

ABORIGINAL LAND RIGHTS (AMENDMENT) ACT 1990 No. 60

NEW SOUTH WALES



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ABORIGINAL LAND RIGHTS (AMENDMENT) ACT 1990 No. 60

NEW SOUTH WALES



Act No. 60,1990

An Act to amend the Aboriginal Land Rights Act 1983 to make further provision with respect to the membership of the New South Wales Aboriginal Land Council, the functions of Aboriginal Land Councils, the disposal of Aboriginal land and the financial management and accountability of Aboriginal Land Councils; and for other purposes.
[Assented to 11 October 1990]

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) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Schedule 1 (1) and Schedule 8 commence 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 NEW
SOUTH WALES ABORIGINAL LAND COUNCIL**

(Sec. 3)

(1) Section 19 (**Election of members of the N.S.W. Aboriginal Land Council**):

Omit the section.

(2) Part 4, Division 1, heading:

Before section 22, insert:

**Division 1—Constitution and functions of
New South Wales Aboriginal Land Council**

(3) Section 22 (**Constitution of the Council**):

Omit section 22 (2)-(5), insert instead:

SCHEDULE 1—AMENDMENTS RELATING TO THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL—*continued*

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

(3) Each councillor 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 councillors.

(5) Schedule 6 has effect with respect to the procedure of the New South Wales Aboriginal Land Council.

(4) Sections 23-27E:

Omit sections 23-27, insert instead:

Functions of the Council

23. The functions of the New South Wales Aboriginal Land Council are as follows:

- (a) to administer the New South Wales Aboriginal Land Council Account and the Mining Royalties Account established under this Act;
- (b) to grant funds for the payment of the administrative costs and expenses of Regional and Local Aboriginal Land Councils;
- (c) to acquire land on its own behalf or on behalf of or to be vested in a Local Aboriginal Land Council and to transfer land acquired on behalf of a Local Aboriginal Land Council to such a Council;
- (d) to determine and approve or disapprove of the terms and conditions of agreements proposed by Local Aboriginal Land Councils to allow mining or mineral exploration on land;
- (e) 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;
- (f) with the agreement of a Local Aboriginal Land Council, to manage any of the affairs of that Council;

SCHEDULE 1—AMENDMENTS RELATING TO THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL—*continued*

- (g) to conciliate disputes between other Aboriginal Land Councils or between those Councils and individuals or between individual members of those Councils;
- (h) to make grants or lend money to, or invest money for or on behalf of, Aborigines;
- (i) to hold, dispose of, or otherwise deal with land vested in or acquired by it;
- (j) to ensure that Regional and Local Aboriginal Land Councils comply with this Act in respect of the establishment and keeping of accounts and the preparation and submission of budgets and financial reports;
- (k) to ensure that elections for the Chairpersons and other officers of Regional and Local Aboriginal Land Councils are conducted in accordance with this Act;
- (l) to advise the Minister on matters relating to Aboriginal land rights;
- (m) to exercise such other functions as are conferred or imposed on it by or under this or any other Act.

Rules of the N.S.W. Aboriginal Land Council

24. (1) The New South Wales Aboriginal Land Council must, within such period as the Registrar directs, submit to the Registrar for approval rules in relation to the Council's functions or operations.

(2) The New South Wales Aboriginal Land Council's rules may, with the approval of the Registrar, be amended, repealed or replaced from time to time by the Council.

(3) The New South Wales Aboriginal Land Council may appeal to the Court against the Registrar's refusal to approve of rules or to approve of an amendment, a repeal or a replacement of its rules.

SCHEDULE 1—AMENDMENTS RELATING TO THE NEW
SOUTH WALES ABORIGINAL LAND COUNCIL—*continued*

(4) On the hearing of such an appeal, the Court may direct the Registrar to approve of rules, or an amendment, repeal or replacement of rules, specified in the direction.

(5) A rule of the New South Wales Aboriginal Land Council for the time being approved by the Registrar under this section is a rule of the Council but it has no effect to the extent to which it is inconsistent with this Act or the regulations.

(6) Until the New South Wales Aboriginal Land Council makes its first rules in accordance with this section, its rules are the rules prescribed by the regulations as its rules.

