

South Australia

Maralinga Tjarutja Land Rights Act 1984

An Act to provide for the vesting of title to certain lands known as the Maralinga lands in the people who are acknowledged as the traditional owners.

Contents

Part 1—Preliminary

- 1 Short title
- 3 Interpretation

Part 2—Maralinga Tjarutja

Division 1—Constitution of Maralinga Tjarutja as body corporate

- 4 Constitution of Maralinga Tjarutja as body corporate

Division 2—Powers and functions of Maralinga Tjarutja

- 5 Powers and functions of Maralinga Tjarutja

Division 3—The Council of Maralinga Tjarutja

- 6 Constitution of Council
- 7 Powers etc of Maralinga Tjarutja to be exercised by Council
- 8 Council to proceed having regard to customs of traditional owners
- 9 Delegation by Council
- 10 Evidentiary provision
- 11 Accounts and audit

Division 4—Offices

- 12 Offices of Maralinga Tjarutja

Part 3—The lands

Division 1—Vesting of the lands in Maralinga Tjarutja

- 13 The Governor may grant certain land, in fee simple, to Maralinga Tjarutja
- 14 Special provisions in relation to the land grant
- 15 Inalienability of land vested in Maralinga Tjarutja in pursuance of this Part

Division 1A—Co-management board for Unnamed Conservation Park

- 15A Interpretation
- 15B Establishment of co-management board
- 15C Corporate nature of co-management board
- 15D Dissolution or suspension of co-management board

- 15E Staff
- 15F Accounts and audit
- 15G Annual report

Division 2—Sacred sites

- 16 Register of sacred sites

Division 3—Entry to the lands

- 17 Rights of traditional owners with respect to lands
- 18 Unauthorised entry upon the lands
- 19 Special provisions for the residents of Cook
- 20 Use of roads to traverse the lands

Division 4—Mining operations on the lands

- 20A Application of Division
- 21 Mining operations on the lands
- 22 Application for mining tenements and sacred sites
- 23 Interaction of the Act and the Mining and Petroleum Acts
- 24 Royalty
- 25 Offence in relation to obtaining permission to carry out mining operations
- 26 Certain payments or other consideration to Maralinga Tjarutja must represent fair compensation

Division 5—Right of the Crown to continue in occupation of certain parts of the lands

- 27 Right of the Crown to continue its occupation of certain land

Division 6—Construction of roads by the Commissioner of Highways

- 28 Consent of Maralinga Tjarutja required for road works
- 29 Proposals to carry out road works and arbitration of disputes
- 30 Road reserves
- 31 Consent not required for maintenance or repair of road described in Schedule 3
- 32 Interaction between this Act and Highways Act

Part 4—Disputes

- 33 Tribal assessor
- 34 Disputes
- 35 Order compelling compliance with direction of the tribal assessor

Part 5—Miscellaneous

- 36 Summary procedure
- 37 Power of court to order compensation in certain cases
- 38 Exemption of lands from land tax
- 39 Financial provision
- 40 Non-application of Outback Areas Community Development Trust Act
- 41 Interaction between this Act and certain other Acts
- 42 Depasturing of stock
- 44 Regulations

Schedule 1

Schedule 2

Schedule 3

Schedule 4

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Maralinga Tjarutja Land Rights Act 1984*.

3—Interpretation

In this Act, unless the contrary intention appears—

Aboriginal person means a person who is a descendant of an indigenous inhabitant of Australia;

co-management agreement means a co-management agreement under Division 6A of Part 3 of the *National Parks and Wildlife Act 1972*;

co-management board means the board established by regulation under Division 1A of Part 3 for the control and management of the Unnamed Conservation Park;

the constitution means the constitution of Maralinga Tjarutja for the time being in force under this Act;

the Council means the Council of Maralinga Tjarutja constituted under this Act;

exploratory operations means all operations carried out in the course of—

- (a) prospecting or exploring for minerals within the meaning of the *Mining Act 1971*; or
- (b) exploring for petroleum within the meaning of the *Petroleum Act 1940*,

and includes operations conducted under a retention lease within the meaning of the *Mining Act 1971*;

the lands means the lands described in Schedule 1 to this Act;

leader, in relation to the traditional owners, means a person who has been accepted, in accordance with the customs of the traditional owners, as one of their leaders;

Maralinga Tjarutja means the body corporate constituted under that name by this Act;

mining operations means operations authorised by or under the *Mining Act 1971* or the *Petroleum Act 1940*;

mining tenement means a right, permit, claim, lease or licence under the *Mining Act 1971* or the *Petroleum Act 1940*;

road works means the construction, reconstruction or repair of a road, or of related works;

sacred site means part of the lands that is, in accordance with the customs and traditions of the traditional owners, of fundamental importance to the traditional owners;

traditional owner, in relation to the lands, means an Aboriginal person who has, in accordance with Aboriginal tradition, social, economic and spiritual affiliations with, and responsibilities for, the lands or any part of them;

Unnamed Conservation Park means the land described in Schedule 4, being a conservation park constituted under the *National Parks and Wildlife Act 1972*, the inalienable fee simple in which is vested in Maralinga Tjarutja.

Part 2—Maralinga Tjarutja

Division 1—Constitution of Maralinga Tjarutja as body corporate

4—Constitution of Maralinga Tjarutja as body corporate

- (1) There shall be a body corporate entitled "Maralinga Tjarutja".
- (2) All traditional owners are members of Maralinga Tjarutja.
- (3) Maralinga Tjarutja shall have a common seal.
- (4) In any legal proceedings, an apparently genuine document purporting to bear the common seal of Maralinga Tjarutja and the signatures of four members of the Council attesting the affixation of the seal shall be presumed, in the absence of proof to the contrary, to have been duly executed by Maralinga Tjarutja.

