



New South Wales

# Aboriginal Land Rights Regulation 2020

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*.

DONALD HARWIN, MLC

Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts

## Explanatory note

The object of this Regulation is to remake, with minor changes, the provisions of the *Aboriginal Land Rights Regulation 2014*, which is repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*. The new Regulation contains provisions relating to the following—

- (a) land dealings by Local Aboriginal Land Councils, including the payment of the community development levy,
- (b) the exemption of certain land vested in Aboriginal Land Councils from the payment of specified rates and charges,
- (c) the constitution and boundaries of Local Aboriginal Land Councils,
- (d) the election of Board members, the conduct of meetings and model rules for Local Aboriginal Land Councils,
- (e) the election of councillors for the New South Wales Aboriginal Land Council, the conduct of meetings and model rules for the New South Wales Aboriginal Land Council,
- (f) the investment of money in the New South Wales Aboriginal Land Council Account and Local Aboriginal Land Council Accounts,
- (g) the appointment of administrators for the New South Wales Aboriginal Land Council and Local Aboriginal Land Councils,
- (h) other miscellaneous matters.

This Regulation is made under the *Aboriginal Land Rights Act 1983*, including sections 41, 42D–42G, 42I, 42K, 42R, 42T, 42W, 43, 46, 48, 49, 52F, 59, 60, 61, 63–65, 68, 79A, 83, 84, 87, 90, 106, 117, 121, 131, 134, 137C, 143A, 149, 152, 153, 165A, 177, 222, 223B, 226, 234A, 240 and 252 (the general regulation-making power).

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## Aboriginal Land Rights Regulation 2020

under the

Aboriginal Land Rights Act 1983

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Aboriginal Land Rights Regulation 2020*.

#### 2 Commencement

This Regulation commences on 1 September 2020 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Aboriginal Land Rights Regulation 2014*, which is repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation—

***deputy electoral officer*** means a person appointed as a deputy electoral officer for an election of a councillor of the New South Wales Aboriginal Land Council under clause 57(2).

***regional electoral officer*** means a person appointed as a regional electoral officer for an election of a councillor of the New South Wales Aboriginal Land Council under clause 57(1).

***rules***, in relation to an Aboriginal Land Council, means rules for the time being in force under the Act and applying to that Council.

***the Act*** means the *Aboriginal Land Rights Act 1983*.

***the rules of the Court*** means rules made under the *Land and Environment Court Act 1979* in relation to proceedings brought before the Court under the Act or this Regulation.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Land dealings and land rights

### Division 1 Approval of land dealings

#### 4 Interpretation

- (1) In this Part—

*land dealing approval application* means an application under section 42F of the Act by a Local Aboriginal Land Council for approval by the New South Wales Aboriginal Land Council of a land dealing.

- (2) Words and expressions in this Part have the same meaning as in Divisions 4 and 4A of Part 2 of the Act.

#### 5 Form of certificates

The forms for the following certificates are set out in Forms 1–4 in Schedule 5—

- (a) a dealing approval certificate for a land dealing relating to land vested in the New South Wales Aboriginal Land Council,
- (b) a dealing approval certificate for a land dealing relating to land vested in a Local Aboriginal Land Council,
- (c) a registration approval certificate for a registrable instrument relating to a land dealing by the New South Wales Aboriginal Land Council,
- (d) a registration approval certificate for a registrable instrument relating to a land dealing by a Local Aboriginal Land Council.

#### 6 NSWALC approval not required for certain LALC land dealings

For the purposes of section 42E(2)(b) of the Act, the making of a development application by a Local Aboriginal Land Council is prescribed as a land dealing that does not require the approval of the New South Wales Aboriginal Land Council if the development the subject of the application—

- (a) is to be carried out on land vested in the Local Aboriginal Land Council, and
- (b) has an estimated cost of less than \$500,000.

#### 7 Notice of meetings of Local Aboriginal Land Councils

- (1) For the purposes of section 42G(5)(a) of the Act, notice of a meeting to approve a land dealing must be given not less than 7 clear days before the day on which the meeting is to be held.
- (2) The notice must—
  - (a) clearly identify the land subject to the dealing, and
  - (b) state the manner in which the land is to be dealt with, and
  - (c) state that at the meeting it is proposed to decide whether or not to approve of the land dealing.

#### 8 Applications for approval of land dealings

- (1) For the purposes of section 42F(2) of the Act, an application by a Local Aboriginal Land Council for approval of a dealing with land must be in the form approved by the New South Wales Aboriginal Land Council.
- (2) An application must—
  - (a) identify the land affected by the proposed land dealing, and
  - (b) specify the manner in which the land is to be dealt with, and

- (c) set out any terms or conditions of the proposed dealing, and
  - (d) be accompanied by a copy of the resolution of the Local Aboriginal Land Council approving the dealing, and
  - (e) be accompanied by information and other material establishing that the Local Aboriginal Land Council has complied with the requirements of section 42G(5) of the Act, and
  - (f) be accompanied by a valuation of the land, and
  - (g) be accompanied by the application fee.
- (3) Despite subclause (2)(f), a valuation of the land is not required to accompany an application for approval of a land dealing in relation to a social housing management lease (within the meaning of section 42E of the Act).
- (4) The fee for making an application to the New South Wales Aboriginal Land Council for approval of a land dealing is \$250.
- (5) No application fee is payable if the land dealing consists only of a development application.

#### **9 Application assessment fees**

- (1) A Local Aboriginal Land Council must pay to the New South Wales Aboriginal Land Council the assessment fee (if any) determined by the New South Wales Aboriginal Land Council for assessment of a land dealing approval application.
- (2) The assessment fee is to be an amount that reflects the reasonable costs incurred by the New South Wales Aboriginal Land Council in assessing the land dealing approval application concerned, including (but not limited to) the costs of any expert advisory panel constituted for the purposes of assessing the application for approval.
- (3) The assessment fee must be paid—
- (a) on or before the date, or on or after the occurrence of an event, as required by the New South Wales Aboriginal Land Council, or
  - (b) in accordance with arrangements agreed between the Local Aboriginal Land Council and the New South Wales Aboriginal Land Council.
- (4) The New South Wales Aboriginal Land Council may, after an application is made, require a Local Aboriginal Land Council to give security (whether by way of deposit of money or otherwise) for the payment of the assessment fee for an approval.
- Note.** A security in the form of a mortgage is a land dealing for which compliance with the Act will be required.
- (5) The New South Wales Aboriginal Land Council may waive the payment by a Local Aboriginal Land Council of the whole or any part of an assessment fee.

#### **10 Application procedures**

- (1) The New South Wales Aboriginal Land Council must, as soon as practicable after receiving a land dealing approval application, notify the Local Aboriginal Land Council, in writing, of the following—
- (a) the manner in which it intends to assess the application and whether or not the application, or any part of it, is to be referred to an expert advisory panel,
  - (b) the assessment fee for the application, or the manner in which the assessment fee is to be determined and an estimate of the amount of the fee,
  - (c) the time within which, or the event on the occurrence of which, the assessment fee is to be paid and any security is required to be provided,
  - (d) the estimated time for determining the application,



- (e) that the New South Wales Aboriginal Land Council is not required to determine the application unless the Local Aboriginal Land Council agrees to the proposed assessment fee, security and manner of determination.
- (2) If notice has been given to the Local Aboriginal Land Council in accordance with subclause (1), the New South Wales Aboriginal Land Council may refuse to assess or determine a land dealing approval application if—
  - (a) the application does not comply with section 42F(2) of the Act, or
  - (b) the Local Aboriginal Land Council does not agree to the proposed assessment fee, security and manner of determination, or
  - (c) any security required by the notice under subclause (1) has not been provided, or
  - (d) any assessment fee has not been paid in accordance with the notice under subclause (1) or the New South Wales Aboriginal Land Council is not satisfied that the fee will be paid in accordance with that notice.

#### **11 Register of members for expert advisory panels**

- (1) The New South Wales Aboriginal Land Council is to establish a register of persons who may be appointed to expert advisory panels.
- (2) A person may be listed on the register if the person has expertise in one or more of land valuation, property development, planning, business, finance, corporate governance or Aboriginal heritage or culture or any other expertise that the New South Wales Aboriginal Land Council considers relevant.
- (3) The register is to be in the form determined by the New South Wales Aboriginal Land Council.
- (4) The register is to contain the following particulars—
  - (a) the name and contact address of each person on the register,
  - (b) the area of expertise of each person on the register,
  - (c) any other particulars determined by the New South Wales Aboriginal Land Council.
- (5) The New South Wales Aboriginal Land Council may at any time add the name of a person to or remove the name of a person from the register.
- (6) The New South Wales Aboriginal Land Council must, not less than once every 12 months, forward a copy of the register to the Minister.
- (7) The New South Wales Aboriginal Land Council must, if the name of a person is added to or removed from the register, forward a copy of the revised register to the Minister.
- (8) The New South Wales Aboriginal Land Council must ensure that the register is made publicly available.

#### **12 Expert advisory panels**

- (1) The New South Wales Aboriginal Land Council may constitute an expert advisory panel to assess a land dealing approval application or any part or aspect of an application—
  - (a) if it is of the opinion that it is appropriate to do so and clause 10 has been complied with, or
  - (b) at the request of the Local Aboriginal Land Council seeking approval of the land dealing concerned.

- (2) A panel may consider one or more land dealing approval applications.
- (3) A panel is to determine the procedure for the calling of meetings held by the panel and for the conduct of business at those meetings.
- (4) A panel is to consist of one or more members selected from the persons listed on the register established under this Division, as determined by the New South Wales Aboriginal Land Council.
- (5) A member of an expert advisory panel is entitled to be paid the remuneration (including travelling and subsistence allowances) determined from time to time by the New South Wales Aboriginal Land Council in respect of the member.
- (6) The New South Wales Aboriginal Land Council may at any time and for any or no reason remove a member of an expert advisory panel from office.

### **13 Assessments and reports by expert advisory panels**

- (1) For the purposes of an assessment, an expert advisory panel must review any material provided to the New South Wales Aboriginal Land Council by the Local Aboriginal Land Council relating to the relevant land dealing approval application and any other material provided to the panel by the New South Wales Aboriginal Land Council.
- (2) A panel may, at the request of the New South Wales Aboriginal Land Council, consider whether the proposed land dealing is, or is likely to be, contrary to the interests of the members of the Local Aboriginal Land Council concerned or other Aboriginal persons within the area of the Local Aboriginal Land Council.
- (3) An expert advisory panel may, if requested to do so by the New South Wales Aboriginal Land Council, include in a report to the New South Wales Aboriginal Land Council a recommendation as to whether the proposed land dealing approval application should be approved and a recommendation as to conditions that may be imposed on any approval.
- (4) A panel must submit a report to the New South Wales Aboriginal Land Council within the time required by the New South Wales Aboriginal Land Council.

### **14 Pecuniary interests in land dealings**

- (1) A member of an expert advisory panel who has a pecuniary interest in a matter being assessed by the panel must disclose the nature of the interest to the New South Wales Aboriginal Land Council as soon as practicable.
- (2) A person who has, or who discloses, a pecuniary interest in a matter is not eligible to be appointed to, or to remain as a member of, an expert advisory panel assessing the matter.
- (3) Words and expressions used in this clause have the same meaning as in Part 10 of the Act.

## **Division 2 Community development levy**

### **15 Amount of community development levy**

- (1) For the purposes of section 42T of the Act, the prescribed percentage of the duty that would be chargeable under the *Duties Act 1997* for a dutiable transaction to which a threshold range specified in Column 1 of the table to this subclause applies is the percentage specified for that threshold range in Column 2.

Column 1	Column 2
Threshold range	Amount of community development levy
4 or 5	100% of amount of duty
6	150% of amount of duty

- (2) The community development levy does not apply to a dutiable transaction if the dutiable value of the land concerned is the minimum threshold amount specified for threshold range 4, or less.

**Note.** See Part 3 of Chapter 2 of the *Duties Act 1997*, which contains the threshold ranges of dutiable value used to calculate the amount of duty chargeable under that Part on a dutiable transaction.

#### 16 Periods within which community development levy payable

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if the community development levy is paid within—

- (a) in the case of an agreement for sale or transfer of land for consideration, and any transfer in completion of an agreement—the period commencing when the liability for the community development levy first arises and ending on the settlement of the agreement or transfer, or
- (b) in any other case—the period commencing when a liability for the community development levy first arises and ending 3 months after the liability for the levy first arises.

#### 17 Application of Duties Act 1997

- (1) Sections 15–18, 25 and 31 of the *Duties Act 1997* apply, with any necessary modifications, in respect of the community development levy for a dutiable transaction in the same way as they apply in respect of duty under that Act for a dutiable transaction.
- (2) Part 1 of Chapter 12 of the *Duties Act 1997* applies, with any necessary modifications, in respect of the payment of the community development levy and instruments associated with dutiable transactions for which the levy is payable, in the same way as it applies to the payment of duty and instruments associated with dutiable transactions.

#### 18 Interim payment of duty

- (1) If the full dutiable value of land subject to an agreement for sale or transfer cannot, in the Chief Commissioner's opinion, be immediately ascertained, the Chief Commissioner may make an assessment by way of estimate under section 11(2) of the *Taxation Administration Act 1996*.
- (2) A written instrument effecting or evidencing the sale or transfer may be stamped "interim stamp" only.

