



New South Wales

# Aboriginal Land Rights Amendment Act 1995 No 39

## Contents

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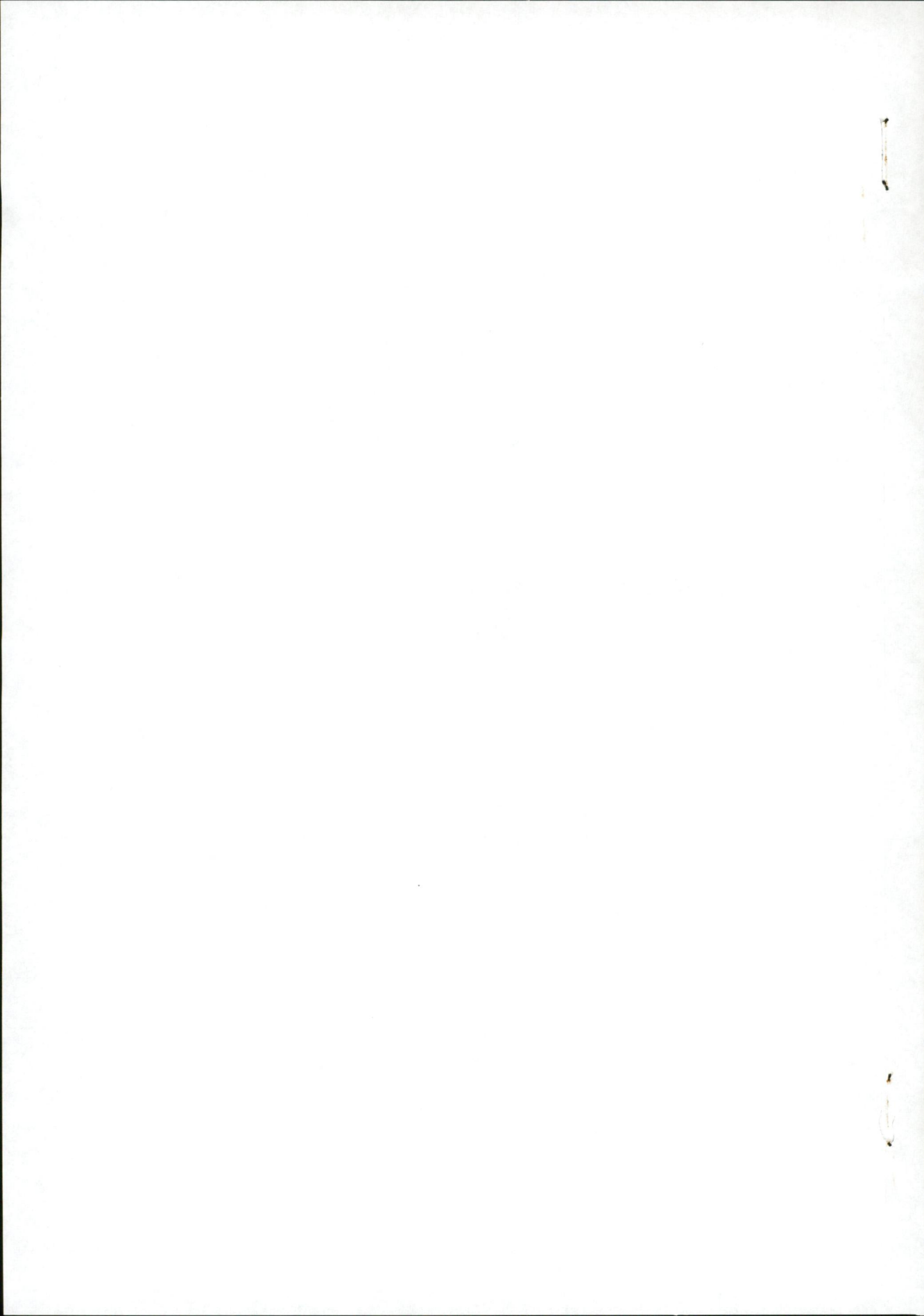
	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Aboriginal Land Rights Act 1983 No 42	2
4 Amendment of Land and Environment Court Act 1979 No 204	2

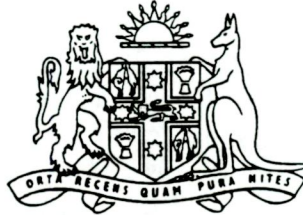
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## Schedules

1 Amendment of Aboriginal Land Rights Act 1983	3
2 Amendment of Land and Environment Court Act 1979	7

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New South Wales

# Aboriginal Land Rights Amendment Act 1995 No 39

Act No 39, 1995

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An Act to amend the *Aboriginal Land Rights Act 1983* to make further provision with respect to the election of councillors of the New South Wales Aboriginal Land Council; and to amend the *Land and Environment Court Act 1979* to confer jurisdiction on the Court to settle disputed returns in such elections. [Assented to 26 October 1995]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Aboriginal Land Rights Amendment Act 1995*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Aboriginal Land Rights Act 1983 No 42**

The *Aboriginal Land Rights Act 1983* is amended as set out in Schedule 1.

**4 Amendment of Land and Environment Court Act 1979 No 204**

The *Land and Environment Court Act 1979* is amended as set out in Schedule 2.



---

## **Schedule 1    Amendment of Aboriginal Land Rights Act 1983**

(Section 3)

### **[1]    Section 26**

Omit the section. Insert instead:

#### **26 Who may vote**

- (1) A person is entitled to vote at an election for a councillor to represent a Regional Aboriginal Land Council area on the New South Wales Aboriginal Land Council if the person is a member of a Local Aboriginal Land Council within the area.
- (2) However, a person is not entitled to vote more than once in an election of all councillors of the New South Wales Aboriginal Land Council if that person is a member of more than one Local Aboriginal Land Council:
  - (a) within the same Regional Aboriginal Land Council area, or
  - (b) in different Regional Aboriginal Land Council areas.
- (3) A person who is a member of more than one Local Aboriginal Land Council:
  - (a) within the same Regional Aboriginal Land Council area, or
  - (b) in different Regional Aboriginal Land Council areas,

is only entitled to cast his or her vote in respect of the Local Aboriginal Land Council area in which the person ordinarily resides.

**[2] Part 4, Divisions 2A and 2B**

Insert after section 27A:

**Division 2A Declaration of election**

**27AA Declaration of election**

If the returning officer for an election of councillors of the New South Wales Aboriginal Land Council is advised by a regional electoral officer that the result of the counting of votes is that a candidate has been elected, the returning officer must immediately publicly declare the candidate elected as a councillor.

**27AB Office holders pending determination of disputed return**

- (1) Section 27AA applies even if the election of the candidate (or of any other candidate in the election) is the subject of an application under section 27AC disputing the validity of the election of the candidate.
- (2) A candidate who is publicly declared elected as a councillor by the returning officer holds that office until the determination of any proceedings disputing the validity of the election of the candidate.
- (3) A candidate referred to in subsection (2) is taken to hold office, and is competent to carry out all the functions and duties of a duly elected councillor, from the date on which the returning officer declares the candidate elected, until:
  - (a) the Court hearing an application under section 27AC disputing the validity of the election of the candidate determines otherwise, or
  - (b) the term of office of the councillor expires or becomes vacant,whichever is the earlier.
- (4) The New South Wales Aboriginal Land Council in which a candidate referred to in subsection (2) holds office is not invalidly constituted for that reason.

## **Division 2B Disputed returns**

### **27AC Method of disputing elections and returns**

- (1) The validity of an election for a councillor to represent a Regional Aboriginal Land Council area, or of any return or statement showing the voting in any such election, may be disputed by an application to the Court, and not otherwise.
- (2) Any person may make an application to the Court under this section within 28 days after the returning officer has publicly declared the result of the election that is the subject of the application.

### **27AD Powers of Court**

In determining an application under section 27AC, the Court has the same powers as are conferred by section 161 of the *Parliamentary Electorates and Elections Act 1912* on the Court of Disputed Returns.

### **27AE Right of returning officer to be represented**

The returning officer is entitled to be represented at the hearing of an application under section 27AC.

### **27AF Procedure**

- (1) The procedure of the Court on an application under section 27AC is to be determined by rules of Court, or in the absence of rules of Court, by the Court or a judge of the Court.
- (2) The Court is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.
- (3) Despite section 27AD, the Court may make an order for costs in respect of an application under section 27AC only if the Court is satisfied that there are exceptional circumstances that warrant the making of such an order.



**27AG Immaterial errors not to invalidate election**

- (1) An election of councillors of the New South Wales Aboriginal Land Council, or any return or statement showing the voting in an election, is not invalid because of:
  - (a) any delay in taking the votes of the electors or in making any statement or return, or
  - (b) the absence of any officer, or
  - (c) the error or omission of any officer,that could not have affected the result of the election.
- (2) If a person was prevented from voting in an election because of the absence of any officer, or the error or omission of any officer, the Court must not admit any evidence of the way the person intended to vote in order to determine whether or not the absence, error or omission could have affected the result of the election.

