

THIS Public Bill originated in the Senate; and, having this day passed, is now ready for presentation to the House of Representatives for its concurrence.

K. O. BRADSHAW,
Clerk of the Senate

The Senate,
Canberra, 18 March 1982

No. 294

A BILL

FOR

An Act providing for the granting of Self-Management and Traditional Land in Queensland for the benefit of Aboriginals and Torres Strait Islanders and for other purposes

BE IT ENACTED by the Queen, the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Queensland Aboriginals and Torres Strait Islanders (Self-Management and Land Rights) Act 1982*.

Commencement

2. This Act shall come into operation on the day on which it receives Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears—
“Aboriginal” means a person who is a member of the Aboriginal race of Australia identified as such by the community in which he lives and includes an Islander;

- “Aboriginal Community” means a Community of persons that, on 31 March 1978, was a community for Aborigines for the purpose of the Aborigines Act;
- “Aboriginal Community to which this Act applies” means an Aboriginal Community in respect of which a declaration under sub-section 5 (3) is in force; 5
- “Aboriginal Reserve” means any land that, on 31 March 1978, was a reserve for the purposes of the Aborigines Act;
- “Aboriginal Reserve to which this Act applies” means an Aboriginal Reserve in respect of which a declaration under sub-section 5 (1) is in force; 10
- “Aborigines Act” means the *Aborigines Act* 1971 of Queensland as in force in Queensland on 31 March 1978 whether or not:
- (a) that Act was amended after 31 March 1978; or
 - (b) that Act was amended by a retrospective law of Queensland; or 15
 - (c) that Act ceases to be in force after 31 March 1978;
- and includes—
- (i) any regulations and other instruments (including by-laws) as in force at 31 March 1978 under or by virtue of the *Aborigines Act* 1971; and 20
 - (ii) any instruments (including any by-laws) as in force at 31 March 1978 under or by virtue of those regulations as in force at 31 March 1978;
- “Community” means an Aboriginal Community or an Islander Community; 25
- “Community to which this Act applies” means an Aboriginal Community to which this Act applies or an Islander Community to which this Act applies;
- “Council”, in relation to a Reserve or Community, means—
- (a) except in a case where paragraph (b) applies—the Aboriginal Council for the Reserve or Community or the Island Council for the Reserve or Community, as the case may be, established or continued in existence under or by the Aborigines Act or the Torres Strait Islanders Act, as the case may be; or 30
 - (b) if a declaration under sub-section 6 (1) is in force at the relevant time in relation to the Reserve or Community—the body specified in that declaration; 35
- “Islander” means a person who is a member of the race to which Torres Strait Islanders belong and is identified as such by the community in which he lives; 40
- “Islander Community” means a Community of persons that, on 31 March 1978, was a community for Islanders for the purpose of the Torres Strait Islanders Act;

“Islander Community to which this Act applies” means an Islander Community in respect of which a declaration under sub-section 5 (4) is in force;

5 “Islander Reserve” means any land that, on 31 March 1978, was a reserve for the purposes of the Torres Strait Islanders Act;

“Islander Reserve to which this Act applies” means an Islander Reserve in respect of which a declaration under sub-section 5 (2) is in force;

“Lands Acquisition Act” means the *Lands Acquisition Act* 1955 as if that Act were amended by the omission of sub-section 6 (2);

10 “law of Queensland” means any law, whether written or unwritten and whether substantive or procedural, and as in force in Queensland from time to time, and includes:

15 (a) a law made by the Parliament of Queensland or a law having effect under, or by virtue of a law made by, the Parliament of Queensland, and includes regulations and other instruments (including by-laws), and

(b) any laws providing for the interpretation of laws specified in paragraph (a);

“Reserve” means an Aboriginal Reserve or an Islander Reserve;

20 “Reserve to which this Act applies” means an Aboriginal Reserve to which this Act applies or an Islander Reserve to which this Act applies;

“Torres Strait Islanders Act” means the *Torres Strait Islanders Act* 1971 of Queensland as in force in Queensland on 31 March 1978 whether or not:

25 (a) that Act was amended after 31 March 1978; or

(b) that Act was amended by a retrospective law of Queensland; or

(c) that Act ceases to be in force after 31 March 1978;

and includes—

30 (i) any regulations and other instruments (including by-laws) as in force at 31 March 1978 under or by virtue of the *Torres Strait Islanders Act* 1971; and

(ii) any instruments (including any by-laws) as in force at 31 March 1978 under or by virtue of those regulations as in force at 31 March 1978.

35 **Act binds Commonwealth and Queensland**

4. This Act binds the Crown in right of the Commonwealth and the Crown in right of Queensland.

PART I—SELF-MANAGEMENT OF RESERVES

Declaration of Reserves and Communities

5. (1) Where—

- (a) the Council for an Aboriginal Reserve requests the Minister to make a declaration under this sub-section; or 5
- (b) the Minister is satisfied that a majority of the adult Aboriginals resident on an Aboriginal Reserve wish to manage and control their own affairs in the manner provided for by this Act,

the Minister shall, within 30 days after receiving the request or being so satisfied, as the case may be, by notice published in the *Gazette*, declare the reserve to be an Aboriginal Reserve to which this Act applies. 10

(2) Where—

- (a) the Council for an Islander Reserve requests the Minister to make a declaration under this sub-section; or
- (b) the Minister is satisfied that a majority of the adult Islanders resident on an Islander Reserve wish to manage and control their own affairs in the manner provided for by this Act, 15

the Minister shall, within 30 days after receiving the request or being so satisfied as the case may be, by notice published in the *Gazette*, declare the reserve to be an Islander Reserve to which this Act applies. 20

(3) Where—

- (a) the Council for an Aboriginal Community requests the Minister to make a declaration under this sub-section; or
- (b) the Minister is satisfied that a majority of the adult Aboriginals who are the members of an Aboriginal Community wish to manage and control their own affairs in the manner provided for by this Act, 25

the Minister shall, within 30 days after receiving the request or being so satisfied as the case may be, by notice published in the *Gazette*, declare the Community to be an Aboriginal Community to which this Act applies.