### Division 3 Miscellaneous

#### 19 Exemption of Aboriginal lands from the payment of rates

- (1) For the purposes of section 43 of the Act, the land specified in subclause (2) is declared to be exempt from—
  - (a) the payment of rates and charges under the *Local Government Act 1993*, and
  - (b) the payment of rates, levies and charges under the *Hunter Water Act 1991*, and

- (c) the payment of service charges under the *Sydney Water Act 1994* and the *Water Management Act 2000*.
- (2) Subclause (1) applies to the following land vested in an Aboriginal Land Council—
  - (a) land that is not being used for a commercial or residential purpose,
  - (b) land that is not being used for a residential purpose in respect of which a resolution has been passed in accordance with this clause declaring it to be land of spiritual or cultural significance to Aboriginal people.
- (3) An Aboriginal Land Council may pass a resolution for the purposes of subclause (2)(b) declaring that specified land vested in it is land of spiritual or cultural significance to Aboriginal people.
- (4) A resolution under subclause (3) has no effect unless—
  - (a) it is passed at a meeting of the Aboriginal Land Council that is called specifically for the purpose in accordance with this Regulation and at which a quorum is present, and
  - (b) it is passed by not less than 80% of the members present and voting at the meeting, and
  - (c) the chief executive officer of the Aboriginal Land Council has advised the Minister in writing that a resolution has been passed in accordance with this clause in relation to the land concerned, and
  - (d) the Minister has approved the resolution.

#### **20 Disposition of mining royalties**

- (1) Money to the credit of the Mining Royalties Account established under section 46 of the Act may be invested, pending its disbursement, in any manner for the time being authorised by law for the investment of trust funds.
- (2) Money so credited must, unless the New South Wales Aboriginal Land Council by resolution otherwise determines in respect of any particular royalty in any year, be disbursed as soon as practicable after the end of each financial year of that Council.

#### **21 Application for access permit for hunting, fishing or gathering**

An application under section 48(1) of the Act must—

- (a) specify the land in respect of which the permit is sought and the purpose for which access to the land is desired, and
- (b) be in a form approved by the Registrar.

## **Part 3 Local Aboriginal Land Councils**

### **Division 1 Constitution of Local Aboriginal Land Council area**

#### **22 Application for constitution of Local Aboriginal Land Council area**

- (1) An application for the constitution of an area as a Local Aboriginal Land Council area may be made by any 10 or more adult Aboriginal persons each of whom resides within the area or has an association with the area.
- (2) An application must—
  - (a) be made in writing, and
  - (b) be lodged with the Registrar, and
  - (c) be supported by a map showing, or a description specifying, to the satisfaction of the Registrar, the boundaries of the area proposed to be constituted in the application, and
  - (d) include a proposed name for the area, and
  - (e) specify an address for service of notices on the applicants.
- (3) An application may be withdrawn at any time by notice to the Registrar or, if the application has been referred to the Court, in accordance with the rules of the Court.

#### **23 Notification of application for constitution of Local Aboriginal Land Council area**

- (1) On receipt of an application under this Division, the Registrar must cause notice of it to be—
  - (a) published in the Gazette, and
  - (b) sent to the New South Wales Aboriginal Land Council.
- (2) A notice must give particulars of the proposal contained in the application.
- (3) A notice published in the Gazette must specify the requirements for making objections to the application.

#### **24 Objections to proposal to constitute Local Aboriginal Land Council area**

- (1) Ten or more adult Aboriginal persons, each of whom resides in or has an association with the area in respect of which an application under this Division is made, may object to the proposal or any part of the proposal contained in the application.
- (2) An objection must—
  - (a) be made in writing, and
  - (b) be lodged with the Registrar not later than 30 clear days after publication of the notice of the application in the Gazette, and
  - (c) set out the grounds of the objection, and
  - (d) specify an address for service of notices on the objectors.
- (3) An objection may be withdrawn at any time by giving written notice of the withdrawal to the Registrar or, if the objection has been referred to the Court, in accordance with the rules of the Court.

#### **25 Consideration of objections by New South Wales Aboriginal Land Council**

- (1) The Registrar must, immediately on the lodgment of an objection to an application under this Division, refer the objection to the New South Wales Aboriginal Land Council.

- (2) If, after completing any inquiry as it thinks fit, the New South Wales Aboriginal Land Council is of the opinion that a dispute between parties to an application and parties who have lodged objections to the application may be resolved by conciliation, the Council is to endeavour to resolve the dispute.
- (3) The New South Wales Aboriginal Land Council must report to the Registrar in respect of an objection not later than 60 clear days after the objection has been referred to it.

## **26 Registrar's recommendation**

- (1) This clause applies if—
  - (a) 30 clear days after publication of the notice of an application under this Division in the Gazette, no objection has been lodged, or
  - (b) at any time later than 30 clear days after that publication, all objections lodged have been withdrawn.
- (2) The Registrar must send a recommendation concerning an application to the Minister after—
  - (a) allowing a reasonable period for submissions to be made by the New South Wales Aboriginal Land Council in relation to the application, and
  - (b) considering any submissions.
- (3) The Registrar may recommend—
  - (a) that an area be constituted as a Local Aboriginal Land Council area in accordance with the application, or
  - (b) with the consent of the applicants—
    - (i) that only part of the area proposed in the application be so constituted, or
    - (ii) that the whole or part of the area so proposed be so constituted under a name other than the name proposed in the application, or
  - (c) that the application not be granted.
- (4) A recommendation under subclause (3)(b) must specify the area or the name to which the applicants have consented.
- (5) The Registrar must serve notice on the applicants of particulars of a recommendation.

## **27 Court's recommendation**

- (1) If an objection to an application under this Division has not been withdrawn within 120 clear days after publication of the notice of the application in the Gazette, the Registrar must refer the application and the objection to the Court.
- (2) The following have the right to be heard on the hearing by the Court of an application and objection—
  - (a) the applicants,
  - (b) the objectors,
  - (c) by its representative, the New South Wales Aboriginal Land Council.
- (3) In considering a referred application and objection under this clause, the Court may make any recommendation that the Registrar could make in respect of the application, but is not required to obtain the consent of the applicants when making a recommendation referred to in clause 26(3)(b).

- (4) The Court must notify the Minister of its recommendation in relation to an application.

**28 Court may review recommendation of the Registrar**

- (1) Applicants may appeal to the Court within 14 clear days after notice of a recommendation in respect of the application has been given under clause 26(5).
- (2) The applicants and the Registrar have a right to be heard on the appeal.
- (3) In considering an appeal under this clause, the Court may make any recommendation that the Registrar could make in respect of the application.
- (4) The Court must notify the Minister of its recommendation in relation to an application.

**29 Limitations on constitution of Local Aboriginal Land Council areas**

- (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.
- (2) Subclause (1) does not apply to an amalgamation of areas.

**30 Determination of applications for constitution of Local Aboriginal Land Council area**

- (1) The Minister may, on the recommendation of the Registrar, by order published in the Gazette, constitute an area as a Local Aboriginal Land Council area having the boundaries, and to be known by the name, specified in the order.
- (2) The Minister must make an order specified in subclause (1) in accordance with a determination of the Court.
- (3) The boundaries of an area may be specified by reference to a map deposited in the office of the Registrar.
- (4) The Registrar must serve notice of the constitution of the area on the applicants.

**Division 2 Alterations of names or boundaries and amalgamations**

**31 Alteration of boundaries or dissolution of Local Aboriginal Land Council area**

- (1) A Local Aboriginal Land Council may apply to the Registrar for an order under section 87(1)(b) or (e) of the Act.
- (2) An application must—
  - (a) be made in writing, and
  - (b) specify, to the satisfaction of the Registrar, the boundaries of the area as proposed to be altered or the area of the Local Aboriginal Land Council to be dissolved.
- (3) An application may be withdrawn at any time by notice to the Registrar or, if the application has been referred to the Court, in accordance with the rules of the Court.
- (4) Division 1 applies to and in respect of an application under this clause in the same way as it applies to and in respect of an application under Division 1.
- (5) For that purpose—
  - (a) a reference to an area proposed in an application under Division 1 is taken to be a reference to an area as proposed to be altered in accordance with an application under this clause, and
  - (b) a reference to the constitution of an area as a Local Aboriginal Land Council area is taken to be a reference to the alteration of the boundaries of a Local

- Aboriginal Land Council area or a reference to the dissolution of a Local Aboriginal Land Council, as the case requires, and
- (c) in the case of an application under section 87(1)(e) of the Act, clauses 22(2)(c) and (d), 26(3)(b) and (4), 29 and 30 do not apply.

### **32 Change of name of Local Aboriginal Land Council area**

- (1) A Local Aboriginal Land Council may apply to the Registrar for an order under section 87(1)(a) of the Act.
- (2) An application must be made in writing and specify the proposed new name.
- (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.
- (4) The Registrar must make a recommendation to the Minister concerning an application after—
  - (a) allowing a reasonable period for submissions to be made in relation to the matter by the New South Wales Aboriginal Land Council, and
  - (b) considering any submissions and any other matter the Registrar thinks fit.
- (5) On receiving the recommendation of the Registrar, the Minister may make an order under section 87(1)(a) of the Act or refuse to make an order.
- (6) The Registrar must serve notice of the Minister's determination on the applicant.

### **33 Amalgamation of and inclusion in Local Aboriginal Land Council areas**

- (1) Two or more Local Aboriginal Land Councils may apply to the Registrar for an order under section 87(1)(c) or (d) of the Act.
- (2) The decision by each Local Aboriginal Land Council to apply for amalgamation or inclusion under this clause must—
  - (a) be made at a meeting of the Local Aboriginal Land Council specifically called for the purpose in accordance with this Regulation and the rules, and
  - (b) in the case of an amalgamation, recommend a name as the name of the area of the proposed Local Aboriginal Land Council.
- (3) The Registrar is to send the application to the Minister and a copy to the New South Wales Aboriginal Land Council.
- (4) The New South Wales Aboriginal Land Council must, within 14 clear days after receiving the copy of the application, make a recommendation to the Minister as to whether or not the Minister should approve—
  - (a) the amalgamation or inclusion, and
  - (b) the name of the proposed Local Aboriginal Land Council.
- (5) On receiving the recommendation of the New South Wales Aboriginal Land Council, the Minister may make an order under section 87(1)(c) or (d) of the Act or may refuse to make the order.
- (6) An order under section 87(1)(c) of the Act is to specify the name of the new area constituted by the order and the date from which the new area is constituted.

### **34 Transition after boundary change, amalgamation or inclusion**

- (1) In this clause—  
*appointed day* means the day on which an order takes effect.



**new Council** means the Local Aboriginal Land Council of an area after the area is amalgamated or altered by an order or a Local Aboriginal Land Council in whose area the area of an old Council is included.

**old Councils** means the Local Aboriginal Land Councils of the areas changed, amalgamated or included under an order.

**order** means an order made under section 87(1)(b), (c) or (d) of the Act.

- (2) The members of the old Councils immediately before the appointed day are to be listed by the Registrar on the rolls of the appropriate Local Aboriginal Land Councils in accordance with any applicable order under section 87(2) of the Act.
- (3) If no order is made, the members of the old Councils immediately before the appointed day are to be listed by the Registrar on the roll of the new Council (in the case of an amalgamation or inclusion) or on the rolls of the new Councils as determined by the Registrar (in the case of a boundary change).
- (4) If the order is an order under section 87(1)(c) of the Act, the Registrar must convene the first meeting of the new Council within 7 clear days of the appointed day at a place nominated by the Registrar.
- (5) The Board members of a new Council, and the Chairperson and Deputy Chairperson, are to be elected in accordance with Division 3 at the first meeting of the new Council.

### **Division 3 Board members**

#### **35 Number of Board members for Council having more than 100 voting members**

- (1) A Local Aboriginal Land Council having more than 100 voting members when an election for all Board members is held is to have not fewer than 7 and not more than 10 Board members.
- (2) If, at the election for all Board members of the Local Aboriginal Land Council, 7, 8, 9 or 10 nominations are received, the persons nominated are taken to be elected as the Board members of the Council and the number of persons nominated is to be the number of Board members for the Council for the period for which the members are elected.
- (3) If, at the election for all Board members of the Local Aboriginal Land Council, more than 10 nominations are received, the number of Board members for the Council for the period for which the members are elected is to be 10.
- (4) If, at the election for all Board members of the Local Aboriginal Land Council, fewer than 7 nominations are received, the persons nominated are taken to be elected as Board members of the Council and the number of Board members for the Council for the period for which the members are elected is to be 7.

**Note.** Section 68 of the Act provides for elections to fill casual vacancies (such as those created when positions are unfilled after a general Board election). See clause 41 for the filling of casual vacancies.

#### **36 Number of Board members for Council having 100 or fewer voting members**

- (1) A Local Aboriginal Land Council having 100 or fewer voting members when an election for all Board members is held is to have not fewer than 5 and not more than 7 Board members.
- (2) If, at the election for all Board members of the Local Aboriginal Land Council, 5, 6 or 7 nominations are received, the persons nominated are taken to be elected as the Board members of the Council and the number of persons nominated is to be the number of Board members for the Council for the period for which the members are elected.

- (3) If, at the election for all Board members of the Local Aboriginal Land Council, more than 7 nominations are received, the number of Board members for the Council for the period for which the members are elected is to be 7.
- (4) If, at the election for all Board members of the Local Aboriginal Land Council, fewer than 5 nominations are received, the persons nominated are taken to be elected as Board members of the Council and the number of Board members for the Council for the period for which the members are elected is to be 5.

**Note.** Section 68 of the Act provides for elections to fill casual vacancies (such as those created when positions are unfilled after a general Board election). See clause 41 for the filling of casual vacancies.

