



New South Wales

Aboriginal Land Rights Amendment Act 2022 No 68

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New South Wales

Aboriginal Land Rights Amendment Act 2022 No 68

Act No 68, 2022

An Act to amend the *Aboriginal Land Rights Act 1983* in relation to land dealings and community benefits, office holders of Aboriginal Land Councils, membership of Local Aboriginal Land Councils, conduct and disciplinary matters and other miscellaneous matters; and for other purposes. [Assented to 25 November 2022]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Aboriginal Land Rights Amendment Act 2022*.

2 Commencement

This Act commences as follows—

- (a) for Schedules 2.1[15]–[19] and [26] and 2.2—on a day or days to be appointed by proclamation,
- (b) otherwise—on the date of assent to this Act.

Schedule 1 Amendments relating to land dealings and community benefits

Amendment of Aboriginal Land Rights Act 1983 No 42

[1] Section 36 Claims to Crown lands

Insert “recorded in the register of Aboriginal Land Agreements” after “Agreement” wherever occurring in section 36(4A)(b) and (4E)(b).

[2] Section 38 Purchase, lease etc of property

Omit “5%” from section 38(1A)(a). Insert instead “15%”.

[3] Section 38(1A)(c)

Insert at the end of section 38(1A)(b)—

, or

(c) the purchase is for nominal consideration.

[4] Section 42IA

Insert after section 42I—

42IA Amendment of land dealing approvals

- (1) A Local Aboriginal Land Council for which a land dealing has been approved may make an application to the New South Wales Aboriginal Land Council for an amendment of the approval.
- (2) The New South Wales Aboriginal Land Council may—
 - (a) amend the approval, or
 - (b) refuse to amend the approval.
- (3) The New South Wales Aboriginal Land Council must not amend the approval if—
 - (a) the land dealing has been completed, or
 - (b) a registrable instrument has been registered in reliance on the approval.
- (4) The New South Wales Aboriginal Land Council must give the Local Aboriginal Land Council a written statement of the reasons for its decision in relation to the application if—
 - (a) the decision is to refuse to amend the approval, and
 - (b) the Local Aboriginal Land Council requests the written statement.
- (5) The written statement must be given within 28 days after the Local Aboriginal Land Council makes the request.
- (6) The regulations may make provision about the amendment of an approval, including—
 - (a) applications for amendments of approvals, and
 - (b) grounds for amendments of approvals, and
 - (c) fees for amendments of approvals.
- (7) In this section—

amend an approval includes amend the conditions of the approval, including by—

- (a) imposing new conditions on the approval, or
- (b) substituting a condition of the approval, or
- (c) omitting or amending a condition of the approval.

[5] Section 42J, heading

Omit “**Amendment and revocation**”. Insert instead “**Revocation**”.

[6] Section 42J(1)

Omit “amend or”.

[7] Section 42J(1), note

Omit “amend or”.

[8] Section 42K Certificates for dealings by Local Aboriginal Land Councils

Insert after section 42K(3)—

- (3A) If the approval to which a dealing approval certificate relates is amended under section 42IA—
 - (a) the dealing approval certificate and the registration approval certificates, if any, relating to the approval cease to have effect, and
 - (b) the Local Aboriginal Land Council must, within 14 days after the amendment, return to the Chief Executive Officer of the New South Wales Aboriginal Land Council—
 - (i) the dealing approval certificate, and
 - (ii) if a registration approval certificate has been given for an instrument relating to the land dealing—each registration approval certificate, and
 - (c) the Chief Executive Officer must, within 14 days after the amendment, give to the Local Aboriginal Land Council a new dealing approval certificate for the land dealing to which the amended approval relates, and
 - (d) if the Chief Executive Officer is satisfied as to the matters referred to in subsection (2)(a)–(c) for an instrument to which the land dealing relates—the Chief Executive Officer must give to the Local Aboriginal Land Council a new registration approval certificate for the instrument.

[9] Section 42UA

Insert after section 42U—

42UA Refund of levy for cancelled transactions

- (1) This section applies to a dutiable transaction for which—
 - (a) a Local Aboriginal Land Council is liable to pay the community development levy, and
 - (b) an amount of community development levy has been paid to the New South Wales Aboriginal Land Council by the Chief Commissioner of State Revenue.
- (2) If the New South Wales Aboriginal Land Council is satisfied that the dutiable transaction has been cancelled, the New South Wales Aboriginal Land Council—

- (a) must refund to the Local Aboriginal Land Council the amount of community development levy paid by the Chief Commissioner of State Revenue to the New South Wales Aboriginal Land Council for the dutiable transaction, and
 - (b) may recover from the New South Wales Aboriginal Land Council Community Fund the amount paid by the New South Wales Aboriginal Land Council to the Fund under section 42U(5) for the dutiable transaction.
- (3) In this section—
cancelled means rescinded, annulled or terminated without completion.

[10] Section 82 Community, land and business plans

Omit “that, having regard to the limited operations of the Local Aboriginal Land Council,” from section 82(5).

[11] Section 137B Matters covered by plans

Omit section 137B(2).

[12] Section 137C Approval of community, land and business plans

Omit “, of which not less than 14 days notice was given” from section 137C(1).

[13] Section 137C(2)–(4) and (8)

Omit the subsections.

[14] Section 149A NSW Aboriginal Land Council Community Fund

Insert after section 149A(2)(d)—

- (d1) amounts that become payable under section 42UA, and

Schedule 2 Amendments relating to office holders

2.1 Amendment of Aboriginal Land Rights Act 1983 No 42

[1] Section 52G Functions exercised by Council resolution

Insert after section 52G(1)(g)—

- (g1) approval of travelling and other allowances of Board members under section 63,
- (g2) approval of a policy, employment or consultancy for the purposes of section 66A,

[2] Section 63 Board members

Omit section 63(3) and (4). Insert instead—

- (3) A Board member is entitled to be paid travelling and other allowances decided by resolution of the voting members of the Local Aboriginal Land Council.

[3] Sections 63A and 63B

Insert after section 63—

63A Term of office of Board members

The term of office of a Board member commences on the Board member's election and ends on the election of the next Board at the fourth annual meeting of the Council following the member's election.

Note— See section 63B for provisions dealing with the term of office of Board members elected to fill vacancies following the appointment of an administrator for a Local Aboriginal Land Council.

63B Effect of appointment of administrator

- (1) This section applies if elections have been held to fill vacancies as required by section 226 on the appointment of an administrator for a Local Aboriginal Land Council.
- (2) The term of office of a Board member appointed to fill a vacancy as required by section 226 ends on the election of the next Board.
- (3) If the elections required by section 226 have been held more than 12 months before the start of the next election period, the election of the next Board must be held during the next election period.
- (4) If the elections required by section 226 have been held within the period of 12 months before the start of the next election period, the election of the next Board must be held during the subsequent election period.
- (5) In this section—

next election period means the period during which the election of the next Board would have been required under this Act to have been held had the administrator not been appointed.

Note— Section 63 requires Board members to be elected at every fourth annual meeting of a Local Aboriginal Land Council. Regulations made under this Act specify the period during which a Local Aboriginal Land Council must hold an annual meeting.

subsequent election period means the period of 4 months commencing 4 years after the last day of the next election period.

