

TASMANIA

ABORIGINAL LANDS AMENDMENT BILL 2005

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ABORIGINAL LANDS AMENDMENT BILL 2005

(Brought in by the Premier, the Honourable Paul Anthony Lennon)

A BILL FOR

An Act to amend the *Aboriginal Lands Act 1995* and make consequential amendments to other Acts

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Aboriginal Lands Amendment Act (No. 2) 2005*.

2. Commencement

This Act commences on a day to be proclaimed.

PART 2 – ABORIGINAL LANDS ACT 1995 AMENDED**3. Principal Act**

In this Part, the *Aboriginal Lands Act 1995** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definitions of “Aboriginal land” and “Aboriginal person” and substituting the following definitions:

“Aboriginal land” means –

- (a) land vested in the Council under section 27(1); or
- (b) any land declared by the Minister to be Aboriginal land under section 35A;

“Aboriginal person” means a person specified in section 3A;

- (b) by inserting “at the time and date fixed by the Electoral Commissioner under section 12(2) for the relevant election” after “that area” in the definition of “eligible elector”;

*No. 98 of 1995

- (c) by inserting the following definition after the definition of “north-west region”:

“Preliminary Roll” means the Preliminary Roll prepared under section 10(2A);

- (d) by inserting “Derwent Valley,” after “Highlands,” in the definition of “south region”;
- (e) by omitting “New Norfolk,” from the definition of “south region”.

5. Section 3A inserted

After section 3 of the Principal Act, the following section is inserted in Part 1:

3A. Aboriginal person

- (1) An Aboriginal person is a person who satisfies all of the following requirements:
- (a) Aboriginal ancestry;
 - (b) self-identification as an Aboriginal person;
 - (c) communal recognition by members of the Aboriginal community.
- (2) The onus of proving that a person satisfies the requirements referred to in subsection (1) lies on that person.

6. Section 8 amended (Aboriginal Land Council of Tasmania Electors Roll)

Section 8 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

- (1) The Electoral Commissioner is to –
 - (a) prepare and maintain an Aboriginal Land Council of Tasmania Electors Roll; and
 - (b) include on the Roll, subject to subsection (2), the address at which each person named on the Roll resides and indicate the electoral area in which each such person is enrolled.
- (2) If the Electoral Commissioner is satisfied that there is reason to do so, the Electoral Commissioner may determine that an address, other than the address at which a person resides, is to be shown on the Roll in respect of that person.
- (2A) As soon as practicable after the commencement of the *Aboriginal Lands Amendment Act (No. 2) 2005*, the Electoral Commissioner is to prepare the Roll, which is to comprise the names of those persons who were entitled to vote at the election of members of the Council in 2001 and is to be constituted from the material from which the Roll for that election was constituted.

- (2B) The Electoral Commissioner is to transfer the name of a person to the Roll in accordance with section 10A.
- (2C) The Electoral Commissioner may remove the name of a person from the Roll if –
- (a) the Electoral Commissioner is satisfied that the person has ceased to be entitled under section 9(1)(b); or
 - (b) that person has applied in writing to have his or her name removed from the Roll.
- (2D) A person whose name has been removed from the Roll under subsection (2C) may apply in writing to the Electoral Commissioner to have his or her name reinstated to the Roll if that person is entitled under section 9(1)(b).
- (2E) On receipt of an application under subsection (2D), the Electoral Commissioner is to reinstate the name of a person to the Roll if the Electoral Commissioner is satisfied that the person is entitled under section 9(1)(b).
- (2F) The Electoral Commissioner may change the address shown on the Roll in respect of a person if the Electoral Commissioner is satisfied that the person has changed the address at which he or she resides.

7. Section 9 amended (Who is entitled to be on the Roll)

Section 9(3) of the Principal Act is amended by omitting “the eligibility of a person to have his or her name entered on the Roll on the basis that the person is or is not an Aboriginal person” and substituting “the requirements referred to in section 3A”.

8. Section 10 amended (Preliminary Roll)

Section 10 of the Principal Act is amended as follows:

- (a) by omitting subsection (1);
- (b) by omitting from subsection (2)(a) “which is to be prepared for the purposes of the election”;
- (c) by omitting from subsection (2)(b) “of closure of the Roll” and substituting “at which applications for enrolment on the Roll close”;
- (d) by inserting the following subsections after subsection (2):
 - (2A) In each year in which nominations for an election of members of the Council are to be called, the Electoral Commissioner is to prepare a Preliminary Roll.

