



New South Wales

Aboriginal Land Rights Amendment Act 2014 No 75

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Aboriginal Land Rights Amendment Act 2014 No 75

Act No 75, 2014

An Act to amend the *Aboriginal Land Rights Act 1983* to make provision with respect to Aboriginal Land Agreements; and for other purposes. [Assented to 19 November 2014]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Aboriginal Land Rights Amendment Act 2014*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Aboriginal Land Rights Act 1983 No 42

[1] Long title

Omit “of Aborigines”. Insert instead “of Aboriginal persons”.

[2] Preamble

Omit “Aborigines” wherever occurring. Insert instead “Aboriginal persons”.

[3] Section 4 Definitions

Omit the definition of *Chief Executive* from section 4 (1).

[4] Section 4 (1), definition of “community benefits scheme”

Insert “funded wholly or in part by an Aboriginal Land Council” after “provision of community benefits”.

[5] Section 4 (1)

Insert in alphabetical order:

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

[6] Section 4 (1), definition of “officer”

Omit the definition. Insert instead:

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.

[7] Section 4 (1), definition of “satisfactory audited financial statements and documents”

Omit the definition. Insert instead:

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.

[8] Section 36 Claims to Crown lands

Insert after section 36 (4):

- (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.

[9] Section 36 (5AA)–(5AC)

Insert after section 36 (5):

- (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.

[10] Section 36AA

Insert after section 36:

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.

[11] Section 36B

Insert after section 36A:

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.

[12] Section 40 Interpretation

Insert after section 40 (2) (a):

- (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

[13] Section 42E Approval required for land dealings by Local Aboriginal Land Councils

Omit the definition of *social housing management lease* from section 42E (6).

Insert instead:

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.

[14] Section 52 Functions of Local Aboriginal Land Councils

Insert “or to enter into Aboriginal Land Agreements” after “claims to Crown lands” in section 52 (2) (g).

[15] Section 52 (5) (c)

Insert “(including by establishing, acquiring, operating or managing business enterprises)” after “business enterprises”.

[16] Section 52 (5A) and (5B)

Insert after section 52 (5):

(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.

[17] Section 52A Community benefits schemes

Insert after section 52A (1):

(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)*).

[18] Section 52B Social housing schemes

Omit the section.

[19] Section 52C

Omit the section. Insert instead:

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.

[20] Section 52G Functions exercised by Council resolution

Omit section 52G (1) (d). Insert instead:

- (d) approval or amendment of the community, land and business plan of the Council,
- (d1) approval of transfers of assets under section 52C,

[21] Section 52G (1) (e)

Omit “relate to short-term residential tenancy agreements”.

Insert instead “do not require the approval of the New South Wales Aboriginal Land Council”.

[22] Section 57 Suspension of members from attending Council meetings

Omit section 57 (1). Insert instead:

- (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.

[23] Section 57A

Insert after section 57:

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.

[24] Section 63 Board members

Omit "second" from section 63 (1) and (3) wherever occurring. Insert instead "fourth".

[25] Section 78A Chief executive officer

Insert after section 78A (2) (a):

- (a1) to assist in the preparation and implementation of the Council's community, land and business plan,

[26] Section 78B Certain persons must not be employed as chief executive officers

Insert after section 78B (2):

- (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.

[27] Section 79 Certain persons must not be employed

Insert after section 79 (1):

- (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.

[28] Section 79 (2)

Omit “a councillor or an officer of a Local”. Insert instead “an officer of an”.

[29] Section 79 (2)

Omit “such a councillor or officer”.

Insert instead “an officer of an Aboriginal Land Council”.

[30] Section 82 Community, land and business plans

Insert after section 82 (1):

- (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.

[31] Section 83

Omit the section. Insert instead:

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.

[32] Section 84 Approval of community, land and business plans

Omit section 84 (2).

[33] Section 84 (5A)

Insert after section 84 (5):

- (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.

