

FIRST PRINT

ABORIGINAL LAND RIGHTS (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Aboriginal Land Rights Act 1983:

- * to create a new Commission to replace the NSW Aboriginal Land Rights Council.
 - * to expand the functions of Local Aboriginal Land Councils.
 - * to change the role of Regional Aboriginal Land Councils to that of an advisory body to Local Aboriginal Land Councils.
 - * to provide for the participation of the Electoral Commissioner of NSW in the conduct of elections of the members of the Commission, the members of Regional Aboriginal Land Councils and of the office holders of Local Aboriginal Land Councils.
 - * to enable the Commission and Local Aboriginal Land Councils to sell, mortgage or otherwise dispose of land if certain requirements are met.
 - * to provide for the preparation and audit of annual financial statements of the operations of the Commission and Regional and Local Aboriginal Land Councils.
 - * to make further provision relating to the investigation of the affairs of the Commission and Regional and Local Aboriginal Land Councils and the appointment of administrators.
 - * to require a person elected to an office under that Act to disclose any direct or indirect pecuniary interest if it might conflict with the proper performance of the duties of the office.
 - * to make other miscellaneous amendments to the Act.
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Aboriginal Land Rights (Amendment) 1990

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act, except for Schedule 8, to commence on a proclaimed day or days. Schedule 8 (containing savings and transitional provisions) is to commence on the date of assent to the proposed Act.

Clauses 3 and 4 give effect to the Schedules of amendments.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE CONSTITUTION
OF THE NSW ABORIGINAL AFFAIRS AND LAND RIGHTS COMMISSION**

New Commission

Schedule 1 (2) replaces Part 4 of the Principal Act with a new Part.

The new Part:

- * creates the New South Wales Aboriginal Affairs and Land Rights Commission.
- * provides that the Commission consists of elected full-time Aboriginal Commissioners - one for each Regional Aboriginal Land Council area (currently 13 areas).
- * provides for members of each area to vote for the Commissioner to represent that area. (Elections are to be conducted by the Electoral Commissioner for NSW in accordance with the regulations.)
- * sets out the functions of the Commission.
- * provides that the Commission is to exercise its functions in accordance with general directions given to it by the Minister and laid before each House of the Parliament.
- * provides for the appointment of a Chairperson, a Deputy Chairperson, Chief Executive Officer and staff of the Commission.

Schedule 1 (3) inserts 3 new Schedules into the Principal Act.

Commissioners

Proposed Schedule 5, relating to Commissioners, provides for:

- * a 3 year term of office.
- * the circumstances in which the office of a Commissioner becomes vacant.
- * the removal of a Commissioner by the Minister on the grounds of a petition calling for his or her removal signed by at least 66 per cent of the members of Local Aboriginal Land Councils in the area the Commissioner represents.
- * the filling of casual vacancies.

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Procedure at meetings of Commission

Proposed Schedule 6 contains provisions dealing with the procedure at meetings of the Commission. In particular, it provides that a decision of the Commission must be supported by at least 6 votes.

Preservation of certain rights of staff previously public servants etc.

Proposed Schedule 7 preserves certain rights of staff of the Commission who were previously public servants etc. These rights relate to superannuation, long service and sick leave and the right to re-appointment to former employment.

SCHEDULE 2 - AMENDMENTS RELATING TO LOCAL ABORIGINAL LAND COUNCILS

This Schedule changes the existing provisions relating to Local Aboriginal Land Councils:

- * by providing that a person cannot be listed on the Local Aboriginal Land Council roll for an area if the person is a member of another Local Aboriginal Land Council.
- * by providing for the Electoral Commissioner of NSW to conduct elections every 3 years to elect the Chairperson, Secretary and Treasurer of each Council. (Office holders are currently elected at each annual meeting of the Council.)
- * by expanding the functions of these Councils.
- * by enabling Councils to exercise their functions without reference to a Regional Aboriginal Land Council.
- * by providing that the Councils may fund Regional Aboriginal Land Councils.

SCHEDULE 3 - AMENDMENTS RELATING TO REGIONAL ABORIGINAL LAND COUNCILS

This Schedule changes the existing provisions relating to Regional Aboriginal Land Councils:

- * by providing for the Electoral Commissioner of NSW to conduct elections every 3 years to elect the members of the Councils. (Members are currently elected at annual meetings of each Local Aboriginal Land Council.)
- * by providing for the office holders of each Council to be elected in accordance with the regulations.
- * by reducing the functions of each of these Councils to that of a consultative and advisory body to the Local Aboriginal Land Councils within its area.

SCHEDULE 4 - AMENDMENTS RELATING TO DISCLOSURE OF PECUNIARY INTERESTS AND DISQUALIFICATION FOR OFFICE

This Schedule inserts 2 new sections into the Principal Act. The new sections apply to Commissioners, members of Regional Aboriginal Land Councils and the Chairperson, Secretary and Treasurer of Local Aboriginal Land Councils.

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Proposed section 56AA requires these office holders to disclose any direct or indirect pecuniary interest in a matter if it appears to conflict with the proper performance of their duties.

Proposed section 56AB makes it an offence to fail to comply with the disclosure requirement. It also provides that if a person is convicted of the offence by a court the person is disqualified from holding office for 7 years or such shorter period as the court may order.

SCHEDULE 5 - AMENDMENTS RELATING TO DISPOSAL OF ABORIGINAL LAND

The Principal Act as currently in force contains very limited provisions for the disposal of land vested in Aboriginal Land Councils. In general, while Councils may lease the land they may not sell or mortgage it.

Proposed section 40 enables the Commission and Local Aboriginal Land Councils to dispose of land if it is not of cultural significance to the Aborigines of the Local Aboriginal Land Council area in which the land is situated.

The land may only be disposed of with the approval of the Minister and of the members of the relevant Local Aboriginal Land Council.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL MATTERS, INVESTIGATORS AND ADMINISTRATORS

Schedule 6 (1) replaces Part 5 of the Principal Act with a new Part.

The new Part re-enacts much of the old Part but with the following differences:

- * the old provisions relating to the NSW Aboriginal Land Council now relate to the Commission.
- * the funds of the Commission are to be used to pay for elections conducted under the Principal Act and for the staff and other administration costs of the Commission.
- * Regional and Local Aboriginal Land Councils must prepare financial statements for each financial year in accordance with the Public Finance and Audit Act 1983 and those statements are to be audited by a registered company auditor.
- * Regional and Local Aboriginal Land Councils must submit to the Commission, for its approval, a budget relating to their operations for the next financial year.
- * Regional and Local Aboriginal Land Councils may be required to submit quarterly reports to the Commission relating to the expenditure of funds.
- * the Commission, Regional and Local Aboriginal Land Councils may invest their funds in accordance with the regulations.

Schedule 6 (2) is consequent on the proposed changes to the functions of Local and Regional Aboriginal Land Councils.

Schedule 6 (3) provides that mining fees and royalties are to be paid to the Commission. Forty per cent of the fees and royalties are to be retained by the Commission. The remaining 60 per cent is to be distributed to the Local Aboriginal

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Land Councils on whose land the mining operations were carried out. (This differs from the existing provision which provides for 30 per cent to be retained by the Commission, 40 per cent to be distributed among Regional Aboriginal Land Councils and 30 per cent to be distributed to the relevant Council on whose land the mining operations were carried out.)

Investigators

Schedule 6 (4) inserts new provisions relating to the appointment of investigators. These provisions enable the Minister to appoint an investigator to investigate the affairs of the Commission. Similarly, the Commission may appoint an investigator to investigate the affairs of a Regional or Local Aboriginal Land Council.

Administrators

Schedule 6 (4) substitutes provisions relating to the appointment of administrators.

Under the substituted provisions, the Commission may appoint an administrator to exercise all of the functions of a Regional or Local Aboriginal Land Council and the Minister may appoint an administrator to exercise all of the functions of the Commission. The circumstances in which administrators may be appointed are specified in the provisions. One circumstance is where the report of an investigator discloses grounds which justify the appointment. Provision is also made for the holding of fresh elections on the appointment of an administrator.

SCHEDULE 7 - MISCELLANEOUS AMENDMENTS

Dissolution of Regional and Local Aboriginal Land Councils

Schedule 7 (13) enables the Commission to dissolve a Regional or Local Aboriginal Land Council if it has ceased to function or if the Council requests the Commission to do so.

Conciliation and disputes

Schedule 7 (14) amends the provision which enables the Registrar to refer disputes to the Land and Environment Court. The amendment enables the Registrar to conciliate and, if necessary, determine the dispute. A party dissatisfied with the Registrar's decision may require the Registrar to refer the dispute to the Land and Environment Court.

