



New South Wales

# Aboriginal Land Rights Amendment (Local Aboriginal Land Councils) Bill 2016

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Aboriginal Land Rights Act 1983* (*the Act*) as follows:

- (a) to authorise the New South Wales Aboriginal Land Council to make a performance improvement order to a Local Aboriginal Land Council if the New South Wales Aboriginal Land Council considers that action must be taken to improve the performance of the Local Aboriginal Land Council,
- (b) to restore the authority of Local Aboriginal Land Councils to own and operate corporations,
- (c) to clarify the role and functions of an administrator or interim administrator appointed to an Aboriginal Land Council,
- (d) to provide for the payment of an interim administrator.

## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** provides for the repeal of the uncommenced provisions of the *Aboriginal Land Rights Amendment Act 2014*.

## **Schedule 1      Amendment of Aboriginal Land Rights Act 1983 No 42**

**Schedule 1 [1]** restores the authority of a Local Aboriginal Land Council to establish, acquire, operate or manage companies under the *Corporations Act 2001* of the Commonwealth in addition to Aboriginal and Torres Strait Islander corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth.

**Schedule 1 [2]** makes it clear that the Board of a Local Aboriginal Land Council is not able to exercise any of the Board's functions that have been granted to the administrator of the Council. Section 222 (4) of the Act currently provides that the Council cannot exercise any functions that have been granted to the administrator of the Council. **Schedule 1 [7]** makes a consequential amendment.

**Schedule 1 [5]** provides that an interim administrator appointed for a Local Aboriginal Land Council has, to the exclusion of the Council and the Board of the Council, the functions specified in the interim administrator's instrument of appointment. **Schedule 1 [3] and [4]** make consequential amendments.

**Schedule 1 [6]** provides that an interim administrator appointed to a Local Aboriginal Land Council is to be paid by the New South Wales Aboriginal Land Council, and that the New South Wales Aboriginal Land Council may recover that amount from the Local Aboriginal Land Council for which the interim administrator has been appointed.

**Schedule 1 [9]** inserts proposed Division 4 (proposed sections 234A–234E) in Part 11 of the Act to provide for the making of performance improvement orders to Local Aboriginal Land Councils.

Proposed section 234A provides for the making of a performance improvement order if the New South Wales Aboriginal Land Council reasonably considers that action must be taken to improve the performance of a Local Aboriginal Land Council. The proposed section also provides for matters to be considered by the New South Wales Aboriginal Land Council before making an order, matters that are to be included in an order and the variation of an order.

Proposed section 234B requires the Board of a Local Aboriginal Land Council to ensure that the Council complies with a performance improvement order and makes it clear that compliance with the order must be to the satisfaction of the New South Wales Aboriginal Land Council.

Proposed section 234C requires a Local Aboriginal Land Council to report to the New South Wales Aboriginal Land Council on the Local Aboriginal Land Council's compliance with the performance improvement order.

Proposed section 234D provides for the appointment by the New South Wales Aboriginal Land Council of one or more advisors to a Local Aboriginal Land Council that is subject to a performance improvement order. An advisor is appointed to advise and assist the Council in the exercise of the Council's functions and in complying with the order and to monitor the Council's compliance with the order.

Proposed section 234E requires the Board and members and staff of a Local Aboriginal Land Council to co-operate with any advisor appointed to the Council and to provide the advisor with any assistance or information that is required by the advisor. Failure to comply with the proposed section is taken to be a failure to comply with the performance improvement order.

**Schedule 1 [8]** makes a consequential amendment.

**Schedule 1 [10]** inserts a provision of a transitional nature consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Aboriginal Land Rights Regulation 2014**

**Schedule 2 [3]** amends the *Aboriginal Land Rights Regulation 2014* (***the Regulation***) to prescribe the functions of a Council and the members of a Council that may be exercised by an interim administrator.

**Schedule 2 [4]** inserts proposed Division 2 (proposed clause 97A) in Part 7 of the Regulation. The proposed Division sets out matters that are required to be considered by the New South Wales Aboriginal Land Council before making a performance improvement order. **Schedule 2 [1] and [2]** make consequential amendments.