**Division 2—Election of councillors of
New South Wales Aboriginal Land Council**

Conduct of elections

25. (1) The regulations may make provision for or with respect to the election of councillors of the New South Wales Aboriginal Land Council.

(2) The Electoral Commissioner for 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 election of those councillors.

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

Who may vote

26. A person is entitled to vote at an election for a councillor 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

27. A person is not qualified to stand for election, or to be elected, as a councillor representing a Regional Aboriginal Land Council area unless the person is a

SCHEDULE 1—AMENDMENTS RELATING TO THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL—*continued*

member of a Local Aboriginal Land Council within the area.

Timing of elections

27A. Elections of all councillors (other than the first election) are to be held:

- (a) not sooner than 3 years and 9 months; and
 - (b) not later than 4 years and 3 months,
- after the previous election of all councillors.

Division 3—Staff

Staff

27B. The New South Wales Aboriginal Land Council may employ such staff as it considers appropriate:

- (a) to enable the Council to exercise its functions; and
- (b) to enable Regional Aboriginal Land Councils to exercise their functions.

Industrial Authority to be employer for industrial purposes

27C. (1) The Public Employment Industrial Relations Authority is to be the employer of staff of the New South Wales Aboriginal Land Council for the purposes of any proceedings relating to such staff held before a competent tribunal having jurisdiction to deal with industrial matters.

(2) The salary, wages or other remuneration and conditions of employment of a staff member are, except in so far as provision is otherwise made by law, such as may be determined from time to time by the Public Employment Industrial Relations Authority.

(3) A staff member may sue for and recover the amount of the remuneration of the staff member that is determined under this section.

SCHEDULE 1—AMENDMENTS RELATING TO THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL—*continued*

Industrial Authority may enter into agreements

27D. (1) The Public Employment Industrial Relations Authority may enter into an agreement with any association or organisation representing a group or class of staff members of the New South Wales Aboriginal Land Council with respect to industrial matters.

(2) An agreement under this section binds all staff members in the class or group affected by the agreement, and no such staff member (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.

Consultants

27E. The New South Wales Aboriginal Land Council may engage such consultants as it considers appropriate.

(5) Schedules 5, 6:

After Schedule 4, insert:

**SCHEDULE 5—PROVISIONS RELATING TO
COUNCILLORS OF THE NEW SOUTH WALES
ABORIGINAL LAND COUNCIL**

(Sec. 22 (4))

Term of office

1. Subject to this Act, the term of office of a councillor expires on the councillor's re-election for another term or on the election of the councillor's successor.

Remuneration

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

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

SCHEDULE 1—AMENDMENTS RELATING TO THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL—*continued*

Vacancy in office

3. The office of a councillor becomes vacant if the councillor:
- (a) dies; or
 - (b) resigns the office by instrument in writing addressed to the Council; or
 - (c) ceases to be a member of a Local Aboriginal Land Council within the Regional Aboriginal Land Council area the councillor represents; 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 Council; 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 mentally incapacitated person; 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 56C; or
 - (i) engages in any paid employment outside the duties of his or her office, except with the consent of the Council.

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 councillor for the remainder of the term of office.

Definitions

5. In this Schedule:

“**Council**” means the New South Wales Aboriginal Land Council;

“**councillor**” means a member of the Council.

SCHEDULE 1—AMENDMENT§ RELATING TO THE NEW
SOUTH WALES ABORIGINAL LAND COUNCIL—*continued*

**SCHEDULE 6 - PROVISIONS RELATING TO
PROCEDURE OF THE NEW SOUTH WALES
ABORIGINAL LAND COUNCIL**

(Sec.22(5))

Meetings of the Council

1. (1) The Council is to hold its first meeting after each election of all councillors in accordance with Division 2 of Part 4 at a time (being a time as soon as practicable after the election) and place arranged by the Registrar.

(2) The regulations may prescribe the minimum number of meetings the Chairperson is to convene in a specified period.

(3) The Chairperson may convene such other meetings of the Council 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 Council on receipt of a written request for a meeting signed by a majority of councillors for the time being.

