

# Aboriginal Land Rights Act 1983 No 42

[1983-42]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**

[Aboriginal Land Rights Amendment Act 2014 No 75](#), Sch 1 [92]-[94] [97]-[99] [103] [108]-[112] [116] [117] [119]-[122] and [124] (not commenced)

[Statute Law \(Miscellaneous Provisions\) Act 2016 No 27](#) (not commenced — Sch 1.1 [1]-[8] to commence on 8.7.2016; Sch 1.1 [9] to commence on 1.7.2016)

### Authorisation

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# Aboriginal Land Rights Act 1983 No 42



New South Wales

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# Aboriginal Land Rights Act 1983 No 42



New South Wales

An Act to repeal the *Aborigines Act 1969* and to make provisions with respect to the land rights of Aboriginal persons, 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 Aboriginal persons:
- (2) Land is of spiritual, social, cultural and economic importance to Aboriginal persons:
- (3) It is fitting to acknowledge the importance which land has for Aboriginal persons and the need of Aboriginal persons for land:
- (4) It is accepted that as a result of past Government decisions the amount of land set aside for Aboriginal persons 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, and the management of land and other assets and investments, by or for those Councils and the allocation of funds to and by those Councils,
- (e) to provide for the provision of community benefit schemes by or on behalf of 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 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.

**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.

**Board** means a Board of a Local Aboriginal Land Council.

**Board member** means a member of a Board of a Local Aboriginal Land Council.

**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.

**community benefit** means a benefit or service provided for the benefit of Aboriginal persons, and may include, but is not limited to, the following:

- (a) funeral funds,
- (b) residential accommodation,
- (c) education and training,
- (d) scholarships and other assistance for education and training,
- (e) cultural activities,
- (f) child care,
- (g) aged care services.

**community benefits scheme** means a scheme for the provision of community benefits funded wholly or in part by an Aboriginal Land Council.

**community development levy** means the levy payable under Division 4A of Part 2.

**community, land and business plan** means a plan prepared and approved under Division 6 of Part 5 or Division 5 of Part 7.

**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.

**investigator** means a person appointed under section 216 to investigate the affairs, or specified affairs, of an Aboriginal Land Council.

**land** includes any estate or interest in land, whether legal or equitable.

**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** of an Aboriginal Land Council means:

- (a) in relation to a Local Aboriginal Land Council, a Board member of the Council, or
- (b) in relation to the New South Wales Aboriginal Land Council, a councillor.

**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.

**Region** means a Region specified in Schedule 5.

**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 or de facto partner,

(b) the spouse or de facto partner of the person or of a person referred to in paragraph (a).

**residential tenancy agreement** has the same meaning as in the *Residential Tenancies Act 2010*.

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

**satisfactory financial statements and documents** means financial statements and documents furnished to the New South Wales Aboriginal Land Council under Division 2 of Part 8 by a Local Aboriginal Land Council that are determined by the New South Wales Aboriginal Land Council to be satisfactory in accordance with the requirements of that Division.

**short-term residential tenancy agreement** means a residential tenancy agreement:

- (a) that is a fixed term agreement (within the meaning of the *Residential Tenancies Act 2010*) for a term of less than 3 years (including any option to renew the agreement) or is a periodic agreement (within the meaning of that Act), and
- (b) where the only parties to the agreement are a Local Aboriginal Land Council and one or more natural persons.

**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.
- (4A) The Registrar may refuse to refer a claim, or part of a claim, to the Crown Lands Minister if the Registrar is satisfied that:
- (a) the claim, or the part of the claim, relates to lands that are not vested in Her Majesty, or
  - (b) the claim, or the part of the claim, has been made in contravention of an undertaking given by the claimant in an Aboriginal Land Agreement under section 36AA while such an undertaking remains in force.
- (4B) Before refusing to refer a claim, or part of a claim, to the Crown Lands Minister, the Registrar must:
- (a) inform the claimant, by notice in writing, of the Registrar's intention to refuse to refer the claim, or the part of the claim, and the reasons for the refusal, and
  - (b) invite the claimant to provide further information supporting the claim, or part of the claim, within 28 days of the giving of the notice (or such greater period as may be specified in the notice), and
  - (c) consider any further information provided by the claimant within that period.
- (4C) If the Registrar has not referred a claim, or any part of a claim, to the Crown Lands Minister within 60 days after the claim was lodged with the Registrar or by the end of the period within which the claimant has been invited to provide further information supporting the claim, the Registrar is taken to have refused to refer the claim, or the part of the claim, to the Crown Lands Minister.
- (4D) An Aboriginal Land Council may appeal to the Court against a refusal to refer the claim, or any part of the claim, to the Crown Lands Minister.
- (4E) The Court is to hear and determine any appeal made to it under subsection (4D) and may order that the claim, or any part of the claim, be referred to the Crown Lands Minister if the Registrar fails to satisfy the Court that:
- (a) the claim, or the part of the claim, relates to lands that are not vested in Her Majesty, or
  - (b) the claim, or the part of the claim, has been made in contravention of an undertaking given by the claimant in an Aboriginal Land Agreement under section

36AA while such an undertaking remains in force.

(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.

(5AA) The Crown Lands Minister to whom a claim for lands has been referred must not grant a claim under subsection (5) if the Crown Lands Minister is satisfied that the claimant has entered into an Aboriginal Land Agreement under section 36AA that includes an undertaking by the claimant not to lodge a claim in respect of the lands claimed or to withdraw such a claim.

(5AB) An Aboriginal Land Council may appeal to the Court against a decision of the Crown Lands Minister under subsection (5AA).

(5AC) The Court is to hear and determine any appeal made to it under subsection (5AB) and may order the Crown Lands Minister to determine the claim if the Crown Lands Minister fails to satisfy the Court that the claimant has entered into an Aboriginal Land Agreement under section 36AA that includes an undertaking by the claimant not to lodge a claim in respect of the lands claimed or to withdraw such a claim.

(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 a forestry right (within the meaning of section 87A of the *Conveyancing Act 1919*) granted in respect of them or 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 is subject to the following:
- (a) any easements affecting the lands immediately before the transfer,
  - (b) any condition imposed under subsection (5A),
  - (c) any forestry right within the meaning of section 87A of the *Conveyancing Act 1919*, and any restriction on use or covenant imposed under Division 4 of Part 6 of that Act in connection with that forestry right, in force in respect of the lands immediately before the transfer.
- (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 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) Duty under the *Duties Act 1997* is not payable in respect of a transfer of lands in accordance with this section.
- (16) The definition of **claimable Crown lands** in subsection (1) is taken to include land vested in the State Property Authority that complies with paragraphs (a)–(e) of that definition and that was, immediately before it vested in that Authority, claimable

Crown lands within the meaning of that definition.

- (17) The provisions of this section are modified as follows in relation to its application to land vested in the State Property Authority:
- (a) subsection (4) (c) requires the Registrar to refer a copy of a claim in relation to the land to the Minister administering the *State Property Authority Act 2006* in addition to the other Ministers referred to in that paragraph,
  - (b) a reference in subsection (5) to the Crown Lands Minister granting a claim by making a transfer referred to in that subsection is to be read as the Crown Lands Minister granting a claim and requiring the State Property Authority to transfer the relevant land as referred to in that subsection,
  - (c) a reference in subsection (14) to a Crown Lands Minister is to be read as a reference to the State Property Authority,
  - (d) a reference in subsection (14) to Crown land is a reference to land vested in the State Property Authority that, immediately before it was vested in that Authority, was Crown land.
- (18) In accordance with a requirement by a Crown Lands Minister under subsection (5) (as modified by subsection (17) (b)), the State Property Authority is to transfer land vested in it in relation to which a claim has been granted by that Minister, subject to the taking of any action required to implement a condition imposed under subsection (5A) on the grant of the claim.

### **36AA Aboriginal Land Agreements**

- (1) In this section, **Aboriginal Land Agreement** means an agreement, in writing, between the Crown Lands Minister and one or more Aboriginal Land Councils (whether or not the agreement also includes other parties) that, in addition to any other matter that may be included in the agreement, makes provision for:
- (a) the exchange, transfer or lease of land to an Aboriginal Land Council, or
  - (b) an undertaking by an Aboriginal Land Council not to lodge a claim, or to withdraw a claim, in relation to specified land.
- (2) An Aboriginal Land Council and the Crown Lands Minister may, at any time by notice in writing, commence negotiation, in good faith and in a manner agreed between the parties, for an Aboriginal Land Agreement whether or not a claim has been made under section 36 by the Council in relation to the land that is the subject of the proposed agreement.
- (3) The Aboriginal Land Council or the Crown Lands Minister may, with the approval of the other party, invite one or more other Aboriginal Land Councils, or any other person, to join the negotiations and enter into the Aboriginal Land Agreement.



- (4) An Aboriginal Land Council, the Crown Lands Minister or any other party may, at any time before the making of an Aboriginal Land Agreement, withdraw from negotiation for the agreement by notice in writing to the other party or parties.
- (5) Without limiting the matters that may be included in an Aboriginal Land Agreement, such an agreement may make provision for or with respect to the following:
  - (a) financial or other consideration,
  - (b) exchange, transfer or lease of land,
  - (c) conditions or restrictions on the use of any land to which the agreement relates,
  - (d) joint access to and management of land (including a lease of a type referred to in section 36A),
  - (e) undertakings by an Aboriginal Land Council or the Crown Lands Minister with regard to the lease, transfer, management or use of any land,
  - (f) the duration of the agreement,
  - (g) the resolution of disputes arising under the agreement.
- (6) The Crown Lands Minister may enter into an Aboriginal Land Agreement whether or not a claim has been made under section 36 in relation to any lands to which the agreement relates.
- (7) If a proposed Aboriginal Land Agreement provides for the transfer or lease of lands for which a Minister other than the Crown Lands Minister is responsible, the concurrence of that other Minister is required before the agreement is made.
- (8) The provisions of section 36 (9)–(13), (15) and (17) apply (with necessary modifications) to the transfer of lands in accordance with an Aboriginal Land Agreement in the same way as those provisions apply to the transfer of lands under that section.
- (9) An Aboriginal Land Council or the Crown Lands Minister may, at any time during the negotiation for an Aboriginal Land Agreement, notify the other party, in writing, that the agreement must not make provision with respect to specified lands.
- (10) The Crown Lands Minister is, on the making of an Aboriginal Land Agreement, authorised to transfer or lease Crown lands the subject of the agreement in accordance with the agreement.
- (11) If an Aboriginal Land Agreement provides for termination or transfer of an interest in land, other than an interest of the Crown, the transfer or termination may only be effected with the approval of the holder of the interest.

- (12) The Registrar is to keep and maintain a register in relation to Aboriginal Land Agreements made under this section.
- (13) The register required to be kept under this section is, subject to the regulations, to include such information and to be in such form as is determined by the Registrar.
- (14) The provisions of the *Crown Lands Act 1989* that provide for the transfer of Crown lands do not apply in respect of the transfer of land carried out in accordance with an Aboriginal Land Agreement.
- (15) In this section:

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

***interest in land*** includes:

- (a) a legal or equitable interest in the land, or
- (b) an easement, right, charge, power or privilege over, or in connection with, the land.

### **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.

**36B Special provisions relating to Crown lands subject of land claim**

- (1) Despite anything to the contrary in the *Crown Lands Act 1989*, if an Aboriginal Land

Council has appealed to the Court against a refusal of a land claim made by it in relation to any land, the Crown Lands Minister must not, by any act or omission, cause anything to occur in relation to that land that would cause a claim (if any) lodged in relation to that land before the final determination of the appeal to be unsuccessful.

- (2) Subsection (1) does not prohibit the extension or continuance of an existing lawful use of the land to which the claim relates or anything done with the consent of the relevant Aboriginal Land Council.
- (3) If an Aboriginal Land Council has appealed to the Court against the refusal of a land claim or part of a land claim, a land claim may not be made in relation to the land the subject of the appeal until the final determination of the appeal.

### **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 *Local Land Services Act 2013* (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 Local Land Services.
- (2) This section has effect notwithstanding the provisions of the *Local Land Services Act 2013* 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 Aboriginal persons defined rights, or conferring or imposing on the claimant Aboriginal Land Council or on Aboriginal persons 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 Aboriginal persons have traditional rights to the land or that Aboriginal persons 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 *Local Land Services Act 2013* 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 *Local Land Services Act 2013*, 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) Duty under the *Duties Act 1997* is not 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 market value of the land, as assessed by a qualified valuer who is appointed by the Local Aboriginal Land Council, 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) (Repealed)
- (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 tenants in common.

**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) Subject to the regulations, a reference in this section to a **qualified valuer** is a reference to a person who:
  - (a) has membership of the Australian Valuers Institute (other than associate or student membership), or
  - (b) has membership of the Australian Property Institute (other than student or provisional membership), acquired in connection with his or her occupation as a valuer, or
  - (c) has membership of the Royal Institution of Chartered Surveyors as a chartered valuer, or
  - (d) is of a class prescribed by the regulations.

### **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 Aboriginal persons.
- (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 Land dealings by Aboriginal Land Councils**

### **40 Interpretation**

- (1) In this Division and Division 4A:

**agreement** includes an arrangement.

**deal with land** means:

- (a) sell, exchange, lease, mortgage, dispose of, or otherwise create or pass a legal or equitable interest in, land, or
- (b) grant an easement or covenant over land or release an easement or covenant benefiting land, or
- (c) enter into a biobanking agreement relating to land under the *Threatened Species Conservation Act 1995* or a conservation agreement under the NPW Act, or
- (d) enter into a wilderness protection agreement relating to land under the *Wilderness Act 1987*, or
- (e) enter into a property vegetation plan under the *Native Vegetation Act 2003*, or
- (f) subdivide or consolidate land so as to affect, or consent to a plan of subdivision or consolidation of land that affects, the interests of an Aboriginal Land Council in that land, or
- (g) make a development application in relation to land, or
- (h) any other action (including executing an instrument) relating to land that is prescribed by the regulations.

**Note—**

In this Act, a reference to land includes any estate or interest in land, whether legal or equitable (see section 4 (1)).

**dealing approval certificate**—see section 41.

**development application** means:

- (a) a development application within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (b) an application for approval of a project under Part 3A of the *Environmental*

*Planning and Assessment Act 1979*, or

- (c) an application for approval of State significant infrastructure under Part 5.1 of the *Environmental Planning and Assessment Act 1979*.

**General Register of Deeds** means the General Register of Deeds maintained under the *Conveyancing Act 1919*.

**land dealing** means an action in relation to land of a kind referred to in paragraphs (a)–(h) of the definition of **deal with land**.

**land dealing approval agreement** means an agreement entered into under a condition imposed under section 42G (6) (b).

**Register** means the Register maintained under the *Real Property Act 1900*.

**registrable instrument** means:

- (a) an instrument (other than a caveat or registration prohibition notice) giving effect to or forming part of a land dealing (within the meaning of this Division) that is registrable or capable of being made registrable under the *Real Property Act 1900* or in respect of which a recording is required or permitted (under that or any other Act or Commonwealth Act) to be made in the Register maintained under that Act, or
- (b) a plan that is required or permitted to be registered under Division 3 of Part 23 of the *Conveyancing Act 1919* and that is or gives effect to or forms part of a land dealing (within the meaning of this Division), or
- (c) an instrument (other than a registration prohibition notice) giving effect to or forming part of a land dealing (within the meaning of this Division) that is registrable or in respect of which a recording is required or permitted to be made in the General Register of Deeds.

**registration approval certificate**—see section 41.

**registration prohibition notice**—see section 42O.

- (2) For the purposes of this Division, land is **vested** in an Aboriginal Land Council if:

(a) the Council has a legal interest in the land, or

(a1) the land is the whole or part of land that is, pursuant to an Aboriginal Land Agreement under section 36AA, to be transferred to the Council, or

(b) the land is the whole or part of land the subject of a claim under section 36 and:

- (i) the Crown Lands Minister is satisfied that the land is claimable Crown land under section 36, or



(ii) the Court has ordered under section 36 (7) that the land be transferred to the Council,

and the land has not been transferred to the Council.

(3) In this Division, an Aboriginal Land Council is taken to **make a development application** for land vested in the Council if the Council consents to such an application by another person.

(4) For the purposes of this Division, land is of **cultural and heritage significance to Aboriginal persons** if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aboriginal persons.

#### **40AA-40D (Repealed)**

#### **41 Certificates—land vested in Aboriginal Land Councils**

(1) A **dealing approval certificate**:

(a) for a land dealing relating to land vested in the New South Wales Aboriginal Land Council, is a certificate in the prescribed form signed by the Chief Executive Officer of the New South Wales Aboriginal Land Council that the dealing complies with section 42D, or

(b) for a land dealing relating to land vested in a Local Aboriginal Land Council, is a certificate in the prescribed form signed by the Chief Executive Officer of the New South Wales Aboriginal Land Council that the dealing has been approved by the New South Wales Aboriginal Land Council.

(2) A **registration approval certificate** for a registrable instrument relating to land vested in an Aboriginal Land Council is a certificate in the prescribed form signed by the Chief Executive Officer of the New South Wales Aboriginal Land Council that:

(a) the registration, under the [Real Property Act 1900](#), of the instrument is authorised under this Act, or

(b) the registration, under Division 3 of Part 23 of the [Conveyancing Act 1919](#), of the instrument is authorised under this Act, or

(c) the making of a recording in respect of the instrument in the Register or the General Register of Deeds is authorised under this Act.

(3) A dealing approval certificate signed by the Chief Executive Officer of the New South Wales Aboriginal Land Council is conclusive evidence of the matters certified in the certificate in favour of any person.

(4) Subsection (3) does not operate in favour of any person who had knowledge that any of the matters certified in the certificate was incorrect before the land dealing was

completed (whether or not any subsequent registration was required or has taken place).

(5) A dealing approval certificate must set out any conditions of the relevant approval.

#### **42 Restrictions on dealing with land subject to native title**

(1) An Aboriginal Land Council must not 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) This section does not apply to or in respect of:

(a) 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 NPW Act under Part 4A of that Act in accordance with a condition imposed under section 36A (2), or

(b) a transfer of land to another Aboriginal Land Council, or

(c) a lease of land referred to in section 37 (3) (b).

#### **42A Restrictions on dealing with land reserved or dedicated under the NPW Act**

(1) An Aboriginal Land Council must not deal with land that is vested in it and that is reserved or dedicated under Part 4A of the NPW Act except in accordance with that Act.

(2) This Division and Division 4A (other than sections 40, 42B and this section) do not apply to land referred to in subsection (1).

#### **42B Appropriation or resumption of Aboriginal land**

Despite anything in any Act, land vested in an Aboriginal Land Council must not be appropriated or resumed except by an Act of Parliament.

#### **42C Land dealings by Aboriginal Land Councils generally**

(1) A land dealing by an Aboriginal Land Council in contravention of section 42D or 42E is void.

(2) This Division is in addition to any requirements of or under any other Act in relation to a land dealing.

(3) This section has effect despite any other Act or law.

#### **42D Land dealings by New South Wales Aboriginal Land Council**

(1) The New South Wales Aboriginal Land Council must not deal with land vested in it

unless:

- (a) it has notified the Local Aboriginal Land Council (if any) for the area in which the land is situated in writing of the land affected and the type of proposed dealing, and
  - (b) it has considered any comments made by that Council within 28 days of that notice being given, and
  - (c) (Repealed)
  - (d) it has had regard to its community, land and business plan and any of its policies that are applicable, and
  - (e) if it is appropriate to do so in the circumstances, it has considered the cultural and heritage significance of the land to Aboriginal persons in determining whether to deal with the land, and
  - (f) the land dealing complies with a resolution of the New South Wales Aboriginal Land Council approving the dealing.
- (2) The Chief Executive Officer of the New South Wales Aboriginal Land Council must give a dealing approval certificate for a land dealing by the Council if the Chief Executive Officer is satisfied that the Council has complied with this Division in relation to the dealing.
  - (3) The Chief Executive Officer of the New South Wales Aboriginal Land Council must give a registration approval certificate for an instrument if the Chief Executive Officer is satisfied that the instrument is a registrable instrument relating to a land dealing by the Council that complies with this Division.
  - (4) This section does not apply to or in respect of the following land dealings by the New South Wales Aboriginal Land Council:
    - (a) a lease for a period of less than 3 years (including any option to renew the lease),
    - (b) a land dealing prescribed by the regulations for the purposes of this section.

#### **42E Approval required for land dealings by Local Aboriginal Land Councils**

- (1) A Local Aboriginal Land Council must not deal with land vested in it except in accordance with an approval of the New South Wales Aboriginal Land Council under section 42G.
- (2) However, the approval of the New South Wales Aboriginal Land Council is not required for the following land dealings by a Local Aboriginal Land Council:
  - (a) a land dealing in relation to a lease for a period of less than 3 years (including any option to renew the lease) or a short-term residential tenancy agreement, other

than a social housing management lease,

(b) a land dealing prescribed by the regulations for the purposes of this section.

