

House of Assembly—No 178A

As reported with amendments, report agreed to and passed remaining stages,
27 October 2021

South Australia

Coorong Environmental Trust Bill 2019

A BILL FOR

An Act to establish the Coorong Environmental Trust, to provide for the administration of the Trust, and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

Part 2—Coorong Environmental Trust

Division 1—Establishment of Trust

- 4 Establishment of Trust

Division 2—Membership of Trust

- 5 Members
- 6 Rights and liabilities of membership
- 7 Calling of meetings
- 8 Procedures at meetings
- 9 Voting at meetings

Part 3—Management of Trust

- 10 Board of management
- 11 Directors term of office and remuneration
- 12 Removal from office
- 13 Staff of Trust
- 14 Disclosure of interest
- 15 Director's duties of honesty, care and diligence
- 16 Validity of acts and immunity of members
- 17 Presiding member and deputy presiding member
- 18 Proceedings
- 19 Delegation

Part 4—Functions and powers of Trust

- 20 Functions

Part 5—Miscellaneous

- 21 Advisory committees
 - 22 Accounts and audit
 - 23 Annual report
 - 24 Power of delegation
 - 25 Regulations
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Coorong Environmental Trust Act 2019*.

2—Commencement

This Act will come into operation Within 3 months after the day on which it is assented to by the Governor.

3—Interpretation

5 In this Act, unless the contrary intention appears—

board means the board of directors established as the governing body of the Trust under Part 2;

Coorong means—

- 10 (a) the Coorong and Lakes Alexandrina and Albert Wetland, as designated by the Commonwealth under Article 2 of the Ramsar Convention for inclusion in the List of Wetlands of International Importance;
- (b) any other land, waterway or area designated by the Minister by notice in the Gazette;

director means a person appointed as a member of the Trust under Part 3;

15 **Ngarrindjeri Aboriginal Corporation** means the Ngarrindjeri Aboriginal Corporation that is a registered native title body corporate within the meaning of the *Native Title Act 1993* of the Commonwealth and includes its successors and assigns;

waterway means a river, creek or other natural watercourse (whether modified or not) in which water is contained or flows whether permanently or from time to time and includes—

- 20 (a) a dam or reservoir that collects water flowing in a watercourse;
- (b) a lake through which water flows;
- (c) a channel (but not a channel declared by regulation to be excluded from the ambit of this definition) into which the water of a watercourse has been
- 25 diverted;
- (d) part of a watercourse;
- (e) an estuary through which water flows;

Trust means the Coorong Environmental Trust established under Part 2.

Part 2—Coorong Environmental Trust

30 Division 1—Establishment of Trust

4—Establishment of Trust

- (1) The Coorong Environmental Trust is established to raise and administer philanthropic funds to support the ecological wellbeing of the Coorong..
- (2) The Trust—
- 35 (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name.

The Minister will approve an initial set of rules relating to the membership, management and operations of the Trust.

Thereafter, the Trust will maintain the rules of the Trust.

The Trust must publish any variations it makes to the rules of the Trust in its Annual Report.

The Crown does not incur any liability for the Trusts / all costs associated with the Trust are to be met by the Trust.

Division 2—Membership of Trust

5—Members

- (1) There will be a Trust constituted of members representing organisations with a professional, financial, physical or legal commitment to the ecological wellbeing of the Coorong.
- (2) The initial members of the Trust will be appointed by the Minister.
- (3) Thereafter, persons representing organisations with a professional, financial, physical or legal commitment to the ecological wellbeing of the Coorong may be admitted as members of the Trust by resolution of the Trust or as provided by the rules of the Trust.
- (4) Before a person representing an organisation may be appointed by the Minister under subsection (2) or admitted as a member under subsection (3), the person must sign a statement on behalf of the organisation declaring its commitment to the ecological wellbeing of the Coorong.
- (5) A person ceases to be a member of the Trust in any of the following circumstances or as otherwise provided by this Act:
 - (a) if the Trust resolves that the membership should be discontinued—
 - (i) on the ground that the member has ceased on a permanent basis to—
 - (A) represent an organisation with a professional, financial, physical or legal commitment to the ecological wellbeing of the Coorong that gives rise to their entitlement to membership; or
 - (B) provide assistance toward the functions, upkeep and administration of the Trust in accordance with the rules of the Trust;
 - (ii) on any other reasonable ground determined by the Trust;
 - (b) if the member resigns;
 - (c) on death;
 - (d) if the organisation that the member represents is dissolved.
- (6) The presiding member of the board will be the presiding member of the Trust and the deputy presiding member of the board (if any) will be the deputy presiding member of the Trust.

