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## **Aboriginal Lands Act 1995**

Version current from 1 July 2019 to date (accessed 28 April 2023 at 10:26)

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## **Aboriginal Lands Act 1995**

**An Act to promote reconciliation with the Tasmanian Aboriginal community by granting to Aboriginal people certain parcels of land of historic or cultural significance**

**[Royal Assent 14 November 1995]**

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

## PART 1 - Preliminary

### 1. Short title

This Act may be cited as the Aboriginal Lands Act 1995 .

### 2. Commencement

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

### 3. Interpretation

In this Act, unless the contrary intention appears –

**Aboriginal land** means –

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

**Aboriginal person** means a person specified in section 3A ;

**burdening rights**, in relation to land, includes rights, conditions or covenants relating to that land, whether registered or unregistered, legal or registrable, created or implied or existing or capable of existing;

**Cape Barren Island group** means Cape Barren Island, Long Island, Preservation Island, Passage Island, Forsyth Island, Clarke Island, Badger Island and Mount Chappell Island;

**certificate of election** means a certificate issued under section 16 (1) ;

**Council** means the Aboriginal Land Council of Tasmania established under section 5 ;

**electoral area** means any of the following:

- (a) the south region;
- (b) the north region;
- (c) the north-west region;
- (d) the Flinders Island group;
- (e) the Cape Barren Island group;

**Electoral Commissioner** means the Electoral Commissioner appointed under section 14 of the Electoral Act 2004 ;

**eligible elector**, in relation to an electoral area, means a person whose name is entered on the Roll for an address within that area at the time and date fixed by the Electoral Commissioner under section 12(2) for the relevant election;

**estate**, in relation to land, includes all easements, licences, leases, rights of occupation or possession, habitual access or other burdening rights relating to that land;

**Flinders Island group** means Flinders Island and all islands, except Long Island, Badger Island and Mount Chappell Island, to the north of Cape Barren Island in the Flinders municipal area;

**local Aboriginal group**, in relation to an area of Aboriginal land, means an Aboriginal group nominated by the Council for that area;

**north region** means that part of the State comprising the city of Launceston and the municipal areas of Break O'Day, Dorset, George Town, Meander Valley, Northern Midlands and West Tamar;

**north-west region** means that part of the State comprising the cities of Burnie and Devonport and the municipal areas of Central Coast, Circular Head, Kentish, King Island, Latrobe, Waratah-Wynyard and West Coast;

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

**Register** means the register of title to land referred to in section 33 of the Land Titles Act 1980 ;

**regulations** means regulations made under this Act;

**reserved road** means a road (however described) which has been reserved in a land grant or a folio of the Register of title or by the exercise of a power of reservation conferred by or under an Act;

**Roll** means the Aboriginal Land Council of Tasmania Electors Roll prepared and maintained under section 8 ;

**south region** means that part of the State comprising the cities of Hobart, Clarence and Glenorchy and the municipal areas of Brighton, Central Highlands, Derwent Valley, Glamorgan-Spring Bay, Huon Valley, Kingborough, Sorell, Southern Midlands and Tasman.

### **3A. Aboriginal person**

(1) An Aboriginal person is a person who satisfies all of the following requirements:

- (a) Aboriginal ancestry;
- (b) self-identification as an Aboriginal person;
- (c) communal recognition by members of the Aboriginal community.

(2) The onus of proving that a person satisfies the requirements referred to in subsection (1) lies on that person.

### **4. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

## **PART 2 - Aboriginal Land Council of Tasmania**

### ***Division 1 - Establishment and constitution of Council***

#### **5. Establishment of Council**

- (1) The Aboriginal Land Council of Tasmania is established.
- (2) The Council –
  - (a) is a body corporate; and
  - (b) has a seal; and
  - (c) may sue and be sued in its corporate name.
- (3) The seal is to be kept and used only as authorised by the Council.
- (4) All courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Council.

#### **6. Constitution of Council**

- (1) The Council consists of 8 Aboriginal persons of whom –
  - (a) 2 are to be elected by eligible electors for the south region to represent the south region; and
  - (b) 2 are to be elected by eligible electors for the north region to represent the north region; and
  - (c) 2 are to be elected by eligible electors for the north-west region to represent the north-west region; and
  - (d) one is to be elected by eligible electors for the Flinders Island group to represent the Flinders Island group; and
  - (e) one is to be elected by eligible electors for the Cape Barren Island group to represent the Cape Barren Island group.
- (2) Schedule 1 has effect.
- (3) Schedule 2 has effect.

### ***Division 2 - Election of members of Council***

#### **7. Timing of elections**

- (1) The Chief Electoral Officer is to hold the first election of members of the Council as soon as practicable after the commencement of this Act.
- (2) The Electoral Commissioner must, in respect of each election of members of the Council, determine the date on which nominations are to be called for that election.
- (3) The date determined by the Electoral Commissioner under subsection (2) is to be a date–
  - (a) not sooner than 2 years and 9 months; and
  - (b) not later than 3 years and 3 months–after the date on which nominations were called for the previous election of all members of the Council.
- (4) The Electoral Commissioner is to call for nominations for election of members of the Council on the date determined under subsection (2) by notice published in the *Gazette* and in 3 daily newspapers published and circulating in the State and by such other manner as the Electoral Commissioner considers appropriate.

