



# DECISION

*Fair Work (Registered Organisations) Act 2009*  
s.159—Alteration of other rules of organisation

## **Local Government NSW** (R2022/38)

MURRAY FURLONG

MELBOURNE, 8 JULY 2022

Alteration of other rules of organisation.

[1] On 4 April 2022 the Local Government NSW lodged with the Fair Work Commission a notice and declaration setting out particulars of alterations to its rules. Further information in support of the application was lodged on 3 June 2022.

[2] Staff of the Commission’s Registered Organisation’s section contacted the organisation following an initial assessment of the matter and raised concerns about the organisation’s overall compliance with its rules and the Act. The organisation was invited to provide further information and submissions addressing these concerns. Having regard to the totality of the information supplied, I am satisfied that the process followed by the organisation in transacting the alterations is consistent with its rules.

[3] The particulars set out alterations to the following rules of the organisation:

- Rule 32 – Annual Conferences
- Rule 33– Special Conferences
- Rule 43– Casual Vacancies
- Rule 50– Removal from the Board

[4] The alteration to Rule 32 reduces the timelines required for notifying members of an Annual Conference from a period of at least four (4) months to at least three (3) months.

[5] At Rule 33 a new provision has been introduced which sets out the process to be followed where Special Conferences are called for by resolution of the organisation’s Board of Directors. The rule also provides clarity on who can convene Special Conferences and when these can be held.

[6] The amendments to Rule 43 clarify that Board Directors who are candidates in an upcoming election will remain eligible to hold their office between the day a general election is held, and the day that the results of that election are announced. The alterations to Rule 50 on the other hand, clarify the circumstances in which Board Directors are no longer eligible to hold such office under the rules of the organisation.

[7] In my opinion, the alterations comply with and are not contrary to the *Fair Work (Registered Organisations) Act 2009*, the *Fair Work Act 2009*, modern awards and enterprise agreements, and are not otherwise contrary to law. I certify accordingly under subsection 159(1) of the *Fair Work (Registered Organisations) Act 2009*.



GENERAL MANAGER

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<PR741347>

**From:** LGNSW Events <Events@lgnsw.org.au>  
**Sent:** Friday, 3 June 2022 4:35 PM  
**To:** Vanessa Bolzan  
**Subject:** Vanessa - Your council is NOT registered to attend the Special Conference



## **FINAL WEEK TO REGISTER**

### **Your Council is NOT Registered for the Special Conference**

Dear Vanessa,

Our records indicate, **your council is not currently registered** to attend the LGNSW Special Conference, where the local government sector will debate and vote on council-submitted motions that help set our advocacy priorities for 2022.

We wish to assure members the conference will continue as an in-person event. Every precaution will be taken to host the event in a COVID-19 safe environment in compliance with Public Health Orders. To ensure the safety of guests, sponsors and staff, COVID-19 safety measures for the event venues will be provided prior to the Special Conference.

[View the Special Conference COVID safety measures >](#)

#### **Not attending the Special Conference?**

If your council is NOT intending to register for the Special Conference, please let us know via email to [bradley.hayden@lgnsw.org.au](mailto:bradley.hayden@lgnsw.org.au).

Registrations for the LGNSW Special Conference will close next week at **5.00pm, Monday 14 February**.

**REGISTER NOW**

We look forward to seeing you at the conference on Monday 28 February.

Yours sincerely

**LGNSW Events Team**

Elite Sponsor



## VOTING ENTITLEMENTS

The number of voting delegates that each member is entitled to send to the Special Conference is listed in [Appendix A](#).

Nominations for Special Conference voting delegates are [now open](#) and will close on 17 February 2022.

## Event Details



### Venue

Hyatt Regency Sydney



### Date

28 Feb - 2 Mar 2022



### Price

\$1094.50 Member Fee



### Program

[See draft program](#)



### Accommodation

[Book now](#)



### Parking

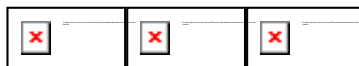
[Important information](#)

## Questions?

Please do not hesitate to contact us if you require any further information.

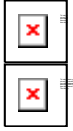
[Contact us today](#)

## Follow Us



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**From:** LGNSW <lgnsw@lgnsw.org.au>  
**Sent:** Tuesday, 8 February 2022 2:35 PM  
**To:** Tom Duffy  
**Subject:** The Weekly Newsletter, 8 February 2022



## 8 February

Dear Tom,

Your new LGNSW Board has now been inducted and it was great to finally come together – albeit online - for our very first meeting last week. It is a terrific group of Directors representing city and country, and I am particularly pleased to see that we have almost achieved a 50-50 gender balance!

Sadly, the unavoidable proximity of our Board Election and the 4 December Local Government election means we are one Director down: a fresh election will be held for this position on a date yet to be determined by the Australian Electoral Commission.

Highlights in this week's edition,

- EOIs Sought for LGNSW Committees
- Closing the Gap
- Deadline for Nominated Voting Delegates for the LGNSW Special Conference
- International Women's Day 2022 Lunch

[Read more](#)

## LGNSW Submissions

See the latest LGNSW Submissions in relation to government inquiries, legislation and other key issues of importance to local government

[View submissions](#)



## Final Week to Register for Special Conference

It's the final week to [register](#) for the **LGNSW Special Conference**, with registrations closing on Monday 14 February at 5.00pm. Also registered councils must [provide names of voting delegates](#) before the deadline of 5pm (AEDT) on Thursday 17 February.

[Read more](#)

## LGNSW Audit & Risk Committee EOIs Sought

Applications are sought from suitable qualified individuals interested in appointment as the independent Member of the LGNSW Audit and Risk Committee. Applications close COB Tuesday 15 February.

[Read More](#)



## New Look AdaptNSW Website

The new look AdaptNSW website is the leading source of credible information on climate change for NSW. The website is your one-stop shop to increase your awareness of climate change and how it will affect Councils and your communities.

[Read more](#)



## Employment Opportunities for People with Disability

The Australian Government is inviting organisations to apply to deliver services under the Information, Linkages and Capacity Building Program (ILC) - Building Employer Confidence and Inclusion in Disability Grant.

[Read more](#)

## Upcoming Events & Conferences



9 - 11 February 2022

Water Management Conference



28 February - 2 March 2022

Special Conference



8 March 2022

International Women's Day Lunch

## Upcoming Learning & Development Courses



14, 21 & 28 February 2022

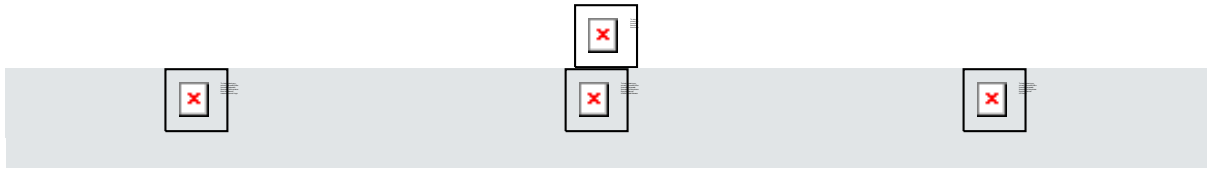


15 February 2022



17 February 2022

## Learning & Development Course Calendar



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**Nara Lovisa**

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**From:** LGNSW <lgnsw@lgnsw.org.au>  
**Sent:** Tuesday, 15 February 2022 8:50 AM  
**To:** Tom Duffy  
**Subject:** Notice of Business Papers for LGNSW Special Conference 2022

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged



## Notice of Business Paper for the Special Conference

Dear Tom,

It's two weeks until the 2022 LGNSW Special Conference, which begins at the Hyatt Regency Sydney. Registrations closed yesterday at 5.00pm (AEDT).

If you need further details or assistance regarding registration please contact Conference Secretariat Bradley Hayden on 0412 461 392 or [bradley.hayden@lgnsw.org.au](mailto:bradley.hayden@lgnsw.org.au).

**Note:** Due to COVID restrictions, some of our optional functions are at capacity. If you have not yet registered, some waitlists may apply.

To help registered voting delegates prepare for motions debate, the conference business paper, which includes motions submitted by councils, is now available to download. Please note, there are 2 categories of motions:

- **Category 1:** Motions for debate and consideration by conference, with new policies
- **Category 2:** Motions already covered by existing LGNSW policies

Members still have the opportunity to submit late motions [via email](#), up to 24 hours before the conference.

If registered voting delegates intend to propose amendments to motions during debate, they are encouraged to also [email these proposed amendments](#) to LGNSW in advance of, or during, the conference to ensure smooth proceedings during debate.

[VIEW BUSINESS PAPER](#)

We look forward to seeing you at the conference on Monday 28 February.

Yours sincerely,



**Cr Darriea Turley AM**  
LGNSW President

*Elite Sponsor*



## VOTING ENTITLEMENTS

The number of voting delegates that each member is entitled to send to the Special Conference is listed in [Appendix A](#). Nominations for Special Conference voting delegates are [now open](#) and will close on 17 February 2022.

## Event Details



### Venue

Hyatt Regency Sydney



### Date

28 Feb-2 Mar 2022



### Price

\$1,094.50 Member Fee



### Program

[See draft program](#)



### Accommodation

[Book now](#)



### Parking

[Important information](#)

## Questions?

Please do not hesitate to contact us if you require any further information.

[Contact us today](#)

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## Nara Lovisa

---

**From:** Tom Duffy <Tom.Duffy@lgnsw.org.au>  
**Sent:** Friday, 3 June 2022 4:54 PM  
**To:** Nara Lovisa  
**Subject:** RE: R2022/38 - Application pursuant to s.159 to alter other rules - LGNSW  
**Attachments:** Notice of Business Papers for LGNSW Special Conference 2022; The Weekly Newsletter, 8 February 2022; Vanessa - Your council is NOT registered to attend the Special Conference

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hi Nara,

Thank you for getting back to me and apologies for the delay.

As you have noted, pursuant to rule 33(b) of the Rules of Local Government New South Wales, “*where a Special Conference is called for under sub rule (a) of this Rule the Chief Executive shall convene a Special Conference for a date not later than four (4) weeks after the receipt of the notice calling for the Conference*”.

For clarity, Rule 33(a) of the Rules of Local Government New South Wales provides that a Special Conference of the Association may be convened by the President, or by resolution of the Board or by a petition signed by at least 10% of the member councils of the Association.

I understand that the application to alter the Rules of LGNSW (Matter No. R2022/38) did not include particulars as to the notice calling for the Special Conference.

LGNSW advises that notice calling for the Special Conference on 28 February 2022 to 1 March 2022 was provided on numerous occasions within four weeks of the Special Conference taking place:

- 8 February 2022;
- 9 February 2022;
- 15 February 2022(twice);
- 24 February 2022.

On 8 February 2022, LGNSW President, Cr Darriea Turley AM, issued correspondence by way of a ‘President’s Message’ to all member councils of the Association (see [here](#) and attached). Such correspondence was also published on LGNSW’s website and remained ‘live’ from 8 February 2022 until after the holding of the Special Conference.

On 9 February 2022, LGNSW issued correspondence by way of email titled ‘Your Council is NOT registered to attend the Special Conference’. This correspondence was sent to all General Managers and Senior Staff of the member councils of the Association who had not registered to attend the Special Conference. Please find this correspondence attached.

Please find attached an email sent from LGNSW President, Cr Darriea Turley AM, notifying all member councils of the Association on 15 February 2022 of the Special Conference commencing from 28 February 2022 to 2 March 2022. Attached to this notice was the *Special Conference 2022 Business Paper* sent to all member councils of the Association (see the *Special Conference 2022 Business Paper* [here](#)).

Further to the notice referred to in the above paragraph, LGNSW President, Cr Darriea Turley AM, issued correspondence by way of a ‘President’s Message’ to all member councils of the Association on 15 February 2022 (see [here](#)). Such correspondence was also published on LGNSW’s website and remained ‘live’ from 15 February 2022 until after the holding of the Special Conference. An excerpt of the President’s Message is copied below:

## Special Conference Update

The move will come just in time for [LGNSW's Special Conference](#) at the Hyatt Regency Sydney, which kicks off the following day with local government-focused workshops on Closing the Gap, rural and regional health, domestic violence and, of course, our Politician's Panel.

This Thursday marks the final 17 February deadline for the [registration of Nominated Voting Delegates](#). Don't forget: registration of Voting Delegates is a separate process from conference registration and should be undertaken [via the web form](#).

Our voting delegates will play a key role in helping to determine local government's advocacy priorities for the year and I'm confident we'll leave the Conference with a raft of powerful resolutions that will help us drive a much-needed locally led recovery.

The Business Paper is now available for download and printing from the [conference website](#).

On 24 February 2022, LGNSW President, Cr Darriea Turley AM, issued correspondence by way of a 'President's Message' to all member councils of the Association (see [here](#)). Such correspondence was also published on LGNSW's website and remained 'live' from 15 February 2022 until after the holding of the Special Conference. An excerpt of the President's Message is copied below:

The entire Board is looking forward to our [Special Conference](#) next week and a subsequent workshop where we will finalise LGNSW's Strategic Plan, which will incorporate your guidance through resolutions passed at our Special Conference. Don't forget to check out the motions up for debate ahead of time by downloading the [Conference Business Paper](#).

Should you require further information, please do not hesitate to contact me.

Kind Regards,

**Tom Duffy**

Industrial Officer

Local Government NSW

T 02 9242 4141 M 0409 166 288

[tom.duffy@lgnsw.org.au](mailto:tom.duffy@lgnsw.org.au)

[lgnsw.org.au](http://lgnsw.org.au)

**EXECUTIVE & PERSONAL ASSISTANTS CONFERENCE**  
**9-10 JUNE 2022**

**SWISSOTEL SYDNEY  
68 MARKET STREET, SYDNEY**

Join the EA&PA Conference to learn from a mix of professional and leading practitioners about current trends, ideas and practical skills.

**REGISTER NOW**

**From:** Nara Lovisa <Nara.Lovisa@fwc.gov.au>

**Sent:** Friday, 27 May 2022 12:49 PM

**To:** Tom Duffy <Tom.Duffy@lgnsw.org.au>

**Subject:** R2022/38 - Application pursuant to s.159 to alter other rules - LGNSW

You don't often get email from [nara.lovisa@fwc.gov.au](mailto:nara.lovisa@fwc.gov.au). [Learn why this is important](#)

**CAUTION:** This email originated from outside of LGNSW. Do not click links or open attachments unless you recognise the sender and know the content is safe.

OFFICIAL

Dear Tom,

I hope this finds you well!

