

Aboriginal Land Rights Act 1983 No 42

[1983-42]



New South Wales

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

Notes—

- **Does not include amendments by**
[State Property Authority Act 2006 No 40](#) (not commenced)

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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 Purpose of Act

The purposes of this Act are as follows:

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

4 Definitions

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

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 Aboriginal persons whose names are entered on the Register of Aboriginal Owners because of the persons' cultural association with particular land.

Note—

An Aboriginal person's name and other relevant information is entered in the Register of Aboriginal Owners.

Aboriginal person means a person who:

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

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

Alternate Representative, in relation to a Local Aboriginal Land Council, means the First or Second Alternate Representative of the Council.

authority, in Division 5 of Part 10, means the Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police or the Director of Public Prosecutions.

code of conduct means the code of conduct that applies to an Aboriginal Land Council by the operation of this Act.

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

Commonwealth.

compliance direction means a direction issued by the Registrar under Part 12.

councillor means a member of the New South Wales Aboriginal Land Council.

Court means the Land and Environment Court.

Director-General means the Director-General of the Department of Aboriginal Affairs.

land includes any estate or interest in land.

land claim means a claim for land made under section 36.

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.

non-voting member, of a Local Aboriginal Land Council, means a member of that Council who does not have voting rights in relation to that Council.

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

officer, in relation to an Aboriginal Land Council, means the Chairperson, Secretary or Treasurer of the Council.

Pecuniary Interest Tribunal means the Aboriginal Land Councils Pecuniary Interest Tribunal established under Division 3 of Part 10.

records includes any of the following (whether in a written or electronic form):

- (a) financial statements (including statements or lists of assets or liabilities),
- (b) bank statements or other authorised deposit-taking institution statements,
- (c) membership rolls,
- (d) voting rolls,
- (e) minutes of meetings,

(f) attendance lists of meetings,

(g) leases, contracts and other documents relating to arrangements to which an Aboriginal Land Council is a party.

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.

Register of Aboriginal Land Claims means the Register of Aboriginal Land Claims established under Division 2 of Part 9.

Register of Aboriginal Owners means the Register of Aboriginal Owners established under Division 3 of Part 9.

Registrar means the Registrar appointed under this Act.

regulations means regulations made under this Act.

relative, in relation to a person, means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse,
- (b) the spouse or de facto partner of the person or of a person referred to in paragraph (a).

rules means the rules of an Aboriginal Land Council that apply to the Council by the operation of this Act.

satisfactory audited financial statements and documents means audited financial statements and documents furnished to the New South Wales Aboriginal Land Council under Division 2 of Part 8 by a Local or Regional Aboriginal Land Council that are determined by the New South Wales Aboriginal Land Council to be satisfactory under the criteria prescribed by the regulations under section 154.

voting member, of a Local Aboriginal Land Council, means a member of that Council who has voting rights in relation to that Council.

voting rights, in relation to a Local Aboriginal Land Council, means the right of a member of the Council to vote in the elections held by, and on any matter to be decided by, the Council.

(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.

5-34C (Repealed)

Part 2 Land rights

Division 1

35 (Repealed)

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 3 and 4 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.
- (1A) Despite subsection (1), a Local Aboriginal Land Council may purchase land only if:
- (a) the purchase price for the land is not more than 5% above the assessed market value of the land, or
 - (b) the New South Wales Aboriginal Land Council has given its written approval to that purchase.

- (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.

- (6) In this section, **assessed market value** of land means the market value of the land as assessed by a registered valuer (within the meaning of the [Valuers Act 2003](#)) appointed by the Local Aboriginal Land Council concerned.

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 Aboriginals.
- (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 149 or 152.

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 land vested in it for a period of 3 or more years (including any option to renew the lease), and
 - (a1) 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.
- (2A) A Local Aboriginal Land Council may, subject to the provisions of any other Act, lease land vested in it for a period of less than 3 years (including any option to renew the lease), but only if the lease 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) (Repealed)
 - (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) (Repealed)
 - (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) The regulations may declare that specified land (being land vested in an Aboriginal Land Council) is exempt from:
 - (a) the payment of rates and charges, or from the payment of specified rates and charges, under the *Local Government Act 1993*, or
 - (b) the payment of rates, levies and charges, or from the payment of specified rates, levies and charges, under the *Hunter Water Act 1991*, or
 - (c) the payment of service charges, or the payment of specified service charges, under the following Acts:
 - (i) the *Sydney Water Act 1994*,

(ii) the *Water Management Act 2000*.

(2) A regulation made under subsection (1) may provide that the exemption referred to in that subsection is to operate for a limited period of 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 3 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 4 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.
Maximum penalty: 10 penalty units.
- (9) The Court may, on the application of any person and on reasonable cause being

shown, revoke a permit issued under this section.

Part 5 Local Aboriginal Land Councils

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

49 Constitution of Local Aboriginal Land Council areas (cf former section 5)

- (1) The Minister may, in the manner prescribed by the regulations, 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 the following:
 - (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,
 - (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.

50 Constitution of Local Aboriginal Land Councils (cf former section 6 (1) and (2))

- (1) A Local Aboriginal Land Council is constituted by this Act for each Local Aboriginal Land Council area.
- (2) A Local Aboriginal Land Council is a body corporate.
- (3) The corporate name of a Local Aboriginal Land Council is "Local Aboriginal Land Council" preceded by the name of the area of the Council.

51 Objects of Local Aboriginal Land Councils (cf clause 5 of Schedule 1 to 1996 Regulation)

The objects of each Local Aboriginal Land Council are to improve, protect and foster the best interests of all Aboriginal persons within the Council's area and other persons who are members of the Council.

52 Functions of Local Aboriginal Land Councils (cf former section 12)

- (1) The functions of a Local Aboriginal Land Council are as follows:
- (a) in accordance with any regulations, to acquire land and to use, manage, control, hold or dispose of, or otherwise deal with, land vested in or acquired by the Council,
 - (b) 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 Aboriginal persons that are listed in Schedule 14 to the NPW Act and the lease of those lands to the Minister administering that Act,
 - (c) 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 Aboriginal persons that are reserved or dedicated under the NPW Act,
 - (d) 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,
 - (e) 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,
 - (f) to make applications in writing to the New South Wales Aboriginal Land Council or other persons or bodies for the granting of funds for the payment of the costs and expenses of the Local Aboriginal Land Council,
 - (g) 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 (including enterprises that promote employment and employment training as a means of obtaining self-sufficiency for Aboriginal persons),
 - (h) to consider applications to prospect or mine for minerals on its land and to make recommendations to the New South Wales Aboriginal Land Council in respect of such applications,
 - (i) to make claims to Crown lands,
 - (j) to acquire, construct, upgrade or extend residential accommodation for Aboriginal persons in its area,
 - (k) to protect the interests of Aboriginal persons in its area in relation to the

acquisition, management, use, control and disposal of its land,

- (l) to negotiate with persons desiring to use, occupy or gain access to any part of its land,
- (m) to promote the protection of Aboriginal culture and the heritage of Aboriginal persons in its area,
- (n) to ensure that no part of the income or property of the Council is transferred directly or indirectly by way of dividend or bonus or otherwise by way of profit to members of the Council (nothing in this paragraph prevents the payment in good faith of remuneration to any officer or member of staff of the Council),
- (o) such other functions as are conferred or imposed on it by or under this or any other Act.

Note—

Section 50 of the [Interpretation Act 1987](#) provides for the powers of a statutory corporation.

- (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.

Division 2 Membership of Local Aboriginal Land Councils

53 Membership of Local Aboriginal Land Councils (cf former section 6 (3))

The members of the Local Aboriginal Land Council for a Local Aboriginal Land Council area are the adult Aboriginal persons who are listed on the Local Aboriginal Land Council membership roll for that area.

54 Local Aboriginal Land Council membership rolls (cf former section 7 (1) and (2))

- (1) The Secretary of a Local Aboriginal Land Council must, in respect of the Local Aboriginal Land Council area, prepare and maintain a Local Aboriginal Land Council membership roll (the **membership roll**).
- (2) The Secretary of a Local Aboriginal Land Council must list on the membership roll for the Local Aboriginal Land Council area the names and addresses of those adult Aboriginal persons:
 - (a) who:
 - (i) reside within that area, or

- (ii) have an association with that area, and
 - (b) who have been accepted by a meeting of that Council as members.
- (3) A person seeking to be accepted as a member of a Local Aboriginal Land Council must make and submit to that Council a written application for that membership that:
- (a) declares that the person is an Aboriginal person and that the person:
 - (i) resides within that Council's area, or
 - (ii) has an association with that area, and
 - (b) sets out the basis on which the person asserts his or her Aboriginal descent and, if the application declares that the person has an association with that Council's area, the basis of that association, and
 - (c) if the person is seeking to be accepted as a voting member of the Council—attaches a notice from the Chief Executive Officer of the New South Wales Aboriginal Land Council declaring that the person is not a voting member of any other Local Aboriginal Land Council.

Note—

If a person is a voting member of one Local Aboriginal Land Council and wishes to join and become a voting member of another Local Aboriginal Land Council, the person must first be accepted as a non-voting member of the second Local Aboriginal Land Council under this section. The person must then make a nomination under section 56 to change the Council in which the person intends to have voting rights.

- (4) A person must not make an application for membership of an Aboriginal Land Council that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Maximum penalty (subsection (4)): 10 penalty units.

Note—

An Aboriginal person may request that the Registrar issue a compliance direction under Part 12 if the person believes a Local Aboriginal Land Council has, in contravention of this Act:

- (a) failed or refused to list the person's name on the membership roll of the Council, or
- (b) removed the person's name from that roll.

55 Aboriginal persons may be member of more than one Local Aboriginal Land Council

- (1) An Aboriginal person may be a member of more than one Local Aboriginal Land Council.
- (2) However, a person is entitled to voting rights in relation to one Local Aboriginal Land Council only at any one time.

- (3) The Local Aboriginal Land Council in relation to which the person has voting rights is to be the Council nominated by the person or determined by the Chief Executive Officer of the New South Wales Aboriginal Land Council in accordance with section 56.
- (4) A non-voting member of a Local Aboriginal Land Council is not entitled to vote:
 - (a) in elections for officers of the Council (including Regional or Alternate Representatives), or
 - (b) on any matter to be determined by the Council.

Note—

A person is not 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 unless the person is a voting member of a Local Aboriginal Land Council within the area (see section 119).

- (5) A vote by a non-voting member of a Local Aboriginal Land Council in such an election or on such a matter is void.

56 Nomination of voting area

- (1) A person who is a member of more than one Local Aboriginal Land Council may, by notice in writing given to the Chief Executive Officer of the New South Wales Aboriginal Land Council, make a nomination to change the Council in relation to which the person has voting rights (being a Council of which the person is a member).
- (2) A person must not make more than one nomination under subsection (1) in any 12 month period.
- (3) The Chief Executive Officer of the New South Wales Aboriginal Land Council may at any time, by notice in writing to a person who the Chief Executive Officer believes is a member of 2 or more Local Aboriginal Land Councils, require the person to make a nomination under this section within the time specified in the notice.
- (4) If a nomination is not made within the time required under subsection (3), the Chief Executive Officer is to determine the Local Aboriginal Land Council in relation to which the person is to have voting rights (being a Council of which the person is a member).
- (5) The Chief Executive Officer is, as soon as practicable, to give notice of the receipt of a nomination or of a determination under this section to the person concerned and to the Secretary of the New South Wales Aboriginal Land Council and the Secretary of each Local Aboriginal Land Council of which the person is a member.
- (6) The Secretary of each such Council must record on the membership roll for the Local Aboriginal Land Council the Council in relation to which the person has voting rights.

57 Suspension of members from attending Council meetings (cf clause 10 of Schedule 1 to

1996 Regulation)

- (1) A member of a Local Aboriginal Land Council (other than an officer or Regional or Alternate Representative of that Council) whose conduct the Council decides is detrimental to the best interests of the Council may be suspended by the Council from attending Council meetings for a period of time specified by the Council, but such a period must not be greater than 3 years.

Note—

A Local Aboriginal Land Council may remove an officer or Regional or Alternate Representative of the Council from office under section 68.

- (2) During any period of suspension, the member is not entitled:
 - (a) to attend meetings of that Council, or
 - (b) to vote:
 - (i) in elections for officers of the Council, or
 - (ii) on any matter to be determined by the Council, or
 - (c) if the member is also a member of another Local Aboriginal Land Council—to make a nomination to change the Council in relation to which the person has voting rights.
- (3) A Local Aboriginal Land Council that has suspended a member under this section may at any time revoke the suspension.
- (4) The Secretary of a Local Aboriginal Land Council that has suspended a member under this section must notify the Chief Executive Officer of the New South Wales Aboriginal Land Council of the suspension, and the details of the suspension, and of any revocation of that suspension.
- (5) At the end of the period of suspension, the member is entitled to attend Council meetings, vote and make a nomination in relation to voting rights unless the Council, by a further vote, held in accordance with this section, sets another period of suspension.

58 Removal of person's name from membership roll (cf clause 8 (2) of Schedule 1 to 1996 Regulation)

The Secretary of a Local Aboriginal Land Council must remove the name of a person from the Council's membership roll if, and only if:

- (a) the person dies, or
- (b) the person resigns in writing, or
- (c) if the person is a member because the person resided in the Council area—the person

no longer resides in the Council area and the Council at a meeting decides that the person does not have a sufficient association with the area to continue as a member.

59 Membership rolls to be sent to NSW Aboriginal Land Council annually (cf clause 8 (3) of Schedule 1 to 1996 Regulation)

The Secretary of each Local Aboriginal Land Council must:

- (a) not less than 10 weeks before the commencement of each financial year, send a copy of the Council's membership roll to the Secretary of the New South Wales Aboriginal Land Council, and
- (b) advise the New South Wales Aboriginal Land Council in writing of any changes to the membership roll that have occurred since a copy was last sent to that Council.

60 Regulations concerning membership of Local Aboriginal Land Council and membership rolls (cf former section 7 (3))

The Governor may make regulations for or with respect to:

- (a) the preparation and maintenance of Local Aboriginal Land Council membership rolls, and
- (b) the particulars to be recorded in Local Aboriginal Land Council membership rolls, and
- (c) the removal of particulars from Local Aboriginal Land Council membership rolls, and
- (d) the procedure to be followed by Local Aboriginal Land Councils when deciding whether to suspend a member from attending Council meetings and voting.

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

61 Chairperson, Secretary and Treasurer of Local Aboriginal Land Councils (cf former section 9 (1))

The members of a Local Aboriginal Land Council are to elect at every second annual meeting:

- (a) a Chairperson, and
- (b) a Secretary, and
- (c) a Treasurer.

62 Term of office of Chairperson, Secretary and Treasurer (cf former section 9 (5) and (6))

- (1) The term of office of a Chairperson, Secretary or Treasurer of a Local Aboriginal Land Council begins on his or her election and expires on his or her re-election for another term, or on the election of his or her successor, at the second annual meeting of the

Council following his or her election.