**27AH Decisions to be final**

- (1) A decision of the Court in respect of an application under section 27AC is final and conclusive and without appeal, and is not to be questioned in any way.
- (2) Section 58 of the *Land and Environment Court Act 1979* does not apply to any such decision of the Court.

**[3] Section 68 Regulations**

Insert after section 68 (2) (f):

- (g) disputed returns in elections of councillors of the New South Wales Aboriginal Land Council.

---

## Schedule 2 Amendment of Land and Environment Court Act 1979

(Section 4)

**[1] Section 20 Class 4—environmental planning and protection and development contract civil enforcement**

Insert after section 20 (1) (dc):

(dd) proceedings under Division 2B of Part 4 of the *Aboriginal Land Rights Act 1983*,

**[2] Section 20 (2A)**

Insert after section 20 (2):

(2A) The Court has jurisdiction to hear and dispose of proceedings referred to in subsection (1) (dd).

**[3] Section 20 (3) (a)**

Insert “(other than Division 2B of Part 4)” after “*Aboriginal Land Rights Act 1983*”.

[Minister's second reading speech made in—  
Legislative Assembly on 20 September 1995  
Legislative Council on 19 October 1995]



**Aboriginal Land Rights Act Amendment Bill,  
1995  
Legislative Council**

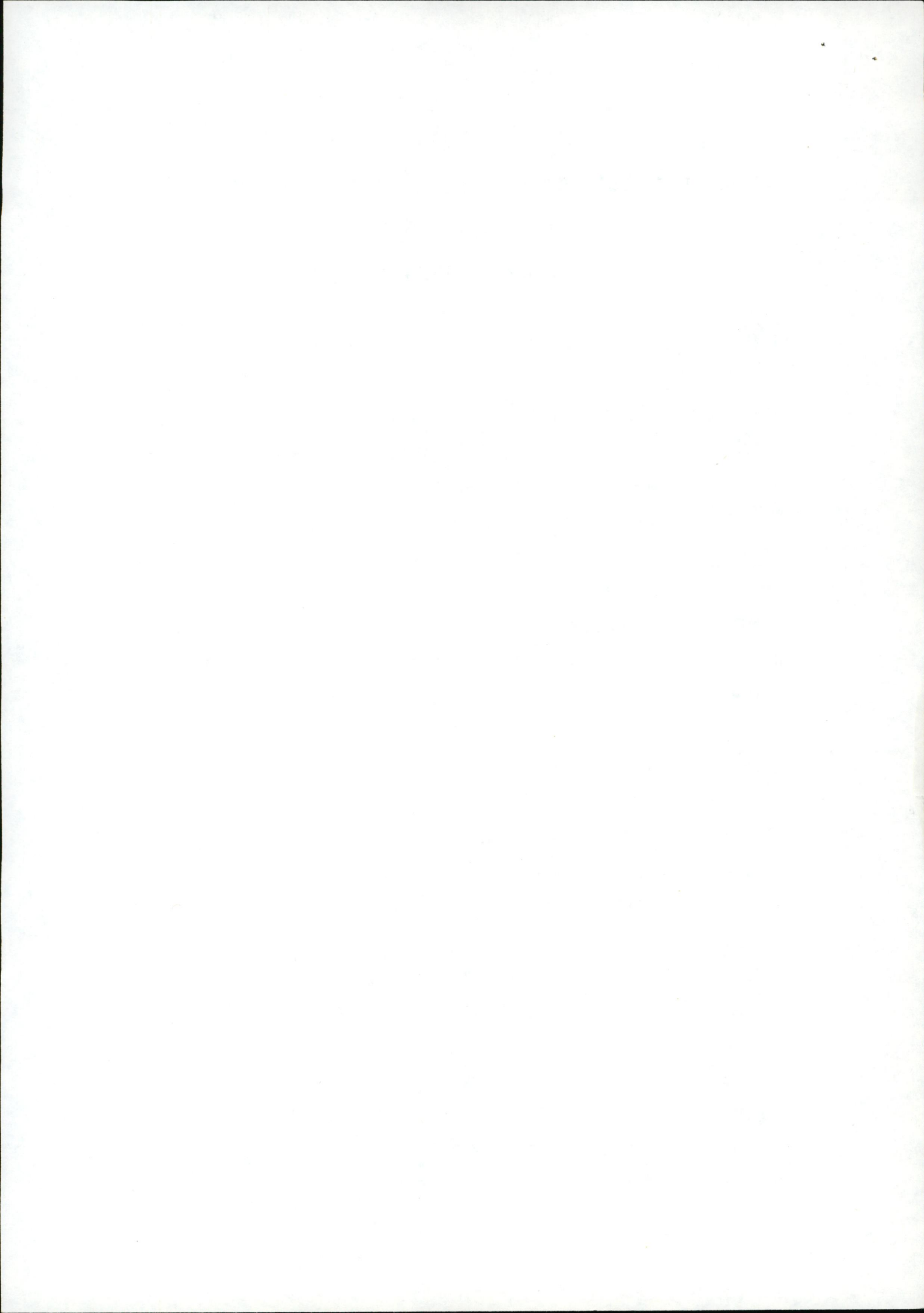
Mr President.

The purpose of this Bill is to amend the Aboriginal Land Rights Act 1983 as follows: first, to provide for a Court of Disputed Returns which shall resolve disputes about electoral matters which may arise from the elections of Councillors to the NSW Aboriginal Land Council; and secondly to provide for members of Aboriginal Land Councils to have only one vote in elections for the NSW Aboriginal Land Council. These amendments are sought by the NSW Aboriginal Land Council, which initiated discussions with both the former and current Governments to bring them about.

Schedule 1[1] of the Bill amends section 26 of the Aboriginal Land Rights Act, 1983 to provide for one vote per person, meaning that persons who are members of more than one Local Aboriginal Land Council are to vote for a Councillor to the NSW Aboriginal Land Council to represent the region in which they reside.

However, the Act when amended will continue to allow persons to be members of more than one Local Aboriginal Land Council in either the same region or different regions.

This provision in the existing Act takes into account the fact that many Aboriginal people do not reside in their place of traditional affiliation, and may therefore have a legitimate interest in the operation of the Local





Aboriginal Land Council in that area, as well as in the area in which they reside or may reside from time to time.

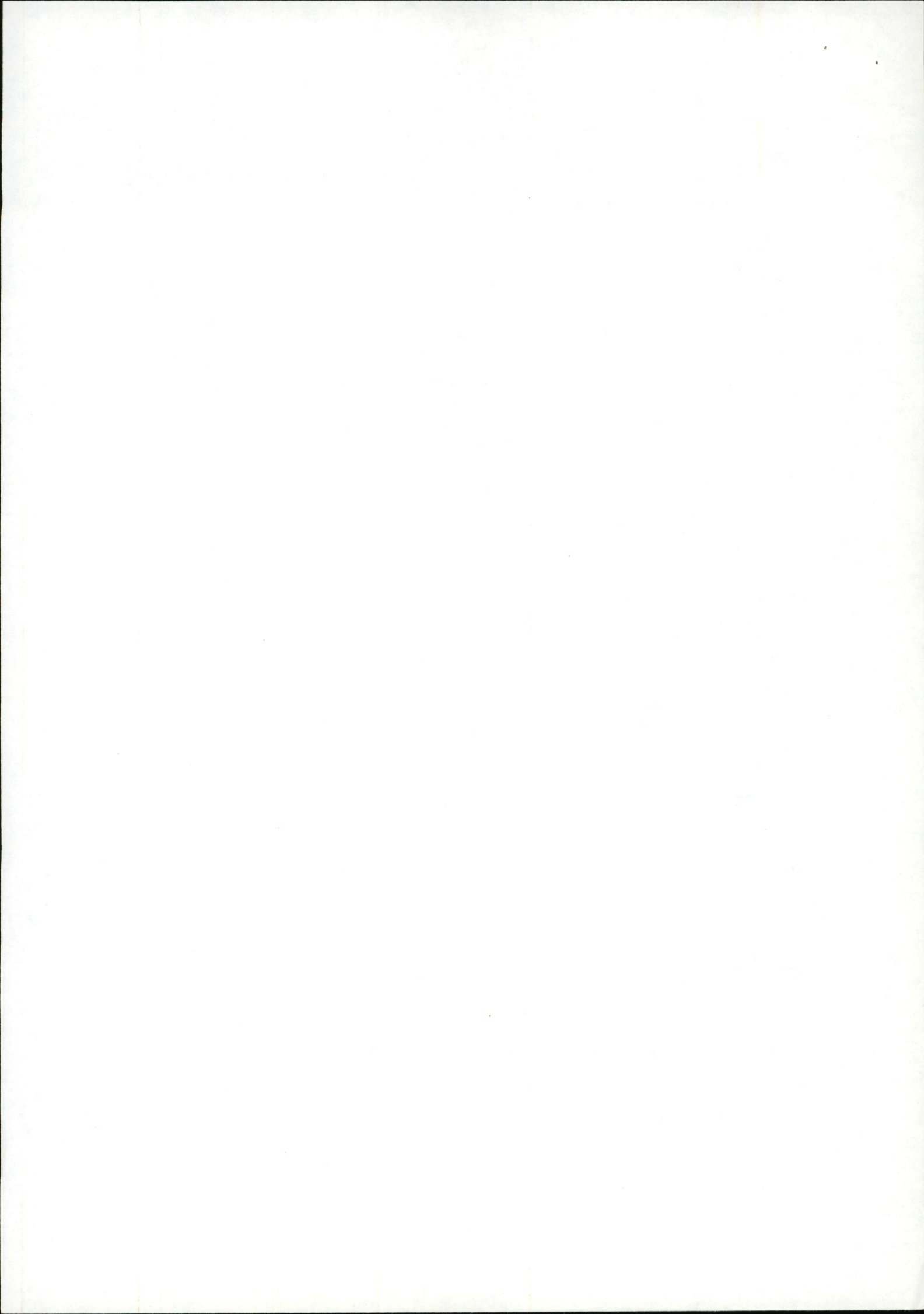
This Bill seeks to ensure that the principle of 'one person one vote' applies not only within a single Regional Land Council Area but between regions. The Bill provides for a person who is a member of more than one Aboriginal Land Council to cast a vote in the area in which the person resides.