Division 2—Powers and functions of Maralinga Tjarutja

5—Powers and functions of Maralinga Tjarutja

- (1) The functions of Maralinga Tjarutja are as follows:
 - (a) to ascertain the wishes and opinions of traditional owners in relation to the management, use and control of the lands and to seek, where practicable, to give effect to those wishes and opinions; and
 - (b) to protect the interests of traditional owners in relation to the management, use and control of the lands; and
 - (c) to negotiate with persons desiring to use, occupy or gain access to any part of the lands; and
 - (d) to administer land vested in Maralinga Tjarutja.
- (2) Maralinga Tjarutja has the following powers:
 - (a) the power to sue and be sued;
 - (b) the power—

- (i) to grant a lease or licence, for any period it thinks fit, in respect of any part of the lands (being a part of the lands vested in Maralinga Tjarutja) to a traditional owner or an organisation comprised of traditional owners;
- (ii) to grant a lease or licence, for a period not exceeding fifty years, in respect of any part of the lands (being a part of the lands vested in Maralinga Tjarutja) to an agency or instrumentality of the Crown;
- (iii) to grant a lease or licence, for a period not exceeding five years, in respect of any part of the lands (being a part of the lands vested in Maralinga Tjarutja) to any other person or body of persons;
- (c) the power to acquire by agreement, hold, deal in, or dispose of, land outside the lands;
- (d) the power to enter into contracts;
- (e) the power to appoint and dismiss staff;
- (f) the power to receive and disburse moneys;
- (g) the power to obtain advice from persons who are expert in matters with which Maralinga Tjarutja is concerned;
- (h) the power to establish offices;
- (i) the power to enter into a co-management agreement in relation to land to be vested in Maralinga Tjarutja.

Division 3—The Council of Maralinga Tjarutja

6—Constitution of Council

- (1) All persons who are for the time being leaders of the traditional owners are members of the Council.
- (2) The Council—
 - (a) shall within thirty days after the commencement of this Act and, thereafter, before the thirty-first day of October in each ensuing year; and
 - (b) may at any other time,

give notice in writing to the Corporate Affairs Commission of those persons who are, at the date of the notice, members of the Council.

- (3) An apparently genuine document received by the Corporate Affairs Commission purporting to be notice given under subsection (2) of the persons who are at the date of the notice members of the Council (being the last such document received by the Commission) shall constitute proof, in the absence of proof to the contrary, of the membership of the Council.

7—Powers etc of Maralinga Tjarutja to be exercised by Council

- (1) The powers, functions and affairs of Maralinga Tjarutja shall be exercised and administered by the Council.

- (2) An act done or a decision made by the Council in the exercise or administration of the powers, functions or affairs of Maralinga Tjarutja is an act or decision of Maralinga Tjarutja.

8—Council to proceed having regard to customs of traditional owners

The Council shall in making its decisions and conducting its business—

- (a) consult with the traditional owners; and
- (b) act in all other respects,

in such manner as may be determined by the Council having regard to the customs of the traditional owners.

9—Delegation by Council

- (1) The Council may delegate the exercise of any power or function of Maralinga Tjarutja to any member, officer or employee of Maralinga Tjarutja.
- (2) A delegation under this section shall be revocable at will and shall not derogate from the power of the Council to act itself in any matter.

10—Evidentiary provision

An apparently genuine document purporting—

- (a) to be under the common seal of Maralinga Tjarutja; and
- (b) to be signed by four or more members of the Council; and
- (c) to certify that a specified act of the Council has been done in conformity with the provisions of this Act,

shall be conclusive proof that that act is valid and binding upon Maralinga Tjarutja.

11—Accounts and audit

- (1) The Council shall cause proper accounts to be kept of the financial affairs of Maralinga Tjarutja.
- (2) The Council—
 - (a) shall, before the thirtieth day of September in each year, cause the accounts of Maralinga Tjarutja for the preceding financial year to be audited by an auditor registered under the *Companies (South Australia) Code*; and
 - (b) shall, within one month after completion of the audit, lodge copies of the audited accounts with the Corporate Affairs Commission.

Division 4—Offices

12—Offices of Maralinga Tjarutja

- (1) Maralinga Tjarutja must, by notice in writing served on the Corporate Affairs Commission, specify the addresses of two offices at which legal process, notices and other documents may be served upon Maralinga Tjarutja or the Council.

- (2) One office specified by Maralinga Tjarutja under subsection (1) must be situated within thirty kilometres of the General Post Office at Adelaide and the other office must be situated on the lands, or at a place that is reasonably accessible from the lands.

Part 3—The lands

Division 1—Vesting of the lands in Maralinga Tjarutja

13—The Governor may grant certain land, in fee simple, to Maralinga Tjarutja

The Governor may issue a land grant, in fee simple, of the whole or any part of the lands to Maralinga Tjarutja.

14—Special provisions in relation to the land grant

- (1) A land grant issued under this Division shall be expressed in the English language and in the Pitjantjatjara language, but the interpretation of the land grant shall be governed by those portions of the land grant that are expressed in the English language.
- (2) If, in the opinion of the Surveyor-General, a land grant issued under this Division erroneously or imperfectly defines the land to which it was intended to apply, the Surveyor-General may submit to the Minister of Lands a proposal to amend the land grant for the purpose of correcting the error, or defining the land with greater precision.
- (3) If, in the opinion of the Minister of Lands, the proposal of the Surveyor-General should be carried into effect, he may direct the Registrar-General to amend the land grant in accordance with the proposal.

15—Inalienability of land vested in Maralinga Tjarutja in pursuance of this Part

Subject to this Act, where land has vested in Maralinga Tjarutja in pursuance of this Part, no estate or interest in the land—

- (a) may be alienated from Maralinga Tjarutja; or
- (b) may be compulsorily acquired, resumed or forfeited under the law of this State.

Division 1A—Co-management board for Unnamed Conservation Park

15A—Interpretation

In this Division—

Minister means the Minister to whom the administration of the *National Parks and Wildlife Act 1972* is committed.

15B—Establishment of co-management board

- (1) The Governor may, by regulation, establish a co-management board for the control and management of the Unnamed Conservation Park subject to the provisions of this Act and the *National Parks and Wildlife Act 1972*.

