



New South Wales

Aboriginal Land Rights Amendment Bill 2022

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 *principal Act*) in relation to the following matters—

- (a) land dealings by a Local Aboriginal Land Council (an *LALC*) and the amendment by the New South Wales Aboriginal Land Council (*NSWALC*) of the approval of land dealings,
- (b) the refund of community development levy amounts paid for cancelled dutiable transactions,
- (c) the preparation and approval of community, land and business plans of Aboriginal Land Councils,
- (d) the financial reporting obligations of NSWALC and other governance and administrative matters relating to the operations of Aboriginal Land Councils,
- (e) officers of Aboriginal Land Councils, including suspension from office, grounds for disqualification from office, vacancies in office, and employment and training of officers,
- (f) the administration of elections of councillors of NSWALC,
- (g) the employment of staff and the advertising of staff vacancies of an Aboriginal Land Council,
- (h) the functions under the principal Act of Aboriginal Land Councils and the Minister for Aboriginal Affairs,
- (i) the rectification of the Register of Aboriginal Owners by the Registrar under the principal Act,

- (j) the transaction of business of NSWALC outside meetings or by telephone or other electronic means,
- (k) updating the Preamble to the principal Act to reflect the importance of waters to Aboriginal persons, in addition to the existing recognition of lands,
- (l) other minor or consequential matters.

The Bill also makes consequential amendments to the *Aboriginal Land Rights Regulation 2020* and the *Government Sector Finance Regulation 2018*.

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.

Schedule 1 Amendments relating to land dealings and community benefits

Schedule 1[1] makes it clear that the power of the Registrar to refuse to refer a claim for land made in contravention of an undertaking given in an Aboriginal Land Agreement applies only if the agreement is recorded in the register of Aboriginal Land Agreements under the principal Act.

Schedule 1[2] and [3] provide for further exceptions to the restriction on an LALC purchasing land. Currently, an LALC can purchase land only if the purchase price is not more than 5% above the assessed market value of the land or NSWALC has given its written approval to the purchase. Schedule 1[2] allows an LALC to purchase land for more than 5%, but not more than 15%, above the assessed market value of the land. Schedule 1[3] allows an LALC to purchase land for nominal consideration.

Schedule 1[4] enables NSWALC to amend an approval of a land dealing on the application of the LALC concerned if the land dealing has not been completed and certain instruments giving effect to or forming part of the land dealing have not been registered under the *Real Property Act 1900* or the *Conveyancing Act 1919*. **Schedule 1[5]–[8]** make consequential amendments.

Schedule 1[9] provides for the amount of community development levy paid by the Chief Commissioner of State Revenue to NSWALC for a dutiable transaction to be refunded to the LALC concerned if the transaction is cancelled. The amendment also provides that NSWALC may obtain a refund of the amount contributed to the New South Wales Aboriginal Land Council Community Fund by NSWALC for the transaction. **Schedule 1[14]** makes a consequential amendment.

Schedule 1[10] removes the requirement for NSWALC to have regard to the limited operations of an LALC when considering whether to exempt the LALC from the requirement to prepare a community, land and business plan.

Schedule 1[11] removes the requirement for a community, land and business plan of NSWALC to contain certain matters in relation to land.

Schedule 1[12] removes the requirement for 14 days' notice to be given of a meeting of NSWALC at which a community, land and business plan of NSWALC is to be approved.

Schedule 1[13] repeals provisions requiring the Chief Executive Officer of NSWALC to make available a summary or copy of a proposed community, land and business plan containing matters prescribed by regulations under the principal Act. The amendment also repeals a provision allowing more than one meeting to be called to enable approval of a community, land and business plan of NSWALC. **Schedule 4.2[4]** makes a consequential amendment.

Schedule 2 Amendments relating to office holders

Schedule 2.1[2] requires travelling and other allowances for a Board member of an LALC to be determined by resolution of the voting members of the LALC, rather than by the Minister for Aboriginal Affairs. **Schedule 2.1[1]** makes a consequential amendment.