(7) The deputy presiding member of the Trust may act as the presiding member in the absence of the presiding member or during a vacancy in the office of presiding member.

5 (8) If there is no deputy presiding member, a person selected by the board may act as the presiding member in the absence of the presiding member or during a vacancy in the office of presiding member.

6—Rights and liabilities of membership

(1) Membership of the Trust does not confer on a member, except as may be provided by this Act, any right, title or interest in any real or personal property of the Trust.

10 (2) Except as provided by this Act, a member of the Trust is not liable to contribute towards the payment of the debts and liabilities of the Trust or the costs, charges and expenses of a winding up of the Trust.

7—Calling of meetings

15 (1) A meeting of the Trust may be called at any time by the presiding member, by the board of the Trust, or by at least 10% of the voting members of the Trust.

(2) The presiding member must call a meeting of the Trust (the annual general meeting) at least once in each year.

20 (3) At least 7 days written notice specifying the time and place of each meeting must be given to every member of the Trust (subject to any other requirements under another provision of this Act).

8—Procedures at meetings

(1) The presiding member will preside at meetings of the Trust or, in the presiding member's absence, a member chosen by the members present will preside.

25 (2) A quorum for a meeting of the Trust is—
(a) one-third of the voting members of the Trust or 10 voting members, whichever is the smaller number; or
(b) such other number as the Trust may from time to time determine.

30 (3) When determining whether a quorum is present at a meeting, both voting members who are present at the meeting and those who are represented at the meeting for the purposes of voting will be counted.

(4) Subject to this Act, a resolution will be carried if the value of the votes supporting it exceeds the value of the votes against it but if the values are equal the resolution will be carried if it is supported by the person presiding at the meeting.

35 (5) 21 days notice must be given of a resolution that varies or revokes a decision made by resolution of the Trust within the preceding 12 months.

(6) Subject to this Act, the Trust may determine its own procedures.

(7) The Trust must keep minutes of its proceedings.

9—Voting at meetings

40 (1) Subject to this section, a member of the Trust is entitled to vote at meetings of the Trust.

- (2) A member may nominate another person to attend and vote at meetings on the member's behalf.
- (3) A nomination referred to in subsection (2) must be made by written notice to the Trust and may be revoked by the member, or all of the members, by subsequent written notice to the Trust.
- (4) If a person who is not a member of the Trust has been nominated by a member or members to attend and vote at a meeting of the Trust, that person must be regarded as a member of the Trust for the purposes of proceedings at the meeting.

Part 3—Management of Trust

10—Board of management

- (1) the Minister will appoint an initial board of management of the Trust to carry out the day to day operations of the Trust and to manage its general affairs. Thereafter, 2 voting members will be appointed by the Minister.
- (2) The board will consist of 7 members of the Trust (who will be called *directors*).
- (3) The Trust must seek to ensure, as far as is reasonably practicable, that—
- (a) 1 director is a representative of the Ngarrindjeri Aboriginal Corporation; and
 - (b) 1 director is an employee in an administrative unit of the Public Service that is responsible, under a Minister, for assisting in the administration of this Act; and
 - (c) 5 directors among them have knowledge of, and experience in, the fields of finance or business management, biological science, fisheries, community education, hydrology or geomorphology, and engineering.
- (4) The Trust board may appoint—
- (a) a suitable person who is a representative of the Ngarrindjeri Aboriginal Corporation to be the deputy of the director referred to in subsection (3)(a); and
 - (b) a suitable person who is an employee in an administrative unit of the Public Service that is responsible, under a Minister, for assisting in the administration of this Act to be the deputy of the director referred to in subsection (3)(b),
- and the deputy may perform or exercise the functions and powers of the relevant director in their absence.
- (5) On the office of a director becoming vacant, a person may be appointed in accordance with this Act to the vacant office.

