

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) as follows:

- (a) to require all dealings with land (other than acquisition of land) by the New South Wales Aboriginal Land Council (the NSWALC) to be consistent with its community, land and business plan and any applicable policies of the NSWALC,
- (b) to require all dealings with land (other than acquisition of land) by a Local Aboriginal Land Council (a LALC) to be approved by the NSWALC,
- (c) to specify procedures and requirements for approvals by the NSWALC of land dealings and to provide for assessment of land dealings by expert advisory panels,
- (d) to prohibit registration of land dealings by Aboriginal Land Councils under the Real Property Act 1900 unless the registration application is accompanied by a registration approval certificate,
- (e) to provide for a system of registration prohibition notices to enforce agreements implementing conditions of approvals of land dealings,

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- (f) to provide for a community development levy to be paid by LALCs on dealings with land and for the collection, use and payment of the proceeds of that levy and to provide for matching payments to be made by the NSWALC,
- (g) to re-enact certain provisions relating to land dealings,
- (h) to prohibit the NSWALC from delegating its land dealing approval functions,
- (i) to make other minor and consequential amendments,
- (j) to enable regulations to be made as a consequence of the enactment of the proposed Act and to insert a transitional provision.

The proposed Act also makes related amendments to other Acts and regulations.

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 proclaimed.

Schedule 1 Amendment of Aboriginal Land Rights

Act 1983 No 42

Schedule 1 [3] repeals Division 4 of Part 2 of the Principal Act and inserts proposed Divisions 4 (proposed sections 40–42P) and 4A (proposed sections 42Q–42X).

Proposed Division 4

Proposed section 40 defines words and expressions used in the proposed Divisions.

Deal with land means sell, exchange, lease, mortgage, dispose of or otherwise create or pass a legal or equitable interest in land, grant or release an easement or covenant over land, enter into agreements under certain Acts, subdivide or consolidate land, make a development application and do any other action relating to land that is prescribed by the regulations.

Proposed section 41 defines dealing approval certificate and registration approval certificate and makes a dealing approval certificate conclusive evidence of the matters specified in it. A dealing approval certificate is a certificate by the Chief Executive Officer of the NSWALC that a land dealing by the NSWALC complies with the proposed Division or that a land dealing by a LALC has been approved by the NSWALC. A registration approval certificate is a certificate by the Chief Executive Officer that a registrable instrument (relating to a land dealing by the NSWALC or a LALC) can be registered or recorded under the Real Property

Act 1900 or that a plan or other instrument can be registered under the Conveyancing Act 1919.

Proposed sections 42–42B re-enact, with minor variations, sections 40AA, 40AB and 42 of the Principal Act.

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Proposed section 42C provides that a dealing with land by an Aboriginal Land Council that contravenes proposed section 42D or 42E is void. The provision is in addition to the requirements of or under any other Act or law in relation to a land dealing.

Proposed section 42D prohibits the NSWALC from dealing with land unless it has notified the LALC for the area in which the land is situated of the proposed dealing and considered any comments by the LALC. It also requires the NSWALC not to deal with land unless it has had regard to its community, land and business plan and any applicable policies. The Chief Executive Officer of the NSWALC must give a dealing approval certificate if satisfied that the NSWALC has complied with the proposed Division in relation to a land dealing and must also give a registration approval certificate for a registrable instrument if satisfied that the instrument is a registrable instrument relating to such a dealing. Leases for periods of less than 3 years will not be subject to the proposed section.

Proposed section 42E prohibits a LALC from dealing with land except in accordance with an approval by the NSWALC. Leases for periods of less than 3 years (other than certain social housing management leases) will not be subject to the proposed section. The proposed section also provides that an agreement by a LALC to deal with land is, if the land dealing has not been approved (if required), unenforceable against the LALC.

Proposed section 42F sets out requirements for applications for approval of LALC land dealings by the NSWALC and also contains the power to make regulations about assessment fees and other related matters.

Proposed section 42G sets out requirements for approval of LALC land dealings by the NSWALC. The NSWALC must approve the dealing if it is approved at a meeting of the LALC that complies with the proposed section and the application is in accordance with the proposed Act. However, the NSWALC may refuse to approve a land dealing if it is of the opinion that the land dealing is, or is likely to be, contrary to the interests of LALC members or other Aboriginal persons within the area of the LALC. The proposed section requires any conditions of approval to be able to be satisfied before completion of the land dealing but also enables a condition requiring an agreement relating to ongoing obligations to be entered into.

