



New South Wales

# Aboriginal Land Rights Amendment Bill 2009

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Aboriginal Land Rights Act 1983* (the *Principal Act*) as follows:

- (a) to require all dealings with land (other than acquisition of land) by the New South Wales Aboriginal Land Council (the *NSWALC*) to be consistent with its community, land and business plan and any applicable policies of the NSWALC,
- (b) to require all dealings with land (other than acquisition of land) by a Local Aboriginal Land Council (a *LALC*) to be approved by the NSWALC,
- (c) to specify procedures and requirements for approvals by the NSWALC of land dealings and to provide for assessment of land dealings by expert advisory panels,
- (d) to prohibit registration of land dealings by Aboriginal Land Councils under the *Real Property Act 1900* unless the registration application is accompanied by a registration approval certificate,
- (e) to provide for a system of registration prohibition notices to enforce agreements implementing conditions of approvals of land dealings,

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- (f) to provide for a community development levy to be paid by LALCs on dealings with land and for the collection, use and payment of the proceeds of that levy and to provide for matching payments to be made by the NSWALC,
- (g) to re-enact certain provisions relating to land dealings,
- (h) to prohibit the NSWALC from delegating its land dealing approval functions,
- (i) to make other minor and consequential amendments,
- (j) to enable regulations to be made as a consequence of the enactment of the proposed Act and to insert a transitional provision.

The proposed Act also makes related amendments to other Acts and regulations.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

## **Schedule 1      Amendment of Aboriginal Land Rights Act 1983 No 42**

**Schedule 1 [3]** repeals Division 4 of Part 2 of the Principal Act and inserts proposed Divisions 4 (proposed sections 40–42P) and 4A (proposed sections 42Q–42X).

Proposed Division 4

Proposed section 40 defines words and expressions used in the proposed Divisions. ***Deal with land*** means sell, exchange, lease, mortgage, dispose of or otherwise create or pass a legal or equitable interest in land, grant or release an easement or covenant over land, enter into agreements under certain Acts, subdivide or consolidate land, make a development application and do any other action relating to land that is prescribed by the regulations.

Proposed section 41 defines ***dealing approval certificate*** and ***registration approval certificate*** and makes a dealing approval certificate conclusive evidence of the matters specified in it. A dealing approval certificate is a certificate by the Chief Executive Officer of the NSWALC that a land dealing by the NSWALC complies with the proposed Division or that a land dealing by a LALC has been approved by the NSWALC. A registration approval certificate is a certificate by the Chief Executive Officer that a registrable instrument (relating to a land dealing by the NSWALC or a LALC) can be registered or recorded under the *Real Property Act 1900* or that a plan or other instrument can be registered under the *Conveyancing Act 1919*.

Proposed sections 42–42B re-enact, with minor variations, sections 40AA, 40AB and 42 of the Principal Act.

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Proposed section 42C provides that a dealing with land by an Aboriginal Land Council that contravenes proposed section 42D or 42E is void. The provision is in addition to the requirements of or under any other Act or law in relation to a land dealing.

Proposed section 42D prohibits the NSWALC from dealing with land unless it has notified the LALC in which the land is situated of the proposed dealing and considered any comments by the LALC. It also requires the NSWALC not to deal with land unless it has had regard to its community, land and business plan and any applicable policies. The Chief Executive Officer of the NSWALC must give a dealing approval certificate if satisfied that the NSWALC has complied with the proposed Division in relation to a land dealing and must also give a registration approval certificate for a registrable instrument if satisfied that the instrument is a registrable instrument relating to such a dealing. Leases for periods of less than 3 years will not be subject to the proposed section.

Proposed section 42E prohibits a LALC from dealing with land except in accordance with an approval by the NSWALC. Leases for periods of less than 3 years (other than certain social housing management leases) will not be subject to the proposed section. The proposed section also provides that an agreement by a LALC to deal with land is, if the land dealing has not been approved (if required), unenforceable against the LALC.

Proposed section 42F sets out requirements for applications for approval of LALC land dealings by the NSWALC and also contains the power to make regulations about assessment fees and other related matters.

