

Aboriginal Land Rights Amendment (Local Aboriginal Land Councils) Bill 2016

Second Reading

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (20:03): I move:

That this bill be now read a second time.

First and foremost, I acknowledge the traditional custodians of the land on which we meet today, the Gadigal people of the Eora nation. I pay my respects to their elders past and present and I also pay my respects to the elders of the other First Nations people of New South Wales and Aboriginal people who might be present today. It gives me great pleasure that one of my first responsibilities as the newly appointed Minister for Aboriginal Affairs is to complete the passage of the Aboriginal Land Rights Amendment (Local Aboriginal Land Councils) Bill 2016 through the Parliament. This is because I recognise the significance and importance of the Aboriginal Land Rights Act to the Aboriginal people of New South Wales. This bill complements other work in my portfolio.

As the newly appointed Minister for Aboriginal Affairs, I pay respects to my predecessor, Mrs Leslie Williams, who did a wonderful job in her time as the Minister. I am committed to continuing the work of Mrs Leslie Williams and also the Government to build upon the momentum of the significant initiatives in Aboriginal affairs reforms in New South Wales, of which this bill is one. Other important initiatives that we work on include OCHRE, which is the Government's plan for Aboriginal affairs, the development of draft legislation to acknowledge and protect New South Wales Aboriginal languages, and the establishment of a stolen generations reparation scheme, and a stolen generations advisory committee to monitor and review the implementation of the Government's response to the recommendations of the report of General Purpose Standing Committee No. 3 on reparations for the Stolen Generations in New South Wales, titled "Unfinished business". Those matters are of critical importance to my portfolio and to Aboriginal people across New South Wales. I will speak to the House in more detail on those matters another day. Today the focus is on this bill.

I turn to the provisions of the bill. The amendments contained in the bill will enable the intention and purpose of the Aboriginal Land Rights Act to be further realised. The bill empowers the land council network to address governance and capacity-building issues and has the potential to prevent the need for more direct interventions in the affairs of local Aboriginal land councils. The purpose of the Aboriginal Land Rights Act is:

- (a) to provide land rights for Aboriginal persons in New South Wales,
- (b) to provide for representative Aboriginal land councils in New South Wales,
- (c) to vest land in those Councils,
- (d) to provide for the acquisition of land, and the management of land and other assets and investments, by or for those Councils and the allocation of funds to and by those Councils,
- (e) to provide for the provision of community benefits schemes by or on behalf of those Councils.

Meeting those provisions is made possible through the work of the 120 representative local Aboriginal land councils that represent the interests of those members and the broader Aboriginal population in their areas to provide economic, social and cultural benefit to their communities. This

work is supported by the NSW Aboriginal Land Council, which regulates, oversees, funds and supports local Aboriginal land councils. It is therefore only when the 120 local Aboriginal land councils have capacity-building support, good corporate governance and access to assistance that the principles and intent of the Aboriginal Land Rights Act can be fully realised for the benefit of Aboriginal people in New South Wales.

This bill introduces improvements to the Aboriginal Land Rights Act that aim to refine and enhance the regulatory structures and mechanisms of the Act and provide better means to build the capacity and strength of local Aboriginal land councils, and the staff and elected officials who run them. The bill provides that the NSW Aboriginal Land Council will be provided the authority to issue a performance improvement order to a local Aboriginal land council if it is satisfied that action must be taken to improve the performance of the local Aboriginal land council. A performance improvement order may, or may not, also provide for the appointment of an adviser. Those new mechanisms and the policy intention behind the bill will enhance the intervention and compliance framework in the Aboriginal Land Rights Act, particularly in the way that advisers can be appointed to assist local Aboriginal land council boards to implement improvement orders. The intention is to make early midway intervention available when local Aboriginal land councils need assistance to comply with the regulatory and operational requirements of the land rights Act.

Since 2007, section 234 of the Aboriginal Land Rights Act has empowered the Minister for Aboriginal Affairs to appoint advisers to boards of local Aboriginal land councils on the recommendation of the Registrar of the NSW Aboriginal Land Council. However, this provision has never been used because it is ambiguous about the role and actual powers of advisers in relation to the statutory functions of boards of land councils and so its application has been unclear. In addition, the current provision to appoint an adviser under section 234 of the Act does not specify the repercussions for a local Aboriginal land council if it fails to follow an adviser's advice. These amendments make the advice provisions clearer and provide the regulators, particularly the NSW Aboriginal Land Council, with additional but less punitive tools to support Aboriginal land councils. Compliance with the performance improvement order is the responsibility of the board of the local Aboriginal land council. A land council will only be deemed compliant with a performance improvement order if the action taken, including any actions required to be taken by individual board members, is taken to the satisfaction of the NSW Aboriginal Land Council.

The board of the local Aboriginal land council must supply a report, called a compliance report, on the steps it has taken to implement the order to the NSW Aboriginal Land Council. If an adviser has been appointed, the adviser will also be required to comment on the land council's compliance report. A copy of the report must also be provided to the land council's members at the first meeting of the land council held after the report is submitted to the NSW Aboriginal Land Council. This will provide an important accountability mechanism and transparency to the members of the land council concerned.

The effectiveness of improvement orders, which is the centrepiece of the amendments in this bill, coupled with the option of appointing advisers, is to provide ways for local Aboriginal land councils to actively participate in their own regulatory oversight and recovery. Where there are councils or individuals who do not want to comply or follow good practice, then a more interventionist step, such as the appointment of an administrator, can be considered. The proposed amendments will make for a midway and more cost-effective intervention mechanism to assist councils to comply with the regulatory and operational requirements of the land rights Act.