New South Wales

# Aboriginal Land Rights Amendment (Local Aboriginal Land Councils) Bill 2016

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New South Wales

# Aboriginal Land Rights Amendment (Local Aboriginal Land Councils) Bill 2016

No. , 2016

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## **A Bill for**

An Act to amend the *Aboriginal Land Rights Act 1983* to provide for the making of performance improvement orders by the New South Wales Aboriginal Land Council; and for other purposes.

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

**1 Name of Act**

This Act is the *Aboriginal Land Rights Amendment (Local Aboriginal Land Councils) Act 2016*.

**2 Commencement**

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

**3 Repeal of Aboriginal Land Rights Amendment Act 2014 No 75**

The *Aboriginal Land Rights Amendment Act 2014* is repealed.

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<b>Schedule 1</b>	<b>Amendment of Aboriginal Land Rights Act 1983</b>	1
	<b>No 42</b>	2
<b>[1] Section 52 Functions of Local Aboriginal Land Councils</b>		3
Omit section 52 (5A) and (5B). Insert instead:		4
<b>(5A) Corporations</b>		5
A Local Aboriginal Land Council may establish, acquire, operate or manage the following:		6
(a) an Aboriginal and Torres Strait Islander corporation within the meaning of the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> of the Commonwealth,		8
(b) a company within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth.		11
<b>[2] Section 222 Administrators—Local Aboriginal Land Councils</b>		13
Insert “and the Board of the Council” after “the Council” where firstly occurring in section 222 (4).		14
<b>[3] Section 223B Interim actions pending appointment of administrator</b>		16
Insert “and the Board of the Council” after “Council” in section 223B (1) (a).		17
<b>[4] Section 223B (1) (b)</b>		18
Omit “, with specified functions,”.		19
<b>[5] Section 223B (1A)</b>		20
Insert after section 223B (1):		21
(1A) The interim administrator has, during the period of his or her appointment, to the exclusion of the Council and the Board of the Council:		22
(a) all, or such part as is specified in the interim administrator’s instrument of appointment, of the functions of the Board of the Council conferred or imposed by or under this Act, and		24
(b) the functions of the Council and the members of the Council exercised by resolution of the members of the Council that are prescribed by the regulations (except as provided by the interim administrator’s instrument of appointment).		27
<b>[6] Section 223B (6)</b>		31
Insert after section 223B (5):		32
(6) The interim administrator is to be paid out of the funds of the New South Wales Aboriginal Land Council and the New South Wales Aboriginal Land Council may recover that amount from the Local Aboriginal Land Council for which the interim administrator has been appointed.		33
<b>[7] Section 231 Minister may amend instrument of appointment of administrator</b>		37
Omit section 231 (3). Insert instead:		38
(3) The Minister may, by subsequent instrument of appointment, vary the functions that may be exercised by an administrator during the extension of the administrator’s term of appointment.		39
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<b>[8] Section 234 Appointment of advisors</b>	1
Omit the section.	2
<b>[9] Part 11, Division 4</b>	3
Insert after Division 3:	4
<b>Division 4 Performance improvement orders for Local Aboriginal Land Councils</b>	5
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<b>234A Performance improvement orders</b>	7
(1) The New South Wales Aboriginal Land Council may make a performance improvement order in respect of a Local Aboriginal Land Council if the New South Wales Aboriginal Land Council reasonably considers that action must be taken to improve the performance of the Local Aboriginal Land Council.	8 9 10 11
(2) In determining whether to make a performance improvement order, the New South Wales Aboriginal Land Council:	12 13
(a) must consider the performance improvement criteria prescribed by the regulations (if any), and	14 15
(b) may consider any previous communication between the Local Aboriginal Land Council concerned and the New South Wales Aboriginal Land Council in relation to the Local Aboriginal Land Council's performance.	16 17 18 19
(3) Without limiting subsection (2), the New South Wales Aboriginal Land Council may consider any other matter that the Council considers to be appropriate when determining whether to make a performance improvement order.	20 21 22 23
(4) A performance improvement order must specify:	24
(a) the reason for making the order, and	25
(b) the actions that are required to be taken to improve the performance of the Local Aboriginal Land Council.	26 27
(5) Actions to improve the performance of a Local Aboriginal Land Council may include any actions that the New South Wales Aboriginal Land Council considers necessary to improve or restore the proper or effective functioning of the Local Aboriginal Land Council.	28 29 30 31
(6) The performance improvement order may require action to be taken by any or all of the following:	32 33
(a) the Local Aboriginal Land Council,	34
(b) the Board or individual Board members of the Local Aboriginal Land Council,	35 36
(c) the chief executive officer of the Local Aboriginal Land Council.	37
(7) A performance improvement order may provide for the appointment of an advisor in accordance with this Division.	38 39
(8) A copy of the performance improvement order, or the variation of a performance improvement order, is to be served on the Local Aboriginal Land Council.	40 41 42
(9) A performance improvement order takes effect on the day on which it is served on the Local Aboriginal Land Council concerned, or such later date as may be specified in the order.	43 44 45



