

# Regulatory Impact Statement

## Proposed National Parks and Wildlife Regulation 2009

Department of **Environment & Climate Change** NSW





# **Regulatory Impact Statement**

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## Submissions

We welcome written comments on the draft Regulation and Regulatory Impact Statement. The closing date for submissions is 27 March 2009. Send your submission to:

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This Regulatory Impact Statement is available on DECC's website at [www.environment.nsw.gov.au/consult/DecPublicConsultation.htm](http://www.environment.nsw.gov.au/consult/DecPublicConsultation.htm) or from Environment Line, telephone 131 555.

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## Summary

The Regulatory Impact Statement for the proposed National Parks and Wildlife Regulation 2009 discusses alternative approaches to achieving the objectives of the National Parks and Wildlife Regulation 2002, including consideration of allowing this Regulation to lapse without being remade (the 'base case' scenario), remaking the Regulation as it currently is, or amending the Regulation as proposed. The costs and benefits as well as alternatives to regulation are also discussed.

The repeal of the Regulation could result in a diverse range of negative impacts, including:

- limiting the powers of the Department of Environment and Climate Change (DECC) to manage visitor use of parks in a safe and sustainable manner
- removing the power to charge fees for the use of parks and park facilities, which would lead to a significant loss in revenue which directly contributes to park management and the provision of visitor facilities
- removing the power to enforce the protection of specific park values, such as karst caves
- limiting DECC's powers to provide public health services and facilities in the resort areas of Kosciuszko National Park, including the preservation of healthy conditions through the use of entry and inspection powers
- reduction in the effective management, renewal and enforcement of licence conditions
- potential reduction in animal welfare standards currently prescribed for the keeping of and trade in protected fauna
- potential for illegal sourcing and trade of protected fauna
- limiting powers to enforce the protection of marine mammals in NSW waters in a manner consistent with other jurisdictions
- compromising the management of Aboriginal lands (parks that have been returned to Aboriginal ownership and leased back to the Minister for Climate Change and the Environment to be jointly managed by a Board of Management and DECC).

Generally, the Regulation is considered to be the most cost effective means of achieving the objectives of the *National Parks and Wildlife Act 1974* compared to having no Regulation or to using non-regulatory alternative means where available.

The proposed Regulation, however, will further refine and improve the operation of the existing Regulation and hence achievement of its objectives through a series of mostly minor amendments. There is not likely to be any significant difference in the costs between administering the current or proposed Regulation, particularly with regards to Parts 2 and 5.

# Contents

## Summary

1	Introduction .....	1
1.1	The Regulatory Impact Statement.....	1
1.2	Consistency with the Better Regulation Principles – summary statement ...	1
1.3	Consultation .....	3
2	Background .....	4
2.1	The National Parks and Wildlife Act 1974 .....	4
2.2	The National Parks and Wildlife Regulation 2002 .....	5
2.3	Objectives of the proposed Regulation .....	5
2.4	Park management .....	6
2.4.1	What is a park?.....	6
2.4.2	Pressures on park values .....	8
2.5	Fauna protection .....	10
3	National Parks and Wildlife Regulation .....	11
3.1	Part 1: Preliminary.....	11
3.1.1	Option 1 – existing Regulation.....	11
3.1.2	Option 2 – proposed Regulation.....	11
3.2	Part 2: Regulation of the use of parks .....	12
3.2.1	Base case – no Regulation.....	12
3.2.2	Option 1 – existing Regulation.....	14
3.2.3	Option 2 – proposed amendments .....	17
3.2.4	Alternatives to the Regulation.....	24
3.2.5	Costs and benefits.....	26
3.3	Public health in Kosciuszko National Park .....	27
3.3.1	Base case – no Regulation.....	27
3.3.2	Option 1 – existing Regulation.....	28
3.3.3	Option 2 – proposed Regulation.....	28
3.3.4	Alternative to Regulation .....	28
3.3.5	Costs and benefits.....	29
3.4	Licences and certificates .....	29
3.4.1	Base case – no Regulation.....	29
3.4.2	Option 1 – existing Regulation.....	30
3.4.3	Option 2 – proposed Regulation.....	30
3.4.4	Alternative to the Regulation .....	30
3.4.5	Costs and benefits.....	30
3.5	Fauna protection .....	30
3.5.1	Base case – no Regulation.....	31
3.5.2	Option 1 – existing Regulation.....	31

3.5.3	Option 2 – proposed Regulation.....	32
3.5.4	Alternative to Regulation .....	33
3.5.5	Costs and benefits.....	33
3.6	Marine mammals.....	33
3.6.1	Base case – no Regulation.....	34
3.6.2	Option 1 – existing Regulation.....	34
3.6.3	Option 2 – proposed Regulation.....	35
3.6.4	Alternative to Regulation .....	35
3.6.5	Costs and benefits.....	35
3.7	Exemptions in favour of Aboriginal people .....	35
3.7.1	Base case – no Regulation.....	36
3.7.2	Option 1 – existing Regulation.....	36
3.7.3	Option 2 – proposed Regulation.....	36
3.7.4	Alternative to Regulation .....	36
3.7.5	Costs and benefits.....	36
3.8	Aboriginal land.....	36
3.8.1	Base case – no Regulation.....	37
3.8.2	Option 1 – existing Regulation.....	37
3.8.3	Option 2 – proposed Regulation.....	37
3.8.4	Alternative to Regulation .....	38
3.8.5	Costs and benefits.....	38
3.9	Advisory committees .....	39
3.9.1	Base case – no Regulation.....	39
3.9.2	Option 1 – existing Regulation.....	39
3.9.3	Option 2 – proposed Regulation.....	39
3.9.4	Alternative to Regulation .....	40
3.9.5	Costs and benefits.....	40
3.10	Penalty notices .....	40
3.10.1	Costs and benefits.....	41
3.11	Miscellaneous.....	41
4	Conclusion .....	42
Appendix 1:	Types of parks in the parks system.....	44
Appendix 2:	Summary of proposed amendments .....	46
Appendix 3:	Alternative legislation.....	66
Appendix 4:	Calculating costs .....	69
References.....		70





# 1 Introduction

The National Parks and Wildlife Regulation 2002 (the Regulation) is due to lapse on 1 September 2009. As required by the *Subordinate Legislation Act 1989*, the existing Regulation has been reviewed to ensure that the most appropriate legislative approach is applied to the management of parks reserved under the *National Parks and Wildlife Act 1974* (NPW Act), the protection of fauna in NSW, the management of public health in Kosciuszko National Park and the operation of committees constituted under the NPW Act. This report is a Regulatory Impact Statement (RIS) for the making of the proposed National Parks and Wildlife Regulation 2009.

## 1.1 The Regulatory Impact Statement

The *Subordinate Legislation Act 1989* provides for the staged repeal of statutory rules, including Regulations, every five years. The aim of the Act is to improve the quality of regulatory proposals and to assess the economic and social impacts of the Regulations and alternative options before they are introduced. This process helps to ensure that Regulations have continuing relevance and that they provide the best approach to meet the objectives proposed.

Before a new Regulation can be made, a RIS must be prepared and public consultation undertaken. The purpose of the RIS is to ensure that the new Regulation provides the best approach for achieving the desired objective. The RIS must provide justification for a proposed Regulation by showing that it provides the greatest net benefit or least cost to the community compared with its alternatives.

A RIS generally contains the following:

- a statement of the objectives of the Regulation and the reasons for them
- an identification of alternative regulatory options
- an assessment of the costs and benefits of the proposed Regulation and alternatives (including the option of doing nothing)
- an evaluation as to which option provides the most cost-effective outcome
- a statement of the public consultation process to be undertaken.

Where possible, quantification of costs and benefits should be attempted. Where quantification is not possible, the anticipated impacts of the proposed Regulation and the alternative options should be described to facilitate a clear comparison of costs and benefits.

## 1.2 Consistency with the Better Regulation Principles – summary statement

As noted above, the review of the Regulation is required under the five-year staged repeal program of the *Subordinate Legislation Act 1989*. However, in addition to assessment of the proposed Regulation through the process of developing a RIS, compliance is now also required with the Better Regulation Principles, as part of the implementation of the NSW Government's *Guide To Better Regulation* and its Better Regulation Principles (DPC 2008a, 2008b).

