

South Australia

# **Pitjantjatjara Land Rights (Executive Board) Amendment Act 2004**

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

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## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

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

- 4 Amendment of section 4—Interpretation
- 5 Amendment of section 9—Constitution of the Executive Board of Anangu Pitjantjatjara
- 6 Insertion of section 9A
  - 9A Offences relating to election of Executive Board
- 7 Amendment of section 14—The approved constitution of Anangu Pitjantjatjara
- 8 Amendment of section 19—Unauthorized entry on the lands
- 9 Insertion of Schedule 3

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

##### **Part 1—Preliminary**

- 1 Interpretation

##### **Part 2—General rules relating to an election**

- 2 Elections
- 3 Returning officer
- 4 Election timetable
- 5 Distribution of information
- 6 Eligibility and nominations
- 7 Uncontested elections
- 8 Voting
- 9 Counting of votes

##### **Part 3—Declaration of results**

- 15 Provisional declarations
- 16 Recounts
- 17 Declaration of results and certificate

##### **Part 4—Disputed Returns**

- 18 Constitution of Court
- 19 The clerk of the Court
- 20 Jurisdiction of the Court
- 21 Procedure upon petition
- 22 Powers of the Court

23	Illegal practices
24	Effect of decision
25	Participation of Anangu Pitjantjatjara in proceedings
26	Right of appearance
27	Case stated
28	Costs
29	Rules of the Court

**Part 5—Miscellaneous**

30	Amendment of Schedule
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**Schedule 1—Transitional provisions**

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

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Pitjantjatjara Land Rights (Executive Board) Amendment Act 2004*.

**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.

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

**4—Amendment of section 4—Interpretation**

Section 4—after the definition of *the constitution* insert:

*Electoral Commissioner* means the person for the time being holding, or acting in, the office of the Electoral Commissioner under the *Electoral Act 1985*;

**5—Amendment of section 9—Constitution of the Executive Board of Anangu Pitjantjatjara**

- (1) Section 9(2)—delete subsection (2) and substitute:
  - (2) The Executive Board consists of—
    - (a) the Chairperson; and
    - (b) 10 other members,  
elected in accordance with this section.
- (2) Section 9(3)—delete subsection (3)

- (3) Section 9(4)—delete subsection (4) and substitute:
- (4) A member of the Executive Board holds office, subject to the provisions of the constitution relating to casual vacancies, until the next election of members and is, subject to the constitution, eligible for re-election.
- (4) Section 9(5)—delete "subject to the constitution, hold office until the next annual general meeting of Anangu Pitjantjatjara" and substitute:
- subject to the provisions of the constitution relating to casual vacancies, hold office for the balance of the term of the person's predecessor
- (5) Section 9(6)—delete subsection (6) and substitute:
- (6) An election of members of the Executive Board—
- (a) must be conducted within 3 months after the first anniversary of the previous election; and
- (b) must be conducted by the Electoral Commissioner—
- (i) in accordance with the rules set out in Schedule 3; and
- (ii) to the extent that the rules set out in Schedule 3 fail to deal with a matter that, in the opinion of the Electoral Commissioner, is necessary for the proper conduct of the election—in accordance with rules determined by the Electoral Commissioner in relation to that matter.
- (7) The validity of any election or return may be disputed in accordance with Schedule 3 and not otherwise.

## **6—Insertion of section 9A**

After section 9 insert:

### **9A—Offences relating to election of Executive Board**

- (1) A person who—
- (a) exercises violence or intimidation, or offers or gives a bribe, with a view to—
- (i) inducing a person to submit or withdraw candidature for an election under section 9; or
- (ii) influencing the vote of a person at such an election; or
- (iii) otherwise interfering with the due course of an election; or
- (b) receives a bribe offered in contravention of paragraph (a), is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for seven years.