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

Chairperson and other officers

2. The councillors are to elect a Chairperson, a Secretary and a Treasurer at the Council's first meeting on or after each election of all councillors in accordance with Division 2 of Part 4.

Quorum

3. The quorum for a meeting of the Council is two thirds of the number of councillors constituting the Council for the time being.

Presiding councillor

4. (1) The Chairperson of the Council is to preside at a meeting of the Council.

(2) A councillor elected by the other councillors present is to preside at a meeting in the absence of the Chairperson.

(3) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, a second or casting vote.

SCHEDULE 1—AMENDMENTS RELATING TO THE NEW SOUTH WALES ABORIGINAL LAND COUNCIL—*continued*

Voting

5. A decision supported by a majority of votes cast at a meeting of the Council at which a quorum is present is the decision of the Council unless the decision is supported by fewer than 6 votes.

Minutes

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

Definitions

7. In this Schedule:

“**Council**” means the New South Wales Aboriginal Land Council;

“**councillor**” means a member of the Council.

SCHEDULE 2—AMENDMENTS RELATING TO REGIONAL ABORIGINAL LAND COUNCILS

(Sec. 3)

(1) Section 20:

Omit the section, insert instead:

Functions of a Regional Aboriginal Land Council

20. The functions of a Regional Aboriginal Land Council are as follows:

- (a) to compile and maintain a register, containing the prescribed particulars, of all Local Aboriginal Land Councils within its area;
- (b) to provide assistance, when requested, to Local Aboriginal Land Councils within its area in the preparation of claims to Crown land or the negotiation of the purchase or sale of land;
- (c) to provide assistance, when requested, to Local Aboriginal Land Councils within its area in respect of the establishment and keeping of accounts and the preparation and submission of budgets and financial reports in accordance with this Act;

SCHEDULE 2—AMENDMENTS RELATING TO REGIONAL
ABORIGINAL LAND COUNCILS—*continued*

- (d) to provide advice and such further assistance as is required from time to time by Local Aboriginal Land Councils within its area;
 - (e) to assist the New South Wales Aboriginal Land Council to conciliate disputes between Local Aboriginal Land Councils within its area or between those Councils and individuals or between individual members of those Councils;
 - (f) such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) Section 36 (**Claims to Crown lands**):
- (a) Omit section 36 (2A).
 - (b) From section 36 (4), omit “, (2A)”.
 - (c) Omit section 36 (4) (b1).
- (3) Section 38 (**Purchase, lease etc. of property**):
- (a) From section 38 (1) and (2), omit "An Aboriginal Land Council" wherever occurring, insert instead "The New South Wales Aboriginal Land Council or a Local Aboriginal Land Council".
 - (b) From section 38 (3) and (4), omit "an Aboriginal Land Council" wherever occurring, insert instead "the New South Wales Aboriginal Land Council 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 New South Wales Aboriginal Land Council or a Local Aboriginal Land Council".

**SCHEDULE 3—AMENDMENTS RELATING TO LOCAL
ABORIGINAL LAND COUNCILS** (Sec. 3)

(1) Section 12:

Omit the section, insert instead:

Functions of a Local Aboriginal Land Council

12. The functions of a Local Aboriginal Land Council

- (a) in accordance with any regulations, to acquire land and to hold or dispose of, or otherwise deal with, land vested in or acquired by the Council; and
- (b) to make applications in writing to the New South Wales Aboriginal Land Council for the acquisition by the New South Wales Aboriginal Land Council of land on behalf of or to be vested in the Local Aboriginal Land Council; and
- (c) to make applications in writing to the New South Wales Aboriginal Land Council for the granting of funds to be applied solely to the payment of the administrative costs and expenses of the Local Aboriginal Land Council; and
- (d) to implement 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 acquisition, establishment and operation of enterprises; and
- (e) to consider applications to prospect or mine for minerals on its land and to make recommendations to the New South Wales Aboriginal Land Council; and
- (f) to make claims to Crown lands; and
- (g) to upgrade and extend residential accommodation for Aborigines in its area; and

**SCHEDULE 3—AMENDMENTS RELATING TO LOCAL
ABORIGINAL LAND COUNCILS—*continued***

- (h) to protect the interests of Aborigines in its area in relation to the acquisition, management, use, control and disposal of its land; and
- (i) to negotiate with persons desiring to use, occupy or gain access to any part of its land; and
- (j) with the consent of the parties concerned, to conciliate disputes between individual Aborigines or groups of Aborigines in its area; and
- (k) such other functions as are conferred or imposed on it by or under this or any other Act.

