

South Australia

# **Maralinga Tjarutja Land Rights (Miscellaneous) Amendment Act 2009**

An Act to amend the *Maralinga Tjarutja Land Rights Act 1984*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Maralinga Tjarutja Land Rights (Miscellaneous) Amendment Act 2009*.

#### 2—Commencement

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

#### 3—Amendment provisions

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

### Part 2—Amendment of *Maralinga Tjarutja Land Rights Act 1984*

#### 4—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *Aboriginal person* insert:

*British Nuclear Test Program* has the same meaning as in the Maralinga nuclear test site handback deed;

- (2) Section 3, definition of *co-management board*—delete "Unnamed" and substitute:  
Mamungari

- (3) Section 3—after the definition of *leader* insert:

*Mamungari 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;

*Maralinga nuclear test site* means—

- (a) that part of the lands comprised of Section 400, Out of Hundreds, Section 1486, Out of Hundreds and Section 1487, Out of Hundreds (not including any part of those sections declared by the regulations not to be included in the ambit of this definition); and
- (b) any other part of the lands declared by the regulations to be included within the ambit of this definition;

**Note—**

The test site areas are, for ease of reference only, shaded in grey on the map in Schedule 5.

*Maralinga nuclear test site handback deed* means the deed of that name between the State, the Commonwealth and Maralinga Tjarutja, tabled by or on behalf of the Minister in the House of Assembly on 17 November 2009, as varied from time to time;

- (4) Section 3—after the definition of *mining tenement* insert:

*minor trials* has the same meaning as in the Maralinga nuclear test site handback deed;

- (5) Section 3, definition of *Unnamed Conservation Park*—delete the definition

## **5—Amendment of section 5—Powers and functions of Maralinga Tjarutja**

Section 5(2)—after paragraph (i) insert:

- (j) the power to make a constitution relating to—
  - (a) the conduct of meetings of Maralinga Tjarutja; and
  - (b) the procedures to be followed in resolving disputes; and
  - (c) any other matter that may be necessary or expedient in relation to the conduct or administration of the affairs of Maralinga Tjarutja;
- (k) the power to take such other steps as may be necessary or expedient for, or incidental to, the performance of Maralinga Tjarutja's functions.

## **6—Substitution of section 9**

Section 9—delete the section and substitute:

### **9—Delegations**

- (1) The Council may delegate the exercise of any power or function of Maralinga Tjarutja under this or any other Act to a specified body or person.
- (2) However, the following functions and powers must not be delegated:
  - (a) this power of delegation;
  - (b) a function under section 5(1);
  - (c) the power to grant a lease or licence under this Act.
- (3) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Council to act in any matter; and
  - (d) is revocable at will by the Council.

### **7—Amendment of heading to Part 3 Division 1A**

Heading to Part 3 Division 1A—delete "Unnamed" and substitute:

Mamungari

### **8—Amendment of section 15B—Establishment of co-management board**

Section 15B—delete "Unnamed" wherever occurring and substitute in each case:

Mamungari

### **9—Amendment of section 15D—Dissolution or suspension of co-management board**

Section 15D(2)—delete "Unnamed" and substitute:

Mamungari

### **10—Amendment of section 15E—Staff**

Section 15E(3)(b)—delete "Unnamed" and substitute:

Mamungari

### **11—Insertion of Part 3 Division 1B**

After Part 3 Division 1A insert:

#### **Division 1B—Special provisions related to Maralinga nuclear test site**

##### **15H—Interpretation**

In this Division—

*management plan* for the Maralinga nuclear test site, means the management plan annexed to the Maralinga nuclear test site handback deed, as varied from time to time.

##### **15I—Guidelines related to Maralinga nuclear test site**

- (1) Maralinga Tjarutja must, within 6 months after the commencement of this section, prepare and submit to the Minister for approval guidelines to be followed in relation to the Maralinga nuclear test site.
- (2) Maralinga Tjarutja may, with the approval of the Minister, vary or substitute the guidelines prepared under this section.
- (3) The guidelines may be constituted of the relevant part or parts of the management plan for the Maralinga nuclear test site (and, if so, a variation or substitution of the guidelines may only be made in accordance with the relevant terms of the management plan).
- (4) The guidelines must contain the following:
  - (a) a clear delineation of the site;

