Aboriginal Lands Amendment Bill 2023 – draft exposure Bill

Explanatory Clause Notes

These notes are intended to provide an explanation of the intent, and the legislative mechanisms used, for each clause of the *Aboriginal Lands Amendment Bill 2023*.

The project team will be happy to try to answer questions and clarify the Draft Bill. Online or in-person meetings may be arranged, if practicable.

Introduction

The *Aboriginal Lands Amendment Bill 2023* (the Bill) amends the *Aboriginal Lands Act 1995* (the Act), to deliver improvements to the model for returning land to Aboriginal people. The proposals for these improvements were outlined in the two consultation papers released in 2022 and available on the department's website. The Bill also makes minor changes to other legislation where necessary (see Parts 3 and 4) and repeals the redundant *Aboriginal Land Council Elections Act 2004* (see Part 5) which had the effect of deferring the timing of the election due that year.

References to clauses in this document are references to clauses in the Bill unless otherwise indicated. References to new or existing sections are references to how the amendments will appear in the Act.[1]

The main changes are:

1: A modified long title and a new "Purposes of Act" section
These are in cls.5 and 6. The provisions are expressions of intent, and are included in response to considerable input during the review and consultation process confirming that the Act lacked the overarching statements of purpose that its importance warranted.

2: A new system for people to apply for their names to be added to the Electors Roll to be eligible to vote in Aboriginal Land Council elections and to stand for election
This is covered mainly in cl.17, which inserts 6 new sections in a new Part 2A. The preceding clauses largely clear the way for the new Part.

The new sections establish that:

- All applications for the Electors Roll are to be considered by the Electoral Commissioner;

[1] **Note on abbreviations**: in these notes, when referring to numbered provisions "cl." or cls." are used for "clause(s)", and "s." or "ss." for "section(s)".

- The Electoral Commissioner must be satisfied that the applicant meets each part of the three-part test for being an Aboriginal person (see s.3A of the Act);
- The Electoral Commissioner must establish a new Advisory Panel of Aboriginal people;
- The Advisory Panel is to consider all applications for the Electors Roll and provide advice to the Electoral Commissioner to assist him in deciding an applicant's eligibility for the Roll;
- Applications for enrolment can be made at any time;
- A person whose application is refused by the Electoral Commissioner may appeal to the Tasmanian Civil and Administrative Tribunal (TASCAT), but no other person may appeal the decision of the Electoral Commissioner;
- An appeal of the Electoral Commissioner's decision can only be on fairness and natural justice grounds. TASCAT may only confirm a decision or send it back for reconsideration; but cannot make its own decision in relation to an application for enrolment.

An important feature of the new amendments is the removal of the current objection process and its replacement with the more equitable and consistent process whereby <u>every</u> application is rigorously assessed.

Some essential provisions are either unchanged, or only modernised and relocated. Unchanged provisions include s.3A (the three-part test defining an Aboriginal person) and s.9(1), setting out the basic eligibility requirements – be an Aboriginal person, be 18 years old, and reside within the electoral area in which the person enrols to vote.

<u>3: Two new accountability mechanisms, and new appeals</u>

Increasing the visibility of Council activities and approaches was an important theme in the review process. Cl.15 inserts two new sections that provide for two new mechanisms to support this:

- New s.18A will for the first time require the Council to publish an annual report, with the opportunity to make its work more widely known and understood; and
- S.18B requires the development of a code of conduct (as is common in land councils and other governing bodies elsewhere), and provides also for complaints in relation to alleged breaches, to be determined by the Council.

In addition, a new appeal process strengthens the accountability of the Council to Aboriginal people. Cl.16 inserts the new s.19A, allowing appeals against Council decisions and determinations on land matters (under the unchanged s.19) and code of conduct complaints. Importantly, TASCAT will only be able to confirm a decision or send it back for reconsideration; it cannot make a new decision.

<u>4: A new process to declare Crown land as Aboriginal land</u>

A key feature of the proposals outlined in 2022 was to replace the current cumbersome process whereby every significant transfer of Crown land had to be achieved by amending the Act, and cluttering it with detail (especially in s.27). This has impeded transfers, and produced confusing information. The change aims to make the process to transfer Crown land more consistent and more transparent.

The change does not affect the other main way of creating Aboriginal land, under s.35A, which is predominantly used for land, other than reserved Crown land, that is acquired by the Council. This includes private land that is acquired by the Council through purchase or gifting.

