

**Legislative Council—No 100A**

As reported with amendments, report adopted Standing Orders suspended and passed remaining stages, 18 October 2005

South Australia

**Pitjantjatjara Land Rights (Miscellaneous)  
Amendment Bill 2005**

A BILL FOR

An Act to amend the *Pitjantjatjara Land Rights Act 1981*.

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## Schedule 1—Transitional provisions

### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Pitjantjatjara Land Rights (Miscellaneous) Amendment Act 2005*.

### 5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## 10 Part 2—Amendment of *Pitjantjatjara Land Rights Act 1981*

### 4—Amendment of section 1—Short title

Section 1—delete "*Pitjantjatjara*" and substitute:

*Anangu Pitjantjatjara Yankunytjatjara*

## 5—Amendment of section 4—Interpretation

- (1) Section 4—before the definition of *Anangu Pitjantjatjara* insert:

*Administrator* means a person appointed under section 13O as an Administrator;

*Anangu* means a person who is—

- (a) a member of the Pitjantjatjara, Yankunytjatjara or Ngaanyatjara people; and  
(b) a traditional owner of the lands, or a part of them;

- (2) Section 4—after the definition of *the constitution* insert:

*Director of Administration* means the person appointed as the Director of Administration under section 13B;

- (3) Section 4—after the definition of *Electoral Commissioner* insert:

*electorate*—see Schedule 3 clause 2;

- (4) Section 4—after the definition of *the Executive Board* insert:

*General Manager* means the person appointed as the General Manager under section 13D;

- (5) Section 4, definition of *Pitjantjatjara*—delete the definition and substitute:

*principal office* of Anangu Pitjantjatjara Yankunytjatjara means the office specified in accordance with section 14(7);

- (6) Section 4—after its present contents (now to be designated as subsection (1)) insert:

- (2) If a provision of this Act specifies that an act may be done or a resolution made by Anangu Pitjantjatjara Yankunytjatjara at an annual or special general meeting, that act may not be done, or the resolution made, by the Executive Board on behalf of Anangu Pitjantjatjara Yankunytjatjara.

## 6—Insertion of section 4A

After section 4 insert:

### 4A—Objects

The objects of this Act are as follows:

- (a) to provide for and subsequently acknowledge Anangu ownership of the lands;  
(b) to establish Anangu Pitjantjatjara Yankunytjatjara as a body corporate and set out its powers and functions;  
(c) to provide for efficient and accountable administration and management of the lands by Anangu Pitjantjatjara Yankunytjatjara.

**7—Amendment of section 5—Constitution of Anangu Pitjantjatjara Yankunytjatjara as body corporate**

(1) Section 5(1) and (2)—delete subsections (1) and (2) and substitute:

(1) The body corporate known as "Anangu Pitjantjatjara" continues in existence as "Anangu Pitjantjatjara Yankunytjatjara".

(2) All Anangu are members of Anangu Pitjantjatjara Yankunytjatjara.

(2) Section 5(3)—delete "Anangu Pitjantjatjara shall" and substitute:

Anangu Pitjantjatjara Yankunytjatjara must

(3) Section 5(4)— delete "Anangu Pitjantjatjara and the signatures of five members of the Executive Board attesting the affixation of the seal, shall be presumed, in the absence of proof to the contrary, to have been duly executed by Anangu Pitjantjatjara" and substitute:

Anangu Pitjantjatjara Yankunytjatjara and the signatures of—

(a) 6 members of the Executive Board; or

(b) any 2 of the following:

(i) the Chairperson;

(ii) the Deputy Chairperson;

(iii) the Director of Administration;

(iv) the General Manager,

attesting the affixation of the seal will be presumed, in the absence of proof to the contrary, to have been duly executed by Anangu Pitjantjatjara Yankunytjatjara

**8—Amendment of section 6—Powers and functions of Anangu Pitjantjatjara Yankunytjatjara**

(1) Section 6(2)—delete "Anangu Pitjantjatjara has" and substitute:

Subject to this section, Anangu Pitjantjatjara Yankunytjatjara has

(2) Section 6(2)(b)(i)—delete "(being a part of the lands vested in Anangu Pitjantjatjara) to a Pitjantjatjara or an organisation comprised of Pitjantjatjaras" and substitute:

to an Anangu or an organisation comprised of Anangu

(3) Section 6(2)(b)(ii)—delete "(being a part of the lands vested in Anangu Pitjantjatjara)"

(4) Section 6(2)(b)(iii)—delete subparagraph (iii) and substitute:

(iii) to grant a lease or licence, for a period not exceeding 10 years, in respect of any part of the lands to any other person or body of persons; and

(5) Section 6—after subsection (2) insert:

- 5
- (3) Anangu Pitjantjatjara Yankunytjatjara must not grant a lease or licence for a period exceeding 5 years under subsection (2)(b)(i) or (iii) except in accordance with a resolution made at an annual general meeting or a special general meeting held in accordance with this Act.
- (4) Subject to this or any other Act, a lease or licence relating to the lands may only be granted by resolution of the Executive Board.
- 10
- (5) An application for a lease or licence under subsection (2)(b)(ii) must be considered, and a resolution made to determine the application, as soon as is reasonably practicable after the application is received by the Executive Board.
- (6) The interest of the lessee or licensee under a lease or licence granted by Anangu Pitjantjatjara Yankunytjatjara—
- 15
- (a) must not be mortgaged; and
- (b) subject to the conditions of the lease or licence, must not be transferred, assigned, sublet, sublicensed or otherwise dealt with without the consent of the Executive Board.
- (7) A mortgage, transfer, assignment, sublease, sublicense or other interest created in contravention of this section is void and of no effect.
- 20
- (8) The Executive Board—
- (a) must not unreasonably withhold consent under subsection (6)(b); and
- 25
- (b) must not require the payment of a fee for giving such consent, or considering an application for such consent, that exceeds the reasonable expenses of Anangu Pitjantjatjara Yankunytjatjara in relation to that act.

30 **9—Amendment of section 8—Annual general meetings and special general meetings**

(1) Section 8(2)—delete subsection (2)

(2) Section 8(4)—delete subsection (4) and substitute:

- 35
- (4) A special general meeting of Anangu Pitjantjatjara Yankunytjatjara must be held if—
- (a) the Executive Board passes a resolution that such a meeting be held; or
- (b) not less than 10 members of Anangu Pitjantjatjara Yankunytjatjara make a request to the Executive Board that such a meeting be held,

40 and such a meeting must be held as soon as is reasonably practicable after the resolution is passed or request made (as the case requires).

## **10—Amendment of section 9—Executive Board of Anangu Pitjantjatjara Yankunytjatjara**

(1) Section 9(2)—delete subsection (2) and substitute:

(2) The Executive Board consists of 10 members elected or appointed in accordance with this Act.

(2a) A person may not, while holding office as the Director of Administration, the General Manager or an employee of Anangu Pitjantjatjara Yankunytjatjara, be a member of the Executive Board.

