

[Act 2001 No 118]



New South Wales

Aboriginal Land Rights Amendment Bill 2001

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 Principal Act***) in response to the recommendations of the Independent Commission Against Corruption contained in the *Report on Investigations into Aboriginal Land Councils in New South Wales: Corruption Prevention and Research* and the recommendations arising from the review of the Principal Act.

The principal changes proposed by this Bill are made for the following purposes:

- (a) to insert a new provision that sets out the purpose of the Principal Act,
 - (b) to provide that a Local Aboriginal Land Council may purchase land without gaining the approval of the New South Wales Aboriginal Land Council if the purchase price of the land is not more than 5% above the assessed market value of the land,
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Explanatory note

- (c) to provide that a Local Aboriginal Land Council may, without gaining the approval of the New South Wales Aboriginal Land Council, lease land vested in the Council for a period of less than 3 years,
- (d) to provide that exemptions of Aboriginal land from the payment of various local council and water rates and charges are to be made under the regulations,
- (e) to provide that Aboriginal Land Councils need not notify the Minister for Aboriginal Affairs of a proposed disposal of land,
- (f) to restructure the Principal Act to make the document more accessible to users,
- (g) to insert provisions that set out the objects of Local and Regional Aboriginal Land Councils and the New South Wales Aboriginal Land Council,
- (h) to revise the functions of Local and Regional Aboriginal Land Councils and the New South Wales Aboriginal Land Council,
- (i) to provide that new members of Local Aboriginal Land Councils be accepted by a meeting of the Council,
- (j) to provide that persons seeking to become members of Local Aboriginal Land Councils establish the basis of their entitlement to become such a member,
- (k) to provide that although an Aboriginal person may be a member of more than one Local Aboriginal Land Council, the person may be a voting member in relation to only one Council at any time,
- (l) to increase the maximum period of suspension of membership to a period of three years and clarify the consequences of such suspension,
- (m) to provide that Local Aboriginal Land Councils are annually to provide the New South Wales Aboriginal Land Council with updated membership rolls,
- (n) to provide that Chairpersons, Secretaries, Treasurers and Regional and Alternate Representatives of Local Aboriginal Land Councils are to serve a term of office of approximately two years,
- (o) to provide that a person is not qualified to stand and be elected to such a position unless the person is a voting member of the Local Aboriginal Land Council concerned,
- (p) to insert provisions that set out the role of officers of Local Aboriginal Land Councils and of members of the New South Wales Aboriginal Land Council (*councillors*),
- (q) to insert provisions to clarify how and when councillors and officers of Aboriginal Land Councils vacate office or are removed or disqualified from office (including provisions specifying that conviction for certain offences leads to disqualification from office for a period of 5 years),

Explanatory note

- (r) to provide that persons may apply to the Administrative Decisions Tribunal for an order declaring that a particular office of a Local or Regional Aboriginal Land Council or the New South Wales Aboriginal Land Council has become vacant,
- (s) to place provisions relating to the conduct and procedure of meetings of Local and Regional Aboriginal Land Councils and the New South Wales Aboriginal Land Council, that were formally in the regulations or in a schedule to the Principal Act, into the main body of the Principal Act,
- (t) to reduce the quorum for a meeting of the New South Wales Aboriginal Land Council from two-thirds to a majority of the councillors constituting the Council for the time being,
- (u) to insert provisions relating to the employment of staff and consultants by Local Aboriginal Land Councils or by the New South Wales Aboriginal Land Council (including provisions prohibiting the employment of certain persons and requiring employment decisions to be made on the basis of merit),
- (v) to clarify the power of Local Aboriginal Land Councils and the New South Wales Aboriginal Land Council to delegate their functions to other persons or bodies,
- (w) to provide the New South Wales Aboriginal Land Council with the following additional functions:
 - (i) to mediate, conciliate and arbitrate disputes relating to the operation of the Principal Act between Aboriginal Land Councils, between those Councils and individuals, or between individual members of those Councils and to refer such disputes to the Registrar or independent mediators, conciliators and arbitrators,
 - (ii) with the approval of the Minister, to make grants or lend money to a funeral benefits scheme established for the benefit of Aboriginal persons,
 - (iii) to compile and maintain a consolidated roll of all members of Local Aboriginal Land Councils,
 - (iv) to compile and maintain a register of all land held by Local Aboriginal Land Councils,
 - (v) to make prescribed information contained in the land register or consolidated membership roll that relates to a Local Aboriginal Land Council available on request to the members of that Local Aboriginal Land Council,
- (x) to provide for the appointment of a Chief Executive Officer of the New South Wales Aboriginal Land Council, and for that officer's functions,

