

1991—No. 421

ABORIGINAL LAND RIGHTS ACT 1983—REGULATION

(Relating to Aboriginal Land Councils)

NEWSOUTHWALES



[Published in Gazette No. 116 of 16 August 1991]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Aboriginal Land Rights Act 1983, has been pleased to make the Regulation set forth hereunder.

N. F. GREINER
Premier.

Commencement

1. This Regulation commences on 16th August, 1991.

Amendments

2. The Aboriginal Land Rights Regulation 1983 is amended:
 - (a) by inserting at the end of clause 11 the following subclause:
 - (2) Subclause (1) (a) does not apply to the amalgamation of Local Aboriginal Land Council areas under clause 14A.
 - (b) by inserting after clause 14 the following clauses:

Amalgamation of Local Aboriginal Land Council areas

14A. (1) Two or more Local Aboriginal Land Councils may apply in writing to the Registrar for amalgamation of their areas as 1 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 an extraordinary meeting of the Local Aboriginal Land Council specifically called for the purpose in accordance with 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 forward the application to the Minister and a copy of the application 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 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 1 Local Aboriginal Land Council area, to be known by the name specified in the order, from a day, that is later than the day of publication, appointed in the order.

Transition to amalgamation

14B. (1) In this clause:

“amalgamation order” means an order published in the Gazette under clause 14A 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 days of the appointed day at a place nominated by the Registrar.

(c) by inserting at the end of clause 15 the following subclause:

(10) A person's name may not be listed on the roll of a Council during the period commencing from certification of that roll under clause 23 for the purposes of an election until the election has been held.

(d) by omitting from clause 16 (1) the matter "1 July and 30 September" and by inserting instead the matter "1 October and 31 December";

(e) by omitting clause 16 (3) and by inserting instead the following subclause:

(3) The procedure for the calling of meetings of a Local Aboriginal Land Council, the conduct of those meetings and the determining of a quorum at those meetings is to be as set out in the rules.

(f) by omitting clause 17 and by inserting instead the following clauses:

Form of application for access permit

17. An application under section 48(1) of the Act:

- (a) must be made in writing; and
- (b) must specify the land in respect of which the permit is sought and the purpose for which access to the land is desired; and
- (c) must otherwise be in a form approved by the Registrar.

Purchase of land

17A. A Local Aboriginal Land Council must, before purchasing any land, obtain the written approval of the New South Wales Aboriginal Land Council to the proposed purchase of the land.

Model rules

17B. The rules set forth in Schedule 3 are prescribed, for the purposes of section 13(6) of the Act, as model rules for each Local Aboriginal Land Council.

- (g) by inserting after clause 18B the following clause:

Fees etc. payable to members

18C. Any fees, allowances and expenses determined by the Council to be payable to a member of a Regional Aboriginal Land Council under section 15 (5) of the Act must not exceed the amount of the fees, allowances or expenses for the time being determined by the Minister to be payable to persons in respect of attendance at meetings of bodies of a class or description that includes Regional Aboriginal Land Councils.

- (h) by omitting from clause 19(1) the matter “1 October and 30 November” and by inserting instead the matter “1 January and 28 February”;
- (i) by omitting clause 19 (3) and by inserting instead the following subclause:

(3) The procedure for the calling of meetings of a Regional Aboriginal Land Council, the conduct of those meetings and the determining of a quorum at those meetings is to be as set out in the rules.

- (j) by inserting after clause 19A the following clause:

Model rules

19B. The rules set forth in Schedule 2 are prescribed, for the purposes of section 21 (6) of the Act, as model rules for Regional Aboriginal Land Councils.

- (k) by omitting Parts 4 and 5 and by inserting instead the following Parts:

**PART 4—NEW SOUTH WALES ABORIGINAL LAND
COUNCIL**

Division 1—Calling of election of councillors

Notice of election

21. (1) The Minister, in consultation with the New South Wales Aboriginal Land Council, is to determine when an election of all councillors is to be held in accordance with section 27A or 57B (2) of the Act.

(2) The returning officer is to give notice of an election of all councillors as soon as practicable after having been notified of such an election by or on behalf of the Minister.

(3) The returning officer is to give notice of the election in each Regional Aboriginal Land Council area by causing a notice concerning the election to be published in at least 1 newspaper circulating in the area and in such other manner as may be determined by the returning officer.

(4) The notice must state the following:

- (a) that an election is to be held for a councillor to represent the area;
- (b) that a person may only vote at the election if the person is a member of a Local Aboriginal Land Council within the area;
- (c) that a person (if eligible) may be listed on the roll of such a Council before the election if the person requests or applies to the Secretary of the Council in writing to be listed on the roll on or before a closing date specified in the notice;
- (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.

(5) The date fixed for the closing date of the roll must be not earlier than 14 days and not later than 21 days after the date of giving notice of the election.

Enrolment of Aboriginal persons not residing in the area

22. (1) Each Local Aboriginal Land Council must hold a meeting after notice of an election is given under clause 21 to consider applications by adult Aboriginal persons who have an association with the Local Aboriginal Land Council area (but who do not reside within the area) to be listed on the roll for the area.

