

# Aboriginal Land Rights Regulation 2002

[2002-785]



New South Wales

## Status Information

### Currency of version

Historical version for 7 February 2007 to 26 April 2007 (accessed 2 June 2024 at 22:54)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 7 February 2007

# Aboriginal Land Rights Regulation 2002



New South Wales

## Contents

<b>Part 1 Preliminary</b>	<b>7</b>
1 Name of Regulation	7
2 Commencement	7
3 Definitions	7
4 Notes	7
5 Repeal	7
<b>Part 2 Provisions relating to land</b>	<b>8</b>
6 Certificate relating to disposal of land	8
7 Exemption of Aboriginal lands from the payment of rates	8
8 Disposition of mining royalties (section 46)	9
9 Form of application for access permit (hunting, fishing or gathering)	9
<b>Part 3 Local Aboriginal Land Councils</b>	<b>9</b>
<b>Division 1 Manner of constitution</b>	<b>9</b>
10 Application for constitution of an area as a Local Aboriginal Land Council area	9
11 Notification of application for constitution of an area as a Local Aboriginal Land Council area	10
12 Objections to proposal to constitute an area as a Local Aboriginal Land Council area	10
13 Consideration of objections by New South Wales Aboriginal Land Council	10
14 Registrar's recommendation	11
15 Court's recommendation	11
16 Court may review recommendation of the Registrar	12
17 Limitations on areas that may be constituted as Local Aboriginal Land Council areas	12

18 Determination of applications for constitution of an area as a Local Aboriginal Land Council area .....	12
<b>Division 2 Alterations of boundaries or names and amalgamations .....</b>	<b>13</b>
19 Alteration of boundaries of Local Aboriginal Land Council area .....	13
20 Change of name of Local Aboriginal Land Council area .....	13
21 Amalgamation of Local Aboriginal Land Council areas .....	14
22 Transition to amalgamation .....	14
<b>Division 3 Elections and casual vacancies .....</b>	<b>15</b>
23 Election of officers of Local Aboriginal Land Councils .....	15
24 (Repealed) .....	16
25 Elections to fill vacancies for officers of Local Aboriginal Land Councils .....	16
<b>Division 4 Meetings .....</b>	<b>17</b>
26 Meetings of Local Aboriginal Land Councils (section 73) .....	17
27 Notice of meetings .....	17
<b>Division 5 Miscellaneous .....</b>	<b>18</b>
28 Local Aboriginal Land Council membership rolls (section 60) .....	18
29 Model rules .....	18
<b>Part 4 (Repealed) .....</b>	<b>18</b>
<b>Part 5 New South Wales Aboriginal Land Council .....</b>	<b>18</b>
<b>Division 1 Calling of election of councillors of New South Wales Aboriginal Land Council .....</b>	<b>18</b>
42 Notice of election of New South Wales Aboriginal Land Council .....	18
43 Certification of roll .....	19
44 Calling for nominations .....	20
45 Extension of time .....	20
46 Officers to assist returning officer .....	21
47 Manner of nominating candidates .....	21
48 Rejection of nomination .....	22
49 Return of deposit .....	22

50 Withdrawal of nomination.....	23
51 Uncontested election.....	23
52 Contested election.....	23
<b>Division 2 Ballot-papers</b> .....	23
53 Order of candidates' names on ballot-papers.....	23
54 Printing of ballot-papers .....	23
55 Directions to electors.....	24
<b>Division 3 Postal voting</b> .....	24
56 Applications to vote by post .....	24
57 Distribution of postal ballot-papers .....	25
58 Duplicate postal ballot-papers.....	26
59 Recording of postal votes .....	26
60 Preliminary scrutiny of postal ballot-papers and transmission to regional electoral officer.....	26
<b>Division 4 Voting at polling places</b> .....	27
61 Appointment of polling place.....	27
62 Arrangements at polling place.....	27
63 Hours of polling .....	27
64 Elector to give name and address .....	27
65 Questions for challenged voters .....	27
66 Errors not to forfeit vote .....	28
67 Initialling of ballot-papers and marking of rolls .....	28
68 Recording of vote .....	29
69 Spoilt ballot-papers .....	29
70 Assistance to certain electors.....	29
71 Voting procedure—disputed votes.....	30
<b>Division 5 The scrutiny</b> .....	31
72 Scrutineers .....	31
73 Scrutiny of votes at close of poll.....	31
74 Informal ballot-papers .....	31
75 Transmission of ballot-papers by deputy electoral officers to regional electoral officers.....	32
76 Counting of votes .....	32

77 Returning officer to be advised of result.....	34
<b>Division 6 Miscellaneous electoral provisions.....</b>	<b>34</b>
78 Signature to electoral paper .....	34
79 Death of candidate .....	34
80 Decisions of returning officer.....	35
81 Notification of result of election.....	35
82 Retention of electoral papers .....	35
83 Offences .....	35
<b>Division 7 Casual vacancies .....</b>	<b>36</b>
84 Casual vacancy to be filled .....	36
85 (Repealed) .....	36
<b>Division 8 Meetings.....</b>	<b>36</b>
86 Annual meetings of New South Wales Aboriginal Land Council .....	36
87 Meeting place .....	36
88 Notice of meetings .....	36
<b>Division 9 Miscellaneous.....</b>	<b>37</b>
89 Model rules .....	37
90 Community, land and business plans .....	37
91, 92 (Repealed) .....	37
<b>Part 6 Finance .....</b>	<b>37</b>
93 Investment of money in New South Wales Aboriginal Land Council Account (section 149 (5)) .....	37
94 Investment of money in Local Aboriginal Land Council Accounts (section 152) .....	38
95 Auditors .....	38
96 Documents to be furnished to New South Wales Aboriginal Land Council.....	39
<b>Part 7 Honesty and disclosure of interests.....</b>	<b>39</b>
97 Codes of conduct (section 177 (6)).....	39
<b>Part 8 Investigation and administration of Aboriginal Land Councils.....</b>	<b>39</b>
98 Election of officers of Local Aboriginal Land Council following appointment of administrator .....	39
99 Election of councillors after administration .....	41

<b>Part 9 Dispute resolution</b>	41
100 Application of Commercial Arbitration Act 1984 to arbitrations under the Act	41
<b>Part 10 Miscellaneous</b>	41
101 Certain information on land register and consolidated membership roll to be made available	41
101A Delegation by Registrar	42
102 Copies of minutes to be made available in certain circumstances	42
103 Savings, transitional and other provisions	42
<b>Schedule 1 Land exempt from certain rates and charges</b>	42
<b>Schedule 2 Model rules for Local Aboriginal Land Councils</b>	42
<b>Schedule 3 (Repealed)</b>	50
<b>Schedule 4 Model rules for the New South Wales Aboriginal Land Council</b>	
	50
<b>Schedule 5 Model code of conduct for Local Aboriginal Land Councils</b>	56
<b>Schedule 6 (Repealed)</b>	57
<b>Schedule 7 Model code of conduct for New South Wales Aboriginal Land Council</b>	
	57
<b>Schedule 8 Savings, transitional and other provisions</b>	58

# Aboriginal Land Rights Regulation 2002



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Aboriginal Land Rights Regulation 2002*.