(2) Section 9(4)—delete ", subject to the provisions of the constitution relating to casual vacancies,"

(3) Section 9(5)—delete subsection (5)

(4) Section 9(6)(a)—delete "first" and substitute:  
third

(5) Section 9—after subsection (7) insert:

(8) The Minister must cause the electorates constituted by Schedule 3 to be reviewed not later than 3 months prior to each election (and such a review must include consultation with Anangu Pitjantjatjara Yankunytjatjara and the Executive Board).

(9) Subject to subsection (11), a member of the Executive Board must, within 3 months after being elected or appointed, commence a course of training related to corporate governance that has been approved by the Minister.

(10) The Minister must determine an application for approval of such a course within 28 days after receiving the application, and may, in determining whether to approve a course, take into consideration any matter the Minister thinks fit.

(11) The Minister may, by notice in writing, exempt a member of the Executive Board from the requirement under subsection (9) on any ground the Minister thinks fit.

## **11—Insertion of sections 9B to 9F**

After section 9A insert:

### **9B—Functions and powers of the Executive Board**

(1) The Executive Board is the governing body of Anangu Pitjantjatjara Yankunytjatjara.

(2) Subject to this Act, the Executive Board—

(a) is responsible for carrying out the functions of Anangu Pitjantjatjara Yankunytjatjara and the day-to-day business of Anangu Pitjantjatjara Yankunytjatjara; and

(b) may, in carrying out the functions of Anangu Pitjantjatjara Yankunytjatjara, exercise any power conferred on Anangu Pitjantjatjara Yankunytjatjara by or under this Act.

- 5
- (3) The Executive Board must, in carrying out its functions, endeavour to advance the interests of Anangu at all times.
  - (4) The Executive Board must comply with a resolution of Anangu Pitjantjatjara Yankunytjatjara made at an annual or special general meeting held in accordance with this Act that directs the Executive Board to act, or to not act, in a specified manner.
  - (5) An act of the Executive Board done in accordance with this Act is binding on Anangu Pitjantjatjara Yankunytjatjara.

### **9C—Chairperson and Deputy Chairperson**

- 10
- (1) Subject to this section, the Executive Board must elect 1 of its number to be the Chairperson, and 1 to be the Deputy Chairperson.
  - (2) An election of a Chairperson or Deputy Chairperson—
    - 15 (a) must take place at the first meeting of the Executive Board following the office or offices of Chairperson or Deputy Chairperson (as the case requires) becoming vacant; and
    - (b) must, unless the election is uncontested, be by secret ballot.
  - (3) The office of Chairperson or Deputy Chairperson—
    - 20 (a) becomes vacant on the day that an election is held under section 9; and
    - (b) becomes vacant when the Chairperson or Deputy Chairperson (as the case requires) resigns from that position by notice in writing given to—
      - 25 (i) in the case of the resignation of the Chairperson—the Deputy Chairperson; or
      - (ii) in the case of the resignation of the Deputy Chairperson—the Chairperson; and
    - (c) becomes vacant when a casual vacancy occurs in the office of the member of the Executive Board who is the Chairperson or Deputy Chairperson (as the case requires); and
    - 30 (d) becomes vacant when the casual vacancy referred to in paragraph (c) is filled in accordance with section 9D.
  - (4) The Chairperson is, in addition to his or her remuneration, allowances and expenses as a member of the Executive Board, entitled to an allowance determined by the Executive Board and approved by the Minister.
  - 35 (5) The Minister must determine to approve, or not approve, the proposed allowance within 28 days after receiving the proposal, and may, in determining whether to approve the allowance, take into consideration any matter the Minister thinks fit.

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### **9D—Casual Vacancies**

- 5                   (1) The Executive Board may, by resolution passed by at least a two-thirds majority, remove a member of the Executive Board from office if the member—
- (a) becomes physically or mentally incapable of carrying out official duties satisfactorily; or
- (b) fails to comply with a duty imposed under section 12B, 12C, 12D or 12F; or
- 10                   (c) is absent, without leave of the Executive Board, from 3 or more consecutive meetings (the first of which having been held 3 months or more before the last); or
- (d) engages in serious misconduct.
- (2) The office of a member of the Executive Board becomes vacant if the member—
- 15                   (a) dies; or
- (b) completes a term of office and is not re-elected or reappointed; or
- (c) resigns by notice in writing addressed to the Chairperson; or
- (d) is sentenced to imprisonment for an offence; or
- 20                   (e) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
- (f) is appointed to the office of Director of Administration or General Manager or is employed by Anangu Pitjantjatjara Yankunytjatjara; or
- 25                   (g) is removed from office by the Executive Board under subsection (1).
- (3) Subsection (2)(d) does not apply until the period for appealing against the conviction has expired or, if an appeal is lodged within that period, until the appeal is finalised.
- 30                   (4) The Minister may direct the Executive Board to remove a member from office who—
- (a) has failed to comply with a duty imposed under section 12B, 12C, 12D or 12F; or
- 35                   (b) has failed to attend 6 or more consecutive meetings of the Executive Board (the first of which having been held 6 months or more before the last).
- (5) If a casual vacancy occurs in the office of a member, a supplementary election must, subject to subsection (7), be held in the electorate from which the member was elected to fill the vacant office.
- 40

- (6) A supplementary election in the electorate from which the member was elected—
- (a) must be held as soon as possible after the vacancy occurs; and
  - (b) must be conducted in accordance with Schedule 3 (with such modifications as the Electoral Commissioner thinks fit) as if the election were an election under section 9.
- (7) If—
- (a) no person nominates for a supplementary election; or
  - (b) a casual vacancy occurs during the period of 6 months preceding the date on or before which an election must be held under section 9,
- then the Executive Board may appoint a suitable Anangu from the electorate from which the member was elected to fill the vacant office.
- (8) Subject to the provisions of the constitution relating to casual vacancies, a person elected or appointed to fill a casual vacancy will hold office for the balance of the term of the person's predecessor.

#### **9E—Remuneration**

- (1) A member of the Executive Board is entitled to remuneration, allowances and expenses determined by the Executive Board and approved by the Minister.
- (2) The Minister must determine to approve, or not approve, the proposed remuneration, allowances and expenses within 28 days after receiving the proposal, and may, in determining whether to approve the proposal, take into consideration any matter the Minister thinks fit.

#### **9F—Delegations**

- (1) The Executive Board may delegate to the General Manager (and no other person) a power or function conferred under this or any other Act.
- (2) However, the following functions and powers must not be delegated:
  - (a) this power of delegation;
  - (b) the power to grant a lease or licence under this Act;
  - (c) the power to grant a permit under this Act;
  - (d) a function requiring that the Executive Board consult with Anangu Pitjantjatjara Yankunytjatjara or a specified group of Anangu.
- (3) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and

- (c) does not derogate from the power of the Executive Board to act in any matter; and
- (d) is revocable at will by the Executive Board.

