

# Aboriginal Land Rights Act 1983 No 42

[1983-42]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Aboriginal Land Rights Amendment Act 2001 No 118](#) (not commenced)
  - [Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)

### Authorisation

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# Aboriginal Land Rights Act 1983 No 42



New South Wales

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# Aboriginal Land Rights Act 1983 No 42



New South Wales

An Act to repeal the *Aborigines Act 1969* and to make provisions with respect to the land rights of Aborigines, including provisions for or with respect to the constitution of Aboriginal Land Councils, the vesting of land in those Councils, the acquisition of land by or for those Councils and the allocations of funds to and by those Councils; to amend certain other Acts; and to make provisions for certain other purposes.

WHEREAS:

- (1) Land in the State of New South Wales was traditionally owned and occupied by Aborigines:
- (2) Land is of spiritual, social, cultural and economic importance to Aborigines:
- (3) It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land:
- (4) It is accepted that as a result of past Government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation:

**BE** it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Aboriginal Land Rights Act 1983*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)



#### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**Aboriginal** means a person who:

- (a) is a member of the Aboriginal race of Australia,
- (b) identifies as an Aboriginal, and
- (c) is accepted by the Aboriginal community as an Aboriginal.

**Aboriginal Land Council** means the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council or a Local Aboriginal Land Council.

**Aboriginal owners** of land means the Aboriginals named as persons having a cultural association with the land in the register of Aboriginal owners kept under Part 8A.

**adult Aboriginal** means an Aboriginal who has attained the age of 18 years.

**Commonwealth Native Title Act** or **NTA** means the [Native Title Act 1993](#) of the Commonwealth.

**Court** means the Land and Environment Court.

**land** includes any estate or interest in land.

**Local Aboriginal Land Council** means a Local Aboriginal Land Council constituted under this Act.

**Local Aboriginal Land Council area** means a Local Aboriginal Land Council area constituted under this Act.

**native title** or **native title rights and interests** has the same meaning as in the Commonwealth Native Title Act.

**New South Wales Aboriginal Land Council** means the New South Wales Aboriginal Land Council constituted under this Act.

**NPW Act** means the [National Parks and Wildlife Act 1974](#).

**Regional Aboriginal Land Council** means a Regional Aboriginal Land Council constituted under this Act and, in relation to a Local Aboriginal Land Council, means the Regional Aboriginal Land Council constituted under this Act for the area in which the Local Aboriginal Land Council area is situated.

**Regional Aboriginal Land Council area** means a Regional Aboriginal Land Council area constituted under this Act.

**Registrar** means the Registrar appointed under this Act.

**regulations** means regulations made under this Act.

- (2) A reference in this Act to:
  - (a) a function includes a reference to a power, authority and duty, and
  - (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (3) The Chairperson of an Aboriginal Land Council may be referred to as the Chairman or Chairwoman, as the case requires.
- (4) Notes included in this Act are explanatory notes and do not form part of this Act.

## **Part 2 Local Aboriginal Land Councils**

### **5 Constitution of Local Aboriginal Land Council areas**

- (1) The Minister may, in the manner prescribed, constitute an area as a Local Aboriginal Land Council area.
- (2) The Governor may make regulations for or with respect to the constitution of Local Aboriginal Land Council areas.
- (3) Without affecting the generality of subsection (2), regulations may be made under that subsection for or with respect to:
  - (a) applications for the constitution of areas as Local Aboriginal Land Council areas,
  - (b) the making of recommendations to the Minister with respect to proposals to constitute Local Aboriginal Land Council areas,
  - (c) the lodging of objections against:
    - (i) the refusal of applications for the constitution of Local Aboriginal Land Council areas or the failure to deal with any such applications, and
    - (ii) proposals to constitute Local Aboriginal Land Council areas, and
  - (d) the reference to the Court of objections of the kind referred to in paragraph (c) and the hearing and determination by the Court of any such objections.

### **6 Constitution of Local Aboriginal Land Councils**

- (1) There is hereby constituted for each Local Aboriginal Land Council area a Local Aboriginal Land Council which shall be a body corporate.
- (2) The corporate name of a Local Aboriginal Land Council shall be "Local Aboriginal Land

Council” preceded by the name of the area of the Council.

- (3) All adult Aborigines who are listed in the Local Aboriginal Land Council roll for a Local Aboriginal Land Council area shall be members of the Local Aboriginal Land Council for that area.

## **7 Local Aboriginal Land Council rolls**

- (1) The Secretary of a Local Aboriginal Land Council shall, in respect of the Local Aboriginal Land Council area, prepare and maintain a Local Aboriginal Land Council roll.
- (2) The Secretary of a Local Aboriginal Land Council shall list on the roll for the Local Aboriginal Land Council area the names and addresses of those adult Aborigines who:
  - (a) reside within that area and who have requested in writing that they be enrolled as members of the Local Aboriginal Land Council, or
  - (b) have an association with that area and who, upon application made in writing, have been accepted by a meeting of that Council as members.
- (3) The Governor may make regulations for or with respect to:
  - (a) the preparation and maintenance of Local Aboriginal Land Council rolls,
  - (b) the particulars to be recorded in Local Aboriginal Land Council rolls,
  - (c) the removal of particulars from Local Aboriginal Land Council rolls,
  - (d) the lodging of objections against:
    - (i) the failure or refusal to list a person’s name and address on a Local Aboriginal Land Council roll, and
    - (ii) the removal of a person’s name and address from a Local Aboriginal Land Council roll, and
  - (e) the reference to the Court of objections of the kind referred to in paragraph (d) and the hearing and determination by the Court of any such objections.
- (4) Until a Secretary of a Local Aboriginal Land Council for a Local Aboriginal Land Council area is elected, the functions of a Secretary under this section in respect of the area shall be exercised by a person appointed by the Registrar for the purpose.

## **8 Meetings of Local Aboriginal Land Councils**

- (1) A Local Aboriginal Land Council shall hold its first meeting at a time (being a time as soon as practicable after its constitution) and place arranged by the Registrar.
- (2) Subject to subsection (3), a Local Aboriginal Land Council shall hold its second and

subsequent meetings at such times as the Council determines.

(3) A Local Aboriginal Land Council:

(a) shall hold ordinary meetings at least once in every 3 months, and

(b) shall hold annual meetings at the times, or within the periods, prescribed.

(4) Subject to this Act and the regulations, the procedure for the calling of meetings and the conduct of business at meetings of a Local Aboriginal Land Council shall be as determined by the Council.

## **9 Chairperson and other officers**

(1) The members of a Local Aboriginal Land Council shall at its first meeting and at each annual meeting elect a Chairperson, a Secretary and a Treasurer.

(2) Until a Chairperson is elected at the first meeting of a Local Aboriginal Land Council, the Registrar or a person appointed by the Registrar shall preside at that meeting.

(3) Subject to subsection (4), the Chairperson of a Local Aboriginal Land Council shall preside at meetings of the Council.

(4) In the absence of the Chairperson from a meeting of a Local Aboriginal Land Council, the members of the Council shall elect a member to preside at the meeting.

(5) Subject to the regulations, a term of office of a Chairperson, Secretary or Treasurer of a Local Aboriginal Land Council shall expire on his or her re-election for another term or on the election of his or her successor at the annual meeting of the Council next following his or her election.

(6) In the event of there being a vacancy in the office of a Chairperson, Secretary or Treasurer of a Local Aboriginal Land Council, a member of the Council may, in the manner prescribed, be elected to fill the vacancy.

## **10 Voting**

Subject to this Act, at a meeting of a Local Aboriginal Land Council at which a quorum is present a decision of a majority of the members of the Council present and voting is a decision of the Council.

## **11 Election of members of Regional Aboriginal Land Council**

(1) The members of a Local Aboriginal Land Council shall, at the Council's annual meeting or at such other times as may be prescribed, elect members to represent the Local Aboriginal Land Council as members of the Regional Aboriginal Land Council for the area in which the Local Aboriginal Land Council area is situated.

(2) A Local Aboriginal Land Council shall have not more than the prescribed number of

representatives as members of a Regional Aboriginal Land Council at any one time.

## **12 Functions of a Local Aboriginal Land Council**

(1) The functions of a Local Aboriginal Land Council are:

- (a) in accordance with any regulations, to acquire land and to hold or dispose of, or otherwise deal with, land vested in or acquired by the Council, and
  - (a1) to negotiate the acquisition by the Council or by the Council and one or more other Local Aboriginal Land Councils of lands of cultural significance to Aboriginals that are listed in Schedule 14 to the NPW Act and the lease of those lands to the Minister administering that Act, and
  - (a2) to submit proposals to the Director-General of National Parks and Wildlife for the listing in that Schedule of other lands of cultural significance to Aboriginals that are reserved or dedicated under the NPW Act, and
  - (a3) to negotiate the lease by the Council or by the Council and one or more other Local Aboriginal Land Councils of lands to which section 36A applies to the Minister administering the NPW Act, and
- (b) to make applications in writing to the New South Wales Aboriginal Land Council for the acquisition by the New South Wales Aboriginal Land Council of land on behalf of or to be vested in the Local Aboriginal Land Council, and
- (c) to make applications in writing to the New South Wales Aboriginal Land Council for the granting of funds to be applied solely to the payment of the administrative costs and expenses of the Local Aboriginal Land Council, and
- (d) to implement the wishes of its members (as decided at a meeting of the Council) with respect to:
  - (i) the acquisition, management, use, control and disposal of land, and
  - (ii) the acquisition, establishment and operation of enterprises, and
- (e) to consider applications to prospect or mine for minerals on its land and to make recommendations to the New South Wales Aboriginal Land Council, and
- (f) to make claims to Crown lands, and
- (g) to upgrade and extend residential accommodation for Aborigines in its area, and
- (h) to protect the interests of Aborigines in its area in relation to the acquisition, management, use, control and disposal of its land, and
- (i) to negotiate with persons desiring to use, occupy or gain access to any part of its land, and

(j) with the consent of the parties concerned, to conciliate disputes between individual Aborigines or groups of Aborigines in its area, and

(k) such other functions as are conferred or imposed on it by or under this or any other Act.

(2) A Local Aboriginal Land Council must, when exercising its functions with respect to lands that are the subject of a lease, or proposed lease, under Part 4A of the NPW Act, act in the best interests of the Aboriginal owners of the lands concerned.

**Note—**

Part 4A of the NPW Act deals with lands, reserved or dedicated under that Act, that are vested in an Aboriginal Land Council or Councils and are leased by that Council or those Councils to the Minister administering that Act.

### **12A Staff**

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

### **13 Rules of a Local Aboriginal Land Council**

(1) A Local Aboriginal Land Council shall, within such period as the Registrar directs, submit to the Registrar for approval rules in relation to the Council's functions or operations.

(2) A Local Aboriginal Land Council's rules may, with the approval of the Registrar, be amended, repealed or replaced from time to time.

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

(4) On the hearing of an appeal under subsection (3) the Court may direct the Registrar to approve of rules, or an amendment, a repeal or a replacement of rules, specified in the direction.

(5) A rule of a Local Aboriginal Land Council for the time being approved by the Registrar under this section shall, to the extent that it is not inconsistent with this Act or the regulations, be a rule of the Council.

(6) Until a Local Aboriginal Land Council makes its first rules in accordance with this section, its rules shall be the rules prescribed by the regulations as model rules.

## **Part 3 Regional Aboriginal Land Councils**

### **14 Constitution of Regional Aboriginal Land Council areas**

(1) The Minister, after considering any recommendation of the Registrar, may, by notice

published in the Gazette, constitute an area as a Regional Aboriginal Land Council area.

- (2) The boundaries and the name of a Regional Aboriginal Land Council area shall be as specified in the notice constituting the area.

### **15 Constitution of Regional Aboriginal Land Councils**

- (1) There is hereby constituted for each Regional Aboriginal Land Council area a Regional Aboriginal Land Council which shall be a body corporate.
- (2) The corporate name of a Regional Aboriginal Land Council shall be "Regional Aboriginal Land Council" preceded by the name of the area of the Council.
- (3) The members of each Regional Aboriginal Land Council shall be such members of the Local Aboriginal Land Councils, the areas of which are within the Regional Aboriginal Land Council area, as are for the time being elected under this Act to represent those Local Aboriginal Land Councils as members of that Regional Aboriginal Land Council.
- (4) Subject to the regulations, the term of office of a member of a Regional Aboriginal Land Council shall expire on the member's re-election for another term or on the election of the member's successor.
- (5) A member of a Regional Aboriginal Land Council shall, subject to the regulations, be entitled to receive from the funds of the Council such fees, allowances and expenses as the Council determines in respect of the member.

### **16 Meetings of Regional Aboriginal Land Councils**

- (1) A Regional Aboriginal Land Council shall hold its first meeting at a time (being a time as soon as practicable after its constitution) and place arranged by the Registrar.
- (2) Subject to subsection (3), a Regional Aboriginal Land Council shall hold its second and subsequent meetings at such times as the Council determines.
- (3) A Regional Aboriginal Land Council:
  - (a) shall hold ordinary meetings at least once in every 3 months, and
  - (b) shall hold annual meetings at the times, or within the periods, prescribed.
- (4) Subject to this Act and the regulations, the procedure for the calling of meetings and the conduct of business at meetings of a Regional Aboriginal Land Council shall be as determined by the Council.

### **17 Chairperson and other officers**

- (1) The members of a Regional Aboriginal Land Council shall at its first meeting and at each annual meeting elect a Chairperson, a Secretary and a Treasurer.

