



New South Wales

Aboriginal Land Rights Amendment Bill 2014

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Aboriginal Land Rights Act 1983* (the *principal Act*) as follows:

- (a) to provide for Aboriginal Land Agreements to be made between the Crown Lands Minister and Aboriginal Land Councils as an alternative to land claims under the principal Act,
- (b) to clarify the functions of Local Aboriginal Land Councils in relation to business enterprises (including by expressly authorising such a Council to establish an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth and limiting a Local Aboriginal Land Council's power to establish corporations under the *Corporations Act 2001* of the Commonwealth),
- (c) to simplify the matters that are required to be included in a community, land and business plan of an Aboriginal Land Council,
- (d) to clarify the reporting obligations of Local Aboriginal Land Councils in relation to arrangements between Councils and other persons in relation to the exercise of the Council's functions and the requirements for the approval of the transfer of assets under such an arrangement,
- (e) to provide for disciplinary action to be taken in relation to officers of Aboriginal Land Councils (including Board members of Local Aboriginal Land Councils and councillors of the New South Wales Aboriginal Land Council) who engage in misconduct such as failing to comply with the disclosure requirements under the principal Act,

- (f) to authorise the Registrar to apply for search warrants in relation to apparent contravention of the principal Act or the failure of a person to provide records as required by the principal Act,
- (g) to increase maximum penalties for offences under the principal Act,
- (h) to provide for the appointment by the Registrar under the principal Act of administrators and investigators in respect of Local Aboriginal Land Councils,
- (i) to allow the Registrar to apply for an injunction to prevent a contravention of the principal Act,
- (j) to allow for members of a Local Aboriginal Land Council who have not attended 6 consecutive meetings to be declared to be inactive and provide that such members should not be counted for the purposes of determining the quorum required for a meeting of the Council,
- (k) to make other related, consequential or minor amendments.

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 a day or days to be appointed by proclamation.

Schedule 1 Amendment of Aboriginal Land Rights Act 1983 No 42

Amendments relating to Aboriginal Land Agreements, claims to Crown lands and land dealings generally

Schedule 1 [10] inserts proposed section 36AA into the principal Act. The proposed section establishes a process for the Crown Lands Minister and an Aboriginal Land Council to enter into an agreement (an *Aboriginal Land Agreement*) for the transfer or lease of land or giving an undertaking not to make a land claim, amongst other things, as an alternative to the land claim process set out in section 36 of the principal Act. **Schedule 1 [12], [14], [37] and [133]** make consequential amendments.

Schedule 1 [8] and [9] amend section 36 of the principal Act to clarify the role of the Registrar in the land claim process and to provide that the Crown Lands Minister is not to grant a land claim if the claim was made in contravention of an undertaking given by the claimant under an Aboriginal Land Agreement.

Schedule 1 [11] provides that, from the time of an appeal against the Crown Lands Minister's refusal to grant a land claim under section 36 of the principal Act until the final determination of that appeal, the Minister must not do anything, without the consent of the claimant, that would cause a land claim in relation to that land to be unsuccessful.

Amendments relating to business enterprise functions of Aboriginal Land Councils

Schedule 1 [19] and [43] make provision with respect to an Aboriginal Land Council's reporting obligations under arrangements that are entered into for exercising the Council's functions. The amendments also require the conduct of a risk assessment prior to the transfer of the Council's assets under such an arrangement and, in the case of a Local Aboriginal Land Council, require the members' approval to the transfer of assets under such an arrangement.

Schedule 1 [15] makes it clear that the functions of an Aboriginal Land Council include establishing, acquiring, operating or managing business enterprises. **Schedule 1 [39]** makes a similar amendment in relation to the New South Wales Aboriginal Land Council. **Schedule 1 [16]** expressly authorises a Local Aboriginal Land Council to establish, acquire, operate or manage an Aboriginal and Torres Strait Islander corporation within the meaning of the *Corporations*

(*Aboriginal and Torres Strait Islander*) Act 2006 of the Commonwealth. However, a Council may not establish or acquire a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth unless authorised by a policy of the New South Wales Aboriginal Land Council or, if there is no such policy, by the regulations.

Schedule 1 [46] and [47] make consequential amendments relating to the business enterprise functions of Aboriginal Land Councils.

Amendments relating to community benefits schemes

Schedule 1 [4] makes it clear that a community benefits scheme is one that is funded wholly or partly funded by an Aboriginal Land Council.