Proposed section 42G sets out requirements for approval of LALC land dealings by the NSWALC. The NSWALC must approve the dealing if it is approved at a meeting of the LALC that complies with the proposed section and the application is in accordance with the proposed Act. However, the NSWALC may refuse to approve a land dealing if it is of the opinion that the land dealing is, or is likely to be, contrary to the interests of LALC members or other Aboriginal persons within the area of the LALC. The proposed section requires any conditions of approval to be able to be satisfied before completion of the land dealing but also enables a condition requiring an agreement relating to ongoing obligations to be entered into.

Proposed section 42H requires the NSWALC to give a LALC a written statement of reasons for a decision to refuse approval of a land dealing or to impose conditions on a land dealing within 28 days after the LALC requests such a statement.

Proposed section 42I enables the NSWALC to constitute expert advisory panels to assess applications for approvals of dealings with land.

Proposed section 42J prohibits the NSWALC from revoking a land dealing approval if the land dealing has been completed (whether or not it is required to be, or has been, registered). It also provides that the relevant approval certificates cease to have effect on revocation of the approval.

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Proposed section 42K requires the Chief Executive Officer of the NSWALC to give a dealing approval certificate for a LALC land dealing within 14 days after it is approved by the NSWALC. It also requires a registration approval certificate to be given for a LALC land dealing if the Chief Executive Officer is satisfied that the instrument concerned is a registrable instrument, that any conditions of the NSWALC approval have been met and that any community development levy has been paid.

Proposed section 42L limits the right to bring proceedings in relation to a decision to approve or not to approve a land dealing, under the *Land and Environment Court Act 1979* or for judicial review in any other court, to the LALC concerned.

Proposed section 42M prohibits the Registrar-General from registering or recording a transfer or other dealing relating to land of an Aboriginal Land Council unless the transfer or dealing is accompanied by a registration approval certificate relating to the transfer or dealing or is not required to have such a certificate. A registration or recording prohibited by the proposed section will have no effect.

Proposed section 42N provides for agreements entered into in accordance with a condition imposed by an approval by the NSWALC of a land dealing (a **land dealing approval agreement**) to be registered on the title of land under the *Real Property Act 1900* or in the General Register of Deeds (in the case of old system title land). The effect of registration of an agreement will be to make the agreement binding on the successors in title to the owner who entered the agreement.

Proposed sections 42O and 42P establish a system of registration prohibition notices for land subject to a registered land dealing approval agreement. The NSWALC may lodge a registration prohibition notice with the Registrar-General for recording on the title of land that is subject to a land dealing approval agreement. Notice must be given to the registered proprietors of estates or interests in the land. The Registrar-General is prohibited from registering or recording a land dealing that is prohibited by a registration prohibition notice, except with the consent of the NSWALC. The NSWALC must not refuse consent if the dealing is permitted by the agreement or does not materially affect its performance or enforcement.

Proposed Division 4A

Proposed section 42Q provides that words and expressions used in the proposed Division have the same meaning as they have in the *Duties Act 1997*.

Proposed section 42R requires a LALC to pay a community development levy on specified dealings with land and enables related regulations to be made.

Proposed section 42S provides that the community development levy is not payable for transactions between Aboriginal Land Councils.

Proposed section 42T provides that the amount of the community development levy for a transaction is to be the prescribed percentage (if any) of the amount of duty payable for the transaction.

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Proposed section 42U provides for the payment to the NSWALC of the amounts of community development levy collected by the Chief Commissioner of State Revenue, as agreed with the Chief Commissioner, and also requires the NSWALC to match the payments of community development levy made by LALCs.

Proposed section 42V enables the Minister to waive matching payments by the NSWALC in appropriate circumstances.

Proposed section 42W enables regulations to be made with respect to the application of provisions of the *Duties Act 1997* in respect of the community development levy and other matters related to the levy.

Proposed section 42X provides that the proposed Division is to be read together with the *Taxation Administration Act 1996* (other than Part 4 of that Act).

**Schedule 1 [1], [2], [6] and [8]** make amendments consequential on the amendment made by **Schedule 1 [3]**.

**Schedule 1 [4] and [11]** amend sections 52 and 106 of the Principal Act to insert notes relating to the powers of LALCs and the NSWALC as statutory corporations.

**Schedule 1 [5]** inserts proposed section 52AA into the Principal Act. The proposed section re-enacts existing section 41 in relation to LALCs.

**Schedule 1 [7]** amends section 52G of the Principal Act to require a LALC to exercise its function of approving a land dealing by resolution of its voting members.