### 37 Election of Board members

- (1) An election for a Board member is to be conducted by the Registrar as returning officer.

**Note.** Section 63(6) of the Act provides that the Registrar is the returning officer for an election of Board members. Section 165A of the Act provides for the Registrar to delegate the Registrar's functions in certain circumstances.

- (2) The chief executive officer of the Local Aboriginal Land Council must, not later than 48 hours before a meeting at which an election for one or more Board members is to take place, send a current copy of the Council's membership roll, certified in a manner approved by the Registrar, to the Registrar.
- (3) If a copy of a membership roll is not provided in accordance with subclause (2), the Registrar is to—
  - (a) use the most recent copy of the Local Aboriginal Land Council's membership roll kept by the Registrar under section 59 of the Act, and
  - (b) if the Registrar has delegated the Registrar's functions as returning officer, provide a certified copy of the roll to the delegate before the election, if requested by the delegate.
- (4) The returning officer must not vote in the election.
- (5) A person may be nominated to stand for election as a Board member—
  - (a) by notice in writing to the returning officer at or before the time when nominations are called for at the meeting of the Local Aboriginal Land Council at which the election is held, or
  - (b) by any voting member present at that meeting.

**Note.** Section 63 of the Act provides for who may nominate a person for election as a Board member and who may be nominated to stand for election as a Board member.

- (6) For a nomination to be valid the person nominated must give consent to the nomination before the election is held and the consent must be recorded in the minutes of the meeting.
- (7) A ballot must be held for the positions of Board members if—
  - (a) in the case of a Local Aboriginal Land Council referred to in clause 35—more than 10 nominations are received, or
  - (b) in the case of a Local Aboriginal Land Council referred to in clause 36—more than 7 nominations are received.
- (8) A ballot held under this clause must—
  - (a) be a secret ballot, and
  - (b) subject to this Division, be conducted in the manner determined by the Registrar.

- (9) The returning officer is to make all necessary arrangements for a ballot and may nominate a person (other than a voting member of the Local Aboriginal Land Council) to assist in those arrangements.
- (10) The candidates elected in accordance with clauses 35(2) and (4) and 36(2) and (4) must be declared elected.

### **38 Conduct of ballots for Board members**

- (1) If a ballot is to be held for the election of Board members, the returning officer must, after the close of nominations, determine the order in which the candidates' names are to be listed on ballot-papers.
- (2) The order is to be determined by the returning officer or in the manner determined by the returning officer.
- (3) The returning officer must prepare a ballot-paper listing the names of the candidates in the order determined in accordance with this clause with a square opposite each name.
- (4) The returning officer is to direct the voting members present at the election meeting that each member must record a vote on the ballot-paper for one candidate by placing the number "1" (or a tick or cross) in the square opposite the name of the candidate.
- (5) The returning officer is to determine the processes for voting.
- (6) Without limiting subclause (5), the returning officer may require a person who wishes to vote in the election to state any particulars necessary for the purpose of identifying the name on the membership roll under which the vote is claimed.

### **39 Assistance to certain electors**

- (1) The returning officer is to permit a person appointed by an elector to assist the elector to vote if—
  - (a) the returning officer is satisfied that the elector is unable to vote without assistance, or
  - (b) the elector makes an oral declaration to the returning officer that the elector objects on religious grounds to vote in the manner provided by the Act and this Regulation.
- (2) If an elector does not appoint a person under subclause (1), the returning officer must assist the elector to vote in the presence of—
  - (a) the scrutineers (if any) that are present, or
  - (b) if there are no scrutineers present, a deputy electoral officer or another person appointed by the elector.

### **40 Counting of votes**

- (1) The returning officer must as soon as practicable after voting takes place in a ballot under this Division—
  - (a) examine each ballot-paper and reject those which are informal, and
  - (b) proceed to count the votes in accordance with this clause.
- (2) The returning officer is to examine the ballot-papers and count the votes in the presence of any scrutineers and any other persons the returning officer thinks fit.
- (3) Each candidate may nominate a person present at the meeting to act as a scrutineer for the candidate.

- (4) A ballot-paper must be rejected as informal if the elector has failed to record the elector's vote in the manner directed by the returning officer.
- (5) A ballot-paper is not to be rejected as informal merely because of any mark or writing that is not authorised or required by this Regulation if, in the opinion of the returning officer, the elector's intention is clearly indicated on the ballot-paper.
- (6) In any election for Board members, the method of counting votes is to be the "first past the post" method, that is, the candidate or candidates with the most votes is or are taken to be elected.
- (7) If the number of candidates to be elected cannot be determined because of an equality of votes, the candidate taken to be elected is the candidate whose name is drawn by lot from a receptacle containing the names of each of the candidates having equal votes.

#### **41 Elections to fill casual vacancies**

- (1) For the purposes of section 68 of the Act, an election to fill a vacancy in the position of a Board member must be held in accordance with this clause.
- (2) An election for the position is to be conducted by the Registrar.
- (3) A person may nominate another person to stand for election as a Board member by notice in writing to the returning officer or the returning officer's delegate at or before the time when nominations are called for at the meeting of the Local Aboriginal Land Council at which the election is held.
- (4) For a nomination to be valid, the person nominated must give consent to the nomination before the election is held and the consent must be recorded in the minutes of the meeting of the Local Aboriginal Land Council at which the election is held.
- (5) If only one nomination is received for the position, the nominated candidate must be declared elected.
- (6) In any other case, a ballot must be held for each position.
- (7) A ballot held under this clause must be held in the same manner as a ballot for the position of a Board member and the provisions of this Division apply accordingly.

#### **42 Elections for Chairperson and Deputy Chairperson of Board**

An election for the position of Chairperson or Deputy Chairperson of a Board is to be conducted by the chief executive officer of the Local Aboriginal Land Council in the manner determined by the Board members present at the first meeting of the Board after its election.

#### **43 Decisions of returning officer**

Subject to the Act, a decision by the returning officer on any matter relating to the conduct of an election is final if the decision is required or permitted to be made by the returning officer by this Regulation.

#### **44 Retention of electoral papers**

- (1) If the Registrar has delegated the Registrar's functions as returning officer, the delegate must send all electoral material to the Registrar immediately after the declaration of the result of an election under this Division.
- (2) The Registrar must retain all nomination papers, ballot-papers and other papers in connection with an election under this Division for a period of not less than 3 months after the election takes place.

#### **45 Training requirements for Board members**

- (1) For the purposes of section 65 of the Act, the New South Wales Aboriginal Land Council must arrange training in relation to the operation of Local Aboriginal Land Councils, the Act and this Regulation, including training relating to the following—
  - (a) the principles of governance applicable to Local Aboriginal Land Councils,
  - (b) the rules of Local Aboriginal Land Councils,
  - (c) the role and functions of Board members and the chief executive officers of Local Aboriginal Land Councils,
  - (d) the role and functions of the New South Wales Aboriginal Land Council and the Chief Executive Officer of that Council,
  - (e) provisions of this Act and the regulations relating to misbehaviour and the role and functions of the Civil and Administrative Tribunal under the Act.
- (2) The New South Wales Aboriginal Land Council must review and update training materials, or courses, used for the purposes of this clause at least once every 2 years.

### **Division 4 Miscellaneous**

#### **46 Meetings**

- (1) A Local Aboriginal Land Council must hold an annual meeting between 1 July and 30 September in each year.
- (2) Despite subclause (1), a Local Aboriginal Land Council is not required to hold an annual meeting within 6 months of its first meeting.
- (3) The procedure for the calling of meetings of a Local Aboriginal Land Council is to be as set out in the rules.
- (4) Notice of a meeting of a Local Aboriginal Land Council must—
  - (a) be published in a newspaper, magazine or periodical circulating in the area of the Local Aboriginal Land Council (whether in print or online), or
  - (b) be given to all the members of the Local Aboriginal Land Council by any other efficient and practicable means approved by the Council.
- (5) The notice 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.
- (6) The notice of a meeting at which an election under Division 3 is to be held must also specify—
  - (a) that the election is to be held, and
  - (b) the classes of persons who are eligible to vote, and
  - (c) the classes of persons who are eligible to be nominated to stand or to be elected, or to nominate others to stand for election.

#### **47 Local Aboriginal Land Council membership rolls**

- (1) The following particulars are to be recorded on each Local Aboriginal Land Council membership roll—
  - (a) the name, residential address and date of birth of each person who is a member of the Local Aboriginal Land Council,
  - (b) the date of entry of the person's name on the membership roll,
  - (c) whether the person is a voting or non-voting member of the Local Aboriginal Land Council,

- (d) whether the person's membership is based on residence in the Local Aboriginal Land Council's area or association with that area or the person is a member because the person is an Aboriginal owner in relation to land within that area,
  - (e) whether the person is suspended from the Local Aboriginal Land Council,
  - (f) whether the person is a member of any other Local Aboriginal Land Council and, if so, the names of those other Local Aboriginal Land Councils.
- (2) For the purposes of section 59(1) of the Act, the copy of a Local Aboriginal Land Council's membership roll must be sent to the Registrar not later than 10 weeks before the commencement of each financial year of the Council.

#### **48 Community, land and business plans**

- (1) For the purposes of section 84(4) of the Act, a summary of a proposed community, land and business plan of a Local Aboriginal Land Council must contain a summary of each matter listed in section 83 of the Act (under headings that correspond to the paragraphs set out in that section).
- (2) The Local Aboriginal Land Council may include any other information that it thinks fit in the summary.

#### **49 Staff vacancies**

- (1) For the purposes of section 79A(1) of the Act, the manner of advertising a vacancy in the position of chief executive officer of a Local Aboriginal Land Council is to publish notice of the advertisement—
- (a) in a newspaper, magazine or periodical circulating in the area of the Local Aboriginal Land Council (whether in print or online), and
  - (b) in a major Indigenous newspaper, magazine or periodical circulating throughout the State (whether in print or online).
- (2) The chief executive officer of a Local Aboriginal Land Council may appoint a person to a vacant position in the staff of the Council without first advertising the vacancy if the Board gives approval to the filling of the vacancy, or that class of vacancies, without advertisement of the vacancy.

## Part 4 New South Wales Aboriginal Land Council

### 50 Meetings

- (1) A meeting of the New South Wales Aboriginal Land Council must be held within New South Wales.
- (2) A meeting of the New South Wales Aboriginal Land 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.
- (3) An annual general meeting must be held between 1 July and 31 October in each year.
- (4) Notice of a meeting of the New South Wales Aboriginal Land Council must—
  - (a) be published in a newspaper, magazine or periodical circulating throughout the State (whether in print or online), or
  - (b) be given to all members of the New South Wales Aboriginal Land Council by any efficient and practicable means approved by the Council.
- (5) 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.
- (6) Despite subclause (5), 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.

### 51 Casual vacancy to be filled

- (1) A person is to be appointed in accordance with this clause to fill a casual vacancy in the office of a councillor representing a Region.

**Note.** A person who is appointed to fill a casual vacancy is appointed as a councillor for the remainder of the term of office and has, therefore, all the functions of a councillor.
- (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).
- (4) This clause does not apply to a casual vacancy in the office of a councillor caused by the operation of section 226(2) of the Act (being a casual vacancy caused by the removal of all councillors from office after the appointment of an administrator to administer all of the functions of the New South Wales Aboriginal Land Council).

### 52 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).

### 53 Staff vacancies

- (1) For the purposes of section 143A(1) of the Act, the manner of advertising a vacancy in the position of Chief Executive Officer of the New South Wales Aboriginal Land Council is to publish notice of the advertisement—

- (a) in a newspaper, magazine or periodical circulating throughout the State (whether in print or online), and
  - (b) in a major Indigenous newspaper, magazine or periodical circulating throughout the State (whether in print or online).
- (2) The Chief Executive Officer of the New South Wales Aboriginal Land Council may appoint a person to a vacant position in the staff of the New South Wales Aboriginal Land Council without first advertising the vacancy if the Chairperson gives approval to the filling of the vacancy, or that class of vacancies, without advertisement of the vacancy.

#### **54 Training requirements for councillors**

- (1) For the purposes of section 131 of the Act, the New South Wales Aboriginal Land Council must arrange training for each councillor elected for the first time to the New South Wales Aboriginal Land Council in relation to the operation of the Council, the Act and this Regulation, including training relating to the following—
- (a) the principles of governance applicable to the New South Wales Aboriginal Land Council,
  - (b) the rules of the New South Wales Aboriginal Land Council,
  - (c) the role and functions of councillors and the Chief Executive Officer of the New South Wales Aboriginal Land Council,
  - (d) the role and functions of Local Aboriginal Land Councils,
  - (e) provisions of the Act and the regulations relating to misbehaviour and the role and functions of the Civil and Administrative Tribunal under the Act.
- (2) The New South Wales Aboriginal Land Council must review and update training materials, or courses, used for the purposes of this clause at least once every 2 years.



## **Part 5 Election of New South Wales Aboriginal Land Council councillors**

### **Division 1 Preliminary**

#### **55 Notice of election of New South Wales Aboriginal Land Council**

- (1) The returning officer is, as soon as practicable after being notified of the date of an election of all councillors under section 122(2) of the Act, to give notice of the election by causing it to be published in a manner that, in the opinion of the returning officer, is appropriate to cause the notice to come to the attention of persons eligible to vote in the election.
- (2) The notice must state the following—
  - (a) that an election is to be held for a councillor to represent the Region,
  - (b) that a person is entitled to vote at the election if the person is a voting member of a Local Aboriginal Land Council within the Region,
  - (c) that a person is, however, only entitled to cast a vote in respect of the Local Aboriginal Land Council area for which the person is a voting member,
  - (d) how information concerning the procedure for being listed on a roll can be accessed,
  - (e) that the roll of a Local Aboriginal Land Council may be inspected at the office of the Council during normal office hours,
  - (f) the date on which the roll for the election will be closed.
- (3) The date fixed for the closing date of the roll must be not earlier than 14 clear days and not later than 21 clear days after the date notice of the election was given.