11—Directors term of office and remuneration

- (1) Subject to this section, a director will be elected at the annual general meeting of the Trust.
- (2) A member of the Trust is not eligible for election as a director if the member—
- (a) is an undischarged bankrupt or is taking the benefit of a law for the relief of insolvent debtors; or

- (b) is an employee of the Trust; or
 - (c) is a member who is not entitled to vote at a meeting of the Trust; or
 - (d) is a member who is not entitled to be a director of the board under the rules of the Trust or on account of a resolution of the Trust.
- 5 (3) Subject to subsections (4) and (5), a director will hold office for a term of 2 years (with each period between the annual general meetings of the Trust to be taken to be 1 year) and, at the expiration of a term of office, will be eligible for re-election.
- (4) The office of a director becomes vacant if the person holding the office—
- (a) dies; or
 - 10 (b) completes a term of office and is not re-elected; or
 - (c) resigns by written notice to the board; or
 - (d) ceases to be eligible for election as a director of the board under subsection (2); or
 - (e) is convicted of an indictable offence; or
 - 15 (f) is found guilty of an offence against section 14; or
 - (g) is removed from office by resolution of the Trust.
- (5) If a casual vacancy occurs in the office of a director, the remaining directors may appoint a person to the vacant office for the balance of the former director's term of office.
- 20 (6) A director is entitled to remuneration, allowances and expenses determined or approved by the Trust.

12—Removal from office

The Trust may, by resolution, remove a director from office in accordance with the rules of the Trust—

- 25 (a) for breach of, or non-compliance with, a condition of appointment; or
- (b) for misconduct; or
- (c) for failure or incapacity to carry out official duties satisfactorily.

13—Staff of Trust

30 The Trust may engage staff for the purposes of this Act on terms and conditions considered appropriate by the Trust.

14—Disclosure of interest

- (1) A director who has a direct or indirect personal or pecuniary interest in a matter under consideration by the board—
 - 35 (a) must, as soon as they become aware of the interest, disclose the nature and extent of the interest to the board; and

- (b) must not take part in any deliberations or decision of the board on the matter and must be absent from the room when any such deliberations are taking place or decision is being made.

Maximum penalty: \$10 000.

- 5 (2) If a director discloses an interest in a contract or proposed contract and complies with the other requirements of this section—
 - (a) the contract is not liable to be avoided by the board; and
 - (b) the director is not liable to account for profits derived from the contract.
- 10 (3) If a director fails to make a disclosure of interest or fails to comply with the other requirements of this section in respect of a proposed contract, the contract is liable to be avoided by the board.
- (4) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- 15 (5) If, in the Trust's opinion, the holding of a particular interest is not consistent with the proper discharge of the duties of a member of the board, the Trust may direct the member either to divest themselves of the interest or to resign from the board (and non-compliance with the direction constitutes a ground for removal of the member from the board).
- 20 (6) A disclosure under this section must be recorded in the minutes of the board.
- (7) This section does not apply to an interest that a director shares in common with all or a substantial proportion of the members of the Trust.

15—Director's duties of honesty, care and diligence

- 25 (1) A director must at all times act honestly in the performance of official functions.
Maximum penalty: \$10 000.
- (2) A director must at all times act with reasonable care and diligence in the performance of official functions.
Maximum penalty: \$10 000.
- 30 (3) A director or former director must not make improper use of information acquired because of their official position to gain, directly or indirectly, a personal advantage for themselves or another, or to cause detriment to the Trust.
Maximum penalty: \$10 000.
- (4) A director must not make improper use of their official position to gain, directly or indirectly, a personal advantage for themselves or another, or to cause detriment to the Trust.
35 Maximum penalty: \$10 000.
- (5) This section is in addition to, and does not derogate from, other laws.

16—Validity of acts and immunity of members

- 40 (1) An act or proceeding of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

- (2) A director incurs no civil liability for an honest act or omission in the performance or exercise, or purported performance or exercise, of the director's or the board's functions, duties or powers under this or any other Act.
- (3) The immunity conferred by subsection (2) does not extend to culpable negligence.
- 5 (4) A civil liability that would, but for this section, attach to a member attaches instead to the Trust.