(2) Section 12A:

After section 12, insert:

Staff

12A. A Local Aboriginal Land Council may employ such staff as are necessary to enable the Council to exercise its functions.

(3) Section 68 (**Regulations**):

After section 68 (2) (d), insert:

- (d1) the acquisition, holding or disposal of or other dealing with land by Local Aboriginal Land Councils;

**SCHEDULE 4—AMENDMENTS RELATING TO DISCLOSURE
OF PECUNIARY INTERESTS AND DISQUALIFICATION FROM
OFFICE**

(Sec. 3)

Sections 56B, 56C:

After section 56A, insert:

Disclosure of pecuniary interests

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

SCHEDULE 4—AMENDMENTS RELATING TO DISCLOSURE
OF PECUNIARY INTERESTS AND DISQUALIFICATION
FROM OFFICE—*continued*

- (a) a member of the New South Wales Aboriginal Land Council; or
- (b) a member of a Regional Aboriginal Land Council; or
- (c) the Chairperson, Secretary or Treasurer of a Local Aboriginal Council.

(2) An office holder of an Aboriginal Land Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council 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 Council 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.

(3) A disclosure by an office holder at a meeting of the Council 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 Council.

SCHEDULE 4—AMENDMENTS RELATING TO DISCLOSURE
OF PECUNIARY INTERESTS AND DISQUALIFICATION
FROM OFFICE—*continued*

(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 of the Council concerned otherwise determine:

- (a) be present during any deliberation, or take part in any decision, of the Council 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 by other 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 those office holders for the purposes of making the determination; or
- (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 Council or the exercise of any function under this Act.

(8) This section does not apply to an interest of an office holder (being the provision of goods or services to the office holder by the Council) 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 Land Council includes a reference to a meeting of a committee of an Aboriginal Land Council; and
- (b) to an office holder includes a reference to a member of such a committee.

SCHEDULE 4—AMENDMENTS RELATING TO DISCLOSURE
OF PECUNIARY INTERESTS AND DISQUALIFICATION
FROM OFFICE—*continued*

Disqualification from office

56C. (1) A person who fails to comply with section 56B 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 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 40–40D:

Omit section 40, insert instead

Disposal of land restricted

40. (1) The New South Wales Aboriginal Land Council 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.

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

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

(3) This Division does not apply to land purchased as an investment under section 29 or 31.

Transfer of land from one Council to another

40A. (1) The New South Wales Aboriginal Land Council 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 New South Wales Aboriginal Land Council 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.

Lease, use etc. of land

40B. (1) The New South Wales Aboriginal Land Council 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 New South Wales Aboriginal Land Council:

- (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,

but only if the lease, change of use or the grant or release of the easement has been approved at a meeting of the Local Aboriginal Land Council specifically called for that purpose at which a quorum was present.

(3) The New South Wales Aboriginal Land Council may not refuse to give an approval of a lease or change of use under this section except on the ground that the terms or

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

conditions of the lease are inequitable to the Local Aboriginal Land Council concerned or that the change of use would be detrimental to the interests of other Local Aboriginal Land Councils.

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

Sale etc. of land by New South Wales Aboriginal Land Council

40C. (1) The New South Wales 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 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 significance to Aborigines of the area and should be disposed of; and
- (b) the Minister has been notified of the proposed disposal; and
- (c) in the case of the disposal of land transferred to an Aboriginal Land Council under section 36, both the Crown Lands Minister referred to in that section and the Minister have been notified of the proposed disposal.

(2) A certificate in the prescribed form (if any) purporting to be signed by the Chairperson of the New South Wales Aboriginal Land Council and certifying that the disposal by the Council of land specified in the certificate does not contravene this section is conclusive

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

evidence of the fact in favour of any person (whether or not the person is the person to whom the certificate was issued) except a person who had notice, when the certificate was issued, that the disposal of the land did contravene this section.