#### **56 Certification of roll**

- (1) The chief executive officer of each Local Aboriginal Land Council must, not later than 7 clear days after the closing date specified in the relevant notice of election, send a current copy of the Council's membership roll to the Registrar that is certified in a manner approved by the Registrar.
- (2) Within 7 clear days after the certified copies of the membership rolls for the Local Aboriginal Land Councils have been sent to the Registrar, the Registrar must—
  - (a) ensure that the consolidated membership roll kept by the Registrar is current, and
  - (b) prepare an electoral roll for each Region that contains the names of each voting member of a Local Aboriginal Land Council in that Region, and
  - (c) certify each electoral roll in the form set out in Form 5 of Schedule 5, and
  - (d) send the rolls to the returning officer.
- (3) If the chief executive officer of a Local Aboriginal Land Council fails for any reason to provide the Registrar with a certified copy of the membership roll of the Local Aboriginal Land Council, the Chairperson of the Board of the Local Aboriginal Land Council may certify and send to the Registrar a copy of the membership roll for the Local Aboriginal Land Council.
- (4) If the chief executive officer and the Chairperson of the Board of a Local Aboriginal Land Council do not provide the Registrar with a certified copy of the membership roll of the Local Aboriginal Land Council, the Registrar may compile a membership roll and certify a copy of the roll.

#### **57 Officers to assist returning officer**

- (1) The returning officer may appoint a regional electoral officer for a Region to assist in taking the poll for an election of a councillor to represent the Region.
- (2) The regional electoral officer may appoint one or more deputy electoral officers to assist in taking the poll.
- (3) The regional electoral officer and deputy electoral officers are to assist the returning officer in the exercise of any of the returning officer's functions that are specified by the returning officer.
- (4) A person who is nominated for election as a councillor cannot be appointed as a returning officer, regional electoral officer or deputy electoral officer in respect of that election.
- (5) If a person who is a regional electoral officer or deputy electoral officer becomes a candidate for an election, the person ceases to be the regional electoral officer or deputy electoral officer (as the case requires).

### **Division 2 Nominations**

#### **58 Calling for nominations**

- (1) The returning officer, after receiving the certified rolls for all the Local Aboriginal Land Council areas in a Region, is to give notice—
  - (a) stating that an election of a councillor for that Region is to be held, and
  - (b) specifying the address of the office of the returning officer as the address where nominations are to be lodged, and
  - (c) inviting nominations, and
  - (d) fixing the close of nominations, and
  - (e) fixing the day for taking the poll, being a day not more than 28 clear days after the close of nominations.
- (2) The returning officer is to give the notice by causing it to be published in a manner that, in the opinion of the returning officer, is appropriate to cause the notice to come to the attention of persons eligible to nominate a person, or be nominated, as a candidate for election.
- (3) The date fixed for the close of nominations must be not earlier than 21 clear days and not later than 28 clear days after the date of the notice inviting nominations.

#### **59 Extension of time**

- (1) The returning officer may fix a day for the close of nominations or the taking of the poll that is later than the day fixed by a previous notice.
- (2) The returning officer may fix a later day under this clause only if the returning officer is of the opinion that the election would otherwise fail.
- (3) The returning officer must give notice of the later day in the same manner as the previous notice of the election.
- (4) A notice published under this clause must not fix a day for the taking of the poll more than 14 clear days after the day fixed for that purpose by the previous notice.

#### **60 Manner of nominating candidates**

- (1) A nomination of a candidate for election as a councillor must—

- (a) be made by no fewer than 6 persons (other than the candidate), each of whom is entitled to vote in the election, and
  - (b) be in a form approved by the returning officer, and
  - (c) specify the form of the candidate's given name that should be printed on ballot-papers for the election, and  
**Note.** The form of a candidate's given name may only be that on the roll or in a form referred to in subclause (5).
  - (d) be signed by the candidate stating that the candidate consents to the nomination and is qualified to stand for election, and
  - (e) 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
  - (f) be accompanied by a deposit of \$50 paid in a manner approved by the returning officer, and
  - (g) be lodged with the returning officer before the close of nominations in the election.
- (2) A person can only nominate one candidate in an election of a councillor for a Region.
  - (3) A nomination paper is not open for public inspection.
  - (4) A failure to comply with the requirements of subclause (1) in relation to the nomination of a candidate must be rectified by the candidate before the date fixed for the close of nominations.
  - (5) A given name of a candidate specified in a nomination paper under subclause (1)(c) 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).

#### **61 Rejection of nomination**

- (1) The returning officer is to reject the nomination of a person as a candidate at an election if—
  - (a) the person is not qualified to stand for election, or
  - (b) the person is not nominated in accordance with clause 60 and any failure to comply with the requirements of clause 60(1) is not rectified as provided by that clause.
- (2) The deposit accompanying the nomination is to be retained pending the election.

#### **62 Return of deposit**

- (1) After the election, the deposit accompanying a nomination is to be returned to the candidate, or to a person authorised by the candidate in writing to receive it, if—
  - (a) the nomination of the person as a candidate has been rejected, or
  - (b) the candidate is elected, or

- (c) the total number of votes polled in the candidate's favour as first preferences is more than 4 per cent of the total number of first preference votes polled in the election.
- (2) In the case of the death of the candidate before the date of the election, the deposit is to be returned to the candidate's legal personal representative.
- (3) The deposit is to be returned to the candidate, or to a person authorised by the candidate in writing to receive it, if the candidate withdraws the nomination before the close of nominations.
- (4) Unless otherwise provided by this clause, the deposit is forfeited to the New South Wales Aboriginal Land Council if—
  - (a) the candidate is not elected, and
  - (b) the total number of votes polled in the candidate's favour as first preferences is not more than 4 per cent of the total number of first preference votes polled in the election.

### **63 Withdrawal of nomination**

A candidate at an election may withdraw the nomination by notice in writing delivered to the returning officer at any time before the close of nominations.

### **64 Uncontested election**

A person duly nominated by the close of nominations is taken to be elected if no other person has been duly nominated by that time.

### **65 Contested election**

- (1) A ballot is to be held if more than one person has been duly nominated by the close of nominations.
- (2) If a ballot is to be held, the returning officer is to publish a notice stating the following—
  - (a) that a poll will be taken,
  - (b) the following information relating to each candidate for election—
    - (i) the candidate's name,
    - (ii) the town, suburb or locality in which the candidate resides,
    - (iii) the Local Aboriginal Land Council of which the candidate is a voting member,
  - (c) the addresses of the polling places and the day and the hours during that day that the polling places will be open for voting,
  - (d) that postal voting facilities will be available for electors unable to vote at a polling place.
- (3) The notice is to be published—
  - (a) on the New South Wales Electoral Commission's website, and
  - (b) in any other manner determined by the returning officer.

## **Division 3 Ballot-papers**

### **66 Order of candidates' names on ballot-papers**

If a poll is to be taken in respect of an election, the returning officer must, as soon as practicable after the close of nominations, determine the order in which the candidates' names are to be listed on ballot-papers by randomly selecting names of

candidates nominated for election in a manner specified by the New South Wales Electoral Commission (including by electronic means).

#### **67 Printing of ballot-papers**

The ballot-paper for an election must—

- (a) list the names of the candidates, together with the name of the Local Aboriginal Land Council of which the respective candidates are members and on the basis of the membership of which the candidates are standing for election, in the order determined in accordance with clause 66 with a square opposite each name, and
- (b) include the surname of each candidate in more conspicuous type than that used for the given name of the candidate and the name of the relevant Local Aboriginal Land Council of which the candidate is a voting member, and
- (c) include the given name of each candidate in the form specified in the candidate's nomination paper as provided by clause 60(1)(c), and
- (d) if, in the opinion of the returning officer, the names of 2 or more candidates are so similar as to cause confusion, include other matter that will, in the opinion of the returning officer, distinguish between those candidates, but must not include the address of any candidate, and
- (e) include any directions as to the manner in which the vote is to be recorded as are referred to in clause 68 and as the returning officer considers appropriate.

#### **68 Directions to electors**

The directions to electors must include a direction that the elector—

- (a) must record a vote on the ballot paper by placing the number “1” in the square opposite the name of the candidate for whom the elector desires to give the elector's first preference vote, and
- (b) may, if the elector wishes, vote for additional candidates by placing consecutive numbers beginning with the number “2” in the squares opposite the names of those additional candidates in the order of the elector's preferences for them.

### **Division 4 Postal voting**

#### **69 Applications to vote by post**

- (1) An elector may, after the returning officer gives notice of an election, apply to vote by post.
- (2) An application to vote by post must be in the manner and form approved by the returning officer.
- (3) The returning officer is not required to accept an application received after 6 pm on the day that is 5 days before polling day.
- (4) The returning officer is to number, in consecutive order, each application to vote by post received.

#### **70 Distribution of postal ballot-papers**

- (1) If the returning officer receives an application to vote by post that is made in accordance with clause 69, the returning officer is to deliver or post to the elector who made the application—
  - (a) a ballot-paper—
    - (i) initialled by or on behalf of the returning officer, and

- (ii) if the particulars of the candidates are not already printed on it—on which the returning officer has entered the names of the candidates in the order determined in accordance with clause 66, and
  - (b) an envelope bearing the declaration set out in Form 6 of Schedule 5 (a *postal vote declaration*) 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 69(4), and
  - (c) an envelope bearing the address of the returning officer.
- (2) The returning officer is to note on a certified copy of the roll the names of the electors to whom the returning officer has delivered or posted a ballot-paper under this clause.
- (3) An elector to whom a ballot-paper has been delivered or posted under this clause is not entitled to vote at a polling place unless the elector first delivers the elector's ballot-paper to a deputy electoral officer for cancellation.
- (4) However, if the elector makes a declaration in an approved form that the elector has not received, or has lost, the ballot-paper or the declaration envelope or both and that the elector will not use them if the elector later receives or finds them, the elector may be permitted to vote.

#### **71 Spoilt postal ballot-papers**

- (1) If an elector to whom a ballot-paper has been delivered or posted satisfies the returning officer that the elector has spoilt the ballot-paper by mistake or accident, the elector may, on giving it up, receive a new ballot-paper from the returning officer.
- (2) The returning officer must cancel and preserve the spoilt ballot-paper.

#### **72 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 the postal vote declaration delivered or sent by the returning officer under clause 70, 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 folded ballot-paper in the envelope bearing a signed postal vote declaration and seal that envelope,
  - (d) place the sealed envelope bearing the signed postal vote declaration inside the envelope addressed to the returning officer and seal that envelope.

- (4) The elector must, before 6 pm on polling day—
  - (a) post the envelope, or
  - (b) deliver the envelope to the returning officer.

### **73 Preliminary scrutiny of postal votes and transmission to regional electoral officer**

- (1) This clause applies to each envelope purporting to contain a postal ballot-paper that is received by the returning officer before 6 pm on the fourth day immediately following the close of the poll.
- (2) The returning officer must, in respect of each envelope—
  - (a) check if the declaration on the envelope containing the ballot-paper has been duly signed and witnessed, and
  - (b) if the officer is satisfied that the declaration has been duly signed and witnessed, accept the ballot-paper for further scrutiny.
- (3) If a ballot-paper is accompanied by, but is not inside, an envelope bearing a declaration that has been duly signed and witnessed, the returning officer may accept the ballot-paper for scrutiny, but only if the returning officer is satisfied that the declaration relates to that ballot-paper.
- (4) If the envelope has been accepted for further scrutiny, the returning officer must—
  - (a) send the envelope and ballot-paper to the regional electoral officer for the Region for which the elector has cast a vote in time to reach that officer before the close of the poll, or
  - (b) if the returning officer is of the opinion that the envelope cannot be sent to the regional electoral officer in order to reach the officer before the close of the poll, count and inform the regional electoral officer of—
    - (i) the first preference votes which are recorded for each candidate on the ballot-papers, and
    - (ii) if necessary, the additional preference votes which are recorded on the ballot-papers.
- (5) A ballot-paper that is not accepted for further scrutiny must be set aside, together with the other ballot papers that have not been accepted for further scrutiny, without unfolding or otherwise examining the ballot-paper.

## **Division 5 Voting at polling places**

### **74 Appointment of polling places**

- (1) The returning officer is to appoint for each Local Aboriginal Land Council area as many polling places as the returning officer considers necessary for the purpose of taking a poll at an election.
- (2) The returning officer must not appoint a polling place for a Local Aboriginal Land Council area if the returning officer is satisfied that there are no voting members residing in that Local Aboriginal Land Council area.
- (3) A polling place for a Local Aboriginal Land Council area may—
  - (a) be within the Local Aboriginal Land Council area, or
  - (b) if the returning officer is satisfied it would enhance the convenience of a large number of voters for a Local Aboriginal Land Council area—be outside of the Local Aboriginal Land Council area.
- (4) The returning officer may appoint the same polling place for more than one Local Aboriginal Land Council area.