[34] Section 84 (6)

Omit the subsection. Insert instead:

- (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.

[35] Section 85 Chairperson may refer community, land and business plan to New South Wales Aboriginal Land Council

Omit section 85 (1).

[36] Section 91 Changes on initiative of Minister

Insert at the end of section 91 (1) (h):

, 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)*).

[37] Section 106 Functions of New South Wales Aboriginal Land Council

Insert “or enter into Aboriginal Land Agreements” after “claims to Crown lands” in section 106 (2) (f).

[38] Section 106 (3) (a1)

Insert after section 106 (3) (a):

- (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),

[39] Section 106 (8) (d)

Insert “(including by establishing, acquiring, operating or managing business enterprises)” after “business enterprises”.

[40] Section 108 Community benefits schemes

Omit section 108 (1) (b).

[41] Section 108 (1) (f)

Omit the paragraph.

[42] Section 109 Social housing schemes

Omit the section.

[43] Section 111

Omit the section. Insert instead:

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) Requirements 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:

- (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.

(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.

[44] Section 113 Policies relating to Aboriginal Land Council functions

Omit section 113 (1) (c). Insert instead:

- (c) the management of investments by Local Aboriginal Land Councils,

[45] Section 113 (1) (f)

Insert “, including any requirements for the verification and certification of accounts” after “Councils”.

[46] Section 113 (1) (g1)

Insert after section 113 (1) (g):

- (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),

[47] Section 137B Matters covered by plans

Omit “for carrying out” from section 137B (1) (c).

Insert instead “in relation to”.

[48] Section 138A Certain persons must not be employed as Chief Executive Officer

Insert after section 138A (2):

- (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.

[49] Section 139 Functions of Chief Executive Officer

Insert after section 139 (2) (a):

- (a1) to assist in the preparation and implementation of the Council's community, land and business plan,

[50] Section 152 Local Aboriginal Land Council Accounts

Omit section 152 (4). Insert instead:

- (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.

[51] Section 153 Local Aboriginal Land Councils to keep accounts

Omit section 153 (2)–(3). Insert instead:

- (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.

[52] Section 153 (4)

Omit the subsection.

[53] Section 153 (5) and (6)

Omit “audited” wherever occurring.

[54] Section 154 Regulations may set requirements to judge satisfactory financial statements

Omit the section.

[55] Section 158

Omit the section. Insert instead:

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.

[56] Section 160 NSW Aboriginal Land Council may give other Councils directions regarding accounting

Omit "to Local Aboriginal Land Councils" from section 160 (1).

Insert instead "to a Local Aboriginal Land Council or class of Local Aboriginal Land Councils".

[57] Section 160 (1) (c)

Omit the paragraph. Insert instead:

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

[58] Section 161 Annual reports

Omit section 161 (2). Insert instead:

- (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.

[59] Section 165AA

Insert after section 165:

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.

[60] Section 165A Delegation

Omit section 165A (a). Insert instead:

- (a) any person employed in Aboriginal Affairs, Department of Education and Communities, or

[61] Part 10, heading

Omit the heading. Insert instead:

Part 10 Conduct, disclosure and disciplinary matters

[62] Section 177 Codes of conduct

Omit section 177 (1). Insert instead:

- (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.

[63] Section 177 (3)

Omit "its". Insert instead "a".

[64] Part 10, Division 3A, heading

Omit the heading. Insert instead:

Division 3A Disciplinary action

[65] Sections 181A–181F

Omit sections 181A–181I. Insert instead:

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).

[66] Section 181J Appeals against disciplinary action by Registrar

Omit “A member of staff” from section 181J (1).

Insert instead “An officer or member of staff of an Aboriginal Land Council”.

[67] Section 181J (2)

Omit “member of staff”. Insert instead “officer or member of staff”.

[68] Section 181J (6)

Insert after section 181J (5):

- (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.

[69] Section 181K Referral of matters to NCAT

Omit section 181K (1) and (2). Insert instead:

- (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.