- (2) A person who—
- (a) dishonestly exercises, or attempts to exercise, a vote at an election under section 9 to which that person is not entitled; or
  - (b) dishonestly influences or attempts to influence the result of such an election; or
  - (c) hinders or interferes with the free exercise or performance, by another person, of a right in respect of such an election,
- is guilty of an offence
- Maximum penalty: \$5 000 or imprisonment for one year.
- (3) A person who is a candidate for election or acting on behalf of such a candidate (whether with or without the candidate's authority) must not act as an assistant to a person voting at the election.
- Maximum penalty: \$5 000 or imprisonment for one year.
- (4) A scrutineer must not act as an assistant to a person voting at an election.
- Maximum penalty: \$5 000 or imprisonment for one year.
- (5) A person must not, by clandestine or dishonest means, attempt to discover how another person has voted.
- Maximum penalty: \$1 250 or imprisonment for 3 months.
- (6) A person who acquires knowledge of the vote of another person in the exercise of powers or functions under this Act must not divulge that knowledge.
- Maximum penalty: \$2 500 or imprisonment for 6 months.
- (7) To avoid doubt, no declaration of public policy or promise of public action constitutes bribery or dishonest influence.
- (8) In this clause—
- bribe* includes any pecuniary sum or material advantage including food, drink or entertainment.

### **7—Amendment of section 14—The approved constitution of Anangu Pitjantjatjara**

- (1) Section 14(3)—delete "the Corporate Affairs Commission" and substitute:  
the Minister
- (2) Section 14(4)—delete subsection (4)

### **8—Amendment of section 19—Unauthorized entry on the lands**

- (1) Section 19(8)—after paragraph (b) insert:
- (ba) the Electoral Commissioner acting in relation to an election being conducted, or to be conducted, under section 9, or a person assisting the Electoral Commissioner in relation to such an election;

(2) Section 19(9)—after "(8)(b)," insert:

(ba),

## 9—Insertion of Schedule 3

After Schedule 2 insert:

### Schedule 3—Rules of election under section 9

#### Part 1—Preliminary

##### 1—Interpretation

In this Schedule—

*Court* means the Court of Disputed Returns constituted under this Schedule;

*electoral official* means the returning officer or an electoral official appointed by the returning officer under clause 3(2);

*electorate*—see clause 2(a);

*relevant electoral official* means an electoral official appointed to be responsible for a particular electorate in accordance with clause 3(2);

*returning officer*—see clause 3(1).

#### Part 2—General rules relating to an election

##### 2—Elections

An election under section 9 will consist of—

- (a) an election of one member of the Executive Board from each of the following community groups (and each community group will constitute an *electorate* for the election):
  - (i) Pipalyatjara/Kalka;
  - (ii) Watarru;
  - (iii) Kanypitjara/Nyapari/Angatja;
  - (iv) Amata/Tjurma;
  - (v) Kaltjiti/Irintata/Watinuma;
  - (vi) Anilalya/Turkey Bore;
  - (vii) Pukatja/Yunyarinyi;
  - (viii) Mimili;
  - (ix) Iwantja;
  - (x) Amuruna/Railway Bore/Witjintitja/Walatina; and
- (b) an election of the Chairperson of the Executive Board.

### **3—Returning officer**

- (1) The Electoral Commissioner will be the returning officer for the purposes of an election under section 9.
- (2) The returning officer must appoint a relevant electoral official in relation to each electorate, and may appoint one or more other electoral officials to assist in the conduct of an election.
- (3) Without limiting the generality of subclause (2), an electoral official—
  - (a) may hand out nomination forms to members of the community; and
  - (b) may receive nomination forms up to the close of nominations; and
  - (c) may, if permissible under local custom, take a photograph of each candidate and write the name of the candidate on the back.

### **4—Election timetable**

- (1) Subject to this Schedule, voting will be held in each electorate during the period from 9.30 am until 3 pm on a day determined by the returning officer (which must be the same day in each electorate).
- (2) A person may only vote during the times, and on the day, referred to in subclause (1).

### **5—Distribution of information**

- (1) The returning officer will be responsible for publicity of an election in each electorate.
- (2) Publicity of an election under these rules must include—
  - (a) the description of the election process; and
  - (b) the time and date when voting shall take place; and
  - (c) the location where—
    - (i) nominations will be called; and
    - (ii) voting will take place,in each electorate; and
  - (d) the eligibility of voters to one vote in each ballot at the election on the date and time advertised.