The new process is mainly in cl.19, inserting 3 new sections. The central features are:

- Preparation of a draft declaration instrument, in consultation with the Council and with a public consultation process. The process will ensure that issues of existing rights and interests, access etc will be addressed transparently before the matter comes to Parliament.
- The instrument will be a consolidated, accessible summary of values and interests, and may specify that a local Aboriginal group is to be involved in local management of the land.
- The instrument will be disallowable by Parliament. Consistent with processes for similar instruments, approval by each House of Parliament can be given in 3 ways: 1) if a positive motion of approval is passed; 2) if, after 5 sitting days there has been no motion of disallowance, approval is deemed to be given; or 3) if a motion of disallowance has been moved, but has then been withdrawn or defeated.

5: Other provisions

Other provisions are mainly complementary to the major changes outlined above, and ensure the Act is internally consistent. Some minor matters are tidied or corrected, and the *Tasmanian Civil and Administrative Tribunal Act 2020* is amended to accommodate the new appeals. A minor amendment is made to the *Right to Information Act 2009*, and the opportunity is taken to repeal a long-inactive 2004 Act.

Details may be explored in the notes that follow.

Explanatory clause notes

PART 1 – Preliminary

Provisions in this part are formal only

Clause 1 **Short Title**

Clause 2 **Commencement**
This will allow, if necessary or appropriate, for a staggered commencement, with some provisions coming into force before others.

Clause 3 **Repeal of Act**
This is a standard provision for amending legislation, repealing the amending Act a year after all amendments are incorporated into the principal Acts.

PART 2 – *Aboriginal Lands Act 1995* amended

The majority of the amendments to the Aboriginal Lands Act are in this Part of the Bill.

Cls.4-8 are mostly preliminary or technical.

Clause 4 **Principal Act**
Identifies the *Aboriginal Lands Act 1995* as "the principal Act".

Clause 5 **Long title substituted**
This clause replaces the original long title with new words, based on the general preference in the consultation process for a title of broader and clearer intent.

Clause 6 **Section 2A inserted (Purposes of Act)**
The Act currently has no statement of objectives or purpose. As with cl.5, this new text responds to earlier feedback and adds explicit purposes to the Principal Act, to better reflect what it does, including in light of some of the amendments made in this Bill.

Provisions of this sort do not carry great legal weight, but they give an indication of the underlying intent and purpose of the legislation.

Paragraph (a) recognises Aboriginal people as the original owners and includes a reference to "waters".

Paragraph (b) acknowledges the significance of land and waters for Aboriginal people.

Paragraph (c) states one of the original core intents of the Principal Act, to establish the permanent and inalienable tenure of "Aboriginal land".

Paragraph (d) covers the intent of the Act to provide a legislative process by which land (Crown and other) may be declared as Aboriginal land.

Paragraph (e) states another of the original core purposes of the Principal Act, the establishment of the Aboriginal Land Council of Tasmania to hold the title of all Aboriginal land, and exercise other functions and powers (under s.18 etc).

Clause 7 **Section 3 amended (Interpretation)**

This clause amends definitions in s.3.

Paragraph (a) provides a definition for the new Advisory Panel that plays a key role in the new Part 2A (see cl.17 below).

Paragraph (b) provides a simple definition for Crown land, which is the focus of new ss.27A, 27B and 27C (see cl.19 below).

Paragraph (c) slightly revises the definition of "eligible elector", to more clearly reflect the fact that the Roll will now be open to applications at all times, rather than only for a short and fixed period. Everyone who is on the Roll on the cut-off date fixed by the Electoral Commissioner (under the unchanged s.12(2)) will be eligible.

Paragraph (d) makes two changes:

- First, it makes clear in a new definition that "land" includes "waters" and the land beneath them, which is consistent with the definition in the *Crown Lands Act 1976*; and
- Second, in a revised definition, a "local Aboriginal group" is defined to include both a group nominated by the Council in relation to an area of land, as now under s.18(5), and also a group involved in the management of all or part of an area "as required under s.31(1)"; both 18(5) and 31(1) are unchanged provisions. The definition can include a group specified in one of the new declaration instruments (see cl.19).

Paragraph (e) omits the definition of "Preliminary Roll", which will no longer be part of the process.

Paragraphs (f) and (g) add a definition of TASCAT – the Tasmanian Civil and Administrative Tribunal – which is where reviews and appeals will be referred in two of the amendments (see new ss.19A and 26C(3-6)). (Access to the appeal body also requires amendments to the TASCAT legislation; see Part 4.)