- (10) The making of a performance improvement order, or the fact that any such order is in force, does not derogate from any power of the New South Wales Aboriginal Land Council or any other person to make any order or take any other action under this Act. 1  
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- (11) A performance improvement order in respect of a Local Aboriginal Land Council ceases to be in force if the Minister appoints an administrator or interim administrator for the Local Aboriginal Land Council. 5  
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- (12) In relation to a performance improvement order, a reference to an action, or the taking of any action, includes a reference to doing any thing or refraining from doing any thing. 8  
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- (13) A Local Aboriginal Land Council must provide a copy of a performance improvement order to the members of the Council at the first meeting of the Council held after the performance improvement order is made in respect of the Council. 11  
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- 234B Compliance with performance improvement order** 15
- (1) The Board of a Local Aboriginal Land Council is responsible for ensuring the Council's compliance with a performance improvement order. 16  
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- (2) A Local Aboriginal Land Council complies with a performance improvement order only if any action required to be taken by the performance improvement order (including any actions required to be taken by individual Board members or the chief executive officer) is taken to the satisfaction of the New South Wales Aboriginal Land Council. 18  
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- 234C Compliance report** 23
- (1) A Local Aboriginal Land Council must provide the New South Wales Aboriginal Land Council with written reports on its compliance with a performance improvement order as required by the order (a *compliance report*). 24  
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- (2) A compliance report must specify any actions taken that demonstrate compliance with the performance improvement order. 28  
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- (3) A compliance report must comply with any requirements for the report specified in the performance improvement order. 30  
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- (4) A Local Aboriginal Land Council must provide a copy of a compliance report to the members of the Council at the first meeting of the Council held after the report is provided to the New South Wales Aboriginal Land Council. 32  
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- 234D Appointment of advisors** 35
- (1) If the New South Wales Aboriginal Land Council makes a performance improvement order in respect of a Local Aboriginal Land Council, the New South Wales Aboriginal Land Council may appoint one or more persons as advisors to the Local Aboriginal Land Council. 36  
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- (2) An advisor may be appointed at the same time as the New South Wales Aboriginal Land Council makes the performance improvement order or at any time while the order remains in force. 40  
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- (3) An advisor may be appointed on the recommendation of the Local Aboriginal Land Council or on the New South Wales Aboriginal Land Council's own initiative. 43  
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- (4) An advisor has, subject to any limitations specified in the advisor's instrument of appointment, the following functions: 1  
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- (a) to advise and assist the Board of the Local Aboriginal Land Council and the Council in the exercise of their functions, 3  
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  - (b) to advise and assist the Board of the Local Aboriginal Land Council and the Council in complying with the performance improvement order, 5  
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  - (c) to monitor compliance with the performance improvement order. 7
- (5) An advisor's appointment to a Local Aboriginal Land Council ends on the earlier of the following: 8  
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- (a) the end of the term specified in the advisor's instrument of appointment, 10
  - (b) the day on which the performance improvement order for the Local Aboriginal Land Council expires, is revoked or otherwise ceases to be in force. 11  
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- (6) The New South Wales Aboriginal Land Council may terminate an advisor's appointment at any time. 14  
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- (7) The advisor is to be paid a salary determined by the New South Wales Aboriginal Land Council out of the funds of the New South Wales Aboriginal Land Council and the New South Wales Aboriginal Land Council may recover that amount from the Local Aboriginal Land Council for which the advisor has been appointed. 16  
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- 234E Co-operation with advisor** 21
- (1) If an advisor is appointed to a Local Aboriginal Land Council, the Council and its Board members and staff are required to co-operate with the advisor and provide any information or assistance the advisor reasonably requires to exercise his or her functions. 22  
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- (2) In particular, the Local Aboriginal Land Council must give the advisor an opportunity to review a compliance report at least 14 days before providing the report to the New South Wales Aboriginal Land Council and must include a copy of the advisor's comments (if any) when providing the compliance report to the New South Wales Aboriginal Land Council. 26  
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- (3) If a Local Aboriginal Land Council fails to give an advisor an opportunity to comment on a compliance report, the advisor is to: 31  
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- (a) inform the New South Wales Aboriginal Land Council of that fact, and 33
  - (b) give the New South Wales Aboriginal Land Council a report on the Local Aboriginal Land Council's compliance with the performance improvement order. 34  
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- (4) If a Local Aboriginal Land Council fails to provide a compliance report to the New South Wales Aboriginal Land Council in accordance with a performance improvement order, the advisor must, as soon as practicable after becoming aware of that fact: 37  
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- (a) prepare a compliance report on behalf of the Local Aboriginal Land Council, and 41  
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  - (b) provide the report to the New South Wales Aboriginal Land Council. 43
- (5) A contravention of this section by a Local Aboriginal Land Council is, for the purposes of this Division, a failure to comply with a performance improvement order. 44  
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**[10] Schedule 4 Savings, transitional and other provisions**

