Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Greg Pearce.

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [4.00 p.m.]: I move:

That this bill be now read a second time.

As this piece of legislation is an amendment to the Aboriginal Land Rights Act 1983, it is appropriate that I commence my second reading speech by acknowledging the traditional custodians of the land, the Gadigal people of the Eora nation, and I pay my respects to their elders past and present. The object of this bill is to amend the Aboriginal Land Rights Act 1983 to facilitate entering into and the management of residential tenancy agreements of less than three years or periodic agreements by boards of local Aboriginal land councils [LALCs] where other parties to the agreements are natural persons. I refer to the specific elements of this amendment bill. An amendment to section 42E of the Act will exempt residential tenancy agreements of less than three years from the operation of the section, which is located within that part of the Land Rights Act that imposes specific requirements on how local land councils deal with their land—that is, the amendments will bring the Act more into line with the Residential Tenancies Act 2010. An amendment to section 52G (e) of the Act will ensure that short-term residential tenancy agreements are excluded from the types of "dealing with land" that require approval by resolutions of voting members of a local Aboriginal land council.

An amendment to section 62 of the Act will confer directly on the board of a local Aboriginal land council the functions of entering into, managing and terminating short-term residential tenancy agreements in relation to land vested in the council and managing and terminating those agreements. By adding this specific function to the other board functions set out in section 62, the board becomes empowered to delegate the function to the chief executive officer of the land council in accordance with section 72, which provides that boards may delegate their functions. Additional provisions include an amendment to section 230 of the Act to make it clear that an administrator of a local Aboriginal land council is empowered to exercise the board function in relation to short-term residential tenancy agreements without requiring the consent of the council at a meeting. However, to put the amendment in context, I need to provide an overview of the Aboriginal Land Rights Act and the land council network. The Aboriginal Land Rights Act commenced operation in 1983. The essence of the Act is captured in the preamble, which sets out the following provisions of the Act:

> (1) Land in the State of New South Wales was traditionally owned and occupied by Aborigines:
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> (2) Land is of spiritual, social, cultural and economic importance to Aborigines:
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> (3) It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land:
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> (4) It is accepted that as a result of past Government decisions the amount of

land set aside for Aborigines has been progressively reduced without compensation.

The Aboriginal Land Rights Act 1983 provides a mechanism for compensating Aboriginal people of New South Wales for loss of their land. The local Aboriginal land councils, of which there are 119, can claim Crown land which, if granted, is transferred as freehold title. Self-determination is the underlying theme of the Aboriginal Land Rights Act and it is unique in that it provides the members of local Aboriginal land councils with real power to utilise their landholdings for the purposes of economic development. The local Aboriginal land councils have statutory functions for the acquisition, management, control and disposal of land with freehold title. Local land councils are corporate bodies whose managing boards are elected every two years by the membership of adult Aboriginal persons, largely based on residence within a local land council boundary.

The roles and functions of the elected boards, staff and members of Aboriginal land councils are set out in the Act to enshrine a separation of powers and to specify certain powers as delegable to foster transparent and effective governance of land councils. However, the rationale for the amendment was borne from the fact that on 23 March 2011 the decision of the Land and Environment Court in *Woods v Gandangara Local Aboriginal Land Council* on the land council's management of its housing tenancy leases meant that all decisions concerning residential tenancy agreements now would require the approval of a member's meeting. This has particularly onerous ramifications for the management by local Aboriginal land councils of the approximately 2,600 houses which they manage as Aboriginal community housing stock.

First of all, it will increase the possibility of circumstances where a conflict of interest may arise—for example, in the circumstance where family members are voting on whether to increase the rent or evict a tenant who is a family member. The decision also meant that local Aboriginal land councils suffer the imposition of the time and expense of advertising and convening meetings if an extraordinary meeting is required to be called. If this anomaly is not corrected, economic viability and good governance will be jeopardised. The decision resulted in strong representations to the Government by the New South Wales Aboriginal Land Council, various local Aboriginal land councils and the Registrar of the Act, which have resulted in this amendment. The benefits of implementing the amendment include empowering elected local Aboriginal land council boards to administer fair, consistent and financially viable housing policies. As the members of this House know well, clear and definitive corporate governance is the foundation of the most valued institutions in our society, both private and public. We all depend on accomplished corporate governance to ensure sound and fair decision-making. Without attention and commitment to good governance we risk disarray and the erosion of expectations and trust in our institutions and corporations and those who lead and administer them.

The Aboriginal Land Rights Amendment (Housing) Bill 2011 is the O'Farrell-Stoner Government's commitment, made jointly with stakeholders, to ensure that the governance of Aboriginal land councils is free of potential conflicts of interest for members, elected officials and staff. As a consequence this will build the capacity to deliver housing outcomes and services to members, their families and Aboriginal communities across the State. The conflict of interest exists in the fact that a rent-paying tenant can simultaneously be a member of a land council. Balancing conflicting interests is often wrought with complexities. However, the amendment goes towards resolving this issue, which would have undermined the functioning of local Aboriginal land councils. Aboriginal people from across the network have told the Government that the decision has led to poor compliance with housing policies

and agreements. This has resulted in frustrating and contradicting the elected boards' efforts to manage housing in a fair, consistent and financially viable manner. The bill provides certainty for all stakeholders involved in the management of land council housing, including elected land council boards, the New South Wales Aboriginal Land Council and, if relevant, the Aboriginal Housing Office and/or other approved housing providers.