- (2) Until a Chairperson is elected at the first meeting of a Regional Aboriginal Land Council, the Registrar or a person appointed by the Registrar shall preside at that meeting.
- (3) Subject to subsection (4), the Chairperson of a Regional Aboriginal Land Council shall preside at meetings of the Council.
- (4) In the absence of the Chairperson from a meeting of a Regional Aboriginal Land Council, the members of the Council shall elect a member to preside at the meeting.
- (5) Subject to the regulations, a term of office of a Chairperson, Secretary or Treasurer of a Regional Aboriginal Land Council shall expire on his or her re-election for another term or on the election of his or her successor at the annual meeting of the Council next following his or her election.
- (6) In the event of there being a vacancy in the office of a Chairperson, Secretary or Treasurer of a Regional Aboriginal Land Council, a member of the Council may, in the manner prescribed, be elected to fill the vacancy.

## **18 Voting**

At a meeting of a Regional Aboriginal Land Council at which a quorum is present a decision of a majority of the members of the Council present and voting is a decision of the Council.

## **19 (Repealed)**

## **20 Functions of a Regional Aboriginal Land Council**

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

- (a) to compile and maintain a register, containing the prescribed particulars, of all Local Aboriginal Land Councils within its area,
- (b) to provide assistance, when requested, to Local Aboriginal Land Councils within its area in the preparation of claims to Crown land or the negotiation of the purchase or sale of land,
- (c) to provide assistance, when requested, to Local Aboriginal Land Councils within its area in respect of the establishment and keeping of accounts and the preparation and submission of budgets and financial reports in accordance with this Act,
- (d) to provide advice and such further assistance as is required from time to time by Local Aboriginal Land Councils within its area,
- (e) to assist the New South Wales Aboriginal Land Council to conciliate disputes between Local Aboriginal Land Councils within its area or between those Councils and individuals or between individual members of those Councils,



- (f) such other functions as are conferred or imposed on it by or under this or any other Act.

## **21 Rules of a Regional Aboriginal Land Council**

- (1) A Regional Aboriginal Land Council shall, within such period as the Registrar directs, submit to the Registrar for approval rules in relation to the Council's functions or operations.
- (2) A Regional Aboriginal Land Council's rules may, with the approval of the Registrar, be amended, repealed or replaced from time to time.
- (3) A Regional Aboriginal Land Council may appeal to the Court against the Registrar's refusal to approve of rules or to approve of an amendment, a repeal or a replacement of its rules.
- (4) On the hearing of an appeal under subsection (3) the Court may direct the Registrar to approve of rules, or an amendment, a repeal or a replacement of rules, specified in the direction.
- (5) A rule of a Regional Aboriginal Land Council for the time being approved by the Registrar under this section shall, to the extent that it is not inconsistent with this Act or the regulations, be a rule of the Council.
- (6) Until a Regional Aboriginal Land Council makes its first rules in accordance with this section, its rules shall be the rules prescribed by the regulations as model rules.

## **Part 4 New South Wales Aboriginal Land Council**

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

#### **22 Constitution of NSW Aboriginal Land Council**

- (1) There is hereby constituted a New South Wales Aboriginal Land Council which shall be a body corporate under the corporate name of "New South Wales Aboriginal Land Council".
- (2) The Council is to consist of full-time Aboriginal councillors equal in number to the number of Regional Aboriginal Land Council areas.
- (3) Each councillor is to be elected in the manner specified in Division 2 to represent a Regional Aboriginal Land Council area.
- (4) Schedule 5 has effect with respect to councillors.
- (5) Schedule 6 has effect with respect to the procedure of the New South Wales Aboriginal Land Council.

### **23 Functions of the Council**

- (1) The functions of the New South Wales Aboriginal Land Council are as follows:
- (a) to administer the New South Wales Aboriginal Land Council Account and the Mining Royalties Account established under this Act,
  - (b) to grant funds for the payment of the administrative costs and expenses of Regional and Local Aboriginal Land Councils,
  - (c) to acquire land on its own behalf or on behalf of or to be vested in a Local Aboriginal Land Council and to transfer land acquired on behalf of a Local Aboriginal Land Council to such a Council,
  - (c1) to negotiate the acquisition by the Council or by one or more Local Aboriginal Land Councils of lands of cultural significance to Aboriginals that are listed in Schedule 14 to the NPW Act and the lease of those lands to the Minister administering that Act,
  - (c2) to submit proposals to the Director-General of National Parks and Wildlife for the listing in that Schedule of other lands of cultural significance to Aboriginals that are reserved or dedicated under the NPW Act,
  - (c3) to negotiate the lease by the Council or by one or more Local Aboriginal Land Councils of lands to which section 36A applies to the Minister administering the NPW Act,
  - (d) to determine and approve or disapprove of the terms and conditions of agreements proposed by Local Aboriginal Land Councils to allow mining or mineral exploration on land,
  - (e) to make claims to Crown lands, either on its own behalf or, if requested by a Local Aboriginal Land Council, on behalf of that Council,
  - (f) with the agreement of a Local Aboriginal Land Council, to manage any of the affairs of that Council,
  - (g) to conciliate disputes between other Aboriginal Land Councils or between those Councils and individuals or between individual members of those Councils,
  - (h) to make grants or lend money to, or invest money for or on behalf of, Aboriginals,
  - (i) to hold, dispose of, or otherwise deal with land vested in or acquired by it,
  - (j) to ensure that Regional and Local Aboriginal Land Councils comply with this Act in respect of the establishment and keeping of accounts and the preparation and submission of budgets and financial reports,

- (k) to ensure that elections for the Chairpersons and other officers of Regional and Local Aboriginal Land Councils are conducted in accordance with this Act,
  - (l) to advise the Minister on matters relating to Aboriginal land rights,
  - (ll) to exercise the functions conferred or imposed, by the Commonwealth Native Title Act, on a representative Aboriginal/Torres Strait Islander body (within the meaning of that Act) if the Council is determined to be such a body by the relevant Commonwealth Minister under that Act,
  - (m) to exercise such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) The New South Wales Aboriginal Land Council must, when exercising its functions with respect to lands that are the subject of a lease, or proposed lease, under Part 4A of the NPW Act, act in the best interests of the Aboriginal owners of the lands concerned.

**Note—**

Part 4A of the NPW Act deals with lands, reserved or dedicated under that Act, that are vested in an Aboriginal Land Council or Councils and are leased by that Council or those Councils to the Minister administering that Act.

## **24 Rules of the NSW Aboriginal Land Council**

- (1) The New South Wales Aboriginal Land Council must, within such period as the Registrar directs, submit to the Registrar for approval rules in relation to the Council's functions or operations.
- (2) The New South Wales Aboriginal Land Council's rules may, with the approval of the Registrar, be amended, repealed or replaced from time to time by the Council.
- (3) The New South Wales Aboriginal Land Council may appeal to the Court against the Registrar's refusal to approve of rules or to approve of an amendment, a repeal or a replacement of its rules.
- (4) On the hearing of such an appeal, the Court may direct the Registrar to approve of rules, or an amendment, repeal or replacement of rules, specified in the direction.
- (5) A rule of the New South Wales Aboriginal Land Council for the time being approved by the Registrar under this section is a rule of the Council but it has no effect to the extent to which it is inconsistent with this Act or the regulations.
- (6) Until the New South Wales Aboriginal Land Council makes its first rules in accordance with this section, its rules are the rules prescribed by the regulations as its rules.

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

## **25 Conduct of elections**

- (1) The regulations may make provision for or with respect to the election of councillors of the New South Wales Aboriginal Land Council.
- (2) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, is to be the returning officer for the election of those councillors.
- (3) The returning officer has the functions conferred or imposed by the regulations in relation to the elections.

## **26 Who may vote**

- (1) A person is entitled to vote at an election for a councillor to represent a Regional Aboriginal Land Council area on the New South Wales Aboriginal Land Council if the person is a member of a Local Aboriginal Land Council within the area.
- (2) However, a person is not entitled to vote more than once in an election of all councillors of the New South Wales Aboriginal Land Council if that person is a member of more than one Local Aboriginal Land Council:
  - (a) within the same Regional Aboriginal Land Council area, or
  - (b) in different Regional Aboriginal Land Council areas.
- (3) A person who is a member of more than one Local Aboriginal Land Council:
  - (a) within the same Regional Aboriginal Land Council area, or
  - (b) in different Regional Aboriginal Land Council areas,is only entitled to cast his or her vote in respect of the Local Aboriginal Land Council area in which the person ordinarily resides.

## **27 Who may stand for election**

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

### **27A Timing of elections**

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

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

## **Division 2A Declaration of election**

### **27AA Declaration of election**

If the returning officer for an election of councillors of the New South Wales Aboriginal Land Council is advised by a regional electoral officer that the result of the counting of votes is that a candidate has been elected, the returning officer must immediately publicly declare the candidate elected as a councillor.

### **27AB Office holders pending determination of disputed return**

- (1) Section 27AA applies even if the election of the candidate (or of any other candidate in the election) is the subject of an application under section 27AC disputing the validity of the election of the candidate.
- (2) A candidate who is publicly declared elected as a councillor by the returning officer holds that office until the determination of any proceedings disputing the validity of the election of the candidate.
- (3) A candidate referred to in subsection (2) is taken to hold office, and is competent to carry out all the functions and duties of a duly elected councillor, from the date on which the returning officer declares the candidate elected, until:
  - (a) the Court hearing an application under section 27AC disputing the validity of the election of the candidate determines otherwise, or
  - (b) the term of office of the councillor expires or becomes vacant,whichever is the earlier.
- (4) The New South Wales Aboriginal Land Council in which a candidate referred to in subsection (2) holds office is not invalidly constituted for that reason.

## **Division 2B Disputed returns**

### **27AC Method of disputing elections and returns**

- (1) The validity of an election for a councillor to represent a Regional Aboriginal Land Council area, or of any return or statement showing the voting in any such election, may be disputed by an application to the Court, and not otherwise.
- (2) Any person may make an application to the Court under this section within 28 days after the returning officer has publicly declared the result of the election that is the subject of the application.

### **27AD Powers of Court**

In determining an application under section 27AC, the Court has the same powers as are conferred by section 161 of the *Parliamentary Electorates and Elections Act 1912* on the

Court of Disputed Returns.

**27AE Right of returning officer to be represented**

The returning officer is entitled to be represented at the hearing of an application under section 27AC.

**27AF Procedure**

- (1) The procedure of the Court on an application under section 27AC is to be determined by rules of Court, or in the absence of rules of Court, by the Court or a judge of the Court.
- (2) The Court is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.
- (3) Despite section 27AD, the Court may make an order for costs in respect of an application under section 27AC only if the Court is satisfied that there are exceptional circumstances that warrant the making of such an order.

**27AG Immaterial errors not to invalidate election**

- (1) An election of councillors of the New South Wales Aboriginal Land Council, or any return or statement showing the voting in an election, is not invalid because of:
  - (a) any delay in taking the votes of the electors or in making any statement or return, or
  - (b) the absence of any officer, or
  - (c) the error or omission of any officer,that could not have affected the result of the election.
- (2) If a person was prevented from voting in an election because of the absence of any officer, or the error or omission of any officer, the Court must not admit any evidence of the way the person intended to vote in order to determine whether or not the absence, error or omission could have affected the result of the election.

**27AH Decisions to be final**

- (1) A decision of the Court in respect of an application under section 27AC is final and conclusive and without appeal, and is not to be questioned in any way.
- (2) Section 58 of the [Land and Environment Court Act 1979](#) does not apply to any such decision of the Court.

**Division 3 Staff**

### **27B Staff**

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

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

### **27C Industrial Authority to be employer for industrial purposes**

- (1) The Public Employment Industrial Relations Authority is to be the employer of staff of the New South Wales Aboriginal Land Council for the purposes of any proceedings relating to such staff held before a competent tribunal having jurisdiction to deal with industrial matters.
- (2) The salary, wages or other remuneration and conditions of employment of a staff member are, except in so far as provision is otherwise made by law, such as may be determined from time to time by the Public Employment Industrial Relations Authority.
- (3) A staff member may sue for and recover the amount of the remuneration of the staff member that is determined under this section.

### **27D Industrial Authority may enter into agreements**

- (1) The Public Employment Industrial Relations Authority may enter into an agreement with any association or organisation representing a group or class of staff members of the New South Wales Aboriginal Land Council with respect to industrial matters.
- (2) An agreement under this section binds all staff members in the class or group affected by the agreement, and no such staff member (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.

### **27E Consultants**

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

## **Part 5 Finance**

### **Division 1 Establishment of accounts**

#### **28 Annual payment of 7.5 per cent of land tax into the NSW Aboriginal Land Council Account**

- (1) There shall be paid into the New South Wales Aboriginal Land Council Account in 1984 and in each succeeding year up to and including 1998 out of the Consolidated Fund an amount equal to 7.5 per cent of the amount certified from time to time by the

Treasurer as having been paid as land tax under the *Land Tax Management Act 1956* in respect of the previous year.

- (2) The amounts required by subsection (1) to be paid into the New South Wales Aboriginal Land Council Account are hereby appropriated out of the Consolidated Fund.