#### **8. Aboriginal Land Council of Tasmania Electors Roll**

- (1) The Electoral Commissioner is to –
- (a) prepare and maintain an Aboriginal Land Council of Tasmania Electors Roll; and
  - (b) include on the Roll, subject to subsection (2) , the address at which each person named on the Roll resides and indicate the electoral area in which each such person is enrolled.
- (2) If the Electoral Commissioner is satisfied that there is reason to do so, the Electoral Commissioner may determine that an address, other than the address at which a person resides, is to be shown on the Roll in respect of that person.
- (2A) As soon as practicable after the commencement of the Aboriginal Lands Amendment Act (No. 2) 2005 , the Electoral Commissioner is to prepare the Roll, which is to comprise the names of those persons who were entitled to vote at the election of members of the Council in 2001 and is to be constituted from the material from which the Roll for that election was constituted.
- (2B) The Electoral Commissioner is to transfer the name of a person to the Roll in accordance with section 10A .
- (2C) The Electoral Commissioner may remove the name of a person from the Roll if –
- (a) the Electoral Commissioner is satisfied that the person has ceased to be entitled under section 9(1)(b) ; or
  - (b) that person has applied in writing to have his or her name removed from the Roll.
- (2D) A person whose name has been removed from the Roll under subsection (2C) may apply in writing to the Electoral Commissioner to have his or her name reinstated to the Roll if that person is entitled under section 9(1)(b) .
- (2E) On receipt of an application under subsection (2D) , the Electoral Commissioner is to reinstate the name of a person to the Roll if the Electoral Commissioner is satisfied that the person is entitled under section 9(1)(b) .
- (2F) The Electoral Commissioner may change the address shown on the Roll in respect of a person if the Electoral Commissioner is satisfied that the person has changed the address at which he or she resides.
- (3) The Roll may be kept by electronic means or any similar means.
- (4) The forms to be used for the purposes of the Roll are to be as approved by the Electoral Commissioner.

## 9. Who is entitled to be on the Roll

- (1) A person is entitled to have his or her name entered on the Roll if the person –
- (a) is an Aboriginal person; and
  - (b) resides in the electoral area in respect of which the person applies to have his or her name entered on the Roll; and
  - (c) has attained the age of 18 years.
- (2) A person is taken to have satisfied paragraphs (b) and (c) of subsection (1) if –
- (a) the person's name is entered on the State roll for an address within the electoral area in respect of which the person applies to have his or her name entered on the Roll; or
  - (b) the person is entitled to have his or her name entered on the State roll for an address within the electoral area in respect of which the person applies to have his or her name entered on the Roll; or
  - (c) the person verifies the matters referred to in those paragraphs in such manner as the Electoral Commissioner may determine.
- (3) The Electoral Commissioner, in consultation with such persons as the Electoral Commissioner considers necessary, is to prepare guidelines concerning the requirements referred to in section 3A .
- (4) The Electoral Commissioner is to make the guidelines available to a person who requests them.

(5) A person who is entitled to and wishes to have his or her name entered on the Roll must lodge with the Electoral Commissioner an enrolment form in a form approved by the Electoral Commissioner.

(6) In this section, *State roll* has the same meaning as in the Electoral Act 2004 .

## 10. Preliminary Roll

(1) . . . . .

(2) The Electoral Commissioner is to cause to be published in the *Gazette* and in 3 daily newspapers published and circulating in the State and by such other manner as the Electoral Commissioner considers appropriate, at least 120 days before nominations are called for election of members of the Council, a notice—

- (a) seeking applications for enrolment on the Roll; and
- (b) specifying the date and time at which applications for enrolment on the Roll close, being a date not later than 60 days before nominations are called for that election; and
- (c) specifying the vacancies in the membership of the Council to be filled; and
- (d) specifying details of entitlement to vote at the election; and
- (e) specifying any other matter which the Electoral Commissioner considers appropriate.

(2A) In each year in which nominations for an election of members of the Council are to be called, the Electoral Commissioner is to prepare a Preliminary Roll.

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

- (a) have lodged a properly completed enrolment form with the Electoral Commissioner —
  - (i) after the commencement of the Aboriginal Lands Amendment Act (No. 2) 2005 and before the close of applications for enrolment on the Roll in the year 2005; or
  - (ii) in any other year after the year 2005 in which nominations for an election of members of the Council are to be called, after the close of applications for enrolment on the Roll in the previous year in which nominations for an election of members of the Council were called and before the close of applications for enrolment on the Roll in that other year; and
- (b) have been determined by the Electoral Commissioner as meeting the requirements in section 9(1)(b) and (c) .

(3) The Electoral Commissioner is to cause to be published in the *Gazette* and in 3 daily newspapers published and circulating in the State and by such other manner as the Electoral Commissioner considers appropriate, at least 60 days before nominations are called for election of members of the Council, a notice—

- (a) stating that a Preliminary Roll has been prepared for the purposes of the election; and
- (b) stating that the Preliminary Roll may be inspected and specifying the times and places at which the Preliminary Roll may be inspected; and
- (c) stating that objections to the transfer of the name of a person from the Preliminary Roll to the Roll on the basis that the person is not an Aboriginal person may be lodged with the Electoral Commissioner before such date as is specified in the notice, being a date not earlier than 28 days after the publication of the notice; and
- (d) specifying any other matter which the Electoral Commissioner considers appropriate.

(4) In order to properly consider any objection, the Electoral Commissioner—

- (a) may request the advice of such persons as the Electoral Commissioner considers necessary; and
- (b) in the case of an objection to the name of a person being transferred from the Preliminary Roll to the Roll, must give that person an opportunity to make submissions to the Electoral Commissioner in relation to the matter.

