

ABORIGINAL LAND RIGHTS (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

- * to create a new Commission to replace the NSW Aboriginal Land Rights Council.
 - * to expand the functions of Local Aboriginal Land Councils.
 - * to change the role of Regional Aboriginal Land Councils to that of an advisory body to Local Aboriginal Land Councils.
 - * to provide for the participation of the Electoral Commissioner of NSW in the conduct of elections of the members of the Commission, the members of Regional Aboriginal Land Councils and of the office holders of Local Aboriginal Land Councils.
 - * to enable the Commission and Local Aboriginal Land Councils to sell, mortgage or otherwise dispose of land if certain requirements are met.
 - * to provide for the preparation and audit of annual financial statements of the operations of the Commission and Regional and Local Aboriginal Land Councils.
 - * to make further provision relating to the investigation of the affairs of the Commission and Regional and Local Aboriginal Land Councils and the appointment of administrators.
 - * to require a person elected to an office under that Act to disclose any direct or indirect pecuniary interest if it might conflict with the proper performance of the duties of the office.
 - * to make other miscellaneous amendments to the Act.
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Clause 1 specifies the short title of the proposed Act.

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

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

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

New Commission

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

The new Part:

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

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

Commissioners

Proposed Schedule 5, relating to Commissioners, provides for:

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

Procedure at meetings of Commission

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

Preservation of certain rights of staff previously public servants etc.

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

**SCHEDULE 2 — AMENDMENTS RELATING TO LOCAL ABORIGINAL
LAND COUNCILS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Investigators

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

Administrators

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

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

SCHEDULE 7 — MISCELLANEOUS AMENDMENTS

Dissolution of Regional and Local Aboriginal Land Councils

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

Conciliation and disputes

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

Certain acts to apply to Commission and Aboriginal Land Councils

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

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

Amalgamation of Local Aboriginal Land Council areas

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

Consequential amendments

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

SCHEDULE 8 — AMENDMENTS RELATING TO SAVINGS AND TRANSITIONAL PROVISIONS

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

SCHEDULE 9 — CONSEQUENTIAL AMENDMENT OF OTHER ACTS

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

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