## **29 NSW Aboriginal Land Council Account**

- (1) The New South Wales Aboriginal Land Council shall establish in a bank, building society or credit union an account named the “New South Wales Aboriginal Land Council Account” into which shall be deposited:
  - (a) money provided to that Council by Parliament for the purposes of this Act, and
  - (b) any other money received by that Council and not required by or under this or any other Act to be paid into any other account or fund,and from which shall be paid:
  - (c) money to be provided from that Account to Regional Aboriginal Land Councils and Local Aboriginal Land Councils for the purposes of this Act,
  - (d) amounts required to meet expenditure incurred by the New South Wales Aboriginal Land Council in the execution or administration of this Act, and
  - (e) any other payments authorised by or under this or any other Act.
- (2) Expenditure incurred in the execution or administration of this Act includes:
  - (a) the payment of the salaries of the members of the New South Wales Aboriginal Land Council and of the staff it employs, and
  - (b) the cost of the election of members of that Council (including the costs incurred by the Electoral Commissioner for New South Wales).
- (3) Money to the credit of the Account may be invested in any manner authorised by the regulations.

## **29A Investment of money in NSW Aboriginal Land Council Account**

- (1) Fifty per cent of the money paid pursuant to section 28 into the New South Wales Aboriginal Land Council Account in the year 1984 and in succeeding years shall be and remain, together with the interest thereon, invested in accordance with the regulations and shall not be disbursed.
- (2) The money invested in accordance with this section, and interest accruing on the money up to 31 December 1998, may not be disbursed except for the purpose of paying any costs incurred in investing the money (including the cost of obtaining



investment advice).

- (3) Interest accruing after 31 December 1998 on money invested in accordance with this section may be disbursed.

### **30 Regional Aboriginal Land Council Accounts**

- (1) Each Regional Aboriginal Land Council shall establish in a bank, building society or credit union an account into which shall be deposited:

- (a) money received from the New South Wales Aboriginal Land Council, and
- (b) any other money received by the Regional Aboriginal Land Council and not required by or under this or any other Act to be paid into any other account or fund,

and from which shall be paid:

- (c) (Repealed)
  - (d) amounts required to meet expenditure incurred by the Regional Aboriginal Land Council in the execution or administration of this Act, and
  - (e) any other payments authorised by or under this or any other Act.
- (2) Money to the credit of the account may be invested in any manner authorised by the regulations.

### **31 Local Aboriginal Land Council Accounts**

- (1) Each Local Aboriginal Land Council shall establish in a bank, building society or credit union an account into which shall be deposited:

- (a) money received from the New South Wales Aboriginal Land Council for or in respect of the acquisition of land, and
- (b) any other money received by the Local Aboriginal Land Council and not required by or under this or any other Act to be paid into any other account or fund,

and from which shall be paid:

- (c) amounts required for the acquisition of land by the Council where that acquisition has been approved in accordance with this Act,
  - (d) amounts required to meet expenditure incurred by the Council in the execution or administration of this Act, and
  - (e) any other payments authorised by or under this or any other Act.
- (2) Money to the credit of the account may be invested in any manner authorised by the

regulations.

## **Division 2 Keeping of accounts**

### **32 Aboriginal Land Councils to keep accounts**

- (1) Each Local Aboriginal Land Council and each Regional Aboriginal Land Council must cause proper accounts and records to be kept in relation to all its operations.
- (2) Each such Council must prepare financial statements for each financial year of the Council in accordance with section 41B (1) of the *Public Finance and Audit Act 1983*.
- (3) The financial statements must be submitted for verification and certification to an auditor selected by the Council from a list of auditors compiled in the manner prescribed by the regulations.
- (4) The financial statements must be prepared and submitted to the auditor not later than 6 weeks after the end of the financial year to which they relate.
- (5) Each such Council must furnish to the New South Wales Aboriginal Land Council and to the Minister the audited financial statements and a certificate of the auditor, in a form prescribed by the regulations, not later than 4 months after the end of each financial year.

### **33 Financial year of Aboriginal Land Councils**

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

### **33A-33D (Repealed)**

### **34 Budget of New South Wales Aboriginal Land Council**

- (1) The New South Wales Aboriginal Land Council must, not less than 6 weeks before the commencement of each financial year, prepare and submit for the approval of the Minister a detailed budget relating to its proposed operations during that financial year.
- (2) In determining whether or not to approve a budget, the Minister may seek from the Council, and the Council must furnish to the Minister, such information as the Minister requests relating to the budget.
- (3) The Council must, if directed to do so by the Minister, prepare and submit to the Minister within 4 weeks of the end of each quarter of each financial year a report specifying the amounts of funds granted during the quarter by the Council to other Aboriginal Land Councils and the purposes for which the funds were granted.
- (4) The Minister may give directions, not inconsistent with this Act or the regulations, to the Council with respect to the establishment and monitoring of a uniform system of

accounting by Aboriginal Land Councils, the form, contents and method of preparation of budgets and quarterly reports by those Councils and other matters relating to the keeping of financial records and the making of financial reports by those Councils.

- (5) The Minister is to prepare a report in writing of the Minister's reasons for giving any such directions and is to cause a copy of the report to be laid before both Houses of Parliament as soon as practicable after the directions are given.
- (6) The New South Wales Aboriginal Land Council must comply with a direction given to it by the Minister under this section.

#### **34A Budget of other Aboriginal Land Councils**

- (1) Each Regional and Local Aboriginal Land Council must, not less than 6 weeks before the commencement of each financial year, prepare and submit for the approval of the New South Wales Aboriginal Land Council a detailed budget relating to its proposed operations during that financial year.
- (2) The New South Wales Aboriginal Land Council may seek information relating to the budget from a Regional or Local Aboriginal Land Council at any time.

#### **34B Quarterly reports by Regional and Local Aboriginal Land Councils**

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

#### **34C Cessation of funding**

- (1) The New South Wales Aboriginal Land Council must cease immediately to provide any funds to a Regional or Local Aboriginal Land Council if the Regional or Local Aboriginal Land Council:
  - (a) fails to obtain a certificate, or is unable to obtain a satisfactory certificate, of an auditor under section 32, or
  - (b) otherwise fails to comply with section 32, 34A or 34B, or
  - (c) is the subject of a report by an investigator appointed in accordance with section 56D recommending that funds should cease to be provided to the Council.
- (2) The New South Wales Aboriginal Land Council may not resume providing funds to such a Regional or Local Aboriginal Land Council until:
  - (a) the Regional or Local Aboriginal Land Council obtains a satisfactory certificate of an auditor under section 32 or otherwise complies with section 32, 34A or 34B, or

(b) the Minister, after consideration of a report of:

- (i) an investigator appointed in accordance with section 56D, or
- (ii) an administrator of the area of the Council,

notifies the New South Wales Aboriginal Land Council in writing that the provision of funds may be resumed.

- (3) Nothing in this section prevents funds from being provided to a Regional or Local Aboriginal Land Council for the area for which an administrator has been appointed under section 57.
- (4) Any payments which the Council is unable to make as a result of the cessation of funding may be paid by the New South Wales Aboriginal Land Council from money held by it in the New South Wales Aboriginal Land Council Account.

## **Part 6 Land rights**

### **Division 1 Transfer of former Trust lands to Aboriginal Land Councils**

#### **35 Vesting of former Trust lands in Aboriginal Land Councils**

- (1) In this section, **former Trust lands** means lands vested in The Aboriginal Lands Trust constituted under the *Aborigines Act 1969* as in force immediately before the repeal of that Act by this Act.
- (2) Any former Trust lands:
  - (a) within a Local Aboriginal Land Council area for which a Local Aboriginal Land Council is constituted are hereby vested in that Local Aboriginal Land Council, and
  - (b) not within a Local Aboriginal Land Council area for which a Local Aboriginal Land Council is constituted are hereby vested in the New South Wales Aboriginal Land Council.
- (3) Where a Local Aboriginal Land Council is constituted for a Local Aboriginal Land Council area after the commencement of this section, the New South Wales Aboriginal Land Council shall, as soon as practicable after that constitution, by notification published in the Gazette vest any former Trust lands within that area in that Local Aboriginal Land Council.
- (4) Upon the publication of a notification under subsection (3), the former Trust lands specified in the notification shall vest in the Local Aboriginal Land Council so specified.

## Division 2 Claimable Crown lands

### 36 Claims to Crown lands

- (1) In this section, except in so far as the context or subject-matter otherwise indicates or requires:

**claimable Crown lands** means lands vested in Her Majesty that, when a claim is made for the lands under this Division:

- (a) are able to be lawfully sold or leased, or are reserved or dedicated for any purpose, under the [Crown Lands Consolidation Act 1913](#) or the [Western Lands Act 1901](#),
- (b) are not lawfully used or occupied,
- (b1) do not comprise lands which, in the opinion of a Crown Lands Minister, are needed or are likely to be needed as residential lands,
- (c) are not needed, nor likely to be needed, for an essential public purpose, and
- (d) do not comprise lands that are the subject of an application for a determination of native title (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the Commonwealth Native Title Act, and
- (e) do not comprise lands that are the subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act) (other than an approved determination that no native title exists in the lands).

**Crown Lands Minister** means the Minister for the time being administering any provisions of the [Crown Lands Consolidation Act 1913](#) or the [Western Lands Act 1901](#) under which lands are able to be sold or leased.

- (2) The New South Wales Aboriginal Land Council may make a claim for land on its own behalf or on behalf of one or more Local Aboriginal Land Councils.
- (3) One or more Local Aboriginal Land Councils may make a claim for land within its or their area or, with the approval of the Registrar, outside its or their area.
- (4) A claim under subsection (2) or (3):
  - (a) shall be in writing and, if a form for making such a claim has been prescribed, shall be in or to the effect of that form,
  - (b) shall describe or specify the lands in respect of which it is made,
  - (b1) (Repealed)

- (c) shall be lodged with the Registrar, who shall refer a copy thereof (together with a copy of any approval necessary under subsection (3)) to the Crown Lands Minister or, if there is more than one Crown Lands Minister, to each of them.
- (5) A Crown Lands Minister to whom a claim for lands (being lands which are, or, but for any restriction on their sale or lease, would be, able to be sold or leased under a provision of an Act administered by the Crown Lands Minister) has been referred under subsection (4) shall:
- (a) if the Crown Lands Minister is satisfied that:
- (i) the whole of the lands claimed is claimable Crown lands, or
  - (ii) part only of the lands claimed is claimable Crown lands,
- grant the claim by transferring to the claimant Aboriginal Land Council (or, where the claim is made by the New South Wales Aboriginal Land Council, to a Local Aboriginal Land Council (if any) nominated by the New South Wales Aboriginal Land Council) the whole or that part of the lands claimed, as the case may be, or
- (b) if the Crown Lands Minister is satisfied that:
- (i) the whole of the lands claimed is not claimable Crown lands, or
  - (ii) part of the lands claimed is not claimable Crown lands,
- refuse the claim or refuse the claim to the extent that it applies to that part, as the case may require.
- (5A) Where, under subsection (5), a Crown Lands Minister is not satisfied that the whole or part of the lands claimed is claimable Crown lands because the lands are needed, or likely to be needed, for an essential public purpose, but that the need for the lands for the public purpose would be met if the claim were to be granted in whole or in part subject to the imposition of a condition (whether by way of covenant or easement or in any other form) relating to the use of the lands, the Crown Lands Minister may, notwithstanding that subsection, where the condition is agreed to by the Aboriginal Land Council making the claim, grant the claim under that subsection subject to the imposition of the condition.
- (6) An Aboriginal Land Council may appeal to the Court against a refusal under subsection (5) (b) of a claim made by it.
- (7) The Court shall hear and determine any appeal made to it under subsection (6) in respect of any lands claimed and may, if the relevant Crown Lands Minister fails to satisfy the Court that the lands or a part thereof are not or is not claimable Crown lands, order that the lands or the part, as the case may be, be transferred to the claimant Aboriginal Land Council or, where the claim is made by the New South Wales Aboriginal Land Council, to a Local Aboriginal Land Council (if any) nominated by the

New South Wales Aboriginal Land Council.

(8) A certificate being:

- (a) a certificate issued by a Crown Lands Minister stating that any land the subject of a claim under this section and specified in the certificate is needed or is likely to be needed as residential land, or
- (b) a certificate issued by a Crown Lands Minister, after consultation with the Minister administering this Act, stating that any land the subject of a claim under this section and specified in the certificate is needed or likely to be needed for an essential public purpose,

shall be accepted as final and conclusive evidence of the matters set out in the certificate and shall not be called into question in any proceedings nor liable to appeal or review on any grounds whatever.

(9) Except as provided by subsection (9A), any transfer of lands to an Aboriginal Land Council under this section shall be for an estate in fee simple but shall be subject to any native title rights and interests existing in relation to the lands immediately before the transfer.

(9A) Where the transfer of lands to an Aboriginal Land Council under this section is of land to which the [Western Lands Act 1901](#) applies but which is not within an area determined by the Minister administering that Act as being the urban area of a city, town or village, the transfer shall be effected by the granting to the Council of a lease in perpetuity under that Act but shall be subject to any native title rights and interests existing in relation to the lands immediately before the transfer.

(9B) A lease referred to in subsection (9A):

- (a) may be granted without the necessity for the payment of any rent under the lease or may require the payment of a nominal rent, and
- (b) notwithstanding the [Western Lands Act 1901](#), shall not be cancelled unless the Minister administering that Act has consulted with the Minister administering this Act.

(9C) Land transferred under this section to 2 or more Aboriginal Land Councils may be transferred to those Councils as joint tenants or as tenants in common.