(2) The Council must hold the meeting referred to in subclause (1) within the period of 7 days immediately following the closing date specified in the notice of the election in accordance with clause 21 (4) (c).

(3) A Local Aboriginal Land Council is not required to hold a meeting under this clause if there are no applications to be listed on the roll for the area to be considered.

(4) If a Local Aboriginal Land Council fails to hold a meeting to consider an application by a person to be listed on the roll as required by this clause, the Chairperson of the New South Wales

Aboriginal Land Council must list the person on the roll of the Local Aboriginal Land Council for the purposes of the election of councillors of the New South Wales Aboriginal Land Council.

(5) Following the election, the Local Aboriginal Land Council must consider the application of any person who has been listed on the roll by the Chairperson of the New South Wales Aboriginal Land Council under subclause (4) but the determination of any such application by the Local Aboriginal Land Council does not invalidate or in any other way affect the result of the election.

(6) This clause and clause 21 (4) (c) apply in relation to an election to which clause 21 applies despite Rule 10 of Schedule 3.

Certification of roll

23. (1) The Secretary of each Local Aboriginal Land Council must, not later than:

- (a) 7 days after a meeting is held in accordance with clause 22; or
- (b) 7 days after the closing date specified in clause 21 (4) (c) (if no such meeting is required to be held under clause 22),

compile a roll for the Council that lists the names and addresses of the members of the Council in alphabetical order, certify a copy of that roll in a manner approved by the New South Wales Aboriginal Land Council and send the certified copy of the roll to the New South Wales Aboriginal Land Council.

(2) Within 7 days after the certified copies of the rolls for Local Aboriginal Land Councils have been forwarded to the New South Wales Aboriginal Land Council:

- (a) the Secretary of the New South Wales Aboriginal Land Council must amalgamate the Local Aboriginal Land Council rolls for each Regional Aboriginal Land Council area, consecutively number each amalgamated roll and ensure that a person is not listed more than once on an amalgamated roll; and
- (b) the Chairperson of the New South Wales Aboriginal Land Council must certify each amalgamated roll in the manner specified in subclause (3) and send each amalgamated roll to the returning officer.

(3) The certification of the roll for a Regional Aboriginal Land Council area 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 members of the Local Aboriginal Land Councils within the Regional Aboriginal Land Council area as at

Signed

Date

(4) If the Secretary of a Local Aboriginal Land Council fails for any reason to provide the Chairperson of the New South Wales Aboriginal Land Council with a certified copy of the 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 Chairperson a copy of the roll for the Local Aboriginal Land Council.

(5) If none of the officers of a Local Aboriginal Land Council provides the Chairperson of the New South Wales Aboriginal Land Council with a certified copy of the roll of the Local Aboriginal Land Council, the member of the New South Wales Aboriginal Land Council representing the Regional Aboriginal Land Council area in which the Local Aboriginal Land Council is situated may compile the roll, certify a copy of the roll and provide the Chairperson of the New South Wales Aboriginal Land Council with the certified copy of the roll.

Calling for nominations

24. (1) The returning officer, after receiving the certified rolls for all the Local Aboriginal Land Council areas in a Regional Aboriginal Land Council area, is to give notice:

- (a) stating that an election of a councillor for that area 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 days after the close of nominations.

(2) The returning officer is to give the notice by causing it to be published in at least 1 newspaper circulating in the Regional Aboriginal Land Council area 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 days and not later than 28 days after the date of the notice inviting nominations.

Extension of time

25. (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 given under clause 24.

(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 given under clause 24.

(4) A notice published under this clause must not fix a day for the taking of the poll more than 14 days after the day fixed for that purpose by the previous notice.

Officers to assist returning officer

26. (1) The returning officer may nominate a regional electoral officer for a Regional Aboriginal Land Council area to assist in taking the poll.

(2) The regional electoral officer may appoint 1 or more deputy electoral officers and 1 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.

Eligibility and manner of nominating candidates

27. (1) To be eligible for nomination as a candidate for election as councillor, a person must be listed on the regional roll certified by the Chairperson of the New South Wales Aboriginal Land Council in relation to the Regional Aboriginal Land Council area for which the candidate has been nominated.

(2) A person cannot be nominated as a candidate for election as councillor in relation to more than 1 Regional Aboriginal Land Council area.

(3) If at the close of nominations for a Regional Aboriginal Land Council area a person is nominated as a candidate for election as councillor for any other Regional Aboriginal Land Council area each of those nominations is void.

(4) A nomination of a candidate for election as a councillor must:

- (a) be made by not less 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
- (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.

(5) A person can only nominate 1 candidate in an election of a councillor for a Regional Aboriginal Land Council area.

(6) A nomination paper is not open for public inspection.

(7) A failure to comply with the requirements of subclause (4) in relation to the nomination of a candidate must be rectified by the candidate before the date fixed for the close of nominations.

Rejection of nomination

28. (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 under section 27 of the Act; or
- (b) the person is not nominated in accordance with clause 27 and any failure to comply with the requirements of subclause (4) of that clause is not rectified as provided by that clause.