### 2 Commencement

This Regulation commences on 25 October 2002.

### 3 Definitions

(1) In this Regulation:

**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.

(2) Expressions used in this Regulation that are defined in the Act have the meanings set out in the Act.

### 4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

### 5 Repeal

(1) The *Aboriginal Land Rights Regulation 1996* is repealed.

(2) Any act, matter or thing that, immediately before that repeal, had effect under the *Aboriginal Land Rights Regulation 1996* continues to have effect under this Regulation.

## Part 2 Provisions relating to land

### 6 Certificate relating to disposal of land

For the purposes of section 40D (2) of the Act, a certificate referred to in that subsection is to be in a form that:

- (a) specifies the land that is to be disposed of, and
- (b) is signed by the Secretary of the Local Aboriginal Land Council in which the land is vested, and
- (c) is signed and sealed by the New South Wales Aboriginal Land Council, and
- (d) includes a copy of the resolution of the New South Wales Aboriginal Land Council that was passed approving the disposal of the land.

### 7 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 following Acts:
    - (i) the [Sydney Water Act 1994](#),
    - (ii) the [Water Management Act 2000](#).
- (2) Subclause (1) applies to the following land if it is vested in an Aboriginal Land Council:
  - (a) land specified in Schedule 1,
  - (b) land that is not being used for a commercial or residential purpose,
  - (c) land that is not being used for a residential purpose in respect of which a resolution has been passed in accordance with subclauses (3) and (4) 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) (c) 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, being a meeting at which a quorum is present and which has been specifically called for the purpose in accordance with this Regulation, and

- (b) it is passed by not less than 80 per cent of the members present and voting at the meeting, and
- (c) the Secretary of the Council (or, in the case of the New South Wales Aboriginal Land Council, the Chief Executive Officer of the 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.

## **8 Disposition of mining royalties (section 46)**

- (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.

## **9 Form of application for access permit (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 Manner of constitution**

### **10 Application for constitution of an area as a 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.

#### **11 Notification of application for constitution of an area as a 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.

#### **12 Objections to proposal to constitute an area as a 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 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 notice to the Registrar or, if the objection has been referred to the Court, in accordance with the rules of the Court.

#### **13 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 such 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, it is the function of the Council 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.

#### **14 Registrar's recommendation**

- (1) This clause applies if:
- (a) 30 clear days after publication of 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 such period as seems to the Registrar to be reasonable for submissions to be made by the New South Wales Aboriginal Land Council in relation to the application, and
  - (b) considering any such 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 part only 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.

#### **15 Court's recommendation**

- (1) If an objection to an application under this Division has not been withdrawn within 90 clear days after the lodging of the application, 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) (Repealed)
  - (d) by its representative, the New South Wales Aboriginal Land Council.
- (3) The Court must determine the application and notify the Minister of the determination.
- (4) The Court may make any determination which the Registrar might have recommended in respect of the application (but need not get the consent of the applicants when making a recommendation referred to in clause 14 (3) (b)).

#### **16 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 14 (5).
- (2) The applicants and the Registrar have a right to be heard on the appeal.
- (3) The Court must determine the application and notify the Minister of its determination.
- (4) The Court may make any determination that the Registrar might have recommended in respect of the application.

#### **17 Limitations on areas that may be constituted as 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.

#### **18 Determination of applications for constitution of an area as a Local Aboriginal Land Council area**

- (1) The Minister:
  - (a) may, on the recommendation of the Registrar, or
  - (b) must, in accordance with a determination of the Court,by order published in the Gazette, constitute an area as a Local Aboriginal Land Council area having such boundaries, and to be known by such name, as is specified in the order.

- (2) The boundaries of an area may be specified by reference to a map deposited in the office of the Registrar.
- (3) The Registrar must serve notice of the constitution of the area on the applicants.

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

### **19 Alteration of boundaries of Local Aboriginal Land Council area**

- (1) A Local Aboriginal Land Council may apply to the Registrar for the alteration of the boundaries of its area.
- (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.
- (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) The provisions of Division 1 apply to and in respect of an application under this clause in the same way as they apply to and in respect of an application under Division 1.
- (5) In the application of those provisions:
  - (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.

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

- (1) A Local Aboriginal Land Council may apply to the Registrar for the change of its name.
- (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 such period as seems to the Registrar to be reasonable for submissions to be made in relation to the matter by the New South Wales Aboriginal Land Council, and

(b) considering any such submissions and any other matter the Registrar thinks fit.

(5) The Minister may:

(a) on the recommendation of the Registrar, and by order published in the Gazette, alter the name of a Local Aboriginal Land Council area in accordance with the application, or

(b) for such reasons as may to the Minister appear sufficient, refuse to grant the application.

(6) The Registrar must serve notice of the Minister's determination on the applicant.

## **21 Amalgamation of Local Aboriginal Land Council areas**

(1) Two or more Local Aboriginal Land Councils may apply in writing to the Registrar for amalgamation of their areas as one Local Aboriginal Land Council area.

(2) The decision by each Local Aboriginal Land Council to apply for amalgamation 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) 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 make a recommendation to the Minister as to whether or not the Minister should approve:

(a) the amalgamation, and

(b) the name of the proposed Local Aboriginal Land Council,

within 14 clear working days after it receives the copy of the application.

(5) On receiving the recommendation of the New South Wales Aboriginal Land Council, the Minister may approve the amalgamation of the Local Aboriginal Land Council areas by order published in the Gazette constituting the areas as one Local Aboriginal Land Council area, to be known by the name specified in the order.

(6) The constitution of the new area is to take effect from a day (later than the day of publication) appointed in the order.

## **22 Transition to amalgamation**

(1) In this clause:

**amalgamation order** means an order published in the Gazette amalgamating Local Aboriginal Land Council areas.

**appointed day** means the day appointed for the constitution of a new Local Aboriginal Land Council area in an amalgamation order.

**new Council**, in relation to an amalgamation order, means the Local Aboriginal Land Council of the Local Aboriginal Land Council area constituted under that order.

**old Councils**, in relation to an amalgamation order, means the Local Aboriginal Land Councils of the areas amalgamated under that order.

