



New South Wales

# Aboriginal Land Rights Regulation 1996

under the

Aboriginal Land Rights Act 1983

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

ANDREW REFSHAUGE, M.P.,

Minister for Aboriginal Affairs

## Explanatory note

The object of this Regulation is to repeal and remake, without any major changes of substance, the provisions of the *Aboriginal Land Rights Regulation 1983*. The new Regulation deals with the following matters:

- (a) formal and machinery matters (Part 1),
- (b) provisions with respect to Local Aboriginal Land Councils (Part 2), including:
  - (i) the constitution of Councils (Division 1),
  - (ii) the alteration of boundaries and names of areas (Division 2),
  - (iii) membership of Councils and other matters (Division 3),
- (c) provisions with respect to the Regional Aboriginal Land Councils (Part 3),
- (d) provisions with respect to the New South Wales Aboriginal Land Council (Part 4), including:
  - (i) the calling of elections for councillors (Division 1),
  - (ii) ballot-papers (Division 2),

## 1996 No 396

Aboriginal Land Rights Regulation 1996

Explanatory note

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- (iii) postal voting (Division 3),
- (iv) voting at polling places (Division 4),
- (v) the scrutiny of votes (Division 5),
- (vi) miscellaneous electoral provisions (Division 6),
- (vii) other miscellaneous matters (Division 7),
- (e) financial matters, investigators and administrators (Part 5).

This Regulation is made under the *Aboriginal Land Rights Act 1983*, including section 68 (the general regulation making power) and various other sections of the Act.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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## Contents

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	Page
<b>Part 1 Preliminary</b>	
1 Name of Regulation	8
2 Commencement	8
3 Definitions	8
4 Notes	8
5 Repeal	8
<b>Part 2 Local Aboriginal Land Councils</b>	
<b>Division 1 Manner of constitution</b>	
6 Application for constitution of an area as a Local Aboriginal Land Council area	9
7 Notification of application for constitution of an area as a Local Aboriginal Land Council area	9
8 Objections to proposal to constitute an area as a Local Aboriginal Land Council area	10
9 Consideration of objections by Regional Aboriginal Land Council	10
10 Registrar's recommendation	11
11 Court's recommendation	11
12 Court may review recommendation of the Registrar	12
13 Limitations on areas that may be constituted as Local Aboriginal Land Council areas	12
14 Determination of applications for constitution of an area as a Local Aboriginal Land Council area	13
<b>Division 2 Alterations of boundaries or names and amalgamations</b>	
15 Alteration of boundaries of Local Aboriginal Land Council area	13
16 Change of name of Local Aboriginal Land Council area	14
17 Amalgamation of Local Aboriginal Land Council areas	15
18 Transition to amalgamation	15

## 1996 No 396

Aboriginal Land Rights Regulation 1996

Contents

---

	Page
<b>Division 3 Membership and other matters</b>	
19 Local Aboriginal Land Council roll	16
20 Meetings of Local Aboriginal Land Councils	18
21 Removal of Council officers	18
22 Elections to fill vacancies in Council offices	19
23 Form of application for access permit (hunting, fishing or gathering)	20
24 Purchase of land	20
25 Model rules	20

---

<b>Part 3 Regional Aboriginal Land Councils</b>	
26 Election of members of Regional Aboriginal Land Councils	21
27 Alternate members	21
28 Removal from office of member of Regional Aboriginal Land Council	22
29 Fees, allowances and expenses payable to members	23
30 Meetings of Regional Aboriginal Land Councils	23
31 Removal of Council officers	23
32 Elections to fill vacancies in Council offices	24
33 Model rules	25
34 Regional Aboriginal Land Council register	25
35 Alteration of boundaries of Regional Aboriginal Land Council area	26
36 Notification of application for alteration of boundaries of Regional Aboriginal Land Council area	26
37 Objections to proposal to alter boundaries of Regional Aboriginal Land Council area	26
38 Registrar's recommendation	27
39 Determination of application for alteration of boundaries of Regional Aboriginal Land Council area	27
40 Change of name of Regional Aboriginal Land Council area	20

---

	Page
<b>Part 4 New South Wales Aboriginal Land Council</b>	
<b>Division 1 Calling of election of councillors</b>	
41 Notice of election	29
42 Special meeting of Local Aboriginal Land Council to consider applications to be listed on roll	30
43 Certification of roll	30
44 Calling for nominations	32
45 Extension of time	32
46 Officers to assist returning officer	33
47 Eligibility and manner of nominating candidates	33
48 Rejection of nomination	34
49 Return of deposit	34
50 Withdrawal of nomination	35
51 Uncontested election	35
52 Contested election	35
<b>Division 2 Ballot-papers</b>	
53 Order of candidates' names on ballot-papers	36
54 Printing of ballot-papers	36
55 Directions to electors	37
<b>Division 3 Postal voting</b>	
56 Applications to vote by post	37
57 Distribution of postal ballot-papers	38
58 Duplicate postal ballot-papers	39
59 Recording of postal votes	39
60 Preliminary scrutiny of postal ballot-papers and transmission to regional electoral officer	40
<b>Division 4 Voting at polling places</b>	
61 Appointment of polling place	40
62 Arrangements at polling place	41
63 Hours of polling	41
64 Elector to give name and address	41
65 Questions for challenged voters	41
66 Errors not to forfeit vote	42

## 1996 No 396

### Aboriginal Land Rights Regulation 1996

#### Contents

---

	Page	
67	Initialling of ballot-papers and marking of rolls	43
68	Recording of vote	43
69	Spoilt ballot-papers	43
70	Assistance to certain electors	43
71	Voting procedure—disputed votes	44
 <b>Division 5 The scrutiny</b>		
72	Scrutineers	46
73	Scrutiny of votes at close of poll	46
74	Informal ballot-papers	46
75	Transmission of ballot-papers by deputy electoral officers to regional electoral officers	47
76	Counting of votes	47
77	Returning officer to be advised of result	49
 <b>Division 6 Miscellaneous electoral provisions</b>		
78	Signature to electoral paper	49
79	Death of candidate	49
80	Decisions of returning officer	49
81	Notification of result of election	50
82	Retention of electoral papers	50
83	Offences	50
84	Casual vacancy to be filled	51
 <b>Division 7 Miscellaneous</b>		
85	Removal of councillor from office	51
86	Meetings of New South Wales Aboriginal Land Council	52
87	Model rules	52
 <hr/>		
<b>Part 5</b>	<b>Financial matters, investigators and administrators</b>	
88	Investment of money in NSW Aboriginal Land Council Account	53
89	Investment of money in Regional and Local Aboriginal Land Council accounts	54
90	List of auditors	54

Aboriginal Land Rights Regulation 1996

Contents

---

	Page
91 Certification	54
92 Disposition of mining royalties	55
93 Investigators of Aboriginal Land Councils	55
94 Office holders to assist administrator	55
95 Outgoing office holders to hand over books and other property of Council	56
96 Election of office holders following appointment of administrator	56

---

**Schedules**

1 Model rules for Local Aboriginal Land Councils	59
2 Model rules for Regional Aboriginal Land Councils	79
3 Model rules for the New South Wales Aboriginal Land Council	89

## 1996 No 396

Clause 1 Aboriginal Land Rights Regulation 1996

Part 1 Preliminary

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# Aboriginal Land Rights Regulation 1996

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Aboriginal Land Rights Regulation 1996*.