[70] Section 181L Alternatives to suspension or referral to NCAT

Omit section 181L (1).

[71] Section 181L (3)

Omit “suspending a councillor or Board member from office under this Division or taking action in relation to a member of staff”.

Insert instead “taking disciplinary action against an officer or member of staff of an Aboriginal Land Council”.

[72] Section 181M Expenses to be borne by Aboriginal Land Councils

Omit “a request made under section 181C” from section 181M (1).

Insert instead “disciplinary proceedings arising from a complaint or allegation made by an Aboriginal Land Council or the Board of a Local Aboriginal Land Council”.

[73] Section 181M (1)

Omit “the request”. Insert instead “alleged misconduct”.

[74] Section 181M (2)

Omit the subsection. Insert instead:

- (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.

[75] Section 181N Reasons to be given

Omit the section.

- [76] **Section 181O Other proceedings or actions not affected**
Omit “a councillor, Board member or”. Insert instead “an officer or a”.
- [77] **Section 184 Disclosure and presence in meetings**
Omit “or a councillor” from section 184 (1).
- [78] **Section 184 (2)**
Omit “, member of staff or councillor”. Insert instead “or member of staff”.
- [79] **Section 186 General disclosure**
Omit “or a councillor to the effect that the officer, staff member or councillor”.
Insert instead “to the effect that the officer or staff member”.
- [80] **Section 186**
Omit “, staff member’s or councillor’s” wherever occurring.
Insert instead “or staff member’s”.
- [81] **Part 10, Division 5 Complaints concerning non-disclosure**
Omit the Division.
- [82] **Part 10, Division 6, Subdivision 1 Proceedings relating to pecuniary interest matters**
Omit the Subdivision.
- [83] **Part 10, Division 6, Subdivision 2, heading**
Omit the heading. Insert instead:

Subdivision 2 Proceedings relating to misconduct
- [84] **Section 199A, heading**
Omit “misbehaviour”. Insert instead “misconduct”.
- [85] **Section 211 Decision of NCAT—interest matters**
Omit the section.
- [86] **Section 211A Decision of NCAT—conduct matters**
Omit “may, if” wherever occurring in section 211A (2) and (3).
Insert instead “may do any one or more of the following if”.
- [87] **Section 211A (2) and (3)**
Omit “behaviour” wherever occurring. Insert instead “conduct”.
- [88] **Section 211A (2)**
Omit “a councillor or Board member” where firstly occurring.
Insert instead “an officer of an Aboriginal Land Council”.
- [89] **Section 211A (2) (a)–(c)**
Omit “the councillor or Board member” wherever occurring.
Insert instead “the officer”.

[90] Section 211A (2) (d)

Omit the paragraph. Insert instead:

- (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

[91] Section 211A (2) (e)–(g)

Omit section 211A (2) (e). Insert instead:

- (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.

[92] Section 216

Omit the section. Insert instead:

216 Appointment of investigator into Aboriginal Land Councils

- (1) The New South Wales Aboriginal Land Council must prepare a list of investigators in accordance with the regulations from which the Registrar may appoint an investigator to investigate the affairs, or specified affairs, of a Local Aboriginal Land Council and submit that list to the Minister for approval (the *list of investigators*).
- (2) The Registrar may appoint, from the list of investigators, an investigator to investigate the affairs, or specified affairs, of a Local Aboriginal Land Council, including the efficiency and effectiveness of the Council, but only with the approval of the New South Wales Aboriginal Land Council.
- (3) The Minister may appoint an investigator to investigate the affairs, or specified affairs, of the New South Wales Aboriginal Land Council, including the efficiency and effectiveness of the Council.
- (4) If the Minister appoints an investigator to investigate the affairs of the New South Wales Aboriginal Land Council, the Minister must prepare a report in writing of the Minister's reasons for appointing the investigator to investigate the New South Wales Aboriginal Land Council.
- (5) 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.
- (6) An investigator appointed under this section 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.