Explanatory note

- (y) to provide that the capital value of the New South Wales Aboriginal Land Council Account as at 31 December 1998 is to be maintained,
- (z) to change the financial year of Aboriginal Land Councils to the financial year commencing 1 July each year,
- (aa) to clarify and revise the provisions of the Principal Act relating to budgets and other reports, and auditors and audited reports, of Aboriginal Land Councils,
- (bb) to provide that the regulations may set criteria by which to judge whether submitted financial statements are satisfactory,
- (cc) to provide that the New South Wales Aboriginal Land Council may enter into funding agreements with Local and Regional Aboriginal Land Councils,
- (dd) to provide for the appointment of the Registrar as a statutory officer (and not a member of the Public Service within the Department of Aboriginal Affairs) and provide for the Registrar's functions and powers (including the function of establishing and keeping a Register of land claims made under the Principal Act),
- (ee) to insert provisions relating to honesty and disclosure of interests by councillors and officers and members of staff of Aboriginal Land Councils, including:
 - (i) provisions requiring Aboriginal Land Councils to prepare codes of conduct to be observed by such councillors, officers and members of staff (breaches of such codes allowing, or automatically causing, such persons to be removed from office), and
 - (ii) provisions requiring the disclosure of pecuniary interests by such councillors, officers and members of staff and providing for complaints regarding non-disclosure to be made to the Registrar and referred to an Aboriginal Land Councils Pecuniary Interest Tribunal which will have power to deal with the matter,
- (ff) to clarify the process of appointment and the functions of investigators and administrators of Aboriginal Land Councils,
- (gg) to provide that an administrator of a Local Aboriginal Land Council may not dispose of land vested in or acquired by that Council without the consent of the Council as decided at a meeting,
- (hh) to provide the Registrar with the power to issue compliance directions to Aboriginal Land Councils, officers of Aboriginal Land Councils and councillors relating to the administration of the Principal Act and to refer failures to comply with such directions to the Land and Environment Court,

- (ii) to make provision for the resolution of disputes relating to the administration of Aboriginal Land Councils by the Registrar, the New South Wales Aboriginal Land Council or other independent persons by way of mediation, conciliation or arbitration,
- (jj) to provide that the acts or omissions of the Registrar, an investigator, an administrator or a person acting as a mediator, conciliator or arbitrator under the Principal Act do not subject that person personally to any civil liability if the act or omission was done in good faith for the purpose of executing the Principal Act or any other Act,
- (kk) to increase the maximum penalty that may be imposed for conviction of an offence against the Principal Act from 5 penalty units (currently \$550) to 10 penalty units (currently \$1,100).

This Bill also makes related amendments to other Acts.

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 is a formal provision giving effect to the amendments to the *Aboriginal Land Rights Act 1983* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the Acts and instruments set out in Schedule 2.

Schedule 1 Amendment of Aboriginal Land Rights Act 1983

Schedule 1 [1] inserts proposed section 3 into the Principal Act to set out the purposes of that Act which are as follows:

- (a) to provide land rights for Aboriginal persons in New South Wales,
- (b) to provide for representative Aboriginal Land Councils in New South Wales,
- (c) to vest land in those Councils,
- (d) to provide for the acquisition of land by or for those Councils and the allocation of funds to and by those Councils.

Schedule 1 [2] and **[3]** update certain definitions and insert a number of new definitions into the Principal Act as a consequence of the amendments to be made by the proposed Act.

Schedule 1 [4] and **[17]** operate together to omit and re-enact (with modifications and new Part and section numbers) Parts 2, 3, 4, 5, 8A and 9 of the Principal Act. **Schedule 1 [17]** also inserts a number of new Parts into the Principal Act. As part of the reorganisation of provisions of the Principal Act, **Schedule 1 [5]** renumbers Parts 6, 7 and 8 of the Principal Act as Parts 2, 3 and 4.

Schedule 1 [6] omits a spent provision from the Principal Act.

Schedule 1 [7] and **[10]** makes amendments consequent on the re-structuring of the Principal Act.

Schedule 1 [8] and **[9]** amend section 38 of the Principal Act to provide that a Local Aboriginal Land Council may purchase land only if:

- (a) the purchase price for the land is not more than 5% above the assessed market value of the land (being the market value of the land as assessed by a registered real estate valuer), or
- (b) the New South Wales Aboriginal Land Council has given its written approval to that purchase.

Schedule 1 [11] and **[12]** amend section 40B of the Principal Act to remove the requirement for a Local Aboriginal Land Council to obtain the approval of the New South Wales Aboriginal Land Council to lease land vested in it, but only if the lease is for a period of less than 3 years (including any option to renew the lease).

Schedule 1 [13] and **[14]** omit provisions requiring that before selling, exchanging, mortgaging or otherwise disposing of land vested in them, the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council must notify the Minister of the proposed disposal.

