



New South Wales

Aboriginal Land Rights Amendment Regulation 2007

under the

Aboriginal Land Rights Act 1983

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Aboriginal Land Rights Act 1983*.

REBA MEAGHER, M.P.,
Minister for Aboriginal Affairs

Explanatory note

The object of this Regulation is to amend the *Aboriginal Land Rights Regulation 2002*, as a consequence of the partial commencement of the *Aboriginal Land Rights Amendment Act 2006*, as follows:

- (a) to omit provisions, and remove references, relating to Regional Aboriginal Land Councils and to transfer the assets and liabilities of those Councils to the New South Wales Aboriginal Land Council,
- (b) to provide for the procedure for electing councillors, representing Regions, to the New South Wales Aboriginal Land Council,
- (c) to transfer functions to the Chief Executive Officer and Chairperson of the New South Wales Aboriginal Land Council, as a result of the abolition of the offices of Secretary and Treasurer,
- (d) to provide for procedures for meetings of the New South Wales Aboriginal Land Council,
- (e) to remove the requirement to hold elections within 2 years of the appointment of an administrator to Aboriginal Land Councils and to provide for procedures for the holding of elections after such an appointment,
- (f) to enable the Registrar to delegate functions to members of staff of the New South Wales Aboriginal Land Council,
- (g) to make other minor and consequential amendments.

This Regulation is made under the *Aboriginal Land Rights Act 1983*, including sections 49 (3), 106 (2) and (9), 117 (2), 120 (7), 121 (2), 134, 165A, 177 (6), 226 (1) and (2) and 252 (the general regulation-making power) and clause 1A of Schedule 4.

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Clause 1 Aboriginal Land Rights Amendment Regulation 2007

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Aboriginal Land Rights Act 1983

1 Name of Regulation

This Regulation is the *Aboriginal Land Rights Amendment Regulation 2007*.

2 Commencement

This Regulation commences on 7 February 2007.

3 Amendment of Aboriginal Land Rights Regulation 2002

The *Aboriginal Land Rights Regulation 2002* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 7 Exemption of Aboriginal lands from the payment of rates

Insert “(or, in the case of the New South Wales Aboriginal Land Council, the Chief Executive Officer of the Council)” after “the Council” in clause 7 (4) (c).

[2] Clause 11 Notification of application for constitution of an area as a Local Aboriginal Land Council area

Omit clause 11 (1) (b). Insert instead:

(b) sent to the New South Wales Aboriginal Land Council.

[3] Clause 13 Consideration of objections by New South Wales Aboriginal Land Council

Omit “Regional Aboriginal Land Council for the area in which the Local Aboriginal Land Council area would be situated if the application were granted” from clause 13 (1).

Insert instead “New South Wales Aboriginal Land Council”.

[4] Clause 13 (2)

Omit “a Regional Aboriginal Land Council”.

Insert instead “the New South Wales Aboriginal Land Council”.

[5] Clause 13 (3)

Omit “A Regional Aboriginal Land Council”.

Insert instead “The New South Wales Aboriginal Land Council”.

[6] Clause 14 Registrar’s recommendation

Omit clause 14 (2) (a). Insert instead:

(a) allowing such period as seems to the Registrar to be reasonable for submissions to be made by the New South Wales Aboriginal Land Council in relation to the application, and

[7] Clause 15 Court’s recommendation

Omit clause 15 (2) (c).

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Schedule 1 Amendments

[8] Clause 17 Limitations on areas that may be constituted as Local Aboriginal Land Council areas

Omit clause 17 (1). Insert instead:

- (1) An area must not be constituted as a Local Aboriginal Land Council area if it is wholly or partly within another area already so constituted.

[9] Clause 17 (2)

Omit “Subclause (1) (a)”. Insert instead “Subclause (1)”.

[10] Clause 20 Change of name of Local Aboriginal Land Council area

Omit clause 20 (3). Insert instead:

- (3) On receipt of an application, the Registrar must cause a notice containing particulars of the proposal to be sent to the New South Wales Aboriginal Land Council.