Certain acts to apply to Commission and Aboriginal Land Councils

Schedule 7 (16) inserts a new section to ensure that the following Acts apply in relation to the Commission and Aboriginal Land Councils:

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- * Ombudsman Act 1974
- * Independent Commission Against Corruption Act 1988
- * Freedom of Information Act 1989.

Amalgamation of Local Aboriginal Land Council areas

Schedule 7 (17) enables regulations to be made authorising the Minister to approve the amalgamation of Local Aboriginal Land Council areas.

Consequential amendments

The remaining amendments contained in Schedule 7 are consequent on the amendments already described in this Explanatory Note.

SCHEDULE 8 - AMENDMENTS RELATING TO SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 8 amends Schedule 4 to the Principal Act to insert savings and transitional provisions consequent on the enactment of the proposed Act. In particular, proposed clause 16 of Schedule 4 provides for the holding of elections for Commissioners and others as if the relevant provisions of the proposed Act had commenced on the date of assent to the proposed Act.

SCHEDULE 9 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

This Schedule amends the Public Finance and Audit Act 1983 to apply the auditing and accounting provisions of that Act to the Commission. The amendments to this Act also take out the reference to Regional Aboriginal Land Councils. (The proposed Act contains express provisions for the auditing of the accounts of these Councils.)

The Schedule also amends the Statutory and Other Offices Remuneration Act 1975 so that the remuneration of Commissioners will be determined in accordance with that Act.

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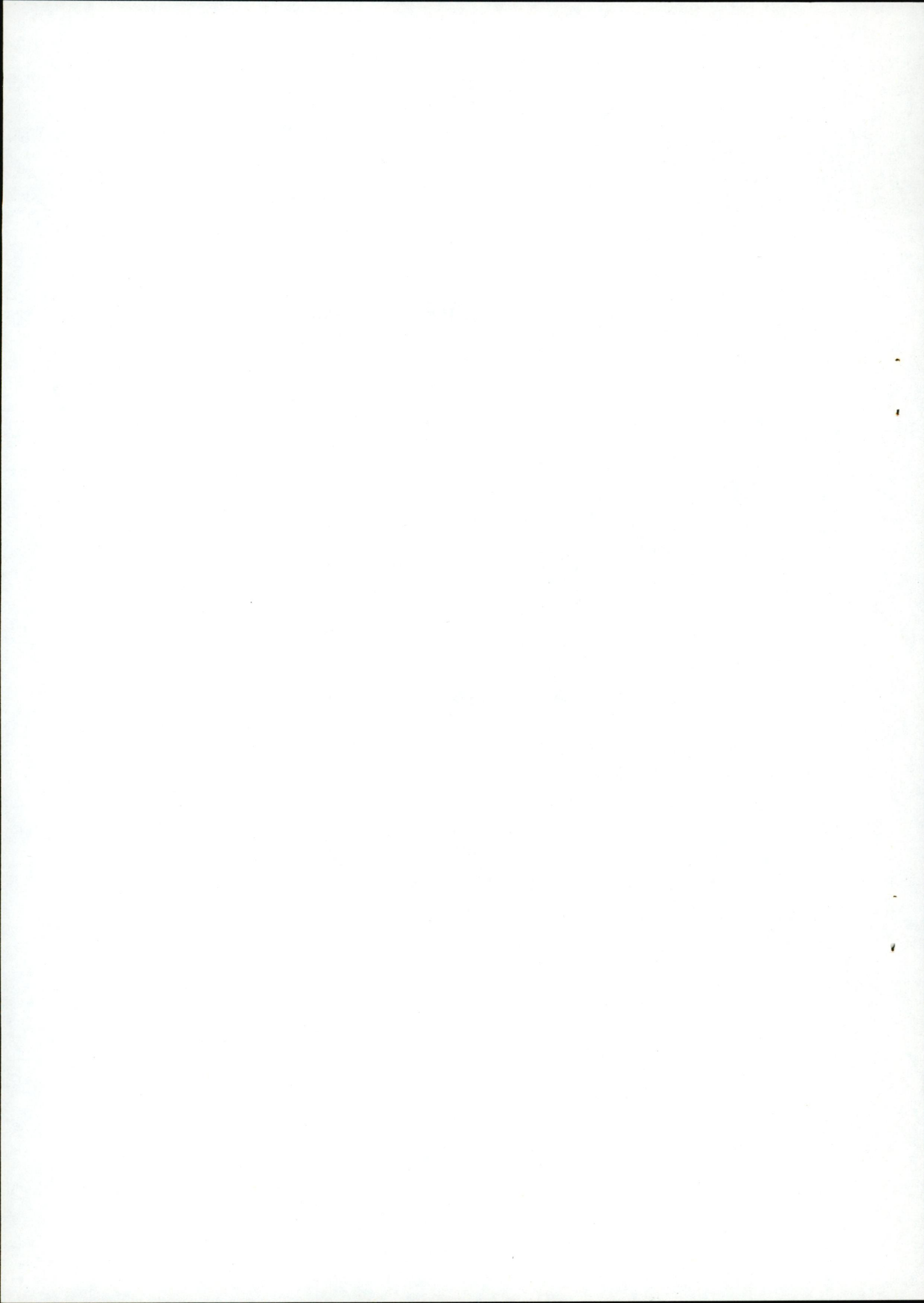
SCHEDULE 5 - AMENDMENTS RELATING TO THE DISPOSAL OF
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SCHEDULE 9 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS



ABORIGINAL LAND RIGHTS (AMENDMENT) BILL 1990

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No. , 1990

A BILL FOR

An Act to amend the Aboriginal Land Rights Act 1983 to constitute the New South Wales Aboriginal Affairs and Land Rights Commission and specify its functions; to make further provision with respect to the functions of Regional and Local Aboriginal Land Councils; to make further provision with respect to the disposal of Aboriginal land and the financial management and accountability of the Commission and those Councils; and for other purposes.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Aboriginal Land Rights (Amendment) Act 1990.

Commencement

2. (1) The provisions of this Act commence on a day or days to be appointed by proclamation, except as provided by this section.

(2) Schedule 8 commences on the date of assent to this Act.

(3) Section 3 in its application to a provision of Schedules 1-8 commences on the day on which the provision commences.

Amendment of Aboriginal Land Rights Act 1983 No. 42

3. The Aboriginal Land Rights Act 1983 is amended as set out in Schedules 1-8.

Consequential amendment of other Acts

4. Each Act specified in Schedule 9 is amended as set out in that Schedule.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
AFFAIRS AND LAND RIGHTS COMMISSION**

(Sec. 3)

(1) Section 4 (**Definitions**):

(a) Insert in section 4 (1) in alphabetical order, the following definitions:

"**Aboriginal Authority**" means the Commission or an Aboriginal Land Council;

"**Commission**" means the New South Wales Aboriginal Affairs and Land Rights Commission constituted under this Act;

"**Commissioner**" means a person elected to be a member of the Commission in accordance with Division 2 of Part 4;

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
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- (b) Omit from the definition of "Aboriginal Land Council" in section 4 (1) "the New South Wales Aboriginal Land Council,".
 - (c) Omit from section 4 (1) the definition of "New South Wales Aboriginal Land Council".
- (2) Part 4:
Omit the Part, insert instead:

**PART 4 - NEW SOUTH WALES ABORIGINAL
AFFAIRS AND LAND RIGHTS COMMISSION**

**Division 1 - Constitution and functions
of Commission**

Constitution of Commission

22. (1) There is constituted by this Act a body corporate under the corporate name of the New South Wales Aboriginal Affairs and Land Rights Commission.

(2) The Commission is to consist of full-time Aboriginal Commissioners equal in number to the number of Regional Aboriginal Land Council areas.

(3) Each Commissioner is to be elected in the manner specified in Division 2 to represent a Regional Aboriginal Land Council area.

(4) Schedule 5 has effect with respect to the Commissioners.

(5) Schedule 6 has effect with respect to the procedure of the Commission.

