

South Australia

Anangu Pitjantjatjara Yankunytjatjara Land Rights (Miscellaneous) Amendment Act 2016

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

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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 *Anangu Pitjantjatjara Yankunytjatjara Land Rights (Miscellaneous) Amendment Act 2016*.

2—Commencement

- (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Section 13 will come into operation on 1 July 2017.

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 *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*

4—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *road works* insert:

serious offence means—

- (a) an offence against Division 1, 1A, 4, 5, 9, 11, 11A, 12 or 16 of Part 3 of the *Criminal Law Consolidation Act 1935*; or
- (b) an offence against section 19A, 19AB, 23, 29, 29A, 32AA or 72 of the *Criminal Law Consolidation Act 1935*; or
- (c) an offence against Part 3B, 5 (other than a summary offence), 5A, 6, 6A (other than an offence against section 170A), 6B or 7 (other than an offence against section 257) of the *Criminal Law Consolidation Act 1935*; or
- (d) an indictable offence under Part 5 of the *Controlled Substances Act 1984*; or
- (e) an offence against section 9A of this Act; or
- (f) an offence against section 42D of this Act; or
- (g) an offence against a by-law made under this Act consisting of or involving the sale or supply of alcoholic liquor; or
- (h) an offence against a by-law made under this Act relating to gambling; or
- (i) an offence against the law of another jurisdiction that corresponds to an offence referred to in a preceding paragraph; or

- (j) a conspiracy to commit, or an attempt to commit, an offence referred to in a preceding paragraph; or
- (k) an offence of a kind declared by the regulations to be a serious offence,

but does not include an offence, or an offence of a class, declared by the regulations to not be a serious offence;

5—Amendment of section 4A—Objects

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

- (2) It is an object of this Act that Anangu men and Anangu women are afforded the opportunity to have equal representation on the Executive Board.

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

Section 5(4)(a)—delete paragraph (a) and substitute:

- (a) a majority of the members of the Executive Board; or

7—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 up to 14 members elected or appointed in accordance with this Act.

Note—

Each electorate will be able to elect 1 male member and 1 female member of the Executive Board.

- (2) Section 9(6)(a)—delete paragraph (a) and substitute:
 - (a) must (unless the Minister determines otherwise) be conducted during the period commencing on 1 May and ending on 31 August in the third year following the previous election; and
- (3) Section 9(8)—delete "Minister must cause the electorates constituted by" and substitute:

Electoral Commissioner must review the electorates constituted in accordance with

8—Amendment of section 9D—Casual vacancies

- (1) Section 9D(1)—after paragraph (c) insert:
 - (ca) resides, without leave of the Executive Board, other than in the electorate from which he or she was elected for a total period of more than 3 months in any 12 month period; or
- (2) Section 9D(2)—after paragraph (d) insert:
 - (da) is found guilty of a serious offence; or

- (3) Section 9D(3)—delete "does not apply until the period for appealing against the conviction" and substitute:
- or (da) do not apply until the period for appealing against the conviction or finding of guilt
- (4) Section 9D(5) and (6)—delete subsections (5) and (6) and substitute:
- (5) If a casual vacancy occurs in the office of a member, a supplementary election must, subject to subsection (7), be held in accordance with the following provisions:
- (a) the supplementary election must be conducted in the electorate from which the member was elected;
- (b) the supplementary election must be held as soon as possible after the casual vacancy occurs;
- (c) only a person of the same gender as the member can be elected at the supplementary election;
- (d) the supplementary election must be conducted in accordance with Schedule 3 (with such modifications as the Electoral Commissioner thinks fit) as if the supplementary election were an election under section 9.
- (5) Section 9D(7)—delete "suitable Anangu" and substitute:
- suitable male or female Anangu (as the case requires)

9—Amendment of section 10—Procedure of the Executive Board

- (1) Section 10(2)—delete subsection (2) and substitute:
- (2) A quorum of the Executive Board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (2) Section 10(6)—delete "(being a majority comprising not less than 6 votes)"

10—Amendment of section 13B—Director of Administration

Section 13B(3)—delete subsection (3) and substitute:

- (3) A person who—
- (a) has been found guilty of a serious offence within the preceding 10 years; or
- (b) has ever been removed from office for failing to comply with—
- (i) a duty imposed under section 13H, 13I or 13J; or
- (ii) a corresponding duty imposed under any other Act or law; or
- (c) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth,

must not be appointed as the Director of Administration.

