torres Strait Islanders, unless the Minister determines, in writing, that they hold the land for a specified Torres Strait Islander or specified group of Torres Strait Islanders; and
- (d) must deliver the deed of grant or Torres Strait Islander lease to the Registrar of Titles who must cause the appropriate endorsement to be made on the deed or lease and in the relevant register.

(2) Before making a determination under subsection (1), the Minister must consult with the Torres Strait Islanders particularly concerned with the land and, unless the Minister is satisfied that exceptional circumstances exist that require the Minister to do otherwise, must act in a manner that is consistent with—

- (a) any Island custom applicable to the land; and
- (b) the views of the Torres Strait Islanders so far as they are not inconsistent with such Island custom.

(3) Subsection (1) applies despite any other Act.

Division 3—Reservations**Reservations of minerals and petroleum**

5.17 A deed of grant of granted land and a Torres Strait Islander lease must contain a reservation to the Crown of—

- (a) all minerals; and
- (b) all petroleum;

on and below the surface of the land.

Reservations of forest products and quarry material etc.

5.18(1) A deed of grant of granted land that was transferable land, and a Torres Strait Islander (transferred land) lease, must not contain a reservation to the Crown of—

- (a) forest products; or
- (b) quarry material;

above, on or below the surface of the land unless the Governor in Council has, by order in council—

- (c) declared that specified forest products or quarry material above, on or below, as the case may be, the land are of vital State interest; and
- (d) reserved to the Crown the rights in the specified forest products or quarry material.

(2) A deed of grant of granted land that was not transferred land, and a Torres Strait Islander (non-transferred land) lease, must contain a reservation to the Crown of—

- (a) all forest products; and
- (b) all quarry material;

above, on and below the surface of the land.

(3) Despite subsection (1), a permit, lease, licence, agreement or contract granted or made under the *Forestry Act 1959*, before the day on which land that was transferred land became granted land, in relation to the getting and selling of forest products or quarry material above, on or below the surface of the land, continues in force as if this section had not been enacted.

(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, the Governor in Council may, by order in council, declare that—

- (a) the forest products or quarry material are of vital State interest; and
- (b) rights in the forest products or quarry material are acquired by the Crown.

(5) If an order in council is made under subsection (1) or (4), the grantees

of the land are entitled to be paid by the State such reasonable compensation because of the reservation or acquisition as is agreed on between the State and the grantee or grantees or, failing agreement, as is determined by the Land Court.

Division 4—Access to coastal land

Rights of access preserved

5.19 If—

- (a) land that is an area of coast becomes Torres Strait Islander land because of a claim under this Act; and
- (b) a right of access to or across the area (whether by persons generally or particular persons) existed immediately before the land became claimable land;

the right of access continues in force as if the land had not become Torres Strait Islander land.

Division 5—National Park land

National Park land subject to lease to State etc.

5.20(1) If granted land is, or includes part of, a National Park (in this section called the “**National Park land**”), the grant of the National Park land—

- (a) is subject to the condition that the grantees lease the National Park land, in perpetuity, to the Crown for the purposes of the management of the National Park land under the National Parks and Wildlife Act 1975; and
- (b) is subject to such other conditions as the Governor in Council determines, by order in council, in relation to the National Park land or National Parks generally.

(2) There is to be a board of management for the National Park, the composition of which the Minister must approve in writing.

(3) The Torres Strait Islanders particularly concerned with the National Park land are to be represented on the board of management.

(4) The Director must, in cooperation with the board of management—

(a) before the grant of the land, prepare a management plan for the National Park; and

(b) from time to time as requested by the Minister—

(i) review and revise the management plan in force for the National Park; or

(ii) prepare a new management plan.

(5) Before exercising functions under subsection (4), the Director must consult with, and consider the views of, the Torres Strait Islanders particularly concerned with the National Park land (including any tradition relating to activities on the National Park land).

(6) In exercising functions under subsection (4), the Director must, as far as practicable, but subject to this section, section 5.21 and the *National Parks and Wildlife Act 1975*, act in a way that is consistent with any Island custom applicable to the National Park land (including any tradition relating to activities on the National Park land).

(7) Before a management plan, or a revision of a management plan, takes effect, the plan or revision must be approved by the Governor in Council by order in council.

(8) The lease of the National Park land must be subject to the following conditions—

(a) that the National Park is to be managed in accordance with the management plan as in force from time to time; and

(b) that the management plan is to be implemented by the board of management.

(9) The grantees of the granted land must—

(a) sign a lease of the National Park land in registrable form containing the required conditions and such other terms and conditions as are agreed; and

(b) give the signed lease to the Minister before or at the time of delivery of the deed of grant issued under section 5.01 in relation to the

land.

(10) Nothing in this Act or a management plan or lease under this section is to result in a decrease, in the aggregate, in the public rights of access that existed in relation to the National Park land immediately before the land became claimable land.

Park remains National Park

5.21 To allay any doubt, it is declared that—

- (a) a National Park remains a National Park even if the whole or a part of it is claimed and granted under this Act; and
- (b) subject to this Act, the *National Parks and Wildlife Act 1975* applies to the National Park as though it had all remained Crown land.