The amendment seeks to eliminate the opportunity for voting twice for representation at the NSW Aboriginal Land Council.

The existing legislative arrangements on the one hand prevent members of more than one Local Aboriginal Land Council in the same region from voting twice in the election of a council representation for that region, while on the other hand Aborigines who are dual members of Local Aboriginal Land Councils in different regions may vote for representation in each region. This Bill seeks to eliminate this discrepancy.

Schedule 1 [2] of the Bill provides for a Court of Disputed Returns.

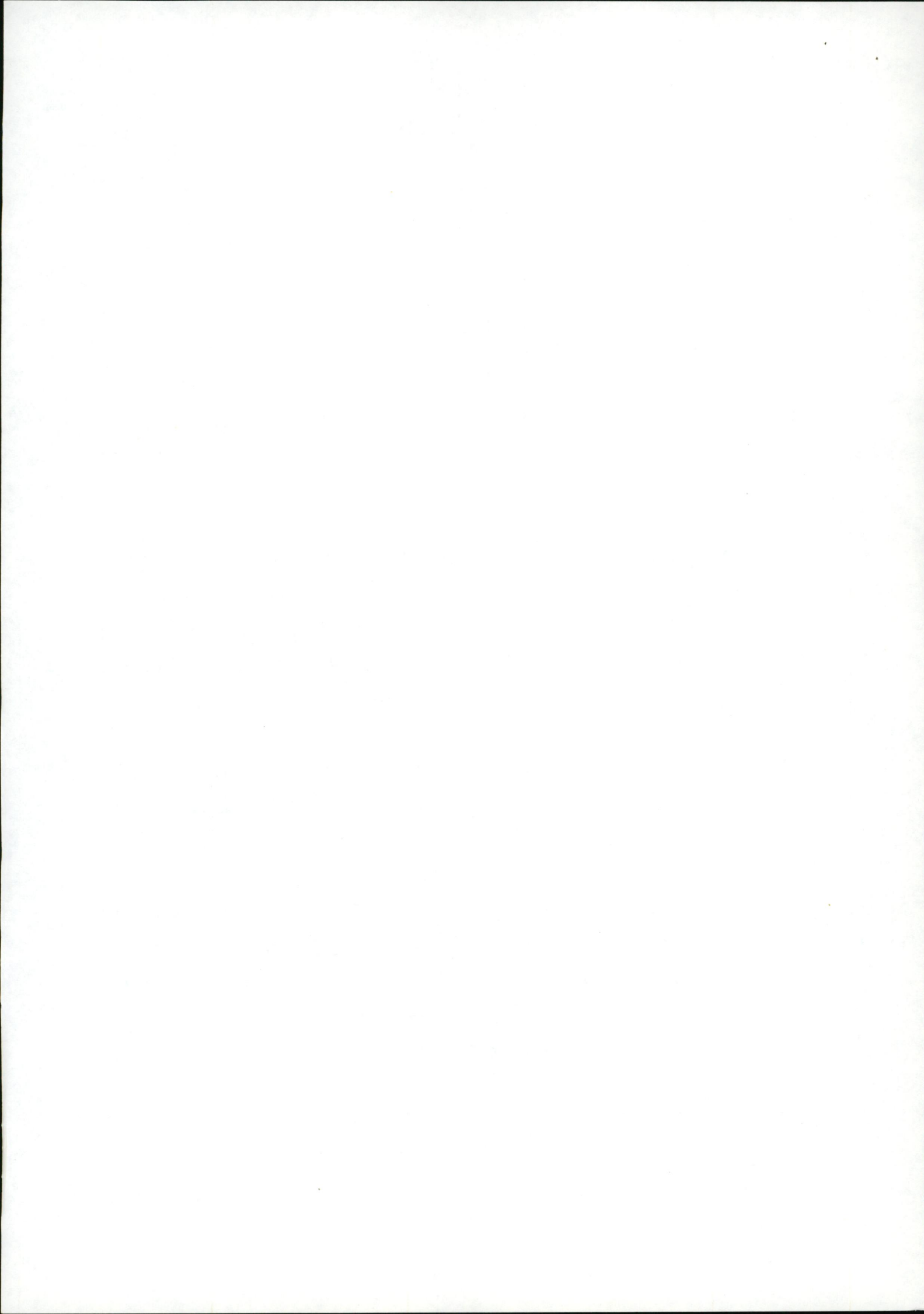
The Land and Environment Court will be provided with jurisdiction to deal with electoral disputes pertaining to the election of Councillors to the NSW Aboriginal Land Council. The Land and Environment Court has been chosen because it already deals with other matters concerning disputes between members of Councils or between Councils themselves under the Aboriginal Land Rights Act. It is also the Court of Appeal to which Aboriginal Land Councils turn in respect of land claims refused by Government.



Mr President.

There can be no doubt about the need for a Court of Disputed Returns. In the past, disputes concerning the validity of elections have been heard under the general law of Judicial Review of Administrative Decisions. This has resulted in very significant delays in the election of Councillors and the incurring of considerable expense in litigation. The following events have occurred as a direct result of the lack of a Court of Disputed Returns:

- (1) after the first popular election of the Councillors to the NSW Aboriginal Land Council in 1991, the Returning Officer refused to declare two candidates elected because litigation disputing the election results for the Regional Aboriginal Land Council Areas of Sydney/Newcastle and the South Coast had commenced;
- (2) the Registrar of the Aboriginal Land Rights Act correctly refused to call the first meeting of the NSW Aboriginal Land Council as all 13 Councillors were not declared elected by the Returning Officer.
- (3) Councillors who were declared elected commenced proceeding in the Land and Environment Court seeking declaratory relief and the Court determined that the former Councillors of NSW Aboriginal Land Council should continue to serve until all of the popularly elected Councillors were declared elected.
- (4) the Court's decision necessitated a further amendment to the Act which took effect on 12 December 1991. The amendment provided for the Registrar to call the first meeting of the NSW



