

TASMANIA

ABORIGINAL LANDS AMENDMENT BILL 2023

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Consultation Draft

ABORIGINAL LANDS AMENDMENT BILL 2023

*(Brought in by the Minister for Aboriginal Affairs, the
Honourable Roger Charles Jaensch)*

A BILL FOR

An Act to amend the *Aboriginal Lands Act 1995*, to consequentially amend the *Right to Information Act 2009* and the *Tasmanian Civil and Administrative Tribunal Act 2020* and to repeal the *Aboriginal Land Council Elections Act 2004*

Be it enacted by Her 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 2023*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.

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Part 2 – Aboriginal Lands Act 1995 Amended

PART 2 – ABORIGINAL LANDS ACT 1995 AMENDED

4. Principal Act

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

5. Long title substituted

The Principal Act is amended by omitting the long title and substituting the following long title:

An Act to promote reconciliation by returning parts of Tasmania, including its waters, to the ownership of Aboriginal people

6. Section 2A inserted

After section 2 of the Principal Act, the following section is inserted in Part 1:

2A. Purposes of Act

The purposes of this Act are –

- (a) to recognise the millennia of ownership and custody of Tasmania's lands and waters by its Aboriginal inhabitants; and

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- (b) to acknowledge the ongoing significance of lands and waters to Aboriginal people; and
- (c) to establish a permanent, and inalienable, tenure of Aboriginal land within Tasmania for the benefit of Aboriginal people; and
- (d) to provide legislative authority, and to establish a process, for the declaration of land to be Aboriginal land; and
- (e) to establish an elected body to represent Aboriginal people in respect of current and future Aboriginal land, including the management of such land.

7. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *Aboriginal person*:

Advisory Panel means the panel established by the Electoral Commissioner under section 26D(1);

- (b) by inserting the following definition after the definition of *Council*:

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Part 2 – Aboriginal Lands Act 1995 Amended

Crown land has the same meaning as
in the *Crown Lands Act 1976*;

- (c) by omitting the definition of *eligible elector* and substituting the following definition:

eligible elector, in relation to an
election in an electoral area,
means a person whose name –

- (a) is entered on the Roll for
an address within that
electoral area; and
- (b) is on the Roll for that area
on the date fixed by the
Electoral Commissioner
under section 12(2) in
respect of the election;

- (d) by omitting the definition of *local Aboriginal group* and substituting the following definitions:

land includes –

- (a) land covered by the sea or
other waters; and
- (b) the sea, and any other
waters, that covers the
land; and
- (c) messuages, tenements,
hereditaments, houses and
buildings on the land;

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local Aboriginal group, in relation to an area of Aboriginal land, includes –

- (a) an Aboriginal group nominated by the Council for that area; and
- (b) an Aboriginal group involved in the management of all, or part, of that area as required under section 31(1), including a group specified in an instrument approved under section 27B, while that group has management of that area;
- (e) by omitting the definition of *Preliminary Roll*;
- (f) by omitting “Tasman.” from the definition of *south region* and substituting “Tasman;”;
- (g) by inserting the following definition after the definition of *south region*:

TASCAT means the Tasmanian Civil and Administrative Tribunal.

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Part 2 – Aboriginal Lands Act 1995 Amended

8. Section 4A inserted

After section 4 of the Principal Act, the following section is inserted in Part 1:

4A. Act prevails

In respect of the exercise of a statutory power within the meaning of the *National Parks and Reserves Management Act 2002*, this Act prevails, to the extent of any inconsistency, over section 35(1) of that Act.

9. Section 7 amended (Timing of elections)

Section 7 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (3):

(3A) Despite subsection (3), the Electoral Commissioner may determine a date under subsection (2) that is after the period specified in subsection (3), in respect of an election if –

(a) the Electoral Commissioner is satisfied that it is reasonable, in the circumstances, to delay the election; and

(b) before the expiry of the period specified in

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subsection (3)(b) in respect of the election, the Electoral Commissioner publishes, in accordance with subsection (4) –

(i) the reasons for delaying the date of the election; and

(ii) the date determined by the Electoral Commissioner, in accordance with paragraph (c), for the election; and

(c) the date determined by the Electoral Commissioner is a date that is not later than 4 years and 3 months after the date on which nominations were called for the previous election of all members of the Council.

(b) by omitting from subsection (4) “subsection (2)” and substituting “subsection (2), or publish the date determined under subsection (3A).”.

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10. Section 7A inserted

After section 7 of the Principal Act, the following section is inserted in Division 2:

7A. Timing of first election after commencement of *Aboriginal Lands Amendment Act 2023*

- (1) The Electoral Commissioner must, in respect of the first election of members of the Council (the *transitional election*) held after the commencement of this section, determine the date on which nominations are to be called for that election, being a date that is –
 - (a) not sooner than 15 months after the commencement of this section; and
 - (b) not later than 18 months after the commencement of this section.
- (2) Section 7(2) and (3) do not apply in respect of a date determined under subsection (1) in respect of the transitional election.
- (3) If, before the commencement of this section, the Electoral Commissioner has taken one or more actions under section 7(2) or (3) in respect of the transitional election –
 - (a) those actions are void; and