I tried phoning you a couple of times this week but was unable to reach you.

I am getting in touch to let you know that the preliminary assessment has been completed for the application above, and was just hoping you may be able to assist with clarifying one of the aspects of the procedure followed by the Organisation in amending its rules.

More specifically, Rule 33(b) of the Organisation's rules provides that a Special Conference must be convened no later than 4 weeks after receipt by members of the notice which called for the meeting, if that Conference was convened by either the President, a Board resolution or a petition by at least 10% of member councils.

The Particulars lodged with the application do not clarify who or which body provided notice to members, however they do indicate that notice of the Special Conference was forwarded to all members on 10 August 2021. The Special Conference however, appears to have been held on 1 March 2022, which is more than four weeks after members received the notice for the meeting.

I am therefore just seeking some further information which could clarify whether the Organisation complied with Rule 33(b) in providing notice to members. In doing so, feel free to provide submissions or any further documentation in support of this, and I will pass these on to the General Manager for his further consideration. You may wish to also provide further information in relation to the Business Paper which was forwarded to members a few weeks ahead of the Special Conference, on 15 February 2022.

If you have any questions or concerns, please feel free to get in touch at any time and I'll be happy to help.

Thank you in advance for your assistance!

Best regards,

**Nara Lovisa**  
**Assistant Advisor**  
**Registered Organisations Section**



**Fair Work Commission**  
Australia's national workplace relations tribunal


**T:** 03 8656 4747

**E:** [nara.lovisa@fwc.gov.au](mailto:nara.lovisa@fwc.gov.au)

11 Exhibition Street, Melbourne VIC 3000

GPO Box 1994, Melbourne VIC 3001

[www.fwc.gov.au](http://www.fwc.gov.au)



The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.

Further contact: [adam.dansie@lgnsw.org.au](mailto:adam.dansie@lgnsw.org.au)

4 March 2022

Regulatory and Compliance Branch, NSW  
Fair Work Commission  
Level 11, Terrace Tower  
80 William Street  
EAST SYDNEY NSW 2011

By email: [ros@fwc.gov.au](mailto:ros@fwc.gov.au)

Dear Delegate to the General Manager,

**APPLICATION FOR CERTIFICATION OF ALTERATION OF THE RULES OF A REGISTERED ORGANISATION**

Pursuant to section 159 of the *Fair Work (Registered Organisations) Act 2009* (Cth) the Local Government and Shires Association of New South Wales ('LGNSW') hereby applies for certification of alteration of the Rules of LGNSW. The Fair Work Commission is advised that the rules that are the subject of this application for alteration are rules other than eligibility rules.

Attached hereto please find:

- 1) The Application - Form F1
- 2) Annexure 1 - Declaration of Cr Darriea Turley, President of LGNSW
- 3) Annexure 2 - A marked up copy of the Rules showing the proposed alterations

Consistent with regulation 126 of the *Fair Work (Registered Organisations) Regulations 2009* (Cth) the notice setting out the particulars of the alteration must be lodged with the Fair Work Commission within 35 days after the alteration is made. In this regard, LGNSW advises that the alterations were adopted by way of resolution that was moved and passed on 1 March 2022 during the 2022 LGNSW Special Conference to amend the LGNSW Rules.

Yours Sincerely



per Adam Dansie

**Senior Manager Workplace Relations**

# About the F1 application form

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## Application (no specific form provided)

### When to use this form

You can use this form if you would like to make an application to the Fair Work Commission (the Commission) and there is no specific form provided.

Please carefully check the [Forms](#) page of the Commission's website before using this form. If there is a specific approved form for your purpose, you must use the approved form that is available on the Commission's website.

### Lodgment and service of your completed form

1. **Lodge your application** along with any accompanying documents with the Commission. You can lodge your application online using the Commission's [Online Lodgment Service \(OLS\)](#) or by post, by fax or by email or in person at the [Commission office](#) in your state or territory.
2. **Serve a copy** of this application on the Respondent as soon as possible after lodging this application with the Commission.

If you are unsure about the service requirements for your particular application, you can seek directions from the Commission by lodging a Form F48 – Applications for Directions on Procedure.

### Where to get help

#### Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- processes in the Commission
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website [www.fwc.gov.au](http://www.fwc.gov.au) also contains a range of information that may assist.

### Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

### Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person's behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.



There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person's lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person's behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person **or**
- a bargaining representative that is representing the person **or**
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

## **Glossary of common terms**

**Appellant** – This is the person or organisation lodging an appeal.

**Applicant** – This is the person or organisation that is making an application.

**Jurisdictional objection** – This is a type of objection a Respondent can raise to an application. A Respondent can make this kind of objection if they think that the Commission, for a technical or legal reason, cannot hear the matter.

**Lawyer** – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

**Paid agent** – in relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

**Party** – A party is a person or organisation involved in a matter or case that is brought to the Commission.

**Respondent** – The person or business responding to an application made by an Applicant.

**Service** – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the Fair Work Commission Rules 2013 deal with service.

## Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



**Remove this cover sheet** and keep it for future reference – it contains useful information

# Form F1 – Application (no specific form provided)

Fair Work Commission Rules 2013, subrule 8(3) and Schedule 1

This is an application to the Fair Work Commission.

## The Applicant



These are the details of the person who is making the application.

<b>Title</b>	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name(s)</b>	Local Government NSW		
<b>Surname</b>			
<b>Postal address</b>	Level 28, Margaret Street		
<b>Suburb</b>	Sydney		
<b>State or territory</b>	NSW	<b>Postcode</b>	
<b>Phone number</b>	(02) 9242 4140	<b>Fax number</b>	
<b>Email address</b>	<a href="mailto:lgnsw.lgnsw@org.au">lgnsw.lgnsw@org.au</a> and <a href="mailto:adam.dansie@lgnsw.org.au">adam.dansie@lgnsw.org.au</a>		

If the Applicant is a company or organisation please also provide the following details

<b>Legal name of business</b>	Local Government NSW
<b>Trading name of business</b>	Local Government NSW
<b>ABN/ACN</b>	49 853 913 882
<b>Contact person</b>	Adam Dansie, Senior Management Workplace Relations

## How would you prefer us to communicate with you?

Email (you will need to make sure you check your email account regularly)

Post

## Does the Applicant have a representative?



A representative is a person or organisation who is representing the Applicant. This might be a lawyer or paid agent, a union or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No

### Applicant's representative



These are the details of the person or business who is representing the Applicant.

<b>Name of person</b>			
<b>Firm, union or company</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	
<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			

### Is the Applicant's representative a lawyer or paid agent?

Yes

No

### The Respondent



These are the details of the person or business who will be responding to your application to the Commission.

<b>Title</b>	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name(s)</b>			
<b>Surname</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	
<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			

### If the respondent is a company or organisation please also provide the following details

<b>Legal name of business</b>	
<b>Trading name of business</b>	
<b>ABN/ACN</b>	
<b>Contact person</b>	

## 1. The Application

### 1.1 Please set out the provision(s) of the Fair Work Act 2009 (or any other relevant legislation) under which you are making this application.

Section 159 of the *Fair Work Act (Registered Organisations) Act 2009* (Cth); and  
Regulation 126 of the *Fair Work (Registered Organisations) Regulations 2009* (Cth).

## 2. Order or relief sought

### 2.1 Please set out the order or relief sought.



Using numbered paragraphs, set out what you are asking the Commission to do.

1. That pursuant to section 159(1) of the *Fair Work (Registered Organisations) Act 2009* (Cth) the General Manager certify the alterations to the Rules of Local Government NSW. The particulars of the alterations sought are set out in 'Annexure DT1' which accompanies the Declaration of Cr Darriea Turley.
2. The alterations comply with and are not contrary to the *Fair Work (Registered Organisations) Act 2009* (Cth), the *Fair Work Act 2009* (Cth), and are not otherwise contrary by law.

## 2.2 Please set out grounds for the order or relief sought.



Using numbered paragraphs, set out the grounds, including particulars, on which you are seeking the relief set out in question 2.1.

1. On Tuesday 1 March 2022, during the course of the Local Government NSW (LGNSW which is hereafter referred to as the 'Association') Special Conference it was resolved that a number of alterations to the Association's Rules be adopted.
2. Attached to this Application and marked as "**Annexure 1**" is a Declaration by an Authorised Officer of the Association. The Declaration addresses the requirements of regulation 126(2) of the *Fair Work (Registered Organisations) Regulations 2009* in stating:
  - a) that the alterations were made in accordance with the Association's Rules; and
  - b) the action taken under the Rules to make the alterations; and
  - c) that the particulars are true and correct to the best knowledge and belief of the signatory.
3. Attached to this Application and marked as "**Annexure 2**" is a marked copy of the Association's Rules reflecting the alterations.

## 3. The employer

### 3.1 What is the industry of the employer?


#### 4. Industrial instrument(s)

4.1 Please set out any modern award, agreement or other industrial instrument relevant to the application and their ID/Code number(s) if known.

#### Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

<b>Signature</b>	
<b>Name</b>	per Adam Dansie, Senior Manager Workplace Relations
<b>Date</b>	4 March 2022



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**

# DECLARATION

I, Cr Darriea Turley AM, of Level 8, 28 Margaret Street, Sydney in the State of New South Wales make the following declaration pursuant to Section 159 of the *Fair Work (Registered Organisations) Act 2009* (Cth) (“**the RO Act**”) and Regulation 126 of the *Fair Work (Registered Organisations) Regulations 2009* (Cth) (“**the RO Regulations**”).

1. I am the President of Local Government NSW (“**LGNSW**”), an organisation of employers registered under the RO Act, and I am duly authorised to make this declaration.
2. LGNSW is making an application under the RO Act for the General Manager of the Fair Work Commission to certify the alterations to the Rules of LGNSW.
3. I have served as a Director of the Board of LGNSW since 3 December 2021. The declaration of my election for a first term in the office of President of LGNSW was made by the appointed Returning Officer from the Australian Electoral Commission on 3 December 2021.
4. The 2022 LGNSW Special Conference (“**the Conference**”) was conducted in person on 1 March 2022.
5. At the Conference a motion was carried pursuant to rule 73(a) of the LGNSW Rules to make a number of alterations to the Association’s Rules. To give effect to the proposed alterations, the Conference also resolved that



application be made to the Fair Work Commission to amend the Association's Rules.

6. Rule 32 requires that notice of the holding of an Annual Conference shall be forwarded to members at least four (4) months before the holding of the Annual Conference. Notice of the holding of the Conference was forwarded to all members of LGNSW by email on 10 August 2021.
7. Similarly, in accordance with Rule 32, all members were forwarded by email, on 15 February 2022 a link to the Business Paper for the Conference. A copy of the Business Paper was also made available on the LGNSW website on 15 February 2022.
8. Annexed hereto and marked "**Annexure DT1**" to this Declaration is a true copy of Item F2 extracted from the Business Paper forwarded to all members.
9. Annexure DT1 reveals that consistent with Rule 28(b) of the Rules, delegates at the Conference considered a resolution that was proposed by the Board of LGNSW.
10. I chaired the Conference proceedings and was present throughout the entirety of the proceedings. To the best of my knowledge and belief, at the relevant time the Conference was considering Item F2, there was a quorum present as required by Rule 25 of the Rules.
11. The Conference duly resolved to adopt the resolution for alterations to the Rules of LGNSW outlined in Item F2, the text of which is set forth in "**Annexure DT2**" to this Declaration, being an extract from the Record of Decisions of the Conference.
12. The alterations to the Rules were made in accordance with Rule 73(a) of the LGNSW Rules.

13. The particulars set out in this Declaration are true and correct to the best of my belief and knowledge.



---

Cr Darriea Turley AM  
President, Local Government NSW  
Date: 4 April 2022

**Annexure 2**

I CERTIFY under section 161 of the Fair Work

(Registered Organisations) Act 2009 that the pages

herein numbered 1 to 42 both inclusive contain a

true and correct copy of the registered rules of the

Local Government NSW.

DELEGATE OF THE GENERAL MANAGER

FAIR WORK COMMISSION

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## **Rules of the Local Government NSW**

### **CONSTITUTION**

1. (a) The name of the Organisation shall be Local Government NSW (the “Association”), but may also be known as “the Local Government and Shires Association of New South Wales”.
- (b) The registered office of the Association is situated at Level 8, 28 Margaret Street, Sydney, New South Wales.

### **PREAMBLE – AMALGAMATION COMPACT**

2. (a) These Rules form part of the scheme of amalgamation for the amalgamation of the Local Government Association of New South Wales (“LGA NSW”) and the Shires Association of New South Wales (“SA NSW”) to form the Association.
- (b) These Rules are intended to reflect the compact between the LGA NSW and the SA NSW that their respective membership constituencies (that is, Metropolitan/Urban councils and Rural/Regional councils respectively) would, post the amalgamation, each have an approximately equal voice in the governance of the Association.
- (c) The principal means by which this compact is implemented in these Rules is through the composition of conferences of the Association and the Committee of Management (“Board of Directors”), and arrangements for alternative access to the office of President from the two different constituencies.

### **INTERPRETATION**

3. (a) Unless the context otherwise requires:

“Aboriginal Land Council” or “the ALC” means the New South Wales Aboriginal Land Council as constituted under the Aboriginal Land Rights Act 1983 (NSW).

“Act” or “the Act” means the Fair Work (Registered Organisations) Act 2009 (Cth).

“Administrator” means an Administrator appointed in accordance with the Local Government Act 1993 (NSW) or Division 2 of Part 11 of the Aboriginal Land Rights Act 1983 (NSW).

“ALC Region” mean a Region constituted under the Aboriginal Land Rights Act 1983 (NSW).

“Amalgamation” or “the Amalgamation” means the amalgamation between LGA NSW and SA NSW, each of which were organisations registered under the Act immediately prior to the amalgamation date.

## INTERPRETATION

“Amalgamation date” means the date fixed by Fair Work Australia as the date upon which the Amalgamation and these Rules takes effect, being such date as Fair Work Australia determines but being no earlier than 1 March 2013

“Associate member” means a member who is not an Ordinary member.

“Association” means the Local Government and Shires Association of New South Wales, the Association governed by this Constitution.

“Badge” means all those records, signs and facilities that allow a person to be identified as and discharge the functions of a Delegate at a Conference.

“Board” or “the Board” means the Board of Directors of the Association, which is the Committee of Management of the Association for the purpose of the Act.

“Calculation date” means the first day of March last occurring prior to a Conference.

“Chief Executive” means the most senior employee of the Association, whose position and general responsibilities are specified in Rule 70.