(3) 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 Aborigines.

Sale etc. of 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 New South Wales Aboriginal Land Council has approved of the proposed disposal; and
- (c) the Minister has been notified of the proposed disposal; and
- (d) in the case of the disposal of land transferred to an Aboriginal Land Council under section 36, both the Crown Lands Minister referred to in that section and the Minister have been notified of the proposed disposal.

(2) 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 any person (whether or not the person is the

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

person to whom the certificate was issued) except a person who had notice, when the certificate was issued, that the disposal of the land did contravene this section.

(3) 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 Aborigines.

**SCHEDULE 6—AMENDMENT RELATING TO FINANCIAL
MATTERS, INVESTIGATORS AND ADMINISTRATORS**

(Sec. 3)

(1) Section 29 (N.S.W. Aboriginal Land Council Account):

At the end of section 29, insert:

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

- (a) the payment of the salaries of the members of the New South Wales Aboriginal Land Council and of the staff it employs; and
- (b) the cost of the election of members of that Council (including the costs incurred by the Electoral Commissioner for New South Wales).

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

(2) Section 29A (Investment of money in N.S.W. Aboriginal Land Council Account):

Omit section 29A (2), insert instead

(2) The money invested in accordance with this section, 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 after 31 December 1998 on money invested in accordance with this section may be disbursed.

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

(3) Section 30 (**Regional Aboriginal Land Council Accounts**):

(a) Omit section 30 (c).

(b) At the end of section 30, insert

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

(4) Section 31 (**Local Aboriginal Land Council Accounts**):

(a) From section 31 (a), omit "or the Regional Aboriginal Land Council".

(b) At the end of section 31, insert

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

(5) Part 5, Division 2:

Omit the Division, insert instead

Division 2 - Keeping of accounts

Aboriginal Land Councils to keep accounts

32. (1) Each Local Aboriginal Land Council and each Regional Aboriginal Land Council must cause proper accounts and records to be kept in relation to all its operations.

(2) Each such 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.

(3) The financial statements must be submitted for verification and certification to an auditor selected by the Council from a list of auditors compiled in the manner prescribed by the regulations.

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

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

(5) Each such Council must furnish to the New South Wales Aboriginal Land Council and to the Minister the audited financial statements and a certificate of the auditor, in a form prescribed by the regulations, not later than 4 months after the end of each financial year.

Financial year of Aboriginal Land Councils

33. The financial year of an Aboriginal Land Council is the year commencing 1 October.

Budget of New South Wales Aboriginal Land Council

34. (1) The New South Wales Aboriginal Land Council 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) In determining whether or not to approve a budget, the Minister may seek from the Council, and the Council must furnish to the Minister, such information as the Minister requests relating to the budget.

(3) The Council 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 Council to other Aboriginal Land Councils and the purposes for which the funds were granted.

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

(5) The Minister is to prepare a report in writing of the Minister's reasons for giving any such directions and is to cause a copy of the report to be laid before both Houses

SCHEDULE 6—AMENDMENTS RELATING TO FINANCIAL
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of Parliament as soon as practicable after the directions are given.

(6) The New South Wales Aboriginal Land Council must comply with a direction given to it by the Minister under this section.

Budget of other Aboriginal Land Councils

34A. (1) Each Regional and Local Aboriginal Land Council must, not less than 6 weeks before the commencement of each financial year, prepare and submit for the approval of the New South Wales Aboriginal Land Council a detailed budget relating to its proposed operations during that financial year.

(2) The New South Wales Aboriginal Land Council may seek information relating to the budget from a Regional or Local Aboriginal Land Council at any time.

Quarterly reports by Regional and Local Aboriginal Land Councils

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

Cessation of funding

34C. (1) The New South Wales Aboriginal Land Council must cease immediately to provide any funds to a Regional or Local Aboriginal Land Council if the Regional or Local Aboriginal Land Council:

- (a) fails to obtain a certificate, or is unable to obtain a satisfactory certificate, of an auditor under section 32; or

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

- (b) otherwise fails to comply with section 32, 34A or 34B or
- (c) is the subject of a report by an investigator appointed in accordance with section 56D recommending that funds should cease to be provided to the Council.