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- (b) any other actions taken by the Electoral Commissioner, in respect of the transitional election, before the commencement of this section are void.
- (4) For the avoidance of doubt, subsection (3)(b) does not apply to –
- (a) the acceptance of an enrolment form, and any supporting information, under section 10 as in force immediately before the commencement of section 13 of the *Aboriginal Lands Amendment Act 2023*; and
- (b) the transfer of a name, by the Electoral Commissioner, to the Roll under this Act before the commencement of this section.
- (5) If, immediately before the commencement of this section, a person's name is on the Preliminary Roll, on and after the commencement of this section –
- (a) the person's enrolment form under section 10, as in force immediately before the commencement of section 13 of the *Aboriginal Lands Amendment Act 2023*, is taken to be an application under section 26 as in

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force after the commencement of section 17 of that Act; and

- (b) the Electoral Commissioner may require the person to provide such further information as the Electoral Commissioner considers necessary to determine the application in accordance with Part 2A.
- (6) Except as specified in this section, this Act applies in respect of the date determined under subsection (1), in respect of an election of members of the Council, as if it were a date determined by the Electoral Commissioner under section 7(2).

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

Section 8 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “in accordance with Part 2A” after “Roll”;
- (b) by omitting subsections (2A), (2B), (2C), (2D) and (2E).

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

Section 9 of the Principal Act is amended by omitting subsections (2), (3), (4), (5) and (6) and substituting the following subsection:

- (2) Part 2A specifies how a person may apply to the Electoral Commissioner to have the person's name entered on the Roll.

13. Sections 10, 10AA and 10A repealed

Sections 10, 10AA and 10A of the Principal Act are repealed.

14. Section 11 amended (Availability of Roll)

Section 11 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “the Preliminary Roll and”;
- (b) by omitting from subsection (2) “the Preliminary Roll and”;
- (c) by omitting from subsection (3) “the Preliminary Roll and”;
- (d) by omitting from subsection (4) “the Preliminary Roll and”;
- (e) by omitting from subsection (4) “those Rolls” and substituting “the Roll”;

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- (f) by omitting from subsection (5) “the Preliminary Roll or”;
- (g) by omitting from subsection (6) “the Preliminary Roll or” twice occurring;
- (h) by omitting from subsection (7) “the Preliminary Roll or”;
- (i) by inserting the following subsection after subsection (7):
 - (8) Nothing in this section prevents the Electoral Commissioner from confirming that a person’s name appears on the Roll if the Electoral Commissioner is requested to do so, in writing, by that person.

15. Sections 18A and 18B inserted

After section 18 of the Principal Act, the following sections are inserted in Division 3:

18A. Annual report of Council

- (1) Within 4 months after the end of a financial year, the Council is to prepare an annual report in respect of the financial year.
- (2) An annual report prepared under subsection (1) in respect of a financial year is to include –
 - (a) a summary of –

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- (i) the functions performed, and powers exercised, by the Council during the financial year; and
 - (ii) the financial status of the Council during the financial year; and
 - (iii) the actions taken by the Council in respect of Aboriginal land during the year; and
- (b) information on all complaints made, within the year, in respect of the code of conduct prepared under section 18B; and
- (c) any prescribed information that is relevant to the financial year; and
- (d) any other information that the Council considers appropriate.
- (3) Information under subsection (2)(b) may only identify, or lead to the identification of, a person connected to the relevant complaint if –
- (a) the identity of the person is already in the public domain, in connection with the complaint, before the annual report is prepared; or

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- (b) the person has given consent to being identified in connection with the complaint.
- (4) The Council is to ensure that an annual report under this section is made available to the public as soon as practicable after it has been prepared.
- (5) In respect of the financial year in which this section commences –
 - (a) if a period of more than 3 months remains of the financial year after this section commences, the Council is to prepare a report under this section for such part of the financial year that so remains; and
 - (b) the Council is not required to prepare, but may prepare, a report under this section if a period of 3 months, or less, of the financial year remains at the time at which this section commences.

18B. Code of conduct

- (1) The Council is to prepare a code of conduct, in respect of its members, that specifies –
 - (a) the expected behaviours of members when –

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- (i) interacting with each other, staff of the Council, Aboriginal persons and local Aboriginal groups; and
 - (ii) representing the Council or conducting Council business; and
 - (b) behaviours that are unacceptable when –
 - (i) interacting with each other, staff of the Council, Aboriginal persons and local Aboriginal groups; and
 - (ii) representing the Council or conducting Council business.
 - (2) For the purposes of subsection (1), a reference to a local Aboriginal group includes a reference to a registered organisation within the meaning of section 26B.
 - (3) For the avoidance of doubt –
 - (a) nothing in section 36 prevents a code of conduct, prepared under this section, from including provisions relating to conflicts of interest; but

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- (b) a code of conduct, prepared under this section, cannot remove, amend or override an obligation set out under this Act.
- (4) The Council is to ensure that the code of conduct prepared under this section is made available to its members and to members of the public.
- (5) If a person makes a complaint about a breach of the code of conduct prepared under this section, the Council –
 - (a) is to determine the complaint in the manner that it considers reasonable in the circumstances; and
 - (b) must inform the complainant in writing of the determination made by the Council in respect of the complaint.

16. Section 19A inserted

After section 19 of the Principal Act, the following section is inserted in Division 3:

19A. Appeals of certain determinations and decisions

- (1) If a person is aggrieved by a determination, or decision, of the Council under section 18B(5) or 19(4), the person

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may apply to TASCAT for a review of that determination or decision.