[11] Clause 20 (4) (a)

Omit “Regional Aboriginal Land Council and the”.

[12] Clause 24 Election of Regional and Alternate Representatives

Omit the clause.

[13] Part 4 Regional Aboriginal Land Councils

Omit the Part.

[14] Clause 42 Notice of election of New South Wales Aboriginal Land Council

Omit “section 121 (2)” from clause 42 (1). Insert instead “section 122 (2)”.

[15] Clause 42 (2)

Omit “Regional Aboriginal Land Council area”. Insert instead “Region”.

[16] Clause 42 (2)

Omit “area” where secondly occurring. Insert instead “Region”.

[17] Clause 42 (3) (a) and (b)

Omit “area” wherever occurring. Insert instead “Region”.

[18] Clause 43 Certification of roll

Omit “Secretary” from clause 43 (2) (a).

Insert instead “Chief Executive Officer”.

[19] Clause 43 (2) (a) (ii)

Omit “Regional Aboriginal Council area”.

Insert instead “Region”.

[20] Clause 43 (2) (a) (ii)

Omit “that area”. Insert instead “that Region”.

[21] Clause 43 (3) and (5)

Omit “Regional Aboriginal Land Council area” wherever occurring.

Insert instead “Region”.

[22] Clause 43 (6)

Insert after clause 43 (5):

- (6) If an election is to be held to elect councillors to hold office at the end of the term of appointment of an administrator to the New South Wales Aboriginal Land Council, the functions of the Chairperson, or a member of that Council, under this clause may be exercised by the administrator.

[23] Clause 44 Calling for nominations

Omit “Regional Aboriginal Land Council area” wherever occurring.

Insert instead “Region”.

[24] Clause 44 (1) (a)

Omit “area”. Insert instead “Region”.

[25] Clause 46 Officers to assist returning officer

Omit “Regional Aboriginal Land Council area” from clause 46 (1).

Insert instead “Region”.

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[26] Clause 47 Manner of nominating candidates

Insert after clause 47 (1) (c):

- (c1) be accompanied by a statutory declaration by the candidate, in a form approved by the returning officer, that the candidate is not disqualified from holding office under section 132 of the Act, and

[27] Clause 47 (2)

Omit “Regional Aboriginal Land Council area”. Insert instead “Region”.

[28] Clause 52 Contested election

Omit “Regional Aboriginal Land Council area” from clause 52 (2).

Insert instead “Region”.

[29] Clause 55 Directions to electors

Omit “placing” where secondly occurring.

Insert instead “may, but is not required to, place”.

[30] Clause 56 Applications to vote by post

Omit “Regional Aboriginal Land Council area” from clause 56 (1) (a).

Insert instead “Region”.

[31] Clause 65 Questions for challenged voters

Omit “*Regional Aboriginal Land Council*] area” from clause 65 (1) (d).

Insert instead “*Region*]”.

[32] Clause 71 Voting procedure—disputed votes

Omit clause 71 (5). Insert instead:

- (5) In order that the regional electoral officer may make inquiries of a kind referred to in subclause (4) (a), the Chairperson of the New South Wales Aboriginal Land Council must make available to the returning officer for the election copies of the certified copies of the membership rolls for Local Aboriginal Land Councils referred to in clause 43 (2).
- (6) Without limiting subclause (4) (a), the returning officer may make inquiries of the Chief Executive Officer of the New South Wales Aboriginal Land Council for the purposes of making inquiries under subclause (4) (a).