(3) (Repealed)

(4) An agreement to deal with land vested in a Local Aboriginal Land Council that is made by the Council is, if the land dealing is not approved by the New South Wales Aboriginal Land Council and an approval is required, unenforceable against the Local Aboriginal Land Council.

(5) A person is not entitled to damages, or any other remedy, against a Local Aboriginal Land Council in respect of a warranty or other promise relating to an unenforceable agreement referred to in subsection (4).

(6) In this section:

***social housing management lease*** means a lease (other than a residential tenancy agreement) entered into by a Local Aboriginal Land Council in relation to the provision or management of a community benefits scheme for residential accommodation for Aboriginal persons in its area.

(7) This section has effect despite any other Act or law.

**Note—**

Approval of a land dealing by a Local Aboriginal Land Council must be by resolution of the voting members (see section 52G (e)).

**42F Applications for approval of LALC land dealings by NSWALC and assessment fees**

(1) A Local Aboriginal Land Council may apply to the New South Wales Aboriginal Land Council for the approval of a land dealing relating to land vested in the Local Aboriginal Land Council.

(2) An application by a Local Aboriginal Land Council to the New South Wales Aboriginal Land Council for approval of a dealing with land is:

(a) to be made in accordance with the regulations, and

(b) to contain the matters prescribed by the regulations, and

(c) to be accompanied by any application fee, and any documents, prescribed by the regulations.

(3) An application may also be accompanied by such additional documents and other information as the Local Aboriginal Land Council thinks fit.

(4) The New South Wales Aboriginal Land Council may require the Local Aboriginal Land Council to provide additional documents and other information in relation to an

application.

- (5) Regulations may be made for or with respect to the following:
- (a) the fees that may be charged by the New South Wales Aboriginal Land Council for assessing and determining applications for approval of land dealings,
  - (b) without limiting paragraph (a), the fees that may be charged by the New South Wales Aboriginal Land Council with respect to the costs of appointing an expert advisory panel to assess an application for approval of a land dealing,
  - (c) waiver of assessment fees,
  - (d) provision of securities in respect of the payment of assessment fees,
  - (e) notice by the New South Wales Aboriginal Land Council to applicants for approval of proposed assessment fees or security arrangements and other matters relating to determination of the application,
  - (f) the circumstances in which the New South Wales Aboriginal Land Council may refuse to assess or determine an application.

#### **42G Approval of LALC land dealings by NSWALC**

- (1) **Approval requirements** The New South Wales Aboriginal Land Council must (subject to subsection (2) and any requirements of the regulations), on an application for approval of a land dealing being made by a Local Aboriginal Land Council in accordance with this Act, approve (with or without conditions) the land dealing if the New South Wales Aboriginal Land Council is satisfied that:
- (a) the application is in accordance with this Act, and
  - (b) the members of the Local Aboriginal Land Council have passed a resolution in accordance with subsection (5) and that the dealing is in accordance with that resolution.
- (2) **Refusal if contrary to LALC members' interests** The New South Wales Aboriginal Land Council may refuse to approve a land dealing if it considers that the dealing is, or is likely to be, contrary to the interests of the members of the Local Aboriginal Land Council or other Aboriginal persons within the area of that Council.
- (3) In considering whether a land dealing is contrary to any such interests, the New South Wales Aboriginal Land Council may consider (and is not limited to considering) the following:
- (a) the community, land and business plan of the Local Aboriginal Land Council and whether, and to what extent, the land dealing is consistent with that plan,
  - (b) the terms of the land dealing and whether those terms are fair and equitable to

the Local Aboriginal Land Council in all the circumstances,

- (c) whether the Local Aboriginal Land Council, in passing the resolution, had proper regard to the cultural and heritage significance of the land to Aboriginal persons,
  - (d) any assessment of the application for approval of the land dealing by an expert advisory panel under this Division,
  - (e) whether it is likely that the proceeds of the land dealing will be managed and applied in the interests of the members of the Local Aboriginal Land Council or other Aboriginal persons within the area of the Council,
  - (f) any applicable policy of the New South Wales Aboriginal Land Council in relation to land dealings by Local Aboriginal Land Councils.
- (4) The New South Wales Aboriginal Land Council is not required to consider any additional information or other material provided by a person other than the Local Aboriginal Land Council in considering whether a land dealing is, or is likely to be, contrary to the interests of the members of the Local Aboriginal Land Council or other Aboriginal persons within the area of that Council.
- (5) **Requirements for approval resolutions** A Local Aboriginal Land Council resolution approving a land dealing must:
- (a) be passed at a meeting of which prior notice was given, in accordance with the regulations, and at which a quorum was present, and
  - (b) be passed by not less than 80 per cent of the voting members of the Council present at the meeting, and
  - (c) contain the following matters:
    - (i) the identity of the land,
    - (ii) a statement that the impact of the land dealing on the cultural and heritage significance of the land to Aboriginal persons has been considered in determining whether to approve the dealing,
    - (iii) the manner in which the land is to be dealt with,
    - (iv) any conditions to which the approval of the dealing is subject.
- (6) **Conditions of approval** The New South Wales Aboriginal Land Council may only impose the following kinds of conditions on an approval of a land dealing:
- (a) a condition that is to be satisfied before completion of the land dealing,
  - (b) a condition that requires the Local Aboriginal Land Council or one or more parties to the land dealing to enter into an agreement with the New South Wales

Aboriginal Land Council as to specified matters to be carried out before or after the dealing is completed.

**Note—**

Section 119 enables conditions to be imposed on approvals and also enables approvals to be revoked.

- (7) Without limiting any other action that may be taken, failure by a Local Aboriginal Land Council to comply with a provision of a land dealing approval agreement is taken to be a breach by the Council of this Act.
- (8) **Approval may relate to more than one dealing** An approval under this section may relate to one or more land dealings.

**42H Reasons for refusal or conditions**

If the New South Wales Aboriginal Land Council refuses an application for approval of a land dealing, or approves a land dealing subject to conditions, it must give the Local Aboriginal Land Council concerned a written statement of the reasons for the decision within 28 days after a request by that Local Aboriginal Land Council for the statement.

**42I Assessment of dealings by expert advisory panels**

- (1) The New South Wales Aboriginal Land Council may constitute expert advisory panels to assess applications for approval of land dealings by Local Aboriginal Land Councils.
- (2) An expert advisory panel is to be constituted in accordance with the regulations.
- (3) Regulations may be made for or with respect to the following:
  - (a) a register of persons eligible to be appointed to expert advisory panels,
  - (b) the addition of persons to, or removal of persons from, the register,
  - (c) qualifications for inclusion on the register,
  - (d) the appointment and removal of members of panels,
  - (e) the remuneration of members of panels,
  - (f) the circumstances in which an assessment by a panel is required or may be requested,
  - (g) reports by panels,
  - (h) regulating the assessment of matters by panels in respect of conflicts of interest and prohibiting persons from assessing matters if there is a conflict of interest or a pecuniary interest in a matter.

#### **42J Amendment and revocation of land dealing approvals**

- (1) The New South Wales Aboriginal Land Council must not amend or revoke an approval of a land dealing if the land dealing has been completed or a registrable instrument has been registered in reliance on that approval.

**Note—**

This provision limits the power of the New South Wales Aboriginal Land Council to amend or revoke an approval (see section 119 (4)).

- (2) If an approval of a land dealing under this Division is revoked by the New South Wales Aboriginal Land Council, any dealing approval certificate or registration approval certificate relating to the land dealing ceases to have effect.
- (3) A Local Aboriginal Land Council must return any dealing approval certificate or registration approval certificate given to it that is revoked to the New South Wales Aboriginal Land Council within 14 days of notice of the revocation being given.

#### **42K Certificates for dealings by Local Aboriginal Land Councils**

- (1) **Dealing approval certificate** If the New South Wales Aboriginal Land Council approves a land dealing by a Local Aboriginal Land Council under this Division, the Chief Executive Officer of the New South Wales Aboriginal Land Council must give a dealing approval certificate for the land dealing to the Local Aboriginal Land Council within 14 days of approval being given.
- (2) **Registration approval certificates** The Chief Executive Officer of the New South Wales Aboriginal Land Council must give a registration approval certificate for an instrument relating to a land dealing by a Local Aboriginal Land Council if the Chief Executive Officer is satisfied as to the following:
  - (a) that the instrument is a registrable instrument giving effect to or forming part of a land dealing approved by the New South Wales Aboriginal Land Council under this Division,
  - (b) that any conditions of the approval by the New South Wales Aboriginal Land Council of the land dealing to which the instrument relates have been met,
  - (c) that any community development levy payable in respect of that land dealing has been paid.
- (3) The Chief Executive Officer may refuse to give a dealing approval certificate or a registration approval certificate under this section if any assessment fee payable in relation to the application for approval of the land dealing to which the certificate relates has not been paid or is not subject to arrangements for payment that are satisfactory to the New South Wales Aboriginal Land Council.
- (4) For the purposes of any other Act or law, a dealing approval certificate for a land



dealing by a Local Aboriginal Land Council land is taken to be a written consent by the New South Wales Aboriginal Land Council to the dealing.

#### **42L Review of approval decisions**

- (1) Despite any other Act or law, the only person who has standing to bring proceedings:
  - (a) under the *Land and Environment Court Act 1979*, or
  - (b) for judicial review in any other court,in relation to a decision to approve or not to approve of a land dealing, or an act or omission of the New South Wales Aboriginal Land Council in connection with any such decision, is the Local Aboriginal Land Council concerned.
- (2) This section does not confer any standing on a Local Aboriginal Land Council in respect of class 3 proceedings under the *Land and Environment Court Act 1979* in connection with any such decision.

#### **42M Registration of dealings and instruments**

- (1) The Registrar-General must, if an Aboriginal Land Council is the registered proprietor of an estate in fee simple in land, make a recording in the Register to the following effect:
  - (a) that the land is subject to this Division,
  - (b) that a registrable instrument may not be registered, or a recording in respect of a registrable instrument may not be made, unless the Registrar-General is satisfied that a registration approval certificate has been obtained or is not required.
- (2) The Registrar-General must not register a registrable instrument in relation to land referred to in subsection (1) if the registered proprietor of the land is an Aboriginal Land Council, unless the registrable instrument is accompanied by:
  - (a) a registration approval certificate, or
  - (b) a statement signed by the Chief Executive Officer of the New South Wales Aboriginal Land Council that the instrument gives effect to or forms part of a land dealing for which a registration approval certificate is not required under this Division.

#### **Note—**

If the registered proprietor of land is an Aboriginal Land Council, an instrument or plan affecting the land that is accompanied by a registration approval certificate or the signed statement referred to above has on registration or recording all the protections afforded under the *Real Property Act 1900*.

- (3) Despite section 42 of the *Real Property Act 1900* or any other Act, the registration of a registrable instrument, or the making of a recording, that is prohibited by this section

has no effect and does not create or pass or otherwise affect any estate or interest in the land of any registered proprietor of the land, as otherwise recorded under the *Real Property Act 1900*.

- (4) In this section, **register** a registrable instrument means:
- (a) register the instrument in the Register or under the *Conveyancing Act 1919*, or
  - (b) make a recording in the Register in respect of any such instrument, or
  - (c) register a plan under Division 3 of Part 23 of the *Conveyancing Act 1919*.
- (5) This section does not affect the operation of any other prohibition or restriction relating to transfers or other dealings with land under this or any other Act.

#### **42N Certain land dealing approval agreements to run with land**

- (1) This section applies to a land dealing approval agreement if it imposes obligations as to the use, development or management of, or dealings with, land vested in, or formerly vested in, an Aboriginal Land Council.
- (2) A land dealing approval agreement may be registered under this section if the following persons agree to its registration:
- (a) the New South Wales Aboriginal Land Council,
  - (b) if the agreement relates to land under the *Real Property Act 1900*, each person who is the registered proprietor of an estate or interest in the land,
  - (c) if the agreement relates to land not under the *Real Property Act 1900*, each person who is a party to the agreement.
- (3) On lodgment by an Aboriginal Land Council of an application for registration in a form approved by the Registrar-General, the Registrar-General is to register the land dealing approval agreement:
- (a) by making an entry in the relevant folio of the Register if the agreement relates to land under the *Real Property Act 1900*, or
  - (b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the *Real Property Act 1900*.
- (4) A land dealing approval agreement that has been registered by the Registrar-General under this section is binding on, and is enforceable by and against, the successors in title to the owner who entered into the agreement and those successors in title are taken to have notice of the agreement.
- (5) The Registrar-General may, on the request in writing of the Chief Executive Officer of the New South Wales Aboriginal Land Council, cancel the registration of a land dealing

approval agreement.

(6) A reference in this section to a land dealing approval agreement includes a reference to any agreement amending a land dealing approval agreement.

(7) In this section:

**successors in title** includes a mortgagee, chargee, covenant chargee or other person in possession of land pursuant to a mortgage, charge, positive covenant or other encumbrance entered into before or after the registration of the land dealing approval agreement.

#### **420 Enforcement of land dealing approval agreements—registration prohibition notices**

(1) This section applies to land under the *Real Property Act 1900* if:

(a) a land dealing approval agreement has been registered under section 42N, or

(b) a current registered proprietor of an estate or interest in the land is a party to a land dealing approval agreement in respect of the land.

(2) The New South Wales Aboriginal Land Council may lodge with the Registrar-General a notice in writing prohibiting, except with the consent of that Council, the registration or recording of any dealing affecting an estate or interest in land to which this section applies (a **registration prohibition notice**).

(3) A registration prohibition notice is to be in the form approved by the Registrar-General and must contain the following:

(a) the name and address of the person who is the registered proprietor of an estate or interest in the land affected by the notice,

(b) if the registration notice relates only to part of the land described in a folio of the Register, a description of that part,

(c) a statement that the prohibition notice relates to the land (or part of the land) in respect of which a dealing approval agreement has been entered into under this Division.

(4) On the lodgment of a registration prohibition notice, the Registrar-General must give notice in writing of the lodgment to any registered proprietor of an estate or interest in land affected by the notice, at the address specified in the notice.

(5) Notice of lodgment is not required to be given to a registered proprietor under subsection (4) if the consent of the registered proprietor to the lodgment is endorsed on the registration prohibition notice.

(6) The Registrar-General must, if satisfied that the notice complies with any requirements made in respect of it under this Division or the *Real Property Act 1900*,

record in the Register such particulars of the notice as the Registrar-General thinks appropriate.

- (7) A caveat does not prevent the recording of a registration prohibition notice under this section.
- (8) A registration prohibition notice lodged under this section has effect when particulars of the notice are recorded in the Register under this section.
- (9) A registration prohibition notice may be withdrawn by the New South Wales Aboriginal Land Council, by notice in writing in the form approved by the Registrar-General and on payment of the fee (if any) prescribed by the regulations, and on being withdrawn, ceases to be in force.

#### **42P Effect of registration prohibition notices**

- (1) The Registrar-General must not, except with the consent in writing of the New South Wales Aboriginal Land Council notified in writing by the Chief Executive Officer of the Council, record or register in the Register any dealing if it appears to the Registrar-General that the registration or recording of the dealing is prohibited by a registration prohibition notice that has effect under this Division.
- (2) The New South Wales Aboriginal Land Council must not refuse to give consent under this section if:
  - (a) the dealing or the registration or recording of the dealing is permitted by the applicable land dealing approval agreement, or
  - (b) the dealing or the registration or recording does not materially affect the performance or enforcement of that agreement.
- (3) The regulations may provide that a registration prohibition notice does not prevent the Registrar-General from registering or recording a dealing of a class prescribed by the regulations.
- (4) If in any legal proceedings a question arises as to the validity of a registration prohibition notice, the court is to disregard any failure to comply strictly with the requirements of this Division as to the form of the notice.
- (5) This section:
  - (a) has effect despite the [Real Property Act 1900](#) or any other Act or law, and
  - (b) does not affect the operation of any other prohibition or restriction relating to transfers or other dealings with land.

### **Division 4A Community development levy**

#### **42Q Interpretation**

Words and expressions used in this Division, and in any regulations made under this Division, have the same meaning as they have in the *Duties Act 1997*.

#### **42R Community development levy payable for certain transactions**

- (1) A Local Aboriginal Land Council is liable to pay the community development levy for any dutiable transaction to which the levy applies that occurs in relation to a dealing with land vested in the Council (whether or not the Council is liable to pay duty in respect of the transaction under the *Duties Act 1997*).
- (2) The community development levy applies to the following dutiable transactions:
  - (a) a transfer of land,
  - (b) an agreement for the sale or transfer of land,
  - (c) a declaration of trust over land,
  - (d) a lease of land in respect of which a premium is paid or agreed to be paid,
  - (e) any other transaction prescribed by the regulations.
- (3) Except as provided by subsection (4), the community development levy does not apply to the following dutiable transactions:
  - (a) except as provided by the regulations, transactions that are exempt from duty under the *Duties Act 1997*,
  - (b) transactions under a community benefit scheme providing home ownership for Aboriginal persons,
  - (c) transactions prescribed by the regulations.
- (4) The community development levy is payable in respect of a dutiable transaction even though duty is not chargeable on the transaction because of section 280 of the *Duties Act 1997*.
- (5) The regulations may provide that the community development levy is payable for other transactions in relation to dealings with land vested in a Local Aboriginal Land Council and may also provide for the amount of the levy for those transactions.
- (6) For the purposes of this Division, a dutiable transaction occurs when it is taken to occur for the purposes of the *Duties Act 1997*.

#### **42S Community development levy not payable on transactions between Councils**

The community development levy is not payable in respect of a dutiable transaction between a Local Aboriginal Land Council and another Aboriginal Land Council.

#### **42T Amount of community development levy**

- (1) The amount of the community development levy payable for a dutiable transaction is the prescribed percentage (if any) of the amount of duty in respect of the transaction calculated as if duty were chargeable on the transaction at the rate specified in section 32 (1) of the *Duties Act 1997*.
- (2) In calculating the community development levy, any arrangement for the payment of the levy by a person other than the Local Aboriginal Land Council concerned is to be disregarded.

#### **42U Payment of community development levy amounts**

- (1) Amounts of community development levy collected by the Chief Commissioner of State Revenue are to be paid to the New South Wales Aboriginal Land Council by the Chief Commissioner as agreed between the Council and the Chief Commissioner.

**Note—**

The *Taxation Administration Act 1996* (other than Part 4 of that Act), which includes provisions relating to the collection, payment and non-payment of tax, applies to the community development levy. The Chief Commissioner of State Revenue will be responsible for the collection of the community development levy.

- (2) The Chief Commissioner of State Revenue may retain from the community development levy collected by the Chief Commissioner amounts for payment of the Chief Commissioner's costs in relation to the Chief Commissioner's functions relating to the levy.
- (3) Any such costs are to be in accordance with an agreement between the Chief Commissioner of State Revenue and the New South Wales Aboriginal Land Council.
- (4) The New South Wales Aboriginal Land Council must pay to the New South Wales Aboriginal Land Council Community Fund established under section 149A amounts of community development levy received from the Chief Commissioner.
- (5) The New South Wales Aboriginal Land Council must also pay to that Fund an additional amount equal to the amount of community development levy paid by the Chief Commissioner of State Revenue to the Council under this section.
- (6) The additional amount payable by the New South Wales Aboriginal Land Council under subsection (5) must be paid not later than 28 days after receipt by the Council of a payment of levy under this section.
- (7) Amounts of community development levy are to be paid in accordance with this section, despite any provision of the *Taxation Administration Act 1996*.

#### **42V NSWALC payments may be waived**

The Minister may waive payment of the whole or any part of an amount payable by the New South Wales Aboriginal Land Council under section 42U (5), if the Minister is of the

opinion that it is appropriate to do so, having regard to the financial circumstances of the Council, its obligations under this Act and any other matters the Minister considers relevant.

#### **42W Regulations**

The regulations may make provision for or with respect to the following:

- (a) the application of provisions of the *Duties Act 1997* (with or without modifications) in respect of the community development levy,
- (b) the period within which the community development levy is payable,
- (c) interim assessments of community development levy,
- (d) without limiting paragraph (a), the stamping of instruments.

#### **42X Relationship with *Taxation Administration Act 1996***

This Division, and any regulations made under this Division, are to be read together with the *Taxation Administration Act 1996* (other than Part 4 of that Act).

### **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 *Sydney Water Act 1994*,
- (c) the *Hunter Water Act 1991*, or
- (d) the *Water Management Act 2000*,

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) **uranium** has the same meaning as it has in the *Mining Act 1992*.
- (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, petroleum and uranium.
- (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, petroleum or uranium, 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 Aboriginal persons or group of Aboriginal persons 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 Aboriginal persons or group of Aboriginal persons 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 Aboriginal persons or any group of Aboriginal persons 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.