- (2) Subject to this section, TASCAT may determine an application under subsection (1) in accordance with the *Tasmanian Civil and Administrative Tribunal Act 2020*.
- (3) In determining an application under subsection (1) in respect of a determination or decision of the Council, TASCAT may only –
 - (a) confirm the determination or decision of the Council and, if necessary, direct that the determination or decision is to take effect from the date specified by TASCAT; or
 - (b) set aside the determination or decision of the Council and direct the Council to make a new determination, or decision, in respect of the matter to which the set-aside decision relates.
- (4) Section 75(5)(b) of the *Tasmanian Civil and Administrative Tribunal Act 2020* does not apply to proceedings in respect of an application under subsection (1).

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17. Part 2A inserted

After section 25 of the Principal Act, the following Part is inserted:

**PART 2A – ABORIGINAL LAND COUNCIL OF
TASMANIA ELECTORS ROLL**
Division 1 – Applications for name to be entered on Roll

26. Application for name to be entered on Roll

- (1) If a person believes that the person is entitled to have his or her name entered on the Roll under section 9, the person may apply to the Electoral Commissioner for the person's name to be entered on the Roll.
- (2) An application under subsection (1) –
 - (a) is to be in a form approved by the Electoral Commissioner; and
 - (b) is to include such evidence as is specified by the Electoral Commissioner; and
 - (c) may include such other evidence that the applicant feels is relevant for the Electoral Commissioner to determine whether the applicant is entitled to be on the Roll.
- (3) After receiving an application under subsection (1), the Electoral Commissioner –

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- (a) may request that the applicant provide further information in respect of the application; and
 - (b) if further information is requested under paragraph (a), is not to consider the application until –
 - (i) the information is so provided; or
 - (ii) the applicant provides an explanation, to the satisfaction of the Electoral Commissioner, as to why the information is unable to be provided.

26A. Eligibility of applicant

(1) For the purposes of section 9 –

- (a) a person is taken to have satisfied section 9(1)(a) if the person verifies, to the satisfaction of the Electoral Commissioner, that the person is an Aboriginal person; and
- (b) a person is taken to have satisfied section 9(1)(b) and (c) if –
 - (i) the person’s application under this Division states that the person’s address is the same as the address

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entered on the State roll
for the person; or

(ii) the person's application
under this Division states
that the person's address
is the same as the address
that the person is entitled
to have entered on the
State roll in respect of the
person; or

(iii) the person provides
evidence, to the
satisfaction of the
Electoral Commissioner,
in another manner of the
matters specified in
subparagraph (i) or (ii).

(2) The Electoral Commissioner, in
consultation with the Advisory Panel and
such other persons as the Electoral
Commissioner considers appropriate, is
to prepare guidelines in respect of –

(a) the processes in respect of an
application under this Division;
and

(b) the types of evidence that may be
used or required, in respect of
matters, under this Division.

(3) The Electoral Commissioner –

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- (a) must ensure that guidelines prepared under subsection (2) are available on a website operated by, or on behalf of, the Electoral Commissioner, while the guidelines are in force; and
 - (b) is to provide a copy of the guidelines prepared under subsection (2) to a person if requested to do so by that person.
- (4) In this section –

State roll has the same meaning as in the *Electoral Act 2004*.

26B. Determination of eligibility of applicant

- (1) Before determining an application under this Division, the Electoral Commissioner –
 - (a) must refer the application to the Advisory Panel for its advice on whether the applicant satisfies section 9(1)(a); and
 - (b) may seek advice on the application from a person who has the skills, experience or qualifications to help the Commissioner determine all, or part, of the application.

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- (2) For the purposes of determining an application under this Division, a declaration made by a registered organisation, in a form approved by the Electoral Commissioner, that the applicant meets the communal recognition requirement of section 3A is, in the absence of evidence to the contrary, sufficient evidence of that fact.
- (3) For the purposes of determining if an applicant under this Division is entitled under section 9(1) to have his or her name entered on the Roll, the Electoral Commissioner –
 - (a) must take into account the response of the Advisory Panel in respect of whether the applicant satisfies section 9(1)(a); and
 - (b) may take into account any one or more of the following:
 - (i) whether the applicant has complied, or the application complies, with the guidelines prepared by the Electoral Commissioner under section 26A(2);
 - (ii) whether an organisation has made a declaration, other than a declaration under subsection (2), in

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respect of whether the applicant satisfies section 9(1)(a);

(iii) any other matter, evidence or information that the Electoral Commissioner considers relevant to the application.

(4) Without limiting the generality of subsection (3)(b), the Electoral Commissioner –

(a) must take into account, when considering an application under this Division, a 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(1); and

(b) may rely on such a determination in respect of the applicant as sufficient evidence that the applicant meets one or more of the requirements of section 3A(1) or satisfies section 9(1)(a).

(5) In this section –

registered organisation, in relation to a declaration, means an organisation –

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- (a) that, at the time at which the declaration is made –
 - (i) is incorporated under the *Associations Incorporation Act 1964*;
or
 - (ii) is registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth with a registered business address located within Tasmania; and
- (b) that the Secretary, of the Department, has notified the Electoral Commissioner is a registered organisation for the purposes of this Act.