Schedule 1 [17] provides that a Local Aboriginal Land Council that intends to provide a community benefits scheme in relation to the acquisition or provision of accommodation to Aboriginal persons within the community does not require the approval of the New South Wales Aboriginal Land Council to carry on that scheme if the Local Aboriginal Land Council is registered under the law of this State as an Aboriginal housing organisation or a registered community housing provider. **Schedule 1 [21]** makes a consequential amendment.

Schedule 1 [18] removes a provision that requires the New South Wales Aboriginal Land Council to take certain additional matters into consideration when considering an application by a Local Aboriginal Land Council for the approval of a community benefits scheme in relation to the acquisition or provision of accommodation to Aboriginal persons within the community. **Schedule 1 [36]** allows the Minister to make certain orders under section 87 of the principal Act in relation to a Local Aboriginal Land Council if an administrator has been appointed in respect of the Council on the ground that the Council has been operating such a scheme without the approval of the New South Wales Aboriginal Land Council. **Schedule 1 [13], [107] and [118]** make consequential amendments.

Schedule 1 [41] and [42] simplify the functions of the New South Wales Aboriginal Land Council in relation to the provision of community benefits schemes by removing special requirements relating to the provision of a funeral fund or social housing scheme. **Schedule 1 [40]** makes a consequential amendment.

Amendments relating to community, land and business plans of Aboriginal Land Councils

Schedule 1 [25] and [49] provide that the functions of the chief executive officer of a Local Aboriginal Land Council, and the functions of the Chief Executive Officer of the New South Wales Aboriginal Land Council, include assisting in the preparation and implementation of the respective Council's community, land and business plan.

Schedule 1 [30] requires a Local Aboriginal Land Council to either approve or amend the community, land and business plan for the Council within 9 months after the election of a new Board. **Schedule 1 [20]** makes a consequential amendment.

Schedule 1 [31] replaces section 83 of the principal Act to clarify the matters that are to be included in the community, land and business plan of a Local Aboriginal Land Council.

Schedule 1 [33] requires a Local Aboriginal Land Council to provide the New South Wales Aboriginal Land Council with a copy of the plan after it is approved by the members.

Schedule 1 [34] removes the requirement for a Local Aboriginal Land Council's community, land and business plan to be approved by the New South Wales Aboriginal Land Council before it takes effect. **Schedule 1 [32] and [35]** make consequential amendments.

Amendments relating to finances of Aboriginal Land Councils

Schedule 1 [50] ensures that the investment of the accounts of Local Aboriginal Land Councils is consistent with the investment of other accounts under the principal Act. **Schedule 1 [44]** makes a consequential amendment.

Schedule 1 [51] requires Local Aboriginal Land Councils to prepare financial statements, and provides for the verification and certification of those accounts, in accordance with the policies of

the New South Wales Aboriginal Land Council. **Schedule 1 [7], [45], [52], [53], [54], [56], [57] and [105]** make consequential amendments.

Schedule 1 [55] removes the requirement that the budget of a Local Aboriginal Land Council be approved by the New South Wales Aboriginal Land Council.

Schedule 1 [58] requires the report of operations of a Local Aboriginal Land Council to be prepared in accordance with the policies of the New South Wales Aboriginal Land Council.

Amendments relating to administrative matters for Aboriginal Land Councils

Schedule 1 [23] inserts proposed section 57A. The proposed section allows the chief executive officer of a Local Aboriginal Land Council to declare a member to be inactive if the member is absent from 6 consecutive meetings. An inactive member is not to be included for the purposes of the determination of the quorum required for a meeting of the Council. A member ceases to be an inactive member of the Council if the member attends a meeting of the Council or requests that the member not be declared an inactive member of the Council.

Schedule 1 [24] increases the term of office of a Board member of a Local Aboriginal Land Council from 2 years to 4 years.

Schedule 1 [26] provides that a person may, with the consent of the Board of a Council, be employed as the chief executive officer of the Local Aboriginal Land Council if the person would otherwise be excluded because of the person's involvement in the management of a corporation owned or operated by the Aboriginal Land Council or because the person is also the chief executive officer of another Local Aboriginal Land Council. **Schedule 1 [48]** makes a comparable amendment in relation to the Chief Executive Officer of the New South Wales Aboriginal Land Council.

Schedule 1 [27] allows the Registrar, in certain circumstances, to authorise the employment of a person by a Local Aboriginal Land Council despite the person being otherwise prohibited due to the person having been convicted of a certain offence.

Schedule 1 [38] provides that the functions of the New South Wales Aboriginal Land Council includes assisting and supporting Local Aboriginal Land Councils in the exercise of functions under the principal Act.

Amendments relating to conduct, disclosure and disciplinary matters

Schedule 1 [65] replaces existing provisions relating to disciplinary matters with proposed sections 181A–181F.