## **Division 1A Functions of Local Aboriginal Land Councils**

**52 Functions of Local Aboriginal Land Councils**

- (1) A Local Aboriginal Land Council has the functions conferred or imposed on it by or under this or any other Act.
- (2) **Land acquisition** A Local Aboriginal Land Council has the following functions in relation

to the acquisition of land and related matters:

- (a) in accordance with this Act and the 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) functions relating to the acquisition of land and any other functions conferred on it by or under Part 4A of the NPW Act,
- (c) to submit proposals for the listing in Schedule 14 to the NPW Act of lands of cultural significance to Aboriginal persons that are reserved under the NPW Act,
- (d) to negotiate the lease by the Council or by the Council and one or more other Aboriginal Land Councils of lands to which section 36A applies to the Minister administering the NPW Act,
- (e) when exercising its functions with respect to land that is the subject of a lease, or proposed lease, under Part 4A of the NPW Act, to act in the best interests of the Aboriginal owners of the land concerned,
- (f) to make written applications 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,
- (g) to make claims to Crown lands or to enter into Aboriginal Land Agreements.

(3) **Land use and management** A Local Aboriginal Land Council has the following functions in relation to land use and management:

- (a) to consider applications to prospect or mine for minerals on the Council's land and to make recommendations to the New South Wales Aboriginal Land Council in respect of such applications,
- (b) to protect the interests of Aboriginal persons in its area in relation to the acquisition, management, use, control and disposal of its land.

(4) **Aboriginal culture and heritage** A Local Aboriginal Land Council has the following functions in relation to Aboriginal culture and heritage:

- (a) to take action to protect the culture and heritage of Aboriginal persons in the Council's area, subject to any other law,
- (b) to promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area.

(5) **Financial stewardship** A Local Aboriginal Land Council has the following functions in relation to financial management and business planning:

- (a) to prepare and implement, in accordance with this Act, a community, land and

business plan,

- (b) to manage, in accordance with this Act and consistently with its community, land and business plan, the investment of any assets of the Council,
- (c) to facilitate business enterprises (including by establishing, acquiring, operating or managing business enterprises), in accordance with this Act and the regulations and consistently with its community, land and business plan.

(5A) **Corporations** A Local Aboriginal Land Council may establish, acquire, operate or manage an Aboriginal and Torres Strait Islander corporation within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth.

(5B) A Local Aboriginal Land Council may not establish or acquire a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth unless authorised to do so by any applicable policy of the New South Wales Aboriginal Land Council or, if there is no such policy, by the regulations.

(6) **Other functions prescribed by regulations** A Local Aboriginal Land Council has any other functions prescribed by the regulations.

**Note—**

Under section 50 of the *Interpretation Act 1987*, a Local Aboriginal Land Council has certain functions as a statutory corporation, including the power to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property. This provision is subject to the provisions of this Act.

## **52A Community benefits schemes**

(1) A Local Aboriginal Land Council may, in accordance with an approval of the New South Wales Aboriginal Land Council:

- (a) directly or indirectly, provide community benefits under community benefits schemes, and
- (b) without limiting paragraph (a), provide, acquire, construct, upgrade or extend residential accommodation for Aboriginal persons in its area.

(1A) Despite subsection (1), the approval of the New South Wales Aboriginal Land Council is not required for a community benefits scheme for the provision or acquisition of residential accommodation for Aboriginal persons in its area, or for constructing, upgrading or extending any such accommodation, if the Local Aboriginal Land Council is:

- (a) a registered Aboriginal housing organisation (within the meaning of the *Aboriginal Housing Act 1998*), or
- (b) a registered community housing provider (within the meaning of the *Community Housing Providers National Law (NSW)*).

- (2) The New South Wales Aboriginal Land Council must not approve a community benefits scheme of a Local Aboriginal Land Council unless it is satisfied that:
  - (a) the proposed scheme complies with this Act and the regulations, and
  - (b) the proposed scheme is consistent with any applicable policy of the New South Wales Aboriginal Land Council, and
  - (c) the proposed scheme is consistent with the community, land and business plan of the Local Aboriginal Land Council, and
  - (d) the proposed scheme is fair and equitable and will be administered in a way that is responsible and transparent, and
  - (e) the proposed scheme is not likely to prevent the Local Aboriginal Land Council from being able to meet its debts as and when they fall due, and
  - (f) the need for the proposed benefits is not otherwise being adequately met.
- (3) A Local Aboriginal Land Council must ensure that any community benefits scheme under which community benefits are provided by it or on its behalf:
  - (a) complies with this Act and the regulations, and
  - (b) is consistent with any applicable policy of the New South Wales Aboriginal Land Council, and
  - (c) is consistent with the community, land and business plan of the Local Aboriginal Land Council.
- (4) A Local Aboriginal Land Council may provide community benefits under a community benefits scheme to persons within the areas of other Local Aboriginal Land Councils and may provide community benefits in conjunction with one or more other Aboriginal Land Councils.

**52AA Powers of Local Aboriginal Land Councils with respect to property**

- (1) A Local 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.
- (2) In particular, without limiting the generality of subsection (1), a Local Aboriginal Land Council 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.



(3) This section is subject to this Act.

**52B (Repealed)**

**52C Local Aboriginal Land Councils' responsibilities in relation to certain arrangements and transfers**

(1) In this section:

**enter into** includes participate in.

**entity** means any partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated).

(2) This section applies to an arrangement entered into by a Local Aboriginal Land Council:

(a) for the purpose of exercising any of the Council's functions under this Act (including providing a community benefits scheme), and

(b) that includes the formation, acquisition, operation or management of an entity.

(3) **Local Aboriginal Land Councils to report on certain arrangements** A Local Aboriginal Land Council must include, in the accounts and records of the Council under this Act and the regulations, details of any operations that are carried out under an arrangement to which this section applies (including any activities or operations carried out by the entity formed, acquired, operated or managed and any financial matters relating to any such entity).

(4) Before entering into an arrangement to which this section applies, a Local Aboriginal Land Council must take reasonable steps to ensure that the Local Aboriginal Land Council will not be prevented from complying with the Council's reporting obligations in relation to operations carried out under such an arrangement (including any financial matters relating to the entity formed, acquired, operated or managed under the arrangement).

(5) **Risk assessment and approval for transfer of certain assets** Before transferring assets (other than land) in connection with an arrangement to which this section applies, a Local Aboriginal Land Council must, if required to do so by any applicable policy of the New South Wales Aboriginal Land Council (or, if there is no such policy, by the regulations):

(a) conduct a risk assessment with respect to the proposed transfer in accordance with any applicable policy of the New South Wales Aboriginal Land Council or any such regulation, and

(b) obtain the approval of the members of the Local Aboriginal Land Council to the transfer.

- (6) **Requirements for approval resolutions** Any Local Aboriginal Land Council resolution that approves the Council's proposed transfer of an asset (other than land) under this section must:
- (a) contain a statement identifying the purpose of the action and any conditions to which the approval is subject, and
  - (b) be made at a meeting of the Council:
    - (i) in respect of which notice was given, in accordance with the regulations, not less than 14 days before the day on which the meeting is held, and
    - (ii) at which a quorum is present, and
  - (c) be passed by not less than 80% of the votes cast.
- (7) **Approval of termination of certain arrangements** A Local Aboriginal Land Council must not terminate an arrangement to which this section applies, or dispose of an interest in an entity formed, acquired, operated or managed under such an arrangement, otherwise than in accordance with the approval of the Board of the Council.

**52D Duty of Aboriginal Land Council not to transfer land or other assets to Council members, Board members, staff or consultants**

- (1) A Local Aboriginal Land Council must 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, Board members or any member of staff of, or consultant to, the Council.
- (2) Nothing in this section prevents:
  - (a) the provision of a benefit in good faith to a Council member, Board member, member of staff or consultant in accordance with this Act, or
  - (b) the payment in good faith of remuneration to any such member, Board member, member of staff or consultant.

**52E Delegation of functions by Local Aboriginal Land Councils**

- (1) A Local Aboriginal Land Council may, by resolution, delegate to the Board, any of the functions of the Council with respect to the acquisition of land other than:
  - (a) this power of delegation, and
  - (b) any function under this or any other Act that is expressly required to be exercised by resolution of the voting members of the Council.
- (2) Each Local Aboriginal Land Council must, once every year, review all its delegations.

### **52F Rules of Local Aboriginal Land Councils**

- (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.

### **52G Functions exercised by Council resolution**

- (1) The following functions are to be exercised, in accordance with this Act, by resolution of the voting members of a Local Aboriginal Land Council:
  - (a) acceptance of persons as qualified for membership,
  - (b) (Repealed)
  - (c) approval of the rules and code of conduct of the Council and any amendment to or repeal or replacement of those rules or that code,
  - (d) approval or amendment of the community, land and business plan of the Council,
  - (d1) approval of transfers of assets under section 52C,
  - (e) approval of dealings with land (within the meaning of Division 4 of Part 2) and land dealing approval agreements (within the meaning of that Division), other than any such dealings or agreements that do not require the approval of the New South Wales Aboriginal Land Council,
  - (f) receipt of the annual budget and the financial statements of the Council,

- (g) election of Board members,
  - (h) suspension of members from attending or voting at meetings of the Council,
  - (i) approval of requests to change the name of the Council's area or for the amalgamation or dissolution of the Council, or its re-allocation to another Region.
- (2) For the avoidance of doubt, subsection (1) (f) requires a resolution of the Council confirming receipt by the Council of the annual budget and financial statements, not a resolution approving the contents of the annual budget and financial statements.

## **52H Meetings of Local Aboriginal Land Councils**

Part 1 of Schedule 3 has effect.

## **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 chief executive officer 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 chief executive officer of a Local Aboriginal Land Council must list on the membership roll for the area of the Council the names and addresses of those persons who are qualified for membership.
- (2A) A person is qualified for membership if:
- (a) the person is an adult Aboriginal person who resides within the area of the Local Aboriginal Land Council concerned and is accepted as being qualified on that basis to be a member by a meeting of the Council, or
  - (b) the person is an adult Aboriginal person who has a sufficient association with the area of the Local Aboriginal Land Council concerned (as determined by the voting members of the Council at a meeting of the Council) and is accepted as being qualified on that basis to be a member by a meeting of the Council, or
  - (c) the person is an Aboriginal owner in relation to land within the area of the Local Aboriginal Land Council concerned and has made a written application for membership in accordance with subsection (3).

- (2B) The membership roll must indicate whether a member is a person who is included on

the roll because of residence or association, or as an Aboriginal owner, and must indicate the basis for that inclusion.

- (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 eligible for inclusion on the membership roll, and
  - (b) sets out the grounds (other than acceptance as being qualified at a meeting) on which the person is qualified for inclusion on the membership roll, and
  - (b1) sets out the basis on which the person asserts his or her Aboriginal descent and, if the application declares that the person has a sufficient 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 Registrar 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, if the person has not made a

nomination, the Council for the area within which the person resides.

- (4) A non-voting member of a Local Aboriginal Land Council is not entitled to vote:
  - (a) in elections for Board members, or
  - (b) on any matter to be determined by the Council.
- (4A) A voting member of a Local Aboriginal Land Council is not entitled to vote in elections for Board members if:
  - (a) the member has not attended at least 2 meetings of the Council in the preceding 12 months as a voting member, or
  - (b) the member is suspended from membership of the Council or Board.
- (5) A vote by a non-voting member of a Local Aboriginal Land Council or a member referred to in subsection (4A) 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 Registrar, 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 Registrar may at any time, by notice in writing to a person who the Registrar 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 Local Aboriginal Land Council in relation to which the person has voting rights is to be the Council for the area within which the person resides.
- (5) The Registrar is, as soon as practicable, to give notice of the receipt of a nomination or of a failure to make a nomination under this section to the person concerned and to the Registrar and the chief executive officer of each Local Aboriginal Land Council of which the person is a member.
- (6) The chief executive officer 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 Local Aboriginal Land Council may suspend a member of the Council (other than a Board member) from attending meetings of the Council for a specified time (not exceeding 3 years) if the Council decides that the conduct of the member:
  - (a) constitutes a serious breach of the Code of Conduct for members of the Local Aboriginal Land Council, or
  - (b) is otherwise detrimental to the best interests of the Council.
- (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 chief executive officer of a Local Aboriginal Land Council that has suspended a member under this section must notify the Registrar 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.

**57A Inactive members**

- (1) The chief executive officer of a Local Aboriginal Land Council may, by notice in writing to a member of the Council (other than a Board member of the Council), declare the member to be an inactive member if, and only if, the member has been absent from 6 consecutive meetings of the Council (or such other number of meetings as may be prescribed by the regulations).
- (2) Before declaring a member of a Local Aboriginal Land Council to be an inactive member, the chief executive officer of the Council must:
  - (a) inform the member, in writing, of the following:

- (i) that the member will be declared to be an inactive member if the member does not attend the requisite number of meetings of the Council,
  - (ii) that the chief executive officer intends to declare the member to be an inactive member after the next meeting of the Council,
  - (iii) the date, time and location of the meeting of the Council after which the chief executive officer intends to make the declaration (being a meeting not less than 20 days after the date the notice is given, or such other period as may be prescribed by the regulations),
  - (iv) the process to be followed by the member to prevent the declaration being made or to cease being an inactive member, and
- (b) at the meeting of the Council after which the chief executive officer intends to declare a member inactive, inform the members in attendance at the meeting of the chief executive officer's intention.
- (3) If the chief executive officer of a Local Aboriginal Land Council declares a member of the Council to be an inactive member under subsection (1), the chief executive officer must make an entry in the Council's membership roll accordingly.
- (4) A member of a Local Aboriginal Land Council ceases to be an inactive member of the Council if the member:
- (a) attends a meeting of the Council, or
  - (b) at any time after being informed of the chief executive officer's intention to declare a member to be inactive requests, in writing to the Registrar, that the member not be declared to be an inactive member.
- (5) If a member of a Local Aboriginal Land Council makes a request under subsection (4) (b), the Registrar must notify the chief executive officer of the relevant Council of the member's request and may issue a compliance direction to the chief executive officer in relation to the maintenance of the Council's membership roll.
- (6) A member of a Local Aboriginal Land Council, during any period that the member is declared to be an inactive member under this section, is not to be counted as a voting member of the Council for the purposes of determining the quorum required for a meeting of the Council.

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

The chief executive officer 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, or
- (d) the chief executive officer is satisfied, after making reasonable inquiries, that the residential address of the person is unknown.

### **59 Updating and consolidation of membership rolls**

- (1) The chief executive officer of each Local Aboriginal Land Council must:
  - (a) within such period as may be prescribed by the regulations, send a copy of the Council's membership roll, certified as correct by the chief executive officer, to the Registrar, and
  - (b) advise the Registrar in writing of any changes to the membership roll that have occurred since a copy was last sent to the Registrar.
- (2) The chief executive officer of a Local Aboriginal Land Council is to ensure, so far as practicable, that the membership roll of the Council is kept up to date.
- (3) The Registrar is to compile and maintain a consolidated roll of all members of Local Aboriginal Land Councils.
- (4) (Repealed)

### **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 Boards of Local Aboriginal Land Councils**

### **61 Local Aboriginal Land Councils to have Boards**

- (1) Each Local Aboriginal Land Council is to have a Board consisting of not less than 5, and not more than 10, members.

- (2) The number of Board members for each Local Aboriginal Land Council is to be determined in accordance with the regulations.
- (3) Part 2 of Schedule 3 has effect with respect to the procedure of Boards of Local Aboriginal Land Councils.
- (4) The regulations may prescribe additional requirements with respect to meetings.

## **62 Functions of Boards of Local Aboriginal Land Councils**

- (1) A Board of a Local Aboriginal Land Council has the following functions:
  - (a) to direct and control the affairs of the Council,
  - (b) to facilitate communication between the Council's members and the New South Wales Aboriginal Land Council,
  - (c) to review the performance of the Council in the exercise of its functions and the achievement of its objectives,
  - (c1) without limiting paragraph (a), to enter into short-term residential tenancy agreements in relation to land vested in the Council and to manage or terminate such agreements,
  - (d) any other functions conferred on the Board by or under this Act.
- (1A) Without limiting subsection (1), a Board of a Local Aboriginal Land Council may, subject to any directions of the Council, exercise:
  - (a) any of the functions of the Council on behalf of the Council, other than any function that under this or any other Act that is expressly required to be exercised by resolution of the voting members of the Council, and
  - (b) any function delegated to the Board under section 52E.
- (2) The functions of the Board of a Local Aboriginal Land Council are to be exercised in accordance with this Act and the regulations and consistently with the community, land and business plan of the Council.

## **63 Board members**

- (1) The Board members are to be elected at every fourth annual meeting of a Local Aboriginal Land Council.
- (2) A person is not qualified to be nominated to stand for election, or to be elected, as a Board member of a Local Aboriginal Land Council if, at the time of the nomination or election, any of the following applies to the person:
  - (a) the person is not a voting member of the Council,

- (b) the person is suspended or disqualified from holding office as a Board member or is suspended from membership of the Council,
  - (c) the person has not attended at least 2 meetings of the Council in the last 12 months.
- (2A) Subsection (2) (c) does not apply if an administrator was appointed to perform all of the functions of the Local Aboriginal Land Council for all or part of the relevant 12-month period.
- (2B) A person may nominate another person to stand for election as a Board member of a Local Aboriginal Land Council if, at the time of the nomination, all of the following apply to the person:
- (a) the person is a voting member of the Council, and
  - (b) the person is not suspended from membership of the Council, and
  - (c) the person has attended at least 2 meetings of the Council in the last 12 months.
- (3) The term of office of a Board member commences on the Board member's election and ends on the election of the next Board at the fourth annual meeting of the Council following the member's election.
- (4) A Board member is entitled to be paid such travelling and other allowances as the Minister may from time to time determine in respect of the member.
- (5) A Board member is eligible for re-election, subject to this Act.
- (6) The Registrar is to be the returning officer for an election.
- (7) Elections for Board members are to be conducted in accordance with the regulations.
- (8) Without limiting subsection (7), the regulations may make provision with respect to the nomination of persons to stand for election as a Board member of a Local Aboriginal Land Council.

#### **64 Chairperson and Deputy Chairperson**

- (1) A Chairperson and Deputy Chairperson of the Board of a Local Aboriginal Land Council are to be elected from among the Board members at the first meeting of the Board after its election.
- (2) The Chairperson and Deputy Chairperson of a Board have the functions conferred on the Chairperson or Deputy Chairperson by or under this Act.
- (3) In the absence of the Chairperson of a Board, the Deputy Chairperson:
  - (a) is, if available, to act in the place of the Chairperson, and

(b) while so acting, has all the functions of the Chairperson and is taken to be the Chairperson of the Board.

- (4) If a Chairperson of a Board becomes a councillor, the person ceases to be the Chairperson and a new Chairperson is to be elected.
- (5) Elections for Chairperson and Deputy Chairperson are to be conducted in accordance with the regulations.

## **65 Training for Board members**

- (1) The New South Wales Aboriginal Land Council must arrange training in relation to the matters prescribed by the regulations for each member elected to a Board of a Local Aboriginal Land Council.
- (2) The training is to be provided not later than 6 months after the date of election of a Board member.
- (3) A Board member must not refuse or fail to undergo training provided under this section when required to do so by the New South Wales Aboriginal Land Council.
- (4) If a Board member refuses or fails to undergo training provided under this section when required to do so by the New South Wales Aboriginal Land Council, the Board member is, on written notice being given to the Board member by the Council, suspended from office as a Board member until the person undergoes the training.
- (5) The New South Wales Aboriginal Land Council may:
  - (a) exempt a Board member wholly or partly from the requirement to undergo training provided under this section, if the Council is satisfied that the Board member has previously undergone training under this section or already has sufficient expertise, skills and experience to carry out his or her functions as a Board member, or
  - (b) extend the period within which training is to be provided to a Board member under this section.

## **66 Grounds for disqualification from office**

- (1) A person is disqualified from holding office as a Board member of a Local Aboriginal Land Council if the person:
  - (a) has a conviction in New South Wales or elsewhere for an offence relating to the management of a corporation, that was recorded within the last 5 years, or
  - (b) has a conviction for an offence under this Act that was recorded within the last 5 years, or
  - (c) has a conviction in New South Wales for any other 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 that was recorded within the last 5 years, or

- (d) ceases to be a voting member of the Council, or
- (e) becomes a councillor of the New South Wales Aboriginal Land Council, or
- (f) is a mentally incapacitated person, or
- (g) is or 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
- (h) is or was a director or person concerned in the management of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed under the *Corporations Act 2001* of the Commonwealth during the last 3 years, or
- (i) is disqualified from holding office in or being concerned in the management of a corporation under any law of this or any other State or Territory or the Commonwealth, or
- (j) is an employee of, or a consultant to, the Council, or
- (k) was, within the last 5 years, an officer of the Local Aboriginal Land Council immediately before an administrator was appointed for the Council, or
- (l) fails, without a reasonable excuse, for a period of 3 months or more to comply with a written requirement by the New South Wales Aboriginal Land Council to undergo training under section 65, or
- (m) is disqualified from holding office as a councillor (other than on the ground that the person is an employee of, or consultant to, the New South Wales Aboriginal Land Council).

- (2) The Registrar may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.
- (3) The Registrar may determine that a person is not disqualified on the ground set out in subsection (1) (k) if the Registrar is satisfied that it is appropriate in the circumstances that the person not be disqualified on that ground.
- (4) Despite subsection (1) (j), a person is not disqualified from holding office as a Board member of a Local Aboriginal Land Council (and is taken not to have been disqualified from holding office at the time of the person's nomination) on the ground that the

person is an employee of, or a consultant to, the Council if the person resigns as an employee of, or as a consultant to, the Council as soon as practicable after becoming aware of the result of the election.