Functions of the Commission

23. (1) The general functions of the Commission are:
- (a) to administer the New South Wales Aboriginal Affairs and Land Rights Commission Account and

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
AFFAIRS AND LAND RIGHTS COMMISSION - *continued*

- the Mining Royalties Account established under this Act; and
- (b) to consult with Aboriginal Land Councils and other Aboriginal organisations and communities in New South Wales concerning the policies and programs of the New South Wales Government relating to Aboriginal affairs; and
 - (c) to make claims to Crown lands, either on its own behalf or, if requested by a Local Aboriginal Land Council, on behalf of that Council; and
 - (d) to make grants or lend money for:
 - (i) housing and infrastructure for Aborigines; and
 - (ii) programs designed to improve the health and education of Aborigines; and
 - (iii) the acquisition, establishment and operation of enterprises by Aborigines; and
 - (iv) the cultural development of Aborigines; and
 - (e) to invest any of its funds for or on behalf of Aborigines; and
 - (f) to co-ordinate, monitor and evaluate policies, budgets and programs of the New South Wales Government for Aborigines and to report on them to the Minister; and
 - (g) to advise the Minister on matters relating to Aborigines; and
 - (h) to undertake and commission research into matters affecting Aborigines and to liaise with other research agencies; and
 - (i) to prepare and distribute information on matters relating to Aboriginal life, culture and heritage; and
 - (j) to foster improved relations between Aborigines and non-Aborigines in New South Wales; and
 - (k) to provide or arrange for appropriate training of Commissioners, elected office bearers of

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
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- Aboriginal Land Councils and persons employed by the Commission or Aboriginal Land Councils; and
- (l) to hold, dispose of, or otherwise deal with land vested in or acquired by the Commission; and
 - (m) to exercise such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) The functions of the Commission in relation to Aboriginal Land Councils are:
- (a) to provide financial and other assistance to Local Aboriginal Land Councils for:
 - (i) the acquisition, management, use, control and disposal of land; and
 - (ii) housing and infrastructure for Aborigines; and
 - (iii) programs designed to improve the health and education of Aborigines; and
 - (iv) the acquisition, establishment and operation of enterprises by Aborigines; and
 - (v) the cultural development of Aborigines; and
 - (b) to provide assistance to Local Aboriginal Land Councils in the preparation of claims to Crown lands or the negotiation of purchases of other lands; and
 - (c) to provide such further assistance and co-ordination as is required from time to time by Local Aboriginal Land Councils; and
 - (d) to ensure that the funds of Aboriginal Land Councils are properly managed and that the Councils are accountable for those funds; and
 - (e) to arrange for the conciliation of disputes between Local Aboriginal Land Councils or between those Councils and individuals or between individual members of those Councils relating to claims to land or purchases of land; and

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
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- (f) to determine and approve or disapprove the terms and conditions of agreements proposed by Local Aboriginal Land Councils to allow mining or mineral exploration on land; and
- (g) with the agreement of a Local Aboriginal Land Council, to manage any of the affairs of the Council; and
- (h) to compile and maintain a register, containing the prescribed particulars, of all Local Aboriginal Land Councils.

Directions by Minister

24. (1) The Commission is to exercise its functions in accordance with such general directions as are given to it by the Minister in writing.

(2) This section does not empower the Minister to give directions relating to the content of any advice, information or recommendation that may be given by the Commission to a Minister, government department, administrative office or public authority.

(3) The Minister must cause a copy of the direction to be laid before each House of Parliament not later than 1 month after the direction is given.

(4) If a House of Parliament is not sitting when the Minister seeks to comply with this section, the Minister is to present a copy of the direction to the Clerk of the House of Parliament.

(5) A direction presented to the Clerk under this section is:

- (a) on presentation and for all purposes, to be taken to have been laid before the House of Parliament; and

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
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- (b) required to be printed by authority of the Clerk; and
- (c) for all purposes to be taken to be a document published by order or under the authority of the House; and
- (d) to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the direction by the Clerk.

(6) A copy of a direction laid before the Parliament in accordance with this section must not disclose any matter the disclosure of which in that manner would be inconsistent with the views or sensitivities of Aborigines because that matter is sacred or otherwise significant to them.

Chairperson and Deputy Chairperson

25. The Minister, on the recommendation of the majority of the Commissioners, is to appoint one of their number as Chairperson and one as Deputy Chairperson of the Commission.

Chief Executive Officer

26. (1) The Minister, in consultation with the Commission, is to appoint a Chief Executive Officer of the Commission.

(2) The employment of the Chief Executive Officer is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

(3) The Chief Executive Officer is to be taken, while holding that office, to be employed by the Commission, but nothing in this section is to be taken as authorising the Commission to remove the Chief Executive Officer from office.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
AFFAIRS AND LAND RIGHTS COMMISSION - *continued*

(4) The Chief Executive Officer is to manage and control the affairs of the Commission in accordance with its policies and any directions given by the Minister under section 24.

Staff of the Commission

27. (1) The Commission may employ such staff as it requires to exercise its functions.

(2) The Commission may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under this Act or any other law.

(3) The Commission may arrange for the use of the services of any staff (by secondment or otherwise) of a government department, an administrative office or a public or local authority.

(4) The Commission may engage such consultants as it requires to exercise its functions.

(5) Schedule 7 has effect in relation to the preservation of certain rights of employees of the Commission.

Division 2 - Election of Commissioners

Conduct of elections

27A. (1) Regulations may be made for or with respect to the election of Commissioners.

(2) The Electoral Commissioner of New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, is to be the returning officer for elections for Commissioners to represent Regional Aboriginal Land Council areas.

(3) The returning officer has the functions conferred or imposed by the regulations in relation to the elections.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
AFFAIRS AND LAND RIGHTS COMMISSION - *continued***

Who may vote

27B. A person is entitled to vote at an election for a Commissioner to represent a Regional Aboriginal Land Council area if the person is a member of a Local Aboriginal Land Council within the area.

Who may stand for election

27C. A person is not qualified to stand for election, or to be elected, as a Commissioner for a Regional Aboriginal Land Council area unless the person is a member of a Local Aboriginal Land Council within the area.

Timing of elections

27D. Simultaneous elections for all Commissioners are to be held every 3 years.

(3) Schedules 5-7:

After Schedule 4, insert:

**SCHEDULE 5 - PROVISIONS RELATING
TO COMMISSIONERS**

(Sec. 22 (4))

Term of office

1. The term of office of a Commissioner expires on the Commissioner's re-election for another term or on the election of the Commissioner's successor.

Remuneration

2. (1) A Commissioner is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975.

(2) A Commissioner is entitled to be paid such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Commissioner.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
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Vacancy in office

3. (1) The office of a Commissioner becomes vacant if the Commissioner:

- (a) dies; or
- (b) resigns the office by instrument in writing addressed to the Commission; or
- (c) is removed from office by the Minister under this clause; or
- (d) is absent from duty for 30 days (whether or not consecutive days) in any period of 12 months, except on leave granted by the Commission; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or
- (h) is disqualified from holding office under section 56AB; or
- (i) engages in any paid employment outside the duties of his or her office, except with the consent of the Commission.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
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(2) The Minister is to remove a person from the office of Commissioner if the Minister receives a valid petition calling for the person's removal from office.

(3) In this clause:

"**valid petition**" means a petition:

- (a) that contains the signatures of at least 66 per cent of the persons entitled to vote at an election for the office and who were eligible persons when they signed the petition; and
- (b) that sets out legibly:
 - (i) the name of each person who has signed the petition; and
 - (ii) the date on which the person signed; and
 - (iii) an address for the person that is sufficient to identify the place where the person lives; and
- (c) all the signatures to which have been affixed within the period of 6 months immediately preceding the delivery of the petition to the Minister;

"**eligible person**" means a person who would be entitled to vote at an election for the office of Commissioner concerned (if it were vacant).

Filling of casual vacancy

4. A person is to be appointed in accordance with the regulations to fill a casual vacancy in the office of a Commissioner for the remainder of the term of office.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
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**SCHEDULE 6 - PROVISIONS RELATING TO
PROCEDURE OF COMMISSION**

(Sec. 22 (5))

Meetings of Commission

1. (1) The Commission is to hold its first meeting after the election of Commissioners at a time (being a time as soon as practicable after the election) and place arranged by the Registrar.

(2) The Chairperson is to convene at least 4 meetings of the Commission in each calendar year.

(3) The Chairperson may convene such other meetings of the Commission as, in his or her opinion, are necessary for the proper exercise of its functions.

(4) The Chairperson, in accordance with the request, is to convene a meeting of the Commission on receipt of a written request for a meeting signed by a majority of Commissioners for the time being.

(5) The procedure for the calling of meetings and the conduct of business at meetings of the Commission is to be as determined by the Commission, except as otherwise provided by this Act or the regulations.

Quorum

2. The quorum for a meeting of the Commission is two thirds of the Commissioners for the time being.

Presiding member

3. (1) The Chairperson of the Commission or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Commission.

(2) A Commissioner elected by the Commissioners present is to preside at a meeting in the absence of both the Chairperson and the Deputy Chairperson.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
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(3) The person presiding at any meeting of the Commission has a deliberative vote only.

Voting

4. A decision supported by a majority of votes cast at a meeting of the Commission at which a quorum is present is the decision of the Commission unless the decision is supported by less than 6 votes.

Minutes

5. The Commission must cause full and accurate minutes to be kept of the proceedings of each meeting of the Commission.

SCHEDULE 7 - PRESERVATION OF CERTAIN
RIGHTS OF STAFF PREVIOUSLY PUBLIC
SERVANTS ETC.