17—Presiding member and deputy presiding member

- 10 (1) The directors must, at the first meeting of the board held after an annual general meeting of the Trust, select 1 of their number to be the presiding member of the board (and therefore of the Trust).
- (2) The directors may also select 1 of their number to be the deputy presiding member of the board (and therefore of the Trust).
- 15 (3) Subject to subsections (4) and (5), a person selected under subsection (1) or (2) will hold office until the conclusion of the next annual general meeting of the Trust held after the member's selection (and is eligible for reappointment if they continue or are re-elected as a member of the board).
- (4) A person selected under this section may be removed from office by resolution of the board.
- 20 (5) The office of a person selected under this section becomes vacant before an annual general meeting of the Trust if the person holding the office—
 - (a) dies; or
 - (b) resigns by written notice to the board; or
 - (c) ceases to be a member of the board or of the Trust; or
 - (d) is removed from office under subsection (4).
- 25 (6) If a casual vacancy occurs in the office of the presiding member or deputy presiding member, the members (or remaining members) of the board may appoint another of their number to the vacant office (and to hold office until the conclusion of the next annual general meeting of the Trust).

18—Proceedings

- 30 (1) A quorum of the board consists of 5 directors.
- (2) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (3) Each director present at a meeting of the board has 1 vote on any question arising for a decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- 35 (4) A telephone or video conference between directors constituted in accordance with procedures determined by the board will, for the purposes of this section, be taken to be a meeting of the board at which the participating members are present.
- (5) A resolution of the board—
 - 40 (a) of which prior notice was given to all directors in accordance with procedures determined by the board; and

(b) in which a majority of the directors expressed their concurrence in writing, will be taken to be a decision of the board made at a meeting of the board.

(6) The board must have accurate minutes kept of its proceedings.

(7) Subject to this Act, the board may determine its own procedures.

5 **19—Delegation**

(1) The board of management may delegate a function or power of the board—

(a) to a director; or

(b) to another person (including the person for the time being holding or occupying a particular position) or body.

10 (2) A delegation under this section—

(a) must be made by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the ability of the board to act in any matter; and

(d) is revocable at will.

15 (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

Part 4—Functions and powers of Trust

20—Functions

The functions of the Trust are as follows:

20 (a) to create and maintain a repository for all environmental data and research outcomes relating to the Coorong;

(b) to prepare an annual 'State of Our Estuary' report, along with presenting an opportunity for community, policy writers, and researchers to discuss outcomes;

25 (c) to prepare, adopt and maintain a set of rules relating to the membership, management and operations of the Trust;

(d) to provide independent, impartial scientific advice on the state of the Coorong to all stakeholders;

(e) to provide guidance for future environmental research within the Coorong;

30 (f) to clearly monitor and document environmental flow outcomes;

(g) to coordinate and if necessary implement a comprehensive water quality monitoring program;

(h) to independently assess proposed solutions to ecological challenges faced by the Coorong;

35 (i) to raise money so that it can carry out its functions with financial independence;

(j) to perform any function assigned to the Trust by regulation.

Part 5—Miscellaneous

21—Advisory committees

- (1) The Trust must establish—
 - (a) the Fundraising committee; and
 - 5 (b) the Wetland Science committee.
- (2) The members of the Fundraising committee and the Wetland Science committee are to be appointed by the Trust.
- (3) The Trust may establish other committees to provide advice on any matter affecting the administration of this Act as the Trust thinks fit.
- 10 (4) The procedures to be observed in relation to the conduct of the business of an advisory committee will be—
 - (a) as determined by the Trust; or
 - (b) insofar as the procedure is not determined under paragraph (a), as determined by the relevant committee.

15 22—Accounts and audit

- (1) The Trust must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.
- (2) The Auditor-General must, in respect of each financial year, audit the accounts of the Trust.

20 23—Annual report

- (1) The Trust must, on or before 30 September in every year, forward to the Minister a report on the Trust's operations for the preceding financial year.
- (2) The report must contain any information required by the regulations.
- 25 (3) The Minister must, within 6 sitting days after receiving a report under this section, cause copies of the report to be laid before both Houses of Parliament.

24—Power of delegation

- (1) Subject to subsection (2), the Trust may delegate a function or power of the Trust under this Act—
 - (a) to the board of management of the Trust; or
 - 30 (b) to a particular person or other body.
- (2) A delegation under this section—
 - (a) must be made by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the trust to act in any matter; and
 - 35 (d) is revocable at will.

- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

25—Regulations

- 5 (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) The regulations may—
- 10 (a) be of general or limited application; and
- (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- (c) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Trust.