### **67 Vacancy in office**

A person who is a Board member of a Local Aboriginal Land Council vacates office if the person:

- (a) dies, or
- (b) is absent from 2 consecutive meetings of the Board or the Council of which reasonable notice has been given to the person personally or by post, except on leave granted by the Board or unless the person is excused by the Board for having been absent from those meetings, or
- (c) completes a term of office and is not re-elected, or
- (d) resigns the office by instrument in writing addressed to the Council, or
- (e) becomes disqualified from holding office as a Board member under this Act.

### **68 Casual vacancy**

- (1) A person is to be appointed in accordance with the regulations to fill a casual vacancy in the office of a Board member for the remainder of the term of office.
- (2) A casual vacancy in the office of a Board member occurs when a person who is disqualified from holding office as a Board member is declared (or purportedly declared) to have been elected to the office despite, at the time of nomination or election, not being qualified to be nominated to stand for election or to be elected.

### **69 NCAT 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 Civil and Administrative Tribunal for an order declaring that a particular office of a Board member of a Local Aboriginal Land Council has become vacant under this Act.
- (2) (Repealed)

### **70 (Repealed)**

### **71 Effect of order declaring vacancy** (cf section 331 of [Local Government Act 1993](#))

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

- (a) if no appeal is made under the [Civil and Administrative Tribunal Act 2013](#) 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.

## **72 Delegation by Boards**

- (1) A Board may delegate to the chief executive officer of the Local Aboriginal Land Council, or to any other person or body prescribed by the regulations, any of the functions of the Board other than this power of delegation and any matter under this Act or the regulations that also requires the approval of the New South Wales Aboriginal Land Council.
- (2) A Board must, once every year and immediately after an election of the Board, review all its delegations.

## **Division 4**

### **73-77 (Repealed)**

## **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.

#### **78A Chief executive officer**

- (1) A Local Aboriginal Land Council must employ a member of staff to exercise the functions of the chief executive officer of the Council for the purposes of this Act.
- (2) The chief executive officer has the following particular functions:
  - (a) the day-to-day management of the Council's affairs,
    - (a1) to assist in the preparation and implementation of the Council's community, land and business plan,
    - (b) the exercise of such functions of the Board as are delegated by the Board to the chief executive officer,
    - (c) the appointment of staff in accordance with the approval of the Board,
    - (d) the direction and dismissal of members of staff,
    - (e) such other functions as may be conferred or imposed on the chief executive

officer by or under this or any other Act.

- (3) The chief executive officer may delegate to any member of staff of the Local Aboriginal Land Council any of the functions of the chief executive officer, other than this power of delegation.

**78B Certain persons must not be employed as chief executive officers**

- (1) The following persons must not be or continue to be employed as the chief executive officer of a Local Aboriginal Land Council:
- (a) a person who is a Board member of the Council or a councillor,
  - (b) a person who has a conviction in New South Wales or elsewhere for an offence relating to the management of a corporation that was recorded within the last 5 years,
  - (c) a person who has a conviction in New South Wales for 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, that was recorded within the last 5 years,
  - (d) a person who is disqualified from holding office in or being concerned in the management of a corporation under any law of this or any other State or Territory or the Commonwealth,
  - (e) a person who has an interest in, or is an employee of or concerned in the management of, a corporation that receives a benefit from the Council,
  - (f) a person who is already engaged as a consultant to the Council,
  - (g) a person who is a member of staff of the New South Wales Aboriginal Land Council,
  - (h) a person who has been dismissed on the recommendation of the former Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal or the Civil and Administrative Tribunal within the last 5 years,
  - (i) a person who is disqualified under this Act from being a Board member or a councillor (other than on the grounds of employment by the Council or ceasing to be a voting member of a Local Aboriginal Land Council).
- (2) The Registrar may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.
- (3) Despite subsection (1) (e), a person may, with the approval of the Board of a Local



Aboriginal Land Council, be employed or continue to be employed as the chief executive officer of the Local Aboriginal Land Council, if the person would be prohibited merely because:

- (a) the person is concerned in the management of a corporation established, acquired, operated or managed in connection with an arrangement to which section 52C applies, or
- (b) the person is employed as the chief executive officer of another Local Aboriginal Land Council.

### **78C Filling of vacancy in position of chief executive officer**

- (1) If a vacancy occurs in the position of chief executive officer, the Local Aboriginal Land Council must immediately appoint a person under section 78A 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 removed from the position on a ground set out in section 78B or for any other reason.

### **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.
- (1A) The Registrar may determine that an offence committed by a person may be disregarded for the purposes of subsection (1) because of:
  - (a) the time that has passed since the offence was committed, or
  - (b) the triviality of the acts or omissions giving rise to the offence, or
  - (c) the nature and circumstances of the proposed employment.
- (1B) A person must not be employed as a staff member of, or engaged as a consultant to, a Local Aboriginal Land Council if the person has been convicted of:
  - (a) an offence that involves sexual intercourse with a child or of attempting, or of

conspiracy or incitement, to commit an offence of that kind, or

(b) an offence under section 66EB of the *Crimes Act 1900*, or

(c) an offence under section 80D of the *Crimes Act 1900* where the person against whom the offence is committed is a person under the age of 18 years.

- (2) A person who is an officer of an Aboriginal Land Council must not be employed as a member of staff of a Local Aboriginal Land Council while the person is an officer of an Aboriginal Land Council.
- (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.
- (5) Subsection (4) does not prevent a member of staff of the New South Wales Aboriginal Land Council from being seconded to the staff of a Local Aboriginal Land Council.

#### **79A Advertising vacancies**

- (1) If it is proposed to make an appointment to the vacant position of chief executive officer of a Local Aboriginal Land Council (other than the appointment of a person to act in the position), the Board must ensure that the vacancy is advertised in the manner prescribed by the regulations.
- (2) If it is proposed to make an appointment to a vacant position in the staff of a Local Aboriginal Land Council (other than the chief executive officer), the chief executive officer must advertise the vacancy in such manner as the chief executive officer considers appropriate.
- (3) The chief executive officer need not advertise a vacant position in the circumstances prescribed by the regulations.

#### **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 Community, land and business plans**

### **82 Community, land and business plans**

- (1) A Local Aboriginal Land Council must prepare and implement a community, land and business plan.
- (1A) A Local Aboriginal Land Council must, within 9 months after the holding of an election of Board members for the Council, approve or amend the community, land and business plan for the Council that was in force immediately before the election.
- (2) A Local Aboriginal Land Council preparing a community, land and business plan must consult with the following persons:
  - (a) members of the Council,
  - (b) persons who have a cultural association with the land within the Council's area,
  - (c) any other persons required to be consulted by the regulations or a policy of the New South Wales Aboriginal Land Council.
- (3) A Local Aboriginal Land Council may amend a community, land and business plan.
- (4) The provisions of this Division apply to any proposed amendment in the same way as they apply to the preparation and approval of a plan.
- (5) The New South Wales Aboriginal Land Council may exempt a Local Aboriginal Land Council wholly or partly from the requirement to prepare a community, land and business plan, if the New South Wales Aboriginal Land Council is satisfied that, having regard to the limited operations of the Local Aboriginal Land Council, compliance is not appropriate.
- (6) For the purposes of this section, a person has a cultural association with land if the

person is an Aboriginal owner in relation to land within the area of the Local Aboriginal Land Council concerned or is a person of a class prescribed by the regulations for the purposes of this subsection.

### **83 Matters covered by community, land and business plans**

A community, land and business plan of a Local Aboriginal Land Council must contain the following:

- (a) the objectives and strategy of the Council in relation to the acquisition, management and development of land and other assets,
- (b) the objectives and strategy of the Council in relation to the provision and management of community benefits schemes,
- (c) the objectives and strategy of the Council in relation to business enterprises and investment,
- (d) the objectives and strategy of the Council in relation to Aboriginal culture and heritage,
- (e) any other matter required to be included in the community, land and business plan by any applicable policy of the New South Wales Aboriginal Land Council,
- (f) any other matter prescribed by the regulations.

### **84 Approval of community, land and business plans**

- (1) A community, land and business plan is adopted by a Local Aboriginal Land Council if it is approved by a meeting of the members of the Council, of which not less than 14 days notice was given.
  - (1A) A Local Aboriginal Land Council resolution that approves the adoption of a community, land and business plan must be passed by not less than 80 per cent of the voting members of the Council present at a meeting at which a quorum is present.
- (2) (Repealed)
- (3) A Local Aboriginal Land Council must make available to its members, on request, for a period of not less than 14 days before any such meeting and at the meeting, a summary of the proposed community, land and business plan or a copy of the plan.
- (4) The summary is to contain the matters prescribed by the regulations.
- (5) More than one meeting may be called to enable approval of a community, land and business plan.
  - (5A) A Local Aboriginal Land Council must, not more than 14 days after approving or amending a community, land and business plan, provide the New South Wales

Aboriginal Land Council with:

(a) a copy of the plan, and

(b) documentation demonstrating that the Council approved the plan in accordance with this Division.

- (6) A community, land and business plan for a Local Aboriginal Land Council takes effect on the day on which it is approved or on such later date as may be specified in the plan.
- (7) A community, land and business plan has effect for the period (not exceeding 5 years) specified in the plan or until it is replaced, whichever occurs first.
- (8) Failure to comply with a requirement of this Division for the preparation or approval of a community, land or business plan does not affect the validity of the plan.

#### **85 Chairperson may refer community, land and business plan to New South Wales Aboriginal Land Council**

- (1) (Repealed)
- (2) If a Local Aboriginal Land Council is not able to reach agreement on a proposed community, land and business plan within 3 months after it is first proposed for approval at a meeting of the Council, the Chairperson of the Board may refer the proposed plan to the New South Wales Aboriginal Land Council.
- (3) The New South Wales Aboriginal Land Council may amend or replace a proposed community, land and business plan referred to it under subsection (2) and may refer the amended or replaced plan to the Local Aboriginal Land Council for approval.

#### **86 Administration may follow plan failure**

- (1) A failure by a Local Aboriginal Land Council to approve the same or another proposed community, land and business plan after a plan is referred to it by the New South Wales Aboriginal Land Council under section 85 (3) is, for the purposes of section 222 (1) (e), a substantial breach of the requirements of this Act.
- (2) A substantial failure by a Local Aboriginal Land Council to comply with its community, land and business plan is, for the purposes of section 222 (1) (e), a substantial breach of the requirements of this Act.

#### **Note—**

The effect of a substantial breach is that an administrator may be appointed for the Local Aboriginal Land Council.

### **Division 7 Changes to Local Aboriginal Land Councils and areas of Local Aboriginal Land Councils**

## **87 Changes to Local Aboriginal Land Council areas**

- (1) The Minister may, by order published in the Gazette, do any one or more of the following:
  - (a) change the name of a Local Aboriginal Land Council area,
  - (b) change the boundaries of a Local Aboriginal Land Council area,
  - (c) amalgamate 2 or more Local Aboriginal Land Council areas and constitute the amalgamated area as a Local Aboriginal Land Council area,
  - (d) without limiting paragraph (b) or (c), include the whole of the area of a Local Aboriginal Land Council within the area of one or more other Local Aboriginal Land Councils,
  - (e) dissolve a Local Aboriginal Land Council.
- (2) If the Minister makes an order under subsection (1) (b), (c), (d) or (e), the Minister may, in the same order, specify the Councils to which members of existing Councils affected by the order may (with the members' consent) be allocated, or a method of determining the allocation of members (with the members' consent).
- (3) The Minister may make an order under subsection (1) only if the order concerned is permitted or required by or under this Act or the regulations.
- (4) The regulations may make provision of a savings or transitional nature consequent on the making of orders under this section, including (but not limited to) construing references to Local Aboriginal Land Council areas and Councils and elections for Boards of new Local Aboriginal Land Councils.

## **88 Effect of dissolution**

On the day an order dissolving a Local Aboriginal Land Council takes effect, the Council ceases to exist and the Board members of the Council cease to hold office.

## **89 Transfer of assets, rights and liabilities**

- (1) If the Minister makes an order under section 87 (1), the Minister may, after consulting with the New South Wales Aboriginal Land Council, by order in writing, direct that all or part of the assets, rights and liabilities be transferred to an Aboriginal Land Council specified in the order.
- (2) An order under this section may be subject to specified terms and conditions.
- (3) More than one order may be made in respect of the same assets, rights and liabilities following the making of an order referred to in subsection (1).
- (4) Schedule 3A has effect with respect to the transfer of assets, rights and liabilities

under this section.

- (5) Words and expressions used in this section have the same meanings as they have in Schedule 3A.
- (6) Despite any other provision of this section, lands vested in a Local Aboriginal Land Council under Part 4A of the NPW Act 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 Councils to the Minister administering that Act.

- (7) An order under this section must, if the Aboriginal Land Council from which the assets, rights or liabilities are to be transferred under this section is a deductible gift recipient, provide for the transfer of the assets, rights or liabilities to an Aboriginal Land Council that is also a deductible gift recipient.
- (8) In this section, an Aboriginal Land Council is a deductible gift recipient if the Council is endorsed as a deductible gift recipient under the *Income Tax Assessment Act 1997* of the Commonwealth.

## **90 Voluntary changes**

- (1) The Minister may make an order under section 87 in relation to a Local Aboriginal Land Council area or a Local Aboriginal Land Council on application made by an Aboriginal Land Council or a person in accordance with the regulations.
- (2) For the purposes of this section, regulations may be made for or with respect to the following matters:
  - (a) the persons who may apply for an order under section 87,
  - (b) applications for the making of an order,
  - (c) procedures for approval of applications,
  - (d) the making of recommendations to the Minister with respect to proposals to change Local Aboriginal Land Council areas,
  - (e) determination of applications,
  - (f) the functions of the Registrar in relation to applications,
  - (g) the lodging of objections against the refusal of applications,
  - (h) the reference to the Court of any such objections and the hearing and determination of any such objections.

## 91 Changes on initiative of Minister

- (1) The Minister may make an order under section 87 in relation to a Local Aboriginal Land Council area or a Local Aboriginal Land Council if the Minister is satisfied that the Council:
- (a) has less than 50 voting members, or
  - (b) has less than 3% of the potential members who reside in its area, as determined from the most recent available Australian census data, or
  - (c) has a membership that is in significant decline, or
  - (d) has not, for a period of not less than 3 months, been able to elect the required number of Board members, or
  - (e) cannot pay its debts as and when they fall due, or
  - (f) has had qualified audits or has failed to provide complete financial statements for any 3 of the last 5 years, or
  - (g) has had an administrator appointed under this Act for any 3 of the last 5 years, or
  - (h) is the subject of a report by an investigator or administrator under this Act, the New South Wales Aboriginal Land Council or the Local Aboriginal Land Council that has found that the Local Aboriginal Land Council has ceased to function, or
  - (i) has had an administrator appointed for a period of 6 months on one or more grounds, including the ground that the Local Aboriginal Land Council had been operating a community benefits scheme for the provision or acquisition of residential accommodation for Aboriginal persons in its area and the scheme continues to operate in contravention of the requirement for approval of the New South Wales Aboriginal Land Council under section 52A.

### Note—

Section 52A (1A) provides that the approval of the New South Wales Aboriginal Land Council is not required if the Local Aboriginal Land Council is a registered Aboriginal housing organisation (within the meaning of the *Aboriginal Housing Act 1998*) or a registered community housing provider (within the meaning of the *Community Housing Providers National Law (NSW)*).

- (2) The Minister may take action on a ground specified subsection (1) (a)–(f) on the basis of a report by the Registrar.
- (3) The Minister may not make an order on a ground specified in subsection (1):
- (a) in the case of an order amalgamating one or more Local Aboriginal Land Councils—except with the consent of the Councils, or
  - (b) in the case of an order including the area of a dissolved Local Aboriginal Land



Council in the area of one or more other Councils—except with the consent of those other Councils.

## **92 Objections to Minister's changes**

- (1) Before taking action on a ground under section 91, the Minister must notify the following persons of the proposed action and of their rights under this section:
  - (a) the New South Wales Aboriginal Land Council,
  - (b) the Board of any Local Aboriginal Land Council affected,
  - (c) the members of any such Council,
  - (d) any investigator appointed to investigate the affairs of any such Council,
  - (e) any administrator of any such Council.
- (2) A person notified of a proposed action may make submissions, within 21 days of being notified, to the Minister about the proposed action.
- (3) Before determining whether to take the action, the Minister must consider any submissions received under this section.

## **Part 6 Regions**

### **93 Regions**

- (1) The Region for a Local Aboriginal Land Council is the Region specified for the Council in Schedule 5.
- (2) The Governor may, by order published on the NSW legislation website, amend or substitute Schedule 5.
- (3) An order that has the effect of changing the area of a Region may not be made except on the recommendation of the Minister.
- (4) The Minister must not make a recommendation unless the Minister is satisfied that any Local Aboriginal Land Council affected, and the New South Wales Aboriginal Land Council, consent to the change of Region.
- (5) Subsection (4) does not apply if the change results from an order made under section 87.
- (6) The New South Wales Aboriginal Land Council or a Local Aboriginal Land Council may at any time request the Minister to change the name of a Region or the Council areas included in the Region.
- (7) Regulations may be made for or with respect to elections for councillors and other

matters consequential on changes to Regions.

**94-103 (Repealed)**

**Part 7 New South Wales Aboriginal Land Council**

**Division 1 Constitution 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.

**Division 2 Functions of New South Wales Aboriginal Land Council**

**106 Functions of New South Wales Aboriginal Land Council**

- (1) The New South Wales Aboriginal Land Council has the functions conferred or imposed on it by or under this or any other Act.
- (2) **Land acquisition** The New South Wales Aboriginal Land Council has the following functions in relation to the acquisition of land and related matters:
  - (a) in accordance with this Act and the regulations, to acquire land on its own behalf or on behalf of or to be vested in a Local Aboriginal Land Council and to use, manage, control, hold, transfer to a Local Aboriginal Land Council or dispose of, or otherwise deal with, land vested in or acquired by the Council,
  - (b) functions relating to the acquisition of land and any other functions conferred on it by or under Part 4A of the NPW Act,
  - (c) to submit proposals for the listing in Schedule 14 to the NPW Act of lands of cultural significance to Aboriginal persons that are reserved under the NPW Act,
  - (d) to negotiate the lease by the Council or by the Council and one or more other Aboriginal Land Councils of lands to which section 36A applies to the Minister

administering the NPW Act,

- (e) when exercising its functions with respect to land that is the subject of a lease, or proposed lease, under Part 4A of the NPW Act, to act in the best interests of the Aboriginal owners of the land,
- (f) to make claims to Crown lands or enter into Aboriginal Land Agreements, either on its own behalf or, if requested by a Local Aboriginal Land Council, on behalf of that Council,
- (g) to compile and maintain a register of all land held by Local Aboriginal Land Councils and to make the information available on request to the members of the Council concerned.

(3) **Oversight of Local Aboriginal Land Councils** The New South Wales Aboriginal Land Council has the following functions in relation to Local Aboriginal Land Councils:

- (a) with the agreement of a Local Aboriginal Land Council, to manage any of the affairs of the Council,
  - (a1) to assist and support Local Aboriginal Land Councils in exercising functions under this Act (including by the grant or loan of funds to Councils),
- (b) to assist Local 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,
- (c) to assist Local Aboriginal Land Councils in the preparation and implementation of community, land and business plans,
- (d) to approve community, land and business plans of Local Aboriginal Land Councils,
- (e) to assist Local Aboriginal Land Councils in conducting elections in accordance with this Act for Board members,
- (f) 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,
- (g) to mediate, conciliate and arbitrate disputes relating to the operation of this Act or the regulations between Aboriginal Land Councils, between those Councils and individuals and between individual members of those Councils and to refer such disputes to the Registrar or independent mediators, conciliators and arbitrators,
- (h) to approve land dealings by Local Aboriginal Land Councils.

(4) **Policy and advice** The New South Wales Aboriginal Land Council has the following functions in relation to policy and advice:

- (a) to advise the Minister on matters relating to Aboriginal land rights,
  - (b) to prepare and implement policies relating to its functions under this Act and the functions of Local Aboriginal Land Councils under this Act.
- (5) **Administration of statutory accounts** The New South Wales Aboriginal Land Council is to administer the New South Wales Aboriginal Land Council Account, the New South Wales Aboriginal Land Council Community Fund and the Mining Royalties Account established under this Act.
- (6) **Native title** The New South Wales Aboriginal Land Council is 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.
- (7) **Aboriginal culture and heritage** The New South Wales Aboriginal Land Council has the following functions in relation to Aboriginal culture and heritage:
- (a) to take action to protect the culture and heritage of Aboriginal persons in New South Wales, subject to any other law,
  - (b) to promote awareness in the community of the culture and heritage of Aboriginal persons in New South Wales.
- (8) **Financial stewardship** The New South Wales Aboriginal Land Council has the following functions in relation to financial management and business planning:
- (a) to prepare and implement policies relating to community, land and business plans required to be adopted by Aboriginal Land Councils,
  - (b) to prepare and implement, in accordance with this Act, a community, land and business plan,
  - (c) to manage, in accordance with this Act, the investment of any assets of the Council,
  - (d) to facilitate business enterprises (including by establishing, acquiring, operating or managing business enterprises), in accordance with this Act,
  - (e) to grant funds for the payment of the costs and expenses of Local Aboriginal Land Councils (whether under funding agreements with Local Aboriginal Land Councils or otherwise).
- (9) **Other functions prescribed by regulations** The New South Wales Aboriginal Land Council has any other functions prescribed by the regulations.