### 2 Commencement

This Regulation commences on 1 September 1996.

### 3 Definitions

(1) In this Regulation:

***Court*** means the Land and Environment Court.

***roll***, in relation to a Local Aboriginal Land Council, means the roll of members of that Council prepared and maintained for the purposes of section 7 of the Act.

***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 which are defined in the Act have the meanings set out in the Act.

### 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

### 5 Repeal

(1) The *Aboriginal Land Rights Regulation 1983* is repealed.

(2) Any act, matter or thing that, immediately before that repeal, had effect under the *Aboriginal Land Rights Regulation 1983* continues to have effect under this Regulation.



## **Part 2      Local Aboriginal Land Councils**

### **Division 1   Manner of constitution**

#### **6   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 Aborigines each of whom resides within the area or has an association with the area.
- (2) An application:
  - (a) must be made in writing, and
  - (b) must be lodged with the Registrar, and
  - (c) must 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) must include a proposed name for the area, and
  - (e) must 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.

#### **7   Notification of application for constitution of an area as a Local Aboriginal Land Council area**

- (1) On receipt of an application the Registrar must cause notice of it to be:
  - (a) published in the Gazette, and
  - (b) sent to:
    - (i) the Regional Aboriginal Land Council for the area in which the Local Aboriginal Land Council area would be situated if the application were granted, and
    - (ii) the New South Wales Aboriginal Land Council.

## **1996 No 396**

Clause 7            Aboriginal Land Rights Regulation 1996

Part 2              Local Aboriginal Land Councils  
Division 1

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- (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.

### **8 Objections to proposal to constitute an area as a Local Aboriginal Land Council area**

- (1) Ten or more adult Aborigines, each of whom resides in or has an association with the area in respect of which an application is made, may object to the proposal or any part of the proposal contained in the application.
- (2) An objection:
  - (a) must be made in writing, and
  - (b) must be lodged with the Registrar not later than 30 days after publication of notice of the application in the Gazette, and
  - (c) must set out the grounds of the objection, and
  - (d) must 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.

### **9 Consideration of objections by Regional Aboriginal Land Council**

- (1) The Registrar must, immediately on the lodgment of an objection to an application, refer the objection to the Regional Aboriginal Land Council for the area in which the Local Aboriginal Land Council area would be situated if the application were granted.
- (2) If, after such inquiry as it thinks fit, a Regional 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) A Regional Aboriginal Land Council must report to the Registrar in respect of an objection not later than 60 days after the objection has been referred to it.

#### **10 Registrar's recommendation**

- (1) This clause applies if:
- (a) 30 days after publication of notice of an application in the Gazette, no objection has been lodged, or
  - (b) at any time later than 30 days after that publication, all objections lodged have been withdrawn.
- (2) After:
- (a) allowing such period as seems to the Registrar to be reasonable for submissions to be made by a Regional Aboriginal Land Council and the New South Wales Aboriginal Land Council in relation to an application, and
  - (b) considering any such submissions,
- the Registrar must send a recommendation concerning the application to the Minister.
- (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.

#### **11 Court's recommendation**

- (1) If an objection to an application has not been withdrawn within 90 days after the lodging of the application, the Registrar must refer the application and the objection to the Court.

## 1996 No 396

Clause 11            Aboriginal Land Rights Regulation 1996

Part 2                Local Aboriginal Land Councils  
Division 1

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- (2) The following have the right to be heard on the hearing by the Court of an application and objection:
  - (a) the applicants,
  - (b) the objectors,
  - (c) by its representative, the Regional Aboriginal Land Council for the area in which the Local Aboriginal Land Council area would be situated if the application were granted,
  - (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 to the application.

### **12 Court may review recommendation of the Registrar**

- (1) Applicants may appeal to the Court within 14 days after notice of a recommendation to the Minister by the Registrar in respect of an application has been given under clause 10 (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 which the Registrar might have recommended in respect of the application.

### **13 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:
  - (a) if it is wholly or partly within another area already so constituted, or
  - (b) if it is partly within one area constituted as a Regional Aboriginal Land Council area and partly within another area so constituted.
- (2) Subclause (1) (a) does not apply to an amalgamation of areas.

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**14 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****15 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:
  - (a) must be made in writing, and
  - (b) must 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

## 1996 No 396

Clause 15            Aboriginal Land Rights Regulation 1996

Part 2                Local Aboriginal Land Councils  
Division 2

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- (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.

### 16 Change of name of Local Aboriginal hand 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:
  - (a) the Regional Aboriginal Land Council for the area in which the Local Aboriginal Land Council area is situated, and
  - (b) the New South Wales Aboriginal Land Council.
- (4) 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 Regional Aboriginal Land Council and the New South Wales Aboriginal Land Council, and
  - (b) considering any such submissions and any other matter the Registrar thinks fit,the Registrar must make a recommendation to the Minister concerning the application.
- (5) The Minister:
  - (a) on the recommendation of the Registrar, and by order published in the Gazette, may alter the name of a Local Aboriginal Land Council area in accordance with the application, or
  - (b) may, 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.

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**17 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 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 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 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.

**18 Transition to amalgamation**

- (1) In this clause:

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

## 1996 No 396

Clause 18            Aboriginal Land Rights Regulation 1996

Part 2                Local Aboriginal Land Councils  
Division 2

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*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.

### Division 3 Membership and other matters

#### 19 Local Aboriginal Land Council roll

- (1) The Secretary of a Local Aboriginal Land Council must remove from the roll of the Council the name of a person who:
  - (a) the Council is satisfied has died or no longer meets any of the criteria of membership of the Council, or
  - (b) if the rules of the Council provide for suspension of members from attending Council meetings — is suspended in accordance with those rules.



- (2) If the Secretary of a Local Aboriginal Land Council fails or refuses to list a person's name and address on the roll of the Council or removes a person's name from that roll, the person may lodge a written objection with the Registrar.
- (3) On receipt of an objection concerning the roll of a Council, the Registrar:
  - (a) if the area to which the roll relates is not the only Local Aboriginal Land Council area within the Regional area, must refer the objection to the Regional Aboriginal Land Council for determination, or
  - (b) in any other case, must refer the objection to the Court for determination.
- (4) If, after such inquiry as it may think fit to undertake, a Regional Aboriginal Land Council is of the opinion that any dispute between a person lodging an objection and a Local Aboriginal Land Council may be resolved by conciliation, it is the function of the Regional Aboriginal Land Council to endeavour to resolve the dispute.
- (5) A Regional Aboriginal Land Council may at any time refer any objection referred to it to the Court for determination.
- (6) If a Regional Aboriginal Land Council fails to refer an objection to the Court within 90 days after the objection was referred to it (and the objection has not been withdrawn), the objector or the Registrar may refer it to the Court for determination.
- (7) The objector and the Secretary of the Local Aboriginal Land Council concerned have a right to be heard on the hearing of an objection.
- (8) 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.
- (9) The determination by the Court of an objection is final.
- (10) A person's name may not be placed on the roll of a Council during the period commencing on the date of certification of the roll for the purposes of an election and ending on the date of the election.