“Conference” means the Annual Conference or a Special Conference of the Association as provided by these Rules.

“Constitution” or “this Constitution” means these Rules as they provide from time to time.

“Council” means a council constituted under the Local Government Act 1993 (NSW) and the ALC but does not include a County council.

“Councillor” means a person elected or appointed to civic office under the Local Government Act 1993 (NSW), but does not include an Administrator.

“County council” means a County council established under Part 5 of Chapter 12 of the Local Government Act 1993 (NSW).

“Director” means a member of the Board including an Office Bearer (unless the contrary intention appears from the context).

“Delegate” means an elected member of a council or a member of the Board of the ALC, the LHIB, the NIRC or RLGB or an Administrator who are by virtue of this Constitution entitled to vote at a Conference.

“Financial year” means the period from July 1 in one year to 30 June in the following year.

## INTERPRETATION

“LGA NSW”, means the Local Government Association of New South Wales, an organisation of employers registered under the Act until the Amalgamation Date.

“LHIB” means the Lord Howe Island Board as constituted under the *Lord Howe Island Act 1953* (NSW).

“Member” means a Council, County council, the ALC, the LHIB, the NIRC or a RLGB that is a member of the Association, whether as an Ordinary member or as an Associate member.

“Metropolitan/Urban County council” means a County council which is identified in Schedule A attached to these Rules as a Metropolitan/Urban County council.

“Metropolitan/Urban council” means a council which is identified in Schedule A attached to these Rules as a Metropolitan/Urban council.

“NIRC” means the Norfolk Island Regional Council as constituted under the *Norfolk Island Act 1979* (Cth).

“Office” has the same meaning as defined by section 9 of the Act, but to avoid doubt includes the office of Director.

“Office Bearer” means the President, Immediate Past President, Vice President (Metropolitan/Urban), Vice President (Rural/Regional) and/or Treasurer of the Association.

“Officer” has the same meaning as defined by section 6 of the Act, but to avoid doubt includes a Director.

“Ordinary member” means a member that obtains and retains ordinary membership pursuant to Rule 6 of these Rules.

“Political objects” means the expenditure of money:

- (i) on any contribution to the funds of, or on the payment of any expenses incurred directly or indirectly by, a political party;
- (ii) on the provision of any service or property for use by or on behalf of any political party;
- (iii) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot in connection with any election to a political office;
- (iv) on the maintenance of any holder of a political office; or



## INTERPRETATION

(v) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting – the main purpose of which is the transaction of business in connection with a political party (including any expenditure incurred in connection with the attendance of delegates or other participants).”

“Related local government body” or “RLGB” means an association, body corporate or body politic that is controlled by:

- (a) one or more Councils; or
- (b) An entity constituted under a law of the state of New South Wales to perform the functions of a council, other than a Council or County council.

In this definition:

- (i) A “related local government body” is controlled by a Council if that Council has the capacity to determine the outcome of decisions about the body’s financial and operational policies, and is controlled by more than one Council if those Councils concerned, acting jointly, have that capacity;
- (ii) In paragraph (b), the expression “the functions of a council” means those functions that are of a kind conferred on a council by the *Local Government Act 1993*, even if the entity concerned has other functions.

“Roll of Voters” shall mean all those members of the Association who are, by virtue of these Rules, entitled to vote in the election of members of the Board.

“Rural/Regional County council” means a County council in the State of New South Wales other than a Metropolitan/Urban council.

“Rural/Regional council” means a council in the State of New South Wales which is a council in the said State which is other than a Metropolitan/Urban council.

“SA NSW” shall mean the Shires Association of New South Wales, an organisation of employers registered under the Act (until the Amalgamation Date).

- (b) Unless the contrary intention appears:
  - the singular shall include the plural and vice versa, and a reference to one gender shall include a reference to the other gender;
  - headings are for convenience and do not affect meaning;

## OBJECTS

- schedules shall form part of these Rules; and
- a reference to any particular statute or regulation shall include any successor to or substitute legislation or regulation, as the case may be.

### OBJECTS

4. The objects of the Association shall be in New South Wales and elsewhere:
  - (a) to encourage, promote, protect and foster an efficient and effective autonomous, democratic system of Local Government elected by and responsible to local communities with its position constitutionally guaranteed and with adequate resources including revenue from State and Commonwealth Governments;
  - (b) to promote, maintain and protect the interests, rights and privileges of Local Government in New South Wales and of the constituent members of the Association;
  - (c) to encourage and assist Local Government to seek out, determine, assess and respond to the needs and aspirations of its constituents;
  - (d) to encourage, assist, promote and foster the achievement and maintenance of the highest level of integrity, justice, competence, effectiveness and efficiency of Local Government;
  - (e) to develop, encourage, promote, foster and maintain consultation and co-operation between councils and Local, State and Commonwealth Governments and their instrumentalities;
  - (f) to develop, encourage, promote, foster and maintain the financial and economic well-being and advancement of Local Government and for such purposes to undertake, establish, acquire, conduct or dispose of any business, enterprise, undertaking or venture which in the opinion of the Association is necessary, desirable or convenient;
  - (g) to represent the members of the Association and Local Government generally in their dealings with State and Commonwealth Governments, with statutory and other corporations, with the media and with the public;
  - (h) to promote, support and encourage Local Government at a State and national level;
  - (i) to provide an industrial relations service to members including:
    - (i) representing the interests of members in industrial matters before courts and tribunals;
    - (ii) assisting in negotiations relating to the settlement of disputes between members and their employees;

## POWERS

- (iii) representing the interests of members in negotiating the establishment of and/or variation of industrial awards and agreements;
- (iv) promoting training programs aimed at enhancing the performance of Local Government.
- (j) to undertake or promote any activity which the Board determines to be for the benefit and/or interest of members and local government in New South Wales.

## POWERS

### 5. The Association is empowered:

- (a) to purchase, take on lease or in exchange, hire, invest in and otherwise acquire any real and personal property and any interest therein and any rights or privileges and in particular any land, buildings, easements, machinery, plant, shares, debentures, mortgages and securities;
- (b) to enter into with any council or government or statutory authority, or any incorporated or unincorporated body or any association of persons, any arrangement, joint venture, union of interest or field of co-operation intended directly or indirectly to advance the interests or objects of the Association;
- (c) to apply for, promote and obtain any statute, order, regulation, ordinance or other authorisation or enactment which may seem calculated directly or indirectly to benefit the interests or objects of the Association and to oppose any bills, proceedings or applications which may seem calculated directly or indirectly to prejudice the Association's interests or objects;
- (d) to construct, improve, maintain, develop, manage, carry out or control any buildings and other works intended directly or indirectly to advance the Association's interests and to contribute to, subsidise or otherwise assist or take part in the construction, improvement, maintenance, development, working, management, carrying out or control thereof;
- (e) to invest, deposit, lend, pay out, grant, donate and deal with money of the Association in such manner as may from time to time be thought fit but subject to legislative requirements;
- (f) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (g) to borrow or raise or secure the payment of money in such manner as the Association may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Association in any way and in particular by charges upon all or any of the Association's property (both present and future) and to redeem or repay any such securities;
- (h) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Association;

## MEMBERSHIP

- (i) to do all such other things as are incidental or conducive to the attainment of the objects, the furtherance of the interests and the exercise of the powers of the Association.

### MEMBERSHIP

- 6. (a) Membership of the Association shall be open to Councils, County councils in the State of New South Wales, the ALC, the LHIB, the NIRC and RLGB's.
- (b) Membership of the Association shall be limited to:
  - (i) Ordinary members; and
  - (ii) Associate members.
- (c) Any Council shall be eligible for Ordinary membership of the Association subject to compliance with the requirements of Rule 7 and payment of the prescribed annual subscription in accordance with Rule 13, Annual Subscriptions.
- (d) County councils and the ALC (each of which is referred to in this sub rule as an "entity") shall be eligible for Ordinary membership or Associate membership of the Association, at the election of the entity concerned, provided that:
  - (i) the original application for membership made by such entity complies with the requirements of Rule 7 and the prescribed subscription is paid in accordance with the requirements of Rule 13;
  - (ii) the election as to the category of membership that such entity wishes to make is communicated to the Chief Executive at the time of application for membership or, in the case of renewal of membership, not later than 21 days after the date upon which notice is given to the member by the Chief Executive pursuant to Rule 13 (c);
  - (iii) any such election shall remain in force for not less than 3 (three) financial years; and
  - (iv) where an entity that has made an election pursuant to this sub Rule is entitled to exercise a further election, a failure to exercise that election will be regarded as an election to remain in that entity's existing category of membership.

## MEMBERSHIP

- (e) RLGB's, the LHIB and the NIRC shall be eligible for Associate membership of the Association subject to compliance with the requirements of Rule 7 and payment of the prescribed annual subscription in accordance with Rule 13, Annual Subscriptions. Where a RLGB covers or relates to a geographic area that falls within one or more Metropolitan/Urban councils and one or more Rural/Regional councils, that RLGB shall be included in the category of councils that is most appropriate by reason of the area of the State or the population of the State or of the category of councils it covers, or any combination of those factors, as determined by the Board. A RLGB may at not less than three (3) yearly intervals following commencement of its membership apply to the Board for reconsideration of its category allocation.
  - (f) Associate Membership of the Association confers on the Associate Member the right through its delegates to attend, participate and vote on resolutions proposed at conferences of the Association, and to participate in or receive such benefits or services as the Board shall deem appropriate for provision to Associate Members from time to time, but does not confer any right to have its delegates stand for or vote in elections for any office within the Association.
7. (a) An application for membership of the Association, whether as an ordinary member or as an associate member, shall be in writing, signed by the General Manager, to the Chief Executive.
- Upon receipt of an application for membership the Chief Executive shall inform the applicant in writing of:
- (i) the financial obligations arising from membership; and
  - (ii) the circumstances, and the manner, in which a member may resign from the Association.
- (b) Any application for membership of the Association shall be promptly submitted to the Board which may either approve or reject the application, but may only reject the application if it is not in accordance with these Rules or does not comply with the Act.
8. A member of the Association may resign from membership of the Association by written notice addressed and delivered to the Chief Executive. A notice of resignation from membership of the Association takes effect:
- (a) where the member ceases to be eligible to become a member of the Association:
    - (i) on the day on which the notice is received by the Association; or
    - (ii) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member; whichever is the later; or
  - (b) in any other case:

## REGISTER OF MEMBERS

- (i) at the end of two (2) weeks, or such shorter period as is specified in the Rules of the Association, after the notice is received by the Association; or
- (ii) on the day specified in the notice;

whichever is the later.

9. A member shall cease to be a member in the following circumstances:
- (c) the member resigns in accordance with Rule 8;
  - (d) the member is a council that is dissolved;
  - (e) the member fails to pay all or any monies due and payable to the Association pursuant to these Rules (whether by way of annual subscriptions or special levies or otherwise) for a period in excess of six (6) months after the due date;
  - (f) by order of a court in accordance with the Act.
10. When a member of the Association merges with another council or when a member is to be dissolved such member shall notify the Association of the change.

### REGISTER OF MEMBERS

11. The Chief Executive shall keep or cause to be kept a Register of Members in which shall be recorded the name and address of every member of the Association and whether the member is an Ordinary Member or an Associate Member of the Association. Such Register of Members may be inspected during the ordinary office hours of the Association in accordance with any relevant provisions of the Act.
12. An entry of the name of a member in the Register of Members shall be evidence of membership of the Association.

### ANNUAL SUBSCRIPTIONS

13. (a) All members must pay an annual subscription of such an amount as may be determined by the Board from time to time.
- (b) The Board may determine the amount of subscriptions to be paid by members and in doing so may determine different subscriptions for different classes of members as it sees fit.
- (c) The Chief Executive must give written notice to each member specifying the amount of its subscription.

## ANNUAL SUBSCRIPTIONS

- (d) A member's subscription is payable within thirty (30) days after notice of the amount of its subscription has been given to it. A member who is in arrears of subscriptions for more than thirty (30) days shall be regarded by the Association as an unfinancial member until such time as subscriptions are paid.
- (e) While soever a member is an unfinancial member that member shall not be entitled to any of the benefits or privileges of membership, including voting at any meeting, conference or election conducted within or by the Association, and shall be precluded from having any delegate or councillor stand for office in the Association.
- (f) Should a member join the Association after more than half of the financial year has expired then the subscription for the remaining period of that financial year shall be fifty (50) percent of the annual fee as may be determined by the Board.
- (g) Notwithstanding the above, the payment by a member or applicant for membership to the Local Government and Shires Association of New South Wales being an organisation registered under the *Industrial Relations Act 1996* (NSW) (the "State organisation") of the prescribed membership contribution or subscription shall constitute payment in full of the membership contributions and fees to the Association.
- (h)
  - (i) In circumstances of hardship, a member may make a request to the Board to have their annual subscription reduced in part.
  - (ii) The Board may consider any such request and grant the member a partial waiver of their annual subscription at the Board's discretion.
  - (iii) Notwithstanding rules 13(d) and (e), a member that is granted a partial waiver of their annual subscription and who pays the revised annual subscription is entitled to such benefits or privileges of membership as may be determined by the Board.

## SPECIAL LEVIES

- 14.
  - (a) The Board may make a levy or levies on members from time to time to establish a fund or funds to defray any extraordinary expenditure (incurred or to be incurred) in carrying out a matter to further the objects of the Association.
  - (b) The Board may determine, in respect of any particular matter, the amount of levy to be paid by members and in doing so may determine different levy amounts for different classes of members as it sees fit.
  - (c) No levy is to be imposed on members for political objects and no donations or other payment for political objects is to be made out of amounts levied by the Association.
  - (d) Where a special levy is made under this Rule, the Chief Executive shall give written notice to each member specifying:

## SPECIAL LEVIES

- (i) the amount of the special levy payable by it; and
  - (ii) the purpose for which such special levy is made.
- (e) Nothing in this Rule shall be taken to reduce, qualify or abridge the power of the Board to make arrangements with all, some or a group members for voluntary levies for particular purposes determined by the Board to be in the interests of the Association or some members of it.

### **DISBURSEMENT OF MONIES RAISED BY LEVY**

15. Disbursements of monies raised by levy must be for the purpose for which the levy is made.
16. If the purpose for which a levy is made or completed or exhausted, and monies raised by levy remain unexpended, those monies must be reimbursed to members in proportion to the respective amounts of levies paid by members.