(10) A transfer of lands pursuant to this section operates to revoke any dedication or reservation under the [Crown Lands Consolidation Act 1913](#) to which the lands were subject immediately before the transfer.

(11) Where, by reason of the existence of an easement over them, any lands claimed under this section could not, but for this subsection, be regarded by a Crown Lands

Minister as claimable Crown lands, the Crown Lands Minister may, for the purposes of this section, treat the lands as claimable Crown lands.

- (12) A transfer of lands pursuant to this section shall be subject to any easements affecting the lands immediately before the transfer or any condition imposed under subsection (5A).
- (13) Where the transfer of lands in accordance with this section would not, but for this subsection, be authorised by the *Crown Lands Consolidation Act 1913* or the *Western Lands Act 1901*, the transfer of the lands in accordance with this section shall be deemed to have been authorised by whichever of those Acts the lands were subject to immediately before the transfer.
- (14) The New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council or a Local Aboriginal Land Council may request a Crown Lands Minister to supply or cause to be supplied to it such information in relation to the Crown land or dealings in Crown land as is specified in the request and the Crown Lands Minister shall, so far as is reasonably practicable, comply with that request.
- (15) Stamp duty under the *Stamp Duties Act 1920* shall not be payable in respect of a transfer of lands in accordance with this section.

### **36A Special provision concerning certain Crown lands having nature conservation value**

- (1) This section applies in relation to lands that:
  - (a) are the subject of a claim by one or more Aboriginal Land Councils under section 36, and
  - (b) the Crown Lands Minister is satisfied would be claimable Crown lands except for the fact that the lands are needed, or likely to be needed, for the essential public purpose of nature conservation.
- (2) If the Aboriginal Land Council or Councils making the claim agree to the imposition of the conditions that, before the grant of a claim to lands to which this section applies, the Aboriginal Land Council or Councils:
  - (a) must negotiate a lease of the lands, that complies with the requirements of Part 4A of the NPW Act, with the Minister administering that Act, and
  - (b) must agree:
    - (i) to enter into a lease of the lands to the Minister administering the NPW Act in the terms negotiated in accordance with paragraph (a), and
    - (ii) to the simultaneous reservation or dedication of the lands under the NPW Act, and



- (iii) to hold the lands as lands reserved or dedicated under the NPW Act, and
- (iv) to comply with the requirements of the NPW Act and, in particular, the requirements of Part 4A of that Act in relation to the lands,

the Crown Lands Minister may, despite section 36 (5) (b), grant a claim to lands to which this section applies.

**Note—**

Part 4A of the NPW Act deals with lands, reserved or dedicated under that Act, that are vested in an Aboriginal Land Council or Councils and are leased by that Council or those Councils to the Minister administering that Act.

- (3) The Crown Lands Minister must not grant a claim to lands to which this section applies unless the Minister administering the NPW Act:
  - (a) has agreed to the reservation or dedication of the lands under Division 4 of Part 4A of that Act, and
  - (b) has notified the Crown Lands Minister in writing that a lease, negotiated in pursuance of subsection (2) with the Aboriginal Land Council or Councils concerned, is acceptable to the Minister and has been executed in escrow by the proposed parties to it.

**Note—**

Division 4 of Part 4A of the NPW Act deals with the reservation or dedication and leasing under that Act of lands to which section 36A applies that have been granted by the Crown Lands Minister to an Aboriginal Land Council or Councils under this Act.

- (4) If a claim by one or more Aboriginal Land Councils relates partly to lands to which this section applies and partly to other lands, nothing in this section prevents the Crown Lands Minister from granting the claim:
  - (a) as to so much of the lands to which this section applies—subject to and in accordance with this section, and
  - (b) as to the balance of the lands—in accordance with the other provisions of this Part.
- (5) This section does not limit section 36 and the provisions of that section (in so far as they are applicable) apply to the lands to which this section applies, and to their transfer.
- (6) Parts 7 and 8 do not apply to lands to which this section applies on and from the date of their reservation or dedication under the NPW Act.
- (7) In this section, ***claimable Crown lands*** and ***Crown Lands Minister*** have the same meanings as in section 36.

### **37 Aboriginal lands in travelling stock reserves**

- (1) Where a claim by an Aboriginal Land Council is lodged under section 36 in respect of land which is or is part of a travelling stock reserve within the meaning of the *Rural Lands Protection Act 1998* (not being a travelling stock reserve in the Western Division within the meaning of the *Crown Lands Act 1989*), the Registrar shall, in addition to complying with section 36 (4) (c), refer a copy of the claim to the Pastures Protection Board for the district in which that land is situated.
- (2) This section has effect notwithstanding the provisions of the *Rural Lands Protection Act 1998* or *Crown Lands Act 1989*.
- (3) Subject to subsection (4), the Crown Lands Minister within the meaning of section 36 may, in respect of the land referred to in subsection (1), enter into an agreement with the claimant Aboriginal Land Council so referred to, so as to achieve the following purposes:
  - (a) the vesting of the freehold title to that land, subject to any existing easements, in the claimant Aboriginal Land Council,
  - (b) the leasing in perpetuity of that land to Her Majesty at a nominal rent,
  - (c) the preparation of a plan of management in respect of that land giving the claimant Aboriginal Land Council or Aborigines defined rights, or conferring or imposing on the claimant Aboriginal Land Council or on Aborigines defined functions, in respect of that land.
- (4) The Minister referred to in subsection (3) shall not enter into an agreement under that subsection in respect of land unless the Minister is satisfied that Aborigines have traditional rights to the land or that Aborigines have had a long association with the land.
- (4A) The Minister referred to in subsection (3) shall not enter into an agreement under that subsection in respect of land which is or is part of a travelling stock reserve within the meaning of the *Rural Lands Protection Act 1998* without the approval of the Minister administering that Act.
- (5) For the purposes of giving effect to an agreement referred to in subsection (3):
  - (a) the Minister so referred to may, by notification published in the Gazette, vest the freehold title to land, subject to any existing easements, in the claimant Aboriginal Land Council and that notification shall have effect according to its tenor, and
  - (b) the Minister so referred to and the claimant Aboriginal Land Council may execute any necessary instruments.
- (6) Subject to any plan of management prepared as referred to in subsection (3) in respect of the land, the vesting of the freehold title to any land in an Aboriginal Land

Council, and the holding of the land under perpetual lease by Her Majesty, under this section shall not affect:

(a) the application of the provisions of the *Rural Lands Protection Act 1998*, or regulations under that Act, to the land, or

(b) the status of the land for the purposes of any other law, other than a law relating to the registration of titles.

(7) There shall be no appeal against, or review of, a decision of the Minister referred to in subsection (3) not to enter into an agreement under this section.

(8) Stamp duty under the *Stamp Duties Act 1920* shall not be payable in respect of an agreement or other instrument executed for the purposes of this section.

### **Division 3 Acquisition of other lands**

#### **38 Purchase, lease etc of property**

(1) The New South Wales Aboriginal Land Council or a Local Aboriginal Land Council may purchase, take on lease or hold any property or may acquire property by gift inter vivos, devise or bequest.

(2) The New South Wales Aboriginal Land Council or a Local Aboriginal Land Council may agree to the condition of any gift, devise or bequest to it, and the rule of law relating to perpetuities does not apply to any condition to which the Council has agreed under this section.

(3) Property acquired by the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council subject to a condition to which the Council has agreed shall not be dealt with by the Council except in accordance with the condition.

(4) Without limiting its functions under any other provision of this Act or under any other Act, the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council may exercise its power to purchase or take on lease any property (other than land), as referred to in subsection (1), only for or in connection with the use, development and improvement of land.

(5) Nothing in this Act prevents the vesting of lands pursuant to Division 3 of Part 4A of the NPW Act in more than one Local Aboriginal Land Council as joint tenants (without the benefit of survivorship).

#### **Note—**

Division 3 of Part 4A of the NPW Act deals, among other matters, with the vesting in an Aboriginal Land Council or Councils of lands, reserved or dedicated under that Act, that are of cultural significance to Aboriginals and that are listed in Schedule 14 to that Act.

### **39 Acquisition of land**

- (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) The Minister may do so only if the Minister is of the opinion that there are exceptional circumstances which warrant the acquisition of land for the purpose of satisfying the objectives of this Act.
- (3) If so required by the Minister, the New South Wales Aboriginal Land Council or the Local Aboriginal Land Council is to make provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).
- (4) The Minister may transfer land acquired under this section to an Aboriginal Land Council or other organisation or body established for the benefit of Aborigines.
- (5) For the purposes of the [Public Works Act 1912](#), an acquisition of land under this section is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.
- (6) Part 3 of the [Public Works Act 1912](#) does not apply in respect of works constructed under this Act.

## **Division 4 Disposal and use of Aboriginal land**

### **40 Disposal of land restricted**

- (1) The New South Wales Aboriginal Land Council or a Local Aboriginal Land Council may not sell, exchange, lease, dispose of, mortgage or otherwise deal with land vested in it, except in accordance with this Division.
- (2) Any sale, exchange, lease, disposal or mortgage of, or other dealing with, land in contravention of this Division is void.
- (3) This Division does not apply to land purchased as an investment under section 29 or 31.

### **40AA Disposal of land subject to native title restricted**

- (1) The New South Wales Aboriginal Land Council or a Local Aboriginal Land Council may not sell, exchange, lease, dispose of, mortgage or otherwise deal with land vested in it subject to native title rights and interests under section 36 (9) or (9A) unless the land is the subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act).
- (2) Subsection (1) does not apply to or in respect of the lease of land by the New South

Wales Aboriginal Land Council or one or more Local Aboriginal Land Councils to the Minister administering the *National Parks and Wildlife Act 1974* under Part 4A of that Act in accordance with a condition imposed under section 36A (2).

**40AB Disposal of land reserved or dedicated under NPW Act restricted**

- (1) The New South Wales Aboriginal Land Council or a Local Aboriginal Land Council or Councils may not sell, exchange, lease, dispose of, mortgage or otherwise deal with lands that are vested in them and that are reserved or dedicated under Part 4A of the NPW Act except in accordance with that Act.
- (2) Sections 40A-40D and 41 do not apply with respect to lands referred to in subsection (1).

**Note—**

Part 4A of the NPW Act deals with lands, reserved or dedicated under that Act, that are vested in an Aboriginal Land Council or Councils and are leased by that Council or those Councils to the Minister administering that Act.

**40A Transfer of land from one Council to another**

- (1) The New South Wales Aboriginal Land Council may transfer land vested in it to a Local Aboriginal Land Council.
- (2) A Local Aboriginal Land Council may transfer land vested in it to the New South Wales Aboriginal Land Council or to another Local Aboriginal Land Council.
- (3) Stamp duty under the *Stamp Duties Act 1920* is not payable in respect of the transfer of land under this section.

**40B Lease, use etc of land**

- (1) The New South Wales Aboriginal Land Council may, subject to the provisions of any other Act:
  - (a) lease or change the use of land vested in it, and
  - (b) grant an easement over land vested in it, and
  - (c) release an easement benefiting land vested in it.
- (2) A Local Aboriginal Land Council may, subject to the provisions of any other Act and with the approval of the New South Wales Aboriginal Land Council:
  - (a) lease or change the use of land vested in it, and
  - (b) grant an easement over land vested in it, and
  - (c) release an easement benefiting land vested in it,but only if the lease, change of use or the grant or release of the easement has been

approved at a meeting of the Local Aboriginal Land Council specifically called for that purpose at which a quorum was present.

- (3) The New South Wales Aboriginal Land Council may not refuse to give an approval of a lease or change of use under this section except on the ground that the terms or conditions of the lease are inequitable to the Local Aboriginal Land Council concerned or that the change of use would be detrimental to the interests of other Local Aboriginal Land Councils.
- (4) Nothing in this section authorises the change of use of land claimed and granted to an Aboriginal Land Council under section 36 if the change of use contravenes a condition imposed when the claim was granted under that section.

#### **40C Sale etc of land by New South Wales Aboriginal Land Council**

- (1) The New South Wales Aboriginal Land Council may, subject to the provisions of any other Act, sell, exchange, mortgage or otherwise dispose of land vested in it if:
  - (a) at a meeting of the Local Aboriginal Land Council of the area in which the land is situated specifically called for the purpose (being a meeting at which a quorum was present) not less than 80 per cent of the members of the Council present and voting have determined that the land is not of cultural significance to Aborigines of the area and should be disposed of, and
  - (b) the Minister has been notified of the proposed disposal, and
  - (c) in the case of the disposal of land transferred to an Aboriginal Land Council under section 36, both the Crown Lands Minister referred to in that section and the Minister have been notified of the proposed disposal.
- (2) A certificate in the prescribed form (if any) purporting to be signed by the Chairperson of the New South Wales Aboriginal Land Council and certifying that the disposal by the Council of land specified in the certificate does not contravene this section is conclusive evidence of the fact in favour of any person (whether or not the person is the person to whom the certificate was issued) except a person who had notice, when the certificate was issued, that the disposal of the land did contravene this section.
- (3) For the purposes of this section, land is of cultural significance to Aborigines if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aborigines.