(4) Where— 30

- (a) the Council for an Islander Community requests the Minister to make a declaration under this sub-section; or
- (b) the Minister is satisfied that a majority of the adult Islanders who are the members of an Islander Community wish to manage and control their own affairs in the manner provided for by this Act, 35

the Minister shall, within 30 days after receiving the request or being so satisfied as the case may be, by notice published in the *Gazette*, declare the Community to be an Islander Community to which this Act applies.

(5) Where a Council for an Aboriginal or Islander Community makes a request under sub-section 5 (1), (2), (3) or (4) of the *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management)* 40

Act 1978 that request shall be deemed to be a request under sub-section (1), (2), (3) or (4) as the case may be.

Declaration of Councils for the purposes of this Act

6. (1) If, at any time—

- 5 (a) there is not in existence for a Reserve to which this Act applies, or for a Community to which this Act applies, a Council of a kind referred to in paragraph (a) of the definition of “Council” in section 3; or
- 10 (b) there is in existence for a Reserve to which this Act applies, or for a Community to which this Act applies, a Council of that kind, but the declaration under section 5 has been made other than at the request of that Council, or the Minister is satisfied that the Council does not represent the wishes of a majority of the adult Aboriginals or Islanders who are resident on the Aboriginal or Islander Reserve, or who are members of the Aboriginal or Islander Community, as the case may be,
- 15 the Minister shall cause to be conducted by the Commonwealth Electoral Office, within thirty days of a declaration under section 5, an election for a Council, and upon the declaration of the election by the Commonwealth Electoral Office the persons duly elected in accordance with the regulations shall be constituted as the Council for the Reserve or for the Community, as the case may be, for the purpose of this Act.
- 20

(2) A declaration under sub-section (1) does not cease to have effect by reason that, after the making of the declaration, another body is established, or purports to be established, under or by the Aborigines Act or the Torres Strait Islanders Act as the Aboriginal Council for the Reserve or Community, or the Island Council for the Reserve or Community, as the case may be, to which the declaration relates.

25

(3) The Governor-General may make regulations prescribing—

- 30 (a) the ascertainment by the Commonwealth Electoral Office of the persons, being Aboriginals or Islanders, entitled to vote in elections conducted under sub-section (1);
- (b) the method of voting for elections conducted under sub-section (1), providing that such method shall provide for election by secret ballot;
- (c) the method of counting votes, provided that all votes cast are accorded equal values;
- 35 (d) the number of persons to be elected to a Council to be elected under sub-section (1);
- (e) the manner in which persons entitled to vote may become candidates for election;
- (f) provision for voting by illiterate persons; and
- 40 (g) all matters not inconsistent with sub-section (1), required or permitted by sub-section (2) or necessary or convenient for carrying out or giving effect to sub-section (1).

Functions of Councils

7. (1) The Council for an Aboriginal Reserve to which this Act applies, or for an Islander Reserve to which this Act applies, shall manage and control the affairs of the Aboriginal Community or the Islander Community, as the case may be, residing on the Reserve.

5

(2) The Council for a Reserve to which this Act applies has such other functions as are conferred on it by the regulations, being functions in relation to persons who reside on the Reserve or are on the Reserve.

(3) The Council for an Aboriginal Community to which this Act applies, or for an Islander Community to which this Act applies, shall manage and control the affairs of that Aboriginal Community or that Islander Community, as the case may be.

10

(4) The Council for a Community to which this Act applies has such other functions as are conferred on it by the regulations, being functions in relation to persons who are members of that Community or are on that part of the Reserve on which the Community is established that is appropriated for the use of the Community.

15

Councils responsible to Communities

8. (1) The Council for an Aboriginal Reserve to which this Act applies, or for an Islander Reserve to which this Act applies, shall be responsible to, and only to, the Aboriginal Community or the Islander Community, as the case may be, residing on the Reserve for the conduct, discipline and well-being of the members of the Aboriginal Community or the Islander Community, as the case may be.

20

(2) The Council for an Aboriginal Community to which this Act applies, or for an Islander Community to which this Act applies, shall be responsible to, and only to, that Aboriginal Community or that Islander Community, as the case may be, for the conduct, discipline and well-being of the members of that Community.

25

Provision of services by Councils

30

9. (1) Without limiting the services that, in the performance of its functions, may be provided or made available by the Council for a Reserve to which this Act applies, or for a Community to which this Act applies, or that such a Council may arrange to be provided or made available, for persons who reside on the Reserve or are members of that Community, as the case may be, such a Council may provide or make available, or arrange to be provided or made available, for such persons services relating to all or any of the following matters:

35

- (a) housing;
- (b) health;
- (c) sewerage;
- (d) water supply;

40

- (e) electricity supply;
- (f) communications;
- (g) education or training;
- (h) relief work for unemployed persons;
- 5 (j) roads and associated works;
- (k) garbage collection and disposal;
- (l) welfare;
- (m) community amenities;
- (n) forestries;
- 10 (o) waterways;
- (p) fisheries.

(2) Sub-section (1) shall not be construed as preventing any body, authority or person other than the Council for a Reserve to which this Act applies, or for a Community to which this Act applies, with the consent of the Council and the Minister, from providing or making available for the persons who reside on the Reserve or who are members of that Community, as the case may be, any services, including services relating to all or any of the matters specified in sub-section (1).