While some changes are proposed in the draft National Parks and Wildlife Regulation 2009, many of these are minor or machinery in nature and the proposed amendments do not represent a major new regulatory initiative. Given that the Regulation is subordinate legislation, a period of review is built into the legislative

process, being required every five years. Therefore the proposed National Parks and Wildlife Regulation 2009 will similarly be reviewed to ensure its continued efficiency and effectiveness five years from its commencement date.

Broadly, the objectives of the Regulation are to assist in achieving the objectives of the NPW Act. It contains detailed provisions to support the Act, specifically the protection of natural and cultural values in parks, marine mammals and fauna in NSW, and the provision of a safe environment in which all park visitors can undertake recreational, educational, scientific, commercial and cultural activities in a sustainable manner.

The proposed Regulation establishes a range of offences and associated penalties, to encourage compliance with the Regulation by providing a sufficient but not excessive deterrent against committing an offence. Combined with DECC policy and community education, this assists the protection of fauna, park values and visitor safety.

Alternative options to the proposed Regulation were considered as part of the review. These included the options of taking no action (repeal and no Regulation), retaining the existing Regulation, adopting the proposed Regulation, or an alternative means to the Regulation (for example other existing legislation, plans of management, public education) to achieve the objectives. These options are discussed in detail in section 3.

Costs and benefits of each proposed option were examined, and the proposed Regulation is considered to be the most cost effective and efficient means of achieving the objectives without imposing unnecessary costs. Hence it is considered that the Regulation is both effective and proportional to its importance and its impact.

The proposed Regulation should have minimal impact on individuals and the community. Any such impacts are proportional to achieving the necessary objectives of the Regulation. In addition, the proposed Regulation will impose little impact upon businesses, the marketplace or the economy.

As part of the review, the Regulation was also examined for clarity, effectiveness and consistency with other legislation, where relevant, to ensure that the Regulation is achieving its objectives and is not complicated to implement. The review examined consistency with related regulatory requirements and where certain matters might be dealt with by other regulation where similar powers exist. These matters are also discussed in more detail in section 3.

The review of the Regulation as a part of the staged repeal program, in conjunction with the application of the Better Regulation Principles, demonstrates the New South Wales Government's commitment to simplify, reform or consolidate existing regulation. The proposed Regulation remains the most effective means for achieving its objectives rather than relying on similar powers that may exist in other regulation as an alternative. In particular, given that the conservation of natural and cultural heritage are objectives of the NPW Act, more specific provisions or higher penalties than those provided by similar regulation may be required in some cases to ensure the objectives are achieved.

There is a broad range of stakeholders who could potentially consider themselves affected by the proposed Regulation, including many recreational user groups, conservation groups and businesses, including leaseholders in parks. The most appropriate means of consultation with such a wide range of stakeholders is through

the required public exhibition process for the draft Regulation and RIS, which must be for a minimum period of 28 days. The other means of consultation employed is through the National Parks and Wildlife Advisory Council, which is an advisory body constituted under the NPW Act to represent a wide range of stakeholder groups. Targeted meetings will also be held with major stakeholder groups during the public exhibition phase.

### **1.3 Consultation**

The proposed Regulation and RIS are available for public comment. Copies will be provided to key stakeholders, including (but not limited to) the National Parks and Wildlife Advisory Council, environment groups, recreational user groups, Part 4A Boards of Management and park leaseholders.

DECC welcomes submissions from all interested parties and will consider carefully all matters raised and make any necessary amendments to the proposed Regulation before the new provisions commence on or before 1 September 2009. A notice calling for submissions from the public will be published in the *NSW Government Gazette*, the *Sydney Morning Herald* and major regional newspapers in NSW.

## **2 Background**

DECC is the government body responsible for developing and maintaining the parks system, protecting fauna and flora, and conserving natural and cultural heritage in NSW.

The National Parks and Wildlife Service (NPWS) was established in 1967 to administer a fledgling system of national parks. Since then, its responsibilities have been greatly expanded and there are now over six and a half million hectares of land protected in parks and reserves, equal to about eight per cent of all land in NSW.

In 2003, NPWS was subsumed into the Department of Environment and Conservation, which became responsible for national parks. That Department has since been replaced by DECC, which is responsible to the NSW Minister for Climate Change and the Environment.

DECC manages a variety of parks, including national parks, nature reserves, Aboriginal areas, historic sites, state conservation areas, regional parks and karst conservation reserves.

The functions of DECC in relation to conservation and park management are to:

- conserve and protect wildlife (including threatened species, populations and ecological communities and their habitats)
- conserve and protect wilderness and wild rivers throughout NSW
- identify, conserve and protect, and prevent damage to Aboriginal objects and Aboriginal places
- promote community awareness, understanding and appreciation of the conservation of nature and our cultural heritage (public education)
- investigate and acquire land for the state's network of parks so that it conserves a complete range of the natural environments of NSW
- identify and protect buildings, places and objects of non-Aboriginal cultural values within parks
- provide facilities and opportunities for sustainable visitor use and enjoyment in parks.

### **2.1 The National Parks and Wildlife Act 1974**

Under the NPW Act, the Director General of DECC is responsible for the care, control and management of NSW parks.

The Director General is also responsible under the NPW Act for the conservation and protection of wildlife and flora, and of Aboriginal places and objects throughout NSW.

The objectives of the NPW Act are:

- the conservation of nature including, but not limited to, the conservation of:
  - habitat, ecosystems and ecosystem processes
  - biological diversity at the ecological community, species and genetic levels
  - landforms of significance, including geological features and processes
  - landscapes and natural features of significance including wilderness and wild rivers.
- the conservation of objects, places or features (including biological diversity) of cultural value within the landscape including, but not limited to:
  - places, objects and features of significance to Aboriginal people

- places of social value to the people of NSW
- places of historic, architectural or scientific significance.
- fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation
- providing for the management of land reserved under the NPW Act in accordance with the management principles applicable for each type of reservation.

## **2.2 The National Parks and Wildlife Regulation 2002**

The Regulation was gazetted in 2002 and repealed the National Parks and Wildlife (Land Management) Regulation 1995, the National Parks and Wildlife (Administration) Regulation 1995 and the National Parks and Wildlife (Fauna Protection) Regulation 2001.

Broadly, the Regulation deals with the following matters:

- the regulation of the use of parks (Part 2)
- the preservation of public health in Kosciuszko National Park (Part 3) and the obligations of the Snowy Hydro Company (Part 3A)
- licences and certificates (Part 4)
- the protection of fauna (Part 5)
- the exemption of Aboriginal people from the restrictions imposed by various sections of the NPW Act on the hunting of certain animals and the gathering of certain plants (Part 6)
- boards of management and plans of management in relation to Aboriginal land (Part 7)
- advisory committees constituted under section 24 of the NPW Act (Part 8)
- trustees appointed to trust boards for state conservation areas and regional parks under the NPW Act (Part 9)
- penalty notices (Part 10)
- various miscellaneous matters (Part 11).

## **2.3 Objectives of the proposed Regulation**

Broadly, the objectives of the existing and proposed Regulations are to assist DECC achieve the objectives of the NPW Act which enables the protection of natural and cultural values in parks, marine mammals and fauna, and the provision of a safe environment in which all park users can undertake recreational, educational, scientific, commercial and cultural activities without being in conflict with other people or the natural and cultural values of parks.

This review of the Regulation has been undertaken to ensure that it remains the best approach to meeting these objectives. A number of factors have been considered in the review, including how the Regulation assists in achieving the objectives of the NSW Government's State Plan, in particular the commitments to better Regulation and the reduction of Government red tape (the Better Regulation Principles), improvement in efficiency in administration and implementation of the Regulation, addressing key stakeholder concerns and ensuring that issues are adequately covered where DECC has recently increased its management responsibility, such as karst management.

## 2.4 Park management

### 2.4.1 What is a park?

'Park' is the general term used in the Regulation to refer to all land which has been acquired under the NPW Act. This term includes all park categories and also unreserved land held under Part 11 of the NPW Act.