26C. Determination of application

- (1) If, after considering an application under this Division, the Electoral Commissioner is satisfied that the applicant is entitled, under section 9(1), to have his or her name entered on the Roll, the Electoral Commissioner is to –
 - (a) enter the applicant's name on the Roll; and

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- (b) notify the applicant, in writing, that the applicant's name has been entered on the Roll.
- (2) If, after considering an application under this Division, the Electoral Commissioner is not satisfied that the applicant is entitled, under section 9(1), to have his or her name entered on the Roll, the Electoral Commissioner is to notify the applicant, in writing, that the Electoral Commissioner has refused the application.
- (3) An applicant under this Division may appeal to TASCAT within 7 days after receiving written notice under subsection (2) in respect of the application if –
- (a) the applicant is aggrieved by the decision of the Electoral Commissioner to refuse the application; and
 - (b) the appeal is –
 - (i) on the basis that the decision of the Electoral Commissioner was procedurally incorrect or unfair having regard to the requirements of this Act and natural justice; and

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- (ii) not on the basis that the decision was incorrect as a matter of fact.
- (4) Subject to subsections (5) and (6), TASCAT may determine an application under subsection (3) in accordance with the *Tasmanian Civil and Administrative Tribunal Act 2020*.
- (5) In determining an application under subsection (3) in respect of a decision of the Electoral Commissioner, TASCAT may only –
 - (a) confirm the decision and, if necessary, direct that the decision is to take effect from the date specified by TASCAT; or
 - (b) set aside the decision and direct the Electoral Commissioner to make a new decision in respect of the matter to which the set-aside decision relates.
- (6) Section 75(5)(b) of the *Tasmanian Civil and Administrative Tribunal Act 2020* does not apply to proceedings in respect of an application under subsection (3).

Division 2 – Advisory Panel

26D. Establishment of Advisory Panel

- (1) The Electoral Commissioner is to establish a panel for the purposes of –
- (a) advising the Electoral Commissioner as to whether an applicant under this Division satisfies section 9(1)(a); and
 - (b) making recommendations, if requested to do so by the Electoral Commissioner, in respect of one or more of the following:
 - (i) the application process under this Part;
 - (ii) the preparation of guidelines under section 26A(2);
 - (iii) the development of public education strategies in relation to the Advisory Panel and the application process under this Part;
 - (iv) any other matter specified by the Electoral Commissioner that relates to the Roll; and

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- (c) such other functions as are prescribed.
- (2) The Electoral Commissioner may appoint such Aboriginal persons to the Advisory Panel as the Electoral Commissioner considers necessary to ensure that, as far as is reasonably possible, the Advisory Panel –
 - (a) is representative of all Aboriginal people in respect of whom land is held on trust under this Act; and
 - (b) collectively possesses the skills, knowledge and experience to perform the functions of the Advisory Panel fairly.
- (3) At least 28 days before appointing a person as a member of the Advisory Panel, the Electoral Commissioner must notify each registered organisation under section 26B of the Electoral Commissioner's intention to appoint the person to the Advisory Panel.
- (4) Schedule 3A has effect with respect to the membership and meetings of the Advisory Panel.
- (5) For the purposes of section 17, any costs or expenses incurred by the Electoral Commissioner in respect of the Advisory Panel are costs incurred in connection with an election under this Act.

Division 3 – The Roll

26E. Protection of information

- (1) Except as necessary for the purposes of this Act or another Act, a person who has received relevant information under this Act, or who has brought relevant information into existence under this Act, must not –
- (a) disclose, or divulge, that information; or
 - (b) disclose, or divulge, other information that may result in relevant information being inferred from that disclosure or divulgence.

Penalty: Fine not exceeding 100 penalty units.

- (2) For the avoidance of doubt, this section applies to relevant information that was provided under this Act, or brought into existence under this Act, before or after the commencement of this section.
- (3) In this section –

relevant information means information that –

- (a) has been provided under this Act for the purpose of, or in

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connection with, an application under this Part; or

- (b) has been brought into existence by the Electoral Commissioner, or the Advisory Panel, for the purpose of determining an application under this Part.

18. Part 3, Division 1: Heading inserted

Part 3 of the Principal Act is amended by inserting the following heading before section 27:

Division 1 – Aboriginal land

19. Sections 27A, 27B and 27C inserted

After section 27 of the Principal Act, the following sections are inserted in Division 1:

27A. Guidelines for declaration of Crown land as Aboriginal land

- (1) Subject to subsections (2) and (3), the Minister may make guidelines in respect of the declaration of Crown land as Aboriginal land under this Division including, but not limited to, guidelines on the following:
 - (a) grounds for, and criteria that may be taken into account for, Crown land to become Aboriginal land under this Division;

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- (b) notification and consultation recommendations, or requirements, under this Division;
 - (c) information that may be required for a draft instrument to be prepared under section 27B;
 - (d) matters that may be taken into account by the Minister when performing functions, or exercising powers, under this Division;
 - (e) any matters prescribed for the purposes of this section;
 - (f) any other matters that the Minister considers relevant.
- (2) Before the Minister makes guidelines under subsection (1) –
- (a) the Minister –
 - (i) must consult with, and provide a draft of the guidelines to, the Council; and
 - (ii) must consult the Minister responsible for the administration of the *Crown Lands Act 1976* and any other relevant Minister; and