## **12—Substitution of sections 10, 11 and 12**

5           Sections 10, 11 and 12—delete the sections and substitute:

### **10—Procedure of the Executive Board**

- (1) The Chairperson must call a meeting of the Executive Board for the transaction of business at least once in every 2 months.
- (2) 6 members constitute a quorum of the Executive Board.
- 10       (3) A meeting will be chaired by the Chairperson or, in his or her absence, by the Deputy Chairperson and, in the absence of both the Chairperson and the Deputy Chairperson, the members present at a meeting must choose 1 of their number to preside at the meeting.
- 15       (4) Each member present at a meeting has 1 vote on any question arising for decision.
- 20       (5) A conference by means of telephone link (including a satellite link) between the members will, for the purposes of this section, be taken to be a meeting of the Executive Board at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Executive Board for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- 25       (6) A decision carried by a majority of votes cast by members at a meeting (being a majority comprising not less than 6 votes) is a decision of the Executive Board.
- 30       (7) The Executive Board must have accurate minutes kept of its meetings.
- 35       (8) Any Anangu is entitled to inspect (without charge) the minutes at the places on the lands, and during the times, nominated by the Executive Board and approved by the Minister.
- (9) Any Anangu is entitled, on payment of the fee prescribed by the regulations, to a copy of the minutes.
- 40       (10) Subject to subsection (11), a member of the Executive Board may, by written instrument, appoint another member of the Executive Board to act as his or her proxy at a meeting specified in the instrument of appointment.
- (11) A member of the Executive Board appointed to act as a proxy for another member at a specified meeting may only so act if he or she—
  - (a) is present at the specified meeting; and

(b) exercises the proxy vote at the meeting in accordance with any instructions of the appointing member in the instrument of appointment.

5 (12) A member of the Executive Board is not entitled to additional remuneration for acting as a proxy.

(13) To avoid doubt, a proxy vote that is exercised other than in accordance with subsection (11) is void and of no effect.

(14) Subject to this Act and the constitution, the Executive Board may determine its own procedures.

10 (15) No act or proceeding of the Executive Board is invalid by reason only of a vacancy in the office of a member of the Executive Board, or any defect in the election or appointment of a person to the Executive Board.

### **11—Minister may call meetings**

15 (1) If—

(a) the Chairperson refuses or fails to call a meeting of the Executive Board within 4 months after the previous meeting; or

(b) 2 or more successive meetings are inquorate,

20 then the Minister may call a meeting of the Executive Board.

(2) The Minister may direct the members of the Executive Board to attend a meeting called under subsection (1).

### **12—Meetings to be open to all Anangu**

25 (1) Subject to subsection (2), a meeting of the Executive Board must be open to all Anangu.

(2) The Executive Board may exclude Anangu, or a class of Anangu, who are not members of the Executive Board from a meeting, or part of a meeting, if, in the opinion of the Executive Board, there are reasonable grounds for so doing.

30 (3) The grounds for excluding Anangu, or a class of Anangu, who are not members of the Executive Board from a meeting, or part of a meeting, must be recorded in the minutes of the meeting.

### **12A—Advisory Committees**

35 (1) The Executive Board may establish advisory committees to provide advice in relation to any functions of the Executive Board under this Act.

(2) The Executive Board must determine the following procedures of an advisory committee:

40 (a) the conditions of appointment of the members of the advisory committee; and

- (b) the matter or matters on which the advisory committee is to advise; and
- (c) the manner in which the advisory committee is to report to the Executive Board; and
- (d) the date on or before which the advisory committee must provide a report to the Executive Board,

and may determine any other procedures of an advisory committee.

- (3) A member of an advisory committee is entitled to remuneration, allowances and expenses determined by the Executive Board and approved by the Minister.
- (4) Subject to this Act, an advisory committee may determine its own procedures.

### **12B—Duty to exercise care and diligence**

- (1) A member of the Executive Board must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.
- (2) A member of the Executive Board does not commit any breach of duty under this section by acting in accordance with a lawful resolution of Anangu Pitjantjatjara Yankunytjatjara.

### **12C—Duty to act honestly**

A member of the Executive Board must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

### **12D—Duty with respect to conflict of interest**

- (1) A member of the Executive Board who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Executive Board—
  - (a) must, as soon as reasonably practicable, disclose to the Executive Board full and accurate details of the interest; and
  - (b) must not take part in any discussion by the Executive Board relating to that matter; and
  - (c) must not vote in relation to that matter; and
  - (d) must be absent from the meeting room when any such discussion or voting is taking place.
- (2) If a member of the Executive Board makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—
  - (a) the contract is not liable to be avoided by the Executive Board; and
  - (b) the member is not liable to account to the Executive Board for profits derived from the contract.

- 5
- (3) If a member of the Executive Board fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the Executive Board.
- 10
- (4) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- 15
- (5) If a member of the Executive Board has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a member of the Executive Board, the member must, as soon as reasonably practicable, disclose to the Executive Board full and accurate details of the interest or office.
- 20
- (6) A disclosure under this section must be recorded in the minutes of the Executive Board.
- 25
- (7) If, in the opinion of the Executive Board, a particular interest or office of a member of the Executive Board is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the member, the Executive Board may require the member either to divest himself or herself of the interest or office or to resign from the Executive Board (and non-compliance with the requirement constitutes a failure to comply with a duty under this section and hence a ground for removal of the member from the Executive Board).
- 30
- (8) A member of the Executive Board is exempt from this section in respect of an interest in a matter—
- 35
- (a) while he or she remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest; or
- (b) arising by reason of the fact that the member is a member of a community in an electorate to which the matter relates; or
- (c) that is shared in common with Anangu generally, or a substantial section of Anangu.

### **12E—Civil liability for contravention of section 12C or 12D**

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If a person who is a member of the Executive Board or a former member of the Executive Board fails to comply with a duty under section 12C or 12D, Anangu Pitjantjatjara Yankunytjatjara may recover from the person by action in a court of competent jurisdiction—

- (a) if the person or any other person made a profit as a result of the failure—an amount equal to the profit; and

- (b) if Anangu Pitjantjatjara Yankunytjatjara suffered loss or damage as a result of the failure—compensation for the loss or damage.

### **12F—Code of conduct**

- 5           (1) The Executive Board must prepare a code of conduct to be observed by members of the Executive Board, the Director of Administration, the General Manager and any employees of Anangu Pitjantjatjara Yankunytjatjara.
- 10           (2) The code of conduct must contain the following provisions:
- (a) a provision requiring that a person referred to in subsection (1) must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
- 15               (i) as required or authorised by or under this Act or any other Act or law; or
- (ii) with the consent of the person to whom the information relates; or
- (iii) in connection with the administration of this Act;
- 20           (b) a provision requiring that a person referred to in subsection (1) must not engage in bullying of, harassment of or threatening behaviour towards any Anangu or persons employed by Anangu Pitjantjatjara Yankunytjatjara, in the course of, or the purported course of, official duties;
- 25           (c) a provision requiring that a person referred to in subsection (1) must declare any unsolicited gifts received by them in the course of, or related to, official duties;
- (d) any other provision prescribed by the regulations.
- 30           (3) Subject to this Act, the Executive Board may at any time amend the code of conduct, or substitute a new code of conduct.
- (4) The code of conduct prepared, and any amendment or substitution under this section, must be presented to Anangu Pitjantjatjara Yankunytjatjara at the next general meeting for approval.
- (5) A person referred to in subsection (1) must comply with the approved code of conduct.
- 35           (6) The Executive Board must, within 12 months after each election of the Executive Board, complete (and, as appropriate, implement) a review of its code of conduct under this section.
- (7) The code of conduct must not diminish a right under any Act or law.
- 40           (8) A person is entitled to inspect (without charge) the code of conduct—
- (a) at the places on the lands, and during the times, nominated by the Executive Board and approved by the Minister; and

- (b) during ordinary office hours at the principal office of Anangu Pitjantjatjara Yankunytjatjara.
- (9) A person is entitled, on payment of the fee prescribed by the regulations, to a copy of the code of conduct.