- (2) Subject to this section, regulations establishing the co-management board—
- (a) must not be inconsistent with the co-management agreement for the Unnamed Conservation Park; and
 - (b) must name the board; and
 - (c) must provide for the appointment, term and conditions of office and removal of the members of the board; and
 - (d) must provide for the procedures governing the board's proceedings; and
 - (e) must provide that the board have a majority of members who are members of Maralinga Tjarutja; and
 - (f) must provide that the board be chaired by a person nominated by Maralinga Tjarutja; and
 - (g) must provide that the quorum of the board have a majority of members who are members of Maralinga Tjarutja; and
 - (h) may limit the powers and functions of the board; and
 - (i) may provide for delegation by the board; and
 - (j) may provide for the remuneration of members; and
 - (k) may require reporting by the board to the Minister; and
 - (l) may make any other provision (not inconsistent with the *National Parks and Wildlife Act 1972*) relating to the board or the control and management of the Unnamed Conservation Park.
- (3) If a regulation establishing the co-management board is disallowed by either House of Parliament, the assets and liabilities of the board will be dealt with in accordance with the directions of the Minister.

15C—Corporate nature of co-management board

- (1) The co-management board—
- (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) can sue and be sued in its corporate name; and
 - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
 - (e) has the functions and powers assigned or conferred by or under this or any other Act.
- (2) If a document appears to bear the common seal of the co-management board, it will be presumed, in the absence of proof to the contrary, that the common seal of the co-management board was duly fixed to the document.

15D—Dissolution or suspension of co-management board

- (1) Subject to this section, the Governor may, by regulation, dissolve or suspend the co-management board.

- (2) The co-management board must not be dissolved unless the Unnamed Conservation Park is abolished.
- (3) The co-management board must not be suspended unless the Minister is satisfied that such action is warranted due to continuing failure by the board properly to discharge its responsibilities.
- (4) On dissolution and during any suspension of the co-management board, any assets and liabilities of the board will be dealt with or disposed of in accordance with the directions of the Minister.

15E—Staff

- (1) The staffing arrangements for the co-management board will be determined or approved by the Minister after consultation with Maralinga Tjarutja.
- (2) Any staff under subsection (1) will be—
 - (a) Public Service employees assigned to work with the co-management board; or
 - (b) if appointments have been made under subsection (3)—the persons holding those appointments.
- (3) The co-management board may, with the approval of the Minister—
 - (a) appoint persons to the staff of the board; and
 - (b) appoint persons to assist in the management of the Unnamed Conservation Park.
- (4) The co-management board may, with the approval of the Minister administering an administrative unit of the Public Service, on terms and conditions mutually arranged, make use of the services of any officer, or use any facilities or equipment, of that unit.
- (5) A person employed under subsection (3) is not a Public Service employee.

15F—Accounts and audit

- (1) The co-management board must cause proper accounts to be kept of its financial affairs.
- (2) The Auditor-General may at any time, and must in respect of each financial year, audit the accounts of the co-management board.

15G—Annual report

- (1) The co-management board must, on or before 30 September in each year, prepare and deliver to the Minister a report on its operations during the preceding financial year.
- (2) The report must include—
 - (a) the audited accounts of the co-management board; and
 - (b) any other information required by or under the regulations.
- (3) The Minister must, within 6 sitting days after receiving a report, cause copies of the report to be laid before both Houses of Parliament.

Division 2—Sacred sites

16—Register of sacred sites

- (1) Maralinga Tjarutja may compile a register of sacred sites recording—
 - (a) where a site has been identified with particularity—the boundaries of the site; or
 - (b) where a site is known to exist but has not been identified with particularity—the boundaries of the area within which it is known to exist.
- (2) A register compiled pursuant to subsection (1) shall be kept by Maralinga Tjarutja in such manner as it considers appropriate to prevent disclosure of its contents without the authority of Maralinga Tjarutja.

Division 3—Entry to the lands

17—Rights of traditional owners with respect to lands

- (1) All traditional owners shall have unrestricted rights of access to the lands.
- (2) Subsection (1) applies to the Unnamed Conservation Park subject to the provisions of the *National Parks and Wildlife Act 1972*.

18—Unauthorised entry upon the lands

- (1) A person (not being a traditional owner) who enters the lands vested in Maralinga Tjarutja without the permission of Maralinga Tjarutja is guilty of an offence and liable to a penalty not exceeding the maximum prescribed by subsection (2).
- (2) The maximum penalty for an offence against subsection (1) is—
 - (a) where the offence was committed intentionally—a fine of two thousands dollars plus five hundred dollars for each day during which the convicted person remained on the land after the unlawful entry; or
 - (b) in any other case—a fine of two hundred dollars.
- (3) An application for permission to enter the lands—
 - (a) may be made by an applicant on behalf of himself, or on behalf of a group of persons; and
 - (b) must—
 - (i) be in writing and lodged with the Council; and
 - (ii) set out—
 - (A) the purpose for which entry to the lands is sought; and
 - (B) the period for which entry to the lands is sought; and
 - (C) the time and place at which the applicant, or the group upon whose behalf the application is made, seeks to enter the lands.
- (4) The applicant shall, at the request of Maralinga Tjarutja, furnish such further information as it may reasonably require to determine the application.

- (5) Upon an application under this section, Maralinga Tjarutja may, by instrument in writing—
- (a) grant permission to enter the lands unconditionally; or
 - (b) grant permission to enter the lands subject to such conditions as it thinks fit; or
 - (c) refuse permission to enter the lands.
- (6) Where a group of persons is permitted to enter the lands, each member of the group is bound by the conditions (if any) subject to which the permission was granted.
- (7) A person who contravenes or fails to comply with a condition on which he, or a group of which he is a member, was granted permission to enter the lands is guilty of an offence and liable to a penalty not exceeding the maximum prescribed by subsection (8).
- (8) The maximum penalty for an offence against subsection (7) is a fine of two thousand dollars plus five hundred dollars for each day (if any) during which the convicted person was on the lands, or a particular part of the lands, in contravention of the condition.
- (9) Maralinga Tjarutja may, upon such conditions as it thinks fit, delegate any of its powers under subsection (5) to any group of traditional owners.
- (10) A delegation under subsection (9) is revocable at will and does not derogate from the power of Maralinga Tjarutja to act itself in any matter.
- (11) This section does not apply to—
- (a) a police officer acting in the course of carrying out his official duties; or
 - (b) any other officer appointed pursuant to statute acting in the course of carrying out his official duties; or
 - (c) a person acting upon the written authority of the Minister of Aboriginal Affairs, who enters the lands for the purpose of carrying out functions that have been assigned to a Minister or instrumentality of the Crown or a department of government; or
 - (d) a member of the Parliament of the State or the Commonwealth, a person who is genuinely a candidate for election as a member of the Parliament of the State or the Commonwealth, or a person who is accompanying and genuinely assisting any such member or candidate; or
 - (e) an Aboriginal person who enters the lands at the invitation of a traditional owner; or
 - (f) a person who proves to the satisfaction of the Minister that he or she carried on the business of taking rabbits on a part of the lands before it became subject to the application of this Act; or
 - (g) entry upon the lands in case of emergency; or
 - (ga) entry upon the road reserve described in Schedule 3 and the Unnamed Conservation Park; or
 - (h) entry upon the lands in pursuance of Division 4 or Division 6 of this Part.