#### **40D Sale etc of land by Local Aboriginal Land Council**

- (1) A Local Aboriginal Land Council may, subject to the provisions of any other Act, sell, exchange, mortgage or otherwise dispose of land vested in it if:
  - (a) at a meeting of the Council specifically called for the purpose (being a meeting at which a quorum was present) not less than 80 per cent of the members of the

Council present and voting have determined that the land is not of cultural significance to Aborigines of the area and should be disposed of, and

- (b) the New South Wales Aboriginal Land Council has approved of the proposed disposal, and
  - (c) the Minister has been notified of the proposed disposal, and
  - (d) in the case of the disposal of land transferred to an Aboriginal Land Council under section 36, both the Crown Lands Minister referred to in that section and the Minister have been notified of the proposed disposal.
- (2) A certificate in the prescribed form (if any), purporting to be signed by the Secretary of the Local Aboriginal Land Council and certifying that the disposal by the Council of land specified in the certificate does not contravene this section, is conclusive evidence of that fact in favour of any person (whether or not the person is the person to whom the certificate was issued) except a person who had notice, when the certificate was issued, that the disposal of the land did contravene this section.
- (3) For the purposes of this section, land is of cultural significance to Aborigines if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aborigines.

#### **41 Powers of Aboriginal Land Councils with respect to property**

Subject to this Act, an Aboriginal Land Council may do or suffer in relation to its property any act or thing that it could lawfully do or suffer if it were a natural person having, in the case of land, the same estate or interest in the property as the Council and, in particular, but without prejudice to the generality of the foregoing, it may do or suffer any such act or thing to enable it to:

- (a) improve, or cause to be improved, any land vested in it, or
- (b) explore for and exploit, or cause to be explored for or exploited, mineral resources, or other natural resources, vested in it.

#### **42 Appropriation or resumption of Aboriginal lands**

Notwithstanding anything in any Act, lands vested in an Aboriginal Land Council shall not be appropriated or resumed except by an Act of Parliament.

### **Division 5 Rates**

#### **43 Exemption of Aboriginal lands from the payment of rates**

- (1) Where the Minister is of the opinion that special circumstances exist which warrant so doing, the Minister may, by notification published in the Gazette, declare that any land vested in an Aboriginal Land Council and specified in the notification shall be exempt

from the payment of rates under:

- (a) the *Local Government Act 1993*,
- (b) the *Water Board (Corporatisation) Act 1994*,
- (c) the *Hunter Water Board (Corporatisation) Act 1991*, and
- (d) the *Broken Hill Water and Sewerage Act 1938*,

or shall be exempt from the payment of such of those rates as is specified in the notification.

(2) A declaration made under subsection (1):

- (a) shall operate for a limited period of time if such a period is specified in the declaration, and
- (b) may, by notification published in the Gazette, be revoked by the Minister at any time.

#### **44 Proceedings for non-payment of certain rates for Aboriginal lands barred**

Notwithstanding the provisions of:

- (a) the *Local Government Act 1993*,
- (b) the *Water Board (Corporatisation) Act 1994*,
- (c) the *Hunter Water Board (Corporatisation) Act 1991*, or
- (d) the *Broken Hill Water and Sewerage Act 1938*,

or any other rule of law, land vested in an Aboriginal Land Council shall not be sold, whether by way of writ of execution or otherwise, for overdue rates payable under any of those Acts nor shall action be taken to wind up any such Council because of non-payment of any such rates.

#### **44A Payment of rates by NSW Aboriginal Land Council**

- (1) Where rates payable under an Act referred to in section 44 have been unpaid for a period of not less than 12 months in respect of a rating year commencing on 1 January 1985 or any subsequent date, the New South Wales Aboriginal Land Council shall, within 30 days after receipt of a notice from the appropriate rating authority specifying the total of the amount unpaid, the amount of any interest accrued on that amount and any extra charges, pay that total to that rating authority.
- (2) A rating authority may recover an amount unpaid after the expiration of the period of 30 days referred to in subsection (1) from the New South Wales Aboriginal Land Council as a debt in a court of competent jurisdiction.



- (3) The New South Wales Aboriginal Land Council may recover an amount paid under this section from the Local Aboriginal Land Council in whose area the land subject to the rate is situated.

## **Part 7 Mineral rights and mining**

### **45 Mineral rights and mining on Aboriginal land**

- (1) In this section:
- (a) **mining operations** means prospecting, exploring or mining for mineral resources or other natural resources, and
  - (b) (Repealed)
- (2) Notwithstanding any other Act, but subject to this section:
- (a) any transfer of lands to an Aboriginal Land Council under section 36 includes the transfer of the mineral resources or other natural resources contained in those lands,
  - (b) any vesting of the title to lands in an Aboriginal Land Council under section 37 includes, subject to that section, the vesting of the title to the mineral resources or other natural resources contained in those lands, and
  - (c) where:
    - (i) an Aboriginal Land Council purchases lands under section 38, or
    - (ii) lands are acquired under section 39 and vested in an Aboriginal Land Council, any mineral resources or other natural resources which were, immediately before the purchase or vesting, vested in the Crown shall, on that purchase or vesting, become vested in the Aboriginal Land Council.
- (3) To the extent to which an Act provides for a person to explore for or exploit mineral resources, or other natural resources, vested in another person, the Act does not apply to or in respect of mineral resources, or other natural resources, vested in the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council.
- (4) Subject to this section, no person shall carry on mining operations on the lands of an Aboriginal Land Council without the consent of that Council.
- (5) An Aboriginal Land Council may give a consent under subsection (4) subject to such terms and conditions, including terms or conditions with respect to payment of fees or royalties, as it thinks fit to impose.
- (6) A Local Aboriginal Land Council shall not give its consent under subsection (4) unless either:

(a) the New South Wales Aboriginal Land Council, or

(b) the Court, under subsection (8),

has approved of the consent being given and of any terms and conditions proposed to be attached to the consent.

(7) Where a Local Aboriginal Land Council has submitted to the New South Wales Aboriginal Land Council a proposal to give a consent under subsection (4), and any terms and conditions proposed to be attached to the consent, and the New South Wales Aboriginal Land Council:

(a) has refused to approve of the proposed consent being given or of the proposed terms and conditions, or

(b) has not, within 1 month after the submission of the proposed consent and of the proposed terms and conditions or such longer period as the Local Aboriginal Land Council and the New South Wales Aboriginal Land Council agree to, approved of the consent being given and of the proposed terms and conditions (or those terms and conditions as altered with the consent of the Local Aboriginal Land Council),

the Local Aboriginal Land Council or the New South Wales Aboriginal Land Council may refer the proposal or the proposed terms and conditions, as the case may require, to the Court to be dealt with under subsection (8).

(8) Where a proposal to give a consent or the terms and conditions proposed to be attached to a consent are referred to the Court under subsection (7), the Court shall approve or refuse to approve of the giving of the consent or of the proposed terms and conditions, with or without alterations specified by the Court.

(9) The New South Wales Aboriginal Land Council or the Court shall not, under this section, refuse to approve of the giving of a consent or of the terms and conditions proposed to be attached to a consent except on the ground that the giving of the consent is, or those terms and conditions are, inequitable to the Local Aboriginal Land Council concerned or would be detrimental to the interests of members of other Local Aboriginal Land Councils.

(10) A consent given in contravention of this section is void.

(11) Nothing in or done under this Act operates to abridge or control the prerogative rights and powers of the Crown with respect to gold mines and silver mines or affects the Crown's ownership of coal and petroleum.

(12) This section does not apply to or in relation to any mining operations that are or may be carried on on any lands of an Aboriginal Land Council:

(a) in respect of gold, silver, coal or petroleum, or

(b) in respect of any other mineral, pursuant to any right conferred by or under the *Mining Act 1992*, the *Offshore Minerals Act 1999*, or any other law, being a right in force at the time the lands were vested in that Council or a mineral claim or authority referred to in subsection (13) (b), or a renewal or extension of any such right, mineral claim or authority.

(13) Nothing in this section prevents:

(a) the renewal or extension of any right, mineral claim or authority referred to in subsection (12) (b), or

(b) the granting of an authority or mineral claim in accordance with an exclusive right conferred by the *Mining Act 1992* or of a licence in accordance with an exclusive right conferred by the *Offshore Minerals Act 1999*,

under and subject to the provisions of the *Mining Act 1992* or the *Offshore Minerals Act 1999* as the case requires.

#### **46 Fees or royalties for mining on Aboriginal land**

(1) All fees and royalties payable in respect of mining on land owned by a Local Aboriginal Land Council are payable to the New South Wales Aboriginal Land Council and not the Local Aboriginal Land Council.

(2) Such fees and royalties together with the fees and royalties payable to the New South Wales Aboriginal Land Council in respect of mining on its land must, when received by it, be paid into a separate account in a bank, building society or credit union to be called the Mining Royalties Account.

(3) Money to the credit of the Mining Royalties Account is to be disbursed, in accordance with the regulations, as follows:

(a) 40 per cent is to be paid to the New South Wales Aboriginal Land Council,

(b) the balance, in so far as it is derived from the fees and royalties payable in respect of mining on land owned by a Local Aboriginal Land Council, is to be paid to the Local Aboriginal Land Council.

(4) Money to the credit of the Mining Royalties Account may be invested in any manner authorised by the regulations pending its disbursement in accordance with this section.

## **Part 8 Hunting, fishing and gathering**

### **47 Agreements to permit hunting, fishing or gathering**

Subject to the provisions of any other Act and any rule, by-law, regulation, ordinance or like instrument, a Local Aboriginal Land Council may negotiate agreements with the

owner, occupier or person in control of any land to permit any specified Aborigines or group of Aborigines to have access to the land for the purpose of hunting, fishing or gathering on the land.

**48 Access permits may be issued by the Court**

- (1) Where a Local Aboriginal Land Council:
  - (a) desires to obtain rights of access for any specified Aborigines or group of Aborigines for the purpose of hunting or fishing for, or the gathering of, traditional foods for domestic purposes, being access to land traditionally used for those purposes or to land giving access to any land so used, and
  - (b) has been unable to negotiate an agreement to obtain those rights,the Council may apply to the Court for a permit conferring those rights.
- (2) An application under subsection (1) shall be:
  - (a) made as prescribed, and
  - (b) lodged with the Registrar.
- (3) The Registrar shall refer an application lodged with the Registrar under subsection (2) to the Court together with a statement as to who appears to the Registrar to be the owner, occupier or person in control of the land to which the application relates.
- (4) The Court shall:
  - (a) give notice of any application referred to it under subsection (3) to any person who, in its opinion, is likely to be directly affected by the issue of the permit applied for, or to the public generally if it considers it appropriate, and
  - (b) by that notice, provide that objections against the application may be lodged within the time specified in that notice.
- (5) The Court shall consider:
  - (a) any application referred to it under subsection (3), and
  - (b) any objections lodged against the application,and, subject to subsection (6), shall either:
  - (c) issue a permit conferring such rights of access as it specifies in the permit on Aborigines or any group of Aborigines so specified, or
  - (d) refuse to issue the permit.
- (6) The Court shall issue a permit under subsection (5) in pursuance of an application

under subsection (1) only if it is satisfied that the rights applied for are rights of a kind referred to in subsection (1).

(7) A permit issued under subsection (5) (c):

(a) shall be subject to the provisions of any other Act and any rule, by-law, regulation, ordinance or like instrument, and

(b) may be subject to such terms and conditions as the Court thinks fit and are specified in the permit.

(8) Any person who fails to allow access to any person in accordance with a permit issued under this section shall be guilty of an offence against this Act.

(9) The Court may, on the application of any person and on reasonable cause being shown, revoke a permit issued under this section.

## **Part 8A Registrar and register of Aboriginal owners**

### **49 Appointment of Registrar**

There is to be a Registrar employed under Part 2 of the [Public Sector Management Act 1988](#) who has the functions conferred or imposed on the Registrar by or under this or any other Act or law.

#### **49A Definitions**

In this Part:

**Crown Lands Minister** has the same meaning as in section 36.

**register** means the register of Aboriginal owners established under this Part.

#### **49B Register of Aboriginal owners**

(1) The Registrar must establish and keep a register of Aboriginal owners.

(2) The register is to be kept in a form prescribed by the regulations or, if no form is prescribed, in a form determined by the Registrar.

(3) The register may consist of 2 or more parts, each containing some of the information that must be entered in the register.

#### **49C Contents of register**

(1) The Registrar is to use the Registrar's best endeavours to enter in the register:

(a) the name of every Aboriginal who has a cultural association with land in the State,  
and

- (b) the location of the land with which the Aboriginal has a cultural association, and
  - (c) the nature of the cultural association that the Aboriginal has with the land.
- (2) The name of an Aboriginal must not be entered in the register unless the Aboriginal:
- (a) is directly descended from the original Aboriginal inhabitants of the cultural area in which the land is situated, and
  - (b) has a cultural association with the land that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the land, and
  - (c) has consented to the entry of the Aboriginal's name in the register.
- (3) The Registrar is to give priority to the entry in the register of the names of Aboriginals who have a cultural association with the lands listed in Schedule 14 to the NPW Act.

**Note—**

Schedule 14 to the NPW Act lists lands of cultural significance to Aboriginals that are reserved or dedicated under that Act.

**49D Requests for entry of names in register**

- (1) Any Aboriginal may make a written request to the Registrar to enter the name of an Aboriginal in the register.
- (2) A request must specify the cultural area with which the Aboriginal nominated for inclusion in the register has a cultural association.
- (3) A request must not be made without the written consent of the Aboriginal nominated for inclusion in the register.

**49E Requests for opening of parts of register**

- (1) The Minister administering the NPW Act may request the Registrar to open a part of the register for the purpose of entering the names of Aboriginals who have a cultural association with lands that the Minister administering the NPW Act has recommended to the Governor be listed in Schedule 14 of that Act.
- (2) The Registrar is to comply with a request made by a Minister under this section.
- (3) An Aboriginal or an Aboriginal Land Council may also request the Registrar to open a part of the register for the purpose of entering the names of Aboriginals who have a cultural association with a particular area of land specified in the request.