[93] Section 217 Contents of investigator's instrument of appointment

Omit "the Minister appoints an investigator" from section 217 (1).

Insert instead "an investigator is appointed".

[94] Section 217 (1) (b)

Omit “, or the Minister”. Insert instead “or to the Registrar”.

[95] Section 218 Aboriginal Land Councils to assist investigators

Omit the penalty at the end of section 218 (1). Insert instead:

Maximum penalty:

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

[96] Section 218 (3)

Omit the penalty. Insert instead:

Maximum penalty: 60 penalty units.

[97] Section 219 Investigator to report

Omit “Minister” from section 219 (b). Insert instead “Registrar”.

[98] Section 220 Term of office of investigator may be extended

Omit “Minister” from section 220 (2). Insert instead “Registrar”.

[99] Section 221 Investigator may be removed

Omit “Minister” from section 221 (2). Insert instead “Registrar”.

[100] Section 221A Provision of information to Registrar and New South Wales Aboriginal Land Council

Omit the penalty at the end of section 221A (1). Insert instead:

Maximum penalty:

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

[101] Section 221A (2)

Omit the penalty. Insert instead:

Maximum penalty:

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

[102] Section 221B

Insert after section 221A:

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.

[103] Section 222 Administrators—Local Aboriginal Land Councils

Omit “Minister” wherever occurring in section 222 (1) and (3). Insert instead “Registrar”.

[104] Section 222 (1)

Omit “jointly prepared by the Chief Executive and the New South Wales Aboriginal Land Council”.

Insert instead “prepared, in accordance with the regulations, by the New South Wales Aboriginal Land Council and submitted to the Minister for approval”.

[105] Section 222 (1) (b)

Omit “audited”.

[106] Section 222 (1) (d)

Insert “, or a report by the New South Wales Aboriginal Land Council” after “Division 1” in section 222 (1) (d).

[107] Section 222 (1) (g) and (h)

Insert at the end of section 222 (1) (f):

, 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)*).

[108] Section 223A Notice of appointment of administrator

Omit “may,” from section 223A (1). Insert instead “or Registrar must,”.

[109] Section 223A (2)

Insert “or Registrar” after “The Minister”.

[110] Section 223B

Omit the section. Insert instead:

223B Interim actions pending appointment of administrator

(1) The Minister or Registrar may, by notice in writing to an Aboriginal Land Council, take any of the following actions pending the appointment of an administrator for the Council by the Minister or Registrar:

- (a) prohibit the Council from exercising specified functions or taking specified actions, except with the approval of the Minister or Registrar appointing the administrator, for a specified period,
- (b) appoint a person to act as an interim administrator for the Council, with specified functions, for a period not exceeding 3 months.

Note. Section 222 provides that the Registrar may appoint an administrator in respect of a Local Aboriginal Land Council and section 223 provides that the Minister may appoint an administrator in respect of the New South Wales Aboriginal Land Council.

- (2) A notice under this section ceases to have effect if an administrator is appointed under this Division or the Minister or Registrar notifies the Council, in writing, that an administrator will not be appointed.
- (3) The Minister or Registrar must notify the Aboriginal Land Council in writing if the decision is made not to appoint an administrator.
- (4) The Minister or Registrar may revoke or vary a notice prohibiting the Council from exercising specified functions or taking specified actions or appointing a person to act as an interim administrator.
- (5) Any person who knowingly contravenes a prohibition in a notice given under this section, or causes an Aboriginal Land Council to contravene such a provision, is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—60 penalty units, or
- (b) in the case of a corporation—150 penalty units.

(6) Section 223A does not apply in respect of the appointment of an administrator under this section so as to require notice to be given before the proposed appointment. However the Minister or Registrar must, at the time of the appointment, give the notice referred to in that section and, if written representations are received from any person or body to whom notice was given, review the appointment of the administrator taking into account any such representations.