- (2) On the appointed day, the old Councils cease to exist and the office holders cease to hold office.
- (3) Any property that, immediately before the appointed day, was vested in the old Councils is on and from that day vested in the new Council.
- (4) On and from the appointed day, the assets, liabilities, rights and obligations of the old Councils become the assets, liabilities, rights and obligations of the new Council.
- (5) The members of the old Councils immediately before the appointed day are taken to be members of the new Council and are to be listed on its roll by the Registrar.
- (6) The Registrar is to convene the first meeting of the new Council within 7 clear days of the appointed day at a place nominated by the Registrar.

## **Division 3 Elections and casual vacancies**

### **23 Election of officers of Local Aboriginal Land Councils**

- (1) An election for an officer of the Council must be conducted by a returning officer, being either a member of the Council (not being an intended candidate for election) present at the meeting at which the election is held and appointed by the members present, or a non-member invited and appointed by the meeting.
- (2) The returning officer must not vote in the election.
- (3) A person may be nominated for an elected position:
  - (a) by any member present at the meeting at which the election is held, or
  - (b) by notification made in writing by a member and received by the Chairperson at or before the time when nominations are called for at the meeting.
- (4) For a nomination to be valid, the person nominated must be a voting member of the Council and give his or her consent to the nomination before the election is held and the consent must be recorded in the minutes of the meeting.

- (5) If only one nomination is received for an elected position the nominated candidate must be declared elected. In any other case, a ballot must be held for each elected position.
- (6) A ballot held under this clause must:
  - (a) be a secret ballot, and
  - (b) subject to this clause, be conducted in such a manner as the meeting thinks fit.
- (7) In a ballot held under this clause:
  - (a) voting is not to be preferential, and
  - (b) the candidate with the highest number of votes must be declared elected.
- (8) If 2 or more candidates each obtain the highest number of votes, a second ballot must be held, in which those candidates are the only contenders.
- (9) If the second ballot is inconclusive, the returning officer may determine the successful candidate by lot or by such other means as the meeting may approve.

## **24 (Repealed)**

## **25 Elections to fill vacancies for officers of Local Aboriginal Land Councils**

- (1) For the purposes of section 62 (2) of the Act, an election to fill a vacancy in the office of a Chairperson, Secretary or Treasurer of a Local Aboriginal Land Council must be held in accordance with this clause.
- (2) The election must be conducted by a returning officer, being either a member of the Council (not being an intended candidate for election) present at the meeting at which the election is held and appointed by the members present, or a non-member invited and appointed by the meeting.
- (3) The returning officer must not vote in the election.
- (4) A person may be nominated for an elected position:
  - (a) by any member present at the meeting at which the election is held, or
  - (b) by written notification received by the Chairperson at or before the time when nominations are called for at the meeting.
- (5) For a nomination to be valid, the person nominated must be a member of the Council and give his or her consent to the nomination before the election is held and the consent must be recorded in the minutes of the meeting.
- (6) If only one nomination is received for an elected position the nominated candidate must be declared elected. In any other case, a ballot must be held for each elected

position.

(7) A ballot held under this clause must:

- (a) be a secret ballot, and
- (b) subject to this clause, be conducted in such manner as the meeting thinks fit.

(8) In a ballot held under this clause:

- (a) voting is not to be preferential, and
- (b) the candidate with the highest number of votes must be declared elected.

(9) If 2 or more candidates each obtain the highest number of votes, a second ballot must be held, in which those candidates are the only contenders.

(10) If the second ballot is inconclusive, the returning officer may determine the successful candidate by lot or by such other means as the meeting may approve.

## **Division 4 Meetings**

### **26 Meetings of Local Aboriginal Land Councils (section 73)**

- (1) A Local Aboriginal Land Council must hold an annual meeting at some time between 1 July and 30 September in each year.
- (2) However, a Local Aboriginal Land Council need not 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.

### **27 Notice of meetings**

- (1) Notice of a meeting of a Local Aboriginal Land Council must:
  - (a) be published in a newspaper, magazine or periodical circulating in the Council's area, or
  - (b) be given to all the members of the Council by such other means as may appear to the Council to be efficient and practicable and are approved by the Council.
- (2) Notice under subclause (1) 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.

## **Division 5 Miscellaneous**

### **28 Local Aboriginal Land Council membership rolls (section 60)**

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 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 Council,
- (d) whether the person's membership is based on residence in the Council's area or association with that area,
- (e) whether the person is suspended from the Council,
- (f) whether the person is a member of any other Local Aboriginal Land Council and, if so, the names of those other Councils.

### **29 Model rules**

The rules set out in Schedule 2 are prescribed, for the purposes of section 84 (2) of the Act, as model rules for each Local Aboriginal Land Council.

## **Part 4**

### **30-41 (Repealed)**

## **Part 5 New South Wales Aboriginal Land Council**

### **Division 1 Calling of election of councillors of New South Wales Aboriginal Land Council**

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

- (1) The returning officer is to give notice of an election of all councillors as soon as practicable after being notified of the date of the election by or on behalf of the Minister under section 122 (2).
- (2) The returning officer is to give notice of the election in each Region. The notice is to be published in at least one newspaper circulating in the Region and in such other manner as may be determined by the returning officer.
- (3) 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 his or her vote in respect of the Local Aboriginal Land Council area for which the person is a voting member,
  - (d) the places at which information is available concerning the procedure for being listed on such a roll,
  - (e) that the roll of a Local Aboriginal Land Council may be inspected at the office of the Council during normal office hours.
- (4) 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 of giving notice of the election.

#### **43 Certification of roll**

- (1) The Secretary 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 New South Wales Aboriginal Land Council that is certified in a manner approved by the New South Wales Aboriginal Land Council.
- (2) Within 7 clear days after the certified copies of the membership rolls for Local Aboriginal Land Councils have been sent to the New South Wales Aboriginal Land Council:
  - (a) the Chief Executive Officer of the New South Wales Aboriginal Land Council must:
    - (i) ensure that the consolidated membership roll kept by the New South Wales Aboriginal Land Council is current, and
    - (ii) 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
  - (b) the Chairperson of the New South Wales Aboriginal Land Council must certify each such electoral roll in the manner specified in subclause (3) and send those rolls to the returning officer.
- (3) The certification of an electoral roll for a Region by the Chairperson of the New South Wales Aboriginal Land Council must be in the following form:

#### **Certification of Regional Aboriginal Land Council Roll**

I, ....., Chairperson of the New South Wales Aboriginal Land Council, certify that the attached roll containing ..... pages commencing with the name ..... number ..... and ending with the name ..... number ..... is a true and accurate record of all of the voting members of the Local Aboriginal Land Councils within the ..... Region as at .....

Date: ..... Signed: .....