5                   **12G—Guidelines**

- (1) The Executive Board must, within 6 months after the commencement of this section, prepare and submit to the Minister for approval guidelines to be followed by the Executive Board and the General Manager when entering contracts or engaging in other commercial activities.
- (2) Subsection (1) does not apply in relation to a lease or licence granted under this Act.
- (3) A person is entitled to inspect (without charge) the guidelines—
  - (a) at the places on the lands, and during the times, nominated by the Executive Board and approved by the Minister; and
  - (b) during ordinary office hours at the principal office of Anangu Pitjantjatjara Yankunytjatjara,
- (4) A person is entitled, on payment of the fee prescribed by the regulations, to a copy of the guidelines.

10                   **12H—Prudential requirements for certain activities**

- (1) The Executive Board must obtain and consider a report that addresses the prudential issues set out in subsection (2) before the Executive Board engages in any project (whether commercial or otherwise and including through participation in a joint venture, trust, partnership or other similar body) if the expected expenditure of the Anangu Pitjantjatjara Yankunytjatjara in relation to the project is likely to exceed 20 per cent of Anangu Pitjantjatjara Yankunytjatjara's approved budget for the year during which the project would be undertaken.
- (2) The following are prudential issues for the purposes of subsection (1):
  - (a) the relationship between the project and relevant strategic management plans (if any);
  - (b) the level of consultation with Anangu, including contact with Anangu who may be affected by the project and the representations that have been made by them, and the means by which Anangu can influence or contribute to the project or its outcomes;
  - (c) if the project is intended to produce revenue, revenue projections and potential financial risks;
  - (d) the recurrent and whole-of-life costs associated with the project including any costs arising out of proposed financial arrangements;



- 5
- (e) the financial viability of the project, and the short and longer term estimated net effect of the project on the financial position of Anangu Pitjantjatjara Yankunytjatjara;
- (f) any risks associated with the project, and the steps that can be taken to manage, reduce or eliminate those risks (including by the provision of periodic reports to the Executive Board and the Minister);
- (g) the most appropriate mechanisms or arrangements for carrying out the project.
- 10
- (3) A report must be prepared by a person whom the Executive Board reasonably believes to be qualified to address the prudential issues set out in subsection (2).
- (4) A copy of the report must be provided to the Minister as soon as practicable after being received by the Executive Board.
- 15
- (5) Once the Executive Board has made a decision on the relevant project, a copy of the report must be made available for inspection (without charge) by Anangu—
- (a) at the places on the lands, and during the times, nominated by the Executive Board and approved by the Minister; and
- 20
- (b) during ordinary office hours at the principal office of Anangu Pitjantjatjara Yankunytjatjara,
- (and may also be made available at an earlier time).
- (6) However, the Executive Board may take steps to prevent the disclosure of specific information in order to protect its commercial value or to avoid disclosing the financial affairs of a person (other than Anangu Pitjantjatjara Yankunytjatjara).
- 25

### **13—Amendment of section 13—Accounts and audit**

Section 13(2)—delete subsection (2) and substitute:

- 30
- (2) The Executive Board must cause the accounts of Anangu Pitjantjatjara Yankunytjatjara for each financial year to be audited by a registered company auditor.
- (3) The Auditor-General may audit the accounts of Anangu Pitjantjatjara Yankunytjatjara at any time.
- 35
- (4) The Executive Board must, at the annual general meeting of Anangu Pitjantjatjara Yankunytjatjara—
- (a) make copies of the audited accounts for the financial year ending on the preceding 30 June available to Anangu; and
- (b) provide an explanation of the audited accounts, or a part of the audited accounts, if requested by any Anangu.

## 14—Insertion of section 13A and Part 2 Division 4A and 4B

After section 13 insert:

### 13A—Reports and Budget

- 5
- (1) The Executive Board must, not later than 31 December in each year, prepare and submit to the Minister an annual report on the operations of the Executive Board during the financial year ending on the preceding 30 June (and must provide a copy of the audited accounts for that financial year with the annual report).
- 10
- (2) The Executive Board must, not later than the prescribed day in each year, prepare and submit to the Minister for approval a budget setting out estimates of the Executive Board's proposed expenditure for the next financial year or for some other period determined by the Minister.
- 15
- (3) The Minister may, if he or she is satisfied that the Executive Board has refused or failed to perform or discharge a function or duty under this Act, by notice in writing, direct the Executive Board to prepare a report on the matter.
- 20
- (4) A report or budget (as the case requires) under this section must—
- (a) in the case of an annual report under subsection (1) or a budget under subsection (2)—contain the information required by the regulations; and
- (b) in the case of a report required under subsection (3)—contain the information, and be delivered to the Minister on or before the date, specified in the notice; and
- 25
- (c) in any case—be in a form determined by the Minister.
- (5) The Executive Board must, at an annual general meeting of Anangu Pitjantjatjara Yankunytjatjara—
- (a) make available to Anangu copies of the annual report for the financial year ending on the preceding 30 June; and
- 30
- (b) if requested by any Anangu, provide an explanation of the annual report, or a part of the annual report.
- (6) The Minister must determine to approve, or not approve, a budget within 28 days after receiving the proposed budget, and may, in determining whether to approve the budget, take into consideration any matter the Minister thinks fit.
- 35

### Division 4A—Director of Administration and General Manager

#### 13B—Director of Administration

- 40
- (1) There will be a Director of Administration for the lands.
- (2) The Director of Administration will be appointed by the Executive Board.

- (3) A person who—
- (a) has ever been convicted of an offence involving dishonesty; or
  - (b) has ever been removed from any office for conduct involving dishonesty; or
  - (c) is, or has ever been, disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth (or any other Act related to the management of corporations),
- must not be appointed as the Director of Administration.
- (4) The Director of Administration will be appointed on conditions (including conditions as to remuneration) determined by the Executive Board with the approval of the Minister and for a term specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (5) The Minister must determine to approve, or not approve, the conditions of appointment within 28 days after receiving the conditions, and may, in determining whether to approve the conditions, take into consideration any matter the Minister thinks fit.

### **13C—Functions of Director of Administration**

The functions of the Director of Administration are—

- (a) to oversee the implementation of resolutions of Anangu Pitjantjatjara Yankunytjatjara and the Executive Board; and
- (b) to carry out any other functions assigned to the Director of Administration—
  - (i) in the instrument of appointment; or
  - (ii) by the Minister after consultation with the Executive Board.