Power of Councils to make by-laws

20 **10. (1)** The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, may make by-laws for purposes connected with its functions, including by-laws amending or varying by-laws as in force from time to time under this section.

25 (2) By-laws made under sub-section (1) may fix charges for services provided or made available by the Council for Aboriginals or Islanders, and may make provision with respect to the payment of such charges.

30 (3) The amount of a charge referred to in sub-section (2) may, if unpaid, be recovered by the Council by action in a court of competent jurisdiction from any persons to whom the service to which the charge relates has been provided or made available.

(4) Subject to this Act, by-laws made under sub-section (1) bind the Crown in right of the Commonwealth and the Crown in right of Queensland.

(5) In sub-section (1), "functions" includes the provision, making available, or arranging to make available services under sub-section 9 (1).

35 (6) Where a Council makes by-laws under sub-section (1), the Council shall cause a copy of the by-laws to be received by the Minister within 3 days of the making of the by-laws.

(7) Where the Minister receives a copy of any by-laws, he shall cause a copy of the by-laws to be laid before each House of the Parliament within 15

sitting days of that House after the day on which he receives a copy of those by-laws.

(8) Where a copy of any by-laws has been laid before a House of the Parliament in accordance with sub-section (5), sub-sections (4), (5), (5A) and (6) of section 48 of the *Acts Interpretation Act* 1901 apply to and in relation to those by-laws as if references in those sub-sections to regulations were references to such by-laws. 5

(9) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, shall use its best endeavours to ensure that the by-laws of the Council are made known to Aboriginals or Islanders who reside on the Reserve or are members of the Community. 10

(10) The by-laws may provide that any contravention of a by-law is an offence punishable, upon conviction, by a fine not exceeding \$50.

(11) In proceedings for an offence referred to in sub-section (10), it is a defence if the person charged proves that he was not aware of the by-laws to which the offence relates. 15

Powers of Councils

11. (1) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, may do all things that are necessary or convenient to be done for or in connection with the performance of its functions. 20

(2) Subject to the regulations, the Council for a Reserve to which this Act applies, or for a Community to which this Act applies, may, in the performance of its functions, receive and disburse moneys.

Entry to Reserves or Communities 25

12. (1) A person, not being an Aboriginal or Islander, shall not reside on a Reserve or visit a Reserve or Community without the authority of the Council or the consent of the Minister.

(2) A person who is an Aboriginal or Islander, shall not be prevented from residing on a Reserve or visiting a Reserve or Community, except by a decision of the Council. 30

Entry to Premises on Reserves or Communities

13. Where premises situated on a Reserve to which this Act applies, or on which there is established a Community to which this Act applies, are occupied by an Aboriginal or Islander, a person is not entitled, without the consent of the Aboriginal or Islander, to enter those premises unless, if the Reserve on which those premises are situated were not a Reserve, the entry would not be unlawful. 35

Application of Queensland Law to Part I

5 14. (1) The Council for a Reserve to which this Act applies, or for a Community to which this Act applies, is not subject to control under a prescribed law of Queensland and, in particular, is not required to comply with any directions given to it under or by virtue of a prescribed law of Queensland.

 (2) Subject to sub-sections (1) and (3), this Part does not affect the application to a Reserve, or to a Community of a law of Queensland to the extent that that law is capable of operating concurrently with this Part.

10 (3) The regulations may make provision for the exclusion or modification of a law of Queensland which adversely affects Aboriginals or which discriminates against Aboriginals, in its application to Reserves or to Communities.

Commonwealth may make land available to Councils

15 15. (1) The Commonwealth may make available to the Council for a Reserve to which this Part applies, or for a Community to which this Part applies, for the purpose of enabling the Council to perform its functions, any land acquired by or otherwise vested in the Commonwealth.

 (2) For the purpose of making land available under sub-section (1), the Commonwealth may acquire the land under the *Lands Acquisition Act 1955*.

20 (3) In this section, "land" has the same meaning as in the *Lands Acquisition Act 1955*.

Compensation

25 16. (1) If the operation of this Part results in the acquisition of property from a person (including the Crown in right of Queensland), being an acquisition of property within the meaning of paragraph 51 (xxxi) of the Constitution, the Commonwealth is liable to pay to that person such compensation as is determined by agreement between the Commonwealth and that person or, in the absence of agreement, by action brought by that person against the Commonwealth in the Supreme Court of Queensland.

30 (2) The Supreme Court of Queensland has jurisdiction, to the extent that the Constitution permits, with respect to matters arising under this section.

Non-derogation of Commonwealth law

35 17. The provisions of this Part are in addition to, and shall not be taken as being in derogation of, the provisions of the *Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975*.

PART II—GRANTS OF LAND TO ABORIGINAL LAND TRUSTS IN RESPECT OF ABORIGINAL RESERVES

Interpretation

18. In this Part, unless the contrary intention appears—

- “Aboriginal Council” has the same meaning as in the *Aboriginal Councils and Associations Act 1976*; 5
- “Aboriginal land” means land held by a Land Trust for an estate or interest in land;
- “Aboriginal or Islander tradition” means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships; 10
- “adult Aboriginal” means an Aboriginal who has attained the age of 18 years; 15
- “area”, in relation to a Land Trust, means an area for which the Trust is established under this Act;
- “Authority” means an authority established by or under a law of the Commonwealth;
- “community purpose” means a purpose that is calculated to benefit primarily the members of a particular community or group; 20
- “exploration licence” includes a prospecting authority and also a permit in respect of land under a law of Queensland relating to mining;
- “Incorporated Aboriginal Association” means an Aboriginal association incorporated under the *Aboriginal Councils and Associations Act 1976*; 25
- “interest or estate”, in relation to land, means—
 - (a) a fee simple estate in perpetuity,
 - (b) a legal or equitable estate or interest in the land, or
 - (c) a right, power or privilege over, or in connection with, the land; 30
- “Judge” means a Judge of a court created by the Parliament;
- “land” includes an interest or estate in land;
- “Land Trust” means an Aboriginal Land Trust established under this Act;
- “mineral royalties” means royalties payable to the Commonwealth in respect of the mining of minerals; 35
- “minerals” includes—
 - (a) gold, silver, copper, tin and other metals;
 - (b) coal, shale, petroleum and valuable earths and substances;
 - (c) mineral substances;
 - (d) gems and precious stones; and 40
 - (e) ores and other substances containing minerals,
 whether suspended in water or not, and includes water;