- (4) If the Secretary of a Local Aboriginal Land Council fails for any reason to provide the New South Wales Aboriginal Land Council with a certified copy of the membership roll of the Local Aboriginal Land Council, the Chairperson or, failing the Chairperson, the Treasurer of the Local Aboriginal Land Council may certify and send to the New South Wales Aboriginal Land Council a copy of the membership roll for the Local Aboriginal Land Council.
- (5) If none of the officers of a Local Aboriginal Land Council provides the New South Wales Aboriginal Land Council with a certified copy of the membership roll of the Local Aboriginal Land Council, the member of the New South Wales Aboriginal Land Council representing the Region in which the Local Aboriginal Land Council is situated may compile a membership roll, certify a copy of the roll and provide the New South Wales Aboriginal Land Council with the certified copy.
- (6) If an election is to be held to elect councillors to hold office at the end of the term of appointment of an administrator to the New South Wales Aboriginal Land Council, the functions of the Chairperson, or a member of that Council, under this clause may be exercised by the administrator.

#### **44 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 at least one newspaper circulating in the Region and in such other manner as may be determined by the returning officer.
- (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.

#### **45 Extension of time**

- (1) The returning officer may:

(a) fix a later day for the close of nominations, or

(b) fix a later day for the taking of the poll,

than that fixed for an election 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.

#### **46 Officers to assist returning officer**

(1) The returning officer may nominate a regional electoral officer for a Region to assist in taking the poll.

(2) The regional electoral officer may appoint one or more deputy electoral officers and one or more poll clerks to assist in taking the poll.

(3) The regional electoral officer, deputy electoral officers and poll clerks are to assist the returning officer to exercise such of his or her functions in conducting the poll as are specified by the returning officer.

#### **47 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) be signed by the candidate stating that he or she consents to the nomination and is qualified to stand for election, and

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

(d) be accompanied by a deposit of \$50 in the form of cash, money order or bank cheque, and

(e) 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.

#### **48 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 47 and any failure to comply with the requirements of clause 47 (1) is not rectified as provided by that clause.
- (2) The deposit accompanying the nomination is to be retained pending the election.

#### **49 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 his or her 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.

## **50 Withdrawal of nomination**

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

## **51 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.

## **52 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 in at least one newspaper circulating in the Region, and in such other manner as may be determined by the returning officer, a notice stating the following:
  - (a) that a poll will be taken,
  - (b) the names and addresses of the persons duly nominated as candidates,
  - (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.

## **Division 2 Ballot-papers**

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

- (1) 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.
- (2) The order is to be determined by means of a ballot held in accordance with the procedure prescribed for the purposes of section 82A of the [Parliamentary Electorates and Elections Act 1912](#).

### **54 Printing of ballot-papers**

The ballot-paper for an election must:

- (a) list the names of the candidates (together with the names of the Local Aboriginal Land Councils 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 this Division 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 member, and
- (c) if, in the opinion of the returning officer, the names of 2 or more candidates are so similar as to cause confusion, include such other matter as will, in the opinion of the returning officer, distinguish between those candidates (but must not include the address of any candidate), and
- (d) include such directions as to the manner in which the vote is to be recorded as are referred to in clause 55 and as the returning officer considers appropriate.

## **55 Directions to electors**

The directions to electors must include a direction that the elector is to record his or her vote on the ballot-paper by placing the number “1” in the square opposite the name of the candidate for whom he or she desires to give his or her first preference vote and may, but is not required to, place consecutive numbers beginning with the number “2” in squares opposite the names of all the remaining candidates in the order of his or her preferences for them.

## **Division 3 Postal voting**

### **56 Applications to vote by post**

- (1) An elector may make an application to vote by post if the elector:
  - (a) will not, throughout the hours of polling on polling day, be within the Region in respect of which the elector is enrolled, or
  - (b) is seriously ill or infirm, and by reason of the illness or infirmity will be precluded from attending at the polling place to vote or, in the case of a woman, will, by approaching maternity, be precluded from attending at the polling place to vote, or
  - (c) is, at a place other than a hospital, caring for a person who is seriously ill or infirm or approaching maternity or by reason of caring for the person will be precluded from attending at any polling place to vote, or
  - (d) is, by reason of his or her membership of a religious order or his or her religious beliefs:
    - (i) precluded from attending at the polling place to vote, or
    - (ii) precluded from voting throughout the hours of polling on polling day or throughout the greater part of those hours, or
  - (e) is, by reason of his or her being kept in a correctional centre (within the meaning

of the *Crimes (Administration of Sentences) Act 1999*), precluded from attending at the polling place to vote, or

(f) will, by reason of being engaged for fee, gain or reward in any work throughout the hours of polling on polling day, be precluded from attending at any polling place to vote, or

(g) resides more than 8 kilometres from a polling place.

(2) An application to vote by post under this clause must:

(a) be in writing, and

(b) specify the ground on which it is made, and

(c) be signed by the elector, and

(d) be made after the publication of the election notice in respect of the election, and

(e) be received by the returning officer not later than 7 clear days before polling day.

(3) The returning officer is to number in consecutive order all applications to vote by post made under this clause.

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

(1) If the returning officer receives an application to vote by post that is made in accordance with clause 56, 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 53, and

(b) an unsealed envelope addressed to the returning officer and bearing on the back the words “Name and enrolled address of voter” and “Signature of voter”, together with appropriate spaces for the insertion of the name, address and signature.

(2) The returning officer is to note on a certified copy of the roll the names of the electors to whom he or she 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 the polling place unless the elector first delivers his or her ballot-paper to the deputy electoral officer for cancellation.

### **58 Duplicate postal ballot-papers**

If any elector to whom a ballot-paper has been delivered or posted satisfies the returning officer that the elector has spoilt his or her ballot-paper by mistake or accident, the elector may, on giving it up, receive a new ballot-paper from the returning officer, who is to cancel and preserve the spoilt ballot-paper.

### **59 Recording of postal votes**

An elector who wishes to vote by post is, on receipt of a ballot-paper, to do the following:

- (a) record his or her vote on the ballot-paper in accordance with the directions shown on it,
- (b) place the completed ballot-paper, folded so that the vote cannot be seen, in the envelope addressed to the returning officer and delivered or posted with the ballot-paper,
- (c) seal the envelope,
- (d) complete on the back of the envelope his or her full name and address as shown on the roll and inscribe his or her signature,
- (e) post or deliver the envelope to the returning officer so as to be received by the returning officer not later than 6 pm on polling day.