[33] Clause 76

Omit the clause. Insert instead:

76 Counting of votes

- (1) The regional electoral officer must as soon as practicable after the close of the poll count the votes in accordance with this clause.
- (2) The votes are to be counted and the result of the election ascertained in accordance with the following procedures:
 - (a) the unrejected ballot-papers are arranged under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate,
 - (b) the total number of first preferences given for each candidate on such ballot-papers is then counted,
 - (c) the candidate who has received the largest number of first preference votes is elected if that number constitutes an absolute majority of votes,
 - (d) if no candidate has received an absolute majority of first preference votes, a second count is made,
 - (e) on the second count the candidate who has received the fewest first preference votes is excluded, and each unexhausted ballot-paper counted to him or her is counted to the candidate next in the order of the voter's preference,
 - (f) if a candidate then has an absolute majority of votes, he or she is elected, but if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes and counting each of his or her unexhausted ballot-papers to the continuing candidate next in the order of the voter's preference is repeated until one candidate has received an absolute majority of votes,
 - (g) the candidate who has received an absolute majority of votes is elected.
- (3) If, on any count at which the candidate with the fewest number of votes has to be excluded, 2 or more candidates have an equal number of votes (that number being fewer than the number of votes that any other candidate has or those candidates being the only continuing candidates):
 - (a) the candidate who had the fewest votes at the last count before the equality occurred is excluded, or

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- (b) if they had an equal number of votes at all preceding counts, the candidate whose name is on a slip drawn in accordance with subclause (4) is excluded.
- (4) For the purposes of subclause (3), the returning officer writes the names of the candidates who have an equal number of votes on similar slips of paper. The returning officer then folds the slips so as to prevent the names being seen, mixes them, and draws one slip at random.
- (5) In the process of counting under subclause (2) or (3), exhausted ballot-papers are set aside as finally dealt with and are not taken into account in the election of a candidate under the appropriate clause.
- (6) The process of counting each of the unexhausted ballot-papers of an excluded candidate to the continuing candidate next in the order of the voter's preference is not repeated if there is only one continuing candidate. Instead, that continuing candidate is elected.
- (7) In this clause:
- absolute majority of votes* means a greater number than one-half of the whole number of ballot-papers other than informal and exhausted ballot-papers.
- continuing candidate* means a candidate not already elected or excluded from the count.
- exhausted ballot-paper* means a ballot-paper on which there is no indication of a next preference for a continuing candidate.
- next preference* means the first of the subsequent preferences marked on a ballot-paper that is not given to an elected or excluded candidate. However, if there is a repetition or omission in the consecutive numbering of preferences marked on a ballot-paper (other than a repetition or omission that makes the ballot-paper informal), only those preferences preceding the repetition or omission can be taken into account.
- unrejected ballot-papers* means all ballot-papers not rejected as informal.

[34] Clause 84 Casual vacancy to be filled

Omit "Regional Aboriginal Land Council area" from clause 84 (1).

Insert instead "Region".

[35] Clause 84 (2) and (3)

Omit the subclauses. Insert instead:

- (2) The Minister is to appoint the person who, at the time of the count at which the councillor was declared elected, was the candidate for election with the second highest number of votes.
- (3) If no person is available for appointment in accordance with subclause (2), the Minister is, after consulting with the New South Wales Aboriginal Land Council, to appoint a person who is qualified to be a candidate for election to the position (whether or not the person was a candidate for election).

[36] Clause 85 Casual vacancy

Omit the clause.

[37] Part 5, Divisions 8 and 9

Omit Divisions 8 and 9 of Part 5. Insert instead:

Division 8 Meetings

86 Annual meetings of New South Wales Aboriginal Land Council

The New South Wales Aboriginal Land Council must hold an annual general meeting some time between 1 July and 30 September in each year.

87 Meeting place

- (1) Any meeting of the Council must be held within New South Wales.
- (2) A meeting of the Council must not be held in a residence unless a decision at a previous Council meeting allows for the meeting to be held at a residence.

88 Notice of meetings

- (1) Notice of a meeting of the New South Wales Aboriginal Land Council must:
 - (a) be published in a newspaper, magazine or periodical circulating generally throughout the State, or
 - (b) be given to all members of the Council by such other means as may appear to the Council to be efficient and practicable and are approved by the Council.