“mining interest” means any lease or other interest in land (including an exploration licence) granted under a law of Queensland relating to mining for minerals;

5 “mission” means a religious society or association the purposes of which are, or include, furthering the spiritual, cultural or economic welfare of Aboriginals, and includes a trustee or trustees empowered to hold land on behalf of such a society or association;

“petroleum” means—

- 10 (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- 15 (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium and carbon dioxide;

“traditional Aboriginal owners”, in relation to land, means a group of Aboriginals or Islanders who—

- 20 (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land;
- (b) are entitled by Aboriginal or Islander tradition to forage as of right over that land; or
- 25 (c) are entitled to land ownership by virtue of prior residence on a Reserve or by virtue of having been born on a Reserve.

Application by Council for land grant

30 **19.** Where there is in existence in respect of an Aboriginal or Islander Reserve a declaration under section 5, the Council for that Reserve or Community may make an application in writing to the Minister for a grant of an interest or estate in the land in respect of that reserve in accordance with this Part.

Form of application

20. (1) An application by a Council under this Part—

- 35 (a) shall be in writing; and
- (b) shall request the Minister to acquire an interest or estate in the land on which the reserve is situated; and
- (c) may contain such further information as the Council sees fit to include.

(2) Subject to sub-section (1), an application under this Part shall not be required to be in any particular form.

Acquisition of land by Minister on request by Council

21. Where, on the receipt of an application from a Council for a reserve under section 20, the Minister is reasonably satisfied that:

- (a) the application is supported by a majority of the traditional land owners in respect of the Reserve or is supported by a majority of adult Aboriginals or Islanders entitled to live on the Reserve; and 5
- (b) that it is for the interests of the traditional land owners or residents of the Reserve for the application to be granted,

the Minister shall, within 12 months of receipt of the application, acquire the interest or estate in land (or a part thereof, where the Minister is satisfied that there are special reasons for so doing) which is the subject of the application in accordance with the provisions of the *Lands Acquisition Act 1955*. 10

Establishment of Land Trusts

22. (1) Where the Minister acquires land in Queensland under this Part, the Minister shall by notice published in the *Gazette*, establish Aboriginal Land Trusts or Islander Land Trusts, as the case may be, to hold title to land in Queensland for the benefit of Aboriginals or Islanders who in the opinion of the Minister, are entitled, whether by Aboriginal or Islander tradition or by prior residence or by birth on a Reserve, to the use or occupation of the land concerned, whether or not the entitlement is qualified as to place, time, circumstance, purpose or permission, and shall so establish Land Trusts to hold any interests or estates in land acquired from the Crown in right of Queensland by the Minister in accordance with this Part. 15 20

- (2) A notice published under sub-section (1) shall— 25
 - (a) specify the name of the Land Trust;
 - (b) specify the interest or estate in land to be held by the Land Trust;
 - (c) identify the Aboriginals or Islanders for whose benefit land is to be held by the Land Trust; and
 - (d) set out the boundaries of the land to be held by the Land Trust.

- (3) A Land Trust— 30
 - (a) is a body corporate, with perpetual succession;
 - (b) shall have a common seal;
 - (c) subject to this Part, may acquire, hold and dispose of real and personal property;
 - (d) may sue and be sued in its corporate name; 35
 - (e) may receive and disburse moneys;
 - (f) may appoint and dismiss staff; and
 - (g) may obtain advice from persons who are expert in matters with which the Trust is concerned.

(4) The common seal of a Land Trust shall be kept by a member of the staff of the Land Trust. 40

(5) The common seal of a Land Trust shall be affixed to a document only with a written authority signed by the Chairman and at least 2 other members of the Land Trust.

5 (6) All courts, judges and persons acting judicially shall take notice of the common seal of a Land Trust affixed to a document and shall presume that it was duly affixed.

Functions of Land Trust

23. The functions of a Land Trust are—

- 10 (a) to hold title to interests or estates in land vested in it in accordance with this Act;
- (b) to exercise its powers as owner of land referred to in paragraph (a) for the benefit of the Aboriginals concerned;
- 15 (c) to ascertain the wishes and opinions of traditional owners in relation to the management, use and control of the lands and to seek, where practicable, to give effect to those wishes and opinions;
- (d) to protect the interests of traditional owners in relation to the management, use and control of the lands; and
- (e) to negotiate with persons desiring to use, occupy or gain access to any part of the land.

Membership of Land Trust

20 24. (1) A Land Trust shall consist of a Chairman and such other members not less than 3 in number as the Minister appoints.

25 (2) The Minister shall appoint to the Land Trust not less than 3 persons (including the Chairman) nominated to the Minister by that Council which made the application under section 20 in respect of the land held by the Land Trust.

(3) Members of a Land Trust nominated by a Council shall constitute a majority of the members of the Land Trust.

30 (4) The Minister shall endeavour to appoint to the Trust persons who will reflect the wishes of the traditional Aboriginal owners.