[4] Section 65 Training for Board members

Omit “has previously undergone training under this section or” from section 65(5)(a).

[5] Section 66 Grounds for disqualification from office

Omit “12 months” from section 66(1)(c). Insert instead “5 years”.

[6] Section 66(1)(c1)

Insert after section 66(1)(c)—

- (c1) has, within the last 5 years, been the subject of a finding by the Independent Commission Against Corruption that the person has engaged in serious corrupt conduct, or

[7] Section 66(1)(h)

Omit the paragraph. Insert instead—

- (h) is or was a director or person concerned in the management of a body corporate that is the subject of a winding up order or for which either of the following has been appointed during the last 3 years—
 - (a) a controller or administrator under the *Corporations Act 2001* of the Commonwealth,
 - (b) a controller or administrator, other than a special administrator, under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth, or

[8] Section 66(1)(j)

Insert “or contractor” after “consultant”.

[9] Section 66(1)(k)

Omit the paragraph. Insert instead—

- (k) was an officer of the Local Aboriginal Land Council at a time that was both—
 - (i) within the last 5 years, and
 - (ii) within 2 years before an administrator was appointed for the Council, or

[10] Section 66(1)(m)

Insert “or contractor” after “consultant”.

[11] Section 66(4)

Omit “to, the Council if the person resigns as an employee of, or as a consultant”.

Insert instead “or contractor to, the Council if the person resigns from employment with, or ceases to be a consultant or contractor”.

[12] Section 66A

Insert after section 66—

66A Exception to disqualification—approved short-term work

- (1) Despite section 66(1)(j), a person is not disqualified from holding office as a Board member of a Local Aboriginal Land Council on the ground that the person is an employee of, or a consultant or contractor to, the Council if the employment, consultancy or contract meets the requirements of this section.

- (2) The employment, consultancy or contract must involve the performance of work of a kind specified in a policy (an *approved work policy*)—
 - (a) prepared in accordance with the directions of the New South Wales Aboriginal Land Council, and
 - (b) approved by resolution of the voting members of the Local Aboriginal Land Council.
- (3) The employment, consultancy or contract must be approved by—
 - (a) resolution of the voting members of the Local Aboriginal Land Council, or
 - (b) if the approved work policy requires the Board of the Local Aboriginal Land Council to approve the employment, consultancy or contract—the Board.
- (4) An approved work policy may not specify either of the following as approved work—
 - (a) work involving the exercise of the functions of the chief executive officer of a Local Aboriginal Land Council,
 - (b) work to be performed on a permanent basis.

[13] Section 67 Vacancy in office

Insert at the end of the section—

- (2) A vacancy does not arise under subsection (1)(b) until the Board has—
 - (a) given the member reasonable notice of the Board’s intention to consider at a meeting of the Board whether to excuse the member for the absences, and
 - (b) resolved at the meeting not to excuse the member for the absences.

[14] Section 116 Delegation by New South Wales Aboriginal Land Council

Insert after section 116(1)(f1)—

- (g) approval of paid work for the purposes of section 132(1)(i),

[15] Section 120A

Insert before section 120—

120A Definitions

In this Division—

election administrator, in relation to an election of councillors, means—

- (a) if the New South Wales Aboriginal Land Council has engaged an electoral services provider to administer the election—the electoral services provider, or
- (b) otherwise—the Electoral Commissioner.

election arrangement—see section 121A.

Electoral Commissioner means the person for the time being holding or acting in the office of Electoral Commissioner under the *Electoral Act 2017*.

[16] Section 121 Election of councillors

Omit section 121(3).

[17] Sections 121A–121C

Insert after section 121—

121A NSW Aboriginal Land Council to plan for administration of elections

- (1) The New South Wales Aboriginal Land Council must resolve that the next election for the election of councillors will be administered—
 - (a) by the Electoral Commissioner under an arrangement (an *election arrangement*), or
 - (b) by an electoral services provider engaged by the Council.
- (2) The resolution must be made at least 12 months before the earliest date on which the election may be held.
- (3) The resolution must include the following information if it provides for the election to be administered by an electoral services provider—
 - (a) whether the Council has identified the provider,
 - (b) if the provider has been identified—the name of the provider,
 - (c) other information required by the regulations.
- (4) The New South Wales Aboriginal Land Council must give written notice of the resolution to the Electoral Commissioner as soon as practicable after it has been made.
- (5) The New South Wales Aboriginal Land Council may enter into an election arrangement in accordance with the resolution if—
 - (a) the arrangement is entered into at least 9 months before the earliest date on which the election may be held, or
 - (b) the Electoral Commissioner is satisfied there are exceptional circumstances that make it necessary or desirable for the election to be administered by the Electoral Commissioner.
- (6) An election arrangement may be by contract or otherwise.

121B Elections administered by Electoral Commissioner

- (1) This section applies to an election of councillors administered by the Electoral Commissioner.
- (2) The Electoral Commissioner must appoint a returning officer and a substitute returning officer.
- (3) The returning officer may appoint a regional electoral officer for a Region to assist in taking the poll for an election of a councillor to represent the Region.
- (4) The regional electoral officer may appoint one or more deputy electoral officers to assist in taking the poll.
- (5) The returning officer must conduct the election on behalf of, and under the direction of, the Electoral Commissioner.
- (6) The substitute returning officer must exercise the functions of the returning officer in the absence of the returning officer.
- (7) A person nominated for election as a councillor must not hold the following offices in relation to the election and, if the person held the office before the nomination, the person ceases to hold the office—
 - (a) returning officer,
 - (b) substitute returning officer,

- (c) regional electoral officer,
 - (d) deputy electoral officer.
- (8) A member of staff of the New South Wales Aboriginal Land Council must not be appointed as—
- (a) a returning officer, or
 - (b) a substitute returning officer.
- (9) The following persons must not vote at the election—
- (a) the Electoral Commissioner,
 - (b) the returning officer for the election,
 - (c) the substitute returning officer for the election.
- (10) For the purpose of conducting the election, the Electoral Commissioner must decide any matter not provided for by this Act or the regulations.

121C Elections administered by electoral services provider

- (1) This section applies to an election of councillors administered by an electoral services provider engaged by the New South Wales Aboriginal Land Council.
- (2) The electoral services provider must appoint a returning officer and a substitute returning officer.
- (3) The returning officer may appoint a regional electoral officer for a Region to assist in taking the poll for an election of a councillor to represent the Region.
- (4) The regional electoral officer may appoint one or more deputy electoral officers to assist in taking the poll.
- (5) The substitute returning officer must exercise the functions of the returning officer in the absence of the returning officer.
- (6) A person nominated for election as a councillor must not hold the following offices in relation to the election and, if the person held the office before the nomination, the person ceases to hold the office—
- (a) returning officer,
 - (b) substitute returning officer,
 - (c) regional electoral officer,
 - (d) deputy electoral officer.
- (7) A member of staff of the New South Wales Aboriginal Land Council must not be appointed as—
- (a) a returning officer, or
 - (b) a substitute returning officer.
- (8) The following persons must not vote at the election—
- (a) the returning officer for the election,
 - (b) the substitute returning officer for the election.
- (9) For the purpose of conducting an election, the returning officer must decide any matter not provided for by this Act or the regulations.

