

South Australia

# Maralinga Tjarutja Land Rights (Establishment of Co-management Board) Regulations 2004

under the *Maralinga Tjarutja Land Rights Act 1984*

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## Legislative history

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### 1—Short title

These regulations may be cited as the *Maralinga Tjarutja Land Rights (Establishment of Co-management Board) Regulations 2004*.

### 2—Commencement

These regulations will come into operation on 24 August 2004.

### 3—Interpretation

In this Part—

*Act* means the *Maralinga Tjarutja Land Rights Act 1984*;

*Board* means the *Maralinga Lands Unnamed Conservation Park Board* established under regulation 4;

*co-management agreement* means the co-management agreement for the Unnamed Conservation Park;

*Department* means the administrative unit that is responsible for the administration of the *National Parks and Wildlife Act 1972*;

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

**Pila Nguru** means an Aboriginal person who is a member of the Aboriginal people of the Western Desert region known as the Pila People, or Spinifex People, and who belongs to the language group of the Southern Pitjantjatjara;

**Pila Nguru (Aboriginal Corporation)** means the Aboriginal Association of that name incorporated under the *Aboriginal Councils and Associations Act 1976* of the Commonwealth.

#### **4—Establishment of co-management board**

The *Maralinga Lands Unnamed Conservation Park Board* is established as the co-management board for the Unnamed Conservation Park.

#### **5—Composition of Board**

- (1) The Board consists of 8 members appointed by the Minister of whom—
  - (a) 5 must be members of Maralinga Tjarutja—
    - (i) 3 of whom are appointed on the nomination of the Council; and
    - (ii) 2 of whom are Pila Nguru appointed on the nomination of the Pila Nguru (Aboriginal Corporation); and
  - (b) 3 must be officers of the Department, of whom—
    - (i) 1 must be the person for the time being holding the office of Regional Conservator for the region in which the Park is located (or the person for the time being performing the functions of the Regional Conservator for that region); and
    - (ii) 1 must be a person with qualifications or substantial experience in the field of ecology or a related field.
- (2) However, if the Pila Nguru (Aboriginal Corporation) withdraws from the co-management agreement, the following provisions apply:
  - (a) the office of each member of the Board appointed in accordance with subregulation (1)(a)(ii) becomes vacant on the date of the withdrawal; and
  - (b) the Minister may appoint a member, on the nomination of the Council, to fill each of those vacancies and a member so appointed will hold office for the balance of the term of his or her predecessor; and
  - (c) thereafter the Board will consist of 8 members appointed by the Minister of whom—
    - (i) 5 must be members of Maralinga Tjarutja appointed on the nomination of the Council; and
    - (ii) 3 must be officers of the Department, of whom—
      - (A) 1 must be the person for the time being holding the office of Regional Conservator for the region in which the Park is located (or the person for the time being performing the functions of the Regional Conservator for that region); and

- (B) 1 must be a person with qualifications or substantial experience in the field of ecology or a related field.
- (3) The Minister may appoint a person to be a deputy of a member appointed under subregulation (1) and a person so appointed may act as a member of the Board in the absence of the member.
- (4) The requirements of qualification made by this regulation in relation to an appointment of a member extend to an appointment of a deputy of that member.

## **6—Terms and conditions**

- (1) A member of the Board will be appointed on conditions determined by the Minister and for a term, not exceeding 4 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Minister may remove a member of the Board from office—
- (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.
- (3) However, the Minister may only remove a member of the Board who is a member of Maralinga Tjarutja after consultation with—
- (a) in the case of a member appointed on the nomination of the Pila Nguru (Aboriginal Corporation)—the Pila Nguru (Aboriginal Corporation); or
  - (b) in any other case—the Council.
- (4) The office of a member of the Board becomes vacant if the member—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Board; or
  - (e) is removed from office under subregulation (2).
- (5) If a casual vacancy occurs in the office of a member, the Minister may appoint a suitable person to fill the vacancy, and that person will hold office for the balance of the term of his or her predecessor.

## **7—Presiding member and deputy**

The presiding member of the Board will be the member nominated by Maralinga Tjarutja to preside at meetings of the Board, and the deputy presiding member of the Board will be the member nominated by Maralinga Tjarutja to preside at meetings of the Board in the absence of the presiding member.

## **8—Vacancies or defects in appointment of members**

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 member.

## 9—Remuneration

A member of the Board is entitled to remuneration, allowances and expenses determined by the Minister.

## 10—Functions and powers of Board

- (1) The functions of the Board are—
  - (a) to carry out the functions assigned to the Board by or under the *National Parks and Wildlife Act 1972*; and
  - (b) to carry out the functions assigned to the Board by the co-management agreement; and
  - (c) to carry out other functions assigned to the Board by or under the Act, or by the Minister.
- (2) The Board has the power to do anything necessary, expedient or incidental to the performance of its functions.
- (3) Without limiting the generality of subsection (2), the Board may enter into any form of contract, agreement or arrangement.
- (4) The Board must perform its functions, or exercise a power, in a manner that is consistent with the co-management agreement.
- (5) The Board must not enter into an agreement that may affect the customs or traditions of the traditional owners except with the agreement of the Council.