### **13D—General Manager**

- (1) There will be a General Manager for the lands.
- (2) The General Manager will be appointed by the Executive Board.
- (3) A person who—
- (a) has ever been convicted of an offence involving dishonesty; or
  - (b) has ever been removed from any office for conduct involving dishonesty; or
  - (c) is, or has ever been, disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth (or any other Act related to the management of corporations),
- must not be appointed as the General Manager.

- 5
- (4) The General Manager will be appointed on conditions (including conditions as to remuneration) determined by the Executive Board with the approval of the Minister and for a term specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (5) The Minister must determine to approve, or not approve, the conditions of appointment within 28 days after receiving the conditions, and may, in determining whether to approve the conditions, take into consideration any matter the Minister thinks fit.

10 **13E—Functions of General Manager**

The functions of the General Manager are—

- 15
- (a) to implement the resolutions of the Executive Board in a timely and efficient manner; and
- (b) to undertake responsibility for the day-to-day operations and affairs of Anangu Pitjantjatjara Yankunytjatjara; and
- (c) to ensure that records required under this or another Act are properly kept and maintained; and
- (d) to discharge any duties under this or any other Act relating to financial and annual reports; and
- 20
- (e) to ensure that the assets and resources of Anangu Pitjantjatjara Yankunytjatjara are properly managed and maintained; and
- 25
- (f) to exercise, perform or discharge any other powers, functions or duties conferred on the General Manager by or under this or any other Act.

**13F—Director of Administration and General Manager subject to direction**

30 If an Administrator is appointed in accordance with section 13O, the Director of Administration and the General Manager are subject to the direction and control of the Administrator.

**13G—Termination of appointment of Director of Administration or General Manager by Executive Board**

- 35
- (1) The Executive Board may terminate the appointment of the Director of Administration or the General Manager if the Director of Administration or the General Manager (as the case requires)—
- (a) becomes physically or mentally incapable of carrying out official duties satisfactorily; or
- (b) fails, without reasonable excuse, to carry out official duties to the performance standards specified in the instrument of appointment; or
- 40
- (c) fails to comply with a duty imposed under section 12F, 13H, 13I or 13J; or

- (d) engages in serious misconduct; or
- (e) in the case of the General Manager—
- (i) is convicted of an indictable offence; or
- (ii) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors.
- 5
- (2) The appointment of the Director of Administration or the General Manager may only be terminated by resolution passed by at least a two-thirds majority of the members of the Executive Board.
- (3) The office of Director of Administration or the General Manager becomes vacant if the Director of Administration or General Manager (as the case requires)—
- 10
- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by notice in writing addressed to the Executive Board; or
- 15
- (d) is sentenced to imprisonment for an offence; or
- (e) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
- 20
- (f) is removed from the office by the Executive Board under subsection (1).
- (4) The Minister may direct the Executive Board to terminate the appointment of the Director of Administration or the General Manager if he or she—
- 25
- (a) in the case of the General Manager—is convicted of an indictable offence; or
- (b) in any case—has failed to comply with a duty imposed under section 12F, 13H, 13I or 13J.
- (5) Subsections (1)(e)(i), (3)(d) and (4)(a) do not apply until the period for appealing against the conviction has expired or, if an appeal is lodged within that period, until the appeal is finalised.
- 30
- (6) If the Director of Administration or General Manager is temporarily absent, or temporarily unable to discharge his or her official duties, the Executive Board may appoint a person in accordance with this section to act in the position of Director of Administration or General Manager (as the case requires) during the period during which Director of Administration or General Manager (as the case requires) is absent or unable to discharge his or her official duties.
- 35
- (7) If a casual vacancy occurs in the office of Director of Administration or General Manager, the Executive Board must, as soon as practicable after the vacancy occurs, appoint a person in accordance with this section to fill the vacancy.
- 40

### **13H—Duty to exercise care and diligence**

- (1) The Director of Administration and General Manager must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.
- (2) The Director of Administration or General Manager does not commit any breach of duty under this section by acting in accordance with a lawful resolution of Anangu Pitjantjatjara Yankunytjatjara.

### **13I—Duty to act honestly**

The Director of Administration and General Manager must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

### **13J—Duty with respect to conflict of interest**

- (1) If the Director of Administration or General Manager has a direct or indirect personal or pecuniary interest in a matter in relation to which he or she is required or authorised to act in the course of official duties, he or she—
- (a) must, as soon as reasonably practicable, disclose to the Executive Board full and accurate details of the interest; and
  - (b) must not, unless the Executive Board otherwise determines, act in relation to the matter.
- (2) If the Director of Administration or General Manager makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—
- (a) the contract is not liable to be avoided by the Executive Board; and
  - (b) the Director of Administration or General Manager (as the case requires) is not liable to account to the Executive Board for profits derived from the contract.
- (3) If the Director of Administration or General Manager fails to make a disclosure of interest in respect of a proposed contract, the contract is liable to be avoided by the Executive Board.
- (4) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (5) If the Director of Administration or General Manager has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her official duties, the Director of Administration or General Manager (as the case requires) must, as soon as reasonably practicable, disclose to the Executive Board full and accurate details of the interest or office.

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- 10
- 15
- 20
- 25
- (6) A disclosure under this section must be recorded in the minutes of the Executive Board and reported to the Minister.
- (7) If, in the opinion of the Executive Board, a particular interest or office of the Director of Administration or General Manager is of such significance that the holding of the interest or office is not consistent with the proper discharge of the official duties of the Director of Administration or General Manager (as the case requires), the Executive Board may require the Director of Administration or General Manager (as the case requires) either to divest himself or herself of the interest or office or to resign from the office of Director of Administration or General Manager (and non-compliance with the requirement constitutes a failure to comply with a duty under this section and hence a ground for termination of the appointment of the Director of Administration or the General Manager).
- (8) The Director of Administration and the General Manager are exempt from this section in respect of an interest in a matter—
- (a) while he or she remains unaware that he or she has an interest in the matter, but in any proceedings against the Director of Administration or the General Manager the burden will lie on Director of Administration or the General Manager (as the case requires) to prove that he or she was not, at the material time, aware of his or her interest; or
- (b) that is shared in common with Anangu generally, or a substantial section of Anangu.

### **13K—Civil liability for contravention of section 13I or 13J**

30 If the Director of Administration or the General Manager, or a former Director of Administration or General Manager, fails to comply with a duty under section 13I or 13J, Anangu Pitjantjatjara Yankunytjatjara may recover from the person by action in a court of competent jurisdiction—

- 35
- (a) if the person or any other person made a profit as a result of the failure—an amount equal to the profit; and
- (b) if Anangu Pitjantjatjara Yankunytjatjara suffered loss or damage as a result of the failure—compensation for the loss or damage.

### **13L—Appointment etc by General Manager**

- 40 (1) Subject to this Act, the General Manager is responsible for appointing, managing, suspending and dismissing the employees of Anangu Pitjantjatjara Yankunytjatjara on behalf of Anangu Pitjantjatjara Yankunytjatjara.