Note—

The term of office of Chairperson, Secretary or Treasurer of a Local Aboriginal Land Council is, therefore, approximately two years (depending on the timing of the Council's annual meeting).

- (2) In the event of a vacancy in the office of a Chairperson, Secretary or Treasurer of a Local Aboriginal Land Council, a member of the Council may be elected to fill the vacancy for the remainder of that term of office.
- (3) A Chairperson, Secretary or Treasurer of a Local Aboriginal Land Council is eligible for re-election, subject to this Act.

63 Regional Representatives and Alternate Representatives (cf former section 11)

- (1) The members of a Local Aboriginal Land Council are to elect at every second annual meeting:
 - (a) 2 Regional Representatives, and
 - (b) a First Alternate Representative, and
 - (c) a Second Alternate Representative.
- (2) In the event of a vacancy in the office of a Regional or Alternate Representative, a member of the Council may be elected at a meeting of the Local Aboriginal Land Council of which notice (including notice of the proposed election) has been given in accordance with the regulations to fill the vacancy for the remainder of that term of office.
- (3) A Regional Representative, First or Second Alternate Representative of a Local Aboriginal Land Council is eligible for re-election, subject to this Act.

64 Qualification for office

A person is not qualified to stand and be elected as an officer or Regional or Alternate Representative of a Local Aboriginal Land Council unless the person is a voting member of the Council.

65 Role of officers of Local Aboriginal Land Councils (cf section 232 of [Local Government Act 1993](#))

The role of an officer of a Local Aboriginal Land Council is:

- (a) to direct and control the affairs of the Council in accordance with this Act and the resolutions and decisions of the members of the Council as expressed through Council meetings, and
- (b) to participate in the allocation of the Council's resources for the benefit of the Council's members in accordance with this Act and the resolutions and decisions of

the members of the Council as expressed through Council meetings, and

- (c) to represent the interests and respond to the concerns of the Council's members, and
- (d) to facilitate communication between the Council's members and the New South Wales Aboriginal Land Council, and
- (e) to participate in the creation and review of Council policies and objectives, and
- (f) to review the performance of the Council in the exercise of its functions and the achievement of its objectives.

66 Role of Alternate Regional Representatives

- (1) An Alternate Representative may, with the written authority of a Regional Representative or the Chairperson of the Local Aboriginal Land Council, act in the place of a Regional Representative during the illness or absence of the Regional Representative.
- (2) If a Regional Representative or the Chairperson of a Local Aboriginal Land Council decides to give an authority under subsection (1), the authority must be given to the First Alternate Representative or, in a case where the First Alternate Representative is unable to act in the place of the Regional Representative concerned, to the Second Alternate Representative.
- (3) During the illness or absence of both Regional Representatives, an authority under subsection (1) may be given to each of the Alternate Representatives.
- (4) An Alternate Representative acting in the place of a member must table his or her authority to act at any meeting of a Regional Aboriginal Land Council attended by him or her.
- (5) An Alternate Representative, while acting as a member, may exercise all the functions of the member and is taken to be the member.
- (6) For the purposes of subsection (1), a vacancy in the office of a member is taken to be an absence from office of the member.
- (7) In the event of a vacancy occurring in the office of a Regional Representative, the Alternate Representative acting in the place of the Regional Representative may continue to act in that place until a person is elected to fill the vacancy.
- (8) Nothing in this Act prevents an Alternate Representative being elected at an election to fill a vacancy in the office of the Regional Representative but, in any such case, a further Alternate Representative must then be elected.

67 Disqualification from office

- (1) A person who is convicted of an offence under Part 3 (except section 61), 4, 4A or 5 of the *Crimes Act 1900* is disqualified from holding office as an officer or Regional or Alternate Representative of a Local Aboriginal Land Council for 5 years from the date of conviction.
- (2) A person who is a councillor is disqualified from holding office as an officer or Regional or Alternate Representative of a Local Aboriginal Land Council while that person is a councillor.
- (3) A person who is a member of staff of the New South Wales Aboriginal Land Council is disqualified from holding office as an officer or Regional or Alternate Representative of a Local Aboriginal Land Council while that person is such a staff member.

68 Removal from office

- (1) A Local Aboriginal Land Council may remove an officer or Regional or Alternate Representative of the Council from office for any reason.
- (2) The removal from office may only be effected at a Council meeting of which notice (including notice of the motion that the person concerned be removed from office) was given in accordance with this Act and the regulations.
- (3) The removal from office may only be effected if the motion for removal is supported:
 - (a) if the person to be removed from office is to be removed for a breach of a provision of the Council's code of conduct (being a provision declared by the code to be a dismissal provision)—by a majority of the voting members who are present and voting, or
 - (b) in any other case—by at least 66 per cent of the voting members who are present and voting.
- (4) Voting on the motion for removal is to be by secret ballot.
- (5) The motion for removal must not be put to the vote of the meeting unless the person concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (6) If the person to whom the motion refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if the notice required under this Act and the regulations for the meeting has been given.

69 Vacancy in office

A person who is an officer or Regional or Alternate Representative vacates office if the person:

- (a) dies, or
- (b) completes a term of office and is not re-elected, or
- (c) resigns the office by instrument in writing addressed to the Local Aboriginal Land Council, or
- (d) becomes disqualified from holding office under this Act, or
- (e) is removed from office by the Local Aboriginal Land Council under section 68, or
- (f) 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
- (g) becomes a mentally incapacitated person.

70 ADT may declare particular offices of Local Aboriginal Land Council vacant (cf section 329 of *Local Government Act 1993*)

- (1) Any person may apply to the Administrative Decisions Tribunal for an order declaring that a particular office of a Local Aboriginal Land Council (including the office of a Regional or Alternate Representative) has become vacant under this Act.
- (2) The Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in respect of proceedings commenced by an application made under this section.

71 Appeals to Supreme Court against order (cf section 330 of *Local Government Act 1993*)

- (1) A person whose office has been declared vacant by order of the Administrative Decisions Tribunal may appeal against the order, on a question of law, to the Supreme Court.
- (2) Such an appeal may not be made more than 28 days after the date on which the order is made.

72 Effect of order declaring vacancy (cf section 331 of *Local Government Act 1993*)

An order declaring a vacancy in an office made by the Administrative Decisions Tribunal under this Division takes effect:

- (a) if no appeal to the Supreme Court is made against the order, at the end of the period during which such an appeal may be made, or
- (b) if such an appeal is made within that period and the order is confirmed on appeal, when the order is confirmed, or
- (c) if, within that period, the person against whom the order is made serves on the Chief

Executive Officer of the New South Wales Aboriginal Land Council written notice of intention not to appeal against the order, when the notice is lodged.

Division 4 Meetings of Local Aboriginal Land Councils

73 Meetings of Local Aboriginal Land Councils (cf former section 8)

- (1) Subject to subsection (2), a Local Aboriginal Land Council is to hold meetings at such times as the Council determines.
- (2) A Local Aboriginal Land Council must:
 - (a) hold ordinary meetings at least once in every 3 months, and
 - (b) hold annual meetings at the times, or within the periods, prescribed by the regulations.

74 Chairperson to preside at meetings (cf former section 9 (2)–(4))

- (1) Subject to subsection (2), the Chairperson of a Local Aboriginal Land Council is to preside at meetings of the Council.
- (2) In the absence of the Chairperson from a meeting of a Local Aboriginal Land Council, the members of the Council are to elect a member to preside at the meeting.

75 General procedure

The procedure for the calling of meetings of a Local Aboriginal Land Council and for the conduct of business at those meetings is, subject to this Act, the regulations and the rules of the Council, to be determined by the Council.

76 Quorum

The quorum for a meeting of a Local Aboriginal Land Council is:

- (a) if the total number of voting members of the Council is less than 27—one third of the total number of voting members of the Council plus one (if one third of the number of voting members includes a fraction, ignoring the fraction), or
- (b) if the total number of voting members of the Council is 27 or more—ten.

77 Voting (cf former section 10)

Subject to this Act, a decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

Division 5 Staff of Local Aboriginal Land Councils

78 Staff (cf former section 12A)

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

79 Certain persons must not be employed

- (1) A person who is convicted of an offence under Part 3 (except section 61), 4, 4A or 5 of the *Crimes Act 1900* must not be employed as a staff member of, or a consultant to, a Local Aboriginal Land Council for 5 years from the date of conviction.
- (2) A person who is a councillor or an officer of a Local or Regional Aboriginal Land Council must not be employed as a member of staff of a Local Aboriginal Land Council while the person is such a councillor or officer.
- (3) A person who is a consultant to a Local Aboriginal Land Council must not be employed as a member of staff of that Council while the person is such a consultant.
- (4) A member of staff of the New South Wales Aboriginal Land Council must not be employed as a member of staff of a Local Aboriginal Land Council while the person is such a member of staff.

80 Appointments and promotion to be on merit

- (1) Appointments to the staff of a Local Aboriginal Land Council and promotions for members of that staff are to be made on the basis of the merit of the applicants for appointment or promotion.
- (2) The merit of persons eligible for appointment or promotion to a vacant position is to be determined having regard to:
 - (a) the nature of the duties of the position, and
 - (b) the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.

81 Consultants to be engaged on merit

- (1) A decision by a Local Aboriginal Land Council to engage a consultant is to be made on the basis of merit.
- (2) The merit of persons eligible to be engaged as a consultant is to be determined having regard to:
 - (a) the nature of the duties of the work required to be done, and

- (b) the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.

Division 6 Delegations

(cf sections 377–381 of *Local Government Act 1993*)

82 General power of Local Aboriginal Land Council to delegate

A Local Aboriginal Land Council may, by resolution, delegate to any person or body any of the functions of the Council, other than the following:

- (a) the acquisition of land and the use, management, control, holding or disposal of, or otherwise dealing with, land vested in or acquired by the Council,
- (b) this power of delegation,
- (c) any function under this or any other Act that is expressly required to be exercised by resolution of the Council.

83 Review of delegations

Each Local Aboriginal Land Council must, once every year, review all its delegations.

Division 7 Rules of Local Aboriginal Land Councils

84 Rules of Local Aboriginal Land Councils (cf former section 13)

- (1) The purpose of this section is to provide rules for Local Aboriginal Land Councils relating to those Councils' functions and operations.
- (2) The rules prescribed by the regulations as model rules are the rules for a Local Aboriginal Land Council.
- (3) However, a Local Aboriginal Land Council may prepare its own rules and submit them to the Registrar for approval.
- (4) On approval by the Registrar, the rules prepared by a Local Aboriginal Land Council, to the extent that they are not inconsistent with this Act or the regulations, become the rules of the Council to the exclusion of the model rules.
- (5) A Local Aboriginal Land Council's rules may, with the approval of the Registrar, be amended, repealed or replaced from time to time.
- (6) 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 a replacement of its rules.

- (7) On the hearing of an appeal under subsection (6), the Court may direct the Registrar to approve of rules, or an amendment, a repeal or a replacement of rules, specified in the direction.

Part 6 Regional Aboriginal Land Councils

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

85 Constitution of Regional Aboriginal Land Council areas (cf former section 14)

- (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 must be specified in the notice constituting the area.

86 Constitution of Regional Aboriginal Land Councils (cf former section 15 (1) and (2))

- (1) A Regional Aboriginal Land Council is constituted by this Act for each Regional Aboriginal Land Council area.
- (2) A Regional Aboriginal Land Council is a body corporate.
- (3) The corporate name of a Regional Aboriginal Land Council is "Regional Aboriginal Land Council" preceded by the name of the area of the Council.

87 Objects of Regional Aboriginal Land Councils (cf clause 5 of Schedule 1 to 1996 Regulation)

The objects of each Regional Aboriginal Land Council are to improve, protect and foster the best interests of all Aboriginal persons within the Council's area and other persons who are members of Local Aboriginal Land Councils in that area.

88 Functions of Regional Aboriginal Land Councils (cf former section 20)

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

- (a) to provide assistance, when requested, to Local Aboriginal Land Councils within its area in the management, acquisition, use, control and disposal of land,
- (b) to promote the protection of Aboriginal culture and the heritage of Aboriginal persons in its area,
- (c) to provide advice and such further assistance as is required from time to time by Local Aboriginal Land Councils within its area,
- (d) to provide advice and such further assistance as is required from time to time by the New South Wales Aboriginal Land Council,

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

Note—

Section 50 of the [Interpretation Act 1987](#) provides for the powers of a statutory corporation.

Division 2 Membership of Regional Aboriginal Land Councils

89 Members of Regional Aboriginal Land Councils (cf former section 15 (3), (4) and (5))

- (1) The Regional Representatives of each Local Aboriginal Land Council within the Regional Aboriginal Land Council's area are the members of that Regional Aboriginal Land Council.
- (2) Subject to the regulations, the term of office of a member of a Regional Aboriginal Land Council begins on the member's election as a Regional Representative and expires:
 - (a) on the member's re-election for another term, or
 - (b) on the election of the member's successor.

Note—

The election of Regional Representatives is dealt with by section 63.

- (3) A member of a Regional Aboriginal Land Council, subject to the regulations, is entitled to receive from the funds of the Council such fees, allowances and expenses as the Council determines in respect of the member.

Division 3 Officers of Regional Aboriginal Land Councils

90 Chairperson and other officers (cf former section 17 (1))

The members of a Regional Aboriginal Land Council are at each annual meeting to elect from among its members:

- (a) a Chairperson, and
- (b) a Secretary, and
- (c) a Treasurer.

91 Term of office of Chairperson, Secretary and Treasurer (cf former section 17 (5) and (6))

- (1) Subject to the regulations, the term of office of a Chairperson, Secretary or Treasurer of a Regional Aboriginal Land Council begins on the person's election to that office and expires 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.

- (2) 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 be elected to fill the vacancy for the remainder of that term of office.

92 Disqualification from office

- (1) A person who is convicted of an offence under Part 3 (except section 61), 4, 4A or 5 of the *Crimes Act 1900* is disqualified from holding any office of a Regional Aboriginal Land Council for 5 years from the date of conviction.
- (2) A person who is a councillor is disqualified from holding any office of a Regional Aboriginal Land Council while the person is a councillor.
- (3) A member of staff of the New South Wales Aboriginal Land Council is disqualified from holding any office of a Regional Aboriginal Land Council while the person is such a member of staff.

93 Removal from office

- (1) A Regional Aboriginal Land Council may remove an officer of the Council from office for any reason.
- (2) The removal from office may only be effected at a Council meeting of which notice (including notice of the motion that the officer be removed from office) was given in accordance with this Act and the regulations.
- (3) The removal from office may only be effected if the motion for removal is supported:
 - (a) if the officer to be removed from office is to be removed for a breach of a provision of the Council's code of conduct (being a provision declared by the code to be a dismissal provision)—by a majority of the members who are present and voting, or
 - (b) in any other case—by at least 66 per cent of the members who are present and voting.
- (4) Voting on the motion for removal is to be by secret ballot.
- (5) The motion for removal must not be put to the vote of the meeting unless the officer concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (6) If the person to whom the motion refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if the notice required under the regulations for the meeting has been given.