Another important benefit of the bill relates to cost. Over the past 10 years approximately \$9.8 million has been spent on remuneration paid to administrators. All costs of appointed administrators

are paid by the NSW Aboriginal Land Council, which may recover them from local Aboriginal land councils, creating a debt by local Aboriginal land councils to be paid off over time. The implementation of these amendments will provide a lower cost and less interventionist option in the NSW Aboriginal Land Council's regulation of local Aboriginal land councils. The operation of the amendments will redirect moneys to flexible early intervention alternatives to implement capacity-building initiatives at a lower cost.

The proposed amendments contained in the bill are modelled on the improved intervention mechanisms that were introduced into the Local Government Act in 2013.

I acknowledge and appreciate the support for this bill by the Opposition in the Legislative Assembly, and, as expressed in that Chamber by the member for Wyong, David Harris, on behalf of the Opposition, the "great work" of my predecessor the member for Port Macquarie, Leslie Williams, in developing the bill. I also note the member for Wyong's comment that several land councils had expressed to him their view that while there had been good consultation on the bill by the New South Wales Aboriginal Land Council, consultation might have been more extensive. I say in response to the member for Wyong that consultation on the proposed Performance Improvement Framework in the bill were held in seven locations across New South Wales, and were attended by the chief executive officers [CEOs] and at least one, and often more, board members of the great majority of the 120 Local Aboriginal Land Councils.

The performance of their statutory functions by CEOs and board members is the most likely target of performance improvement orders. It is the responsibility of the elected representatives and chief executive officers of land councils who attended consultations to take that information back to their fellow staff and board members. Equally significantly, with respect to consultation, I am advised that the land council network—including members and elected officials—expressed a view at consultation forums in 2012 and 2013, in discussing amendments to the Land Rights Act, that the mode of interventions in the affairs of local Aboriginal land councils should be reconsidered and remodelled; that more cost effective, and less disruptive interventions in local land councils' affairs should be introduced; and that the New South Wales Aboriginal Land Council have a more prominent and support-focussed role in interventions.

This bill represents fulfilment of those preferences by local aboriginal land councils. It represents a reflective and constructive response to the network. And, as previously mentioned, under Section 234C, a land council will need to provide the New South Wales Aboriginal Land Council with a written compliance report outlining how it has complied with a Performance Improvement Order. In addition, a copy must be provided to members of the Local Aboriginal Land Council at the first council meeting held after the report is delivered to the New South Wales Aboriginal Land Council. This ensures that the elected board maintains accountability to the members who they were elected to represent.

The bill also includes an amendment to Section 52 that gives Local Aboriginal Land Councils the discretion to establish, acquire, operate or manage related corporate entities under either the Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006—otherwise known as the CATSI Act—or the Corporations Act 2001, at their discretion. The CATSI Act and the Corporations Act 2001 have different statutory compliance requirements. This amendment will give local Aboriginal land councils the power to choose how they want to register any corporation associated with the land council, dependent upon their needs and the differing resources and capabilities of each land council.

Allowing local Aboriginal land councils to incorporate related entities under the Corporations Act 2001, or the CATSI Act, will provide greater scope and flexibility for land councils and third parties to establish business enterprises. I want to make some comments on the relevance of the New South Wales Government's plan for Aboriginal Affairs—OCHRE—to the bill amending the Aboriginal Land Rights Act that is before the House. OCHRE stands for Opportunity, Choice, Healing, Responsibility and Empowerment. It was developed following a Ministerial Taskforce on Aboriginal Affairs, which was established by the then Premier and the then Minister for Aboriginal Affairs in late 2011. OCHRE represents a new approach to working with Aboriginal communities that is based on genuine partnerships and the devolution of power. I am committed to the community-led principles of OCHRE.

The establishment of the Aboriginal Land Rights Act in 1983 represented a major step to provide land rights to the Aboriginal people of New South Wales. The Act created a network of Aboriginal Land Councils and provides the mechanism for them to claim and manage land as compensation for historic dispossession and to provide economic, social, and cultural benefit to their communities. The principle of self-determination underpins the Act. Over the course of its history and development the legislation has progressively increased the power and local decision-making elements of its intents and purposes to Aboriginal people. Apart from a regulatory regime of statutory reporting requirements the legislation provides for a self-funded and self-regulated network of independent Aboriginal Land Councils.

Because of this, the land council network plays a crucial role in fostering self-determination in Aboriginal communities. The amendment bill, which provides a mechanism for early intervention in the affairs of land councils, will ultimately increase the financial and operational efficiencies in the network. This amendment bill is a significant step towards increasing the financial and operational efficiency of the network. It redirects funding—currently being spent on costly administrators—to flexible, early intervention alternatives to implement capacity-building initiatives at a lower cost and with wider application to better outcomes for the Aboriginal community of New South Wales. The scope of land councils' activities is increasing, including the scope of their engagement with the mainstream economy. It is crucial that, as their operations broaden, their capacity increases.

I conclude by stating that these amendments to the Aboriginal Land Rights Act provide a critical framework to support and build the capacity of the land council network across New South Wales. Strengthening land councils' governance and capacity, will in turn support the realisation of economic development opportunities throughout the network for the benefit of the Aboriginal community of New South Wales. I thank those who were involved in the development of this bill prior to my taking on the role as Minister, including the New South Wales Aboriginal Land Council—in particular, Roy Ah-See and the Deputy Chair Anne Dennis, for their assistance. I also thank the staff of Aboriginal Affairs NSW, who have been crucial to the development of this bill. The bill will enable local Aboriginal land councils to realise the vision for their communities—for Aboriginal communities that are prosperous and strong socially, economically and culturally. I commend the bill to the House.