(Sec. 27 (5))

Definitions

1. In this Schedule:

"member of staff" means an employee of the Commission, other than a person employed on a temporary basis, but does not include the Chief Executive Officer;

"proclaimed body" means any body or organisation constituted or regulated by or under an Act that is declared by the Governor to be a body or organisation to which this Schedule applies;

"superannuation scheme" means a scheme, fund or arrangement, under which any superannuation or retirement benefits are provided and which is established by or under any Act.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
AFFAIRS AND LAND RIGHTS COMMISSION - *continued*

Preservation of certain rights

2. (1) This clause applies to a member of staff who, immediately before being employed as a member of staff was:

- (a) an officer of the Public Service; or
- (b) a contributor to a superannuation scheme; or
- (c) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee; or
- (d) an officer employed by a proclaimed body.

(2) A person to whom this clause applies:

- (a) retains any rights accrued or accruing to him or her as such an officer, member, contributor or person; and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being employed as a member of staff; and
- (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a member of staff.

(3) Service as a member of staff is to be regarded as service as an officer or employee for the purposes of any law under which those rights accrued or were accruing, under which he or she continues to contribute to any such superannuation scheme or by which that entitlement is conferred.

(4) The member of staff is to be regarded as an officer or employee, and the Commission is to be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
AFFAIRS AND LAND RIGHTS COMMISSION - *continued*

(5) A member of staff is not, under this clause, entitled to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme if he or she becomes (whether on being employed as a member of staff or at any later time while so employed) a contributor to any other superannuation scheme.

(6) Subclause (4) ceases to apply to or in respect of a member of staff and the Commission on the member of staff becoming such a contributor to another superannuation scheme.

(7) Subclauses (5) and (6) do not prevent the payment to a member of staff (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.

(8) A member of staff is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

Member of staff entitled to re-appointment to former employment in certain cases

3. A person who:

- (a) being a member of staff, ceases to be employed by the Commission (except through dismissal on the ground of misbehaviour); and
- (b) was, immediately before being employed as a member of staff:
 - (i) an officer of the Public Service; or
 - (ii) an officer employed by a proclaimed body; and
- (c) has not reached the age of 60 years,

is entitled to be appointed to some position in the Public Service or the service of the proclaimed body, as the case

SCHEDULE 1 - AMENDMENTS RELATING TO THE
CONSTITUTION OF THE NEW SOUTH WALES ABORIGINAL
AFFAIRS AND LAND RIGHTS COMMISSION - *continued*

may be, not lower in salary than the current salary for the position in the Public Service which the person held immediately before becoming a member of staff (or a similar position).

SCHEDULE 2 - AMENDMENTS RELATING TO LOCAL
ABORIGINAL LAND COUNCILS

(Sec. 3)

Sections 7-12:

Omit the sections, insert instead:

Local Aboriginal Land Council rolls

7. (1) The Secretary of a Local Aboriginal Land Council is to prepare and maintain a Local Aboriginal Land Council roll in respect of the Local Aboriginal Land Council area.

(2) The Secretary is to list on the roll the name and address of any adult Aborigine who:

- (a) resides within that area and who has requested in writing that he or she be enrolled as a member of the Council; or
- (b) has an association with that area and who, on application made in writing, has been accepted by a meeting of that Council as a member,

except if the person is listed on the roll of another Local Aboriginal Land Council.

(3) The regulations may make provision for or with respect to:

- (a) the preparation, certification and maintenance of Local Aboriginal Land Council rolls; and
- (b) the particulars to be recorded in Local Aboriginal Land Council rolls; and
- (c) the removal of particulars from Local Aboriginal Land Council rolls; and

SCHEDULE 2 - AMENDMENTS RELATING TO LOCAL
ABORIGINAL LAND COUNCILS - *continued*

- (d) the lodging of objections against:
 - (i) the failure or refusal to list a person's name and address on a Local Aboriginal Land Council roll; and
 - (ii) the removal of a person's name and address from a Local Aboriginal Land Council roll; and
- (e) the reference to the Court of objections of the kind referred to in paragraph (d) and the hearing and determination by the Court of any such objections.

(4) Until a Secretary of a Local Aboriginal Land Council for a Local Aboriginal Land Council area is elected, the functions of a Secretary under this section in respect of the area are to be exercised by a person appointed by the Registrar for the purpose.

Election of Chairperson and other officers

8. (1) The members of a Local Aboriginal Land Council are to elect members as a Chairperson, a Secretary and a Treasurer.

(2) Regulations may be made for or with respect to the election of those members.

(3) Elections are to be held every 3 years simultaneously with the election of Commissioners.

(4) The Electoral Commissioner of New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, is to be the returning officer for the elections.

(5) The returning officer has the functions conferred or imposed by the regulations in relation to the elections.

(6) A term of office of a Chairperson, Secretary or Treasurer expires on his or her re-election for another term or the election of his or her successor.

SCHEDULE 2 - AMENDMENTS RELATING TO LOCAL
ABORIGINAL LAND COUNCILS - *continued*

(7) A person is to be appointed in accordance with the regulations to fill a casual vacancy in the office of the Chairperson, Secretary or Treasurer for the remainder of the term of office.

Meetings of Local Aboriginal Land Councils

9. (1) A Local Aboriginal Land Council is to hold:

- (a) an ordinary meeting at least once in every 3 months; and
- (b) annual meetings at the times, or within the periods, prescribed.

(2) The procedure for the calling of meetings and the conduct of business at meetings is to be as determined by the Council, subject to this Act and the regulations.

(3) The Chairperson of the Council is to preside at its meetings.

(4) In the absence of the Chairperson from a meeting, the members of the Council present at the meeting are to elect a member to preside at the meeting.

(5) At a meeting at which a quorum is present, a decision of a majority of the members of the Council present and voting is a decision of the Council, subject to this Act.

Functions of a Local Aboriginal Land Council

10. A Local Aboriginal Land Council has the following functions:

- (a) the holding or disposal of, or otherwise dealing with, land vested in or acquired by the Council;
- (b) the implementation of the wishes of its members (as decided at a meeting of the Council) with respect to:
 - (i) the acquisition, management, use, control and disposal of land; and
 - (ii) the provision of housing and infrastructure for Aborigines; and

**SCHEDULE 2 - AMENDMENTS RELATING TO LOCAL
ABORIGINAL LAND COUNCILS - *continued***

- (iii) programs designed to improve the health and education of Aborigines; and
- (iv) the acquisition, establishment and operation of enterprises by Aborigines; and
- (v) the cultural development of Aborigines;
- (c) the consideration of applications to prospect or mine for minerals on its lands;
- (d) the making of claims to Crown lands;
- (e) the repair, maintenance, upgrading and extending of local residential accommodation vested in the Council;
- (f) the protection of the interests of Aborigines in its area in relation to the management, use and control of its lands;
- (g) with the consent of the parties concerned, the conciliation of disputes between individual Aborigines or groups of Aborigines in its area;
- (h) the provision of funds to the Regional Aboriginal Land Council to enable it to carry out its functions;
- (i) such other functions as are conferred or imposed on it by or under this or any other Act.

**SCHEDULE 3 - AMENDMENTS RELATING TO REGIONAL
ABORIGINAL LAND COUNCILS**

(Sec. 3)

- (1) Sections 16-20:

Omit the sections, insert instead:

Election of members of Regional Aboriginal Land Council

16. (1) The members of a Local Aboriginal Land Council are to elect members to represent the Council as members of the Regional Aboriginal Land Council for the area in which the Local Aboriginal Land Council area is situated.

SCHEDULE 3 - AMENDMENTS RELATING TO REGIONAL
ABORIGINAL LAND COUNCILS - *continued*

(2) A Local Aboriginal Land Council may not have more than the prescribed number of representatives as members of a Regional Aboriginal Land Council at any one time.

(3) Regulations may be made for or with respect to the election of those members.

(4) Elections are to be held every 3 years simultaneously with the election of Commissioners.

(5) The Electoral Commissioner of New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, is to be the returning officer for the elections.

(6) The returning officer has the functions conferred or imposed by the regulations in relation to the elections.

(7) A term of office of a member expires on his or her re-election for another term or the election of his or her successor.

(8) A person is to be appointed in accordance with the regulations to fill a casual vacancy in the office of a member for the remainder of the term of office.

Election of Chairperson and other officers

17. (1) The members of a Regional Aboriginal Land Council are to elect members as a Chairperson, a Secretary and a Treasurer in accordance with the regulations.

(2) A term of office of a Chairperson, Secretary or Treasurer expires on his or her re-election for another term or the election of his or her successor.

(3) A person is to be appointed in accordance with the regulations to fill a casual vacancy in the office of the Chairperson, Secretary or Treasurer for the remainder of the term of office.

SCHEDULE 3 - AMENDMENTS RELATING TO REGIONAL
ABORIGINAL LAND COUNCILS - *continued*

Meetings of Regional Aboriginal Land Councils

18. (1) A Regional Aboriginal Land Council is to hold annual meetings at the times, or within the periods, prescribed.