## 11—Committees

- (1) The Board may establish committees—
  - (a) to advise the Board on any matter; or
  - (b) to carry out functions on behalf of the Board.
- (2) The membership of a committee will be determined by the Board and may, but need not, consist of, or include, members of the Board.
- (3) The Board will determine who will be the presiding member of a committee.
- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the Board;
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

## 12—Delegations

- (1) The Board may delegate any of its functions or powers (other than this power of delegation)—
  - (a) to a member of the Board, or an employee of the Board; or
  - (b) to a committee established by the Board; or
  - (c) to an employee of Maralinga Tjarutja or Pila Nguru (Aboriginal Corporation);  
or

- (d) to an officer of the Department.
- (2) A delegation—
  - (a) must be in writing; and
  - (b) may be made subject to conditions and limitations specified in the instrument of delegation; and
  - (c) is revocable at will and does not derogate from the power of the Board to act in a matter.

### **13—Board's procedures**

- (1) Subject to these regulations, 5 members (of whom at least 3 must be members of Maralinga Tjarutja and at least 1 must be an officer of the Department) constitute a quorum of the Board.
- (2) The Board must meet at least once in each quarter.
- (3) A meeting of the Board will be chaired by the presiding member or, in his or her absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose one of their number to preside at the meeting.
- (4) A decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.
- (5) Each member present at a meeting of the Board has one vote on any question arising for decision and the member presiding at the meeting may exercise a casting vote if the votes are equal.
- (6) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this regulation, be taken to be a meeting of the Board at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (7) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
  - (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission, electronic mail or other written communication setting out the terms of the resolution.
- (8) The Board must have accurate minutes kept of its meetings.
- (9) Subject to this regulation, the Board may determine its own procedures.
- (10) In this regulation—

*quarter* means a period of three months—

  - (a) commencing on 1 January, 1 April, 1 July or 1 October of any year; and

- (b) ending on 31 March, 30 June, 30 September or 31 December (as the case requires) of the same year.

#### **14—Conflict of interest**

- (1) A member of the Board who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Board—
  - (a) must, as soon as reasonably practicable, disclose in writing to the Board full and accurate details of the interest; and
  - (b) must not take part in any discussion by the Board relating to that matter; and
  - (c) must not vote in relation to that matter; and
  - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$2 000.

- (2) Without limiting the effect of this regulation, a member will be taken to have an interest in a matter for the purposes of this regulation if an associate of the member has an interest in the matter.
- (3) This regulation does not apply to a member of the Board—
  - (a) in respect of an interest that is shared in common with traditional owners generally, or a substantial section of traditional owners; and
  - (b) in relation to a matter in which the member has an interest while the member remains unaware that he or she has an interest in the matter (but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest).
- (4) The Minister may, by notice published in the Gazette, exempt a member (conditionally or unconditionally) from the application of a provision of this regulation, and may, by further notice published in the Gazette, vary or revoke such an exemption.
- (5) Non-compliance by a member with a duty imposed by this regulation constitutes a ground for removal of the member from office.
- (6) If a member or former member is convicted of an offence for a contravention of this regulation, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the Minister—
  - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
  - (b) if the court is satisfied that any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.
- (7) If a member or former member is guilty of a contravention of this regulation, the Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
  - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
  - (b) if any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

- (8) For the purposes of this regulation, a person is an associate of another if—
- (a) they are partners; or
  - (b) one is a spouse, parent or child of another; or
  - (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
  - (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
  - (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5 per cent or more of the share capital of the body corporate or other entity; or
  - (f) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (g) a chain of relationships can be traced between them under any one or more of the above paragraphs.

### **15—Annual report (section 15G)**

For the purposes of section 15G of the Act, the annual report of the Board must include the following:

- (a) information relating to traditional hunting activities in the Park carried out in accordance with section 68D of the *National Parks and Wildlife Act 1972*;
- (b) information relating to the effect of traditional hunting activities in the Park carried out in accordance with section 68D of the *National Parks and Wildlife Act 1972* on native plants and protected animals, or the eggs of protected animals (and in particular those species that are scheduled as rare, endangered or vulnerable under the *National Parks and Wildlife Act 1972*);
- (c) information relating to the operations and work programs undertaken by or on behalf of the Board;
- (d) information relating to public access to the Park (including details of any applications by members of the public that were refused by Board);
- (e) information relating to Park infrastructure;
- (f) any other information required by the Minister.

### **16—Immunity from liability**

- (1) Subject to subregulation (3), no civil liability attaches to a member of the Board, or an employee of the Board, for an act or omission in the exercise or purported exercise of official powers or functions.
- (2) An action that would, but for subregulation (1), lie against a person lies instead against the Board.
- (3) This regulation does not prejudice rights of action of the Board itself in respect of an act or omission not in good faith.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

### Principal regulations

Year	No	Reference	Commencement
2004	159	<i>Gazette 29.7.2004 p2686</i>	24.8.2004: r 2