Schedule 2.1[3] inserts provisions about the election and term of office of Board members of an LALC for which an administrator has been appointed. The term of office of a Board member appointed to fill a vacancy as a result of the appointment of an administrator ends on the election of the next Board. The timing of the election of the next Board is subject to whether the elections to fill the vacancies were held before, or during, the period of 12 months before the next Board election would have been held had the administrator not been appointed.

Schedule 2.1[4] removes the power of NSWALC to exempt a Board member of an LALC from a requirement to undergo certain training arranged by NSWALC if the member has previously undergone the training.

Schedule 2.1[5] provides that a conviction for an offence disqualifies a person from holding office as a Board member of an LALC only if the offence is punishable by imprisonment for 5 years or more. Currently, disqualification applies in relation to offences punishable by imprisonment for 12 months or more.

Schedule 2.1[6] provides that a person is disqualified from holding office as a Board member of an LALC if, within the last 5 years, the person has been the subject of a finding by the Independent Commission Against Corruption of serious corrupt conduct.

Schedule 2.1[7] provides that a person is disqualified from holding office as a Board member of an LALC if the person is or was concerned in the management of a body corporate that is the subject of a winding up order or for which a controller or administrator, other than a special administrator, has been appointed under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth within the last 3 years.

Schedule 2.1[8] provides that a person who is a contractor to an LALC is disqualified from holding office as a Board member of the LALC. **Schedule 2.1[10] and [11]** make consequential amendments.

Schedule 2.1[9] provides that a person who was a Board member of an LALC for which an administrator has been appointed is disqualified from holding the office if the person held the office at a time that was both—

- (a) within 2 years before the appointment, and
- (b) within the last 5 years.

Schedule 2.1[12] provides for an exception to disqualification from office as a Board member of an LALC for certain short-term work. The exception applies to work of a kind specified in a policy prepared in accordance with the directions of NSWALC and approved by resolution of the voting members of the LALC. The employment, consultancy or contract concerned must also be approved by resolution of the voting members of the LALC or, if required by the approved work policy, the Board. The policy may not specify, as approved work, the functions of the chief executive officer of the LALC or work performed on a permanent basis.

Schedule 2.1[13] provides that a vacancy in the office of a Board member of an LALC does not arise as a result of the member's absence from 2 consecutive meetings of the Board until the Board has resolved not to excuse the member for the absences.

Schedule 2.1[17] inserts new provisions dealing with the administration of elections of councillors of NSWALC as follows—

- (a) proposed section 121A requires NSWALC to decide whether elections will be administered by the Electoral Commissioner or by an electoral services provider engaged by NSWALC,

- (b) proposed section 121B contains provisions relating to the administration of elections by the Electoral Commissioner,
- (c) proposed section 121C contains provisions relating to the administration of elections by an electoral services provider.

Schedules 2.1[15], [16], [19] and [26] and 2.2 make consequential amendments.

Schedule 2.1[18] provides that NSWALC, rather than the Minister for Aboriginal Affairs, must decide the date for the election of all councillors of NSWALC. The date must be determined in consultation with the Electoral Commissioner in certain circumstances. The amendment also provides that if an election of all councillors of NSWALC is not held on the date determined by NSWALC for the election, the Minister for Aboriginal Affairs may decide a new date and appoint a returning officer for the election.

Schedule 2.1[20] provides that a conviction for an offence disqualifies a person from holding office as a councillor of NSWALC only if the offence is punishable by imprisonment for 5 years or more. Currently, disqualification applies in relation to offences punishable by imprisonment for 12 months or more.

Schedule 2.1[21] provides that a person is disqualified from holding office as a councillor of NSWALC if, within the last 5 years, the person has been the subject of a finding by the Independent Commission Against Corruption of serious corrupt conduct.