(2) The procedure for the calling of meetings and the conduct of business at meetings of a Regional Aboriginal Land Council is to be determined by the Council, subject to this Act and the regulations.

(3) The Chairperson of the Council is to preside at its meetings.

(4) In the absence of the Chairperson from a meeting, the members of the Council present at the meeting are to elect a member to preside at the meeting.

(5) At a meeting at which a quorum is present, a decision of the majority of members present and voting is a decision of the Council, subject to this Act.

Function of Regional Aboriginal Land Councils

19. The function of a Regional Aboriginal Land Council is to act as a consultative and advisory body to Local Aboriginal Land Councils within its area.

(2) Section 36 (**Claims to Crown lands**):

(a) Omit section 36 (2A).

(b) From the opening words of section 36 (4), omit ", (2A)".

(c) Omit section 36 (4) (b1).

(d) From section 36 (14), omit ", a Regional Aboriginal Land Council".

(3) Section 38 (**Purchase, lease etc. of property**):

(a) From section 38 (1) and (2), omit "An Aboriginal Land Council", insert instead "The Commission or a Local Aboriginal Land Council".

SCHEDULE 3 - AMENDMENTS RELATING TO REGIONAL
ABORIGINAL LAND COUNCILS - *continued*

- (b) From section 38 (2) and (3), omit "the Council" wherever occurring, insert instead "it".
- (c) From section 38 (3) and (4), omit "an Aboriginal Land Council", insert instead "the Commission or a Local Aboriginal Land Council".
- (4) Section 45 (**Mineral rights and mining on Aboriginal land**):
Omit section 45 (1) (b).
- (5) Section 53 (**Corporation land - erection of buildings and vesting of property**):
Omit "an Aboriginal Land Council", insert instead "the Commission, a Local Aboriginal Land Council".

SCHEDULE 4 - AMENDMENTS RELATING TO DISCLOSURE
OF PECUNIARY INTERESTS AND DISQUALIFICATION
FOR OFFICE

(Sec. 3)

Sections 56AA, 56AB:

After section 56, insert:

Disclosure of pecuniary interests

56AA. (1) In this section, "**office holder**" means:

- (a) in relation to the Commission, a Commissioner; and
- (b) in relation to a Regional Aboriginal Land Council, a member of the Council; and
- (c) in relation to a Local Aboriginal Land Council, the Chairperson, Secretary or Treasurer of the Council.

(2) An office holder of an Aboriginal Authority who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Aboriginal Authority is required, as soon as possible after the relevant facts have come to the office holder's knowledge, to disclose the nature of the interest at a meeting of the Aboriginal Authority if the interest appears to raise a conflict with the proper performance of the office holder's duties in relation to the consideration of the matter.

SCHEDULE 4 - AMENDMENTS RELATING TO DISCLOSURE
OF PECUNIARY INTERESTS AND DISQUALIFICATION FOR
OFFICE - *continued*

(3) A disclosure by an office holder at a meeting of the Aboriginal Authority that the office holder:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

is sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (2).

(4) Particulars of any disclosure made under this section are to be recorded in a book kept for the purpose and that book is required to be open at all reasonable hours to the inspection of any person on payment of the fee determined by the Aboriginal Authority.

(5) After an office holder has disclosed the nature of an interest in any matter or thing, the office holder may not, unless the other office holders otherwise determine:

- (a) be present during any deliberation, or take part in any decision, of the Aboriginal Authority with respect to that matter or thing; or
- (b) exercise any function under this Act with respect to that matter or thing.

(6) For the purposes of the making of a determination of the office holders under subsection (5), an office holder who has a direct or indirect pecuniary interest in a matter to which the disclosure relates may not:

- (a) be present during any deliberation of the other office holders for the purposes of making the determination; or

SCHEDULE 4 - AMENDMENTS RELATING TO DISCLOSURE
OF PECUNIARY INTERESTS AND DISQUALIFICATION FOR
OFFICE - *continued*

(b) take part in the making by the other office holders of the determination.

(7) A contravention of this section does not invalidate any decision of the Aboriginal Authority or the exercise of any function under this Act.

(8) This section does not apply to or in respect of an interest of an office holder (being the provision of goods or services to the office holder by the Aboriginal Authority) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

(9) A reference in this section:

(a) to a meeting of an Aboriginal Authority includes a reference to a meeting of a committee of an Aboriginal Authority; and

(b) to an office holder includes a reference to a member of such a committee.

Disqualification for office

56AB. (1) An office holder who fails to comply with section 56AA is guilty of an offence.

Maximum penalty: 2 penalty units.

(2) It is a defence in any prosecution for an offence under this section if the defendant satisfies the court that the defendant did not know that the matter in which the defendant had a pecuniary interest was the subject of consideration at the meeting.

(3) A person who is convicted of an offence under this section is disqualified from holding any office under this Act for 7 years from the date of conviction, or for such shorter period as the court by which the person is convicted may order.

(4) In any prosecution for such an offence, the court may order that, despite the conviction, the defendant is not

**SCHEDULE 4 - AMENDMENTS RELATING TO DISCLOSURE
OF PECUNIARY INTERESTS AND DISQUALIFICATION FOR
OFFICE - *continued***

disqualified from holding office because the circumstances giving rise to the offence are of a trifling character.

(5) An order of the court under this section has effect according to its tenor.

**SCHEDULE 5 - AMENDMENTS RELATING TO THE DISPOSAL
OF ABORIGINAL LAND**

(Sec. 3)

Sections 40-40B:

Omit section 40, insert instead:

Disposal of Aboriginal land restricted

40. (1) The Commission or a Local Aboriginal Land Council may not sell, exchange, lease, dispose of, mortgage or otherwise deal with land vested in it (except in accordance with this Division).

(2) Any sale, exchange, lease, disposal or mortgage of, or other dealing with, land in contravention of this Division is void.

(3) This section does not apply to land purchased as an investment under section 29 or 32.

Transfer of land from one Aboriginal Authority to another

40A. (1) The Commission may transfer land vested in it to a Local Aboriginal Land Council.

(2) A Local Aboriginal Land Council may transfer land vested in it to the Commission or to another Local Aboriginal Land Council.

(3) Stamp duty under the Stamp Duties Act 1920 is not payable in respect of the transfer of land under this section.

SCHEDULE 5 - AMENDMENTS RELATING TO THE
DISPOSAL OF ABORIGINAL LAND - *continued*

Lease, use etc. of Aboriginal land

40B. (1) The Commission may, subject to the provisions of any other Act:

- (a) lease or change the use of land vested in it; and
- (b) grant an easement over land vested in it; and
- (c) release an easement benefiting land vested in it.

(2) A Local Aboriginal Land Council may, subject to the provisions of any other Act and with the approval of the Commission:

- (a) lease or change the use of land vested in it; and
- (b) grant an easement over land vested in it; and
- (c) release an easement benefiting land vested in it,

only if the lease, change of use or the grant or release of the easement has been approved at a meeting of the Council specifically called for that purpose at which a quorum was present and not less than 80 per cent of the members of the Council present and voting voted in favour of it.

(3) Nothing in this section authorises the change of use of land claimed and granted to an Aboriginal Authority under section 36 if the change of use contravenes a condition imposed when the claim was granted under that section.

Sale etc. of Aboriginal land by Commission

40C. (1) The Commission may, subject to the provisions of any other Act, sell, exchange, mortgage or otherwise dispose of land vested in it if:

- (a) at a meeting of the Local Aboriginal Land Council of the area in which the land is situated specifically called for the purpose (being a meeting at which a quorum was present) not less than 80 per cent of the members of the Council present and voting have determined that the land is not of cultural

SCHEDULE 5 - AMENDMENTS RELATING TO THE
DISPOSAL OF ABORIGINAL LAND - *continued*

significance to Aborigines of the area and should be disposed of; and

(b) the Minister has approved of the disposal.

(2) The Minister may not approve of the disposal of land transferred to an Aboriginal Authority under section 36 without first consulting with the Crown Lands Minister referred to in that section.

(3) A certificate signed by the Chairperson of the Commission certifying that the disposal by the Commission of land specified in the certificate does not contravene this section is conclusive evidence of that fact in favour of a bona fide purchaser for value without notice of any such contravention.

(4) For the purposes of this section, land is of cultural significance to Aborigines if the land is significant in terms of the traditions, observances, customs, beliefs or history of those Aborigines.

Sale etc. of Aboriginal land by Local Aboriginal Land Council

40D. (1) A Local Aboriginal Land Council may, subject to the provisions of any other Act, sell, exchange, mortgage or otherwise dispose of land vested in it if:

(a) at a meeting of the Council specifically called for the purpose (being a meeting at which a quorum was present) not less than 80 per cent of the members of the Council present and voting have determined that the land is not of cultural significance to Aborigines of the area and should be disposed of; and

(b) the Minister, after consulting with the Commission, has approved of the disposal.

