

South Australia

National Parks and Wildlife (Flinders Ranges National Park) Regulations 2011

under the *National Parks and Wildlife Act 1972*

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- 1 Transitional provision

Legislative history

Preamble

- 1 Flinders Ranges National Park was constituted as a national park by statute on 3 July 1972.

Note—

see Gazette 29.06.1972 p2689.

- 2 The Adnyamathanha people have a traditional association with the land constituting the national park.
- 3 It is now intended that the national park be co-managed pursuant to a co-management agreement under the *National Parks and Wildlife Act 1972* between the Minister and the Adnyamathanha Traditional Lands Association (Aboriginal Corporation) representing the Adnyamathanha people.
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Part 1—Preliminary

1—Short title

These regulations may be cited as the *National Parks and Wildlife (Flinders Ranges National Park) Regulations 2011*.

2—Commencement

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

3—Interpretation

In these regulations—

Act means the *National Parks and Wildlife Act 1972*;

Adnyamathanha people means the Native Title Holders as defined in the determination of native title made by the Federal Court of Australia in the Adnyamathanha No. 2 Native Title Claim SAD 6002/98 on 30 March 2009 (and *Adnyamathanha person* has a corresponding meaning);

ATLA means the Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth;

Board means the Flinders Ranges National Park Co-management Board established by regulation 4;

co-management agreement means the co-management agreement for the Flinders Ranges National Park, as in force from time to time;

Department means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of the Act;

Minister means the Minister responsible for the administration of the Act;

Park means the Flinders Ranges National Park.

Part 2—Flinders Ranges National Park Co-management Board

4—Establishment of co-management board

The *Flinders Ranges National Park Co-management Board* is established as the co-management board for the Park.

5—Composition of Board

- (1) Subject to subregulation (2), the Board consists of 8 members appointed by the Minister of whom—
 - (a) 4 must be Adnyamathanha people appointed on the nomination of ATLA; and
 - (b) 3 must be officers of the Department, of whom 1 must be either the Director or the person for the time being holding the office of Regional Manager (however described) for the region in which the Park is located (or the person for the time being performing the functions of that office); and
 - (c) 1 must be a person nominated by the Minister.
- (2) If ATLA refuses or fails to nominate an Adnyamathanha person in relation to a particular office under subregulation (1)(a), the Minister may appoint a suitable Adnyamathanha person to fill the office.
- (3) At least 1 member of the Board must be a woman and 1 a man.
- (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 requirements of qualification made by this regulation in relation to an appointment of a member (other than in relation to the member who is the Director or the relevant Regional Manager) 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 an Adnyamathanha person after consultation with ATLA.
- (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—Chairperson and Deputy Chairperson

The Minister must appoint 2 of the members of the Board as Chairperson and Deputy Chairperson of the Board respectively.

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 (other than a member appointed under regulation 5(1)(b) or a member appointed under regulation 5(1)(c) who is a member of the Public Service) 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 Act; 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 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.

11—Delegations

- (1) The Board must, as soon as is reasonably practicable after the commencement of this regulation and in accordance with the co-management agreement—
 - (a) delegate to the Minister, or a person or body nominated by the Minister, the powers specified in clause 5 of the co-management agreement; and
 - (b) delegate the powers specified in Schedule 4 of the co-management agreement (if any).
- (2) Without limiting subregulation (1), the Board may delegate any other of its powers (other than this power of delegation)—
 - (a) to a member of the Board; or
 - (b) to an officer of the Department.
- (3) A delegation under subregulation (1)(a)—
 - (a) must be in writing; and
 - (b) is subject to the conditions or limitations specified in clause 5 of the co-management agreement (if any) but must not be made subject to any other conditions or limitations; and

