



New South Wales

Aboriginal Land Rights Amendment Regulation 2011

under the

Aboriginal Land Rights Act 1983

The Administrator, with the advice of the Executive Council, has made the following Regulation under the *Aboriginal Land Rights Act 1983*.

VICTOR DOMINELLO, MP
Minister for Aboriginal Affairs

Explanatory note

The object of this Regulation is to make amendments to provisions of the *Aboriginal Land Rights Regulation 2002* relating to elections for councillors of the New South Wales Aboriginal Land Council to make those provisions consistent with those governing state and local government elections. Specifically, the Regulation deals with the following:

- (a) providing that returning officers and other electoral officers for such elections cannot be candidates in those elections,
- (b) allowing an alternate form of a candidate's given name to appear on ballot-papers,
- (c) enabling certain electoral notices to be published on the New South Wales Electoral Commission's website,
- (d) expanding the classes of voters entitled to postal vote to include persons with a disability and persons who believe that attending a polling place will place them or members of their family at risk,
- (e) requiring the act of postal voting (but not the content of a ballot-paper) to be witnessed and a declaration to be signed by the witness on the postal voting envelope,
- (f) requiring voters at polling places to answer the question "Have you voted before in this election?",
- (g) allowing candidates to request a recount of votes within 24 hours of being informed of the result of the initial count of the votes,
- (h) allowing the New South Wales Electoral Commission to advertise information about the election,
- (i) other minor and machinery amendments.

2011 No 262

Aboriginal Land Rights Amendment Regulation 2011

Explanatory note

This Regulation is made under the *Aboriginal Land Rights Act 1983*, including sections 121 and 252 (the general regulation-making power).

Aboriginal Land Rights Amendment Regulation 2011

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1 Name of Regulation

This Regulation is the *Aboriginal Land Rights Amendment Regulation 2011*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

2011 No 262

Aboriginal Land Rights Amendment Regulation 2011

Schedule 1 Amendment of Aboriginal Land Rights Regulation 2002

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[1] Clause 46 Officers to assist returning officer

Insert after clause 46 (3):

- (4) A person who is nominated for election as a councillor cannot be appointed as a returning officer or regional electoral officer, or appointed as a deputy electoral officer, in respect of that election.
- (5) A returning officer, regional electoral officer or deputy electoral officer ceases to hold office in respect of an election for councillor on being nominated as a candidate in that election.

[2] Clause 47 Manner of nominating candidates

Insert after clause 47 (1) (b):

- (b1) specify the form of the candidate's given name that should be printed on ballot-papers for the election, and

Note. An alternative form of a candidate's given name may only be:

- (a) an initial standing for that name, or
- (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
- (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the returning officer is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).

[3] Clause 47 (5)

Insert after clause 47 (4):

- (5) A given name of a candidate specified in a nomination paper under subclause (1) (b1) as the form in which that name should be printed on ballot-papers for the election may differ from the candidate's given name as it appears on the roll only to the extent that the given name is specified by:
 - (a) an initial standing for that name, or
 - (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
 - (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the returning officer is satisfied that the proposed name is a commonly

used other name specific to the candidate by which the candidate is usually identified).

[4] Clause 52 Contested election

Omit “in at least one newspaper circulating in the Region, and in such other manner as may be determined by the returning officer,” from clause 52 (2).

[5] Clause 52 (3)

Insert after clause 52 (2):

- (3) The notice is to be published:
 - (a) on the New South Wales Electoral Commission’s website, and
 - (b) in at least one newspaper circulating in the Region, and
 - (c) in such other manner as may be determined by the returning officer.

[6] Clause 54 Printing of ballot-papers

Insert after clause 54 (b):

- (b1) include the given name of each candidate in the form specified in the candidate’s nomination paper as provided by clause 47 (1) (b1), and

[7] Clause 56 Applications to vote by post

Insert at the end of clause 56 (1) (g):

- , or
- (h) is a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*), or
- (i) believes that attending a polling place on polling day will place the personal safety of the elector or of members of the elector’s family at risk.

[8] Clause 57 Distribution of postal ballot-papers

Omit clause 57 (1) (b). Insert instead:

- (b) an envelope bearing both the address of the returning officer and a form of declaration in Form 1A of Schedule 6 on which the returning officer has filled in the full name of the elector and the number given to the elector’s application as referred to in clause 56 (3).

2011 No 262

Aboriginal Land Rights Amendment Regulation 2011

Schedule 1 Amendment of Aboriginal Land Rights Regulation 2002

[9] Clause 59

Omit the clause. Insert instead:

59 Postal voting procedure

- (1) An elector who wishes to vote by post is, on receipt of a ballot-paper, to do the following:
 - (a) show to a witness the ballot-paper and Form 1A declaration delivered or sent by the returning officer under clause 57, and
 - (b) in the presence of the witness, and if the facts on the declaration are correct, sign the declaration in the space provided.
- (2) The witness is to sign the declaration and complete the spaces in it for the address of the witness and the date on which the declaration is signed. The witness is to do those things only if the witness:
 - (a) is at least 18 years old and is not a candidate for election as a councillor in the Region in which the election is being held, and
 - (b) is satisfied as to the elector's identity, and
 - (c) has seen the elector sign the declaration, and
 - (d) is satisfied that the statements in the declaration are true.
- (3) The elector is then to do the following in the presence of the witness, but without showing the witness how the elector has voted:
 - (a) vote as directed on the ballot-paper,
 - (b) fold the ballot-paper so that the vote cannot be seen,
 - (c) place the ballot-paper in the envelope addressed to the returning officer and close and seal the envelope.
- (4) The elector is then to deliver or send the envelope, or have it delivered or sent, so as to reach the returning officer before 6 pm on polling day.