(2) The deposit accompanying the nomination is to be retained pending the election.

Return of deposit

29. (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% 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 in accordance with clause 30.

(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% of the total number of first preference votes polled in the election.

Withdrawal of nomination

30. 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.

Uncontested election

31. 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.

Contested election

32. (1) A ballot is to be held if more than 1 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 1 newspaper circulating in the Regional Aboriginal Land Council area, 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**Order of candidates' names on ballot-papers**

33. (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.

Printing of ballot-papers

34. (1) 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 clause 33 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 35 as the returning officer considers appropriate.

Directions to electors

35. 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 placing 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**Applications to vote by post**

36. (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 Regional Aboriginal Land Council area 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 prison (within the meaning of the Prisons Act 1952), 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 days before polling day.
- (3) The returning officer is to number in consecutive order all applications to vote by post made under this clause.

Distribution of postal ballot-paper

37. (1) If the returning officer receives an application to vote by post that is made in accordance with clause 36, 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 33; 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.

Duplicate postal ballot-papers

38. If any elector to whom a ballot-paper has been delivered or posted under clause 37 (1) 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.

Recording of postal vote

39. 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 p.m. on polling day.

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

40. 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

Appointment of polling place

41. 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.

Arrangements at polling place etc.

42. (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.

Hours of polling

43. (1) Each polling place, other than a mobile polling place, is to be open for voting on polling day between the hours of 8a.m. and 6 p.m.

(2) Each mobile polling place is to be open for voting on polling day during the hours specified by the returning officer.

Elector to give name and address etc.

44. 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.

Questions for challenged voters

45. (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 member of the (*here state name of relevant Local Council*) Local Aboriginal Land Council within the (*here state name of relevant Regional Council*) Regional Aboriginal Land Council area or in that you have been suspended as a member of that Local Aboriginal Land Council under its rules?

(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.

Errors not to forfeit vote

46. (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 by marriage but, in that case, a note of the fact is to be made by the deputy electoral officer.

Initialling of ballot-papers etc.

47. (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.

Recording of vote

48. On receipt of a ballot-paper the 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 forthwith deposit it in the ballot-box; and

(c) leave the polling place.

Spoilt ballot-papers

49. (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.

Assistance to certain electors

50. (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 pursuant to 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.

Voting procedure—disputed votes

51. (1) A person claiming to vote at the polling place may vote pursuant to 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 under clause 45 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 under clause 37 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 under clause 45 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 pursuant to 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 pursuant to 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 persons voting pursuant to this clause 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 pursuant to 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 Secretary of each Local Aboriginal Land Council must be available on polling day to advise the regional electoral officer for the Secretary's area on the eligibility of electors who claim a vote but whose names do not appear on the roll.

Division 5—The scrutiny

Scrutineers

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

- (a) 1 scrutineer to act on his or her behalf at the taking of votes at each polling place; and
- (b) 1 scrutineer to act on his or her behalf at the place where postal ballot-papers are received; and
- (c) 1 scrutineer to act on his or her behalf at the scrutiny.

Scrutiny of votes at close of poll

53. 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

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- (d) proceed to count the votes and ascertain the number of first preference votes recorded for each candidate.

Informal ballot-papers

54. (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 1 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.

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

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

- (a) in 1 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.

Counting of votes

56. (1) The regional electoral officer must as soon as practicable after the close of the poll, count the total number of first preference votes given for each candidate and must include in the count all postal votes received from the returning officer.

(2) The candidate who has received the largest number of first preference votes is, if that number constitutes an absolute majority of votes, elected.

(3) If no candidate has received an absolute majority of first preference votes, the regional electoral officer must make a second count.

(4) On the second count, the candidate who has received the fewest first preference votes must be excluded and each ballot-paper counted to him or her must be counted to the candidate next in the order of the elector's preference.

(5) If any candidate then has an absolute majority of votes as the result of the second count in accordance with subclause (4), he or she must be declared 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 ballot-papers to the continuing candidate next in the order of the elector's preference must be repeated until 1 candidate has received an absolute majority of votes.

(6) The candidate who has received an absolute majority of votes in accordance with subclause (5) must be declared elected.

(7) If on any count 2 or more candidates have an equal number of votes and 1 of them has to be excluded, that candidate among them who had the least number of votes at the last count at which they had not an equal number of votes, must be excluded.

(8) If 2 or more candidates referred to in subclause (7) had an equal number of votes at all preceding counts, the regional electoral officer must determine between them by lot which of them must be excluded.

(9) In this clause:

“absolute majority of votes” means, in relation to any count, a greater number than one-half of the number of ballot-papers counted;

“continuing candidate” means a candidate not already excluded at the count;

“determine by lot” means determine in accordance with the following direction:

The names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification and mixed and drawn at random, the candidate whose name is first drawn must be excluded,

Declaration of poll

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

(2) On being advised of the result of the counting of the votes, the returning officer must publicly declare the candidate elected.

Division 6—Miscellaneous electoral provisions

Signature to electoral paper

58. (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.

Death of candidate

59. 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.