(2B) The Electoral Commissioner is to enter on the Preliminary Roll the names of all persons who –

(a) have lodged a properly completed enrolment form with the Electoral Commissioner –

(i) after the commencement of the *Aboriginal Lands Amendment Act (No. 2) 2005* and before the close of applications for enrolment on the Roll in the year 2005; or

(ii) in any other year after the year 2005 in which nominations for an election of members of the Council are to be called, after the close of applications for enrolment on the Roll in the previous year in which nominations for an election of members of the

Council were called and before the close of applications for enrolment on the Roll in that other year; and

- (b) have been determined by the Electoral Commissioner as meeting the requirements in section 9(1)(b) and (c).
- (e) by omitting from subsection (3)(a) “an Aboriginal Land Council of Tasmania Electors” and substituting “a Preliminary”;
- (f) by omitting paragraph (b) from subsection (3) and substituting the following paragraph:
 - (b) stating that the Preliminary Roll may be inspected and specifying the times and places at which the Preliminary Roll may be inspected; and
- (g) by omitting from subsection (3)(c) “inclusion of the name of a person on the Roll or the exclusion of the name of a person from the Roll on the basis that the person is or is” and substituting “transfer of the name of a person from the Preliminary Roll to the Roll on the basis that the person is”;

- (h) by omitting from subsection (4)(b) “included on or excluded from” and substituting “transferred from the Preliminary Roll to”;
- (i) by inserting the following subsection after subsection (4):
 - (4A) Before rejecting an objection, the Electoral Commissioner must be satisfied that the person to whom the objection relates has satisfied the requirements referred to in section 3A(1)(a), (b) and (c).
- (j) by omitting paragraph (a) from subsection (5);
- (k) by omitting from subsection (5)(b) “that person” and substituting “those persons”;
- (l) by omitting subsection (6) and substituting the following subsections:
 - (6) No action or proceeding may be brought in respect of a decision of the Electoral Commissioner as to whether a person is or is not an Aboriginal person except as prescribed in subsection (7).
 - (7) A person who lodged an objection under this section, or a person to whom an objection related, who is aggrieved by the decision of the Electoral Commissioner may, in accordance with the Rules of the Supreme Court, appeal to the

Supreme Court, within 7 days after the date on which notice was served on that person under subsection (5), on the ground that procedures that are required by law to be observed relating to the making of the decision have not been observed.

9. Section 10A inserted

After section 10 of the Principal Act, the following section is inserted in Division 2:

10A. Transfer of names to Roll

- (1) If no objection in relation to a name was lodged with the Electoral Commissioner in accordance with section 10, the Electoral Commissioner is to transfer the name from the Preliminary Roll to the Roll.
- (2) If the Electoral Commissioner has rejected an objection in relation to a name in accordance with section 10, and no appeal has been lodged under that section in relation to that decision, the Electoral Commissioner is to transfer the name from the Preliminary Roll to the Roll.
- (3) If, in relation to an appeal to the Supreme Court lodged under section 10, the effect of the decision of the Supreme Court is that the Electoral Commissioner reconsider the objection in relation to a name, and the objection is then rejected

by the Electoral Commissioner, the Electoral Commissioner is to transfer the name from the Preliminary Roll to the Roll.

10. Sections 11 and 12 substituted

Sections 11 and 12 of the Principal Act are repealed and the following sections are substituted:

11. Availability of Preliminary Roll and Roll

- (1) The Electoral Commissioner is to make the Preliminary Roll and the Roll available to the Council.
- (2) The Council may use the Preliminary Roll and the Roll for any purposes related to the performance of its functions.
- (3) The Electoral Commissioner may use the Preliminary Roll and the Roll for the purpose of performing any of his or her functions under this Act.
- (4) The Council may provide to any person who has obtained the approval of the Council a copy of the Preliminary Roll and the Roll or any part of those Rolls in printed or electronic form.
- (5) For the purposes of subsection (4), the approval of the Council is to be in writing and is to specify the purpose for which information contained in the

Preliminary Roll or the Roll may be used.

- (6) A person must not make or use a copy of the Preliminary Roll or the Roll or any part of the Preliminary Roll or the Roll for any purpose other than that specified in subsection (2) or (3) or in the approval referred to in subsection (5).

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (7) The *Freedom of Information Act 1991* does not apply to the Preliminary Roll or the Roll.

12. Conduct of elections

- (1) Elections of members of the Council are, subject to any other provisions of this Act, to be conducted in such manner as is approved by the Electoral Commissioner.
- (2) Without limiting subsection (1), the Electoral Commissioner is to fix a time and date for the purposes of determining a person's entitlement to vote at an election of members of the Council.
- (3) Without limiting subsection (1), the Electoral Commissioner is to fix a time and date for the close of nominations in respect of an election of members of the Council.

11. Section 14 amended (Who may stand for election)

Section 14 of the Principal Act is amended by omitting “person is an eligible elector for that area” and substituting “person’s name is shown on the Roll in respect of that electoral area at the time and date fixed by the Electoral Commissioner under section 12(3)”.

12. Section 18 amended (Functions and powers of Council)

Section 18 of the Principal Act is amended as follows:

- (a) by inserting in subsection (4) “and, in particular, has power, subject to this Act, to acquire, hold, dispose of and otherwise deal with property, both real and personal” after “functions”;
- (b) by omitting from subsection (6) “acquired by the Council” and substituting “in which the Council acquires an interest”.