### **6—Eligibility and nominations**

- (1) A Pitjantjatjara of or above the age of 18 years who is a member of a community constituting an electorate will be eligible—
  - (a) to nominate for one (but not both) of the following offices—
    - (i) member of the Executive Board to be elected from the electorate; or

- (ii) Chairperson of the Executive Board; and
  - (b) to vote in an election held in relation to the electorate.
- (2) Nominations will be called in each electorate at a time and location determined by the returning officer, and will close 7 days after the nominations are called.
- (3) A person wishing to nominate must nominate in writing and lodge their nomination with the relevant electoral official.
- (4) If, at the close of nominations, it appears that the same person has nominated for election to two or more offices, both or all the nominations are void.
- (5) If more than one person nominates in an election for a particular electorate, a photograph of each candidate will, if permissible under local custom, be taken and be used to assist voters during the voting process.
- (6) The relevant electoral official must cause all nomination forms and photographs of candidates (if any) to be sent to the returning officer in a manner determined by the returning officer (but so that the documents reach the returning officer within 7 days after the close of nominations).

## **7—Uncontested elections**

If only one nomination is received in relation to any office to be filled at an election under section 9, the relevant electoral official will declare the candidate duly elected to the office.

## **8—Voting**

- (1) If more than one nomination is received in relation to an office to be filled at an election under section 9, an election by secret ballot in relation to the office will be held in accordance with this Schedule at a time and at locations determined by the returning officer (and such time should be approximately 21 days after the nominations close).
- (2) Voting will be conducted by use of voting marbles placed in receptacles each bearing the name and, if permissible under local custom, the photograph of a candidate, and the method of voting will be first past the post.
- (3) The relevant electoral official must place the receptacles in a line, the order of which is to be determined by lot conducted by the electoral official in the presence of another person.
- (4) Each person wishing to vote must cast their vote in the presence of an electoral official (but otherwise in private) by placing a voting marble in the receptacle that bears the name and, if permissible under local custom, the photograph of the candidate of their choice.
- (5) A person may, in an election, only cast—
  - (a) one vote in relation to the election of the Chairperson of the Executive Board; and

- (b) one vote in relation to the election of other members of the Executive Board,

and in any case must not vote in more than one electorate.

### **9—Counting of votes**

- (1) The following provisions relate to the counting of votes at an election:
  - (a) an electoral official must count the votes for each candidate;
  - (b) the candidate receiving the greatest number of votes will be elected;
  - (c) in the event of a tie, an electoral official will determine who is elected by placing the names of the drawn candidates into a receptacle and drawing one out (and the candidate drawn out will be elected).
- (2) A candidate may nominate a person (not being a candidate) to represent him or her during the counting of votes by signing a scrutineer's form (and the scrutineer may view the handing out of voting marbles and counting of votes, but must not view an elector voting).

## **Part 3—Declaration of results**

### **15—Provisional declarations**

When the result of the election becomes apparent, the returning officer must make a provisional declaration of the result.

### **16—Recounts**

- (1) At any time within 48 hours after the returning officer has made a provisional declaration, a candidate (not being a candidate in whose favour the provisional declaration was made) may, in a manner determined by the returning officer, request a recount of the votes cast in relation to the relevant vacancy and, in the event of a request being made, the returning officer must cause a recount of votes to be made unless the returning officer considers that there is no prospect that a recount would alter the result of the election.
- (2) The returning officer may, on his or her own initiative, during the period of 48 hours referred to in subclause (1), decide to conduct a recount of any votes cast in the election.
- (3) The following provisions apply to a recount:
  - (a) the returning officer should give the candidates reasonable notice of the time and place at which it is to be conducted;
  - (b) the returning officer may reverse a decision taken at the count;



- (c) if the votes of two or more candidates are equal and one of them was excluded by lot at the count, the same candidate must be excluded at the recount.

### **17—Declaration of results and certificate**

- (1) If the period for requesting a recount for an election expires without such a request having been made and the returning officer has not decided to initiate a recount, the returning officer must confirm the relevant provisional declarations, and immediately make out a return to the Minister certifying the election of specified candidates to specified offices.
- (2) If a recount is made, the returning officer must, according to the result of the recount—
  - (a) confirm the relevant provisional declaration; or
  - (b) revoke the provisional declaration and make a final declaration in accordance with the result of the recount,and then immediately make out a return to the Minister certifying the result of the election accordingly.
- (3) The returning officer—
  - (a) must notify all candidates, in writing, of the result of the election; and
  - (b) must within one month after the conclusion of the election cause public notice to be given of the result of the election in a manner determined by the Minister.
- (4) When the returning officer certifies the result of an election under subclause (1) or (2), the election of the candidate or candidates takes effect immediately.