**Schedule 1 [9]** amends section 106 of the Principal Act to include the function of approving land dealings by LALCs in the list of functions of the NSWALC.

**Schedule 1 [12]** inserts proposed section 106A into the Principal Act. The proposed section re-enacts existing section 41 in relation to the NSWALC.

**Schedule 1 [13]** amends section 113 of the Principal Act to enable policies to be made by the NSWALC in relation to land dealings by LALCs and in relation to the distribution of amounts from the New South Wales Aboriginal Land Council Community Fund.

**Schedule 1 [14]** amends section 116 of the Principal Act to prevent the NSWALC from delegating functions relating to the administration of the New South Wales Aboriginal Land Council Community Fund established under proposed section 149A (see **Schedule 1 [16]**).

**Schedule 1 [15]** amends section 116 of the Principal Act to add approval of land dealings by LALCs to the list of functions that may not be delegated by the NSWALC.

**Schedule 1 [16]** inserts proposed section 149A into the Principal Act. The proposed section establishes the New South Wales Aboriginal Land Council Community Fund, into which payments of community development levy are to be paid. The Fund is to be used for the management and acquisition of land by LALCs and for

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community benefit schemes by LALCs and other purposes. **Schedule 1 [10]** makes a consequential amendment.

**Schedule 1 [17]** amends section 150 of the Principal Act to enable amounts in the New South Wales Aboriginal Land Council Community Fund to be taken into account when determining the capital value of the New South Wales Aboriginal Land Council Account.

**Schedule 1 [18]** inserts proposed section 239A into the Principal Act. The proposed section requires a dispute relating to a decision to approve or not to approve a land dealing to be referred to the Registrar for mediation, conciliation or arbitration if an Aboriginal Land Council proposes to commence legal proceedings.

**Schedule 1 [19]** amends section 242 of the Principal Act to add members of expert advisory panels to the persons who are protected under that section from personal liability for acts or omissions done in good faith for the purpose of executing that Act or any other Act.

**Schedule 1 [20]** amends Schedule 4 to the Principal Act to enable regulations containing provisions of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [21]** inserts savings and transitional provisions into Schedule 4 to the Principal Act.

## **Schedule 2      Amendment of other Acts and instruments**

**Schedule 2.1** amends the *Aboriginal Land Rights Regulation 2002* to insert proposed Part 10 (Land Dealings) and to make other consequential amendments. The proposed Part:

- (a) prescribes the forms for dealing approval certificates and registration approval certificates, and
- (b) prescribes requirements for land dealing approval applications and the fees for applications and assessment of applications, and
- (c) prescribes the procedures for dealing with applications, including the circumstances when the NSWALC is not required to assess a land dealing approval application, and
- (d) contains provisions relating to expert advisory panels, and
- (e) contains provisions relating to the community development levy, including the amount of the levy and periods for payment, as well as making provision for the application of specified provisions of the *Duties Act 1997* and interim assessments of liability.

**Schedule 2.2** amends the *Environmental Planning and Assessment Act 1979* to enable regulations to be made:

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- (a) requiring the NSWALC to consent to applications for approval of Part 3A projects relating to LALC land if LALC approval is required as the owner of land, and
- (b) requiring the NSWALC to consent to applications for the modification of development consents relating to such land, and
- (c) enables regulations containing savings and transitional provisions to be made.

**Schedule 2.3** amends the *Environmental Planning and Assessment Regulation 2000* to:

- (a) require the consent of the NSWALC to a Part 3A project relating to LALC land if the consent of the LALC is required, and
- (b) require the consent of the NSWALC to a development application made in respect of such land, and
- (c) require notice of determination of a development application, or an application to modify a development consent, for such land to be given to the NSWALC, and
- (d) require the consent of the NSWALC to an application for the modification of development consents relating to such land.

**Schedule 2.4** amends the *National Parks and Wildlife Act 1974* to require the consent of the NSWALC to a conservation agreement under that Act relating to LALC land.

**Schedule 2.5** amends the *Taxation Administration Act 1996* to provide for the provisions of that Act (which apply to the collection of taxes) to apply to the community development levy.

**Schedule 2.6** amends the *Threatened Species Conservation Act 1995* to require the consent of the NSWALC to a biobanking agreement under that Act relating to LALC land and for notice to be served on the NSWALC of any application to transfer LALC land to the Minister on the ground of a contravention of a biobanking agreement.