[18] Section 122 Timing of elections

Omit section 122(2). Insert instead—

- (2) The New South Wales Aboriginal Land Council must—

- (a) set the date for the election in accordance with subsection (1), and
- (b) give written notice of the date to—
 - (i) the Minister, and
 - (ii) the Electoral Commissioner, and
 - (iii) if an electoral services provider has been engaged to administer the election—the electoral services provider.
- (3) The New South Wales Aboriginal Land Council must consult with the Electoral Commissioner before setting the date unless the Council has made a resolution under section 121A for the election to be administered by an electoral services provider engaged by the Council.
- (4) The Minister may, in consultation with the Electoral Commissioner, set a date for the election if the Minister is satisfied that—
 - (a) the date set by the New South Wales Aboriginal Land Council is not in accordance with subsection (1), or
 - (b) the election was not held on the date set by the New South Wales Aboriginal Land Council.
- (5) The date set under subsection (4)(b) must be as soon as practicable after the date set by the New South Wales Aboriginal Land Council.
- (6) If the Minister sets the date for the election, the Minister—
 - (a) may appoint the Electoral Commissioner, or a person nominated by the Electoral Commissioner, as the returning officer for the election, and
 - (b) must notify the returning officer of the date as soon as practicable.

[19] Section 125 Method of disputing elections and returns

Omit section 125(3). Insert instead—

- (3) For the purposes of deciding an application under this section—
 - (a) the Court has the same powers as are conferred by the *Electoral Act 2017*, section 225 on the Court of Disputed Returns, and
 - (b) a reference in that section to the Electoral Commission is taken to include an electoral services provider engaged by the New South Wales Aboriginal Land Council to administer the election.

[20] Section 132 Grounds for disqualification from office

Omit “12 months” from section 132(1)(c). Insert instead “5 years”.

[21] Section 132(1)(c1)

Insert after section 132(1)(c)—

- (c1) has, within the last 5 years, been the subject of a finding by the Independent Commission Against Corruption that the person has engaged in serious corrupt conduct, or

[22] Section 132(1)(f)

Omit the paragraph. Insert instead—

- (f) is or was a director or person concerned in the management of a body corporate that is the subject of a winding up order or for which either of the following has been appointed during the last 3 years—
 - (a) a controller or administrator under the *Corporations Act 2001* of the Commonwealth,

- (b) a controller or administrator, other than a special administrator, under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth, or

[23] Section 132(1)(i)

Omit “employment”.

Insert instead “work without the approval of the New South Wales Aboriginal Land Council”.

[24] Section 133 Vacancy in office

Insert at the end of the section—

- (2) A vacancy does not arise under subsection (1)(b) until the Council has—
 - (a) given the person reasonable notice of the Council’s intention to consider at a meeting of the Council whether to excuse the person for the absences, and
 - (b) resolved at the meeting not to excuse the person for the absences.

[25] Section 144 Certain persons must not be employed

Insert after section 144(1)—

- (1A) The Registrar may decide that an offence committed by a person may be disregarded for the purposes of subsection (1) because of—
 - (a) the time that has passed since the offence was committed, or
 - (b) the triviality of the acts or omissions giving rise to the offence, or
 - (c) the nature and circumstances of the proposed employment.

[26] Section 149 NSW Aboriginal Land Council Account

Omit “costs incurred by the Electoral Commissioner for New South Wales” from section 149(4)(b).

Insert instead “payment of amounts to the Electoral Commissioner for New South Wales and electoral services providers”.

2.2 Amendment of Aboriginal Land Rights Regulation 2020

[1] Clause 3 Definitions

Omit “under clause 57(2)” and “under clause 57(1)” wherever occurring in clause 3(1), definitions of *deputy electoral officer* and *regional electoral officer*.

[2] Clause 55 Notice of election of New South Wales Aboriginal Land Council

Omit “being notified of the date of an election of all councillors under section 122(2) of” from clause 55(1).

Insert instead “becoming aware that an election of councillors is required to be held under”.

[3] Clause 57 Officers to assist returning officer

Omit the clause.

[4] Clause 65 Contested election

Omit clause 65(3)(a). Insert instead—

- (a) on the website of the election administrator, and

[5] Clause 66 Order of candidates' names on ballot-papers

Omit "New South Wales Electoral Commission". Insert instead "election administrator".

[6] Clause 74 Appointment of polling places

Omit "New South Wales Electoral Commission's website" from clause 74(7).

Insert instead "website of the election administrator".

[7] Clause 96 Notification of result of election

Omit "New South Wales Electoral Commission's website" from clause 96(b).

Insert instead "website of the election administrator".

[8] Clause 99, heading

Omit the heading. Insert instead—

99 Advertising by election administrator

[9] Clause 99(1)

Omit "New South Wales Electoral Commission may, at the times the Commission thinks fit, publish electoral information the Commission".

Insert instead "election administrator may publish electoral information as and when the election administrator".

[10] Clause 99(1)(c)

Insert at the end of clause 99(1)(b)(iii)—

, and

(c) other information about the administration of an election.

[11] Clause 99(2)

Omit "New South Wales Electoral Commission's website or in any other manner the Commission".

Insert instead "website of the election administrator or in another way the election administrator".

Schedule 3 Amendments relating to conduct and disciplinary matters

Amendment of Aboriginal Land Rights Act 1983 No 42

[1] **Section 4 Definitions**

Omit section 4(1), definition of *authority*.

[2] **Section 67 Vacancy in office**

Omit section 67(f). Insert instead—

- (f) is removed from office by the Council for the breach of a dismissal provision of a code of conduct under section 182, or
- (g) is removed from office by the Registrar under Part 10, Division 4.

[3] **Section 133 Vacancy in office**

Omit section 133(f). Insert instead—

- (f) is removed from office by the Council for the breach of a dismissal provision of a code of conduct under section 182, or
- (g) is removed from office by the Registrar under Part 10, Division 4.

[4] **Part 10**

Omit the Part. Insert instead—

Part 10 Conduct and disciplinary matters

Division 1 Interpretation

176 Definitions

(1) In this Part—

authority means—

- (a) the Ombudsman, or
- (b) the Independent Commission Against Corruption, or
- (c) the Commissioner of Police, or
- (d) the Director of Public Prosecutions.

dismissal provision—see section 178.

misconduct includes the following—

- (a) a contravention of a provision of this Act or the regulations,
- (b) a contravention of an applicable code of conduct,
- (c) a contravention of a direction under section 197,
- (d) a contravention of a compliance direction under Part 12 by an officer of an Aboriginal Land Council, the Chief Executive Officer of the New South Wales Aboriginal Land Council or the chief executive officer of a Local Aboriginal Land Council,
- (e) an act of disorder committed by—
 - (i) a councillor at a meeting of the New South Wales Aboriginal Land Council, or

- (ii) a Board member of a Local Aboriginal Land Council at a meeting of the Board or of the Local Aboriginal Land Council.

pecuniary interest—see section 184.

Tribunal means the Civil and Administrative Tribunal.

- (2) A reference in this Part to *misconduct* includes a reference to misconduct consisting of an omission or failure to do something.