- (12) Where a person proposes to enter the lands in pursuance of subsection (11)(b), (c), (d) or (e), reasonable notice of the time, place and purpose of the proposed entry must be given to Maralinga Tjarutja.
- (13) If Maralinga Tjarutja, by notice in writing to the Minister of Aboriginal Affairs, objects to an authorised person entering or remaining upon the lands, the Minister shall revoke or modify the authorisation in order to give effect to the objection unless he is satisfied that there are sufficient reasons why the authorisation should continue notwithstanding the objection.
- (14) The Council may order that a person who has entered the lands under subsection (11)(e) leave the lands and if the person, having been notified of the order, fails to comply with the order, he shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.
- (15) The Minister may, after consultation with Maralinga Tjarutja, impose on a person who may enter the lands under subsection (11)(f) conditions relating to his entry to, and conduct while on, the lands and if such a person, having been notified of a condition imposed under this section, contravenes or fails to comply with that condition, he shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

19—Special provisions for the residents of Cook

- (1) Notwithstanding the other provisions of this Division, Maralinga Tjarutja shall, in accordance with a procedure determined by the Minister, grant a general permit to the residents of Cook to enter the prescribed area for recreational or sporting purposes.
- (2) The first permit to be granted under subsection (1) shall be granted within two months of the commencement of this Act, and subsequent permits shall be granted in each ensuing year in either the month of March or April.
- (3) A permit granted under subsection (1) shall continue in force until a further permit is granted in accordance with subsection (2).
- (4) A resident of Cook and any person accompanying him shall, by virtue of a permit granted under subsection (1), be entitled to enter the prescribed area at any time and place subject to the following conditions:
 - (a) that the prescribed area is not entered for some purpose other than recreational or sporting purposes; and
 - (b) that alcoholic liquor is not supplied to any traditional owner within the prescribed area; and
 - (c) that the traditional owners are not disturbed in any use that they may be making of any part of the prescribed area; and
 - (d) such other conditions as may be imposed by Maralinga Tjarutja after consultation with the Minister and of which notice has been given, in a manner approved by the Minister, to the residents of Cook.
- (5) Where a person contravenes or fails to comply with a condition referred to in subsection (4)—
 - (a) he shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars; and

- (b) in the case of a resident of Cook—his permission to enter the lands by virtue of a permit granted under subsection (1) may be cancelled by Maralinga Tjarutja, by notice in writing, for a period not exceeding one year.
- (6) A person who ceases to be a resident of Cook shall cease to have permission to enter the lands by virtue of a permit granted under subsection (1).
- (7) In this section—

the prescribed area means that part of the lands that is within forty kilometres of the post office in the township of Cook;

resident of Cook means a person whose sole or principal place of residence is within the township of Cook.

20—Use of roads to traverse the lands

- (1) Notwithstanding the other provisions of this Division, a person (other than a traditional owner) shall be entitled to use a prescribed road subject to the following conditions:
- (a) that the use of the road is limited to that involved in, or reasonably associated with, traversing the land; and
 - (b) that the person gives Maralinga Tjarutja reasonable prior notice of the time and place of his entry upon and departure from the lands.
- (2) Where a person contravenes or fails to comply with a condition referred to in subsection (1), he shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.
- (3) For the purposes of this section—

prescribed road means a road delineated in the map in Schedule 2 including land on either side of the road to a distance of not more than one hundred metres from the centre of that road.

Division 4—Mining operations on the lands

20A—Application of Division

This Division does not apply to the Unnamed Conservation Park.

21—Mining operations on the lands

- (1) Notwithstanding the provisions of any other Act, a person who, without permission under this section—
- (a) carries out mining operations upon the lands; or
 - (b) enters the lands for the purpose of carrying out mining operations,
- shall be guilty of an offence and liable to a penalty not exceeding the maximum prescribed by subsection (2).
- (2) The maximum penalty for an offence against subsection (1) is a fine of ten thousand dollars plus one thousand dollars for each day during which the convicted person—
- (a) carried out unlawful mining operations upon the lands; or
 - (b) remained upon the lands after the unlawful entry.

- (3) An application for permission to carry out mining operations upon the lands—
- (a) may be made only by a person who has applied for a mining tenement in respect of the lands or a part of the lands and has been notified by the Minister of Mines and Energy that he approves the making of an application under this section; and
 - (b) must be in writing and lodged with the Council; and
 - (c) must contain, or be accompanied by, all information submitted by the applicant to the Minister of Mines and Energy in support of his application for a mining tenement.
- (4) The applicant shall, at the request of Maralinga Tjarutja, furnish in writing such further information as it may reasonably require to determine the application.
- (5) The applicant shall, as soon as practicable after making his application, or furnishing information under subsection (4), send to the Minister of Mines and Energy a copy of the application or of the document by which the information was furnished.
- (6) Upon an application under this section, Maralinga Tjarutja may—
- (a) grant its permission unconditionally; or
 - (b) grant its permission subject to such conditions (which must be consistent with the provisions of this Act) as it thinks fit; or
 - (c) refuse its permission.
- (7) Maralinga Tjarutja shall, upon deciding an application under this section, notify the applicant, in writing, of its decision and the applicant shall, within seven days after receiving that notification, furnish the Minister of Mines and Energy with a copy of the notification.
- (8) The reasonable costs and expenses incurred by Maralinga Tjarutja in dealing with an application under this section may be recovered from the applicant as a debt.
- (9) Any payment made in satisfaction of a liability arising under subsection (8) shall, if the application is subsequently determined in favour of the applicant but on condition that he pay compensation to Maralinga Tjarutja, be regarded as a payment made on account of that compensation.
- (10) Where—
- (a) Maralinga Tjarutja refuses its permission under this section or grants its permission but subject to conditions that are unacceptable to the applicant; or
 - (b) the applicant has not, at the expiration of one hundred and twenty days from the date of the application, received notice of a decision by Maralinga Tjarutja, upon the application,
- the applicant may request the Minister of Mines and Energy to refer the application to an arbitrator.
- (11) Upon the receipt of a request under subsection (10), the Minister of Mines and Energy shall confer with the Minister of Aboriginal Affairs, Maralinga Tjarutja and the applicant with a view to resolving the matter by conciliation.