- 5
- (2) The General Manager may only appoint an employee of Anangu Pitjantjatjara Yankunytjatjara—
- (a) if the appointment is consistent with the approved budget for the financial year in which the appointment is to be made; or
- (b) with the approval of the Executive Board and the Minister.
- (3) Subject to this Act, the remuneration and other conditions of service of an employee of Anangu Pitjantjatjara Yankunytjatjara will be as determined by the General Manager.
- 10 (4) The General Manager must, in the exercise of powers under this section, comply with any relevant Act, award or industrial agreement.
- (5) Suspension of an employee by the General Manager does not affect a right to remuneration in respect of the period of suspension.
- 15 (6) The Minister must determine to approve, or not approve, a proposed appointment under subsection (2)(b) within 28 days after receiving the proposal, and may, in determining whether to approve the appointment, take into consideration any matter the Minister thinks fit.

20 **13M—Director of Administration, General Manager and employees of Anangu Pitjantjatjara Yankunytjatjara not subject to direction by member of Executive Board**

25 The Director of Administration, the General Manager and any employees of Anangu Pitjantjatjara Yankunytjatjara are not subject to direction by an individual member of the Executive Board unless the member of the Executive Board is acting in accordance with a resolution of the Executive Board.

**Division 4B—Limited intervention by Minister**

**13N—Minister may direct Executive Board**

- 30 (1) If the Minister is satisfied that—
- (a) the Executive Board has refused or failed to exercise, perform or discharge a power, function or duty under the Act or the constitution; and
- (b) the refusal or failure has resulted in, or will result in, a detriment to Anangu generally, or to a substantial section of Anangu,
- 35 the Minister may direct the Executive Board to take such action as the Minister requires to correct or prevent such detriment.
- (2) If the requirements of a direction under subsection (1) are not
- 40 complied with, the Minister may take any action required by the direction.



- 5
- (3) Action taken by the Minister may be taken on the Minister's behalf by a member of the Minister's department, or another person authorised by the Minister for the purpose.
- (4) A person must not hinder or obstruct the Minister or another person taking action under subsection (2).  
Maximum penalty: \$5 000.
- (5) The reasonable costs and expenses incurred by the Minister in taking action under this section may be recovered by the Minister as a debt from the Executive Board.
- 10 (6) Aṅangu Pitjantjatjara Yankunytjatjara cannot claim compensation from the Minister or the Crown (or from any person acting under subsection (2)) in respect of any action taken under this section.

### **130—Minister may suspend Executive Board**

- 15 (1) If the Executive Board refuses or fails to comply with a direction of the Minister under section 9D(4), 13A(3), 13G(4) or 13N, or not less than 4 members of the Executive Board refuse or fail to attend a meeting called by the Minister under section 11, the Minister may, by notice in the Gazette, suspend the Executive Board for a period specified in the notice or until further notice in the Gazette.
- 20 (2) Despite any other provision of this Act, if the Executive Board is suspended the following provisions apply:
- 25 (a) the Minister may, by notice in the Gazette, appoint an Administrator, on terms and conditions determined by the Minister, to administer the affairs of Aṅangu Pitjantjatjara Yankunytjatjara in the name of, and on behalf of, Aṅangu Pitjantjatjara Yankunytjatjara during the period of the suspension;
- 30 (b) the Administrator is entitled to remuneration, allowances and expenses determined by the Minister;
- (c) the Minister may remove a person from the office of Administrator for any reason the Minister thinks fit;
- (d) the office of Administrator becomes vacant if the Administrator—
- 35 (i) dies; or
- (ii) completes a term of office; or
- (iii) resigns by written notice to the Minister; or
- (iv) is removed from office under paragraph (c);
- (e) the Minister may appoint a person to act as the Administrator—
- 40 (i) during a vacancy in the office of Administrator; or
- (ii) when the Administrator is absent from, or unable to discharge, official duties;

- 5
- (f) the Administrator has all the functions and powers of Anangu Pitjantjatjara Yankunytjatjara;
- (g) in carrying out a function or exercising a power of Anangu Pitjantjatjara Yankunytjatjara, the Administrator is not bound by a resolution under section 9B(4) that is, in the opinion of the Administrator, inconsistent with the appointment of the Administrator (but, to avoid doubt, is otherwise bound by a resolution under that section);
- 10
- (h) Part 2 Division 5 of the *Public Sector Management Act 1995* applies to the Administrator as if the Administrator were a senior official and the Minister administering this Act were the relevant Minister;
- 15
- (i) any liability incurred by the Administrator in the course of the administration will be paid or satisfied out of the funds of Anangu Pitjantjatjara Yankunytjatjara;
- (j) in any legal proceedings, an apparently genuine document purporting to bear the common seal of Anangu Pitjantjatjara Yankunytjatjara and the signature of the Administrator attesting the affixation of the seal will be presumed, in the absence of proof to the contrary, to have been duly executed by Anangu Pitjantjatjara Yankunytjatjara;
- 20
- (k) the Administrator must cause proper accounts to be kept of the financial affairs of Anangu Pitjantjatjara Yankunytjatjara and must cause the accounts of Anangu Pitjantjatjara Yankunytjatjara for each financial year to be audited by a registered company auditor;
- 25
- (l) to avoid doubt—
- (i) the Administrator must, in the course of the administration, endeavour to advance the interests of Anangu at all times;
- 30
- (ii) the Administrator must comply with section 4(2) and section 7 and any other provision of this Act that requires consultation with, or a resolution of, Anangu Pitjantjatjara Yankunytjatjara.

35

**13P—Use of facilities**

An Administrator may, by arrangement with the relevant body, make use of the services of the staff, equipment or facilities of—

- (a) an administrative unit in the Public Service; or
- (b) a public authority.

### 13Q—Offences

A person who—

- (a) hinders or obstructs an Administrator, or a person assisting an Administrator, in the exercise of powers or functions under this Act; or
- (b) falsely represents, by words or conduct, that he or she is assisting an Administrator in the exercise of powers or functions under this Act,

is guilty of an offence.

Maximum penalty: \$5 000.

### 15—Substitution of section 14

Section 14—delete the section and substitute:

#### 14—Constitution

- (1) Subject to this Act, the proceedings of Anangu Pitjantjatjara Yankunytjatjara and the administration of its affairs will be governed by a constitution determined by Anangu Pitjantjatjara Yankunytjatjara and approved in accordance with this section.
- (2) The constitution must, within 12 months after the commencement of this section—
  - (a) be amended so as to be consistent with the Act; and
  - (b) submitted to the Minister for approval.
- (3) Anangu Pitjantjatjara Yankunytjatjara may, by resolution passed by at least a two-thirds majority of members present at an annual general meeting or special general meeting of Anangu Pitjantjatjara Yankunytjatjara, propose an amendment to the constitution.
- (4) The Executive Board must, as soon as is reasonably practicable, cause the proposed amendment to be submitted to the Minister for approval and the proposed amendment will come into effect on such approval being granted.
- (5) The Minister must not unreasonably withhold approval to a proposed amendment.
- (6) An amendment of the constitution made other than in accordance with this section is void and of no effect.
- (7) The constitution must specify the address of an office within 30 kilometres of the General Post Office at Adelaide (the *principal office* of Anangu Pitjantjatjara Yankunytjatjara) at which legal process, notices and other documents may be served upon Anangu Pitjantjatjara Yankunytjatjara or the Executive Board.
- (8) A person is entitled to inspect (without charge) the constitution—
  - (a) at the places on the lands, and during the times, nominated by the Executive Board and approved by the Minister; and

(b) during ordinary office hours at—

- (i) the principal office of Anangu Pitjantjatjara Yankunytjatjara; and
- (ii) the Minister's office.