Parks are an important part of achieving natural and cultural conservation objectives, and through their legal designation they bring a range of benefits. At the most fundamental level, the legal designation of parks ensures protection in perpetuity.

Our parks are the cornerstone of biological diversity, cultural heritage and natural environment conservation. They perform an essential role in the provision of ecosystem services, the benefits of which extend beyond biodiversity conservation. NSW's parks provide a range of social values, including opportunities for recreation, tourism, education, research and social interaction between groups, families and others. People using our parks contribute to regional economies, helping to create jobs in local communities. For details on the types of parks DECC manages, see Appendix 1.

### 2.4.2 Park values

Values play an important role in determining how a park is used and how it should be managed. A park will typically have a wide range of diverse and complex values, some of which are objective and widely agreed upon, while others may be more subjective.

The starting point in determining a park's values is the consideration of the purpose and values for which the park was reserved. These values are represented in the objectives of the NPW Act: nature, culture, and public appreciation.

#### Natural values

The objectives of the NPW Act (section 2A(1)(a)) include the conservation of nature including, but not limited to, the conservation of:

- (i) habitat, ecosystems and ecosystem processes
- (ii) biological diversity at the community, species and genetic levels
- (iii) landforms of significance, including geological features and processes
- (iv) landscapes and natural features of significance including wilderness and wild rivers.

Parks play an important role in conserving habitats and ecosystems. Thus they also play an important role in providing ecosystem services such as:

- maintaining water quality through providing suitable environments for water filtration and protection
- contributing to air quality
- providing carbon sequestration and climate regulation
- crop pollination and seed dispersal
- preserving genetic and species diversity for future use.

Biological diversity (biodiversity) is the variety of life forms, the different plants, animals and microorganisms. It is usually considered at three levels of diversity: genetic, species and ecosystem.

Biodiversity has many values and is more than just the presence or absence of species. Biodiversity contributes to healthy, functioning ecosystems that are necessary to maintain a range of ecosystem services. Biodiversity also provides opportunities for recreation, tourism and education, and is the source of cultural identity for many Australians. Scientific research provides knowledge about biodiversity and benefits its conservation as well as education and tourism based on that knowledge. We all benefit from the conservation of biodiversity in parks and the products and services that biodiversity provides.

The parks system also protects natural landscapes and features of natural significance such as wilderness and wild rivers.

Significant geological features protected in parks include karst environments and caves. Karst environments form over millions of years in areas where limestone or dolomite rock is dissolved by acidic water to create landscapes of strangely sculptured stone outcrops, arches, gorges and sinkholes. What makes them truly special, however, is the immense labyrinth of caves, cavities and water filled passages, which remain hidden below the surface. The resultant landscape is both chemically and physically fragile and contains significant large and small scale features often of great rarity and value. In addition, the karst environment's unique development has created habitat for numerous specialised and endemic species, many of which survive only in caves.

Karst caves have trapped and conserved significant archaeological material over thousands of years and are often places of significance to Aboriginal people. After European settlement, karst caves also became the focus of an early tourism industry with many sites still containing nineteenth century guesthouses, tourism infrastructure and technological innovation.

### **Cultural values**

The objectives of the NPW Act (section 2A(1)(b)) include the conservation of objects, places or features (including biological diversity) of cultural value within the landscape including, but not limited to:

- (i) places, objects and features of significance to Aboriginal people
- (ii) places of social value to the people of NSW
- (iii) places of historic, architectural or scientific significance.

Cultural heritage includes the landscapes, places, objects, customs and traditions (and their contexts) that communities have inherited from the past and wish to conserve for current and future generations. Cultural heritage therefore comprises physical or 'tangible' sites, places and objects, as well as 'intangible' values and cultural practices associated with those landscapes, sites, places and objects. Cultural heritage includes traditional, historical and contemporary associations of people with heritage places. Natural elements of the environment may also have cultural meanings and values.

The NSW parks system contains a wide range of cultural heritage values, and these parks play an important role in the conservation and presentation of these values.

The NPW Act is the primary legislation protecting Aboriginal objects and Aboriginal places in NSW. The Regulation also gives effect to some of these provisions contained within the NPW Act.

## **Public appreciation, understanding and enjoyment**

The objectives of the NPW Act (section 2A(1)(c)) include fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation.

Parks bring vital benefits to communities living within and around them as well as to society at large. While parks are established primarily for conservation, they are also established for social, scientific and economic reasons and are managed for these values in addition to conservation objectives. Parks are valuable resources for public education about the conservation and protection of parks, wilderness, wildlife, Aboriginal objects and Aboriginal places as well as non-Aboriginal culture.

People value parks as sanctuaries, as places of solitude and tranquillity, as settings of natural beauty, as places to discover and learn, and as destinations for tourism and recreation. It is estimated that there are over 22 million visits to parks in NSW annually. Many visitors undertake recreational activities, such as camping, hiking and cycling.

### **2.4.2 Pressures on park values**

DECC has a statutory responsibility to manage parks to conserve nature and cultural heritage. This requires management programs to protect park values against pressures that might contribute to a decline in the condition of those values. The inclusion of land in parks enables a greater focus on managing these pressures and minimises the overall impacts that may occur.

Managing pressures is difficult because people have different expectations and values associated with parks, and therefore they have different views about inappropriate uses and unacceptable pressures. The NPW Act also imposes constraints on the management practices that can be employed.

Key threatening processes are specific types of pressures that have been identified through the *Threatened Species Conservation Act 1995* (TSC Act). These are defined as processes that threaten, or could threaten, the survival or evolutionary development of species, populations or ecological communities.

The most commonly reported pressures on NSW parks are weeds, pest animals and fire.

Pest animals and weeds are among the greatest threats to biodiversity in Australia. DECC spends approximately \$26 million per year on pest animal and weed control. As many pests are widely established across Australia, eradication is not always possible in parks. DECC therefore focuses on areas where impacts on biodiversity, neighbours and cultural heritage are greatest. Some pest animals and weed species are listed as key threatening processes under the TSC Act (for example invasion of native plant communities by bitou bush and boneseed, and predation by the European red fox).

Sustained high fire frequency may lead to a loss of plant species, reduction in vegetation structure and a corresponding loss of animal species. Fires may also have an impact on the cultural heritage values of parks. Although fire is a natural process, it can have devastating effects on cultural heritage, such as scarred trees and historic huts. Unplanned fires also can have negative impacts on regional economies, which include impacts on neighbours as well as local tourism.



DECC manages some of the most rugged and remote bushfire-prone country in the world, hence managing the impacts of unplanned fires is an important part of park management. DECC manages fire to minimise impacts on life and property as a priority, but also to protect the natural and cultural heritage values on the land that it manages.

### **Visitor related impacts**

NSW's parks are among the state's most significant visitor destinations for both local and overseas visitors. DECC is faced with the challenge of balancing the need to conserve the natural and cultural values of parks while also facilitating opportunities for sustainable visitor use and enjoyment. There is a variety of possible impacts from high visitation pressure, such as vegetation trampling, littering, soil compaction and erosion. High visitation or competing use can also affect cultural heritage values which are often fragile.

The potential for future growth in visitation is substantial and is important for expanding the public's awareness, appreciation and stewardship of the values that parks protect. Hence the management of sustainable visitation to parks is essential to minimise impacts. It is therefore important for park managers to have an understanding of the range of appropriate and sustainable opportunities available in parks to accommodate visitor use. This is critical for the adaptive management of parks and for building the capacity to manage changes and shifts in visitation patterns and park usage.

### **Vandalism and environmental damage**

Vandalism can involve the damage, defacement or destruction of park infrastructure, disturbance or damage of cultural heritage sites, damage to or removal of bushrock, trees or other natural assets, or activities that result in pollution or alteration of the environment, such as rubbish dumping.

Vandalism places a financial pressure on park management by requiring funds to be diverted from other conservation activities to replacing damaged assets or undertaking restoration and rehabilitation works. Vandalism may also require an area to be closed until it can be made safe for visitors, and this reduces the recreational opportunities available for park visitors.