PART 6—OCCUPATION AND USE OF FORMER CROWN LAND BY THE CROWN

Crown's use of Islander land preserved

6.01(1) If, on the day land becomes Torres Strait Islander land, the land or any part of the land is being occupied or used by the Crown in right of the State or the Commonwealth, the Crown is entitled to continue to occupy or use it for such period as the land, or that part of the land, is required by the Crown.

(2) While the Crown is entitled to the occupation or use of land under subsection (1), the improvements on the land are the property of the Crown.

(3) This section ceases to apply to land on its being leased to the Crown under section 3.11 or 5.13.

No rent payable by Crown

6.02 The Crown is not liable to pay any amount in the nature of rent in relation to its occupation or use of land under section 6.01.

Access to land used by Crown

6.03(1) While the Crown is entitled to the occupation or use of land under section 6.01, the officers, employees, agents and servants of the Crown and its licensees and invitees are entitled, with or without vehicles, machinery, plant and equipment (of any description), to enter and cross Torres Strait Islander land for the purpose of gaining access to the land.

(2) A person mentioned in subsection (1) must only cross Torres Strait Islander land by—

- (a) the routes that were commonly used before the land became Torres Strait Islander land; or
- (b) other routes agreed on from time to time by the Crown and the grantees of the land.

(3) The grantees must not agree on a route for the purposes of subsection (2) unless—

- (a) they have explained to the Torres Strait Islanders particularly concerned with the land the purpose and effect of the proposed route; and
- (b) the Torres Strait Islanders are given adequate opportunity to express their views on, and are generally in agreement with, the proposed route; and
- (c) they have subsequently given the Torres Strait Islanders notice of not less than 1 month of their intention to enter into the agreement.

(4) Contravention of subsection (3) does not invalidate an agreement made for the purposes of subsection (2).

PART 7—MINING**Application of Mineral Resources Act**

7.01(1) To allay any doubt, it is declared that the *Mineral Resources Act 1989* applies to transferable land as if it were a reserve within the meaning

of that Act.

(2) Subject to subsection (5), the *Mineral Resources Act 1989* applies to the following land as if it were a reserve, and the grantees of the land were the owners of the land, within the meaning of that Act—

- (a) Torres Strait Islander land that is or was transferred land; or
- (b) Torres Strait Islander land (other than land that was transferred land) that was claimable land, but was not subject to a mining interest at the beginning of the day on which the relevant claim for the land was made to the Land Claims Registrar, other than—
 - (i) land subject to a Torres Strait Islander (non-transferred land) lease; or
 - (ii) land that was acquired by or on behalf of Torres Strait Islanders if all interests in the land (other than interests in favour of the Crown) were surrendered to or acquired by the Crown before the land became claimable land; or
 - (iii) any National Park.

(3) To allay any doubt, it is declared that the *Mineral Resources Act 1989* applies to Torres Strait Islander land (other than land that was transferred land) that was claimable land and—

- (a) is subject to a Torres Strait Islander (non-transferred land) lease; or
- (b) was acquired by or on behalf of Torres Strait Islanders if all interests in the land (other than interests in favour of the Crown) were surrendered to or acquired by the Crown before the land became claimable land;

as if that land were not Torres Strait Islander land.

(4) If Torres Strait Islander land (other than land that was transferred land) was claimable land and was subject to a mining interest at the beginning of the day on which the relevant claim for the land was made to the Lands Claims Registrar, then—

- (a) in relation to the mining interest and any associated interest—to allay any doubt, it is declared that the *Mineral Resources Act 1989* applies to the land as if the land were not Torres Strait Islander land; and

- (b) in relation to any other mining interest—subject to subsection (5), the *Mineral Resources Act 1989* applies to the land as if it were a reserve, and the grantees of the land were the owners of the land, within the meaning of that Act.

(5) Subsections (2) and (4)(b) do not apply in relation to sections 7.69 and 7.70 of the *Mineral Resources Act 1989*.

(6) The holder of a mining lease must, before making application for a mining lease under section 7.69 of the *Mineral Resources Act 1989* or a variation of a mining lease under section 7.70 of that Act, consult and endeavour to reach agreement with the Torres Strait Islanders particularly concerned with the land in relation to which the application is to be made about the route of the proposed access over the land.

(7) In this section—

“associated interest”, in relation to a mining interest, means—

- (a) any renewal or other continuance in force of the interest; or
(b) any other mining interest derived through, or as a result of, the interest;

“relevant claim”, in relation to Torres Strait Islander land, means the claim because of which the land became Torres Strait Islander land.

Royalties in relation to mining on Torres Strait Islander land

7.02(1) This section applies if the State receives an amount (in this section called the **“royalty amount”**), by way of royalty under the *Mineral Resources Act 1989* or the *Petroleum Act 1923*, in relation to land that is Torres Strait Islander land (other than land that is subject to a Torres Strait Islander (non-transferred land) lease).