## **Part 4—Disputed Returns**

### **18—Constitution of Court**

- (1) There will be a Court of Disputed Returns for the purposes of this Act.
- (2) The Court is constituted of a District Court Judge.
- (3) The Court, separately constituted under this clause, may sit contemporaneously to hear separate proceedings.
- (4) The Court is a court of record.
- (5) Subject to this Part, the procedure and powers of the Court are the same as those of the District Court when exercising its civil jurisdiction.

### **19—The clerk of the Court**

- (1) There will be a clerk of the Court appointed by the Chief Judge of the District Court.

- (2) The office of clerk of the Court may be held in conjunction with any other office.

## **20—Jurisdiction of the Court**

- (1) The Court has jurisdiction to hear and determine any petition addressed to it disputing the validity of an election under this Act.
- (2) The Court may not call in question the eligibility of a person—
- (a) to nominate for the office of—
    - (i) member of the Executive Board to be elected from a particular electorate; or
    - (ii) Chairperson of the Executive Board; or
  - (b) to vote in an election held in relation to a particular electorate,

on the basis of whether or not they are a Pitjantjatjara, or a member of a particular community group.

## **21—Procedure upon petition**

- (1) A petition to the Court must—
- (a) set out the facts relied on to invalidate the election; and
  - (b) set out the relief to which the petitioner claims to be entitled; and
  - (c) be signed by a candidate at the election in dispute or by an elector for that election; and
  - (d) be lodged with the clerk of the Court within 28 days after the conclusion of the election; and
  - (e) be accompanied by the prescribed amount as security for costs.
- (2) A copy of the petition must be served on—
- (a) any person declared elected in the disputed election; and
  - (b) Anangu Pitjantjatjara; and
  - (c) if it is alleged that the election is invalid on account of an act or omission of an electoral official—the returning officer.
- (3) If, having been served under subclause (2), a person or Anangu Pitjantjatjara proposes to contest the petition, the person or Anangu Pitjantjatjara must, within 14 days after service, or such further time as may be allowed by the Court (on application made either before or after the expiration of the period of 14 days), lodge with the clerk of the Court, and serve on the petitioner, a reply.
- (4) A reply must—
- (a) set out the facts on which the applicant proposes to rely; and

- (b) ask for any relief to which the applicant claims to be entitled; and
- (c) be executed by—
  - (i) if the applicant is a natural person—the applicant; or
  - (ii) if the applicant is Anangu Pitjantjatjara—Anangu Pitjantjatjara.

## **22—Powers of the Court**

- (1) The Court must sit as an open court, and its powers include the following:
  - (a) to adjourn;
  - (b) to compel the attendance of witnesses and the production of documents;
  - (c) to examine witnesses on oath, affirmation or declaration;
  - (d) with the consent of the parties to the proceedings, to receive evidence on affidavit or by statutory declaration;
  - (e) subject to this Act and the rules, to determine its procedure in each case;
  - (f) to declare—
    - (i) that a person who was returned as elected was not duly elected; and
    - (ii) that a candidate who was not returned as elected was duly elected;
  - (g) to declare an election void;
  - (h) to dismiss or uphold a petition, in whole or in part;
  - (i) to amend or allow the amendment of a petition or reply;
  - (j) to punish contempt of its authority by fine or imprisonment.
- (2) The Court may exercise all or any of its powers under this clause on such grounds as the Court in its discretion thinks just and sufficient.
- (3) The Court is not bound by the rules of evidence.
- (4) The Court must act according to good conscience and the substantial merits of the case without regard to legal technicalities.
- (5) A decision of the Court is final and without appeal.

## **23—Illegal practices**

- (1) The Court cannot declare an election void, or that a candidate returned as elected was not duly elected, on the ground of an illegal practice found by the Court to have been committed unless the Court is satisfied, on the balance of probabilities, that the result of the election was affected by the illegal practice.