Proposed section 42H requires the NSWALC to give a LALC a written statement of reasons for a decision to refuse approval of a land dealing or to impose conditions on a land dealing within 28 days after the LALC requests such a statement.

Proposed section 42I enables the NSWALC to constitute expert advisory panels to assess applications for approvals of dealings with land.

Proposed section 42J prohibits the NSWALC from revoking a land dealing approval if the land dealing has been completed (whether or not it is required to be, or has been, registered). It also provides that the relevant approval certificates cease to have effect on revocation of the approval.

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Proposed section 42K requires the Chief Executive Officer of the NSWALC to give a dealing approval certificate for a LALC land dealing within 14 days after it is approved by the NSWALC. It also requires a registration approval certificate to be

given for a LALC land dealing if the Chief Executive Officer is satisfied that the instrument concerned is a registrable instrument, that any conditions of the NSWALC approval have been met and that any community development levy has been paid.

Proposed section 42L limits the right to bring proceedings in relation to a decision to approve or not to approve a land dealing, under the Land and Environment Court Act 1979 or for judicial review in any other court, to the LALC concerned.

Proposed section 42M prohibits the Registrar-General from registering or recording a transfer or other dealing relating to land of an Aboriginal Land Council unless the transfer or dealing is accompanied by a registration approval certificate relating to the transfer or dealing or is not required to have such a certificate. A registration or recording prohibited by the proposed section will have no effect.

Proposed section 42N provides for agreements entered into in accordance with a condition imposed by an approval by the NSWALC of a land dealing (a land dealing approval agreement) to be registered on the title of land under the Real Property Act 1900 or in the General Register of Deeds (in the case of old system title land). The effect of registration of an agreement will be to make the agreement binding on the successors in title to the owner who entered the agreement.

Proposed sections 42O and 42P establish a system of registration prohibition notices for land subject to a land dealing approval agreement. The NSWALC may lodge a registration prohibition notice with the Registrar-General for recording on the title of land that is subject to a land dealing approval agreement. Notice must be given to the registered proprietors of estates or interests in the land. The Registrar-General is prohibited from registering or recording a land dealing that is prohibited by a registration prohibition notice, except with the consent of the NSWALC. The NSWALC must not refuse consent if the dealing is permitted by the agreement or does not materially affect its performance or enforcement.

Proposed Division 4A

Proposed section 42Q provides that words and expressions used in the proposed Division have the same meaning as they have in the Duties Act 1997.

Proposed section 42R requires a LALC to pay a community development levy on specified dealings with land and enables related regulations to be made.

Proposed section 42S provides that the community development levy is not payable for transactions between Aboriginal Land Councils.

Proposed section 42T provides that the amount of the community development levy for a transaction is to be the prescribed percentage (if any) of the amount of duty payable for the transaction.

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Proposed section 42U provides for the payment to the NSWALC of the amounts of community development levy collected by the Chief Commissioner of State Revenue, as agreed with the Chief Commissioner, and also requires the NSWALC to match the payments of community development levy made by LALCs.

Proposed section 42V enables the Minister to waive matching payments by the NSWALC in appropriate circumstances.

Proposed section 42W enables regulations to be made with respect to the application of provisions of the Duties Act 1997 in respect of the community development levy and other matters related to the levy.

Proposed section 42X provides that the proposed Division is to be read together with the Taxation Administration Act 1996 (other than Part 4 of that Act).

Schedule 1 [1], [2], [6] and [8] make amendments consequential on the amendment made by Schedule 1 [3].

Schedule 1 [4] and [11] amend sections 52 and 106 of the Principal Act to insert

notes relating to the powers of LALCs and the NSWALC as statutory corporations. Schedule 1 [5] inserts proposed section 52AA into the Principal Act. The proposed section re-enacts existing section 41 in relation to LALCs.

Schedule 1 [7] amends section 52G of the Principal Act to require a LALC to exercise its function of approving a land dealing by resolution of its voting members.

Schedule 1 [9] amends section 106 of the Principal Act to include the function of approving land dealings by LALCs in the list of functions of the NSWALC.