Vandalism is covered by various offence provisions under the NPW Act and Regulation and also the *Protection of the Environment Operations Act 1997* (POEO Act).

## 2.5 Fauna protection

The Director General of DECC is responsible for caring for and protecting wildlife in NSW. All native birds, reptiles, amphibians and mammals, except the dingo, are protected in NSW by the NPW Act. Hundreds of these species are listed as threatened, giving them additional protection under the TSC Act. DECC is responsible for administering that Act and plays an active role in managing human–wildlife interactions and undertakes wildlife licensing to protect native wildlife.

Part 5 of the existing Regulation provides a range of tools to achieve the objective of protecting native fauna species across NSW. In accordance with the NPW Act, a licence is required to:

- keep native animals as pets
- carry out research into protected fauna and flora
- move native animals across state and territory borders.

In 2006–07, 23,213 licences were issued across a range of categories (for example interstate import–export, scientific research, reptile, amphibian, bird, mammal keepers). The Regulation supports the issue of these licences, including support for record keeping and tagging systems relating to licences to trade in protected fauna, and provides for the care and protection of protected fauna held for commercial sale.

The Regulation also contains specific provisions concerning the protection of marine mammals, including minimum approach distances to certain species of marine mammals.

## **3 National Parks and Wildlife Regulation**

The following section discusses each Part of the Regulation. The discussion outlines the implications of either allowing this Regulation to lapse without being remade (the 'base case' scenario), remaking the Regulation as it currently is, or amending the Regulation as proposed. The costs and benefits as well as alternatives to regulation are also discussed.

A detailed summary of all the proposed amendments to the Regulation is contained in Appendix 2.

### **3.1 Part 1: Preliminary**

#### **3.1.1 Option 1 – existing Regulation**

Part 1 (clause 3) of the Regulation provides a number of definitions of terms used in the Regulation, the objective of which is to provide clarity and greater certainty in the application of certain provisions of the Regulation.

The term 'park authority' is used throughout the Regulation to describe who has the authority to provide consent for certain activities or matters that are prohibited by the Regulation. The Director General of DECC is the park authority for national parks, historic sites, nature reserves, karst conservation reserves, Aboriginal areas and any land acquired by the Minister under Part 11 of the NPW Act. This gives the Director General, amongst other things, the authority for imposition or waiver of fees in relation to these lands. For state conservation areas and regional parks, however, the park authority may be a Trust, local council or the Director General of DECC, except in relation to the imposition or waiver of fees, in which case the Minister is the park authority.

#### **3.1.2 Option 2 – proposed Regulation**

An amendment is proposed to the definition of park authority in relation to a state conservation area and a regional park. Where the park authority for a state conservation area or regional park is the Director General of DECC (which is generally the case), authority does not extend to the Director General for the imposition and waiver of fees. This authority is currently given to the Minister for Climate Change and the Environment, and is at odds with the authority given to the Director General for other parks (as described in 3.2.1 above). The proposed Regulation will therefore provide that where there is no trust or local council having the care, control and management of the land, the Director General's power as the park authority for state conservation areas and regional parks extends to the ability to impose or waive fees and charges.

A further amendment is proposed which clarifies that for the purposes of this Regulation, a lease or licence issued under sections 47GC or 47U or Part 11 or 12 of the NPW Act that authorises a person to carry out an activity in a park, is taken to also constitute consent to the carrying out of that activity in a park where such consent would generally be required by the Regulation.

Although relatively minor in nature, these amendments are expected to reduce the administration costs to DECC and reduce red tape for park users.

## **3.2 Part 2: Regulation of the use of parks**

Part 2 is a major component of the Regulation which governs the regulation of the use of parks. This achieves a number of objectives, primarily the protection of the natural and cultural values of parks while providing a safe environment in which park users can undertake recreational, educational, scientific, commercial and cultural activities where appropriate.

To achieve these objectives, this part of the Regulation encompasses a broad range of matters, including traffic management, regulating conduct, taking or keeping animals in parks, camping, littering and damage, protection of animals, cultural heritage, protection of vegetation, regulating possession or use of weapons, commercial activities, managing sporting and recreational activities, research activities, protection and use of caves and the mooring of vessels, particularly in relation to Cowan Water in Ku-ring-gai Chase National Park. It also sets the method by which the consent of a park authority may be given in relation to these matters.

### **3.2.1 Base case – no Regulation**

#### **Regulation by notice**

Repealing the Regulation could result in undesirable situations where the park authority has no broad power to regulate various activities by notice, as described below.

No power to designate entry points to a park could result in damage to park values, complicate the management of traffic in parks, particularly heavily visited parks, pose risks to visitor safety, and may impede the ability to position entry stations for the collection of park use fees.

The current power to be able to close a park or part of a park is particularly important. The inability to enforce park closures, for example due to bushfire, hazard reduction burn activities, high fire danger, flood or to protect sensitive park values, could severely compromise the safety of visitors and staff as well as park management operations. Detrimental impacts upon the environment and park values could also result. For example, the park authority may wish to close a particular part of a park to a certain recreational activity where the activity has caused negative environmental impacts and rehabilitation of the area is required. The inability to enforce this could lead to a loss of social and recreational amenity as well as environmental damage and loss of park values.

Park entry fees could not be levied upon park visitors, nor could the park authority charge for the use of certain park facilities (such as the hire of a building for a function) or for activities such as camping, which would lead to a significant loss in revenue which directly contributes to park management activities and the provision of visitor facilities. In 2006–07, DECC collected approximately \$14 million in park entry and camping fees (DECC 2007).

The inability to grant consent for activities under the Regulation by use of a notice may result in more time spent administering consents. For example, where consent is required for an activity in a particular park, such as rock climbing, a notice can currently be erected which effectively grants consent for any person to undertake the activity in the approved location.

## **Regulation of traffic**

The consequences of repealing the Regulation could be severe in that the park authority would be unable to regulate vehicle, generator and machinery use in parks, nor would the park authority be able to enforce the requirement for vehicle entry fees. The lack of power to regulate vehicle use could pose a risk to natural and cultural heritage values as well as visitor safety. There could also be a high risk to the recreational and social amenity of parks arising from potential park user conflicts associated with inappropriate vehicle use. For example, unregistered trail bikes are not permitted in parks, however their illegal use poses a significant law enforcement problem for DECC. The repeal of the Regulation would make enforcement of offences for illegal trail bikes more difficult as the park authority would need to rely on the powers of other legislation and the police to enforce that legislation.

The Regulation prescribes that vehicles can only be driven on roads or trails set aside for that purpose. Without the Regulation, unrestricted access to parks could be the result, the consequences of which could be damaging to park values as well as risking the safety of visitors and staff.

Other risks to visitor and staff safety may also result, given Part 2 of the Regulation assists in the enforcement of offences relating to the operation of vehicles and vessels in a safe manner as well as ensuring vehicles are not parked in a way that obstructs the use of a road or trail or endangers the safety of other park users.

## **Regulation of conduct in parks**

### **Taking and keeping of animals in parks**

Parks are refuges for native animals. The Regulation restricts people from taking, keeping, possessing (other than trained assistance animals such as guide dogs) or releasing animals in a park.

The repeal of the Regulation would reduce the park authority's ability to enforce restrictions on taking animals into parks. Although it is an offence under the NPW Act to harm fauna, to liberate any animal in a park, or to be accompanied by a dog in a nature reserve or karst conservation area, this does not give the park authority the power to enforce a number of other offences, such as walking a dog or keeping an animal in other park categories such as a national park or state conservation area.

In relation to animals taken into parks, particularly domestic dogs, the absence of the Regulation could possibly lead to negative impacts, including:

- the lasting scent left by dogs which can scare small animals and birds away from their homes, often causing them to leave their young unprotected (native animals see dogs as predators)
- dog faeces which carry diseases which can be harmful to wildlife and people, and also add nutrients to the soil, increasing the spread of weeds
- loss of native animals from popular visitor areas, animals which have been frightened away by dogs and other domestic animals
- interference with the enjoyment of park visitors
- an increase in certain pest species in parks, such as cats, dogs, rabbits and pigs.