Schedule 1 [15] replaces section 43 of the Principal Act to provide that the regulations may declare that specified Aboriginal Land Council land is exempt from the payment of certain rates, levies and charges under the *Local Government Act 1993*, the *Hunter Water Act 1991*, the *Sydney Water Act 1994* and the *Water Management Act 2000*.

Schedule 1 [16] makes an amendment consequential on the restructure of the Principal Act. The amendment provides that the maximum penalty for the offence specified in section 48 (8) (refusing to allow access to land to a person with a permit) is 10 penalty units (currently \$1,100).

A note at the end of this explanatory note sets out a table of provisions to illustrate the structure of the Principal Act after the commencement of the proposed Act. Also, where a proposed section is based on a provision of the Principal Act that is to be repealed by the proposed Act or on a provision of another Act or instrument, a note in the heading of the proposed section indicates the source of the provision.

An explanation of each Part (re-enacted or new) inserted by **Schedule 1 [17]** follows:

Part 5 Local Aboriginal Land Councils

Division 1 of Part 5 provides for the constitution of Local Aboriginal Land Council areas, the constitution of a Local Aboriginal Land Council for each such area and the objects and functions of such Councils.

Division 2 of Part 5 deals with the membership of Local Aboriginal Land Councils, the preparation of membership rolls and suspension of membership. A new section, proposed section 55, provides that an Aboriginal person may be a member of more than one Local Aboriginal Land Council, however such a person may exercise voting rights only in relation to one such Council. Proposed section 56 provides for such persons to nominate the Council of which they wish to be a voting member.

Division 3 of Part 5 deals with the election, term of office, removal from office and role of the officers (being the Chairperson, Secretary and Treasurer) and Regional and Alternate Representatives of Local Aboriginal Land Councils. The Division also deals with qualification for and vacation and disqualification from office. For example, only voting members of a Local Aboriginal Land Council may be elected as officers of that Council. New provisions, proposed sections 70–72, allow persons to apply to the Administrative Decisions Tribunal for a declaration that a particular office has become vacant.

Division 4 of Part 5 deals with the holding of, and the procedure at, meetings of Local Aboriginal Land Councils.

Division 5 of Part 5 deals with the employment of staff and the engagement of consultants by Local Aboriginal Land Councils. Certain persons may not be employed by such Councils, including persons who have had specified criminal convictions within the previous 5 years. New provisions specifically state that appointment and promotion of staff, and the engagement of consultants, is to be on the basis of merit.

Division 6 of Part 5 provides that a Local Aboriginal Land Council may delegate certain of its functions and requires such a Council to review its delegations once a year.

Division 7 of Part 5 provides for rules for Local Aboriginal Land Councils. Unless rules are prepared by a Local Aboriginal Land Council and approved by the Registrar, model rules prescribed by the regulations are to be the rules of the Council.

Part 6 Regional Aboriginal Land Councils

Division 1 of Part 6 provides for the constitution of Regional Aboriginal Land Council areas, the constitution of a Regional Aboriginal Land Council for each such area and the objects and functions of such Councils.

Division 2 of Part 6 deals with the membership of Regional Aboriginal Land Councils. The members of a Regional Aboriginal Land Council are the Regional Representatives of the Local Aboriginal Land Councils within the Regional Aboriginal Land Council's area.

Division 3 of Part 6 deals with the election, term of office, removal from office and role of the officers (being the Chairperson, Secretary and Treasurer) of Regional Aboriginal Land Councils. The Division also deals with qualification for and vacation and disqualification from office. New provisions, proposed sections 95–97, allow persons to apply to the Administrative Decisions Tribunal for a declaration that a particular office has become vacant.

Division 4 of Part 6 deals with the holding of, and the procedure at, meetings of Regional Aboriginal Land Councils.

Division 5 of Part 6 provides for rules for Regional Aboriginal Land Councils. Unless rules are prepared by a Regional Aboriginal Land Council and approved by the Registrar, model rules prescribed by the regulations are to be the rules of the Council.

Part 7 New South Wales Aboriginal Land Council

Division 1 of Part 7 provides for the constitution of the New South Wales Aboriginal Land Council and the objects and functions of that Council.

Division 2 of Part 7 deals with the membership of the New South Wales Aboriginal Land Council. The Council is to consist of full-time Aboriginal councillors equal in number to the number of Regional Aboriginal Land Council areas in the State. The proposed Division also deals with the election, term of office, removal from office and role of those councillors. New provisions, proposed sections 115–117, allow persons to apply to the Administrative Decisions Tribunal for a declaration that a particular office of a councillor has become vacant.

Divisions 3, 4 and 5 of Part 7 deal with the conduct of elections for councillors, declarations of those elections and disputed returns.