### **60 Preliminary scrutiny of postal ballot-papers and transmission to regional electoral officer**

On receipt of all envelopes purporting to contain postal ballot-papers, the returning officer must:

- (a) compare the signature of the elector on each such envelope with the signature of the same elector on the application to vote by post and allow any scrutineer present to inspect both signatures, and
- (b) if the returning officer is satisfied that the signature on the envelope is that of the elector who signed the application to vote by post—accept the ballot-paper for further scrutiny, but if not so satisfied, disallow the ballot-paper without opening the envelope, and
- (c) transmit to the regional electoral officer, in time to reach that officer before the close of the poll, all envelopes which have been accepted for further scrutiny, and
- (d) at the close of the poll, open all envelopes which have been accepted for further scrutiny and which have not been transmitted to the regional electoral officer, and:
  - (i) count the first preference votes which are recorded for each candidate on the ballot-papers within the envelopes and inform the regional electoral officer of the

result of that count, and

- (ii) if necessary, inform the regional electoral officer of the additional preference votes which are recorded on the ballot-papers within the envelopes.

## **Division 4 Voting at polling places**

### **61 Appointment of polling place**

The returning officer is to appoint polling places, which may include mobile polling places, within each Local Aboriginal Land Council area for the purposes of taking the poll at an election.

### **62 Arrangements at polling place**

- (1) The returning officer is to make all the necessary arrangements for taking the poll at the polling places.
- (2) Immediately before proceeding to take the poll at each polling place, the deputy electoral officer must exhibit for the inspection of any candidate, scrutineer or other person present, the ballot-box open and empty and must immediately afterwards close and lock it and place it on the table at which the deputy electoral officer is to preside in full view of all persons present at the polling place.
- (3) The ballot-box must be kept unopened in the same place until the close of the poll.

### **63 Hours of polling**

- (1) Each polling place, other than a mobile polling place, is to be open for voting on polling day between the hours of 8 am and 6 pm.
- (2) Each mobile polling place is to be open for voting on polling day during the hours specified by the returning officer.

### **64 Elector to give name and address**

Each person claiming to vote at the polling place must:

- (a) state his or her surname and his or her given name or names, and
- (b) if required to do so by the deputy electoral officer, state any other particulars necessary for the purpose of identifying the name on the roll under which the vote is claimed, and
- (c) be handed a ballot-paper.

### **65 Questions for challenged voters**

- (1) The 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 such 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 his or her answer shows that he or she is 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.

## **66 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 the deputy electoral officer.
- (2) A female elector is not disqualified from voting under the name appearing on the roll because her surname has been changed as a result of marriage but, in that case, a note of the fact is to be made by the deputy electoral officer.

## **67 Initialling of ballot-papers and marking of rolls**

- (1) Before delivering a ballot-paper to an elector, the deputy electoral officer must initial the ballot-paper on the back.
- (2) The deputy electoral officer must keep an exact account of all initialled ballot-papers.

- (3) The deputy electoral officer must mark off the roll the name of any elector to whom the officer delivers a ballot-paper.

## **68 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 his or her 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.

## **69 Spoilt ballot-papers**

- (1) If an elector satisfies the deputy electoral officer, before his or her 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 deputy electoral officer.
- (2) The deputy electoral officer must cancel and preserve the spoilt ballot-paper.

## **70 Assistance to certain electors**

- (1) If an elector satisfies the deputy electoral officer that:

- (a) his or her sight is so impaired, or
- (b) he or she is so physically incapacitated, or
- (c) he or she is so illiterate,

that the elector is unable to vote without assistance, the deputy electoral officer is to permit a person appointed by the elector to enter an unoccupied compartment of a booth at the polling place with the elector and mark the ballot-paper according to the instruction of the elector and fold and deposit the ballot-paper in the ballot-box.

- (2) If any such elector fails to appoint a person under subclause (1), the deputy electoral officer must, in the presence of:

- (a) such scrutineers as choose to be present, or
- (b) if there are no scrutineers present, then in the presence of such person as the elector may appoint,

mark the ballot-paper according to the instruction of the elector and fold and deposit the ballot-paper in the ballot-box.

- (3) The instruction of a person under this clause may be given by handing to the person marking the ballot-paper a “how-to-vote” card or a printed or written statement indicating the candidates for whom the elector desires to vote and the order of his or her preferences for them.

## **71 Voting procedure—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 his or her answers to the questions put to the person by the 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 he or she has not applied to vote by post and his or her 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 his or her 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 he or she has made a written declaration specifying the ground on which the person claims to vote, and
  - (b) sign the declaration in his or her 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 transmit 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 must:
  - (a) if, after making such inquiries as the officer considers necessary, the officer is satisfied that the person who signed the declaration on any such envelope is entitled to vote—accept the ballot-paper for further scrutiny but, if the officer is not so satisfied, disallow the ballot-paper without opening the envelope, and

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

## **Division 5 The scrutiny**

### **72 Scrutineers**

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

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

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

At the close of the poll, the deputy electoral officer must, in the presence of his or her assistants and such scrutineers as choose to be present but no others:

- (a) unlock 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 such 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.

### **74 Informal ballot-papers**

- (1) At the scrutiny, a ballot-paper must be rejected as informal if:
  - (a) it is neither initialled by the deputy electoral officer nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary*

*Electorates and Elections Act 1912*, or

- (b) the elector has failed to record his or her vote in the manner directed on the ballot-paper, or
  - (c) it has on it any mark or writing which, in the opinion of the 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 on which the elector has recorded votes for all candidates 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 his or her 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.

**75 Transmission of ballot-papers by deputy electoral officers to regional electoral officers**

Immediately after ascertaining the total number of first preference votes recorded for each candidate, each deputy electoral officer must make up:

- (a) in one parcel, the ballot-papers which have been used in voting at his or her 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 him or her during the poll,
- and must transmit these parcels to the regional electoral officer.

**76 Counting of votes**

- (1) The regional electoral officer must as soon as practicable after the close of the poll count the votes in accordance with this clause.
- (2) The votes are to be counted and the result of the election ascertained in accordance with the following procedures:

- (a) the unrejected ballot-papers are arranged under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate,
  - (b) the total number of first preferences given for each candidate on such ballot-papers is then counted,
  - (c) the candidate who has received the largest number of first preference votes is elected if that number constitutes an absolute majority of votes,
  - (d) if no candidate has received an absolute majority of first preference votes, a second count is made,
  - (e) on the second count the candidate who has received the fewest first preference votes is excluded, and each unexhausted ballot-paper counted to him or her is counted to the candidate next in the order of the voter's preference,
  - (f) if a candidate then has an absolute majority of votes, he or she is elected, but if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes and counting each of his or her unexhausted ballot-papers to the continuing candidate next in the order of the voter's preference is repeated until one candidate has received an absolute majority of votes,
  - (g) the candidate who has received an absolute majority of votes is elected.
- (3) If, on any count at which the candidate with the fewest number of votes has to be excluded, 2 or more candidates have an equal number of votes (that number being fewer than the number of votes that any other candidate has or those candidates being the only continuing candidates):
- (a) the candidate who had the fewest votes at the last count before the equality occurred is excluded, or
  - (b) if they had an equal number of votes at all preceding counts, the candidate whose name is on a slip drawn in accordance with subclause (4) is excluded.
- (4) For the purposes of subclause (3), the returning officer writes the names of the candidates who have an equal number of votes on similar slips of paper. The returning officer then folds the slips so as to prevent the names being seen, mixes them, and draws one slip at random.
- (5) In the process of counting under subclause (2) or (3), exhausted ballot-papers are set aside as finally dealt with and are not taken into account in the election of a candidate under the appropriate clause.
- (6) The process of counting each of the unexhausted ballot-papers of an excluded

candidate to the continuing candidate next in the order of the voter's preference is not repeated if there is only one continuing candidate. Instead, that continuing candidate is elected.