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- (2) Notice of a meeting must specify a time and place for the meeting and the date on which it is to be held, not being a date earlier than 7 clear days after the notice is given.
- (3) Despite subclause (2), notice of a meeting may specify a date for the meeting that is not earlier than 2 clear days after the notice is given, if the Chairperson and the Chief Executive Officer of the New South Wales Aboriginal Land Council think it appropriate in the circumstances.

Division 9 Miscellaneous

89 Model rules

The rules set out in Schedule 4 are prescribed, for the purposes of section 117 (2) of the Act, as model rules for the New South Wales Aboriginal Land Council.

90 Community, land and business plans

For the purpose of section 137C (3) of the Act, a summary of a proposed community, land and business plan must contain a summary of each matter listed in section 137B (1) of the Act (under headings that correspond to the paragraphs set out in that subsection).

[38] Clause 94 Investment of money in Local Aboriginal Land Council Accounts (section 152)

Omit “Regional or Local Aboriginal Land Council under section 151 or 152”.
Insert instead “Local Aboriginal Land Council under section 152”.

[39] Clause 95 Auditors

Omit “and Regional” from clause 95 (2).

[40] Clause 96 Documents to be furnished to New South Wales Aboriginal Land Council

Omit “or Regional” wherever occurring.

[41] Clause 97 Codes of conduct (section 177 (6))

Omit clause 97 (2).

[42] Clause 98 Election of officers of Local Aboriginal Land Council following appointment of administrator

Omit clause 98 (1) and (2). Insert instead:

- (1) For the purposes of section 226 (1) of the Act, elections for officers of a Local Aboriginal Land Council are to be held at a meeting of the Local Aboriginal Land Council called for that purpose by the administrator.
- (2) The elections are to be held not less than 28 days before the end of the period of the administrator's term.
- (2A) Despite subclause (2), if an administrator of a Local Aboriginal Land Council held office immediately before the commencement of this subclause, an election may be held at any time before the end of the period of the administrator's term.
- (2B) The term of office of the officers elected at a meeting commences at the end of the period of administration.

[43] Clause 99

Omit the clause. Insert instead:

99 Election of councillors after administration

- (1) For the purposes of section 226 (2) of the Act, elections for councillors for Regions are to be held on a date determined by the Minister, after consulting with the administrator, being a date not less than 28 days before the end of the period of the administrator's term.
- (2) Despite subclause (1), if an administrator of the New South Wales Aboriginal Land Council held office immediately before the commencement of this subclause, elections for councillors may be held at any time before the end of the period of the administrator's term.
- (3) The term of office of the councillors elected commences at the end of the period of administration.
- (4) Division 1 of Part 5 applies to the election of councillors under this clause.

Note. Sections 121–129 of the Act apply to the election of councillors and the Chairperson and Deputy Chairperson of the New South Wales Aboriginal Land Council.

[44] Clause 101 Certain information on land register and consolidated membership roll to be made available

Omit "section 106 (1) (s)". Insert instead "section 106 (2) (g) and (9)".

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[45] Clause 101A

Insert after clause 101:

101A Delegation by Registrar

For the purposes of section 165A of the Act, any member of staff of the New South Wales Aboriginal Land Council is authorised as a person to whom the Registrar may delegate any function of the Registrar.

[46] Clause 102 Copies of minutes to be made available in certain circumstances

Omit clause 102 (2). Insert instead:

- (2) Despite subclause (1), a Local Aboriginal Land Council must not pass a resolution making such a request of another Local Aboriginal Land Council.

[47] Schedule 2 Model rules for Local Aboriginal Land Councils

Omit clause 22.

[48] Schedule 3 Model rules for Regional Aboriginal Land Councils

Omit the Schedule.