### **Sporting, recreational and other activities**

The repeal of the Regulation would reduce the park authority's ability to manage 'risky' and other recreational activities in parks or to enforce the restriction of these activities to certain locations. Such restrictions can be necessary to help protect

visitor safety (for example by not permitting access to dangerous or otherwise inappropriate areas) and also to protect sensitive natural and cultural park values. DECC has a number of policies that guide park management decision making on where recreational activities may be appropriate in parks, however the ability to exclude activities from parks, or parts of parks, or to regulate the manner in which they are conducted could not be enforced without the Regulation.

### **Caves**

The Regulation currently restricts public access to caves to enable the park authority to protect caves and their values from harm whilst offering appropriate opportunities for their appreciation and enjoyment.

Given the unique values and the extreme fragility of karst environments, every entry into, and activity in, a cave has the potential for negative impacts. Repealing the Regulation may lead to unrestricted and unconditional public access (including recreation) to caves, which in turn may result in the:

- destruction of fragile or irreplaceable geoheritage features
- degradation of rare or endemic ecosystems
- loss of cultural or historical values
- alteration of local hydrological systems
- loss of biodiversity
- loss of recreational opportunities
- compromised visitor safety due to crowding, inappropriate activities and unregulated environmental modification.

### **Mooring of vessels in Ku-ring-gai Chase National Park**

Repealing the Regulation would remove the power for the park authority to regulate the mooring of vessels in Cowan Water, which is surrounded by Ku-ring-gai Chase National Park. Uncontrolled placement of moorings can lead to navigation hazards and overcrowding of the waterway, detracting from the aesthetic value of the area. The inappropriate use of moorings, such as by multiple boats or oversized boats, can lead to the same problem. In addition, managing public and privately leased moorings involves costs to the park authority for maintenance, inspection and compliance. Without the ability to ensure compliance, some boat owners may behave in a manner that is at the expense of the public interest.

## **3.2.2 Option 1 – existing Regulation**

### **Regulation by notice**

Part 2 of the Regulation gives the park authority the power to regulate certain activities in parks by notice or by an oral direction. The powers given are broad and allow the park authority to:

- designate entry points to a park
- close a park or part of a park
- reserve a park or part of a park for a particular use or for the use of particular persons
- impose fees and charges
- regulate or prohibit the use of any facilities or the carrying out of activities in a park
- grant any consent required by the Regulation in relation to the use of a park
- impose conditions, such as those relating to the payment of fees to enter and use a park or facilities in a park
- prohibit the collection of deadfalls of timber in a park.

These powers have provided an effective contribution to achieving the objective of Part 2 of the Regulation. In particular, the ability to designate entry points to a park, close any park or part of a park and to prohibit the use of certain facilities or particular activities in parks are intended to protect both park values and the safety of visitors and staff.

As noted earlier, the power to impose fees and charges for entry into parks, use of facilities and certain activities in parks provides a significant revenue stream which directly contributes to the provision of visitor facilities and other park management activities. Parks that charge entry fees are generally only those which receive a high number of visitors because of the cost of providing and maintaining visitor facilities and other infrastructure in these parks.

Clause 4(2) of the existing Regulation establishes a number of offences in relation to the above which are intended to act as a deterrent against contravening the Regulation. Offences include, for example, entering a park closed to the public, using any park for a use other than that for which it is reserved, using any park or facilities to carry out an activity in contravention of the terms of a notice, or entering or using any park without paying the applicable fee. The fact that clause 4 is one of the most commonly utilised for the issue of penalty notices under the Regulation adds weight to the need for these factors to be dealt with by an instrument that is enforceable, rather than by some alternative means.

### **Regulation of traffic**

The Regulation prescribes that a person may not drive a vehicle into a park otherwise than on a road leading into a park or otherwise on a road or trail set aside for that purpose. The benefit of this power is that it enables the park authority to designate entry roads into parks, to maintain specific roads and trails for management access only and to enforce this restricted access. This helps protect park values by giving the park authority the power to enforce the designation of roads and trails for public use, and to ensure that unimpeded or inappropriate access is not available to any part of a park.

Part 2 also regulates the use of vehicles and vessels (which includes camels, horses and machines) in parks and limits the types of vehicles that can be used in parks, how they should be operated (for example, drive a vehicle that is registered, drive in a safe manner) and creates an offence should a vehicle be unregistered or parked in an area not set aside for parking. Some of these powers are similar to legislation that applies to public roads across the state whereas others are specifically intended to protect both park values and visitor safety.

Clause 7(1)(c) of the existing Regulation makes it an offence to drive or park a vehicle that does not clearly display a valid pass for entry into a park which charges entry fees. This is the most commonly committed offence against the Regulation; there are benefits from enforcing the payment of fees as this revenue, including that gained from the payment of fines, provides funds for a range of park management purposes, such as maintaining and improving visitor facilities and services, conserving threatened species and their habitats, protecting cultural and heritage sites, and carrying out pest and weed control programs.

### **Regulation of conduct**

It is estimated that parks in NSW receive more than 22 million visitors annually. DECC is faced with the challenge of balancing the need to conserve the natural and cultural values of parks while also facilitating opportunities for recreation and tourism.

Powers to regulate the conduct of visitors to parks include the restriction on taking animals into parks, camping, littering and damage, offensive conduct, lighting of fires, recreational activities, and the protection of animals, vegetation and cultural heritage. These are all aimed at providing a safe and enjoyable environment for park visitors and reducing conflicts between visitors while at the same time protecting park values.

The threats posed by taking animals into parks are noted in section 3.2.1. Taking an animal into a park, or having possession or control of an animal in a park, is a commonly committed offence against the Regulation, which usually involves a person walking their dog in a park. Given the potential threats to native animals and other park visitors, an enforceable deterrent is required such as that currently provided by the Regulation. Apart from the right of a disabled person to be accompanied by an assistance animal, the current exceptions to the prohibition of taking animals into parks are:

- dog walking in some regional parks, as these parks are generally large, open spaces in urban areas managed to give city residents recreational opportunities in natural surroundings
- the transit of animals in vehicles travelling on public or other roads that traverse a park.

DECC is one of the major providers of recreational opportunities in a natural setting across NSW. The Regulation requires that risky activities be managed differently from other recreational activities, because they involve risking the safety of the person involved in the activity or the safety of other persons. The Regulation contains this provision because DECC, as land owner and manager, has certain legal obligations relating to the management of risk on its land. To ensure risky activities are conducted in appropriate areas and in an appropriate manner, the Regulation provides an important deterrent factor, as it is an offence to conduct these activities without consent. This directly assists in the management of risky recreational activities to protect both visitor safety and park values, and to ensure that recreational activities are sustainable.

Risky recreational activities are those perceived to involve a medium to high degree of challenge or risk. The following are the risky activities that are currently listed in the Regulation which are only permitted in parks with the consent of the park authority: abseiling, base jumping, bungee jumping, rock climbing, caving, parachuting, white water boating, paragliding, parasailing and hang gliding. For practicality, consent for these activities may be provided through a plan of management (PoM) for a park as well as directly from a local park office. DECC policy is that base jumping will not be permitted in any park, due to the extreme safety concerns about this activity.

Consent is also required for a person to undertake any commercial operation in a park and to conduct an organised sporting activity, concert, function or gathering involving more than 40 people (or such other number as stated in a PoM for the park or on a notice erected in the park). These restrictions are necessary to ensure that appropriate large scale activities are managed adequately, that large group visitor numbers are sustainable and that such activities do not damage park values or compromise visitor safety.

Caves are very sensitive environments that are easily disturbed. For this reason the current Regulation restricts access to caves and prohibits activities which may harm caves, affect geodiversity values, and damage habitat and cave biodiversity. The Regulation strengthens the park authority's ability to protect the cultural, social and historic values of caves. The enforceability of this protection is particularly important



given the unique and sensitive nature of cave environments. In addition, in July 2006, management responsibility for Abercrombie, Borenore and Wombeyan Karst Conservation Reserves, and the conservation management zone of the Jenolan Karst Conservation Reserve, was transferred from the Jenolan Caves Trust to the Director General of DECC. Hence the Director General of DECC is now responsible for the management of many of the most significant karst environments in the state.