**49F Rectification of register**

- (1) An Aboriginal or group of Aboriginals that consider that his, her or their names have been wrongly entered on or omitted from the register may request the Registrar to

rectify the register.

(2) If the Registrar:

(a) fails to rectify the register in the manner requested within 6 months after the making of the request, or

(b) refuses, within that time, to rectify the register in the manner requested,

the Aboriginal or group of Aboriginals that made the request may appeal to the Land and Environment Court.

(3) On the hearing of an appeal under this section, the Court may:

(a) order the Registrar to rectify the register, or

(b) decline to order that the register be rectified, or

(c) make such other order as to the Court appears appropriate.

(4) An appeal is to be made within the time and in the manner provided by the rules of the Court.

(5) In deciding an appeal, the Court:

(a) has the functions and discretions of the Registrar under this Part, and

(b) is not bound by the rules of evidence and may inform itself on any matter in any way that the Court considers to be just.

(6) A decision of the Court on an appeal is final and is to be given effect to as if it were the decision of the Registrar.

(7) The Court may award costs in an appeal under this section in exceptional circumstances only.

#### **49G Reference by Registrar to Land and Environment Court**

(1) The Registrar may refer to the Land and Environment Court, for decision by the Court:

(a) a request for the entry of the name of an Aboriginal in the register, or

(b) a request for the omission of the name of an Aboriginal from the register, or

(c) any other question arising under this Part in relation to the keeping of the register by the Registrar.

(2) The Chief Judge of the Court is to determine whether or not the Court should deal with the request or question.

(3) The Court may:

- (a) hear and determine the request or question, or
  - (b) refer the request or question back to the Registrar, with such directions or recommendations as the Court considers appropriate.
- (4) The Court may hear and determine a part of a question and refer the remainder back to the Registrar.
- (5) The Registrar is to give effect to a determination of the Court under this section.

## Part 9 Miscellaneous

### 50 Minister to be corporation sole

- (1) There is hereby constituted under the corporate name of “The Minister, *Aboriginal Land Rights Act 1983*” a corporation sole which shall represent the Crown and shall be the Minister for the time being administering this Act.
- (2) The official seal of the corporation constituted by subsection (1) shall not be affixed to any instrument or writing except in the presence of the Minister in person, and the Minister shall attest by the Minister’s signature the fact and date of the official seal being so affixed.

### 51 Aborigines Assistance Fund

- (1) In sections 51, 52 and 53, **corporation** means the corporation sole constituted under section 50.
- (2) There shall be established in the Special Deposits Account in the Treasury an account called the “Aborigines Assistance Fund” into which shall be paid:
  - (a) all money to the credit of the Aborigines Assistance Fund established under section 20 of the *Aborigines Act 1969* immediately before the commencement of this section,
  - (b) all money acquired by the corporation, by gift inter vivos, devise or bequest, for the benefit of Aborigines, and
  - (c) the income from all investments acquired by the corporation, by gift inter vivos, devise or bequest, for the benefit of Aborigines or made by the corporation under this section or by the corporation sole constituted under section 6 of the *Aborigines Act 1969* as in force immediately before the commencement of this section.
- (3) Where any money in the Aborigines Assistance Fund was received subject to a condition to which the recipient has agreed, the money shall be carried to a separate account in the Aborigines Assistance Fund and shall be applied in accordance with the condition.



- (4) Subject to subsection (3), money in the Aborigines Assistance Fund may be applied for the benefit of Aborigines in such manner as the Minister may from time to time direct either generally or in a particular case.
- (5) Pending application under subsection (4), or in accordance with any condition agreed to, such part of the Aborigines Assistance Fund as the Minister may from time to time direct may be invested with the Treasurer or in any manner authorised by law for the investment of trust funds.
- (6) (Repealed)

## **52 Acquisition of property by corporation**

- (1) For the purposes of this Act, the corporation may acquire property by purchase, exchange, gift inter vivos, devise or bequest and may take land on lease.
- (2) A gift, devise or bequest to the Minister in the capacity of a Minister shall be deemed to be a gift, devise or bequest to the corporation.
- (3) The corporation may agree to the condition of any gift, devise or bequest to it, and the rule of law relating to perpetuities shall not apply to any condition to which the corporation has agreed under this subsection.
- (4) Any property acquired by the corporation subject to a condition to which the corporation has agreed shall not be dealt with by the corporation except in accordance with the condition.

## **53 Corporation land—erection of buildings and vesting of property**

The corporation may, subject to this Act, cause a building to be erected on its land and may, by notification published in the Gazette, vest any of its lands or buildings, subject to such terms and conditions as it deems necessary, in the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council or in some other organisation or body established for the benefit of Aborigines, and any such notification shall have effect according to its tenor.

## **54 Liability of members etc of Councils**

No matter or thing done by an Aboriginal Land Council and no matter or thing done by any member of any such Council or by any person acting under the direction of any such Council shall, if the matter or thing was done bona fide for the purposes of executing this or any other Act, subject a member of any such Council or a person so acting personally to any action, liability, claim or demand whatever.

## **55 Delegation**

- (1) The Minister may delegate to any person any of the functions of the Minister under this Act, other than this power of delegation.

- (2) The corporation sole constituted under section 50 may delegate to any person any of its functions, other than this power of delegation.
- (3) The New South Wales Aboriginal Land Council may delegate to a person prescribed by the regulations any of the functions of the Council prescribed by the regulations, other than this power of delegation.

## **56 (Repealed)**

### **56A Rules of conduct**

The Minister may from time to time determine rules of conduct to be observed by Aboriginal Land Councils and members of Aboriginal Land Councils.

### **56B Disclosure of pecuniary interests**

- (1) In this section, **office holder** means:
  - (a) a member of the New South Wales Aboriginal Land Council, or
  - (b) a member of a Regional Aboriginal Land Council, or
  - (c) the Chairperson, Secretary or Treasurer of a Local Aboriginal Land Council.
- (2) An office holder of an Aboriginal Land Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council is required, as soon as possible after the relevant facts have come to the office holder's knowledge, to disclose the nature of the interest at a meeting of the Council if the interest appears to raise a conflict with the proper performance of the office holder's duties in relation to the consideration of the matter.
- (3) A disclosure by an office holder at a meeting of the Council that the office holder:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or a specified person,is sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (2).
- (4) Particulars of any disclosure made under this section are to be recorded in a book kept for the purpose and that book is required to be open at all reasonable hours to the inspection of any person on payment of the fee determined by the Council.
- (5) After an office holder has disclosed the nature of an interest in any matter or thing,

the office holder may not, unless the other office holders of the Council concerned otherwise determine:

- (a) be present during any deliberation, or take part in any decision, of the Council with respect to that matter or thing, or
  - (b) exercise any function under this Act with respect to that matter or thing.
- (6) For the purposes of the making of a determination by other office holders under subsection (5), an office holder who has a direct or indirect pecuniary interest in a matter to which the disclosure relates may not:
- (a) be present during any deliberation of those office holders for the purposes of making the determination, or
  - (b) take part in the making by the other office holders of the determination.
- (7) A contravention of this section does not invalidate any decision of the Council or the exercise of any function under this Act.
- (8) This section does not apply to an interest of an office holder (being the provision of goods or services to the office holder by the Council) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.
- (9) A reference in this section:
- (a) to a meeting of an Aboriginal Land Council includes a reference to a meeting of a committee of an Aboriginal Land Council, and
  - (b) to an office holder includes a reference to a member of such a committee.

### **56C Disqualification from office**

- (1) A person who fails to comply with section 56B is guilty of an offence.
- Maximum penalty: 2 penalty units.
- (2) It is a defence in any prosecution for an offence under this section if the defendant satisfies the court that the defendant did not know that the matter in which the defendant had a pecuniary interest was the subject of consideration at the meeting.
- (3) A person who is convicted of an offence under this section is disqualified from holding any office under this Act for 7 years from the date of conviction, or for such shorter period as the court by which the person is convicted may order.
- (4) In any prosecution for such an offence, the court may order that, despite the conviction, the defendant is not disqualified from holding office because the circumstances giving rise to the offence are of a trifling character.

(5) An order of the court under this section has effect according to its tenor.

#### **56D Investigation of Aboriginal Land Councils**

- (1) The Minister may appoint an investigator from a list of investigators compiled in the manner prescribed by the regulations to investigate the affairs, or specified affairs, of an Aboriginal Land Council, including its efficiency and effectiveness.
- (2) The Minister must prepare a report in writing of the Minister's reasons for appointing an investigator to investigate the efficiency and effectiveness of the New South Wales Aboriginal Land Council.
- (3) The Minister is to cause a copy of such a report to be laid before both Houses of Parliament as soon as practicable after the investigator is appointed.
- (4) The Minister may appoint an investigator to investigate the affairs of a Local or Regional Aboriginal Land Council only with the approval of the New South Wales Aboriginal Land Council.
- (5) The Chairperson of the Council and any other person who has possession or control of any records of the Council must, if required to do so by an investigator who produces evidence of his or her appointment, provide the investigator with:
  - (a) access to such of the records as relate to the affairs being investigated, and
  - (b) information that the Chairperson or other person is able to give in relation to those records and affairs, and
  - (c) authorities or orders on bankers and others that relate to those records or affairs and that the Chairperson or other person is able to provide.
- (6) If a record:
  - (a) is not in writing, or
  - (b) is not written in the English language, or
  - (c) is not decipherable on sight,a requirement to provide access to the record is not complied with unless access is provided to a statement, written in the English language and decipherable on sight, that contains all the information in the record.
- (7) A person must not hinder, obstruct or delay an investigator in the exercise of his or her functions.

Maximum penalty: 5 penalty units.
- (8) The investigator is to report on the investigation:

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

**57 Administrators—Regional and Local Aboriginal Land Council areas**

- (1) The Governor may at any time, by proclamation published in the Gazette, appoint an administrator under this section for a Regional or Local Aboriginal Land Council area:
  - (a) if there are not sufficient members of the Council for that area to form a quorum of the Council, or
  - (b) if the Council fails to comply with section 32, 34A or 34B, or
  - (c) on the receipt of a certificate by the Minister under section 32 stating that the results of an audit of the financial statements of the Council are unsatisfactory, or
  - (d) on the receipt by the Minister of a report by an investigator appointed in accordance with section 56D that the funds or other property of the Council for that area have not been properly applied or managed, or
  - (e) if the Council for that area has substantially breached the requirements of this Act or the regulations or the rules of the Council, or
  - (f) if the Minister is of the opinion that the Council for that area has ceased for 6 months substantially to exercise its functions.
- (2) An administrator may be appointed under this section only on the recommendation of the Minister made after consultation with the New South Wales Aboriginal Land Council.
- (3) The administrator has, during the period of his or her appointment, all, or such part as is specified in the proclamation, of the functions of the Council conferred or imposed by or under this Act, to the exclusion of the Council.
- (4) The administrator is to be paid out of the funds of the New South Wales Aboriginal Land Council which may recover the amount paid from the Regional or Local Aboriginal Land Council of the area for which the administrator has been appointed.
- (5) The regulations may make provision for or with respect to the functions of the administrator and, in particular, for or with respect to requiring persons who have possession or control of any records of the Council to give necessary assistance to the administrator in the exercise of his or her functions.

**57A Administrator—NSW Aboriginal Land Council**

- (1) The Governor may at any time, on the recommendation of the Minister, by

proclamation published in the Gazette, appoint an administrator of the New South Wales Aboriginal Land Council.

- (2) The Minister may recommend that an administrator be appointed under this section only after considering:
  - (a) a report of the Auditor-General, or
  - (b) a report of an investigator appointed by the Minister in accordance with section 56D,  
which discloses, in the opinion of the Minister, grounds which justify the making of such a recommendation.
- (3) The administrator has, during the period of his or her appointment, all, or such part as is specified in the proclamation, of the functions of the Council conferred or imposed by or under this Act, to the exclusion of the Council.
- (4) The administrator is to be paid out of the funds of the Council.
- (5) The regulations may make provision for or with respect to the functions of the administrator and, in particular, for or with respect to requiring persons who have possession or control of any records of the Council to give necessary assistance to the administrator in the exercise of his or her functions.

#### **57B Removal of office holders on appointment of administrator**

- (1) On the appointment of an administrator to administer all of the functions of a Regional or Local Aboriginal Land Council, the office holders of the Council are removed from office and fresh elections are to be held in accordance with the regulations to fill the vacancies.
- (2) On the appointment of an administrator to administer all of the functions of the New South Wales Aboriginal Land Council, the members of the Council are removed from office and fresh elections are to be held in accordance with the regulations to fill the vacancies.

#### **58 Failure of NSW Aboriginal Land Council to function**

- (1) Where, in the opinion of the Minister, the New South Wales Aboriginal Land Council has wilfully failed or neglected to exercise any of its functions in a material respect, the Governor may, by order published in the Gazette, declare that the Council has ceased to function.
- (2) An order under subsection (1) may be limited in its operation according to time, place or circumstance.
- (3) Where the Governor has made an order under subsection (1), the Minister may make,

in writing, such orders as to the transfer, disposal or dealing with the assets, debts and liabilities of the New South Wales Aboriginal Land Council as the Minister considers appropriate and those orders shall have effect according to their tenor.