(2) The New South Wales Aboriginal Land Council may not resume providing funds to such a Regional or Local Aboriginal Land Council until:

- (a) the Regional or Local Aboriginal Land Council obtains a satisfactory certificate of an auditor under section 32 or otherwise complies with section 32, 34A or 34B; or
- (b) the Minister, after consideration of a report of:
 - (i) an investigator appointed in accordance with section 56D; or
 - (ii) an administrator of the area of the Council, notifies the New South Aboriginal Land Council in writing that the provision of funds may be resumed.

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

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

(6) Section 44A (**Payment of rates by N.S.W. Aboriginal Land Council**):

Omit section 44A (3), insert instead

(3) The New South Wales Aboriginal Land Council may recover an amount paid under this section from the Local

SCHEDULE 6—AMENDMENTS RELATING TO FINANCIAL
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Aboriginal Land Council in whose area the land subject to the rate is situated.

(7) 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 New South Wales Aboriginal Land Council and not the Local Aboriginal Land Council.

(2) Such fees and royalties together with the fees and royalties payable to the New South Wales Aboriginal Land Council in respect of mining on its land must, when received by it, 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 New South Wales Aboriginal Land Council;
- (b) the balance, in so far as it is derived from the fees and royalties payable in respect of mining on land owned by a Local Aboriginal Land Council, is to be paid to the Local Aboriginal Land Council.

(4) 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*

(8) Sections 56D–57B:

Omit sections 57 and 57A, insert instead:

Investigation of Aboriginal Land Councils

56D. (1) The Minister may appoint an investigator from a list of investigators compiled in the manner prescribed by the regulations to investigate the affairs, or specified affairs, of an Aboriginal Land Council, including its efficiency and effectiveness.

(2) The Minister must prepare a report in writing of the Minister's reasons for appointing an investigator to investigate the efficiency and effectiveness of the New South Wales Aboriginal Land Council.

(3) The Minister is to cause a copy of such a report to be laid before both Houses of Parliament as soon as practicable after the investigator is appointed.

(4) The Minister may appoint an investigator to investigate the affairs of a Local or Regional Aboriginal Land Council only with the approval of the New South Wales Aboriginal Land Council.

(5) The Chairperson of the Council and any other person who has possession or control of any records of the Council 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.

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

(6) 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.

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

Maximum penalty 5 penalty units.

(8) The investigator is to report on the investigation:

- (a) to the Minister, in the case of an investigation of the affairs of the New South Wales Aboriginal Land Council; and
- (b) to the Minister and the New South Wales Aboriginal Land Council, in any other case.

Administrators - Regional and Local Aboriginal Land Council areas

57. (1) The Governor may at any time, by proclamation 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 32, 34A or 34B; or
- (c) on the receipt of a certificate by the Minister under section 32 stating that the results of an audit of the financial statements of the Council are unsatisfactory; or
- (d) on the receipt by the Minister of a report by an investigator appointed in accordance with section 56D that the funds or other property of the Council

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

for that area have not been properly applied or managed; or

- (e) if the Council for that area has substantially breached the requirements of this Act or the regulations or the rules of the Council; or
- (f) if the Minister is of the opinion that the Council for that area has ceased for 6 months substantially to exercise its functions.

(2) An administrator may be appointed under this section only on the recommendation of the Minister made after consultation with the New South Wales Aboriginal Land Council.

(3) The administrator has, during the period of his or her appointment, all, or such part as is specified in the proclamation, of the functions of the Council conferred or imposed by or under this Act, to the exclusion of the Council.

(4) The administrator is to be paid out of the funds of the New South Wales Aboriginal Land Council which may recover the amount paid from the Regional or Local Aboriginal Land Council of the area for which the administrator has been appointed.

(5) The regulations may make provision for or with respect to the functions of the administrator and, in particular, for or with respect to requiring persons who have possession or control of any records of the Council to give necessary assistance to the administrator in the exercise of his or her functions.

Administrator - N.S.W. Aboriginal Land Council

57A. (1) The Governor may at any time, on the recommendation of the Minister, by proclamation published in the Gazette, appoint an administrator of the New South Wales Aboriginal Land Council.