**Schedule 2.7** amends the *Wilderness Act 1987* to require the consent of the NSWALC to a wilderness protection agreement under that Act relating to LALC land.

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New South Wales

# Aboriginal Land Rights Amendment Bill 2009

No. , 2009

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## A Bill for

An Act to amend the *Aboriginal Land Rights Act 1983* with respect to land dealings by Aboriginal Land Councils and community development levies; and for other purposes.

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Clause 1            Aboriginal Land Rights Amendment Bill 2009

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Aboriginal Land Rights Amendment Act 2009*.

**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]      Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

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

### **[2]      Section 4 (1), definition of “land”**

Omit the definition. Insert instead:

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

### **[3]      Part 2, Divisions 4 and 4A**

Omit Division 4. Insert instead:

## **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.

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Schedule 1      Amendment of Aboriginal Land Rights Act 1983 No 42

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**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*.

**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

- (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 Aborigines*** if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aborigines.

**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.

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### Schedule 1      Amendment of Aboriginal Land Rights Act 1983 No 42

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- (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) in the case of a land dealing with land transferred to the New South Wales Aboriginal Land Council under section 36, both the Crown Lands Minister referred to in that section and the Minister have been notified of the proposed dealing, and
  - (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 Aborigines 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.

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### Schedule 1 Amendment of Aboriginal Land Rights Act 1983 No 42

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- (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 lease for a period of less than 3 years (including any option to renew the lease), other than a social housing management lease,
  - (b) a land dealing prescribed by the regulations for the purposes of this section.
- (3) A Local Aboriginal Land Council must not deal with land vested in it that is land transferred to the Council under section 36 unless both the Crown Lands Minister referred to in that section and the Minister have been notified of the proposed dealing.
- (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 entered into for the purposes of the provision of or management of a social housing scheme (other than a residential tenancy agreement).
- (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 Aborigines,
- (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 Aborigines 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

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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:

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- (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.

**42O Enforcement of land dealing approval agreements—registration prohibition notices**

- (1) This section applies to land under the *Real Property Act 1900* in respect of which a land dealing approval agreement has been entered into that:
- (a) has been registered under section 42N, or
  - (b) may be registered under that section.
- (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:

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- (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.
  - (10) A registration prohibition notice that takes effect before any land dealing approval agreement relating to the land is registered under section 42N ceases to have effect if a land dealing approval agreement is not registered within 6 months after the notice takes effect.

#### **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

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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:

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- (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**

The amount of the community development levy payable for a dutiable transaction is the prescribed percentage (if any) of the amount of duty payable for the dutiable transaction.

**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.

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**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* 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).

**[4] Section 52 Functions of Local Aboriginal Land Councils**

Insert at the end of the section:

**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.

**[5] Section 52AA**

Insert after section 52A:

**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.

**[6] Section 52B Social housing schemes**

Omit section 52B (4).

**[7] Section 52G Functions to be exercised by Council resolution**

Insert “and land dealing approval agreements (within the meaning of Division 4 of Part 2)” after “land” in section 52G (e).

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**[8] Sections 83 (2) (c) and 137B (2) (c)**

Omit “section 40AA” wherever occurring.

Insert instead “section 42”.

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

Insert after section 106 (3) (g):

- (h) to approve land dealings by Local Aboriginal Land Councils.

**[10] Section 106 (5)**

Insert “, the New South Wales Aboriginal Land Council Community Fund” after “New South Wales Aboriginal Land Council Account”.

**[11] Section 106, note**

Insert at the end of the section:

**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.

**[12] Section 106A**

Insert after section 106:

**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.

**[13] Section 113 Policies relating to Aboriginal Land Council functions**

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



- (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,

**[14] Section 116 Delegation by New South Wales Aboriginal Land Council**

Insert “, the New South Wales Aboriginal Land Council Community Fund” after “Account” in section 116 (1) (a).

**[15] Section 116 (1) (f1)**

Insert after section 116 (1) (f):

- (f1) approval under Division 4 of Part 2 of land dealings by Local Aboriginal Land Councils,

**[16] Section 149A**

Insert after section 149:

**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

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- (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.