- (c) subject to paragraph (d), is not revocable; and
- (d) will by force of this regulation be revoked—
 - (i) on the Lease or the Contract for Services Agreement ceasing to be in force for any reason; or
 - (ii) on the expiry of the Resort Term.
- (4) While a delegation under subregulation (1)(a) is in force, the Board must not exercise or purport to exercise a power the subject of the delegation.
- (5) A delegation under subregulation (1)(b)—
 - (a) must be in writing; and
 - (b) is subject to the conditions or limitations specified in the co-management agreement (if any) relating to such a delegation; and
 - (c) may be made subject to any other conditions and limitations specified in the instrument of delegation; and
 - (d) does not derogate from the power of the Board to act in a matter; and
 - (e) is not revocable.
- (6) A delegation under subregulation (2)—
 - (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.
- (7) In this regulation—

Contract for Services Agreement, *Lease* and *Resort Term* have the same meaning as in the co-management agreement.

12—Board's procedures

- (1) Subject to these regulations, 6 members (of whom at least 3 must be Adnyamathanha people and at least 3 must be members appointed under regulation 5(1)(b) or (c)) constitute a quorum of the Board.
- (2) The Board must meet at least 4 times in each financial year.
- (3) A meeting of the Board will be chaired by the Chairperson or, in the absence of the Chairperson, by the Deputy Chairperson or, in the absence of both, the members present at a meeting of the Board must choose 1 of their number to preside at the meeting.
- (4) Subject to this regulation, 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 1 vote on any question arising for decision.
- (6) If the Board is unable to decide a question arising for decision, the question must be referred to the Minister for decision (and the decision of the Minister will be taken to be a decision of the Board).

- (7) In making a decision under subregulation (6), the Minister—
 - (a) must have regard to any written submission made by ATLA that is received by the Minister not more than 30 days after the date of the meeting at which the Board was unable to decide the question; and
 - (b) may have regard to any other matter the Minister thinks fit.
- (8) The Minister may direct the Board to implement, or cause to be implemented, a decision of the Minister under subregulation (6).
- (9) 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.
- (10) 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 comprised of not less than 6 members (of whom at least 3 must be Adnyamathanha people and at least 3 must be members appointed under regulation 5(1)(b) or (c)) 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.
- (11) The Board must have accurate minutes kept of its meetings.
- (12) Subject to these regulations, the Board may determine its own procedures.

13—Minister may call meetings

- (1) If—
 - (a) the Chairperson refuses or fails to call a meeting of the Board within 4 months after the previous meeting; or
 - (b) 2 or more successive meetings are inquorate,then the Minister may call a meeting of the Board.
- (2) The Minister may direct the members of the Board to attend a meeting called under subregulation (1).

14—Suspension of Board (section 43I of the Act)

- (1) Subject to this regulation, during the period of any suspension of the Board under section 43I, the Park—
 - (a) is under the control of the Minister; and
 - (b) is under the management of the Director.

- (2) The Minister and the Director must, during any period of suspension of the Board, endeavour, where appropriate, to give effect to the objects set out in section 43E of the Act.

15—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) This regulation does not apply to a member of the Board—
- (a) in respect of an interest that is shared in common with Adnyamathanha people generally, or a substantial section of Adnyamathanha people; 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).
- (3) 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.
- (4) Non-compliance by a member with a duty imposed by this regulation constitutes a ground for removal of the member from office.
- (5) 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.
- (6) 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.

16—Annual report (section 43L of the Act)

For the purposes of section 43L 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 Park infrastructure;
- (e) any other information required by the Minister.

Schedule 1—Transitional provision

1—Transitional provision

A licence, permit or written permission issued under the Act or the *National Parks and Wildlife (National Parks) Regulations 2001* in relation to the Park, or any other licence, permit, written permission or agreement issued or entered by the Minister in relation to the land constituting the Park, in force immediately before the commencement of these regulations continues in force in accordance with its terms.

Legislative history

Notes

- 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 regulations

Year	No	Reference	Commencement
2011	232	<i>Gazette 3.11.2011 p4414</i>	3.11.2011: r 2