-
- (12) If steps taken under subsection (11) have failed to resolve the matter within a reasonable time after receipt of the request, the Minister of Mines and Energy shall refer the application to an arbitrator.
- (13) The arbitrator shall—
- (a) in relation to an application for permission to carry out exploratory operations—be a Judge of the Supreme Court of South Australia (being a Judge upon whom the jurisdiction of the Land and Valuation Court is conferred) or a legal practitioner of not less than ten years standing appointed by the Minister of Mines and Energy to be arbitrator; or
 - (b) in any other case—be a Judge of the High Court, the Federal Court of Australia or the Supreme Court of a State or Territory of Australia or a legal practitioner of not less than ten years standing appointed by the Minister of Mines and Energy to be arbitrator,
- the Minister having first afforded Maralinga Tjarutja and the applicant a reasonable opportunity to make representations as to that appointment.
- (14) The arbitrator—
- (a) shall have the powers of a commission of inquiry under the *Royal Commissions Act*; and
 - (b) may state a case for the opinion of the Supreme Court on a question of law.
- (15) A case stated under subsection (14) shall be heard and determined by the Full Court.
- (16) After hearing such evidence and submissions as—
- (a) Maralinga Tjarutja; and
 - (b) the applicant; and
 - (c) the Minister of Mines and Energy; and
 - (d) the Minister of Aboriginal Affairs,
- may desire to make to him, and such other evidence and submissions as he thinks fit to receive, the arbitrator may—
- (e) affirm, vary or reverse the decision of Maralinga Tjarutja; or
 - (f) where no decision has been made by Maralinga Tjarutja upon the application—determine the application as the arbitrator thinks fit.
- (17) The arbitrator may, if he thinks fit, award against the applicant and in favour of Maralinga Tjarutja an amount determined by the arbitrator as representing the reasonable costs and expenses incurred by Maralinga Tjarutja in relation to the arbitration.
- (18) An amount awarded under subsection (17) may be recovered by Maralinga Tjarutja as a debt.
- (19) In arriving at his determination, the arbitrator shall have regard to—
- (a) the effect of the grant of the mining tenement upon—
 - (i) the preservation and protection of ways-of-life, culture and tradition of the traditional owners;

- (ii) the interests, proposals, opinions and wishes of the traditional owners in relation to the management, use and control of the lands;
 - (iii) the growth and development of social, cultural and economic structures of the traditional owners;
 - (iv) freedom of access by traditional owners to the lands and their freedom to carry out on the lands rites, ceremonies and other activities in accordance with their traditions; and
- (b) the suitability of the applicant to carry out the proposed mining operations and his capacity, in carrying out those operations, to minimise disturbance to the traditional owners and the lands; and
 - (c) the preservation of the natural environment; and
 - (d) the economic and other significance of the operations to the State and Australia.
- (20) The arbitrator shall hear and determine the arbitration as expeditiously as possible.
- (21) A determination under this section is binding upon Maralinga Tjarutja, the applicant and the Crown.
- (22) The *Arbitration Act 1891* does not apply to an arbitration under this section.
- (23) Mining operations in pursuance of a mining tenement that was in force in relation to a part of the lands immediately before it became subject to the application of this Act shall be deemed to have been unconditionally permitted under this section.

22—Application for mining tenements and sacred sites

- (1) Where an application has been made for a mining tenement in respect of a part of the lands, the Minister of Mines and Energy and the Minister of Aboriginal Affairs shall consult with Maralinga Tjarutja to determine whether any sacred site or part of a sacred site registered on a register kept pursuant to section 16 is within the land to which the application relates.
- (2) Where the Minister of Mines and Energy and the Minister of Aboriginal Affairs are satisfied that a sacred site or part of a sacred site registered on a register kept pursuant to section 16 is within the land to which the application relates, the Minister of Mines and Energy—
- (a) shall provide the applicant with such information as to the sacred site and its location as he and the Minister of Aboriginal Affairs determine to be appropriate; and
 - (b) shall, subject to subsection (3)—
 - (i) in granting any mining tenement upon the application, make necessary provision for the protection of the sacred site—
 - (A) in the case of a sacred site that has been identified with particularity—by excluding land from the tenement or imposing conditions on the tenement; or

-
- (B) in the case of a sacred site that is known to exist but which has not been identified with particularity—by imposing conditions on the tenement to protect the sacred site until it is so identified; and
- (ii) in the case of a sacred site referred to in subparagraph (i)(B), when it is so identified, make further or other provision for the protection of the site by excluding land from the tenement or imposing conditions on the tenement.
- (3) The Minister of Mines and Energy shall not, in granting a mining tenement relating to land to which another mining tenement (being a mining tenement granted in respect of the land after it became subject to the application of this Act) previously related, make provision under subsection (2)(b) for the protection of any sacred site within the land unless provision for the protection of that sacred site was made under that subsection in granting that earlier tenement.
- (4) Land may be excluded from a mining tenement under this section, and, subject to subsection (5), conditions may be imposed, varied or revoked under this section in respect of a mining tenement, by notice in writing to the holder of the tenement.
- (5) Conditions shall not be imposed under this section in respect of a mining tenement, and any conditions so imposed shall not be varied or revoked, without the consent of Maralinga Tjarutja.
- (6) Where information is provided as to a sacred site and its location pursuant to subsection (2), the Minister of Mines and Energy may, in consultation with the Minister of Aboriginal Affairs, impose conditions prohibiting or restricting disclosure of the information and any person who knowingly contravenes any such condition shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

23—Interaction of the Act and the Mining and Petroleum Acts

- (1) Where prospecting or mining is permitted upon the lands in pursuance of this Division, the person in whose favour the permission was granted and his agents, contractors and employees may, subject to the conditions (if any) upon which the permission was granted, and to the provisions of the *Mining Act 1971* or the *Petroleum Act 1940*, as the case may require (but without requiring any further permission or authority to enter the lands under the provisions of either of those Acts), enter the lands for the purpose of prospecting or mining.
- (2) A mining tenement shall not be granted in respect of the lands or a part of the lands except to a person who has permission to carry out mining operations upon the lands under this Division, but this Act does not prevent the taking of any step under the *Mining Act* or the *Petroleum Act* antecedent to the grant of a mining tenement.
- (3) Before a mining tenement is granted in pursuance of the *Mining Act* or the *Petroleum Act* in relation to the lands or a part of the lands, the Minister administering the relevant Act shall afford Maralinga Tjarutja a reasonable opportunity to make submissions relating to the conditions subject to which the tenement should be granted.