**[17] Section 150 Preservation of money in NSW Aboriginal Land Council Account**

Insert after section 150 (2):

- (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.

**[18] Section 239A**

Insert after section 239:

**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.

**[19] Section 242 Exclusion of personal liability**

Insert after section 242 (1) (d):

- (e) a person who is a member of an expert advisory panel constituted under section 42I,

**[20] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1A (1):

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**[21] Schedule 4, Part 9**

Insert after Part 8:

**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.

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- (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.

## **Schedule 2    Amendment of other Acts and instruments**

### **2.1    Aboriginal Land Rights Regulation 2002**

**[1]    Clause 6 Certificate relating to disposal of land**

Omit the clause.

**[2]    Part 10**

Insert after Part 9:

### **Part 10    Land dealings**

#### **Division 1    Approval of land dealings**

**101    Interpretation**

(1)    In this Part:

*land dealing approval application* means an application under section 42F of the Act by a Local Aboriginal Land Council for approval by the New South Wales Aboriginal Land Council of a land dealing.

(2)    Words and expressions in this Part have the same meaning as they have in Divisions 4 and 4A of Part 2 of the Act.

**102    Form of certificates**

(1)    For the purposes of sections 42D (2) and 42K (1) of the Act, the prescribed form of a dealing approval certificate is Form 1 in Schedule 6.

(2)    For the purposes of sections 42D (3) and 42K (2) of the Act, the prescribed form of a registration approval certificate is Form 2 in Schedule 6.

**103    Notice of meetings of LALCs**

(1)    For the purposes of section 42G (5) (a) of the Act, notice of a meeting to approve a land dealing must be given not less than 7 clear days before the meeting.

(2)    The notice must:

(a)    clearly identify the land subject to the dealing, and

(b)    state the manner in which the land is to be dealt with, and

- (c) state that at the meeting it is proposed to decide whether or not to approve of the land dealing.

**104 Applications for approval of land dealings**

- (1) A land dealing approval application is to be made in the form approved by the New South Wales Aboriginal Land Council.
- (2) An application must:
  - (a) identify the land affected by the proposed land dealing, and
  - (b) specify the manner in which the land is to be dealt with, and
  - (c) set out any terms or conditions of the proposed dealing, and
  - (d) be accompanied by a copy of the resolution of the Local Aboriginal Land Council approving the dealing, and
  - (e) be accompanied by information and other material establishing that the Local Aboriginal Land Council has complied with the requirements of section 42G (5) of the Act, and
  - (f) be accompanied by a valuation of the land prepared by a registered valuer within the preceding 12 months, and
  - (g) be accompanied by the application fee.

**105 Approval application fees**

- (1) For the purposes of section 42F (2) (c) of the Act, the fee for making an application to the New South Wales Aboriginal Land Council for approval of a land dealing is \$250.
- (2) No application fee is payable if the land dealing consists of a development application.

**106 Application assessment fees**

- (1) A Local Aboriginal Land Council must pay to the New South Wales Aboriginal Land Council the assessment fee (if any) determined by the New South Wales Aboriginal Land Council for assessment of a land dealing approval application.
- (2) The assessment fee is to be an amount that reflects the reasonable costs incurred by the New South Wales Aboriginal Land Council in assessing the land dealing approval application concerned, including (but not limited to), the costs of any expert advisory panel constituted for the purposes of assessing the application for approval.

- (3) The assessment fee must be paid:
  - (a) on or before the date, or on or after the occurrence of an event, as required by the New South Wales Aboriginal Land Council, or
  - (b) in accordance with arrangements agreed between the Local Aboriginal Land Council and the New South Wales Aboriginal Land Council.
- (4) The New South Wales Aboriginal Land Council may, after an application is made, require a Local Aboriginal Land Council to give security (whether by way of deposit of money or otherwise) for the payment of the assessment fee for an approval.

**Note.** A security in the form of a mortgage is a land dealing for which compliance with the Act will be required.
- (5) The New South Wales Aboriginal Land Council may waive the payment by a Local Aboriginal Land Council of the whole or any part of an assessment fee.