(2) The Minister may not approve of the disposal of land transferred to an Aboriginal Authority under section 36 without first consulting with the Crown Lands Minister referred to in that section.

**SCHEDULE 5 - AMENDMENTS RELATING TO THE
DISPOSAL OF ABORIGINAL LAND - *continued***

(3) A certificate in the prescribed form (if any), purporting to be signed by the Secretary of the Local Aboriginal Land Council and certifying that the disposal by the Council of land specified in the certificate does not contravene this section, is conclusive evidence of that fact in favour of a bona fide purchaser for value without notice of any such contravention.

(4) A certificate in the prescribed form (if any), purporting to be signed by the Secretary of the Local Aboriginal Land Council and certifying that a person was, at the time of disposing of the land, a member of the Local Aboriginal Land Council is conclusive evidence, in favour of a bona fide purchaser for value without notice, that the person was at that time such a member.

(5) For the purposes of this section, land is of cultural significance to Aborigines if the land is significant in terms of the traditions, observances, customs, beliefs or history of those Aborigines.

**SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND ADMINISTRATORS**

(Sec. 3)

(1) Part 5:

Omit the Part, insert instead:

PART 5 - FINANCE

Division 1 - Establishment of accounts

**Annual payment of 7.5 per cent of land tax into the N.S.W.
Aboriginal Affairs and Land Rights Commission Account**

28. (1) There is to be paid into the New South Wales Aboriginal Affairs and Land Rights Commission Account in 1990 and in each succeeding year up to and including 1998 out of the Consolidated Fund an amount equal to 7.5 per cent of the amount certified from time to time by the Treasurer as having been paid as land tax under the Land Tax Management Act 1956 in respect of the previous year.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

(2) The amounts required by this section to be paid into the New South Wales Aboriginal Affairs and Land Rights Commission Account are appropriated by this Act out of the Consolidated Fund.

N.S.W. Aboriginal Affairs and Land Rights Commission Account

29. (1) The Commission is to establish in a bank an account named the New South Wales Aboriginal Affairs and Land Rights Commission Account.

(2) The Commission is required to pay into the Account:

- (a) money provided to the Commission by Parliament for the purposes of this Act; and
- (b) any other money received by the Commission and not required by or under this or any other Act to be paid into any other account or fund.

(3) The Commission may pay out of the Account:

- (a) money to be provided from that Account to Local Aboriginal Land Councils for the purposes of this Act; and
- (b) amounts required to meet expenditure incurred in the execution or administration of this Act; and
- (c) any other payments authorised to be made by the Commission by or under this or any other Act.

(4) Expenditure incurred in the execution or administration of this Act includes:

- (a) the salaries of the Commissioners, the Chief Executive Officer and the staff of the Commission; and
- (b) the cost of elections required to be conducted under this Act (including the costs incurred by the Electoral Commissioner of New South Wales).

(5) Money to the credit of the Account may be invested in any manner authorised by the regulations.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

**Investment of money in N.S.W. Aboriginal Affairs and
Land Rights Commission Account**

30. (1) Fifty per cent of the money paid pursuant to section 28 into the New South Wales Aboriginal Affairs and Land Rights Commission Account in the year 1990 and in succeeding years is to be, and is to remain, together with the accrued interest, invested in accordance with the regulations.

(2) The invested money, and interest accruing on the money up to 31 December 1998, may not be disbursed except for the purpose of paying any costs incurred in investing the money (including the cost of obtaining investment advice).

(3) Interest accruing on the invested money after 31 December 1998 may be disbursed.

Regional Aboriginal Land Council Accounts

31. (1) Each Regional Aboriginal Land Council is to establish a bank account.

(2) The Council is to pay into the account:

- (a) money received from Local Aboriginal Land Councils within its area; and
- (b) any other money received by the Regional Aboriginal Land Council and not required by or under this or any other Act to be paid into any other account or fund.

(3) The Council may pay out of the account amounts required to meet expenditure incurred by the Council in the execution or administration of this Act.

(4) Money to the credit of the account may be invested in any manner authorised by the regulations.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

Local Aboriginal Land Council Accounts

32. (1) Each Local Aboriginal Land Council is to establish a bank account.

(2) The Council is to pay into the account:

- (a) money received from the Commission; and
- (b) any other money received by the Council and not required by or under this or any other Act to be paid into any other account or fund.

(3) The Council may pay out of the account:

- (a) amounts required for the acquisition of land by the Council; and
- (b) amounts required to fund the Regional Aboriginal Land Council for its area; and
- (c) amounts required to meet expenditure incurred by the Council in the execution or administration of this Act; and
- (d) any other payments authorised by or under this or any other Act.

(4) Money to the credit of the account may be invested in any manner authorised by the regulations.

Division 2 - Keeping of accounts

Aboriginal Land Councils to keep accounts

33. (1) An Aboriginal Land Council must cause proper accounts and records to be kept in relation to all its operations.

(2) An Aboriginal Land Council must prepare financial statements for each financial year of the Council in accordance with section 41B (1) of the Public Finance and Audit Act 1983.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

(3) The financial statements must be submitted to a registered company auditor employed by the Council and approved by the Commission.

(4) The financial statements must be prepared and submitted to the auditor for verification and certification not later than 6 weeks after the end of the financial year to which they relate.

(5) The auditor must, not later than 10 weeks after the receipt by the auditor of the financial statements:

- (a) audit the accounts of the Aboriginal Land Council for the financial year to which the financial statements relate; and
- (b) furnish a certificate to the Council and the Commission:
 - (i) stating that the auditor has audited the accounts caused to be kept by the Council for that financial year; and
 - (ii) indicating whether the financial statements comply with this section; and
 - (iii) setting forth any qualifications subject to which the certification is given; and
 - (iv) reporting any irregularities or other matters as in the judgment of the auditor call for special notice; and
 - (v) stating whether the result of the audit is satisfactory or unsatisfactory.

(6) In this section, "registered company auditor" has the same meaning as in the Companies (New South Wales) Code.

Financial year of Aboriginal Authority

34. The financial year of an Aboriginal Authority is the year commencing 1 January.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

Budget of Commission etc.

34A. (1) The Commission must, not less than 6 weeks before the commencement of each financial year, prepare and submit for the approval of the Minister a detailed budget relating to its proposed operations during that financial year.

(2) The Commission must, in the preparation of its budget, consult with the Public Employment Industrial Relations Authority concerning amounts of salary, wages, fees and other remuneration.

(3) In determining whether or not to approve a budget, the Minister may seek from the Commission, and the Commission must furnish to the Minister, such information as the Minister requests relating to the budget.

(4) The Commission must, if directed to do so by the Minister, prepare and submit to the Minister within 4 weeks of the end of each quarter of each financial year a report specifying the amounts of funds granted during the quarter by the Commission to Local Aboriginal Land Councils and the purposes for which the funds were granted.

(5) The Minister may give directions, not inconsistent with this Act or the regulations, to the Commission with respect to the establishment and monitoring of a uniform system of accounting by Aboriginal Authorities, the form, contents and method of preparation of budgets by Authorities, the form, contents and methods of preparation of quarterly reports by Local Aboriginal Land Councils and other matters relating to the keeping of financial reports by Aboriginal Land Councils.

(6) The Commission must comply with a direction given to it by the Minister under this section.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

Budget of Aboriginal Land Council

34B. (1) An Aboriginal Land Council must, not less than 10 weeks before the commencement of each financial year, prepare and submit for the approval of the Commission a detailed budget relating to its proposed operations during that financial year.

(2) In determining whether or not to approve a budget, the Commission:

- (a) is to consult with the Public Employment Industrial Relations Authority concerning amounts of salary, wages, fees and other remuneration; and
- (b) may seek from an Aboriginal Land Council such information as the Commission requests relating to the budget.

Quarterly reports by Aboriginal Land Councils

34C. An Aboriginal Land Council which receives funds directly or indirectly from the Commission in a financial year must, if directed to do so by the Commission, prepare and submit to the Commission within 4 weeks of the end of each quarter of the financial year, a report certified by the Treasurer of the Council as to the expenditure of those funds.

Cessation of funding

34D. (1) The Commission must cease immediately to provide any funds to a Local Aboriginal Land Council if the Council:

- (a) fails to obtain a report, or is unable to obtain a satisfactory report, of an auditor under section 33; or
- (b) fails to comply with section 33, 34B or 34C; or
- (c) is the subject of a report by an investigator appointed under section 56C recommending that funds should cease to be provided to the Council.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

(2) A Local Aboriginal Land Council must cease immediately to provide any funds to a Regional Aboriginal Land Council if the Regional Aboriginal Land Council:

- (a) fails to obtain a report, or is unable to obtain a satisfactory report, of an auditor under section 33; or
- (b) fails to comply with section 33, 34B or 34C; or
- (c) is the subject of a report by an investigator appointed under section 56C recommending that funds should cease to be provided to the Council.