- (5) The returning officer may designate one or more polling places to be a special polling place.
- (6) The returning officer may revoke the appointment of a polling place, but only if—
  - (a) there will be at least one polling place remaining for the Local Aboriginal Land Council area concerned after the revocation, or
  - (b) the returning officer is satisfied that there are no voting members residing in the Local Aboriginal Land Council area concerned, or
  - (c) the returning officer determines that the polling place cannot be used due to an event (such as fire, flood, storm or earthquake) that—
    - (i) causes a failure of, or a significant disruption to, an essential service or infrastructure in the Local Aboriginal Land Council area concerned, or
    - (ii) destroys or damages, or threatens to destroy or damage, property in the Local Aboriginal Land Council area concerned, or
    - (iii) endangers, or threatens to endanger, the safety or health of persons in the Local Aboriginal Land Council area concerned.
- (7) The returning officer is to cause notice of the revocation of a polling place to be published on the New South Wales Electoral Commission's website at a time determined by the returning officer.

#### **75 Arrangements at polling places**

- (1) The returning officer is to make all the necessary arrangements for taking the poll at polling places.
- (2) Immediately before proceeding to take the poll at each polling place, a deputy electoral officer must exhibit for the inspection of any candidate, scrutineer or other person present, a ballot-box open and empty and must immediately afterwards close and seal it and place it on the table at which the officer is to preside in full view of all persons present at the polling place.
- (3) A ballot-box must be kept, sealed and unopened, at the polling place until the close of the poll, except as provided by this clause.
- (4) A ballot-box at a special polling place must—
  - (a) be closed and sealed by a deputy electoral officer at the end of voting on any day on which votes have been cast at the special polling place, to prevent an additional ballot-paper being put into the ballot-box without breaking the seal, and
  - (b) be transported, or caused to be transported, by the deputy electoral officer to a polling place specified by the returning officer for scrutiny and counting in accordance with Division 6 at the close of the poll.
- (5) For the purposes of Division 6, a ballot-box transported to a polling place in accordance with subclause (4)(b) is taken to be a ballot-box containing ballot-papers of electors voting at that polling place.
- (6) Despite subclause (3), the ballot-box used at a special polling place may, with the approval of the returning officer, be re-used at another special polling place without being emptied.
- (7) If a ballot-box is to be re-used without being emptied, a deputy electoral officer must—
  - (a) exhibit for the inspection of any candidate, scrutineer or other person present at the second or subsequent special polling place, the unbroken seal affixed to the ballot-box in accordance with subclause (4)(a), and



- (b) break the seal to allow ballot-papers to be added to the ballot-box, while the special polling place is open, and
- (c) place the ballot-box on the table at which the deputy electoral officer is to preside in full view of all persons present at the polling place.

#### **76 Hours of polling**

- (1) Each polling place, other than a special polling place, is to be open for voting on polling day between the hours of 8 am and 6 pm.
- (2) The returning officer may, in accordance with subclause (3), specify days and hours during which a specified special polling place is to be open to allow for the casting of votes.
- (3) A special polling place may be open for voting at any time between—
  - (a) 9 am on the day after the date fixed for the close of nominations, and
  - (b) 6 pm on polling day.

#### **77 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, or
  - (b) answers "Yes" or otherwise in the affirmative to the question referred to in subclause (1)(b).

#### **78 Questions for challenged voters**

- (1) A deputy electoral officer may, and at the request of any scrutineer must, put to any person claiming to vote all or any of the following questions—
  - (a) Are you the person whose name appears as [*here state name under which the person claims to vote*] on the roll for this election?
  - (b) Are you of or above the age of 18 years?
  - (c) Have you already voted at this election?
  - (d) Are you disqualified from voting in that you are not a voting member of the [*here state name of relevant Local Aboriginal Land Council*] within the [*here state name of relevant Region*]?
  - (e) Do you ordinarily reside in the [*here state name of relevant Local Aboriginal Land Council*] area?
  - (f) Are you currently suspended as a member of the [*here state name of relevant Local Aboriginal Land Council*] under its rules?
  - (g) Are you aware that a suspension will disqualify you from voting in this election?

- (h) Have you voted in any other Local Aboriginal Land Council area in this election?
- (i) Are you aware that you may only vote once in this election?
- (2) If a person refuses to answer fully any question put to the person by the deputy electoral officer, or by the person's answer shows that they are not entitled to vote, the person's claim to vote must be rejected.
- (3) The voter's answers to the questions are to be conclusive, and the matter is not to be further inquired into during the polling.

**79 Errors not to forfeit vote**

- (1) An omission of any given name or names, or entry of a wrong given name or names or wrong address, or a mistake in the spelling of any surname, does not warrant the rejection at the polling of any claim to vote if the elector is sufficiently identified in the opinion of a deputy electoral officer.
- (2) An elector is not disqualified from voting under the name appearing on the roll because the elector's surname has been changed as a result of marriage but, in that case, a note of the fact is to be made by a deputy electoral officer.

**80 Initialling of ballot-papers and marking of rolls**

- (1) Before delivering a ballot-paper to an elector, a deputy electoral officer must initial the ballot-paper on the front.
- (2) A deputy electoral officer must keep an exact account of all ballot-papers.
- (3) A deputy electoral officer must mark off the roll the name of any elector to whom the officer delivers a ballot-paper.

**81 Recording of vote**

On receipt of a ballot-paper an elector must, without delay—

- (a) retire alone to some unoccupied compartment of a booth at the polling place and there in private record the elector's vote on the ballot-paper in accordance with the directions shown on it, and
- (b) fold the ballot-paper so as to conceal the names of the candidates and then immediately deposit it in the ballot-box, and
- (c) leave the polling place.

**82 Spoilt ballot-papers**

- (1) If an elector satisfies a deputy electoral officer, before the elector's ballot-paper is deposited in the ballot-box, that the elector has spoilt the ballot-paper by mistake or accident, the elector may, on giving it up, receive a new ballot-paper from the officer.
- (2) The deputy electoral officer must cancel and preserve the spoilt ballot-paper.

**83 Assistance to certain electors**

- (1) A deputy electoral officer is to permit a person appointed by the elector to assist an elector to vote if—
  - (a) the deputy electoral officer is satisfied that the elector is unable to vote without assistance, or
  - (b) the elector makes an oral declaration to the returning officer that the elector objects on religious grounds to vote in the manner provided by the Act and this Regulation.

- (2) If an elector does not appoint a person under subclause (1), the returning officer must assist the elector to vote in the presence of—
  - (a) the scrutineers (if any) that are present, or
  - (b) if there are no scrutineers present, a deputy electoral officer or another person appointed by the elector.

#### **84 Procedure for disputed votes**

- (1) A person claiming to vote at a polling place may vote under this clause even though—
  - (a) a mark on the roll indicates that the person has already voted at the polling place or before polling day, if the person's answers to the questions put to the person by a deputy electoral officer show that the person is entitled to vote, or
  - (b) a mark on the roll indicates that a ballot-paper has been delivered or posted to the person if the person states that the person has not applied to vote by post and the answers to the questions put to the person by the deputy electoral officer show that the person is entitled to vote, or
  - (c) the person's name cannot be found on the roll, if the person claims to be entitled to be enrolled as an elector for the election.
- (2) A person voting under this clause must, after recording the person's vote on the ballot-paper—
  - (a) place the completed ballot-paper, folded so that the vote cannot be seen, in an envelope which is addressed to the deputy electoral officer and on which the person has made a written declaration specifying the ground on which the person claims to vote, and
  - (b) sign the declaration in the person's own handwriting, and
  - (c) seal the envelope, and
  - (d) hand the envelope to the deputy electoral officer.
- (3) The deputy electoral officer must inform the regional electoral officer of the names of all persons who have voted under this clause and, at the completion of the count of first preference votes following the close of the poll, must send all envelopes purporting to contain ballot-papers of those persons to the regional electoral officer.
- (4) The regional electoral officer must examine the declarations on all envelopes purporting to contain ballot-papers of persons voting under this clause and if, after making any inquiries the officer considers necessary—
  - (a) the regional electoral officer is satisfied that the person who signed the declaration on the envelope is entitled to vote—withdraw from the envelope all ballot-papers for further scrutiny and, without inspecting or unfolding the ballot-papers or allowing any other person to do so, place them in a locked ballot-box for further scrutiny under Division 6, or
  - (b) the regional electoral officer is not so satisfied—reject the ballot-papers purported to be contained in the envelope, without opening the envelope.
- (5) Without limiting subclause (4), the returning officer may make inquiries of the Registrar for the purposes of making inquiries under subclause (4).

### **Division 6 The scrutiny**

#### **85 Scrutineers**

Each candidate for election is entitled to appoint by notice in writing—

- (a) one scrutineer to act on the candidate's behalf at the taking of votes at each polling place, and
- (b) one scrutineer to act on the candidate's behalf at the place where postal ballot-papers are received, and
- (c) one scrutineer to act on the candidate's behalf at the scrutiny.

#### **86 Scrutiny of votes at close of poll**

At the close of the poll, a deputy electoral officer must, in the presence of any scrutineers who choose to be present, but no others—

- (a) unseal the ballot-boxes containing ballot-papers of electors voting at the polling place, and
- (b) remove those ballot-papers from the ballot-boxes, and
- (c) examine each ballot-paper and reject those which are informal, and
- (d) proceed to count the votes and ascertain the number of first preference votes recorded for each candidate.

#### **87 Informal ballot-papers**

- (1) At the scrutiny, a ballot-paper must be rejected as informal if—
  - (a) it is neither initialled by a deputy electoral officer nor bears a mark prescribed as an official mark for the purposes of section 165(3)(c) of the *Electoral Act 2017*, or
  - (b) the elector has failed to record the elector's vote in the manner directed on the ballot-paper, or
  - (c) it has on it any mark or writing which, in the opinion of a deputy electoral officer, will enable any person to identify the elector.
- (2) A ballot-paper is not to be rejected as informal merely because of any mark or writing which is not authorised or required by this Regulation (not being a mark or writing referred to in subclause (1)(c)) if, in the opinion of the deputy electoral officer, the elector's intention is clearly indicated on the ballot-paper.
- (3) A ballot-paper is not to be rejected as informal merely because—
  - (a) the same preference (other than the elector's first preference) has been recorded on the ballot-paper for more than one candidate, but the ballot-paper must be treated as if those preferences and any subsequent preferences had not been recorded on the ballot-paper, or
  - (b) there is a break in the order of the elector's preferences recorded on the ballot-paper, but the ballot-paper must be treated as if any subsequent preferences had not been recorded on the ballot-paper.
- (4) A ballot-paper is not to be rejected as informal in the following circumstances—
  - (a) by reason only that the elector has recorded a vote by placing a cross or a tick in a square and not placing any mark or writing in any other square, but the ballot-paper is to be treated as if the cross or tick were the number "1",
  - (b) by reason only that the elector has recorded a vote by placing the number "1" or a tick in a square and placing a cross in (or a line through) all or some of the other squares on the ballot-paper, but the ballot-paper is to be treated as if the marks in those other squares did not appear on the ballot paper and the tick were the number "1",
  - (c) by reason only that the elector has placed one or more numbers, a tick or one or more crosses adjacent to but outside a square or squares if, in the opinion of the deputy electoral officer, the elector's intention is clearly indicated on the

ballot-paper, but in such a case, each such number, tick or cross is taken to have been placed within the relevant square.

#### **88 Ballot-papers to be provided to regional electoral officer**

Immediately after ascertaining the total number of first preference votes recorded for each candidate, each deputy electoral officer must make up the following parcels and provide the parcels to the regional electoral officer—

- (a) in one parcel, the ballot-papers which have been used in voting at the deputy electoral officer's polling place during the election, labelled according to first preferences for each candidate, and
- (b) in a second, separate parcel, the ballot-papers which have remained unused, and
- (c) in a third, separate parcel, the certified copies of rolls supplied to the deputy electoral officer, and all books, rolls and papers kept or used by the officer during the poll.

#### **89 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 the 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 that candidate 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, the candidate 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 the candidate's 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
  - (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 regional electoral 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.

#### **90 Candidates to be informed of result of count**

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

#### **91 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 90.
- (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.

## **92 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 a request was made, that the returning officer has determined not to order the recount.

## **Division 7 Miscellaneous**

### **93 Signature on electoral papers**

- (1) If a person is unable to sign the person's name in writing and makes the person's mark as the person's signature on an electoral paper, the mark is taken to be the person's personal signature, if it is identifiable as such, and is made in the presence of a witness who signs the electoral paper as a witness.
- (2) In this clause, *electoral paper* means an application to vote by post or declaration or a disputed vote declaration but does not include a ballot-paper.

### **94 Death of candidate**

- (1) If a candidate dies after the close of nominations and before polling day in respect of an election—
  - (a) the election is taken to have failed, and
  - (b) the returning officer is to conduct a new election.
- (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.

### **95 Decisions of returning officer**

Subject to the Act, a decision by the returning officer on any matter relating to the conduct of an election is final if the decision is required or permitted to be made by the returning officer by this Regulation.

### **96 Notification of result of election**

As soon as practicable after a candidate has been elected, the returning officer must—

- (a) notify the Minister, the Chief Executive Officer of the New South Wales Aboriginal Land Council and the Registrar in writing of the candidate who has been elected, and
- (b) cause to be published on the New South Wales Electoral Commission's website a notice that the candidate has been elected.

### **97 Retention of electoral papers**

- (1) The regional electoral officer must send all electoral material to the returning officer immediately after the declaration of the poll.
- (2) The returning officer must retain all nomination papers, ballot-papers, applications to vote by post, rolls and other papers in connection with the election for a period of not less than 3 months after the polling day for the election concerned.