(2) The Minister may recommend that an administrator be appointed under this section only after considering:

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

- (a) a report of the Auditor-General; or
- (b) a report of an investigator appointed by the Minister in accordance with section 56D,

which discloses, in the opinion of the Minister, grounds which justify the making of such a recommendation.

(3) The administrator has, during the period of his or her appointment, all, or such part as is specified in the proclamation, of the functions of the Council conferred or imposed by or under this Act, to the exclusion of the Council.

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

(5) The regulations may make provision for or with respect to the functions of the administrator and, in particular, for or with respect to requiring persons who have possession or control of any records of the Council to give necessary assistance to the administrator in the exercise of his or her functions.

Removal of office holders on appointment of administrator

57B. (1) On the appointment of an administrator to administer all of the functions of a Regional or 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 all of the functions of the New South Wales Aboriginal Land Council, the members of the Council 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) 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 New South Wales Aboriginal Land Council may delegate to a person prescribed by the regulations any of the functions of the Council prescribed by the regulations, other than this power of delegation.

(2) Section 58A:

After section 58, insert:

Dissolution of Regional or Local Aboriginal Land Councils

58A. (1) The Minister may, on the recommendation of the New South Wales Aboriginal Land Council and by notice published in the Gazette, declare that a Regional or Local Aboriginal Land Council is dissolved if:

- (a) the Regional or Local Aboriginal Land Council so requests; or
- (b) the New South Wales Aboriginal Land Council is satisfied that the Regional or Local Aboriginal Land Council 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 New South Wales Aboriginal Land Council; and

SCHEDULE 7—MISCELLANEOUS AMENDMENTS—*continued*

- (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 New South Wales Aboriginal Land Council; 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 New South Wales Aboriginal Land Council; and
 - (d) time that had commenced to run in relation to the Council becomes time that had commenced to run in relation to the New South Wales Aboriginal Land Council,
- (3) Any property that, immediately before dissolution, was vested in the Council is on and from that day vested in the New South Wales Aboriginal Land Council.
- (4) The Minister may, on the recommendation of the New South Wales Aboriginal Land Council:
- (a) alter the boundaries of one or more Regional Aboriginal Land Councils to include the whole or any part of the land within the area of a Regional Aboriginal Land Council declared to be dissolved under this section; and
 - (b) alter the boundaries of one or more Local Aboriginal Land Councils to include the whole or any part of the land within the area of a Local Aboriginal Land Council declared to be dissolved under this section.
- (5) A member of the New South Wales Aboriginal Land Council ceases to hold office on the dissolution of the Regional Aboriginal Land Council of the area the member represents if, and only if, the Minister authorises all the land within the area of the Regional Aboriginal Land Council to be included within the area of one or more other such Councils.

SCHEDULE 7—MISCELLANEOUS AMENDMENTS—*continued*

(3) Section 60 (**Officers and employees**):

Omit the section.

(4) Section 61:

Omit the section, insert instead:

Annual reports

61. Each Regional and Local Aboriginal Land Council must in each year, as soon as practicable after 30 September, but on or before 1 February in the following year, forward to the New South Wales Aboriginal Land Council a report of its work and activities for the 12 months ending on 30 September in that year.

(5) Section 65A:

After section 65, insert

Aboriginal Land Councils to be public authorities, etc. for certain purposes

65A. 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.

(6) Section 67 (**Proceedings for offences**):

Omit "before a court", insert instead "summarily before a Local Court".

(7) Section 68 (**Regulations**):

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

(b1) authorising the Minister, on the recommendation of the New South Wales Aboriginal Land Council, to approve the amalgamation of Local Aboriginal Land Council areas;

SCHEDULE 7—MISCELLANEOUS AMENDMENTS—*continued*

- (b) From section 68 (2) (c), omit "Aboriginal Land Councils", insert instead "Regional and Local Aboriginal Land Councils".
- (c) From section 68 (2) (c1), omit "an Aboriginal Land Council" wherever occurring, insert instead "a Regional or Local Aboriginal Land Council".
- (d) After section 68 (2) (c1), insert:
 - (c2) the removal of a member of the New South Wales Aboriginal Land Council from office on the ground of a petition calling for the person's removal from office signed by persons entitled to vote at an election for the office;
- (e) From section 68 (2) (d), omit "the New South Wales Aboriginal Land Council and".
- (f) After section 68 (2) (d), insert:
 - (d1) the employment of staff and consultants by the New South Wales Aboriginal Land Council and the employment of staff by Local Aboriginal Land Councils;
- (g) From section 68 (2) (f), omit "by Local Aboriginal Land Councils".