94 Vacancy in office

A person who is an officer of a Regional Aboriginal Land Council vacates office if the person:

- (a) dies, or
- (b) completes a term of office and is not re-elected, or
- (c) resigns the office by instrument in writing addressed to the Regional Aboriginal Land Council, or
- (d) becomes disqualified from holding office under this Act, or
- (e) is removed from office by the Regional Aboriginal Land Council under section 93, or
- (f) 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
- (g) becomes a mentally incapacitated person.

95 ADT may declare particular offices of Regional Aboriginal Land Council vacant (cf section 329 of *Local Government Act 1993*)

- (1) Any person may apply to the Administrative Decisions Tribunal for an order declaring that a particular office of a Regional Aboriginal Land Council has become vacant under this Act.
- (2) The Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in respect of proceedings commenced by an application made under this section.

96 Appeals to Supreme Court against order (cf section 330 of *Local Government Act 1993*)

- (1) A person whose office has been declared vacant by order of the Administrative Decisions Tribunal may appeal against the order, on a question of law, to the Supreme Court.
- (2) Such an appeal may not be made more than 28 days after the date on which the order is made.

97 Effect of order declaring vacancy (cf section 331 of *Local Government Act 1993*)

An order declaring a vacancy in an office made by the Administrative Decisions Tribunal under this Division takes effect:

- (a) if no appeal to the Supreme Court is made against the order, at the end of the period during which such an appeal may be made, or
- (b) if such an appeal is made within that period and the order is confirmed on appeal, when the order is confirmed, or
- (c) if, within that period, the person against whom the order is made serves on the Chief

Executive Officer of the New South Wales Aboriginal Land Council written notice of intention not to appeal against the order, when the notice is lodged.

Division 4 Meetings of Regional Aboriginal Land Councils

98 Meetings of Regional Aboriginal Land Councils (cf former section 16)

- (1) Subject to subsection (2), a Regional Aboriginal Land Council is to hold its meetings at such times as the Council determines.
- (2) A Regional Aboriginal Land Council must:
 - (a) hold ordinary meetings at least once in every 3 months, and
 - (b) hold annual meetings at the times, or within the periods, prescribed by the regulations.

99 Chairperson to preside at meetings (cf former section 17 (2)-(4))

- (1) Subject to subsection (2), the Chairperson of a Regional Aboriginal Land Council is to preside at meetings of the Council.
- (2) In the absence of the Chairperson from a meeting of a Regional Aboriginal Land Council, the members of the Council are to elect a member to preside at the meeting.

100 General procedure

The procedure for the calling of meetings of a Regional Aboriginal Land Council and for the conduct of business at those meetings is, subject to this Act, the regulations and the rules of the Council, to be determined by the Council.

101 Quorum

Subject to this Act, the regulations and the rules of the Council, the quorum for a meeting of a Regional Aboriginal Land Council is one half of the total number of voting members of the Council plus one (if one half of the number of voting members includes a fraction, ignore the fraction).

102 Voting (cf former section 18)

A decision supported by a majority of the votes cast at a meeting of a Regional Aboriginal Land Council at which a quorum is present is the decision of the Council.

Division 5 Rules of Regional Aboriginal Land Councils

103 Rules of Regional Aboriginal Land Councils (cf former section 21)

- (1) The purpose of this section is to provide rules for Regional Aboriginal Land Councils relating to those Councils' functions and operations.

- (2) The rules prescribed by the regulations as model rules are the rules for a Regional Aboriginal Land Council.
- (3) However, a Regional Aboriginal Land Council may prepare its own rules and submit them to the Registrar for approval.
- (4) On approval by the Registrar, the rules prepared by a Regional Aboriginal Land Council, to the extent that they are not inconsistent with this Act or the regulations, become the rules of the Council to the exclusion of the model rules.
- (5) A Regional Aboriginal Land Council's rules may, with the approval of the Registrar, be amended, repealed or replaced from time to time.
- (6) 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.
- (7) On the hearing of an appeal under subsection (6), the Court may direct the Registrar to approve of rules, or an amendment, a repeal or a replacement of rules, specified in the direction.

Part 7 New South Wales Aboriginal Land Council

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

104 Constitution of NSW Aboriginal Land Council (cf former section 22 (1))

- (1) The New South Wales Aboriginal Land Council is constituted by this Act.
- (2) The New South Wales Aboriginal Land Council is a body corporate and has the corporate name of the "New South Wales Aboriginal Land Council".

105 Objects of New South Wales Aboriginal Land Council (cf clause 5 of Schedule 1 to 1996 Regulation)

The objects of the New South Wales Aboriginal Land Council are:

- (a) to improve, protect and foster the best interests of Aboriginal persons within New South Wales, and
- (b) to relieve poverty, sickness, suffering, distress, misfortune, destitution and helplessness of Aboriginal persons within New South Wales.

106 Functions of the Council (cf former section 23)

- (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 costs and expenses of Local and Regional Aboriginal Land Councils (whether under funding agreements with Local and Regional Aboriginal Land Councils or otherwise),
- (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,
- (d) to negotiate the acquisition by the Council or by one or more Local Aboriginal Land Councils of lands of cultural significance to Aboriginal persons that are listed in Schedule 14 to the NPW Act and the lease of those lands to the Minister administering that Act,
- (e) 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 Aboriginal persons that are reserved or dedicated under the NPW Act,
- (f) 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,
- (g) 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,
- (h) 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,
- (i) with the agreement of a Local Aboriginal Land Council, to manage any of the affairs of that Council,
- (j) to mediate, conciliate and arbitrate disputes relating to the operation of this Act between Aboriginal Land Councils, between those Councils and individuals, or between individual members of those Councils and to refer such disputes to the Registrar or independent mediators, conciliators and arbitrators,
- (k) to make grants or lend money to, or invest money for or on behalf of, Aboriginal persons,
- (l) with the approval of the Minister, to make grants or lend money to a funeral benefits scheme established for the benefit of Aboriginal persons,
- (m) to hold, dispose of, or otherwise deal with land vested in or acquired by it,
- (n) to assist Local and Regional Aboriginal Land Councils in complying with this Act in respect of the establishment and keeping of accounts and the preparation and

- submission of budgets and financial reports,
- (o) to assist Local and Regional Aboriginal Land Councils in conducting elections in accordance with this Act for Chairpersons and other officers,
 - (p) to advise the Minister on matters relating to Aboriginal land rights,
 - (q) to compile and maintain a register of all land held by Local Aboriginal Land Councils,
 - (r) to compile and maintain a consolidated roll of all members of Local Aboriginal Land Councils,
 - (s) to make prescribed information contained in the land register or consolidated membership roll that relates to a Local Aboriginal Land Council available on request to the members of that Local Aboriginal Land Council,
 - (t) to promote the protection of Aboriginal culture and the heritage of Aboriginal people in New South Wales,
 - (u) to provide or make available appropriate training for staff, officers and members of Aboriginal Land Councils (including but not limited to training in computer, administration, financial, accounting and ethical practice skills),
 - (v) 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,
 - (w) to ensure that no part of the income or property of the Council is transferred directly or indirectly by way of dividend or bonus or otherwise by way of profit to councillors or members of staff of the Council (but nothing in this paragraph prevents the payment in good faith of remuneration to any councillor or member of staff of the Council),
 - (x) to exercise such other functions as are conferred or imposed on it by or under this or any other Act.

Note—

Section 50 of the [Interpretation Act 1987](#) provides for the powers of a statutory corporation.

- (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.

Division 2 Members of NSW Aboriginal Land Council

107 Membership of New South Wales Aboriginal Land Council (cf former section 22 (2) and (3))

- (1) The Council is to consist of full-time Aboriginal councillors equal in number to the number of Regional Aboriginal Land Council areas in the State.
- (2) Each councillor is to be elected in the manner specified in Division 3 to represent a Regional Aboriginal Land Council area.

108 Role of members of NSW Aboriginal Land Council (cf section 232 of [Local Government Act 1993](#))

- (1) The role of a councillor is, as a member of the governing body of the Council:
 - (a) to direct and control the affairs of the Council in accordance with this Act, and
 - (b) to participate in the allocation of the Council's resources for the benefit of Aboriginal people, and
 - (c) to participate in the creation and review of the Council's policies and objectives, and
 - (d) to review the performance of the Council in the exercise of its functions and the achievement of its objectives.
- (2) The role of a councillor is, as an elected person:
 - (a) to represent the interests and respond to the concerns of Local Aboriginal Land Council members, and
 - (b) to facilitate communication between the Local Aboriginal Land Council members and the New South Wales Aboriginal Land Council.

109 Term of office (cf former clause 1 of Schedule 5)

Subject to this Act, the term of office of a councillor begins on the councillor's election and expires:

- (a) on the councillor's re-election for another term, or
- (b) on the election of the councillor's successor.

Note—

Elections for councillor are held approximately every 4 years. See section 121 (Timing of elections).

110 Remuneration (cf former clause 2 of Schedule 5)

- (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.

111 Disqualification from office

A person who is convicted of an offence under Part 3 (except section 61), 4, 4A or 5 of the *Crimes Act 1900* is disqualified from holding office as a councillor for 5 years from the date of conviction.

112 Removal of councillors from office (cf clause 85 of 1996 Regulation)

- (1) The Minister is to remove a person from the office of councillor if the Minister receives a valid petition calling for the person's removal from the office.
- (2) In this section:

eligible person means a person who is entitled to vote at an election for the office of the councillor concerned (if it were vacant).

valid petition means a petition:

- (a) that contains the signatures of at least 66 per cent of the persons:
 - (i) who were eligible persons when they signed the petition, and
 - (ii) who were eligible persons on the date of presentation of the petition to the Minister, and
 - (b) that sets out legibly:
 - (i) the name of each person who has signed the petition, and
 - (ii) the date on which the person signed, and
 - (iii) an address for the person that is sufficient to identify the place where the person lives, and
 - (c) all the signatures to which have been affixed within the period of 6 months immediately preceding the date of presentation of the petition to the Minister.
- (3) For the purposes of this section, the Secretary of the New South Wales Aboriginal Land Council must, within 7 days after the presentation of the petition to the Minister, provide the Minister with a copy of the roll for the Regional Aboriginal Land Council area which the person whose removal is sought represents, certified by the Secretary of the New South Wales Aboriginal Land Council as at the date of the presentation.

- (4) If the petition calls for the removal of the Secretary of the New South Wales Aboriginal Land Council, the Chairperson (and not the Secretary) of the Council is to perform the functions referred to in subsection (3).

113 Vacancy in office (cf former clause 3 of Schedule 5)

The office of a councillor becomes vacant if the councillor:

- (a) dies, or
- (b) resigns the office by instrument in writing addressed to the New South Wales Aboriginal Land 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 2 consecutive meetings of the Council of which written notice has been given in accordance with the regulations and rules to the councillor personally, by post or by facsimile, unless:
 - (i) leave was granted by the Council or the councillor is excused by the Council for having been absent from those meetings, or
 - (ii) the Administrative Decisions Tribunal, on an application for an order under section 115, declares that the councillor had a reasonable excuse for being absent from those meetings, or
- (e) breaches a provision of the Council's code of conduct (being a provision declared by the code to be a dismissal provision), or
- (f) 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
- (g) becomes a mentally incapacitated person, or
- (h) is disqualified from holding office as a councillor under this Act, or
- (i) is removed from office by the Minister under section 112, or
- (j) engages in any paid employment outside the duties of his or her office, except with the consent of the Council.

114 Filling of casual vacancy (cf former clause 4 of Schedule 5)

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.

115 Office of particular member of the NSW Aboriginal Land Council may be declared

vacant by ADT (cf section 329 of *Local Government Act 1993*)

- (1) Any person may apply to the Administrative Decisions Tribunal for an order declaring that a particular office of councillor has become vacant under this Act.
- (2) The Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in respect of proceedings commenced by an application made under this section.

116 Appeals to Supreme Court against order (cf section 330 of *Local Government Act 1993*)

- (1) A person whose office of councillor has been declared vacant by order of the Administrative Decisions Tribunal under this Division may appeal against the order, on a question of law, to the Supreme Court.
- (2) Such an appeal may not be made more than 28 days after the date on which the order is made.

117 Effect of order declaring vacancy (cf section 331 of *Local Government Act 1993*)

An order declaring a vacancy in an office of a councillor made by the Administrative Decisions Tribunal under this Division takes effect:

- (a) if no appeal to the Supreme Court is made against the order, at the end of the period during which such an appeal may be made, or
- (b) if such an appeal is made within that period and the order is confirmed on appeal, when the order is confirmed, or
- (c) if, within that period, the person against whom the order is made serves on the Chief Executive Officer of the New South Wales Aboriginal Land Council written notice of intention not to appeal against the order, when the notice is lodged.

Division 3 Election of councillors

118 Conduct of elections (cf former section 25)

- (1) The regulations may make provision for or with respect to the election of councillors.
- (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.

119 Who may vote (cf former section 26)

- (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 voting member of a Local Aboriginal Land Council within the area.

Note—

A person is entitled to be a voting member in only one Local Aboriginal Land Council area.

- (2) A person is only entitled to cast his or her vote in respect of the Local Aboriginal Land Council area in which the person has voting rights.

120 Who may stand for election (cf former section 27)

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 voting member of a Local Aboriginal Land Council within the area.

121 Timing of elections (cf former section 27A and clause 41 (1) of 1996 Regulation)

- (1) Elections of all councillors 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.
- (2) The Minister, in consultation with the New South Wales Aboriginal Land Council, is in accordance with this section to determine a date for the election of all councillors and is to notify the returning officer of that date.

Division 4 Declaration of election

122 Declaration of election (cf former section 27AA)

If the returning officer for an election of councillors 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.

123 Councillors pending determination of disputed return (cf former section 27AB)

- (1) Section 122 applies even if the election of the candidate (or of any other candidate in the election) is the subject of an application under section 124 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 124 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 5 Disputed returns

124 Method of disputing elections and returns (cf former section 27AC)

(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.

125 Powers of Court (cf former section 27AD)

In determining an application under section 124, 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.

126 Right of returning officer to be represented (cf former section 27AE)

The returning officer is entitled to be represented at the hearing of an application under section 124.

127 Procedure (cf former section 27AF)

(1) The procedure of the Court on an application under section 124 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 125, the Court may make an order for costs in respect of an application under section 124 only if the Court is satisfied that there are exceptional circumstances that warrant the making of such an order.

128 Immaterial errors not to invalidate election (cf former section 27AG)

(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.

129 Decisions to be final (cf former section 27AH)

- (1) A decision of the Court in respect of an application under section 124 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 6 Officers of NSW Aboriginal Land Council

130 Chairperson and other officers (cf former clause 2 of Schedule 6)

- (1) The councillors, at the New South Wales Aboriginal Land Council's first meeting on or after each election of all councillors in accordance with Division 3 and approximately every 12 months after that meeting, are to elect from among the councillors:
 - (a) a Chairperson, and
 - (b) a Secretary, and
 - (c) a Treasurer.
- (2) Subject to the regulations, a term of office of a Chairperson, Secretary or Treasurer of the New South Wales Aboriginal Land Council begins on the person's election to that office and expires on his or her re-election for another term, or on the election of his or her successor, at the next election held in accordance with subsection (1).
- (3) A person vacates office as an officer of the New South Wales Aboriginal Land Council if the person:
 - (a) ceases to be a councillor, or
 - (b) is removed from office by the New South Wales Aboriginal Land Council under section 131, or

(c) is removed from office by the Pecuniary Interest Tribunal under section 211.

