

Passed by both Houses



New South Wales

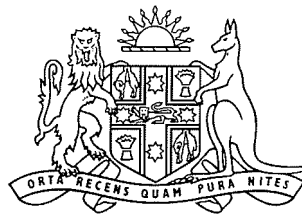
Aboriginal Land Rights Amendment Bill 2013

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2013*



New South Wales

Aboriginal Land Rights Amendment Bill 2013

Act No , 2013

An Act to amend the *Aboriginal Land Rights Act 1983* with respect to the functions, officers and staff of Aboriginal Land Councils; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Aboriginal Land Rights Amendment Act 2013*.

2 Commencement

- (1) Except as provided by subsection (2), this Act commences on the date of assent to this Act.
- (2) The amendment of section 63, and the repeal of sections 162 (3) and 163, of the *Aboriginal Land Rights Act 1983* by this Act commence on 1 January 2014.

Schedule 1 Amendment of Aboriginal Land Rights Act 1983 No 42

- [1] **Sections 37 (3) (c) and (4), 39 (4), 40 (4), 42D (1) (e), 42G (3) (c) and (5) (c) (ii), 47 and 48 (1) (a) and (5) (c)**
Omit “Aborigines” wherever occurring. Insert instead “Aboriginal persons”.
- [2] **Section 38 Purchase, lease etc of property**
Omit section 38 (4).
- [3] **Section 38 (5)**
Omit “joint tenants (without the benefit of survivorship)”.
Insert instead “tenants in common”.
- [4] **Section 42D Land dealings by New South Wales Aboriginal Land Council**
Omit section 42D (1) (c).
- [5] **Section 42E Approval required for land dealings by Local Aboriginal Land Councils**
Omit section 42E (3).
- [6] **Section 42T**
Omit the section. Insert instead:
- 42T Amount of community development levy**
- (1) The amount of the community development levy payable for a dutiable transaction is the prescribed percentage (if any) of the amount of duty in respect of the transaction calculated as if duty were chargeable on the transaction at the rate specified in section 32 (1) of the *Duties Act 1997*.
- (2) In calculating the community development levy, any arrangement for the payment of the levy by a person other than the Local Aboriginal Land Council concerned is to be disregarded.
- [7] **Section 42W Regulations**
Insert “(with or without modifications)” after “*Duties Act 1997*” in section 42W (a).

[8] Section 44 Proceedings for non-payment of certain rates for Aboriginal lands barred

Omit section 44 (b)–(d). Insert instead:

- (b) the *Sydney Water Act 1994*,
- (c) the *Hunter Water Act 1991*, or
- (d) the *Water Management Act 2000*,

[9] Section 52E Delegation of functions by Local Aboriginal Land Councils

Omit section 52E (1). Insert instead:

- (1) A Local Aboriginal Land Council may, by resolution, delegate to the Board, any of the functions of the Council with respect to the acquisition of land other than:
 - (a) this power of delegation, and
 - (b) any function under this or any other Act that is expressly required to be exercised by resolution of the voting members of the Council.

[10] Section 52G Functions exercised by Council resolution

Omit section 52G (b).

[11] Section 52G (2)

Insert at the end of section 52G:

- (2) For the avoidance of doubt, subsection (1) (f) requires a resolution of the Council confirming receipt by the Council of the annual budget and financial statements, not a resolution approving the contents of the annual budget and financial statements.

[12] Section 59 Updating and consolidation of membership rolls

Omit section 59 (4).

[13] Section 62 Functions of Boards of Local Aboriginal Land Councils

Insert after section 62 (1):

- (1A) Without limiting subsection (1), a Board of a Local Aboriginal Land Council may, subject to any directions of the Council, exercise:
 - (a) any of the functions of the Council on behalf of the Council, other than any function that under this or any other Act that is expressly required to be exercised by resolution of the voting members of the Council, and

-
- (b) any function delegated to the Board under section 52E.

[14] Section 63 Board members

Omit section 63 (2). Insert instead:

- (2) A person is not qualified to be nominated to stand for election, or to be elected, as a Board member of a Local Aboriginal Land Council if, at the time of the nomination or election, any of the following applies to the person:
- (a) the person is not a voting member of the Council,
 - (b) the person is suspended or disqualified from holding office as a Board member or is suspended from membership of the Council,
 - (c) the person has not attended at least 2 meetings of the Council in the last 12 months.
- (2A) Subsection (2) (c) does not apply if an administrator was appointed to perform all of the functions of the Local Aboriginal Land Council for all or part of the relevant 12-month period.
- (2B) A person may nominate another person to stand for election as a Board member of a Local Aboriginal Land Council if, at the time of the nomination, all of the following apply to the person:
- (a) the person is a voting member of the Council, and
 - (b) the person is not suspended from membership of the Council, and
 - (c) the person has attended at least 2 meetings of the Council in the last 12 months.