(4A) Before rejecting an objection, the Electoral Commissioner must be satisfied that the person to whom the objection relates has satisfied the requirements referred to in section 3A(1)(a), (b) and (c).

(5) The Electoral Commissioner must accept the objection or reject the objection not later than 21 days before nominations are called for election of members of the Council and—

(a) . . . . .

(b) by notice in writing served on a person who lodged an objection under this section and the person to whom the objection related, must notify those persons of the Electoral Commissioner's decision.

(6) No action or proceeding may be brought in respect of a decision of the Electoral Commissioner as to whether a person is or is not an Aboriginal person except as prescribed in subsection (7).

(7) A person who lodged an objection under this section, or a person to whom an objection related, who is aggrieved by the decision of the Electoral Commissioner may, in accordance with the Rules of the Supreme Court, appeal to the Supreme Court, within 7 days after the date on which notice was served on that person under subsection (5), on the ground that procedures that are required by law to be observed relating to the making of the decision have not been observed.

#### 10AA. Protection of sensitive enrolment records

(1) The procedures referred to in section 10(7) are not to be taken as including a requirement for the Electoral Commissioner to —

(a) divulge the existence or contents of any sensitive enrolment record to any person; or

(b) give any person an opportunity to comment on any sensitive enrolment record or its contents.

(2) A court must not, under the Judicial Review Act 2000 or otherwise, make an order impugning an enrolment decision on the ground that the Electoral Commissioner —

(a) did not divulge to a person the existence or contents of any sensitive enrolment record taken into account in making the decision; or

(b) did not give a person an opportunity to comment on any sensitive enrolment record taken into account in making the decision or on the contents of any such record.

(3) For the purposes of subsection (2), an order of a court is taken to impugn an enrolment decision if the order —

(a) quashes the decision or sets it aside; or

(b) varies the decision; or

(c) remits the decision to the Electoral Commissioner, with or without directions, for further consideration or remaking; or

(d) contains any adverse declaration about the legality or fairness of the decision or the process by which it was arrived at; or

(e) stays or defers the implementation of the decision.

(4) This section applies to every enrolment decision made after the commencement of the Aboriginal Lands Amendment Act 2008, even if the decision —

(a) relates to a Preliminary Roll or Roll in respect of which, immediately before that commencement, proceedings of any kind were in progress; or

(b) is in substitution for an enrolment decision made before that commencement.

(5) In this section —

***enrolment decision*** means any decision of the Electoral Commissioner under section 10;

***proceedings*** include —

(a) appeals under section 10(7); and

(b) applications for orders of review under the Judicial Review Act 2000 ; and

(c) applications for any form of equitable relief;

***sensitive enrolment record*** means a record –

(a) which is provided to the Electoral Commissioner by any person for or in connection with the preparation of a Preliminary Roll or Roll; and

(b) which the Electoral Commissioner in good faith believes is regarded by that person as being a record of a personally sensitive or confidential nature.

#### **10A. Transfer of names to Roll**

(1) If no objection in relation to a name was lodged with the Electoral Commissioner in accordance with section 10 , the Electoral Commissioner is to transfer the name from the Preliminary Roll to the Roll.

(2) If the Electoral Commissioner has rejected an objection in relation to a name in accordance with section 10 , and no appeal has been lodged under that section in relation to that decision, the Electoral Commissioner is to transfer the name from the Preliminary Roll to the Roll.

(3) If, in relation to an appeal to the Supreme Court lodged under section 10 , the effect of the decision of the Supreme Court is that the Electoral Commissioner reconsider the objection in relation to a name, and the objection is then rejected by the Electoral Commissioner, the Electoral Commissioner is to transfer the name from the Preliminary Roll to the Roll.

#### **11. Availability of Preliminary Roll and Roll**

(1) The Electoral Commissioner is to make the Preliminary Roll and the Roll available to the Council.

(2) The Council may use the Preliminary Roll and the Roll for any purposes related to the performance of its functions.

(3) The Electoral Commissioner may use the Preliminary Roll and the Roll for the purpose of performing any of his or her functions under this Act.

(4) The Council may provide to any person who has obtained the approval of the Council a copy of the Preliminary Roll and the Roll or any part of those Rolls in printed or electronic form.

(5) For the purposes of subsection (4) , the approval of the Council is to be in writing and is to specify the purpose for which information contained in the Preliminary Roll or the Roll may be used.

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

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

(7) The Right to Information Act 2009 does not apply to the Preliminary Roll or the Roll.

#### **12. Conduct of elections**

(1) Elections of members of the Council are, subject to any other provisions of this Act, to be conducted in such manner as is approved by the Electoral Commissioner.

(2) Without limiting subsection (1) , the Electoral Commissioner is to fix a time and date for the purposes of determining a person's entitlement to vote at an election of members of the Council.

(3) Without limiting subsection (1) , the Electoral Commissioner is to fix a time and date for the close of nominations in respect of an election of members of the Council.

#### **13. Who may vote**

An eligible elector for an electoral area is entitled to vote at an election for a member of the Council to represent that area.

#### 14. Who may stand for election

A person is not qualified to stand for election, or to be elected, as a member of the Council to represent an electoral area unless the person's name is shown on the Roll in respect of that electoral area at the time and date fixed by the Electoral Commissioner under section 12(3) .

#### 15. Counting of votes

Votes cast at an election of members of the Council are to be counted in accordance with –

- (a) Part 2 of Schedule 7 to the Local Government Act 1993 if one member of the Council is to be elected to represent an electoral area; or
- (b) Part 3 of Schedule 7 to the Local Government Act 1993 if more than one member of the Council is to be elected to represent an electoral area.