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- (iii) may consult with, or provide a draft of the guidelines to, any other person whom the Minister considers appropriate; and
 - (b) after consulting the persons specified in paragraph (a), the Minister must release a draft of the guidelines for consultation with the public for a period of at least 4 weeks.
- (3) After the conclusion of the consultation on draft guidelines undertaken in accordance with subsection (2) and before making the guidelines under subsection (1), the Minister –
 - (a) is to consider any submissions, or recommendations, made on the draft of the guidelines as part of that consultation; and
 - (b) may amend the draft of the guidelines to take into account those submissions or recommendations.
- (4) Guidelines made under this section –
 - (a) must be made available on a website operated by, or on behalf of, the Department or the Tasmanian Government while the guidelines are in force; and

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(b) take effect –

- (i) on the day on which the guidelines are made available as required under paragraph (a); or
- (ii) on such later day as is specified in the guidelines.

27B. Instrument declaring land as Aboriginal land

- (1) If the Minister believes that an area of Crown land should become Aboriginal land, the Minister is to prepare an instrument, under this section, that declares the Crown land to be Aboriginal land.
- (2) The Minister may prepare an instrument under subsection (1) –
 - (a) on the Minister's own initiative; or
 - (b) at the request of the Council.
- (3) An instrument, declaring an area of Crown land to be Aboriginal land, under this section –
 - (a) is to include –
 - (i) a full description of the area of Crown land to which it relates, including

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- a reference to each relevant plan in the Central Plan Register; and
- (ii) the relevant folio of the Register for the Crown land, by reference to the volume and folio recorded in the Register for that area of Crown land; and
- (iii) a summary description of the specific values of the area of Crown land; and
- (iv) a summary of –
 - (A) all existing leases, licences, easements, rights and interests in respect of the area of Crown land including, but not limited to, leases and licences in force under the *Mineral Resources Development Act 1995*; and
 - (B) all existing public access rights, and all limitations on access, to the area

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of Crown land;
and

- (v) a summary of all proposed public access rights, and all proposed limitations on access, to the area of Crown land if it is vested in the Council and becomes Aboriginal land; and

(b) may include –

- (i) details of who, on the vesting of the land in the Council, is required, under section 31(1), to be involved in the local management of the area of land, if the land is vested in the Council and becomes Aboriginal land; and

- (ii) such other information as the Minister considers relevant to the area of land or its declaration as Aboriginal land.

- (4) The Minister may only include details of who may be involved in the local management of the area of land in an instrument prepared under subsection (1) if the Minister has taken into account –

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- (a) the extent to which the person, or group, specified in the instrument has an association or connection with the land to which the instrument relates; and
 - (b) the extent to which the person, or group, specified in the instrument has the desire and capacity to manage that land; and
 - (c) the importance of that land to all Aboriginal people.
- (5) After notifying the Council of the Minister's intention to declare Crown land to be Aboriginal land and providing a draft of the relevant instrument under subsection (1) in respect of the declaration, the Minister must arrange for the draft to be released for public consultation for a period of at least 6 weeks.
- (6) After the completion of the public consultation, under subsection (5), on the draft of an instrument declaring Crown land to be Aboriginal land, the Minister –
- (a) after consulting with the Council, may amend the draft instrument to respond to matters raised as part of the public consultation; and
 - (b) is to cause the draft instrument, as amended under paragraph (a) if

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applicable, to be laid before each House of Parliament for approval.

- (7) For the avoidance of doubt, nothing in this section prevents the Minister from discontinuing the process under this section in respect of a draft instrument before the draft instrument is laid before each House of Parliament.
- (8) For the purposes of subsection (6), a House of Parliament is to be taken to have approved a draft of an instrument declaring Crown land to be Aboriginal land if –
- (a) the House passes a motion to approve the draft; or
 - (b) at the expiration of 5 sitting-days after the draft was laid before the House, no notice has been given of a motion to disallow it or, if such notice has been given, the notice has been withdrawn or the motion has been negated; or
 - (c) if a notice of motion to disallow the draft has been given during the period of 5 sitting-days, the notice is, after the expiration of that period, withdrawn or the motion is negated.
- (9) If a draft of an instrument declaring Crown land to be Aboriginal land has

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been approved by both Houses of Parliament under this section –

- (a) the Minister must provide a copy of the instrument, as so approved, to the Recorder of Titles; and
 - (b) the instrument, as so approved, is taken to be a memorandum of transfer in an approved form for the purposes of section 58 of the *Land Titles Act 1980*; and
 - (c) the Recorder of Titles must take such action as required under the *Land Titles Act 1980* in respect of that deemed memorandum of transfer; and
 - (d) for the purposes of any action required to be taken under the *Land Titles Act 1980*, the Council is taken to be the transferee.
- (10) On the day on which land specified in an instrument under this section vests in the Council –
- (a) the Council is to manage the land in accordance with, and subject to, any relevant provisions of the instrument; and
 - (b) if the instrument of transfer specifies a person as required to be involved in the local management of the land, the

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person is taken to be a local Aboriginal group, or local Aboriginal persons, that must be involved in the management of the land under section 31(1).