## CONTROL AND GOVERNANCE OF THE ASSOCIATION

### CONTROL AND GOVERNANCE OF THE ASSOCIATION

17. The Scheme for control and governance of the Association prescribed by these Rules is in summary form as follows:
- (a) a Conference of all ordinary and associate members of the Association, which conference shall be the supreme policy making body of the Association;
  - (b) a Board of Directors which shall be responsible for the governance of the Association between Conferences, subject to the resolutions of any Conference from time to time;
  - (c) a Senior Executive Group to assist and make recommendations to the Board in relation to that Committee's responsibilities under these Rules;
  - (d) the President, who shall have the role of representing the Association between conferences and meetings of the Board, shall chair meetings of the Board and the Senior Executive Group, and may act on behalf of the Association between these meetings provided that all such action is consistent with the objects of the Association, any relevant resolutions of conferences and the Board and where there is any such resolution for the purpose of carrying out any such resolution;
  - (e) the Vice Presidents shall participate in Board and Senior Executive Group meetings, chair meetings where the President is unavailable (with the Vice President to chair any such meeting being that Vice President who is from the same group of councils as the President, unless that Vice President is also unavailable) and undertake such other duties as are conferred on those office by these Rules; and
  - (f) the Treasurer shall, subject to the responsibility of the Board under Rule 62, have overall responsibility for the financial administration of the Association, together with such specific duties as are conferred on that office by these Rules.
18. A Conference of the members shall be the supreme policy making body of the Association, and while a Conference is sitting the Conference shall have the control and governance of the Association, such that it may take any action or make any decision(s) for the furtherance of the objects of the Association as it may think fit, subject to compliance with these Rules provided that a Conference may not appoint or dismiss staff of the Association.
19. The Board is the Committee of Management of the Association for the purposes of the Act, and shall have the control and governance of the Association in between Conferences, such that it may take any action or make any decision during this time as it thinks fit for the furtherance of the objects of the Association in accordance with these Rules, provided that any such action or decision:

## CONTROL AND GOVERNANCE OF THE ASSOCIATION

- (a) is consistent with any relevant policy decision of the members at a Conference; and
- (b) may be reviewed, amended or quashed by the members at a Conference, except in relation to the appointment or dismissal of staff.

Without limiting the generality of the foregoing the powers of the Board extend to the appointment and dismissal of the Chief Executive (see Rule 70), and to the appointment, constitution and dissolution of committees to investigate for and/or make recommendations to the Board in relation to particular matters falling within the objects of the Association. Any such Committee may, with the consent of the Board, co opt suitably qualified persons to assist the Committee with its work.

20. (a) The Senior Executive Group shall consist of :
- (i) the President, the Immediate Past President (if applicable) the two Vice Presidents and the Treasurer,
  - (ii) two directors chosen by and from the seven (7) directors representing Metropolitan/Urban members of the Association elected in the immediately preceding elections, and
  - (iii) two directors chosen by and from the seven (7) directors representing Rural/Regional members of the Association elected in the immediately preceding elections
- (b) The method of selection of the members of the Senior Executive Group other than the Office bearers shall be determined by the respective college (that is, as specified in paragraphs (20(a)(ii) and 20(a)(iii)) from which they are to be chosen.
- (c) No business shall be transacted at any meeting of the Senior Executive Group unless a quorum is present in person or by telephone or video-conference or a combination of these forms at the same time. The quorum for a meeting of the Senior Executive Group shall be fifty percent of the total number of Senior Executive Group members, plus one.
- (d) The Senior Executive Group shall have the following functions:
- (i) to make a recommendation to the Board as to who it ought appoint as Chief Executive;
  - (ii) to monitor the management of the Association by the Chief Executive, in accordance with and subject to all or any directions prescribed by the Board from time to time;
  - (iii) to develop service standards of the Association and priorities for it, and to monitor its performance;
  - (iv) to recommend to the Board the annual budget of the Association and to provide regular reports to the Board on financial performance;
  - (v) to invest the funds of the Association in accordance with the policy determined from time to time by the Board;

## CONTROL AND GOVERNANCE OF THE ASSOCIATION

- (vi) to recommend to the Board the remuneration and/or allowances to be paid to the President, other office bearers and other directors;
  - (vii) to recommend to the Board any expenses policies for the Association;
  - (viii) to undertake such other functions as may be delegated to the Group by the Board provided that such functions are subject to supervision and directions for their exercise by the Board.
- (e) A member of the Senior Executive Group shall attend at all meetings of the Senior Executive Group unless granted leave of absence by or having reasonable excuse acceptable to the Senior Executive Group. A failure by a director to attend three consecutive meetings of the Board, the Senior Executive Group or a combination of both without leave shall be deemed to constitute a breach of the duties of a director under these Rules.
21. The President of the Association shall have, in addition to such powers as are specifically conferred on him or her by these Rules, the power to act on behalf of the Association between meetings of the Board, provided that such action(s):
- (a) are consistent with any resolution(s) of the Board, and
  - (b) are for the purpose of carrying out the objects of the Association,

PROVIDED THAT any such actions are consistent with any relevant policy decision(s) of a Conference of the members.

- 21A. (a) The Association shall establish an Industrial Advisory Committee to assist and make recommendations to the Board in relation to industrial relations issues that concern or are likely to concern more than one of the members of the Association either currently or in the future.
- (b) The Industrial Advisory Committee's terms of reference, size and composition shall be determined by the Board, provided that the Committee shall at least include Directors from the Board and general managers of member organisations (or their representatives).
- (c) The Board shall consider recommendations of the Industrial Advisory Committee when making relevant decisions.

## CONFERENCES

### CONFERENCES

#### General

22. A Conference shall consist of Delegates from all Members of the Association provided that the Member must be financial on both the calculation date and on the date that the roll of voters closes as provided for in Schedule B. Where an Annual Conference does not involve elections for the Board, the roll of voters (for voting on motions) shall be deemed to close eight weeks prior to the first business day of the Annual Conference.
23. The voting delegation to which any Member of the Association is entitled at a Conference of the Association is determined in accordance with the following formula.

#### STEP 1

Determine the number of delegates for each member (other than the ALC), by applying the latest population statistics for each council area either published by the Australian Bureau of Statistics (ABS) in ABS publication 3218.0 entitled 'Regional Population Growth Australia' or, where that publication does not contain population statistics for a Member, the latest such statistics as can be obtained from the ABS for that Member (even if on an estimate basis only) as at the calculation date for those Members that were financial on the calculation date, using the following scale:

Group No. (Councils other than County councils)	Population	Delegates
(1)	Up to 10,000	1
(2)	10,001 - 20,000	2
(3)	20,001 - 50,000	3
(4)	50,001 - 100,000	4
(5)	100,001 - 150,000	5
(6)	Over 150,000	7
County councils		
	each Metropolitan/ Urban County council	2
	each Rural/ Regional County council	1
LHIB		1
NIRC		1
Related local government bodies	Each RLGB	1

## CONFERENCES

### STEP 2

- (a) If the ALC is a member of the Association at a time when the formula in this Rule is to be applied, allocate the ALC 9 delegates.
- (b) The 9 delegates from the ALC shall consist of one delegate from each of the 9 ALC Regions constituted under the Aboriginal Land Rights Act 1983 (NSW), each such delegate being a member of the Board of the ALC.
- (c) Treat each such ALC Region as being a Rural/Regional council for the purpose of the Table in Step 1 above, except for the Region for Sydney/Newcastle, which Region shall be treated as a Metropolitan/Urban council for the purpose of that Table.
- (d) The ALC shall notify the Association in writing not later than 28 days prior to the relevant Conference as to allocation of the nine ALC Regions between the nine members of the ALC Board, identifying which ALC Region is to be represented by which ALC Board member.

### STEP 3

Determine the total voting strength of the Metropolitan/Urban Councils and the Rural/Regional councils as follows.

1. Determine the total number of delegates from Metropolitan/Urban councils and County councils and the total number of delegates from Rural/Regional councils and County councils resulting from the application of Steps 1 and (if applicable) 2.
2. Then add to the total number of delegates from Metropolitan/Urban councils so determined the additional votes given to directors who are delegates from those councils pursuant to Rule 30 and add to the total number of delegates from Rural/Regional councils so determined the additional votes given to directors who are delegates from those councils pursuant to Rule 30.
3. Then add to the total number of delegates from Metropolitan/Urban councils so determined the number of delegates from any RLGB covering the geographic area of Metropolitan/Urban councils (if applicable), and add to the total number of delegates from Rural/Regional councils so determined the number of delegates from any RLGB covering the geographic area of Rural/Regional councils (if applicable).
4. Then add to the total number of delegates from Rural/Regional councils a vote for the delegate from the LHIB and NIRC (if applicable).

## CONFERENCES

### STEP 4

If as a result of Steps 1 – 3 there is a greater number of delegates from the Rural/Regional category than the Metropolitan/Urban category, increase the total number of delegates from the Metropolitan/Urban category, so that that total number is the same as the total number of delegates from the Rural/Regional category, then distribute that additional number of delegates among the Metropolitan/Urban councils (except for the Sydney/Newcastle ALC Region and any RLGB), by attributing to each such council additional delegates in accordance with that council's proportion of the total population of all these councils, rounded off to the nearest whole number.

If as a result of Steps 1 – 3 there is a greater number of delegates from the Metropolitan/Urban category than the Rural/Regional category, increase the total number of delegates from the Rural/Regional category, so that that total number is the same as the total number of delegates from the Metropolitan/Urban category, then distribute that additional number of delegates among the Rural/Regional councils (except for the ALC, the LHIB, the NIRC and any RLGB), by attributing to each such council additional delegates in accordance with that council's proportion of the total population of all these councils, rounded off to the nearest whole number.

### STEP 5

If the adjustment required to be undertaken in Step 4 results arithmetically in a Metropolitan/Urban council or Rural/Regional council being entitled to more than 15 delegates, that council's delegation is capped at 15 delegates.

### STEP 6

Except in the case of the ALC, where any member that has less councillors holding office than the total number of votes to which that member is entitled pursuant to the application of the formula for determining votes under this Rule, the Council affected shall nominate the delegate (or delegates if applicable) who shall be allocated an extra vote . In the case of the ALC, the formula in Step 2 only shall apply.

Example: If a member is entitled to 10 votes but has only 8 councillors holding office, the Council affected will nominate in writing which 2 of those 8 councillors will have an extra vote each, the ultimate outcome being that 6 of the councillors will have 1 vote each and 2 of the councillors nominated by the Council will have 2 votes each.

### STEP 7

On each anniversary of the amalgamation date, carry out steps 1, 3 4, and 5 by reference to the population for each Council area published by the Australian Bureau of Statistics in that edition of ABS publication 3218.0 Regional Population Growth Australia last published prior to that anniversary.

[NOTE: the voting entitlement of Ordinary members in elections is dealt with in Rule 37.]

## CONFERENCES

24. A Conference shall be presided over by the President, and in his or her absence by one of the Vice Presidents. Should neither of the Vice Presidents be present, a Director shall preside.
25. The quorum for a Conference shall be fifty per cent of the total number of delegates to the Conference, plus one. The business of a Conference shall not be conducted unless a quorum is present. In the event of the Conference not having a quorum:
  - (a) A record of the names of voting delegates that are present at the time be taken on return of the electronic handset and voting card.
  - (b) Each constituent council be provided with advice on which of their voting delegates were present and which were not at the time the meeting became inquorate.
  - (c) That all constituent councils be provided with a report detailing which councils had voting delegates who were not present at the time the meeting became inquorate.
26. Subject to Rule 73 (Amendment), any question to be determined by a Conference shall be the subject of a resolution, and a resolution shall be regarded as adopted if it is supported by a majority of the delegates present who vote on the resolution, where the Conference is quorate in accordance with Rule 25.
27.
  - (a) A Conference shall be conducted in accordance with Standing Orders.
  - (b) Standing Orders do not form part of these Rules and may be varied by a resolution of Conference.
28.
  - (a) The Association may establish groupings of members (“divisions”) which may consider and place motions before a Conference.
  - (b) The Board may bring any matter falling within the objects of the Association before a Conference of the Association for opinion or actioning.
  - (c) A Member may bring any matter falling within the objects of the Association before a Conference of the Association for opinion or action by forwarding a statement to the Chief Executive not less than twenty eight (28) days prior to the first day of the Conference and the Chief Executive shall, subject to any direction from the Board of the Association, place such business upon the Business Paper for the consideration of Conference;
  - (d) Where the Chief Executive receives a statement from a Member that it wishes to bring a matter before a Conference and less than twenty eight (28) days notice has been given, the Board may allow the matter to be considered by the Conference as a late item;

## CONFERENCES

- (e) A Conference may, should a majority of the members present so approve, consider any business not introduced as provided for by the foregoing paragraphs, subject to at least 24 hours notice thereof being given;

PROVIDED THAT the Board may exclude any business so proposed if the Board determines that such business concerns a matter not falling within the objects of the Association.

29. Subject to these Rules:

- (a) each Delegate shall be entitled to one vote only;
- (b) except in an election for Office Bearers and Directors, the person presiding over a Conference shall in the case of an equality of votes have a casting vote.

30. Office Bearers of the Association shall be entitled to speak on any matter before a Conference and furthermore any Director (whether an Office Bearer or not) shall be entitled to vote on any matter before a Conference, and in that regard have one vote as a Delegate and an additional vote as a consequence of being Director. In the case of a person presiding over a Conference, the right to a casting vote shall be in addition to the vote as a delegate and the vote as a Director.

### ANNUAL CONFERENCES

- 31. The Annual Conference of the Association shall be held each year at a time and place to be determined by the Board provided that no more than eighteen (18) months shall expire between successive annual general meetings.
- 32. The notice of the holding of an Annual Conference shall be forwarded to members at least ~~four~~ three (3) months before the holding of the Annual Conference. The business paper shall be forwarded to members prior to the Annual Conference.

### SPECIAL CONFERENCES

- 33. (a) A Special Conference of the Association may be convened:
  - (i) by the President; or
  - (ii) by resolution of the Board; or
  - (iii) by a petition signed by at least 10% of the member councils of the Association.
- ~~(b) Where a Special Conference is called for under sub rule (a) of this Rule the Chief Executive shall convene a Special Conference for a date not later than four (4) weeks after the receipt of the notice calling for the Conference.~~



## CONFERENCES

- (b) Subject to these rules, where a Special Conference is called for under sub-rule (a) of this Rule the Chief Executive shall convene a Special Conference for a date not later than four (4) weeks after the receipt of the notice calling for the Conference.
- (c) If a Special Conference is called for by resolution of the Board, the Board may specify the date(s) on which the Special Conference is to occur, and the Chief Executive shall convene a Special Conference on the date(s) so specified. For the avoidance of doubt, the date of a Special Conference called for by resolution of the Board may be more than four (4) weeks after receipt of the notice calling for the Conference.