Schedule 1 [12] inserts proposed section 106A into the Principal Act. The proposed section re-enacts existing section 41 in relation to the NSWALC.

Schedule 1 [13] amends section 113 of the Principal Act to enable policies to be made by the NSWALC in relation to land dealings by LALCs and in relation to the distribution of amounts from the New South Wales Aboriginal Land Council Community Fund.

Schedule 1 [14] amends section 116 of the Principal Act to prevent the NSWALC from delegating functions relating to the administration of the New South Wales Aboriginal Land Council Community Fund established under proposed section 149A (see Schedule 1 [16]).

Schedule 1 [15] amends section 116 of the Principal Act to add approval of land dealings by LALCs to the list of functions that may not be delegated by the NSWALC.

Schedule 1 [16] inserts proposed section 149A into the Principal Act. The proposed section establishes the New South Wales Aboriginal Land Council Community Fund, into which payments of community development levy are to be paid. The Fund is to be used for the management and acquisition of land by LALCs and for

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community benefit schemes by LALCs and other purposes. Schedule 1 [10] makes a consequential amendment.

Schedule 1 [17] amends section 150 of the Principal Act to enable amounts in the New South Wales Aboriginal Land Council Community Fund to be taken into account when determining the capital value of the New South Wales Aboriginal Land Council Account.

Schedule 1 [18] inserts proposed section 239A into the Principal Act. The proposed section requires a dispute relating to a decision to approve or not to approve a land dealing to be referred to the Registrar for mediation, conciliation or arbitration if an Aboriginal Land Council proposes to commence legal proceedings.

Schedule 1 [19] amends section 242 of the Principal Act to add members of expert advisory panels to the persons who are protected under that section from personal liability for acts or omissions done in good faith for the purpose of executing that Act or any other Act.

Schedule 1 [20] amends Schedule 4 to the Principal Act to enable regulations containing provisions of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [21] inserts savings and transitional provisions into Schedule 4 to the Principal Act.

Schedule 2 Amendment of other Acts and instruments

Schedule 2.1 amends the Aboriginal Land Rights Regulation 2002 to insert proposed Part 10 (Land Dealings) and to make other consequential amendments. The proposed Part:

(a) prescribes the forms for dealing approval certificates and registration approval certificates, and

(b) prescribes requirements for land dealing approval applications and the fees for

applications and assessment of applications, and
(c) prescribes the procedures for dealing with applications, including the circumstances when the NSWALC is not required to assess a land dealing approval application, and
(d) contains provisions relating to expert advisory panels, and
(e) contains provisions relating to the community development levy, including the amount of the levy and periods for payment, as well as making provision for the application of specified provisions of the Duties Act 1997 and interim assessments of liability.

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Schedule 2.2 amends the Environmental Planning and Assessment Act 1979 to enable regulations to be made:

(a) requiring the NSWALC to consent to applications for approval of Part 3A projects relating to LALC land if LALC approval is required as the owner of land, and
(b) requiring the NSWALC to consent to applications for the modification of development consents relating to such land, and
(c) enables regulations containing savings and transitional provisions to be made.

Schedule 2.3 amends the Environmental Planning and Assessment Regulation 2000 to:

(a) require the consent of the NSWALC to a Part 3A project relating to LALC land if the consent of the LALC is required, and
(b) require the consent of the NSWALC to a development application made in respect of such land, and
(c) require notice of determination of a development application, or an application to modify a development consent, for such land to be given to the NSWALC, and
(d) require the consent of the NSWALC to an application for the modification of development consents relating to such land.

Schedule 2.4 amends the National Parks and Wildlife Act 1974 to require the consent of the NSWALC to a conservation agreement under that Act relating to LALC land.

Schedule 2.5 amends the Taxation Administration Act 1996 to provide for the provisions of that Act (which apply to the collection of taxes) to apply to the community development levy.

Schedule 2.6 amends the Threatened Species Conservation Act 1995 to require the consent of the NSWALC to a biobanking agreement under that Act relating to LALC land and for notice to be served on the NSWALC of any application to transfer LALC land to the Minister on the ground of a contravention of a biobanking agreement.

Schedule 2.7 amends the Wilderness Act 1987 to require the consent of the NSWALC to a wilderness protection agreement under that Act relating to LALC land.