Agreement in Principle

Mr PAUL LYNCH (Liverpool—Minister for Ageing, Minister for Disability Services, and Minister for Aboriginal Affairs) [10.10 a.m.]: I move:

> That this bill be now agreed to in principle.

It is appropriate, in particular for this piece of legislation, that I commence this speech by acknowledging the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation. I pay my respects to their elders past and present. I also pay my respects to the elders of the other first nations of this land. The Aboriginal Land Rights Amendment Bill will make a number of significant and important amendments to the Aboriginal Land Rights Act 1983. The twenty-fifth anniversary of the 1983 Act was celebrated last year in this Chamber. It is an Act of very considerable practical and symbolic importance. The preamble to that Act is a good summary of why it has such importance:

> Land in the State of New South Wales was traditionally owned and occupied by Aborigines. Land is of spiritual, social, cultural and economic importance to Aborigines. It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land. 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.

These matters go to the core of Australia's history and identity. They deal in part with what was described as the Great Australian Silence by W.E.H. Stanner. We have of course recently been reminded of that by Robert Manne's collection of Stanner's essays. As a result of claims pursued under this legislation, land councils own approximately 82,000 hectares of land in freehold title in New South Wales. As of this month a total of 17,780 land claims have been lodged by Aboriginal land councils, 2,328 have been granted fully or partially to date, while 8,719 have been refused. Many of those granted include high value coastal land and 8,689 are yet to be determined and thus potentially granted. The up-to-date valuation of those granted land parcels is $2.157 billion. Unlike other schemes, this regime transfers freehold title in land. In a judgement in the recent High Court decision concerning a land claim in Wagga, then Justice Kirby, described the 1983 Act as little short of revolutionary. In detail he said:

> Against the background of prolonged, deep-seated, reinforced and, ultimately, widely accepted discrimination in the law against the rights to traditional lands of the indigenous people of Australia, the objects evident in the Land Rights Act could fairly be described as little short of revolutionary.
>
> The discriminatory common law principle that lay at the source of the denial to indigenous people in Australia to rights to land existed despite the fact that such recognition was accorded to the land rights of the settlers and their successors.
>
> There was a further fundamental correction to this principle some years after the Land Rights Act was adopted, notably in the decisions of this court in *Mabo v Queensland* and *Wik People v Queensland*.
>
> However the contextual consideration of these decisions does not, in any way, diminish the important shift in direction in the law of New South Wales achieved by the enactment of the Land Rights Act.

The Land Rights Act is an attempt to overcome the historical fact of dispossession. To quote from Henry Reynolds in *The Law of the Land*:

> The common law was corrupted in Australia by the nature of the relationship between settlers and Aborigines in the same way in which it was corrupted in Britain's slave colonies. In the West Indies the law accommodated the bondage of the slave and the vast power of the master. In Australia it accommodated the dispossession of the owners of the land without payment of any compensation at all.

That is the significance of the 1983 Act, which this bill seeks to amend. The amendments in this bill will provide clearer and more certain processes for Aboriginal land councils to follow when they deal with, dispose of, or develop land. This will reinforce the beneficial and remedial nature of the Act. The amendments will increase the confidence of the property industry when engaging in land developments with Aboriginal land councils. They will bring clear and appropriate regulation of the extensive and valuable land holdings of Aboriginal land councils in New South Wales. That regulation is of vital importance. It will invigorate land development partnerships between the property industry and land councils. It will enhance the effectiveness of the Land Rights Act in bringing benefits to Aboriginal people in New South Wales.

These amendments will enhance the objectives of the Land Rights Act by facilitating greater opportunities for economic development by Aboriginal communities throughout New South Wales. Land assets are critical for Aboriginal communities, not just for the social and cultural benefits it brings, but for the economic leverage they

bring. Since 1983 the Act has undergone a number of reviews with subsequent amendments to improve the outcomes for the Aboriginal people of New South Wales and to safeguard the rights, assets and interests held by Aboriginal land councils. Aboriginal land councils have statutory functions for the acquisition, management, use, control and disposal of land with freehold title. Self-determination is the underlying theme of the legislation and it is unique in that it provides the members of Aboriginal land councils with real power over how to utilise their land holdings.