Clause 8 **Section 4A inserted (Act prevails)**

This is a technical provision, to address an issue that will arise if land reserved under the *Nature Conservation Act 2002* becomes Aboriginal land while retaining its reservation status. Such reserved land is subject to the *National Parks and Reserves Management Act 2002* (NPRMA) and in certain classes (national park, State reserve, nature reserve, historic site or game reserve) s.35(1) of the NPRMA would otherwise prevent ALCT from exercising its own statutory powers.

The next 2 clauses deal with the timing of elections, with cl.9 allowing a general ability to delay elections slightly, and cl.10 dealing specifically with the timing of the first election after these amendments come into force.

Clause 9 **Section 7 amended (Timing of elections)**

The timing of elections is currently inflexible, allowing for the calling of nominations to be 3 years, plus or minus 3 months, after nominations were called for the previous election. Circumstances may make it necessary and reasonable for the Electoral Commissioner to delay an election to a later date, although the 3-year term is to remain standard. In effect this new section allows for up to an additional 12 months, and requires the Electoral Commissioner to publish the reasons for the delay.

Clause 10 **Section 7A inserted (Timing of first election after commencement of *Aboriginal Lands Amendment Act 2023*)**

This new section addresses the fact that preparations for a new election under the provisions of the amendments in this Bill are expected to take 12-18 months, which would clash with the due date of the next election under the current Act. It is considered preferable and more reasonable to postpone the election date to provide sufficient time for the new provisions to take effect. This includes providing time for all Aboriginal persons wanting to apply for the Electors Roll to prepare their applications, and for the Electoral Commissioner to establish new processes and assess incoming applications.

The new section allows the Electoral Commissioner to set a date for the calling of nominations 15-18 months after this section comes into force ("commences"). If actions have already been taken under current arrangements, they will be of no effect ("void"), except in the case of applications and their supporting information, placement on the Preliminary Roll, or the addition of names to the Roll.

Cls.11-14 amend or repeal the current provisions in ss.8-11 that deal with the Electors Roll. Some provisions remain, but many are repealed so they can be replaced in the new ss.26-26E (see cl.17 below). What is left are mainly formal or mechanical elements of the process, but with the key exception of s.9(1), which is unchanged and sets out the basic requirements for enrolment.

Clause 11 **Section 8 amended (Aboriginal Land Council of Tasmania Electors Roll)**

This clause means that the substantive elements of the Principal Act in relation to the Roll will be in the new Part 2A (see cl.17 below).

It also deletes several subsections relating to formal procedures, which are now better covered in the new Part. What is left are some purely procedural matters relating to change of address, forms, etc.

Clause 12 **Section 9 amended (Who is entitled to be on the Roll)**

This deletes most of the detailed provisions in s.9, and refers them to the new Part 2A. These provisions are largely formal and most are not substantively different in the proposed new ss.26A-26B.

What remains are the key requirements in s.9(1) that to be enrolled, a person must: (a) be an Aboriginal person; (b) reside in the relevant electoral area; and (c) have attained the age of 18 years.

Clause 13 **Sections 10 (Preliminary Roll), 10AA (Protection of sensitive information) and 10A (Transfer of names to Roll) repealed**

Again, this clause essentially clears the way for the processes set out in the new Part 2A. While some provisions remain largely or exactly the same in the new Part, they are currently intermixed with processes that are to be removed. S.10 (Preliminary Roll), including publishing the Preliminary Roll and calling for objections, is removed altogether.

Moving away from these features is a fundamental aspect of the new legislation.

Clause 14 **Section 11 amended (Availability of Roll)**

The amendments (a) to (h) in this clause have the sole purpose of removing all references to the Preliminary Roll. Cl.14(i) inserts a new subsection (10) that allows the Electoral Commissioner to provide a person with confirmation that they are on the Roll. This is strictly for the use of individuals, on their own behalf. Other access to the Roll and related information is tightly controlled.

Cls.15 and 16 insert provisions that have been highlighted throughout the consultation process to date. They are all tied to the desire to strengthen the Council's accountability to the Aboriginal people for whose benefit it holds and manages Aboriginal land.

The provisions for an annual report and a code of conduct allow greater visibility of the Council's work and approaches. They are intended to help increase understanding and interest in the work the Council does.