(2) The grantees of the land are entitled to receive, out of money appropriated by the Parliament, the percentage prescribed for the purposes of this subsection of the royalty amount, and the grantees are to apply the amount received for the benefit of the Torres Strait Islanders for whose benefit they hold the land, particularly those that are affected by the activities to which the royalty amount relates.

(3) The chief executive of the department is entitled to receive, out of money appropriated by the Parliament, the percentage prescribed for the

purposes of this subsection of the royalty amount and is to apply the amount received for the benefit of Torres Strait Islanders.

PART 8—THE LAND TRIBUNAL

Division 1—Establishment and membership

Land Tribunal

8.01(1) A tribunal called the Land Tribunal is established for the purposes of this Act.

(2) The Land Tribunal consists of the Chairperson and such number of Deputy Chairpersons and other members as are appointed under this Act.

Appointment of members

8.02(1) The members of the Tribunal are to be appointed by the Governor in Council.

(2) The Chairperson is to be appointed on a full-time basis, and the Deputy Chairpersons and other members are to be appointed on a part-time basis.

(3) The *Public Service Management and Employment Act 1988* does not apply to the appointment of a member of the Tribunal.

(4) Nothing in this Act prevents the Chairperson also holding office as the Chairperson or other member of the Land Tribunal established for the purposes of the *Aboriginal Land Act 1991*.

Qualifications for appointment

8.03(1) A person is not eligible for appointment as Chairperson or Deputy Chairperson of the Land Tribunal unless the person is a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of the State, another State or a Territory of not less than 5

years standing.

(2) A person is not eligible for appointment as a non-presiding member of the Land Tribunal unless the person—

- (a) has, in the opinion of the Governor in Council, suitable knowledge of Torres Strait Islanders or Island custom; or
- (b) has had experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or an authority of a government.

Term of appointment

8.04 A member of the Land Tribunal is appointed for such term (not exceeding 7 years) as is specified in the instrument of appointment, but is eligible for re-appointment.

Terms and conditions of appointment

8.05(1) A member of the Land Tribunal is to be paid such remuneration and allowances as are determined by the Governor in Council.

(2) A member of the Land Tribunal holds office on such terms and conditions not provided for by this Act as are determined by the Governor in Council.

Preservation of rights

8.06(1) This section applies if an officer of the public service is appointed as the Chairperson of the Land Tribunal.

(2) The person retains and is entitled to all rights that have accrued to the person because of employment as an officer of the public service, or that would accrue in the future to the person because of that employment, as if service as Chairperson were a continuation of service as an officer of the public service.

(3) If the person has not attained 65 years of age at the time of the expiry of the person's term of office or resignation—

- (a) the person is entitled to be appointed to an office in the public

service at a salary level not less than the salary level, at that time, of an office equivalent to the one the person held before being appointed as Chairperson; and

- (b) the person's service as Chairperson is to be regarded as service in the public service for the purpose of determining the person's rights as an officer of the public service.

Leave of absence

8.07 The Minister may grant leave of absence to the Chairperson of the Land Tribunal on such terms and conditions as the Minister considers appropriate.

Resignation

8.08 A member of the Land Tribunal may resign by writing signed and delivered to the Governor.

Disclosure of interests

8.09(1) If a member of the Land Tribunal is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding and the member has or acquires an interest (whether pecuniary or otherwise) that could conflict with the proper performance of the member's functions in relation to the proceeding—

- (a) the member must disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all parties to the proceeding—the member must not take part in the proceeding or exercise any powers in relation to the proceeding.

(2) Where the Chairperson of the Land Tribunal becomes aware that a member of the Tribunal, who is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding, has in relation to the proceeding an interest of the kind mentioned in subsection (1)—

- (a) if the Chairperson considers that the member should not take part, or continue to take part, in the proceeding—the Chairperson must

direct the member accordingly; or

- (b) in any other case—the Chairperson must cause the interest of the member to be disclosed to the parties to the proceeding if the interest has not already been disclosed to them.

Termination of appointment

8.10 The Governor in Council may terminate the appointment of a member of the Land Tribunal if the member—

- (a) becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (b) is convicted of an indictable offence (whether in Queensland or elsewhere); or
- (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service; or
- (d) contravenes section 8.09 or a direction given under that section; or
- (e) in the case of the Chairperson—is absent, without the Minister’s leave and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.

Acting Chairperson

8.11 The Governor in Council may appoint a person to act as Chairperson of the Land Tribunal—

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from the State or is, for any other reason, unable to perform the duties of the office.

Division 2—Organisation of Tribunal**Arrangement of business**

8.12(1) Subject to section 8.13, the Chairperson of the Land Tribunal may give directions as to the arrangement of the business of the Tribunal and as to the members who are to constitute the Tribunal for the purposes of particular proceedings.

(2) If the Chairperson gives a direction as to the members who are to constitute the Tribunal for the purposes of a particular proceeding, the Chairperson may—

- (a) at any time after giving the direction and before the start of the hearing of the proceeding; or
- (b) if, in the case of a proceeding before the Tribunal constituted by 3 members, 1 of those members ceases to be a member, or ceases to be available for the purposes of the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the matter to which the proceeding relates is determined—at any time after the member ceases to be a member or to be available;

revoke the direction and give a further direction under subsection (1) as to the persons who are to constitute the Tribunal for the purposes of the proceeding.