Decisions of returning officer

60. 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.

Notification of result of election

61. As soon as practicable after a candidate has been elected under clause 31 or 56, the returning officer must:

- (a) notify the Minister in writing of the candidate who has been elected; and
- (b) notify the Director 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.

Retention of electoral papers

62. (1) The regional electoral officer must forward 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.

Offences

63. Any person who:

- (a) votes or attempts to vote in an election in which the person is not entitled to vote; or
- (b) votes or attempts to vote more than once in a Regional Aboriginal Land Council area; or
- (c) makes 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) obstructs 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) enters any compartment of a booth at a polling place, other than as authorised under clause 50, while any person is in the compartment recording his or her vote,

is guilty of an offence.

Maximum penalty: \$500.

Casual vacancy to be filled

64. (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 Regional Aboriginal Land Council area.

(2) The Minister is to appoint a member of a Local Aboriginal Land Council within the Regional Aboriginal Land Council area to fill the vacancy for the remainder of the term of office of the councillor.

(3) The Minister may only appoint a member under this clause if the member has been recommended to the Minister for appointment by the New South Wales Aboriginal Land Council.

Division 7—Miscellaneous

Removal of councillor from office

65. (1) The Minister is to remove a person from the office of councillor if the Minister receives a valid petition calling for the person's removal from the office.

(2) In this clause:

“eligible person” means a person who would be entitled to vote at an election for the office of the councillor concerned (if it were vacant);

“valid petition” means a petition:

- (a) that contains the signatures of at least 66% of the persons:
 - (i) who would have been eligible persons when they signed the petition; and
 - (ii) who would have been eligible persons on the date of presentation of the petition to the Minister; and
- (b) that sets out legibly:
 - (i) the name of each person who has signed the petition; and
 - (ii) the date on which the person signed; and
 - (iii) an address for the person that is sufficient to identify the place where the person lives; and
- (c) all the signatures to which have been affixed within the period of 6 months immediately preceding the date of presentation of the petition to the Minister.

(3) For the purposes of this clause, the Secretary of the New South Wales Aboriginal Land Council must, within 7 days after the presentation of the petition to the Minister, provide the

Minister with a copy of the roll for the Regional Aboriginal Land Council area which the person whose removal is sought represents, certified by the Secretary as at the date of such presentation.

(4) If the petition calls for the removal of the Secretary of the New South Wales Aboriginal Land Council, the Chairperson, and not the Secretary, of the Council must perform the functions referred to in subclause (3).

Meetings of New South Wales Aboriginal Land Council

66. (1) The Chairperson of the New South Wales Aboriginal Land Council must convene at least 1 meeting every 3 months.

(2) The procedure for the calling of meetings of the New South Wales Aboriginal Land Council and the conduct of business at meetings of the Council is to be as set out in the rules.

Model rules

67. The rules set forth in Schedule 1 are prescribed, for the purposes of section 24 (6) of the Act, as model rules for the New South Wales Aboriginal Land Council.

PART 5—FINANCIAL MATTERS, INVESTIGATORS AND ADMINISTRATORS

Investment of money in N.S.W. Aboriginal Land Council Account

68. (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 clause, must be invested in accordance with this clause, and must not be disbursed, except as provided by section 29A of 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 forthwith 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 after the commencement of 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.

[NOTE: Section 29A of the Act makes provision as to investment of certain money in the N.S.W. Aboriginal Land Council Account.]

Investment of money in Regional and Local Aboriginal Land Council accounts

69. Money to the credit of an account established by a Regional or Local Aboriginal Land Council under Division 1 of Part 5 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 a bank authorised to carry on the business of banking under any law of the Commonwealth or of a State or Territory of the Commonwealth.

List of auditors

70. (1) For the purposes of section 32 (3) of the Act, the New South Wales Aboriginal Land Council is to compile a list of auditors:

- (a) who are registered company auditors; and
- (b) who have informed the New South Wales Aboriginal Land Council in writing that they are able and willing to audit the accounts of Local Aboriginal Land Councils, Regional Aboriginal Land Councils or both Local Aboriginal Land Councils and Regional Aboriginal Land Councils; and
- (c) who have been approved by the New South Wales Aboriginal Land Council.

Certification

71. For the purposes of section 32 (5) of the Act, the prescribed form of the certificate of the auditor is a certificate:

- (a) stating that the auditor has audited the accounts caused to be kept by the Local or Regional Aboriginal Land Council for that financial year; and
- (b) indicating whether the financial statements comply with section 41B(1) of the Public Finance and Audit Act 1983; and
- (c) setting forth any qualifications subject to which the certificate is given.

Disposition of mining royalties

72. (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.

Investigators of Aboriginal Land Councils

73. For the purposes of section 56D (1) of the Act, a list of investigators is to be compiled jointly by the Minister and the New South Wales Aboriginal Land Council.