5 (9) A person is entitled, on payment of the fee prescribed by the regulations, to a copy of the constitution.

### **16—Amendment of section 18—Rights of Anangu with respect to lands**

Section 18—delete "Pitjantjatjaras" and substitute:

Anangu

### **17—Amendment of section 19—Unauthorised entry on the lands**

10 (1) Section 19(1)—delete "not being a Pitjantjatjara" and substitute:

not being an Anangu

(2) Section 19(3)(b)—after subparagraph (ii) insert:

and

15 (iii) be accompanied by the prescribed application fee.

(3) Sections 19(6) and (7)—delete subsections (6) and (7)

(4) Section 19(8)(ba)—delete ", or a person assisting the Electoral Commissioner in relation to such an election"

(5) Section 19(8)(c)—delete "of Aboriginal Affairs"

20 (6) Section 19(8)(c)—delete "a department of government" and substitute:

an administrative unit of the Public Service

(7) Section 19(8)—after paragraph (c) insert:

- (ca) a member of the Minister's department, or another person authorised by the Minister, acting on behalf of the Minister under section 13N;
- or

25

(8) Section 19(8)(d)—delete ", or a person who is accompanying and genuinely assisting any such member or candidate"

(9) Section 19(8)—after paragraph (d) insert:

- (da) a person assisting a person referred to in any of the preceding paragraphs;

30

(10) Section 19(10)—delete "of Aboriginal Affairs"

(11) Sections 19(11) and (12)—delete subsections (11) and (12)

## 18—Insertion of section 19A

After section 19 insert:

### 19A—Residence on the lands

5 A person who is entitled under section 19(8)(a), (b), (ba), (c), (ca) or (da) to enter the lands for the purpose of carrying out, or assisting in carrying out, official duties or functions or providing a service is entitled to reside on the lands where that is necessary or desirable for the purpose of carrying out that duty or function or providing such assistance.

## 19—Amendment of section 20—Mining operations on the lands

10 (1) Section 20(14)(d)—delete "of Aboriginal Affairs"

(2) Section 20(15)(a)(i)—delete "Pitjantjatjara" and substitute:

Anangu

(3) Section 20(15)(a)(ii)—delete "the Pitjantjatjara people" and substitute:

15 Anangu

(4) Section 20(15)(a)(iii)—delete "Pitjantjatjara" and substitute:

Anangu

(5) Section 20(15)(a)(iv)—delete "Pitjantjatjaras" and substitute:

Anangu

20 (6) Section 20(15)(a)(iv)—delete "Pitjantjatjara" and substitute:

Anangu

(7) Section 20(15)(b)—delete "the Pitjantjatjara people" and substitute:

Anangu

## 20—Amendment of section 22—Royalty

25 Section 22(2)(b)—delete "of Aboriginal Affairs"

## 21—Amendment of section 24—Certain payments or other consideration to Anangu Pitjantjatjara Yankunytjatjara must represent fair compensation

Section 24(2)—delete "the Pitjantjatjara people" and substitute:

Anangu

## 22—Amendment of section 26—The Mintabie Consultative Committee

30 (1) Section 26(3)(a)—delete "Pitjantjatjaras" and substitute:

Anangu

(2) Section 26(6)—delete "Pitjantjatjara" and substitute:

Anangu

**23—Amendment of section 27—Exclusion of certain persons from the field**

Section 27(2)(a)(v)—after "liquor" insert:

or a regulated substance

**24—Amendment of section 30—Right of the Crown to continue its occupation of certain land**

Section 30—delete "the Pitjantjatjara people" and substitute:

Anangu

**25—Substitution of section 35**

Section 35—delete the section and substitute:

**35—Conciliator**

- (1) There will be a conciliator for the lands.
- (2) The conciliator will be appointed by the Minister, with the approval of Anangu Pitjantjatjara Yankunytjatjara, for a term, and on conditions, determined by the Minister.

**26—Amendment of section 36—Disputes**

- (1) Section 36(1)—delete "Any Pitjantjatjara who is aggrieved by a decision or action of Anangu Pitjantjatjara, or any of its members," and substitute:

An Anangu who is aggrieved by a decision or action of the Executive Board

- (2) Section 36—delete "tribal assessor" wherever occurring and substitute:

conciliator

- (3) Section 36—after subsection (1) insert:

- (1a) The conciliator may refuse to hear an appeal if the conciliator considers that the appeal is frivolous or vexatious.
- (1b) Before hearing an appeal, the conciliator should, so far as is practicable, endeavour to resolve the dispute by mediation between the parties.

- (4) Section 36(3)—delete "himself in such manner as he" and substitute:

herself or himself in such manner as she or he

- (5) Section 36(4)—delete subsection (4) and substitute:

- (4) In proceedings under this section, the conciliator—
  - (a) must seek to further the objects of the Act; and
  - (b) must have regard to, and where appropriate give effect to, the customs and traditions of the Pitjantjatjara, Yankunytjatjara or Ngaanyatjara people (as the case requires); and
  - (c) must act fairly and consider the need of the Executive Board to balance the interests of all Anangu.

(6) Section 36(5)(a)—before "he" insert:

she or

(7) Section 36—after subsection (5) insert:

(6) A direction under this section that is inconsistent with this or any other Act or law, or the constitution, is, to the extent of the inconsistency, void and of no effect.

## **27—Amendment of section 37—Order compelling compliance with direction of conciliator**

Sections 37(1) and (2)—delete subsections (1) and (2) and substitute:

(1) If a person or body refuses or fails to comply with a direction of the conciliator, any party to the proceedings before the conciliator may apply to the District Court for an order to compel that person or body to comply with the direction.

(2) On an application under this section, the District Court must, unless satisfied that the direction of the conciliator is unjust or unreasonable, make an order requiring the person or body against whom the direction was made to comply with the direction.

## **28—Substitution of section 42B**

Section 42B—delete the section and substitute:

### **42B—Depasturing of stock**

A provision of the *Pastoral Land Management and Conservation Act 1989* relating to overstocking that applies to holders of pastoral leases under that Act applies in respect of the depasturing of stock upon the lands as if—

(a) if a lease or licence has been granted by Anangu Pitjantjatjara Yankunytjatjara for the purpose of grazing livestock on part of the lands—the lessee or licensee; or

(b) in any other case—Anangu Pitjantjatjara Yankunytjatjara, were the holder of a pastoral lease under that Act in respect of the lands or part of the lands.