## **98 Offences**

A person must not—

- (a) vote or attempt to vote in an election in which the person is not entitled to vote, or
- (b) vote or attempt to vote more than once in an election, or
- (c) make a false or wilfully misleading statement—
  - (i) to the returning officer, a regional electoral officer or a deputy electoral officer in connection with an election, or
  - (ii) in any document that the person supplies for the purposes of an election, or
- (d) obstruct the proceedings at a polling place or at the office of the returning officer, a regional electoral officer or a deputy electoral officer, or
- (e) enter any compartment of a booth at a polling place, otherwise than as authorised under this Regulation, while any other person is in the compartment recording a vote.

Maximum penalty—5 penalty units.

## **99 Advertising by New South Wales Electoral Commission**

- (1) The New South Wales Electoral Commission may, at the times the Commission thinks fit, publish electoral information the Commission thinks fit, including but not limited to—
  - (a) 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.
- (2) The information may be published by way of newspaper notices, on the New South Wales Electoral Commission's website or in any other manner the Commission thinks appropriate.
- (3) A publication of information may relate to one or more Regions.



## **Part 6 Finance**

### **100 Investment of money in New South Wales Aboriginal Land Council Account**

- (1) Money to the credit of the New South Wales Aboriginal Land Council Account may be invested in any manner for the time being authorised by law for the investment of trust funds.
- (2) The whole of the proceeds of any investment, including the interest earned on any investment, made by the New South Wales Aboriginal Land Council, whether the investment was made before or after the commencement of this Regulation, must be invested in accordance with this clause, and must not be disbursed, except as provided by the Act.
- (3) The Minister may direct that any money that is the subject of a specified investment made by the New South Wales Aboriginal Land Council or of a specified class of investments so made, be realised immediately and that the proceeds be invested in accordance with this clause, and the New South Wales Aboriginal Land Council must comply with the direction.
- (4) Money invested under this clause may be invested only in the name of the New South Wales Aboriginal Land Council, except to the extent that the Minister otherwise directs.
- (5) A direction under this clause may be given unconditionally or subject to any conditions determined by the Minister.
- (6) A reference in this clause to an investment made by the New South Wales Aboriginal Land Council extends to an investment made in trust for or otherwise made on behalf of the New South Wales Aboriginal Land Council.
- (7) Any or all of the functions of the Minister under this clause may be exercised on behalf of the Minister by a person or persons—
  - (a) for the time being nominated by the Minister for the purpose, or
  - (b) holding or acting in a position or positions nominated by the Minister for the purpose.

### **101 Investment of money in Local Aboriginal Land Council Accounts**

Money to the credit of an account established by a Local Aboriginal Land Council under section 152 of the Act may be invested in—

- (a) any public funds or Government stock or Government securities of the Commonwealth or any State of the Commonwealth, or
- (b) any debentures or securities guaranteed by the Government of New South Wales, or
- (c) any debentures or securities—
  - (i) issued by a public or local authority, or a statutory body representing the Crown, constituted by or under any law of the Commonwealth, of any State of the Commonwealth, of the Northern Territory or of the Australian Capital Territory, and
  - (ii) guaranteed by the Commonwealth, any State of the Commonwealth or the Northern Territory, or
- (d) interest bearing deposits in an authorised deposit-taking institution.

### **102 Auditors**

The New South Wales Aboriginal Land Council must not include a person on the list of auditors required to be kept under section 153 of the Act unless the person is—

- (a) a registered company auditor, or
- (b) a member of the Institute of Public Accountants, or
- (c) a member of CPA Australia, or
- (d) a member of the Institute of Chartered Accountants Australia.

**103 Documents to be furnished to New South Wales Aboriginal Land Council**

For the purposes of section 153(5), the following documents must be furnished in accordance with that subsection to the New South Wales Aboriginal Land Council by a Local Aboriginal Land Council—

- (a) copies of all insurance policies taken out by the Local Aboriginal Land Council,
- (b) any audit management letter given to the Local Aboriginal Land Council in respect of that Local Aboriginal Land Council's financial statements by the auditor who audited those statements.

## Part 7 Administration of Councils

### 104 Functions that may be exercised by administrator or interim administrator

- (1) For the purposes of section 222(4) of the Act, an administrator of a Local Aboriginal Land Council may exercise all of the functions of the Council and the members of the Council exercised by resolution of the Council.

**Note.** Under section 222(4)(b) of the Act, the administrator's instrument of appointment may limit the functions that may be exercised.

- (2) For the purposes of section 223B(1A)(b) of the Act, an interim administrator of an Aboriginal Land Council may exercise all of the functions of the Council and the members of the Council exercised by resolution of the Council.

**Note.** Under section 223B(1A)(b) of the Act, the interim administrator's instrument of appointment may limit the functions that may be exercised.

### 105 List of administrators for Local Aboriginal Land Councils

- (1) For the purposes of section 222(1) of the Act, the New South Wales Aboriginal Land Council is to invite expressions of interest from persons seeking to be included in the list of persons who may be appointed as an administrator of a Local Aboriginal Land Council (the *administrator appointment list*) at least once in any 5 year period.
- (2) The New South Wales Aboriginal Land Council may consider an expression of interest from a person seeking to be included in the administrator appointment list whether or not the Council had invited expressions of interest or the period (if any) specified for the receipt of expressions of interest has ended.
- (3) A determination as to whether a person who has submitted an expression of interest should be included in the administrator appointment list is to be made having regard to the following—
  - (a) the functions and objects of Local Aboriginal Land Councils,
  - (b) the person's knowledge of public sector governance and relevant legislation,
  - (c) the person's understanding of Aboriginal culture and heritage,
  - (d) the person's understanding of the role of Aboriginal Land Councils,
  - (e) the person's experience in the administration of not-for-profit organisations.
- (4) The New South Wales Aboriginal Land Council may submit to the Minister for the Minister's approval a proposal to—
  - (a) amend the administrator appointment list by adding specified persons to, or removing specified persons from, the list, or
  - (b) replace the administrator appointment list.
- (5) The New South Wales Aboriginal Land Council must not submit a proposal to remove a person from the administrator appointment list unless the Council has notified the person of the proposal and given the person a reasonable opportunity to submit an expression of interest indicating that the person wishes to continue to be included in the administrator appointment list.
- (6) If the New South Wales Aboriginal Land Council receives an expression of interest from a person who wishes to continue to be included in the administrator appointment list, the Council must determine whether or not to continue to include the person in the list in accordance with this clause before submitting the proposal to remove the person from the list to the Minister.

**106 Election of Local Aboriginal Land Council Board members after administration**

- (1) For the purposes of section 226(1) of the Act, elections for Board members 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 of office.
- (3) The term of office of the Board members elected commences at the end of the period of administration.
- (4) Division 3 of Part 3 applies to the election of Board members under this clause.
- (5) At a meeting called by the administrator, the Board members elected under this clause are to elect, in the manner determined by the Board members, a Chairperson and Deputy Chairperson.

**107 Election of New South Wales Aboriginal Land Council 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 of office.
- (2) The term of office of the councillors elected commences at the end of the period of administration.
- (3) 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.

## Part 8 Miscellaneous

### 108 Performance improvement criteria

For the purposes of section 234A(2)(a) of the Act, the performance improvement criteria that the New South Wales Aboriginal Land Council must consider before making a performance improvement order in respect of a Local Aboriginal Land Council are—

- (a) whether the Local Aboriginal Land Council has failed to comply with the Act, this Regulation or any policy of the New South Wales Aboriginal Land Council, and
- (b) whether meetings of the Local Aboriginal Land Council or Board of the Local Aboriginal Land Council are being conducted in accordance with the Act and this Regulation, and
- (c) whether the appointment of an advisor is reasonably likely to assist the Board of the Local Aboriginal Land Council to restore, improve or develop the capacity for the proper and effective functioning of the Council, and
- (d) whether the behaviour of one or more Board members, or members of staff, of the Local Aboriginal Land Council has adversely affected the Council's performance of its functions under the Act and the Council's response to that behaviour, and
- (e) whether there are significant risks facing the Local Aboriginal Land Council that are not being addressed.

### 109 Application of Commercial Arbitration Act 2010 to arbitrations under the Act

- (1) For the purposes of section 240 of the Act, the application of the *Commercial Arbitration Act 2010* is modified in accordance with this clause.
- (2) Section 10 of the *Commercial Arbitration Act 2010* is to be read as follows—

An arbitration agreement is to be taken to provide for the appointment of a single arbitrator only.
- (3) A provision of the *Commercial Arbitration Act 2010* does not apply to the extent to which it provides for the appointment of more than one arbitrator.

### 110 Certain information on land register to be made available

For the purposes of section 106(2)(g) of the Act, the New South Wales Aboriginal Land Council is to make available, on request by the members of a Local Aboriginal Land Council, all the information contained in the land register that relates to the Local Aboriginal Land Council.

### 111 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.

### 112 Copies of minutes to be made available in certain circumstances

- (1) The New South Wales Aboriginal Land Council may pass a resolution requesting a Local Aboriginal Land Council to provide copies of minutes for a particular meeting or meetings.
- (2) A Local Aboriginal Land Council may pass a resolution requesting the New South Wales Aboriginal Land Council to provide copies of minutes for a particular meeting or meetings.

- (3) An Aboriginal Land Council is to comply with any request made by resolution passed in accordance with this clause.

**113 Savings**

Any act, matter or thing that, immediately before the repeal of the *Aboriginal Land Rights Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Model rules for Local Aboriginal Land Councils

### 1 Application of Rules and definitions

- (1) The Rules set out in this Schedule are prescribed, for the purposes of section 52F(2) of the Act, as model rules for each Local Aboriginal Land Council.
- (2) In these Rules—

**area** means the Local Aboriginal Land Council area constituted under the Act.

**Council** means the Local Aboriginal Land Council to which these Rules apply.

**extraordinary meeting** means—

  - (a) a meeting called by the Registrar in response to a written request by a quorum of members, or
  - (b) a meeting called by the Board otherwise than in the ordinary course of business.

**ordinary meeting** means a meeting scheduled by a previous meeting or called by the Chairperson of the Board in the ordinary course of business.

**the Act** means the *Aboriginal Land Rights Act 1983*.

**the Regulation** means the *Aboriginal Land Rights Regulation 2020*.

**Note.** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of these Rules.
- (3) Words and expressions used in these Rules have the same meaning as in the Act or the Regulation.
- (4) Notes included in these Rules do not form part of these Rules.

### 2 Application of Rules

These Rules apply to the [*name*] Local Aboriginal Land Council.

### 3 Council to which Rules apply

These Rules apply to a Local Aboriginal Land Council as incorporated under the *Aboriginal Land Rights Act 1983*.

### 4 Address

- (1) The official address of the Council is the address for the time being notified to the Registrar by the chief executive officer of the Council.
- (2) Any change to the address must be approved at a Council meeting before notification is given to the Registrar.

### 5 Procedure for suspension of members

The procedure for deciding on the suspension of a member in accordance with section 57 of the Act is to be as follows—

- (a) notice of the proposed suspension must be included in the notice given for the next meeting of the Council,
- (b) the member whose suspension is under consideration must be allowed to address the meeting or to submit a written explanation which must be read to the meeting,
- (c) voting on the question and the period of suspension is to be by secret ballot,
- (d) if at least a majority of the members attending the meeting vote in favour of suspension of the member for a certain period of time, that is the decision of the Council.

## **6 Calling of ordinary meetings**

- (1) The Council, before the end of any meeting of the Council, must set a time and place for the next meeting of the Council.
- (2) The chief executive officer must call a meeting for that time and place and must cause notice of the meeting to be given in accordance with the Regulation.

## **7 Calling of extraordinary meetings on request by members**

- (1) If the Board receives a request in writing signed by members whose number amounts to a quorum, the Board must as soon as practicable, but in any event within 21 clear days after the receipt of the request, call a meeting and cause notice of the meeting to be given in accordance with the Regulation.
- (2) If a request for an extraordinary meeting is made and the Board has not called a meeting or caused notice of a meeting to be given in accordance with the Regulation within 21 clear days after receipt of the request, or the Board has not met to respond to the request, the Registrar is to be notified of that fact.
- (3) If the Registrar is satisfied that a request has been made under this Rule and a meeting has not been called, or that the number of board members is less than the number required for quorum, the Registrar may call the meeting by notice given in accordance with this Regulation.
- (4) The Council must, at an extraordinary meeting, deal only with those matters contained in the request for the meeting.
- (5) An extraordinary meeting must not be opened unless 80 per cent of the members who signed the request (and a quorum) are present.
- (6) If, half an hour after the advertised time of the meeting, 80 per cent of the members who signed the request (and a quorum) are not present, the meeting lapses.

## **8 Calling of extraordinary meetings by Board**

The Board may call an extraordinary meeting of the Council at any time.

**Note.** The *Aboriginal Land Rights Regulation 2020* sets out the way in which notice of a meeting is to be given.

## **9 Meeting place**

- (1) Any meeting of the Council must be held within the boundaries of its area.
- (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 the residence.

## **10 Voting**

- (1) Subject to Rule 5, voting at a Council meeting is to be determined—
  - (a) if the vote is for an election—by secret ballot, or
  - (b) in any other case—by a show of hands.
- (2) Despite subrule (1)(b), the Council may determine at a meeting, by a show of hands, that any other vote is to be determined by secret ballot.
- (3) No proxy votes are permitted (that is, voting members must be present at the meeting).