(3) In giving a direction under this section as to the members who are to constitute the Tribunal for the purposes of a particular proceeding, the Chairperson must have regard to—

- (a) the degree of public importance or complexity of the matters to which the proceeding relates; and
- (b) the need for the Tribunal's affairs to be conducted expeditiously and efficiently; and
- (c) the nature of the issues likely to be involved in the proceeding.

Constitution of Tribunal

8.13(1) Subject to section 8.15, the Tribunal is to be constituted for the

purposes of the hearing and determination of a proceeding by—

- (a) a presiding member; or
- (b) subject to subsection (2), a presiding member and 2 non-presiding members.

(2) If the Tribunal is to be constituted as mentioned in subsection (1) (b)—

- (a) one of the non-presiding members must be a person who, in the opinion of the Chairperson of the Tribunal, has suitable knowledge of Torres Strait Islanders or Island custom; and
- (b) the other non-presiding member must have had experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or an authority of a government.

(3) The Tribunal may be constituted for the exercise of powers in relation to the hearing of a proceeding, or for the purposes other than the hearing and determination of a proceeding, by a presiding member.

Member presiding

8.14 At the hearing of a proceeding before the Tribunal at which the Tribunal is constituted for the purposes of the proceeding by more than 1 member, the presiding member is to preside unless another member is directed under section 8.15 to preside.

Member of Tribunal ceasing to be available

8.15(1) If the hearing of a proceeding has been commenced or completed by the Land Tribunal constituted by 3 members but, before the matter to which the proceeding relates has been determined, 1 of the members constituting the Tribunal ceases to be a member, or ceases to be available for the purposes of the proceeding—

- (a) if the parties agree and the Chairperson does not give a direction under section 8.12—the hearing and determination, or the determination, of the proceeding may be completed by the Tribunal constituted by the remaining members or member; or

- (b) in any other case—the proceeding is to be reheard by the Tribunal as reconstituted under section 8.13.

(2) If the member who ceases to be a member, or ceases to be available for the purposes of the proceeding, is the member who is, but for this subsection, to preside, the Chairperson may, in writing, appoint 1 of the remaining members, or the remaining member, to preside.

(3) If a proceeding is reheard by the Tribunal, the Tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the Tribunal as previously constituted, including any evidence taken in the proceeding.

Sitting places

8.16 Sittings of the Land Tribunal may be held from time to time as required at any place in the State.

Division 3—Conduct of proceedings before Tribunal

Parties to proceeding before Tribunal

8.17(1) Subject to section 8.26, the parties to a proceeding for the hearing of a claim under this Act are—

- (a) the claimant or claimants; and
- (b) the claimants of any other claim under this Act that is to be heard and determined with that claim; and
- (c) any other person who has been made a party to the proceeding by the Tribunal on application by the person under subsection (2).

(2) An interested person may, within the period specified in the notice published under section 4.07 in relation to the claim or within such further period as the Tribunal allows, apply, in writing, to the Tribunal to be made a party to the proceeding and the Tribunal may, by order, make the person a party to the proceeding.

Tribunal to determine who are interested persons

8.18(1) If it is necessary for the purposes of this Act to decide whether a person is an interested person in relation to a claim under this Act, the matter is to be decided by the Land Tribunal.

(2) If the Tribunal decides that a person is not an interested person in relation to a claim under this Act, the Tribunal must give the person written reasons for its decision.

Representation before Tribunal

8.19 At the hearing of a proceeding before the Tribunal, a party to the proceeding may appear in person or be represented by an agent duly appointed in writing for the purpose but, unless the Tribunal otherwise orders, cannot be represented by counsel or a solicitor (enrolled in Queensland or elsewhere) engaged as counsel or solicitor for the proceeding.

Procedure of Tribunal

8.20(1) In a proceeding before the Land Tribunal—

- (a) the procedure of the Tribunal is, subject to this Act, within the discretion of the Tribunal; and
- (b) the proceeding is to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence but may inform itself on any matter in any way that it considers appropriate.

(2) For the purposes of subsection (1), directions as to the procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may be given—

- (a) if the hearing of the proceeding has not started—by the Chairperson or by a presiding member authorised by the Chairperson to give directions for the purposes of this paragraph; and

(b) if the hearing of the proceeding has started—by the member presiding at the hearing or by another member authorised by the member presiding to give such directions.

(3) A direction may be varied or revoked by a member empowered to give the direction.

(4) An authorisation by the Chairperson may be of general application or may relate to the hearing of a particular proceeding or class of proceedings.

(5) The Chairperson may vary or revoke an authorisation.

Conferences

8.21(1) If a claim is referred to the Land Tribunal, the Chairperson may direct the holding of a conference of the parties presided over by a presiding member.