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

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

(b) After clause 1, insert:

Savings and transitional regulations

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

"**appointed day**" means the day on which Schedule 1 (3) to the 1990 Act commences;

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

Vesting of property in N.S.W. Aboriginal Land Council

11. (1) 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 New South Wales Aboriginal Land Council.

(2) On and from the appointed day

- (a) all real and personal property (including any estate or interest in, or right to control or manage, real or personal property)

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

- that, immediately before the appointed day, was vested in a Regional Aboriginal Land Council vests in the New South Wales Aboriginal Land Council; and
- (b) all money that, immediately before the appointed day, was payable to a Regional Aboriginal Land Council becomes payable to the New South Wales Aboriginal Land Council; and
 - (c) any liquidated or unliquidated claim that, immediately before the appointed day, was enforceable by or against a Regional Aboriginal Land Council becomes enforceable by or against the New South Wales Aboriginal Land Council; and
 - (d) any proceedings pending immediately before the appointed day at the suit of or against a Regional Aboriginal Land Council becomes a proceeding pending at the suit of or against the New South Wales Aboriginal Land Council; and
 - (e) any contract or arrangement entered into with a Regional Aboriginal Land Council and in force immediately before the appointed day becomes a contract or arrangement entered into with the New South Wales Aboriginal Land Council; and
 - (f) any security or charge given to or by a Regional Aboriginal Land Council and in force immediately before the appointed day becomes a security or charge given to or by the New South Wales Aboriginal Land Council; and
 - (g) any act, matter or thing done or omitted to be done before the appointed day by, to or in respect of a Regional Aboriginal Land Council is (to the extent that that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the New South Wales Aboriginal Land Council.

Claims to Crown lands made by Regional Aboriginal Land Councils

12. Any claim made by a Regional Aboriginal Land Council under section 36 which, immediately before the 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 New South Wales Aboriginal Land Council on the appointed day.

Mining Royalties Account

13. Money to the credit of the Mining Royalties Account is to be disbursed in accordance with section 46, as amended by the 1990 Act, whenever the money was paid into the Account.

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

Election of members of the N.S.W. Aboriginal Land Council

14. (1) For the purpose of enabling the New South Wales Aboriginal Land Council to be constituted on or after the appointed day, regulations may be made, elections may be held and any other act, matter or thing may be done before that day as if the whole of the 1990 Act commenced on the date of assent to that Act.

(2) The first election of all councillors is to be held as soon as practicable after the date of assent to the 1990 Act.

(3) If elections are not held in accordance with this Act, as amended by the 1990 Act, before the term of office of the current members of the Council expires:

- (a) the term of office of the current members; and
- (b) the term of office of the current Chairperson, Secretary and Treasurer of the Council,

are extended until the new members are elected.

(4) In this clause:

"**current members**" means the members of the New South Wales Aboriginal Land Council on the date of assent to the 1990 Act; and

"**current Chairperson, Secretary and Treasurer**" means the Chairperson, Secretary and Treasurer of the New South Wales Aboriginal Land Council on the date of assent to the 1990 Act.

SCHEDULE 9—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS

(Sec. 4)

Public Finance and Audit Act 1983 No. 152

Schedule 2 (**Statutory bodies**):

Omit "A Regional Aboriginal Land Council constituted under the Aboriginal Land Rights Act 1983."

Statutory and Other Offices Remuneration Act 1975 (1976 4)

Schedule 2 (**Public offices**):

At the end of Part 1, insert "Member of the New South Wales Aboriginal Land Council."

*[Minister's second reading speech made in -
Legislative Assembly on 13 September 1990
Legislative Council on 9 October 1990]*