Proposed section 181A defines certain terms and expressions used in Division 3A of Part 10 of the principal Act (including *misconduct*). Misconduct includes a contravention of a provision of the principal Act or the regulations, a contravention of an applicable code of conduct and an act of disorder committed by a councillor at a meeting of the New South Wales Aboriginal Land Council or by a Board member at a meeting of the Board or of the members of a Local Aboriginal Land Council.

Proposed section 181B sets out the grounds on which disciplinary action may be taken against an *officer* (to be defined as a Board member of a Local Aboriginal Land Council or a councillor of the New South Wales Aboriginal Land Council) or member of staff of an Aboriginal Land Council.

Proposed section 181C provides that an Aboriginal Land Council may formally censure an officer of the Council or member of staff of the Council if the Council is satisfied that the officer or member of staff has engaged in misconduct.

Proposed section 181D sets out the obligation of the Registrar to commence disciplinary proceedings in relation to complaints, allegations or reports of misconduct by an officer or member of staff of an Aboriginal Land Council.

Proposed section 181E makes provision with respect to the conduct of, and reporting on, investigations by the Registrar into alleged misconduct by officers or members of staff of Aboriginal Land Councils.

Proposed section 181F authorises the Registrar to take disciplinary action (including counselling or reprimanding the officer or member of staff, recommending the dismissal of a member of staff, recommending that other action be taken against an officer or member of staff or suspending an officer) if the Registrar is satisfied that there are sufficient grounds for doing so.

Schedule 1 [69] requires the Registrar to refer certain disciplinary matters to the Civil and Administrative Tribunal.

Schedule 1 [91] authorises the Civil and Administrative Tribunal to, in relation to misconduct by an officer of an Aboriginal Land Council:

- (a) disqualify an officer from holding office for a period not exceeding 5 years, or
- (b) order the payment of a pecuniary penalty not exceeding \$11,000, or
- (c) order the officer to reimburse the Aboriginal Land Council for loss incurred as a result of the misconduct.

Schedule 1 [6], [22], [28], [29], [61]–[68], [71]–[91] and [125]–[127] make amendments consequential on the above amendments relating to conduct, disclosure and disciplinary matters.

Amendments relating to the appointment of investigators and administrators for Aboriginal Land Councils

Schedule 1 [92] allows the Registrar, rather than the Minister, to appoint investigators to investigate the affairs of Local Aboriginal Land Councils, from a list of investigators prepared by the New South Wales Aboriginal Land Council and approved by the Minister. **Schedule 1 [5], [93], [94] and [97]–[99]** make consequential amendments.

Schedule 1 [103] allows the Registrar, rather than the Minister, to appoint administrators for a Local Aboriginal Land Council from the list of administrators prepared by the New South Wales Aboriginal Land Council and approved by the Minister. **Schedule 1 [104], [109], [111]–[113], [116], [117] and [119]–[124]** make consequential amendments.

Schedule 1 [106] allows for the appointment of an administrator on the recommendation of the New South Wales Aboriginal Land Council.

Schedule 1 [108] and [110] clarify the requirement of the Registrar or Minister to give notice, and consider responses, before appointing an administrator for an Aboriginal Land Council.

Minor amendments relating to other matters

Schedule 1 [1] and [2] replace references to “Aborigines” with “Aboriginal persons”.

Schedule 1 [3] removes a defined term that is no longer used.

Schedule 1 [59] requires the Registrar to report to the Minister on the exercise of the Registrar’s functions under the principal Act.

Schedule 1 [60] updates a reference to a Department as a consequence of administrative changes.

Schedule 1 [95], [96], [100], [101], [114], [115], [128] and [129] increase penalties for certain offences under the principal Act.

Schedule 1 [102] makes it clear that the power of the Registrar, the New South Wales Aboriginal Land Council or an investigator to require a person to provide information does not require the person to comply with such a request if doing so would require the person to disclose privileged information.

Schedule 1 [130] excludes Local Aboriginal Land Councils from certain disclosure requirements under the *Government Information (Public Access) Act 2009*.

Schedule 1 [131] enables the Registrar to obtain a search warrant to search premises if the Registrar believes on reasonable grounds that a provision of the proposed Act or the regulations has been contravened or that records required to be provided to an investigator or administrator have not been so provided.

Schedule 1 [132] provides for the grant of injunctions to prevent a contravention of the principal Act or the regulations.

Schedule 1 [134] updates a reference to the status of the Registrar as a consequence of the enactment of the *Government Sector Employment Act 2013*.

Schedule 1 [135] and [136] contain savings and transitional provisions consequent on the proposed Act.