(2) If a conference is held under subsection (1) and—

(a) at or after the conference, agreement is reached between the parties as to the terms of a decision of the Tribunal in the proceeding that would be acceptable to the parties; and

(b) the terms of the agreement are reduced to writing, signed by the parties and given to the Tribunal; and

(c) the Tribunal is satisfied that—

(i) a decision in those terms would be within the powers of the Tribunal; and

(ii) that it would be appropriate to make a decision in those terms;

the Tribunal may, without holding a hearing, make a recommendation to the Minister in accordance with or based on those terms.

(3) At the hearing of a proceeding before the Tribunal, unless the parties otherwise agree, evidence must not be given, and statements must not be made, about anything that happens at a conference held under subsection (1) in relation to the proceeding.

(4) If—

(a) a conference held under subsection (1) in relation to a proceeding

is presided over by a member of the Tribunal; and

- (b) a party to the proceeding who was present at the conference notifies the Tribunal before, or at the start of, the hearing that the party objects to the member participating in the hearing;

the member is not entitled to be a member of the Tribunal as constituted for the purposes of the proceeding.

Hearings to be in public except in special circumstances

8.22(1) Subject to this section, the hearing of a proceeding before the Land Tribunal is to be in public.

(2) If the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the Tribunal may, by order—

- (a) direct that a hearing or part of a hearing is to take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal; or
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Tribunal, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal.

(3) In considering—

- (a) whether the hearing of a proceeding should be held in private; or
- (b) whether publication, or disclosure to a party, of evidence, or of a matter contained in a document or received in evidence, should be prohibited or restricted;

the Tribunal is to take as the basis of its consideration the principle that it is desirable that the hearing of a proceeding before the Tribunal should be held in public and that evidence given before the Tribunal and the contents of documents lodged with the Tribunal or received in evidence by the Tribunal should be made available to the public and to all the parties, but must pay due regard to any reasons given to the Tribunal why the hearing should be

held in private or why publication or disclosure of the evidence or matter should be prohibited or restricted, particularly if those reasons are based on any applicable Torres Strait Island custom.

Opportunity to make submissions

8.23 Subject to section 8.22, the Land Tribunal must ensure that every party to a proceeding before the Tribunal is given a reasonable opportunity to present the party's case and, in particular, to inspect any documents to which the Tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to the documents.

Particular powers of Tribunal

8.24(1) For the purpose of a proceeding, the Land Tribunal may—

- (a) take evidence on oath or affirmation; or
- (b) proceed in the absence of a party who has had reasonable notice of the proceeding; or
- (c) adjourn the proceeding from time to time.

(2) For the purposes of the hearing of a proceeding, a presiding member may summon a person to appear before the Tribunal to give evidence and to produce such documents (if any) as are specified in the summons.

(3) The member who presides at the hearing of a proceeding—

- (a) may require a person appearing before the Tribunal to give evidence either to take an oath or to make an affirmation; and
- (b) may administer an oath or affirmation to a person so appearing before the Tribunal.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give to questions asked of the person will be true.

Manner in which questions to be decided

8.25(1) A question of law arising in a proceeding before the Land Tribunal at which a presiding member is presiding (including the question

whether a particular question is one of law) is to be decided in accordance with the opinion of the member presiding.

(2) Subject to subsection (1), when the members constituting the Tribunal for the purposes of a particular proceeding are divided in opinion as to the decision to be made on any question—

- (a) if there is a majority of the one opinion—the question is to be decided according to the opinion of the majority; or
- (b) in any other case—the question is to be decided according to the opinion of the member presiding.

Power of Tribunal to dismiss claim or strike out party

8.26 If a party to a proceeding before the Land Tribunal fails either to appear at a preliminary conference or at the hearing of the proceeding, the Tribunal may—

- (a) if the party has made a claim under this Act to which the proceeding relates—dismiss the claim concerned; or
- (b) in any other case—direct that the person who failed to appear is to cease to be a party to the proceeding.

General Powers

8.27 For the purpose of a proceeding in relation to a claim, the Land Tribunal may do all other things necessary or convenient to be done for or in connection with the hearing and determination of the claim.

Reasons to be given by Tribunal

8.28(1) Subject to this section and to section 8.22, the Land Tribunal must give written reasons for—

- (a) its recommendations to the Minister in relation to a claim; and
- (b) a claim being or not being established on 1 or more grounds.

(2) The reasons must include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

(3) The Tribunal must cause a copy of its reasons to be given (in writing) to the Minister and each party to the proceeding.

Appeals to Land Appeal Court from decisions of Tribunal

8.29(1) A party to a proceeding before the Land Tribunal may—

- (a) appeal to the Land Appeal Court against a decision of the Tribunal—
 - (i) that an area of land is or is not claimable land; or
 - (ii) that a claim for an area of claimable land is or is not established on a particular ground; or
 - (iii) to make or not to make a particular recommendation to the Minister in relation to a claim; or
 - (iv) as to the terms of a particular recommendation to the Minister; and
- (b) appeal to the Land Appeal Court, with the leave of that Court, against any other decision of the Tribunal made in or in relation to the proceeding.

(2) If—

- (a) a person has applied to be made a party to a proceeding before the Land Tribunal; and
- (b) the Tribunal decides that the person is not an interested person;

the person may appeal to the Land Appeal Court against the decision.