- (4) In the event of there being a vacancy in the office of a Chairperson, Secretary or Treasurer of the New South Wales Aboriginal Land Council, a councillor may be elected to fill the vacancy for the remainder of that term of office.

131 Removal from office

- (1) The New South Wales Aboriginal Land Council may remove a councillor from office as an officer of the Council for any reason.
- (2) The removal from office may only be effected at a Council meeting of which notice (including notice of the motion that the officer be removed from office) was given in accordance with this Act and the regulations.
- (3) Voting on the motion for removal is to be by secret ballot.
- (4) The motion for removal must not be put to the vote of the meeting unless the officer concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the person to whom the motion refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if the notice required under this Act and the regulations for the meeting has been given.

Division 7 Meetings of New South Wales Aboriginal Land Council

132 Meetings of New South Wales Aboriginal Land Council (cf former clause 1 of Schedule 6)

- (1) The New South Wales Aboriginal Land Council is to hold its first meeting after each election of all councillors in accordance with Division 3 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 must 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.

133 Presiding councillor (cf former clause 4 of Schedule 6)

- (1) The Chairperson of the New South Wales Aboriginal Land Council is to preside at a meeting of the Council.
- (2) A councillor elected by the other councillor 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.

134 Quorum

The quorum for a meeting of the New South Wales Aboriginal Land Council is a majority of the councillors constituting the Council for the time being.

135 Voting (cf former clause 5 of Schedule 6)

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

136 Minutes (cf former clause 6 of Schedule 6)

- (1) The New South Wales Aboriginal Land Council must cause minutes to be kept of the proceedings of each meeting of the Council.
- (2) The minutes are to include a record of the following:
 - (a) motions put to the meeting,
 - (b) amendments to such motions,
 - (c) the names of the movers and seconders of those motions and amendments,
 - (d) the resolutions passed by the meeting.

Division 8 Rules of the NSW Aboriginal Land Council

137 Rules of the NSW Aboriginal Land Council (cf former section 24)

- (1) The purpose of this section is to provide rules for the New South Wales Aboriginal Land Council relating to the Council's functions and operations.
- (2) The rules prescribed by the regulations as model rules are the rules for the New South Wales Aboriginal Land Council.
- (3) However, the New South Wales Aboriginal Land Council may prepare its own rules and submit them to the Registrar for approval.

- (4) On approval by the Registrar, the rules prepared by the New South Wales Aboriginal Land Council, to the extent that they are not inconsistent with this Act or the regulations, become the rules of the Council to the exclusion of the model rules.
- (5) 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.
- (6) 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.
- (7) On the hearing of an appeal under subsection (6), the Court may direct the Registrar to approve of rules, or an amendment, a repeal or a replacement of rules, specified in the direction.

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

(cf sections 334–336 of *Local Government Act 1993*)

138 Chief Executive Officer

- (1) The New South Wales Aboriginal Land Council must appoint a person to be its Chief Executive Officer.
- (2) For the purposes of this Act (other than section 139), the Chief Executive Officer is taken to be a member of staff of the New South Wales Aboriginal Land Council.

139 Functions of Chief Executive Officer

- (1) The Chief Executive Officer is generally responsible for the efficient and effective operation of the New South Wales Aboriginal Land Council's organisation and for ensuring the implementation, without undue delay, of decisions of the Council.
- (2) The Chief Executive Officer has the following particular functions:
 - (a) the day-to-day management of the Council's affairs,
 - (b) the exercise of such of the functions of the Council as are delegated by the Council to the Chief Executive Officer,
 - (c) the appointment of members of staff in accordance with the staff organisation structure and resources approved by the Council,
 - (d) the direction and dismissal of members of staff.
- (3) The Chief Executive Officer has such other functions as may be conferred or imposed on the Chief Executive Officer by or under this or any other Act.

140 Attendance of Chief Executive Officer at meetings (cf section 376 of [Local Government Act 1993](#))

- (1) Subject to subsection (2), the Chief Executive Officer is entitled to attend, but not to vote at, a meeting of the New South Wales Aboriginal Land Council.
- (2) However, the Council may, by resolution, exclude the Chief Executive Officer from a meeting, or part of a meeting, of the Council.

Note—

The New South Wales Aboriginal Land Council may resolve to exclude the Chief Executive Officer from a meeting, or part of a meeting, that deals with a matter relating to the standard of performance of the Chief Executive Officer or the terms of the employment of the Chief Executive Officer.

141 Filling of vacancy in position of Chief Executive Officer

- (1) If a vacancy occurs in the position of Chief Executive Officer, the New South Wales Aboriginal Land Council must immediately appoint a person under section 138 to the vacant position or appoint a person to act in the vacant position.
- (2) A vacancy occurs in the position of Chief Executive Officer if the Chief Executive Officer:
 - (a) dies, or
 - (b) completes the term of his or her contract and is not re-appointed, or
 - (c) resigns from the position, or
 - (d) becomes a mentally incapacitated person and is removed from the position by the Council because of that mental incapacity, or
 - (e) 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
 - (f) is removed from the position for breach of or under the terms of the Chief Executive Officer's contract with the Council.

Division 10 Staff of New South Wales Aboriginal Land Council

142 Staff organisation structure (cf sections 332 (1) and 333 of [Local Government Act 1993](#))

- (1) The New South Wales Aboriginal Land Council must determine:
 - (a) a staff organisation structure that it considers appropriate:
 - (i) to enable the Council to exercise its functions, and
 - (ii) to enable Regional Aboriginal Land Councils to exercise their functions, and

(b) the resources to be allocated towards the employment of staff.

- (2) The organisation structure may be re-determined by the Council from time to time.
- (3) The organisation structure must be reviewed by the Council within 12 months after every election of all councillors.

143 Appointments and promotion to be on merit

- (1) Appointments to the staff of the New South Wales Aboriginal Land Council and promotions for members of that staff are to be made on the basis of the merit of the applicants for appointment or promotion.
- (2) The merit of persons eligible for appointment or promotion to a vacant position is to be determined having regard to:
 - (a) the nature of the duties of the position, and
 - (b) the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.

144 Certain persons must not be employed

A person who is convicted of an offence under Part 3 (except section 61), 4, 4A or 5 of the [Crimes Act 1900](#) must not be employed as a staff member of the New South Wales Aboriginal Land Council for 5 years from the date of conviction.

145 Consultants to be engaged on merit (cf former section 27E)

- (1) The New South Wales Aboriginal Land Council may engage such consultants as it considers appropriate.
- (2) A decision by the New South Wales Aboriginal Land Council to engage a consultant is to be made on the basis of merit.
- (3) The merit of persons eligible to be engaged as a consultant is to be determined having regard to:
 - (a) the nature of the duties of the work required to be done, and
 - (b) the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.

Division 11 Delegations

(cf sections 377-380 of [Local Government Act 1993](#))

146 General power of New South Wales Aboriginal Land Council to delegate

The New South Wales Aboriginal Land Council may, by resolution, delegate to the Chief Executive Officer or any other person or body (not including another member of staff of the Council) any of the functions of the Council, other than the following:

- (a) the administration of the New South Wales Aboriginal Land Council Account and the Mining Royalties Account established under this Act,
- (b) the granting of funds for the payment of the costs and expenses of Local and Regional Aboriginal Land Councils,
- (c) the acquisition of land on the Council's behalf, or on behalf of a Local Aboriginal Land Council, and the transfer of such land to a Local Aboriginal Land Council,
- (d) the negotiation of the acquisition by the Council, or by one or more Local Aboriginal Land Councils, of land of cultural significance to Aboriginal persons that is listed in Schedule 14 to the NPW Act and the lease of that land to the Minister administering that Act,
- (e) the negotiation of the lease by the Council, or by one or more Local Aboriginal Land Councils, of land to which section 36A applies to the Minister administering the NPW Act,
- (f) the determination and approval of terms and conditions of agreements proposed by Local Aboriginal Land Councils to allow mining or mineral exploration on land,
- (g) the making of grants or lending of money to, or the investment of money for or on behalf of, Aboriginal persons,
- (h) the holding, disposal of or otherwise dealing with land vested in or acquired by the Council,
- (i) the advising of the Minister on matters relating to Aboriginal land rights,
- (j) this power of delegation,
- (k) any function under this or any other Act that is expressly required to be exercised by resolution of the Council.

147 Delegations by Chief Executive Officer

- (1) The Chief Executive Officer may delegate any of the functions of the Chief Executive Officer, other than this power of delegation.
- (2) The Chief Executive Officer may sub-delegate a function delegated to the Chief Executive Officer by the New South Wales Aboriginal Land Council to any person or body (including another member of staff of the Council).

148 Review of delegations

The New South Wales Aboriginal Land Council must, once every year, review all its delegations.

Part 8 Finance

Division 1 Establishment of accounts

149 NSW Aboriginal Land Council Account (cf former section 29)

- (1) The New South Wales Aboriginal Land Council is to establish in an authorised deposit-taking institution an account named the “New South Wales Aboriginal Land Council Account” (the **Account**).
- (2) The following is to be deposited in the Account:
 - (a) money provided to the New South Wales Aboriginal Land Council by Parliament for the purposes of this Act,
 - (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.
- (3) Subject to section 150, the following is to be paid from the Account:
 - (a) money to be provided to Regional Aboriginal Land Councils and Local Aboriginal Land Councils for the purposes of this Act,
 - (b) amounts required to meet expenditure incurred by the New South Wales Aboriginal Land Council in the execution or administration of this Act,
 - (c) any other payments authorised by or under this or any other Act.
- (4) Expenditure incurred in the execution or administration of this Act includes:
 - (a) the payment of the salaries of the councillors and staff of the New South Wales Aboriginal Land Council, and
 - (b) the cost of the election of councillors (including the costs incurred by the Electoral Commissioner for New South Wales).
- (5) Money to the credit of the Account may be invested in any manner authorised by the regulations.

150 Preservation of money in NSW Aboriginal Land Council Account (cf former section 29A)

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

Note—

The capital value of the New South Wales Aboriginal Land Council Account as at 31 December 1998 was determined in the 1998-1999 Annual Report for that Council to be \$485,340,000.

- (2) Net realised investment income and net realised capital gains on money to the credit of the Account (being realised investment income and realised capital gains less any costs incurred in investing the money, including the cost of obtaining investment advice) after 31 December 1998 may be disbursed from the Account.

151 Regional Aboriginal Land Council Accounts (cf former section 30)

- (1) Each Regional Aboriginal Land Council is to establish in an authorised deposit-taking institution an account (the ***Regional Aboriginal Land Council's Account***).
- (2) The following is to be deposited in the Regional Aboriginal Land Council's Account:
 - (a) money received from the New South Wales Aboriginal Land Council,
 - (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.
- (3) The following is to be paid from the Regional Aboriginal Land Council's Account:
 - (a) amounts required to meet expenditure incurred by the Regional Aboriginal Land Council in the execution or administration of this Act,
 - (b) any other payments authorised by or under this or any other Act.
- (4) Money to the credit of the account may be invested in any manner authorised by the regulations.

152 Local Aboriginal Land Council Accounts (cf former section 31)

- (1) Each Local Aboriginal Land Council is to establish in an authorised deposit-taking institution an account (the ***Local Aboriginal Land Council's Account***).
- (2) The following is to be deposited in the Local Aboriginal Land Council's Account:
 - (a) money received from the New South Wales Aboriginal Land Council for or in respect of the acquisition of land,
 - (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.
- (3) The following is to be paid from the Local Aboriginal Land Council's Account:
 - (a) amounts required for the acquisition of land by the Council where that acquisition has been approved in accordance with this Act,
 - (b) amounts required to meet expenditure incurred by the Council in the execution or

administration of this Act,

(c) any other payments authorised by or under this or any other Act.

(4) Money to the credit of the account may be invested in any manner authorised by the regulations.

Division 2 Keeping of accounts

153 Local and Regional Aboriginal Land Councils to keep accounts (cf former section 32)

- (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 appointed by the New South Wales Aboriginal Land Council in the manner prescribed by the regulations.
- (4) The financial statements must be prepared and submitted to the auditor not later than 10 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 the audited financial statements and such other documents as are prescribed by the regulations, not later than 4 months after the end of each financial year.
- (6) For the avoidance of doubt, the audited financial statements prepared and furnished to the New South Wales Aboriginal Land Council under this section must include information relating to all the Council's funding and operations and not merely funding received from, and operations funded by, the New South Wales Aboriginal Land Council.

154 Regulations may set criteria to judge satisfactory financial statements

The regulations may provide for criteria by which to assess whether the audited financial statements and other documents required to be furnished to the New South Wales Aboriginal Land Council under this Division by a Local or Regional Aboriginal Land Council are satisfactory.

155 Aboriginal Land Councils may request special auditor

The New South Wales Aboriginal Land Council must, on the request of a Local or Regional Aboriginal Land Council, appoint a special auditor to examine the financial affairs of the Local or Regional Aboriginal Land Council.

156 Financial year of Aboriginal Land Councils (cf former section 33)

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

157 Budget of New South Wales Aboriginal Land Council (cf former section 34 (1) and (2))

- (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.

158 Budget of other Aboriginal Land Councils (cf former section 34A)

- (1) Each Local and Regional Aboriginal Land Council must, not less than 10 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 Local or Regional Aboriginal Land Council at any time.
- (3) The budget prepared and submitted under this section is to include details of all of a Council's proposed operations, including operations to be funded by persons or bodies other than the New South Wales Aboriginal Land Council.

159 Quarterly and six monthly reports by Aboriginal Land Councils (cf former section 34B)

- (1) A Local or Regional Aboriginal Land Council that 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 after the end of each quarter of the financial year, a report certified by the Treasurer of the Local or Regional Aboriginal Land Council as to the expenditure of those funds.
- (2) The New South Wales Aboriginal Land Council must, if directed to do so by the Minister, prepare and submit to the Minister within 10 weeks after the end of each quarter of each financial year a report specifying:
 - (a) the amounts of funds granted during the quarter by that Council to Local and Regional Aboriginal Land Councils and the purposes for which the funds were granted, and
 - (b) whether the Local and Regional Aboriginal Land Councils concerned have complied with the financial obligations imposed by this Part in relation to those

grants.

- (3) A Local or Regional Aboriginal Land Council that receives funds directly or indirectly from the New South Wales Aboriginal Land Council in a financial year must prepare and submit to it within 4 weeks after the end of each 6-month period ending on 30 June and 31 December in each year, a report certified by the Treasurer of the Local or Regional Aboriginal Land Council as to the expenditure of those funds.
- (4) The New South Wales Aboriginal Land Council must prepare and submit to the Minister within 10 weeks after the end of each 6-month period ending on 30 June and 31 December in each year a report specifying:
 - (a) the amounts of funds granted during the 6-month period by that Council to Local and Regional Aboriginal Land Councils and the purposes for which the funds were granted, and
 - (b) whether the Local and Regional Aboriginal Land Councils concerned have complied with the financial obligations imposed by this Part in relation to those grants.
- (5) The regulations may prescribe the form and content of such reports.

