



New South Wales

Aboriginal Land Rights Amendment Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Aboriginal Land Rights Act 1983* (the *principal Act*):

- (a) to clarify which functions of a Local Aboriginal Land Council (a *LALC*) may be exercised by the Board of the LALC and to alter the provisions relating to the delegation of functions by the chief executive officer of a LALC, and
- (b) to alter the requirements in relation to the advertising of staff vacancies for Aboriginal Land Councils and the qualifications of persons to fill those vacancies, and
- (c) to clarify the provisions relating to the disqualification of a person to hold the office of a member of a LALC or New South Wales Aboriginal Land Council (*NSWALC*) and the filling of vacancies in those offices, and
- (d) to change the basis on which community development levies payable in relation to certain transactions of LALCs are calculated, and
- (e) to make other miscellaneous amendments aimed at improving the administration of the principal Act and of Aboriginal Land Councils.

The Bill also makes consequential amendments to the *Aboriginal Land Rights Regulation 2002*.

The Bill also amends the *National Parks and Wildlife Act 1974* to provide that land of cultural significance to Aboriginal persons vested in more than one Aboriginal Land Council under that Act is vested in those Councils as tenants in common rather than as joint tenants.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act except for the repeal of section 163 of the principal Act which will commence on 1 January 2014.

Schedule 1 Amendment of Aboriginal Land Rights Act 1983 No 42

Amendments relating to property and land dealings of Aboriginal Land Councils

Schedule 1 [2] amends section 38 of the principal Act to remove a restriction on purchasing or leasing property (other than land) by NSWALC or a LALC that requires the purchase or lease to be connected to the use, development or improvement of land.

Schedule 1 [4] amends section 42D of the principal Act to remove a requirement that NSWALC must notify the Minister administering that Act and the Minister administering the Crown lands and Western lands legislation before dealing with land vested in it under section 36 (Claims to Crown lands) of the principal Act.

Schedule 1 [5] amends section 42E of the principal Act to remove a requirement that a LALC must notify the Minister administering that Act and the Minister administering the Crown lands and Western lands legislation before dealing with land vested in it under section 36 (Claims to Crown lands) of the principal Act.

Amendments relating to members of NSWALC and LALCs, Board members and staff

Schedule 1 [12] amends section 55 of the principal Act to remove the restriction that prevents a voting member of a LALC from voting at an election for Board members if he or she has not attended at least 2 meetings of the Council in the preceding 12 months as a voting member.

Schedule 1 [13] amends section 59 of the principal Act to remove the requirement that NSWALC pay to the Registrar a contribution towards the cost of the Registrar compiling and maintaining a consolidated roll of all members of LALCs.

Schedule 1 [15] amends section 63 of the principal Act to provide that a person is not qualified to stand for election, or to be elected, as a member of the Board of a

LALC if he or she has not attended at least 2 meetings of the Council in the preceding 12 months. That ground for disqualification does not apply if an administrator was appointed for the LALC for all or part of the relevant 12 month period. **Schedule 1 [16]** makes a consequential amendment.

Schedule 1 [17] and [18] amend section 65 of the principal Act to extend the requirement for NSWALC to arrange certain training for new members of the Board of a LALC so that training will be required to be arranged for all members of the Board. NSWALC may exempt a Board member from the training if satisfied that the member has already undergone such training.

Schedule 1 [19] amends section 66 of the principal Act to disqualify a person from holding the office of a Board member of a LALC if the person was a Board member of the Council immediately before the appointment of an administrator for the Council at any time during the preceding 5 years.

Schedule 1 [20] amends section 66 of the principal Act to clarify that a person is not disqualified from holding the office of a Board member of a LALC if the person is an employee of, or consultant to NSWALC.

Schedule 1 [21] amends section 66 of the principal Act to provide that a person who is employed by, or is a consultant to, a LALC is not disqualified from being elected or holding office as a Board member of a LALC if the person resigns as an employee or consultant as soon as practicable after becoming aware of the result of the election.

Schedule 1 [22] amends section 68 of the principal Act to enable a vacancy in the office of a Board member of a LALC that has been created by the election of a person who was disqualified from holding that office to be filled in the same way as a casual vacancy in that office.