Division 6 of Part 7 deals with the election and removal from office of officers of the New South Wales Aboriginal Land Council (being the Chairperson, Secretary and Treasurer).

Division 7 of Part 7 deals with the holding of, and the procedure at, meetings of the New South Wales Aboriginal Land Council.

Division 8 of Part 7 provides for rules for the New South Wales Aboriginal Land Council. Unless rules are prepared by the New South Wales Aboriginal Land Council and approved by the Registrar, model rules prescribed by the regulations are to be the rules of the Council.

Divisions 9 and 10 of Part 7 deal with the employment of a Chief Executive Officer and other staff, and the engagement of consultants, by the New South Wales Aboriginal Land Council. Certain persons may not be employed by the Council, including persons who have had specified criminal convictions within the previous 5 years. New provisions specifically state that appointment and promotion of staff, and the engagement of consultants, is to be on the basis of merit.

Division 11 of Part 7 provides that the New South Wales Aboriginal Land Council and the Chief Executive Officer of that Council may delegate certain functions to other persons and requires the New South Wales Aboriginal Land Council to review its delegations once a year.

Part 8 Finance

Division 1 of Part 8 provides for the establishment of a number of accounts, including the New South Wales Aboriginal Land Council Account and an account for each Local and Regional Aboriginal Land Council. A new section, proposed section 150, provides that the capital value of the New South Wales Aboriginal Land Council Account, as at 31 December 1998, is to be maintained.

Division 2 of Part 8 contains provisions dealing with the keeping and auditing of Aboriginal Land Council accounts. New provisions provide that regulations may set criteria to determine whether financial statements furnished by a Local or Regional Aboriginal Land Council to the New South Wales Aboriginal Land Council are satisfactory (proposed section 154), that a Local or Regional Aboriginal Land Council may request the New South Wales Aboriginal Land Council to appoint a special auditor (proposed section 155), and change the financial year of Aboriginal Land Councils to one commencing on July 1 each year.

Division 3 of Part 8 provides that the New South Wales Aboriginal Land Council may enter into funding agreements with Local and Regional Aboriginal Land Councils. The Division also deals with circumstances where the New South Wales Aboriginal Land Council must cease funding Local and Regional Aboriginal Land Councils (whether that funding was under a funding agreement or otherwise).

Part 9 Registrar and Registers of Aboriginal Land Claims and Aboriginal Owners

Division 1 of Part 9 deals with the appointment and functions of the Registrar. The Registrar is to be a statutory officer and not a member of the Public Service within the Department of Aboriginal Affairs.

Division 2 of Part 9 provides that the Registrar is to establish and maintain a Register of Aboriginal Land Claims made under the Principal Act. The proposed Division also deals with matters relating to that Register.

Division 3 of Part 9 provides that the Registrar is to establish and maintain a Register of Aboriginal Owners. The proposed Division also deals with matters relating to that Register.

Part 10 Honesty and disclosure of interests

Part 10 deals with the honesty of councillors, officers and members of staff of Aboriginal Land Councils and contains provisions relating to the disclosure of conflicts of interests. The provisions of this Part are modelled (with modifications) on Chapter 14 of the *Local Government Act 1993*.

Division 1 of Part 10 places obligations on officers and members of staff of Aboriginal Land Councils, and councillors, to act honestly and exercise a reasonable degree of care and diligence in carrying out their functions.

Division 2 of Part 10 requires Aboriginal Land Councils to adopt a code of conduct to be observed by officers and members of staff of the Aboriginal Land Council and, in relation to the New South Wales Aboriginal Land Council, councillors. A code of conduct may declare that the breach of a specified provision of the code:

- (a) by an officer or Regional or Alternate Representative of a Local Aboriginal Land Council—allows the Council by majority vote to remove that person from office, or

- (b) by an officer of a Regional Aboriginal Land Council—allows the Council by majority vote to remove that person from office, or
- (c) by a councillor of the New South Wales Aboriginal Land Council—causes a councillor to vacate his or her office as councillor.

Division 3 of Part 10 constitutes the Aboriginal Land Councils Pecuniary Interest Tribunal.

Division 4 of Part 10 requires that pecuniary interests of councillors, officers and members of staff of, and consultants to, Aboriginal Land Councils must be disclosed at meetings and requires those persons to refrain from taking part in decisions in which they have a pecuniary interest (unless the Aboriginal Land Council concerned determines otherwise).

Division 5 of Part 10 enables a person to make a complaint to the Registrar concerning a failure to disclose a pecuniary interest. After inquiring into the complaint, the Registrar may refer it to the Aboriginal Land Councils Pecuniary Interest Tribunal. The Tribunal is empowered to conduct hearings into such complaints and to take action against a person if a complaint is found to be proved.