- (4) If a person—
- (a) makes a payment, or gives some other consideration, in contravention of section 25; or
 - (b) in relation to—
 - (i) obtaining the permission of Maralinga Tjarutja for the carrying out of mining operations upon the lands; or
 - (ii) the carrying out or proposed carrying out of mining operations upon the lands,makes a payment, or gives some other consideration, to Maralinga Tjarutja (not being a payment or consideration in discharge or partial discharge of a liability arising under this Act, and not being a payment of royalty under section 24) otherwise than in conformity with—
 - (iii) conditions imposed by Maralinga Tjarutja under this Division in granting its permission for the carrying out of the mining operations;
 - (iv) conditions determined or approved by an arbitrator under this Division;
 - (v) an agreement of which the Minister of Mines and Energy has been notified under this Division,
- then—
- (c) the amount of the payment, or the value of the consideration, is recoverable as a debt due to the Crown; and
 - (d) no mining tenement in respect of the lands shall be granted to the person by whom the payment was made or the consideration given, and any such mining tenement held by that person shall be cancelled.

24—Royalty

- (1) Royalty paid in respect of minerals recovered from the lands shall be paid into a separate fund maintained by the Minister of Mines and Energy.
- (2) Subject to subsection (3), the royalty shall be applied as follows:
 - (a) one-third shall be paid to Maralinga Tjarutja; and
 - (b) one-third shall be paid to the Minister of Aboriginal Affairs to be applied towards the health, welfare and advancement of the Aboriginal inhabitants of the State generally; and
 - (c) one-third shall be paid into the General Revenue of the State.
- (3) If the income of the fund maintained under subsection (1) exceeds in any financial year the prescribed limit, the excess shall be paid in full into the General Revenue of the State.
- (4) No moneys shall be paid out of the fund maintained under subsection (1) unless a regulation is in force prescribing a limit for the purposes of subsection (3).
- (5) In this section—

royalty means royalty payable under the *Mining Act 1971* or the *Petroleum Act 1940*.

25—Offence in relation to obtaining permission to carry out mining operations

- (1) A person who, without the consent of the Minister of Mines and Energy, gives, offers, or agrees to give, a payment or other consideration to another person (not being a payment or consideration in discharge or partial discharge of a liability arising under this Act) in connection with obtaining the permission of Maralinga Tjarutja to carry out mining operations upon the lands shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.
- (2) Where a body corporate commits an offence against subsection (1), each director of the body corporate shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars unless he proves that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

26—Certain payments or other consideration to Maralinga Tjarutja must represent fair compensation

- (1) This section applies to payments made, or to be made, or consideration given, or to be given, to Maralinga Tjarutja (not being a payment or consideration in discharge or partial discharge of a liability arising under this Act, and not being a payment or royalty under section 24) in respect of the carrying out or proposed carrying out of mining operations upon the lands.
- (2) Subject to subsection (3), a payment or consideration to which this section applies must be reasonably proportioned to the disturbance to the lands, the traditional owners, and their ways-of-life, that has resulted or is likely to result from the grant of the relevant mining tenement.
- (3) A person shall not be required to make or give, or to agree to make or give, any payment or consideration to which this section applies in respect of the carrying out or proposed carrying out of exploratory operations upon the lands other than a payment of such amount (if any) as is or would become payable as compensation under the *Mining Act 1971* or the *Petroleum Act 1940* (as the case may require) in respect of the carrying out of such operations.
- (4) A person who makes or gives, or agrees to make or give, a payment or consideration to which this section applies shall, within fourteen days of the date of making or giving the payment or consideration, or entering into the agreement, notify the Minister of Mines and Energy of the amount or value of the payment or consideration, or of the terms of the agreement.

Penalty: Two thousand dollars.

Division 5—Right of the Crown to continue in occupation of certain parts of the lands**27—Right of the Crown to continue its occupation of certain land**

Where before the commencement of this Act the Crown occupied a part of the lands for purposes connected with the health, education, welfare or advancement of the traditional owners, the Crown may continue to occupy that part of the lands, for a period of up to fifty years, for the same or similar purposes and without payment of rent or compensation to Maralinga Tjarutja.

Division 6—Construction of roads by the Commissioner of Highways

28—Consent of Maralinga Tjarutja required for road works

- (1) The Commissioner of Highways may carry out road works upon the lands with the consent of Maralinga Tjarutja.
- (2) The consent of Maralinga Tjarutja may be given subject to such conditions as Maralinga Tjarutja thinks fit.
- (3) Maralinga Tjarutja shall not withhold its consent to the construction or reconstruction of the road described in Schedule 3, but this subsection does not prejudice the right of Maralinga Tjarutja to negotiate conditions affecting the road works, or ancillary or associated works.

29—Proposals to carry out road works and arbitration of disputes

- (1) Where the Commissioner of Highways desires to carry out road works on the lands, he shall submit to Maralinga Tjarutja proposals containing—
 - (a) a plan describing the land upon which the road works are to be carried out; and
 - (b) a description of all ancillary or associated works that are to be carried out and of the areas in which those ancillary or associated works are to be carried out; and
 - (c) a description of the access roads to be used for the purpose of the road works, or the ancillary or associated works; and
 - (d) a general description of the areas in which gravel or stone is to be quarried for the purpose of the road works; and
 - (e) such other information as Maralinga Tjarutja may reasonably require.
- (2) If the Commissioner and Maralinga Tjarutja are unable to agree on the proposals, or on some modified form of the proposals, the Commissioner may submit the differences to arbitration.
- (3) The arbitrator shall be the arbitrator appointed in pursuance of section 21.
- (4) The arbitrator is empowered to determine any matter in dispute and his determination shall be binding upon the Commissioner and Maralinga Tjarutja.
- (5) No compensation is payable to Maralinga Tjarutja in respect of loss or damage arising from road works where those road works are carried out in relation to the road described in Schedule 3 and in accordance with conditions agreed by Maralinga Tjarutja and the Commissioner, or determined by the arbitrator.