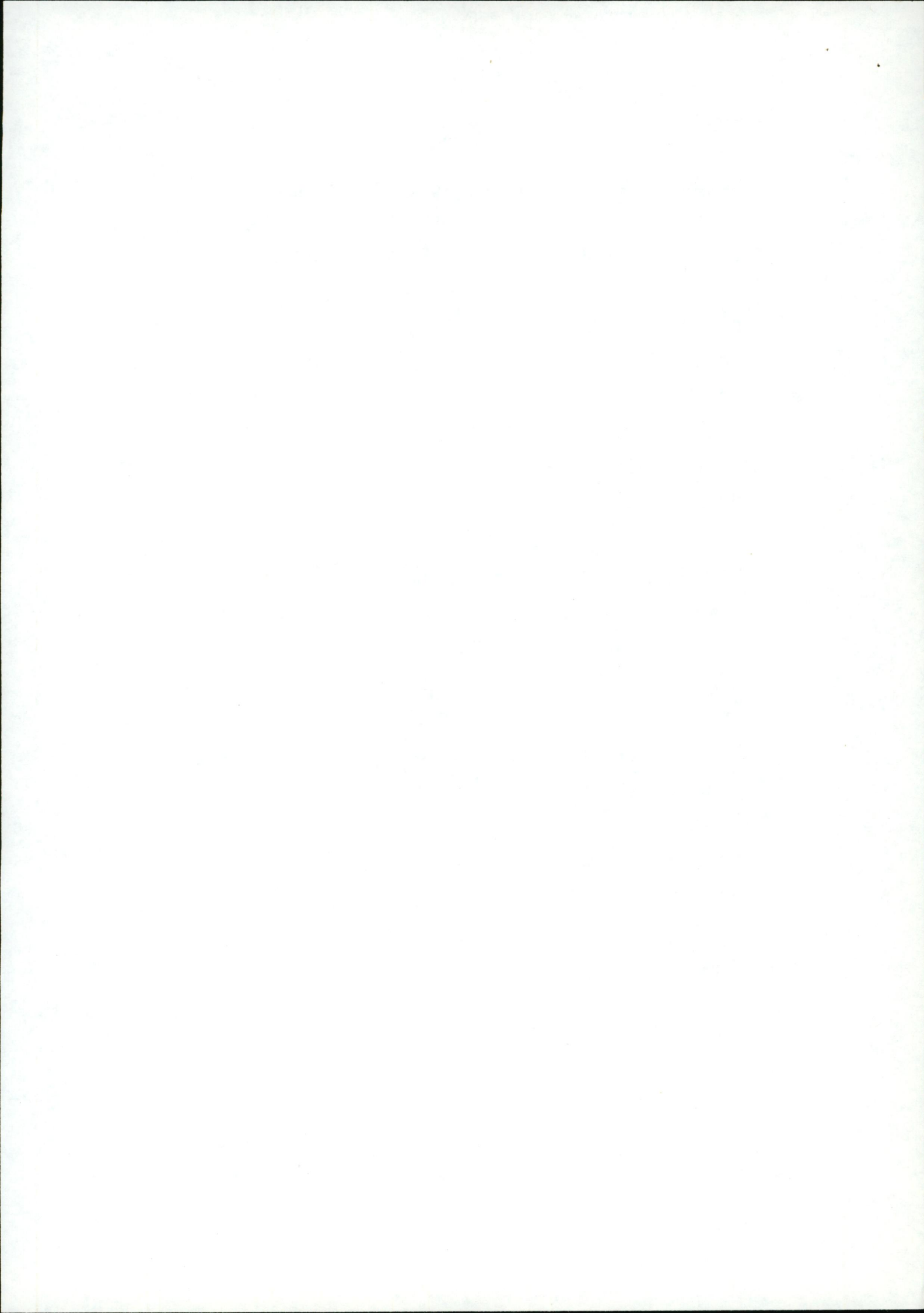


Aboriginal Land Council after the Returning Officer for the election Aboriginal Land Council Areas void and ordered the Electoral Commissioner of NSW to conduct new elections for those areas.

- (6) in February, March and April of 1992 written submissions were made to the Government on behalf of the NSW Aboriginal Land Council to further amend the Act to provide for a Court of Disputed Returns before the election of 11 April 1992. However, there was insufficient Parliamentary time available prior to the election for this to occur.
- (7) the election for the two unrepresented regional areas was held on 11 April 1992. As a result of that election only one candidate was declared elected. The results of the election for the South Coast Regional Aboriginal Land Council Area was disputed and subject to further litigation in the Land and Environment Court. That Court declared the election for the South Coast area void and ordered a further election. The Court's decision was subject to an appeal to the Court of Appeal.
- (8) the appeal was dismissed and consequently the further election for the South Coast region was finally held in June 1994.

Mr President.

If the legislation had provided for a Court of Disputed Returns, the



disputes arising from the election would have been dealt with expeditiously, cheaply and with minimum formality.

Mr President.

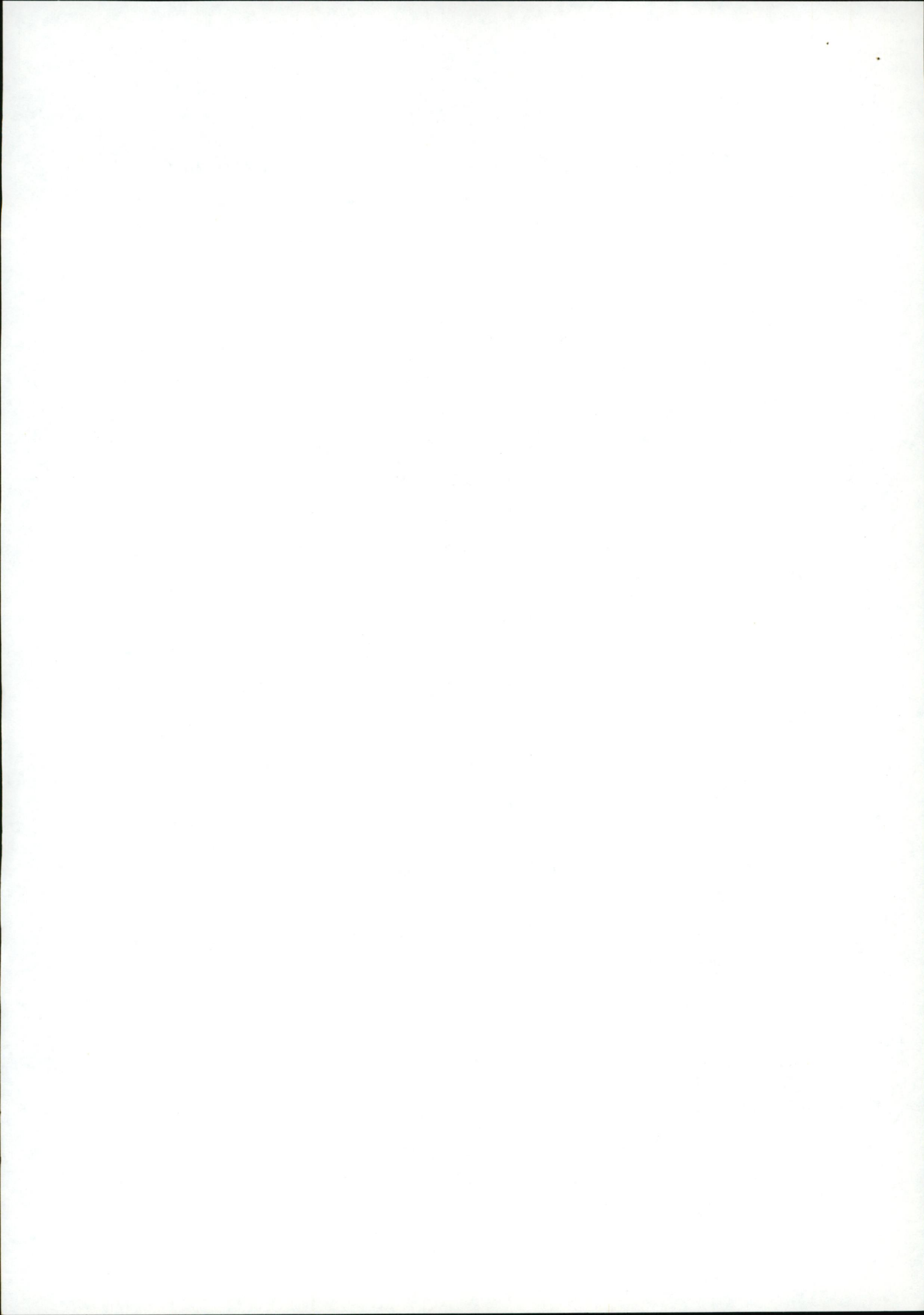
This Bill inserts two new Divisions into Part 4 of the Act. Proposed Division 2A provides that if the validity of the election of a Councillor is disputed, the returning officer must nevertheless declare the candidate elected, and the candidate is to hold office as a Councillor until the Land and Environment Court has settled the disputed return.

The Bill provides that the Land and Environment Court is the sole forum for the resolution of disputes concerning the election of a Councillor. Application to the Court can be made by any person within 28 days of the returning officer publicly declaring the result of the disputed election. In determining such applications the Land and Environment Court is to have the same powers as the Court of Disputed Returns under the Parliamentary Electorates and Elections Act 1912, including the power to make declarations:

1. that any person who was returned as elected was not duly elected; and
2. that any candidate who was not returned as elected was duly elected; and
3. that an election is absolutely void.

The decision of the Land and Environmental Court in determining a disputed return is final.

The procedure of the Land and Environment Court on an application





under the amended Act is to be flexible, and the Court is only to make orders for costs in "exceptional circumstances".

Mr President.