Division 2 Codes of conduct

177 Preparation of codes of conduct

- (1) Every Local Aboriginal Land Council must prepare—
 - (a) a code of conduct to be observed by all officers and members of staff of the Council, and
 - (b) a code of conduct to be observed by all members of the Council.
- (2) The New South Wales Aboriginal Land Council must prepare a code of conduct to be observed by all councillors and members of staff of the Council.
- (3) A code of conduct prepared under this section must be submitted to the Registrar for approval.
- (4) The code must be prepared and submitted within the time directed by the Registrar.

178 Dismissal provisions

A code of conduct prepared under section 177 may declare a specified provision of the code to be a *dismissal provision* for this Division.

179 Model code of conduct

- (1) The Registrar may prepare and issue a model code of conduct.
- (2) A Council may, but need not, adopt the model code.

180 Prescribed code of conduct

- (1) The regulations must prescribe a code of conduct for Aboriginal Land Councils (the *prescribed code of conduct*).
- (2) The prescribed code of conduct is the code of conduct for an Aboriginal Land Council until a code of conduct is approved for the Aboriginal Land Council under this Division.

181 Amendment and replacement

An Aboriginal Land Council may, with the approval of the Registrar, amend or replace a code of conduct.

182 Breach of dismissal provision

- (1) An Aboriginal Land Council may, by resolution at a meeting, remove an officer from office if the Council is satisfied that the officer has breached a dismissal provision of the code of conduct for the Council.
- (2) The Aboriginal Land Council must not remove an officer from office under this section unless the Council has—
 - (a) at least 14 days before the meeting, given the officer notice of the Council's intention to consider the alleged breach, and

- (b) given the officer an opportunity to make submissions about the alleged breach.
- (3) A notice of intention to consider an alleged breach must specify—
 - (a) the date of the meeting at which the matter is to be considered, and
 - (b) particulars of the alleged breach.
- (4) This section does not affect other action that may be taken under this Part in relation to an alleged breach of a dismissal provision.

Division 3 Duties of officers and staff of Aboriginal Land Councils

Subdivision 1 General

183 General duties

- (1) A person who is an officer or member of staff of an Aboriginal Land Council or an advisory committee must—
 - (a) act honestly, in good faith and in the best interests of the Aboriginal Land Council, and
 - (b) exercise a reasonable degree of care and diligence in carrying out the person's functions under this or another Act, and
 - (c) act for a proper purpose in carrying out the person's functions under this or another Act, and
 - (d) not use the person's position for personal advantage.
- (2) This section does not give rise to, and cannot be taken into account in, a civil cause of action.

Subdivision 2 Duty to disclose pecuniary interests

184 Pecuniary interests

- (1) For the purposes of this Subdivision, a pecuniary interest is an interest a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided by this section.
- (2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.
- (3) A person has a pecuniary interest in a matter if the pecuniary interest is the interest of—
 - (a) the person, or
 - (b) another person with whom the person is associated as provided by this section.
- (4) A person is taken to have a pecuniary interest in a matter if—
 - (a) the person's spouse or de facto partner, a relative of the person or a partner or employer of the person has a pecuniary interest in the matter, or
 - (b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

Note— *De facto partner* is defined in the *Interpretation Act 1987*, section 21C.

- (5) However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (4)—
- (a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a local council or a statutory body or is employed by the Crown, or
 - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

185 Duty of officers and staff to disclose pecuniary interests

- (1) A person who is an officer or member of staff of an Aboriginal Land Council must disclose the nature of a pecuniary interest in a matter if—
- (a) the Council is considering or discussing the matter, and
 - (b) the person is present at a meeting of the Council, or the Board of the Council, at which the matter is being considered or discussed.
- (2) The person must make the disclosure to the meeting as soon as practicable.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the Aboriginal Land Council decides otherwise, the person must not be present at, or in sight of, the meeting of the Aboriginal Land Council—
- (a) when the matter is being considered or discussed by the Council, or
 - (b) when the Council is voting on a question in relation to the matter.
- (5) A person does not breach this section if the person did not know and could not reasonably be expected to have known that the matter considered or discussed was a matter in which the person had a pecuniary interest.

186 General disclosure

- (1) An officer or member of staff of an Aboriginal Land Council may give a written notice (a *general disclosure notice*)—
- (a) to a meeting of the Aboriginal Land Council, and
 - (b) to the effect that the officer or member of staff, or the officer's or staff member's spouse, de facto partner or relative, is—
 - (i) a member or employee of a specified company or other body, or
 - (ii) a partner or employee of a specified person.
- (2) A general disclosure notice given and not withdrawn is sufficient disclosure of the matters disclosed in the notice for the purposes of future meetings of the Aboriginal Land Council.

187 Duty of consultants to disclose pecuniary interests

- (1) A consultant who is engaged by an Aboriginal Land Council and who gives advice on a matter at a meeting of the Council must disclose the nature of each pecuniary interest the person has in the matter to the meeting at the time the advice is given.
- (2) The person is not required to disclose the person's interest as a consultant.

- (3) A person does not breach this section if the person did not know and could not reasonably be expected to have known that the matter on which the advice was given was a matter in which the person had a pecuniary interest.

Division 4 Disciplinary action

Subdivision 1 Preliminary

188 Definitions

In this Division—

disciplinary action—see section 196.

member of staff means—

- (a) a member of staff, or former member of staff, of an Aboriginal Land Council, or
- (b) a consultant, or former consultant, to an Aboriginal Land Council.

officer of an Aboriginal Land Council includes a former officer of the Aboriginal Land Council.

189 Formal censure for misconduct

- (1) An Aboriginal Land Council or a Board of a Local Aboriginal Land Council may, by resolution at a meeting, formally censure an officer or member of staff of the Council for misconduct.
- (2) A formal censure resolution may be passed only if the Council or Board is satisfied that the officer or member of staff has engaged in misconduct on one or more occasions.
- (3) The procedure for consideration of a formal censure motion is as follows—
- (a) notice of the motion must be included in the notice given for the next meeting of the Council,
- (b) the notice of the motion must specify the grounds on which the Council or Board is satisfied that the officer or member of staff should be censured,
- (c) the officer or member of staff to whom the motion relates must be—
- (i) notified of the motion, and
- (ii) allowed to—
- (A) address the meeting, or
- (B) give a written explanation that must be read to the meeting,
- (d) voting on the question of the formal censure must be by secret ballot.
- (4) The Council or Board is taken to have formally censured the officer or member of staff if at least a majority of the members of the Council or Board attending the meeting vote in favour of the formal censure of the officer or member of staff.

190 Complaints

- (1) A person may make a complaint to the Registrar that an officer or member of staff of an Aboriginal Land Council has engaged in misconduct.
- (2) A complaint need not be in writing.

- (3) The Registrar may request a person who makes a complaint to provide, within a specified period, further information in relation to a matter arising from the complaint.

Subdivision 2 Investigations of misconduct

191 Investigations

- (1) The Registrar may conduct an investigation for the purpose of deciding whether an officer or member of staff of an Aboriginal Land Council has engaged in misconduct and should be subject to disciplinary action.
- (2) The Registrar may conduct the investigation—
 - (a) on the Registrar’s own initiative, or
 - (b) on the basis of a complaint made to the Registrar that the officer or member of staff has engaged in misconduct, or
 - (c) on the basis of a report by the Independent Commission Against Corruption, or
 - (d) on the basis of a report by the Ombudsman.
- (3) The Registrar may request the Aboriginal Land Council to provide the Registrar with a report in relation to the alleged misconduct of the officer or member of staff.
- (4) This section authorises the Independent Commission Against Corruption or the Ombudsman to make a report to the Registrar for the purposes of this section or another provision of this Act.