**107 Application procedures**

- (1) The New South Wales Aboriginal Land Council must, as soon as practicable after receiving a land dealing approval application, notify the Local Aboriginal Land Council, in writing, of the following:
  - (a) the manner in which it intends to assess the application and whether or not the application, or any part of it, is to be referred to an expert advisory panel,
  - (b) the assessment fee for the application, or the manner in which the assessment fee is to be determined and an estimate of the amount of the fee,
  - (c) the time within which, or the event on the occurrence of which, the assessment fee is to be paid and any security for payment required to be provided,
  - (d) the estimated time for determining the application,
  - (e) that the New South Wales Aboriginal Land Council is not required to determine the application unless the Local Aboriginal Land Council agrees to the proposed manner of determination, fees and any security.
- (2) The New South Wales Aboriginal Land Council is not required to assess a land dealing approval application, if notice has been given in accordance with this clause in relation to the application, unless:

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- (a) the application complies with section 42F (2) of the Act, and
- (b) the Local Aboriginal Land Council notifies the New South Wales Aboriginal Land Council that it agrees to the proposed manner of determination, fees and any security, and
- (c) any security required by the notice under subclause (1) has been provided, and
- (d) any assessment fee is paid in accordance with that notice or it is satisfied that the fee will be paid in accordance with that notice.

#### **108 Register of members for expert advisory panels**

- (1) The New South Wales Aboriginal Land Council is to establish a register of persons who may be appointed to expert advisory panels.
- (2) A person may be listed on the register if the person has expertise in one or more of land valuation, property development, planning, business, finance, corporate governance or aboriginal heritage or culture or any other expertise that the New South Wales Aboriginal Land Council considers relevant.
- (3) The register is to be in the form determined by the New South Wales Aboriginal Land Council.
- (4) The register is to contain the following particulars:
  - (a) the name and contact address of each person on the register,
  - (b) the area of expertise of each such person,
  - (c) any other particulars determined by the New South Wales Aboriginal Land Council.
- (5) The New South Wales Aboriginal Land Council may at any time add the name of a person to or remove the name of a person from the register.
- (6) The New South Wales Aboriginal Land Council must, not less than once every 12 months, forward a copy of the register to the Minister.
- (7) The New South Wales Aboriginal Land Council must, if the name of a person is added to or removed from the register, forward a copy of the revised register to the Minister.
- (8) The New South Wales Aboriginal Land Council must ensure that the register is made publicly available.



**109 Expert advisory panels**

- (1) The New South Wales Aboriginal Land Council may constitute an expert advisory panel to assess a land dealing approval application, or any part or aspect of an application, if:
  - (a) it is of the opinion that it is appropriate to do so and clause 107 has been complied with, or
  - (b) at the request of the Local Aboriginal Land Council seeking approval of the land dealing concerned.
- (2) A panel may consider one or more land dealing approval applications.
- (3) A panel is to determine the procedure for the calling of any meetings held by it and for the conduct of business at those meetings.
- (4) A panel is to consist of one or more members selected from the persons listed on the register established under this Division, as determined by the New South Wales Aboriginal Land Council.
- (5) A member of an expert advisory panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the New South Wales Aboriginal Land Council may from time to time determine in respect of the member.
- (6) The New South Wales Aboriginal Land Council may at any time and for any or no reason remove a member of an expert advisory panel from office.

**110 Assessments and reports by expert advisory panels**

- (1) For the purposes of an assessment, an expert advisory panel must review any material provided to the New South Wales Aboriginal Land Council by the Local Aboriginal Land Council relating to the relevant land dealing approval application and any other material provided to the panel by the New South Wales Aboriginal Land Council.
- (2) A panel may, at the request of the New South Wales Aboriginal Land Council, consider whether the proposed land dealing is, or is likely to be, contrary to the interests of the members of the Local Aboriginal Land Council concerned or other Aboriginal persons within the area of the Council.
- (3) An expert advisory panel may, if requested to do so by the New South Wales Aboriginal Land Council, include in a report to the Council a recommendation as to whether the proposed land dealing approval application should be approved and a

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recommendation as to conditions that may be imposed on any approval.

- (4) A panel must submit a report to the New South Wales Aboriginal Land Council within the time required by the Council.

**111 Pecuniary interests in land dealings**

- (1) A member of an expert advisory panel who has a pecuniary interest in a matter being assessed by the panel must disclose the nature of the interest to the New South Wales Aboriginal Land Council as soon as practicable.
- (2) A person who has, or who discloses, a pecuniary interest in a matter is not eligible to be appointed to, or to remain as a member of, an expert advisory panel assessing the matter.
- (3) Words and expressions used in this clause have the same meaning as they have in Part 10 of the Act.