(3) The provision of funds to the Local or Regional Aboriginal Land Council must not be resumed until:

- (a) the Council obtains a satisfactory report of an auditor under section 33 or complies with section 33, 34B or 34C; or
- (b) the Minister, after consideration of a report of:
 - (i) an investigator appointed by the Commission; or
 - (ii) an administrator of the area of the Council, directs that the provision of funds to the Council should be resumed.

(4) Nothing in this section prevents funds from being provided to an Aboriginal Land Council for the area for which an administrator has been appointed under section 57.

(5) Any payments which the Council is unable to make as a result of the cessation of funding may be paid by the Commission from money held by it in the New South Wales Aboriginal Affairs and Land Rights Commission Account.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

(2) Section 44A (**Payment of rates by Commission**):

Omit section 44A (3), insert instead:

(3) The Commission may recover an amount paid under this section from the Local Aboriginal Land Council in whose area the land subject to the rate is situated.

(3) Section 46:

Omit the section, insert instead:

Fees or royalties for mining on Aboriginal land

46. (1) All fees and royalties payable in respect of mining on land owned by a Local Aboriginal Land Council are payable to the Commission and not the Council.

(2) Such fees and royalties together with the fees and royalties payable to the Commission in respect of mining on the Commission's land must, when received by the Commission, be paid into a separate account in a bank to be called the Mining Royalties Account.

(3) Money to the credit of the Mining Royalties Account is to be disbursed, in accordance with the regulations, as follows:

- (a) 40 per cent is to be paid to the Commission;
- (b) 60 per cent is to be distributed to those Local Aboriginal Land Councils on whose land the mining operations were carried out.

(4) Each Local Aboriginal Land Council is to be paid an amount equivalent to 60 per cent of the fees or royalties it would have received but for this section.

(5) Money to the credit of the Mining Royalties Account may be invested in any manner authorised by the regulations pending its disbursement in accordance with this section.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

(4) Sections 56B-57B:

Omit sections 57 and 57A, insert instead:

Investigation of Commission

56B. (1) The Minister may appoint an investigator to investigate the affairs, or specified affairs, of the Commission, including its efficiency and effectiveness.

(2) The investigator is to have such qualifications as the Minister considers necessary to ensure the investigation is carried out effectively.

(3) The Chairperson of the Commission and any other person who has possession or control of any records of the Commission must, if required to do so by an investigator who produces evidence of his or her appointment, provide the investigator with:

- (a) access to such of the records as relate to the affairs being investigated; and
- (b) information that the Chairperson or other person is able to give in relation to those records and affairs; and
- (c) authorities or orders on bankers and others that relate to those records or affairs and that the Chairperson or other person is able to provide.

(4) If a record:

- (a) is not in writing; or
- (b) is not written in the English language; or
- (c) is not decipherable on sight,

a requirement to provide access to the record is not complied with unless access is provided to a statement, written in the English language and decipherable on sight, that contains all the information in the record.

(5) A person must not hinder, obstruct or delay an investigator in the exercise of his or her functions.

Maximum penalty: 5 penalty units.

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

(6) The investigator is to report to the Minister on the investigation.

Investigation of Aboriginal Land Council

56C. (1) The Commission may appoint an investigator to investigate the affairs or specified affairs, of an Aboriginal Land Council, including its efficiency and effectiveness.

(2) The investigator is to have such qualifications as the Commission considers necessary to ensure the investigation is carried out effectively.

(3) The provisions of section 56B (3)-(5) apply to an investigation under this section as if:

- (a) a reference to the Commission were a reference to the Aboriginal Land Council; and
- (b) a reference to the Minister were a reference to the Commission.

(4) The investigator is to report to the Commission on the investigation, and if requested by the Commission, the report is to contain recommendations as to whether funds should cease to be provided to the Council.

Administrators - Regional and Local Aboriginal Land Council areas

57. (1) The Commission may at any time, by notice published in the Gazette, appoint an administrator under this section for a Regional or Local Aboriginal Land Council area:

- (a) if there are not sufficient members of the Council for that area to form a quorum of the Council; or
- (b) if the Council fails to comply with section 33, 34B or 34C; or
- (c) on the receipt of a certificate by the Commission under section 33 stating that the results of an audit

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

of the financial statements of the Council are unsatisfactory; or

- (d) on the receipt by the Commission of a report by an investigator appointed by the Commission that the funds or other property of the Council for that area have not been properly applied or managed; or
- (e) if the Council for that area has substantially breached the requirements of or under this Act or the regulations or the rules of the Council; or
- (f) if the Commission is of the opinion that the Council for that area has ceased for 6 months substantially to exercise its functions.

(2) The administrator has, during the period of his or her appointment, all of the functions of the Council conferred or imposed by or under this Act, to the exclusion of the Council.

(3) The administrator is to be paid out of the funds of the Commission.

Administrator - Commission

57A. (1) The Minister may, by order published in the Gazette, appoint an administrator under this section to administer all of the functions conferred or imposed on the Commission by or under this Act.

- (2) The Minister may appoint an administrator if:
 - (a) a report of the Auditor-General or an investigator appointed by the Minister discloses grounds which, in the opinion of the Minister, justify the appointment; or
 - (b) the Commission fails to comply with a direction given by the Minister in accordance with section 24.
- (3) The administrator has, during the period of his or her appointment, all of the functions of the Commission

SCHEDULE 6 - AMENDMENTS RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND
ADMINISTRATORS - *continued*

conferred or imposed by or under this Act, to the exclusion of the Commission.

(4) The administrator is to be paid out of the funds of the Commission.

Removal of office holders on appointment of administrator

57B. (1) On the appointment of an administrator to administer the functions of a Local Aboriginal Land Council, the office holders of the Council are removed from office and fresh elections are to be held in accordance with the regulations to fill the vacancies.

(2) On the appointment of an administrator to administer the functions of the Commission, the Commissioners are removed from office and fresh elections are to be held in accordance with the regulations to fill the vacancies.

SCHEDULE 7 - MISCELLANEOUS AMENDMENTS

(Sec. 3)

(1) Long title:

- (a) Omit "Aboriginal Land Councils", insert instead "Aboriginal Authorities".
- (b) Omit "Councils" wherever occurring, insert instead "Authorities".

(2) The whole Act (except Schedule 4):

Omit "New South Wales Aboriginal Land Council" wherever occurring (except where those words are to be omitted by other provisions of this Act or are inserted by this Act), insert instead "Commission".

SCHEDULE 7 - MISCELLANEOUS AMENDMENTS - *continued*

- (3) Section 4 (**Definitions**):
Omit section 4 (3).
- (4) Parts 6-9:
- (a) Omit "claimant Aboriginal Land Council" wherever occurring, insert instead "claimant Aboriginal Authority".
 - (b) Omit "the Aboriginal Land Council" wherever occurring, insert instead "the Aboriginal Authority".
 - (c) Omit "An Aboriginal Land Council" wherever occurring, insert instead "An Aboriginal Authority".
 - (d) Omit "an Aboriginal Land Council" wherever occurring, insert instead "an Aboriginal Authority".
 - (e) Omit "the Council" wherever occurring (except in sections 39 (2) and 58 (1)), insert instead "the Aboriginal Authority".
- (5) Section 36 (**Claims to Crown lands**):
- (a) From subsection (9C), omit "Aboriginal Land Councils", insert instead "Aboriginal Authorities".
 - (b) From subsection (9C), omit "those Councils", insert instead "those Authorities".
- (6) Section 39 (**Appropriation or resumption of land**):
From section 39 (2), omit "the Council", insert instead "the Commission or the Council".
- (7) Section 44 (**Execution etc. against Aboriginal lands barred in certain cases**):
Omit "such Council", insert instead "such Authority".
- (8) Section 45 (**Mineral rights and mining on Aboriginal land**):
Omit from section 45 (12) (b) "that Council", insert instead "that Authority".