(5) A member of a Land Trust shall be appointed as a part-time member.

(6) The exercise of a power or performance of a function by a Land Trust is not affected by reason only of there being a vacancy in the office of a member of the Land Trust.

35 (7) Decisions of the Land Trust shall be made only by a majority of members of that Land Trust.

(8) All members of a Land Trust shall be Aboriginals living in the area in which the land of the Land Trust is situated or whose names are set out in the register maintained by that Land Trust in accordance with section 32.

(9) Subject to this Act, a member of a Land Trust holds office for such period, not exceeding 3 years, as is specified in the instrument of his appointment and on such terms and conditions as the Minister determines, but is eligible for reappointment.

(10) Where a member of a Land Trust is unable, whether on account of illness or otherwise, to perform the duties of his office, the Minister may with the consent of the Land Trust appoint an Aboriginal to act in the place of that member during the period during which that member is unable to perform the duties of his office.

(11) A person appointed to act in the place of a member of a Land Trust has all the functions, powers and duties of that member.

(12) In sub-section (3) "Council" includes a body which by virtue of regulations made under section 29 is responsible for the management and control of the affairs of the Aboriginals for whose benefit a Land Trust is established.

Termination of appointment of members of Land Trusts

25. (1) Where a Land Trust requests the Minister, in writing, to remove a member of the Land Trust on the ground that he has, in the opinion of the Land Trust, failed properly to perform the duties of his office, the Minister shall, if he is satisfied that the request is reasonable, terminate the appointment of the member.

(2) Where, under sub-section (1), a member of a Land Trust, in respect of whom sub-section (1) applies, has been nominated by a Council under sub-section 24 (2) or (3), the Minister shall cause to be delivered to the Council a statement in writing as to the reasons for the request under sub-section (1) by the Land Trust and shall consult with the Council before terminating the appointment.

Resignation of member of Land Trust

26. A member of a Land Trust may resign his office by writing under his hand delivered to the Minister.

Recommendation for grants of land to Land Trusts

27. Where a Land Trust has been established in respect of an area of land, the Minister shall recommend to the Governor-General that a grant of the interest or estate acquired in respect of that land be made to that Land Trust.

Grants of land to Land Trusts

28. (1) Subject to this section, on the receipt of a recommendation under section 27 with respect to land, the Governor-General shall execute a deed of grant of an estate in perpetuity in the land in accordance with the recommendation and deliver it to the grantee.

5 (2) A deed of grant under this section may be expressed to be subject to the reservation that the right to any minerals existing in their natural condition, or in a deposit of waste material obtained from any underground or surface working, on or below the surface of the land remains with the Crown in right of Queensland.

(3) A deed of grant under this section—

(a) shall identify any land on which there is, at the time of the grant, a road over which the public has a right of way; and

(b) shall be expressed to exclude such land from the grant.

10 (4) A deed of grant under this section takes effect on the date on which it is delivered by the Governor-General to the grantee.

15 (5) On the application of a Land Trust to which has been delivered a deed of grant of an estate or interest in land executed by the Governor-General under this section, the appropriate officer under the law of Queensland relating to the transfer of land shall register and otherwise deal with that deed of grant under that law according to its tenor.

(6) Subject to sub-section (5), the provisions of the *Real Property (Commonwealth Titles) Act* 1924, of Queensland, as amended from time to time, apply to a deed of grant under this section.

20 (7) In this section, a reference to a delivery of a deed by a person shall be read as including a reference to a delivery of the deed by the duly authorized agent of the person.

Self-management of Aboriginal land

25 29. (1) Where a Land Trust has been established in respect of an area of land, the Governor-General may make regulations in accordance with this section.

(2) The regulations may provide that—

(a) a Council established under Part I in respect of an area of land held under Part II by a Land Trust;

30 (b) an Aboriginal Council;

(c) an Incorporated Aboriginal Association;

(d) a Land Trust; or

(e) a body established by the regulations constituted by Aboriginals who are traditional Aboriginal owners and are elected by the traditional
35 Aboriginal owners,

shall be responsible for the management and control of the affairs of the Aboriginals for whose benefit a Land Trust is established under sub-section 22 (1).

(3) Regulations made under this section shall provide for—

40 (a) the services to be provided or made available, or arranged to be provided or made available, by a body specified in sub-section (2);

- (b) the functions of a body specified in sub-section (2), being functions in relation to Aboriginals and Islanders for whose benefit a Land Trust is established under sub-section 22 (1); and
- (c) powers in respect of the making of by-laws by a body specified in sub-section (2) in respect of its functions. 5

(4) Sub-sections (4), (5), (5A) and (6) of section 48 of the *Acts Interpretation Act* 1901 apply to and in relation to by-laws made under regulations made in accordance with this section as if references in those sub-sections to regulations were references to such by-laws.

(5) Until the making of regulations under this section, Part I applies to Aboriginal land as if such Aboriginal land were an Aboriginal or Islander Reserve and any Council established under Part I shall continue in existence with the powers specified in Part I until the regulations otherwise provide. 10

(6) The Executive Council shall not offer advice to the Governor-General with respect to the making of regulations under this section unless the Minister has certified that the traditional Aboriginal owners understand the nature and purpose of the proposed regulations and as a group consent to the proposed regulations. 15

Occupation or use of Aboriginal land by a mission

30. (1) Where, on the vesting of an estate or interest in land in a Land Trust, the land is being occupied or used by a mission with the licence or permission of the Crown, the mission is entitled to continue that occupation or use in accordance with this section. 20

(2) The Land Trust for the area in which land referred to in sub-section (1) is situated may serve notice on the mission that it wishes to terminate the occupation or use of the land by the mission on a date specified in the notice, being a date not earlier than 12 months after the date on which the notice is served. 25

