



NSW Legislative Council Hansard

Aboriginal Land Rights Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 21 November 2006.

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.01 p.m.], on behalf of the Hon. Ian Macdonald: I move:

That this bill be now read a second time.

I am pleased to introduce the Aboriginal Land Rights Amendment Bill. The bill is a landmark step, and a new and positive direction for land rights in New South Wales. The legislation is designed to ensure that assets are managed in a transparent manner and that decision makers are held to account, including being required to undergo training in organisational management. This will do much to prevent further administrations from occurring and will assist greatly in increasing membership numbers. In turn, this means all members of Aboriginal communities will have increased opportunities to participate in, and benefit from, the decisions that affect them. With this in mind the Government has engaged in further consultations since the bill was first introduced. Consultation has taken place with Aboriginal people and various elected representatives, including the Opposition spokesperson. This has resulted in a number of amendments in the other place to ensure our shared goals of requiring greater accountability in decision making and allowing all Aboriginal people to benefit from management of their land are met.

These amendments include a number of technical adjustments and some further substantive changes. The bill now provides for a direct system of electing board members of land councils to ensure a democratic process. All members will be directly elected through this system. The existence of nine regional representative councils rather than six will ensure that diverse groups within the Aboriginal community receive adequate representation across the State and have a greater voice. Full-time elected representatives of the New South Wales Aboriginal Land Council instead of part-time executives will ensure a dedicated and committed team to work hard for all members. Furthermore, in response to the needs of community groups the Government will now conduct further consultation to determine the appropriate method of indexing the minimum level of the statutory fund of the New South Wales Aboriginal Land Council. As the remainder of my speech has already been given in the other place, I seek leave to have it incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Aboriginal Land Rights Amendment Bill, which is the outcome of extensive consultation with Aboriginal people across the State. In 2004 the former Minister for Aboriginal Affairs, the Hon. Andrew Refshauge, announced the review of the Aboriginal Land Rights Act and established a task force to oversee the review. The task force comprised the Administrator of the New South Wales Aboriginal Land Council, the Registrar of the Aboriginal Land Rights Act, and the Director General of the Department of Aboriginal Affairs. In making its recommendations the task force took into consideration feedback gained from consultation with Aboriginal people across the State.

The Department of Aboriginal Affairs engaged two independent facilitators, Mr Jack Beetson and the Hon. Wendy Machin, to consult with Aboriginal people in 10 locations across the State about the task force recommendations. Further consultations were conducted by the New South Wales Aboriginal Land Council in various locations across the State in October and November 2004 and in June and July 2005. I personally travelled extensively throughout New South Wales to consult with Aboriginal people face to face and I extended the time for written submissions to ensure that proper consultation was undertaken with Aboriginal people across our State.

The bill amends the Act to improve Aboriginal Land Council governance and facilitate the better management of Aboriginal Land Council assets, investments and business enterprises. The bill will provide for the changing structure of Local Aboriginal Land Councils [LALCs] from small-scale community organisations to reflect the million dollar corporate structures some have grown into over the past 23 years. In this regard the bill is modernising the legislation to recognise that the Aboriginal Land Rights Act is moving into a new area of economic and social development for Aboriginal Land Councils. Reforms to the Local Aboriginal Land Council structure are designed to create better decision-making and fairer participation in land councils.

The oversight and regulatory role of the New South Wales Aboriginal Land Council recognises the significance of the commercial activities of Aboriginal Land Councils and the need for strong self-regulation within the system. The LALC activities requiring New South Wales Aboriginal Land Council approval will be unlawful unless the approval has been obtained. This is a key element of the self-regulation of the Aboriginal Land

Council system. Local Aboriginal Land Council business enterprise and investment will be regulated by a system to assess the merits and viability of any business or investment proposal.

Local Aboriginal land councils will be able to facilitate business enterprises that may include the incorporation of related corporate entities. Any such entities will be accountable to the LALC, and their activities will form part of the reporting requirements of the LALC. This information must then be provided to the New South Wales Aboriginal Land Council as per the current requirement for LALCs to provide audited financial statements and budgets. All elected LALC board members and New South Wales Aboriginal Land Council councillors will be required to undertake basic training in their particular duties and responsibilities under the Act. The functions of the registrar and the Pecuniary Interest Tribunal have been expanded to more effectively deal with misbehaviour of councillors, land council members, and council board members and staff.