Office holders to assist administrator

74. (1) The Chairperson of an Aboriginal Land Council and any other person who has possession or control of any records of the Council must, if required to do so by an administrator who produces evidence of his or her appointment, provide the administrator with:

- (a) access to such of the records as relate to the functions of the Council being performed by the administrator; and
- (b) information that the Chairperson or other person is able to give in relation to those records and functions; and
- (c) authorities or orders on bankers and others that relate to those records or functions and that the Chairperson or other person is able to provide.

Maximum penalty: \$500.

(2) A requirement to provide access to a record that:

- (a) is not in writing; or
- (b) is not written in the English language; or
- (c) is not decipherable on sight,

is not complied with unless access is provided to a statement, written in the English language and decipherable on sight, that contains all the information in the record.

Maximum penalty: \$500.

(3) A person must not hinder, obstruct or delay an administrator in the exercise of his or her functions.

Maximum penalty: \$500.

Outgoing office holders to hand over books and other property of Council

75. (1) A Chairperson, Secretary or Treasurer of an Aboriginal Land Council whose term of office expires on:

- (a) his or her vacation of office; or
- (b) his or her removal from office; or
- (c) the election of his or her successor,

must forthwith on the expiration of the term of office hand over to a remaining office holder, the successor or an administrator, as the case requires, any books, accounts or other records of the Council and any other property of the Council in his or her possession or under his or her control.

(2) In the case of the death of the Chairperson, Secretary or Treasurer, the legal personal representative of the Chairperson, Secretary or Treasurer, as the case may be, must comply with the requirements of subclause (1).

Election of office holders following appointment of administrator

76. (1) For the purposes of section 57B (1) of the Act, as soon as practicable after the appointment of an administrator to administer all of the functions of a Regional or Local Aboriginal Land Council, the administrator must give notice, in accordance with subclause (2), of the calling of a meeting of the Council at which the office holders of the Council are to be elected.

(2) 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.

(3) An election for the purposes of this clause must be conducted in accordance with this clause.

(4) An 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.

(5) The returning officer must not vote in the election.

(6) 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 instrument in writing received by the administrator at or before the time when nominations are called for at the meeting.

(7) In order that a nomination be valid, the person nominated must be a 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.

(8) Where only 1 nomination is received for an elected position, the nominated candidate must be declared elected.

(9) Except as provided by subclause (8), a ballot must be held for each elected position.

(10) A ballot held under this clause:

- (a) must be a secret ballot; and

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- (b) must, subject to this clause, be conducted in such manner as the meeting thinks fit.
- (11) 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.
- (12) 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.
- (13) 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.
- (1) by omitting from the heading to Schedule 1 the words “AND FOR REGIONAL ABORIGINAL LAND COUNCILS”;
- (m) by omitting the definition of “Council” in Rule 1 of Schedule 1 and by inserting instead the following definitions:
 - “**Council**” means the New South Wales Aboriginal Land Council;
 - “**councillor**” means a member of the Council.
- (n) by omitting from Schedule 1 the word “Chairman” wherever occurring and by inserting instead the word “Chairperson”;
- (o) by omitting from Rules 4 and 6 in Schedule 1 the word “members” wherever occurring and by inserting instead the words “councillors”;
- (p) by omitting from Schedule 1 the word “member” wherever occurring and by inserting instead the word “councillor”;
- (q) by omitting Rule 3 from Schedule 1 and by inserting instead the following Rules:

Calling of extraordinary meetings on request by councillors

3. (1) If the Secretary receives a request in writing signed by councillors whose number amounts to a quorum, the Secretary must call an extraordinary meeting to be held as soon as practicable but in any event within 21 days after the receipt of the request.

(2) At an extraordinary meeting, the Council is to deal only with those matters contained in the request for the meeting.

Calling of extraordinary meetings by Secretary

3A. The Secretary, with the concurrence of the Chairperson, may call an extraordinary meeting at any time.

Meeting place

3B. (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 in a residence.

(r) by inserting at the end of Rule 4 in Schedule 1 the following subrule:

(2) 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.

(s) by omitting Rule 5 from Schedule 1 and by inserting instead the following Rule:

Voting

5. (1) Each councillor present (including the Chairperson) is entitled to 1 vote at any 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).

(t) by inserting at the end of Rule 6 in Schedule 1 the following subrules:

(2) The minutes must include record of all motions and amendments to motions, the names of the proposer and seconder of each motion and whether each motion was passed or defeated.

(3) The minutes of the proceedings of all meetings are to be kept in a suitable book.

(4) The Chairperson is to sign the minutes when they have been accepted at the next meeting.

(u) by omitting from Rule 7 (1) in Schedule 1 the matter “referred to in section 9 (6), 17 (6) or 24 (6) of the Act” and by inserting instead the words “occurring in the office of the Chairperson, Secretary or Treasurer”;

(v) by omitting Rule 7 (2) from Schedule 1 and by inserting instead the following subrules:

(2) An election to fill a vacancy referred to in subrule (1) is to be conducted in accordance with this Rule.

(3) An election is to be conducted by a returning officer, being either a councillor (not being an intended candidate for election) present at the meeting at which the election is held and appointed by the councillors present, or by a non-councillor invited and appointed by the meeting.

(4) The returning officer must not vote in the election.