The amendment provides greater clarity of boards' functions and roles and adds significant efficiency to land council administration in land and housing asset management. It does this by assigning boards the statutory function of managing the residential tenancy aspects of their council's community housing assets by empowering boards, if they so choose, to delegate performance of that function to their chief executive officer or other appropriate agents. It also ensures that housing owned and managed by the Aboriginal community housing sector is supported to become sustainable and financially viable. As a result, the quality of living conditions of Aboriginal people residing in land council-managed housing hopefully will be improved. Importantly, most of the 119 local Aboriginal land councils manage community housing for their members and their families, making up the 60 per cent of housing stock in the Aboriginal community housing sector, or 2,600 of the total 4,300 dwellings managed by approximately 200 Aboriginal housing providers in New South Wales. The number of dwellings managed by any one local Aboriginal land council can be as little as two or three but can range up to more than 80. In some remote areas local land councils are the largest landowner. Management of their housing by local land councils is a key yet often burdensome part of the overall administration of land councils. However, at the same time, for many members access to land council housing is the most tangible benefit that membership offers.

Local land councils are therefore key players in the delivery and management of housing to many Aboriginal people. Yet the establishment of land councils as housing providers, whilst embedded in good intentions, has nonetheless created an often complex and challenging setting for housing management. While some local land councils adopted the role of housing provider, unfortunately some local land councils have had to deal with a poor tenancy culture, including low or sporadic rental collection and limited maintenance of stock. This has led to a substantial amount of housing stock being substandard, which is why reform in this area is so critical.

These matters are a critical concern for land council boards and administrators, who must balance the rights of tenants with sustainable housing asset management. These matters are also, for similar reasons, an ongoing chief concern and priority of both the New South Wales Aboriginal Land Council and the New South Wales Aboriginal Housing Office. I acknowledge present efforts to develop and implement policies to counter the tenancy trends of the past to ensure the Aboriginal community housing sector of this State is viable and fair well into the future. With the commencement of the Aboriginal Land Rights Act in 1983 came the transfer of land and housing stock, which represented the fundamental basis of the legislation to empower Aboriginal communities to manage their own housing. With that power Aboriginal people not only gained control of the land and housing assets but simultaneously became important corporate citizens of this State in the provision of services to their communities.

The proposed amendments will support and refine a stronger housing culture within local land councils by empowering elected board members and staff of land councils within the legal framework to provide and administer local Aboriginal land council housing equitably through the strengthening of corporate governance. Apart from these benefits, this improved efficiency will strengthen the ability of local Aboriginal land councils to receive benefits

under the current process of reform of the Aboriginal community housing sector. The sector reform—known as the Build and Grow Strategy—is partly predicated on ensuring arm's length management of housing stock by Aboriginal community housing providers as a condition for receiving financial support and subsidies and having maintenance carried out. That is a condition of the Commonwealth's funding support under the Remote Indigenous Housing National Partnership and its implementation by Housing NSW through the Aboriginal Housing Office.

The point must also be made that a critical element of tenancy and housing management by local land councils is the ability for both the land councils and their tenants to have their rights under residential tenancy agreements overseen and enforced by the Consumer, Trader and Tenancy Tribunal. In addition, while the decision is delegable to the chief executive officer or the board, if the members are not satisfied with the decision they will always have the option of putting forward a resolution and calling an extraordinary meeting to resolve the issue. The proposed amendment does not provide this specific new statutory function to boards at the expense of the overarching power of the broader membership of local Aboriginal land councils. Those members still set the parameters for a board's management function through their statutory role in developing their council's community, land and business plan.

In conclusion, it is well known that improvements in housing have a direct correlation to better outcomes in health, education and employment, as well as a reduction in crime and family violence. Access to stable and affordable housing can also provide a base from which households can access support, develop positive relationships and participate in the community and economy. In this way, improved housing management will make an important contribution to closing the gap and opening up opportunities for Aboriginal people across New South Wales.

I wish to thank and acknowledge the critical role of the New South Wales Aboriginal Land Council in the development of this bill. The land council has provided insight and skill into what measures will be serviceable and effective for Aboriginal land councils in a complex system. I also wish to acknowledge the work and commitment of both the Office of the Registrar of the Aboriginal Land Rights Act and the staff of Aboriginal Affairs NSW in the development of this bill. I also acknowledge the support of this bill by the Aboriginal Housing Office, which has reviewed the bill and confirmed its view that its provisions will assist land councils to meet the tenancy and housing stock management benchmarks, which are conditional to their receiving benefits under the ongoing reform of the Aboriginal community housing sector. This bill is a necessary addition to the Land Rights Act and I commend it to the House.

Debate adjourned on motion by the Hon. Amanda Fazio and set down as an order of the day for a future day.