### **Mooring of vessels in Ku-ring-gai Chase National Park**

Cowan Water is a waterway with numerous inlets that is largely surrounded by Ku-ring-gai Chase National Park. It is popular because of its natural beauty and relatively pollution free waters and is used by a variety of boat users including fishers, water-skiers, canoeists, overnight tourers, houseboats, day cruisers and sightseers.

Where mooring is considered to be in the public interest, it is important to be able to manage it sustainably. Mooring has been permitted to cater for some historic use patterns within Cowan Water, such as at Apple Tree Bay, and at the current marinas. To ensure sustainability the Regulation gives the park authority the power to control the number and location of permanent moorings as well as day use moorings. Controlled moorings protect the environment from impacts of rope ties on vegetation adjacent to the waterway as well as from anchors dragging across sea grass beds.

### **3.2.3 Option 2 – proposed amendments**

As outlined in section 3.2.2 above, the existing Regulation is an effective means of achieving the objectives of the Regulation and the NPW Act. There are some amendments proposed to Part 2, however many of them are administrative in nature or intended to clarify the operation of certain clauses.

#### **Regulation by direction**

Clause 5 of the Regulation allows the park authority to issue oral directions in relation to certain issues, such as granting consent in relation to the use of a park or closing a park or any part of a park. It is an offence to fail to comply with such a direction. Clause 5(3) provides that it is not an offence if a person has consent and if the person has complied with an oral direction issued under the power of this clause. However, if a person is acting in compliance with a direction under this clause, then that person will not have committed an offence. An amendment is therefore proposed to clarify that if a park user follows an oral direction given under this clause, that person is not liable for committing an offence under any other clause of the Regulation.

The ability to issue an oral direction is important to ensure that the park authority can respond quickly to changes in park conditions. For example, a park user might have consent under Clause 10 to camp in an area that is not formally set aside for camping. If that area becomes unsafe due to bushfires or falling branches after a storm, for example, the park authority can issue an oral direction to the park user closing that part of the park. The park user must comply with the oral direction as it will override the earlier camping consent. A minor amendment is proposed whereby clause 33(b) of the proposed Regulation will clarify that if a person follows an oral direction given by the park authority under clause 5 then that person is not liable for committing an offence under Part 2 of the Regulation for anything done or omitted under that direction.

## **Regulation of traffic**

The use of vehicles in parks, including parking, display of registration, and safe driving, is addressed by clause 7 of the proposed Regulation. A number of amendments are proposed to address certain park management issues that have been encountered that are relevant to this clause but are currently not sufficiently addressed by the Regulation. Amendments are also proposed that separate some clauses that currently include offences of mixed severity into separate subclauses, to distinguish a serious offence from a minor one.

### **Clause 7: Use of vehicles, hoofed animals, vessels and machines in parks**

It is an offence to drive or park a vehicle that has no number plate or registration plates or has its number plate or registration plate covered or obscured. It is also an offence to drive a vehicle, which includes motorbikes, other than on a road, trail, way or area set aside for that purpose. These offences pose significant enforcement problems in many parks, and vehicles used to transport off-road motorbikes into parks have been encountered displaying false, incorrect, changed or altered number plates that do not correspond with the registration number of the vehicle. This makes it harder for the park authority to identify a person riding a motorbike illegally in a park. To improve the enforcement of this offence, it is therefore proposed to amend clause 7(1)(f) to ensure that DECC can issue a penalty for the offence of driving or parking a vehicle with false or incorrect number plates or number plates that have been changed or altered.

The current general parking offence under clause 7(1)(i) provides no differentiation for more serious offences such as parking in spaces that are set aside for people with disabilities. An amendment to clause 7(1) is therefore proposed to create an offence for parking a vehicle in an area set aside for parking by people with disabilities, unless the driver's vehicle displays a current parking permit for people with disabilities and the driver complies with the conditions of use of the permit. This will improve park access for people with disabilities as it will enable DECC to issue a more appropriate penalty notice for this offence, which will be \$405, consistent with the equivalent penalty set out in the Road Transport (General) Regulation 2005.

Opening a gate and damaging or destroying a gate are penalty notice offences under clause 7(4)(a) of the existing Regulation with a penalty notice amount of \$300. However, given that destroying a gate is a more serious offence than simply opening a gate without consent, it is proposed that they be addressed as separate offences. This will improve the enforcement of the Regulation as the more serious offence of destroying or damaging a gate, barrier or similar device will be incorporated into clause 7(5)(b), which has a more appropriate penalty notice amount of \$500 for this offence.

Camels and horses are considered in the same manner as a vehicle for a number of penalty notice offences under clause 7. A definition is provided for horse, which means any animal of the genus *Equus*, including an ass. However, this definition is too restrictive and outdated as animals other than horses and camels may be used as a form of transport. An amendment is therefore proposed that the term 'hoofed animals' be used, which will give DECC the power to regulate a broader range of animals. This amendment will also affect the terminology used in clauses 4 and 5 of the proposed Regulation whereby references to camel and horse will be replaced with hoofed animal.

## **Regulation of conduct**

### **Clause 8: removal of certain persons**

Under clause 8 of the current Regulation, an authorised officer may tow away a vehicle but only if a notice is first issued to the owner or driver of the vehicle. However, situations have arisen in parks where vehicles have needed to be removed urgently, such as where a vehicle might be blocking a fire trail in the event of a fire or other emergency situation, or when vehicles have been parked in a dangerous manner or dangerous location which could potentially affect the safety of park users or damage vegetation. In such circumstances, it is not always practicable for an oral direction to be issued to the driver or owner of the vehicle. To improve the safety of park users and staff and the efficiency of park operations, it is therefore proposed that an amendment be made which inserts a new clause 7(3) which will allow a designated officer in certain circumstances within the meaning of this clause to tow a vehicle that is parked in a dangerous manner or dangerous location without first issuing an oral direction.

### **Clause 11: Littering and damage**

It is an offence under clause 11(1)(h) of the existing Regulation to interfere with, dig up, collect or remove certain natural substances such as soil, sand or rock in a park, whether on land or under water. Clause 11(1)(j) makes it an offence to carry or possess these substances in a park but does not apply to water. However, DECC believes that this should be an offence whether on land or under water, as is the case in clause 11(1)(h). For consistency and to reduce unnecessary duplication in the Regulation, it is therefore proposed that these two clauses should be combined and the higher penalty notice amount of \$500 should apply (despite the similarity of each offence, the penalty is currently \$300 for clause 11(1)(h) and \$500 for clause 11(1)(j)).

DECC has been experiencing problems with people removing fossils from parks as souvenirs. This has been a particular issue in parks with significant fossil deposits, such as Kinchega National Park and Mungo National Park, as well as in karst caves. However, the Regulation does not clearly prohibit the interference with, removal or possession of fossils in a park. Given the potential scientific, natural and cultural significance of fossils, it is proposed that the Regulation be amended to improve the protection of these sensitive and irreplaceable values. Therefore, 'fossil' will be inserted into proposed clause 11(1)(h), hence clearly making it an offence to interfere with, remove or possess a fossil in a park. For clarity, the definition of a fossil as the 'naturally preserved remains or evidence of past life, such as bones, shells, impressions and trails' will also be included.

Clause 11(1)(k) of the existing Regulation regulates the use of cutting equipment in parks, whereby it is a penalty notice offence to carry, possess or use equipment such as bolt cutters, angle grinders and other cutting equipment in a park without consent. However, the most commonly used piece of cutting equipment would be a chainsaw. To assist in the enforcement of the Regulation, it is therefore proposed that chainsaws also be included in the list of cutting equipment to make it clear that to carry, possess or use chainsaws in parks without consent is an offence. Note, however, that clause 11(5) of the proposed Regulation provides a clear defence that a person does not commit an offence under clause 11(1)(j) of the proposed Regulation merely because the person carries or possesses the cutting equipment, including a chainsaw, on a road traversing a park if the person does not stop in the park. This defence is intended for fairness and practicality and will not be altered by the proposed amendment.