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Insert at the end of clause 61:

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- (3) This clause ceases to have effect on the amendment of section 52 by the  
*Aboriginal Land Rights Amendment (Local Aboriginal Land Councils) Act*  
*2016.*

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<b>Schedule 2</b>	<b>Amendment of Aboriginal Land Rights Regulation 2014</b>	1
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<b>[1] Part 7, heading</b>		3
	Insert “and performance improvement orders” after “Councils”	4
<b>[2] Part 7, Division 1, heading</b>		5
	Insert before clause 95:	6
<b>Division 1</b>	<b>Administration of Councils</b>	7
<b>[3] Clause 95 Functions that may be exercised by administrator or interim administrator</b>		8
	Insert at the end of the clause:	9
	(2) For the purposes of section 223B (1A) (b) of the Act, an interim administrator of an Aboriginal Land Council may exercise all of the functions of the Council and the members of the Council exercised by resolution of the Council.	10
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	<b>Note.</b> Under section 223B (1A) (b) of the Act, the interim administrator’s instrument of appointment may limit the functions that may be exercised.	13
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<b>[4] Part 7, Division 2</b>		15
	Insert after clause 97:	16
<b>Division 2</b>	<b>Performance improvement orders</b>	17
<b>97A Performance improvement criteria</b>		18
	For the purposes of section 234A (2) (a) of the Act, the performance improvement criteria that the New South Wales Aboriginal Land Council must consider before making a performance improvement order in respect of a Local Aboriginal Land Council are:	19
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	(a) whether the Local Aboriginal Land Council has failed to comply with the Act, this Regulation or any policy of the New South Wales Aboriginal Land Council, and	23
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	(b) whether meetings of the Local Aboriginal Land Council or Board of the Local Aboriginal Land Council are being conducted in accordance with the Act and this Regulation, and	26
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	(c) whether the appointment of an advisor is reasonably likely to assist the Board of the Local Aboriginal Land Council to restore, improve or develop the capacity for the proper and effective functioning of the Council, and	29
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| (d) | whether the behaviour of one or more Board members, or members of staff, of the Local Aboriginal Land Council has adversely affected the Council's performance of its functions under the Act and the Council's response to that behaviour, and | 1<br>2<br>3<br>4 |
| (e) | whether there are significant risks facing the Local Aboriginal Land Council that are not being addressed.  | 5<br>6           |