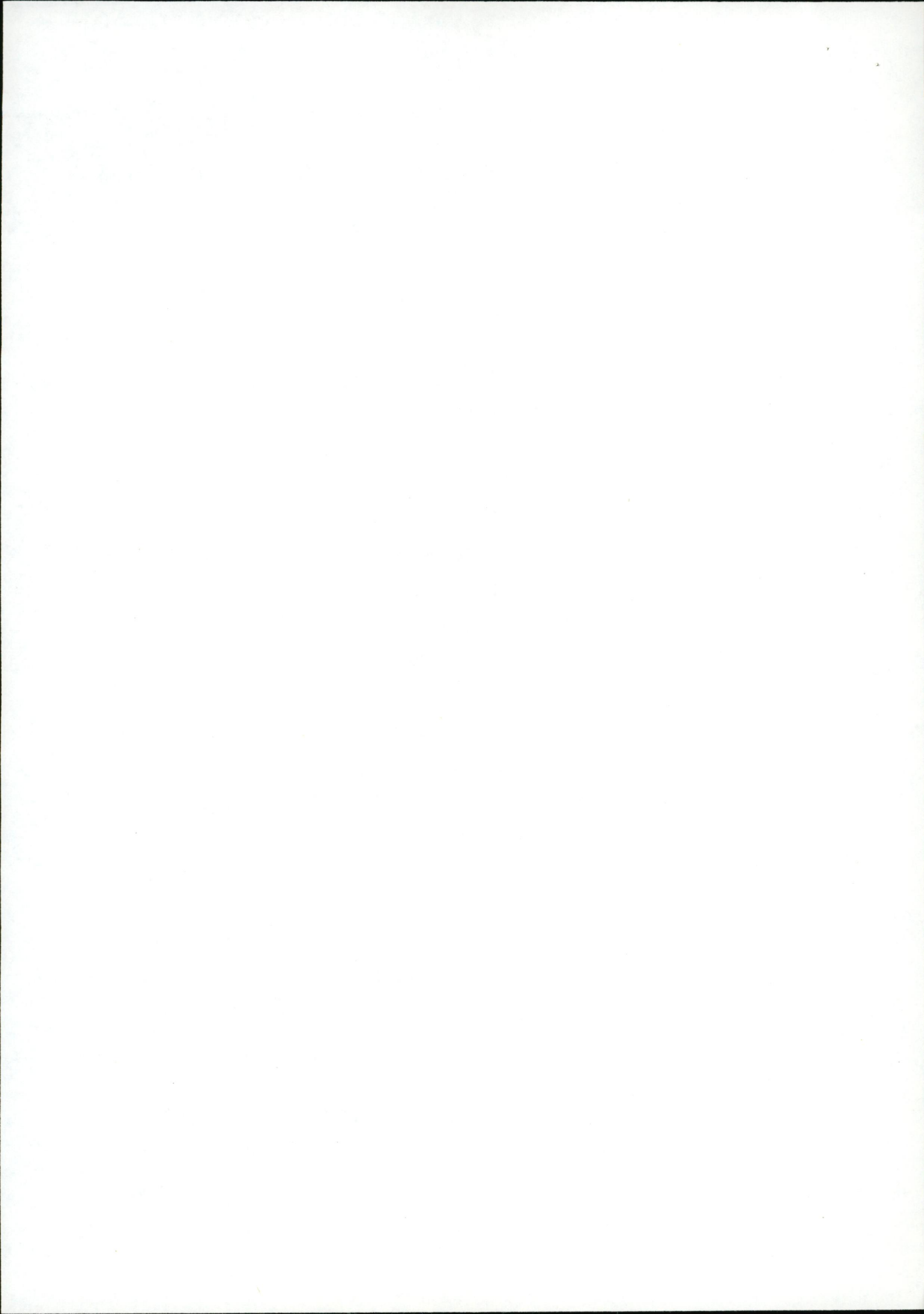
It should be noted that the original Bill presented to the Legislative Assembly proposed that the Court was not to make orders for costs with respect to applications disputing election results.

It was subsequently suggested that the Bill should provide that the Court should have the power to award costs. This was suggested on the basis that most successful challenges to decisions are the result of errors made by electoral officials, through no fault of the parties or candidates and that it would be discriminatory not to provide Aboriginal persons with the right to access orders for costs in these disputes.

The Government then, acting on advice from the NSW Aboriginal Land Council, amended the Bill in the Legislative Assembly to give the Court limited discretion to award costs in "exceptional circumstances". This means that costs will not be awarded unless the circumstances and conduct of the parties warrant it.

The rule giving the Court the discretion to award costs in such circumstances is already applied with good effect to disputes regarding s.36(6) of the Aboriginal Land Rights Act in Class Three of the Court's jurisdiction.

The limited discretion to award costs provided for in the Bill serves to act as a deterrent to vexatious litigants, without unfairly restricting access to the Court as would a general power to award costs. Aboriginal affairs is



one of this Government's key priorities. The amendment of the Aboriginal Land Rights Act implements this Government's pre-election promise to create a Court of Disputed Returns to determine election disputes under the Aboriginal Land Rights Act.

Mr President

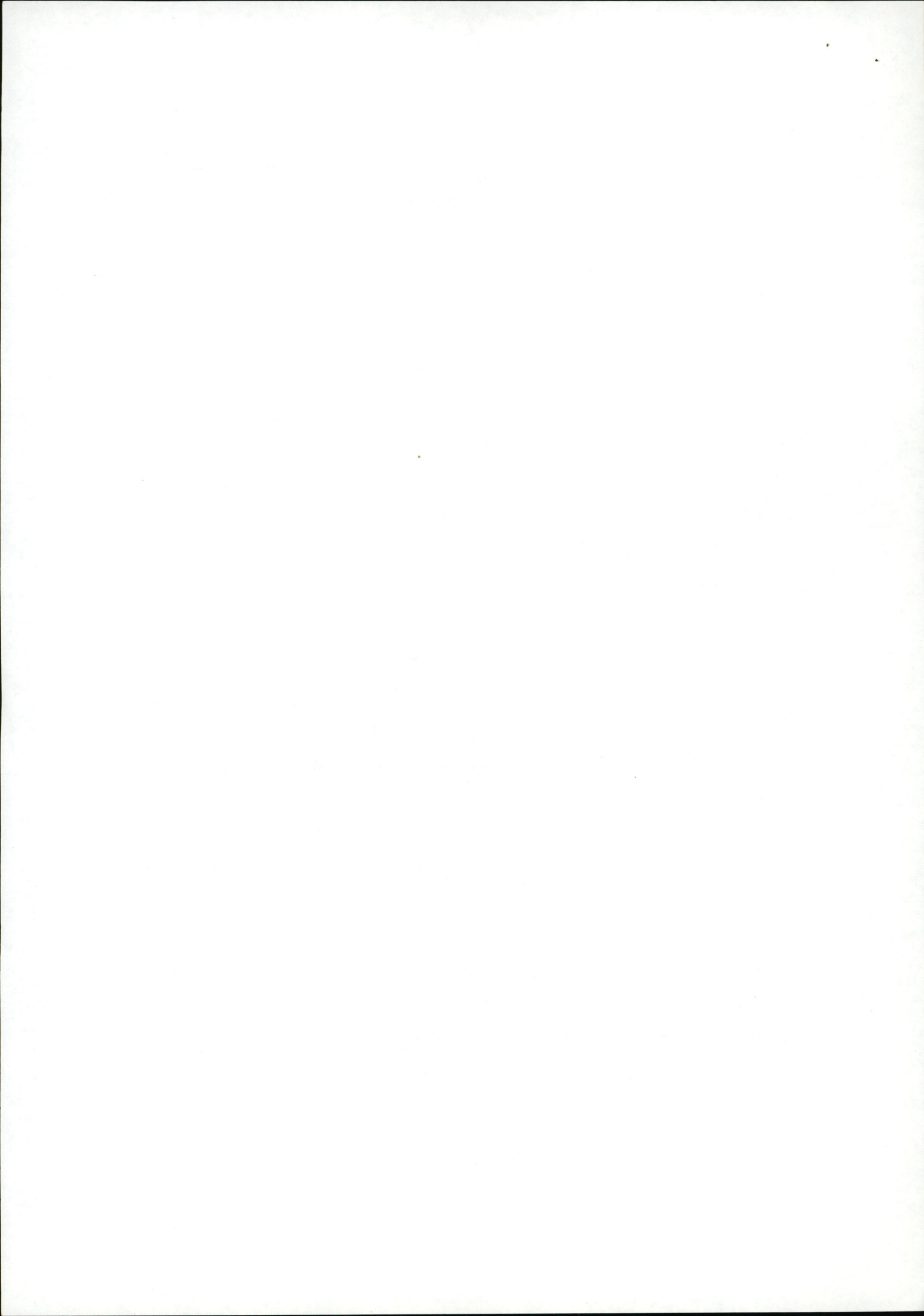
An election of Councillors to the NSW Aboriginal Land Council is to be held on 16 December 1995. The amendment appointing the Land and Environment Court as the Court of Disputed Returns is intended to apply to any disputes arising out of this election as the election was called prior to the Bill being enacted, the "one vote per person" provisions will not apply to the 16 December 1995 election.

The inclusion of the amendment providing for people who are members of more than one Local Aboriginal Land Council to vote in the region in which they reside, rather than in the region of their choice, prevents such people from shopping for an electoral region where their vote counts the most.

The new criteria included in the Bill before the House will eliminate the practice of electorate shopping.