11—Amendment of section 13D—General Manager

Section 13D(3)—delete subsection (3) and substitute:

- (3) A person who—
- (a) has been found guilty of a serious offence within the preceding 10 years; or
 - (b) has ever been removed from office for failing to comply with—
 - (i) a duty imposed under section 13H, 13I or 13J; or
 - (ii) a corresponding duty imposed under any other Act or law; or
 - (c) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
 - (d) is bankrupt, or has applied to take the benefit of a law for the relief of insolvent debtors,

must not be appointed as the General Manager.

12—Amendment of section 13G—Termination of appointment of Director of Administration or General Manager by Executive Board

- (1) Section 13G(1)(e)—delete paragraph (e)
- (2) Section 13G(3)—after paragraph (d) insert:
 - (da) is found guilty of a serious offence; or
- (3) Section 13G(3)—after paragraph (e) insert:
 - (ea) in the case of the General Manager—becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (4) Section 13G(4)(a)—delete paragraph (a)
- (5) Section 13G(5)—delete "(1)(e)(i), (3)(d) and (4)(a) do not apply until the period for appealing against the conviction" and substitute:
 - (3)(d) and (3)(da) do not apply until the period for appealing against the conviction or finding of guilt

13—Amendment of section 13O—Minister may suspend Executive Board

- (1) Section 13O(1)—delete "The Minister may, for any reason he or she thinks fit" and substitute:

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
- (2) Section 13O(1a)—delete subsection (1a)

14—Substitution of section 35

Section 35—delete the section and substitute:

35—Minister to appoint panel of conciliators

- (1) The Minister must establish a panel of conciliators for the purposes of resolving disputes on the lands.
- (2) A member of the panel will be appointed by the Minister after consultation with Anangu Pitjantjatjara Yankunytjatjara and will hold office for a term, and on conditions, determined by the Minister.
- (3) A member of the panel is, at the expiration of a term of office, eligible for reappointment.
- (4) A member of the panel is entitled to fees, allowances and expenses approved by the Governor.
- (5) A member of the panel may be removed by the Minister for any reason the Minister thinks fit.
- (6) In appointing members to the panel, the Minister—
 - (a) should, as far as is reasonably practicable, endeavour to achieve a gender balance on the panel; and
 - (b) must have regard to the fact that the conciliators must be able to consider the needs of communities living on the lands; and
 - (c) should, as far as is reasonably practicable, endeavour to appoint conciliators who have qualifications and experience in law or mediation.
- (7) The panel is subject to the direction and control of the Minister (however the Minister must not give directions in relation to the way in which a particular dispute is to be resolved).

35A—Application for conciliation

- (1) An Anangu who is aggrieved by a decision or action of the Executive Board may apply to the Minister for conciliation in relation to that decision or action.
- (2) An application under this section must be made in a manner and form determined by the Minister.
- (3) On receiving an application under this section, the Minister—
 - (a) must refer the application to a member of the panel of conciliators to determine whether or not the matter is frivolous or vexatious, or otherwise lacks merit; and
 - (b) must, if that member determines that the matter is not frivolous or vexatious or lacking in merit, appoint a conciliator (not being the conciliator who made the determination) from the panel of conciliators to hear the matter.