**Note—**

Under section 50 of the [Interpretation Act 1987](#), the New South Wales Aboriginal Land Council has certain

functions as a statutory corporation, including the power to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property. That provision is subject to the provisions of this Act.

**106A Powers of New South Wales Aboriginal Land Council with respect to property**

- (1) The New South Wales 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.
- (2) In particular, without limiting the generality of subsection (1), the Council 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.
- (3) This section is subject to this Act.

**107 Training**

- (1) The New South Wales Aboriginal Land Council is to provide or arrange training, in accordance with the regulations, for the purpose of developing the capacity of the following persons to exercise functions under this Act or the regulations:
  - (a) councillors,
  - (b) Board members,
  - (c) members of staff of Aboriginal Land Councils.
- (2) The New South Wales Aboriginal Land Council is to prepare and implement a capacity development plan for the purposes of carrying out its functions under this section.
- (3) Regulations may be made for or with respect to requirements for a capacity development plan.

**108 Community benefits schemes**

- (1) The New South Wales Aboriginal Land Council has the following functions in relation to community benefits schemes:
  - (a) directly or indirectly, to provide community benefits under community benefits schemes,
  - (b) (Repealed)
  - (c) to consider and approve the provision of community benefits schemes by or on behalf of Local Aboriginal Land Councils,
  - (d) to make grants or lend money to, or invest money for or on behalf of, Aboriginal

persons,

(e) without limiting paragraph (a), to provide, acquire, construct, upgrade or extend residential accommodation for Aboriginal persons in the State,

(f) (Repealed)

(g) to maintain a register of approvals by the Council of community benefits schemes and to notify the Minister of any such approvals.

(2) The New South Wales Aboriginal Land Council must ensure that any community benefits scheme under which community benefits are provided by it or on its behalf:

(a) complies with this Act and the regulations, and

(b) is consistent with any applicable policy of the Council, and

(c) is consistent with the community, land and business plan of the Council, and

(d) is fair and equitable and administered in a responsible and transparent way, and

(e) will not prevent the Council from being able to meet its debts as and when they fall due.

(3) The New South Wales Aboriginal Land Council may provide community benefits under a community benefits scheme to Aboriginal persons within the area of one or more Local Aboriginal Land Councils and may provide community benefits in conjunction with one or more Local Aboriginal Land Councils.

#### **109 (Repealed)**

#### **110 Report on actions to increase membership of Local Aboriginal Land Councils**

The New South Wales Aboriginal Land Council is to include in its annual report a report of the actions it has taken to increase the membership of Local Aboriginal Land Councils.

#### **111 New South Wales Aboriginal Land Council's responsibilities in relation to certain arrangements and transfers**

(1) In this section:

**enter into** includes participate in.

**entity** means any partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated).

(2) This section applies to an arrangement entered into by the New South Wales Aboriginal Land Council:

(a) for the purpose of exercising any of the Council's functions under this Act

(including providing a community benefits scheme), and

(b) that includes the formation, acquisition, operation or management of an entity.

- (3) **NSWALC to report on certain arrangements** The New South Wales Aboriginal Land Council must include, in the accounts and records of the Council under this Act and the regulations, details of any operations carried out under an arrangement to which this section applies (including any activities or operations carried out by the entity formed, acquired, operated or managed and any financial matters relating to any such entity).
- (4) Before entering into an arrangement to which this section applies, the New South Wales Aboriginal Land Council must take reasonable steps to ensure that the Council will not be prevented from complying with the Council's reporting obligations in relation to the operations carried out under such an arrangement (including any financial matters relating to the entity formed, acquired, operated or managed under the arrangement).
- (5) **Risk assessment and approval for transfer of certain assets** Before transferring assets in connection with an arrangement to which this section applies the New South Wales Aboriginal Land Council must, if required to do so by any applicable policy of the New South Wales Aboriginal Land Council (or, if no such policy exists, by the regulations):
- (a) conduct a risk assessment with respect to the proposed transfer in accordance with any applicable policy of the Council (or, if no such policy exists, the regulations), and
- (b) obtain the approval of the councillors to the transfer.
- (6) A requirement under this section that a risk assessment be conducted, or that the approval of the councillors be obtained, in relation to the proposed transfer of land in connection with an arrangement to which this section applies, is in addition to the requirements of section 42D.
- (7) **Requirement for approval resolutions** A resolution that approves the New South Wales Aboriginal Land Council's proposed transfer or disposal of an asset or termination of an arrangement under this section must contain a statement identifying the purpose of the proposed action and any conditions to which the approval is subject.
- (8) **Approval of termination of certain arrangements** The New South Wales Aboriginal Land Council may not terminate an arrangement to which this section applies, or dispose of an interest in an entity formed, acquired, operated or managed under such an arrangement, otherwise than in accordance with the approval of the councillors.

## **112 Duty of New South Wales Aboriginal Land Council not to transfer land or other assets**

**to councillors, staff or consultants**

- (1) The New South Wales Aboriginal Land Council must 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 any member of staff of, or consultant to, the Council.
- (2) Nothing in this section prevents:
  - (a) the provision of a benefit in good faith to a councillor, member of staff or consultant in accordance with this Act, or
  - (b) the payment in good faith of remuneration to any such councillor, member of staff or consultant.

**113 Policies relating to Aboriginal Land Council functions**

- (1) The New South Wales Aboriginal Land Council may prepare and implement policies about the following matters:
  - (a) the contents, preparation and approval of community, land and business plans of Local Aboriginal Land Councils,
  - (b) land dealings by Aboriginal Land Councils, including the assessment and approval by the New South Wales Aboriginal Land Council of land dealings by Local Aboriginal Land Councils,
  - (b1) the provision of amounts from the New South Wales Aboriginal Land Council Community Fund to Local Aboriginal Land Councils on the basis of need so as to increase resources and assets available for less advantaged Local Aboriginal Land Councils,
  - (c) the management of investments by Local Aboriginal Land Councils,
  - (d) the provision of training to members of staff, Board members and councillors,
  - (e) community benefits schemes,
  - (f) financial and reporting requirements for Aboriginal Land Councils, including any requirements for the verification and certification of accounts,
  - (g) fees for assessments conducted by the Council,
  - (g1) the entering into arrangements by Aboriginal Land Councils that include the formation, acquisition, operation or management of an entity (within the meaning of section 52C) for the purpose of exercising any of the Aboriginal Land Council's functions under this Act (including providing a community benefits scheme),
  - (h) any other matters prescribed by the regulations.



- (2) Without limiting subsection (1), a policy relating to community benefits schemes that provide residential accommodation is to include criteria for determining applications for approval that have been determined after consultation with the Aboriginal Housing Office.
- (3) The New South Wales Aboriginal Land Council must review all of its policies every 5 years.
- (4) The New South Wales Aboriginal Land Council must make copies of its policies publicly available.

#### **114 Procedure for making policies**

- (1) Before the New South Wales Aboriginal Land Council adopts a policy it must:
  - (a) refer the policy to each Local Aboriginal Land Council for comment, and
  - (b) consider any submissions made by any Local Aboriginal Land Council within 30 days of the referral of the policy, and
  - (c) obtain the approval of the Minister to the policy.
- (2) A policy takes effect on its publication in the Gazette or on a later day specified in the policy.
- (3) A policy may be amended or revoked in the same way as a policy may be made.

#### **115 New South Wales Aboriginal Land Council may give other Councils directions regarding certain matters**

- (1) The New South Wales Aboriginal Land Council may give directions to Local Aboriginal Land Councils with respect to the following:
  - (a) the form, contents and method of preparation of community, land and business plans,
  - (b) the keeping of records (including records relating to land and other assets),
  - (c) any other matters prescribed by the regulations.
- (2) A Local Aboriginal Land Council must comply with a direction given under this section.
- (3) A direction must not be inconsistent with this Act or the regulations or any applicable policy of the New South Wales Aboriginal Land Council.

#### **116 Delegation by New South Wales Aboriginal Land Council**

- (1) The New South Wales Aboriginal Land Council may 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, the New South Wales Aboriginal Land Council Community Fund and the Mining Royalties Account established under this Act,
  - (b) the granting of funds for the payment of the costs and expenses of Local Aboriginal Land Councils and advisory committees of the Council,
  - (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 and the disposal of, or otherwise dealing with, land vested in or acquired by the 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,
  - (f1) approval under Division 4 of Part 2 of land dealings by Local Aboriginal Land Councils,
  - (g) approval of community, land and business plans,
  - (h) advising the Minister on matters relating to Aboriginal land rights,
  - (i) this power of delegation,
  - (j) any function under this or any other Act that is expressly required to be exercised by resolution of the Council.
- (2) The New South Wales Aboriginal Land Council must, once every year, review all of its delegations.

### **117 Rules of the New South Wales Aboriginal Land Council**

- (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.

### **118 Advisory committees**

- (1) The New South Wales Aboriginal Land Council may from time to time appoint such advisory committees as the Council considers appropriate for the purpose of advising the Council, carrying out consultations with Aboriginal persons or facilitating discussion about issues arising under this Act.
- (2) An advisory committee has such functions as the Council may from time to time determine in respect of it.
- (3) An advisory committee consists of such persons appointed by the Council as the Council thinks fit.
- (4) A committee member holds office for such period as is specified in the instrument of appointment of the committee member, but any such appointment may be terminated by the Council at any time.
- (5) One of the committee members, in and by the instrument of appointment of the committee member, is to be appointed as chairperson of the committee.
- (6) The procedure for the calling of meetings of an advisory committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.
- (7) A committee member is entitled to be paid such travelling and other allowances as the Minister may from time to time determine in respect of the committee member.

### **119 Approvals**

- (1) The New South Wales Aboriginal Land Council may impose conditions on any approval given by the Council under this Act.

- (2) Without limiting subsection (1), an approval may impose a time within which a condition must be complied with.
- (3) A Local Aboriginal Land Council must comply with the conditions of an approval given to the Council by the New South Wales Aboriginal Land Council.
- (4) The New South Wales Aboriginal Land Council may revoke an approval given by the Council under this Act.

## **Division 3 Councillors of NSW Aboriginal Land Council**

### **120 Membership of New South Wales Aboriginal Land Council**

- (1) The New South Wales Aboriginal Land Council is to consist of an Aboriginal councillor elected for each Region.
- (2) The councillors are to be full-time.
- (3) Subject to this Act, a councillor holds office for a period beginning on the councillor's election and expiring:
  - (a) on the councillor's election for another term, or
  - (b) on the election of the councillor's successor.
- (4) A councillor is eligible (if otherwise qualified) for re-election.
- (5) A councillor is entitled to be paid remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#).
- (6) A councillor is entitled to be paid such travelling and other allowances as the Minister may from time to time determine in respect of the councillor.
- (7) Part 3 of Schedule 3 has effect. The regulations may prescribe additional requirements for or with respect to meetings.

### **121 Election of councillors**

- (1) Each councillor is to be elected in the manner specified in this Division to represent a Region.
- (2) The regulations may make provision for or with respect to the election of councillors.
- (3) 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 elections of councillors.
- (4) A person is not qualified to be nominated to stand for election, or to be elected, as a councillor to represent a Region if, at the time of the nomination or election, either of

the following applies to the person:

- (a) the person is not a voting member of a Local Aboriginal Land Council the area of which is within the Region,
  - (b) the person is disqualified from holding office as a councillor of the New South Wales Aboriginal Land Council.
- (5) A person is entitled to vote at an election for a councillor to represent a Region if the person is a voting member of a Local Aboriginal Land Council the area of which is within the Region.
- (6) 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.
- (7) The regulations may make provision with respect to the nomination of persons to stand for election as a councillor to represent a Region.

### **122 Timing of elections**

- (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.

### **123 Declaration of election**

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.

### **124 Councillors pending determination of disputed return**

- (1) Section 123 applies even if the election of the candidate (or of any other candidate in the election) is the subject of an application under section 125 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 125 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.

### **125 Method of disputing elections and returns**

- (1) The validity of an election for a councillor to represent a Region, 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.
- (3) In determining an application under this section, 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.
- (4) The returning officer is entitled to be represented at the hearing of an application under this section.

### **126 Procedure**

- (1) The procedure of the Court on an application under section 125 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 (3), the Court may make an order for costs in respect of an application under section 125 only if the Court is satisfied that there are exceptional circumstances that warrant the making of such an order.

### **127 Immaterial errors not to invalidate election**

- (1) An election of councillors of the New South Wales Aboriginal Land Council, or any return or statement showing the voting in an election, is not invalid because of:
  - (a) any delay in taking the votes of the electors or in making any statement or return,

or

(b) the absence of any officer, or

(c) the error or omission of any officer,

that could not have affected the result of the election.

- (2) If a person was prevented from voting in an election because of the absence of any officer, or the error or omission of any officer, the Court must not admit any evidence of the way the person intended to vote in order to determine whether or not the absence, error or omission could have affected the result of the election.

### **128 Decisions to be final**

- (1) A decision of the Court in respect of an application under section 125 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.

### **129 Chairperson and Deputy Chairperson**

- (1) The councillors of the New South Wales Aboriginal Land Council are to elect a Chairperson and a Deputy Chairperson at the first meeting of the Council following the election of councillors.
- (2) The Chairperson and Deputy Chairperson are to hold office for a term of 2 years and are eligible (if otherwise qualified) for re-election.
- (3) The Deputy Chairperson is to act in the office of Chairperson during the illness or absence of the Chairperson, and the Deputy Chairperson while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.

### **130 Role of councillors of NSW Aboriginal Land Council**

- (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, in addition:

- (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.

### **131 Training for councillors**

- (1) The New South Wales Aboriginal Land Council must arrange training in relation to the matters prescribed by the regulations for each councillor elected for the first time to the Council.
- (2) The training is to be provided not later than 6 months after the date of election of the councillor.
- (3) A councillor must not refuse or fail to undergo training provided under this section when required to do so by the New South Wales Aboriginal Land Council.
- (4) If a councillor refuses or fails to undergo training provided under this section when required to do so by the New South Wales Aboriginal Land Council, the councillor is, on written notice being given to the councillor by the Council, suspended from office as a councillor until the person undergoes the training.
- (5) The New South Wales Aboriginal Land Council may:
  - (a) exempt a councillor wholly or partly from the requirement to undergo training provided under this section, if the Council is satisfied that the councillor already has sufficient expertise, skills and experience to carry out his or her functions as a councillor, or
  - (b) extend the period within which training is to be provided to a councillor under this section.

## **Division 4 Removal from office**

### **132 Grounds for disqualification from office**

- (1) A person is disqualified from holding office as a councillor of the New South Wales Aboriginal Land Council if the person:
  - (a) has a conviction in New South Wales or elsewhere for an offence relating to the management of a corporation that was recorded within the last 5 years, or
  - (b) has a conviction for an offence under this Act that was recorded within the last 5 years, or
  - (c) has a conviction in New South Wales for any other 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 that was recorded within the last 5 years, or

- (d) is a mentally incapacitated person, or
  - (e) is or becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (f) is or was a director or person concerned in the management of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed under the *Corporations Act 2001* of the Commonwealth during the previous 3 years, or
  - (g) is disqualified from holding office in or being concerned in the management of a corporation under any law of this or any other State or Territory or the Commonwealth, or
  - (h) is an employee of, or a consultant to, the Council, or
  - (i) in the case of a councillor, engages in other paid employment, or
  - (j) was, within the last 5 years, an officer of the Council immediately before an administrator was appointed for the Council, or
  - (k) fails, without a reasonable excuse, for a period of 3 months or more to comply with a written requirement by the Council to undergo training under section 125, or
  - (l) is disqualified from being a Board member, other than on the ground that the person is a councillor.
- (2) The Registrar may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.
- (3) The Registrar may determine that a person is not disqualified on the ground set out in subsection (1) (j) if the Registrar is satisfied that it is appropriate in the circumstances that the person not be disqualified on that ground.
- (4) Despite subsection (1) (h), a person is not disqualified from holding office as a councillor of the Council on the ground that the person is an employee of, or consultant to, the Council (and is taken not to have been disqualified from holding office at the time of the person's nomination) if:
- (a) the person takes a leave of absence from employment with the Council in accordance with section 132A, and

- (b) if the person is elected to the Council, the person resigns from their employment with, or as a consultant to, the Council as soon as practicable after becoming aware of the result of the election.

### **132A Leave of absence for employees nominated to Council**

- (1) If a person who is employed by the New South Wales Aboriginal Land Council is nominated to stand for election as a councillor, the person is required to be granted, and to take, leave of absence from the day following the day on which the person was nominated until the day on which the result of the election is declared.
- (2) Unless the person is entitled to paid leave (and duly applies for such leave), any leave of absence under this section is to be leave without pay.

### **133 Vacancy in office**

A person who is a councillor of the New South Wales Aboriginal Land Council vacates office if the person:

- (a) dies, or
- (b) is absent from 2 consecutive meetings of the Council of which reasonable notice has been given to the person personally or by post, except on leave granted by the Council or unless the person is excused by the Council for having been absent from those meetings, or
- (c) completes a term of office and is not re-elected, or
- (d) resigns the office by instrument in writing addressed to the Council, or
- (e) becomes disqualified from holding office as a councillor under this Act.
- (f) (Repealed)

### **134 Casual vacancy**

- (1) 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.
- (2) A casual vacancy in the office of a councillor occurs when a person who is disqualified from holding office as a councillor is declared (or purportedly declared) to have been elected to the office despite, at the time of nomination or election, not being qualified to be nominated to stand for election or to be elected.

### **135 NCAT may declare particular offices of New South Wales Aboriginal Land Council vacant** (cf section 329 of [Local Government Act 1993](#))

- (1) Any person may apply to the Civil and Administrative Tribunal for an order declaring that a particular office of a councillor has become vacant under this Act.

(2) (Repealed)

**136 (Repealed)**

**137 Effect of order declaring vacancy** (cf section 331 of [Local Government Act 1993](#))

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

- (a) if no appeal is made under the [Civil and Administrative Tribunal Act 2013](#) 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 5 Community, land and business plans**

**137A Community, land and business plans**

- (1) The New South Wales Aboriginal Land Council must prepare and implement a community, land and business plan.
- (2) The Council when preparing a community, land and business plan must consult with the following persons:
  - (a) persons who have a cultural association with land within the State,
  - (b) any other persons required to be consulted by the regulations or a policy of the Council.
- (3) The New South Wales Aboriginal Land Council may amend a community, land and business plan.
- (4) The provisions of this Division apply to any proposed amendment in the same way as they apply to the preparation and approval of a plan.
- (5) For the purposes of this section, a person has a cultural association with land if the person is an Aboriginal owner or a person of a class prescribed by the regulations for the purposes of this subsection.

**137B Matters covered by plans**

- (1) A community, land and business plan of the New South Wales Aboriginal Land Council must contain the following matters:
  - (a) the objectives and strategy of the Council for the acquisition, management and

development of land and other assets,

- (b) the objectives and strategy of the Council for the provision and management of community benefits schemes,
  - (c) the objectives and strategy of the Council in relation to business enterprises and investment,
  - (d) the objectives and strategy of the Council in relation to Aboriginal culture and heritage,
  - (e) if the plan contains particular proposals related to the strategies in paragraph (a), (b) or (c), strategies for the development or acquisition of human resources and skills to implement the proposals,
  - (f) timelines for the achievement of proposed strategies and proposals in the plan,
  - (g) particulars of the assets and liabilities of the Council,
  - (h) any matter required to be included by a policy of the Council,
  - (i) any other matter prescribed by the regulations.
- (2) A community, land and business plan must contain the following matters in relation to land:
- (a) the identity, and particulars of any encumbrance affecting, any parcel of land of the Council,
  - (b) the particulars of any other interest in land of the Council,
  - (c) whether, and what, land is subject to the restriction contained in section 42 or to Part 4A of the NPW Act,
  - (d) any conditions affecting land of the Council under section 36 or 39,
  - (e) any other matters prescribed by the regulations.

### **137C Approval of community, land and business plans**

- (1) A community, land and business plan is adopted by the New South Wales Aboriginal Land Council if it is approved by a meeting of the Council, of which not less than 14 days notice was given.
- (2) The Chief Executive Officer of the New South Wales Aboriginal Land Council must make available to its councillors, on request, for a period of not less than 14 days before any such meeting and at the meeting, a summary of the proposed community, land and business plan or a copy of the plan.