160 NSW Aboriginal Land Council may give other Councils directions regarding accounting (cf former section 34 (4))

- (1) The New South Wales Aboriginal Land Council may give directions, not inconsistent with this Act or the regulations, to Local and Regional Aboriginal Land Councils with respect to the following:
 - (a) the establishment and monitoring of a uniform system of accounting by those Aboriginal Land Councils,
 - (b) the form, contents and method of preparation of budgets and quarterly reports by those Councils,
 - (c) other matters relating to the keeping of financial records and the making of financial reports by those Councils.
- (2) A Local or Regional Aboriginal Land Council must comply with a direction given under this section.

161 Annual reports (cf former section 61 and sections 8 and 9 of *Annual Reports (Statutory Bodies) Act 1984*)

- (1) Each Local and Regional Aboriginal Land Council must in each year, as soon as practicable after 30 June, but on or before 1 November, forward to the New South Wales Aboriginal Land Council a report of its operations for the 12 months ending on 30 June in that year.

- (2) The report of the operations of a Local and Regional Aboriginal Land Council is to include the particulars set out in Schedule 1 to the *Annual Reports (Statutory Bodies) Regulation 2000*.
- (3) In addition to any other requirement under any other Act relating to the annual report of the New South Wales Aboriginal Land Council, the annual report is to include the following particulars for the financial year to which the report relates:
 - (a) the total remuneration (including travelling expenses) paid to each councillor by the New South Wales Aboriginal Land Council,
 - (b) the total funds granted to each Local and Regional Aboriginal Land Council by the New South Wales Aboriginal Land Council.

Division 3 Funding of Local and Regional Aboriginal Land Councils

162 Funding agreements

- (1) The New South Wales Aboriginal Land Council may enter into a funding agreement with a Local or Regional Aboriginal Land Council under which the New South Wales Aboriginal Land Council agrees to grant funds to the Local or Regional Aboriginal Land Council on certain specified conditions.
- (2) A funding agreement may provide that if the Local or Regional Aboriginal Land Council breaches a provision of the agreement, the New South Wales Aboriginal Land Council is to cease to provide funds to the Local or Regional Aboriginal Land Council.
- (3) A funding agreement is subject to the provisions of section 163.
- (4) The regulations may prescribe a model funding agreement that may be adopted for the purposes of this section.

163 Cessation of funding (cf former section 34C)

- (1) The New South Wales Aboriginal Land Council must cease immediately to provide any funds to a Local or Regional Aboriginal Land Council if the Local or Regional Aboriginal Land Council:
 - (a) fails to furnish satisfactory audited financial statements and documents to the New South Wales Aboriginal Land Council in accordance with Division 2, or
 - (b) otherwise fails to comply with section 153, 158 or 159, or
 - (c) is the subject of a report by an investigator appointed in accordance with Division 1 of Part 11 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 Local or Regional Aboriginal Land Council until:

- (a) the Local or Regional Aboriginal Land Council furnishes satisfactory audited financial statements and documents to the New South Wales Aboriginal Land Council under Division 2 or otherwise complies with section 153, 158 or 159, or
 - (b) the Minister, after consideration of a report of:
 - (i) an investigator appointed in accordance with Division 1 of Part 11, 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 Local or Regional Aboriginal Land Council for the area for which an administrator has been appointed under Division 2 of Part 11.
- (4) Despite subsection (1), the New South Wales Aboriginal Land Council may, in its discretion, make payments from the New South Wales Aboriginal Land Council Account to cover expenses incurred by the Local or Regional Aboriginal Land Council before or after the cessation of funding.

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

(cf former Part 8A)

Division 1 Registrar

164 Appointment of Registrar

- (1) The Governor may appoint a Registrar.
- (2) Schedule 1 has effect with respect to the Registrar.
- (3) The Registrar has and may exercise the functions conferred or imposed on the Registrar by or under this or any other Act.

165 Functions of Registrar

The functions of the Registrar are as follows:

- (a) to register land claims made under this Act by the New South Wales Aboriginal Land Council or Local Aboriginal Land Councils,
- (b) to maintain the Register of Aboriginal Land Claims and the Register of Aboriginal Owners,
- (c) to approve the rules of the New South Wales Aboriginal Land Council and Local and

Regional Aboriginal Land Councils,

- (d) to make recommendations to the Minister and carry out such other prescribed functions in relation to the constitution of Local Aboriginal Land Council areas and the constitution of Local Aboriginal Land Councils, the alteration of area boundaries of Local Aboriginal Land Council areas and the changing of names of Local Aboriginal Land Councils,
- (e) to make recommendations to the Minister and carry out such other prescribed functions in relation to the alteration of area boundaries of Regional Aboriginal Land Council areas and the changing of names of Regional Aboriginal Land Councils,
- (f) to issue compliance directions to Aboriginal Land Councils, officers of Aboriginal Land Councils and councillors relating to the administration of the Act and the regulations and to refer failures to comply with such directions to the Court,
- (g) to mediate, conciliate or arbitrate disputes relating to the administration of Aboriginal Land Councils or to refer such disputes to independent mediators, conciliators or arbitrators,
- (h) to investigate complaints regarding the non-disclosure of pecuniary interests and breaches of this Act and the regulations,
- (i) such other functions conferred or imposed on the Registrar by or under this or any other Act.

Division 2 Register of Aboriginal Land Claims

166 Register of Aboriginal Land Claims

- (1) The Registrar must establish and keep a Register of land claims.
- (2) The Register of Aboriginal Land Claims is to be kept in a form prescribed by the regulations or, if no form is prescribed, in a form determined by the Registrar.

167 Contents of Register of Aboriginal Land Claims

The Register of Aboriginal Land Claims is to include the following information:

- (a) a number for each individual land claim (sequential over time),
- (b) the name of the Aboriginal Land Council that made the land claim,
- (c) a description of the land claimed,
- (d) the parish or parishes and the county or counties that the land claimed is within,
- (e) the local government area or areas that the land claimed is within,

- (f) the date of lodgment with the Registrar of the land claim,
- (g) the date of determination of the land claim by the Crown Lands Minister (within the meaning of section 36),
- (h) such other information prescribed by the regulations.

168 Registrar may request information from Crown Lands Minister

The Registrar may request the Crown Lands Minister (within the meaning of section 36) to provide information relating to a land claim that is listed on the Register of Aboriginal Land Claims.

169 Regulations may provide for public inspection of Register

The regulations may make provision for public inspection of the Register of Aboriginal Land Claims.

Division 3 Register of Aboriginal Owners

170 Register of Aboriginal Owners (cf former section 49B)

- (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.

171 Contents of Register of Aboriginal Owners (cf former section 49C)

- (1) The Registrar is to use the Registrar's best endeavours to enter in the Register of Aboriginal Owners:
 - (a) the name of every Aboriginal person who has a cultural association with land in the State, and
 - (b) the location of the land with which the Aboriginal person has a cultural association, and
 - (c) the nature of the cultural association that the Aboriginal person has with the land.
- (2) The name of an Aboriginal person must not be entered in the Register unless the Aboriginal person:
 - (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 person's name in the Register.

(3) The Registrar is to give priority to the entry in the Register of the names of Aboriginal persons who have a cultural association with:

(a) lands listed in Schedule 14 to the NPW Act, and

(b) lands to which section 36A applies.

Note—

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

Section 36A applies to lands that are the subject of a claim by one or more Aboriginal Land Councils under section 36 of this Act and that the Crown Lands Minister is satisfied would be claimable lands except for the fact that the lands are needed, or likely to be needed, for the essential public purpose of nature conservation.

172 Requests for entry of names in Register (cf former section 49D)

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

173 Requests for opening of parts of Register of Aboriginal Owners (cf former section 49E)

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

174 Rectification of Register (cf former section 49F)

- (1) An Aboriginal person or group of Aboriginal persons that considers that his, her or their names have been wrongly entered on or omitted from the Register of Aboriginal Owners may request the Registrar to rectify the register.

- (2) An Aboriginal person or group of Aboriginal persons who has or have made a request under subsection (1) may appeal to the Court if the Registrar fails or refuses to rectify the Register in the manner requested within 6 months after the making of the request.
- (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) The Registrar has the right to appear and be heard by the Court in the appeal proceedings.
- (6) 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.
- (7) 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.
- (8) The Court may award costs in an appeal under this section in exceptional circumstances only.

175 Reference by Registrar to Land and Environment Court (cf former section 49G)

- (1) The Registrar may refer to the Court, for decision by the Court:
 - (a) a request for the entry of the name of an Aboriginal person in the Register of Aboriginal Owners, or
 - (b) a request for the omission of the name of an Aboriginal person 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 10 Honesty and disclosure of interests

(cf Chapter 14 of *Local Government Act 1993*)

Division 1 Honesty, care and diligence

176 Conduct of councillors, officers and staff of Aboriginal Land Councils (cf section 439 of *Local Government Act 1993*)

(1) Every officer and member of staff of an Aboriginal Land Council, and every councillor, must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act.

(2) Although this section places certain duties on officers and members of staff of a Council, and on councillors, nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

Division 2 Codes of conduct

177 Codes of conduct (cf section 440 of *Local Government Act 1993*)

(1) Every Local and Regional Aboriginal Land Council must, within such period as the Registrar directs, prepare and submit to the Registrar for approval a code of conduct to be observed by all officers and members of staff of the Council.

(2) The New South Wales Aboriginal Land Council must, within such period as the Registrar directs, prepare and submit to the Registrar for approval a code of conduct to be observed by all councillors and members of staff of the Council.

(3) An Aboriginal Land Council may, with the approval of the Registrar, amend or replace its code of conduct.

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

(5) A code of conduct prepared in accordance with this section may declare that the breach of a specified provision of the code (a **dismissal provision**):

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

- (b) by an officer of a Regional Aboriginal Land Council—allows the Council by majority vote to remove that person from office, or
 - (c) by a councillor of the New South Wales Aboriginal Land Council—causes a councillor to vacate his or her office as councillor.
- (6) Until a code of conduct for an Aboriginal Land Council is approved by the Registrar in accordance with this section, the code of conduct prescribed by the regulations is the code of conduct for that Aboriginal Land Council.

Division 3 Aboriginal Land Councils Pecuniary Interest Tribunal

178 Establishment of Pecuniary Interest Tribunal (cf section 487 of [Local Government Act 1993](#))

For the purposes of this Part, there is established a tribunal to be known as the Aboriginal Land Councils Pecuniary Interest Tribunal.

179 Constitution of Pecuniary Interest Tribunal (cf section 488 of [Local Government Act 1993](#))

- (1) The Pecuniary Interest Tribunal consists of one part-time member, appointed by the Governor, who is an Australian legal practitioner eligible for appointment as a District Court or Supreme Court Judge or who is a retired District Court or Supreme Court Judge.
- (2) A person is not qualified for appointment if, within 12 months before the appointment, the person has been an officer or a member of staff of an Aboriginal Land Council or a councillor.
- (3) Schedule 2 has effect with respect to the Pecuniary Interest Tribunal.

180 Functions of Pecuniary Interest Tribunal (cf section 489 of [Local Government Act 1993](#))

- (1) The Pecuniary Interest Tribunal has exclusive jurisdiction at first instance to decide allegations of contraventions of Division 4.
- (2) Accordingly, proceedings at first instance to decide allegations of contraventions of Division 4 may not be brought before, or entertained by, any other tribunal or any court.
- (3) The Pecuniary Interest Tribunal has such other functions as are conferred or imposed on it by or under this or any other Act.

181 Annual report (cf section 490 of [Local Government Act 1993](#))

The Pecuniary Interest Tribunal must, within 2 months after the end of each year, provide a report to the Minister concerning proceedings that have been conducted before it during that year.

Division 4 Duties of disclosure

Subdivision 1 Preliminary

182 Definition of “pecuniary interest” (cf section 442 of *Local Government Act 1993*)

- (1) For the purposes of this Part, a **pecuniary interest** is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided in section 183.
- (2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.

183 Persons who have pecuniary interests (cf section 443 of *Local Government Act 1993*)

- (1) For the purposes of this Part, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:
 - (a) the person, or
 - (b) another person with whom the person is associated as provided by this section.
- (2) A person is taken to have a pecuniary interest in a matter if:
 - (a) the person’s spouse or de facto partner or a relative of the person, or a partner or employer of the person, has a pecuniary interest in the matter, or
 - (b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.
- (3) However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (2):
 - (a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
 - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

Subdivision 2 Disclosure of pecuniary interests at meetings

184 Disclosure and presence in meetings (cf section 451 of *Local Government Act 1993*)

- (1) An officer or member of staff of an Aboriginal Land Council or a councillor who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- (2) Unless the Aboriginal Land Council determines otherwise, the officer, member of staff or councillor must not be present at, or in sight of, the meeting of the Aboriginal Land Council:
 - (a) at any time during which the matter is being considered or discussed by the Council, or
 - (b) at any time during which the Council is voting on any question in relation to the matter.

185 Disclosures to be recorded (cf section 453 of *Local Government Act 1993*)

A disclosure made at a meeting of an Aboriginal Land Council must be recorded in the minutes of the meeting.

186 General disclosure (cf section 454 of *Local Government Act 1993*)

A general notice given to a meeting of an Aboriginal Land Council in writing by an officer or a member of staff of the Aboriginal Land Council or a councillor to the effect that the officer, staff member or councillor, or the officer's, staff member's or councillor's spouse, de facto partner or relative, is:

- (a) a member, or in the employment, of a specified company or other body, or
- (b) a partner, or in the employment, of a specified person,

is, unless and until the notice is withdrawn, sufficient disclosure of the officer's, staff member's or councillor's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the Council after the date of the notice.

187 Disclosure by consultants (cf section 456 of *Local Government Act 1993*)

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

188 Circumstances in which sections 184 and 187 are not breached (cf section 457 of *Local*

Government Act 1993)

A person does not breach section 184 or 187 if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Division 5 Complaints concerning non-disclosure

Subdivision 1 Making of and inquiries regarding complaints

189 Complaints concerning failure to disclose pecuniary interests (cf section 460 of *Local Government Act 1993*)

- (1) A person may make a complaint to the Registrar, or the Registrar may make a complaint, that a person has or may have contravened Division 4.
- (2) A complaint must:
 - (a) be in writing, and
 - (b) identify the complainant and the person against whom the complaint is made, and
 - (c) give particulars of the grounds of the complaint, and
 - (d) be verified by statutory declaration, and
 - (e) be lodged with the Registrar.
- (3) The provisions of subsection (2) (b), in so far as they require a complaint to identify the complainant, (d) and (e) do not apply to a complaint made by the Registrar.

190 Registrar may require further information (cf section 461 of *Local Government Act 1993*)

The Registrar may require the complainant to provide further particulars of the complaint within the time specified by the Registrar.