Part 11 Investigation and administration of Aboriginal Land Councils

Division 1 of Part 11 contains provision relating to the appointment and role of investigators into the affairs of Aboriginal Land Councils.

Divisions 2 of Part 11 contains provision relating to the appointment and role of administrators of Aboriginal Land Councils. The proposed Division also:

- (a) requires an administrator of an Aboriginal Land Council to report at least once a month to the Minister, the New South Wales Aboriginal Land Council and, if the administrator has been appointed for a Local or Regional Aboriginal Land Council, that Council (proposed section 229), and
- (b) prohibits the administrator of a Local Aboriginal Land Council from disposing or otherwise dealing with land vested in or acquired by that Council without the consent of the Council (proposed section 230).

Division 3 of Part 11 deals with the failure to function of the New South Wales Aboriginal Land Council and the dissolution of Local and Regional Aboriginal Land Councils.

Part 12 Compliance directions

Part 12 provides that if the Registrar is satisfied that an Aboriginal Land Council or an officer of an Aboriginal Land Council or a councillor has failed to comply, or is not complying, with a specified provision or provisions of the Principal Act or of any regulations or rules made under that Act, the Registrar may issue a compliance direction to the Council or officer or councillor requiring the Council or officer or councillor to comply with that provision or those provisions within a time stated in the direction. The Registrar may not issue such a direction in relation to any matter that could constitute an offence or for which some other provision is made for the matter's determination (for example, other provision is made for disputed returns in councillors' elections).

If an Aboriginal Land Council or an officer of an Aboriginal Land Council or a councillor does not comply with a compliance direction, the Registrar may refer the matter to the Land and Environment Court for determination. The Land and Environment Court is to hear and determine the matter and may make binding directions concerning the matter.

Part 13 Dispute resolution

Part 13 provides for the resolution of certain disputes concerning the administration of Aboriginal Land Councils. The proposed Part does not apply to a dispute if it relates to a matter that could constitute an offence under the Principal Act or any other law or provision is made for the resolution or if determination of the dispute under another provision of that Act (other than under Part 12 of the Principal Act).

Part 13 provides that the New South Wales Aboriginal Land Council may, if the parties to a dispute have agreed:

- (a) attempt to resolve the dispute by mediation, conciliation or arbitration, or
- (b) refer the dispute to mediation, conciliation or arbitration by the Registrar or another independent person. (The Registrar is given the function of attempting to resolve such disputes by mediation, conciliation or arbitration.)

Part 13 also empowers the Registrar to refer a dispute to the Land and Environment Court for determination. The Court must hear and determine any such dispute and may make binding directions concerning the dispute.

Part 14 Miscellaneous

Part 14 contains provisions dealing with a number of matters, including the following:

- (a) exclusion of liability for acts done in good faith by certain persons,
- (b) delegation of functions by the Minister,
- (c) service of documents,
- (d) authentication of certain documents,
- (e) proof of certain matters,
- (f) proceedings for offences,
- (g) establishment of new Local or Regional Aboriginal Land Councils,
- (h) regulations,
- (i) savings, transitional and other provisions.

Schedule 1 [18] omits Schedule 2 to the Principal Act and inserts instead Schedule 1 (which contains machinery provisions relating to the Registrar) and Schedule 2 (which contains machinery provisions relating to the Aboriginal Land Councils Pecuniary Interest Tribunal).

Schedule 1 [19] makes a consequential amendment to Schedule 4.

Schedule 1 [20] amends clause 1A of Schedule 4 to the Principal Act to enable regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

Schedule 1 [21] inserts Part 5 into Schedule 4 to the Principal Act which contains a number of savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 1 [22] omits Schedules 5 and 6 to the Principal Act as a consequence of the incorporation, with modifications, of those provisions into the main body of the Principal Act.

Schedule 2 Amendment of other Acts and instruments

Schedule 2 makes a number of consequential amendments to the following Acts and instruments:

- (a) *Adoption Act 2000*,
- (b) *Children and Young Persons (Care and Protection) Act 1998*,
- (c) *Children (Care and Protection) Act 1987*,
- (d) *Crimes (Administration of Sentences) Regulation 2001*,
- (e) *Defamation Act 1974*,
- (f) *Freedom of Information Regulation 2000*,
- (g) *Land and Environment Court Act 1979*,
- (h) *Local Government Act 1993*,
- (i) *National Parks and Wildlife Act 1974*,
- (j) *Statutory and Other Offices Remuneration Act 1975*,
- (k) *Sydney Water Act 1994*,
- (l) *Water Management Act 2000*.

Note

The following sets out a table of provisions for the *Aboriginal Land Rights Act 1983* following the enactment of the proposed Act.