- (4) Where, by the operation of subsection (3), the corporation sole constituted under section 50 receives any money, it may pay the money or any part thereof to the Aborigines Assistance Fund established under this Act.

#### **58A Dissolution of Regional or Local Aboriginal Land Councils**

- (1) The Minister may, on the recommendation of the New South Wales Aboriginal Land Council and by notice published in the Gazette, declare that a Regional or Local Aboriginal Land Council is dissolved if:
- (a) the Regional or Local Aboriginal Land Council so requests, or
  - (b) the New South Wales Aboriginal Land Council is satisfied that the Regional or Local Aboriginal Land Council has ceased to function.
- (2) On the dissolution of the Council:
- (a) the rights and liabilities of the Council become rights and liabilities of the New South Wales Aboriginal Land Council, and
  - (b) proceedings before a court or tribunal by or against the Council that, immediately before the dissolution, were pending or in the course of being heard become proceedings by or against the New South Wales Aboriginal Land Council, and
  - (c) to the extent to which an act, matter or thing done or omitted to be done on behalf of the Council had any force or effect immediately before the dissolution, it becomes an act, matter or thing done or omitted to be done by the New South Wales Aboriginal Land Council, and
  - (d) time that had commenced to run in relation to the Council becomes time that had commenced to run in relation to the New South Wales Aboriginal Land Council.
- (3) Any property that, immediately before dissolution, was vested in the Council is on and from that day vested in the New South Wales Aboriginal Land Council.
- (3A) Despite subsection (3), lands vested in a Local Aboriginal Land Council under Part 4A of the NPW Act do not vest in the New South Wales Aboriginal Land Council on the dissolution of the Local Aboriginal Land Council but vest in accordance with that Part.

#### **Note—**

Part 4A of the NPW Act deals with lands, reserved or dedicated under that Act, that are vested in an Aboriginal Land Council or Councils and are leased by that Council or those Councils to the Minister administering that Act.

- (4) The Minister may, on the recommendation of the New South Wales Aboriginal Land

Council:

- (a) alter the boundaries of one or more Regional Aboriginal Land Councils to include the whole or any part of the land within the area of a Regional Aboriginal Land Council declared to be dissolved under this section, and
  - (b) alter the boundaries of one or more Local Aboriginal Land Councils to include the whole or any part of the land within the area of a Local Aboriginal Land Council declared to be dissolved under this section.
- (5) A member of the New South Wales Aboriginal Land Council ceases to hold office on the dissolution of the Regional Aboriginal Land Council of the area the member represents if, and only if, the Minister authorises all the land within the area of the Regional Aboriginal Land Council to be included within the area of one or more other such Councils.

#### **59 Reference of certain disputes etc to Court**

(1) The Registrar may, at the request of the New South Wales Aboriginal Land Council or on the Registrar's own initiative, refer to the Court for determination:

(a) a dispute between:

- (i) Local Aboriginal Land Councils in the same Regional Aboriginal Land Council area,
- (ii) a Local Aboriginal Land Council and an individual, or
- (iii) individual members of a Local Aboriginal Land Council,

relating to land claims or purchases where the dispute has first been referred to the Regional Aboriginal Land Council for conciliation,

(b) a dispute between:

- (i) a Local Aboriginal Land Council and a Regional Aboriginal Land Council, or
- (ii) Local Aboriginal Land Councils in different Regional Aboriginal Land Council areas, or

(c) any other matter concerning the administration of particular Regional Aboriginal Land Councils or Local Aboriginal Land Councils.

(1A) The Registrar shall not, under subsection (1), refer to the Court a dispute between a Local Aboriginal Land Council and a Regional Aboriginal Land Council relating to a land claim by the Regional Aboriginal Land Council unless the dispute has first been referred to the New South Wales Aboriginal Land Council for conciliation.

(2) The Registrar shall not, under subsection (1), refer to the Court a dispute or matter if



provision is made for the determination of the dispute or matter under another section of this Act.

- (3) The Court shall hear and determine any dispute or matter referred to it under subsection (1).
- (4) The Court may give such directions as it considers necessary to resolve a dispute or determine any matter referred to it under subsection (1).
- (4A) Where a dispute referred to the Court under subsection (1) relates to the failure or refusal of a Local Aboriginal Land Council to consent, in writing, to the making of a claim for land by a Regional Aboriginal Land Council, the Court may grant the consent on behalf of the Local Aboriginal Land Council.
- (5) Any person who contravenes a direction given under subsection (4) shall be guilty of an offence against this Act.

## **60 (Repealed)**

## **61 Annual reports**

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

## **62 Service of documents**

- (1) A document may be served on an Aboriginal Land Council by leaving it at, or by sending it by post to:
  - (a) the office of the Council, or
  - (b) if it has more than one office—any one of its offices,or, where some other manner of service is prescribed, by serving it in the manner prescribed.
- (2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on an Aboriginal Land Council in a manner not provided for by subsection (1).

## **63 Authentication of certain documents**

Every summons, process, demand, order, notice, statement, direction or document requiring authentication by an Aboriginal Land Council may be sufficiently authenticated without the seal of the Council if signed by the Chairperson of the Council or by any member, officer or employee of the Council authorised to do so by the Chairperson.

#### **64 Proof of certain matters not required**

In any legal proceedings, no proof shall be required (until evidence is given to the contrary) of:

- (a) the constitution of an Aboriginal Land Council,
- (b) any resolution of an Aboriginal Land Council,
- (c) the appointment or election of any member of the New South Wales Aboriginal Land Council or of a Regional Aboriginal Land Council,
- (d) the holding of office by a person as chairperson, secretary or treasurer of an Aboriginal Land Council, or
- (e) the presence or nature of a quorum at any meeting of an Aboriginal Land Council.

#### **65 Aboriginal Land Councils not statutory bodies representing the Crown**

An Aboriginal Land Council is not, for the purposes of any law, a statutory body representing the Crown.

#### **65A Aboriginal Land Councils to be public authorities etc for certain purposes**

Each Aboriginal Land Council is to be taken to be a public authority for the purposes of the [Ombudsman Act 1974](#), the [Independent Commission Against Corruption Act 1988](#) and the [Freedom of Information Act 1989](#).

#### **66 Penalties**

A person who is guilty of an offence against this Act for which no other penalty is provided is liable upon conviction to a penalty not exceeding 5 penalty units.

#### **67 Proceedings for offences**

Proceedings for an offence against this Act or the regulations may be taken summarily before a Local Court constituted by a magistrate sitting alone.

#### **68 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without affecting the generality of subsection (1), the Governor may make regulations for or with respect to:
  - (a) determining the boundaries of, and naming, Local Aboriginal Land Council areas and Regional Aboriginal Land Council areas,

- (b) authorising the Minister to approve of an alteration to the boundaries of, or a change of the name of, a Local Aboriginal Land Council area or a Regional Aboriginal Land Council area,
  - (b1) authorising the Minister, on the recommendation of the New South Wales Aboriginal Land Council, to approve the amalgamation of Local Aboriginal Land Council areas,
  - (c) the procedure for the calling of meetings of Regional and Local Aboriginal Land Councils, the conduct of those meetings and the prescribing or determining of a quorum at those meetings,
    - (c1) the circumstances in which a vacancy shall occur in the office of Chairperson, Secretary or Treasurer of a Regional or Local Aboriginal Land Council and the removal from office of the Chairperson, Secretary or Treasurer of a Regional or Local Aboriginal Land Council,
    - (c2) the removal of a member of the New South Wales Aboriginal Land Council from office on the ground of a petition calling for the person's removal from office signed by persons entitled to vote at an election for the office,
  - (d) the fees, allowances or expenses that may be paid to the members of Regional Aboriginal Land Councils,
    - (d1) the acquisition, holding or disposal of or other dealing with land by Local Aboriginal Land Councils,
  - (e) the investment of money by Aboriginal Land Councils, including regulations for or with respect to the prescribing or the determining of the proportion of the funds of those Councils to be invested, and
    - (e1) the employment of staff and consultants by the New South Wales Aboriginal Land Council and the employment of staff by Local Aboriginal Land Councils,
  - (f) the audit of accounts and records of Aboriginal Land Councils (including regulations for or with respect to the employment of auditors),
  - (g) disputed returns in elections of councillors of the New South Wales Aboriginal Land Council,
    - (g1) the keeping and operation of the register of Aboriginal owners.
- (3) A regulation made for the purposes of subsection (2) (a) or (b) may apply to the matters referred to therein any provisions (with any necessary alterations) of this Act relating to the constitution of Local Aboriginal Land Council areas or Regional Aboriginal Land Council areas.
- (4) A regulation may impose a penalty not exceeding 5 penalty units for any

contravention thereof.

(5) A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

## 69 Repeals

Each Act specified in Column 1 of Schedule 2 is, to the extent specified opposite that Act in Column 2 of that Schedule, repealed.

## 70 (Repealed)

## 71 Savings, transitional and other provisions

Schedule 4 has effect.

## Schedule 1 (Repealed)

## Schedule 2 Repeals

(Section 69)

Column 1		Column 2
Year and number of Act	Short title of Act	Extent of repeal
1969 No 7	<a href="#">Aborigines Act 1969</a>	The whole Act
1973 No 35	<a href="#">Aborigines (Amendment) Act 1973</a>	Sections 3-6
1974 No 37	<a href="#">Crown Lands and Other Acts (Reserves) Amendment Act 1974</a>	Section 13 (4)
1980 No 196	<a href="#">Miscellaneous Acts (Crown Land Titles) Amendment Act 1980</a>	So much of Schedule 1 as amends Act No 7, 1969

## Schedule 3 (Repealed)

## Schedule 4 Savings, transitional and other provisions

(Section 71)

### Part 1 Preliminary

#### 1 Definitions

In this Schedule:

**appointed day**, in relation to a provision of this Schedule, means the day of commencement of the provision.

**former Corporation** means the corporation sole named “The Minister, [Aborigines Act 1969](#)” constituted under section 6 of the [Aborigines Act 1969](#) as in force immediately before the repeal of that Act by this Act.

**former Trust** means The Aboriginal Lands Trust constituted under the [Aborigines Act 1969](#) as in force immediately before the repeal of that Act by this Act.

**instrument** means an Act (other than this Act), a rule, a by-law, a regulation or an ordinance, or any other instrument or document, whether of the same or of a different kind or nature.

#### 1A Savings and transitional regulations

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

[Aboriginal Land Rights \(Amendment\) Act 1990](#)

[National Parks and Wildlife Amendment \(Aboriginal Ownership\) Act 1996](#).

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## Part 2 Provisions consequent on the enactment of this Act

### 2 Transfer of certain property etc of the former Trust

- (1) Except as provided by Division 1 of Part 6, on and from the appointed day:
- (a) all real and personal property and all right and interest therein and all management and control thereof that, immediately before that day, was vested in or belonged to the former Trust shall vest in or belong to the New South Wales Aboriginal Land Council (in this clause referred to as **the Council**),
  - (b) all debts, money and claims, liquidated and unliquidated, that, immediately before that day, were due or payable to, or recoverable by, the former Trust shall be debts due to, money payable to and claims recoverable by the Council,
  - (c) all suits, actions and proceedings pending immediately before that day at the suit of the former Trust shall be respectively suits, actions and proceedings pending at the suit of the Council and all suits, actions and proceedings so pending at the suit of any person against the former Trust shall be respectively suits, actions and proceedings pending at the suit of that person against the Council,
  - (d) all contracts, agreements, arrangements and undertakings entered into with and all securities lawfully given to or by the former Trust and in force immediately before that day shall be deemed to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the Council,
  - (e) the Council may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of money and claims referred to in this clause and for the prosecution of suits, actions and proceedings so referred to as the former Trust might have done but for the enactment of this Act,
  - (f) the Council may enforce and realise any security or charge existing immediately before that day in favour of the former Trust and may exercise any powers thereby conferred on the former Trust as if the security or charge were a security or charge in favour of the Council,
  - (g) all debts, money and claims, liquidated and unliquidated, that, immediately before that day, were due or payable by, or recoverable against, the former Trust shall be debts due by, money payable by and claims recoverable against the Council, and
  - (h) all liquidated and unliquidated claims for which the former Trust would, but for the enactment of this Act, have been liable shall be liquidated and unliquidated claims for which the Council shall be liable.
- (2) No attornment to the Council by a lessee from the former Trust shall be required.

### 3 Transfer of certain property etc of the former Corporation

(1) On and from the appointed day:

- (a) all real and personal property and all right and interest therein and all management and control thereof that, immediately before that day, was vested in or belonged to the former Corporation shall vest in or belong to the corporation sole constituted under section 50 (in this clause referred to as **the Minister**),
- (b) all debts, money and claims, liquidated and unliquidated, that, immediately before that day, were due or payable to, or recoverable by, the former Corporation shall be debts due to, money payable to and claims recoverable by the Minister,
- (c) all suits, actions and proceedings pending immediately before that day at the suit of the former Corporation shall be respectively suits, actions and proceedings pending at the suit of the Minister and all suits, actions and proceedings so pending at the suit of any person against the former Corporation shall be respectively suits, actions and proceedings pending at the suit of that person against the Minister,
- (d) all contracts, agreements, arrangements and undertakings entered into with and all securities lawfully given to or by the former Corporation and in force immediately before that day shall be deemed to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the Minister,
- (e) the Minister may, in addition to pursuing any other remedies or exercising any other powers that may be available to the Minister, pursue the same remedies for the recovery of money and claims referred to in this clause and for the prosecution of suits, actions and proceedings so referred to as the former Corporation might have done but for the enactment of this Act,
- (f) the Minister may enforce and realise any security or charge existing immediately before that day in favour of the former Corporation and may exercise any powers thereby conferred on the former Corporation as if the security or charge were a security or charge in favour of the Minister,
- (g) all debts, money and claims, liquidated and unliquidated, that, immediately before that day, were due or payable by, or recoverable against, the former Corporation shall be debts due by, money payable by and claims recoverable against the Minister, and
- (h) all liquidated and unliquidated claims for which the former Corporation would, but for the enactment of this Act, have been liable shall be liquidated and unliquidated claims for which the Minister shall be liable.