[15] Section 63 (8)

Insert after section 63 (7):

- (8) Without limiting subsection (7), the regulations may make provision with respect to the nomination of persons to stand for election as a Board member of a Local Aboriginal Land Council.

[16] Section 65 Training for Board members

Omit “for the first time” from section 65 (1).

[17] Section 65 (5) (a)

Insert “has previously undergone training under this section or” before “already has”.

[18] Section 66 Grounds for disqualification from office

Omit section 66 (1) (k). Insert instead:

- (k) was, within the last 5 years, an officer of the Local Aboriginal Land Council immediately before an administrator was appointed for the Council, or

[19] Section 66 (1) (m)

Insert “(other than on the ground that the person is an employee of, or consultant to, the New South Wales Aboriginal Land Council)” after “councillor”.

[20] Section 66 (4)

Insert after section 66 (3):

- (4) Despite subsection (1) (j), a person is not disqualified from holding office as a Board member of a Local Aboriginal Land Council (and is taken not to have been disqualified from holding office at the time of the person’s nomination) on the ground that the person is an employee of, or a consultant to, the Council if the person resigns as an employee of, or as a consultant to, the Council as soon as practicable after becoming aware of the result of the election.

[21] Section 68 Casual vacancy

Insert at the end of the section:

- (2) A casual vacancy in the office of a Board member occurs when a person who is disqualified from holding office as a Board member is declared (or purportedly declared) to have been elected to the office despite, at the time of nomination or election, not being qualified to be nominated to stand for election or to be elected.

[22] Sections 70 (1), 71 (a), 136 (1) and 137 (a)

Omit “Supreme Court” wherever occurring.

Insert instead “Land and Environment Court”.

[23] Section 72 Delegation by Boards

Omit “any person or body” from section 72 (1).

Insert instead “the chief executive officer of the Local Aboriginal Land Council, or to any other person or body prescribed by the regulations,”.

[24] Section 78A Chief executive officer

Insert after section 78A (2):

- (3) The chief executive officer may delegate to any member of staff of the Local Aboriginal Land Council any of the functions of the chief executive officer, other than this power of delegation.

[25] Section 79 Certain persons must not be employed

Omit “or Regional” from section 79 (2).

[26] Section 79 (5)

Insert after section 79 (4):

- (5) Subsection (4) does not prevent a member of staff of the New South Wales Aboriginal Land Council from being seconded to the staff of a Local Aboriginal Land Council.

[27] Section 79A

Omit the section. Insert instead:

79A Advertising vacancies

- (1) If it is proposed to make an appointment to the vacant position of chief executive officer of a Local Aboriginal Land Council (other than the appointment of a person to act in the position), the Board must ensure that the vacancy is advertised in the manner prescribed by the regulations.
- (2) If it is proposed to make an appointment to a vacant position in the staff of a Local Aboriginal Land Council (other than the chief executive officer), the chief executive officer must advertise the vacancy in such manner as the chief executive officer considers appropriate.
- (3) The chief executive officer need not advertise a vacant position in the circumstances prescribed by the regulations.

[28] Section 110

Omit the section. Insert instead:

110 Report on actions to increase membership of Local Aboriginal Land Councils

The New South Wales Aboriginal Land Council is to include in its annual report a report of the actions it has taken to increase the membership of Local Aboriginal Land Councils.

[29] Section 116 Delegation by New South Wales Aboriginal Land Council

Omit “use, management, control, holding or” from section 116 (1) (c).

[30] Section 121 Election of councillors

Omit section 121 (4). Insert instead:

- (4) A person is not qualified to be nominated to stand for election, or to be elected, as a councillor to represent a Region if, at the time of the nomination or election, either of the following applies to the person:
 - (a) the person is not a voting member of a Local Aboriginal Land Council the area of which is within the Region,
 - (b) the person is disqualified from holding office as a councillor of the New South Wales Aboriginal Land Council.

[31] Section 121 (7)

Insert after section 121 (6):

- (7) The regulations may make provision with respect to the nomination of persons to stand for election as a councillor to represent a Region.

[32] Section 132 Grounds for disqualification from office

Omit section 132 (1) (j). Insert instead:

- (j) was, within the last 5 years, an officer of the Council immediately before an administrator was appointed for the Council, or

[33] Section 132 (4)

Insert after section 132 (3):

- (4) Despite subsection (1) (h), a person is not disqualified from holding office as a councillor of the Council on the ground that the person is an employee of, or consultant to, the Council (and is taken not to have been disqualified from holding office at the time of the person’s nomination) if:
 - (a) the person takes a leave of absence from employment with the Council in accordance with section 132A, and
 - (b) if the person is elected to the Council, the person resigns from their employment with, or as a consultant to, the Council as soon as practicable after becoming aware of the result of the election.