(3) An interested person who is dissatisfied with a determination of the Land Tribunal under section 9.02(2)(b) may appeal to the Land Appeal Court.

(4) An appeal, or application for leave to appeal, under this section must be made in accordance with any applicable Rules of Court and any regulations made for the purposes of this section.

(5) The Land Appeal Court must hear and determine the appeal, or application for leave to appeal, and may make such order as it considers appropriate.

(6) Without limiting subsection (5), the orders that may be made by the

Land Appeal Court on an appeal include—

- (a) an order affirming a decision of the Land Tribunal; or
- (b) an order varying a decision of the Land Tribunal; or
- (c) an order setting aside a decision of the Land Tribunal and—
 - (i) making a decision in substitution for the decision set aside; or
 - (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Tribunal.

(7) For the purposes of an appeal, the Land Appeal Court may exercise all the powers and discretions conferred on the Land Tribunal.

Reference of questions of law to Land Appeal Court

8.30(1) The Land Tribunal may, of its own motion or at the request of a party, refer a question of law arising in a proceeding before the Tribunal to the Land Appeal Court for decision, but a question is not to be referred without the agreement of the presiding member (if any) who is presiding or the Chairperson of the Tribunal.

(2) If a question of law arising in a proceeding before the Land Tribunal has been referred to the Land Appeal Court, the Tribunal must not, in the proceeding—

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the decision of the Land Appeal Court on the question.

Protection of members etc.

8.31(1) A member of the Land Tribunal has, in the performance of the member's duties as a member, the same protection and immunity as a Judge of the Supreme Court.

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

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

Failure of witness to attend

8.32 A person served, as prescribed, with a summons to appear as a witness before the Land Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear from time to time in the course of the proceeding as required by the presiding member.

Maximum penalty—20 penalty units.

Refusal of witness to be sworn or to answer questions

8.33(1) A person appearing as a witness at a hearing of the Land Tribunal must not, without reasonable excuse—

- (a) fail to be sworn or to make an affirmation; or
- (b) fail to answer a question that the person is required to answer by the presiding member; or
- (c) fail to produce a document that the person was required to produce by a summons under this Act served on the person as prescribed.

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.

Obstructing Tribunal etc.

8.34(1) A person must not obstruct or improperly influence the conduct of a hearing of the Land Tribunal or attempt to do so.

- (2) A person must not contravene an order under section 8.22.

Maximum penalty—40 penalty units.

Allowances for witnesses

8.35 A witness summoned to appear at a hearing of the Land Tribunal is entitled to be paid such allowances and expenses—

- (a) as are prescribed; or
- (b) as the Chairperson of the Tribunal determines in the absence of regulations.

Division 4—Miscellaneous

Management of administrative affairs of Tribunal

8.36 The Chairperson of the Land Tribunal is responsible for managing the administrative affairs of the Tribunal.

Staff of Tribunal

8.37(1) The staff of the Land Tribunal are to be appointed or employed under the *Public Service Management and Employment Act 1988*.

(2) The Chairperson of the Land Tribunal has all the functions and powers of the chief executive of a department, so far as the functions and powers relate to the organisational unit comprising the staff of the Tribunal, as if—

- (a) that unit were a department within the meaning of the *Public Service Management and Employment Act 1988*; and
- (b) the Chairperson were the chief executive of that department.

Consultants to Tribunal

8.38 The Land Tribunal may, on behalf of the State, engage persons having suitable qualifications and experience as consultants to the Tribunal.

Annual report

8.39(1) The Chairperson of the Land Tribunal must, not later than 4 months after the end of each financial year, prepare and give to the Minister a report on the operations of the Tribunal during the year.

(2) The Minister must cause a copy of the report to be laid before the Legislative Assembly within 14 days after its receipt by the Minister.

(3) If, at the time the Minister would otherwise be required to lay a copy of the report before the Legislative Assembly, the Legislative Assembly is not in session or not actually sitting, the Minister must give a copy of the report to the Clerk of the Parliament.

(4) The Clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.

(5) For the purposes of its printing and publication, the report is taken to have been laid before the Legislative Assembly, and to have been ordered to be printed by the Legislative Assembly, when it is given to the Clerk.

Delegation of powers by Chairperson

8.40 The Chairperson of the Land Tribunal may delegate his or her powers under this or any other Act to another presiding member of the Tribunal.

PART 9—MISCELLANEOUS**Creation of interests in transferable and claimable land**

9.01(1) Nothing in this Act prevents the creation of an interest in transferable land if—

- (a) the interest is a mining interest; or
- (b) in the case of another interest—the Minister, subject to subsection (2), consents to the creation of the interest.

(2) The Minister must not consent under subsection (1)(b) to the creation of the interest unless the Minister is satisfied that the creation of the interest

is for the benefit of Torres Strait Islanders particularly concerned with the land.

(3) Nothing in this Act prevents the creation of an interest in claimable land that is not transferred land (whether or not a claim has been made under this Act for the land) if—

- (a) the interest is a mining interest; or
- (b) in the case of any other interest—the Minister, subject to subsection (4), consents to the creation of the interest.