### DELEGATES TO A CONFERENCE

- 34. (a) Each member shall nominate its Delegate(s) to a Conference by such date as the Chief Executive may specify. Thereafter no alteration to the list of delegates shall be permitted other than as hereinafter provided.
  - (b) **Substitution of voting delegates for voting on motions**  
If it is desired to change the nomination of a delegate for voting on motions written notice shall be given to the Chief Executive or his or her nominee of the name of the delegate being replaced and the name of the substitute delegate. Such notification shall be signed by either the Mayor (or Deputy Mayor with the Mayor's written delegated authority) or the General Manager of the Council (or Acting General Manager with the General Manager's written delegated authority), or in the case of the ALC, the LHIB, the NIRC or a RLGB, by the Chairperson or Chief Executive Officer of that entity. The badge and/or voting card of the delegate being replaced shall be surrendered to the Chief Executive or his or her nominee before a fresh badge and/or voting card is issued to the incoming delegate.
- 35. (a) Subject to clause 16 of Schedule B, a Delegate may not appoint a proxy to attend or vote at a Conference.
  - (b) Nothing in sub-rule (a) of this Rule shall prevent the appointment of substitute delegates in accordance with Rule 34.

**BOARD OF DIRECTORS**

36. (a) The Board of the Association (which may be referred to as “the Board of Directors”) is the Committee of Management of the Association and shall consist of a President, the Immediate Past President (where applicable under Sub Rules(b) hereof) two Vice-Presidents (one from a Metropolitan/Urban council and the other from a Regional/Rural council), a Treasurer and 14 Committee members (7 from Metropolitan/Urban councils and 7 from Regional/Rural councils).
- (b) The office of Immediate Past President that was established as part of the Rules of the Association that took effect on the Amalgamation Date shall cease upon the date that the current incumbent ceases to hold that office.
- (c) All Directors, whether Office Bearers or not, are required to give proper and diligent attention to their duties to the Association, whether such duties are prescribed by these Rules or by the Act or any other law.
- (d) Without limiting the foregoing provisions of this Rule, a Director, whether an office bearer or not, is under a duty to the Association to comply with the provisions of the Association’s “Code of Conduct – members of the Board” as such Code provides from time to time.
37. (a) It shall be a prerequisite for any person to be nominated or elected to the Board of the Association, or to vote in such an election, that he or she be either a Councillor of a Council which is an Ordinary member of the Association or if the ALC is an Ordinary member, a member of its Board, provided that any such person who is suspended from office under either the *Local Government Act 1993* or the *Aboriginal Land Rights Act 1983*, as the case may be, shall not be eligible.
- (b) An Administrator of a Council that is an Ordinary member shall not be eligible for nomination or election as a member of the Board nor be entitled to vote in any such election.
- (c) Each Council which is an Ordinary member shall be entitled to a maximum voting delegation for Board elections equal to the delegation to which such Council is entitled for voting at Conferences, as prescribed by the formula in Rule 23, and to avoid doubt each of the 9 delegates from the ALC Regions shall be entitled to cast only one vote each.
- (d) In addition to the foregoing, a Director (whether an office bearer or not) shall have a right to vote in elections for the Board next occurring, in addition to any right to vote in such elections arising from being a delegate for a member.
38. Commencing from the Annual Conference first conducted after the Amalgamation Date, Directors shall be elected, or declared elected in the case of a secret postal ballot, biennially at an Annual Conference.
39. (a) As part of the compact between LGA NSW and SA NSW, referred to in Rule 2 of these Rules, it is intended that, so far as practicable, the office of President should alternate regularly between eligible candidates from Metropolitan/Urban councils and Rural/Regional councils. The following provisions of this Rule shall be interpreted in the light of that intention.

## BOARD OF DIRECTORS

- (b) Subject to the limitations provided in the following provisions of this Rule, all Councillors for Ordinary members, or members of the Board of the ALC if it is an Ordinary member, are eligible to nominate for any election for the office of President. In this Rule, such person(s) shall be referred to as “eligible candidates” or “eligible candidate”.
  - (c) The electorate for the election of the President shall be Delegates of Ordinary members who are entitled to vote at a Conference.
  - (d) The term of office for the office of President shall be two years, commencing at the conclusion of the annual Conference in each alternate year, and concluding at the conclusion of the annual Conference in each alternate year thereafter. To avoid doubt, if such conferences should be more than two (2) years apart due to conference scheduling or venue arrangements, the President shall, subject to these rules, continue to hold office until the conclusion of the conference in the relevant alternate year.
  - (e) The eligible candidate elected as President may stand for re-election for President at the following election for President but may only serve two consecutive terms. This does not preclude that eligible candidate standing again for the office of President at a subsequent election for that office, if otherwise eligible.
  - (f) If an eligible candidate from a Metropolitan/Urban council holds the office of President and, being eligible, nominates for a second term in that office, no other eligible candidate from a Metropolitan/Urban council is eligible to nominate for the office of President at such election.
  - (g) If an eligible candidate from a Rural/Regional council holds the office of President and, being eligible, nominates for a second term in that office, no other eligible candidate from a Rural/Regional council is eligible to nominate for the office of President at such election.
  - (h) If an eligible candidate has held the office of President for two consecutive terms (and thus may not nominate to the office of President for a third consecutive term) the only eligible candidates eligible to nominate for the next election for President are eligible candidates from the other category of councils to that from which the retiring President was an eligible candidate.
  - (i) If an eligible candidate holding the office of President vacates that office for any reason, the casual vacancy thereby occurring shall be filled in accordance with the provisions of Rule 44 and (if applicable) Rule 49. In such a case, the eligible candidate elected or appointed to fill the vacancy will be treated as having completed one term in that office, for the purposes of determining eligibility for re-election as prescribed by sub-Rule (e), unless the balance of the term of office after the occurrence of the vacancy is less than one year.
- 40 (a) The office of Vice President (Metropolitan/Urban) shall be filled by election by an electorate that shall consist of those delegates entitled to vote at a Conference from Metropolitan/Urban councils that are Ordinary members and, if the ALC is an Ordinary member, the member of the Board of the ALC who is the delegate for the Sydney/Newcastle ALC Region. The persons entitled to stand for such office are Councillors from Metropolitan/Urban Councils that are Ordinary members and, where

## BOARD OF DIRECTORS

the ALC is an Ordinary member, the member of the board of the ALC for the Sydney/Newcastle Metropolitan Region.

- (b) The office of Vice President (Rural/Regional) shall be filled by election by an electorate that shall consist of those Delegates entitled to vote at a Conference from Rural/Regional councils that are Ordinary members and, if the ALC is an Ordinary member, the members of the Board of the ALC who are delegates from those ALC Regions that are treated as Rural/Regional Councils for the purpose of Step 2 of Rule 23. The persons entitled to stand for such offices are Councillors from Rural/Regional councils that are Ordinary members, and if the ALC is an Ordinary member, the members of the board of the ALC who are delegates from those ALC Regions that are treated as Rural/Regional Councils for the purpose of Step 2 of Rule 23.
- (c) The electorate for the election of the Treasurer shall be those delegates of Ordinary members who are entitled to vote at Conferences, together with the members of the board of the ALC if the ALC is an Ordinary member. The persons entitled to stand for such office are Councillors from Councils that are Ordinary members together with members of the Board of the ALC if it is an Ordinary member.
- (d) The various offices of other Directors (Metropolitan/Urban) shall be filled by election by an electorate that shall consist of those delegates entitled to vote at a Conference from Metropolitan/Urban councils that are Ordinary members and, if the ALC is an Ordinary member, the member of the Board of the ALC for the Sydney/Newcastle ALC Region. The persons entitled to stand for such offices are Councillors of Metropolitan/Urban Councils that are Ordinary members and, if the ALC is an Ordinary member, the member of the Board of the ALC for the Sydney/Newcastle ALC Region.
- (e) The various offices of other Directors (Rural/Regional) shall be filled by an electorate that shall consist of those delegates entitled to vote at a Conference from Rural/Regional councils that are Ordinary members, and, if the ALC is an Ordinary member, the members of the board of the ALC who are the delegates from those ALC Regions that are treated as Rural/Regional councils for the purpose of Step 2 of Rule 23. The persons entitled to stand for such offices are Councillors from Rural/Regional councils that are Ordinary members, and if the ALC is an Ordinary member, the members of the board of the ALC who are delegates from those ALC Regions that are treated as Rural/Regional Councils for the purpose of Step 2 of rule 23.
- (f) The term of office for Vice Presidents, Treasurer and the other Directors shall be the same as that for the President, as prescribed by Rule 39 (d), *mutatis mutandis*. All delegates holding these offices are eligible for re-election without limitation.

## ELECTION PROCESS FOR MEMBERS OF THE BOARD

### ELECTION PROCESS FOR MEMBERS OF THE BOARD

#### GENERAL

41. Elections for Directors (including the Office Bearers) (hereafter “the elections”) shall be conducted by a Returning Officer appointed or authorised under the Act.

#### ELECTION ARRANGEMENTS

42. Subject to rule 42A, elections shall be conducted in accordance with the requirements of Schedule B.
- 42A. If, in the opinion of the Board, it is not possible to hold an in-person Annual Conference in a Board election year due to circumstances beyond the Association’s control, the Board may determine that the elections for Directors (including Office Bearers) be by secret postal ballot conducted in accordance with the requirements of Schedule C.

#### CASUAL VACANCIES

43. A casual vacancy on the Board of the Association occurs when a Director
- (a) dies;
  - (b) resigns the position by notice in writing delivered or sent by post to the Chief Executive, and such resignation be accepted;
  - (c) is removed from office as a Director in the manner provided for in Rule 50; or
  - (d) ceases to be eligible under the Rules to hold office as a Director, provided that a Director continues as a Director during the intervening period between the day of a local government general election and the declaration of the results of that election if they are a candidate in the election.
44. Subject to Rule 48, a vacancy in the office of President shall be filled as follows:
- (a) if the former President came from a Rural/Regional council the Vice-President (Rural/Regional) shall succeed to the office of President;
  - (b) if the former President came from a Metropolitan/Urban council the Vice-President (Metropolitan/Urban) shall succeed to the office of President.

If there be no such Vice-President then in office, the position shall be filled by the Board by the election thereto of a member of the Board.

45. Subject to Rules 48 and 48A, a vacancy in the office of Vice President or Treasurer shall be filled by the Board by the election thereto of a member of the Board.
46. (a) Subject to Rule 48, a vacancy in the office of a Board member shall be filled by the Board by the appointment thereto of the candidate at the most recent election for the Board from the appropriate category of councils for the vacancy who polled highest of the unsuccessful candidates at that election within that category of councils.

## ELECTION PROCESS FOR MEMBERS OF THE BOARD

- (b) If there be no such candidate as contemplated by sub-rule (a) of this Rule, the position shall be filled by the Board by the election thereof of a person then qualified to hold such position.

[Note: this Rule can be applied to multiple vacancies – see the first dot point at the foot of Rule 3.]

- 47. A casual vacancy shall be filled within ninety (90) days of the occurrence of such vacancy provided, however, that non-compliance with this Rule shall not invalidate or otherwise prejudicially affect the proceedings of business carried out or performed by the Board during the continuance of any such vacancy beyond the said period of ninety (90) days.
- 48. Subject to rule 48A, where a casual vacancy or further casual vacancy is to be filled for so much of the part of the term as exceeds three quarters of the term of the office the vacancy shall be filled by way of secret postal ballot in accordance with the provisions appropriate to the election for the vacant office in Schedule C.

### **SUSPENSION FROM OFFICE**

- 48A. Notwithstanding any other provision of these Rules, where a casual vacancy occurs more than six months after the commencement of the term of the office concerned because a Director ceases to hold office by reason only of being suspended from office under the *Local Government Act 1993* or the *Aboriginal Land Rights Act 1983*, as the case may be, that vacancy shall not be filled unless that person subsequently becomes eligible to be elected a director by reason of the said suspension ceasing during the balance of the term of the relevant office. In such event the person so removed shall fill the vacancy, provided that person is otherwise eligible for such appointment. No other person will be eligible to fill that vacancy.

**REMOVAL FROM THE BOARD**

49. (a) The Board may remove from the Board any Director if the person has been found guilty, under the Rules of the Association, of:
- (i) misappropriation of the funds of the Association; or
  - (ii) a substantial breach of the rules of the Association; or
  - (iii) gross misbehaviour or gross neglect of duty.

[Note: See Rule 36 and Rule 51: Failure by a member of the Board to attend three consecutive meetings of the Board, without leave, constitutes a breach of Rule 51 and gives rise to liability in the director to expulsion from office under (ii) or (iii) above.]

- (b) If a person is believed by the Board to be guilty of any of the offences specified in sub-rule (a) of this Rule the Board shall call on such person to appear before the next meeting of the Board to show cause why that person should not be expelled from his or her position on the Board.
- (c) The person called to show cause pursuant to this Rule shall be given at least fourteen (14) days notice of the time and place of the meeting to which that person is called. The notice calling such person shall also specify the ground or grounds upon which it is proposed to consider such removal.
- (d) The Board shall give to any person so called an opportunity to show cause why that person should not be removed from the Board.
- (e) The Board may proceed to hear and determine the matter under this Rule notwithstanding the absence of the person called if due notice of the hearing has been given in accordance with this Constitution.
- (f) Where the Board expels a person from the Board in accordance with these Rules, such expulsion shall operate from the date of the decision of the Board.

50. ~~A person ceases to be a Director and vacates his or her position on the Board (by operation of this Rule and without any further action) upon him or her ceasing to be a Councillor of an Ordinary member, or otherwise ceasing under these Rules to be eligible to be a Director.~~

Subject to rule 43(d), a person ceases to be eligible to hold office as a Director and vacates his or her position as a Director (by operation of this Rule and without any further action) upon him or her ceasing to be a Councillor of an Ordinary member, or otherwise ceasing under these Rules to be eligible to be a Director.