Schedule 1 [23] amends sections 70 and 136 of the principal Act to provide that an appeal against an order made by the Administrative Decisions Tribunal declaring a vacancy in the office of a Board member of a LALC is to be made to the Land and Environment Court rather than, as is currently the case, to the Supreme Court. It also makes a consequential amendments to sections 71 and 137 of the principal Act.

Schedule 1 [27] amends section 79 of the principal Act to provide that the provision preventing a member of staff of NSWALC from being employed by a LALC does not prevent the secondment of such a person.

Schedule 1 [28] substitutes section 79A of the principal Act to provide that a vacancy in the position of chief executive officer of a LALC must be advertised by the Board of the LALC in the manner prescribed by the regulations. A vacancy in any other position of the staff of a LALC must be advertised in the manner considered appropriate by the chief executive officer of the LALC. Currently, all such vacancies must be advertised in the manner prescribed by the regulations.

Schedule 1 [31] amends section 121 of the principal Act to make it clear that a person is not qualified to stand for election, or to be elected, as a councillor to represent a Region on NSWALC if the person is disqualified from holding the office of councillor.

Schedule 1 [32] amends section 121 of the principal Act to allow for the making of regulations relating to the nomination of persons for election as a councillor to represent a region on NSWALC.

Schedule 1 [33] amends section 132 of the principal Act to disqualify a person from holding the office of a councillor of NSWALC if the person was a councillor immediately before the appointment of an administrator for NSWALC at any time during the preceding 5 years.

Schedule 1 [34] provides that a person who is employed by, or is a consultant to, NSWALC is not disqualified from being elected or holding office as a councillor of NSWALC if the person takes a leave of absence from the time of nomination to stand for election and, if the person is elected, resigns as an employee or consultant as soon as practicable after becoming aware of the result of the election.

Schedule 1 [35] inserts proposed section 132A. The proposed section provides that an employee of, or consultant to, NSWALC who stands for election as a councillor of NSWALC is to take a leave of absence from the day after being nominated for election until the result of the election is declared.

Schedule 1 [37] amends section 133 of the principal Act so that a person who is a councillor of NSWALC will no longer vacate office if the person represents a region the area of which is changed. **Schedule 1 [36]** makes a consequential amendment.

Schedule 1 [38] amends section 134 of the principal Act to enable a vacancy in the office of a councillor of NSWALC that has been created by the election of a person who was disqualified from holding that office to be filled in the same way as a casual vacancy in that office.

Schedule 1 [39] substitutes section 143A of the principal Act to provide that a vacancy in the position of Chief Executive Officer of NSWALC must be advertised by NSWALC in the manner prescribed by the regulations. A vacancy in any other position of the staff of NSWALC must be advertised in the manner considered appropriate by the Chief Executive Officer of NSWALC. Currently, all such vacancies must be advertised in the manner prescribed by the regulations.

Schedule 1 [40] amends section 144 of the principal Act to include as persons who cannot be appointed as members of staff of NSWALC persons who are councillors, officers, consultants or members of staff of LALCs. This does not prevent consultants or members of staff of LALCs being seconded to NSWALC.

Schedule 1 [48] amends section 242 of the principal Act to provide protection from personal liability to members of staff of Aboriginal Land Councils for acts done in good faith for the purpose of executing the principal Act. **Schedule 1 [49]** makes a consequential amendment.

Schedule 1 [50] inserts proposed section 243A into the principal Act which provides that a person who is a councillor of NSWALC or a Board member of a LALC is not entitled to exercise the functions of that office and is not entitled to any fee or remuneration in relation to that office while the person is suspended from holding that office. **Schedule 1 [46]** makes a consequential amendment.

Amendments relating to financial matters

Schedule 1 [6] substitutes section 42T of the principal Act to provide that community development levies currently payable by LALCs in relation to certain transactions are to be calculated at the general rate of duty payable under the *Duties Act 1997* so that premium rates of duty payable under that Act will not apply. The proposed section also modifies the operation of the *Duties Act 1997* in relation to such transactions to simplify the requirements for payment of duty and stamping where a transaction is effected by more than one instrument. **Schedule 1 [7]** and **Schedule 2.1 [5]** make consequential amendments.

Schedule 1 [8] amends section 44 of the principal Act to update references to a number of Acts.

Schedule 1 [41] amends section 149 of the principal Act to remove travelling and other allowances from the list of expenditure that may be paid out of NSWALC's account to Board members of LALCs.