A 2004 review of the Act conducted by a New South Wales Government task force comprehensively examined the operations of land councils to look at how the Act can be strengthened. Following the review, significant amendments to improve the representation, structure and governance of land councils were passed by this Parliament in 2006 and commenced operation in two stages during 2007. This bill represents the second phase of the implementation of the recommendations of the review. It incorporates the recommendations to amend the land dealing provisions of the Act following the findings of an Independent Commission Against Corruption [ICAC] investigation into Koompahtoo Local Aboriginal Land Council in 2003. In passing, I note that I welcome this week's Supreme Court decision touching on the Koompahtoo trust. The ICAC recommended amendments to the Act to:

Review the oversight function of the New South Wales Aboriginal Land Council in relation to land dealings by local Aboriginal land councils [LALCs];

Lay down clearer guidelines for how Aboriginal land councils can pursue commercial land development, including regulation of the processes by which they enter consultancy or partnership agreements with third parties; and

Establish proper roles for Aboriginal land council staff, elected officials, and the membership of LALCs involved in the land dealing approval process.

The 2007 amendments have already addressed some of these recommendations by strengthening the transparency of land council governance and clarifying the functions and roles of the staff and elected representatives of land councils. These current amendments complete the New South Wales Government's implementation of all of the recommendations that arose following the ICAC consideration of the land council land dealings processes.

The bill, of course, was released as an exposure draft in March 2009. With the benefit of submissions, some modifications were made to the exposure draft. This bill is the next step to further the effectiveness of the Land Rights Act as it complements the amendments which commenced operation in 2007. For example, the requirement for land dealing approval applications by land councils to be consistent with council-approved community land and business plans strengthens the transparent governance of land councils and will provide members with increased confidence and oversight of how their council's assets are being applied. This will support and promote greater efficiency in the use and management of land by land councils, which will in turn be more effective in delivering benefits to communities.

Historically, the increase in land values in New South Wales has attracted keen interest from property developers in land held by land councils. However, many land councils have often been without the expertise, capacity or knowledge to enter agreements as an equal partner or, in some cases, according to the Act. Consequently the image of the land rights movement has been marred by some land dealings that have gone wrong and regrettably involved substantial breaches of the Act in dealing with the proceeds of land sales.

The objective of this bill is to address these significant problems that face the land council network. Although the boom in property appears at present to be in recess, we must ensure that appropriate safeguards are in place for the future to guarantee the long-term economic and social development of the land councils for the Aboriginal people of this State. This bill will allow land councils to legally and properly do things they could not do before. I note a report in the *Sydney Morning Herald* inferring that this bill was primarily about putting more barriers in the way of developments. That is simply wrong.

This bill provides this certainty by creating a clearer regime and legal responsibilities for land councils and third parties when engaged in property development and sales. This means land councils will have a long-term future in the development of their land. Importantly, the bill makes it clear that a land dealing by a land council that requires approval and that is not the subject of an approval is void and of no effect. This is a matter of certainty and also a strong protection against corruption. More specifically, the validity of a land dealing by a local Aboriginal land council hinges on a valid approval of the dealing by the New South Wales Aboriginal Land Council. The New South Wales Aboriginal Land Council must ensure the validity of its own land dealings by giving proper approval.

The bill establishes clearer processes and roles for the New South Wales Aboriginal Land Council and local land councils in the land dealing approval process. It requires all disposals of, and dealings with, land by local Aboriginal land councils and the New South Wales Aboriginal Land Council to have regard to their community, land and business plans. Most importantly, the bill provides for clearer procedures and processes for

applications by local Aboriginal land councils to, and approvals by, the New South Wales Aboriginal Land Council in relation to dealings with land. This includes the power for the New South Wales Aboriginal Land Council to impose conditions on approvals. The bill also includes, if required, the assessment of land dealings by expert advisory panels prior to approval.