[49] Schedule 4 Model rules for the New South Wales Aboriginal Land Council

Omit clause 3 (1). Insert instead:

- (1) A person appointed as minutes secretary for the meeting by the councillors present must keep full and accurate minutes of the proceedings of a meeting of the Council.

[50] Schedule 4, clause 3 (2)

Omit "Secretary". Insert instead "minutes secretary".

[51] Schedule 4, clause 3 (3)

Omit "Secretary". Insert instead "Chief Executive Officer of the Council".

[52] Schedule 4, clause 4

Omit "Secretary". Insert instead "Chief Executive Officer of the Council".

[53] Schedule 4, clause 4 (b)

Omit "Regional Aboriginal Land Council area". Insert instead "Region".

- [54] **Schedule 4, clauses 5 (1), 9 (2) and (3), 10 (2) and (4) and 12 (3) (a) (i)**
Omit “Secretary” wherever occurring.
Insert instead “Chief Executive Officer”.
- [55] **Schedule 4, clause 6 (a)**
Omit “either the Chairperson or the Secretary”.
Insert instead “the Chairperson”.
- [56] **Schedule 4, clause 8 (3)**
Omit “, Secretary, Treasurer”. Insert instead “and Deputy Chairperson”.
- [57] **Schedule 4, clause 8 (5) and (6)**
Omit the subclauses.
- [58] **Schedule 4, clause 13 Administrative duties of Chief Executive Officer**
Omit “Secretary”. Insert instead “Chief Executive Officer of the Council”.
- [59] **Schedule 4, clause 13 (f)**
Omit “prepared in consultation with the Treasurer and”.
- [60] **Schedule 4, clause 14 Financial duties of Chief Executive Officer**
Omit “Treasurer”. Insert instead “Chief Executive Officer of the Council”.
- [61] **Schedule 4, clause 14 (c)**
Omit the paragraph. Insert instead:
(c) submit a financial statement at each Council meeting, and
- [62] **Schedule 4, clause 14 (e)**
Omit “Treasurer’s”. Insert instead “Chairperson’s”.
- [63] **Schedule 4, clause 14 (e)**
Omit “both, and”. Insert instead “both.”.
- [64] **Schedule 4, clause 14 (f)**
Omit the paragraph.
- [65] **Schedule 6 Model code of conduct for Regional Aboriginal Land Councils**
Omit the Schedule.
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[66] Schedule 7 Model code of conduct for New South Wales Aboriginal Land Council

Omit “Regional and” from clause 6.

[67] Schedule 7, clauses 7 and 8

Omit “Regional or” wherever occurring.

[68] Schedule 8 Savings, transitional and other provisions

Insert after clause 6:

7 Transfer of assets and liabilities of Regional Aboriginal Land Councils

(1) In this clause:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

instrument means an instrument (other than the Act or this Regulation) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

optimised deprivation value means a value determined by the application of the Guidelines on Accounting Policy for Valuation of Government Trading Enterprises prepared by the Steering Committee on National Performance Monitoring of Government Trading Enterprises, agreed on by the Commonwealth and States and published in October 1994.

(2) The assets, rights and liabilities of a Regional Aboriginal Land Council immediately before the commencement of this clause are transferred to the New South Wales Aboriginal Land Council on that commencement.

(3) On the transfer, the following provisions have effect:

(a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,

(b) those rights and liabilities of the transferor become by virtue of this clause the rights and liabilities of the transferee,

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- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
 - (d) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities), to be read as, or as including, a reference to the transferee.
- (4) The operation of this clause is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
 - (d) as an event of default under any contract or other instrument.
 - (5) No attornment to the transferee by a lessee from the transferor is required.
 - (6) The Minister may specify the value or values at which the assets, rights or liabilities are transferred.
 - (7) The value or values cannot exceed the optimised deprival value of those assets, rights or liabilities.
 - (8) The Minister may, by notice in writing, confirm a transfer of particular assets, rights and liabilities by operation of this clause.
 - (9) A notice given under subclause (8) is conclusive evidence of that transfer.