## **1996 No 396**

Clause 20      Aboriginal Land Rights Regulation 1996

Part 2            Local Aboriginal Land Councils  
Division 3

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### **20 Meetings of Local Aboriginal Land Councils**

- (1) A Local Aboriginal Land Council must hold an annual meeting at some time between 1 October and 31 December 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, the conduct of those meetings and the determining of a quorum at those meetings is to be as set out in the rules.

### **21 Removal of Council officers**

- (1) The Chairperson, Secretary or Treasurer of a Local Aboriginal Land Council may be removed from office in accordance with this clause.
- (2) The removal from office may only be effected at a meeting of the Council of which notice (including notice of the motion that the Chairperson, Secretary or Treasurer be removed from office) was given in accordance with the rules.
- (3) The removal from office may only be effected OR a motion supported by at least 80 per cent of the members who are present at the meeting.
- (4) Voting on the motion is to be by secret ballot.
- (5) The motion for removal must not be put to the meeting unless the Chairperson, Secretary or Treasurer, as the case may be, has been given a reasonable opportunity to reply to the motion at the meeting (whether he or she is present at the meeting or not).
- (6) Any such reply may be made either orally or in writing.
- (7) A person to whom the motion refers who does not attend the meeting is taken to have been given a reasonable opportunity to reply to the motion if the notice required by the rules for the meeting has been given.
- (8) Without affecting the generality of the power under this clause to remove a person from office, that power may be exercised for the purpose of removing from office a Chairperson, Secretary or Treasurer who has been convicted of any offence concerning the property or affairs of an Aboriginal Land Council.

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**22 Elections to fill vacancies in Council offices**

- (1) For the purposes of section 9 (6) 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.
- (7) Except as provided by subclause (6), a ballot must be held for each elected position.
- (8) A ballot held under this clause:
  - (a) must be a secret ballot, and
  - (b) must, subject to this clause, be conducted in such a manner as the meeting thinks fit.
- (9) In a ballot under this clause:
  - (a) voting is not to be preferential, and
  - (b) the candidate with the highest number of votes must be declared elected.

## **1996 No 396**

Clause 22      Aboriginal Land Rights Regulation 1996

Part 2            Local Aboriginal Land Councils  
Division 3

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- (10) 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.
- (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.

### **23 Form of application for access permit (hunting, fishing or gathering)**

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.

### **24 Purchase of land**

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.

### **25 Model rules**

The rules set out in Schedule 1 are prescribed, for the purposes of section 13 (6) of the Act, as model rules for each Local Aboriginal Land Council.

## **Part 3      Regional Aboriginal Land Councils**

### **26   Election of members of Regional Aboriginal Land Councils**

- (1) For the purposes of section 11(1) of the Act, the prescribed times for electing members of a Regional Aboriginal Land Council are:
  - (a) when the first meeting of the Local Aboriginal Land Council is held, and
  - (b) in January each year, and
  - (c) for an election to fill any vacancy, when any meeting of the Local Aboriginal Land Council of which notice (including notice of the proposed election) has been given in accordance with the rules.
- (2) For the purposes of section 11 (2) of the Act, the prescribed number is 2.

### **27   Alternate members**

- (1) When electing members to a Regional Aboriginal Land Council, the members of a Local Aboriginal Land Council must also elect a first and a second alternate.
- (2) An alternate may, with the written authority of the member or the Chairperson of the Local Aboriginal Land Council, act in the place of a member during the illness or absence of the member.
- (3) Authority is to be given to the first alternate except if he or she is unable to act (in which case authority is to be given to the second alternate) or during the illness or absence of both members (in which case authority is to be given to both alternates).
- (4) An alternate who is acting in the place of a member must table his or her authority to act at any meeting of a Regional Aboriginal Land Council attended by him or her.
- (5) An alternate, while acting as a member, may exercise all the functions of the member and is taken to be the member.
- (6) For the purposes of subclause (2), a vacancy in the office of a member is taken to be an absence from office of the member.

## **1996 No 396**

Clause 27          Aboriginal Land Rights Regulation 1996

Part 3              Regional Aboriginal Land Councils

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- (7) In the event of a vacancy occurring in the office of a member, the alternate acting in the place of the member may continue to so act until a person is elected to fill the vacancy.
- (8) Nothing prevents an alternate's being elected at an election to fill a vacancy in the office of the member but, in any such case, a further alternate must be elected.

### **28 Removal from office of member of Regional Aboriginal Land Council**

- (1) A member of the Regional Aboriginal Land Council representing a Local Aboriginal Land Council or an alternate may be removed from office in accordance with this clause.
- (2) The removal from office may only be effected at a meeting of the Local Aboriginal Land Council of which notice (including notice of the motion that the member or alternate be removed from office) was given in accordance with the rules.
- (3) The removal from office may only be effected on a motion supported by at least 80 per cent of the members who are present at the meeting.
- (4) Voting on the motion is to be by secret ballot.
- (5) The motion for removal must not be put to the meeting unless the member of the Regional Aboriginal Land Council or the alternate has been given a reasonable opportunity to reply to the motion at the meeting (whether he or she is present at the meeting or not).
- (6) Any such reply may be made either orally or in writing.
- (7) A person to whom the motion refers who does not attend the meeting is taken to have been given a reasonable opportunity to reply to the motion if the notice required by the rules' for the meeting has been given.
- (8) Without affecting the generality of the power under this clause to remove a person from office, that power may be exercised for the purpose of removing from office a member or alternate who has been convicted of any offence concerning the property or affairs of an Aboriginal Land Council.

**29 Fees, allowances and expenses payable to members**

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.

**30 Meetings of Regional Aboriginal Land Councils**

- (1) A Regional Aboriginal Land Council must hold an annual meeting at some time between 1 January and 28 February in each year.
- (2) However, a Regional 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 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.

**31 Removal of Council officers**

- (1) The Chairperson, Secretary or Treasurer of a Regional Aboriginal Land Council may be removed from office in accordance with this clause.
- (2) The removal from office may only be effected at a meeting of the Council of which notice (including notice of the motion that the Chairperson, Secretary or Treasurer be removed from office) was given in accordance with the rules.
- (3) The removal from office may only be effected on a motion supported by at least 80 per cent of the members who are present at the meeting.
- (4) Voting on the motion is to be by secret ballot.
- (5) The motion for removal must not be put to the meeting unless the Chairperson, Secretary or Treasurer, as the case may be, has been given a reasonable opportunity to reply to the motion at the meeting (whether he or she is present at the meeting or not).

## **1996 No 396**

Clause 31            Aboriginal Land Rights Regulation 1996

Part 3                Regional Aboriginal Land Councils

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- (6) Any such reply may be made either orally or in writing.
- (7) A person to whom the motion refers who does not attend the meeting is taken to have been given a reasonable opportunity to reply to the motion if the notice required by the rules for the meeting has been given.
- (8) Without affecting the generality of the power under this clause to remove a person from office, that power may be exercised for the purpose of removing from office a Chairperson, Secretary or Treasurer who has been convicted of any offence concerning the property or affairs of an Aboriginal Land Council.