(3) Where a notice is served on a mission in accordance with sub-section (2), the mission ceases, on the date of termination specified in the notice, to be entitled to occupy or use the land. 30

(4) Where—

- (a) a mission ceases, by virtue of a notice served on it under sub-section (3), to be entitled to occupy or use land; and
- (b) there are on the land buildings or other improvements that were erected, wholly or partially, by or at the expense of the mission before the service of that notice, 35

the Land Trust shall pay to the mission an amount equal to—

- (c) where the buildings or other improvements referred to in paragraph (b) were erected wholly by or at the expense of the mission—the value, as agreed by the Land Trust and the mission, or, in the absence of such agreement, as determined by the Minister, of those buildings or other 40

improvements at the time of service of the notice under sub-section (2); or

- (d) in any other case—such part of the value referred to in paragraph (c) as is attributable to the action of the mission.

5 (5) Nothing in this section prevents the granting by the Land Trust of a lease of land referred to in sub-section (1) to a mission and, if such a lease is granted, the land ceases to be land to which this section applies.

Dealings with interests in land by Land Trusts

10 31. (1) Except as provided by this Part, a Land Trust shall not deal with or dispose of, or agree to deal with or dispose of, any estate or interest in land vested in it.

(2) A Land Trust may, subject to this section, grant a lease or licence in respect of land vested in it to an Aboriginal, an Aboriginal Council or an Incorporated Aboriginal Association—

- 15 (a) for use for residential purposes by—
- (i) the Aboriginal and his family; or
 - (ii) an employee of the Aboriginal or the Council or Association, as the case may be;
- (b) for use in the conduct of a business by the Aboriginal, the Council or Association, not being a business in which a person who is not an Aboriginal has an interest that entitles him to a share in, or to a payment that varies in accordance with, the profits of the business; or
- 20 (c) for any community purpose of the Aboriginal community or group for whose benefit the Land Trust holds the land.

25 (3) A Land Trust may, subject to this section, grant a lease or licence in respect of land vested in it to the Commonwealth or an Authority for any public purpose or to a mission for any mission purpose.

(4) With the consent, in writing, of the Minister, a Land Trust may—

- 30 (a) grant a lease or licence in respect of the whole, or any part of, the land vested in it to any person for any purpose; and
- (b) transfer to another Land Trust, or surrender to the Crown, the whole or any part of its estate or interest in the whole, or any part of, the land vested in it.

35 (5) A Land Trust shall not grant, transfer or surrender an estate or interest in land unless the Land Trust is satisfied that—

- (a) the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed grant, transfer or surrender and consent to it;
- 40 (b) any Aboriginal community or group that may be affected by the proposed grant, transfer or surrender has been consulted and has had adequate opportunity to express its view to the Land Trust; and

(c) in the case of a proposed grant of a lease or licence—the terms and conditions of that lease or licence are reasonable.

(6) Except with the consent, in writing, of the Minister—

(a) the term of a lease or licence granted under sub-section (2) for a purpose referred to in paragraph (2)(b) or (c) shall not exceed 10 years; and 5

(b) the term of a lease or licence granted under sub-section (3) shall not exceed 5 years.

(7) The grantee of a lease or licence under this section is not empowered to transfer his interest as such grantee to another person, or to grant to another person an interest dependent upon his interest as such grantee, except with the consent, in writing, of the relevant Land Trust and, if the consent of the Minister was required to the grant of that lease or licence to the grantee, the consent, in writing, of the Minister. 10

(8) Where a grant of a lease or licence is invalidated, by failure of the Land Trust to comply with sub-section (5), that invalidity does not affect the rights of a person who has for value and without notice of that failure, accepted the transfer of that lease or licence or been granted an interest dependent upon that lease or licence. 15

(9) In sub-section (8), “notice” includes any information or matter of which a person could, by reasonable enquiry, have attained knowledge or become aware. 20

Register of traditional owners of Aboriginal land

32. A Land Trust shall compile, and maintain, a register setting out—

(a) the names of the persons who, in the opinion of the Trust, are the traditional Aboriginal owners of Aboriginal land in the area of the Land Trust; and 25

(b) in relation to each group of traditional Aboriginal owners, a map or other references showing the sites belonging to them in so far as such can be done without breach of Aboriginal usage. 30

Conciliation of disputes

33. (1) The Minister may appoint persons to act as Disputes Commissioners in accordance with this section.

(2) Disputes Commissioners shall be persons familiar with Aboriginal or Islander tradition. 35

(3) Before the appointment of any person to act as a Disputes Commissioner, the Minister shall consult as widely as possible with those bodies or groups who may be affected by decisions of that Disputes Commissioner.

(4) The terms of appointment of a Disputes Commissioner shall specify the Land Trust or Land Trusts in respect of which the Disputes Commissioner has jurisdiction.

(5) The terms and conditions upon which Disputes Commissioners hold office shall be determined by the Minister.

34. (1) This section applies to—

- (a) Aboriginals;
- (b) Councils;
- (c) Aboriginal Councils;
- (d) Incorporated Aboriginal Associations and any other incorporated Aboriginal groups;
- (e) any prescribed body with powers of self-management in respect of Aboriginal land; and
- (f) a person in respect of whom a Land Trust refuses consent, under section 44, to enter or remain on Aboriginal Land held by the Land Trust.

(2) Any Aboriginal person or body specified in sub-section (1) who is aggrieved by a decision or action of a Land Trust may appeal to a Disputes Commissioner appointed in respect of that Land Trust.

(3) Any Aboriginal or Islander, who is prevented by a decision of a Council under sub-section 12 (2), from residing on a Reserve or visiting a Reserve or Community may appeal to a Disputes Commissioner appointed in respect of that Council.