Schedule 2.1[22] provides that a person is disqualified from holding office as a councillor of NSWALC if the person is or was concerned in the management of a body corporate that is the subject of a winding up order or for which a controller or administrator, other than a special administrator, has been appointed under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth within the last 3 years.

Schedule 2.1[23] provides that a person is disqualified from holding office as a councillor of NSWALC on the ground of engaging in other paid work only if the work is done without the approval of NSWALC. Schedule 2.1[14] makes a related amendment to provide that NSWALC may not delegate the function of approving the paid work.

Schedule 2.1[24] provides that a vacancy in the office of a councillor of NSWALC does not arise as a result of the councillor's absence from 2 consecutive meetings of NSWALC until NSWALC has resolved not to excuse the councillor for the absences.

Schedule 2.1[25] allows the Registrar to decide in certain circumstances that an offence committed by a person may be disregarded for the purposes of a prohibition on employment with NSWALC.

Schedule 3 Amendments relating to conduct and disciplinary matters

Schedule 3[4] repeals and re-enacts, with modifications, Part 10 of the principal Act. The proposed Part contains the following provisions about conduct and disciplinary matters—

- (a) proposed Division 1 defines certain words and expressions used in the proposed Part, and **Schedule 3[1]** makes a consequential amendment,
- (b) proposed Division 2 contains provisions about codes of conduct for members, officers and members of staff of Aboriginal Land Councils, and **Schedule 4.2[6]–[9]** make consequential amendments,
- (c) proposed Division 3 sets out the duties of officers and members of staff of Aboriginal Land Councils, including the duty to disclose pecuniary interests,
- (d) proposed Division 4 contains provisions about formal censure, complaints, investigations and disciplinary action, and **Schedule 3[2] and [3]** make consequential amendments,

- (e) proposed Division 5 contains provisions about proceedings before the NSW Civil and Administrative Tribunal relating to misconduct and other complaints and allegations.

Schedule 3[5] extends the power of the Registrar to issue a compliance direction to enable the Registrar to issue a direction to the chief executive officer of an Aboriginal Land Council. Currently, the Registrar may only issue a compliance direction to an officer of an Aboriginal Land Council.

Schedule 3[6] provides that an officer of an Aboriginal Land Council who is suspended from office under the principal Act is not to be counted as a voting member of NSWALC or the Board of NSWALC for the purposes of determining the quorum required for a meeting of NSWALC or the Board.

Schedule 4 Miscellaneous amendments

Schedule 4.1[1]–[4] amend the Preamble to the principal Act, which currently recognises the importance of land to Aboriginal persons. The amendments extend the recognition so that it reflects the importance of waters to Aboriginal persons.

Schedule 4.1[5] extends the objects of LALCs to include the relief of poverty, sickness, suffering, distress, misfortune, destitution and helplessness of Aboriginal persons within the LALC's area. The amendment makes the objects of an LALC consistent with the objects of NSWALC relating to persons within NSWALC's area.

Schedule 4.1[6] provides that a Board of an LALC must review its delegations within 12 months after an election of the Board, rather than every year and immediately after an election of the Board.

Schedule 4.1[7] allows the Board of an LALC to advertise a vacancy for the position of chief executive officer of the LALC in a way it decides to be sufficient to enable suitably qualified persons to apply for the position, rather than in the way prescribed by the regulations. **Schedule 4.2[1]** makes a consequential amendment.

Schedule 4.1[8] allows a vacancy in the staff of an LALC to be filled without advertisement with the approval of the Board. Currently, a vacancy may be filled without advertisement only in the circumstances prescribed by the regulations.

Schedule 4.1[9] extends the functions of NSWALC in relation to policy and advice to include advising the Minister for Aboriginal Affairs on matters relating to the interests of Aboriginal persons.

Schedule 4.1[10] requires NSWALC to make its policies relating to Aboriginal Land Council functions publicly available on the website of NSWALC.