## BOARD MEETINGS

### BOARD MEETINGS

51. The Board of the Association shall meet at least four (4) times each calendar year but shall meet at such additional times as may be required by the President or by requisition in writing to the Chief Executive signed by not less than five (5) directors. The meetings of the Board shall take place at such times and places as may be determined by the Board, and upon not less than forty eight (48) hours notice to its members. Wherever practicable, notice of any meeting of the Board shall be in writing and shall specify the nature of the business to be conducted at the meeting. Without limiting the generality of Rule 36, a director shall attend at all meetings of the Board unless granted leave of absence by or having reasonable excuse acceptable to the Board. A failure by a director to attend three consecutive meetings of the Board without leave shall be deemed to constitute a breach of the duties of a director as referred to in Rule 36.
52. Where the President or a majority of the Office Bearers of the Association believe that business should be considered by the Board before a scheduled meeting, the Board may meet by telephone or videoconference, or a combination of these forms of meeting or communication. Where any such meeting is conducted other than by way of all of the participants being present in person, such meeting shall be as valid as if all participants had met in person provided that:
  - (a) wherever practicable all directors are given at least seven (7) days notice of the time, date and agenda for the meeting; and
  - (b) a quorum of directors participate in the meeting by the chosen electronic means or in person.
53. Meetings shall be presided over by the President or, in his or her absence, by one of the Vice Presidents (with the Vice President to chair any such meeting being that Vice President who is from the same group of councils as the President, unless that Vice President is also unavailable); should neither of these be present, the Board may elect a chairperson.
54. The President or person so presiding over a Board meeting shall have control of the meeting and shall call upon members to speak. The person so presiding shall have an original and, in the case of an equality of votes, a second or casting vote.
55.
  - (a) No business shall be transacted at any meeting of the Board unless a quorum is present in person or by telephone or video-conference or a combination of these forms at the same time. The quorum for a meeting of the Board shall be fifty percent of the total number of Board members then holding office, plus one.
  - (b) Subject to sub-rule (c), no business shall be transacted at any meeting of the Board unless a quorum is present in person or by telephone or video-conference or a combination of these forms at the same time.
  - (c) Where in the opinion of the President a matter requires the urgent consideration of the Board before a scheduled Board meeting, the Board may be consulted in writing (including electronic means) by flying minute. A motion put before the members of the Board by way of flying minute shall become a resolution of the Board as at the date set for return of responses, provided that the motion is supported by at least fifty percent of the total number of Board members, plus one. A resolution passed by way of flying minute shall be reported to the next Board meeting.



## BOARD MEETINGS

56. (Contents of Rule 56 deleted due to statutory changes. See now Part 2A of Chapter 9 of the Act.)
57. (a) The Directors must cause minutes to be made of:
- (i) all appointments of Directors and officers;
  - (ii) the names of the Directors present at each meeting of the Directors;
  - (iii) all orders made by the Directors;
  - (iv) all declarations made or notices given by any Director (either generally or specifically) of their interest in any contract or proposed contract or of their holding of any office or property whereby any conflict of duty or interest may arise; and
  - (v) all resolutions and proceedings or all general meetings and meetings of Directors and retain the minutes in a minute book.
- (b) The minutes of a meeting must be signed by the chairperson of the meeting or the chairperson of the next meeting.
- (c) In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this Sub Rule (d) is evidence of the matters shown in the minute.
58. The Board may exercise any of its powers, duties and functions by itself or by direction to staff or agents of the Association.

## AUDITOR

### AUDITOR

59. (a) The Board shall appoint one or more auditors. Any person appointed as an auditor by the Board must be a registered auditor under the Act.
- (b) The position of auditor becomes vacant on the following grounds:
- (i) the written resignation of the appointed auditor; or
  - (ii) a resolution by the Board passed at a meeting of the Board by an absolute majority of its members on one or more of the following grounds:
    - A. the service is executed to an unprofessional standard; or
    - B. the auditor's costs are considered excessive; or
    - C. if the person ceases to be a registered company auditor.
  - (iii) at the expiration of the term of appointment.
60. The Board may not remove a person as auditor during the person(s) term of appointment without each director and the auditor having been given fourteen (14) days notice of the intention to remove the auditor from office, and may not so remove the auditor(s) without giving the person(s) a reasonable opportunity to make oral submissions on the matter at a meeting of the Board.

**FINANCE**

61. The sources from which the Association's funds may be derived are as follows:
  - (a) amounts of entrance fees, subscriptions, fines, fees, levies or commissions received by the Association;
  - (b) interest, rents or dividends derived from investments of the Association's funds;
  - (c) the proceeds of any disposal of parts of the funds;
  - (d) any monies or credits received in pursuance of the Association's Objects, as defined in Rule 4, or in the exercise of Powers, as defined under Rule 5 of this Constitution.
62.
  - (a) All moneys received for and on behalf of the Association shall be placed to the credit of the Association at such bank or such other financial institution(s) the Board shall direct and all cheques, promissory notes, draft bills of exchange and other negotiable instruments and all receipts and moneys paid to the Association shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such other manner as the Board may determine.
  - (b) A loan, grant or donation must not be made by the Association unless the Board has approved the making of the loan, grant or donation and has satisfied itself:
    - (i) that the making of the loan, grant or donation would be in accordance with these Rules; and
    - (ii) in the case of a loan - that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory.
63. The Board shall have management of the Association's property and investment of funds.
64. The Association's funds shall only be expended on the objects of the Association.
65. The Association shall develop and implement policies and procedures relating to the expenditure of the Association.
66. (Contents of Rule 66 deleted due to statutory changes. See now Part 2A of Chapter 9 of the Act.)
67. (Contents of Rule 67 deleted due to statutory changes. See now Part 2A of Chapter 9 of the Act.)

## FINANCE

68. (Contents of Rule 68 deleted due to statutory changes. See now Part 2A of Chapter 9 of the Act.)
69. In respect of each financial year of the Association the accounts and financial statements required to be prepared by the Association shall be prepared, audited, and presented to the Board and a Conference of the members (either Annual or Special as may be required) in accordance with the requirements of the Act, and without limiting the generality of the foregoing:
- (a) as soon as practicable after the end of each financial year, the Association shall cause to be prepared a General Purpose Financial Report, to be prepared in accordance with the Australian Accounting Standards, from the financial records kept by the Association in relation to the financial year concerned;
  - (b) as soon as practicable after the end of each financial year, the Association shall cause to be prepared an Operating Report in relation to that financial year, the preparation of which Report shall be the responsibility of the Treasurer and staff of the Association acting under his or her instructions and directions;
  - (c) the Association's Auditor must audit the financial records of the Association for each financial year and must furnish to the Board his or her report in relation to that year within a reasonable time of having received the General Purpose Financial Report;
  - (d) the Association shall provide, free of charge to its members, either a full report in relation to each financial year (consisting of a copy of the Auditor's Report, the General Purpose Financial Report and the Operating Report) or if the Board so resolves, a Concise Report for the said financial year in accordance with the requirements of the Act;
  - (e) the Report in relation to a financial year to be presented to members as referred to in the preceding sub-Rule shall be provided to members not less than 21 days before the Auditor's Report, the General Purpose Financial Report and the Operating Report are presented to a Conference of the members following the end of the relevant financial year of the Association;
  - (f) the Auditor's Report, the General Purpose Financial Report and the Operating Report in respect of each financial year, shall be presented to a Conference of the members of the Association not later than six (6) months after the end of the relevant financial year or such longer period as may be allowed by a Registrar in accordance with the Act;
  - (g) a copy of the Auditor's Report, the General Purpose Financial Report, the Operating Report and any Concise Report in respect of any financial year, shall be lodged with the Office of the Industrial Registrar not later than fourteen (14) days after the presentation of the said reports to a general meeting of the members of the Association.

## CHIEF EXECUTIVE

### CHIEF EXECUTIVE

70. The Chief Executive shall be appointed by the Board, which shall be responsible for determining the terms his or her conditions of employment and, if found necessary, the termination of the employment of the Chief Executive. In the exercise of these powers the Board will be guided by, but not bound by any relevant recommendations of the Senior Executive Group.

The Chief Executive shall be responsible for the day to day administration of the affairs of the Association and shall give effect to all directions given to him or her by the Board or, where the Board has authorised the Senior Executive Group or the President to give such directions, the Senior Executive Group or the President, as the case may be. The Chief Executive shall at all times act in accordance with and subject to such directions as are given to him or her pursuant to this Rule.

### COMMON SEAL

- 70A. (a) The Association shall have a common seal which shall clearly include the words "Local Government NSW".
- (b) Subject to any resolution of the Board, the common seal is to be kept in the custody of an employee designated by the Board.
- (c) The common seal shall only be affixed to a document in the presence of at least two members of the Board who attest to the affixing of the seal by signing the document.

### ACCESS TO RECORDS

71. (a) Except as provided under Rule 62, all records, books, documents, and securities relating to the management and governance of the Association shall be in the custody of the Chief Executive.
- (b) A member of the Association may access the records of the Association in accordance with and subject to the limitations for such access prescribed from time to time by the Act.

### PATRON OF THE ASSOCIATION

72. (a) In order to recognise outstanding service to Local Government and to the Association, the position of 'Patron of the Association' is created, such position to be honorary only. It shall be open to serving or former elected members, including former Presidents of the Association, the LGA NSW or the SA NSW.
- (b) In the case of serving or former elected members, the Annual Conference shall determine such appointment(s) on the recommendation of the Board.
- (c) In the case of former Presidents, the Board shall determine such appointment(s).

## AMENDMENT

### AMENDMENT

73. (a) Subject to sub-rules (b) and (c) of this Rule, no alteration, amendment or rescission shall be made to this Constitution unless by resolution of a Conference adopted by a majority of the voting delegates and members of the Board in attendance at any such Conference.
- (b) The Board may make such amendments to the Rules of the Association as it deems fit, on the recommendation of the Fair Work Commission or the advice of the Association's legal advisors, for the following purposes:
- (i) to ensure that the Rules comply with the Act or any other law; or
  - (ii) to ensure that the Rules remain consistent with the Rules of the industrial organisation of the same name registered under the *Industrial Relations Act 1996* (NSW); or
  - (iii) to correct minor clerical and/or administrative errors,
- and any such amendments shall be taken to be validly made if adopted by resolution at a duly convened meeting of the Board.
- (c) The Board may make such amendments to Schedule A of the Rules as it deems necessary to remove the names of councils and county councils that have been dissolved and to include the names of new councils and county councils that have been established as a result of the amalgamation of councils/county councils and/or the alteration of council/county council boundaries and any such amendments shall be taken to be validly made if adopted by resolution at a duly convened meeting of the Board.

### NOTIFICATION OF DISPUTES

74. Any industrial disputes may be notified to the appropriate court or tribunal under the Act by the Chief Executive or such other employee(s) of the Association that have the Chief Executive's delegated authority.

### DISSOLUTION

75. In the event that the Association is dissolved or wound up:
- (a) a member shall not be required to contribute to the payment of the debts and liabilities of the Association or the costs, charges and expenses of the dissolution or winding up in an amount which is more than 10% of the member's annual subscription for the financial year in which the dissolution or winding up takes place; and
  - (b) any surplus funds remaining after the dissolution or winding up shall be paid to the members of the Association in the proportion which each member's subscription for the year in which the dissolution or winding up occurred bears to the total amount of subscriptions collected for that year.

SCHEDULE A

**SCHEDULE A**

METROPOLITAN/URBAN COUNCILS AND COUNTY COUNCILS

See Definition in Rule 3

Metropolitan/Urban councils

Bayside; Blacktown; Burwood; Camden; Campbelltown; Canada Bay; Canterbury-Bankstown; City of Parramatta; City of Sydney; Cumberland; Fairfield; Georges River; Hawkesbury City; Hornsby; Hunters Hill; Inner West; Ku-ring-gai; Lane Cove; Liverpool; Mosman; Northern Beaches; North Sydney; Penrith; Randwick; Ryde; Strathfield; Sutherland Shire; The Hills Shire; Waverley; Willoughby; and Woollahra.

NOTE: The Sydney/Newcastle region of the ALC is treated under the Rules as being a Metropolitan/Urban Council – see Rule 23, Step 2, paragraph (c).

Metropolitan/Urban County councils

Hawkesbury River

End of Schedule A

**SCHEDULE B**

**RULES FOR CONDUCT OF ELECTIONS IF EXEMPTION IS APPROVED BY FAIR WORK  
COMMISSION/ INDUSTRIAL REGISTRAR**

General

1. The Board shall appoint a Returning Officer not being the holder of any other office in and not being an employee of the Association, and who shall not be a candidate at the election. [NB: under Act the Returning Officer for such elections will be an officer of either the Australian Electoral Commission or the State Electoral Commission, as the case may be, unless exemption is obtained under such legislation.]
2. The Returning Officer shall notify the Chief Executive that he or she is required to deliver a list of ordinary members entitled to vote in the election of members of the Board.
3. The Roll of Voters is to be determined by the Association in accordance with the requirements of Rule 37 and must be closed seven (7) days prior to the date upon which the Returning Officer calls nominations for an election pursuant to these Rules.
4. The Board may determine the form of any nomination form(s) subject to the requirements of the Act.
5.
  - (a) The Returning Officer shall cause an election notice inviting nominations for the office of President, Treasurer, Vice President (Rural/Regional), Vice President (Metropolitan/Urban) and Board members to be published in the Association's official journal and sent to each Ordinary member council by post at least seven (7) weeks prior to the first business day of the Annual Conference in an election year. Such notice shall prescribe the time and date prescribed by these Rules for the closing of nominations.
  - (b) Nominations must be lodged with the Returning Officer, which may be done by electronic means, before the time and date specified for receipt of nominations.
  - (c) Where the nominee is a member of a political party that is registered with either the NSW Electoral Commission (for State or Local Government elections) or the Australian Electoral Commission (for Federal elections) the nominee shall declare the name(s) of such registered political party membership(s) on the nomination form.
6. The persons proposing and seconding a nomination for the offices of President, Treasurer, Vice President (Rural/Regional), Vice President (Metropolitan/Urban) and Board members must be elected members of any Council, as defined in Rule 2, which is an ordinary member of the Association. Nominations shall be signed by the proposer and seconder, and consented to in writing by the candidate.
7. A candidate may nominate for more than one office or position that is subject to an election however, election to the offices of President, Treasurer, Vice President (Rural/Regional), Vice President (Metropolitan/Urban) shall automatically exclude the candidate so elected from election to any other office or position on the Board.