(4) The Disputes Commissioner is not bound by the rules of evidence in proceedings under this section, but may inform himself in such manner as he thinks fit.

(5) In proceedings under this section, the Disputes Commissioner should observe, and where appropriate give effect to, Aboriginal or Islander tradition.

(6) A Disputes Commissioner may, in proceedings under this section—

- (a) give such directions as he considers just or expedient to resolve any matters in dispute; or
- (b) refer the matter back to the Land Trust to be further dealt with in accordance with his directions.

35. (1) If a person refuses or fails to comply with a direction of any party to the proceedings before a Disputes Commissioner, that Disputes Commissioner may apply to a prescribed court for an order to compel that person to comply with that direction.

(2) Upon an application under this section, the court shall, unless satisfied that the direction of the tribal assessor is unjust or unreasonable, make an order

requiring the person against whom the direction was made to comply with the direction.

(3) Proceedings under this section shall be conducted as expeditiously as possible and without undue formality.

(4) In this section, "person" includes a Land Trust and a Council. 5

36. Where proceedings are commenced before a court with respect to a dispute with respect to land in the area of a Land Trust, the judge or magistrate constituting the court may, if he thinks it appropriate, adjourn the proceedings and refer the matter to the Disputes Commissioner appointed in respect of that Land Trust. 10

Grants of mining interests

37. A mining interest in respect of Aboriginal land shall not be granted or shall not have effect unless—

- (a) both the Minister and the Land Trust for the area in which the land is situated have consented, in writing, to the making of the grant; or 15
- (b) each House of Parliament has, by resolution, declared that the national interest requires that the grant be made and that the applicant has complied with sub-section 39 (2).

Non-application of section 37 to grants in substantial accord with proposals

38. Where the Minister and a Land Trust, after considering proposals placed before them by an applicant for an exploration licence in respect of Aboriginal land, being proposals for the exploration for minerals on that land and the recovery of any minerals found as a result of the exploration, have, for the purposes of section 37, consented to the grant of that licence, that section does not apply to a later grant to that person of other mining interests in respect of that land that are in substantial accordance with those proposals. 25

Payments in respect of grant of mining interests

39. (1) A Land Trust may agree with an applicant for a mining interest in respect of Aboriginal land in the area of the Land Trust for the giving of consent by the Land Trust to the granting of that mining interest to that applicant in consideration of the payment to the Land Trust by the applicant of an amount or amounts specified in, or calculated in accordance with, the agreement and of the acceptance of such other terms and conditions as are provided for in the agreement. 30

(2) Where, by virtue of paragraph 37(b), a mining interest in respect of Aboriginal land may be granted without the consent of the Land Trust for the area in which the land is situated, the mining interest shall not be granted unless the applicant for the mining interest has entered into an agreement under seal with the Land Trust containing such terms and conditions as are agreed on by the parties having regard to the effect of the grant of the mining interest on Aboriginals, which terms may include a requirement for the payment of the 35
40

Land Trust by the applicant of an amount or amounts specified in, or calculated in accordance with, the agreement.

5 (3) An agreement of the kind referred to in sub-section (1) or (2) in respect of a lease or other mining interest authorizing the recovery of minerals of any kind shall not be made unless and until the terms and conditions on which that lease or other mining interest is to be granted have been determined, and an agreement purporting to be made in contravention of this sub-section is void and of no effect.

10 (4) An agreement under sub-section (1) or (2) may make provision for the distribution of any moneys paid to the Land Trust under the agreement to or for the benefit of such groups of Aboriginals as are specified in the agreement.

Arbitration on agreement sought by Land Trust

15 40. (1) Where the Minister is satisfied that a Land Trust has refused or is unwilling to give its consent to the grant of a mining interest by reason that the applicant for the grant will not enter into an agreement proposed by the Land Trust as consideration for the giving of the grant, he shall require production to him of a copy of a statement in writing by the applicant for the grant and an acknowledgement in writing signed by not less than one half of the members of the Land Trust that they have seen and understood the proposals contained in the statement in writing.

25 (2) If the Minister considers the proposals contained in the statement in writing referred to in sub-section (1) by the applicant for the grant to be just and equitable in the circumstances, after consultation with the Land Trust and the applicant for the grant, the Minister may appoint a person who is acceptable to the Land Trust and the applicant and is in a position to deal with the matter impartially to be an Arbitrator to determine in accordance with the law for the time being in force in the State of Queensland with respect to Arbitration, the terms and conditions of the agreement that, in the opinion of the Arbitrator, should be acceptable to the Land Trust and to the applicant as consideration for the giving by the Land Trust of its consent to the grant.

30 (3) The written statement referred to in sub-section (1) shall set out—

(a) the amount of payments which the applicant for the grant is prepared to make to the Land Trust on behalf of the traditional Aboriginal owners of the land—

35 (i) in consideration of the right to enter upon the land to explore and prospect for minerals; and

(ii) by way of royalties in respect of minerals, if any, extracted from the land;

40 (b) the amount and nature of any other interest or benefit which is proposed to be granted to, or to any person or Land Trust on behalf of, the traditional Aboriginal owners of the land;

- (c) the type of employment proposed to be available for Aboriginals in connection with the activities which the applicant for the grant proposes to carry out upon the land;
- (d) the manner in which the applicant for the grant proposes to preserve and protect any site or object upon the land which is of significance to the traditional Aboriginal owners of the land; 5
- (e) the nature of each type of activity which the applicant for the grant proposes to carry out upon the land, and the order in which such activities are proposed to be carried out;
- (f) the manner in which the applicant for the grant proposes to consult with the Land Trust and the traditional Aboriginal owners of the land in respect of activities carried out by him or by others on his behalf upon or in respect of the land; and 10
- (g) such other matters as the Minister may require.