- (3) The summary is to contain the matters prescribed by the regulations.
- (4) More than one meeting may be called to enable approval of a community, land and business plan.
- (5) The New South Wales Aboriginal Land Council must not approve a community, land and business plan unless it is satisfied that the plan complies with this Act and the regulations and is consistent with any applicable policy of the Council.
- (6) A community, land and business plan takes effect when it is approved by the New South Wales Aboriginal Land Council.
- (7) A community, land and business plan has effect for the period (not exceeding 5 years) specified in the plan or until it is replaced, whichever occurs first.
- (8) Failure to comply with a requirement of this Division for the preparation or approval of a community, land or business plan does not affect the validity of the plan.

#### **137D Administration may follow plan failure**

- (1) A failure by the New South Wales Aboriginal Land Council to approve a proposed community, land and business plan within 3 months after the plan is first referred to a meeting of the Council for approval is, for the purposes of section 223, a ground that justifies the appointment of an administrator (without any requirement for a report referred to in section 223 (3)).
- (2) A substantial failure by the New South Wales Aboriginal Land Council to comply with its community, land and business plan is, for the purposes of section 223, a ground that justifies the appointment of an administrator (without any requirement for a report referred to in section 223 (3)).

### **Divisions 6-8**

**(Repealed)**

### **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.

**138A Certain persons must not be employed as Chief Executive Officer**

- (1) The following persons must not be or continue to be employed as the Chief Executive Officer of the New South Wales Aboriginal Land Council:
  - (a) a person who is a Board member or a councillor,
  - (b) a person who has a conviction in New South Wales or elsewhere for an offence relating to the management of a corporation that was recorded within the last 5 years,
  - (c) a person who has a conviction in New South Wales for any 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 that was recorded within the last 5 years,
  - (d) a person who is disqualified from holding office in or being concerned in the management of a corporation under any law of this or any other State or Territory or the Commonwealth,
  - (e) a person who has an interest in, or is an employee of or concerned in the management of, a corporation that receives a benefit from the Council,
  - (f) a person who is already engaged as a consultant to the Council,
  - (g) a person who is a member of staff of a Local Aboriginal Land Council,
  - (h) a person who has been dismissed on the recommendation of the former Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal or the Civil and Administrative Tribunal within the last 5 years,
  - (i) a person who is disqualified under this Act from being a Board member or a councillor (other than on the grounds of employment by the Council or ceasing to be a voting member of a Local Aboriginal Land Council).
- (2) The Registrar may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.
- (3) Despite subsection (1) (e), a person may, with the approval of the councillors, be employed or continue to be employed as the Chief Executive Officer of the New South Wales Aboriginal Land Council if the person would be prohibited merely because the person is concerned in the management of a corporation established, acquired, operated or managed under an arrangement to which section 111 applies.

### **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,
    - (a1) to assist in the preparation and implementation of the Council's community, land and business plan,
    - (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) becomes a person who is not eligible to continue to be employed on a ground referred to in section 138A, or
- (f) is removed from the position for breach of or under the terms of the Chief Executive Officer's contract with the Council.

#### **141A Delegations by Chief Executive Officer**

- (1) The Chief Executive Officer may delegate to any person or body 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).

### **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) (Repealed)
  - (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.

**143A Advertising vacancies**

- (1) If it is proposed to make an appointment to the vacant position of Chief Executive Officer of the New South Wales Aboriginal Land Council (other than the appointment of a person to act in the position), the Council must ensure that the vacancy is advertised in the manner prescribed by the regulations.
- (2) If it is proposed to make an appointment to a vacant position in the staff of the New South Wales Aboriginal Land Council (other than the Chief Executive Officer), the Chief Executive Officer must advertise the vacancy in such manner as the Chief Executive Officer considers appropriate.
- (3) The Chief Executive Officer need not advertise a vacant position in the circumstances prescribed by the regulations.

**144 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 the New South Wales Aboriginal Land Council for 5 years from the date of conviction.
- (2) A person who is a councillor must not be employed as a member of staff of the New South Wales Aboriginal Land Council while the person is such a councillor.
- (3) A person who is a consultant to a Local Aboriginal Land Council must not be employed as a member of staff of the New South Wales Aboriginal Land Council while the person is such a consultant.
- (4) A member of staff of a Local Aboriginal Land Council must not be employed as a member of staff of the New South Wales Aboriginal Land Council while the person is such a member of staff.
- (5) Subsection (4) does not prevent a member of staff of a Local Aboriginal Land Council from being seconded to the staff of the New South Wales Aboriginal Land Council.

**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**

### **146-148 (Repealed)**

## **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 advisory committees 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 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), and
  - (c) the payment of amounts for remuneration and allowances to councillors.

- (5) Money to the credit of the Account may be invested in any manner authorised by the regulations.

**149A NSW Aboriginal Land Council Community Fund**

- (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 Community Fund” into which is to be paid:
- (a) amounts of community development levy, and
  - (b) additional amounts payable by the New South Wales Aboriginal Land Council under section 42U, and
  - (c) any money paid to the New South Wales Aboriginal Land Council for the purposes of the Fund, and
  - (d) any interest received in respect of the investment of money belonging to the Fund, and
  - (e) any money directed to be paid into the Fund by or under this or any other Act.
- (2) There is payable from the Fund:
- (a) money for grants to a Local Aboriginal Land Council for the purpose of the management and acquisition of land, and
  - (b) money for community benefit schemes for persons within the area of a Local Aboriginal Land Council, and
  - (c) amounts of repayments of excess community development levy paid by Local Aboriginal Land Councils, and
  - (d) amounts of excess payments made by the New South Wales Aboriginal Land Council under section 42U, and
  - (e) any other payments authorised by or under this or any other Act.
- (3) In determining amounts to be paid from the Fund, the New South Wales Aboriginal Land Council must have regard to any applicable policy of the Council.
- (4) Money to the credit of the account may be invested in any manner in which the New South Wales Aboriginal Land Council Account may be invested.

**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.
- (3) For the purposes of subsection (1), any amount to the credit of the New South Wales Aboriginal Land Council Community Fund is to be taken into account for the purposes of determining the capital value of the New South Wales Aboriginal Land Council Account.

**151 (Repealed)**

**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, including travelling and other allowances to Board members,
  - (c) any other payments authorised by or under this or any other Act.
- (4) Money to the credit of the account may be invested:
  - (a) in any manner authorised by the regulations, and
  - (b) subject to any applicable policy of the New South Wales Aboriginal Land Council—in any manner in which the New South Wales Aboriginal Land Council Account may be invested.

**Division 2 Keeping of accounts**

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

- (1) Each Local Aboriginal Land Council must cause proper accounts and records to be kept in relation to all its operations.
- (2) Each such Council must:
  - (a) prepare financial statements for each financial year in accordance with any applicable policy of the New South Wales Aboriginal Land Council, and
  - (b) if required to do so by any applicable policy of the New South Wales Aboriginal Land Council, cause the accounts to be submitted for verification and certification.
- (2A) A policy of the New South Wales Aboriginal Land Council may require the accounts of a Local Aboriginal Land Council to be submitted for verification and certification by:
  - (a) an auditor, or
  - (b) any other person, or class of persons, as may be specified by the policy.
- (3) The financial statements must, if required by any applicable policy of the New South Wales Aboriginal Land Council, be submitted for verification and certification by an auditor appointed by the Local Aboriginal Land Council concerned from a list of auditors kept by the New South Wales Aboriginal Land Council.
- (3A) The regulations may make provision for or with respect to the following:
  - (a) the manner in which the list of auditors is to be kept by the New South Wales Aboriginal Land Council,
  - (b) the qualifications required for auditors included in the list.
- (4) (Repealed)
- (5) Each such Council must furnish to the New South Wales Aboriginal Land Council the 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 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 (Repealed)**

**155 Local Aboriginal Land Councils may request special auditor**

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

- (1) Each Local Aboriginal Land Council must, before the commencement of each financial year, prepare and adopt a detailed budget relating to the Council's proposed operations during that financial year.
- (2) The budget must be prepared in accordance with any applicable policy of the New South Wales Aboriginal Land Council and be submitted to the New South Wales Aboriginal Land Council not less than 10 weeks before the commencement of the financial year to which the budget relates.
- (3) The New South Wales Aboriginal Land Council may require a Local Aboriginal Land Council to resubmit a budget under this section if the New South Wales Aboriginal Land Council is satisfied that the budget does not meet the requirements of this section.

**159 Quarterly and six monthly reports by New South Wales Aboriginal Land Council**

- (1) 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 Aboriginal Land Councils and the purposes for which the funds were granted, and
  - (b) whether the Local Aboriginal Land Councils concerned have complied with the financial obligations imposed by this Part in relation to those grants.
- (2) 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 Aboriginal Land Councils and the purposes for which the funds were granted, and

(b) whether the Local Aboriginal Land Councils concerned have complied with the financial obligations imposed by this Part in relation to those grants.

(3) 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 a Local Aboriginal Land Council or class of Local 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 by those Councils,

(c) other matters relating to the keeping of accounts and records and the making of reports by those Councils.

(2) A Local 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 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 Aboriginal Land Council must be prepared in accordance with any applicable policy of the New South Wales Aboriginal Land Council.

(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 Aboriginal Land Council by the New South Wales Aboriginal Land Council.

## **Division 3 Funding of Local Aboriginal Land Councils**

### **162 Funding agreements**

(1) The New South Wales Aboriginal Land Council may enter into a funding agreement with a Local Aboriginal Land Council under which the New South Wales Aboriginal Land

Council agrees to grant funds to the Local Aboriginal Land Council on certain specified conditions.

- (2) A funding agreement may provide that if the Local 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 Aboriginal Land Council.
- (3) (Repealed)
- (4) The regulations may prescribe a model funding agreement that may be adopted for the purposes of this section.

### **163 (Repealed)**

## **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 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 Regions and the changing of names of Regions,
- (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 operation of this Act and the regulations or to refer such disputes to independent mediators, conciliators or arbitrators,
- (h) to investigate complaints regarding the non-disclosure of pecuniary interests, misbehaviour by councillors, Board members and members of staff of, and consultants to, Aboriginal Land Councils and breaches of this Act and the regulations,
- (h1) at the request of the Minister, to provide to the Minister information as to the operations of an Aboriginal Land Council,
- (h2) to keep and maintain a register in relation to Aboriginal Land Agreements made under section 36AA,
- (i) such other functions conferred or imposed on the Registrar by or under this or any other Act.

**165AA Registrar to report on exercise of functions**

- (1) The Registrar must in each year, as soon as practicable after 30 June, but on or before 1 November, provide a report to the Minister on the exercise of the Registrar's functions to ensure that Aboriginal Land Councils comply with this Act.
- (2) The report is to contain the following particulars:
  - (a) details of the circumstances in which the Registrar has issued compliance directions to Aboriginal Land Councils,
  - (b) details of the investigations of complaints regarding misconduct by councillors, Board members and members of staff of, and consultants to, Aboriginal Land Councils and breaches of this Act and the regulations,
  - (c) details of the appointment of investigators and administrators to Local Aboriginal Land Councils, including details of the outcome of any investigation carried out by an investigator,
  - (d) such other information in relation to the Registrar's exercise of his or her functions as may be prescribed by the regulations.

### **165A Delegation**

The Registrar may delegate the exercise of any function of the Registrar under this Act (other than this power of delegation) to:

- (a) any person employed in Aboriginal Affairs, Department of Education and Communities, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

## **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 Conduct, disclosure and disciplinary matters**

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

**Division 1 Honesty, care and diligence**

**176 Conduct of councillors, Board members and staff of Aboriginal Land Councils** (cf

section 439 of *Local Government Act 1993*)

- (1) Every councillor, Board member and member of staff of an Aboriginal Land Council or an advisory committee, must:
  - (a) act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act, and
  - (b) act for a proper purpose in carrying out his or her functions under this or any other Act, and
  - (c) not use his or her office or position for personal advantage, and
  - (d) not use his or her office or position to the detriment of an Aboriginal Land Council.
- (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 Aboriginal Land Council must, within such period as the Registrar directs, prepare and submit to the Registrar for approval:
  - (a) a code of conduct to be observed by all officers and members of staff of the Council, and
  - (b) a code of conduct to be observed by all members 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 a 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 a Board member of a Local Aboriginal Land Council—allows the Council by majority vote to remove that person from office, or
  - (b) (Repealed)
  - (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**

### **178-181 (Repealed)**

## **Division 3A Disciplinary action**

### **181A Interpretation**

- (1) In this Division:

**disciplinary action** means action referred to in section 181F.

**disciplinary proceedings** means proceedings under this Division in relation to the alleged behaviour or misconduct of an officer or member of staff of an Aboriginal Land Council.

**member of staff** means a member of staff of an Aboriginal Land Council, and includes a consultant to the Council.

**misconduct** includes any of the following:

- (a) a contravention of a provision of this Act or the regulations,
- (b) a contravention of an applicable code of conduct,
- (c) an act of disorder committed by:
  - (i) a councillor at a meeting of the New South Wales Aboriginal Land Council, or
  - (ii) a Board member of a Local Aboriginal Land Council at a meeting of the Board or of the Local Aboriginal Land Council.

- (2) A reference in this Division to **misconduct** includes a reference to misconduct that consists of an omission or failure to do something.

### **181B Grounds for disciplinary action**

The grounds on which disciplinary action may be taken against an officer or member of staff of an Aboriginal Land Council under this Division include the following:

- (a) the behaviour of the officer or member of staff has:
  - (i) been disruptive over a period, and
  - (ii) involved more than one incident of misconduct during that period,

and the pattern of behaviour during that period is of a sufficiently serious nature as to justify the taking of disciplinary action,

- (b) the officer or member of staff has failed to disclose pecuniary interests in accordance with Division 4 or engaged in any other misconduct of a sufficiently serious nature as to justify the taking of disciplinary action.

**181C Formal censure for misconduct**

- (1) An Aboriginal Land Council or a Board of a Local Aboriginal Land Council may, by resolution at a meeting, formally censure an officer or member of staff of the Council.
- (2) A formal censure resolution may be passed only if the Council or Board is satisfied that the officer or member of staff has engaged in misconduct on one or more occasions.
- (3) The Council or Board must specify in the formal censure motion the grounds on which it is satisfied that the officer or member of staff should be censured.

**181D Initiating disciplinary proceedings**

- (1) Disciplinary proceedings against an officer or member of staff of an Aboriginal Land Council may be initiated by:
  - (a) a complaint or allegation made to the Registrar that there are grounds for taking disciplinary action against the officer or member of staff, or
  - (b) a report by the Independent Commission Against Corruption (other than a report in which the Commission recommends that consideration be given to the taking of disciplinary action against the officer or member of staff), or
  - (c) a report by the Ombudsman (other than a report in which the Ombudsman states that the Ombudsman is satisfied that grounds exist that warrant the taking of disciplinary action against the officer or member of staff of the Council).

**Note—**

Section 181K provides that the Registrar must not take disciplinary action against an officer or member of staff of an Aboriginal Land Council on the basis of a report by the Independent Commission Against Corruption or the Ombudsman recommending that disciplinary action be taken. In such cases the matter must be referred to the Civil and Administrative Tribunal.

- (2) A complaint or allegation that there are grounds for taking disciplinary action against an officer or member of staff of an Aboriginal Land Council:
  - (a) may be made by an Aboriginal Land Council, the Board of a Local Aboriginal Land Council, a member of an Aboriginal Land Council or any other person, and
  - (b) need not be in writing.



- (3) The Registrar may request a person who makes any such complaint or allegation to provide, within a specified period, further information in relation to any matter arising from the complaint or allegation.
- (4) Nothing in this section prevents the Registrar from initiating disciplinary proceedings against a person on the Registrar's own initiative.
- (5) If the Registrar initiates disciplinary proceedings against an officer or member of staff of an Aboriginal Land Council, the Registrar may request that the Council or Board of the Council furnish the Registrar with a report in relation to the officer's or member of staff's alleged misconduct.
- (6) This section authorises the Independent Commission Against Corruption or the Ombudsman to make a report to the Registrar for the purposes of this section or any other provision of this Act.

#### **181E Registrar to investigate misconduct**

- (1) The Registrar is to conduct an investigation, or authorise an investigator to conduct an investigation, and prepare a report, into matters raised by or connected with disciplinary proceedings initiated under this Division.

**Note—**

Section 216 provides for the appointment of investigators by the Registrar.

- (2) However, the Registrar may decide not to conduct an investigation or decide to terminate an investigation or to take no further action in relation to alleged misconduct, if the Registrar is satisfied of one or more of the following:
  - (a) the complaint or allegation initiating the disciplinary proceedings was not made in good faith,
  - (b) the alleged misconduct is trivial or does not warrant investigation or further investigation,
  - (c) the alleged misconduct has been investigated by another authority or is the subject of other proceedings under this Act or any other Act,
  - (d) the alleged misconduct should be referred to another authority for investigation or it is not appropriate that the Registrar investigate the alleged misconduct,
  - (e) the alleged misconduct should not be the subject of disciplinary action under this Division or that no further action is warranted,
  - (f) the alleged misconduct occurred more than 2 years before the complaint or allegation was made and the Registrar is not satisfied as to the reasons for the delay in making the complaint or allegation,

- (g) there are insufficient particulars provided in connection with the alleged misconduct to allow the Registrar to investigate the alleged misconduct,
  - (h) the person making the complaint or allegation has not responded to a request for further information within the time specified by the Registrar.
- (3) Whether the Registrar decides to or not to conduct an investigation, or to take no further action, in relation to alleged misconduct, the Registrar is to prepare a statement of reasons for that decision.
- (4) The Registrar may, at any time after commencing an investigation, decide to terminate the investigation and take no further action in respect of the alleged misconduct on the grounds referred to in subsection (2).
- (5) The Registrar must, as soon as practicable after making a decision under this section, notify the following of that decision:
- (a) the officer or member of staff concerned,
  - (b) in the case of a complaint or allegation made by an Aboriginal Land Council, the Board of a Local Aboriginal Land Council, a member of an Aboriginal Land Council or any other person—the person who made the complaint or allegation.

**181F Registrar may take disciplinary action**

- (1) The Registrar may, if satisfied that there are grounds for the taking of disciplinary action against an officer or member of staff of an Aboriginal Land Council, do one or more of the following:
- (a) counsel or reprimand the officer or member of staff,
  - (b) recommend that the Aboriginal Land Council dismiss the member of staff,
  - (c) recommend that the Aboriginal Land Council take other action against the officer or member of staff,
  - (d) in the case of an officer, suspend the officer.
- (2) The Registrar must not take disciplinary action against an officer or member of staff of an Aboriginal Land Council under this section unless:
- (a) the matter has been investigated under this Division, or
  - (b) the Registrar is satisfied, on the basis of a report by the Independent Commission Against Corruption or the Ombudsman (other than a report referred to in section 181K), that disciplinary action should be taken against the officer or member of staff.

**Note—**

Section 181K provides that the Registrar must not take disciplinary action against an officer or member of staff of an Aboriginal Land Council on the basis of a report by the Independent Commission Against Corruption or the Ombudsman recommending that disciplinary action be taken. In such cases the matter must be referred to the Civil and Administrative Tribunal.

- (3) If the Registrar decides to take disciplinary action against an officer or member of staff of an Aboriginal Land Council under this section, the Registrar is to prepare a statement of reasons for that decision.
- (4) Notice of the decision and a copy of the statement of reasons for the decision is to be served on the officer or member of staff concerned.
- (5) If the Registrar decides to suspend an officer, the notice must specify the period of suspension (not more than 6 months) and the date on which the suspension commences (not less than 7 days after the date the notice is served on the officer).

### **181G-181I (Repealed)**

### **181J Appeals against disciplinary action by Registrar**

- (1) An officer or member of staff of an Aboriginal Land Council against whom a decision is made by the Registrar to take action may appeal against the decision to the Civil and Administrative Tribunal.

**Note—**

An appeal under this section is an external appeal to the Civil and Administrative Tribunal for the purposes of the [Civil and Administrative Tribunal Act 2013](#).

- (2) Such an appeal may not be made more than 28 days after the date notice of the decision was served on the officer or member of staff.
- (3) The Tribunal may stay the decision until such time as the Tribunal determines the appeal.
- (4) The Tribunal may:
  - (a) confirm the decision, or
  - (b) quash the decision, or
  - (c) amend the decision consistently with the powers of the Registrar.
- (5) If the decision is amended, the decision as amended has effect as if it had been made in that form by the Registrar.
- (6) If a decision to suspend an officer is quashed, any fee or other remuneration withheld during the period of suspension is payable to the officer.