The addition of an appeal mechanism addresses the unusual current position whereby complaints are reviewed only by the Council itself. The proposed appeals to TASCAT are limited, but their existence should reassure Aboriginal people that Council decisions are to be reasonable and defensible.

Clause 15 **Sections 18A (Annual report of Council) and 18B (Code of conduct) inserted**

Currently the Council is not explicitly required to prepare or publish an annual report. Important elements of the Government's policy, largely arising from the consultation processes, are the proposals (a) to ensure the accountability of the Council to Aboriginal people by having it report regularly on its activities; and (b) to provide for a code of conduct against which Aboriginal people can consider the behaviour and operations of the Council, collectively and individually as members.

New s.18A provides for an annual report, published by 4 months after the end of the financial year (ie by 31 October, like those of most agencies and statutory bodies). The matters to be covered are set out only at a high level, in terms of the Council's activities and finances.

New s.18B provides for the preparation of a code of conduct for the guidance of the members of the Council. It also provides for the ability to make a complaint about a breach of the code of conduct, and for the Council responding to such a complaint.

Clause 16 **Section 19A inserted (Appeals of certain determinations and decisions)**

This clause provides for an external appeal process to TASCAT in relation to certain decisions or determinations of the Council, when it reviews complaints: under proposed new s.18B (Code of conduct) and existing s.19 (Review of Council's decisions, on land-related matters).

S.19 is the unchanged existing section covering the process for triggering a review, by the Council, of its decisions in relation to a range of matters on the management of Aboriginal land, including the involvement of local Aboriginal groups.

Under subsection (3) TASCAT is limited to either confirming the decision or determination, or setting it aside and directing the Council to make a new decision or determination.

Cl.17 inserts core elements of the amendments in a new Part 2A (Aboriginal Land Council of Tasmania Electors Roll). The 6 inserted sections provide for the proposed new system of establishing eligibility to be entered on the Roll, including how the evidence supporting an application is to be considered.

The new Part 2A retains the final decision of the independent Electoral Commissioner, but sets up a completely new application process that includes a key role for a formally established Advisory Panel appointed by the Electoral Commissioner. There will be no process for objecting to a person's name being added to the Roll, but a rejected applicant may appeal to TASCAT on procedural and natural justice grounds.

Clause 17 **Part 2A inserted (ABORIGINAL LAND COUNCIL OF TASMANIA ELECTORS ROLL)**

Part 2A is divided into 3 Divisions:

- "Division 1 – Applications for name to be entered on the Roll" (ss.26, 26A, 26B and 26C);
- "Division 2 – Advisory Panel" (s.26D); and
- "Division 3 – The Roll" (s.26E).

New s.26 (Application for name to be entered on the Roll) sets up the basic application process. A person may apply (subsection (1)) if they believe they are eligible. An application "is to include such evidence as is specified by the Electoral Commissioner".

Note that the Bill refers, implicitly and explicitly, to the definition of "Aboriginal person" (or parts of it) in existing s.3A, which remains unchanged: this is the "3-part test" accepted nationally, that a person "*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."

As is normal, there is also provision, in subsection (3), for requesting further information to assist the assessment process.

New s.26A (Eligibility of applicant) provides for the framework of the eligibility process:

- subsection (1) establishes the requirement that the 3 parts of s.9(1) (see cl.12 above) are met. Paragraph (1)(a) sets the need to verify "to the satisfaction of the Electoral Commissioner, that the person is an Aboriginal person"; (1)(b) covers the other two more formal elements (residence and age);
- subsections (2) and (3) require the preparation and publication of guidelines in respect of the processes and evidence relevant to matters under this Division.

New s.26B (Determination of eligibility of applicant) provides for the process and considerations by which eligibility is established. The core is that all applicants must present the relevant evidence, to be considered by the Electoral Commissioner, assisted by the Advisory Panel, in relation to the requirement that an applicant is an Aboriginal person (ie meets each part of the 3-part test for an Aboriginal person, as defined in existing s.3A). The section also covers certain evidence that must be taken into account, and which may be relied on in certain circumstances.