- (b) an explanation of the nature and extent of any known contamination of the site;
  - (c) any other information required by the regulations,  
and may contain any other information Maralinga Tjarutja thinks fit in relation to the site.
- (5) Maralinga Tjarutja must, in a manner approved by the Minister after consultation with Maralinga Tjarutja—
- (a) provide an explanation of the guidelines, and of any variation or substitution of the guidelines, to traditional owners; and
  - (b) publish the guidelines on the lands.
- (6) A person is entitled to inspect (without charge) the guidelines—
- (a) at the places on the lands, and during the times, nominated by Maralinga Tjarutja and approved by the Minister; and
  - (b) during ordinary office hours at the principal office of Maralinga Tjarutja.
- (7) A person is entitled, on payment of the fee prescribed by the regulations, to a copy of the guidelines.

### **15J—Immunity from liability**

- (1) This section applies if the Maralinga nuclear test site handback deed—
- (a) ceases to be in force; or
  - (b) for any other reason fails to provide indemnity for the State or Maralinga Tjarutja in relation to a particular claim for damages.
- (2) No liability attaches to the State in relation to injury, damage or loss caused by, or related to, the British Nuclear Test Program, or minor trials, conducted at the Maralinga nuclear test site.
- (3) No liability attaches to Maralinga Tjarutja in relation to injury, damage or loss caused by, or related to, the British Nuclear Test Program, or minor trials, conducted at the Maralinga nuclear test site.

### **15K—Mining etc prohibited on Maralinga nuclear test site**

- (1) The *Mining Act 1971*, the *Petroleum and Geothermal Energy Act 2000* and the *Opal Mining Act 1995* do not apply to, or in relation to, the Maralinga nuclear test site.
- (2) Despite a provision of this or any other Act or law, the following activities are prohibited on, or in relation to, the Maralinga nuclear test site:
- (a) prospecting, exploring or mining for minerals (including, to avoid doubt, petroleum);
  - (b) quarrying;

- (c) any other activity prescribed by the regulations.
- (3) A person who contravenes subsection (2) is guilty of an offence.  
Maximum penalty: \$120 000.
- (4) An offence against this section lies within the criminal jurisdiction of the ERD Court.
- (5) In this section—  
*ERD Court* means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*.

### **15L—Review of operation of Division by Minister**

- (1) The Minister must cause a review of the operation of this Division to be conducted and a report on the results of the review to be prepared and submitted to him or her.
- (2) The Minister must ensure that, as part of the review, reasonable steps are taken to seek submissions from—
  - (a) Maralinga Tjarutja; and
  - (b) the Minister responsible for the administration of the *Mining Act 1971*; and
  - (c) relevant industry, environment and community organisations.
- (3) The review and the report must be completed before the fifth anniversary of the commencement of this Division.
- (4) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

### **15M—Evidence**

- (1) A certificate of the Minister certifying that a document is an accurate copy of the Maralinga nuclear test site handback deed as in force on a date specified in the certificate is admissible in evidence in any proceedings and is evidence—
  - (a) of the tabling of the Maralinga nuclear test site handback deed in the House of Assembly; and
  - (b) of any matter so certified.
- (2) Subsection (1) does not affect any other way in which the tabling or content of the Maralinga nuclear test site handback deed, or the accuracy of a copy of the Maralinga nuclear test site handback deed, may be established.

### **12—Amendment of section 17—Rights of traditional owners with respect to lands**

- (1) Section 17(1)—delete "All" and substitute:  
Subject to this Act, all

- (2) Section 17(1)—delete "Unnamed" and substitute:

Mamungari

### **13—Amendment of section 18—Unauthorised entry upon the lands**

- (1) Section 18(9) and (10)—delete subsections (9) and (10)

- (2) Section 18(11)(d)—delete paragraph (d) and substitute:

(d) a member of the Parliament of the State or the Commonwealth or a person who is genuinely a candidate for election as a member of the Parliament of the State or the Commonwealth; or

(da) a person entering the land in accordance with, or to exercise a function under, the Maralinga nuclear test site handback deed; or

(db) a person assisting a person referred to in any of the preceding paragraphs; or

- (3) Section 18(11)(ga)—delete "Unnamed" and substitute:

Mamungari

- (4) Section 18(12)—after "(d)" insert:

, (da), (db)

### **14—Insertion of section 18A**

After section 18 insert:

#### **18A—Residence on the lands**

A person who is entitled under section 18(11)(a), (b), (c), (da) or (db) to enter the lands for the purpose of carrying out, or assisting in carrying out, official duties or functions is entitled to reside on the lands where that is necessary or desirable for the purpose of carrying out that duty or function.