(7) In this clause:

***absolute majority of votes*** means a greater number than one-half of the whole number of ballot-papers other than informal and exhausted ballot-papers.

***continuing candidate*** means a candidate not already elected or excluded from the count.

***exhausted ballot-paper*** means a ballot-paper on which there is no indication of a next preference for a continuing candidate.

***next preference*** means the first of the subsequent preferences marked on a ballot-paper that is not given to an elected or excluded candidate. However, if there is a repetition or omission in the consecutive numbering of preferences marked on a ballot-paper (other than a repetition or omission that makes the ballot-paper informal), only those preferences preceding the repetition or omission can be taken into account.

***unrejected ballot-papers*** means all ballot-papers not rejected as informal.

## **77 Returning officer to be advised of result**

The regional electoral officer must, immediately after the counting of the votes, advise the returning officer of the result.

## **Division 6 Miscellaneous electoral provisions**

### **78 Signature to electoral paper**

- (1) For the purposes of this Part, if a person who is unable to sign his or her name in writing makes his or her mark as his or her signature to 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 such witness.
- (2) In this clause, ***electoral paper*** means a postal vote application or declaration or a disputed vote declaration but does not include a ballot-paper.

### **79 Death of candidate**

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.

## **80 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.

## **81 Notification of result of election**

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

- (a) notify the Minister in writing of the candidate who has been elected, and
- (b) notify the Chief Executive Officer of the New South Wales Aboriginal Land Council in writing of the candidate who has been elected, and
- (c) cause to be published in the Gazette a notice that the candidate has been elected.

## **82 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 polling day.

## **83 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 furnishes 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 his or her vote.

Maximum penalty: 5 penalty units.

## **Division 7 Casual vacancies**

### **84 Casual vacancy to be filled** (section 114)

- (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).

### **85 (Repealed)**

## **Division 8 Meetings**

### **86 Annual meetings of New South Wales Aboriginal Land Council**

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

### **87 Meeting place**

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

### **88 Notice of meetings**

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

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

## **Division 9 Miscellaneous**

### **89 Model rules**

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

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

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

### **91, 92 (Repealed)**

## **Part 6 Finance**

### **93 Investment of money in New South Wales Aboriginal Land Council Account (section 149 (5))**

- (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, whether any such investment was made before or after the commencement of this clause, be realised immediately and that the proceeds be invested in accordance with this clause, and the 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 such conditions as the Minister determines.
- (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 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.

#### **94 Investment of money in Local Aboriginal Land Council Accounts (section 152)**

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.

#### **95 Auditors**

- (1) For the purposes of section 153 (3) of the Act, the New South Wales Aboriginal Land Council is to appoint auditors in the manner provided by this clause.
- (2) The New South Wales Aboriginal Land Council must, after a process of public tendering, appoint an auditor for each Local Aboriginal Land Council.
- (3) The New South Wales Aboriginal Land Council must not appoint a person to be an auditor for the purposes of section 153 (3) of the Act unless the person is:
  - (a) a registered company auditor, or

- (b) a member of the National Institute of Accountants, or
- (c) a member of CPA Australia, or
- (d) a member of the Institute of Chartered Accountants in Australia.

#### **96 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 Council's financial statements by the auditor who audited those statements.

### **Part 7 Honesty and disclosure of interests**

#### **97 Codes of conduct (section 177 (6))**

- (1) The code of conduct set out in Schedule 5 is prescribed, for the purposes of section 177 (6), as a code of conduct for all Local Aboriginal Land Councils.
- (2) (Repealed)
- (3) The code of conduct set out in Schedule 7 is prescribed, for the purposes of section 177 (6), as a code of conduct for the New South Wales Aboriginal Land Council.

### **Part 8 Investigation and administration of Aboriginal Land Councils**

#### **98 Election of officers of Local Aboriginal Land Council following appointment of administrator**

- (1) For the purposes of section 226 (1) of the Act, elections for officers of a Local Aboriginal Land Council are to be held at a meeting of the Local Aboriginal Land Council called for that purpose by the administrator.
- (2) The elections are to be held not less than 28 days before the end of the period of the administrator's term.
- (2A) Despite subclause (2), if an administrator of a Local Aboriginal Land Council held office immediately before the commencement of this subclause, an election may be held at any time before the end of the period of the administrator's term.
- (2B) The term of office of the officers elected at a meeting commences at the end of the period of administration.
- (3) The administrator must give notice, in accordance with subclause (4), of the calling of

the meeting.

- (4) The administrator must specify in the notice that the meeting is being called for the purpose of the election of the office holders of the Council.
- (5) An election for the purposes of this clause must be conducted in accordance with this clause.
- (6) The election must be conducted by a returning officer, being either a member of the Council (not being an intended candidate for election) present at the meeting at which the election is held and appointed by the members present, or by a non-member invited and appointed by the meeting.
- (7) The returning officer must not vote in the election.
- (8) A person may be nominated for an elected position:
  - (a) by any voting member present at the meeting at which the election is held, or
  - (b) by instrument in writing received by the administrator at or before the time when nominations are called for at the meeting.
- (9) In order that a nomination be valid, the person nominated must be a voting member of the Council and give his or her consent to the nomination and the consent must be recorded in the minutes of the meeting.
- (10) If only one nomination is received for an elected position, the nominated candidate must be declared elected. In any other case, a ballot must be held for each elected position.
- (11) A ballot held under this clause must:
  - (a) be a secret ballot, and
  - (b) subject to this clause, be conducted in such manner as the meeting thinks fit.
- (12) In a ballot held under this clause:
  - (a) voting must not be preferential, and
  - (b) the candidate with the highest number of votes is to be declared elected.
- (13) If 2 or more candidates each obtain the highest number of votes, a second ballot must be held, in which those candidates are the only contenders.
- (14) If the second ballot is inconclusive, the returning officer may determine the successful candidate by lot or by such other means as the meeting may approve.