- subsection (1) provides that an application must be referred to the Advisory Panel for advice as to whether the person is an Aboriginal person (ie "satisfies section 9(1)(a)"), and that the Electoral Commissioner may also seek advice from others (such as archivists or genealogists);
- subsection (2) provides that a declaration from a "registered organisation" (see definition at (5) below) is sufficient evidence that a person "meets the communal recognition requirement of section 3A" (but only that element);
- subsection (3) provides the Electoral Commissioner must take into account the advice of the Advisory Panel;
- subsection (4) provides that the Electoral Commissioner must take into account any relevant "determination of a court or tribunal that has determined, either directly or indirectly, that the applicant meets one or more of the requirements of section 3A", and may rely on such a determination; and
- subsection (5) defines "registered organisation" to be either incorporated under Tasmanian law (ie the two longstanding Aboriginal community organisations in the Furneaux Group); or registered (with a Tasmanian business address) with ORIC.

  In addition, the Electoral Commissioner must be notified by the Secretary of the Department (currently, the Department of Premier and Cabinet) which organisations are to be considered as registered organisations for the purposes of this Act: this ensures consistency in the way Aboriginal community organisations are treated by the Government.

New s.26C (Determination of application) provides for the Electoral Commissioner making a decision either to enter the applicant's name on the Roll, or to refuse the application (subsections (1) and (2) respectively).

Subsection (3) provides a right of appeal to TASCAT if an applicant is aggrieved by a decision of the Electoral Commissioner to refuse their application. Such an appeal can only be on the basis that the decision "was procedurally incorrect or unfair having regard to the requirements of this Act and natural justice", and not on the basis that it is factually incorrect.

Subsection (5) confines the role of TASCAT to reviewing the decision and either upholding it or returning it to the Electoral Commissioner for re-consideration. TASCAT cannot make a new / alternative decision.

New s.26D (Establishment of Advisory Panel) formalises the establishment and operations of the Panel. As a standing body that must consider all applications for enrolment, it is to be supported by clear and explicit provisions.

- Subsection (1) outlines the functions of the Panel – most importantly advising on whether an applicant meets the requirement to be an Aboriginal person (ie "satisfies section 9(1)(a)");
- subsection (2) provides for the Electoral Commissioner to appoint Aboriginal people who "as far as is reasonably possible" are representative of "all Aboriginal people in respect of whom land is held on trust under this Act", and collectively possess the relevant skills, knowledge and experience. Note that there is no set number of members;
- subsection (3) provides that the Electoral Commissioner is to notify all the registered organisations under s.26B(5) at least 28 days before making an appointment;
- subsection (4) establishes that Schedule 3A "has effect" (see cl.30 below). Schedule 3A (Advisory Panel) covers certain formal aspects of the operation of the Panel, as is normal with such bodies;
- subsection (5) provides that the costs of supporting the Panel are costs "incurred in connection with an election under this Act", and are thus covered by the provisions of s.17 (unchanged), which automatically appropriates these election costs. (Similar provisions apply to the funding of other elections, under the *Electoral Act 2004*.)

New s.26E (Protection of information) expands and formalises some of the provisions currently in s.10AA (Protection of sensitive enrolment records), which is to be repealed. The intent is to ensure that the information provided by applicants, and developed or found in the course of considering applications, must not be divulged by any person "Except as necessary for the purposes of this Act or another Act".

Note that this provision responds to the larger quantity of information that is expected to be generated by the new processes. It is also supported by a proposed amendment to the *Right to Information Act 2009* (see Part 3 below).

This provision carries a penalty of up to 100 penalty units, which is the same as the current penalty in the unchanged s.11(6) for improper use

of the Electors Roll. (In 2023-24 a penalty unit is $195 so this is a maximum fine of $19,500.)

Clause 18 Part 3, Division 1: Heading inserted

This is the first of several clauses that simply provide for new Divisions to be created, to better reflect the matters covered by the new provisions and make it easier to navigate the Act.

Cl.19 inserts 3 new sections that provide for the establishment of a formal process for the transfer of Crown land to the Council, by amending the current Schedule 3 without having (as now) to amend the Act each time a significant transfer is made. It also makes transparent a process that is currently unclear.

The change involves the creation of a new instrument declaring land as Aboriginal land. It may be debated and disallowed by the Parliament, if appropriate, but may also pass without debate if approved or MPs consider the instrument raises no issues. Among other things, the new instrument will allow a consolidated presentation of relevant information about the land concerned. All such instruments are to be put out for public consultation before tabling in Parliament.

As this is specifically about the transfer of Crown land, it is appropriate that it requires the decisions and actions of the Minister, who otherwise does not have an active role in the Act.

Clause 19 Sections 27A, 27B and 267C inserted

New s.27A (Guidelines for declaration of Crown land as Aboriginal land) provides for the first step in creating the new process – the preparation of guidelines to outline the various matters that will be considered through the process.