27C. Amendment of Schedule 3

- (1) As soon as practicable after a draft of an instrument declaring an area of Crown land to be Aboriginal land has been approved by both Houses of Parliament in accordance with section 27B, the Minister is to, by order, amend Schedule 3 by inserting an item in respect of the area of Crown land into that Schedule.
- (2) For the avoidance of doubt, Crown land specified in an order under subsection (1) is taken to be vested in the Council under section 27(1) on the day on which the making of the order is notified in the *Gazette*.
- (3) The Minister may, by order, amend, revoke or substitute an entry in Schedule 3 only if –
 - (a) the order is made by the Minister with the approval of the Council; and
 - (b) a draft of the order has been –
 - (i) tabled in both Houses of Parliament, in accordance

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with section 27B, as if it were a draft of an instrument declaring Crown land to be Aboriginal land; and

(ii) approved by both Houses in accordance with that section.

(4) An order under this section –

(a) is a statutory rule within the meaning of the *Rules Publication Act 1953*; and

(b) is not subordinate legislation within the meaning of the *Subordinate Legislation Act 1992*.

20. Part 3, Division 2: Heading inserted

Part 3 of the Principal Act is amended by inserting the following heading after section 27C:

Division 2 – Leases, licences, &c., in respect of Aboriginal land

21. Section 28 amended (Existing leases and licences)

Section 28 of the Principal Act is amended by inserting after subsection (5) the following subsection:

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- (6) For the avoidance of doubt, nothing in subsection (1) authorises the Council to issue a lease or licence that may only be issued, under another Act, by the Crown or another person.

22. Section 29 amended (Appeals in respect of Council’s decisions in relation to leases and licences)

Section 29 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “14 days” and substituting “28 days”;
- (b) by omitting the definition of *Commissioner* from subsection (10) and substituting the following definition:

Commissioner means the chairperson of the Tasmanian Planning Commission established under the *Tasmanian Planning Commission Act 1997*.

23. Part 3, Division 3: Heading inserted

Part 3 of the Principal Act is amended by inserting the following heading after section 30:

Division 3 – Management plans for Aboriginal land

24. Section 31 amended (Local management of certain areas)

Section 31 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) Despite subsection (1), if an instrument is approved under section 27B in respect of an area of land, the Council may only involve a local Aboriginal group, or local Aboriginal person, in the management of the area of land if –
- (a) the group or person is specified in the instrument as being required to be involved in the local management of the land (the ***specified managers for the land***); or
 - (b) the Council has decided that the group or person is to be involved in the local management of the land, as a result of –
 - (i) the specified managers for the land making a written request, to the Council, to be replaced as the local Aboriginal group, or local Aboriginal person, for the land; or

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- (ii) the Council being satisfied, on reasonable grounds, that the specified managers for the land do not have the desire, capability or capacity to manage the land.

25. Section 32 amended (Management plans)

Section 32 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “may” and substituting “is to”;
- (b) by inserting in subsection (1) “each area of” after “of”;
- (c) by omitting subsection (8) and substituting the following subsections:
 - (8) Subject to subsection (9), the Council is to ensure that each management plan in respect of an area of Aboriginal land is –
 - (a) published, on the website operated by or on behalf of the Council, while the plan is in effect in respect of the area; and
 - (b) made available to a person if requested by the person.

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- (9) The Council may decide not to publish or make available, as required under subsection (8), all or part of a management plan in respect of an area of Aboriginal land if the Council –
- (a) is satisfied, on reasonable grounds, that it is inappropriate for the management plan, or part of the management plan, to be so published or made available; and
 - (b) publishes, on the website operated by or on behalf of the Council, a notice stating –
 - (i) which management plan, or part of the management plan, has not been published or made available as required under subsection (8); and
 - (ii) the Council's reasons for not publishing, or making available, the management

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plan, or part of the management plan, as required under that subsection.

- (10) For the avoidance of doubt, if a management plan in respect of an area of Aboriginal land is inconsistent with a management plan in force in respect of that area of land under the *National Parks and Reserves Management Act 2002*, or any other Act, the management plan prepared under this section is of no effect to the extent of the inconsistency.

26. Part 3, Division 4: Heading inserted

Part 3 of the Principal Act is amended by inserting the following heading after section 32:

Division 4 – Miscellaneous

27. Sections 34A and 34B inserted

After section 34 of the Principal Act, the following sections are inserted in Division 4:

34A. Avoidance of doubt

For the avoidance of doubt, a reference in section 33 or 34 to land vested in the Council under section 27(1) includes a reference to land vested under that

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section by virtue of Division 1 of this Part.

34B. Right of access to Aboriginal land

The Council, or any person involved in the management of Aboriginal land, is not to refuse, unreasonably, access to all or part of Aboriginal land to the following persons:

- (a) a person whose name is entered on the Roll;
- (b) a person who is the subject of a declaration referred to in section 26B(2) if the person has not had an application for the person's name to be entered on the Roll refused;
- (c) a family member of a person referred to in paragraph (a) or (b), if the family member has not had an application for the family member's name to be entered on the Roll refused.

28. Section 36 amended (Disclosure of pecuniary interests)

Section 36(2) of the Principal Act is amended by inserting “member’s” after “performance of the”.