### **32 Elections to fill vacancies in Council offices**

- (1) For the purposes of section 17 (6) of the Act, an election to fill a vacancy in the office of a Chairperson, Secretary or Treasurer of a Regional 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** 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 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.



- (7) Except as provided by subclause (6), a ballot must be held for each elected position.
- (8) A ballot held under this clause:
  - (a) must be a secret ballot, and
  - (b) must, subject to this clause, be conducted in such manner as the meeting thinks fit.
- (9) 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.
- (10) 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.
- (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.

### **33 Model rules**

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

### **34 Regional Aboriginal Land Council register**

For the purposes of section 20 (a) of the Act, the prescribed particulars to be contained in the register kept for the purposes of that paragraph are as follows:

- (a) particulars of the boundaries of any Local Aboriginal Land Council area within the area of the Regional Aboriginal Land Council,
- (b) a copy of the roll for the Local Aboriginal Land Council for each such area,
- (c) the address of any office of any such Local Aboriginal Land Council,
- (d) the hours of business of any such office,
- (e) particulars of all land held by any such Local Aboriginal Land Council,

## 1996 No 396

Clause 34 Aboriginal Land Rights Regulation 1996

Part 3 Regional Aboriginal Land Councils

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- (f) particulars of all land held by the Regional Aboriginal Land Council.

### **35 Alteration of boundaries of Regional Aboriginal Land Council area**

- (1) A Regional Aboriginal Land Council may apply to the Registrar for the alteration of the boundaries of its area.
- (2) An application:
  - (a) must be made in writing, and
  - (b) must 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.

### **36 Notification of application for alteration of boundaries of Regional Aboriginal Land Council area**

- (1) On receipt of an application for the alteration of the boundaries of a Regional Aboriginal Land Council area, the Registrar must cause notice of the application to be:
  - (a) published in the Gazette, and
  - (b) sent to the New South Wales Aboriginal Land Council and any affected Regional 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.

### **37 Objections to proposal to alter boundaries of Regional Aboriginal Land Council area**

- (1) Ten or more adult Aborigines each of whom resides in or has an association with a Local Aboriginal Land Council area:
  - (a) situated in the Regional Aboriginal Land Council area the subject of an application for the alteration of its boundaries, or
  - (b) which would be so situated if such an application were granted,may object to the proposal or any part of the proposal contained in the application.

- (2) An objection:
  - (a) must be made in writing, and
  - (b) must be lodged with the Registrar not later than 30 days after publication of notice of the application in the Gazette, and
  - (c) must set out the grounds of the objection, and
  - (d) must specify an address for service of notices on the objectors.
- (3) An objection may be withdrawn at any time.

**38 Registrar's recommendation**

- (1) 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 and any affected Regional Aboriginal Land Council in relation to the matter, and
  - (b) considering the application, any objections, any such submissions and any other matter the Registrar thinks fit, the Registrar must make a recommendation to the Minister concerning the application.
- (2) The Registrar may recommend:
  - (a) that the boundaries of a Regional Aboriginal Land Council area be altered in accordance with the application, or
  - (b) with the consent of the applicant, that part only of the alteration proposed in the application be so made, or
  - (c) that the application not be granted.
- (3) A recommendation under subclause (2) (b) must specify the area consented to by the applicant.
- (4) The Registrar must serve notice on the applicant of particulars of a recommendation.

**39 Determination of application for alteration of boundaries of Regional Aboriginal Land Council area**

- (1) The Minister, after considering any recommendation made by the Registrar, may, by notice published in the Gazette, make such alteration to the boundaries of a Regional Aboriginal Land Council area as is specified in the notice.

**1996 No 396**

Clause 39      Aboriginal Land Rights Regulation 1996

Part 3          Regional Aboriginal Land Councils

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- (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 determination of an application for alteration of boundaries on the applicant.

**40 Change of name of Regional Aboriginal Land Council area**

- (1) A Regional 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) After:
  - (a) allowing such period as seems to the Registrar to be reasonable for a submission to be made in relation to the matter by the New South Wales Aboriginal Land Council, and
  - (b) considering any such submission and any other matter the Registrar thinks fit,the Registrar must make a recommendation to the Minister concerning the application.
- (5) The Minister:
  - (a) on the recommendation of the Registrar, and by order published in the Gazette, may alter the name of a Regional Aboriginal Land Council area in accordance with its application, or
  - (b) may, 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.

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## **Part 4      New South Wales Aboriginal Land Council**

### **Division 1   Calling of election of councillors**

#### **41   Notice of election**

- (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 being notified of the 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. The notice is to be published in at least one 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 is entitled to vote at the election if the person is a member of a Local Aboriginal Land Council within the area,
  - (c) that a person is not, however, entitled to vote more than once if the person is a member of more than one Local Aboriginal Land Council, and that such a person is only entitled to cast his or her vote in respect of the Local Aboriginal Land Council area in which the person ordinarily resides,
  - (d) that a person (if eligible) may be listed on the roll of 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,
  - (e) the places at which information is available concerning the procedure for being listed on such a roll,

## **1996 No 396**

Clause 41            Aboriginal Land Rights Regulation 1996

Part 4                New South Wales Aboriginal Land Council  
Division 1

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- (f) 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.

### **42 Special meeting of Local Aboriginal Land Council to consider applications to be listed on roll**

- (1) After notice of an election is given under clause 41, each Local Aboriginal Land Council must hold a meeting to consider any applications under section 7 (2) (b) of the Act by adult Aborigines who have an association with the Local Aboriginal Land Council area (but who do not reside within the area) to be listed in the roll for the area.
- (2) A Council must hold the meeting within 7 days after the closing date specified in the notice of the election.
- (3) A Council is not required to hold a meeting if there are no applications to be considered.

### **43 Certification of roll**

- (1) The Secretary of each Local Aboriginal Land Council must, not later than:
  - (a) 7 days after a meeting is held in accordance with this Division, or
  - (b) 7 days after the closing date specified in the relevant notice of election (if no such meeting is required to be held),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 to that Council.
- (2) Within 7 days after the certified copies of the rolls for Local Aboriginal Land Councils have been sent to the New South Wales Aboriginal Land Council:

- (a) the Secretary of that 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 that 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 .....

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 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 roll for the Local Aboriginal Land Council.

## **1996 No 396**

Clause 43      Aboriginal Land Rights Regulation 1996

Part 4            New South Wales Aboriginal Land Council  
Division 1

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- (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 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 New South Wales Aboriginal Land Council with the certified copy.

### **44 Calling for nominations**

- (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 one 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.

### **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 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 Regional Aboriginal Land Council area 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 Eligibility and manner of nominating candidates**

- (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 one 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 the nominations is void.

## **1996 No 396**

Clause 47            Aboriginal Land Rights Regulation 1996

Part 4                New South Wales Aboriginal Land Council  
Division 1

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- (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 one 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.