Importantly, the Minister must consult the Council on the draft guidelines, as well as the Minister for Crown Lands and any other relevant Minister, and then publish them for public comment. The Minister may then amend them accordingly, and must publish them.

New s.27B (Instrument declaring land as Aboriginal land) provides for the steps by which Crown land is proposed as Aboriginal land in a draft instrument that: undergoes public consultation; is then tabled in Parliament for approval; and, is processed under the Land Titles Act.

The instrument will be disallowable by Parliament. Consistent with processes for similar instruments, approval by each House of Parliament can be given in 3 ways, outlined under subsections (6) and (8) below.

- Subsections (1) and (2) provide that the instrument is to be prepared by the Minister, if he or she believes particular land "should become Aboriginal land". The Minister may do so either on their own initiative or at the request of the Council;

- subsection (3) sets out what the instrument must include – all formal identification; a summary of the land's values and of all existing rights and interests, such as leases and licences (including under the *Mineral Resources Development Act 1995*) and easements; public access rights; and a summary of the access rights proposed if the land is transferred. It may also include specification of who is to be involved in local management as required under (unchanged) s.31(1). Subsection (4) provides that if the Minister does wish to specify such a person or group, he or she must take into account the same considerations as the Council must when making the same decision under s.31(2);
- subsection (5) provides for notification of the Council and the release of the draft for at least 6 weeks of public consultation;
- subsections (6) and (8) provide for the Minister, following the consultation, to consult with the Council and amend the draft if appropriate, before tabling it in both Houses of Parliament for approval. (Subsection (7) simply clarifies that the Minister may discontinue the process up to when the instrument is tabled.) The approval by each House of Parliament can be given in 3 ways: 1) if a positive motion of approval is passed; 2) if, after 5 sitting days there has been no motion of disallowance, approval is deemed to be given; or 3) if a motion of disallowance has been moved, but has then been withdrawn or defeated;
- subsection (9) outlines the formal steps required to have the Council become the registered proprietor of the land under the *Land Titles Act 1980*;
- finally, subsection (10) provides that the Council is to manage the land in accordance with an approved declaration instrument: eg around access etc, currently addressed by amending s.27, and in relation (if applicable) to any group or person specified as to be involved in the management.

<u>New s.27C (Amendment of Schedule 3 – Land vested in the Council)</u> creates the mechanism by which, after the approval of the instrument, Schedule 3 is amended (to date, requiring a full amendment Act). The mechanism is an order by the Minister (see subsections (1) and (2)) that has the same effect as the current legislative amendment in adding the land to Schedule 3. This brings it under the core provision of the Act, s.27(1).

Subsection (3) addresses a technical contingency, intended to be used <u>only</u> in the event that an entry requires change in order to correct an error or change a name. Among other controls, an order cannot be made under this subsection without the approval of the Council.

Clause 20 **Part 3, Division 2: Heading inserted (Leases, licences, &c., in respect of Aboriginal land)**

As in clauses 18, 23 and 26, simply creates a new Division.

Clause 21 **Section 28 amended (Existing leases and licences)**

S.28(6) is inserted to clarify that the Council has no power to grant leases or licences that are granted under other legislation (such as that covering reserved land, Crown land, or mineral development). This is particularly relevant to former Crown land that may have been subject to such interests.

Clause 22 **Section 29 amended (Appeals in respect of Council's decisions in relation to leases and licences)**

The amended s.29(10) is a simple correction, to replace an outdated reference to the former Resource Planning and Development Commission with a reference to the current Tasmanian Planning Commission.

Clause 23 **Part 3, Division 3: Heading inserted**

As for clause 20, this only inserts a heading.

Cl.24 inserts new subsection 31(3) to clarify that the specified person or group is to be the manager of the land, but recognises that it may not be practical for this to be a permanent arrangement and provides for new arrangements if circumstances change. The existing s.31 has always required that the Council must involve a local Aboriginal group or person in the management of Aboriginal land. Under the amendments, an instrument declaring Crown land to be Aboriginal land may specify a manager for that land (see new s.27B, at (3)(b)(i) and (10)(b)).