15—Amendment of section 36—Conciliation

- (1) Section 36(1) and (1a)—delete subsections (1) and (1a)
- (2) Section 36(1b)—delete "an appeal, the" and substitute:
a matter, a
- (3) Section 36(2)—delete "The conciliator" and substitute:
A conciliator
- (4) Section 36(2)(a)—delete "appeal" and substitute:
matter
- (5) Section 36(3)—delete "The conciliator" and substitute:
A conciliator
- (6) Section 36(4)—delete "the conciliator" and substitute:
a conciliator
- (7) Section 36(5)—delete "The conciliator" and substitute:
A conciliator

16—Amendment of section 37—Order compelling compliance with direction of conciliator

Section 37—delete "the conciliator" wherever occurring and substitute in each case:
a conciliator

17—Amendment of Schedule 3—Rules of election under section 9

- (1) Schedule 3 clause 1, definition of *relevant electoral official*—delete the definition
- (2) Schedule 3 clause 1—after its present contents (now to be designated as subclause (1)) insert:
 - (2) To avoid doubt, a reference in this Schedule to an office of a member in respect of an electorate will be taken to be a reference to—
 - (a) the office of the male member of the Executive Board in respect of the electorate; or
 - (b) the office of the female member of the Executive Board in respect of the electorate; or
 - (c) both offices,
(as the context requires).
 - (3) To avoid doubt, a reference in this Schedule to an election in respect of an electorate will be taken to include a reference to—
 - (a) an election of the male member of the Executive Board; or
 - (b) an election of the female member of the Executive Board, in respect of the electorate (as the case requires).

- (3) Schedule 3 clause 2—delete clause 2 and substitute:

2—Electorates and elections

- (1) The Governor may, on the recommendation of the Minister, make regulations constituting 7 *electorates* for the purposes of an election under section 9.
 - (2) The Minister may only make a recommendation for the purposes of subclause (1) after consultation with—
 - (a) the Executive Board; and
 - (b) the returning officer.
 - (3) The regulations—
 - (a) must specify each of the community groups that comprise a particular electorate (and, to avoid doubt, each community group on the lands must wholly or partly comprise an electorate); and
 - (b) must, for ease of reference, include maps of the electorates setting out the community group or groups comprising the electorate.
 - (4) An election under section 9 will consist of the election of 1 male person and 1 female person to the offices of member of the Executive Board from each electorate.
- (4) Schedule 3 clause 3(2)—delete "must appoint a relevant electoral official in relation to each electorate, and may appoint one or more other" and substitute:
- may appoint 1 or more
- (5) Schedule 3 clause 5(2)(d)—delete "one"
- (6) Schedule 3 clause 5(2)—after paragraph (d) insert:
- and
- (e) an explanation that each eligible voter can vote for 1 male candidate and 1 female candidate at an election in his or her electorate,
- and may include any other information the returning officer thinks fit in relation to the election.
- (7) Schedule 3 clause 6—delete clause 6 and substitute:

6—Nominations for office of member of the Executive Board

- (1) A person is eligible to nominate for an office of member of the Executive Board to be elected from an electorate if—
 - (a) he or she is Anangu; and
 - (b) on the closing date in relation to the election—
 - (i) he or she is an elector enrolled on the State electoral roll in respect of a place of residence within the electorate; or

- (ii) he or she is provisionally enrolled on the State electoral roll in respect of a place of residence within the electorate and will attain 18 years of age on or before the polling day for the election.
- (2) An Anangu is not eligible to nominate for an office of member of the Executive Board in an election, or to hold office as a member of the Executive Board, if he or she has been found guilty of a serious offence within the preceding 10 years.
- (3) Nominations will be called in relation to each electorate at a time and location or locations determined by the returning officer, and will close 7 days after the nominations are called.
- (4) A person nominates for an office of member of the Executive Board by lodging with the returning officer—
 - (a) a written nomination in a form determined by the returning officer; and
 - (b) either—
 - (i) a criminal history report (such as a National Police Certificate) relating to the person and provided by South Australia Police or a CrimTrac accredited agency or broker within the 6 months immediately preceding the nomination; or
 - (ii) an application for, and written consent to the returning officer obtaining, a criminal history report of a kind referred to in subparagraph (i).
- (5) At the close of nominations, the returning officer must forward any applications and consents received under subclause (4)(b)(ii) to South Australia Police.
- (6) The returning officer must bear the cost of obtaining a criminal history report referred to in subclause (4)(b)(ii) (whether or not the person to whom the criminal history report relates is, in fact, elected to an office of member of the Executive Board).
- (7) The returning officer must, within 8 weeks after the close of nominations, make a declaration in respect of each person who is eligible to stand for election to an office of member of the Executive Board.
- (8) If, at the close of nominations, it appears that the same person has nominated for election to 2 or more offices, both or all of the nominations are void.
- (9) If more than 1 person nominates in an election for a particular electorate, a photograph of each candidate may be taken and used to assist voters.