[34] Section 132A

Insert after section 132:

132A Leave of absence for employees nominated to Council

- (1) If a person who is employed by the New South Wales Aboriginal Land Council is nominated to stand for election as a councillor, the person is required to be granted, and to take, leave of absence from the day following the day on which the person was nominated until the day on which the result of the election is declared.
- (2) Unless the person is entitled to paid leave (and duly applies for such leave), any leave of absence under this section is to be leave without pay.

[35] Section 133 Vacancy in office

Omit “, or” from section 133 (e).

[36] Section 133 (f)

Omit the paragraph.

[37] Section 134 Casual vacancy

Insert at the end of the section:

- (2) A casual vacancy in the office of a councillor occurs when a person who is disqualified from holding office as a councillor is declared (or purportedly declared) to have been elected to the office despite, at the time of nomination or election, not being qualified to be nominated to stand for election or to be elected.

[38] Section 143A

Omit the section. Insert instead:

143A Advertising vacancies

- (1) If it is proposed to make an appointment to the vacant position of Chief Executive Officer of the New South Wales Aboriginal Land Council (other than the appointment of a person to act in the position), the Council must ensure that the vacancy is advertised in the manner prescribed by the regulations.
- (2) If it is proposed to make an appointment to a vacant position in the staff of the New South Wales Aboriginal Land Council (other than the Chief Executive Officer), the Chief Executive Officer must advertise the vacancy in such manner as the Chief Executive Officer considers appropriate.

- (3) The Chief Executive Officer need not advertise a vacant position in the circumstances prescribed by the regulations.

[39] Section 144 Certain persons must not be employed

Insert at the end of the section:

- (2) A person who is a councillor must not be employed as a member of staff of the New South Wales Aboriginal Land Council while the person is such a councillor.
- (3) A person who is a consultant to a Local Aboriginal Land Council must not be employed as a member of staff of the New South Wales Aboriginal Land Council while the person is such a consultant.
- (4) A member of staff of a Local Aboriginal Land Council must not be employed as a member of staff of the New South Wales Aboriginal Land Council while the person is such a member of staff.
- (5) Subsection (4) does not prevent a member of staff of a Local Aboriginal Land Council from being seconded to the staff of the New South Wales Aboriginal Land Council.

[40] Section 149 NSW Aboriginal Land Council Account

Omit “travelling and other allowances to Board members and” from section 149 (4) (c).

[41] Section 152 Local Aboriginal Land Council Accounts

Insert “, including travelling and other allowances to Board members” after “this Act” in section 152 (3) (b).

[42] Section 153 Local Aboriginal Land Councils to keep accounts

Omit section 153 (3). Insert instead:

- (3) The financial statements must be submitted for verification and certification to an auditor appointed by the Local Aboriginal Land Council concerned from a list of auditors kept by the New South Wales Aboriginal Land Council.
- (3A) The regulations may make provision for or with respect to the following:
 - (a) the manner in which the list of auditors is to be kept by the New South Wales Aboriginal Land Council,
 - (b) the qualifications required for auditors included in the list.

[43] Section 162 Funding Agreements

Omit section 162 (3).

[44] Section 163 Cessation of funding

Omit the section.

[45] Section 181F Suspension by Registrar for misbehaviour

Omit section 181F (3).

[46] Section 222 Administrators—Local Aboriginal Land Councils

Omit “, 158 or 159” from section 222 (1) (c). Insert instead “or 158”.

[47] Section 242 Exclusion of personal liability

Insert after section 242 (1) (c):

(c1) a member of staff of an Aboriginal Land Council,

[48] Section 242 (1)

Insert “, member of staff” after “Chief Executive Officer” where secondly occurring.

[49] Section 243A

Insert after section 243:

243A Effect of suspension of Board members and councillors

A councillor or Board member, while suspended from office under this Act:

- (a) is not entitled to exercise any functions of the office, and
- (b) is not entitled to any fee or other remuneration to which he or she would otherwise be entitled as the holder of the office.

[50] Section 246A

Insert after section 246:

246A Correction of errors in documents

- (1) This section applies to a resolution of an Aboriginal Land Council or a certificate issued under this Act by an Aboriginal Land Council.
- (2) The Chairperson of an Aboriginal Land Council may, on the application of a person or on the Chairperson’s own initiative,

correct any of the following in any document to which this section applies that was created or issued by that Council:

- (a) a clerical mistake,
- (b) an error arising from an accidental slip or omission,
- (c) a mistake in the description of any person or thing,
- (d) a defect of form.