Schedule 4.1[11] removes the requirement for NSWALC to obtain the approval of the Minister for Aboriginal Affairs before adopting a policy.

Schedule 4.1[12] amends a provision dealing with the commencement of policies of NSWALC to provide that a policy takes effect on the day specified in the policy, but no earlier than the day it is published on the website of NSWALC.

Schedule 4.1[13] corrects a cross-reference.

Schedule 4.1[14] prohibits a person who is not an Aboriginal person from being employed as the Chief Executive Officer of NSWALC. **Schedule 4.1[15]** makes a consequential amendment.

Schedule 4.1[16] allows NSWALC to advertise a vacancy for the position of Chief Executive Officer of NSWALC in a way it decides to be sufficient to enable suitably qualified persons to apply for the position, rather than in the way prescribed by the regulations. **Schedule 4.2[4]** makes a consequential amendment.

Schedule 4.1[17] allows a vacancy in the staff of NSWALC to be filled without advertisement with the approval of the Chairperson of NSWALC. Currently, a vacancy may be filled without advertisement only in the circumstances prescribed by the regulations.

Schedule 4.1[19] provides that the value of the assets of NSWALC, rather than the capital value of the New South Wales Aboriginal Land Council Account, must be maintained above the capital value of the account as at 31 December 1998. **Schedule 4.1[18] and [20]** make consequential amendments.

Schedule 4.1[21] inserts provisions relating to the financial reporting obligations of NSWALC. **Schedule 4.3[1]** makes a related amendment to the *Government Sector Finance Regulation 2018* to exclude NSWALC from the application of the financial reporting requirements of the *Government Sector Finance Act 2018*. **Schedules 4.1[22], [24] and [25], 4.2[5] and 4.3[2]–[5]** make consequential amendments.

Schedule 4.1[23] makes discretionary a requirement for NSWALC to appoint a special auditor on the request of an LALC to examine the financial affairs of the LALC.

Schedule 4.1[26] updates a reference to a Department.

Schedule 4.1[27] and [28] make it clear that the obligation of the Registrar to enter names of Aboriginal persons in the Register of Aboriginal Owners is limited to entering the names of Aboriginal persons who have a cultural association with land in the State, determined on request under the principal Act.

Schedule 4.1[29] corrects an inconsistency in terminology used in reference to the original Aboriginal inhabitants of land in a provision specifying the eligibility requirements for entering the name of an Aboriginal person in the Register of Aboriginal Owners.

Schedule 4.1[30] enables the Registrar to amend information on, or remove information from, the Register of Aboriginal Owners if the Registrar considers the information is false, erroneous or misleading. The Registrar must first give the Aboriginal person to whom the information relates written notice and an opportunity to make submissions about the proposed change. An Aboriginal person who considers the amendment is incorrect may request the Registrar to rectify the Register, and may appeal to the Land and Environment Court if the Registrar fails to rectify the Register within 6 months. **Schedule 4.1[31]** makes a consequential amendment.

Schedule 4.1[32] removes the requirement for NSWALC to submit to the Minister for Aboriginal Affairs for approval the list of persons who may be appointed by the Minister as an administrator for an LALC.

Schedule 4.1[33] requires the Minister for Aboriginal Affairs to prepare a report of the Minister's reasons for appointing an administrator of NSWALC and table the report in Parliament.

Schedule 4.1[34] updates a provision relating to the execution of documents by an Aboriginal Land Council without a common seal consequent on changes to the constitution of LALCs.

Schedule 4.1[36] provides for the transaction of business of NSWALC outside meetings or by telephone or other electronic means. **Schedules 4.1[35] and 4.2[2] and [3]** make consequential amendments.

Schedule 5 Amendment relating to savings and transitional provisions

Schedule 5 makes an amendment of a savings and transitional nature consequent on the amendments made by Schedule 1.