Schedule 1 [42] amends section 152 of the principal Act to include in the expenditure that may be paid out of a LALC's account travelling and other allowances to Board members of the LALC.

Schedule 1 [43] amends section 153 of the principal Act to require the financial statements of a LALC to be audited by an auditor appointed by the LALC from a list of auditors kept by NSWALC. The regulations may prescribe requirements in relation to the manner of keeping the list and the qualifications of auditors. Currently, NSWALC appoints the auditor in the manner prescribed by the regulations.

Schedule 1 [45] omits section 163 from the principal Act which requires NSWALC to immediately cease providing funding to a LALC under a funding agreement if the LALC fails to comply with certain reporting requirements. NSWALC retains the authority to cease providing funding to a LALC that breaches a condition of a funding agreement.

Amendments relating to the exercise of functions by Aboriginal Land Councils and delegations

Schedule 1 [9] amends section 52E of the principal Act to provide that the functions of a LALC relating to the acquisition of land may be delegated to the Board, other than the power of delegation and any function that is required by section 52G of the principal Act to be exercised by resolution of the LALC. **Schedule 1 [10]** makes a consequential amendment.

Schedule 1 [11] amends section 52G of the principal Act to make it clear that a LALC is not required to pass a resolution approving the contents of the annual budget and financial statements of the LALC.

Schedule 1 [14] amends section 62 of the principal Act to clarify that the Board of a LALC may exercise any of the functions of the LALC on behalf of the LALC, including the acquisition of land (if that function is delegated to the Board by the LALC) but not including any other function of the LALC that is expressly required by or under an Act to be exercised by resolution of the LALC.

Schedule 1 [24] amends section 72 of the principal Act to provide that the Board of a LALC may only delegate its functions to the chief executive officer or a person or body prescribed by the regulations. Currently, the Board of a LALC may delegate its functions to any person or body.

Schedule 1 [25] amends section 78A of the principal Act to enable the chief executive officer of a LALC to delegate his or her functions to any member of staff.

Schedule 1 [30] amends section 116 of the principal Act to remove from the list of functions of NSWALC that may not be delegated the use, management, control or holding of land vested in or acquired by NSWALC.

Miscellaneous amendments

Schedule 1 [1], [26], [47] and [52] make amendments by way of statute law revision.

Schedule 1 [29] substitutes section 110 of the principal Act to replace a target for NSWALC to increase the total number of voting members of LALCs by a specified amount with a more general requirement that NSWALC include in its annual report the actions that it has taken to increase the membership of LALCs.

Schedule 1 [51] inserts proposed section 246A into the principal Act to enable the Chairperson of an Aboriginal Land Council to correct mistakes in resolutions of, and certificates issued by, the Council.

Schedule 1 [53] amends Schedule 3 to the principal Act to enable the Registrar to call a meeting of a LALC for the purpose of electing a Board if there is no existing Board and no administrator appointed for the LALC.

Schedule 1 [54] and [55] amend Schedule 4 to the principal Act to make provision for matters of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Act and regulation

Schedule 2.1 amends the *Aboriginal Land Rights Regulation 2002* as a consequence of the amendment of the principal Act. In particular, the following amendments are made to that Regulation:

Schedule 2.1 [1] amends clause 25G as a consequence of the amendment of section 65 of the principal Act in relation to the training of Board members of Local Aboriginal Land Councils.

Schedule 2.1 [2] and [3] amend clauses 31 and 91, respectively, of that Regulation to provide that vacancies in the position of chief executive officer of an Aboriginal Land Council must be advertised in a newspaper circulating in the area of the Council and in a major indigenous newspaper circulating throughout the State.

Schedule 2.1 [4] substitutes clause 95 of that Regulation to specify the qualifications that an auditor must have to be included on the list of auditors that may be appointed by a LALC to verify and certify the financial statements of the LALC.

Schedule 2.1 [6] makes an amendment by way of statute law revision.

Aboriginal Land Rights Amendment Bill 2013

Explanatory note

Schedule 2.2 amends the *National Parks and Wildlife Act 1974* to provide that land vested in more than one Aboriginal Land Council under Part 4A of that Act is vested in those Councils as tenants in common rather than, as at present, joint tenants. **Schedule 1 [3]** makes a consequential amendment to the principal Act.