## **99 Election of councillors after administration**

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

### **Note—**

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

## **Part 9 Dispute resolution**

### **100 Application of [Commercial Arbitration Act 1984](#) to arbitrations under the Act**

- (1) For the purposes of section 240 of the Act, the application of the [Commercial Arbitration Act 1984](#) is modified in accordance with this clause.
- (2) Section 6 of the [Commercial Arbitration Act 1984](#) is to be read as follows:

An arbitration agreement is to be taken to provide for the appointment of a single arbitrator only.
- (3) The following provisions of the [Commercial Arbitration Act 1984](#) do not apply to an arbitration undertaken under Part 13 of the Act:
  - (a) sections 4 (2), 8, 9, 10, 12, 15, 16, 41 and 63,
  - (b) any other provision to the extent to which it provides for the appointment of more than one arbitrator or of an umpire or enables arbitration to be undertaken by an umpire.

## **Part 10 Miscellaneous**

### **101 Certain information on land register and consolidated membership roll to be made available**

For the purposes of section 106 (2) (g) and (9) 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:

- (a) all the information contained in the land register that relates to the Local Aboriginal Land Council, and
- (b) all the information on the consolidated membership roll that relates to the Local Aboriginal Land Council,

except the private addresses of members of that Council and other private contact information relating to members.

#### **101A Delegation by Registrar**

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

#### **102 Copies of minutes to be made available in certain circumstances**

- (1) Any Aboriginal Land Council may pass a resolution requesting another Aboriginal Land Council to provide copies of minutes for a particular meeting or meetings.
- (2) Despite subclause (1), a Local Aboriginal Land Council must not pass a resolution making such a request of another Local Aboriginal Land Council.
- (3) An Aboriginal Land Council is to comply with any request made by resolution passed in accordance with this clause.

#### **103 Savings, transitional and other provisions**

Schedule 8 has effect.

### **Schedule 1 Land exempt from certain rates and charges**

(Clause 7)

### **Schedule 2 Model rules for Local Aboriginal Land Councils**

(Clause 29)

#### **1 Application of Rules**

These Rules apply to the ..... Local Aboriginal Land Council.

#### **2 Definitions**

- (1) 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 Secretary of the Council or the Chairperson of the New South Wales Aboriginal Land Council in response to a written request by a quorum of members, or
- (b) a meeting called by 2 officers otherwise than in the ordinary course of business.

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

**the Act** means the [Aboriginal Land Rights Act 1983](#).

**the Regulation** means the [Aboriginal Land Rights Regulation 2002](#).

- (2) Expressions used in these Rules which are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation, respectively.

### 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 Secretary 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 Secretary 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 Secretary receives a request in writing signed by members whose number amounts to a quorum, the Secretary must as soon as practicable, but in any event within 21 clear days of the receipt of the request, call a meeting and cause notice of the meeting to be given in accordance with the Regulation.
- (2) If the Chairperson of the New South Wales Aboriginal Land Council is satisfied that a request has been made under subrule (1) and a meeting has not been called, the Chairperson of the New South Wales Aboriginal Land Council may call the meeting by notice given in accordance with the Regulation.
- (3) The Council must, at an extraordinary meeting, deal only with those matters contained in the request for the meeting.
- (4) The Chairperson of the Council must not open an extraordinary meeting unless 80 per cent of the members who signed the request (and a quorum) are present.
- (5) 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 officers**

- (1) Any 2 of the Chairperson, Secretary and Treasurer may call an extraordinary meeting.
- (2) The 2 officers are to call the meeting by notice given in accordance with the Regulation.

## **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 such place.

## **10 Voting**

- (1) Subject to Rule 5, voting at any Council meeting is to be by show of hands except that:
  - (a) any election is to be by secret ballot, and

(b) a meeting may, by show of hands, require any other vote to be by secret ballot.

(2) No proxy votes are permitted (that is, voting members must be present at the meeting).

## **11 Minutes**

(1) The Secretary or, in the absence of the Secretary, another member elected as Secretary for the meeting by the members present must keep full and accurate minutes of the proceedings of a meeting of the Council.

(2) The Secretary must record:

(a) all motions put to the meeting, and

(b) amendments to such motions, and

(c) the names of the movers and seconders of those motions and amendments, and

(d) the resolutions passed by the meeting, and

(e) details of all bills and accounts approved for payment in accordance with these Rules.

(3) The Secretary must keep the minutes of the proceedings of all meetings in a suitable book and provide copies to members on request.

(4) The Chairperson 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 either the Chairperson or the Secretary, and

(b) the receipt of the audited financial statements for the previous financial year, and

(c) if required by the Act, the election of all officers and Regional and Alternate Representatives, and

(d) the conduct of any other business placed on the agenda before the commencement of the meeting.

## **13 Attendance record**

(1) The Secretary of the Council must keep a list of those members who attend each Council meeting.

- (2) The list must include the signature of each member present.

#### **14 Sub-committees**

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

#### **15 Financial management**

- (1) The Treasurer 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 made by the Council must be paid by cheque signed by any 2 of the members authorised by the Council to be signatories of the Council's accounts.
- (3) The Chairperson, Secretary, Treasurer and no more than 2 other members of the Council are to be authorised by the Council to be signatories of the Council's accounts.
- (4) If the Council decides to remove a person from acting as a signatory of the Council's accounts by a majority vote at a Council meeting, then 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 Treasurer or, in the absence of the Treasurer, the Chairperson must present to the Council:
  - (a) all bills and accounts that have not been paid to be approved by the Council for payment, and
  - (b) details of all bills and accounts that have been paid and not previously approved by the Council for ratification by the Council.
- (6) Full details of all approvals and ratifications must be entered in the minutes of the meeting.

#### **16 Access to books**

- (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 Secretary must make available the Council records for inspection by any member at such times as the Council directs.
- (3) A member must not remove original documents or records from the place in which they are made available for inspection by the Secretary.
- (4) 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.
- (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.

## **17 Common Seal**

- (1) The Council may provide for a Common Seal.
- (2) A person must not use the Common Seal without the authority of the Council. Every instrument and document on which the seal is placed must be signed by an officer (other than the Secretary) and must be countersigned by the Secretary or by some person appointed by the Council for the purpose.
- (3) A document which can be executed without a seal can be signed by any one of the officers if there is a direction by a Council meeting to do so and the direction is properly minuted.

### **Note—**

Section 245 of the Act provides for authentication of certain documents without 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 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 Secretary 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) in the case of elections, ensure the appointment of a returning officer by the meeting, and
- (e) preserve order and warn any member who is causing a disturbance at a meeting that the member may be removed, and
- (f) 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
- (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 members is no longer present.