## **11 Minutes**

- (1) A Board member elected as minutes secretary for the meeting by the members present must take full and accurate minutes of the proceedings of a meeting of the Council.
- (2) The minutes must include—
  - (a) all motions put to the meeting, and
  - (b) amendments to the motions, and
  - (c) the names of the movers and seconders of those motions and amendments, and
  - (d) the resolutions passed by the meeting.
- (3) The minutes secretary for a meeting must provide a copy of the minutes of the proceedings of the meeting to the chief executive officer.
- (4) The Chairperson of the Board must sign the minutes when they have been accepted at the next meeting.

## **12 Business at annual meeting**

The business of the annual meeting must include—

- (a) the receipt of an Annual Report of the activities of the Council, presented by the Chairperson of the Board, and
- (b) the receipt of the audited financial statements for the previous financial year, and
- (c) if required by the Act, the election of Board members, and
- (d) the conduct of any other business placed on the agenda before the commencement of the meeting.

## **13 Attendance list**

- (1) The minutes secretary of the Council must keep a list of those members who attend each Council meeting.
- (2) The list must include both the name and signature of each member present.
- (3) The minutes secretary must provide a copy of the list of those members who attended a council meeting to the chief executive officer.

## **14 Sub-committees**

- (1) A Board may appoint sub-committees for the purposes of investigating proposals and presenting findings and suggestions to the Board members at a meeting.
- (2) A sub-committee must meet as directed by a Board or, in the absence of a direction, as often as it sees fit.
- (3) A decision of a sub-committee is not a decision of the Board.

## **15 Financial management**

- (1) The chief executive officer must promptly—
  - (a) deposit into the Council's account with an authorised deposit-taking institution all money received, and
  - (b) issue a receipt for all money received.
- (2) A payment in excess of \$50 paid by the Council by cheque must be signed by any 2 of the signatories of the Council's accounts.
- (3) The signatories of the Council's accounts are to be determined by the Board.

- (4) If the Board decides to remove a person from acting as a signatory of the Council's accounts, that person must sign the appropriate authority from the authorised deposit-taking institution terminating that person's role as a signatory at the earliest possible opportunity.
- (5) The chief executive officer must present to the Board monthly financial reports containing details of the following—
  - (a) all bills and accounts that have not been paid and require the approval of the Board before payment,
  - (b) for ratification by the Board, details of all bills and accounts that have been paid and not previously approved by the Board,
  - (c) all other bills and accounts that have been received or paid by the chief executive officer.
- (6) Full details of all approvals and ratifications must be entered in the minutes of the Board meeting.

#### **16 Access to documents**

- (1) The membership roll, minutes of each meeting, attendance lists of each meeting and all financial records (the *Council records*) are the property of the Council.
- (2) The chief executive officer must make available the Council records for inspection by any member at the times directed by the Council.
- (3) If a member requests, by notice in writing, that the chief executive officer make available the Council records for inspection, the chief executive officer must, within 28 days, make the records available for inspection by the member.
- (4) A member must not remove original documents or records from the place in which they are made available for inspection by the chief executive officer.
- (5) The property of the Council which is in the possession of or under the control of an officer whose term of office has expired must be handed over to a remaining officer, or to the officer's successor, as the Council directs.
- (6) In subrule (5)—

*expired* means expired by reason of resignation, removal from office or election of a successor.

*property* includes all books, records, accounts, motor vehicles, office equipment, keys and anything else owned by the Council.

#### **17 Common seal**

- (1) The Council may provide for a common seal.
- (2) The common seal must not be affixed without the authority of the Board of the Council.
- (3) The common seal may be affixed to a document only in the presence of 2 Board members with an attestation by the signatures of the 2 Board members of the fact of affixing the seal.

#### **18 Amendment of Rules**

- (1) The Council may amend these Rules by a resolution passed at a meeting of which notice under the Regulation, including notice of the proposed amendment, has been given.

- (2) The Registrar must be notified in writing of the amendment and the amendment is not effective unless the Registrar has given approval in writing to the amendment being made.

#### **19 Duties of Chairperson**

- (1) The primary duty of the Chairperson of the Board is to ensure the successful functioning of the Council and achievement of its objectives.
- (2) Accordingly the Chairperson must—
  - (a) uphold the rules of the Council, and
  - (b) preside at Council meetings, and
  - (c) represent and act, subject to the instructions of a Council meeting, on behalf of the Council in the interval between meetings.
- (3) In particular, the Chairperson must—
  - (a) before each Council meeting—
    - (i) consult with the chief executive officer in the preparation of an agenda, and
    - (ii) ensure that the notice of the meeting conforms with these Rules, and
    - (iii) check the accuracy of any minutes of previous meetings being presented to the meeting for acceptance, and
    - (iv) read over any correspondence or other material to be brought forward at the meeting, and
  - (b) open the meeting when a quorum is present, ask for any apologies to be tabled, then welcome new members and guests, and
  - (c) sign minutes of previous meetings as correct when they have been accepted by the meeting, and
  - (d) preserve order and warn any member who is causing a disturbance at a meeting that the member may be removed, and
  - (e) order the removal from the meeting of any member who, having been already warned, continues to cause a disturbance and may request assistance from the police to remove the member if it is considered necessary by the majority of members at the meeting, and
  - (f) ensure that debates are conducted in the correct manner and, in particular, that there is one speaker at a time, and
  - (g) rule “out of order” any motion which involves the Council acting outside its functions or powers under the Act or any other statute or rule of law, and
  - (h) close or adjourn the meeting when—
    - (i) a motion to that effect is carried, or
    - (ii) all business has been finished, or
    - (iii) the meeting is excessively disorderly and the Chairperson is unable to restore order, or
    - (iv) a quorum of members is no longer present.
- (4) The Chairperson has, in relation to the Board and meetings of the Board, the same functions as the Chairperson has under this clause in relation to meetings of the Council.

#### **20 Duties of chief executive officer**

The chief executive officer must—

- (a) maintain a membership roll for the Council as required by the Act and the Regulation, and
- (b) maintain an official minute book of the Council containing the minutes taken by the minute secretary under Rule 11 in respect of each meeting, and
- (c) maintain a file which contains all applications and letters asking for membership received by the Council, and
- (d) call meetings and give the proper notice for meetings, of the Council and the Board, in accordance with these Rules, and
- (e) maintain a file containing the attendance lists for each meeting of the Council showing the names of all the members who attend the meeting together with the signature of each member who is present as prepared under Rule 13, and
- (f) prepare an agenda for meetings of the Council and the Board, in consultation with the Chairperson, prior to each meeting, and
- (g) maintain any correspondence to and from the Council and inform the Council of the correspondence, and
- (h) send to the Registrar the following—
  - (i) a copy of the current Council membership roll and changes to the roll as required by section 59 of the Act,
  - (ii) the address of the Council's office (if there is one),
  - (iii) the particulars of all land held by the Council, and
- (i) keep the Council's common seal in safe custody, and
- (j) represent and act, subject to the instructions of a Council meeting, on behalf of the Council in the interval between meetings.

## **21 Financial duties**

- (1) The chief executive officer must—
  - (a) maintain proper accounts and records of all transactions in relation to the operations of the Council (in a manner approved by the New South Wales Aboriginal Land Council), and
  - (b) ensure that all money received is deposited as soon as possible in the Council's account with an authorised deposit-taking institution, and
  - (c) submit the monthly financial reports prepared in accordance with Rule 15 at each Board and Council meeting, and
  - (d) as soon as practicable, bring to the attention of the Board details of any expenditure that in the chief executive officer's opinion contravenes the Act.
- (2) The Chairperson of the Board must—
  - (a) ensure that financial statements, together with an auditor's statement in relation to the statements, are submitted to each annual meeting of the Council and to the New South Wales Aboriginal Land Council, in accordance with Division 2 of Part 8 of the Act, and
  - (b) submit the Council's budget, after it has been passed by a Council meeting, to the New South Wales Aboriginal Land Council in accordance with section 158 of the Act, and
  - (c) as soon as practicable, submit to the Board, and advise the New South Wales Aboriginal Land Council of, details of any expenditure that in the Chairperson's opinion contravenes the Act or the wishes of the majority of the Council members or both.

**22 Relationship between Rules and the Act and Regulation**

To the extent (if any) that a Rule purports to make provision in respect of a matter provided for in the Act or the Regulation, the provision of the Act or the Regulation prevails over the Rule.

**23 Revocation of endorsement as deductible gift recipient**

The Council must, if the Council ceases to be endorsed as a deductible gift recipient under the *Income Tax Assessment Act 1997* of the Commonwealth, transfer to another Local Aboriginal Land Council that is endorsed as a deductible gift recipient under that Act any gifts, contributions or other money as required by section 30–125(6) of that Act.

## Schedule 2 Model rules for New South Wales Aboriginal Land Council

### 1 Application of Rules and definitions

- (1) The Rules set out in this Schedule are prescribed, for the purposes of section 117(2) of the Act, as model rules for the New South Wales Aboriginal Land Council.
- (2) In these Rules—  
*Council* means the New South Wales Aboriginal Land Council.  
*councillor* means a member of the Council.  
*the Act* means the *Aboriginal Land Rights Act 1983*.  
*the Regulation* means the *Aboriginal Land Rights Regulation 2020*.  
**Note.** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of these Rules.
- (3) Words and expressions used in these Rules have the same meaning as in the Act or the Regulation.
- (4) Notes included in these Rules do not form part of these Rules.

### 2 Voting

- (1) Each councillor present (including the Chairperson) is entitled to one vote at a Council meeting.
- (2) Voting at a Council meeting is to be determined—
  - (a) if the vote is for an election at an annual meeting or other meeting—by secret ballot, or
  - (b) in any other case—by a show of hands.
- (3) Despite subrule (2)(b), the Council may determine at a meeting, by a show of hands, that any other vote is to be determined by secret ballot.
- (4) No proxy votes are permitted (that is, voting councillors must be present at the meeting).
- (5) This Rule is subject to clause 4(2) of Part 3 of Schedule 3 to the Act that provides that the person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, a second or casting vote.

### 3 Minutes

- (1) A person appointed as minutes secretary for the meeting by the councillors present must take full and accurate minutes of the proceedings of a meeting of the Council.
- (2) The minutes must include—
  - (a) all motions put to the meeting, and
  - (b) amendments to the motions, and
  - (c) the names of the movers and seconders of those motions and amendments, and
  - (d) the resolutions passed by the meeting.
- (3) The minute secretary must provide the minutes of the proceedings of a meeting to the Chief Executive Officer.
- (4) The Chairperson is to sign the minutes when they have been accepted at the next meeting.

#### **4 Council roll**

The Chief Executive Officer of the Council is to prepare and maintain a council roll on which is to be listed—

- (a) the name and address of each councillor, and
- (b) the Region which each councillor represents, and
- (c) the date of election of each councillor.

#### **5 Attendance list**

- (1) The Chief Executive Officer of the Council is to keep a list of those councillors who attend each Council meeting.
- (2) The list is to include the signature of each councillor present.

#### **6 Business at annual meeting**

The business of the annual meeting is to include—

- (a) the receipt of an Annual Report of the activities of the Council, presented by the Chairperson, and
- (b) the receipt of the audited financial statements for the previous financial year, and
- (c) the conduct of any other business placed on the agenda before the commencement of the meeting.

#### **7 Sub-committees**

- (1) The Council may appoint sub-committees for the purposes of investigating proposals and presenting findings and suggestions to the councillors at a meeting.
- (2) A sub-committee is to meet as directed by the Council or, in the absence of a direction, as often as it sees fit.
- (3) A decision of a sub-committee is not a decision of the Council.

#### **8 Financial management**

- (1) Any money received for the Council must be promptly deposited into the Council's account with an authorised deposit-taking institution and a receipt must be issued for the money.
- (2) A payment in excess of \$50 made by the Council is to be paid by cheque signed by any 2 of the persons authorised by the Council to be signatories of the Council's accounts.
- (3) The Chairperson and Deputy Chairperson and those members of the staff of the Council as are approved by the Council for the purpose are to be authorised by the Council to be signatories of the Council's accounts.
- (4) The Chief Executive Officer is to pay all bills and accounts of the Council.
- (5) Proper records are to be kept of all receipts, payments and other financial transactions in accordance with the requirements of the *Public Finance and Audit Act 1983*.
- (6) Financial budgets and statements are to be prepared and a report submitted on the finances to each Council meeting.

#### **9 Access to documents**

- (1) The council roll, minutes of each meeting, attendance lists of each meeting and all financial records (the *Council records*) are the property of the Council.

- (2) The Chief Executive Officer is to make the Council records available for inspection by any councillor at the times directed by the Council.
- (3) A councillor is not to remove original documents or records from the place in which they are made available for inspection by the Chief Executive Officer.
- (4) The property of the Council which is in the possession of or under the control of an office-bearer whose term of office has expired is to be handed over to a remaining office-bearer or to the office-bearer's successor, as the Council directs.
- (5) In subrule (4)—  
*expired* means expired by reason of resignation, removal from office or election of a successor.  
*property* includes all books, records, accounts, motor vehicles, office equipment, keys and anything else owned by the Council.

#### **10 Common seal**

- (1) The Council may provide for a common seal.
- (2) The common seal must not be affixed without the authority of the Council.
- (3) The common seal may be affixed to a document only in the presence of 2 councillors with an attestation by the signatures of the councillors of the fact of affixing the seal.

#### **11 Amendment of Rules**

- (1) The Council may amend these Rules by a resolution passed at a meeting of which notice under the Regulation, including notice of the proposed amendment, has been given.
- (2) The Registrar must be notified in writing of the amendment and the amendment is not effective unless the Registrar has given approval in writing to the amendment being made.