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29. Section 40A inserted

After section 40 of the Principal Act, the following section is inserted in Part 4:

40A. Electoral Commissioner not to be compelled or impugned

(1) A court or tribunal must not –

(a) require the Electoral Commissioner, under the *Judicial Review Act 2000*, to –

(i) divulge the existence or contents of a record made under this Act that relates to an individual; or

(ii) give another person the ability, or opportunity, to comment on a record made under this Act that relates to an individual; or

(b) under the *Judicial Review Act 2000* or otherwise, make an order that impugns a decision of the Electoral Commissioner under this Act on the ground that the Electoral Commissioner –

(i) did not divulge the existence or contents of a record made under this Act that relates to an individual; or

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- (ii) did not give another person the ability, or opportunity, to comment on a record made under this Act that relates to an individual.
- (2) Subsection (1)(a) does not apply in respect of a record, or such part of a record, made under this Act that relates to an individual if that record, or part of a record, is lawfully available to members of the public.
- (3) For the purposes of subsection (1)(b), a court or tribunal is taken to have impugned a decision of the Electoral Commissioner under this Act, if the court or tribunal –
 - (a) quashes or varies the decision; or
 - (b) other than in accordance with the *Tasmanian Civil and Administrative Tribunal Act 2020* –
 - (i) sets aside the decision; or
 - (ii) remits the decision to the Electoral Commissioner, with or without directions, for further consideration or remaking; or
 - (c) makes an adverse declaration about –

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- (i) the legality, or fairness, of the decision; or
 - (ii) the process by which the decision was made; or
 - (d) stays, or defers, the implementation of the decision without the consent of the Electoral Commissioner.
- (4) For the avoidance of doubt, this section also applies to a decision of the Electoral Commissioner made before the commencement of this section.

30. Section 43A inserted

After section 43 of the Principal Act, the following section is inserted in Part 4:

43A. Transitional provisions consequent on commencement of *Aboriginal Lands Amendment Act 2023*

- (1) In this section –

Amending Act means the *Aboriginal Lands Amendment Act 2023*.

- (2) For the avoidance of doubt –

- (a) the Roll, prepared and maintained under section 8 of this Act, is continued in force, on and after the commencement of section 11 of the Amending Act; and

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- (b) a name on the Roll immediately before the commencement of section 11 of the Amending Act is taken, on the day on which section 11 of the Amending Act commences, to be a name entered on the Roll.
 - (3) Nothing in subsection (2) prevents the Roll, or an entry on the Roll, from being amended or omitted under this Act after the commencement of one or more of the provisions of the Amending Act.
- 31. Schedule 2 amended (Provisions with respect to meetings of the Aboriginal Land Council of Tasmania)**

Schedule 2 to the Principal Act is amended as follows:

- (a) by omitting from clause 2(2) “commence” and substituting “convene”;
- (b) by omitting from clause 4(3) “the person presiding has a casting vote” and substituting “the question is to be deferred until the next meeting of the Council”;
- (c) by inserting the following subclause after subclause (3) in clause 4:
 - (3A) If a question is deferred under subclause (3) and there is an equality of votes on the question

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at the meeting to which it is deferred, the question is taken to have been determined in the negative.

32. Schedule 3A inserted

After Schedule 3 to the Principal Act, the following Schedule is inserted:

SCHEDULE 3A – ADVISORY PANEL

Section 26D

1. Interpretation of Schedule

In this Schedule –

member means a member of the Advisory Panel.

2. Term of office

A member –

- (a) is appointed to the Advisory Panel for such period, not exceeding 3 years, as is specified by the Electoral Commissioner in the member's letter of appointment; and
- (b) if eligible, may be reappointed as a member for one or more further periods, each not exceeding 3 years, as is specified by the

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Electoral Commissioner in the member's letter of appointment in respect of that reappointment.

3. Remuneration and conditions of appointment

- (1) A member holds office on such terms and conditions, in relation to matters not provided for by this Act, as are specified by the Electoral Commissioner in the member's letter of appointment or reappointment.
- (2) A member is entitled to be paid such remuneration and allowances as the Electoral Commissioner may determine and the Treasurer approves.
- (3) Despite subclause (2), a member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.

4. Vacation of office

- (1) A member vacates the office of a member if the member –
 - (a) dies; or
 - (b) resigns by written notice given to the Electoral Commissioner; or

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- (c) is removed from office under subclause (2).
- (2) The Electoral Commissioner may remove a member from the office of a member if –
- (a) the member is absent from 3 consecutive meetings of the Advisory Panel without the permission of the other members of the Advisory Panel; or
 - (b) the member is convicted of an offence under any Act, whether in this jurisdiction or elsewhere, which is punishable by a term of imprisonment of 5 years or more; or
 - (c) the Electoral Commissioner is satisfied that the member is –
 - (i) unable to perform adequately or competently the duties of member; or
 - (ii) is no longer a suitable person to perform the duties of member.

5. Filling of vacancies

If the office of a member becomes vacant, the Electoral Commissioner may appoint a person to fill the remainder of

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the term of the member who vacated the office.

6. Meetings

- (1) The Electoral Commissioner may convene a meeting of the Advisory Panel after giving reasonable notice of the meeting to each member.
- (2) Subject to this Act, the Electoral Commissioner –
 - (a) is to specify how records of the meetings of the Advisory Panel are to be kept; and
 - (b) may determine the terms, and procedures, of a meeting of the Advisory Panel.
- (3) The Electoral Commissioner may attend such meetings of the Advisory Panel as the Electoral Commissioner considers appropriate.
- (4) Without limiting subclause (2), the Advisory Panel may allow a person to attend a meeting for the purposes of advising or informing it on any specific matter.

