

[Act 1995 No 39]



New South Wales

Aboriginal Land Rights Amendent Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to prevent persons voting more than once in an election of councillors of the New South Wales Aboriginal Land Council, and to provide that disputes concerning the validity of the election of a councillor may be settled by the Land and Environment Court.

Amended in committee—see table at end of volume

Outline of provisions

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

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 gives effect to the Schedule of amendments to the *Aboriginal Land Rights Act 1983*.

Clause 4 gives effect to the Schedule of amendments to the *Land and Environment Court Act 1979*.

Schedule 1 Amendment of Aboriginal Land Rights Act 1983

Schedule 1 (1) provides that a person is not entitled to vote more than once in an election of all councillors of the New South Wales Aboriginal Land Council. Accordingly, a person may only vote once for a councillor to represent a regional area, and may not vote for councillors to represent different regions. If a person is a member of more than one Local Aboriginal Land Council, that person is required to cast his or her vote in respect of the Local Aboriginal Land Council area in which the person ordinarily lives.

Schedule 1(2) inserts two new Divisions into Part 4 of the Act. Proposed Division 2A provides that if the validity of the election of a councillor is disputed, the returning officer must nevertheless declare the candidate elected, and the candidate is to hold office as a councillor until the Land and Environment Court has settled the disputed return (proposed sections 27AA and 27AB). Proposed Division 2B provides that the sole method for resolving disputes concerning the validity of the election of a councillor is by application to the Land and Environment Court (proposed section 27AC (1)). Such an application must be made within 28 days of the returning officer publicly declaring the result of the disputed election (proposed section 27AC (2)).

Proposed section 27AD provides that in determining such applications, the Land and Environment Court may exercise the same powers as the Court of Disputed Returns under the *Parliamentary Electorates and Elections Act 1912*, including powers to make declarations:

- that any person who was returned as elected was not duly elected, and
- that any candidate who was not returned as elected was duly elected, and
- that an election is absolutely void.

The procedure of the Land and Environment Court on an application under proposed section 27AC is to be flexible, and the Court is not to make orders for costs in such proceedings (proposed section 27AF). The decision of the Land and Environment Court in determining a disputed return is final (proposed section 27AH).

Schedule 1 (3) confers a general power on the Governor to make regulations concerning disputed returns in elections of councillors of the New South Wales Aboriginal Land Council.

Schedule 2 Amendment of Land and Environment Court Act 1979

Schedule 2 amends the *Land and Environment Court Act 1979* to provide that the Land and Environment Court is to settle disputed returns in elections of councillors of the New South Wales Aboriginal Land Council in Class 4 of its jurisdiction.