[111] Section 224 Contents of administrator's instrument of appointment

Omit "the Minister appoints an administrator" from section 224 (1).

Insert instead "an administrator is appointed".

[112] Section 225 Certain persons ineligible to be administrators

Insert "or Registrar" after "Minister".

[113] Section 225 (c)

Omit the paragraph. Insert instead:

- (c) in the case of the appointment of an administrator of a Local Aboriginal Land Council, a member of that Local Aboriginal Land Council,

[114] Section 227 Officers to assist administrator

Omit the penalty at the end of section 227 (1). Insert instead:

Maximum penalty:

- (a) in the case of an individual—30 penalty units, or
- (b) in the case of a corporation—75 penalty units.

[115] Section 227 (3)

Omit the penalty. Insert instead:

Maximum penalty: 60 penalty units.

[116] Section 229 Administrator to report monthly

Omit “Minister” from section 229 (1) (a). Insert Instead “Registrar”.

[117] Section 229 (3)

Omit the subsection. Insert instead:

- (3) Directions concerning the form and content of such reports may be given to the administrator by:
 - (a) if the administrator is appointed for the New South Wales Aboriginal Land Council—the Minister, or
 - (b) if the administrator is appointed for a Local Aboriginal Land Council—the Registrar.

[118] Section 230 Limitations on certain land dealings by administrator

Insert after section 230 (2) (c):

- (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)*).

[119] Section 231 Term of office of administrator may be extended

Omit “Minister” from section 231 (2). Insert instead “Registrar”.

[120] Section 231 (3)

Insert “or Registrar” after “Minister”.

[121] Section 232 Administrator may be removed

Omit “Minister” from section 232 (2). Insert instead “Registrar”.

[122] Section 234 Appointment of advisors

Omit section 234 (1). Insert instead:

- (1) The Registrar may appoint an advisor to the Board of a Local Aboriginal Land Council if the Registrar is of the opinion that the Council or the Board of the Council requires assistance in the exercise of functions under this Act.

[123] Section 234 (2)

Omit “jointly prepared by the Chief Executive and the New South Wales Aboriginal Land Council”.

Insert instead “prepared by the New South Wales Aboriginal Land Council and approved by the Minister”.

[124] Section 234 (4)

Omit “by the Minister”.

[125] Section 235 Registrar may issue compliance directions

Omit “, an officer of an Aboriginal Land Council or a councillor” from section 235 (1) and (2) wherever occurring.

Insert instead “or an officer of an Aboriginal Land Council”.

[126] Section 235 (1) and (2)

Omit “, officer or councillor” wherever occurring. Insert instead “or officer”.

[127] Section 236 Registrar may refer failure to comply to Court

Omit “, an officer of an Aboriginal Land Council or a councillor”.

Insert instead “or an officer of an Aboriginal Land Council”.

[128] Section 237 Court to determine compliance matters

Omit the penalty at the end of section 237 (3). Insert instead:

Maximum penalty:

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

[129] Section 241 Reference of disputes to Court

Omit the penalty at the end of section 241 (4). Insert instead:

Maximum penalty:

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

[130] Section 248 Aboriginal Land Councils to be public authorities etc for certain purposes

Insert at the end of the section:

- (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*.

[131] Section 248A

Insert after section 248:

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*.

[132] Section 248B

Insert before section 249:

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.

[133] Section 252 Regulations

Insert after section 252 (2) (m):

- (n) the making of Aboriginal Land Agreements under section 36AA.

[134] Schedule 1 Provisions relating to the Registrar

Omit clause 3. Insert instead:

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.

[135] Schedule 4 Savings, transitional and other provisions

Insert after clause 45 (6):

- (7) This clause ceases to apply on the repeal of section 52B by the *Aboriginal Land Rights Amendment Act 2014*.

[136] Schedule 4

Insert at the end of the Schedule:

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.

[Second reading speech made in—
Legislative Assembly on 21 October 2014
Legislative Council on 12 November 2014]