#### 16. Certificate of election

- (1) After all the votes are counted, the Electoral Commissioner is to—
  - (a) declare the names of the persons who are elected at an election; and
  - (b) issue a certificate of the result of the election.
- (2) The Electoral Commissioner is to cause a copy of the certificate of election to be published in the *Gazette* and in 3 daily newspapers published and circulating in the State.
- (3) An eligible elector for an electoral area or the Electoral Commissioner may dispute the result of an election by lodging an application with the Supreme Court within 30 days of the date on which the certificate of election is published in the *Gazette* under subsection (2) .
- (4) A person may not dispute the result of an election of members of the Council on the grounds that a person is or is not entitled to vote at the election.

#### 17. Costs of elections

The costs incurred for or in connection with an election under this Act are to be paid from the Public Account which, to the necessary extent, is appropriated accordingly.

### ***Division 3 - Functions and powers of Council***

#### 18. Functions and powers of Council

- (1) The Council has the following functions:
  - (a) to use and sustainably manage Aboriginal land and its natural resources for the benefit of all Aboriginal persons;
  - (b) to exercise, for the benefit of all Aboriginal persons, the Council's powers as owner of Aboriginal land;
  - (c) to prepare management plans in respect of Aboriginal land;
  - (d) to use and sustainably manage any other land in which the Council acquires an interest;
  - (e) such other functions as are imposed on it by or under this Act or any other Act.
- (2) The Council must perform its functions for the benefit of all Aboriginal persons and in the interests of reconciliation with the broader Tasmanian community.
- (3) In its use and management of Aboriginal land and its natural resources, the Council is to have regard to the interests of local Aboriginal communities.
- (4) The Council may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions and, in particular, has power, subject to this Act, to acquire, hold, dispose of and otherwise deal with property, both real and personal.

(5) The Council may, in respect of any area of Aboriginal land, nominate a local Aboriginal group for that area.

(6) The Council may delegate any of its functions or powers in respect of the use and management of Aboriginal land or other land in which the Council acquires an interest to any Aboriginal group which, or Aboriginal person who, the Council considers appropriate.

## **19. Review of Council's decisions**

(1) If the Council receives a request which complies with subsection (2) to review a decision made by it in respect of –

(a) the involvement of local Aboriginal groups or persons in the management of Aboriginal land; or

(b) the granting of an interest which did not exist at the commencement of this Act in Aboriginal land to any person; or

(c) any other matter which is likely to have a significant impact on Aboriginal land or other land in which the Council acquires an interest–

the Council must review that decision.

(2) The request referred to in subsection (1) must be signed by 50 Aboriginal persons who would be eligible to vote at an election for members of the Council if such an election was held at the date of the request and must contain the names and addresses in a legible form of those persons.

(3) The Council must review its decision within 28 days from the date on which it received a request.

(4) After the Council has reviewed its decision, it must give to each person who signed the request the result, in writing, of its review and the reasons for its decision on the review.

## ***Division 4 - Staff***

### **20. Staff**

(1) The Council may employ such persons as it considers necessary to enable it to perform its functions.

(2) Subject to any relevant award, industrial agreement or enterprise agreement, the terms and conditions of persons employed under subsection (1) are as determined by the Council.

(3) The State Service Act 2000 does not apply to the Council or its staff.

## ***Division 5 - Finances of the Council***

### **21. Aboriginal Land Council of Tasmania Fund**

(1) There is established a fund to be known as the Aboriginal Land Council of Tasmania Fund.

(2) The Fund consists of –

(a) money derived by the Council from leases and licences issued under this Act in respect of any Aboriginal land; and

(b) money provided by the Parliament of the Commonwealth or the State for the purposes of the Council; and

(c) other money received from any other source by the Council.

(3) The Fund is to be administered by the Council.

### **22. Application of Fund**

Money in the Fund is to be applied –

(a) in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Council in the performance of its functions and the exercise of its powers; and

(b) in the payment of any remuneration payable under this Act.

**23. Authorised deposit-taking institution accounts**

- (1) The Council must open and maintain at least one account in an authorised deposit-taking institution in this State.
- (2) The Council must pay any money received by it into the account referred to in subsection (1) .
- (3) Payment of money into the account referred to in subsection (1) is taken to be a payment of money into the Aboriginal Land Council of Tasmania Fund.

**24. Temporary investment of funds**

The Council may invest any money that it is holding and for which it has no immediate use in any manner in which trustees are authorised to invest trust funds under the Trustee Act 1898 .

**25. Financial statements**

- (1) The Council is to prepare and forward to the Auditor-General a copy of its financial statements for each financial year in accordance with the Audit Act 2008 .
- (2) If requested by an Aboriginal person, the Council must make its financial statements available to that person for inspection.

**26.**

. . . . .