### **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 under section 27 of the Act, or
  - (b) the person is not nominated in accordance with clause 47 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.

### **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:

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- (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.

## 1996 No 396

Clause 52            Aboriginal Land Rights Regulation 1996

Part 4                New South Wales Aboriginal Land Council  
Division 1

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- (2) If a ballot is to be held, the returning officer is to publish in at least one 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

#### 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 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 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**

### **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 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:

## 1996 NO 396

Clause 56          Aboriginal Land Rights Regulation 1996

Part 4              New South Wales Aboriginal Land Council  
Division 3

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- (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.

### 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 spoiled 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 spoiled 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.

## **1996 No 396**

Clause 60      Aboriginal Land Rights Regulation 1996

Part 4            New South Wales Aboriginal Land Council  
Division 3

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### **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:

## 1996 No 396

Clause 65            Aboriginal Land Rights Regulation 1996

Part 4                New South Wales Aboriginal Land Council  
Division 4

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- (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 Aboriginal Land Council*) within the (*here state name of relevant Regional Aboriginal Land Council*) area?
  - (e) Are you presently a member of more than one Local Aboriginal Land Council?
  - (f) Do you ordinarily reside in the (*here state name of relevant Local Aboriginal Land Council*) area?
  - (g) Are you currently suspended as a member of the (*here state name of relevant Local Aboriginal Land Council*) under its rules?
  - (h) Are you aware that such a suspension will disqualify you from voting in this election?
  - (i) Will you be voting, or have you voted, in any other Local Aboriginal Land Council area in this election?
  - (j) 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

- (I) 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.

#### **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

## 1996 No 396

Clause 70            Aboriginal Land Rights Regulation 1996

Part 4                New South Wales Aboriginal Land Council  
Division 4

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(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.

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- (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 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

### 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 other 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 total number of first preference votes given for each candidate and must include in the count all postal votes received from the returning officer.

**1996 No 396**

Clause 76            Aboriginal Land Rights Regulation 1996

Part 4                New South Wales Aboriginal Land Council  
Division 5

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- (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 one 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 one 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.

#### **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.

## **1996 No 396**

Clause 81            Aboriginal Land Rights Regulation 1996

Part 4                New South Wales Aboriginal Land Council  
Division 6

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### **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 Executive 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.

### **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**

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 an election, 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, otherwise than as authorised under clause 70, while any person is in the compartment recording his or her vote, is guilty of an offence.

Maximum penalty: 5 penalty units.

#### **84 Casual vacancy to be filled**

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

#### **85 Removal of councillor from office**

- (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 per cent 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

## **1996 No 396**

Clause 85            Aboriginal Land Rights Regulation 1996

Part 4                New South Wales Aboriginal Land Council  
Division 7

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- (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 of the New South Wales Aboriginal Land Council 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).

### **86 Meetings of New South Wales Aboriginal Land Council**

- (1) The Chairperson of the New South Wales Aboriginal Land Council must convene at least one 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.

### **87 Model rules**

The rules set out in Schedule 3 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**

### **88 Investment of money in NSW Aboriginal Land Council Account**

- (1) Money to the credit of the New South Wales Aboriginal Land Council Account may be invested in any manner for the time being authorised by law for the investment of trust funds.
- (2) The whole of the proceeds of any investment (including the interest earned on any investment) made by the New South Wales Aboriginal Land Council, whether the investment was made before or after the commencement of this Regulation, must be invested in accordance with this clause, and must not be disbursed, except as provided by 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 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 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 NSW Aboriginal Land Council Account.

## **1996 No 396**

Clause 89            Aboriginal Land Rights Regulation 1996

Part 5                Financial matters, investigators and administrators

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### **89 Investment of money in Regional and Local Aboriginal Land Council accounts**

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, building society or credit union.

### **90 List of auditors**

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.

### **91 Certification**

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 out any qualifications subject to which the certificate is given.

## 92 Disposition of mining royalties

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

## 93 Investigators of Aboriginal Land Councils

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.

## 94 Office holders to assist administrator

- (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: 5 penalty units.

- (2) A requirement to provide access to a record that:
  - (a) is not in writing, or

## 1996 No 396

Clause 94            Aboriginal Land Rights Regulation 1996

Part 5                Financial matters, investigators and administrators

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(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: 5 penalty units.

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

Maximum penalty: 5 penalty units.

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

- (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 immediately 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 must comply with the requirements of subclause (1).

### **96 Election of office holders following appointment of administrator**

- (I) 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) If only one 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
  - (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.

**1996 No 396**

Clause 96      Aboriginal Land Rights Regulation 1996

Part 5          Financial matters, investigators and administrators

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- (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.

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## Schedule 1 Model rules for Local Aboriginal Land Councils

(Clause 25)

### 1 Application of Rules

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

### 2 Definitions

In these Rules:

*Aboriginal* means a person who:

- (a) is a member of the Aboriginal race of Australia,
- (b) identifies as an Aboriginal, and
- (c) is accepted by the Aboriginal community as an Aboriginal.

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

*adult Aboriginal* means an Aboriginal who is 18 years of age or older.

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

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

*meeting* means any or all of the following:

- (a) an ordinary meeting,
- (b) an annual meeting,
- (c) an extraordinary meeting,

where:

- (d) an ordinary meeting is one scheduled by a previous meeting or called by the Secretary of the Council in the ordinary course of business,

- (e) an annual meeting is the one held once a year where elections of all officers take place,
- (f) an extraordinary meeting is one 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.

*quorum*, in relation to a meeting of a Council, means:

- (a) one-third of the total number of members of the Council plus one (if one-third of the members contains a fraction, leave out the fraction and then add one), or
- (b) ten,

whichever number is the smaller.

**Note.** 10 will be the quorum for any Council with a total membership of 27 or more. The quorum for a Council with less than 27 members will be calculated according to paragraph (a).

**Registrar** means the person appointed as Registrar by the Minister under the Act.

### 3 Type of Council

The Council is 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 and the Regional Aboriginal Land Council 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 and Regional Council.

### 5 Objects

The objects of the Council are as follows:

- (a) to improve, protect and foster the best interests of the Council's members and all Aboriginal people within the Council's area,
- (b) to acquire land in any way authorised under the Act,

- 
- (c) to obtain or construct housing for Aboriginal people within the Council's area and to repair and maintain that housing,
  - (d) to purchase, commence and engage in any business enterprises, including those which promote employment and employment training, as a means of obtaining self-sufficiency for Aboriginal people,
  - (e) to obtain financial assistance, by written submission, from the New South Wales Aboriginal Land Council,
  - (f) to obtain financial assistance from any other source for the provision of facilities for the Council and its projects,
  - (g) in recognition of the fact that land is of spiritual, social and cultural importance to Aboriginal people, to commence, support and carry out proposals designed to protect and preserve the sites and culture of the traditional peoples of the Council's area,
  - (h) to ensure that no part of the income or property of the Council is transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to members of the Council (nothing in this object prevents the payment in good faith of remuneration to any officer or servant of the Council),
  - (i) to do all things permitted by the *Aboriginal Land Rights Act 1983* and to work with and encourage all Aboriginal organisations and people generally to obtain land rights for Aboriginal people.