191 Inquiries regarding complaints (cf section 462 of *Local Government Act 1993*)

- (1) The Registrar may make inquiries regarding a complaint.
- (2) The Registrar may decide not to make inquiries regarding a complaint but to request the Minister to appoint an investigator under Division 1 of Part 11 to investigate a matter to which the complaint relates.

192 Decision not to inquire into complaint (cf section 463 of *Local Government Act 1993*)

- (1) The Registrar may decide to take no action concerning a complaint if the Registrar considers that the complaint falls into any of the following categories:
 - (a) the complaint is frivolous, vexatious or not made in good faith,

- (b) the subject-matter of the complaint is trivial or does not warrant inquiry,
- (c) the subject-matter of the complaint has been or is under investigation by some other competent person or body or has been or is the subject of legal proceedings,
- (d) the complaint raises issues that require investigation by another person or body,
- (e) there is or was, in relation to the matter complained of, a satisfactory alternative means of dealing with the matter by the complainant,
- (f) the complaint relates to a matter that occurred more than 2 years before the complaint was made and the complainant does not have a sufficient reason for having delayed the making of the complaint,
- (g) the complainant has failed to provide further particulars of the complaint within the time specified by the Registrar.

- (2) If the Registrar decides to take no action concerning a complaint, the Registrar must notify the complainant and give the reasons for the decision, unless the Registrar is the complainant.

193 Referral and investigation of complaints by other authorities (cf section 464 of *Local Government Act 1993*)

- (1) An authority who receives a matter for the purpose of investigation is authorised by this Act to refer the matter to the Registrar if the matter involves a possible contravention of Division 4.
- (2) A matter referred to the Registrar under this section is taken to be a complaint made by the Registrar.

Note—

Authority is defined in section 4 to mean the Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police or the Director of Public Prosecutions.

194 Pecuniary Interest Tribunal to be notified of inquiries (cf section 465 of *Local Government Act 1993*)

The Registrar must notify the Pecuniary Interest Tribunal of a decision to make inquiries regarding a complaint or to refer a complaint for investigation to an authority.

195 Persons to be notified of complaint (cf section 466 of *Local Government Act 1993*)

- (1) The Registrar must, within 3 months after receiving a complaint, making a complaint or having a matter referred to the Registrar under section 193, give the person against whom the complaint is made notice of the nature of the complaint and whether any action has been, or is intended to be, taken concerning the complaint.
- (2) At the same time as notice is given to the person against whom the complaint is

made, the Registrar must, unless the Registrar is the complainant, notify the complainant whether any action has been, or is intended to be, taken concerning the complaint.

- (3) However, at the time the notice is given to the person against whom the complaint is made, the Registrar is not obliged to notify the complainant of the decision not to make inquiries regarding a complaint if notice of that decision has already been given under section 192 (2).

196 Reports of investigation of complaints by authorities (cf section 467 of *Local Government Act 1993*)

An authority who has investigated an allegation that a person has or may have contravened Division 4 (whether or not the allegation was referred for inquiry by the Registrar) is authorised by this Act to send any report prepared by the authority concerning the investigation to the Registrar.

Note—

Authority is defined in section 4 to mean the Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police or the Director of Public Prosecutions.

197 Presentation of reports to Pecuniary Interest Tribunal (cf section 468 of *Local Government Act 1993*)

- (1) The Registrar must present a report to the Pecuniary Interest Tribunal of the Registrar's inquiries regarding a complaint carried out by the Registrar.
- (2) The Registrar must present to the Pecuniary Interest Tribunal any report received under section 196 from an authority.

Subdivision 2 Proceedings before the Pecuniary Interest Tribunal

198 Pecuniary Interest Tribunal to decide whether or not to conduct proceedings into a complaint (cf section 469 of *Local Government Act 1993*)

- (1) After considering a report presented to it in relation to a complaint, the Pecuniary Interest Tribunal may decide to conduct proceedings into the complaint.
- (2) If the Pecuniary Interest Tribunal decides not to conduct proceedings into a complaint, it must provide a written statement of its decision, and the reasons for its decision:
 - (a) to the person against whom the complaint was made, and
 - (b) to the person who made the complaint, and
 - (c) to the Registrar, unless the Registrar is the complainant.
- (3) To avoid doubt, a decision by the Pecuniary Interest Tribunal not to conduct proceedings into a complaint is not a decision to which section 213 (Pecuniary Interest

Tribunal to provide details of its decisions) or 214 (Appeals to Supreme Court) applies.

199 Circumstances in which Pecuniary Interest Tribunal may dispense with hearing (cf section 470 of *Local Government Act 1993*)

- (1) After considering the report of the Registrar and any other document or other material lodged with or provided to the Tribunal, the Pecuniary Interest Tribunal may determine the proceedings without a hearing if:
 - (a) the person who made the complaint and the person against whom the complaint is made have agreed that the proceedings may be determined without a hearing, and
 - (b) there are no material facts in dispute between the person who made the complaint and the person against whom the complaint is made, and
 - (c) in the opinion of the Tribunal, public interest considerations do not require a hearing.
- (2) To avoid doubt, a decision by the Pecuniary Interest Tribunal to determine proceedings into a complaint without a hearing is a decision to which sections 213 (Pecuniary Interest Tribunal to provide details of its decisions) and 214 (Appeals to Supreme Court) apply.

Note—

Section 213 requires the Pecuniary Interest Tribunal to inform certain parties of decisions in proceedings before it.

200 General conduct of proceedings (cf section 471 of *Local Government Act 1993*)

- (1) The Pecuniary Interest Tribunal may determine its own procedure, subject to this Act.
- (2) In the conduct of any proceedings, the Pecuniary Interest Tribunal:
 - (a) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence, and
 - (b) may receive information or submissions in the form of oral or written statements, and
 - (c) may consult with such persons as it thinks fit.

201 Private and public hearings (cf section 472 of *Local Government Act 1993*)

- (1) A hearing is to be held in public unless the Pecuniary Interest Tribunal decides otherwise.
- (2) In reaching such a decision, the Pecuniary Interest Tribunal is to have regard to any matters which it considers are related to the public interest.

202 Representation at hearings (cf section 473 of *Local Government Act 1993*)

At a hearing before the Pecuniary Interest Tribunal, a person is entitled to be represented by an Australian legal practitioner.

203 Presentation of cases at hearings (cf section 474 of *Local Government Act 1993*)

A party to proceedings before the Pecuniary Interest Tribunal conducted by hearing may:

- (a) call and examine any witness, and
- (b) cross-examine any witness called by another party, and
- (c) examine any copy of any document or part of a document produced in the proceedings, and
- (d) produce documents and exhibits to the Pecuniary Interest Tribunal, and
- (e) otherwise adduce, orally or in writing, to the Pecuniary Interest Tribunal such matters, and address the Pecuniary Interest Tribunal on such matters, as are relevant to the proceedings.

204 Power to summon witnesses and take evidence at hearings (cf section 475 of *Local Government Act 1993*)

- (1) This section applies only to proceedings conducted by hearing.
- (2) The Pecuniary Interest Tribunal may summon a person to appear in proceedings before the Pecuniary Interest Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.
- (3) The Pecuniary Interest Tribunal may require a person appearing in the proceedings to produce a document.
- (4) The Pecuniary Interest Tribunal may, in proceedings before it, take evidence on oath, and for that purpose the Pecuniary Interest Tribunal:
 - (a) may require a person appearing in the proceedings to give evidence to take an oath or affirmation in a form approved by the Pecuniary Interest Tribunal, and
 - (b) may administer an oath or affirmation to a person so appearing in the proceedings.
- (5) A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:
 - (a) fail to attend as required by the summons, or
 - (b) fail to attend from day to day unless excused, or released from further attendance, by the Pecuniary Interest Tribunal.

- (6) A person appearing in proceedings to give evidence must not, without reasonable excuse:
- (a) when required to be sworn—fail to comply with the requirement, or
 - (b) fail to answer a question that the person is required to answer by the Pecuniary Interest Tribunal, or
 - (c) fail to produce a document that the person is required to produce by this section.

Maximum penalty: 20 penalty units.

205 Power to obtain documents (cf section 476 of *Local Government Act 1993*)

- (1) The Pecuniary Interest Tribunal may, by notice in writing served on a person, require the person:
- (a) to attend, at a time and place specified in the notice, before the Pecuniary Interest Tribunal, and
 - (b) to produce, at that time and place, to the Pecuniary Interest Tribunal a document specified in the notice.
- (2) A person who, without reasonable excuse, fails to comply with a notice served on the person under this section is guilty of an offence.

Maximum penalty (subsection (2)): 20 penalty units.

206 Privilege concerning answers and documents (cf section 477 of *Local Government Act 1993*)

- (1) A witness summoned to attend or appearing before the Pecuniary Interest Tribunal at a hearing is not excused from answering any question or producing any document or other thing:
- (a) on the ground that the answer or production may incriminate the witness, or
 - (b) on any other ground of privilege, or
 - (c) on the ground of a duty of secrecy or other restriction on disclosure, or
 - (d) on any other ground.
- (2) An answer made, or document or other thing produced, by a witness at a hearing before the Pecuniary Interest Tribunal is not (except as otherwise provided by this section) admissible in evidence against the witness in any civil or criminal proceedings or in any disciplinary proceedings.
- (3) Nothing in this section makes inadmissible:

- (a) any answer, document or other thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (1), or
- (b) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.

(4) If:

- (a) an Australian legal practitioner or other person is required to answer a question or produce a document or other thing at a hearing before the Pecuniary Interest Tribunal, and
- (b) the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between the practitioner (in his or her capacity as an Australian legal practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a hearing before the Pecuniary Interest Tribunal,

the Australian legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.

207 Additional complaints (cf section 478 of *Local Government Act 1993*)

- (1) The Pecuniary Interest Tribunal may in proceedings before it deal with one or more complaints about a person.
- (2) If, during any such proceedings, it appears to the Pecuniary Interest Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the person concerned:
 - (a) whether instead of or in addition to the complaint which was made, and
 - (b) whether or not by the same complainant,

the Pecuniary Interest Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.

- (3) If another complaint is taken to have been referred to the Pecuniary Interest Tribunal under subsection (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Pecuniary Interest Tribunal, just and equitable in the circumstances.
- (4) If another complaint is taken to have been referred to the Pecuniary Interest Tribunal under subsection (2), the Tribunal may do either or both of the following:

- (a) reconsider any decision under section 199 to determine proceedings on the original complaint without a hearing and, if appropriate, recommence proceedings in relation to that complaint, or that complaint and any additional complaint, by way of hearing,
- (b) decide, in accordance with section 199, to determine proceedings, in relation to the original complaint, any additional complaint or all complaints, without a hearing.

208 Adjournments (cf section 479 of *Local Government Act 1993*)

The Pecuniary Interest Tribunal may adjourn proceedings for any reason it thinks fit.

209 Release of information (cf section 480 of *Local Government Act 1993*)

- (1) The Pecuniary Interest Tribunal may, if it thinks it appropriate in the particular circumstances of the case (and whether or not on the request of a person):
 - (a) direct that the name of any witness is not to be disclosed in the proceedings, or
 - (b) direct that all or any of the following matters are not to be published:
 - (i) the name and address of any witness,
 - (ii) the name and address of a complainant,
 - (iii) the name and address of the person against whom the complaint was made,
 - (iv) any specified evidence,
 - (v) the subject-matter of a complaint.
- (2) A direction may be amended or revoked at any time by the Pecuniary Interest Tribunal.
- (3) A direction may be given before or during proceedings, but must not be given before the proceedings unless notice is given of the time and place appointed by the Pecuniary Interest Tribunal for consideration of the matter to:
 - (a) a person who requested the direction, and
 - (b) the complainant or the person against whom the complaint was made, as appropriate, and
 - (c) such other person as the Pecuniary Interest Tribunal thinks fit.
- (4) A person who contravenes a direction given under this section is guilty of an offence.

Maximum penalty (subsection (4)): 20 penalty units (in the case of an individual) or 150 penalty units (in the case of a corporation).

210 Witnesses' expenses (cf section 481 of *Local Government Act 1993*)

A person who is required to appear or to give evidence before the Pecuniary Interest Tribunal is entitled to be paid such allowances and expenses as the Pecuniary Interest Tribunal may determine in respect of the person.

211 Decision of Pecuniary Interest Tribunal (cf section 482 of *Local Government Act 1993*)

- (1) The Pecuniary Interest Tribunal may, if it finds a complaint against an officer of an Aboriginal Land Council or a councillor is proved:
 - (a) counsel the officer or councillor, or
 - (b) reprimand the officer or councillor, or
 - (c) if the complaint is against a councillor:
 - (i) suspend the councillor from office for a period not exceeding 6 months, or
 - (ii) if the councillor is an officer of the New South Wales Aboriginal Land Council, remove the councillor from that office, or
 - (d) disqualify the officer or councillor from holding office in an Aboriginal Land Council for a period not exceeding 5 years.

Note—

Suspension from office as a councillor under this section does not create a casual vacancy in that office.

- (2) If it finds a complaint against a member of staff of an Aboriginal Land Council is proved, the Pecuniary Interest Tribunal may:
 - (a) counsel the staff member, or
 - (b) reprimand the staff member, or
 - (c) recommend that the Council take specified disciplinary action against the staff member (including counselling or reprimanding the staff member), or
 - (d) recommend dismissal of the staff member.
- (3) The Pecuniary Interest Tribunal may, if it finds a complaint against a consultant to an Aboriginal Land Council is proved:
 - (a) counsel the consultant, or
 - (b) reprimand the consultant, or
 - (c) suspend the consultant from acting as consultant for a period not exceeding 6 months, or

- (d) disqualify the consultant from acting as a consultant to that Council for a period not exceeding 5 years.

212 Standard of proof (cf section 483 of *Local Government Act 1993*)

A finding of the Pecuniary Interest Tribunal is to be made on the balance of probabilities.

213 Pecuniary Interest Tribunal to provide details of its decisions (cf section 484 of *Local Government Act 1993*)

- (1) The Pecuniary Interest Tribunal must provide a written statement of a decision made in proceedings before it to the person against whom the proceedings were taken, to the person who made the initial complaint and, unless the Registrar is that initial complainant, to the Registrar and must do so as soon as practicable after the decision is made.
- (2) The statement of a decision must:
 - (a) set out the findings on material questions of fact, and
 - (b) refer to any evidence or other material on which the findings were based, and
 - (c) give the reasons for the decision.
- (3) The Pecuniary Interest Tribunal may also:
 - (a) provide the statement of a decision to any other persons that the Pecuniary Interest Tribunal thinks fit, and
 - (b) if it thinks fit, and subject to section 209, make the statement of a decision publicly available.
- (4) The Registrar may, if he or she thinks fit, and subject to any direction made by the Pecuniary Interest Tribunal under section 209, make any statement of decision provided to the Registrar by the Pecuniary Interest Tribunal publicly available.