It is currently an offence to deposit or leave any litter or waste in a park. A minor amendment is proposed whereby 'containers' will be listed amongst the items defined as waste. This will assist in the enforcement of the Regulation in relation to persons leaving waste in a park as well as in relation to activities that involve leaving objects or containers in parks for indefinite periods of time, such as 'geocaching'<sup>1</sup> which is an activity that DECC does not allow in parks as a matter of policy.

#### **Clause 12: Protection of animals**

Pig hunting in parks is a prohibited activity involving the use of hunting dogs and weapons. While there are offences prescribed for taking a dog into a park and for using weapons in a park without consent, clause 12(2)(a) specifically makes it an offence to carry, possess or use a spiked collar or radio tracking equipment on any dog in a park. However, some types of hunting collars in use may not fit the description of those prohibited under clause 12(2)(a). There have been some cases, for example, where illegal hunters have claimed that this penalty notice offence does not apply to them because their dogs were in fact wearing a wide protective collar, not a spiked collar. To improve enforcement of the Regulation, it is therefore proposed that the term 'hunting collar' be used in clause 12(2)(a) and that 'spiked collar' be included as an example of a hunting collar. It is also an offence to carry, possess or use radio tracking equipment under this clause. However, to ensure that this does not limit enforcement, it is proposed that the term 'tracking equipment' is used instead of 'radio tracking equipment' so that the prohibition on the use of tracking equipment is not restricted to radio tracking equipment only.

#### **Clause 14: Alcohol free zones**

DECC has had problems with disorderly behaviour and damage to park infrastructure resulting from the irresponsible consumption of alcohol in parks. This is generally a problem in parks adjacent to urban areas. Hence DECC is seeking similar powers to those available under the *Local Government Act 1993* to be able to declare certain areas in parks to be alcohol free by means of erecting a notice in a park. This is intended to enable problem areas to be targeted and for designated officers to be able to move people on who are consuming alcohol in these areas to discourage disorderly behaviour.

DECC will also be able to declare alcohol free zones for particular special events, such as New Year's Eve, when large numbers of people may be congregating in a park. Note that it is not DECC's intention to target people who may enjoy a glass of wine with their picnic or with their dinner when camping, for example, but rather areas where groups of people may congregate with the intention of consuming large amounts of alcohol.

The amendment will improve the management of visitor safety in parks as well as the protection of park values in problem areas. DECC intends to establish policy to guide the establishment of the zones, including consultation requirements and enforcement guidelines. Consistent with requirements under the *Local Government Act 1993*, it is DECC's intention to issue a warning to cease alcohol consumption or move on, before taking any enforcement action. The warning enables a person consuming alcohol in an alcohol free zone to withdraw without a penalty.

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<sup>1</sup> Geocaching is an outdoor treasure-hunting game in which the participants use a Global Positioning System (GPS) receiver or other navigational techniques to hide and seek containers (called geocaches or caches).

The act of consuming alcohol in an alcohol free zone should not be confused with more serious offences, such as vandalism or offensive conduct, for which other powers exist in the Regulation if required. Therefore, consistent with the *Local Government Act 1993*, DECC considers this to be a low level offence and proposes that the penalty notice offence amount for the offence will be \$22.

### **Clause 15: Lighting of fires**

Clause 14 of the existing Regulation regulates the lighting of fires in parks which, given the risk of uncontrolled fire in parks, is important for enforcement, and the protection of life, property and park values. Clause 14(1)(b) makes it an offence to leave unattended, whether temporarily or otherwise, any fire that the person has lit, maintained or used before the fire is thoroughly extinguished, with a penalty notice offence amount of \$500. However, an amendment will be made whereby the proposed clause 15(1)(b) will separate offences for:

- (i) leaving unattended any fire in a designated fireplace, and
- (ii) leaving unattended any fire other than in a designated fireplace.

The risks posed by leaving a fire unattended in a designated fireplace are not as potentially serious as leaving a fire unattended in any another place from where a fire could spread more easily. Given that leaving a fire unattended in a designated fireplace is a less serious offence, it is proposed that a penalty notice amount of \$100 should be prescribed for this offence, and the penalty notice amount of \$500 be prescribed for the more serious offence of leaving a fire unattended that is not in a designated fireplace. This amendment is intended to improve enforcement and fairness for park users through tiering of the current offence.

### **Clause 18: Protection of vegetation**

Clause 17 of the existing Regulation addresses the protection of vegetation in parks. It is currently an offence to introduce any exotic vegetation into a park. However, the introduction of any vegetation (whether exotic or not) into a park carries a high environmental risk, as it is possible for plants, native or otherwise, to pose considerable risk to the biodiversity of a park. It is therefore proposed that the term 'exotic' be removed so that the introduction of *any* vegetation into a park is an offence. This is consistent with the offence under clause 9 of introducing any animal into a park (rather than an 'exotic' animal) and will achieve a consistent approach in the Regulations to the introduction of either vegetation or animals into a park.

### **Clause 20: Weapons**

It is an offence under the existing Regulation to possess, carry or discharge a firearm or ammunition in park without consent, unless the person is a police officer. However, this also includes off-duty police officers. An amendment is proposed to ensure that off-duty police officers are only able to carry, discharge or possess a firearm, prohibited weapon or ammunition in a park where the officer is acting in accordance with the NSW Police Handbook and any guidelines issued by the Commissioner for Police. Clause 113 of the Firearms Regulation 2006 provides for the issuing of guidelines by the Commissioner in relation to the use of service firearms by off-duty police officers and the handbook sets out when police officers are permitted to carry their gun whilst off duty. This amendment will make the Regulation consistent with the handbook and any guidelines issued by the Commissioner.

The existing Regulation also prohibits the use or possession of a speargun in a park without consent, although it is a defence if the speargun is unloaded. However, DECC also wants to be able to regulate the possession and use of disassembled spearguns in parks, hence it is proposed that the definition of speargun in clause 20(8) of the proposed Regulation will include a disassembled speargun.

### **Clause 22: Sporting, recreational and other activities**

The existing Regulation regulates group activities and military training manoeuvres in a park. It is currently an offence under this clause to organise, attend or participate in any group activity involving more than 40 people or to perform any manoeuvre or training course, whether of a military, naval or aerial nature or otherwise. This is confusing as this clause essentially contains two separate offences and seems to infer that an activity such as military training can be conducted in a park without consent when there are less than 40 people involved. Therefore, to ensure clarity and improve enforcement, it is proposed to amend this clause to clarify that the latter activity regarding manoeuvres or training is an offence regardless of how many people are involved.

Clause 21(1)(d) of the existing Regulation makes it an offence to engage in any activity or recreational pursuit, as defined by clause 21(2), which involves risking the safety of the person, the safety of other people or damaging the environment. Cave diving is extremely risky to those involved and to those who may, for example, be involved in rescue activities. It also poses significant risk of damaging very fragile cave and karst environments. Given that it is an activity that should only be carried out by very experienced cave divers and the potential risks involved, an amendment is proposed that would make cave diving in a park an offence without consent (refer to clause 22(2) of the proposed Regulation).

### **Clause 24: Caves**

Clause 23 of the existing Regulation refers specifically to the management of caves in parks but it does not adequately address current management issues for the protection of karst environments.

To clarify that this clause also applies to karst caves, a new definition is proposed for both *cave* and *karst cave*. A *karst cave* is a specific kind of cave that has developed in soluble rock through the process of solution, abrasion or collapse. *Cave* means any naturally occurring void, cavity, recess or system of interconnected passages beneath the surface of the earth or within a cliff or ledge and which is large enough to permit a person to enter.

A higher level of protection is required for a karst cave. To achieve this, it is proposed that the new clause 24 under the proposed Regulation will apply to karst caves. The effect is that a person cannot enter or remain in a karst cave without the consent of the park authority and must do so in accordance with any conditions set. A person will not commit an offence under proposed clause 24(1) if they enter or remain in a karst cave in accordance with a PoM for the park. If there is no PoM, the person will not commit an offence if the person enters or remains in a karst cave in accordance with a notice erected in the park or consent given to the person.

