

South Australia

Maralinga Tjarutja Land Rights (Mamungari Conservation Park Co-management Board) Regulations 2019

under the *Maralinga Tjarutja Land Rights Act 1984*

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Schedule 1—Revocation of *Maralinga Tjarutja Land Rights (Establishment of Co-management Board) Regulations 2004*

1—Short title

These regulations may be cited as the *Maralinga Tjarutja Land Rights (Mamungari Conservation Park Co-management Board) Regulations 2019*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

In these regulations—

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

Board means the *Mamungari Conservation Park Co-management Board* continued under regulation 4;

co-management agreement means the co-management agreement for the Mamungari Conservation Park;

Department means the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *National Parks and Wildlife Act 1972*;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

Minister means the Minister responsible for the administration of the *National Parks and Wildlife Act 1972*;

Park means the Mamungari Conservation Park;

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 Pila Nguru (Aboriginal Corporation) RNTBC incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth;

spouse—a person is the spouse of another if they are legally married.

4—Continuation of co-management Board

The *Maralinga Lands Unnamed Conservation Park Board* continues in existence as the *Mamungari Conservation Park Co-management Board*.

Note—

The *Maralinga Lands Unnamed Conservation Park Board* was established under regulation 4 of the *Maralinga Tjarutja Land Rights (Establishment of Co-management Board) Regulations 2004* (*Gazette 29.7.2004 p2686*).

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) —
 - (A) 3 of whom are appointed on the nomination of the Council; and
 - (B) 2 of whom are Pila Nguru appointed on the nomination of the Pila Nguru (Aboriginal Corporation); or
 - (ii) if the Pila Nguru (Aboriginal Corporation) fails to nominate members under subparagraph (B)—5 of whom are appointed on the nomination of the Council; and
 - (b) 3 must be officers of the Department.
- (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)(i)(B) 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 their 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.
- (3) Nominations and appointments to the Board should be made, as far as reasonably practicable, in order to achieve a gender balance on the Board.
- (4) 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.
- (5) The qualification requirements 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, any deputy of that member may hold office for the balance of the term of their predecessor.

Note—

This subregulation does not, however, prevent the Minister from instead appointing a new member to the Board under regulation 5.

7—Presiding member and deputy presiding member

The Minister must appoint 1 of the members appointed under regulation 5(1)(a)(i)(A), (1)(a)(ii) or (2)(c)(i) (as the case requires) and nominated by the Council to be the presiding member of the Board, and another such member to be the deputy 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 subregulation (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 under the Act or the *National Parks and Wildlife Act 1972* (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 by instrument in writing; and
 - (b) may be made subject to conditions and limitations specified in the instrument of delegation; and
 - (c) may be further delegated; and
 - (d) is revocable at will by the delegator; and
 - (e) does not derogate from the power of the delegator 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) A meeting of the Board will be chaired by the presiding member or, in the absence of the presiding member, 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 1 of their number to preside at the meeting.
- (3) A decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.
- (4) Each member present at a meeting of the Board has 1 vote on any question arising for decision and the member presiding at the meeting may exercise a casting vote if the votes are equal.
- (5) 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 purposes of this regulation; and
 - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) 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 email, letter or other written communication setting out the terms of the resolution.
- (7) The Board must have accurate minutes kept of its meetings.
- (8) Subject to this regulation, the Board may determine its own procedures.

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 the member has an interest in the matter (but in any proceedings against the member the burden will lie on the member to prove that the member was not, at the material time, aware of the interest).
- (4) The Minister may, by notice in the Gazette, exempt a member (conditionally or unconditionally) from the application of a provision of this regulation, and may, by further notice 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) 1 is the spouse, domestic partner, parent or child of the other; or
 - (c) they are both trustees or beneficiaries of the same trust, or 1 is a trustee and the other is a beneficiary of the same trust; or
 - (d) 1 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) 1 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% 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 1 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 the 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.

Schedule 1—Revocation of *Maralinga Tjarutja Land Rights (Establishment of Co-management Board) Regulations 2004*

The *Maralinga Tjarutja Land Rights (Establishment of Co-management Board) Regulations 2004* are revoked.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 18 July 2019

No 191 of 2019

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