There is the introduction of a new system of certification of the application and approval process. This includes two types of certificates. One is a dealing approval certificate, which will be required before an Aboriginal land council can deal with land, or enter an agreement to deal with land, or lodge development applications with local government authorities. A dealing approval certificate will be conclusive evidence of the matters certified in the certificate in favour of any person. This is a critical issue in the bill. Once a dealing approval certificate is given by the New South Wales Aboriginal Land Council, it may be relied upon to support the land dealing it authorises. Only a person who had knowledge that matters certified in the certificate were incorrect before the land dealing is completed will lose the protection of the certificate. This will be of great benefit to land councils and their partners in land dealings, giving them confidence and security with their transactions.

There is a second form of certificate called a registration approval certificate, which must be obtained by Aboriginal land councils before they can register any dealings on title to land under the Real Property Act 1900. This will ensure that the Land Titles Office will 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. Because a land dealing by a land council cannot be registered without a registration approval certificate, if a registration occurs without a registration approval certificate, the normal rules of indefeasibility under the Real Property Act apply and the wrongful registration of the dealing will not pass any interest in land.

Registration approval certificates provide a high standard of probity and security for the registration of land council land dealings by the Registrar General. These registration approval certificates introduce a new and clearly defined link between the Aboriginal Land Rights Act and the Real Property Act in relation to the exceptions to indefeasibility. There is a requirement for the payment of fees by local Aboriginal land councils to the New South Wales Aboriginal Land Council and, if applicable for, the expert advisory panels, to recover the costs of assessing applications.

The bill also provides a system of land dealing approval agreements that may be entered into to ensure that approvals for land dealings are complied with. Such agreements may in certain circumstances run with the land and bind successors in title. Such agreements will provide greater certainty and legitimacy for land council land dealings, and for the use of resources generated by land dealings. The bill also provides for a system of registration prohibition notices, which may be registered on a land title, to enforce land dealing approval agreements under which a land council has undertaken to comply with conditions placed on land dealing approvals by the New South Wales Aboriginal Land Council.

An important provision of the bill is that a community development levy be paid on certain land dealings to be included in the New South Wales Aboriginal Land Council Community Fund. The New South Wales Aboriginal Land Council [NSWALC] must match amounts paid by a local Aboriginal land council into the fund. The provision also includes a ministerial discretion to waive payments by NSWALC to avoid any possibility that making such a matching payment would compromise the efficient functioning of the land council network.

The New South Wales Aboriginal Land Council Community Fund has been established to receive the community development levy payable by land councils when engaged in a land dealing. The levy will act to evenly spread the wealth from land councils with more valuable land holdings to those councils with less valuable land and development opportunities. The money from the fund is to be used to provide grants for local Aboriginal land council community benefits schemes, to assist land councils with land acquisition and land management and for other purposes.

A local Aboriginal land council is liable to pay the community development levy only for land dealings set out in clause 42R (2) of the bill. The concept and the administration of the community development levy has been carefully integrated with the Duties Act. While land councils have always been exempt from the payment of stamp duty, the community development levy is calculated and collected having regard to the operation of the Duties Act. The amount of the community development levy will depend on the type and value of a land dealing. Amounts are collected by the Chief Commissioner of Taxation and are to be paid to the New South Wales Aboriginal Land Council Community Fund by the Chief Commissioner. The New South Wales Aboriginal Land Council has the power under the bill to distribute money from the fund having regard to the distribution of wealth amongst land councils and in accordance with its policies.

The bill attempts to encourage efficient dispute resolution. For example, the bill makes clear that only a local Aboriginal land council that has made an application to the NSWALC for approval of a land dealing may seek judicial review of NSWALC's decision about their application and that no person may seek to have the merits of a decision by the NSWALC considered by a court. The bill encourages negotiation and alternative dispute resolution in disputes between local Aboriginal land councils, and the New South Wales Aboriginal Land Council in land dealing approvals, by requiring a local Aboriginal land council to refer such a dispute to the registrar of the Aboriginal Land Rights Act before commencing legal proceedings. With the parties' consent the registrar may

use mediation, conciliation or arbitration to resolve the dispute, rather than the matter progressing to litigation.