## SCHEDULE B

8. Nominations for the offices of President, Treasurer, Vice President (Rural/Regional), Vice President (Metropolitan/Urban) and Board members must reach the Returning Officer at least four (4) weeks prior to the first business day of the Annual Conference in the relevant year.
9. If the Returning Officer should receive a nomination that is defective, the Returning Officer shall not immediately reject the nomination but shall instead give the candidate concerned written notice of the defect and where practicable at least seven (7) days to remedy the defect.
10. A nomination for election may be withdrawn by a candidate, provided that notice of withdrawal in writing is received by the Returning Officer no later than seven (7) days before the holding of the ballot.
11. Details of nominations that have been accepted shall be placed before constituent councils before the Annual Conference.
- 11A. The Returning Officer shall conduct a public draw to determine the order of candidates on the ballot paper.
12. Material (e.g. pamphlets, brochures, notices) which is intended or likely to affect voting in an election may not be distributed unless it contains the name and address of the person who authorised it and the name of the relevant political party.
13.
  - (a) In the event that for any office or position to be filled the number of nominations does not exceed the number of persons to be elected then the persons nominated shall be elected to those positions.
  - (b) Where the nominations received are insufficient to fill all vacancies, the Board at its first meeting after the Annual Conference at which it was elected shall determine whether the number and type of vacancies are such as to require that the vacancies be filled and if it so determines, request the Returning Officer to conduct a further election by way of a secret postal ballot of members to fill such vacancies. Such secret ballot shall be conducted in accordance with the requirements of these Rules for the conduct of elections, so far as they can apply to a secret ballot.

### Conduct of Elections at the Annual Conference

14.
  - (a) In the event of the Returning Officer receiving nominations in excess of the number of positions to be filled in any election for the offices of President, Treasurer, Vice President (Rural/Regional), or Vice President (Metropolitan/Urban), the election shall be conducted at the Annual Conference by way of a secret ballot using the standard preferential system of voting. Voters must mark a preference for all candidates.

## SCHEDULE B

Where two or more candidates have an equal number of votes, the candidate who is successful or is to remain in the count at an exclusion shall be the candidate first drawn by lot.

(b) In the event of the Returning Officer receiving nominations in excess of the number of positions to be filled in any election for the offices of other directors the election shall be conducted at the Annual Conference using the proportional system of voting, as described below.

Voters must mark a preference for all candidates.

To be elected, except as provided in the last paragraph of this Rule, a candidate needs to gain a certain proportion (or quota) of the formal votes. The quota is calculated by dividing the total number of formal first preference votes in the count by one more than the number of officers to be elected; and adding one to the result, disregarding any remainder.

The ballot papers are sorted according to the first preference on each paper.

If a candidate receives more first preference votes than the quota, they are immediately elected and, unless all vacancies have been filled, their surplus votes are passed on to the continuing candidates listed on the ballot paper; based on the voter's next available order of preference.

The transfer value of the surplus votes is calculated by dividing the elected candidate's total of surplus votes by the total number of the candidate's votes, and is applied to each of the ballot papers of the elected candidate. The result is taken to the fourth decimal point.

The number of votes to be transferred, disregarding any fraction, shall be added to the continuing candidate(s)' votes.

If any of those candidates who received the surplus votes now have more than the quota they are elected. Their surplus votes are transferred to the candidate listed as the next preference on all of the ballot papers. This is done by dividing the surplus votes by the total number of ballot papers the candidate has received (first preferences plus transferred ballot papers). This process continues until there are no more candidates with enough votes to be elected.

Where, on the counting of the first preference or on any transfer, more than one candidate has a surplus, the largest surplus shall be dealt with first.

Where two or more surpluses are equal, the surplus of the candidate who was the highest on the poll at the count or transfer at which they last had an unequal number of votes shall be dealt with first, and, if they have had an equal number of votes at all preceding counts or transfers, the Returning Officer shall decide by lot which candidate's surplus shall be dealt with first.

## SCHEDULE B

To fill any remaining places not filled by the above process, the candidate with the smallest number of votes is excluded and votes for this candidate are transferred to the remaining continuing candidates. This is done at the value at which the votes were received by the candidate to be excluded. When the transfer of these preferences gives a candidate a quota, that candidate is elected.

Where at any time it becomes necessary to exclude a candidate, and two or more candidates have the same number of votes and are lowest on the poll, then whichever of such candidates was lowest on the poll at the last count or transfer at which they had an unequal number of votes shall be first excluded, and if such candidates have had an equal number of votes at all preceding counts or transfers the Returning Officer shall decide by lot which candidate's votes shall be distributed.

Where the contest for the last seat is close, it is common for the final two continuing candidates to both have less than a quota. In this case, the continuing candidate with the highest number of votes is elected.

15. (a) Where an election is required at the Annual Conference, the voters in such an election shall be the Delegates who are by virtue of Rule 37 of the Association's Rules entitled to vote in such election.
- (b) The Returning Officer shall issue the ballot paper(s) to the voters, such ballot paper(s) to include:
  - (i) the Returning Officer's initials;
  - (ii) the name of each candidate for the office/position to be filled, including the candidates declared registered political party membership(s);
  - (iii) such other information as the Returning Officer deems appropriate.
16. If a delegate of a member or a member of the Board cannot for any reason be present at the Conference to vote in any election (hereafter referred to as "the absentee"), the absentee may by notice in writing signed by the absentee and delivered to the Returning Officer before 5pm on the business day immediately prior to the first business day of the Conference appoint another delegate from the same member to exercise the absentee's right to vote in the election.
17. Where required, the ballots shall be conducted in the following manner, to the extent practicable:
  - (a) the ballot for the office of President shall be conducted first;
  - (b) after the completion of the ballot for President, the ballot for the office of Treasurer shall be conducted next;

## SCHEDULE B

- (c) the ballots for the offices of Vice President (Rural/Regional) and Vice President (Metropolitan/Urban) shall be undertaken after the ballot for the office of Treasurer;
- (d) the ballots for Board members shall be conducted after all previous elections are completed.

Every person concerned in the ballot shall ensure as far as practicable that no irregularity occurs in the ballot.

### Scrutineers

- 18. Each candidate at any election shall have the right, if he or she so desires, to appoint a scrutineer to represent him or her in the ballot and shall give notice of any such appointment of a scrutineer in writing to the Returning Officer. The Association may appoint an employee of the Association to scrutineer for it at any election by giving notice in writing of such appointment to the Returning Officer.
- 19. Every scrutineer shall, so far as is possible having regard to the time of their appointment, have the following rights and duties:
  - (a) to be present with the Returning Officer when the ballot papers are being handed out to voters and to watch the interests of the person whom they represent; and
  - (b) to be present with the Returning Officer when the ballot papers are opened and when the votes are counted and to watch the interests of the person whom they represent, but no election shall be vitiated by reason of the fact that a scrutineer did not exercise any or all of their rights or duties if they had a reasonable opportunity to do so.
- 20. Scrutineers shall have the right to question the inclusion or exclusion of any ballot paper but the decision of the Returning Officer shall, subject to the Act, be final.
- 21. Scrutineers may not remove, mark, alter or deface any ballot paper or other documents used in the ballot.

End of Schedule B

**SCHEDULE C**

**RULES FOR CONDUCT OF ELECTIONS BY SECRET POSTAL BALLOT**

General

1. The Board shall appoint a Returning Officer not being the holder of any other office in and not being an employee of the Association, and who shall not be a candidate in the election. [NB: under the Act the Returning Officer for such elections will be an officer of either the Australian Electoral Commission or the State Electoral Commission, as the case may be, unless exemption is obtained under such legislation.]
2. The Returning Officer shall notify the Chief Executive that he or she is required to deliver a list of Ordinary members entitled to vote in the election.
3. The Roll of Voters for the election is to be determined by the Association in accordance with the requirements of Rule 37 and must be closed seven (7) days prior to the date upon which the Returning Officer calls for nominations for an election pursuant to these rules.
4. The Returning Officer may determine the form of any nomination form(s) subject to the requirements of the Act and these rules.
5.
  - (a) The Returning Officer shall cause an election notice inviting nominations for the office(s) subject to an election to be published in the Association's official journal and sent to each Ordinary member by post at least seven (7) weeks prior to the opening of the ballot.
  - (b) A nomination form shall be enclosed with the election notice when sent by post.
  - (c) The election notice shall:
    - (i) prescribe the time and date for the closing of nominations;
    - (ii) require voting members to advise the Association of the names and postal addresses of their nominated voting delegates (who are to be issued ballot papers in the election) at least two (2) weeks prior to the opening of the ballot; and
    - (iii) contain such other information as the Returning Officer deems appropriate.
6. The persons proposing and seconding a nomination for the vacant office must be either a Councillor of a Council which is an Ordinary member of the Association or if the ALC is an Ordinary member, a member of its Board, provided that any such person must not be suspended from office under either the *Local Government Act 1993* or the *Aboriginal Land Rights Act 1983*, as the case may be. Nominations shall be signed by the proposer and seconder, and consented to in writing by the candidate.
7. Where the nominee is a member of a political party that is registered with either the NSW Electoral Commission (for State or Local Government elections) or the Australian Electoral Commission (for Federal elections) the nominee shall declare the name(s) of such registered political party membership(s) on the nomination form.

## SCHEDULE C

8. Nominations must be lodged with the Returning Officer, which may be done by electronic means, before the time and date specified for receipt of nominations.
9. In the event of multiple offices being filled in the same postal ballot, a candidate may nominate for more than one office or position that is subject to an election however, election to the offices of President, Treasurer, Vice President (Rural/Regional) or Vice President (Metropolitan/Urban) shall automatically exclude the candidate so elected from election to any other office or position on the Board.
10. Nominations for election must reach the Returning Officer at least four (4) weeks prior to the close of the ballot.
11. A nomination for election may be withdrawn by a candidate, provided that notice of withdrawal in writing is received by the Returning Officer no later than seven (7) days before the holding of the ballot.
12. If the Returning Officer should receive a nomination that is defective, the Returning Officer shall not immediately reject the nomination but shall instead give the candidate concerned written notice of the defect and where practicable at least seven (7) days to remedy the defect.
13.
  - (a) If there be no more candidates than the number required to be elected those nominated shall be declared to be elected and if there be more candidates for any office than required to be elected an election by secret ballot shall be held. Pending the declaration of the result of any such election the persons holding office shall retain office.
  - (b) Where the nominations received are insufficient to fill all vacancies, the Board at its first meeting after the Annual Conference at which it was elected shall determine whether the number and type of vacancies are such as to require that the vacancies be filled and if it so determines, request the Returning Officer to conduct a further election by way of a secret postal ballot of members to fill such vacancies. Such secret ballot shall be conducted in accordance with the requirements of these Rules for the conduct of elections, so far as they can apply to a secret ballot.
14. The Returning Officer shall, for each office/position to be contested, conduct a public draw to determine the order of candidates on the ballot paper.
15. The Association shall provide to the Returning Officer the names and postal addresses of nominated voting delegates at least one (1) week prior to the opening of the ballot.
16. The Returning Officer shall make such arrangements for absent voting as will ensure that any voting delegate not able to vote by way of secret postal ballot may be able to vote on an absentee basis.
17. The Returning Officer shall issue the required number of ballot papers, a declaration envelope(s) and a prepaid envelope(s), in the form prescribed by the Act, to be handed or posted to each voting delegate not less than fourteen (14) days before the closing of the ballot. The ballot paper shall include:
  - (a) the Returning Officer's initials;

## SCHEDULE C

- (b) a description of each office/position to be filled, including the number of offices/positions to be filled;
  - (c) the name of each candidate for each office/position to be filled, including the candidates declared current registered political party membership(s);
  - (d) instructions on how to complete the ballot paper;
  - (e) the name and address of the Returning Officer to whom the ballot paper(s) shall be returned, the closing date and the time for receipt of votes and instructions that the ballot papers shall be placed in the declaration envelope and returned to the Returning Officer in the prepaid envelope; and
  - (f) such other information as the Returning Officer deems appropriate.
18. The ballot papers shall be placed in the declaration envelope and returned in the prepaid envelope to the Returning Officer on or before the closing date fixed for voting.
19. The non-receipt of a ballot paper by a member entitled to vote, or the non-return of a ballot paper or the return of a ballot paper improperly filled in or not enclosed in a sealed envelope, shall not invalidate the ballot.
20. No voter shall vote for a greater or lesser number of candidates than the number directed on the ballot paper and any vote or ballot paper contrary to this provision or otherwise improperly filled in shall be informal.
21. The Returning Officer shall arrange for the use of a post office box or other receptacle to which ballot papers may be returned to him/her and arrange for the same not to be opened by any other person.
22. The Returning Officer shall count the votes indicated upon the ballot papers which are properly marked. The candidates who receive the greatest number of votes shall be progressively elected until all offices required to be filled are filled.
23. The Returning Officer shall arrange for votes to be counted and shall within three (3) days after the closing date for voting declare the result of the ballot to the members of the Association by post or in such manner as the Board may from time to time prescribe and the candidate or candidates declared elected shall assume office from the date that the Returning Officer declares the result of the election.
24. Every person concerned in the ballot shall ensure as far as practicable that no irregularity occurs in the ballot.

Elections for the offices of President, Treasurer, Vice President (Rural/Regional), or Vice President (Metropolitan/Urban)

25. In the event of the Returning Officer receiving nominations in excess of the number of positions to be filled in any election for the offices of President, Treasurer, Vice President (Rural/Regional), or Vice President (Metropolitan/Urban), the election shall be conducted using the standard preferential system of voting. Voters must mark a preference for all candidates.

## SCHEDULE C

26. Where two or more candidates have an equal number of votes, the candidate who is first drawn by lot by the Returning Officer shall be declared elected.