(10) In this clause—

closing date, in relation to an election, means the day fixed by the returning officer for the close of the voters roll for that election (being a day falling not less than 3 months prior to the polling day for the election);

State electoral roll means the electoral roll kept under the *Electoral Act 1985* relating to the relevant district (within the meaning of that Act).

6A—Voters roll

- (1) There will be a voters roll prepared for the purposes of each election under section 9.
- (2) A voters roll is to be prepared by the returning officer.
- (3) A voters roll may differentiate the persons enrolled on the voters roll according to the electorates in relation to which they are entitled to vote.
- (4) A person is entitled (without application) to be enrolled on a voters roll in relation to an electorate if—
 - (a) he or she is Anangu; and
 - (b) on the closing date in relation to the election for which the voters roll is prepared—
 - (i) he or she is an elector enrolled on the State electoral roll in respect of a place of residence within the electorate; or
 - (ii) he or she is provisionally enrolled on the State electoral roll in respect of a place of residence within the electorate and will attain 18 years of age on or before the polling day for the election.
- (5) The voters roll must, in relation to each enrolled person, contain—
 - (a) the person's full name; and
 - (b) the person's residential address; and
 - (c) the name of the community group (if any) of which the person is a member,and may contain such other information as the returning officer thinks fit.
- (6) The returning officer may appoint such number of electoral registrars as he or she thinks appropriate.
- (7) The electoral registrars must assist in the preparation of a voters roll in accordance with any requirement of the returning officer.

- (8) If—
- (i) an Anangu is, on the closing date in relation to an election, enrolled or provisionally enrolled on the State electoral roll in respect of a place of residence that is on the lands; but
 - (ii) he or she is not entitled under subclause (4) to be enrolled on a voters roll prepared for the election because his or her place of residence does not fall within a community group forming a part of an electorate,

then, for the purposes of the election, he or she and his or her place of residence will be taken to be part of the community group specified by the returning officer.

- (9) In specifying a community group under subclause (8), the returning officer should, unless he or she does not consider it appropriate to do so in all the circumstances of the case, specify the community group (being a community group that forms part of an electorate) that is located closest to the place at which the Anangu concerned resides.
- (10) The returning officer may make such other rules or determinations in relation to a voters roll as he or she thinks fit.
- (11) In this clause—

closing date, in relation to an election, means the day fixed by the returning officer for the close of the voters roll for that election (being a day falling not less than 3 months prior to the polling day for the election);

State electoral roll means the electoral roll kept under the *Electoral Act 1985* relating to the relevant district (within the meaning of that Act).

6B—Eligibility to vote in elections

An Anangu who is enrolled on a voters roll under clause 6A in relation to a particular electorate is eligible to vote in an election under section 9 held in relation to the electorate.

- (8) Schedule 3 clause 7—delete "relevant electoral official will" and substitute:
- returning officer will, subject to this Schedule,
- (9) Schedule 3 clause 8(1)—delete "during the period, and at a location or locations, determined by the returning officer (and such period should commence approximately 21 days after the nominations close)" insert:
- and any determination of the returning officer during the period, and at a location or locations, determined by the returning officer (and such period should commence approximately 21 days after the nominations are declared)
- (10) Schedule 3 clause 8(2) to (4)—delete subclauses (2) to (4) (inclusive) and substitute:
- (2) The method of voting in an election is to be first past the post.