192 Decision not to investigate complaint

- (1) The Registrar may decide not to conduct an investigation in relation to a complaint, including if satisfied of the following—
 - (a) the alleged misconduct is trivial or does not warrant investigation or further investigation,
 - (b) the alleged misconduct has been investigated by another authority or is the subject of other proceedings under this or another Act,
 - (c) the alleged misconduct should be referred to another authority for investigation or it is not appropriate that the Registrar investigate the alleged misconduct,
 - (d) the alleged misconduct should not be the subject of disciplinary action under this Division or that no further action is warranted,
 - (e) the alleged misconduct occurred more than 2 years before the complaint or allegation was made and the Registrar is not satisfied as to the reasons for the delay in making the complaint or allegation,
 - (f) there are insufficient particulars provided in relation to the alleged misconduct to allow the Registrar to investigate the alleged misconduct,
 - (g) the complaint was not made in good faith,
 - (h) the person making the complaint has not responded to a request by the Registrar for further information within the time specified by the Registrar.
- (2) If the Registrar decides not to conduct an investigation in relation to a complaint, the Registrar must give written notice of the decision to the person who made the complaint.

193 Decision to investigate

- (1) The Registrar must give written notice to an officer or member of staff of an Aboriginal Land Council if the Registrar decides to conduct an investigation in relation to the alleged misconduct of the officer or member of staff.
- (2) The notice must—
 - (a) notify the person about the decision to conduct the investigation, and
 - (b) describe the nature of the complaint or allegation under investigation.

194 Decision to terminate investigation

- (1) The Registrar may decide to terminate an investigation and take no further action in relation to the alleged misconduct to which the investigation relates.
- (2) The Registrar must give written notice of the decision to—
 - (a) each person who made a written complaint about the alleged misconduct, and
 - (b) the officer or member of staff to whom the investigation relates.

195 Suspension during investigation

- (1) This section applies if the Registrar decides to conduct an investigation in relation to an officer of an Aboriginal Land Council.
- (2) The Registrar may, by written notice, suspend the officer from holding office if the Registrar is satisfied the alleged misconduct is so serious as to threaten the proper operation of the Aboriginal Land Council.
- (3) The suspension has effect until whichever of the following occurs first—
 - (a) the end of the period of 6 months after the date of the notice of suspension,
 - (b) the Registrar decides not to take disciplinary action against the officer,
 - (c) the Registrar decides to take disciplinary action against the officer.
- (4) Subsection (3) does not apply if the Registrar refers the alleged misconduct to the Tribunal under Subdivision 4.

Subdivision 3 Disciplinary action

196 Registrar may take disciplinary action

- (1) The Registrar may take action under this Subdivision (*disciplinary action*) against an officer or member of staff of an Aboriginal Land Council if the Registrar is satisfied that—
 - (a) the officer or member of staff has engaged in misconduct, and
 - (b) the disciplinary action is warranted.
- (2) The Registrar must give written notice to the officer or member of staff of a decision of the Registrar to take disciplinary action, including a statement of reasons for the decision.

197 Disciplinary action against officer

- (1) The Registrar may take one or more of the following actions against an officer of an Aboriginal Land Council—
 - (a) counsel or reprimand the officer,
 - (b) direct the officer to cease engaging in the misconduct,

- (c) direct the officer to apologise for the misconduct in the way required by the Registrar,
 - (d) direct the officer to undertake training,
 - (e) direct the officer to participate in mediation,
 - (f) suspend the officer from office,
 - (g) remove the officer from office or recommend that the Aboriginal Land Council remove the officer from office,
 - (h) if the officer holds office as Chairperson or Deputy Chairperson of the Aboriginal Land Council—remove the officer from the office,
 - (i) disqualify the officer from holding office in an Aboriginal Land Council for a period of not more than 2 years,
 - (j) recommend that the Aboriginal Land Council take other action against the officer.
- (2) If the Registrar decides to suspend an officer under subsection (1)(f), the Registrar must give the officer written notice of—
- (a) the period of suspension, which must not be more than 2 years, and
 - (b) the date on which the suspension commences, which must be at least 7 days after the date the notice is given to the officer.
- (3) The Registrar must not remove an officer from office under subsection (1)(g) or (h) unless the Registrar has—
- (a) given the officer written notice of the intention to remove the officer from office, and
 - (b) considered submissions made by the officer within 14 days after receiving the notice, and
 - (c) consulted with the Aboriginal Land Council.

198 Disciplinary action against member of staff

The Registrar may take one or more of the following actions against a member of staff of an Aboriginal Land Council—

- (a) counsel or reprimand the member of staff,
- (b) disqualify the member of staff from holding office in an Aboriginal Land Council for a period of not more than 2 years,
- (c) recommend that the Aboriginal Land Council dismiss the member of staff,
- (d) recommend that the Aboriginal Land Council take other action against the member of staff,
- (e) if the member of staff is the chief executive officer of a Local Aboriginal Land Council or the Chief Executive Officer of the New South Wales Aboriginal Land Council—
 - (i) direct the member of staff to undertake training, or
 - (ii) direct the member of staff to participate in mediation.

199 Appeals against disciplinary action by Registrar

- (1) An officer or member of staff of an Aboriginal Land Council may appeal to the Tribunal against a decision of the Registrar to take disciplinary action against the officer or member of staff.

Note— An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

- (2) For the purposes of subsection (1), a decision to take disciplinary action includes a decision to suspend an officer of an Aboriginal Land Council from holding office during the investigation of alleged misconduct.
- (3) An appeal may not be made more than 28 days after the date notice of the decision was given to the officer or member of staff.
- (4) The Tribunal may stay the decision until the Tribunal determines the appeal.
- (5) The Tribunal may—
 - (a) confirm the decision, or
 - (b) quash the decision, or
 - (c) amend the decision consistently with the powers of the Registrar.
- (6) If the decision is amended, the amended decision has effect as if it had been made by the Registrar.
- (7) If a decision to suspend an officer is quashed, any fee or other remuneration withheld during the period of suspension is payable to the officer.

Subdivision 4 Referral to Tribunal

200 Referral of matters to Tribunal

- (1) The Registrar may refer the alleged misconduct of an officer or member of staff of an Aboriginal Land Council for the consideration of the Tribunal instead of taking disciplinary action.
- (2) The Registrar must give written notice of the referral to the officer or member of staff.
- (3) The referral must occur by a report (the *referral report*)—
 - (a) presented to the Tribunal by the Registrar, and
 - (b) containing or accompanied by material and observations the Registrar considers appropriate.