### Elections for the offices of other directors

27. In the event of the Returning Officer receiving nominations in excess of the number of positions to be filled in any election for the offices of other directors the election shall be conducted using the proportional system of voting, as described below.
- (a) Voters must mark a preference for all candidates.
  - (b) To be elected, except as provided in the last paragraph of this rule, a candidate needs to gain a certain proportion (or quota) of the formal votes. The quota is calculated by dividing the total number of formal first preference votes in the count by one more than the number of officers to be elected; and adding one to the result, disregarding any remainder.
  - (c) The ballot papers are sorted according to the first preference on each paper.
  - (d) If a candidate receives more first preference votes than the quota, they are immediately elected and, unless all vacancies have been filled, their surplus votes are passed on to the continuing candidates listed on the ballot paper; based on the voter's next available order of preference.
  - (e) The transfer value of the surplus votes is calculated by dividing the elected candidate's total of surplus votes by the total number of the candidate's votes, and is applied to each of the ballot papers of the elected candidate. The result is taken to the fourth decimal point.
  - (f) The number of votes to be transferred, disregarding any fraction, shall be added to the continuing candidate(s)' votes.
  - (g) If any of those candidates who received the surplus votes now have more than the quota they are elected. Their surplus votes are transferred to the candidate listed as the next preference on all of the ballot papers. This is done by dividing the surplus votes by the total number of ballot papers the candidate has received (first preferences plus transferred ballot papers). This process continues until there are no more candidates with enough votes to be elected.
  - (h) Where, on the counting of the first preference or on any transfer, more than one candidate has a surplus, the largest surplus shall be dealt with first.
  - (i) Where two or more surpluses are equal, the surplus of the candidate who was the highest on the poll at the count or transfer at which they last had an unequal number of votes shall be dealt with first, and, if they have had an equal number of votes at all preceding counts or transfers, the Returning Officer shall decide by lot which candidate's surplus shall be dealt with first.
  - (j) To fill any remaining places not filled by the above process, the candidate with the smallest number of votes is excluded and votes for this candidate are transferred to the remaining continuing candidates. This is done at the value at which the votes were



## SCHEDULE C

received by the candidate to be excluded. When the transfer of these preferences gives a candidate a quota, that candidate is elected.

- (k) Where at any time it becomes necessary to exclude a candidate, and two or more candidates have the same number of votes and are lowest on the poll, then whichever of such candidates was lowest on the poll at the last count or transfer at which they had an unequal number of votes shall be first excluded, and if such candidates have had an equal number of votes at all preceding counts or transfers the Returning Officer shall decide by lot which candidate's votes shall be distributed.
- (l) Where the contest for the last seat is close, it is common for the final two continuing candidates to both have less than a quota. In this case, the continuing candidate with the highest number of votes is elected.

### Scrutineers

- 28. Each candidate at any election shall have the right, if he or she so desires, to appoint a scrutineer to represent him or her in the ballot, and shall give notice of any such appointment of a scrutineer in writing to the Returning Officer. The Association may appoint an employee of the Association to scrutineer for it at any election by giving notice in writing of such appointment to the Returning Officer,
- 29. Every scrutineer shall, so far as is possible having regard to the time of his/her appointment have the right to be present with the Returning Officer when the ballot papers are opened and when the votes are counted and to watch the interests of the person whom he/she represents, but no election shall be vitiated by reason of the fact that a scrutineer does not exercise any or all of his/her rights or duties if he/she has a reasonable opportunity to do so.
- 30. Scrutineers shall have the right to question the inclusion or exclusion of any ballot paper and the decision of the Returning Officer shall, subject to the Act be final.
- 31. Scrutineers may not remove, mark, alter or deface any ballot paper or other documents used in the ballot.

End of Schedule C

\*\*\*END OF RULES\*\*

## CATEGORY 1 MOTIONS

### F1 LGNSW Board

### Standing Orders

That the Standing Orders as set out in the preceding pages be adopted.

### F2 LGNSW Board

### LGNSW (Federal) rules

1. That Local Government NSW, being a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) (the "**Association**") amend the Association's rules as follows:
  - (i) At rule 32 of the LGNSW rules, delete the words "four (4) months" and insert in lieu thereof the words "three (3) months".
  - (ii) Delete rule 33(b) of the LGNSW rules and insert in lieu thereof the following:
    - "(b) Subject to these rules, where a Special Conference is called for under sub-rule (a) of this Rule the Chief Executive shall convene a Special Conference for a date not later than four (4) weeks after the receipt of the notice calling for the Conference.
    - (c) If a Special Conference is called for by resolution of the Board, the Board may specify the date(s) on which the Special Conference is to occur, and the Chief Executive shall convene a Special Conference on the date(s) so specified. For the avoidance of doubt, the date of a Special Conference called for by resolution of the Board may be more than four (4) weeks after receipt of the notice calling for the Conference."
  - (iii) Delete rule 43(d) of the LGNSW rules and insert in lieu thereof the following:
    - "(d) ceases to be eligible under the Rules to hold office as a Director, provided that a Director continues as a Director during the intervening period between the day of a local government general election and the declaration of the results of that election if they are a candidate in the election."
  - (iv) Delete rule 50 of the LGNSW rules and insert in lieu thereof the following:
    - "50. Subject to rule 43(d), a person ceases to be eligible to hold office as a Director and vacates his or her position as a Director (by operation of this Rule and without any further action) upon him or her ceasing to be a Councillor of an Ordinary member, or otherwise ceasing under these Rules to be eligible to be a Director."
2. That in furtherance of 1 above, the Association make application to the Fair Work Commission to amend the Association's rules.

### Note from Board

Local Government NSW is registered as an organisation of employers under the *Fair Work (Registered Organisations) Act 2009* (Cth) ("**LGNSW (Federal)**"). An organisation of the same name is separately registered as an organisation of employers under the *Industrial Relations Act 1996* (NSW) ("**LGNSW (State)**"). The rules of LGNSW Federal ("**LGNSW rules**") and LGNSW State are substantially the same.

During 2021, the LGNSW Board had regard to the following and resolved to sponsor a motion to the 2022 Special Conference to amend the LGNSW rules:

- The impacts of the COVID-19 pandemic have highlighted that the current requirement under the LGNSW rules to provide members "*at least four (4) months notice before the holding of the Annual Conference*" is unnecessarily restrictive. It is proposed that the notice period be reduced to three (3) months.
- The impacts of the COVID-19 pandemic on the 2021 LGNSW Annual Conference highlighted that the current requirement under the LGNSW rules to convene a Special Conference "*within four (4) weeks after the receipt of the notice calling for the Conference*" is impracticable in some circumstances. It is proposed that the rules be amended to provide a more appropriate period in which to convene Special Conferences that are called by resolution of the Board.

- An ambiguity has been identified in the LGNSW rules concerning the tenure of LGNSW Board members during the intervening period between the day of a local government general election and the declaration of the results of that election. It is proposed that the rules be amended to remove the ambiguity.

The Fair Work Commission (“FWC”) reviewed the proposed amendments in early 2022 and suggested minor changes to avoid an inconsistency in the wording of rules 43 and 50. The FWC’s feedback has been incorporated into the recommended motion.

Amendments to the LGNSW rules require a resolution at a Conference adopted by a majority of the voting delegates and members of the Board in attendance at any such Conference (see rule 73 of the LGNSW rules).

Once all necessary amendments to the rules of LGNSW (Federal) are settled and made, the Board of LGNSW (State) will consider amending the rules of LGNSW (State) pursuant to rule 73(b)(ii) to ensure consistency between the two sets of rules.

**The proposed amendments to the LGNSW rules, following legal advice and consultation with the Fair Work Commission, are as follows:**

**(i) Notice period for calling an Annual Conference**

Rule 32 of the LGNSW rules currently requires the giving of at least four (4) months notice of the holding of the Annual Conference.

Having a longer minimum notice period than necessary reduces LGNSW’s flexibility to change (or set) the date of an Annual Conference, and there may be circumstances beyond LGNSW’s control which make it desirable to change the date of an Annual Conference. This was apparent in 2021 when, due to the COVID-19 pandemic, in late July the NSW Government announced that general local government elections (scheduled for 4 September 2021) would be postponed to 4 December 2021. At the time, LGNSW had already provided notice to members that the 2021 LGNSW Annual Conference would be on 28 to 30 November 2021, approximately 4 days prior to the revised date of the general local government elections. The requirement that at least four (4) months notice be given of the holding of an Annual Conference meant that it was not possible to bring the date of the 2021 Annual Conference forward. Postponing the Annual Conference until after the general local government was also not a viable option because the Conference is legally required to be held before 31 December and members would have needed time after the results of the general election are declared to meet and determine who their delegates to the Conference would be. Having a traditional Annual Conference in close proximity of a general local government election is problematic – voting delegates to the Conference who are also candidates in the local government election may be distracted from the business of the Conference and this may lead to not achieving or maintaining quorum during the Conference (in 2021 the Board decided to hold a short online Annual Conference on 29 November 2021 and a separate Special Conference in 2022 to consider motions).

It is recommended that the minimum notice period for the holding of an Annual Conference be reduced from “four (4) months” to “three (3) months” to increase LGNSW’s flexibility to change (or set) the date of an Annual Conference whilst still providing sufficient time for members to determine who their nominated voting delegates to the Conference will be.

Proposed Amendment

At rule 32 of the LGNSW rules, delete the words “four (4) months” and insert in lieu thereof the words “three (3) months”.

## **(ii) Notice period for convening a Special Conference**

Rule 33(b) of the LGNSW rules currently requires the Chief Executive to convene a Special Conference on a date that is “*not later than four (4) weeks after receipt of the notice calling for the Conference*”.

Due to the COVID-19 pandemic and associated restrictions, it was not possible to hold an in-person Annual Conference in 2021. The postponed general Local Government elections (on 4 December 2021) also meant that it would have been unreasonable to expect councillors to interrupt their election campaigns for the length of time required for an extended online Annual Conference in November 2021. Therefore, the Board resolved (in October 2021) to have a one-hour online Annual Conference on 29 November 2021 (to fulfil LGNSW’s legal obligations), followed by a Special Conference from 28 February to 2 March 2022. A further Board resolution calling for the Special Conference was required in early 2022 (and occurred on 25 February 2022) to satisfy rule 33(b) of the LGNSW rules.

It is recommended that rule 33(b) be amended to provide a more appropriate period in which to convene Special Conferences that are called by resolution of the Board.

### Proposed Amendment

Delete rule 33(b) of the LGNSW rules and insert in lieu thereof the following:

- “(b) Subject to these rules, where a Special Conference is called for under sub-rule (a) of this Rule the Chief Executive shall convene a Special Conference for a date not later than four (4) weeks after the receipt of the notice calling for the Conference.
- (c) If a Special Conference is called for by resolution of the Board, the Board may specify the date(s) on which the Special Conference is to occur, and the Chief Executive shall convene a Special Conference on the date(s) so specified. For the avoidance of doubt, the date of a Special Conference called for by resolution of the Board may be more than four (4) weeks after receipt of the notice calling for the Conference.”

## **(iii) Tenure of LGNSW Board members during the intervening period between the day of a local government general election and the declaration of the results of that election**

The LGNSW rules provide that a casual vacancy occurs on the Board when a Director ceases to be eligible under the rules to hold office as a Director. The LGNSW rules also provide that it is a prerequisite for any person to be nominated or elected to the Board, or to vote in such an election, that he or she be a Councillor of a Council which is an Ordinary member. Further, section 233(2)(b) of the *Local Government Act 1993* provides that the office of Councillor “*becomes vacant on the day appointed for the next ordinary election of councillors, or on the occurrence of a casual vacancy in the office*”.

It is usual LGNSW practice for the tenure of LGNSW Board members to continue during the intervening period between the day of a local government general election and the declaration of the results of that election. Further, legal advice is that this practice is not inconsistent with the LGNSW rules. However, it is suggested that a minor amendment to the LGNSW rules is appropriate to remove ambiguity.

### Proposed Amendment

Delete sub-rule 43(d) of the LGNSW rules and insert in lieu thereof the following:

- “(d) ceases to be eligible under the Rules to hold office as a Director, provided that a Director continues as a Director during the intervening period between the day of a

local government general election and the declaration of the results of that election if they are a candidate in the election.”

Delete rule 50 of the LGNSW rules and insert in lieu thereof the following:

- “50. Subject to rule 43(d), a person ceases to be eligible to hold office as a Director and vacates his or her position as a Director (by operation of this Rule and without any further action) upon him or her ceasing to be a Councillor of an Ordinary member, or otherwise ceasing under these Rules to be eligible to be a Director.”

## LGNSW Special Conference 2022

### Record of Decisions

#### F1 LGNSW Board

#### Standing Orders

That the Standing Orders as set out in the preceding pages be adopted.

**Decision: Carried**

#### F2 LGNSW Board

#### LGNSW (Federal) rules

1. That Local Government NSW, being a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) (the "**Association**") amend the Association's rules as follows:
  - (i) At rule 32 of the LGNSW rules, delete the words "four (4) months" and insert in lieu thereof the words "three (3) months".
  - (ii) Delete rule 33(b) of the LGNSW rules and insert in lieu thereof the following:
    - "(b) Subject to these rules, where a Special Conference is called for under sub-rule (a) of this Rule the Chief Executive shall convene a Special Conference for a date not later than four (4) weeks after the receipt of the notice calling for the Conference.
    - (c) If a Special Conference is called for by resolution of the Board, the Board may specify the date(s) on which the Special Conference is to occur, and the Chief Executive shall convene a Special Conference on the date(s) so specified. For the avoidance of doubt, the date of a Special Conference called for by resolution of the Board may be more than four (4) weeks after receipt of the notice calling for the Conference."
  - (iii) Delete rule 43(d) of the LGNSW rules and insert in lieu thereof the following:

"(d) ceases to be eligible under the Rules to hold office as a Director, provided that a Director continues as a Director during the intervening period between the day of a local government general election and the declaration of the results of that election if they are a candidate in the election."
  - (iv) Delete rule 50 of the LGNSW rules and insert in lieu thereof the following:

"50. Subject to rule 43(d), a person ceases to be eligible to hold office as a Director and vacates his or her position as a Director (by operation of this Rule and without any further action) upon him or her ceasing to be a Councillor of an Ordinary member, or otherwise ceasing under these Rules to be eligible to be a Director."
2. That in furtherance of 1 above, the Association make application to the Fair Work Commission to amend the Association's rules.

**Decision: Carried**

## Nara Lovisa

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**From:** Tom Duffy <Tom.Duffy@lgnsw.org.au>  
**Sent:** Monday, 4 April 2022 2:29 PM  
**To:** ROS  
**Cc:** Adam Dansie; Anastasia Polites  
**Subject:** Application by Local Government NSW to amend its Rules  
**Attachments:** Cover Letter - Application to FWC to amend the Rules of LGNSW.pdf; Form 1 - Application to amend LGNSW rules.pdf; Annexure 1 - Declaration of Cr Darriea Turley AM.pdf; Annexure DT 1 - Item F2 (Business Paper Extract).pdf; Annexure DT2 - Record of Decisions Extract.pdf; Annexure 2 - LGNSW Rules - Marked Up..pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Attention:** Regulatory Compliance Branch, Fair Work Commission

Please find attached a covering letter and an application by Local Government NSW (LGNSW) to amend its Rules.

The proposed amendments were adopted by way of a resolution during LGNSW's 2022 Special Conference on 1 March 2022.

Should you require anything further, please do not hesitate to contact me.

Kind Regards,

**Tom Duffy**  
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Local Government NSW  
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