## PART 3 - Aboriginal Land

### 27. Land vested in Council

- (1) The land referred to in Schedule 3 is vested in the Council in trust for Aboriginal persons in perpetuity.
  - (1A) The land declared under section 35A is held by the Council –
    - (a) in trust for Aboriginal persons in perpetuity; and
    - (b) subject to the provisions of this Act.
  - (2) The land referred to in subsection (1) is vested to a depth of 50 metres and includes minerals other than oil, atomic substances, and geothermal substances, within the meaning of the Mineral Resources Development Act 1995 and helium.
    - (2A) The land referred to in subsection (1A) includes the right to minerals, other than oil, atomic substances and geothermal substances, within the meaning of the Mineral Resources Development Act 1995 , and to helium, to a depth of 50 metres.
  - (3) The land referred to in subsection (1) vests subject to–
    - (a) any estate existing in it immediately before the commencement of this Act; and
    - (b) the provisions of this Act.
  - (4) There is reserved to the Crown the right at all times –
    - (a) of making and constructing in land referred to in subsection (1) such drains, sewers and waterways for sanitary or other purposes as may be considered expedient; and
    - (b) of altering, amending, cleansing or repairing those drains, sewers and waterways.
  - (5) There is reserved to the public during daylight hours over the land referred to in item 11 of Schedule 3 a right of access as specified in Plan 3466 in the Central Plan Register except when a significant Aboriginal cultural event is being held on that land.
  - (6) There is included with the areas of land referred to in items 5, 6 and 7 of Schedule 3 a right of access on foot over any Crown land between each of those areas and the nearest point of public access.
  - (7) There is reserved to the public at all times a right of access over the land referred to in items 1 and 2 of Schedule 3 as specified in Plans 3468 and 3467 in the Central Plan Register.
    - (7A) There is to be reserved to the public at all times over the land referred to in item 13 of Schedule 3 a right of access as specified in Plan 4807 in the Central Plan Register.
    - (7B) There is to be reserved to the public during daylight hours access over the land shown as lot 3 in Plan 4807 in the Central Plan Register.
  - (8) There is reserved to the public at all times, in relation to the land referred to in items 3, 4, 8, 9, 10, 12 and 15 of Schedule 3 , a right of pedestrian access over the area of land 15 metres wide immediately above the high-water mark.
    - (8A) There is reserved to the public at all times, in relation to the land referred to in item 2 of Schedule 3 , a right of pedestrian access over the area of land 15 metres wide immediately above the high-water mark except that area of land between points A and D shown as being on the high-water mark in Plan 3467 in the Central Plan Register.
    - (8B) In relation to the land referred to in item 14 of Schedule 3 there is reserved to the public at all times –
      - (a) a right of access over all roads and vehicular tracks shown on Plan 6457 in the Central Plan Register; and
      - (b) a right of access over all reserved roads in existence at the commencement of the Aboriginal Lands Amendment Act 2004 ; and

(c) a right of pedestrian access over the area of land 15 metres wide immediately above the high-water mark except those areas of land shown as hatched on Plan 6457 in the Central Plan Register; and

(d) a right of pedestrian access over those areas of land shown as hatched on Plan 6457 in the Central Plan Register.

(9) There is reserved to the Crown a right to construct and fence a road over the land referred to in item 11 of Schedule 3 as specified in Plan 3466 in the Central Plan Register and to carry out any preliminary investigation relating to the construction of a road on that land.

(10) If the Crown exercises the right to construct and fence a road over the land referred to in subsection (9) –

(a) no compensation is payable to the Council; and

(b) the road, as constructed and fenced, becomes a highway, within the meaning of the Highways Act 1951, and a road, within the meaning of the Roads and Jetties Act 1935, and forms part of the East Derwent Highway.

## **28. Existing leases and licences**

(1) If any land vested in the Council by section 27 (1) was, in the 12 month period before the vesting, subject to a lease or licence and the lease or licence expires by effluxion of time, the lessee or licensee may apply to the Council for further leases or licences at a rent and on terms and conditions to be agreed between the Council and the lessee or licensee.

(2) In determining whether to grant a further lease or licence, and the terms and conditions of any further lease or licence, the Council must give effect to the guidelines prescribed in the regulations.

(3) Notwithstanding section 19, a person who is aggrieved by a decision of the Council in relation to the granting of a further lease or licence may request the Council to review its decision.

(4) A lease in respect of Aboriginal land which is for a period exceeding 3 years is to be registered under the Land Titles Act 1980.

(5) If a lease for a period exceeding 3 years existed at the commencement of this Act in respect of land which became Aboriginal land on that commencement and that lease was not in a form to enable it to be registered under the Land Titles Act 1980, section 28 of that Act applies as if the lease were an instrument registered under the Registration of Deeds Act 1935.

## **28A. Power to grant new leases and licences**

(1) The Council may grant a lease or licence of or in respect of any Aboriginal land and other land acquired by the Council other than land which is leased or licensed pursuant to section 28.

(2) Subsections (2), (3), (4) and (5) of section 28 do not apply to a lease or licence granted under subsection (1) of this section.

## **29. Appeals in respect of Council's decisions in relation to leases and licences**

(1) A person who held a lease or licence in respect of land in the 12 month period before that land was vested in the Council under section 27 (1) and who is aggrieved by a decision of the Council–

(a) in respect of that lease or licence; or

(b) in respect of a further lease or licence; or

(c) to refuse to grant a further lease or licence–

may appeal to the Commissioner within 14 days after the day on which the person is notified of the Council's decision on a review under section 28 (3).

(2) The Commissioner is to consult the Council before making a decision under this section.

(3) At the hearing of an appeal, the Commissioner may–

(a) dismiss the appeal; or

(b) quash the decision of the Council and direct it to take such action as the Commissioner considers necessary.

(4) If an appeal is brought in respect of the revocation or variation of a lease or licence, the Commissioner is to determine whether the revocation or variation takes effect pending the determination or abandonment of the appeal.

(5) The Commissioner is to cause a copy of his or her decision in relation to an appeal under this section to be served on the parties to the appeal and, in the case of a lease which is registered under the Land Titles Act 1980 in respect of Aboriginal land, on the Recorder of Titles.