Clause 24 **Section 31 amended (Local management of certain areas)**

The new s.31(3) applies only to land that has been subject to an approved declaration instrument (which excludes existing Aboriginal land and all land declared under s.35A). The effect is that on such land, the Council may only either: (a) involve in management the group or person specified in the instrument, if this was included in the instrument; or (b) replace them if the original group has voluntarily withdrawn, or the Council is "satisfied, on reasonable grounds" that they no longer have "the desire, capability or capacity to manage the land". (Note that a decision by the Council to replace a group or person under (3)(b)(ii) would be appealable under ss.19(1) and 19A.)

Clause 25 **Section 32 amended (Management plans)**

The purpose of this clause is to clarify and slightly tighten the expectation for preparation of management plans for Aboriginal land:

- Paragraphs (a) and (b) strengthen the obligation to prepare a management plan and ensure it applies to all Aboriginal land;
- Paragraph (c) inserts 3 new subsections. Subsections (8) and (9) provide for the publication of all management plans by the Council, unless there are reasonable grounds for not doing so. Subsection (10) clarifies the relationship between the Council's management plans and any that may already exist, such as for land that is transferred while remaining reserved under the *Nature*

Conservation Act 2002 or subject to an existing management plan under another land management Act. (See also cl.8 above.) This would apply, for instance, in the case of any transferred land that is part of the Tasmanian Wilderness World Heritage Area and subject to its management plan.

Clause 26 **Part 3, Division 4: Heading inserted (Miscellaneous)**
This is the last of the headings to subdivide Part 3 into 4 Divisions.

Clause 27 **Sections 34A and 34B inserted**
New s.34A (Avoidance of doubt) serves, as its name indicates, solely to remove any doubt that, for certain technical purposes, land transferred under the new process in ss.27A-C above has the same status as land previously added to Schedule 3.

Cl.27 inserts a new s.34B that makes clear that access to Aboriginal land for Aboriginal people and their families is not to be unreasonably denied. Note that this does not limit the land managers' right to restrict access generally on grounds of safety, heritage protection and so on.

New s.34B (Right of access to Aboriginal land) provides that the Council or anyone else involved in the management of Aboriginal land cannot unreasonably refuse the following access to Aboriginal land: people on the Electors Roll; or (the next two both subject to not having been refused enrolment) people who have communal recognition from a registered organisation, or family members of either category.

Clause 28 **Section 36 amended (Disclosure of pecuniary interests)**
This is purely a correction of what appears to be a drafting error, by the insertion of the clarifying word "member's".

Clause 29 **Section 40A inserted**
This new section is entitled "Electoral Commissioner not to be compelled or impugned". Its intent is to provide the same protection to a decision of the Electoral Commissioner as is provided under the current section 10AA, which is being repealed (see cl.12 above). It uses very similar terms, but slightly modernised.

Clause 30 **Section 43A inserted**
This clause has one important purpose – to provide for the continuation of the Roll, and hence the continued eligibility to vote (and stand for election) of the people enrolled at the time the new provisions affecting the Roll come into force.

Clause 31 **Schedule 2 amended (Provisions with respect to meetings of the Aboriginal Land Council of Tasmania)**
The first provision – (a) – simply corrects an apparent drafting error and has no effect other than clarifying the text.

Paragraphs (b) and (c) clarify a point that is not clear in the current Act – ie the role of the Chair in voting. Currently the Schedule has the effect of giving both a deliberative vote (such as, as 1 of 3 votes on one side of a 3:3 tied vote) and a casting vote. The intention is to provide instead that a question on which there is a tied vote is to be deferred to the next meeting. If tied again at the second meeting, the question is determined in the negative.

The new Schedule 3A is inserted to formalise operation of the Advisory Panel. This is due to its new status as a body established by statute and with a permanent role, rather than one confined to advising on possible objections once every 3 years. The Schedule is brief and reflects the essential role of the Advisory Panel as advising the Electoral Commissioner in his or her deliberations.

Clause 32 Schedule 3A inserted (Advisory Panel)

Significant elements include:

Clause 2 (Term of office) provides that members' terms are for 3 years, and that they may be reappointed, with no limit on the number of terms they may serve. This recognises that members may have uniquely useful skills and experience, and should not be arbitrarily barred.

Clause 3 (Remuneration and conditions of appointment) provides for remuneration and allowances as determined by the Electoral Commissioner and approved by the Treasurer.

Clause 4 (Vacation of office) and 5 (Filling of vacancies) contain standard provisions for an appointed body.