13. Section 19 amended (Review of Council’s decisions)

Section 19(1)(c) of the Principal Act is amended by inserting “or other land in which the Council acquires an interest” after “land”.

14. Section 27 amended (Land vested in Council)

Section 27 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) The land declared under section 35A is held by the Council –

- (a) in trust for Aboriginal persons in perpetuity; and
- (b) subject to the provisions of this Act.

- (b) by inserting in subsection (2) “referred to in subsection (1)” after “land”;

- (c) by inserting the following subsection after subsection (2):

(2A) The land referred to in subsection (1A) includes the right to minerals, other than oil, atomic substances and geothermal substances, within the meaning of the *Mineral Resources Development Act 1995*, and to helium, to a depth of 50 metres.

- (d) by inserting in subsection (3) “referred to in subsection (1)” after “land”;

- (e) by omitting from subsection (4)(a) “Aboriginal land” and substituting “land referred to in subsection (1)”.

15. Section 33 amended (Folio of Register to be created for Aboriginal land)

Section 33 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Aboriginal land” and substituting “land vested in the Council under section 27(1)”;
- (b) by omitting from subsection (2) “Aboriginal land” and substituting “land vested in the Council under section 27(1)”;
- (c) by omitting from subsection (3) “Aboriginal land” first occurring and substituting “land vested in the Council under section 27(1)”;
- (d) by omitting from subsection (3) “Aboriginal” second occurring and substituting “that”.

16. Section 34 amended (Stamp duty and charges not payable)

Section 34(2) of the Principal Act is amended by inserting “under section 27(1)” after “Council”.

17. Section 35A inserted

After section 35 of the Principal Act, the following section is inserted in Part 3:

35A. Registration of declarations of land acquired by Council

- (1) The Council may apply to the Minister in writing for land acquired by it to be declared to be Aboriginal land.
- (2) On receipt of an application under subsection (1), the Minister must declare the land referred to in the application to be Aboriginal land.
- (3) As soon as practicable after making the declaration, the Minister must lodge with the Recorder of Titles in a form approved by the Recorder a copy of the declaration.
- (4) The Recorder of Titles must, as soon as practicable after lodgment of the copy of the declaration, record the declaration on the folio of the Register in respect of that land.

18. Section 40 amended (Indemnity of Council in respect of Aboriginal land)

Section 40 of the Principal Act is amended by omitting “Aboriginal land” and substituting “land vested in the Council under section 27(1)”.

**PART 3 – CHILDREN, YOUNG PERSONS AND THEIR
FAMILIES ACT 1997 AMENDED**

19. Principal Act

In this Part, the *Children, Young Persons and Their Families Act 1997** is referred to as the Principal Act.

20. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by omitting the definition of “Aboriginal child” and substituting the following definition:

“Aboriginal child” means a child who is an Aboriginal person within the meaning of the *Aboriginal Lands Act 1995*;

*No. 28 of 1997

PART 4 – DUTIES ACT 2001 AMENDED**21. Principal Act**

In this Part, the *Duties Act 2001** is referred to as the Principal Act.

22. Section 53 amended (Exemptions relating to various transactions)

Section 53 of the Principal Act is amended by omitting paragraph (h) and substituting the following paragraphs:

- (h) any instrument relating to the vesting of land in the Aboriginal Land Council of Tasmania under section 27(1) of the *Aboriginal Lands Act 1995*;
- (ha) any instrument relating to the transfer of land to the Aboriginal Land Council of Tasmania by way of gift, bequest or devise and declared to be Aboriginal land under section 35A of the *Aboriginal Lands Act 1995*;

*No. 15 of 2001

PART 5 – LAND ACQUISITION ACT 1993 AMENDED**23. Principal Act**

In this Part, the *Land Acquisition Act 1993** is referred to as the Principal Act.

24. Section 5A amended (Certain land may not be acquired)

Section 5A of the Principal Act is amended by inserting “without the agreement of the Aboriginal Land Council of Tasmania established under the *Aboriginal Lands Act 1995*” after “this Act”.

*No. 23 of 1993

**PART 6 – LIVING MARINE RESOURCES
MANAGEMENT ACT 1995 AMENDED**

25. Principal Act

In this Part, the *Living Marine Resources Management Act 1995** is referred to as the Principal Act.

26. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by omitting the definition of “Aborigine” and substituting the following definition:

“**Aborigine**” means an Aboriginal person within the meaning of the *Aboriginal Lands Act 1995*;

*No. 25 of 1995

PART 7 – YOUTH JUSTICE ACT 1997 AMENDED**27. Principal Act**

In this Part, the *Youth Justice Act 1997** is referred to as the Principal Act.

28. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by omitting the definition of “Aboriginal youth” and substituting the following definition:

“Aboriginal youth” means a youth who is an Aboriginal person within the meaning of the *Aboriginal Lands Act 1995*;

*No. 81 of 1997