### **15—Amendment of section 20—Use of roads to traverse the lands**

- (1) Section 20(1)—after "Division" insert:

but subject to subsection (1a)

- (2) Section 20—after subsection (1) insert:

(1a) Nothing in this section entitles a person to use a road within Section 400, Out of Hundreds within the Maralinga nuclear test site (whether or not the road is a continuation of a road that the person is entitled to use).

### **16—Substitution of section 20A**

Section 20A—delete the section and substitute:

#### **20A—Application of Division**

This Division does not apply to the following:

- (a) the Mamungari Conservation Park;

- (b) the Maralinga nuclear test site.

**Note—**

Mining and certain associated activities are prohibited on the Maralinga nuclear test site—see section 15K.

**17—Amendment of section 30—Road reserves**

Section 30(3)—delete "Unnamed" and substitute:

Mamungari

**18—Insertion of section 43**

After section 42 insert:

**43—By-laws**

- (1) Maralinga Tjarutja may, with the approval of the Minister, make by-laws—
  - (a) regulating, restricting or prohibiting the consumption, inhalation, possession, sale or supply of regulated substances on the lands;
  - (b) providing for the confiscation, in circumstances in which a contravention of a by-law under paragraph (a) is reasonably suspected, of any regulated substance to which the suspected contravention relates;
  - (c) providing for the treatment or rehabilitation (or both) of any person affected by the misuse of any regulated substance;
  - (d) prohibiting specified forms of gambling on the lands;
  - (e) providing for any other matter that is prescribed by the regulations as a matter in relation to which by-laws may be made.
- (2) A by-law under this section must not be inconsistent with this or any other Act, or with the general law of the State.
- (3) The operation of a by-law is restricted to the lands.
- (4) A by-law made under this section—
  - (a) must be submitted to the Governor for confirmation; and
  - (b) is subject to disallowance by Parliament.
- (5) A court by which a person is found to have been in possession of a regulated substance for his or her own use in contravention of the by-laws may, subject to the by-laws, order that person to undergo treatment or participate in a rehabilitation programme prescribed by the by-laws.
- (6) Subject to subsection (7), a person who contravenes or fails to comply with a by-law is liable to a penalty as follows:
  - (a) if the by-law specifies a penalty (which must not exceed \$2 000)—the penalty so specified; or

- (b) if no penalty is specified—a maximum fine of \$2 000.
- (7) A person who contravenes a by-law regulating, restricting or prohibiting the sale or supply of a regulated substance is guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 2 years.

- (8) In this section—

*petrol* includes any volatile liquid containing hydrocarbons;

*regulated substance* means petrol, alcoholic liquor and any other substance declared by regulation to be included within the ambit of this definition.

### **19—Amendment of section 44—Regulations**

- (1) Section 44(1)—after paragraph (a) insert:

(ab) regulating, restricting or prohibiting entry on, or any activity on, the Maralinga nuclear test site or a part of that site; and

- (2) Section 44—after subsection (1) insert:

(1a) The regulations may—

- (a) be of general application or vary in their application according to prescribed factors;
- (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or a specified body of persons.

- (3) Section 44(3)—delete "subsection (1)(c)" and substitute:

subsection (1)(ab) or (c)

### **20—Amendment of Schedule 1**

Schedule 1—after "Section 50, Out of Hundreds;" insert:

Section 400, Out of Hundreds;





## Schedule 1—Transitional provision

### 1—Maralinga nuclear test site excluded from mining tenements etc

- (1) If, immediately before the commencement of this clause, a right existed under a prescribed tenement in respect of any part of the Maralinga nuclear test site, the right is, by force of this subclause, extinguished.
- (2) If an application for a prescribed tenement in respect of any part of the Maralinga nuclear test site was made but not determined before the commencement of this clause, the application is, by force of this subclause, taken to be modified so that the application does not seek the conferral of any rights in relation to any part of the Maralinga nuclear test site.
- (3) Despite any other Act or law, no compensation is payable in respect of the operation of this clause.
- (4) In this clause—

*prescribed tenement* means—

- (a) a mining tenement or permit under the *Mining Act 1971*;
- (b) a precious stones tenement or permit under the *Opal Mining Act 1995*;
- (c) a tenement under the *Petroleum and Geothermal Energy Act 2000*.