## 6 Powers

The Council:

- (a) may take proceedings and be proceeded against in its corporate name, and
- (b) may, for the purpose of enabling it to exercise its functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property so far as is permitted by the Act, and

## 1996 No 396

### Aboriginal Land Rights Regulation 1996

#### Schedule 1 Model rules for Local Aboriginal Land Councils

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- (c) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its functions.

### 7 Membership

Membership of the Council comprises all those adult Aborigines who:

- (a) reside within the Council's area and have requested in writing that they be enrolled as members of the Council, or
- (b) have an association with the area and who, on application made in writing, have been accepted by a meeting of the Council as members.

### 8 Council Roll

- (1) The Secretary must prepare and maintain a Council Roll on which must be listed the names and addresses of adult Aborigines who are members of the Council.
- (2) The Secretary must remove from the Council Roll the name of a person if, and only if
  - (a) the person dies, or
  - (b) the person resigns in writing, or
  - (c) the person no longer lives in the Council area and the Council at a meeting decides that the person does not have sufficient association with the area to continue as a member, or
  - (d) the person is suspended by the Council from attending Council meetings.
- (3) The Secretary must send a copy of the Council Roll to the Regional Aboriginal Land Council and must advise the Regional Council in writing of any changes to the Roll.

**Note.** Clause 19 of the *Aboriginal Land Rights Regulation 1996* contains provisions for objections concerning a Council Roll. Following is a summary of those provisions:

- 
- (1) If the Secretary fails or refuses to list a person's name and address on the Roll or removes a person's name from the Roll, the person may lodge a written objection with the Registrar.
  - (2) On receipt of an objection, the Registrar is required:
    - (a) if there are more than 2 Local Councils within the Regional area, to refer the objection to the Regional Council for determination, or
    - (b) in any other case, to refer the objection to the Land and Environment Court for determination.
  - (3) If, after such inquiry as it thinks fit, the Regional Council is of the opinion that the dispute between the person lodging the objection and the Local Council may be resolved by conciliation, the Regional Council is required to endeavour to resolve the dispute.
  - (4) The Regional Council may at any time refer any objection to the Land and Environment Court for determination.
  - (5) If, at a time later than 90 days after an objection was referred to it, a Regional Council has failed to refer the objection to the Court and the objection has not been withdrawn, the objector or the Registrar may refer the objection to the Court for determination.
  - (6) On the hearing of an objection by the Court, the objector and the Secretary of the Local Council have a right to be heard.
  - (7) An objection may at any time be withdrawn:
    - (a) by notice to the Registrar, or
    - (b) if the objection has been referred to the Court, in accordance with the rules of the Court.
  - (8) The determination by the Court of an objection is final.

### **9 Acceptances of applications for membership**

- (1) An application for membership by an adult Aboriginal person who has an association with the Local Aboriginal Land Council (but who does not reside within the area) must be delivered to the Secretary or to the official address of the Council.
- (2) A meeting of the Council must not consider such an application within 21 days of its receipt (except if the application is made in response to a notice of election given under clause 41 of the *Aboriginal Land Rights Regulation 1996*).

### **10 Suspension of members**

- (I) A member whose conduct the Council decides is detrimental to the best interests of the Council may be suspended from attending Council meetings for a period of time specified by the Council, but such a period must not be greater than 6 months.

## 1996 No 396

### Aboriginal Land Rights Regulation 1996

#### Schedule 1 Model rules for Local Aboriginal Land Councils

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- (2) The procedure for deciding on the suspension of a member is to be as follows:
  - (a) notice of the proposed suspension must be included in the notice given under Rule 12 notifying 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 two-thirds 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.
- (3) At the end of the period of suspension the member is entitled to attend Council meetings unless a further vote, held in accordance with subrule (2), sets another period of suspension.

#### **11 Meetings**

- (1) The Council must hold an ordinary meeting at least once in every 3 months.
- (2) The Council must hold its annual meeting at some time between 1 October and 31 December in each year.
- (3) Before the end of a meeting the Council must set a time and place for the next meeting of the Council.

#### **12 Calling of ordinary meetings**

- (1) The Secretary must call an ordinary meeting of the Council by notice published in a newspaper, magazine or periodical circulating in its area or by such other means as may appear to the Council to be efficient and practicable and are approved by the Council.
- (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.



**13 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 call a meeting in the same way as a meeting is called under Rule 12 to be held as soon as practicable but in any event within 21 days of the receipt of the request.
- (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:
  - (a) by notice published in a newspaper, magazine or periodical circulating in the Local Council's area, or
  - (b) by such other means as may appear to the New South Wales Aboriginal Land Council to be efficient and practicable and are approved by the Council.
- (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.

**14 Calling of extraordinary meetings by office-bearers**

- (1) Any 2 of the Chairperson, Secretary and Treasurer may call an extraordinary meeting.
- (2) The 2 office-bearers are to call the meeting by notice published in a newspaper, magazine or periodical circulating in its area or by such other means as may appear to the Council to be efficient and practicable and are approved by the Council.
- (3) A notice under subrule (2) 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.

## **1996 No 396**

### Aboriginal Land Rights Regulation 1996

#### Schedule 1 Model rules for Local Aboriginal Land Councils

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#### **15 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.

#### **16 Presiding member**

The Chairperson or, in the absence of the Chairperson, another member elected as chairperson for the meeting by the members present is to preside at a meeting of the Council.

#### **17 Voting**

- (1) At a Council meeting 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 except where the vote is in relation to:
  - (a) the suspension of a member, or
  - (b) the removal from office of an elected person.
- (2) Each member present is entitled to one vote at any Council meeting and voting is by show of hands except that:
  - (a) any election at an annual meeting or other meeting is to be by secret ballot, and
  - (b) a meeting may by show of hands require any other vote to be by secret ballot.
- (3) No proxy votes are permitted (that is, voting members must be present at the meeting).
- (4) In the case of an equality of votes on a question at a meeting, the Chairperson of the meeting has a casting vote.
- (5) In any other case, the Chairperson must not vote, except in the case of an election for office, in which case the Chairperson has an ordinary vote only.

#### **18 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 and amendments to motions, the names of the proposer and seconder of each motion and whether each motion was passed or defeated, and
  - (b) details of all bills and accounts approved for payment in accordance with Rule 26 (5).
- (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.

#### **19 Election of office-bearers**

- (1) The office-bearers of the Council are to be the Chairperson, the Secretary and the Treasurer. They are to be elected by the members of the Council at the first meeting of the Council and at each succeeding annual meeting.
- (2) 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 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.