201 Suspension pending Tribunal determination

- (1) The Registrar may, by written notice, suspend an officer of an Aboriginal Land Council from holding office if—
 - (a) the Registrar decides to refer alleged misconduct of the officer to the Tribunal under this Subdivision, and
 - (b) the Registrar is satisfied the alleged misconduct is so serious as to threaten the proper operation of the Council.
- (2) The suspension continues until the Tribunal—
 - (a) determines the matter, or
 - (b) decides not to conduct proceedings into the matter, or
 - (c) revokes the suspension under subsection (3).
- (3) The Tribunal may, if it considers it appropriate, revoke the suspension of an officer under this Division.

Subdivision 5 Miscellaneous

202 Other proceedings or actions not affected

This Division does not affect or limit proceedings or other action that may be taken in relation to an officer or member of staff.

Division 5 Proceedings before Tribunal

203 Definitions

In this Division—

officer and *member of staff* of an Aboriginal Land Council have the same meanings as in Division 4.

referral report, for a referred matter, means the report of the Registrar under section 200 that referred the matter to the Tribunal.

referred matter means a matter referred to the Tribunal under Subdivision 4.

204 Tribunal to decide whether or not to conduct proceedings

- (1) The Tribunal must decide whether or not to conduct proceedings into a referred matter having considered—
 - (a) the referral report for the matter, and
 - (b) other matter the Tribunal considers relevant.
- (2) If the Tribunal decides not to conduct proceedings into a referred matter, it must provide a written statement of its decision, and the reasons for its decision, to—
 - (a) the officer or member of staff of an Aboriginal Land Council to whom the referral report relates, and
 - (b) the Aboriginal Land Council or Board of the Aboriginal Land Council, and
 - (c) the Registrar.
- (3) The Registrar must be a party to proceedings conducted by the Tribunal into a referred matter.

205 Circumstances in which Tribunal may dispense with hearing

The Tribunal may determine a referred matter without a hearing if—

- (a) the Tribunal has considered—
 - (i) the referral report for the matter, and
 - (ii) other matter the Tribunal considers relevant, and
- (b) the Registrar and the person to whom the referral report relates have agreed that the proceedings may be determined without a hearing, and
- (c) there are no material facts in dispute between the Registrar and the person, and
- (d) in the opinion of the Tribunal, public interest considerations do not require a hearing.

206 Suspension during Tribunal consideration

The Tribunal may suspend an officer of an Aboriginal Land Council from holding office pending the determination of a referred matter if—

- (a) the referred matter relates to the alleged misconduct of the officer, and

- (b) the alleged misconduct is so serious as to threaten the proper operation of the Council, and
- (c) there appears to be sufficient evidence to support the allegation.

207 Decision of Tribunal

- (1) The Tribunal may do one or more of the following if it finds that the conduct of an officer of an Aboriginal Land Council to which a referred matter relates warrants action under this section—
 - (a) counsel or reprimand the officer,
 - (b) direct the officer to cease engaging in the misconduct,
 - (c) direct the officer to apologise for the misconduct in the way required by the Tribunal,
 - (d) direct the officer to undertake training,
 - (e) direct the officer to participate in mediation,
 - (f) suspend the officer from office,
 - (g) disqualify the officer from holding office in an Aboriginal Land Council for a period of not more than 5 years,
 - (h) order the officer to pay a pecuniary penalty of up to \$11,000,
 - (i) order the officer to reimburse the Aboriginal Land Council for any loss incurred by the Council,
 - (j) remove the officer from office or recommend that the Aboriginal Land Council remove the officer from office,
 - (k) if the officer holds office as Chairperson or Deputy Chairperson of the Aboriginal Land Council—remove the officer from the office,
 - (l) recommend that the Aboriginal Land Council take other action against the officer.
- (2) The Tribunal may do one or more of the following if it finds that the conduct of a member of staff of an Aboriginal Land Council to which a referred matter relates warrants action under this section—
 - (a) counsel or reprimand the member of staff,
 - (b) recommend that the Council take specified disciplinary action against the member of staff, including counselling or reprimanding the member of staff,
 - (c) disqualify the member of staff from holding office in an Aboriginal Land Council for a period of not more than 5 years,
 - (d) recommend that the Aboriginal Land Council dismiss the member of staff,
 - (e) recommend that the Aboriginal Land Council take other action against the member of staff,
 - (f) if the member of staff is the chief executive officer of a Local Aboriginal Land Council or the Chief Executive Officer of the New South Wales Aboriginal Land Council—
 - (i) direct the member of staff to undertake training, or
 - (ii) direct the member of staff to participate in mediation.

208 Additional complaints and allegations

- (1) The Tribunal may deal with one or more complaints or allegations about a person in the same proceedings.
- (2) The Tribunal may deal with conduct of a person as if a complaint or allegation (the ***additional complaint or allegation***) had been made about the conduct and referred to the Tribunal if—
 - (a) the Tribunal is conducting proceedings under this Part in relation to a complaint or allegation against the person (the ***original complaint or allegation***), and
 - (b) information about the conduct has arisen in the proceedings, and
 - (c) in the opinion of the Tribunal, a complaint or allegation could have been made against the person about the conduct.
- (3) The Tribunal may deal with the additional complaint or allegation—
 - (a) whether or not the additional complaint or allegation could have been made against the person instead of or in addition to the original complaint or allegation, and
 - (b) whether or not the additional complaint or allegation could have been made by the person who made the original complaint or allegation.
- (4) The Tribunal may deal with an additional complaint or allegation after an adjournment, if any, the Tribunal considers just and equitable in the circumstances.
- (5) The Tribunal may do one or more of the following in relation to an additional complaint or allegation—
 - (a) reconsider a decision under section 205 to determine proceedings on the original complaint or allegation without a hearing,
 - (b) recommence proceedings by way of hearing for—
 - (i) the original complaint or allegation, or
 - (ii) the original complaint or allegation and the additional complaint or allegation,
 - (c) decide, in accordance with section 205, to determine proceedings without a hearing in relation to either or both of the following—
 - (i) the original complaint or allegation,
 - (ii) the additional complaint or allegation.

209 Referral of matters by Tribunal

The Tribunal may refer a matter before it under this Act to an authority if—

- (a) the Tribunal considers that it is more appropriate that the authority deal with the matter, and
- (b) the authority agrees to the referral.

[5] Section 235 Registrar may issue compliance directions

Insert after section 235(3)—

- (4) In this section—

officer, in relation to an Aboriginal Land Council, includes—

 - (a) for a Local Aboriginal Land Council—the chief executive officer of the Council, and

- (b) for the New South Wales Aboriginal Land Council—the Chief Executive Officer of the Council.

[6] Section 243A Effect of suspension of Board members and councillors

Insert at the end of section 243A(b)—

, and

- (c) is not to be counted as a voting member of the Council or Board for the purposes of determining the quorum required for a meeting of the Council or Board.

Schedule 4 Miscellaneous amendments

4.1 Amendment of Aboriginal Land Rights Act 1983 No 42

[1] Preamble

Omit “Land in the State of New South Wales was”.

Insert instead “Land and waters in the State of New South Wales were”.

[2] Preamble

Omit “Land is”. Insert instead “Land and waters are”.

[3] Preamble

Omit “which land has for Aboriginal persons and the need of Aboriginal persons for land”.

Insert instead “land and waters have for Aboriginal persons and the need of Aboriginal persons for land and waters”.

[4] Preamble

Omit “land set”. Insert instead “land and waters set”.