SCHEDULE 7 - MISCELLANEOUS AMENDMENTS - *continued*

- (9) Section 54 (**Liability of members etc. of Councils**):
Omit "such Council" wherever occurring, insert instead "such Authority".
- (10) Section 55:
Omit the section, insert instead:
Delegation
55. (1) The Minister may delegate to any person any of the functions of the Minister under this Act, other than this power of delegation.
(2) The corporation sole constituted under section 50 may delegate to any person any of its functions, other than this power of delegation.
(3) The Commission may delegate to a person prescribed by the regulations any of the functions of the Commission prescribed by the regulations, other than this power of delegation.
- (11) Section 56A (**Rules of conduct**):
Omit "Aboriginal Land Councils" where twice occurring, insert instead "Aboriginal Authorities".
- (12) Section 58 (**Failure of Commission to function**):
From section 58 (1) omit "the Council", insert instead "the Commission".
- (13) Section 58A:
After section 58, insert:
Dissolution of Aboriginal Land Councils
58A. (1) The Commission may, by notice published in the Gazette, declare that an Aboriginal Land Council is to be dissolved if:

SCHEDULE 7 - MISCELLANEOUS AMENDMENTS - *continued*

- (a) the Council so requests the Commission; or
 - (b) the Commission is satisfied that it has ceased to function.
- (2) On the dissolution of the Council:
- (a) the rights and liabilities of the Council become rights and liabilities of the Commission; and
 - (b) proceedings before a court or tribunal by or against the Council that, immediately before the dissolution, were pending or in the course of being heard become proceedings by or against the Commission; and
 - (c) to the extent to which an act, matter or thing done or omitted to be done on behalf of the Council had any force or effect immediately before the dissolution, it becomes an act, matter or thing done or omitted to be done by the Commission; and
 - (d) time that had commenced to run in relation to the Council becomes time that had commenced to run in relation to the Commission.
- (3) Any property that, immediately before dissolution, was vested in the Council is on and from that day vested in the Commission.

(14) Section 59:

Omit the section, insert instead:

Disputes

59. (1) The Registrar may, at the request of the Commission, or on the Registrar's own initiative conciliate and, if necessary, determine:

- (a) a dispute relating to land claims or purchases between:
 - (i) Local Aboriginal Land Councils in the same Regional Aboriginal Land Council area;
 - (ii) a Local Aboriginal Land Council and an individual; or

SCHEDULE 7 - MISCELLANEOUS AMENDMENTS - *continued*

- (iii) individual members of a Local Aboriginal Land Council; or
- (b) a dispute between:
 - (i) a Local Aboriginal Land Council and a Regional Aboriginal Land Council; or
 - (ii) Local Aboriginal Land Councils in different Regional Aboriginal Land Council areas; or
- (c) any other matter concerning the administration of particular Regional Aboriginal Land Councils or Local Aboriginal Land Councils.

(2) The Registrar may not determine a dispute or matter under this section if provision is made for the determination of the dispute or matter under another section of this Act.

(3) The Registrar may give such directions as the Registrar considers necessary to determine a dispute or matter referred to in this section.

(4) A party to a dispute or matter who is dissatisfied with the Registrar's determination may require the Registrar to refer the dispute or matter to the Court for determination.

(5) The Court is to hear and determine the dispute or matter and may give such directions as it considers necessary to determine it.

(6) A person who contravenes a direction given by the Registrar or the Court under this section is guilty of an offence.

Maximum penalty: 5 penalty units.

(15) Section 61:

Omit the section, insert instead:

Annual reports

61. An Aboriginal Land Council must in each year, as soon as practicable after 31 December, but on or before 1 May in the following year, forward to the Commission a

SCHEDULE 7 - MISCELLANEOUS AMENDMENTS - *continued*

report of its work and activities for the 12 months ending on 31 December in that year.

(16) Section 65A:

After section 65, insert:

Aboriginal Authorities to be public authorities etc. for certain purposes

65A. The Commission and each Aboriginal Land Council is to be taken to be a public authority for the purposes of the Ombudsman Act 1974, the Independent Commission Against Corruption Act 1988 and the Freedom of Information Act 1989.

(17) Section 68 (**Regulations**):

(a) After section 68 (2) (b), insert:

(b1) authorising the Minister to approve the amalgamation of Local Aboriginal Land Council areas;

(b) From section 68 (2) (c), (e), omit "Aboriginal Land Councils" wherever occurring, insert instead "Aboriginal Authorities".

(c) From section 68 (2) (f), omit "of Aboriginal Land Councils", insert instead "of Aboriginal Authorities".

SCHEDULE 8 - AMENDMENTS RELATING TO SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 3)

Schedule 4 (**Savings, transitional and other provisions**):

(a) Before clause 1, insert:

PART 1 - PRELIMINARY

(b) After clause 1, insert:

**SCHEDULE 8 - AMENDMENTS RELATING TO SAVINGS
AND TRANSITIONAL PROVISIONS - *continued***

Savings and transitional regulations

1A. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act;

the Aboriginal Land Rights (Amendment) Act 1990.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2 - PROVISIONS CONSEQUENT ON THE
ENACTMENT OF THIS ACT**

(c) Omit clause 10, insert instead:

**PART 3 - PROVISIONS CONSEQUENT ON THE
ENACTMENT OF THE ABORIGINAL LAND
RIGHTS (AMENDMENT) ACT 1990**

Definitions

10. In this Part:

SCHEDULE 8 - AMENDMENTS RELATING TO SAVINGS
AND TRANSITIONAL PROVISIONS - *continued*

"**appointed day**" means the day on which Schedule 1 (2) to the 1990 Act commences;

"**Commission**" means the New South Wales Aboriginal Affairs and Land Rights Commission constituted under Part 4, as amended by the 1990 Act;

"**Council**" means the New South Wales Aboriginal Land Council;

"**instrument**" means an Act (other than this Act or the 1990 Act) a rule, a by-law, a regulation or an ordinance, or any other instrument or document, whether as the same or a different kind or nature;

"**the 1990 Act**" means the Aboriginal Land Rights (Amendment) Act 1990.

Rights and liabilities of N.S.W. Aboriginal Land Council

11. On and from the appointed day:

- (a) the rights and liabilities of the Council become rights and liabilities of the Commission to be exercised and discharged in accordance with this Act; and
- (b) the obligations of the Council become obligations of the Commission to be performed in accordance with this Act; and
- (c) proceedings before a court or tribunal by or against the Council that, immediately before the appointed day, were pending or in the course of being heard become proceedings by or against the Commission; and
- (d) to the extent to which an act, matter or thing done or omitted to be done on behalf of the Council had any force or effect immediately before the appointed day, it becomes an act, matter or thing done or omitted to be done by the Commission; and
- (e) a reference in any instrument to the Council becomes a reference to the Commission; and

SCHEDULE 8 - AMENDMENTS RELATING TO SAVINGS
AND TRANSITIONAL PROVISIONS - *continued*

- (f) time that had commenced to run in relation to the Council becomes time that had commenced to run in relation to the Commission.

Vesting of property

12. (1) Any property that, immediately before the appointed day, was vested in the Council is on and from that day vested in the Commission.

(2) Any property that, immediately before the appointed day, was vested in a Regional Aboriginal Land Council is on and from that day vested in the Commission.

Investment of money in N.S.W. Aboriginal Land Council Account

13. (1) Money held in the New South Wales Aboriginal Land Council Account immediately before the appointed day is to be paid into the New South Wales Aboriginal Affairs and Land Rights Commission Account when it is established.

(2) Money held in the New South Wales Aboriginal Land Council Account which, immediately before the appointed day was required under this Act to be invested and not disbursed, is to be taken to be money to which section 30, as in force on and from the appointed day, applies.

Directions by the Minister in respect of financial matters

14. Any direction given by the Minister before the appointed day under section 33A, and in force immediately before that day, is to be taken to be a direction given under section 34A on the appointed day.

Claims to Crown lands made by Regional Aboriginal Land Councils

15. Any claim made by a Regional Aboriginal Land Council under section 36 which, immediately before the

**SCHEDULE 8 - AMENDMENTS RELATING TO SAVINGS
AND TRANSITIONAL PROVISIONS - *continued***

appointed day, had not been granted or refused under that section is to be taken to be a claim made under that section by the Commission on the appointed day.

Elections

16. For the purpose of enabling:

- (a) the Commission to be constituted on or after the commencement of Schedule 1 to the 1990 Act; and
- (b) each Regional Aboriginal Land Council to be constituted on or after the commencement of Schedule 3 to the 1990 Act; and
- (c) the election of the Chairperson, Secretary and Treasurer of each Local Aboriginal Land Council on or after the commencement of Schedule 2 to the 1990 Act,

elections may be held and any other act, matter or thing may be done before those days as if the whole of the 1990 Act commenced on the date of assent to that Act.

**SCHEDULE 9 - CONSEQUENTIAL AMENDMENT OF OTHER
ACTS**

(Sec. 4)

Public Finance and Audit Act 1983 No. 152

Schedule 2:

- (a) Omit "New South Wales Aboriginal Land Council", insert instead "New South Wales Aboriginal Affairs and Land Rights Commission".
- (b) Omit "A Regional Aboriginal Land Council constituted under the Aboriginal Land Rights Act 1983".

Statutory and Other Offices Remuneration Act 1976 No. 4

Schedule 2:

Insert at the end of Part 1 "Commissioner of the New South Wales Aboriginal Affairs and Land Rights Commission".

