



New South Wales

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

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 Act*) as follows:

- (a) to authorise the New South Wales Aboriginal Land Council to make a performance improvement order to a Local Aboriginal Land Council if the New South Wales Aboriginal Land Council considers that action must be taken to improve the performance of the Local Aboriginal Land Council,
- (b) to restore the authority of Local Aboriginal Land Councils to own and operate corporations,
- (c) to clarify the role and functions of an administrator or interim administrator appointed to an Aboriginal Land Council,
- (d) to provide for the payment of an interim administrator.

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.

Clause 3 provides for the repeal of the uncommenced provisions of the *Aboriginal Land Rights Amendment Act 2014*.

Schedule 1 Amendment of Aboriginal Land Rights Act 1983 No 42

Schedule 1 [1] restores the authority of a Local Aboriginal Land Council to establish, acquire, operate or manage companies under the *Corporations Act 2001* of the Commonwealth in addition to Aboriginal and Torres Strait Islander corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth.

Schedule 1 [2] makes it clear that the Board of a Local Aboriginal Land Council is not able to exercise any of the Board's functions that have been granted to the administrator of the Council. Section 222 (4) of the Act currently provides that the Council cannot exercise any functions that have been granted to the administrator of the Council. **Schedule 1 [7]** makes a consequential amendment.

Schedule 1 [5] provides that an interim administrator appointed for a Local Aboriginal Land Council has, to the exclusion of the Council and the Board of the Council, the functions specified in the interim administrator's instrument of appointment. **Schedule 1 [3] and [4]** make consequential amendments.

Schedule 1 [6] provides that an interim administrator appointed to a Local Aboriginal Land Council is to be paid by the New South Wales Aboriginal Land Council, and that the New South Wales Aboriginal Land Council may recover that amount from the Local Aboriginal Land Council for which the interim administrator has been appointed.

Schedule 1 [9] inserts proposed Division 4 (proposed sections 234A–234E) in Part 11 of the Act to provide for the making of performance improvement orders to Local Aboriginal Land Councils.

Proposed section 234A provides for the making of a performance improvement order if the New South Wales Aboriginal Land Council reasonably considers that action must be taken to improve the performance of a Local Aboriginal Land Council. The proposed section also provides for matters to be considered by the New South Wales Aboriginal Land Council before making an order, matters that are to be included in an order and the variation of an order.

Proposed section 234B requires the Board of a Local Aboriginal Land Council to ensure that the Council complies with a performance improvement order and makes it clear that compliance with the order must be to the satisfaction of the New South Wales Aboriginal Land Council.

Proposed section 234C requires a Local Aboriginal Land Council to report to the New South Wales Aboriginal Land Council on the Local Aboriginal Land Council's compliance with the performance improvement order.

Proposed section 234D provides for the appointment by the New South Wales Aboriginal Land Council of one or more advisors to a Local Aboriginal Land Council that is subject to a performance improvement order. An advisor is appointed to advise and assist the Council in the exercise of the Council's functions and in complying with the order and to monitor the Council's compliance with the order.

Proposed section 234E requires the Board and members and staff of a Local Aboriginal Land Council to co-operate with any advisor appointed to the Council and to provide the advisor with any assistance or information that is required by the advisor. Failure to comply with the proposed section is taken to be a failure to comply with the performance improvement order.

Schedule 1 [8] makes a consequential amendment.

Schedule 1 [10] inserts a provision of a transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Aboriginal Land Rights Regulation 2014

Schedule 2 [3] amends the *Aboriginal Land Rights Regulation 2014* (***the Regulation***) to prescribe the functions of a Council and the members of a Council that may be exercised by an interim administrator.

Schedule 2 [4] inserts proposed Division 2 (proposed clause 97A) in Part 7 of the Regulation. The proposed Division sets out matters that are required to be considered by the New South Wales Aboriginal Land Council before making a performance improvement order. **Schedule 2 [1] and [2]** make consequential amendments.