[5] Section 51

Omit the section. Insert instead—

51 Objects of Local Aboriginal Land Councils

The objects of each Local Aboriginal Land Council are—

- (a) to improve, protect and foster the best interests of Aboriginal persons within the Council’s area and other persons who are members of the Council, and
- (b) to relieve poverty, sickness, suffering, distress, misfortune, destitution and helplessness of Aboriginal persons within the Council’s area.

[6] Section 72 Delegation by Boards

Omit section 72(2). Insert instead—

- (2) A Board must review all its delegations within 12 months after an election of the Board.

[7] Section 79A Advertising vacancies

Omit “the manner prescribed by the regulations” from section 79A(1).

Insert instead “a way decided by the Board to be sufficient to enable suitably qualified persons to apply for the position”.

[8] Section 79A(3)

Omit the subsection. Insert instead—

- (3) The chief executive officer of a Local Aboriginal Land Council may appoint a person to a vacant position in the staff of the Council without first advertising the vacancy—
 - (a) if the Board gives approval to the filling of the vacancy, or vacancies of that kind, without advertisement of the vacancy, or
 - (b) in other circumstances prescribed by the regulations.

- [9] Section 106 Functions of New South Wales Aboriginal Land Council**
Omit “land rights” from section 106(4)(a).
Insert instead “land rights and the interests of Aboriginal persons”.
- [10] Section 113 Policies relating to Aboriginal Land Council functions**
Insert “on the website of the Council” after “publicly available” in section 113(4).
- [11] Section 114 Procedure for making policies**
Omit “and” from section 114(1)(b) and omit (c).
- [12] Section 114(2)**
Omit the subsection. Insert instead—
(2) A policy takes effect—
(a) on the day on which it is published on the website of the New South Wales Aboriginal Land Council, or
(b) if a later day is specified in the policy—on the later day.
- [13] Section 132 Grounds for disqualification from office**
Omit “section 125” from section 132(1)(k). Insert instead “section 131”.
- [14] Section 138A Certain persons must not be employed as Chief Executive Officer**
Insert before section 138A(1)(a)—
(aa) a person who is not an Aboriginal person,
- [15] Section 138A(4)**
Insert after section 138A(3)—
(4) Subsection (1)(aa) has effect despite anything to the contrary in the *Anti-Discrimination Act 1977*.
- [16] Section 143A Advertising vacancies**
Omit “the manner prescribed by the regulations” from section 143A(1).
Insert instead “a way decided by the Council to be sufficient to enable suitably qualified persons to apply for the position”.
- [17] Section 143A(3)**
Omit the subsection. Insert instead—
(3) The Chief Executive Officer of the New South Wales Aboriginal Land Council may appoint a person to a vacant position in the staff of the Council without first advertising the vacancy—
(a) if the Chairperson of the Council gives approval to the filling of the vacancy, or vacancies of that kind, without advertisement of the vacancy, or
(b) in other circumstances prescribed by the regulations.
- [18] Section 150, heading**
Omit the heading. Insert instead—
150 Preservation of NSW Aboriginal Land Council assets

[19] Section 150(1)

Omit the subsection. Insert instead—

- (1) The value of the assets of the New South Wales Aboriginal Land Council must be maintained above the capital value, as at 31 December 1998, of the New South Wales Aboriginal Land Council Account.

[20] Section 150(3)

Omit “capital value of the New South Wales Aboriginal Land Council Account”.

Insert instead “value of the assets of the New South Wales Aboriginal Land Council”.

[21] Part 8, Division 1A

Insert after Part 8, Division 1—

Division 1A Financial reporting and management—NSW Aboriginal Land Council

152A Application

- (1) Financial statements and reports under this Division of the New South Wales Aboriginal Land Council and its controlled entities may be consolidated in a way that conforms with the Australian Accounting Standards concerning the preparation and presentation of financial statements and reports by similar entities.
- (2) An entity is a *controlled entity* of the New South Wales Aboriginal Land Council if the entity is controlled by the Council, with control being determined in accordance with—
 - (a) section 50AA of the *Corporations Act 2001* of the Commonwealth, or
 - (b) the Australian Accounting Standards.
- (3) A Local Aboriginal Land Council is not a controlled entity of the New South Wales Aboriginal Land Council.

152B Definitions

In this Division—

annual reporting information—see section 152F.

Australian Accounting Standards means the standards issued by the Australian Accounting Standards Board, as in force from time to time.

152C Budget of NSW Aboriginal Land Council

The New South Wales Aboriginal Land Council must, not less than 6 weeks before the commencement of each financial year, prepare a detailed budget relating to its proposed operations during the financial year.

152D Accounts and records

The New South Wales Aboriginal Land Council must ensure that accounts and records are kept for the Council that—

- (a) properly record and explain the Council’s transactions, cash flows, financial position and financial performance, and
- (b) allow for the preparation and audit of financial statements or financial reports.

152E Financial statements

- (1) The New South Wales Aboriginal Land Council must—
 - (a) prepare financial statements for the financial year, and
 - (b) give the prepared statements to the Auditor-General for auditing.
- (2) The prepared statements must be given to the Auditor-General within the following period after the end of the financial year—
 - (a) 2 months,
 - (b) if the regulations prescribe a different period—the prescribed period.
- (3) The financial statements must—
 - (a) be prepared in accordance with the Australian Accounting Standards and other requirements specified by this Act or the regulations, and
 - (b) present fairly the Council's financial position, financial performance and cash flows.
- (4) The financial statements must include a statement by the New South Wales Aboriginal Land Council as to whether the statements comply with subsection (3).

152F Annual reporting information

- (1) The *annual reporting information* is the following information about the New South Wales Aboriginal Land Council's activities during a financial year—
 - (a) financial statements,
 - (b) the audit report relating to the financial statements,
 - (c) information relating to the performance of the Council of a kind prescribed by the regulations,
 - (d) the total remuneration, including travelling expenses, paid to each councillor by the New South Wales Aboriginal Land Council,
 - (e) the total funds granted to each Local Aboriginal Land Council by the New South Wales Aboriginal Land Council,
 - (f) other information prescribed by the regulations.
- (2) The regulations may make provision about the preparation, content and presentation of annual reporting information.

152G Publication of annual reporting information

The New South Wales Aboriginal Land Council must, within 4 months, or another period prescribed by the regulations, after the end of the financial year—

- (a) give the annual reporting information to the Minister, and
- (b) publish the annual reporting information on the website of the New South Wales Aboriginal Land Council.

152H Reports relating to funding of Local Aboriginal Land Councils

- (1) The Minister may direct the New South Wales Aboriginal Land Council to prepare and submit a report containing the reportable information for—
 - (a) each quarter of each financial year, or
 - (b) each 6-month period ending on 30 June and 31 December in each year.

- (2) The New South Wales Aboriginal Land Council must comply with the direction and submit each report to the Minister within 10 weeks after the end of the period to which the report relates.
- (3) The regulations may prescribe the form and content of the reports.
- (4) In this section—
 - reportable information*, for a period, means—
 - (a) the amounts of funds granted during the period by the New South Wales Aboriginal Land Council to Local Aboriginal Land Councils, and
 - (b) the purposes for which the funds were granted, and
 - (c) whether the Local Aboriginal Land Councils concerned have complied with the financial obligations imposed by this Division in relation to the grants.