This government recognises the importance and value of traditional country to Aboriginal people, and the amendment to the Act have been drafted to retain the capacity of Aboriginal people to participate in, and vote for Local Land Councils in their traditional areas.

Mr President.





The amendments included in the Bill have been drafted at the request of, and in consultation with the NSW Aboriginal Land Council. The Government has consulted with the Land Council on the amendment to the Bill as proposed by Burnam Burnam as outlined by the member for Pittwater in the other place. The NSW Aboriginal Land Council has recommended that the Government proceed with the Bill as presently drafted.

The Government is committed to conducting, in consultation with the NSW Aboriginal Land Council, a general review of the operation of the Aboriginal Land Rights Act. Such a review would be aimed at improving the system for processing land claims and embracing sites of Aboriginal significance. Proposals such as the amendment suggested by Burnam Burnam will be considered as part of that review.

Mr President.

The provisions in the Aboriginal Land Rights Amendment Bill are intended to safeguard the principle of 'one person one vote'. They are also intended to safeguard the rights of those involved in an election to the NSW Aboriginal Land Council to speedy relief in the event of a challenge to the results of any election.

I commend this Bill to the House.



First print



New South Wales

# **Aboriginal Land Rights Amendment Bill 1995**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to prevent persons voting more than once in an election of councillors of the New South Wales Aboriginal Land Council, and to provide that disputes concerning the validity of the election of a councillor may be settled by the Land and Environment Court.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** gives effect to the Schedule of amendments to the *Aboriginal Land Rights Act 1983*.

**Clause 4** gives effect to the Schedule of amendments to the *Land and Environment Court Act 1979*.

### **Schedule 1      Amendment of Aboriginal Land Rights Act 1983**

**Schedule 1 (1)** provides that a person is not entitled to vote more than once in an election of all councillors of the New South Wales Aboriginal Land Council. Accordingly, a person may only vote once for a councillor to represent a regional area, and may not vote for councillors to represent different regions. If a person is a member of more than one Local Aboriginal Land Council, that person is required to cast his or her vote in respect of the Local Aboriginal Land Council area in which the person ordinarily lives.

**Schedule 1 (2)** inserts two new Divisions into Part 4 of the Act. Proposed Division 2A provides that if the validity of the election of a councillor is disputed, the returning officer must nevertheless declare the candidate elected, and the candidate is to hold office as a councillor until the Land and Environment Court has settled the disputed return (proposed sections 27AA and 27AB). Proposed Division 2B provides that the sole method for resolving disputes concerning the validity of the election of a councillor is by application to the Land and Environment Court (proposed section 27AC (1)). Such an application must be made within 28 days of the returning officer publicly declaring the result of the disputed election (proposed section 27AC (2)).

Proposed section 27AD provides that in determining such applications, the Land and Environment Court may exercise the same powers as the Court of Disputed Returns under the *Parliamentary Electorates and Elections Act 1912*, including powers to make declarations:

- that any person who was returned as elected was not duly elected, and
- that any candidate who was not returned as elected was duly elected, and
- that an election is absolutely void.

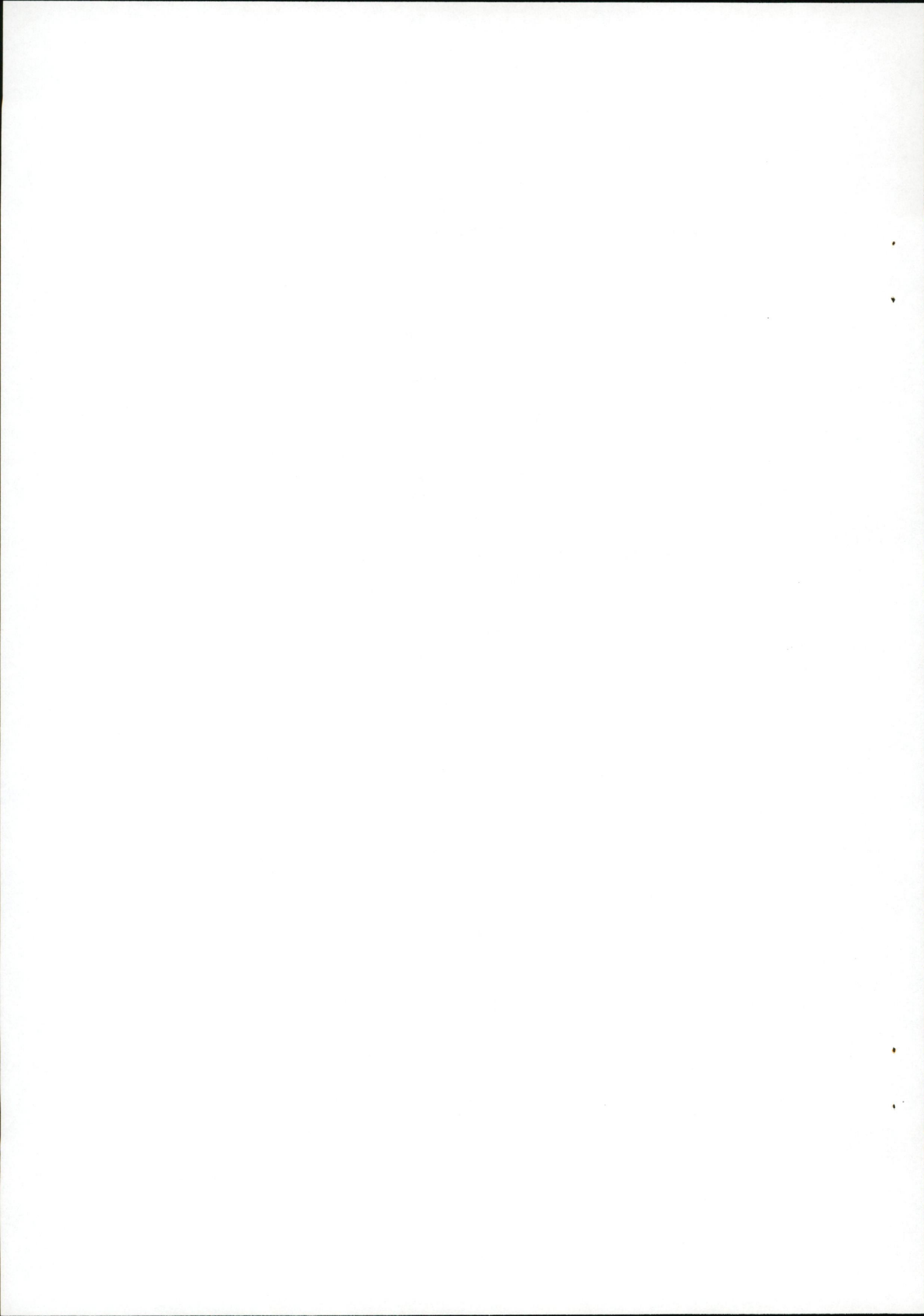


The procedure of the Land and Environment Court on an application under proposed section 27AC is to be flexible, and the Court is not to make orders for costs in such proceedings (proposed section 27AF). The decision of the Land and Environment Court in determining a disputed return is final (proposed section 27AH).

**Schedule 1 (3)** confers a general power on the Governor to make regulations concerning disputed returns in elections of councillors of the New South Wales Aboriginal Land Council.

**Schedule 2      Amendment of Land and Environment Court Act 1979**

**Schedule 2** amends the *Land and Environment Court Act 1979* to provide that the Land and Environment Court is to settle disputed returns in elections of councillors of the New South Wales Aboriginal Land Council in Class 4 of its jurisdiction.