(6) The Recorder of Titles may make any notations or amendments to the Register as the Recorder considers appropriate to give effect to the decision of the Commissioner.

(7) The Council must comply with any directions given to it under this section.

(8) The decision of the Commissioner on the hearing of an appeal under this section is final.

(9) Subject to this section, an appeal to the Commissioner is to be heard and determined as prescribed.

(10) In this section,

*Commissioner* means the chairperson of the Resource Planning and Development Commission established under the Resource Planning and Development Commission Act 1997 .

### **30. Council precluded from mortgaging, &c., Aboriginal land**

The Council must not mortgage Aboriginal land or use it as any form of security for any purpose.

### **31. Local management of certain areas**

(1) The Council, after considering the factors specified in subsection (2) , must involve a local Aboriginal group or a local Aboriginal person in the management of Aboriginal land.

(2) The factors which the Council is to consider in deciding which local Aboriginal group or person is to be involved in the management of Aboriginal land are as follows:

- (a) the extent to which a local Aboriginal group or person has an association or connection with the land;
- (b) the extent to which a local Aboriginal group or person has the desire and capacity to manage the land;
- (c) the importance of the land to all Aboriginal persons.

### **32. Management plans**

(1) The Council or a local Aboriginal group may prepare draft management plans in respect of Aboriginal land.

(2) Where a local Aboriginal group prepares a draft management plan, the local Aboriginal group must forward the draft management plan to the Council.

(3) Where the Council receives a draft management plan from a local Aboriginal group, it must consider the draft management plan and –

- (a) may approve the draft management plan; or
- (b) may make such amendments to it as the Council considers necessary.

(4) Where the Council prepares a draft management plan or makes amendments to a draft management plan forwarded to it by a local Aboriginal group, the Council is to give the draft management plan to the local Aboriginal group and to any local Aboriginal person who the Council considers appropriate.

(5) The local Aboriginal group or person may, within 28 days of receiving the draft management plan, make such representations to the Council in respect of the draft management plan as it thinks fit.

(6) After considering any representations received in respect of a draft management plan, the Council may approve the draft management plan.

(7) The draft management plan comes into operation as a management plan on such date as is specified in it.

(8) If the Council has approved a draft management plan in respect of an area of Aboriginal land, any other management plan, in force immediately before the approval of the draft management plan, is of no effect in so far as it relates to that area.

### **33. Folio of Register to be created for Aboriginal land**

(1) On receipt of an application from the Council and on receipt of a plan certified to be correct by the Surveyor-General, the Recorder of Titles must create, in accordance with the Land Titles Act 1980 , a folio of the Register in respect of land vested in the Council under section 27(1) .

(2) The Recorder may, on the Recorder's own motion, create, in accordance with the Land Titles Act 1980 , a folio of the Register in respect of land vested in the Council under section 27(1) .

(3) If, at the time of creating a folio of the Register in respect of land vested in the Council under section 27(1) or at any time after creating such a folio, it appears to the Recorder of Titles that there is in existence a document in writing which provides evidence of an estate in that land, the Recorder may act as if the land was subject to section 28 of the Land Titles Act 1980 and record the document as if it were registered under the Registration of Deeds Act 1935 .

### **34. Stamp duty and charges not payable**

(1) . . . . .

(2) A fee or charge which is otherwise payable under a law in relation to a vesting of land is not payable in respect of the vesting of any land in the Council under section 27(1) .

### **35. Power of Recorder to correct folio of the Register**

If the Recorder of Titles is satisfied that –

(a) there is an error in a folio of the Register in respect of Aboriginal land or in a dealing or instrument registered on a folio of the Register in respect of Aboriginal land or in a plan held by the Recorder of Titles relating to Aboriginal land; and

(b) the Council and any other person affected by the error agree –

the Recorder has the power, in addition to any other power the Recorder may have, to correct the folio, dealing, instrument or plan in such manner as the Recorder considers appropriate.

### **35A. Registration of declarations of land acquired by Council**

(1) The Council may apply to the Minister in writing for land acquired by it to be declared to be Aboriginal land.

(2) On receipt of an application under subsection (1) , the Minister must declare the land referred to in the application to be Aboriginal land.

(3) As soon as practicable after making the declaration, the Minister must lodge with the Recorder of Titles in a form approved by the Recorder a copy of the declaration.

(4) The Recorder of Titles must, as soon as practicable after lodgment of the copy of the declaration, record the declaration on the folio of the Register in respect of that land.

## PART 4 - Miscellaneous

### 36. Disclosure of pecuniary interests

- (1) In this section, *member* means a member of the Council.
- (2) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council, other than a determination as to the remuneration and allowances payable to a member, is required, as soon as possible after the relevant facts have come to the member's knowledge, to disclose the nature of the interest at a meeting of the Council if the interest appears to raise a conflict with the proper performance of the duties in relation to the consideration of the matter.
- (3) A disclosure by a member at a meeting of the Council that the member –
  - (a) is a member, or is in the employment, of a specified company or other body; or
  - (b) is a partner, or is in the employment, of a specified person; or
  - (c) has some other specified interest relating to a specified company or other body or a specified person

is sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (2) .

