

## Summary of proposals for change to the *Aboriginal Lands Act 1995*

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.

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;
- 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 every 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 enrolls to vote.

### 3: Two new accountability mechanisms, and new appeals

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.

### 4: A new process to declare Crown land as Aboriginal land

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 can be explored in the [Explanatory Clause Notes](#).