First print



New South Wales

# Aboriginal Land Rights Amendment Bill 1995

## Contents

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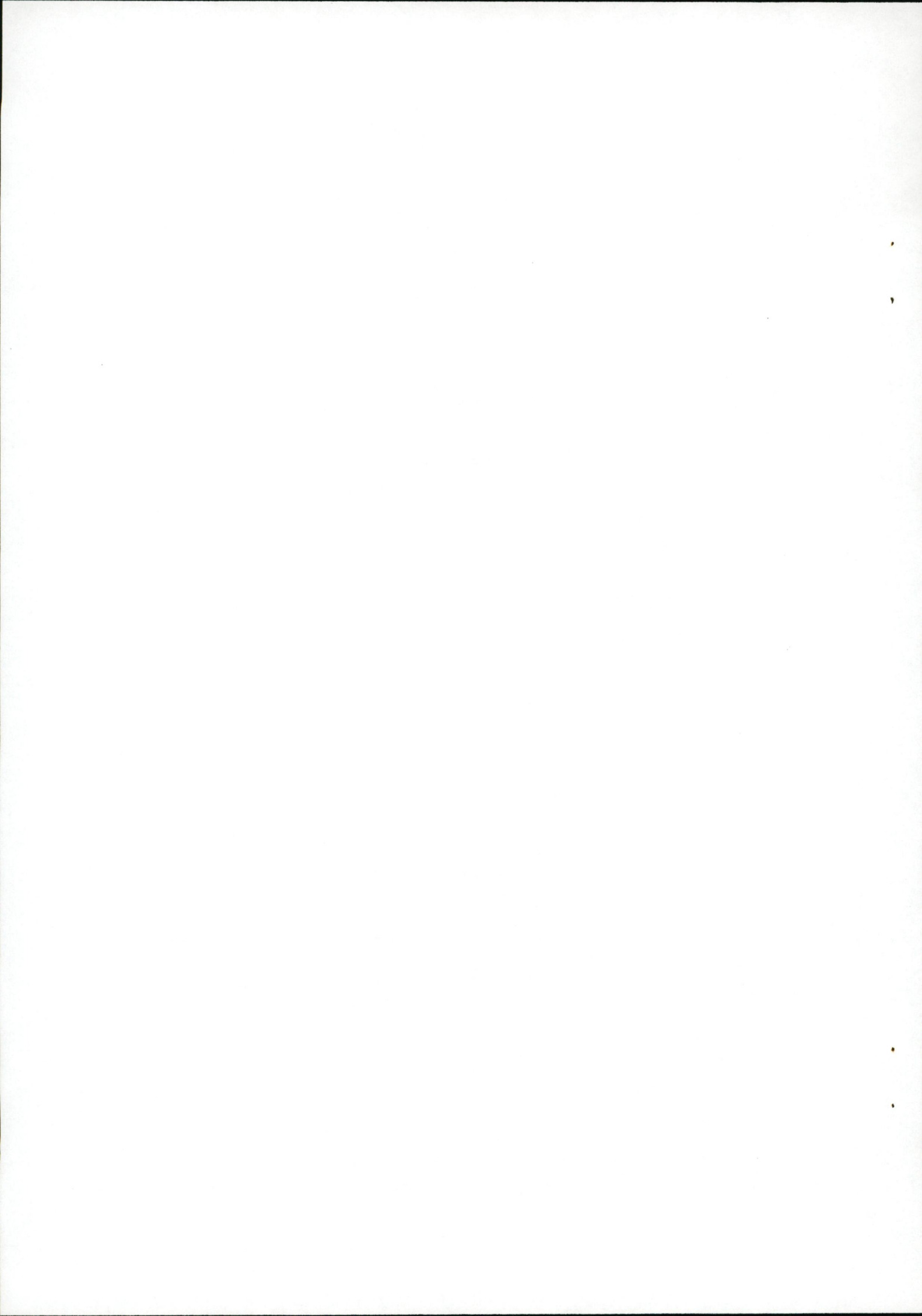
	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Aboriginal Land Rights Act 1983 No 42	2
4 Amendment of Land and Environment Court Act 1979 No 204	2

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### Schedules

1 Amendment of Aboriginal Land Rights Act 1983	3
2 Amendment of Land and Environment Court Act 1979	7

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New South Wales

## Aboriginal Land Rights Amendment Bill 1995

No. , 1995

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### **A Bill for**

An Act to amend the *Aboriginal Land Rights Act 1983* to make further provision with respect to the election of councillors of the New South Wales Aboriginal Land Council; and to amend the *Land and Environment Court Act 1979* to confer jurisdiction on the Court to settle disputed returns in such elections.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Aboriginal Land Rights Amendment Act 1995*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Aboriginal Land Rights Act 1983 No 42**

The *Aboriginal Land Rights Act 1983* is amended as set out in Schedule 1.

**4 Amendment of Land and Environment Court Act 1979 No 204** 10

The *Land and Environment Court Act 1979* is amended as set out in Schedule 2.



---

**Schedule 1    Amendment of Aboriginal Land Rights  
Act 1983**

(Section 3)

**[1]    Section 26**

Omit the section. Insert instead:

5

**26 Who may vote**

(1) A person is entitled to vote at an election for a councillor to represent a Regional Aboriginal Land Council area on the New South Wales Aboriginal Land Council if the person is a member of a Local Aboriginal Land Council within the area. 10

(2) However, a person is not entitled to vote more than once in an election of all councillors of the New South Wales Aboriginal Land Council if that person is a member of more than one Local Aboriginal Land Council: 15

(a) within the same Regional Aboriginal Land Council area, or

(b) in different Regional Aboriginal Land Council areas.

(3) A person who is a member of more than one Local Aboriginal Land Council: 20

(a) within the same Regional Aboriginal Land Council area, or

(b) in different Regional Aboriginal Land Council areas, 25

is only entitled to cast his or her vote in respect of the Local Aboriginal Land Council area in which the person ordinarily resides.

**[2] Part 4, Divisions 2A and 2B**

Insert after section 27A:

**Division 2A Declaration of election**

**27AA Declaration of election**

If the returning officer for an election of councillors of the New South Wales Aboriginal Land Council is advised by a regional electoral officer that the result of the counting of votes is that a candidate has been elected, the returning officer must immediately publicly declare the candidate elected as a councillor. 5  
10

**27AB Office holders pending determination of disputed return**

- (1) Section 27AA applies even if the election of the candidate (or of any other candidate in the election) is the subject of an application under section 27AC disputing the validity of the election of the candidate. 15
- (2) A candidate who is publicly declared elected as a councillor by the returning officer holds that office until the determination of any proceedings disputing the validity of the election of the candidate.
- (3) A candidate referred to in subsection (2) is taken to hold office, and is competent to carry out all the functions and duties of a duly elected councillor, from the date on which the returning officer declares the candidate elected, until: 20
- (a) the Court hearing an application under section 27AC disputing the validity of the election of the candidate determines otherwise, or 25
- (b) the term of office of the councillor expires or becomes vacant,
- whichever is the earlier. 30



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- (4) The New South Wales Aboriginal Land Council in which a candidate referred to in subsection (2) holds office is not invalidly constituted for that reason.

**Division 2B Disputed returns**

**27AC Method of disputing elections and returns**

5

- (1) The validity of an election for a councillor to represent a Regional Aboriginal Land Council area, or of any return or statement showing the voting in any such election, may be disputed by an application to the Court, and not otherwise.
- (2) Any person may make an application to the Court under this section within 28 days after the returning officer has publicly declared the result of the election that is the subject of the application.

10

**27AD Powers of Court**

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In determining an application under section 27AC, the Court has the same powers as are conferred by section 161 of the *Parliamentary Electorates and Elections Act 1912* on the Court of Disputed Returns.

**27AE Right of returning officer to be represented**

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The returning officer is entitled to be represented at the hearing of an application under section 27AC.

**27AF Procedure**

- (1) The procedure of the Court on an application under section 27AC is to be determined by rules of Court, or in the absence of rules of Court, by the Court or a judge of the Court.
- (2) The Court is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.
- (3) The Court is not to make orders for costs in respect of an application under section 27AC.

25

30

**27AG Immaterial errors not to invalidate election**

- (1) An election of councillors of the New South Wales Aboriginal Land Council, or any return or statement showing the voting in an election, is not invalid because of: 5
- (a) any delay in taking the votes of the electors or in making any statement or return, or
  - (b) the absence of any officer, or
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- that could not have affected the result of the election. 10
- (2) If a person was prevented from voting in an election because of the absence of any officer, or the error or omission of any officer, the Court must not admit any evidence of the way the person intended to vote in order to determine whether or not the absence, error or omission could have affected the result of the election. 15

**27AH Decisions to be final**

- (1) A decision of the Court in respect of an application under section 27AC is final and conclusive and without appeal, and is not to be questioned in any way. 20
- (2) Section 58 of the *Land and Environment Court Act 1979* does not apply to any such decision of the Court.

**[3] Section 68 Regulations**

Insert after section 68 (2) (f):

- (g) disputed returns in elections of councillors of the New South Wales Aboriginal Land Council. 25

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**Schedule 2 Amendment of Land and Environment Court Act 1979**

(Section 4)

**[1] Section 20 Class 4—environmental planning and protection and development contract civil enforcement** 5

Insert after section 20 (1) (dc):

(dd) proceedings under Division 2B of Part 4 of the *Aboriginal Land Rights Act 1983*,

**[2] Section 20 (2A)**

Insert after section 20 (2):

(2A) The Court has jurisdiction to hear and dispose of proceedings referred to in subsection (1) (dd). 10

**[3] Section 20 (3) (a)**

Insert “(other than Division 2B of Part 4)” after “*Aboriginal Land Rights Act 1983*”. 15





New South Wales

# Aboriginal Land Rights Amendment Bill 1995

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Aboriginal Land Rights Act 1983 No 42	2
4 Amendment of Land and Environment Court Act 1979 No 204	2