- (4) Particulars of any disclosure made under this section are to be recorded in a book kept for the purpose and that book is required to be open at all reasonable hours for inspection by any person on payment of the fee determined by the Council.
- (5) After a member has disclosed the nature of an interest in any matter or thing, the member may not, unless the other members of the Council concerned otherwise determine –
  - (a) be present during any deliberation, or take part in any decision, of the Council with respect to that matter or thing; or
  - (b) perform any function or exercise any power under this Act with respect to that matter or thing.
- (6) For the purposes of the making of a determination by other members under subsection (5) , a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates may not –
  - (a) be present during any deliberation of those members for the purposes of making the determination; or
  - (b) take part in the making by the other members of the determination.
- (7) A contravention of this section does not invalidate any decision of the Council or the exercise of any function under this Act.
- (8) This section does not apply to an interest of a member (being the provision of goods or services to the member by the Council) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

### 37. Disqualification from office

- (1) A person who knowingly fails to comply with section 36 is guilty of an offence.  
Penalty: Fine not exceeding 20 penalty units.
- (2) A person who is convicted of an offence under this section is disqualified from holding any office under this Act for 7 years from the date of conviction, or for such shorter period as the court by which the person is convicted may order.
- (3) In any prosecution for such an offence, the court may order that, despite the conviction, the defendant is not disqualified from holding office because the circumstances giving rise to the offence are of a trifling character.

**37A. Settlement Point cemetery**

- (1) The Council has the control and management of the Settlement Point cemetery shown on Plan 4806 in the Central Plan Register.
- (2) A person may, within 12 months from the commencement of the Aboriginal Lands Amendment (Wybalenna) Act 1999 , apply to the Council for an exclusive right of burial for 20 years in the unallocated plots in that portion of the Settlement Point cemetery shown bounded by heavy black lines on Plan 4806.
- (3) The Council may grant an exclusive right of burial for 20 years to any person who makes an application under subsection (2) and pays to the Council the relevant fee.
- (4) An exclusive right granted under subsection (3) entitles the grantee to be buried in the portion of the cemetery to which the right of burial relates.
- (5) On receipt of an application and on payment to it of the relevant fee, the Council may extend the period of the exclusive right of burial for such further period, not exceeding 20 years, as it may determine.
- (6) At the expiration of a period of 12 months from the commencement of the Aboriginal Lands Amendment (Wybalenna) Act 1999 , the Council may close the cemetery to burial, other than burials which are carried out pursuant to an exclusive right of burial granted before the closure of the cemetery.
- (7) In this section,

*relevant fee* means the fee prescribed by the Council pursuant to the regulations made under this Act.

**38. Statutory rules revoked or amended**

- (1) The statutory rules specified in column 4 of Part 1 of Schedule 4 are revoked.
- (2) Each statutory rule specified in column 4 of Part 2 of Schedule 4 is amended by omitting from the land referred to in it the land shown edged by a thick line on the plan specified in column 5 .

**38A. Cessation of reserved status of certain land**

- (1) Clarke Island Nature Reserve, that –
  - (a) was, under section 21(1)(a) of the Regional Forest Agreement (Land Classification) Act 1998 , declared to be reserved land in the class of nature reserve and taken to have been so declared under the National Parks and Wildlife Act 1970 ; and
  - (b) is taken to be reserved land in the corresponding class under the Nature Conservation Act 2002 – ceases to be reserved land.
- (2) The areas of land on Cape Barren Island that were, under section 10(3)(b) of the Regional Forest Agreement (Land Classification) Act 1998 , reserved to the Crown as public reserves and taken to have been so reserved under the Crown Lands Act 1976 cease to be public reserves.
- (3) This section has effect notwithstanding section 11(5) and section 21 of the Nature Conservation Act 2002 .

**39. Certain areas cease to be conservation areas and State reserves**

The areas of land shown on Plan 3466 in the Central Plan Register cease to be conservation areas and State reserves.

**40. Indemnity of Council in respect of Aboriginal land**

The Council is indemnified by the Crown against any action arising out of or in relation to land vested in the Council under section 27(1) before it became vested in the Council.

**41. Regulations**

- (1) The Governor, if satisfied that the Council has been consulted, may make regulations for the purposes of this Act.
- (2) Without limiting subsection (1) , the regulations may make provision for or with respect to –

- (a) the election of members of the Council; and
- (b) the conduct, control and management by the Council of the Settlement Point cemetery shown on Plan 4806 in the Central Plan Register.

(3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Council.

(5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(6) A provision referred to in subsection (5) may, if the regulations so provide, take effect from the commencement of this Act or a later date.

#### **42. Amendment of Acts**

The Acts specified in Schedule 5 are amended in the manner specified in that Schedule.

#### **43. Transitional provision**

Until the Chief Electoral Officer issues a certificate of election in respect of each of the inaugural members of the Council, persons nominated by the Minister, after consultation with the Aboriginal community, are to manage Aboriginal land as if they were the Council.

#### **44. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Aboriginal Affairs; and
- (b) the Department responsible to the Minister for Aboriginal Affairs in relation to the administration of this Act is the Department of Premier and Cabinet.

# SCHEDULE 1 - Provisions with Respect to Membership of the Aboriginal Land Council of Tasmania

Section 6

## 1. Interpretation

In this Schedule, *member* means a member of the Council.

## 2. Term of office

Subject to this Act, the term of office of a member is a period starting on the date of issue of a certificate of election by the Electoral Commissioner and ending on the date of issue of the next certificate of election.

## 3. Provisions requiring devotion of whole of time to other duties

Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his or her time to the duties of office under that Act, that provision does not operate to disqualify that person from holding that office and also the office of a member.

## 4. Remuneration

A member is entitled to be paid such remuneration and allowances as the Council determines.

## 5. Vacation of office

(1) A member vacates office if he or she –

- (a) dies; or
- (b) resigns; or
- (c) is disqualified under section 37 ; or
- (d) is removed from office under subclause (2) .