**112 Effect of other Acts on appointment to panel**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member of an expert advisory panel.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member of an expert advisory panel or from accepting and retaining any remuneration payable to the person under this Regulation as such a member.

**Division 2      Community development levy and New South Wales Aboriginal Land Council Community Development Fund**

**113 Amount of community development levy**

- (1) For the purposes of determining the amount of the community development levy, the prescribed percentage (if any) of the duty payable under the *Duties Act 1997* for a dutiable transaction is the percentage set out in Schedule 6A.

**Note.** The general rate of duty for dutiable transactions is set out in section 32 of the *Duties Act 1997* and the premium rates for other land and property are set out in sections 32A–32C of that Act.

- (2) The community development levy is not payable for a dutiable transaction if the dutiable value of the land concerned is \$80,000 or less.

**114 Periods within which community development levy payable**

- (1) A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if the community development levy is paid within the lodgment period for the levy.
- (2) The *lodgment period* for the community development levy is:
- (a) in the case of an agreement for sale or transfer of land for consideration, and any transfer in completion of such an agreement, the period commencing when the liability for community development levy first arises and ending on the settlement of the agreement or transfer, and
- (b) in any other case, the period commencing when a liability for the community development levy first arises and ending 3 months after the liability for the levy first arises.

**115 Application of Duties Act 1997**

- (1) Sections 15–18, 25 and 31 of the *Duties Act 1997* apply, with any necessary modifications, in respect of the community development levy for a dutiable transaction in the same way as they apply in respect of duty under that Act for a dutiable transaction.
- (2) Part 1 of Chapter 12 of the *Duties Act 1997* applies, with any necessary modifications, in respect of the payment of the community development levy and instruments associated with dutiable transactions for which the levy is payable, in the same way as it applies to the payment of duty and instruments associated with dutiable transactions.

**116 Interim payment of duty**

- (1) If the full dutiable value of land subject to an agreement for sale or transfer cannot, in the Chief Commissioner’s opinion, be immediately ascertained, the Chief Commissioner may make an assessment by way of estimate under section 11 (2) of the *Taxation Administration Act 1996*.
- (2) A written instrument effecting or evidencing the sale or transfer may be stamped “interim stamp” only.

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**[3] Part 10 Miscellaneous**

Renumber existing Part 10 as Part 11 and renumber clauses 101–103 as clauses 117–120, respectively, with cross references in the Regulation renumbered accordingly.

**[4] Schedules 6 and 6A**

Insert after Schedule 5:

## **Schedule 6      Forms**

(Clause 102)

### **Form 1 Dealing Approval Certificate**

(Sections 42D (2) and 42K (1) of the Aboriginal Land Rights Act 1983)

I [*name*] Chief Executive Officer of the New South Wales Aboriginal Land Council certify that this Dealing Approval Certificate is given on [*date*] and:

- (a) authorises a land dealing being [*type of land dealing*] by [*name the Aboriginal Land Council*] with [*name other parties*] relating to land being [*enter title reference*] as approved by a resolution of the New South Wales Aboriginal Land Council at [*meeting number*] held on [*insert date*], and
- (b) is given subject to the land dealing complying with the following conditions [*specify any conditions*].

[*signature*]  
.....

Signed on behalf of the New South Wales  
Aboriginal Land Council by the Chief Executive  
Officer of the New South Wales Aboriginal Land  
Council pursuant to the *Aboriginal Land Rights  
Act 1983*

[*witness*]  
.....

[name of witness]  
.....

[address of witness]  
.....

### **Form 2 Registration Approval Certificate**

(Sections 42D (3) and 42K (2) of the Aboriginal Land Rights Act 1983)

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I [*name*] Chief Executive Officer of the New South Wales Aboriginal Land Council certify that this Registration Approval Certificate is given on [*date*] and authorises the registration of dealing type [*Transfer, mortgage, easement, Deposited Plan etc*] by [*name the Aboriginal Land Council*] to [*name other parties*] relating to land being [*enter title details*] and that the [*dealing type*] does not contravene the *Aboriginal Land Rights Act 1983*.

[*signature*]  
.....