## **29—Insertion of section 42C**

After section 42B insert:

### **42C—Protection from personal liability**

(1) No personal civil liability is incurred for an act or omission by—

(a) a member of the Executive Board; or

(b) the Director of Administration or the General Manager or other employee of Anangu Pitjantjatjara Yankunytjatjara; or

(c) an Administrator under Part 2 Division 4B; or

(d) any other person engaged in the administration of this Act,

in good faith in the performance or purported performance of functions or duties under this Act.

- (2) A liability that would, but for subclause (1), lie against a person, lies instead against Anangu Pitjantjatjara Yankunytjatjara.
- (3) This section does not prejudice rights of action of the Executive Board itself in respect of an act or omission not in good faith.

### **30—Amendment of Schedule 3—Rules of election under section 9**

~~(1) Schedule 3, clause 1, definition of *electorate*—delete the definition~~

~~(2) Schedule 3, clause 2—delete clause 2 and substitute:~~

#### **2—Elections**

~~An election under section 9 will consist of an election of 1 member of the Executive Board from each of the following community groups (and each community group will constitute an *electorate* for the election):~~

~~(a) Pipalyatjara/Kalka;~~

~~(b) Watarru;~~

~~(c) Kanypi/Nyapari/Angatja;~~

~~(d) Amata/Tjurma;~~

~~(e) Kaltjiti/Irintata/Watinuma;~~

~~(f) Anilalya/Turkey Bore;~~

~~(g) Pukatja/Yunyarinyi;~~

~~(h) Mimili;~~

~~(i) Iwantja;~~

~~(j) Amuruna/Railway Bore/Witjintitja/Wallatinna.~~

~~(3) Schedule 3, clause 3(3)(c) delete ", if permissible under local custom,"~~

~~(4) Schedule 3, clause 4(1) delete "on a day" and substitute:~~

during a period

~~(5) Schedule 3, clause 4(1) delete "same day" and substitute:~~

same period

~~(6) Schedule 3, clause 4(2) delete "on the day" and substitute:~~

during the period

~~(7) Schedule 3, clause 4—after subclause (2) insert:~~

~~(3) Subject to this Schedule, the period determined by the returning officer during which voting may be held must be not less than 1 day and not more than 7 days.~~

~~(8) Schedule 3, clause 5(2)(b) delete "time and date when voting shall" and substitute:~~

period during which voting may



- ~~(9) Schedule 3, clause 5(2)(c) after "location" insert:~~  
or locations
- ~~(10) Schedule 3, clause 5(2)(d) delete "each ballot at the election on the date and time advertised" and substitute:~~  
5 the election during the period during which voting may take place
- ~~(11) Schedule 3, clause 6(1) delete "A Pitjantjatjara" and substitute:~~  
An Anangu
- ~~(12) Schedule 3, clause 6(1)(a) delete paragraph (a) and substitute:~~  
10 ~~(a) to nominate for the office of the member of the Executive Board to be elected from the electorate; and~~
- ~~(13) Schedule 3, clause 6(2) after "location" insert:~~  
or locations
- ~~(14) Schedule 3, clause 6(5) delete ", if permissible under local custom,"~~
- ~~(15) Schedule 3, clause 8(1) delete "a time and at locations" and substitute:~~  
15 during the period, and at a location or locations;
- ~~(16) Schedule 3, clause 8(1) delete "such time should be" and substitute:~~  
such period should commence
- ~~(17) Schedule 3, clause 8(2) delete ", if permissible under local custom,"~~
- ~~(18) Schedule 3, clause 8(4) delete ", if permissible under local custom,"~~
- ~~(19) Schedule 3, clause 8(5) delete subclause (5) and substitute:~~  
20 ~~(5) A person may, at an election, only cast 1 vote in relation to the election of members of the Executive Board.~~  
~~(6) To avoid doubt, voting is not compulsory.~~
- ~~(20) Schedule 3, clause 17(3)(b) delete paragraph (b) and substitute:~~  
25 ~~(b) must within 1 month after the conclusion of the election cause the result of the election to be published—~~  
~~(i) in the Gazette; and~~  
~~(ii) in a newspaper circulating throughout the State; and~~  
~~(iii) in any other manner determined by the Minister.~~
- ~~(21) Schedule 3, clause 20(2)(a) delete paragraph (a) and substitute:~~  
30 ~~(a) to nominate for the office of the member of the Executive Board to be elected from a particular electorate; or~~
- ~~(22) Schedule 3, clause 20(2) delete "a Pitjantjatjara" and substitute:~~  
an Anangu
- ~~(23) Schedule 3, clause 24 after "member of the" wherever occurring insert:~~  
35 Executive

~~(24) Schedule 3, clause 24 delete "or the Chairperson of Anangu Pitjantjatjara (as the case requires)" wherever occurring~~

~~(25) Schedule 3, clause 30 after "may" insert:~~

~~, on the recommendation of the Minister and Anangu Pitjantjatjara Yankunytjatjara,~~

~~(26) Schedule 3 after clause 30 insert:~~

### **31—Costs**

~~Any money required for the purposes of an election under section 9 is to be paid out of the Consolidated Account (which is appropriated to the necessary extent).~~

### **31—Amendments relating to Anangu Pitjantjatjara Yankunytjatjara**

(1) Throughout Act—after "Anangu Pitjantjatjara" wherever occurring insert:

Yankunytjatjara

(2) Throughout Act—delete "Anangu" wherever occurring and substitute:

Anangu

### **32—Review of Act by Minister**

(1) The Minister responsible for the administration of the *Pitjantjatjara Land Rights Act 1981* (the **Minister**) must cause an independent review of the operation of the amendments effected by this Act to be conducted and a report on the results of the review to be submitted to him or her.

(2) A review under this section must be conducted by a panel of 3 people selected by the Ombudsman of whom one must be an Anangu (within the meaning of the *Pitjantjatjara Land Rights Act 1981*).

(3) The Minister must ensure that the Ombudsman is provided with the resources the Ombudsman reasonably requires for the purposes of carrying out functions under subsection (2).

(4) The Minister must ensure that, as part of the review, reasonable steps are taken to seek submissions from Anangu Pitjantjatjara Yankunytjatjara, the Executive Board of Anangu Pitjantjatjara Yankunytjatjara and the Aboriginal Lands Parliamentary Standing Committee.

(5) The review and the report must be completed before the third anniversary of the commencement of section 1.

(6) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

### **Schedule 1—Transitional provisions**

1 The person holding the position of Director of Administration, however referred to, immediately before the commencement of section 14, will be taken, on commencement of that section, to have been appointed as the Director of Administration under the *Pitjantjatjara Land Rights Act 1981* as amended by this Act.

- 2 The person holding the position of General Manager, however referred to, immediately before the commencement of section 14, will be taken, on commencement of that section, to have been appointed as the General Manager under the *Pitjantjatjara Land Rights Act 1981* as amended by this Act.