[51] Section 252 Regulations

Omit “New South Wales Aboriginal Land Council” from section 252 (2) (l).
Insert instead “Registrar”.

[52] Schedule 3 Procedure of Boards and Councils

Insert at the end of clause 2:

- (2) If there is no Board of a Local Aboriginal Land Council and there is no administrator appointed for that Council, the Registrar may call a meeting of the Council for the purpose of electing a Board.

[53] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

any other Act that amends this Act

[54] Schedule 4, Part 11

Insert after Part 10:

Part 11 Aboriginal Land Rights Amendment Act 2013

55 Definition

In this Part:

amending Act means the *Aboriginal Land Rights Amendment Act 2013*.

56 Existing employment of staff members

The amendment of section 144 by the amending Act does not affect the employment of a staff member of the New South Wales Aboriginal Land Council if the employment commenced before the commencement of the amendment.

57 Appeals from decisions of Administrative Decisions Tribunal

An amendment made to section 70, 71, 136 or 137 by the amending Act applies only to decisions of the Administrative Decisions Tribunal made after the commencement of the amendment.

58 Community development levy

- (1) An amendment made to section 42T, or clause 113 of the *Aboriginal Land Rights Regulation 2002*, by the amending Act does not affect any liability for duty charged on a dutiable transaction that occurred before the commencement of the amendment.
- (2) Clause 113A of the *Aboriginal Land Rights Regulation 2002* (as inserted by the amending Act) does not affect any liability for duty charged on a dutiable transaction that occurred before the commencement of that clause.

Schedule 2 Amendment of other Act and regulation

2.1 Aboriginal Land Rights Regulation 2002

[1] Clause 25G Training requirements for Board members

Omit “The New South Wales Aboriginal Land Council must arrange training for each member elected for the first time to a Board of a Local Aboriginal Land Council” from clause 25G (1).

Insert instead “For the purposes of section 65 of the Act, the training to be arranged by the New South Wales Aboriginal Land Council is training”.

[2] Clause 31 Staff vacancies

Omit clause 31 (1). Insert instead:

- (1) For the purposes of section 79A (1) of the Act, the manner of advertising a vacancy in the position of chief executive officer of a Local Aboriginal Land Council is to advertise the position:
 - (a) in a newspaper circulating in the area of the Council, and
 - (b) in a major indigenous newspaper circulating throughout the State.

[3] Clause 91 Staff vacancies

Omit clause 91 (1). Insert instead:

- (1) For the purposes of section 143A (1) of the Act, the manner of advertising a vacancy in the position of Chief Executive Officer of the New South Wales Aboriginal Land Council is to advertise the position:
 - (a) in a newspaper circulating in the area of the Council, and
 - (b) in a major indigenous newspaper circulating throughout the State.

[4] Clause 95

Omit the clause. Insert instead:

95 Auditors

The New South Wales Aboriginal Land Council must not include a person on the list of auditors required to be kept under section 153 of the Act unless the person is:

- (a) a registered company auditor, or
- (b) a member of the National Institute of Chartered Accountants, or

-
- (c) a member of CPA Australia, or
 - (d) a member of the Institute of Chartered Accountants Australia.

[5] Clauses 113 and 113A

Omit clause 113. Insert instead:

113 Amount of community development levy

For the purposes of section 42T of the Act, the prescribed percentage (if any) of the duty that would be payable under the *Duties Act 1997* for a dutiable transaction is the percentage set out in Schedule 6A.

113A Transactions to which community development levy does not apply

The community development levy does not apply to a dutiable transaction if the dutiable value of the land concerned is \$80,000 or less.

[6] Schedule 2 Model rules for Local Aboriginal Land Councils

Omit clause 21 (2) (c).

2.2 National Parks and Wildlife Act 1974 No 80

[1] Section 71O Vesting and reservation of Schedule 14 lands

Omit “joint tenants (without the benefit of survivorship)” from section 71O (2) (b).

Insert instead “tenants in common”.

[2] Section 71P Effect of publication of proclamation

Omit “joint tenants (without the benefit of survivorship)” from section 71P (2).

Insert instead “tenants in common”.

[3] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Aboriginal Land Rights Amendment Act 2013

[4] Schedule 3, Part 10

Insert after Part 9:

**Part 10 Provision consequent on enactment of
 Aboriginal Land Rights Amendment Act
 2013**

73 Severing of joint tenancies

On the commencement of the amendments made to sections 71O and 71P of this Act by the *Aboriginal Land Rights Amendment Act 2013*:

- (a) any joint tenancy in relation to land created by the operation of section 71O or 71BK and in existence immediately before that commencement is severed, and
- (b) the Aboriginal Land Councils that were the joint tenants hold the land as tenants in common.