### **181K Referral of matters to NCAT** (cf section 440N of [Local Government Act 1993](#))

- (1) The Registrar is to refer the alleged misconduct of an officer or member of staff of an

Aboriginal Land Council for the consideration of the Civil and Administrative Tribunal instead of taking disciplinary action if:

- (a) the Independent Commission Against Corruption has made a report recommending that consideration be given to the taking of disciplinary action against the officer or member of staff, or
  - (b) the Ombudsman has made a report stating that the Ombudsman is satisfied that grounds exist that warrant the taking of disciplinary action against the officer or member of staff, or
  - (c) the Registrar is of the opinion that the matter should be referred to the Tribunal.
- (2) If the Registrar refers any alleged misconduct to the Civil and Administrative Tribunal under this section, the Registrar is to prepare a statement of reasons for doing so and provide a copy of the statement to the officer or member of staff concerned.
- (3) The conduct of an investigation on the preparation and consideration of an investigator's report is not a prerequisite to a decision by the Registrar to refer a matter to the Tribunal, but the Registrar may take into consideration any such investigation or any investigator's report if one is prepared.
- (4) A matter is referred to the Tribunal under this section by means of a report presented to the Tribunal by the Registrar. A report may contain or be accompanied by such material and observations as the Registrar thinks fit.
- (5) (Repealed)

**181L Alternatives to suspension or referral to NCAT** (cf section 440O of [Local Government Act 1993](#))

- (1) (Repealed)
- (2) The Registrar may, at any time, exercise the power to issue a compliance direction to a councillor or Board member or member of staff under this Act.
- (3) The Registrar may, instead of taking disciplinary action against an officer or member of staff of an Aboriginal Land Council or referring the matter to the Civil and Administrative Tribunal, refer the matter to the Aboriginal Land Council or Board of a Local Aboriginal Land Council with recommendations as to how the Council or Board might resolve the matter, by alternative dispute resolution or otherwise.

**181M Expenses to be borne by Aboriginal Land Councils** (cf section 440P of [Local Government Act 1993](#))

- (1) The Registrar may recover the reasonable expenses incurred by or in respect of the Registrar considering and dealing with disciplinary proceedings arising from a complaint or allegation made by an Aboriginal Land Council or the Board of a Local

Aboriginal Land Council, including the expenses of any investigation by the Registrar or an investigator and investigator's report into the matters raised by or connected with alleged misconduct.

- (2) The Registrar may make a determination of the amount of the expenses referred to in subsection (1) and serve a notice requiring the amount so determined to be paid in recovery of the Registrar's expenses on the Aboriginal Land Council concerned.
- (3) An amount equal to the expenses as so determined is payable to the Registrar as a debt by the Council concerned, except as determined by the Minister.
- (4) The Council may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of whether any part of the expenses so determined are not reasonable expenses.
- (5) The Registrar must give effect to any decision of that Tribunal on a review of the determination of the amount of the expenses.
- (6) A reference in this section to expenses incurred includes a reference to remuneration paid to the investigator.

**181N (Repealed)**

**181O Other proceedings or actions not affected**

Nothing in this Division affects or limits any proceedings or other action that may be taken in respect of an officer or a member of staff.

## **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.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

(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 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 or member of staff 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 to the effect that the officer or staff member, or the officer's or staff member'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 or staff member'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

### 189-197 (Repealed)

## Division 6 Proceedings before NCAT

### Subdivision 1

#### 198, 199 (Repealed)

### Subdivision 2 Proceedings relating to misconduct

**199A NCAT to decide whether or not to conduct proceedings into a referred matter relating to misconduct** (cf section 470A of *Local Government Act 1993*)

- (1) After considering a report presented to it under section 181K in relation to a referred matter, the Civil and Administrative Tribunal may decide to conduct proceedings into the matter.
- (2) If the Civil and Administrative Tribunal decides not to conduct proceedings into a referred matter, it must provide a written statement of its decision, and the reasons

for its decision:

- (a) to the person to whom the report relates, and
- (b) to the Council or Board concerned, and
- (c) to the Registrar.

(3) (Repealed)

(4) The Registrar is to be a party to any proceedings conducted by the Civil and Administrative Tribunal into a referred matter.

**199B Circumstances in which NCAT may dispense with hearing** (cf section 470B of [Local Government Act 1993](#))

- (1) After considering a report presented to it under section 181K and any other document or other material lodged with or provided to the Tribunal in relation to the report, the Civil and Administrative Tribunal may determine the proceedings without a hearing if:
- (a) the Registrar and the person to whom the report relates have agreed that the proceedings may be determined without a hearing, and
  - (b) there are no material facts in dispute between the Registrar and person, and
  - (c) in the opinion of the Tribunal, public interest considerations do not require a hearing.

(2) (Repealed)

### **Subdivision 3 General provisions**

**200-206 (Repealed)**

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

- (1) The Civil and Administrative 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 Civil and Administrative 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 Civil and Administrative 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 Civil and Administrative Tribunal under subsection (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Civil and Administrative Tribunal, just and equitable in the circumstances.
- (4) If another complaint is taken to have been referred to the Civil and Administrative 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.

## **208-211 (Repealed)**

### **211A Decision of NCAT—conduct matters**

- (1) This section applies where a matter has been referred to the Civil and Administrative Tribunal under section 181K.
- (2) The Tribunal may do any one or more of the following if it finds that the conduct concerned of an officer of an Aboriginal Land Council warrants action under this section:
  - (a) counsel the officer, or
  - (b) reprimand the officer, or
  - (c) suspend the officer from office for a period not exceeding 6 months, or
  - (d) if the referral relates to an officer of an Aboriginal Land Council who:
    - (i) holds office as a councillor or Board member—suspend the officer from holding that office for a period not exceeding 2 years, or
    - (ii) holds office as the Chairperson or Deputy Chairperson of the New South Wales Aboriginal Land Council—remove the officer from that office, or
  - (e) if the officer holds office as a councillor or Board member—disqualify the officer from holding that office for a period not exceeding 5 years, or
  - (f) order the officer to pay a pecuniary penalty of up to \$11,000, or
  - (g) order the officer to reimburse the Aboriginal Land Council for any loss incurred by the Council.

- (3) The Tribunal may do any one or more of the following if it finds that the conduct concerned of a member of staff of an Aboriginal Land Council warrants action under this section:
- (a) counsel the member of staff, or
  - (b) reprimand the member of staff, or
  - (c) recommend that the Council take specified disciplinary action against the member of staff (including counselling or reprimanding the member of staff), or
  - (d) recommend the dismissal of the member of staff, or
  - (e) disqualify the member of staff from holding office in an Aboriginal Land Council for a period not exceeding 5 years.
- (4) In this section, **member of staff** has the same meaning as it has in Division 3A.

**212-214 (Repealed)**

**215 Referral of matters by NCAT** (cf section 486 of [Local Government Act 1993](#))

Despite section 180 (1) and (2), the Civil and Administrative Tribunal may refer a matter before it under this Act 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.

**215A Exclusive jurisdiction of NCAT over Division 4 contraventions**

- (1) The Civil and Administrative 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.

## **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 Chief Executive 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 Aboriginal Land Council only with the approval of the New South Wales Aboriginal Land Council or on the recommendation of the Registrar with the approval of that

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 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**

- (1) 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.
- (2) The instrument may also contain provision for the payment to the investigator of remuneration in addition to the remuneration specified in the instrument. For example, the instrument could provide for the New South Wales Aboriginal Land Council to approve the payment of additional remuneration that it is satisfied is reasonable.

### **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:

- (a) in the case of an individual—30 penalty units, or
- (b) in the case of a corporation—60 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: 60 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 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 Aboriginal Land Council.

**221A Provision of information to Registrar and New South Wales Aboriginal Land Council**

- (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 the Registrar, provide the Registrar with:
- (a) access to such of the records as relate to the operations of the Council requested by the Registrar, and
  - (b) information that the Chairperson or other person is able to give in relation to those records and operations, and
  - (c) authorities or orders on bankers and others that relate to those records or operations and that the Chairperson or other person is able to provide.

Maximum penalty:

- (a) in the case of an individual—30 penalty units, or
  - (b) in the case of a corporation—60 penalty units.
- (2) The Chairperson of a Local 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 the New South Wales Aboriginal Land Council, provide the Council with:
- (a) access to such of the records as relate to the operations of the Local Aboriginal Land Council requested by the New South Wales Aboriginal Land Council, and
  - (b) information that the Chairperson or other person is able to give in relation to those records and operations, and
  - (c) authorities or orders on bankers and others that relate to those records or operations and that the Chairperson or other person is able to provide.

Maximum penalty:

- (a) in the case of an individual—30 penalty units, or
  - (b) in the case of a corporation—60 penalty units.
- (3) 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.

### **221B Privilege**

- (1) The Chairperson of an Aboriginal Land Council or any other person who is required to provide the Registrar or the New South Wales Aboriginal Land Council with records under section 221A, or provide an investigator with records under section 218, may refuse to comply with the requirements if the record contains privileged communication made by or on behalf of or to an Australian legal practitioner in his or her capacity as an Australian legal practitioner.
- (2) The Chairperson or other person may not refuse to comply with a requirement under section 221A to the extent that the person is able to do so without disclosing privileged communication.
- (3) If the Chairperson or other person refuses to comply with a requirement because the record is a privileged communication, the Chairperson or other person must, in writing, provide the Registrar with sufficient particulars to identify the record and inform the Registrar that privilege is claimed in relation to the record.

## **Division 2 Administration of Aboriginal Land Councils**

### **222 Administrators—Local Aboriginal Land Councils** (cf former section 57)

- (1) The Minister may at any time appoint, from a list of persons prepared, in accordance with the regulations, by the New South Wales Aboriginal Land Council and submitted to the Minister for approval, an administrator for a Local 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 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 or 158, or
  - (d) if the Minister is of the opinion, on the receipt of a report by an investigator appointed in accordance with Division 1, or a report by the New South Wales Aboriginal Land Council, or otherwise, 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, or
- (g) if the Council has failed to comply with a compliance direction given under section 235, or
- (h) if the Council operates a community benefit schemes for the provision or acquisition of residential accommodation for Aboriginal persons in its area in contravention of a requirement under section 52A that the scheme be approved by the New South Wales Aboriginal Land Council.

**Note—**

Section 52A (1A) provides that the approval of the New South Wales Aboriginal Land Council is not required if the Local Aboriginal Land Council is a registered Aboriginal housing organisation (within the meaning of the *Aboriginal Housing Act 1998*) or a registered community housing provider (within the meaning of the *Community Housing Providers National Law (NSW)*).

- (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, to the exclusion of the Council:
  - (a) all, or such part as is specified in the administrator's instrument of appointment, of the functions of the Board of the Council conferred or imposed by or under this Act, and
  - (b) the functions of the Council and the members of the Council exercised by resolution of the members of the Council that are prescribed by the regulations (except as provided by the administrator's instrument of appointment).
- (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 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.
- (7) Without limiting subsection (6), the regulations may:
  - (a) specify functions that the administrator must not exercise, except on a resolution of members of the Council, and

- (b) specify functions of the Board of the Council that the administrator must not exercise, except on a resolution of members of the Council.

**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.

**223A Notice of appointment of administrator**

- (1) The Minister may, before appointing an administrator of an Aboriginal Land Council under this Division, give not less than 14 days notice in writing of the appointment to:
  - (a) in the case of a Local Aboriginal Land Council—each Board member and the New South Wales Aboriginal Land Council, and
  - (b) in the case of the New South Wales Aboriginal Land Council—each councillor.
- (2) The Minister must, before appointing an administrator, take into account any written representations received from any person or body to whom notice was given under this section.

**223B Interim actions pending appointment of administrator**

- (1) The Minister may, by notice in writing to an Aboriginal Land Council, take any of the following actions, pending the appointment of an administrator of the Council:
  - (a) prohibit the Council from exercising certain specified functions or taking specified actions, except with the approval of the Minister, for a specified period,



- (b) appoint a person to act as an interim administrator of the Council, with specified functions, for a specified period (not exceeding 3 months).
- (2) A notice under this section ceases to have effect if an administrator is appointed under this Division or if the Minister decides not to appoint an administrator under this Division.
- (3) The Minister must notify the Aboriginal Land Council in writing if the Minister decides not to appoint an administrator.
- (4) The Minister may revoke or vary a notice given under this section.
- (5) An Aboriginal Land Council must not fail to comply with a notice given under this section.

#### **224 Contents of administrator's instrument of appointment**

- (1) 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.
- (2) The instrument may also contain provision for the payment to the administrator of remuneration in addition to the remuneration specified in the instrument. For example, the instrument could provide for the New South Wales Aboriginal Land Council to approve the payment of additional remuneration that it is satisfied is reasonable.

#### **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) a Board member,
- (c) in the case of the appointment of an administrator of a Local Aboriginal Land Council, a member of that 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 Aboriginal Land Council, the Board members of the Council are removed from office and fresh elections to fill the vacancies are to be held, in the manner specified by the regulations, so as to enable vacancies to be filled at the conclusion of the administrator's term of office.
- (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, in the manner specified by the regulations, so as to enable vacancies to be filled at the conclusion of the administrator's term of office.

**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:

- (a) in the case of an individual—30 penalty units, or
  - (b) in the case of a corporation—75 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: 60 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 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 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 Limitations on certain land dealings by administrator**

(1) 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).

(2) Despite subsection (1), the exercise by an administrator for a Local Aboriginal Land Council of any of the following functions does not require the consent of the Council:

- (a) entering into a short-term residential tenancy agreement,
- (b) the management of a short-term residential tenancy agreement,
- (c) the termination of a short-term residential tenancy agreement,

- (d) if the administrator was appointed on one or more grounds, including that the Local Aboriginal Land Council had operated a community benefits scheme for the provision or acquisition of residential accommodation for Aboriginal persons in its area for a period of 12 months or more in contravention of a requirement under section 52A that the scheme be approved by the New South Wales Aboriginal Land Council—a dealing that is necessary for the purposes of:
- (i) obtaining the approval of the New South Wales Aboriginal Land Council to the operation of the scheme, or
  - (ii) operating the scheme as a registered Aboriginal housing organisation (within the meaning of the *Aboriginal Housing Act 1998*), or
  - (iii) operating the scheme as a registered community housing provider (within the meaning of the *Community Housing Providers National Law (NSW)*).

**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 Aboriginal Land Council.
- (3) The Minister may, by further instrument of appointment, vary the functions of the Council that may be exercised by an administrator during the extension of the administrator's term of appointment.

**232 Minister may remove 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 Aboriginal Land Council.

**Division 3 Non-functioning Aboriginal Land Councils and assistance to Local 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 Appointment of advisors**

- (1) The Minister may, on the recommendation of the New South Wales Aboriginal Land Council or the Registrar, appoint an advisor to the Board of a Local Aboriginal Land Council, if the Minister is of the opinion that the Council is in danger of failing.
- (2) An advisor is to be appointed from a list of persons prepared by the New South Wales Aboriginal Land Council and approved by the Minister.
- (3) Notice of the appointment of an advisor is to be published in the Gazette.
- (4) An advisor is to be appointed for a term specified by the Minister in the advisor's instrument of appointment.
- (5) An advisor has, subject to any limitations specified in the advisor's instrument of appointment, the following functions:
  - (a) to advise and assist the Board of the Local Aboriginal Land Council and the Council in the exercise of their functions,
  - (b) to report to the New South Wales Aboriginal Land Council and the Minister, when requested to do so by that Council or the Minister or at the advisor's discretion, as to the operations of the Local Aboriginal Land Council.
- (6) The appointment of an advisor ceases to have effect if an administrator is appointed for the Local Aboriginal Land Council.

### **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 or an officer of an Aboriginal Land Council requiring the Council or officer 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 or an officer of an Aboriginal Land Council 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 or officer requiring the Council or officer 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 or an officer of an Aboriginal Land Council 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:

- (a) in the case of an individual—80 penalty units, or
- (b) in the case of a corporation—200 penalty units.

## **Part 13 Dispute resolution**

### **238 Application of Part**

- (1) This Part applies to a dispute concerning the operation of this Act or the regulations.
- (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 the regulations 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) or the regulations.

### **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.

### **239A Compulsory mediation of land dealing application disputes**

- (1) This section applies to a dispute relating to a decision by the New South Wales Aboriginal Land Council under Division 4 of Part 2 to approve or not to approve a land dealing.
- (2) A Local Aboriginal Land Council must, if the Council proposes to commence legal proceedings in relation to the dispute, refer the dispute to the Registrar.
- (3) The Registrar may, with the parties consent:
  - (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 2010](#)**

- (1) Subject to this Act and the regulations, the [Commercial Arbitration Act 2010](#) 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 2010](#) 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 2010](#) 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 unless set aside under that Act 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:

- (a) in the case of an individual—80 penalty units, or
- (b) in the case of a corporation—200 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 Aboriginal Land Council or Board member or chief executive officer of a Local Aboriginal Land Council,
  - (b1) a member of an advisory committee,
  - (b2) an advisor to a Local Aboriginal Land Council,
  - (c) the Chief Executive Officer of the New South Wales Aboriginal Land Council,
  - (c1) a member of staff of an Aboriginal Land Council,
  - (d) any person acting under the direction of an Aboriginal Land Council,
  - (e) a person who is a member of an expert advisory panel constituted under section 42I,

does not subject a councillor, member, advisor, Chief Executive Officer, member of staff 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.

**243A Effect of suspension of Board members and councillors**

A councillor or Board member, while suspended from office under this Act:

- (a) is not entitled to exercise any functions of the office, and
- (b) is not entitled to any fee or other remuneration to which he or she would otherwise be entitled as the holder of the office.

**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 Board member, or
- (d) the holding of office by a person as an officer of the New South Wales Aboriginal Land Council or as the Chairperson or Deputy Chairperson of a Board, or
- (e) the presence or nature of a quorum at any meeting of an Aboriginal Land Council.

**246A Correction of errors in documents**

- (1) This section applies to a resolution of an Aboriginal Land Council or a certificate issued under this Act by an Aboriginal Land Council.
- (2) The Chairperson of an Aboriginal Land Council may, on the application of a person or on the Chairperson's own initiative, correct any of the following in any document to which this section applies that was created or issued by that Council:
  - (a) a clerical mistake,
  - (b) an error arising from an accidental slip or omission,
  - (c) a mistake in the description of any person or thing,
  - (d) a defect of form.

**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)

- (1) 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 *Government Information (Public Access) Act 2009*.
- (2) Despite subsection (1), a Local Aboriginal Land Council is not taken to be an agency for the purposes of section 6 of the *Government Information (Public Access) Act 2009*.

**248A Search warrants**

- (1) The Registrar may apply to an authorised officer for a search warrant if the Registrar has reasonable grounds for believing:
  - (a) that a provision of this Act or the regulations has been or is being contravened, or
  - (b) that records required to be provided to an investigator under section 218 have not been so provided, or

(c) that records required to be provided to an administrator under section 227 have not been so provided.

(2) An authorised officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Registrar, when accompanied by a police officer, and any other person named in the warrant:

(a) to enter specified premises, and

(b) to search the premises for evidence of a contravention of this Act or the regulations or records required to be provided to an investigator or administrator, that have not been so provided.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) In this section:

**authorised officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **248B Injunctions**

(1) If the Court is satisfied on the application of the Registrar that a person has engaged or is proposing to engage in conduct that constitutes or would constitute:

(a) a contravention of a provision of this Act or the regulations, or

(b) an attempt to contravene such a provision, or

(c) aiding, abetting, counselling or procuring a person to contravene such a provision, or

(d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene such a provision, or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision, or

(f) conspiring with others to contravene such a provision,

the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.

(3) The Court may rescind or vary an injunction granted under this section.

- (4) When the Registrar makes an application to the Court for the grant of an injunction under this section, the Court is not to require the Registrar or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

**249 Proceedings for offences** (cf former section 67)

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

**249A Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

**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 Board is elected at that first meeting, the Registrar (or a person appointed by the Registrar) is to preside at that meeting, and
  - (d) at the first meeting of the Council, the members are to elect the Board of 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 a sufficient association with that area or are Aboriginal owners of land in

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 (Repealed)**

**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,
  - (b)-(e) (Repealed)
  - (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) (Repealed)
  - (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 Registrar,
  - (m) the keeping and operation of the Register of Aboriginal Land Claims and the Register of Aboriginal Owners,
  - (n) the making of Aboriginal Land Agreements under section 36AA.
- (3) A regulation made for the purposes of subsection (2) (a) may apply to the matters

referred to in that paragraph any provisions (with any necessary alterations) of this Act relating to the constitution of Local Aboriginal Land Council areas.

- (4) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

#### **252A Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the [Aboriginal Land Rights Amendment Act 2006](#) and as soon as possible after the end of every period of 5 years thereafter.
- (3) A report on the outcome of a review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

#### **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 Registrar a statutory officer and not Public Service employee**

The office of Registrar is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that 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 (Repealed)**

## **Schedule 3 Procedure of Boards and Councils**

(Sections 52H, 61 (3) and 120 (7))

### **Part 1 Procedure of Local Aboriginal Land Councils**

#### **1 Frequency of meetings**

- (1) Subject to subclause (2), a Local Aboriginal Land Council is to hold meetings at such time as the Board of the Council determines.
- (2) A Council must:
  - (a) hold not less than 3 ordinary meetings a year, at intervals of not more than 4 calendar months, and
  - (b) hold annual meetings at the times, or within the periods, prescribed by the regulations.

#### **2 General procedure**

- (1) 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 and the regulations, to be as determined by the Council.
- (2) If there is no Board of a Local Aboriginal Land Council and there is no administrator appointed for that Council, the Registrar may call a meeting of the Council for the purpose of electing a Board.