30—Road reserves

- (1) The area comprised within the road described in Schedule 3 constitutes a road reserve.
- (2) The Commissioner of Highways is entitled to unrestricted use of a road reserve for purposes related to road works.
- (3) A member of the public shall be entitled to free and unrestricted access to the Unnamed Conservation Park along the road described in Schedule 3 and to land comprised in the road reserve.

31—Consent not required for maintenance or repair of road described in Schedule 3

The provisions of sections 28 and 29 shall not apply to the maintenance or repair (being maintenance or repair not involving realignment) of the road described in Schedule 3 provided that materials used in the course of the maintenance or repair of the road are not taken from any part of the lands that lie outside the road reserve.

32—Interaction between this Act and Highways Act

Road works carried out by the Commissioner of Highways in pursuance of this Division upon roads that, immediately before the commencement of this Act, were in existence upon the lands shall be deemed to be road works upon roads within the meaning of the *Highways Act 1926*.

Part 4—Disputes

33—Tribal assessor

- (1) There shall be a tribal assessor.
- (2) The tribal assessor shall be appointed by the Minister of Aboriginal Affairs with the approval of Maralinga Tjarutja.
- (3) The terms and conditions upon which the tribal assessor holds office shall be determined by the Minister after considering the advice of the Public Service Board.

34—Disputes

- (1) Any traditional owner who is aggrieved by a decision or action of Maralinga Tjarutja, or any of its members, may appeal to the tribal assessor against that decision or action.
- (2) The tribal assessor—
 - (a) shall hear the appeal at some suitable place upon the lands; and
 - (b) shall conduct the hearing as expeditiously as possible and without undue formality.
- (3) The tribal assessor is not bound by the rules of evidence in proceedings under this section, but may inform himself in such manner as he thinks fit.
- (4) In proceedings under this section, the tribal assessor should observe, and where appropriate give effect to, the customs and traditions of the traditional owners.
- (5) The tribal assessor may in proceedings under this section—
 - (a) give such directions as he considers just or expedient to resolve any matters in dispute; or
 - (b) refer the matter back to Maralinga Tjarutja to be further dealt with in accordance with his directions.

35—Order compelling compliance with direction of the tribal assessor

- (1) If a person refuses or fails to comply with a direction of the tribal assessor, any party to the proceedings before the assessor may apply to a local court of full jurisdiction for an order to compel that person to comply with the direction.

- (2) Upon an application under this section, the local court shall, unless satisfied that the direction of the tribal assessor is unjust or unreasonable, make an order requiring the person against whom the direction was made to comply with the direction.
- (3) Proceedings under this section shall be heard at some suitable place upon the lands, and shall be conducted as expeditiously as possible and without undue formality.

Part 5—Miscellaneous

36—Summary procedure

Proceedings in respect of offences against this Act shall be disposed of summarily.

37—Power of court to order compensation in certain cases

Where a person is convicted of an offence against this Act or any other Act, and it appears to the court by which that person is convicted that Maralinga Tjarutja has suffered damage to its property as a result of the commission of the offence, the court may order the convicted person to pay such compensation to Maralinga Tjarutja as the court considers just.

38—Exemption of lands from land tax

No land tax is payable upon the lands.

39—Financial provision

The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes.

40—Non-application of Outback Areas Community Development Trust Act

- (1) The *Outback Areas Community Development Trust Act 1978* does not apply to the lands.
- (2) Notwithstanding subsection (1), the Outback Areas Community Development Trust may expend moneys for the benefit of residents of the lands.

41—Interaction between this Act and certain other Acts

- (1) For the purpose of determining whether a particular part of the lands is a public place within the meaning of some other Act or law, any restrictions upon access to the lands or that place arising under this Act shall be disregarded.
- (2) A reference in the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959* to a road extends to any road upon the lands.

42—Depasturing of stock

Any regulations relating to the depasturing of stock that apply to holders of pastoral leases under the *Pastoral Act 1936* apply in respect of the depasturing of stock upon the lands as if Maralinga Tjarutja were the holder of a pastoral lease in respect of the lands.