- (3) The returning officer must determine such rules as he or she considers necessary as to enable the casting of absentee votes in an election.
- (4) Without limiting any other rules that may be determined by the returning officer, the rules referred to in subclause (3) must provide for—
 - (a) voting at polling places at the locations determined by the returning officer in Adelaide and Alice Springs; and
 - (b) the verification of the identity of persons casting absentee votes in an election.
- (11) Schedule 3 clause 8(5)—delete subclause (5) and substitute:
 - (5) A person may only cast 1 vote in relation to the election of male members, and 1 vote in relation to the election of female members, of the Executive Board.
- (12) Schedule 3 clause 9(1)(c)—delete "an electoral official" and substitute:

the returning officer
- (13) Schedule 3 clause 9(2)—delete "handing out of voting marbles and"
- (14) Schedule 3—after clause 17 insert:

Part 3A—Supplementary elections on failure of election

17A—Supplementary elections on failure of election etc

- (1) Subject to this clause, if the election of a male member or a female member of the Executive Board from a particular electorate fails because—
 - (a) no person nominates for the office to which the election relates; or
 - (b) no votes are cast in the election,then the Minister may (but need not) require a supplementary election to be held in relation to the office.
- (2) Before making a determination not to require a supplementary election, the Minister must consult with—
 - (a) the Executive Board; and
 - (b) the returning officer,and may consult with any other person or body the Minister thinks fit.
- (3) A supplementary election under this Part must be conducted in accordance with this Schedule (with such modifications as the Electoral Commissioner thinks fit) as if the election were an election under section 9.

Schedule 1—Transitional provisions

1—Executed documents

Section 5(4) of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (as in force immediately before the commencement of section 6 of this Act) will be taken to continue to apply to a document executed before the commencement of that section.

2—Casual vacancies

Section 9D(5) and (6) of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (as in force before the commencement of this clause) do not apply to a vacancy in the office of a member of the Executive Board—

- (a) existing on the commencement of this clause; or
- (b) occurring after the commencement of this clause but before the first election of members of the Executive Board under section 9 following the commencement of this clause.

3—First election of members of the Executive Board

- (1) Despite a provision of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (as amended by this Act), the following provisions apply to the first election of members of the Executive Board under section 9 of that Act following the commencement of this clause:
 - (a) subject to this clause, the electorates for the election will be—
 - (i) the community groups of Pipalyatjara and Kalka;
 - (ii) the community groups of Kanypi, Nyapari, Angatja and Watarru;
 - (iii) the community groups of Amata and Tjurma;
 - (iv) the community groups of Kaltjiti, Irintata and Watinuma;
 - (v) the community groups of Pukatja, Yunyarinyi, Anilalya and Turkey Bore;
 - (vi) the community group of Mimili;
 - (vii) the community groups of Iwantja, Amuruna, Railway Bore, Witjintitja and Wallatinna;
 - (b) a reference in the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* to an electorate will be taken to be a reference to an electorate referred to in paragraph (a);
 - (c) the ***closing date*** for the purposes of clauses 6 and 6A of Schedule 3 of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* in relation to the election will be taken to be the day fixed by the returning officer for the close of the voters roll for the election (being a day falling not less than 1 month prior to the polling day for the election);
 - (d) section 9(6)(a) of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (as amended by this Act) will be taken not to apply in relation to the election;

- (e) the Minister must, for ease of reference, publish maps of the electorates setting out the community group or groups comprising the electorate for the election;
 - (f) section 9(8) of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (as in force immediately before the commencement of this clause) will be taken not to apply in relation to the election;
 - (g) the election must be held as soon as is reasonably practicable after the commencement of this clause;
 - (h) the returning officer may make such modifications to the rules set out in Schedule 3 of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (as amended by this Act) as he or she thinks necessary to enable the election to be conducted in an appropriate manner (including, to avoid doubt, by varying a time period specified in that Schedule in relation to an election).
- (2) The regulations may make further provisions of a savings or transitional nature in relation to the operation of this clause.