## 1996 No 396

### Aboriginal Land Rights Regulation 1996

#### Schedule 1 Model rules for Local Aboriginal Land Councils

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- (6) Except as provided by Rule 20 (4) (a) (which deals with elections of Regional Representatives) and Rule 20 (4) (b) (which deals with elections of Alternate Representatives), if only one nomination is received for an elected position the nominated candidate must be declared elected.
- (7) Except as provided by subrule (6) (which deals with elections if only one nomination is received) and Rule 20 (4) (a) (which deals with elections of Regional Representatives), a ballot must be held for each elected position.
- (8) A ballot held under this Rule:
  - (a) must be a secret ballot, and
  - (b) must, subject to this Rule, 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) except as provided by Rule 20 (5) and (6) (which deal with elections of Regional Representatives and Alternate Representatives), the candidate with the highest number of votes must be declared elected.
- (10) Subject to Rule 20 (7), 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.
- (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.

#### **20 Election of regional representatives**

- (1) There are to be:
  - (a) 2 representatives of the Council to the relevant Regional Aboriginal Land Council (*the Regional Representatives*), and
  - (b) 2 alternate representatives who are to represent the Council when one or both (as the case may be) of the elected representatives is unable to attend any meeting of the Regional Aboriginal Land Council (*the Alternate Representatives*).

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- (2) The 2 Regional Representatives and the 2 Alternate Representatives are to be elected by the members of the Council at the first meeting of the Council and at each succeeding annual meeting.
  - (3) Subject to the provisions of this Rule, the elections for Regional Representatives and Alternate Representatives must be conducted according to Rule 19.
  - (4) If:
    - (a) only 2 nominations are received for the positions of Regional Representatives, the nominated candidates must be declared elected, or
    - (b) only 2 nominations are received for the positions of Alternate Representatives, there must be an election in which the candidate with the highest number of votes is appointed first alternate, and the other is appointed second alternate.
  - (5) Subject to subrule (7), in the election of Regional Representatives, the candidates having the highest and second highest numbers of votes must be declared elected as the representatives.
  - (6) Subject to subrule (7), at an election of Alternate Representatives, the candidates having the highest and second highest numbers of votes must be declared elected as first alternate and second alternate, respectively.
  - (7) If an election is inconclusive due to 2 or more candidates each obtaining the second highest number of votes:
    - (a) the candidate having the highest number of votes must be declared elected, and
    - (b) a second election must then be held for the remaining position in which the candidates who obtained the second highest number of votes are to be the only contenders.
  - (8) If one of the Regional Representatives is unable to attend a Regional Council meeting, the first alternate is the first entitled to attend in the place of that Regional Representative.
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- (9) An Alternate Representative who attends a meeting of the Regional Aboriginal Land Council must, at the commencement of the meeting, table an authorisation in writing signed by the Regional Representative whom he or she replaces or by the Chairperson of the Local Council.

## **21 Removal of office-bearers and regional representatives**

- (1) The Council may remove from office (and so create a vacancy in the office of) the Chairperson, Secretary, Treasurer, Regional Representatives or Alternate Representatives of the Council for any reason (one such reason is if that person has been convicted of an offence relating to the property or affairs of the Council).
- (2) The removal from office may only be effected at a Council meeting of which notice (including notice of the motion that the Chairperson, Secretary, Treasurer, Regional Representatives or Alternate Representatives be removed from office) was given in accordance with these Rules.
- (3) The removal from office may only be effected if the motion is supported by at least 80 per cent of the members who are present at the meeting.
- (4) Voting on the motion is to be by secret ballot.
- (5) The motion for removal must not be put to the vote of the meeting unless the Chairperson, Secretary, Treasurer, Regional Representative or Alternate Representative has been given a reasonable opportunity to reply to the motion at the meeting either orally or in writing.
- (6) If the person to whom the motion refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if the notice required under this Rule for the meeting has been given.

## **22 Vacancy in elected position**

- (1) A vacancy in any position for which an election must be held occurs when the elected person:
- (a) dies, or
  - (b) gives a written resignation to a Council meeting which accepts the resignation, or

- (c) is removed from office according to section 57B (1) of the Act or Rule 21.
- (2) If such a vacancy occurs, the notice given under these Rules for the next Council meeting must include notice of an election to fill the vacancy.
- (3) The vacancy must be filled by an election held in accordance with Rule 19 or Rule 20, as the case requires.
- (4) If a vacancy occurs because of resignation or removal from office, the election to fill that vacancy must not be held at the same meeting at which the vacancy occurs.
- (5) If the Chairperson of the New South Wales Aboriginal Land Council has reasonable grounds to conclude that there is no office-bearer authorised to call a meeting, and has so concluded, the Chairperson, or the Chairperson's delegate, must call a meeting for the purpose of holding an election to fill the vacancy.
- (6) Subrule (5) does not apply if 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 96 of the Aboriginal Land Rights Regulation 1996.

### **23 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) the election of all office-bearers, Regional Representatives and Alternate Representatives, and
- (d) the conduct of any other business placed on the agenda before the commencement of the meeting.

#### **24 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.

#### **25 Sub-committees**

- (1) A Council may appoint subcommittees for the purpose 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.

#### **26 Financial management**

- (1) The Treasurer must promptly:
  - (a) deposit into the Council's account with a bank, building society or credit union all money received, and
  - (b) issue a receipt for all money received.
- (2) A payment in excess of \$20 made by the Council must 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) 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 bank, building society or credit union authority 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 all bills and accounts to be approved for payment and full details of all approvals must be entered in the minutes of the meeting.



- (6) A bill or account must not be paid by or on behalf of the Council unless approved for payment in accordance with subrule (5).
- (7) The Treasurer must cause proper records to be kept of all receipts, payments and other financial transactions (in a manner approved by the New South Wales Aboriginal Land Council).
- (8) The Treasurer must cause to be prepared financial budgets and statements and must submit a report on the finances to each Council meeting.
- (9) The Treasurer must 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 20 August of each year.
- (10) The Treasurer must present audited accounts of the Council to each annual meeting.
- (11) The financial year of the Council ends on 30 September in each year.

## **27 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 office-bearer whose term of office has expired must 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.

## 28 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 office-bearer (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 office-bearers if there is a direction by a Council meeting to do so and the direction is properly minuted.

**Note.** Section 63 of the Act provides for authentication of certain documents without the seal.

## 29 Amendment of Rules

- (1) The Council may amend these Rules by a resolution passed at a meeting of which notice under these Rules, 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.

## 30 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

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- (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.

### 31 Duties of Secretary

The Secretary must:

- (a) maintain a Roll Book of members showing details of names, addresses, dates of birth, dates of acceptance as members and, if applicable, details of a member’s association with the area, and

## 1996 No 396

### Aboriginal Land Rights Regulation 1996

#### Schedule 1 Model rules for Local Aboriginal Land Councils

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- (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 Regional Aboriginal Land Council the following:
  - (i) a copy of the current Council Roll and changes to the Roll as they occur (the copy of the Roll must be sent at least once a year),
  - (ii) the address of the Council office if there is one,
  - (iii) the hours of business of any such office,
  - (iv) the particulars of all land held by the Council,
- (i) 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.

### 32 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

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- (b) ensure that all money received is deposited as soon as possible in the Council's account with a bank, building society or credit union, and
  - (c) ensure that the accounts and records of financial transactions of the Council are inspected and audited by an auditor appointed by the Council immediately after 30 September each 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 to the New South Wales Aboriginal Land Council as early as possible after 30 September each year, and
  - (e) 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 20 August of each year, 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.