(5) A person may be nominated for an elected position:

- (a) by any councillor 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.

(6) For a nomination to be valid, the person nominated must be a councillor and give his or her consent to the nomination and the consent must be recorded in the minutes of the meeting.

(7) If only 1 nomination is received for an elected position, the nominated candidate is to be declared elected.

(8) A ballot held under this Rule is:

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

(9) In a ballot held under this Rule:

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

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

(11) 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.

(w) by omitting Rule 8 from Schedule 1 and by inserting instead the following Rules:

Council Roll

8. The Secretary 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 Regional Aboriginal Land Council area which each councillor represents; and

(c) the date of election of each councillor.

Attendance record

9. (1) The Secretary 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 at each meeting.

Report of non-attendance

10. The Secretary is to inform the Secretary of a Regional Aboriginal Land Council in writing whenever a councillor representing the Regional Aboriginal Land Council area does not attend 2 consecutive meetings of the Council.

Business at Annual Meeting

11. The business of the Annual Meeting is to 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) the conduct of any other business placed on the agenda before the commencement of the meeting.

Sub-committees

12. (1) The Council may appoint sub-committees for the purpose 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.

Financial management

13. (1) The Treasurer or the Treasurer's nominee must promptly

- (a) deposit into the Council's bank account all money received; and
- (b) issue a receipt for all money received.

(2) A payment in excess of \$20 made by the Council is to be paid by cheque signed by any 2 of the persons authorised by the Council to be signatories.

(3) The Chairperson, Secretary, Treasurer 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 Treasurer is to pay all bills and accounts of the Council. The Treasurer is to present to a meeting of the Council any bills and accounts that have not been paid before the meeting for approval and details of any bills and accounts that have been paid, and not previously approved, for ratification of the payments. Details of all approvals and ratifications of the Council are to be entered in the minutes of the meeting at which the approvals and ratifications are made.

(5) The Treasurer is to cause proper records to be kept of all receipts, payments and other financial transactions in accordance with the requirements of the Public Finance and Audit Act 1983.

(6) The Treasurer is to cause to be prepared financial budgets and statements and is to submit a report on the finances to each Council meeting.

(7) The Treasurer is to submit the Council's annual budget, after it has been passed by a Council meeting, to the Minister no later than 6 weeks before 1 October of each year.

(8) The Treasurer is to present audited accounts of the Council to each Annual Meeting.

(9) The financial year of the Council ends on 30 September in every year.

(10) The Treasurer is to examine the annual financial statement and auditor's report in relation to each Local Aboriginal Land Council and Regional Aboriginal Land Council to ascertain whether each of those bodies has fully satisfied its financial accounting responsibilities in accordance with the Act, the Aboriginal Land Rights Regulation 1983 and these Rules.

(11) The Treasurer's comments arising from the examination of the documents referred to in subrule 10 are to be made:

- (a) in the case of the documents of each Local Aboriginal Land Council, to the Local Aboriginal Land Council;
- (b) in the case of the documents of each Regional Aboriginal Land Council, to the Regional Aboriginal Land Council;
- (c) in the case of the documents of each Local Aboriginal Land Council, to the Regional Aboriginal Land Council within the area of which the Local Aboriginal Land Council is located.

Access to books

14. (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 is to make available the Council records for inspection by any councillor at such times as the Council directs.

(3) A councillor is not to remove the original copies of any 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 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.

Common Seal

15. (1) The Council may provide for a Common Seal.

(2) The Secretary 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 office-bearer (other than the Secretary) and is to be countersigned by the Secretary or by some person appointed by the Council for the purpose.

[NOTE: Section 63 of the Act provides for authentication of certain documents without the seal.]

Amendment of Rules

16. (1) The Council may amend these Rules by a resolution passed by at least 80% of the councillors present at a meeting of which notice under these Rules, including notice of the proposed amendment, has been given.

(2) The Registrar is to be notified in writing of the amendment.

[NOTE: Section 24 (2) of the Act states that the Registrar must approve an amendment, repeal or replacement of the rules.]

Duties of office-bearers

17. The duties of office-bearers are:

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) call meetings and give the proper notice for meetings in accordance with these Rules; 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 1 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
- (i) close or adjourn the meeting when:
 - (i) a motion to that effect is carried; or
 - (ii) all business has been finished; or
 - (iii) the meeting is excessively disorderly and the Chairperson is unable to restore order; or
 - (iv) a quorum of councillors is no longer present.

Secretary

- (4) The Secretary 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) forward to the Minister an Annual Report, prepared in consultation with the Treasurer and approved by a meeting of the Council, of the Council’s work and activities for the 12 months ending 30 September; and
 - (g) forward 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.