## **20 Duties of Secretary**

The Secretary must:

- (a) maintain a membership roll for the Council as required by the Act and the Regulation, and
- (b) maintain an accurate record of all meetings of the Council in an official minute book of the Council, 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 in accordance with these Rules, and
- (e) maintain an attendance book showing the names of all the members who attend each meeting together with the signature of each member who is present, and
- (f) prepare an agenda, in consultation with the Chairperson, prior to each meeting, and
- (g) maintain any correspondence to and from the Council and inform the Council of such correspondence, and
- (h) send to the Secretary of the New South Wales Aboriginal Land Council 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 Duties of Treasurer**

The Treasurer 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) ensure that financial statements, together with an auditor's certificate in relation to the statements, are submitted to each annual meeting and to the New South Wales Aboriginal Land Council in accordance with Division 2 of Part 8 of the Act, and
- (d) submit the Council's annual 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
- (e) submit the Council's six monthly report (and, if required, the Council's quarterly report), after it has been passed by a Council meeting, to the New South Wales Aboriginal Land Council in accordance with section 159 of the Act, and
- (f) submit a brief financial statement at each Council meeting, known as the Treasurer's Report (this report must include all accounts and bills which have not been paid and which are to be approved by the Council for payment and details of all accounts and bills of the Council which have been paid by the Treasurer, and not previously approved, the payment of which is awaiting ratification by the Council), and
- (g) represent and act, subject to the instructions of a Council meeting, on behalf of the Council in the interval between meetings, and
- (h) submit to the Council, and advise the New South Wales Aboriginal Land Council of, details of any expenditure which in the Treasurer's opinion contravenes the Act or the wishes of the majority of the Council members, or both.

## **22 (Repealed)**

## **23 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.

## **Schedule 3 (Repealed)**

## **Schedule 4 Model rules for the New South Wales Aboriginal Land**

## Council

(Clause 92)

### 1 Definitions

(1) In these Rules:

**area**, in relation to a Council, means the area in respect of which it is constituted.

**Council** means the New South Wales Aboriginal Land Council.

**councillor** means a member of the Council.

(2) Expressions used in these Rules which are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation, respectively.

### 2 Voting

(1) Each councillor present (including the Chairperson) is entitled to one vote at a Council meeting and voting is to be by show of hands except that:

- (a) any election at an annual meeting or other meeting must be by secret ballot, and
- (b) a meeting may, by show of hands, require any other vote to be by secret ballot.

(2) No proxy votes are permitted (that is, voting councillors must be present at the meeting).

(3) This Rule is subject to section 133 (3) of 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 keep full and accurate minutes of the proceedings of a meeting of the Council.

(2) The minutes secretary must record:

- (a) all motions put to the meeting, and
- (b) amendments to such 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 Chief Executive Officer of the Council must keep the minutes of the proceedings of all meetings in a suitable book and provide copies to councillors on request.

- (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 record**

- (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 their 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 such 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), (6) (Repealed)
- (7) 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](#).
- (8) Financial budgets and statements are to be prepared and a report submitted on the finances to each Council meeting.

## 9 Access to books

- (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 is to make the Council records available for inspection by any councillor at such times as the Council directs.
- (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 Chief Executive Officer is to have the safe custody of the Common Seal.
- (3) A person must not use the Common Seal without the authority of the Council.
- (4) Every instrument and document on which the Common Seal is placed is to be signed by an officer (other than the Chief Executive Officer) and is to be countersigned by the Chief Executive Officer or by some person appointed by the Council for the purpose.

**Note—**

Section 245 of the Act provides for authentication of certain documents without 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) in the case of elections, ensure the appointment of a returning officer by the meeting, and
- (f) preserve order and warn any councillor who is causing a disturbance at a meeting that the councillor may be removed, and
- (g) order the removal from the meeting of any councillor who, having been already warned, continues to cause a disturbance, and
- (h) ensure that debates are conducted in the correct manner and, in particular, that there is one speaker at a time, and
- (i) 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
- (j) 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 Regional Aboriginal Land Council areas which councillors represent and the date of the election of councillors, and
- (b) maintain an accurate record of all meetings of the Council in an official minute book of the Council, and
- (c) maintain an attendance book showing the names of all the councillors who attend each meeting together with the signature of each councillor who is present, 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 such 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 the 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.
- (f) (Repealed)

### **Schedule 5 Model code of conduct for Local Aboriginal Land Councils**

(Clause 97 (1))

- 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.

## **Schedule 6 (Repealed)**

## **Schedule 7 Model code of conduct for New South Wales Aboriginal Land Council**

(Clause 97 (3))

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.

## **Schedule 8 Savings, transitional and other provisions**

(Clause 103)

### **1 (Repealed)**

### **2 Existing rules**

The rules of an Aboriginal Land Council as in force immediately before the commencement of this Regulation cease to have effect on that commencement.

### **3 Saving of rate exemptions**

Land that was declared under section 43 of the Act, as in force immediately before the commencement of Schedule 1 [15] to the [Aboriginal Land Rights Amendment Act 2001](#), to be exempt from the payment of rates, or specified rates, continues to be exempt from the payment of rates, or those specified rates.

### **4 Financial year**

The financial year of an Aboriginal Land Council that commences on 1 October 2002 is taken to end on 30 June 2003.

### **5 Holding of annual meetings in 2002**

- (1) Clauses 26 (1) and 38 (1), apply only on and from 1 July 2003.
- (2) A Local Aboriginal Land Council must hold an annual meeting at some time between 25 October 2002 and 31 December 2002 (inclusive).
- (3) A Local Aboriginal Land Council is taken to have complied with subclause (2) if it held an annual meeting at some time between 1 October 2002 and 24 October 2002 (inclusive).
- (4) A Regional Aboriginal Land Council must hold an annual meeting at some time between 1 January 2003 and 18 February 2003 (inclusive).

## 6 Election following appointment of administrator to Aboriginal Land Council

The amendments made to clauses 98 and 99 by the [Aboriginal Land Rights Amendment \(Elections\) Regulation 2004](#) extend in relation to the appointment of an administrator that took place less than 12 months before the commencement of that Regulation.

## 7 Transfer of assets and liabilities of Regional Aboriginal Land Councils

(1) In this clause:

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

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

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

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

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

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

- (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
- (b) those rights and liabilities of the transferor become by virtue of this clause the rights and liabilities of the transferee,
- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have

been done or omitted by, to or in respect of the transferee,

- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities), to be read as, or as including, a reference to the transferee.

(4) The operation of this clause is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
- (d) as an event of default under any contract or other instrument.

(5) No attornment to the transferee by a lessee from the transferor is required.

(6) The Minister may specify the value or values at which the assets, rights or liabilities are transferred.

(7) The value or values cannot exceed the optimised deprivation value of those assets, rights or liabilities.

(8) The Minister may, by notice in writing, confirm a transfer of particular assets, rights and liabilities by operation of this clause.

(9) A notice given under subclause (8) is conclusive evidence of that transfer.