(4) The Minister must not consent under subsection (3)(b) to the creation of the interest unless the Minister is satisfied that—

- (a) the creation of the interest is for the benefit of Torres Strait Islanders particularly concerned with the land; or
- (b) the interest will cease to have effect before, or if and when, the land becomes Torres Strait Islander land.

(5) Nothing in this Act prevents the creation of an interest in land that may become transferable land or claimable land.

(6) This section has effect despite anything in any other Act.

Rights of access to interests preserved

9.02(1) This section applies if—

- (a) a person has an interest in land (in this section called the “**person’s land**”); and
- (b) the person’s land is—
 - (i) surrounded by Torres Strait Islander land; or
 - (ii) in the vicinity of Torres Strait Islander land and the only practicable way of gaining access to the person’s land is across the Torres Strait Islander land.

(2) The person and the person’s officers, employees, agents, servants, licensees and invitees are entitled, with or without vehicles, machinery, plant and equipment (of any description), to enter and cross Torres Strait Islander land for the purpose of gaining access to the person’s land by a route—

- (a) that is agreed on from time to time by the grantees of the Torres

Strait Islander land and the person; or

- (b) if the grantees and the person fail to agree within a reasonable time—that is determined by the Land Tribunal on application by the grantees or person.

(3) The grantees must not agree on a route for the purposes of subsection (2) unless—

- (a) they have explained to the Torres Strait Islanders particularly concerned with the land the purpose and effect of the proposed route; and
- (b) the Torres Strait Islanders are given an adequate opportunity to express their views on, and are generally in agreement with, the proposed route; and
- (c) they have subsequently given the Torres Strait Islanders notice of not less than 1 month of their intention to enter into the agreement.

(4) Contravention of subsection (3) does not invalidate an agreement made for the purposes of subsection (2).

Persons and bodies representing Crown

9.03 The regulations may declare that a person or body is to be treated for the purposes of this Act, or a particular provision of this Act, as representing, or as not representing, the Crown in right of the State or the Commonwealth (whether generally or in relation to a particular area or class of land).

Delegation by Minister

9.04 The Minister may, by signed writing, delegate to an officer of the public service all or any of the Minister's powers under or in relation to this Act (other than powers under section 3.01, 3.02, 5.01, 5.02 or 5.03).

Delegation by Registrar of Titles

9.05 The Registrar of Titles may, by signed writing, delegate to an officer of the public service all or any of the Registrar's powers under or in relation

to this Act.

Delegation by Land Claims Registrar

9.06 The Land Claims Registrar may, by signed writing, delegate to an officer of the public service all or any of the Registrar's powers under or in relation to this Act.

Amendment of description of land

9.07(1) If, at any time after a deed of grant under this Act or a Torres Strait Islander (non-transferred land) lease takes effect, greater certainty, by survey or otherwise, is obtained as to the boundaries of the land, the grantees must, on receipt of a written notice to do so by the Registrar of Titles, surrender to the Crown their deed to, or lease over, the land within such reasonable period as is specified in the notice.

(2) On surrender of the grantee's deed or lease, a new deed of grant or lease delineating the amended boundaries is to be issued to the grantees.

(3) The new deed of grant or lease is to be issued on the same ground (if any) as the surrendered deed of grant or lease.

(4) The Registrar must endorse on the new deed of grant or lease, in the proper order or priority, the instruments under which existing relevant interests arose.

Survey costs etc. to be paid by State

9.08(1) Survey costs incurred in relation to the preparation of a deed of grant under section 3.01, 5.01 or 9.07 or a Torres Strait Islander lease are to be paid by the State.

(2) A deed of grant in fee simple under this Act, a Torres Strait Islander lease or a lease prepared for the purposes of section 5.20 or 9.07 is not liable to stamp duty, and no fees or charges are payable in relation to the preparation and registration of the deed or lease.

(3) A surrender of a deed or lease under or for the purposes of this Act is not liable to stamp duty, and no fees or charges are payable in relation to the surrender.

(4) This section has effect despite any other Act.

Orders in council to be tabled and disallowable

9.09 Section 28A of the *Acts Interpretation Act 1954* applies to orders in council made under this Act as if they were regulations.

Regulations

9.10(1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may make provision with respect to—

- (a) the incorporation of the grantees of land granted or leased, or to be granted or leased, under this Act; and
- (b) requiring the grantees to become incorporated; and
- (c) the indemnification of incorporated grantees from personal liability; and
- (d) the procedure to be followed by the grantees in arriving at decisions in relation to land; and
- (e) evidence of decisions made by the grantees.