The development of the land dealings bill has been an intensive policy development process over the last year. It has been led with passion, vigour, precision and good humour by the registrar of the Aboriginal Land Rights Act, Mr Stephen Wright, and I acknowledge him for his significant role in shaping this bill. Mr Wright is in the Chamber today. He has been so excited about the process that he is about to start it all over again. I also acknowledge the very hard work done by my department, the Department of Aboriginal Affairs, and in particular Mr Ross Pearson, who is also here with other members of the department. I pay particular tribute to the significant contribution to the development of the bill by the New South Wales Aboriginal Land Council Board. The chairperson, Beth Manton, is also with us today. I also acknowledge the contribution of the chief executive officer, Mr Geoff Scott, and the assistant chief executive officer, Norman Laing—both of whom are in the Chamber—and principal legal officer, Lila D'souza and NSWALC's legal representatives.

This has been a different and frankly better way than it is sometimes done to prepare technical legislation. It is important that I also acknowledge the assistance and cooperation of officers within the Office of State Revenue for their skilled and willing assistance with comments on the parts of this bill that involve their administration and their cooperation in helping to develop the process for collecting and remitting the levy. A number of other State agencies have provided their input and assistance to make this bill the product of cooperation that will ensure its administrative success. In particular, I acknowledge the input of officers from the Land Titles Office who have been at the table in developing this bill. Their input has ensured that this bill will mesh as seamlessly as possible with land titles registration processes under the Real Property Act and the Conveyancing Act. Indeed, the Land Titles Office has helped design the certificates and forms that will be used under the Act to ensure the absolute confidence of the market and the New South Wales State agencies in folding Aboriginal land council developments into the New South Wales development landscape.

I have often remarked that this is a very good time in history to be State Minister for Aboriginal Affairs. A key to success in Aboriginal affairs is to work in partnership with the Aboriginal people of New South Wales. This bill and its preparation demonstrate the value of that partnership. The New South Wales Aboriginal Land Council has had a pivotal role in the development of this bill. The council has provided insight and skill into assessing what measures will be serviceable and effective for Aboriginal land councils in a complex system of land dealing approval and implementation. I acknowledge that the reform of Aboriginal Land Rights Act was driven in large part by the input of the late Murray Chapman, then administrator of the New South Wales Aboriginal Land Council. Murray established the three-person taskforce comprising himself, the Director General of the Department of Aboriginal Affairs, and the registrar of the Aboriginal Land Rights Act.

In the development of this latest raft of amendments the New South Wales Aboriginal Land Council has again continued to be a positive participant in developing this bill, which promises greatly enhanced economic development for Aboriginal communities well into the future. There are many land claims yet to be determined, so it is clear that the provisions of this bill have a lot of work to do—not only in developing land in New South Wales, but in being a driver into the future of the beneficial outcomes for Aboriginal people that the Land Rights Act has become. This bill is a significant addition to the Land Rights Act. It is necessary for the more efficient and effective use and development of the ever-increasing land holdings of Aboriginal land councils.

Most appropriately, the bill gives greater prominence to the consideration of Aboriginal culture and heritage considerations in relation to land dealings. It places the responsibility for determining the significance of culture and heritage to land dealings with the Aboriginal owners of the land. The measures provided for in this bill will significantly increase the confidence of the development industry and the market to engage in property development with Aboriginal land councils, and as a result facilitate greater economic development opportunities for Aboriginal communities in New South Wales.

This bill reflects what I regard as the coming together of both the rights agenda and the development agenda. Over the last decade and a half there have been times when various participants in public debates have placed those agendas in opposition to each other. That never made sense to me, and it is fundamentally illogical. This legislation allows Aboriginal people, through democratically elected structures, to pursue in ways they choose appropriate economic development. It is within the context of the 1983 New South Wales land rights legislation. As I said, that is a coming together of both a rights agenda and an economic development agenda. I commend the bill to the House.