The amended regulatory regime is designed to emphasise fair play in the activities of Aboriginal land councils and bring Aboriginal land councils into line with the standards applied to like corporate bodies such as local government. Regional Aboriginal land councils will be abolished and the number of regions reduced from 13 to 6. In place of the regional councils will be regional electoral forums, comprising the chairpersons of each of the local Aboriginal land councils in the region. Each regional electoral forum will elect a councillor for the region to the New South Wales Aboriginal Land Council. There will be provision for two ministerial appointments to the Aboriginal Land Council, following consultation with the elected councillors. In making these appointments I, as the Minister, will bear in mind the gender, age and expertise of the councillor.

All councillors will be part time except for the chairperson, who will be full time. Councillors will serve four-year terms. Concerns have been raised by many Aboriginal people that the operations of land councils are dominated by certain family groups and therefore the interests of other members are ignored. To avoid this situation, and to assist in modernising the structure of local Aboriginal land councils, the chairperson, secretary and treasurer will be replaced by a board comprising five to 10 members elected by the land council members. The board will determine its chairperson and deputy chairperson. Board members will have a two-year term and can be re-elected. The bill sets out the functions of the board and clearly provides for the demarcation of functions between the board and the land council, as expressed by resolution of members.

It is important that the relationship between the role of the board and the members of the LALC is clearly understood. The day-to-day management functions of the LALC will be the responsibility of the chief executive officer. Often persons are elected to positions when they have had no prior experience or lack appropriate skills to properly fulfil their role. The bill therefore provides for the training of board members and councillors within the first six months after being elected. Board members and councillors can be suspended from office should they refuse or fail to undertake this training. They can also be disqualified from office if they continue to refuse or fail to undertake training.

Further, the bill disqualifies persons from holding office as a board member or councillor where they have convictions for certain offences recorded within the past five years. Such convictions include where a person has been involved in the management of a corporation, or a matter relating to the Aboriginal Land Rights Act, or any other offence that is punishable by imprisonment for 12 months or more. A board member or councillor is also disqualified from office when he or she has a conflict of interest with the council, such as being an employee or consultant of the council. The day-to-day functions of Aboriginal land councils are now to be run by a chief executive officer, whose functions will be set out in the Act. This will avoid confusion between the functions of the board and those of the chief executive officer.

Each Aboriginal land council, including the State land council, will be required to develop a community, land, and business plan setting out strategies for managing assets, investments, and the operation of business enterprises. In preparing this plan a land council must consult its members and other persons who have a cultural association with the land within the council's area. Plans must be approved by the membership of the land council and then by the New South Wales Aboriginal Land Council, in accordance with criteria specified in the Act, including consistency with Aboriginal Land Council policies. Land councils are to operate within the parameters of their council's community, land, and business plans. The plans will cover up to a five-year period and will give land councils certainty in their goals and objectives, and keep them clearly focused on their operations.

The bill provides for the making of specific policies by the New South Wales Aboriginal Land Council. Any policies made must be approved by the Minister for Aboriginal Affairs and subsequently gazetted. The bill amends the Act to enable land councils to establish community benefit schemes provided they will not substantially impair the capacity of land councils to meet their debts as and when they fall due. Community benefit schemes can include education, home ownership, concessional loans, funeral funds, cultural activities, child and aged care services.

There is capacity for land councils to establish a trust for the purpose of providing a community benefit scheme and the bill provides for transparency and accountability in financial dealings and compulsory reporting to members. A major cause of financial problems for many Aboriginal land councils is their provision of social

housing. To address this problem the bill amends the Act to enable land councils to use the services of another body or agency to assist in the running of the scheme.

The bill amends the Act to prescribe situations where a land council may be dissolved or amalgamated, and changes the procedures for carrying out these actions. The bill amends the Act so the Minister may, on the recommendation of the New South Wales Aboriginal Land Council or the registrar, appoint an advisor to a land council board if the Minister is of the opinion that the land council is in danger of failing. The bill requires the New South Wales Aboriginal Land Council to put policies in place to increase the total number of voting members of LALCs in the State by not less than 3 per cent per annum. The New South Wales Aboriginal Land Council is to include in its annual report a report on the steps taken to meet the 3 per cent target. The bill will modernise the Aboriginal land council system, provide benefits to Aboriginal people, provide greater accountability, and ensure that Aboriginal land council members are properly included in the decision-making process. I very proudly commend the bill to the House.