Clause 6 (Meetings) provides for the Electoral Commissioner to convene meetings, and attend as he or she considers appropriate – the expectation is that they would normally attend. The Electoral Commissioner will also determine meeting procedures, and record-keeping requirements. The Panel may have non-members attend to advise or inform it.

Clause 7 (Validation of proceedings) is a standard legal safeguard.

PART 3 – *Right to Information Act 2009* amended

Clause 33 Principal Act

As noted above (cl.16, new s.26E), this supports the revised provisions protecting sensitive information. While the Roll itself is already excluded from the application of the RTI Act under the existing and unchanged s.11(7), it is considered that the most appropriate means of extending broader protection is the inclusion of the protected information in the RTI Act itself.

Clause 34 Section 6 amended (Exclusions of certain bodies or persons)

The new provisions add information held by the Electoral Commissioner, for the purposes of the Aboriginal Lands Act, to the information specified in this section, which lists information to which the RTI Act does not apply.

PART 4 – *Tasmanian Civil and Administrative Tribunal Act 2020* amended

In two areas of the amendments there is provision for appeals to the Tasmanian Civil and Administrative Tribunal (TASCAT): cl.16, new s.19A, and cl.17, new s.26C. The TASCAT Act is not currently drafted to accommodate these appeals, though it is expected shortly to be amended to do so. However, as the TASCAT Act amendments may not be in place before this Bill is introduced, it is necessary to draft the necessary amendments in this Bill.

In both of the new "streams" being established here, it is specified that if practicable an Aboriginal person should be included in any Tribunal established to hear proceedings that are related to the Aboriginal Lands Act

Clause 35 Principal Act

A formality.

Clause 36 Section 3 amended (Interpretation)

The amendments will establish two new "streams" in TASCAT, the "Administrative stream" and the "Occupational and Disciplinary stream". Like all the other streams, they need to be included in the Act's main Interpretation section. The Administrative stream will deal with the majority of potential grounds for appeal.

Both streams are intended to cover other legislation once the wider amendments to the TASCAT Act are introduced.

Clause 37 Schedule 1 amended (Relevant Acts)

Schedule 1 lists every "relevant Act" alphabetically in relation to all TASCAT's jurisdictions. This therefore adds the *Aboriginal Lands Act 1995* at the beginning of the list.

Clause 38 Schedule 2 amended (General Division)

The TASCAT Act structures TASCAT into 2 "Divisions" – this General Division in Schedule 2, and the Protective Division in Schedule 3. Paragraph (a) is minor, adding the Aboriginal Lands Act to another list of relevant Acts. This is followed by (b), which provides for the two new streams.

It inserts a new Part 10 that establishes the Administrative stream in cl.1, and in cl.2 sets out the functions and powers allocated to it under the Aboriginal Lands Act. These consist of two main categories:

- all those under s.19A apart from those allocated to the Occupational and Disciplinary stream (see below): ie including all appeals related to land; and

- appeals relating to refusals by the Electoral Commissioner of applications to be entered on the Electors Roll.

There is also a standard additional provision for the Administrative stream to take on any other functions and powers under the Aboriginal Lands Act that are not specifically allocated to any other stream.

Importantly, there is also provision to include "if practicable" an Aboriginal person, "within the meaning of" the Aboriginal Lands Act, in a Tribunal established to hear proceedings under this stream that are related to that Act.

The clause then inserts a new Part 11, to establish the Occupational and Disciplinary stream. Its scope in relation to the Aboriginal Lands Act is limited to the hearing of any appeals relating to complaints about a code of conduct matter.

It has a limited additional provision for this stream to take on matters specifically allocated to it. It also has a provision identical to that for the Administrative stream, in relation to having an Aboriginal member of a Tribunal hearing matters under this Act.

PART 5 – Legislation repealed

The only Act repealed is the Aboriginal Land Council Elections Act 2004, which was enacted as a temporary measure with the sole purpose of postponing a Council election due in 2004, until any date in 2005. This was done to avoid holding the election during the long and complex negotiations and consultations that led to the return of truwana / Cape Barren Island and lungtalanana / Clarke Island in 2005, and also to the passage of various other significant amendments to the Aboriginal Lands Act, including the insertion of s.3A and an update of provisions around the Roll. The Act has no ongoing effect and need not remain on the statute book.

Clause 39 Legislation repealed

This follows the standard process to repeal legislation: a repeal provision such as this, and a Schedule to list the Act(s) being repealed.

Schedule 1 Legislation repealed

Lists only the *Aboriginal Land Council Elections Act 2004*.