### **3 Quorum**

The quorum for a meeting of a Local Aboriginal Land Council is 10 per cent of the total number of voting members of the Council.

### **4 Presiding member**

- (1) The Chairperson of the Board (or, in the absence of the Chairperson, the Deputy Chairperson of the Board, or in the absence of both the Chairperson and the Deputy Chairperson, a person elected by the members of the Local Aboriginal Land Council who are present at a meeting of the Council) is to preside at a meeting of the Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (3) If an administrator is appointed to the Council, the administrator is to preside at meetings of the Council.

### **5 Voting**

- (1) Except as otherwise provided by this Act, a decision supported by a majority of the votes cast at a meeting of a Local Aboriginal Land Council at which a quorum is present is the decision of the Council.
- (2) The attendance of each person who is a voting member at a meeting of the Council is to be recorded on the membership roll.

### **6 Minutes**

- (1) The Local 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.

## **Part 2 Procedure of Boards of Local Aboriginal Land Councils**

### **1 Frequency of meetings**

- (1) A Board must meet at intervals not longer than every 2 calendar months.
- (2) The Chairperson may, at the request of a majority of the members of the Board, call a meeting of the Board at any time.

## **2 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

## **3 Quorum**

The quorum for a meeting of the Board is a majority of its members for the time being.

## **4 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **5 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

## **6 Transaction of business by telephone**

- (1) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (2) For the purposes of a meeting held in accordance with subclause (1), the presiding member and each Board member have the same voting rights as they have at an ordinary meeting of the Board.
- (3) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (4) Papers may be circulated among the Board members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **7 Authentication of documents**

Any document requiring authentication by the Board is sufficiently authenticated if it is signed by:

- (a) the Board member who presided at the meeting that dealt with the proceedings with respect to which the document was prepared, or

- (b) in the absence of that Board member, any other member who was present at that meeting.

## **8 First meeting**

The chief executive officer of the Council or, if there is no chief executive officer, the Registrar may call the first meeting of the Board in such manner as he or she thinks fit.

## **9 Minutes**

- (1) The Board must cause minutes to be kept of the proceedings of each meeting of the Board.
- (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.

# **Part 3 Procedure of New South Wales Aboriginal Land Council**

## **1 Frequency of meetings**

- (1) The New South Wales Aboriginal Land Council is to hold its first meeting after each election of all councillors in accordance with the regulations at a time (being a time as soon as practicable after the election) and place arranged by the Registrar.
- (2) The New South Wales Aboriginal Land Council must hold ordinary meetings at least once every 3 calendar months.
- (3) The Chairperson must call an extraordinary meeting of the Council if requested to do so by a majority of the councillors for the time being.
- (4) The Chairperson may call an extraordinary meeting of the Council at any time.

## **2 General procedure**

The procedure for the calling of meetings of the New South Wales Aboriginal Land Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

## **3 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.

#### 4 Presiding member

- (1) The Chairperson of the New South Wales Aboriginal Land Council (or, in the absence of the Chairperson or Deputy Chairperson, a person elected by the members of the Council who are present at a meeting of the Council) is to preside at a meeting of the Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (3) If an administrator is appointed to the Council, the administrator is to preside at meetings of the Council.

#### 5 Voting

A decision supported by a majority of the 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.

#### 6 Minutes

- (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.

### Schedule 3A Transfer of assets, rights and liabilities

(Section 89 (6))

#### 1 Definitions

In this Schedule:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

**liabilities** means any liabilities, debts or obligations (whether present or future and

whether vested or contingent).

**transfer order** means an order made under section 89.

## **2 Vesting of undertaking in transferee**

When any assets, rights or liabilities are transferred by a transfer order, the following provisions have effect (subject to the order):

- (a) those assets of the transferor vest in the transferee by virtue of this Schedule and without the need for any conveyance, transfer, assignment or assurance,
- (b) those rights and liabilities of the transferor become by virtue of this Schedule the rights and liabilities of the transferee,
- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to regulations or other provisions under Schedule 4), to be read as, or as including, a reference to the transferee.

## **3 Operation of Schedule**

- (1) The operation of this Schedule is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.

(4) The operation of this Schedule includes the making of a transfer order.

#### **4 Date of vesting**

A transfer order takes effect on the date specified in the order.

#### **5 Consideration for vesting**

- (1) A transfer order may specify the consideration on which the order is made and the value or values at which the assets, rights or liabilities are transferred.
- (2) The consideration and value or values cannot exceed the optimised deprival value of those assets, rights or liabilities.
- (3) In this clause, **optimised deprival value** means a value determined by the application of the Guidelines on Accounting Policy for Valuation of Government Trading Enterprises prepared by the Steering Committee on National Performance Monitoring of Government Trading Enterprises, agreed on by the Commonwealth and States and published in October 1994.

#### **6 Duties**

Duty under the [Duties Act 1997](#) is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities to a person by a transfer order, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

#### **7 Transfer of interest in land**

- (1) A transfer order may transfer an interest in respect of land vested in the transferor without transferring the whole of the interests of the transferor in that land.
- (2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

#### **8 Determinations of Minister for purposes of orders**

For the purposes of any transfer order, a determination by the Minister as to which entity to which any assets, rights or liabilities relate is conclusive.

#### **9 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights and liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

## 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](#)

[Aboriginal Land Rights Amendment Act 2006](#)

[Aboriginal Land Rights Amendment Act 2009](#)

[Aboriginal Land Rights Amendment \(Housing\) Act 2011](#)

any other Act that amends this Act

- (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.

## **Part 7 Aboriginal Land Rights Amendment Act 2006**

### **40 Definition**

In this Part:

**amending Act** means the *Aboriginal Land Rights Amendment Act 2006*.

#### **41 Existing officers of Local Aboriginal Land Councils**

- (1) A person who was an officer of a Local Aboriginal Land Council immediately before the commencement of Division 3 of Part 5 of the Act, as inserted by the amending Act, ceases to hold office on that commencement.
- (2) An officer of a Local Aboriginal Land Council is not entitled to any remuneration or compensation because of the loss of office.
- (3) Nothing in this clause prevents a former officer of a Local Aboriginal Land Council from seeking election as a Board member.

#### **42 First elections of Boards of Local Aboriginal Land Councils**

- (1) For the purpose of enabling Boards of Local Aboriginal Land Councils to be constituted on or after the commencement of Division 3 of Part 5 of the Act, as inserted by the amending Act, regulations may be made, elections for Board members may be held and any other act, matter or thing may be done before that commencement as if the whole of the amending Act, and any regulations relating to the elections, commenced on the date of assent to that Act.
- (2) If elections for Board members are not held in accordance with this Act, as amended by the amending Act, before the term of office of the current officers of the Local Aboriginal Land Council, or of an administrator of the Council, expires, the term of office of the officers or administrator, as the case may be, is extended until the Board members are elected.
- (3) Nothing in this clause prevents the appointment of an administrator from being revoked in accordance with this Act or an administrator from being appointed for a Council.

#### **43 First meetings**

- (1) For the purpose of enabling councillors to be elected on or after the commencement of Part 6 of the Act, as inserted by the amending Act, regulations may be made, elections for councillors may be held and any other act, matter or thing may be done before that commencement as if the whole of the amending Act, and any regulations relating to the elections, commenced on the date of assent to that Act.
- (2) If elections for councillors are not held in accordance with this Act, as amended by the amending Act, before the term of office of the administrator of the New South Wales Aboriginal Land Council expires, the term of office of the administrator is extended until the councillors are elected.
- (3) Nothing in this clause prevents the appointment of the administrator from being revoked in accordance with this Act.

#### 44 Regional Aboriginal Land Councils

- (1) A Regional Aboriginal Land Council constituted under this Act immediately before the commencement of Part 6, as inserted by the amending Act, ceases to exist on that commencement and the officers of the Council cease to hold office.
- (2) An officer of the Council is not entitled to any remuneration or compensation because of the loss of the office.

#### 45 Existing social housing

- (1) This clause applies to residential accommodation provided by Local Aboriginal Land Councils to Aboriginal persons that was provided immediately before the commencement of this clause (an **existing social housing scheme**).
- (2) A Local Aboriginal Land Council must not operate an existing social housing scheme on or after 31 December 2015, except in accordance with an approval of the New South Wales Aboriginal Land Council.
- (3) The New South Wales Aboriginal Land Council must not approve an existing social housing scheme unless it is satisfied that:
  - (a) the scheme complies with this Act and the regulations, and
  - (b) the scheme is consistent with any applicable policy of the New South Wales Aboriginal Land Council, and
  - (c) the scheme is consistent with the community, land and business plan (if any) of the Local Aboriginal Land Council, and
  - (d) the scheme is fair and equitable and will be administered in a responsible and transparent way, and
  - (e) the income (including any subsidies and grants) from the existing social housing scheme is or will be sufficient to meet all the expenses of the scheme, including long term maintenance requirements, and
  - (f) it has considered the impact of the scheme on the overall financial position of the Local Aboriginal Land Council.
- (4) The New South Wales Aboriginal Land Council may impose conditions on an approval under this clause.
- (5) Without limiting subclause (4), the New South Wales Aboriginal Land Council may make it a condition of an approval under this clause that the Local Aboriginal Land Council operate the existing social housing scheme by using the services of another body or agency, or with the assistance of another body or agency, approved by the New South Wales Aboriginal Land Council.

- (6) A Local Aboriginal Land Council that fails to obtain the approval of the New South Wales Aboriginal Land Council to operate an existing social housing scheme under this clause may, with the approval of that Council, enter into an agreement or other arrangement with another body or agency for that body or agency to operate the existing social housing scheme.
- (7) This clause ceases to apply on the repeal of section 52B by the *Aboriginal Land Rights Amendment Act 2014*.

#### **46 Other existing community benefits**

- (1) This section applies to a community benefits scheme (other than an existing social housing scheme) under which community benefits were provided by Local Aboriginal Land Councils to Aboriginal persons immediately before the commencement of this clause (an **existing community benefits scheme**).
- (2) A Local Aboriginal Land Council may continue to operate an existing community benefits scheme despite any other provision of this Act.
- (3) The New South Wales Aboriginal Land Council may review an existing community benefits scheme, to determine whether or not:
  - (a) it is fair and equitable and is administered in a responsible and transparent way, or
  - (b) it is likely to prevent the Local Aboriginal Land Council from being able to meet its debts as and when they fall due.
- (4) On a review, the New South Wales Aboriginal Land Council may impose conditions on the provision of an existing community benefits scheme by a Local Aboriginal Land Council.
- (5) Any such condition is to be consistent with any applicable policy of the New South Wales Aboriginal Land Council.
- (6) A Local Aboriginal Land Council must comply with any conditions imposed on it after a review under this clause.

#### **47 Preparation of community, land and business plans**

- (1) Despite any other provision of this Act, a Local Aboriginal Land Council is to prepare and adopt a community, land and business plan, in accordance with this Act, not later than 18 months after the commencement of Division 6 of Part 5.
- (2) The New South Wales Aboriginal Land Council may extend the period within which a Local Aboriginal Land Council is to prepare and adopt a plan, and may waive the requirement wholly or partially in an appropriate case.

- (3) Despite any other provision of this Act, the New South Wales Aboriginal Land Council is to prepare and adopt a community, land and business plan, in accordance with this Act, not later than 18 months after the commencement of Division 5 of Part 7.
- (4) The Minister may extend the period within which the New South Wales Aboriginal Land Council is to prepare and adopt a plan.

#### **48 References to Aboriginal Land Councils Pecuniary Interest Tribunal**

A reference in any Act, instrument or other document to the Aboriginal Land Councils Pecuniary Interest Tribunal is taken to be a reference to the Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal.

### **Part 8 Statute Law (Miscellaneous Provisions) Act 2007**

#### **49 Remuneration of investigators and administrators**

- (1) Each instrument of appointment of an investigator or administrator under Part 11 that was executed before the commencement of this clause is taken to include (and always to have included) provision to the effect that the New South Wales Aboriginal Land Council may approve the payment of additional remuneration to the investigator or administrator that the Council is satisfied is reasonable.
- (2) An amount paid before the commencement of this clause as remuneration to an investigator or administrator appointed under Part 11, being an amount paid with the approval of the New South Wales Aboriginal Land Council in addition to the remuneration specified in the investigator's or administrator's instrument of appointment, is taken to be and always to have been validly paid as remuneration of the investigator or administrator.
- (3) Sections 217 (2) and 224 (2) extend to an instrument of appointment of an investigator or administrator under Part 11 that was executed before the commencement of this clause, with the result that a provision included in such an instrument that would have been valid had sections 217 (2) and 224 (2) been in force when the instrument was executed is taken to be and always to have been valid.

### **Part 9 Aboriginal Land Rights Amendment Act 2009**

#### **50 Definitions**

- (1) In this Part:

**amending Act** means the *Aboriginal Land Rights Amendment Act 2009*.

**existing land dealing** means a land dealing that was approved by the New South Wales Aboriginal Land Council before the commencement of the new land dealing provisions.



**existing registrable instrument** means a registrable instrument giving effect to or forming part of an existing land dealing.

**former land dealing provisions** means Division 4 of Part 2 of this Act, as in force immediately before its substitution by the amending Act.

**new land dealing provisions** means Division 4 of Part 2 of this Act, as substituted by the amending Act.

- (2) Words and expressions used in this Part have the same meaning as they have in Divisions 4 and 4A of Part 2 of this Act, as substituted by the amending Act.

### **51 Existing land dealings**

- (1) Except as provided by this Part, the new land dealing provisions do not apply to or in respect of an existing registrable instrument or to an existing land dealing.
- (2) Except as provided by this clause and clause 52, the former land dealing provisions continue to apply to an existing land dealing and an existing registrable instrument.
- (3) If the requirements of the former land dealing provisions were not complied with in relation to a land dealing entered into before the commencement of the new land dealing provisions, the new land dealing provisions apply to that land dealing.

### **52 Registration approval provisions to apply to existing dealings**

- (1) This clause applies to an existing land dealing, other than a dealing for which an existing registrable instrument was lodged with the Registrar-General for registration or recording before the commencement of the new land dealing provisions.
- (2) Section 42M applies to a registrable instrument giving effect to an existing land dealing.
- (3) The Chief Executive Officer of the New South Wales Aboriginal Land Council must give a registration approval certificate in respect of an existing registrable instrument if the Chief Executive Officer is satisfied that any conditions of the approval by the New South Wales Aboriginal Land Council of the existing land dealing have been met.
- (4) A registration approval certificate given under subclause (3) is taken to be a registration approval certificate for the purposes of section 42M (2) (a).
- (5) The regulations may make provision for or with respect to applications for registration approval certificates under this clause and the fees for the making of such applications.

### **53 Application of community development levy provisions to existing land dealings**

Division 4A of Part 2 does not apply to dutiable transactions for existing land dealings.

## Part 10 Provisions consequent on enactment of **Aboriginal Land Rights Amendment (Housing) Act 2011**

### 54 Existing residential tenancy agreements

(1) In this clause:

**amending Act** means the *Aboriginal Land Rights Amendment (Housing) Act 2011*.

**commencement date** means the date of assent to the amending Act.

(2) This clause applies to the following functions:

- (a) the management of a short-term residential tenancy agreement,
- (b) the termination of a short-term residential tenancy agreement.

(3) The amendment of section 52G, 62 or 230 by the amending Act extends to the exercise of the functions to which this clause applies in relation to a short-term residential tenancy agreement entered into before the commencement date, but only to the extent that those functions are exercised on or after the commencement date.

## Part 11 **Aboriginal Land Rights Amendment Act 2013**

### 55 Definition

In this Part:

**amending Act** means the *Aboriginal Land Rights Amendment Act 2013*.

### 56 Existing employment of staff members

The amendment of section 144 by the amending Act does not affect the employment of a staff member of the New South Wales Aboriginal Land Council if the employment commenced before the commencement of the amendment.

### 57 Appeals from decisions of Administrative Decisions Tribunal

An amendment made to section 70, 71, 136 or 137 by the amending Act applies only to decisions of the Administrative Decisions Tribunal made after the commencement of the amendment.

### 58 Community development levy

- (1) An amendment made to section 42T, or clause 113 of the *Aboriginal Land Rights Regulation 2002*, by the amending Act does not affect any liability for duty charged on a dutiable transaction that occurred before the commencement of the amendment.
- (2) Clause 113A of the *Aboriginal Land Rights Regulation 2002* (as inserted by the amending Act) does not affect any liability for duty charged on a dutiable transaction

that occurred before the commencement of that clause.

## Part 12 Provisions consequent on enactment of **Aboriginal Land Rights Amendment Act 2014**

### 59 Definition

In this Part:

**amending Act** means the *Aboriginal Land Rights Amendment Act 2014*.

### 60 Existing social housing schemes

- (1) Section 222 (1) (h) (as inserted by the amending Act) does not apply until 31 December 2015 in relation to a community benefit scheme for residential accommodation for Aboriginal persons that was provided before the commencement of clause 45.

#### Note—

Clause 45 allows an Aboriginal Land Council that provided residential accommodation to Aboriginal persons immediately before the commencement of that clause to continue to provide that residential accommodation without the approval of the New South Wales Aboriginal Land Council until 31 December 2015. Continuing to provide residential accommodation to Aboriginal persons after that date without the approval of the New South Wales Aboriginal Land Council is a ground for the appointment of an administrator for the Council under section 222.

- (2) An application for the approval of a community benefits scheme for residential accommodation for Aboriginal persons provided before the commencement of clause 45 that was made, but not finally determined, before the repeal of section 52B by the amending Act is to be determined in accordance with section 52A as amended by the amending Act.

### 61 Existing corporations established by Local Aboriginal Land Councils

- (1) This clause applies in relation to a corporation (an **existing corporation**) that was established or acquired by a Local Aboriginal Land Council under the *Corporations Act 2001* of the Commonwealth before the commencement of section 52 (5B) (as inserted by the amending Act).
- (2) If an existing corporation is not a corporation or kind of corporation that is authorised under section 52 (5B) to be established or acquired by the Local Aboriginal Land Council, the Council is, within 12 months of the commencement of section 52 (5B), to take such steps as are required by the regulations to cease any involvement in the operation or management of the corporation.

## Schedule 5 Regions

(Section 93 (1))

### Central Region

The Central Region consists of the following Local Aboriginal Land Council areas:

Dubbo, Gilgandra, Mudgee, Narromine, Nyngan, Trangie, Warren Macquarie, Weilwan, Wellington.

### **Mid North Coast Region**

The Mid North Coast Region consists of the following Local Aboriginal Land Council areas:

Birpai, Bowraville, Bunyah, Coffs Harbour, Forster, Karuah, Kempsey, Nambucca, Purfleet/Taree, Stuart Island Tribal Elders Descendants, Thungutti, Unkya.

### **Northern Region**

The Northern Region consists of the following Local Aboriginal Land Council areas:

Amaroo, Anaiwan, Armidale, Ashford, Coonabarabran, Dorrigo Plateau, Glen Innes, Guyra, Moombahlene, Nungaroo, Red Chief, Tamworth, Walhallow, Wanaruah.

### **North Coast Region**

The North Coast Region consists of the following Local Aboriginal Land Council areas:

Baryugil, Birrigan Gargle, Bogal, Casino, Grafton-Ngerrie, Gugin Gudduba, Jali, Jana Ngalee, Jubullum, Muli Muli, Ngulingah, Tweed Byron, Yaegl.

### **North Western Region**

The North Western Region consists of the following Local Aboriginal Land Council areas:

Baradine, Brewarrina, Collarenabri, Coonamble, Goodooga, Lightning Ridge, Moree, Mungindi, Murrawari, Narrabri, Nulla Nulla, Pilliga, Toomelah, Walgett, Wee Waa, Weilmoringle.

### **South Coast Region**

The South Coast Region consists of the following Local Aboriginal Land Council areas:

Batemans Bay, Bega, Bodalla, Cobowra, Eden, Illawarra, Jerrinja, Merrimans, Mogo, Ngambri, Nowra, Ulladulla, Wagonga.

### **Sydney and Newcastle Region**

The Sydney and Newcastle Region consists of the following Local Aboriginal Land Council areas:

Awabakal, Bahtaba, Biraban, Darkinjung, Deerubbin, Gandangara, La Perouse, Metropolitan, Mindaribba, Tharawal, Worimi.

### **Western Region**

The Western Region consists of the following Local Aboriginal Land Council areas:

Balranald, Broken Hill, Cobar, Dareton, Ivanhoe, Menindee, Mutawintji, Tibooburra, Wanaaring, Wilcannia, Winbar.

### **Wiradjuri Region**

The Wiradjuri Region consists of the following Local Aboriginal Land Council areas:

Albury and District, Bathurst, Brungle/Tumut, Condobolin, Cowra, Cummerngunja, Deniliquin, Griffith, Hay, Leeton and District, Moama, Murrin Bridge, Narrandera, Onerwal, Orange, Peak Hill, Pejar, Wagga Wagga, Wamba Wamba, West Wyalong, Young.

## **Schedule 6 (Repealed)**