(4) Where the Arbitrator has determined the terms and conditions of an agreement under sub-section (1) and the applicant for the grant is willing to enter into that agreement with the Land Trust, the Land Trust shall enter into that agreement with the applicant and, in consideration of that agreement, shall give its consent to the grant sought by the applicant. 15

(5) Where the Minister is satisfied that a Land Trust has refused, or is unwilling, to comply with sub-section (4), the Minister may, on behalf of the Land Trust, enter into such agreement and give such consent as is required of the Land Trust by that sub-section. 20

Arbitration on required agreement

41. (1) Where the Minister is satisfied that— 25

- (a) a Land Trust has refused, or is unwilling, to negotiate with respect to the terms and conditions of an agreement required by sub-section 39 (2); or
- (b) the Land Trust and the applicant for the relevant mining interest cannot agree on the terms and conditions of an agreement required by sub-section 39 (2), 30

the Minister may, after consultation with the Land Trust and, where appropriate, with the applicant for the grant, appoint an Arbitrator, being a person whom the Minister considers to be in a position to deal with the matter impartially, to determine the terms and conditions of the agreement, that, in the opinion of the Arbitrator, should be acceptable to the Land Trust and to the applicant on the basis that the entering into of the agreement by the Land Trust is equivalent to the giving of a necessary consent by the Land Trust to the grant of the relevant mining interest. 35

(2) The Arbitrator shall, at the request of the Land Trust, provide a statement in writing setting out the reasons for his determination under sub-section (1). 40

(3) Where the Arbitrator has determined the terms and conditions of an agreement under sub-section (1) and the applicant for the grant is willing to enter into that agreement with the Land Trust, the Land Trust shall enter into that agreement.

5 (4) Where the Minister is satisfied that a Land Trust has refused, or is unwilling, to enter into an agreement in accordance with sub-section (3), the Minister may, in the name of, and on behalf of, the Land Trust, enter into the agreement.

10 (5) Where the Arbitrator appointed under sub-section (1) has determined the terms and conditions of an agreement and the applicant for the grant is not willing to enter into that agreement with the Land Trust, the Minister shall not appoint another person to act as an Arbitrator in respect of that mining interest.

Consent of Land Trust to reflect views of traditional Aboriginal owners

15 42. A Land Trust shall not give a consent referred to in paragraph 37 (a) unless the Land Trust is satisfied that—

- 20 (a) the traditional Aboriginal owners (if any) of the land to which the proposed grant or application relates understand the nature and purpose of the proposed grant or application, as the case may be, and, as a group, consent to it;
- (b) any Aboriginal community or group that may be affected by the proposed grant or application, as the case may be, has been consulted and has had adequate opportunity to express its view to the Land Trust; and
- 25 (c) in the case of a proposed grant—the terms and conditions of that grant are reasonable.

Aboriginal land not to be resumed etc.

43. Aboriginal land shall not be resumed, compulsorily acquired or forfeited under any law of Queensland.

Entry on Aboriginal land

30 44. (1) Except in the performance of functions under this Act or otherwise in accordance with this Act, or by a law which by virtue of section 47 applies to Aboriginal land, a person shall not enter or remain on Aboriginal land without the consent of the Land Trust which holds that land.

35 Penalty: \$1,000.

(2) Where a person, other than a Land Trust, has an estate or interest in Aboriginal land—

- 40 (a) a person is entitled to enter and remain on the land for any purpose that is necessary for the use or enjoyment of that estate or interest by the owner of the estate or interest; and

- (b) a law of Queensland shall not authorize an entry or remaining on the land of a person if his presence on the land would interfere with the use or enjoyment of that estate or interest by the owner of the estate or interest.

(3) In proceedings for an offence against sub-section (1), it is a defence if the person charged proves that his entry or remaining on the land was due to necessity. 5

Traditional rights to use or occupation of Aboriginal land

45. (1) Subject to this section, an Aboriginal or a group of Aboriginals is entitled to enter upon Aboriginal land and use or occupy that land to the extent that that entry, occupation or use is in accordance with Aboriginal tradition governing the rights of that Aboriginal or group of Aboriginals with respect to that land, whether or not those rights are qualified as to place, time, circumstances, purpose, permission or any other factor. 10

(2) Sub-section (1) does not authorize an entry, use or occupation that would interfere with the use or enjoyment of an estate or interest in the land held by a person not being a Land Trust or an Aboriginal Council or other incorporated association of Aboriginals. 15

Aboriginal land not to be Reserve

46. Upon the vesting of an estate or interest in land constituting, or forming part of, an Aboriginal Reserve in a Land Trust under this Act, such land ceases to have the status of an Aboriginal Reserve, or part of an Aboriginal Reserve. 20

Application of Queensland laws to Aboriginal land

47. (1) Subject to sub-section (2), this Part does not affect the application to Aboriginal land of a law of Queensland to the extent that that law is capable of operating concurrently with this Act. 25

(2) The regulations may provide for the exclusion or modification of a law of Queensland which adversely affects Aboriginals or which discriminates against Aboriginals in its application to Aboriginal land.

PART III—MISCELLANEOUS 30

Regulations

48. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters permitted or required by this Act to be prescribed, or convenient or necessary to be prescribed, for carrying out or giving effect to this Act. 35

(2) The Executive Council shall not offer advice to the Governor-General with respect to the making of regulations under this section unless the Minister has certified that he has consulted in respect of regulations, or proposed regulations, with the body known as the National Aboriginal Conference and

any Land Trust or Council likely to be affected by those regulations or proposed regulations.

Repeal

5 **49.** The *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978* is hereby repealed.