Aboriginal Land Rights Act—Table of Provisions

Part 1 Preliminary

- 1 Name of Act
- 2 Commencement
- 3 Purpose of Act
- 4 Definitions
- 5–34A (Repealed)

Part 2 Land rights

Division 1

- 35 (Repealed)

Division 2 Claimable Crown lands

- 36 Claims to Crown lands
- 36A Special provision concerning certain Crown lands having nature conservation value
- 37 Aboriginal lands in travelling stock reserves

Division 3 Acquisition of other lands

- 38 Purchase, lease etc of property
- 39 Acquisition of land

Division 4 Disposal and use of Aboriginal land

- 40 Disposal of land restricted
- 40AA Disposal of land subject to native title restricted
- 40AB Disposal of land reserved or dedicated under NPW Act restricted
- 40A Transfer of land from one Council to another
- 40B Lease, use etc of land
- 40C Sale etc of land by New South Wales Aboriginal Land Council
- 40D Sale etc of land by Local Aboriginal Land Council
- 41 Powers of Aboriginal Land Councils with respect to property
- 42 Appropriation or resumption of Aboriginal lands

Division 5 Rates

- 43 Exemption of Aboriginal lands from the payment of rates
- 44 Proceedings for non-payment of certain rates for Aboriginal lands barred
- 44A Payment of rates by NSW Aboriginal Land Council

Part 3 Mineral rights and mining

- 45 Mineral rights and mining on Aboriginal land
- 46 Fees or royalties for mining on Aboriginal land

Part 4 Hunting, fishing and gathering

- 47 Agreements to permit hunting, fishing or gathering
- 48 Access permits may be issued by the Court

Part 5 Local Aboriginal Land Councils

Division 1 Constitution of Local Aboriginal Land Councils and Local Aboriginal Land Council areas

- 49 Constitution of Local Aboriginal Land Council areas
- 50 Constitution of Local Aboriginal Land Councils
- 51 Objects of Local Aboriginal Land Councils
- 52 Functions of Local Aboriginal Land Councils

Division 2 Membership of Local Aboriginal Land Councils

- 53 Membership of Local Aboriginal Land Councils
- 54 Local Aboriginal Land Council membership rolls
- 55 Aboriginal persons may be member of more than one Local Aboriginal Land Council
- 56 Nomination of voting area
- 57 Suspension of members from attending Council meetings
- 58 Removal of person's name from membership roll
- 59 Membership rolls to be sent to NSW Aboriginal Land Council annually
- 60 Regulations concerning membership of Local Aboriginal Land Council and membership rolls

Division 3 Officers and Regional and Alternate Representatives of Local Aboriginal Land Councils

- 61 Chairperson, Secretary and Treasurer of Local Aboriginal Land Councils
- 62 Term of office of Chairperson, Secretary and Treasurer
- 63 Regional Representatives and Alternate Representatives
- 64 Qualification for office
- 65 Role of officers of Local Aboriginal Land Councils
- 66 Role of Alternate Regional Representatives
- 67 Disqualification from office
- 68 Removal from office
- 69 Vacancy in office
- 70 ADT may declare particular offices of Local Aboriginal Land Council vacant
- 71 Appeals to Supreme Court against order
- 72 Effect of order declaring vacancy

Division 4 Meetings of Local Aboriginal Land Councils

- 73 Meetings of Local Aboriginal Land Councils
- 74 Chairperson to preside at meetings
- 75 General procedure
- 76 Quorum
- 77 Voting

Division 5 Staff of Local Aboriginal Land Councils

- 78 Staff
- 79 Certain persons must not be employed
- 80 Appointments and promotion to be on merit
- 81 Consultants to be engaged on merit

Division 6 Delegations

- 82 General power of Local Aboriginal Land Council to delegate
- 83 Review of delegations

Division 7 Rules of Local Aboriginal Land Councils

- 84 Rules of Local Aboriginal Land Councils

Part 6 Regional Aboriginal Land Councils

Division 1 Constitution of Regional Aboriginal Land Councils and Regional Aboriginal Land Council areas

- 85 Constitution of Regional Aboriginal Land Council areas
- 86 Constitution of Regional Aboriginal Land Councils
- 87 Objects of Regional Aboriginal Land Councils
- 88 Functions of Regional Aboriginal Land Councils

Division 2 Membership of Regional Aboriginal Land Councils

- 89 Members of Regional Aboriginal Land Councils

Division 3 Officers of Regional Aboriginal Land Councils

- 90 Chairperson and other officers
- 91 Term of office of Chairperson, Secretary and Treasurer
- 92 Disqualification from office
- 93 Removal from office
- 94 Vacancy in office
- 95 ADT may declare particular offices of Regional Aboriginal Land Council vacant
- 96 Appeals to Supreme Court against order
- 97 Effect of order declaring vacancy