- (2) If an illegal practice under section 9A(1)(a)(i) or 9A(2)(b) is found by the Court to have been committed, the illegal practice will be taken to have affected the result of the election unless the contrary is proved on the balance of probabilities.
- (3) No finding by the Court as to whether an illegal practice was committed constitutes a bar to criminal proceedings in relation to the illegal practice or may be admitted as evidence in such proceedings.
- (4) If the Court finds that an illegal practice occurred in relation to an election, the clerk of the Court must report the finding to the Minister.
- (5) In this clause—  
*illegal practice* means an offence against Part 2 Division 4 of this Act.

#### **24—Effect of decision**

- (1) If pursuant to this Part a person returned as elected is declared not to have been duly elected, that person ceases to be a member of the Board or the Chairperson of Anangu Pitjantjatjara (as the case requires) and the person declared to have been duly elected will take his or her place accordingly.
- (2) If pursuant to this Part an election is declared void, a person returned as elected at the election ceases to be a member of the Board or the Chairperson of Anangu Pitjantjatjara (as the case requires).

#### **25—Participation of Anangu Pitjantjatjara in proceedings**

- (1) The Court may—
  - (a) on the application of a party to the proceedings—order that Anangu Pitjantjatjara be joined as a party to the proceedings; or
  - (b) on the application of Anangu Pitjantjatjara—allow Anangu Pitjantjatjara to intervene in the proceedings.
- (2) Anangu Pitjantjatjara may only be joined as a party to the proceedings or allowed to intervene if the Court is satisfied that it is fair and reasonable that Anangu Pitjantjatjara participate in the proceedings.
- (3) If Anangu Pitjantjatjara is allowed to intervene in the proceedings, it may intervene in the manner and to the extent directed by the Court, and on such other conditions as the Court may direct.

#### **26—Right of appearance**

A party to proceedings before the Court may appear personally or be represented by counsel.

## 27—Case stated

The Court may, of its own motion or on the application of a party to proceedings, state a question of law for the opinion of the Full Court of the Supreme Court.

## 28—Costs

- (1) The Court may make orders for costs as it thinks just (including an order for costs in favour of or against Anangu Pitjantjatjara if it has been joined as a party to the proceedings or has intervened in the proceedings).
- (2) If an election is declared void, or a candidate returned as elected is declared not to have been duly elected, on account of an act or omission of an electoral official, any costs in favour of the petitioner must, to the extent to which they are attributable to that act or omission, be awarded against the Crown.
- (3) An order under this clause may be enforced as an order of the District Court.

## 29—Rules of the Court

The Chief Judge of the District Court may make rules—

- (a) regulating the practices and procedures of the Court; and
- (b) fixing fees to be paid in respect of proceedings before the Court; and
- (c) making any other provision necessary or expedient for the purposes of this Schedule.

## Part 5—Miscellaneous

### 30—Amendment of Schedule

The Governor may, by regulation, amend this Schedule.

## Schedule 1—Transitional provisions

1 In this Schedule—

*Anangu Pitjantjatjara* means the body corporate of that name established under the principal Act;

*Executive Board* means the Executive Board of Anangu Pitjantjatjara established under the principal Act;

*principal Act* means the *Pitjantjatjara Land Rights Act 1981*.

2 Subject to clause 3, and despite a provision of the principal Act, or a relevant provision of the constitution of Anangu Pitjantjatjara, an election conducted in accordance with section 9 of the principal Act (as amended by this Act) at which the members and Chairperson of the Executive Board are elected must be conducted not later than 8 weeks after the date of commencement of this Act.

- 3        However, if the returning officer for the election determines that it would be impracticable or culturally inappropriate to conduct the election within the period referred to in clause 2, the election may be conducted after the end of that period (but should be held as soon as is practicable and culturally appropriate).
- 4        Despite a provision of the principal Act, or a relevant provision of the constitution of Anangu Pitjantjatjara, the term of office of a member of the Executive Board elected on 7 November 2002 will be taken to be the period from 7 November 2002 until the election referred to in clause 2 (and the member is, subject to the constitution, eligible for re-election).
- 5        An act or decision of the Executive Board that would have been valid if done or made after the commencement of clause 4 will be taken to be valid for all purposes.