(2) The Council may remove a member from office if the member –

- (a) is absent from 2 consecutive meetings of the Council without the permission of the Council; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration or estate for their benefit; or
- (c) is convicted in Tasmania or elsewhere of an offence punishable by imprisonment for 3 years or longer or a crime.

## 6. Filling of casual vacancies

(1) If a vacancy occurs in the office of a member, a recount of the votes cast is to be conducted in accordance with Schedule 8 to the Local Government Act 1993 .

(2) If there are no consenting candidates, within the meaning of Schedule 8 to the Local Government Act 1993 , a by-election is to be conducted by the Electoral Commissioner in such manner as is determined by the Electoral Commissioner.

(3) If a vacancy occurs more than 2 years and 6 months after the date of the previous election of all members –

- (a) the Electoral Commissioner is not to carry out a recount unless the number of remaining members is not sufficient to constitute a quorum of the Council; and
- (b) a by-election is not to be conducted by the Electoral Commissioner.

## 7. Validity of proceedings, &c.

All acts and proceedings of the Council or of any person acting pursuant to any direction of the Council are, notwithstanding the subsequent discovery of any defect in the election of any member of the Council or that any person was disqualified from acting as, or incapable of being, a member of the Council, as valid as if the member had been duly elected and was qualified to act as, or capable of being, a member, and as if the Council had been fully constituted.

## **8. Presumptions**

In any proceedings by or against the Council, unless evidence is given to the contrary, no proof is required of –

- (a) the constitution of the Council; or
- (b) any resolution of the Council; or
- (c) the appointment of any member of the Council; or
- (d) the presence of a quorum at any meeting of the Council.

## SCHEDULE 2 - Provisions with respect to meetings of the Aboriginal Land Council of Tasmania

### Section 6

#### 1. Interpretation

In this Schedule –

*chairperson* means the chairperson of the Council;

*member* means a member of the Council.

#### 2. Meetings of the Council

- (1) The Council is to hold its first meeting after each election of all members as soon as practicable after the election.
- (2) The chairperson may commence such other meetings of the Council as, in his or her opinion, are necessary for the proper performance of its functions.
- (3) A meeting of the Council may be convened by 2 or more members.

#### 3. Chairperson

- (1) The members are to elect a chairperson at the Council's first meeting after each election of all members.
- (2) The chairperson of the Council is to preside at all meetings of the Council at which the chairperson is present.
- (3) If the chairperson of the Council is not present at a meeting of the Council a member elected by the members present is to preside at that meeting.

#### 4. Procedure at meetings

- (1) Five members form a quorum at any duly convened meeting of the Council.
- (2) Any duly convened meeting of the Council at which a quorum is present is competent to transact any business of the Council.
- (3) Questions arising at a meeting of the Council are to be determined by a majority of votes of the members present and voting and, in the case of an equality of votes, the person presiding has a casting vote.
- (4) The Council must cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

#### 5. General procedure

The procedure for the calling of, and for the conduct of business at, meetings of the Council is, subject to any procedure that is specified in this Act, to be as determined by the Council.

## SCHEDULE 3 - Land Vested in the Council

Section 27

COLUMN 1 Item No.	COLUMN 2 General description of land	COLUMN 3 Registered plans Central Plan Register reference
1	Oyster Cove	3468
2	Mount Cameron West	3467
3	Mount Chappell Island	3469
4	Steep (Head) Island	3470
5	Kutikina Cave	3471
6	Ballawinne Cave	3472
7	Wargata Mina Cave	3473
8	Badger Island	3469
9	Babel Island	3475
10	Great (Big) Dog Island	3474
11	Risdon Cove	3466
12	Cape Barren Island (part)	3486
13	Wybalenna	4807
14	Cape Barren Island	6457
15	Clarke Island	5135

## SCHEDULE 4 - Statutory Rules

Section 38

### PART 1 - Statutory Rules Revoked

COLUMN 1 Item No.	COLUMN 2 General area covered by rule	COLUMN 3 Status to be revoked	COLUMN 4 Statutory Rule No.
1	Oyster Cove	State Reserve (Historic Site)	1981, No. 124
2	Mount Cameron West	State Reserve (Aboriginal Site)	1978, No. 168
3	Steep (Head) Island	Game Reserve	1981, No. 121
4	Maxwell River (Ballawinne Cave)	Protected Archaeological Site	1986, No. 6
5	Wargata Mina Cave	Protected Archaeological Site	1990, No. 76
6	Risdon Cove	Intended new line of part of East Derwent Highway	1983, No. 14
7	Wybalenna	State Reserve (Historic Site)	1979, No. 270

## PART 2 - Statutory Rules Amended

COLUMN 1 Item No.	COLUMN 2 General area	COLUMN 3 Status	COLUMN 4 Statutory Rule No.	COLUMN 5 Number of plan registered in the Central Plan Register
1	Mount Chappell Island Badger Island	State Reserve (Nature Reserves)	1976, No. 269	3469
2	Kutikina Cave	State Reserve (National Park)	1990, No. 16	3471
3	Maxwell River (Ballawinne Cave)	State Reserve (National Park)	1990, No. 16	3472
4	Wargata Mina Cave	State Reserve (National Park)	1990, No. 85	3473
5	Babel Island	Hunting ground for mutton birds	1957, No. 81	3475
6	Great (Big) Dog Island	Hunting ground for mutton birds	1957, No. 81	3474

## **SCHEDULE 5**

The amendments effected by this Schedule have been incorporated into the authorised version of the appropriate Acts.