#### **12 Duties of Chairperson**

- (1) The primary duty of the Chairperson is to ensure the successful functioning of the Council and the achievement of its objectives.
- (2) Accordingly, the Chairperson must—
  - (a) uphold the rules of the Council, and
  - (b) preside at Council meetings, and
  - (c) represent and act, subject to the instructions of a Council meeting, on behalf of the Council in the interval between meetings.
- (3) In particular, the Chairperson must—
  - (a) before each Council meeting—
    - (i) consult with the Chief Executive Officer in the preparation of an agenda, and
    - (ii) ensure that the notice of the meeting conforms with the Regulation, and
    - (iii) check the accuracy of any minutes of previous meetings being presented to the meeting for acceptance, and
    - (iv) read over any correspondence or other material to be brought forward at the meeting, and
  - (b) call meetings and give the proper notice for meetings in accordance with the Regulation, and



- (c) open the meeting when a quorum is present and ask for any apologies to be tabled, and
- (d) sign minutes of previous meetings as correct when they have been accepted by the meeting, and
- (e) preserve order and warn any councillor who is causing a disturbance at a meeting that the councillor may be removed, and
- (f) order the removal from the meeting of any councillor who, having been already warned, continues to cause a disturbance, and
- (g) ensure that debates are conducted in the correct manner and, in particular, that there is one speaker at a time, and
- (h) rule “out of order” any motion which involves the Council acting outside its functions or powers under the Act or any other statute or rule of law, and
- (i) close or adjourn the meeting when—
  - (i) a motion to that effect is carried, or
  - (ii) all business has been finished, or
  - (iii) the meeting is excessively disorderly and the Chairperson is unable to restore order, or
  - (iv) a quorum of councillors is no longer present.

### **13 Administrative duties of Chief Executive Officer**

The Chief Executive Officer of the Council must—

- (a) maintain a Council Roll showing details of names, addresses, the Regions which councillors represent and the date of the election of councillors, and
- (b) maintain an official minute book of the Council containing the minutes taken by the minute secretary under Rule 3 in respect of each meeting, and
- (c) maintain a file containing the attendance lists for each meeting of the Council showing the names of all the members who attend the meeting together with the signature of each member who is present as prepared under Rule 5, and
- (d) prepare an agenda, in consultation with the Chairperson, before each meeting, and
- (e) maintain any correspondence to and from the Council and inform the Council of the correspondence, and
- (f) send to the Minister an Annual Report, approved by a meeting of the Council, of the Council’s work and activities for the 12 months ending 30 June each year, and
- (g) send to the Auditor-General a copy of the report referred to in paragraph (f), and
- (h) keep the Council’s common seal in safe custody, and
- (i) represent and act, subject to the instructions of a Council meeting, on behalf of the Council in the interval between meetings.

### **14 Financial duties of Chief Executive Officer**

The Chief Executive Officer of the Council must—

- (a) ensure that financial statements, together with an auditor’s certificate in relation to a statement, are submitted to each annual meeting, and
- (b) submit the Council’s annual budget, after it has been passed by a Council meeting, to the Minister in accordance with section 157 of the Act, and
- (c) submit a financial statement at each Council meeting, and

- (d) represent and act, subject to the instructions of a Council meeting, on behalf of the Council in the interval between meetings, and
- (e) submit to the Council details of any expenditure which in the Chairperson's opinion contravenes the Act or the wishes of the majority of the councillors, or both.

## Schedule 3 Model code of conduct for Local Aboriginal Land Councils

### 1 Application of Schedule

The code of conduct set out in this Schedule is prescribed, for the purposes of section 177(6) of the Act, as a code of conduct for all Local Aboriginal Land Councils.

### 2 Code of conduct

- (1) The [name] Local Aboriginal Land Council requires its officers to observe the highest standards of conduct and ethical behaviour in all of their activities. By maintaining such standards, officers enhance their own standing as representatives of the Aboriginal community and increase the public confidence in the management and administration of the [name] Local Aboriginal Land Council.
- (2) Officers must uphold the objectives of the [name] Local Aboriginal Land Council and abide by the *Aboriginal Land Rights Act 1983* and associated legislation, as well as policies and procedures established by the New South Wales Aboriginal Land Council.
- (3) As the conduct of an individual officer can reflect on the wider Aboriginal Land Council network as a whole, this Code sets out what are considered to be appropriate standards of conduct by officers.
- (4) Officers must refrain from conduct or action that detracts from the reputation of the [name] Local Aboriginal Land Council.
- (5) Officers are required to exercise complete probity, honesty and diligence in carrying out their duties and responsibilities.
- (6) Officers must at all times safeguard the interests of the [name] Local Aboriginal Land Council and its members, provided that officers must not knowingly be party to any illegal or unethical activity.
- (7) Officers must not enter into any agreement or undertake any activity that may be in conflict with the interests of the [name] Local Aboriginal Land Council, or that would prejudice the performance of their duties.
- (8) Officers must not use confidential information gained in the performance of their duties for any personal gain or in a manner that could be detrimental to the [name] Local Aboriginal Land Council.
- (9) Officers must exercise due care and diligence in performing their duties and ensure that their knowledge, skills and technical competencies suffice to discharge their responsibilities.
- (10) Officers are to acknowledge that this Code is to be adhered to both in spirit and to the letter, so that an officer's conduct is governed by the highest standards of personal and ethical behaviour.
- (11) Officers of the [name] Local Aboriginal Land Council must not, at a meeting of the Council or the Board, do any of the following things—
  - (a) assault or threaten to assault another officer or person present at the meeting,
  - (b) move or attempt to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or Board, or address or attempt to address the Council or Board on such a motion,
  - (c) insult or make personal reflections on or impute improper motives to another officer,

- (d) say or do anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or Board into contempt.

## **Schedule 4 Model code of conduct for New South Wales Aboriginal Land Council**

### **1 Application of Schedule**

The code of conduct set out in this Schedule is prescribed, for the purposes of section 177(6) of the Act, as a code of conduct for the New South Wales Aboriginal Land Council.

### **2 Code of conduct**

- (1) The New South Wales Aboriginal Land Council requires its councillors to observe the highest standards of conduct and ethical behaviour in all of their activities. By maintaining such standards, councillors enhance their own standing as representatives of the Aboriginal community and increase the public confidence in the management and administration of the New South Wales Aboriginal Land Council.
- (2) Councillors must uphold the objectives of the New South Wales Aboriginal Land Council and abide by the *Aboriginal Land Rights Act 1983* and associated legislation, as well as policies and procedures established by the New South Wales Aboriginal Land Council.
- (3) As the conduct of an individual councillor can reflect on the wider Aboriginal Land Council network as a whole, this Code sets out what are considered to be appropriate standards of conduct by councillors.
- (4) Councillors must refrain from conduct or action that detracts from the reputation of the New South Wales Aboriginal Land Council.
- (5) Councillors are required to exercise complete probity, honesty and diligence in carrying out their duties and responsibilities.
- (6) Councillors must at all times safeguard the interests of the New South Wales Aboriginal Land Council and Local Aboriginal Land Councils and their members, provided that councillors must not knowingly be party to any illegal or unethical activity.
- (7) Councillors must not enter into any agreement or undertake any activity that may be in conflict with the interests of the New South Wales Aboriginal Land Council or Local Aboriginal Land Councils, or that would prejudice the performance of their duties.
- (8) Councillors must not use confidential information gained in the performance of their duties for any personal gain or in a manner that could be detrimental to the New South Wales Aboriginal Land Council or Local Aboriginal Land Councils.
- (9) Councillors must exercise due care and diligence in performing their duties and ensure that their knowledge, skills and technical competencies suffice to discharge their responsibilities.
- (10) Councillors are to acknowledge that this Code is to be adhered to both in spirit and to the letter, so that a councillor's conduct is governed by the highest standards of personal and ethical behaviour.
- (11) Councillors must not, at a meeting of the Council, do any of the following things—
  - (a) assault or threaten to assault another officer or person present at the meeting,
  - (b) move or attempt to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council, or address or attempt to address the Council on such a motion,

- (c) insult or make personal reflections on or impute improper motives to another officer,
- (d) say or do anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council into contempt.

## Schedule 5 Forms

(Clauses 5, 56(2)(c) and 70(1)(b))

### Form 1 Dealing approval certificate—land vested in New South Wales Aboriginal Land Council

(Sections 41(1)(a) and 42D(2) of the Aboriginal Land Rights Act 1983)

I, [name], Chief Executive Officer of the New South Wales Aboriginal Land Council, certify on [date] that the land dealing by the New South Wales Aboriginal Land Council specified in Schedule 1, being [type of land dealing], complies with Division 4 of Part 2 of the *Aboriginal Land Rights Act 1983* subject to the conditions, if any, set out in Schedule 2.

Schedule 1—Description of land dealing

Schedule 2—Conditions on land dealing

[signature]

Signed by the Chief Executive Officer  
of the New South Wales Aboriginal Land  
Council pursuant to section 42D(2) of the  
*Aboriginal Land Rights Act 1983*

### Form 2 Dealing approval certificate—land vested in Local Aboriginal Land Council

(Sections 41(1)(b) and 42K(1) of the Aboriginal Land Rights Act 1983)

I, [name], Chief Executive Officer of the New South Wales Aboriginal Land Council, certify on [date] that the land dealing by the [name] Aboriginal Land Council specified in Schedule 1, being [type of land dealing], has been approved by the New South Wales Aboriginal Land Council under Division 4 of Part 2 of the *Aboriginal Land Rights Act 1983* subject to the conditions, if any, set out in Schedule 2.

Schedule 1—Description of land dealing

Schedule 2—Conditions on land dealing

[signature]

Signed by the Chief Executive Officer  
of the New South Wales Aboriginal Land  
Council pursuant to section 42K(1) of the  
*Aboriginal Land Rights Act 1983*

### Form 3 Registration approval certificate—land vested in New South Wales Aboriginal Land Council

(Sections 41(2) and 42D(3) of the Aboriginal Land Rights Act 1983)

I, [name], Chief Executive Officer of the New South Wales Aboriginal Land Council, on [date] am satisfied that the instrument, being [type of instrument], specified in Schedule 1 is a registrable instrument giving effect to or forming part of a land dealing by the New South Wales Aboriginal Land Council that complies with Division 4 of Part 2 of the *Aboriginal Land Rights Act 1983* and certify that, as appropriate for the instrument—

- (a) the registration, under the *Real Property Act 1900*, of the instrument is authorised under the *Aboriginal Land Rights Act 1983*, or
- (b) the registration, under Division 3 of Part 23 of the *Conveyancing Act 1919*, of the instrument is authorised under the *Aboriginal Land Rights Act 1983*, or
- (c) the making of a recording in respect of the instrument in the Register or the General Register of Deeds is authorised under the *Aboriginal Land Rights Act 1983*.

Schedule 1—Description of instrument

[signature]

Signed by the Chief Executive Officer  
of the New South Wales Aboriginal Land  
Council pursuant to section 42D(3) of the

*Aboriginal Land Rights Act 1983*

#### **Form 4 Registration approval certificate—land vested in Local Aboriginal Land Council**

(Sections 41(2) and 42K(2) of the Aboriginal Land Rights Act 1983)

I, [name], Chief Executive Officer of the New South Wales Aboriginal Land Council, on [date] am satisfied that—

- (a) the instrument, being [type of instrument], specified in Schedule 1 is a registrable instrument giving effect to or forming part of a land dealing by the [name] Aboriginal Land Council approved by the New South Wales Aboriginal Land Council under Division 4 of Part 2 of the *Aboriginal Land Rights Act 1983*, and
- (b) any conditions of that approval have been met, and
- (c) any community development levy payable in respect of that land dealing has been paid.

I certify that, as appropriate for the instrument—

- (a) the registration, under the *Real Property Act 1900*, of the instrument is authorised under the *Aboriginal Land Rights Act 1983*, or
- (b) the registration, under Division 3 of Part 23 of the *Conveyancing Act 1919*, of the instrument is authorised under the *Aboriginal Land Rights Act 1983*, or
- (c) the making of a recording in respect of the instrument in the Register or the General Register of Deeds is authorised under the *Aboriginal Land Rights Act 1983*.

Schedule 1—Description of instrument

[signature]

Signed by the Chief Executive Officer  
of the New South Wales Aboriginal Land  
Council pursuant to section 42K(2) of the  
*Aboriginal Land Rights Act 1983*

#### **Form 5 Certification of Regional Electoral Roll**

(Clause 56(2) of the Aboriginal Land Rights Regulation 2020)

I, [name], Registrar, *Aboriginal Land Rights Act 1983*, certify that the attached roll containing [number] pages commencing with the name [the first name on the roll] number [the first number on the roll] and ending with the name [the last name on the roll] number [the last number on the roll] is a true and accurate record of all of the voting members of the Local Aboriginal Land Councils within the [name of Region] Region as at [date].

Date: [date] Signed: [signature]

#### **Form 6 Postal vote declaration**

(Clause 70(1)(b) of the Aboriginal Land Rights Regulation 2020)

Application No (official use only) of [year] (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, [insert full name in BLOCK letters], declare that—

- 1 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.



- 2 I am satisfied as to the identity of the elector.
- 3 I have seen the elector sign the declaration.
- 4 I am satisfied that the statements contained in the declaration are true.
- 5 The declaration was made before the close of the poll in the election.

*[signature of witness]*

*[address of witness]*

*[date]*