7. Validation of proceedings, &c.

- (1) An act or proceeding of the Advisory Panel is not invalidated by reason only

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that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member.

- (2) Despite a discovery of a defect in the appointment of a member, or that a member was disqualified from acting as or incapable of being a member, all acts and proceedings of the Advisory Panel, that were performed in good faith before the discovery of the defect, are as valid as if –
- (a) the member had been duly appointed; and
 - (b) the member was qualified to act as, or was capable of being, a member; and
 - (c) the Advisory Panel had been fully constituted.

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Part 3 – Right to Information Act 2009 Amended

**PART 3 – RIGHT TO INFORMATION ACT 2009
AMENDED**

33. Principal Act

In this Part, the *Right to Information Act 2009**
is referred to as the Principal Act.

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

Section 6 of the Principal Act is amended by
inserting after subsection (4) the following
subsection:

- (5) This Act does not apply to information –
- (a) that is held by the Electoral Commissioner, appointed under section 14 of the *Electoral Act 2004*, for the purposes of the *Aboriginal Lands Act 1995*; and
 - (b) that is not required, under the *Aboriginal Lands Act 1995*, to be made available to members of the public.

*No. 70 of 2009

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**PART 4 – TASMANIAN CIVIL AND
ADMINISTRATIVE TRIBUNAL ACT 2020 AMENDED**

35. Principal Act

In this Part, the *Tasmanian Civil and Administrative Tribunal Act 2020** is referred to as the Principal Act.

36. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *Acting President*:

Administrative stream means the Administrative stream established by clause 1 of Part 10 of Schedule 2;

- (b) by inserting the following definition after the definition of *monetary order*:

Occupational and Disciplinary stream means the Occupational and Disciplinary stream established by clause 1 of Part 11 of Schedule 2;

*No. 24 of 2020

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Part 4 – Tasmanian Civil and Administrative Tribunal Act 2020 Amended

37. Schedule 1 amended (Relevant Acts)

Schedule 1 to the Principal Act is amended by omitting item 1 and substituting the following items:

1AA. *The Aboriginal Lands Act 1995.*

1. *The Agricultural and Veterinary Chemicals (Control of Use) Act 1995.*

38. Schedule 2 amended (General Division)

Schedule 2 to the Principal Act is amended as follows:

(a) by omitting paragraph (a) from clause 1(1) of Part 3 and substituting the following paragraphs:

(aa) *the Aboriginal Lands Act 1995;*

(a) *the Agricultural and Veterinary Chemicals (Control of Use) Act 1995;*

(b) by inserting the following Parts before Schedule 3:

PART 10 – ADMINISTRATIVE STREAM

1. Administrative stream

There is a stream of the Division to be known as the Administrative stream.

2. Functions and powers allocated to the Administrative stream

The functions and powers of the Tribunal in relation to the following matters are allocated to the Administrative stream:

- (a) the functions and powers allocated to the Tribunal under section 19A of the *Aboriginal Lands Act 1995*, other than the functions and powers that are allocated to the Occupational and Disciplinary stream under Part 11 of this Schedule;
- (b) the functions and powers allocated to the Tribunal under section 26C of the *Aboriginal Lands Act 1995*;
- (c) the functions and powers in respect of the *Aboriginal Lands Act 1995*, and the regulations made under that Act, that have not been allocated to another stream of the Tribunal under this Act or the *Aboriginal Lands Act 1995*.

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Part 4 – Tasmanian Civil and Administrative Tribunal Act 2020 Amended

3. Composition of Tribunal in relation to stream

If proceedings relate to the functions or powers of the Tribunal allocated to the Administrative stream in respect of the *Aboriginal Lands Act 1995*, the Tribunal is to include in its composition, if practicable, a person who is an Aboriginal person within the meaning of that Act.

PART 11 – OCCUPATIONAL AND DISCIPLINARY STREAM

1. Occupational and Disciplinary stream

There is a stream of the Division to be known as the Occupational and Disciplinary stream.

2. Functions and powers allocated to the Occupational and Disciplinary stream

The functions and powers of the Tribunal in relation to the following matters are allocated to the Occupational and Disciplinary stream:

- (a) the functions and powers allocated to the Tribunal, under section 19A of the

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Aboriginal Lands Act 1995, in respect of a code of conduct complaint under section 18B of that Act;

- (b) the functions and powers in respect of the *Aboriginal Lands Act 1995*, and the regulations made under that Act, that have been allocated to the Occupational and Disciplinary stream under this Act or the *Aboriginal Lands Act 1995*.

3. Composition of Tribunal in relation to stream

If proceedings relate to the functions or powers of the Tribunal allocated to the Occupational and Disciplinary stream in respect of the *Aboriginal Lands Act 1995*, the Tribunal is to include in its composition, if practicable, a person who is an Aboriginal person within the meaning of that Act.

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Part 5 – Legislation repealed

PART 5 – LEGISLATION REPEALED

39. Legislation repealed

The legislation specified in Schedule 1 is repealed.

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SCHEDULE 1 – LEGISLATION REPEALED

Section 39

Aboriginal Land Council Elections Act 2004 (No. 1 of 2004)

Consultation Draft