[22] Part 8, Division 2, heading

Omit the heading. Insert instead—

Division 2 Financial reporting—Local Aboriginal Land Councils

[23] Section 155 Local Aboriginal Land Councils may request special auditor

Omit “must, on the request of a Local Aboriginal Land Council”.

Insert instead “may, if the Council considers it appropriate and on the request of a Local Aboriginal Land Council”.

[24] Sections 157 and 159

Omit the sections.

[25] Section 161 Annual reports

Omit section 161(3).

[26] Section 165A Delegation

Omit “Department of Education and Communities” from section 165A(a).

Insert instead “Department of Premier and Cabinet”.

[27] Section 171 Contents of Register of Aboriginal Owners

Omit “use the Registrar’s best endeavours to” from section 171(1).

[28] Section 171(1)(a)

Omit “the name of every Aboriginal person who has”.

Insert instead “the names of Aboriginal persons who have”.

[29] Section 171(2)(b)

Omit “inhabitants of the land”.

Insert instead “inhabitants of the cultural area in which the land is situated”.

[30] Section 174 Rectification of Register

Omit section 174(1). Insert instead—

- (1) The Registrar may amend information on, remove information from or otherwise rectify the Register of Aboriginal Owners in accordance with this section.
- (1A) The Registrar may amend information on, or remove information from, the Register of Aboriginal Owners if the Registrar considers the information is false, erroneous or misleading.
- (1B) Before amending or removing information relating to an Aboriginal person under subsection (1A), the Registrar must give the Aboriginal person—
 - (a) written notice of the proposed change, and
 - (b) an opportunity to make submissions in relation to the proposed change.
- (1C) The Registrar may rectify the Register of Aboriginal Owners at the request of an Aboriginal person who—
 - (a) considers the Aboriginal person’s name has been wrongly entered on or omitted from the Register, or
 - (b) considers an amendment made by the Registrar under subsection (1A) is incorrect.

[31] Section 174(2)

Omit “or group of Aboriginal persons who has or have made a request under subsection (1)”.

Insert instead “who has made a request under subsection (1C)”.

[32] Section 222 Administrators—Local Aboriginal Land Councils

Omit “and submitted to the Minister for approval” from section 222(1).

[33] Section 223 Administrators—New South Wales Aboriginal Land Council

Insert after section 223(3)—

- (3A) The Minister must prepare a written report of the Minister’s reasons for appointing an administrator under this section.
- (3B) The Minister must table a copy of the report in each House of Parliament as soon as practicable after the administrator is appointed.

[34] Section 245

Omit the section. Insert instead—

245 Execution of documents

- (1) The New South Wales Aboriginal Land Council may execute a document without using a common seal if the document is signed by—
 - (a) the Chairperson of the Council, or
 - (b) a councillor or member of staff of the Council authorised by the Chairperson.
- (2) A Local Aboriginal Land Council may execute a document without using a common seal if the document is signed by—
 - (a) the Chairperson of the Board of the Local Aboriginal Land Council, or
 - (b) a Board member or member of staff of the Local Aboriginal Land Council authorised by the Chairperson.

[35] Schedule 3 Procedure of Boards and Councils

Omit Part 2, clause 6. Insert instead—

6 Transaction of business outside meetings or by electronic means

- (1) The Board may transact its business by circulating papers, electronically or otherwise, among all members of the Board.
- (2) A written resolution for which written approval is given by a majority of the members—
 - (a) is taken to be a decision of the Board made at a meeting of the Board, and
 - (b) must, subject to the regulations, be recorded in the minutes of the meetings of the Board.
- (3) The Board may transact its business at a meeting at which some or all members participate by telephone or other electronic means if a member who speaks on a matter before the meeting can be heard by the other members.
- (4) The presiding member and each other member have the same voting rights as they have at an ordinary meeting of the Board for the purposes of—
 - (a) the approval of a resolution under subclause (2), and
 - (b) a meeting held in accordance with subclause (3).

[36] Schedule 3, Part 3, clause 5A

Insert after Part 3, clause 5—

5A Transaction of business outside meetings or by electronic means

- (1) The New South Wales Aboriginal Land Council may transact its business by circulating papers, electronically or otherwise, among all members of the Council.
- (2) A written resolution for which written approval is given by a majority of the members—
 - (a) is taken to be a decision of the Council made at a meeting of the Council, and
 - (b) must, subject to the regulations, be recorded in the minutes of the meetings of the Council.
- (3) The Council may transact its business at a meeting at which some or all members participate by telephone or other electronic means if a member who speaks on a matter before the meeting can be heard by the other members.
- (4) The presiding member and each other member have the same voting rights as they have at an ordinary meeting of the Council for the purposes of—
 - (a) the approval of a resolution under subclause (2), and
 - (b) a meeting held in accordance with subclause (3).

4.2 Amendment of Aboriginal Land Rights Regulation 2020

[1] Clause 49 Staff vacancies

Omit the clause.

[2] Clause 50 Meetings

Omit clause 50(1).

[3] Clause 50(5)

Omit “place for the meeting and the date on which it is to be held”.

Insert instead “date for the meeting”.

[4] Clauses 52 and 53

Omit the clauses.

[5] Schedule 2 Model rules for New South Wales Aboriginal Land Council

Omit clause 14(b).

[6] Schedule 3, heading

Omit “**Model**”. Insert instead “**Prescribed**”.

[7] Schedule 3, clause 1

Omit the clause. Insert instead—

1 Application of Schedule—the Act, s 180(1)

The code of conduct set out in this Schedule is the prescribed code of conduct for all Local Aboriginal Land Councils.

[8] Schedule 4, heading

Omit “**Model**”. Insert instead “**Prescribed**”.

[9] Schedule 4, clause 1

Omit the clause. Insert instead—

1 Application of Schedule—the Act, s 180(1)

The code of conduct set out in this Schedule is the prescribed code of conduct for the New South Wales Aboriginal Land Council.

4.3 Amendment of Government Sector Finance Regulation 2018

[1] Clause 4 Prescribed GSF agencies—the Act, s 2.4(1)(l)

Omit clause 4(4A).

[2] Clause 4(5)

Omit “(4A)”. Insert instead “(4)”.

[3] Clause 6AA Employees of NSW Aboriginal Land Council not government officers

Omit the clause.

[4] Clause 11B Prescribed delegates for NSW Aboriginal Land Council

Omit the clause.

[5] Schedule 2 Transitional annual reporting arrangements

Omit “New South Wales Aboriginal Land Council” from Part 1.

Schedule 5 Amendment relating to savings and transitional provisions

Amendment of Aboriginal Land Rights Act 1983 No 42

Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on the enactment of the Aboriginal Land Rights Amendment Act 2022

Definition

In this Part—

amending Act means the *Aboriginal Land Rights Amendment Act 2022*.

Amendment of land dealing approvals

Section 42IA, as inserted by the amending Act, extends to an approval granted but not completed before the commencement of the section.

Refund of levy for cancelled transactions

Section 42UA, as inserted by the amending Act, extends to a dutiable transaction entered into but not completed before the commencement of the section.

[Second reading speech made in—

Legislative Council on 8 November 2022

Legislative Assembly on 16 November 2022]