ENDNOTES

1 Index to Endnotes

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2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation before 3 July 1992. Future amendments of the *Torres Strait Islander Land Act 1991* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

3 List of legislation

Torres Strait Islander Land Act 1991 No 33

date of assent 12 June 1991

ss 1.01–1.03 commenced on date of assent

remaining provisions commenced 21 December 1991 (SL No 222 Gaz 21 December 1991 p 2293)

as amended by—

Aboriginal and Torres Strait Islander Land (Consequential Amendments) Act 1991 No 76 Part 10

date of assent 21 November 1991

commenced on date of assent

Nature Conservation Act 1992 No 20 s 159 Sch 2

date of assent 22 May 1992

s 159 Sch 2 (so far as it relates to the amendment of the *Torres Strait Islander Land Act 1991*) not yet proclaimed into force

Statute Law (Miscellaneous Provisions) Act 1992 No 36 Sch 2

date of assent 2 July 1992

commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

| | | |
|----------|---|--------------------------|
| RA | = | <i>Reprints Act 1992</i> |
| amd | = | amended |
| ins | = | inserted |
| om | = | omitted |
| renum | = | renumbered |
| sub | = | substituted |
| Pt hdg | = | Part heading |
| Div hdg | = | Division heading |
| Sdiv hdg | = | Subdivision heading |
| hdg prec | = | heading preceding |
| prov hdg | = | provision heading |
| cl | = | clause |
| pres | = | present |
| orig | = | original |

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Definitions

s 1.04 def “National Park” amd 1992 No 20 s 159 Sch 2

Lands that are claimable lands

s 2.09 amd 1991 No 76 s 45

Minister to appoint trustees

s 3.02 amd 1991 No 76 s 46

Existing interests

s 3.06 amd 1991 No. 76 s 47

Reservations of forest products and quarry material etc.

s 3.15 amd 1991 No 76 s 48

Establishment of claim on ground of customary affiliation

s 4.09 amd 1991 No 76 s 49

Interests to be endorsed on deed

s 5.09 amd 1992 No 36 s 1 Sch 2

Reservations of forest products and quarry material etc.

s 5.18 amd 1991 No 76 s 50

Division 5—National Parks

Div hdg sub 1992 No 20 s 159 Sch 2

National Park subject to lease to State etc.

s 5.20 sub 1992 No 20 s 159 Sch 2

Park remains National Park

s 5.21 om 1992 No 20 s 159 Sch 2

Appointment of members

s 8.02 amd 1991 No 76 s 51

Termination of appointment

s 8.10 amd 1992 No 36 s 2 Sch 2

5 Table of corrected minor errorsTABLE OF CORRECTED MINOR ERRORS
under section 7(1)(j) of *Reprints Act 1992*

| Section | Description |
|------------|--|
| 8.12(3) | ins 'to' after the words 'have regard' |
| 8.12(3)(a) | om 'to' before the words 'the degree' |
| 8.12(3)(c) | 'in' replaces 'to' where it occurs after the word 'involved' |

6 Provisions that have not commenced and are not incorporated into reprint

The following provision is not incorporated in this reprint because it had not commenced before the reprint date (see s 5(c) *Reprints Act 1992*).

Section 159 Sch 2 of Act No 20 of 1992 (so far as it relates to the amendment of the *Torres Strait Islander Land Act 1991*) reads as follows—

TORRES STRAIT ISLANDER LAND ACT 1991**1. Section 1.04 (definition “National Park”)—**

omit, insert—

‘ “National Park” means an area dedicated under the *Nature Conservation Act 1922* as a National Park;’.

2. Part 5, Division 5—

omit, insert—

Division 5—National Parks**‘National Park subject to lease to State etc.**

‘5.20(1) If granted land is, or includes part of, a National Park (the **‘National Park land’**), the grant of the National Park land—

(a) is subject to the condition that the grantees lease the National Park land, in perpetuity, to the State for the purposes of the management of the National Park land under the *Nature Conservation Act 1992*; and

(b) is subject to such other conditions as the Governor in Council determines, by order in council, in relation to the National Park land or National Parks generally.

‘(2) There is to be a board of management for the National Park land.

‘(3) Subject to subsection (4), the board of management is to be composed in the way approved by the Minister.

‘(4) The Torres Strait Islanders particularly concerned with the National Park land are to be represented on the board of management.

‘(5) The Minister must, in cooperation with the board of management and before the grant of the land, prepare a management plan for the National Park land.

‘(6) Part 7 of the *Nature Conservation Act 1992* applies to the management plan as if it were a conservation plan required to be prepared under the Part.

‘(7) In the preparation of a management plan, the Minister must—

(a) consult with, and consider the views of, the Torres Strait Islanders particularly concerned with the National Park land; and

(b) as far as practicable, but subject to this section and the *Nature Conservation Act 1992*, act in a way that is consistent with any Island custom applicable to the National Park land (including any tradition relating to activities on the National Park land).

‘(8) The lease of the National Park land must be subject to the following conditions—

(a) that the National Park is to be managed in accordance with the management plan as in force from time to time;

(b) that the management plan is to be implemented by the board of management.

‘(9) The grantees of the granted land must—

(a) sign a lease of the National Park land in registrable form containing the required conditions and such other terms and conditions as are agreed; and

(b) give the signed lease to the Minister before or at the time of delivery of the deed of grant issued under section 5.01 in relation to the land.

‘(10) Nothing in this Act or a management plan or lease under this section is to result in a decrease, in the aggregate, in the public rights of access that existed in relation to the National Park land immediately before the land became claimable land.

‘(11) In this section—

“**Minister**” means the Minister administering the *Nature Conservation Act 1992*.’.