Treasurer

- (5) The Treasurer must:
- (a) maintain proper accounts and records of all transactions in relation to the operations of the Council in accordance with the requirements of the Public Finance and Audit Act 1983; and

- (b) ensure that all money received is deposited as soon as possible in the Council's bank account; and
 - (c) ensure that the accounts and records of financial transactions of the Council are prepared in accordance with the requirements of the Public Finance and Audit Act 1983 at the end of each financial year; and
 - (d) ensure that a statement of accounts, together with an auditor's certificate in relation to the statement, is submitted to each Annual Meeting; and
 - (e) submit the Council's annual budget, after it has been passed by a Council meeting, to the Minister no later than 6 weeks before the commencement of each financial year; and
 - (f) submit a brief financial statement at each Council meeting, known as the Treasurer's Report. This report is to include details of all accounts and bills of the Council which have been paid by the Treasurer, the payment of which is awaiting ratification by the Council meeting; 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 details of any expenditure which in the Treasurer's opinion contravenes the Act or the wishes of the majority of the councillors, or both; and
 - (i) assist the Secretary with preparation of the Annual Report.
- (x) by omitting Rules 12, 13 and 14 from Schedule 1;
- (y) by inserting at the end of Schedule 1 the following Schedule:

**SCHEDULE 2—MODEL RULES FOR REGIONAL
ABORIGINAL LAND COUNCILS**

(Cl. 19B)

Definitions

1. In these Rules:

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

“**Council**” means a Regional Aboriginal Land Council to which these Rules apply.

Calling of meetings

2. (1) A meeting of the Council (whether a meeting required to be held under the Act or an extraordinary meeting) must be called by notice published in a newspaper, magazine or periodical

approved by the Council and circulating in its area or by such other means as may appear to the Council to be sufficient and practicable.

(2) A notice under subrule (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 days after the notice is given.

Calling of extraordinary meetings on request by members

3. (1) If the Secretary receives a request in writing signed by members whose number amounts to a quorum, the Secretary must call an extraordinary meeting to be held as soon as practicable but in any event within 21 days after the receipt of the request.

(2) The Council must, at an extraordinary meeting, deal only with those matters contained in the request for the meeting.

(3) An extraordinary meeting called under this subrule must not commence unless there are present at least 80% of the members who signed the letter of request that the meeting be held. If, one-half hour after the advertised time for commencement of the meeting, at least 80% of such members are not present, the meeting must be adjourned.

Calling of extraordinary meetings by Secretary

4. The Secretary, with the concurrence of the Chairperson, may call an extraordinary meeting at any time.

Meeting place

5. (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 in a residence.

Quorum

6. The quorum for a meeting of the Council (other than a meeting referred to in Rule 3 (3)) is to be the number obtained by dividing the total membership of the Council by 2 and adding 1 to the quotient (any fractional remainder being disregarded).

Presiding member

7. 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,

[NOTE: Section 17 (2), (3) and (4) of the Act makes provision as to the person to preside at a meeting of the Council.]

Voting

8. (1) Voting at any meeting of the Council 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 members must be present at the meeting).

[NOTE: Section 18 of the Act provides that at a meeting of the Council at which a quorum is present, a decision of a majority of the members of the Council present and voting is a decision of the Council.]

Minutes

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

(2) There is to be recorded in the minutes a record of all motions and amendments to motions, the names of the proposer and seconder of each motion and whether each motion was passed or defeated.

(3) The minutes of the proceedings of all meetings are to be kept in a suitable book.

(4) The Chairperson is to sign the minutes when they have been accepted at the next meeting.

Executive vacancy

10. (1) In the event of there being a vacancy referred to in section 17 (6) of the Act, the notice given under Rule 2 notifying the next meeting of the Council after the vacancy occurs must notify an election at that meeting to fill the vacancy.

(2) The vacancy is to be filled by an election held in accordance with Rule 11.

Elections

11. (1) Elections for the purposes of section 11 of the Act, or to fill a vacancy referred to in Rule 10, are to be conducted in accordance with this Rule.

(2) An election is to 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.

(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 instrument in writing 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 and the consent must be recorded in the minutes of the meeting.

(6) If only 1 nomination is received for an elected position, the nominated candidate is to be declared elected.

(7) Except as provided by subrule (6), a ballot must be held for each elected position.

(8) A ballot held under this Rule is:

(a) to be a secret ballot; and

(b) subject to this Rule, to be conducted in such manner as the meeting thinks fit.

(9) In a ballot held under this Rule:

(a) voting is not to be preferential; and

(b) the candidate with the highest number of votes is to be declared elected.

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

(11) 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.

Attendance record

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

(2) The list is to include the signature of each member present.

Business at Annual Meeting

13. The business of the Annual Meeting is to 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) the election of all office-bearers; and
 - (d) the conduct of any other business placed on the agenda before the commencement of the meeting.

Sub-committees

14. (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 is to 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.

Financial management

15. (1) The Treasurer or the Treasurer's nominee must promptly:

- (a) deposit into the Council's bank account all money received; and
- (b) issue a receipt for all money received.

(2) A payment in excess of \$20 made by the Council is to be paid by cheque signed by any 2 of the members authorised by the Council to be signatories.

(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) The Council may authorise any person, in addition to the persons referred to in subrule (3), to be a signatory of the Council's accounts.

(5) The Treasurer is to pay all bills and accounts of the Council. The Treasurer is to present to a meeting of the Council any bills and accounts that have not been paid before the meeting for approval and details of any bills and accounts that have been paid,

and not previously approved, for ratification of the payments. Details of all approvals and ratifications of the Council are to be entered in the minutes of the meeting at which the approvals and ratifications are made.