214 Appeals to Supreme Court (cf section 485 of *Local Government Act 1993*)

- (1) A party to a proceeding before the Pecuniary Interest Tribunal may appeal to the Supreme Court against any decision of the Pecuniary Interest Tribunal in the proceeding.
- (2) An appeal must be made within 28 days after the day on which the statement of the decision of the Pecuniary Interest Tribunal is provided to the person making the appeal or within such further time as the Supreme Court allows.
- (3) The Supreme Court may stay any decision made by the Pecuniary Interest Tribunal, on such terms as the Court thinks fit, until such time as the Court determines the appeal.

- (4) On the hearing of an appeal, the Supreme Court may:
- (a) make an order reversing, affirming or amending the decision appealed against, or
 - (b) remit the matter to the Pecuniary Interest Tribunal for decision by the Pecuniary Interest Tribunal in accordance with the order of the Court, or
 - (c) make an order directing a rehearing of the proceedings in respect of which the decision appealed against was made, or
 - (d) make such other order in relation to the appeal as the Court thinks fit.

215 Referral of matters by Pecuniary Interest Tribunal (cf section 486 of *Local Government Act 1993*)

Despite section 180 (1) and (2), the Pecuniary Interest Tribunal may refer a matter before it to an authority if it considers that it is more appropriate that the authority deal with the matter and if the authority agrees to the referral.

Part 11 Investigation and administration of Aboriginal Land Councils

Division 1 Investigation of Aboriginal Land Councils

216 Appointment of investigator into Aboriginal Land Councils (cf former section 56D (1)–(4))

- (1) The Minister may appoint an investigator, from a list of investigators jointly prepared by the Director-General and the New South Wales Aboriginal Land Council, to investigate the affairs, or specified affairs, of an Aboriginal Land Council, including its efficiency and effectiveness.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) The investigator is to be paid out of the funds of the New South Wales Aboriginal Land Council. However, in the case of an investigator appointed to investigate the affairs, or specified affairs, of a Local or Regional Aboriginal Land Council, the New South Wales Aboriginal Land Council may recover that amount from the Council concerned.

217 Contents of investigator's instrument of appointment

The instrument by which the Minister appoints an investigator under this Division must

specify the following:

- (a) whether all or only specified affairs of the Aboriginal Land Council concerned are to be investigated,
- (b) the time within which the report required to be prepared by the investigator under section 219 is to be delivered to the Minister, or the Minister and the New South Wales Aboriginal Land Council,
- (c) the term of office of the investigator,
- (d) the functions and duties of the investigator,
- (e) unless remuneration for investigators appointed under this Division is prescribed by the regulations—the remuneration of the investigator,
- (f) any other matter prescribed by the regulations.

218 Aboriginal Land Councils to assist investigators (cf former section 56D (5)–(7))

- (1) The Chairperson of an Aboriginal Land 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.

Maximum penalty (subsection (1)): 10 penalty units.

- (2) 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.

- (3) A person must not hinder, obstruct or delay an investigator in the exercise of his or her functions.

Maximum penalty (subsection (3)): 10 penalty units.

219 Investigator to report (cf former section 56D (8))

The investigator is to report on the investigation:

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

220 Minister may extend term of office of investigator

- (1) The Minister may extend the term of office of an investigator appointed under this Division to investigate the affairs, or specified affairs, of the New South Wales Aboriginal Land Council.
- (2) The Minister may, with the consent of the New South Wales Aboriginal Land Council, extend the term of office of an investigator appointed under this Division to investigate the affairs, or specified affairs, of a Local or Regional Aboriginal Land Council.

221 Minister may remove an investigator

- (1) The Minister may, at any time, remove an investigator appointed under this Division to investigate the affairs, or specified affairs, of the New South Wales Aboriginal Land Council.
- (2) The Minister may, at any time, with the consent of the New South Wales Aboriginal Land Council, remove an investigator appointed under this Division to investigate the affairs, or specified affairs, of a Local or Regional Aboriginal Land Council.

Division 2 Administration of Aboriginal Land Councils

222 Administrators—Local and Regional Aboriginal Land Councils (cf former section 57)

- (1) The Minister may at any time appoint, from a list of persons jointly prepared by the Director-General and the New South Wales Aboriginal Land Council, an administrator for a Local or Regional Aboriginal Land Council:
 - (a) if there are not sufficient members of that Council to form a quorum of the Council, or
 - (b) if the Council fails to furnish satisfactory audited financial statements and documents to the New South Wales Aboriginal Land Council in accordance with Division 2 of Part 8, or
 - (c) if the Council otherwise fails to comply with section 153, 158 or 159, or

- (d) on the receipt by the Minister of a report by an investigator appointed in accordance with Division 1 that the funds or other property of the Council have not been properly applied or managed, or
 - (e) if the Council 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 has ceased for 6 months substantially to exercise its functions.
- (2) Notice of an appointment of an administrator under this section must be published in the Gazette.
 - (3) The Minister must not appoint an administrator under this section without the approval of the New South Wales Aboriginal Land Council.
 - (4) The administrator has, during the period of his or her appointment, all, or such part as is specified in the administrator's instrument of appointment, of the functions of the Council conferred or imposed by or under this Act, to the exclusion of the Council.
 - (5) 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 Local or Regional Aboriginal Land Council for which the administrator has been appointed.
 - (6) The regulations may make provision for or with respect to the functions of the administrator.

223 Administrators—New South Wales Aboriginal Land Council (cf former section 57A)

- (1) The Minister may appoint an administrator of the New South Wales Aboriginal Land Council.
- (2) Notice of an appointment of an administrator under this section must be published in the Gazette.
- (3) The Minister may appoint an administrator under this section only after considering one of the following reports that discloses, in the opinion of the Minister, grounds that justify the making of such an appointment:
 - (a) a report of the Auditor-General, or
 - (b) a report of an investigator appointed in accordance with Division 1.
- (4) The administrator has, during the period of his or her appointment, all, or such part as is specified in the administrator's instrument of appointment, of the functions of the Council conferred or imposed by or under this Act, to the exclusion of the Council.
- (5) The administrator is to be paid out of the funds of the Council.

- (6) The regulations may make provision for or with respect to the functions of the administrator.

224 Contents of administrator's instrument of appointment

The instrument by which the Minister appoints an administrator under this Division must specify the following:

- (a) whether the administrator is to administer all or only specified functions of the Aboriginal Land Council concerned,
- (b) the term of office of the administrator,
- (c) the functions and duties of the administrator,
- (d) unless remuneration for administrators appointed under this Division is prescribed by the regulations—the remuneration of the administrator,
- (e) any other matter prescribed by the regulations.

225 Certain persons ineligible to be administrators

The Minister must not appoint any of the following persons as an administrator of an Aboriginal Land Council:

- (a) a councillor,
- (b) an officer of a Local or Regional Aboriginal Land Council,
- (c) a member of a Local Aboriginal Land Council,
- (d) a member of staff of the New South Wales Aboriginal Land Council.

226 Removal of office holders on appointment of administrator (cf former section 57B)

- (1) On the appointment of an administrator to administer all of the functions of a Local or Regional Aboriginal Land Council, the officers of the Council are removed from office and fresh elections to fill the vacancies are to be held at the time and in the manner specified by the regulations.
- (2) On the appointment of an administrator to administer all of the functions of the New South Wales Aboriginal Land Council, the councillors are removed from office and fresh elections to fill the vacancies are to be held at the time and in the manner specified by the regulations.

Note—

If an administrator is appointed to administer only specified functions of an Aboriginal Land Council, the officers or councillors (as the case may be) of that Council remain in office and may continue to exercise those functions of the Council not given to the administrator.

227 Officers to assist administrator (cf clause 94 of 1996 Regulation)

- (1) The Chairperson of an Aboriginal Land Council and any other person who has possession or control of any records of the Council must, if required to do so by an administrator who produces evidence of his or her appointment, provide the administrator with:
 - (a) access to such of the records as relate to the functions of the Council being performed by the administrator, and
 - (b) information that the Chairperson or other person is able to give in relation to those records and functions, and
 - (c) authorities or orders on bankers and others that relate to those records or functions and that the Chairperson or other person is able to provide.

Maximum penalty: 10 penalty units.

- (2) A requirement to provide access to a record that:
 - (a) is not in writing, or
 - (b) is not written in the English language, or
 - (c) is not decipherable on sight,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.
- (3) A person must not hinder, obstruct or delay an administrator in the exercise of his or her functions.

Maximum penalty (subsection (3)): 10 penalty units.

228 Administrator of an Aboriginal Land Council may call meetings

The administrator of an Aboriginal Land Council may call meetings of the Council.

229 Administrator to report monthly

- (1) The administrator for a Local or Regional Aboriginal Land Council must report at least once a month to the following:
 - (a) the Minister,
 - (b) the New South Wales Aboriginal Land Council,
 - (c) the Local or Regional Aboriginal Land Council concerned.
- (2) The administrator of the New South Wales Aboriginal Land Council must report at least once a month to the following:

- (a) the Minister,
 - (b) the New South Wales Aboriginal Land Council.
- (3) The Minister may give directions to an administrator of an Aboriginal Land Council concerning the form and content of such reports.
- (4) The administrator must comply with a direction given under this section.

230 Administrator may not buy or sell Local Aboriginal Land Council land without consent

The administrator for a Local Aboriginal Land Council must not dispose of or otherwise deal with land vested in or acquired by the Council without the consent of the Council (as decided at a meeting).

231 Minister may extend term of office of administrator

- (1) The Minister may extend the term of office of an administrator of the New South Wales Aboriginal Land Council.
- (2) The Minister may, with the consent of the New South Wales Aboriginal Land Council, extend the term of office of an administrator for a Local or Regional Aboriginal Land Council.

232 Minister may remove an administrator

- (1) The Minister may, at any time, remove an administrator of the New South Wales Aboriginal Land Council.
- (2) The Minister may, at any time, with the consent of the New South Wales Aboriginal Land Council, remove an administrator for a Local or Regional Aboriginal Land Council.

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

233 Failure of NSW Aboriginal Land Council to function (cf former section 58)

- (1) If, 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) If the Governor has made an order under subsection (1), the Minister may make, in writing, orders relating 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 (having regard to the objects of that Council set out in section 105) and

those orders have effect according to their tenor.

234 Dissolution of Local or Regional Aboriginal Land Councils (cf former section 58A)

- (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 Local or Regional Aboriginal Land Council is dissolved if:
 - (a) the Local or Regional Aboriginal Land Council so requests, or
 - (b) the New South Wales Aboriginal Land Council is satisfied that the Local or Regional 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.
- (4) 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.

- (5) 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.

(6) A councillor ceases to hold office on the dissolution of the Regional Aboriginal Land Council of the area the councillor 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.

Part 12 Compliance directions

235 Registrar may issue compliance directions

- (1) Any person or body may request the Registrar to issue a direction to an Aboriginal Land Council, an officer of an Aboriginal Land Council or a councillor requiring the Council, officer or councillor to comply with a specified provision or provisions of this Act or of any regulations or rules made under this Act.
- (2) If the Registrar is satisfied that an Aboriginal Land Council, an officer of an Aboriginal Land Council or a councillor has failed to comply, or is not complying, with a specified provision or provisions of this Act or of any regulations or rules made under this Act, the Registrar may issue a direction to the Council, officer or councillor requiring the Council, officer or councillor to comply with that provision or those provisions within a time stated in the direction.
- (3) The Registrar is not to issue a direction under this Part in relation to any matter if:
 - (a) the matter could constitute an offence under this Act or any other law, or
 - (b) provision is made for the determination of the matter under another section of this Act.

236 Registrar may refer failure to comply to Court

If an Aboriginal Land Council, an officer of an Aboriginal Land Council or a councillor does not comply with a direction issued under this Part within the time stated in the direction, the Registrar may refer the matter that is the subject of the direction to the Court for determination.

237 Court to determine compliance matters

- (1) The Court must hear and determine any matter referred to it by the Registrar under this Part.
- (2) The Court may give such directions as it considers necessary to determine a matter referred to it.
- (3) Any person who contravenes a direction given by the Court under this Part is guilty of

an offence.

Maximum penalty (subsection (3)): 10 penalty units.

Part 13 Dispute resolution

238 Application of Part

- (1) This Part applies to a dispute concerning the administration of an Aboriginal Land Council.
- (2) This Part does not apply to a dispute if:
 - (a) the dispute relates to a matter that could constitute an offence under this Act or any other law, or
 - (b) provision is made for the resolution or determination of the dispute under another provision of this Act (other than under Part 12).

Note—

For example, Division 5 of Part 7 provides for the Land and Environment Court to deal with disputes relating to elections for the New South Wales Aboriginal Land Council.

239 Mediation, conciliation or arbitration of disputes by NSW Aboriginal Land Council

- (1) The New South Wales Aboriginal Land Council may, if the parties to a dispute to which this Part applies (other than a dispute to which that Council is a party) have agreed, attempt to resolve the dispute by mediation, conciliation or arbitration.
- (2) The New South Wales Aboriginal Land Council may, if the parties to the dispute have agreed, refer a dispute to which this Part applies (other than a dispute to which the Council is a party) to mediation, conciliation or arbitration by the Registrar or another independent person.
- (3) The Registrar may, if the parties to a dispute to which this Part applies have agreed:
 - (a) attempt to resolve the dispute by mediation, conciliation or arbitration, or
 - (b) refer the dispute to mediation, conciliation or arbitration by an independent person.

240 Application of [Commercial Arbitration Act 1984](#)

- (1) Subject to this Act and the regulations, the [Commercial Arbitration Act 1984](#) applies to an arbitration undertaken by the New South Wales Aboriginal Land Council, the Registrar or an independent person under this Part.
- (2) The provisions of the [Commercial Arbitration Act 1984](#) apply to an arbitration under this Act with the modification that a reference in that Act to **the Court** or **the**

Supreme Court is to be taken to be a reference to the Land and Environment Court.

Note—

The *Commercial Arbitration Act 1984* contains machinery and other provisions applying to arbitrations. The provisions applying to arbitrations under that Act set out the way in which arbitrators are to conduct arbitration proceedings and powers to require evidence to be given, as well as parties' rights to representation and other procedural matters. They also provide that an award by an arbitrator is to be final and provide for enforcement procedures. An appeal to a Court on a question of law is also available under that Act.

241 Reference of disputes to Court (cf former section 59)

- (1) The Registrar may refer a dispute to which this Part applies to the Court for determination.
- (2) The Court must hear and determine any dispute referred to it by the Registrar under this section.
- (3) The Court may give such directions as it considers necessary to determine a dispute referred to it.
- (4) Any person who contravenes a direction given by the Court under this section is guilty of an offence.

Maximum penalty (subsection (4)): 10 penalty units.

Part 14 Miscellaneous

242 Exclusion of personal liability (cf former section 54)

- (1) An act or omission of an Aboriginal Land Council, or any of the following persons:
 - (a) a councillor,
 - (b) a member of any Local or Regional Aboriginal Land Council,
 - (c) the Chief Executive Officer of the New South Wales Aboriginal Land Council,
 - (d) any person acting under the direction of an Aboriginal Land Council,does not subject a councillor, member, Chief Executive Officer or person so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of executing this or any other Act.
- (2) An act or omission of any of the following persons:
 - (a) the Registrar,
 - (b) an investigator,
 - (c) an administrator,

(d) a person acting as a mediator, conciliator or arbitrator under Part 13, does not subject the Registrar, investigator, administrator or person so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of executing this or any other Act.