(2) No attornment to the Minister by a lessee from the former Corporation shall be

required.

#### **4 Effect of certain acts etc of the former Trust and the former Corporation**

- (1) Subject to this Act, to the extent that any act, matter or thing done or omitted to be done before the appointed day by, to or in respect of the former Trust would, but for the enactment of this Act, have had, on or after that day, any force or effect or been in operation, that act, matter or thing shall be deemed to have been done or omitted to be done by, to or in respect of the New South Wales Aboriginal Land Council.
- (2) Subject to this Act, to the extent that any act, matter or thing done or omitted to be done before the appointed day by, to or in respect of the former Corporation would, but for the enactment of this Act, have had, on or after that day, any force or effect or been in operation, that act, matter or thing shall be deemed to have been done or omitted to be done by, to or in respect of the corporation sole constituted under section 50.

#### **5 Transfer of certain assets, debts and liabilities of the former Trust and the former Corporation**

- (1) A reference in this clause to assets, debts and liabilities of the New South Wales Aboriginal Land Council is a reference to assets, debts and liabilities of the Council (excluding former Trust lands within the meaning of section 35) which were, immediately before the appointed day, assets, debts or liabilities of the former Trust.
- (2) The Minister may, after taking into consideration any recommendations made by the New South Wales Aboriginal Land Council, determine:
  - (a) whether any, and if so what, assets, debts and liabilities of the New South Wales Aboriginal Land Council should be those of a Local Aboriginal Land Council, and
  - (b) whether any, and if so what, assets, debts and liabilities of the corporation sole constituted under section 50 should be those of the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council, a Local Aboriginal Land Council or some other organisation or body established for the benefit of Aborigines.
- (3) A determination made under this clause shall be given effect to by the New South Wales Aboriginal Land Council, the corporation sole constituted under section 50 and the relevant Regional or Local Aboriginal Land Council or organisation or body, as the case may require.

#### **6 Vesting of certain assets etc referred to in clause 5**

- (1) Without affecting anything in clause 5, the Governor may, by proclamation published in the Gazette, declare that any assets, debts or liabilities referred to in that clause and specified or referred to in the proclamation belong to an Aboriginal Land Council or an organisation or body specified in the proclamation.



- (2) A proclamation may be published under subclause (1) in respect only of assets, debts and liabilities that are determined under clause 5 to be those of the Aboriginal Land Council or the organisation or body specified in the proclamation in accordance with subclause (1).
- (3) The provisions of clauses 2 and 4 (1) apply to and in respect of the assets, debts or liabilities to which a proclamation under subclause (1) relates in the same way as they apply to and in respect of the things therein referred to, and so apply as if references therein to:
  - (a) the appointed day were references to the date of publication in the Gazette of the proclamation or a later date specified in the proclamation,
  - (b) the former Trust were references to the New South Wales Aboriginal Land Council or the corporation sole constituted under section 50, as the case may require, and
  - (c) the New South Wales Aboriginal Land Council were references to the Aboriginal Land Council or the organisation or body specified in the proclamation.
- (4) For the purposes of subclause (1), any assets, debts or liabilities may be specified or referred to in a proclamation by reference to documents, lists or inventories kept at a place specified in the proclamation.

#### **7 Construction of certain references**

Subject to the regulations, a reference in an instrument enacted, made, proclaimed or published before the repeal by this Act of the *Aborigines Act 1969*, being a reference to, or a reference to be read or construed as a reference to, or deemed or taken to refer to:

- (a) the former Trust shall be read and construed as a reference to the New South Wales Aboriginal Land Council, and
- (b) the corporation sole constituted under section 6 of the *Aborigines Act 1969*, as in force immediately before the repeal of that Act by this Act, shall be read and construed as a reference to the corporation sole constituted under section 50.

#### **8 Claimable Crown lands**

Where, but for this clause, any lands would be claimable Crown lands as defined in section 36, those lands shall not, if they were, on the appointed day, the subject of a lease, licence or permissive occupancy, be claimable Crown lands as so defined until the lease, licence or permissive occupancy ceases to be in force.

#### **9 Existing contracts of employment**

- (1) Notwithstanding any other provision of this Act or any other law, any contracts entered into between the former Trust and its officers or employees in respect of wages, payments or any other benefits or in respect of conditions of employment, or

any other contracts entered into between the former Trust and any person and declared by the Minister to be contracts to which this clause applies, are on and from the appointed day or the date of the declaration, as the case may require, null and void and any money which would, but for this clause, have been payable under those contracts shall not be payable or paid by the former Trust, the New South Wales Aboriginal Land Council, the Crown or any other person or body.

- (2) Any payments made under a contract referred to in subclause (1) before the appointed day and which, in the Minister's opinion, are excessive may be declared by the Minister by instrument in writing to have been unauthorised payments.
- (3) A payment under a contract referred to in subclause (1) after the time that it became null and void under that subclause or an unauthorised payment referred to in subclause (2) shall be repaid to the Crown by the person to whom it was paid, on demand, and if not paid shall be recoverable, wholly or in part, in any court of competent jurisdiction as a debt due to the Crown.
- (4) In subclause (3), a reference to the Crown includes a reference to a person or authority nominated by the Minister, by instrument in writing, for the purposes of that subclause.
- (5) In the absence of evidence to the contrary, any instrument purported to have been signed by the Minister for the purposes of this clause shall, in any legal proceedings, be accepted without proof of the signature of the Minister.

## **Part 2A Provision consequent on the enactment of the [Aboriginal Land Rights \(Amendment\) Act 1986](#)**

### **9A Funding of acquisition of certain land**

- (1) Where, as at 2 May 1986 (the date of assent to the amending Act), land was being acquired by a Local Aboriginal Land Council with money or other financial assistance provided by a Regional Aboriginal Land Council, the Regional Aboriginal Land Council may, notwithstanding the provisions of this Act, as amended by the amending Act, continue to provide that money or financial assistance and the Local Aboriginal Land Council may continue to acquire and complete the acquisition of that land.
- (2) This clause is taken to have commenced on 2 May 1986.
- (3) Subclause (1) re-enacts (with minor modifications) clause 1 of Schedule 2 to the amending Act. Subclause (1) is a transferred provision to which section 30A of the [Interpretation Act 1987](#) applies.
- (4) In this clause:

**amending Act** means the [Aboriginal Land Rights \(Amendment\) Act 1986](#).

## **Part 3 Provisions consequent on the enactment of the [Aboriginal Land Rights \(Amendment\) Act 1990](#)**

### **10 Definitions**

In this Part:

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

**the 1990 Act** means the [Aboriginal Land Rights \(Amendment\) Act 1990](#).

### **11 Vesting of property in NSW Aboriginal Land Council**

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

## **12 Claims to Crown lands made by Regional Aboriginal Land Councils**

Any claim made by a Regional Aboriginal Land Council under section 36 which, immediately before the appointed day, had not been granted or refused under that section is to be taken to be a claim made under that section by the New South Wales Aboriginal Land Council on the appointed day.

## **13 Mining Royalties Account**

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

## **14 Election of members of the NSW Aboriginal Land Council**

- (1) For the purpose of enabling the New South Wales Aboriginal Land Council to be constituted on or after the appointed day, regulations may be made, elections may be held and any other act, matter or thing may be done before that day as if the whole of the 1990 Act commenced on the date of assent to that Act.
- (2) The first election of all councillors is to be held as soon as practicable after the date of assent to the 1990 Act.
- (3) If elections are not held in accordance with this Act, as amended by the 1990 Act, before the term of office of the current members of the Council expires:
  - (a) the term of office of the current members, and
  - (b) the term of office of the current Chairperson, Secretary and Treasurer of the Council,are extended until the new members are elected.
- (4) In this clause:

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

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

## **15 Interim arrangements**

- (1) This clause applies in relation to the first election of councillors of the New South Wales Aboriginal Land Council held after the date of assent to the 1990 Act.
- (2) Despite any other provision of this Act:
  - (a) the Registrar is to arrange forthwith the first meeting of the Council after the returning officer for the election has publicly declared elected candidates

representing at least 10 Regional Aboriginal Land Council areas, and

- (b) those candidates hold office and are taken always to have held office as councillors on and from the date on which the returning officer declared them elected, and the Council is taken to be properly constituted even though councillors representing all such areas have not been elected or otherwise appointed, and
- (c) the terms of office of the persons who were members of the Council on the date of assent to the 1990 Act are taken to have expired on the date referred to in paragraph (b), and
- (d) the councillors may not elect officers referred to in clause 2 of Schedule 6 until councillors representing all such areas have been elected or otherwise appointed in accordance with this Act, but are at their first meeting to elect members to act in place of those officers and with all the functions of those officers, until an election of the officers can take place in accordance with that clause, and
- (e) otherwise, the Council is to proceed to transact business at its first and later meetings in accordance with this Act.

### **Part 3A Provision consequent on the enactment of the [Aboriginal Land Rights \(Revival of Financial Provision\) Act 1990](#)**

#### **15A Saving of certain directions**

- (1) Any directions given by the Minister under section 33A (as inserted by the [Aboriginal Land Rights \(Amendment\) Act 1986](#)) that were in force immediately before 2 May 1990 are to be taken to be directions given by the Minister under that section (as revived by the amending Act).
- (2) This clause is taken to have commenced on 22 June 1990.
- (3) Subclause (1) re-enacts (with minor modifications) section 4 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the [Interpretation Act 1987](#) applies.
- (4) In this clause:

**amending Act** means the [Aboriginal Land Rights \(Revival of Financial Provision\) Act 1990](#).

### **Part 4 Provisions consequent on enactment of [National Parks and](#)**

## Wildlife Amendment (Aboriginal Ownership) Act 1996

### 16 Definitions

In this Part:

**appointed day** means the day on which Schedule 2 [6] to the *National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996* commences.

**Crown Lands Minister** has the same meaning as in section 36.

### 17 Extension of certain provisions to claims to Crown lands

The provisions of this Act, as amended by the *National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996*, extend to the following claims and the Crown Lands Minister may deal with the claims accordingly:

- (a) claims made before the appointed day that were not determined by the Crown Lands Minister before that day,
- (b) claims made before the appointed day that have been refused by the Crown Lands Minister but in respect of the refusal of which the right to appeal to the Land and Environment Court has not expired before the appointed day,
- (c) claims in respect of which appeals to the Land and Environment Court are pending on the appointed day.

## Schedule 5 Provisions relating to councillors of the New South Wales Aboriginal Land Council

(Section 22 (4))

### 1 Term of office

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

### 2 Remuneration

- (1) A councillor is entitled to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*.
- (2) A councillor is entitled to be paid such travelling and subsistence allowances as the Minister may from time to time determine in respect of the councillor.

### 3 Vacancy in office

The office of a councillor becomes vacant if the councillor:

- (a) dies, or

- (b) resigns the office by instrument in writing addressed to the Council, or
- (c) ceases to be a member of a Local Aboriginal Land Council within the Regional Aboriginal Land Council area the councillor represents, or
- (d) is absent from duty for 30 days (whether or not consecutive days) in any period of 12 months, except on leave granted by the Council, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) is disqualified from holding office under section 56C, or
- (i) engages in any paid employment outside the duties of his or her office, except with the consent of the Council.

#### **4 Filling of casual vacancy**

A person is to be appointed in accordance with the regulations to fill a casual vacancy in the office of a councillor for the remainder of the term of office.

#### **5 Definitions**

In this Schedule:

**Council** means the New South Wales Aboriginal Land Council.

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

### **Schedule 6 Provisions relating to procedure of the New South Wales Aboriginal Land Council**

(Section 22 (5))

#### **1 Meetings of the Council**

- (1) The Council is to hold its first meeting after each election of all councillors in accordance with Division 2 of Part 4 at a time (being a time as soon as practicable after the election) and place arranged by the Registrar.
- (2) The regulations may prescribe the minimum number of meetings the Chairperson is to convene in a specified period.

- (3) The Chairperson may convene such other meetings of the Council as, in his or her opinion, are necessary for the proper exercise of its functions.
- (4) The Chairperson, in accordance with the request, is to convene a meeting of the Council on receipt of a written request for a meeting signed by a majority of councillors for the time being.
- (5) The procedure for the calling of meetings and the conduct of business at meetings of the Council is to be as determined by the Council, except as otherwise provided by this Act or the regulations.

## **2 Chairperson and other officers**

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

## **3 Quorum**

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

## **4 Presiding councillor**

- (1) The Chairperson of the Council is to preside at a meeting of the Council.
- (2) A councillor elected by the other councillors present is to preside at a meeting in the absence of the Chairperson.
- (3) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, a second or casting vote.

## **5 Voting**

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

## **6 Minutes**

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

## **7 Definitions**

In this Schedule:

**Council** means the New South Wales Aboriginal Land Council.

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