(6) The Treasurer is to cause proper records to be kept of all receipts, payments and other financial transactions in accordance with the Uniform Accounting System.

(7) The Treasurer is to cause to be prepared financial budgets and statements and is to submit a report on the finances to each Council meeting.

(8) The Treasurer is to submit the Council's annual budget, after it has been passed by a Council meeting, to the New South Wales Aboriginal Land Council no later than 6 weeks before 1 October each year.

(9) The Treasurer is to present audited accounts of the Council to each Annual Meeting.

(10) The financial year of the Council ends on 30 September in every year.

(11) The Treasurer is to examine the annual financial statement and auditor's report in relation to each Local Aboriginal Land Council within the Council's area to ascertain whether each of those bodies has fully satisfied its financial accounting responsibilities in accordance with the Act, the Aboriginal Land Rights Regulation 1983 and these Rules,

(12) The Treasurer's comments arising from the examination of the documents referred to in subrule (11) are to be made to the Council and, in relation to the documents of each Local Aboriginal Land Council, to that Local Aboriginal Land Council.

Access to books

16. (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 is to make available the Council records for inspection by any member at such time as the Council directs.

(3) A member must not remove the original copies of my 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 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.

Common Seal

17. (1) The Council may provide for a Common Seal.

(2) The Secretary 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-bearer (other than the Secretary) and is to be countersigned by the Secretary or by some person appointed by the Council for the purpose.

[NOTE: Section 63 of the Act provides for authentication of certain documents without the seal.]

- (z) by renumbering Schedule 2 as Schedule 3;
- (aa) by omitting the words “Sub-Rule” wherever occurring and by inserting instead the word “subrule”;
- (ab) by omitting Rule 5 (b) from Schedule 3 (as renumbered) and by inserting instead the following paragraph:
 - (b) to acquire land in any way authorised under the Act;
- (ac) by omitting from Rule 5 (e) in Schedule 3 (as renumbered) the words “the Regional Aboriginal Land Council and”;
- (ad) by omitting Rule 7 from Schedule 3 (as renumbered);
- (ae) by inserting in Rule 10 in Schedule 3 (as renumbered) after the word “membership” the words “by an adult Aboriginal person who has an association with the Local Aboriginal Land Council (but who does not reside within the area)”;
- (af) by inserting at the end of Rule 10 in Schedule 3 (as renumbered) the words “, except if the application is made in response to a notice of election given under clause 21 of the Aboriginal Land Rights Regulation 1983”;
- (ag) by omitting from Rule 12 (2) in Schedule 3 (as renumbered) the matter “1 July and 30 September” and by inserting instead the matter “1 October and 31 December”;
- (ah) by inserting in Rule 24 (1) (c) in Schedule 3 (as renumbered) after the word “to” the words “section 57B (1) of the Act or”;

- (ai) by inserting after Rule 24 (5) in Schedule 3 (as renumbered) the following subrules:
- (6) Subrule (5) does not apply where an administrator has been appointed under section 57B (1) of the Act.
- (7) An election for the purposes of section 57B (1) of the Act is to be conducted in accordance with clause 76 of the Aboriginal Land Rights Regulation 1983.
- (aj) by omitting from Rules 28 (9) and 32 (5) (d), (e) and (h) in Schedule 3 (as renumbered) the word “Regional” wherever occurring and by inserting instead the words “New South Wales”;
- (ak) by omitting from Rule 28 (9) in Schedule 3 (as renumbered) the matter “1 May” and by inserting instead the matter “20 August”;
- (al) by omitting from Rule 28 (11) in Schedule 3 (as renumbered) the matter “30 June” and by inserting instead the matter “30 September”;
- (am) by omitting from Rule 32 (5) in Schedule 3 (as renumbered) the matter “30 June” wherever occurring and by inserting instead the matter “30 September”;
- (an) by omitting from Rule 32 (5) (e) in Schedule 3 (as renumbered) the matter “1 May” and by inserting instead the matter “20 August”;
- (ao) by omitting from Rule 32 (5) (f) in Schedule 3 (as renumbered) the words “are awaiting authorisation by the Council meeting for payment and details of any recurrent payments which have been authorised for payment at a Council meeting” and by inserting instead the words “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”.

EXPLANATORY NOTE

The object of this Regulation is to amend the Aboriginal Land Rights Regulation 1983 so as to provide the regulations and rules necessary to permit the commencement of the uncommenced provisions of the Aboriginal Land Rights (Amendment) Act 1990.

The principal matters for which the Regulation makes provision are:

- (a) amalgamation of Local Aboriginal Land Council areas; and
- (b) election of councillors to the New South Wales Aboriginal Land Council; and
- (c) removal of councillors from office; and

- (d) financial matters relating to, and investigators and administrators of, Aboriginal Land Councils; and
 - (e) model rules of Aboriginal Land Councils that deal with such matters as the calling and conduct of meetings and the functions of executive officers.
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