[10] Clause 60 Preliminary scrutiny of postal ballot-papers and transmission to regional electoral officer

Insert after clause 60 (a):

- (a1) check if the Form 1A declaration on the envelope has been duly signed and witnessed, and

[11] Clause 60 (b)

Omit the paragraph. Insert instead:

- (b) accept the ballot-paper for further scrutiny if the returning officer is satisfied that:
 - (i) the signature on the envelope is that of the elector who signed the application to vote by post, and
 - (ii) the Form 1A declaration on the envelope has been duly signed and witnessed,but if the returning officer is not satisfied of those matters, the returning officer must disallow the ballot-paper without opening the envelope, and

[12] Clause 62 Arrangements at polling place

Omit “lock” from clause 62 (2). Insert instead “seal”.

[13] Clause 64

Omit the clause. Insert instead:

64 Questions to be put to voter

- (1) Before being handed a ballot-paper, a deputy electoral officer is to put the following questions to each person attending at the polling place and claiming to vote:
 - (a) What is your full name?
 - (b) Have you voted before in this election?
- (2) If the answer to the question specified in subclause (1) (a) given by a person claiming to vote is not sufficient to distinguish that person from another person on the roll, the deputy electoral officer may, for the purpose of distinguishing the 2 persons, ask the person claiming to vote another question or other questions relating to matters shown on the roll in relation to those persons.
- (3) A person’s claim to vote in the election is to be rejected if the person:
 - (a) refuses to answer fully any question put to the person under this clause,
 - (b) answers “Yes” or otherwise in the affirmative to the question referred to in subclause (1) (b).

[14] Clause 67 Initialling of ballot-papers and marking of rolls

Omit “back” from clause 67 (1). Insert instead “front”.

2011 No 262

Aboriginal Land Rights Amendment Regulation 2011

Schedule 1 Amendment of Aboriginal Land Rights Regulation 2002

[15] Clause 67 (2)

Omit “initialled”.

[16] Clause 73 Scrutiny of votes at close of poll

Omit “unlock” from clause 73 (a). Insert instead “unseal”.

[17] Clause 74 Informal ballot-papers

Omit “on which the elector has recorded votes for all candidates” from clause 74 (3).

[18] Clauses 76A and 76B

Insert after clause 76:

76A Candidates to be informed of result of count

The regional electoral officer is to inform the candidates (in person, in writing, by facsimile, by telephone, by email, by text message or in any other way) of the result of the count as soon as practicable after the result is ascertained.

76B Recount

- (1) A candidate may request a recount of the ballot-papers.
- (2) A request for a recount must:
 - (a) be in writing, and
 - (b) be signed by the candidate, and
 - (c) set out the reasons for the request, and
 - (d) be lodged with the returning officer (in person, by facsimile or by email) within 24 hours of being informed of the result of the count under clause 76A.
- (3) A copy of the written request for a recount must be lodged with the regional electoral officer (in person, by facsimile or by email) at the same time as the original is lodged with the returning officer.
- (4) If a request for a recount is made under this clause, the returning officer may order the regional electoral officer to again scrutinise and recount the ballot-papers.
- (5) The regional electoral officer is to comply with the returning officer’s order.

[19] Clause 77

Omit the clause. Insert instead:

77 Returning officer to be advised of result

The regional electoral officer is to formally advise the returning officer of the names of the candidates elected as councillors for the Region:

- (a) if a recount of ballot-papers was ordered—immediately after the recount has taken place,
- (b) in any other case—immediately after confirming with the returning officer that no requests for a recount have been made within the permitted time or, if any such request was made, that the returning officer has determined not to order the recount.

[20] Clause 79 Death of candidate

Insert at the end of the clause:

- (2) If a candidate dies, after being nominated but before the day fixed for the close of nominations, the day fixed for the close of nominations is postponed for 3 days.

[21] Clause 81 Notification of result of election

Omit “in the Gazette” from clause 81 (c).

Insert instead “on the New South Wales Electoral Commission’s website”.

[22] Clause 83A

Insert after clause 83:

83A Advertising by Electoral Commission

(1) General power to advertise

The Electoral Commission may publish (at such times as the Commission thinks fit) such electoral information as the Commission thinks fit, including but not limited to:

- (a) information of the fact that an election is to be held, and
- (b) information about:
 - (i) the nomination process for an election, and
 - (ii) entitlements and obligations to vote in an election, and
 - (iii) the location of polling places for the election and who may vote at the respective polling places.

2011 No 262

Aboriginal Land Rights Amendment Regulation 2011

Schedule 1 Amendment of Aboriginal Land Rights Regulation 2002

(2) **Types of advertising**

The information may be published by way of newspaper notices, by display on the Electoral Commission's website, or in any other manner the Commission thinks appropriate.

(3) **Coverage of advertisement**

A publication of information may relate to one or more Regions.

[23] Schedule 6 Forms

Insert before Form 1 in Schedule 6:

Form 1A Postal vote declaration

(Clause 57)

Application No (*official use only*) of 20.... (*official use only*)

I [*insert full name in BLOCK letters*] declare that:

- 1 I have not already voted in connection with this New South Wales Aboriginal Land Council election.
- 2 To the best of my knowledge and belief I am entitled to vote and am enrolled on the electoral roll for this election.
- 3 The postal vote to which this declaration relates was completed before the close of the poll in the election.

[*signature*]

[*date*]

WITNESSING OF DECLARATION

I am at least 18 years old and am not a candidate for election as a councillor at this New South Wales Aboriginal Land Council election, and

I am satisfied as to the identity of the elector, and

I have seen the elector sign the declaration, and

I am satisfied that the statements contained in the declaration are true.

The declaration was made before the close of the poll in the election.

[*signature of witness*]

[*address of witness*]

[*date*]