Division 4 Meetings of Regional Aboriginal Land Councils

- 98 Meetings of Regional Aboriginal Land Councils
- 99 Chairperson to preside at meetings
- 100 General procedure
- 101 Quorum
- 102 Voting

Division 5 Rules of Regional Aboriginal Land Councils

- 103 Rules of Regional Aboriginal Land Councils

Part 7 New South Wales Aboriginal Land Council

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

- 104 Constitution of NSW Aboriginal Land Council
- 105 Objects of New South Wales Aboriginal Land Council
- 106 Functions of the Council

Division 2 Members of NSW Aboriginal Land Council

- 107 Membership of New South Wales Aboriginal Land Council
- 108 Role of members of NSW Aboriginal Land Council
- 109 Term of office
- 110 Remuneration
- 111 Disqualification from office
- 112 Removal of councillors from office
- 113 Vacancy in office
- 114 Filling of casual vacancy
- 115 Office of particular member of the NSW Council may be declared vacant by ADT
- 116 Appeals to Supreme Court against order
- 117 Effect of order declaring vacancy

Division 3 Election of councillors

- 118 Conduct of elections
- 119 Who may vote
- 120 Who may stand for election
- 121 Timing of elections

Division 4 Declaration of election

- 122 Declaration of election
- 123 Councillors pending determination of disputed return

Division 5 Disputed returns

- 124 Method of disputing elections and returns
- 125 Powers of Court
- 126 Right of returning officer to be represented
- 127 Procedure
- 128 Immaterial errors not to invalidate election
- 129 Decisions to be final

Division 6 Officers of NSW Aboriginal Land Council

- 130 Chairperson and other officers
- 131 Removal from office

Division 7 Meetings of New South Wales Aboriginal Land Council

- 132 Meetings of New South Wales Aboriginal Land Council
- 133 Presiding councillor
- 134 Quorum
- 135 Voting
- 136 Minutes

Division 8 Rules of the NSW Aboriginal Land Council

- 137 Rules of the NSW Aboriginal Land Council

Division 9 Chief Executive Officer of New South Wales Aboriginal Land Council

- 138 Chief Executive Officer
- 139 Functions of Chief Executive Officer
- 140 Attendance of Chief Executive Officer at meetings
- 141 Filling of vacancy in position of Chief Executive Officer

Division 10 Staff of New South Wales Aboriginal Land Council

- 142 Staff organisation structure
- 143 Appointments and promotion to be on merit
- 144 Certain persons must not be employed
- 145 Consultants to be engaged on merit

Division 11 Delegations

- 146 General power of New South Wales Aboriginal Land Council to delegate
- 147 Delegations by Chief Executive Officer
- 148 Review of delegations

Part 8 Finance

Division 1 Establishment of accounts

- 149 NSW Aboriginal Land Council Account
- 150 Preservation of money in NSW Aboriginal Land Council Account
- 151 Regional Aboriginal Land Council Accounts
- 152 Local Aboriginal Land Council Accounts

Division 2 Keeping of accounts

- 153 Local and Regional Aboriginal Land Councils to keep accounts
- 154 Regulations may set criteria to judge satisfactory financial statements
- 155 Aboriginal Land Councils may request special auditor
- 156 Financial year of Aboriginal Land Councils
- 157 Budget of New South Wales Aboriginal Land Council
- 158 Budget of other Aboriginal Land Councils
- 159 Quarterly and six monthly reports by Aboriginal Land Councils
- 160 NSW Aboriginal Land Council may give other Councils directions regarding accounting
- 161 Annual reports

Division 3 Funding of Local and Regional Aboriginal Land Councils

- 162 Funding Agreements
- 163 Cessation of funding

Part 9 Registrar and Registers of Aboriginal Land Claims and Aboriginal Owners

Division 1 Registrar

- 164 Appointment of Registrar
- 165 Functions of Registrar

Division 2 Register of Aboriginal Land Claims

- 166 Register of Aboriginal Land Claims
- 167 Contents of Register of Aboriginal Land Claims
- 168 Registrar may request information from Crown Lands Minister
- 169 Regulations may provide for public inspection of Register

Division 3 Register of Aboriginal Owners

- 170 Register of Aboriginal Owners
- 171 Contents of Register of Aboriginal Owners
- 172 Requests for entry of names in Register
- 173 Requests for opening of parts of Register of Aboriginal Owners
- 174 Rectification of Register
- 175 Reference by Registrar to Land and Environment Court