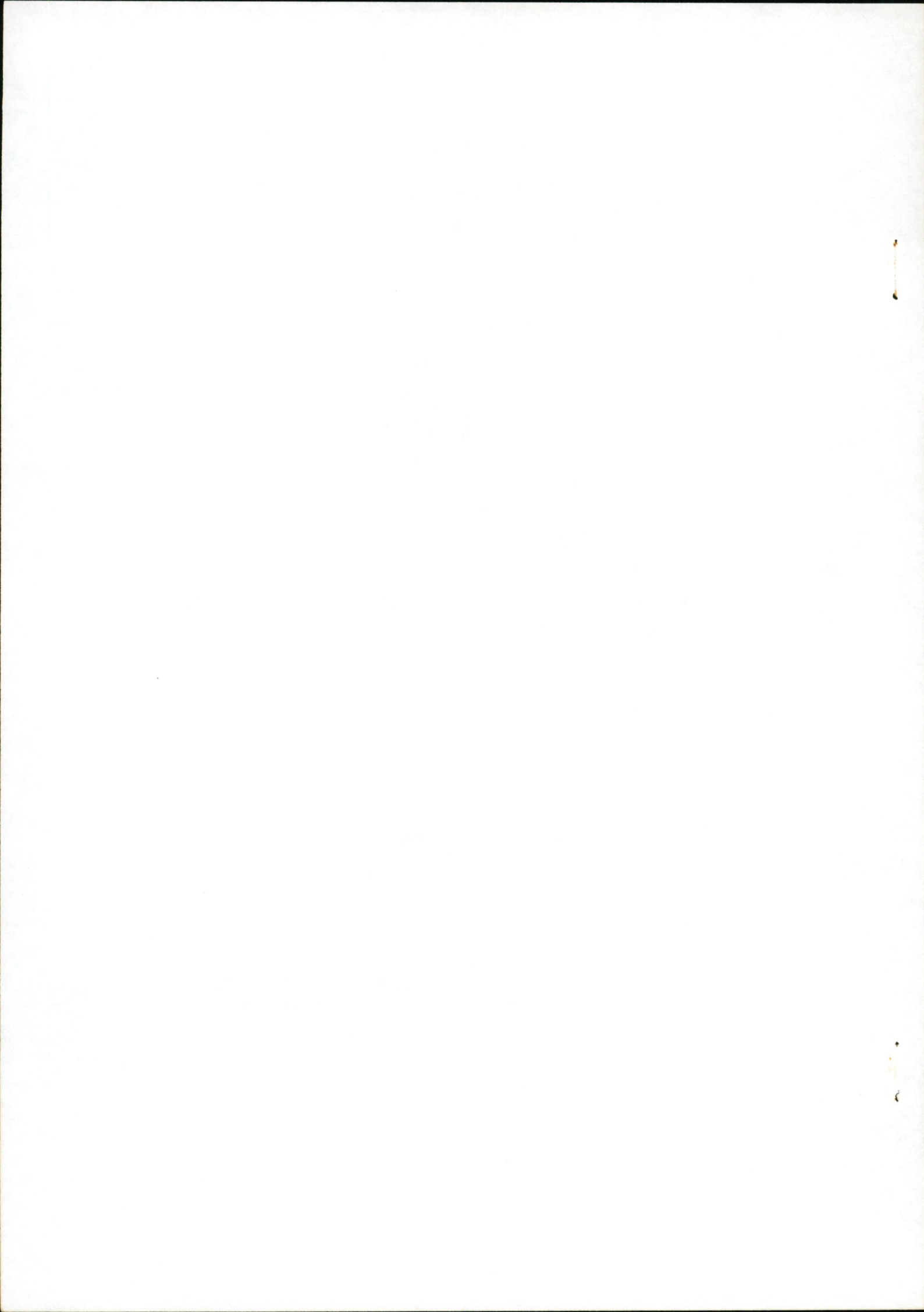
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### Schedules

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Clerk of the Legislative Assembly.  
Legislative Assembly*



New South Wales

## **Aboriginal Land Rights Amendment Bill 1995**

Act No       , 1995

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An Act to amend the *Aboriginal Land Rights Act 1983* to make further provision with respect to the election of councillors of the New South Wales Aboriginal Land Council; and to amend the *Land and Environment Court Act 1979* to confer jurisdiction on the Court to settle disputed returns in such elections.

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**The Legislature of New South Wales enacts:**

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**2 Commencement**

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The *Aboriginal Land Rights Act 1983* is amended as set out in Schedule 1.

**4 Amendment of Land and Environment Court Act 1979 No 204** 10

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## Schedule 1 Amendment of Aboriginal Land Rights Act 1983

(Section 3)

### [1] Section 26

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#### 26 Who may vote

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- (2) However, a person is not entitled to vote more than once in an election of all councillors of the New South Wales Aboriginal Land Council if that person is a member of more than one Local Aboriginal Land Council: 15
- (a) within the same Regional Aboriginal Land Council area, or
  - (b) in different Regional Aboriginal Land Council areas.
- (3) A person who is a member of more than one Local Aboriginal Land Council: 20
- (a) within the same Regional Aboriginal Land Council area, or
  - (b) in different Regional Aboriginal Land Council areas, 25

is only entitled to cast his or her vote in respect of the Local Aboriginal Land Council area in which the person ordinarily resides.

**[2] Part 4, Divisions 2A and 2B**

Insert after section 27A:

**Division 2A Declaration of election**

**27AA Declaration of election**

If the returning officer for an election of councillors of the New South Wales Aboriginal Land Council is advised by a regional electoral officer that the result of the counting of votes is that a candidate has been elected, the returning officer must immediately publicly declare the candidate elected as a councillor. 5  
10

**27AB Office holders pending determination of disputed return**

- (1) Section 27AA applies even if the election of the candidate (or of any other candidate in the election) is the subject of an application under section 27AC disputing the validity of the election of the candidate. 15
- (2) A candidate who is publicly declared elected as a councillor by the returning officer holds that office until the determination of any proceedings disputing the validity of the election of the candidate.
- (3) A candidate referred to in subsection (2) is taken to hold office, and is competent to carry out all the functions and duties of a duly elected councillor, from the date on which the returning officer declares the candidate elected, until:
  - (a) the Court hearing an application under section 27AC disputing the validity of the election of the candidate determines otherwise, or 25
  - (b) the term of office of the councillor expires or becomes vacant,whichever is the earlier. 30



- (4) The New South Wales Aboriginal Land Council in which a candidate referred to in subsection (2) holds office is not invalidly constituted for that reason.

**Division 2B Disputed returns**

**27AC Method of disputing elections and returns** 5

- (1) The validity of an election for a councillor to represent a Regional Aboriginal Land Council area, or of any return or statement showing the voting in any such election, may be disputed by an application to the Court, and not otherwise. 10
- (2) Any person may make an application to the Court under this section within 28 days after the returning officer has publicly declared the result of the election that is the subject of the application.

**27AD Powers of Court** 15

In determining an application under section 27AC, the Court has the same powers as are conferred by section 161 of the *Parliamentary Electorates and Elections Act 1912* on the Court of Disputed Returns.

**27AE Right of returning officer to be represented** 20

The returning officer is entitled to be represented at the hearing of an application under section 27AC.

**27AF Procedure**

- (1) The procedure of the Court on an application under section 27AC is to be determined by rules of Court, or in the absence of rules of Court, by the Court or a judge of the Court. 25
- (2) The Court is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate. 30
- (3) Despite section 27AD, the Court may make an order for costs in respect of an application under section 27AC only if the Court is satisfied that there are exceptional circumstances that warrant the making of such an order.

**27AG Immaterial errors not to invalidate election**

- (1) An election of councillors of the New South Wales Aboriginal Land Council, or any return or statement showing the voting in an election, is not invalid because of: 5
- (a) any delay in taking the votes of the electors or in making any statement or return, or
  - (b) the absence of any officer, or
  - (c) the error or omission of any officer,
- that could not have affected the result of the election. 10
- (2) If a person was prevented from voting in an election because of the absence of any officer, or the error or omission of any officer, the Court must not admit any evidence of the way the person intended to vote in order to determine whether or not the absence, error or omission could have affected the result of the election. 15

**27AH Decisions to be final**

- (1) A decision of the Court in respect of an application under section 27AC is final and conclusive and without appeal, and is not to be questioned in any way. 20
- (2) Section 58 of the *Land and Environment Court Act 1979* does not apply to any such decision of the Court.

**[3] Section 68 Regulations**

Insert after section 68 (2) (f):

- (g) disputed returns in elections of councillors of the New South Wales Aboriginal Land Council. 25

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**Schedule 2 Amendment of Land and Environment  
Court Act 1979**

(Section 4)

**[1] Section 20 Class 4—environmental planning and protection  
and development contract civil enforcement** 5

Insert after section 20 (1) (dc):

(dd) proceedings under Division 2B of Part 4 of the  
*Aboriginal Land Rights Act 1983*,

**[2] Section 20 (2A)**

Insert after section 20 (2): 10

(2A) The Court has jurisdiction to hear and dispose of  
proceedings referred to in subsection (1) (dd).

**[3] Section 20 (3) (a)**

Insert “(other than Division 2B of Part 4)” after “*Aboriginal Land  
Rights Act 1983*”. 15