Signed on behalf of the New South Wales  
Aboriginal Land Council by the Chief Executive  
Officer of the New South Wales Aboriginal Land  
Council pursuant to the *Aboriginal Land Rights  
Act 1983*

[*witness*]  
.....

[*name of witness*]  
.....

[*address of witness*]  
.....

## Schedule 6A Community development levy

(Clause 113)

### Amount of community development levy payable in respect of dutiable transactions

Dutiable value of land	Amount of community development levy
More than \$80,000 but not more than \$1,000,000	100% of amount of duty
More than \$1,000,000	150% of amount of duty

## 2.2 Environmental Planning and Assessment Act 1979 No 203

### [1] Section 75Z Regulations for purposes of Part

Insert at the end of section 75Z (d):

, and

- (e) requiring the New South Wales Aboriginal Land Council to consent to applications for approvals under this Part on

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land owned by Local Aboriginal Land Councils, if the consent of the Local Aboriginal Land Council concerned is required as owner of the land.

**[2] Section 105 Regulations—Part 4**

Insert after section 105 (1) (c):

- (c1) requiring the New South Wales Aboriginal Land Council to consent to applications for the modification of development consents relating to land owned by Local Aboriginal Land Councils,

**[3] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

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**2.3 Environmental Planning and Assessment Regulation 2000**

**[1] Clause 8F Owner's consent or notification**

Insert after clause 8F (1):

- (1A) The consent of the New South Wales Aboriginal Land Council is required for a project application relating to land owned by a Local Aboriginal Land Council if the consent of the Local Aboriginal Land Council is required as owner of the land to the project application.

**[2] Clause 49 Who can make a development application?**

Insert after clause 49 (3):

- (3A) Despite subclause (1), a development application made in respect of land owned by a Local Aboriginal Land Council may be made by a person referred to in that subclause only with the consent of the New South Wales Aboriginal Land Council.

**[3] Clause 100 Notice of determination**

Insert after clause 100 (6):

- (7) For the purposes of section 81 (1) of the Act, a notice of the determination of a development application relating to land owned by a Local Aboriginal Land Council must also be given to the New South Wales Aboriginal Land Council.

**[4] Clause 115 What are the requirements for an application for modification of a development consent?**

Insert after clause 115 (1D):

- (1E) An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act relating to land owned by a Local Aboriginal Land Council may be made only with the consent of the New South Wales Aboriginal Land Council.

**[5] Clause 122 Notice of determination of application to modify development consent**

Insert after clause 122 (2):

- (3) If an application for the modification of a development consent applies to land owned by a Local Aboriginal Land Council, notice under subclause (1) must also be given to the New South Wales Aboriginal Land Council.

**2.4 National Parks and Wildlife Act 1974 No 80**

**Section 69B Conservation agreements**

Insert after section 69B (3):

- (4) The Minister must not enter into a conservation agreement for land owned by a Local Aboriginal Land Council except with the consent of the New South Wales Aboriginal Land Council.

**2.5 Taxation Administration Act 1996 No 97**

**[1] Section 5A**

Insert after section 5:

**5A Application of Act to community development levy**

- (1) For the purpose of the administration and enforcement of the scheme for the levying and payment of the community development levy under the *Aboriginal Land Rights Act 1983*, Division 4A of Part 2 of that Act and any regulations made under that Division, are taken to be a taxation law.
- (2) To avoid doubt, amounts payable for the community development levy under that Act are taxes for the purposes of this Act (other than Part 4).

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**[2] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

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**2.6 Threatened Species Conservation Act 1995 No 101**

**[1] Section 127F General provisions relating to biobanking agreements**

Insert at the end of section 127F (1) (f):

, and

- (g) where the land is owned by a Local Aboriginal Land Council, the New South Wales Aboriginal Land Council has consented in writing to the agreement.

**[2] Section 127O Transfer of land to Minister**

Insert after section 127O (2):

- (2A) Notice of the application must also be served on the New South Wales Aboriginal Land Council if the owner of the land is a Local Aboriginal Land Council.

**2.7 Wilderness Act 1987 No 196**

**Section 10 Wilderness protection agreements**

Insert after section 10 (2):

- (2A) The Minister must not enter into a wilderness protection agreement relating to land owned by a Local Aboriginal Land Council unless the New South Wales Aboriginal Land Council has consented in writing to the agreement.