Part 10 Honesty and disclosure of interests

Division 1 Honesty, care and diligence

- 176 Conduct of councillors, officers and staff of Aboriginal Land Councils

Division 2 Codes of conduct

- 177 Codes of conduct

Division 3 Aboriginal Land Councils Pecuniary Interest Tribunal

- 178 Establishment of Pecuniary Interest Tribunal
- 179 Constitution of Pecuniary Interest Tribunal
- 180 Functions of Pecuniary Interest Tribunal
- 181 Annual report

Division 4 Duties of disclosure

Subdivision 1 Preliminary

- 182 Definition of "pecuniary interest"
- 183 Persons who have pecuniary interests

Subdivision 2 Disclosure of pecuniary interests at meetings

- 184 Disclosure and presence in meetings
- 185 Disclosures to be recorded
- 186 General disclosure
- 187 Disclosure by consultants
- 188 Circumstances in which sections 184 and 187 are not breached

Division 5 Complaints concerning non-disclosure

Subdivision 1 Making of and inquiries regarding complaints

- 189 Complaints concerning failure to disclose pecuniary interests
- 190 Registrar may require further information
- 191 Inquiries regarding complaints
- 192 Decision not to inquire into complaint
- 193 Referral and investigation of complaints by other authorities
- 194 Pecuniary Interest Tribunal to be notified of inquiries
- 195 Persons to be notified of complaint
- 196 Reports of investigation of complaints by authorities
- 197 Presentation of reports to Pecuniary Interest Tribunal

Subdivision 2 Proceedings before the Pecuniary Interest Tribunal

- 198 Pecuniary Interest Tribunal to decide whether or not to conduct proceedings into a complaint
- 199 Circumstances in which Pecuniary Interest Tribunal may dispense with hearing
- 200 General conduct of proceedings
- 201 Private and public hearings
- 202 Representation at hearings
- 203 Presentation of cases at hearings
- 204 Power to summon witnesses and take evidence at hearings
- 205 Power to obtain documents
- 206 Privilege concerning answers and documents
- 207 Additional complaints
- 208 Adjournments
- 209 Release of information
- 210 Witnesses' expenses
- 211 Decision of Pecuniary Interest Tribunal
- 212 Standard of proof
- 213 Pecuniary Interest Tribunal to provide details of its decisions
- 214 Appeals to Supreme Court
- 215 Referral of matters by Pecuniary Interest Tribunal

Part 11 Investigation and administration of Aboriginal Land Councils

Division 1 Investigation of Aboriginal Land Councils

- 216 Appointment of investigator into Aboriginal Land Councils
- 217 Contents of investigator's instrument of appointment
- 218 Aboriginal Land Councils to assist investigators
- 219 Investigator to report
- 220 Minister may extend term of office of investigator
- 221 Minister may remove an investigator

Division 2 Administration of Aboriginal Land Councils

- 222 Administrators—Local and Regional Aboriginal Land Councils
- 223 Administrators—New South Wales Aboriginal Land Council
- 224 Contents of administrator's instrument of appointment
- 225 Certain persons ineligible to be administrators
- 226 Removal of office holders on appointment of administrator
- 227 Officers to assist administrator
- 228 Administrator of an Aboriginal Land Council may call meetings
- 229 Administrator to report monthly
- 230 Administrator may not buy or sell Local Aboriginal Land Council land without consent
- 231 Minister may extend term of office of administrator
- 232 Minister may remove an administrator

Division 3 Non-functioning Aboriginal Land Councils and dissolution of Aboriginal Land Councils

- 233 Failure of NSW Aboriginal Land Council to function
- 234 Dissolution of Local or Regional Aboriginal Land Councils

Part 12 Compliance directions

- 235 Registrar may issue compliance directions
- 236 Registrar may refer failure to comply to Court
- 237 Court to determine compliance matters

Explanatory note

Part 13 Dispute resolution

- 238 Application of Part
- 239 Mediation, conciliation or arbitration of disputes by NSW Aboriginal Land Council
- 240 Application of Commercial Arbitration Act 1984
- 241 References of disputes to Court

Part 14 Miscellaneous

- 242 Exclusion of personal liability
- 243 Delegation
- 244 Service of documents
- 245 Authentication of certain documents
- 246 Proof of certain matters not required
- 247 Aboriginal Land Councils not statutory bodies representing the Crown
- 248 Aboriginal Land Councils to be public authorities etc for certain purposes
- 249 Proceedings for offences
- 250 Establishment of new Local Aboriginal Land Councils
- 251 Establishment of new Regional Aboriginal Land Councils
- 252 Regulations
- 253 Savings, transitional and other provisions

Schedules

- 1 Provisions relating to the Registrar
- 2 Aboriginal Land Councils Pecuniary Interest Tribunal
- 3 (Repealed)
- 4 Savings, transitional and other provisions
- 5,6 (Repealed)