243 Delegation (cf former section 55 (1))

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

244 Service of documents (cf former section 62)

- (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 the regulations, 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).

245 Authentication of certain documents (cf former section 63)

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.

246 Proof of certain matters not required (cf former section 64)

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

- (a) the constitution of an Aboriginal Land Council, or
- (b) any resolution of an Aboriginal Land Council, or
- (c) the appointment or election of any councillor or any member of a Local or Regional Aboriginal Land Council, or
- (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.

247 Aboriginal Land Councils not statutory bodies representing the Crown (cf former section 65)

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

248 Aboriginal Land Councils to be public authorities etc for certain purposes (cf former section 65A)

Each Aboriginal Land Council is 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*.

249 Proceedings for offences (cf former section 67)

Proceedings for an offence against this Act or the regulations are to be dealt with summarily.

250 Establishment of new Local Aboriginal Land Councils

- (1) If, after the commencement of Schedule 1 [17] to the *Aboriginal Land Rights Amendment Act 2001*, a Local Aboriginal Land Council is constituted by this Act:
 - (a) the Registrar (or a person appointed by the Registrar) is to prepare a membership roll for the Council under section 54 (1), and
 - (b) the first meeting of the Council is to be held at a time (being a time as soon as practicable after its constitution) and place determined by the Registrar, and
 - (c) until a Chairperson of the Council is elected at that first meeting, the Registrar (or a person appointed by the Registrar) is to preside at that meeting, and
 - (d) at that first meeting of the Council, the members of the Council are to elect a Chairperson, a Secretary and a Treasurer for the Council.
- (2) Despite section 54, when first prepared as required by subsection (1), the membership roll is to contain the names and addresses of those adult Aboriginal persons:
 - (a) who:
 - (i) reside in the Local Aboriginal Council area concerned, or
 - (ii) have an association with that area, and
 - (b) who have requested in writing that they be enrolled as members of the Council, and
 - (c) who have been accepted by the Registrar (or a person appointed by the Registrar under subsection (1) (a)) as members.

251 Establishment of new Regional Aboriginal Land Councils

If, after the commencement of Schedule 1 [17] to the *Aboriginal Land Rights Amendment Act 2001*, a Regional Aboriginal Land Council is constituted by this Act:

- (a) the first meeting of the Council is to be held at a time (being a time as soon as practicable after its constitution) and place determined by the Registrar, and
- (b) at that first meeting of the Council, the members of the Council are to elect a Chairperson, a Secretary and a Treasurer for the Council, and
- (c) until a Chairperson of the Council is elected at that first meeting, the Registrar or a person appointed by the Registrar is to preside at that meeting.

252 Regulations (cf former section 68)

- (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 the following:
 - (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,
 - (c) authorising the Minister, on the recommendation of the New South Wales Aboriginal Land Council, to approve the amalgamation of Local Aboriginal Land Council areas,
 - (d) the conduct of elections for officers of Local and Regional Aboriginal Land Councils,
 - (e) the procedure for the calling of meetings of Local and Regional Aboriginal Land Councils, the conduct of those meetings and the prescribing or determining of a quorum at extraordinary meetings,
 - (f) the keeping of minutes of meetings of Aboriginal Land Councils and the access to those minutes by other Aboriginal Land Councils and other persons and bodies,
 - (g) the fees, allowances or expenses that may be paid to the members of Regional Aboriginal Land Councils,
 - (h) 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,

- (i) the audit of accounts and records of Aboriginal Land Councils (including regulations for or with respect to the employment of auditors),
 - (j) disputed returns in elections of councillors,
 - (k) the fees, allowances or expenses that may be paid to investigators and administrators of Aboriginal Land Councils,
 - (l) the preparation and maintenance of membership rolls of Local Aboriginal Land Councils, and the time and manner in which those rolls must be provided to the New South Wales Aboriginal Land Council,
 - (m) the keeping and operation of the Register of Aboriginal Land Claims and 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 in those paragraphs 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 create an offence punishable by a penalty not exceeding 10 penalty units.

253 Savings, transitional and other provisions (cf former section 71)

Schedule 4 has effect.

Schedule 1 Provisions relating to the Registrar

(Section 164 (2))

1 Term of office

Subject to this Act, the Registrar is to be appointed for such term, not exceeding 7 years, as is specified in the relevant instrument of appointment, but is (if otherwise qualified) eligible for re-appointment.

2 Remuneration

The Registrar is entitled to be paid:

- (a) remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#), and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine.

3 Public Sector Management Act 1988 not to apply

The *Public Sector Management Act 1988* (including Part 8) does not apply to or in respect of the appointment of the Registrar and the Registrar is not, in his or her capacity as the Registrar, subject to that Act during his or her term of office.

4 Vacancy in office

The office of Registrar becomes vacant if the Registrar:

- (a) dies, or
- (b) engages in New South Wales or elsewhere during his or her term of office in any paid employment outside the duties of his or her office without the approval of the Minister, or
- (c) 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, allowances or estate for their benefit, or
- (d) absents himself or herself from duty for a period exceeding 14 consecutive days, except on leave granted by the Minister, or
- (e) becomes a mentally incapacitated person, or
- (f) 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
- (g) resigns the office by instrument in writing addressed to the Minister, or
- (h) is removed from office under clause 5.

5 Removal from office

The Governor may remove the Registrar from office for incapacity, misbehaviour or incompetence.

6 Superannuation and leave—preservation of rights

(1) In this clause:

superannuation scheme means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

(2) A person appointed as Registrar:

- (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming Registrar, and

(b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme,

as if he or she had continued to be such a contributor during service as Registrar.

- (3) Service by a person as Registrar is taken to be service as an officer in his or her previous employment for the purposes of any law under which the member continues to contribute to the scheme or by which an entitlement under the scheme is conferred.
- (4) The Registrar is to be regarded as an officer or employee, and the State is to be regarded as the employer, for the purposes of the scheme.
- (5) This clause ceases to apply to the Registrar if he or she becomes a contributor to another superannuation scheme, but the Registrar is not prevented from receiving a resignation benefit from the first superannuation scheme.
- (6) A person appointed as Registrar retains any rights to annual leave, extended or long service leave and sick leave accrued or accruing in his or her previous employment.
- (7) A Registrar is not entitled to claim, under both this Act and any other Act, dual benefits of the same kind for the same period of service.

Schedule 2 Aboriginal Land Councils Pecuniary Interest Tribunal

(Section 179 (3))

1 Definition

In this Schedule, **the member** means the member appointed as the Pecuniary Interest Tribunal under section 179.

2 Deputy member

- (1) The Governor may, from time to time, appoint a person to be the deputy of the member, and the Governor may revoke any such appointment. A person appointed as a deputy must have the same qualifications as those required of a person appointed as the member.
- (2) In the absence of the member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has the functions of the member and is taken to be the member.
- (3) A person while so acting in the place of the member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of the member is taken to be an absence from office of the member.

3 Term of office of the member

Subject to this Schedule, the member holds office for such period, not exceeding 5 years, as is specified in the member's instrument of appointment, and (if otherwise qualified) is eligible for re-appointment.

4 Remuneration of the member

The member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Vacancy in office of the member

(1) The office of the member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) becomes a member of staff of an Aboriginal Land Council, or
- (e) is removed from office by the Governor under this clause or under Part 8 of the *Public Sector Management Act 1988*, or
- (f) 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
- (g) becomes a mentally incapacitated person, or
- (h) 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.

(2) The Governor may remove the member from office at any time.

6 Filling of vacancy in office of member

If the office of the member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Application of other Acts

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of the member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as the member.

Schedule 3 (Repealed)

Schedule 4 Savings, transitional and other provisions

(Section 253)

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](#).

[Aboriginal Land Rights Amendment Act 2001](#)

(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.

Part 5 Provisions consequent on the enactment of Aboriginal Land Rights Amendment Act 2001

18 Definition

In this Part:

amending Act means the *Aboriginal Land Rights Amendment Act 2001*.

19 Local and Regional Aboriginal Land Council areas

- (1) A Local Aboriginal Land Council area constituted under section 5 immediately before its repeal is taken to be a Local Aboriginal Land Council area constituted under section

49.

- (2) A Regional Aboriginal Land Council area constituted under section 14 immediately its repeal is taken to be a Regional Aboriginal Land Council area constituted under section 85.

20 Aboriginal Land Councils

- (1) A Local Aboriginal Land Council constituted under section 6 before its repeal is taken to have been constituted under section 50.
- (2) A Regional Aboriginal Land Council constituted under section 15 before its repeal is taken to have been constituted under section 86.
- (3) The New South Wales Aboriginal Land Council constituted under section 22 before its repeal is taken to have been constituted under section 104.
- (4) No amendment made by the amending Act affects the continuity of any Aboriginal Land Council in existence immediately before the commencement of the amendment.

21 Existing officers of Aboriginal Land Councils

- (1) A person holding an office as a Chairperson, Secretary, Treasurer, Regional or Alternate Representative of a Local Aboriginal Land Council immediately before the commencement of this clause continues, subject to this Act, to hold that office until the office falls vacant pursuant to subclause (2).
- (2) At the first annual meeting of a Local Aboriginal Land Council after the commencement of this clause, the offices of Chairperson, Secretary, Treasurer, Regional and Alternate Representative of the Council become vacant. A person elected to such an office at that annual meeting, subject to this Act, holds office until his or her re-election for another term, or the election of his or her successor, at the second annual meeting of the Council following his or her election.
- (3) A person holding an office as a Chairperson, Secretary or Treasurer of a Regional Aboriginal Land Council or the New South Wales Aboriginal Land Council immediately before the commencement of this clause continues, subject to this Act, to hold that office until the next annual meeting after that commencement.

22 Existing members of staff of Aboriginal Land Councils

Any person employed by an Aboriginal Land Council under this Act immediately before its amendment by the amending Act is taken to be employed by that Council as constituted after that amendment.

23 Existing industrial agreements

Any agreement entered into with the Public Employment Industrial Relations Authority or

the Public Employment Office under section 27D of this Act before its repeal by the amending Act and in force immediately before that repeal is taken to be an agreement entered into with the New South Wales Aboriginal Land Council.

24 Membership rolls

A roll prepared for the purposes of this Act before its amendment by the amending Act becomes a membership roll for the purposes of this Act until a membership roll is prepared for the purposes of this Act as so amended.

25 Registrar

The person appointed as Registrar under section 49 before its repeal is, on the commencement of the amending Act, taken to have been appointed as Registrar by the Governor under section 164.

26 Chief Executive Officer of New South Wales Aboriginal Land Council

- (1) The person employed by the New South Wales Aboriginal Land Council as Chief Executive Officer before the commencement of section 138 is taken to have been appointed as Chief Executive Officer by that Council under that section.
- (2) Subject to this Act, the terms and conditions of that person's employment (including the duration of the person's employment) remain in force.

27 Register of Aboriginal Owners

The Register of Aboriginal Owners established and kept under section 49B before its repeal by the amending Act is taken to have been established under section 170.

28 Persons who are members of more than one Local Aboriginal Land Council

A person who, on the commencement of section 56 (as substituted by the amending Act), is a member of more than one Local Aboriginal Land Council must make a nomination under that section within 8 weeks of the commencement of this clause.

29 References to exemptions of Aboriginal lands from payment of rates

A reference in any Act, instrument or other document to a declaration made under Division 5 of Part 6 is to be taken to be a reference to a declaration made under Division 5 of Part 2.

30 Changing of financial year

Despite any provision of Division 2 of Part 8, the regulations may make provision for or with respect to the preparation of the first audited financial statements, budgets, quarterly reports and annual reports of an Aboriginal Land Council required under that Division after the change to the financial year of the Council effected by the amending Act.

31 Aboriginal Land Councils Accounts

- (1) A Local Aboriginal Land Council Account established under section 31 before its repeal is taken to have been established under section 152.
- (2) A Regional Aboriginal Land Council Account established under section 30 before its repeal is taken to have been established under section 151.
- (3) The New South Wales Aboriginal Land Council Account established under section 29 before its repeal is taken to have been established under section 149.
- (4) No amendment made by the amending Act affects the continuity of any Aboriginal Land Council Account in existence immediately before the commencement of the amendment.

32 Delegations

- (1) A delegation made by the Minister under section 55 (1) before its repeal is taken to have been made under section 243.
- (2) A delegation made by the New South Wales Aboriginal Land Council under section 55 (3) before its repeal is taken to have been made under section 146.

33 Regulations

A regulation made under section 68 before its repeal is taken to have been made under section 252.

34 Rules of Court

A rule of Court made under section 27AF before its repeal is taken to have been made under section 127.

Part 6 Aboriginal Land Rights Amendment (Gandangara Estate) Act 2004

35 Definitions

In this Part:

disposal of land means sale, exchange, mortgage or other disposal of land, change of use of land and the grant of an easement over land, and includes purported disposal of land.

Gandangara Estate land means the land comprised in Deposited Plan 1061416, being the land formerly comprising lots 6081–6084 (inclusive) in Deposited Plan 1018026 and lot 2 in Deposited Plan 1041291.

Gandangara LALC means the Gandangara Local Aboriginal Land Council.

36 Gandangara Estate—deemed compliance with ss 40B and 40D

The requirements of sections 40B and 40D are deemed to have been complied with in respect of any disposal of Gandangara Estate land by Gandangara LALC before the commencement of this Part, and it is to be conclusively presumed for all purposes that any such disposal does not (and did not ever) contravene either of those sections.

37 Validation

- (1) Any disposal before the commencement of this Part of Gandangara Estate land by Gandangara LALC or by a person to whom Gandangara Estate land was disposed of before that commencement is validated to the extent of any invalidity that would otherwise have resulted from any contravention of section 40B or 40D in connection with the disposal.
- (2) Any act or omission by the Registrar-General in the exercise or purported exercise of a function under the *Real Property Act 1900* in connection with a disposal of Gandangara Estate land before the commencement of this Part is validated to the extent of any invalidity that would otherwise have resulted from any contravention of section 40B or 40D in connection with any such disposal.

38 Certificate evidence

- (1) A certificate may be given under section 40D (2) certifying that a disposal of Gandangara Estate land by Gandangara LALC before the commencement of this Part does not contravene section 40D.
- (2) The failure to give or obtain such a certificate does not limit or otherwise affect the operation of this Part or prevent the exercise of any function of the Registrar-General.
- (3) The Registrar-General is not required to obtain, and is not to require any other person to obtain, such a certificate as a condition of or as authority for the exercise of any function of the Registrar-General with respect to any such disposal of land.

39 Notice of contravention

This Part has effect despite any notice that any person has or had of any contravention of section 40B or 40D in connection with any disposal of Gandangara Estate land. In particular any such notice has no effect for the purposes of section 40D (2) and any certificate issued under that subsection.

Schedules 5, 6 (Repealed)