### 33 Duties of Regional Representatives

The Regional Representatives (including the Alternate Representatives when they act in place of the Regional Representatives) must:

**1996 No 396**

Aboriginal Land Rights Regulation 1996

Schedule 1 Model rules for Local Aboriginal Land Councils

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- (a) represent the Local Council at each Regional Aboriginal Land Council meeting and put forward the views of the Council as expressed in any instructions given at a Council meeting, and
- (b) report to the next Council meeting after each meeting of the Regional Aboriginal Land Council the details of all decisions made and proposals put forward at the Regional meeting (the report may be given either in written form or orally to a Council meeting), and
- (c) submit all documents and correspondence which the Council wishes to be tabled at a Regional Aboriginal Land Council meeting, and ensure that copies of the Regional Council's minutes are tabled at the Council's next meeting.

**34 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 a Regulation made under the Act, the provision in the Act or the Regulation prevails over the Rule.

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## Schedule 2 Model rules for Regional Aboriginal Land Councils

(Clause 33)

### 1 Definitions

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.

*quorum*, in relation to a meeting of a Council (other than a meeting referred to in Rule 3 (3)), means the number obtained by dividing the total membership of the Council by 2 and adding 1 to the quotient (any fractional remainder being disregarded).

### 2 Calling of meetings

- (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) The notice must specify a time and place for the meeting and the date on which it is to be held, not being a date earlier than 7 days after the notice is given.

### 3 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 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 per cent 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 per cent of such members are not present, the meeting must be adjourned.

#### 4 Calling of extraordinary meetings by Secretary

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

#### 5 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 in a residence.

#### 6 Presiding member

The person presiding at a 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.

#### 7 Voting

- (1) Voting at a 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.



**8 Minutes**

- (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.

**9 Executive vacancy**

- (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 10.

**10 Elections**

- (1) Elections for the purposes of section 11 of the Act, or to fill a vacancy referred to in Rule 9, are to be conducted in accordance with this Rule.
- (2) 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.
- (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.
- (7) Except as provided by subrule (6), a ballot must be held for each elected position.
- (8) A ballot held under this Rule:
  - (a) must be a secret ballot, and
  - (b) must, subject to this Rule, 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 must be declared elected.
- (10) 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.
- (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.

#### **11 Attendance record**

- (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.

#### **12 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 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.

### **13 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 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.

### **14 Financial management**

- (1) The Treasurer or the Treasurer's nominee. must promptly:
  - (a) deposit into the Council's account with a bank, building society or credit union 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.

**1996 No 396**

Aboriginal Land Rights Regulation 1996

Schedule 2 Model rules for Regional Aboriginal Land Councils

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- (6) The Treasurer is to cause proper records to be kept of all receipts, payments and other financial transactions in a manner approved by the New South Wales Aboriginal Land Council.
- (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 each 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 1996* 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.

**15 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 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 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 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.

#### 16 Common Seal

- (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.

#### 17 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

**1996 No 396**

Aboriginal Land Rights Regulation 1996

Schedule 2 Model rules for Regional Aboriginal Land Councils

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- (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 consideration, 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.

**18 Duties of Secretary**

The Secretary must:

- (a) maintain an accurate record of all meetings of the Council in an official Minute Book of the Council, and
- (b) call meetings and give the proper notice for meetings in accordance with these Rules, and
- (c) 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
- (d) prepare an agenda, in consultation with the Chairperson, prior to each meeting, and
- (e) maintain any correspondence to and from the Council and inform the Council of such correspondence, and
- (f) keep the Council's Common Seal in safe custody, and
- (g) represent and act, subject to the instructions of a Council meeting, on behalf of the Council in the interval between meetings.

**19 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 a bank, building society or credit union, and
- (c) ensure that the accounts and records of financial transactions of the Council are inspected and audited by an auditor appointed by the Council immediately after 30 September each 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 to the New South Wales Aboriginal Land Council as early as possible after 30 September each year, and

**1996 No 396**

Aboriginal Land Rights Regulation 1996

Schedule 2 Model rules for Regional Aboriginal Land Councils

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- (e) 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, 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) 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 1996* and its Rules, and
- (h) make any comments arising from such an examination to the Council, the Local Aboriginal Land Council concerned and the New South Wales Aboriginal Land Council, and
- (i) represent and act, subject to the instructions of a Council meeting, on behalf of the Council in the interval between meetings, and
- (i) 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.



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## Schedule 3 Model rules for the New South Wales Aboriginal Land Council

(Clause 87)

### 1 Definitions

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 Calling of meetings

- (1) A meeting of the Council (whether a meeting required to be held under the Act or an extraordinary meeting) is to 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) The notice must specify a time and place for the meeting and the date on which it is to be held, not being a date earlier than 7 days after the notice is given.

### 3 Calling of extraordinary meetings on request by councillors

- (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.

### 4 Calling of extraordinary meetings by Secretary

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

### 5 Meeting place

- (1) Any meeting of the Council must be held within New South Wales.

## **1996 No 396**

Aboriginal Land Rights Regulation 1996

Schedule 3 Model rules for the New South Wales Aboriginal Land Council

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- (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.

### **6 Presiding councillor**

- (1) The Chairperson or, in the absence of the Chairperson, another councillor elected as chairperson for the meeting by the councillors present is to preside at a meeting of the Council.
- (2) The person presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, a second or casting vote.

### **7 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).

### **8 Minutes**

- (1) The Secretary or, in the absence of the Secretary, another councillor elected as 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 must include 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.

**9 Executive vacancy**

- (1) In the event of a vacancy occurring in the office of the Chairperson, Secretary or Treasurer, 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) 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 one 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.

## **1996 No 396**

### Aboriginal Land Rights Regulation 1996

#### Schedule 3 Model rules for the New South Wales Aboriginal Land Council

---

- (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.

#### **10 Council Roll**

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.

#### **11 Attendance record**

- (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.

#### **12 Report of non-attendance**

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.

#### **13 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 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.

**14 Sub-committees**

- (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.

**15 Financial management**

- (1) The Treasurer or the Treasurer's nominee must promptly:
  - (a) deposit into the Council's account with a bank, building society or credit union 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.

## 1996 No 396

### Aboriginal Land Rights Regulation 1996

#### Schedule 3 Model rules for the New South Wales Aboriginal Land Council

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- (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 each 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 1996* 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 and to the Regional Aboriginal Land Council within the area of which the Local Aboriginal Land Council is located, and
  - (b) in the case of the documents of each Regional Aboriginal Land Council, to the Regional Aboriginal Land Council.

#### 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 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 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 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.

### 17 Common Seal

- (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.

### 18 Amendment of Rules

- (1) The Council may amend these Rules by a resolution passed by at least 80 per cent 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.

### 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) 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 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
  - (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.



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**20 Duties of Secretary**

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) send 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) 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.

**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 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 account with a bank, building society or credit union, and

**1996 No 396**

Aboriginal Land Rights Regulation 1996

Schedule 3 Model rules for the New South Wales Aboriginal Land Council

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- (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.