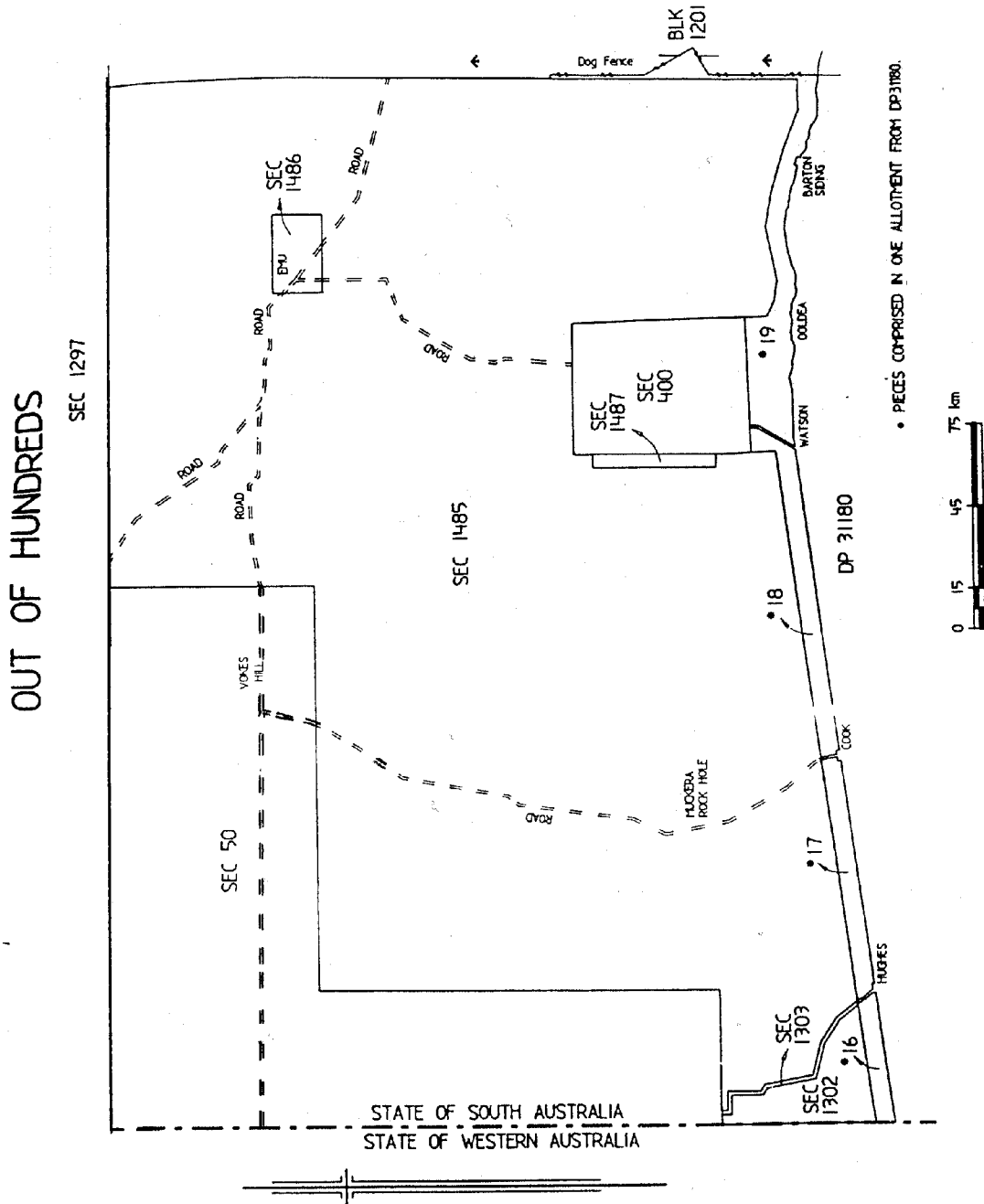
44—Regulations

- (1) The Governor may make regulations—
 - (a) prescribing a form of agreement as a model form of agreement under which exploratory operations may be carried out upon the lands and providing that such a model form of agreement shall form the basis of negotiations between Maralinga Tjarutja and any applicant for permission to carry out exploratory operations upon the lands; and
 - (b) regulating, restricting or prohibiting the depasturing of stock upon any specified part of the lands; and
 - (c) regulating, restricting or prohibiting any activity upon the lands that may have adverse environmental consequences; and
 - (d) regulating, restricting or prohibiting the supply or consumption of alcoholic liquor upon the lands; and
 - (e) providing for the confiscation of alcoholic liquor; and
 - (f) prescribing other matters contemplated by this Act, or necessary or expedient for the purposes of this Act; and
 - (g) prescribing penalties (not exceeding two thousand dollars) for breach of, or non-compliance with, any regulation.
- (2) A regulation shall not be made under subsection (1)(a) except with the approval of Maralinga Tjarutja.
- (3) A regulation shall not be made under subsection (1)(c) except after consultation with Maralinga Tjarutja.
- (4) A regulation shall not be made under subsection (1)(d) or (e) except upon the recommendation of Maralinga Tjarutja.

Schedule 1

Section 50, Out of Hundreds; Section 1302, Out of Hundreds; Section 1485, Out of Hundreds; Section 1486, Out of Hundreds; Section 1487, Out of Hundreds and an Allotment comprising Pieces 16, 17, 18 and 19 on Deposited Plan 31180.

Schedule 2



Schedule 3

Section 1303, Out of Hundreds.

Schedule 4

Section 50, Out of Hundreds.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1984	3	<i>Maralinga Tjarutja Land Rights Act 1984</i>	12.4.1984	6.12.1984 (<i>Gazette 6.12.1984 p1742</i>)
1991	43	<i>Maralinga Tjarutja Land Rights (Additional Lands) Amendment Act 1991</i>	7.11.1991	28.11.1991 (<i>Gazette 28.11.1991 p1376</i>)
2004	27	<i>Statutes Amendment (Co-managed Parks) Act 2004</i>	29.7.2004	ss 4(1) and 5—29.7.2004; ss 4(2) and 6—12—24.8.2004 (<i>Gazette 29.7.2004 p2682</i>)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 49 (s 164)—4.9.2006 (<i>Gazette 17.8.2006 p2831</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	29.7.2004
s 3		
co-management agreement	inserted by 27/2004 s 4(1)	29.7.2004
co-management board	inserted by 27/2004 s 4(1)	29.7.2004
Unnamed Conservation Park	inserted by 27/2004 s 4(2)	24.8.2004
Pt 2		
s 5		
s 5(2)	amended by 27/2004 s 5	29.7.2004

Pt 3		
Div 1A	inserted by 27/2004 s 6	24.8.2004
Div 3		
s 17		
s 17(1)	s 17 redesignated as s 17(1) by 27/2004 s 7	24.8.2004
s 17(2)	inserted by 27/2004 s 7	24.8.2004
s 18		
s 18(11)	amended by 43/1991 s 3 amended by 27/2004 s 8	28.11.1991 24.8.2004
Div 4		
s 20A	inserted by 27/2004 s 9	24.8.2004
s 21		
s 21(23)	amended by 43/1991 s 4	28.11.1991
s 22		
s 22(3)	amended by 43/1991 s 5	28.11.1991
Div 6		
s 30		
s 30(3)	amended by 27/2004 s 10	24.8.2004
Pt 5		
s 43	<i>expired: s 43(12)—omitted under Legislation Revision and Publication Act 2002</i>	(6.12.1989)
Sch 1	substituted by 43/1991 s 6 amended by 27/2004 s 11	28.11.1991 24.8.2004
Sch 2	substituted by 43/1991 s 6 amended by 27/2004 s 12	28.11.1991 24.8.2004

Historical versions

Reprint No 1—28.11.1991

29.7.2004