Non-karst caves will still be subject to the protection of the Regulation principally through the continued operation of the proposed clause 24(2) and 24(4), which currently prohibit a number of activities in caves without consent. It is proposed that these clauses be amended so that they will apply to both caves and karst caves.

There are many activities that can have significant impact upon cave environments, particularly in karst caves. To ensure that the most damaging activities are prohibited, the proposed clause 24(2) will prohibit the following additional activities in a cave or karst cave without the consent of the park authority.

- A person in a park must not obstruct, gate, fill or alter an entrance or passage of a cave or karst cave, as such actions can have detrimental impacts to cave biota and the karst environment. The penalty notice amount for this offence will be \$500 (note that this is consistent with the similar penalty under clause 17(1)(c) for the offence of constructing any structure, installation, engineering work or fixture in a park).
- A person must not use a fuel stove, combustion engine, flare, carbide lamp, magnesium flame or other combustible fuel equipment in a cave or karst cave. The intention is to expressly prohibit the use of naked flame light sources as their use in caves carries significant safety and environmental risks. The penalty notice amount for this offence will be \$300, which is consistent with the penalty for the offence of lighting a fire in a cave.
- Proposed clause 24(2)(d) will make it an offence to *interfere with* or remove certain substances or objects from a cave. Interference includes digging, disturbing or relocating objects. To prevent duplication as a result of this amendment, the current clause 23(2)(e), which refers to interference with equipment, will be deleted. Clause 23(2)(d)(i) will be expanded to prohibit the interference with or removal of crystal, as this is one of the most common substances that is removed from karst caves. It will also be prohibited under proposed clause 24(2)(d)(iv) to remove any guano, bones, fossil, subfossil or palaeoecological objects. The penalty notice amount for these latter two offences will be \$500, which is consistent with the similar offence of interfering with or removing any rock, fossil, mineral or natural substance or object in a park (clause 11(1)(h)).
- The proposed Regulation will prohibit the possession of equipment including a sieve, spade, shovel, fork, mattock, pick, bar, axe, chisel, hammer or similar implement in a park. These items should not be required during routine caving activities and their possession in a cave is often linked to illegal activities such as removing crystals or rocks from the cave environment. Additionally, the possession without consent of caving or cave diving equipment within a karst conservation reserve or in a karst environment will also be prohibited. This amendment is required because illegal access to karst caves that are not open for public access is a current law enforcement problem (it is difficult to catch a person caving illegally unless the law enforcement officer is also caving or catches a person exiting a cave). This amendment should not impose additional restrictions upon people legitimately undertaking these activities as consent is required for caving or cave diving. The penalty notice amount for these offences will be \$300.

Sometimes strings and other markers are used for the purposes of cave exploration and research. It is an offence under current clause 23(2)(c) to enter and lay a track in a cave. However, clause 23(4) provides that a person does not commit an offence if the track is a temporary safety measure and the person removes the track when they leave the cave. It is proposed to expand this defence provision in clause 24(6)(a) of the proposed Regulation to include a track that is laid as a temporary safety or *conservation measure*. It will not be necessary for the person to have the consent of

the park authority to lay a track for these purposes provided the person removes the track when they leave.

### **Authorised officers**

The term 'authorised officer' is used in clauses 8, 25 and 28 of the current Regulation to describe an officer with the appropriate legal authority to carry out a task. This task may be, for example, to direct a person to leave a park, to use snow chains in Kosciuszko National Park or to remove a vessel from a mooring. However, the term authorised officer is also used in the NPW Act but it has a different legal meaning to its use in the Regulation. To clarify the meaning and avoid any confusion a minor amendment is proposed to these clauses such that the term authorised officer will be replaced with *designated officer* in the Regulation (refer to clauses 8, 26 and 29 of the proposed Regulation).

### **Defence for activities under the *Environmental Planning and Assessment Act 1979***

It is currently a defence under clauses 11, 16 and 17 such that a person does not commit an offence under these clauses for an act or omission that occurred in relation to a ski resort area in Kosciuszko National Park that was necessary for the carrying out of a development or activity under Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) respectively. For consistency with similar defences under the NPW Act, an amendment is proposed which extends this defence to an act or omission necessary for the carrying out of a project approved under Part 3A of the EP&A Act (which relates to major infrastructure projects) (refer to clauses 8, 26 and 29 of the proposed Regulation).

## **3.2.4 Alternatives to the Regulation**

As discussed in section 3.2.1, the base case scenario, the enforcement of the matters dealt with by Part 2 of the Regulation would be difficult in the absence of the Regulation.

### **Legislation**

In limited circumstances, the powers of the NPW Act, POEO Act, TSC Act and other legislation not administered by DECC could be utilised to achieve some of the objectives of Part 2 of the current Regulation. However it is not generally the purpose of such legislation to provide detailed provisions on managing the use of parks.

Therefore, although in some circumstances there are similar legislative powers that could be utilised in the absence of the Regulation, these are by no means an effective substitute mechanism to the Regulation. This is chiefly because they do not provide a complete and strategic mechanism for achieving the objectives of the NPW Act in the way that the Regulation currently does. Many of the clauses and subclauses under Part 2 of the Regulation simply do not have any similar legislation that could be relied upon. In addition, in many circumstances DECC would need to rely on other authorities, such as the police, to enforce various pieces of legislation unless DECC officers were authorised to undertake such enforcement. For an examination of the complex range of legislation that could be used as an alternative to the Regulation see Appendix 3.

The operation and efficiency of park management under a system of cobbled-together legislation would be unwieldy and inefficient for DECC officers to implement; it could also create confusion for park users.



## Plans of management

In addition to legislation, park PoMs could present an alternative approach to the Regulation in the management of the use of parks. The NPW Act requires that a PoM be prepared for each park managed by DECC. A PoM is a legal document that outlines how an area will be managed in the years ahead. It sets out the values of the park, management objectives and strategies and complies with legislation, departmental policies, procedures and standards.

Once a PoM has been adopted by the NSW Minister for Climate Change and the Environment, no works may be carried out in the park except in accordance with the plan.

Procedures for the production of a PoM are specified in the NPW Act and involve:

- public exhibition during which time members of the public are invited to make submissions
- consideration by the National Parks and Wildlife Advisory Council
- adoption by the Minister for Climate Change and the Environment.

A number of park management provisions in the Regulation could be covered through PoMs for individual parks (and in some cases already are), such as:

- designation of entry points to a park
- reserving a part of a park for a particular use
- prohibiting the use of particular facilities or certain activities in such facilities
- designating where certain activities may or may not occur in a park (for example, sporting or recreational activities)
- where moorings are appropriate and conditions to be followed when mooring a boat
- where camping is permitted and any restrictions on the maximum period of time a person can camp
- conditions for using designated fireplaces and whether fires are allowed elsewhere in the park
- whether and what type of commercial activities are permitted in the park (noting that some form of licence under the NPW Act may be required)
- codes of conduct for certain recreational activities or for access to particular park features such as caves to help in their protection.

There are some fundamental limitations, however, on the alternative of using PoMs rather than the Regulation to manage the use of parks. Firstly, although a PoM is a statutory document, unless there are powers in principal legislation that can be utilised (some exist but are very limited), DECC has limited powers to enforce the requirements of the PoM with respect to the public using parks. This removes the current deterrent factor of penalties being imposed for offences committed against the Regulation.

Secondly, a PoM is a complex document which may take considerable time and public consultation to prepare and must be publicly exhibited prior to its adoption. Hence relying on a PoM may remove or limit the park authority's capacity to undertake or change certain management actions quickly and to enforce such changes. These may include, for example, changing conditions imposed upon, or excluding, an activity where warranted by environmental impact or closing a part of a park for a period of time for rehabilitation, for example following a fire. The Regulation currently gives the park authority the power to do this above and beyond what a PoM says by erecting a notice in a park.

Thirdly, the Regulation currently provides that certain activities are not permitted without the consent of the park authority. Without the Regulation there would be no such power to provide or enforce consent. To provide control over certain activities in a park where consent is generally required, a PoM could potentially require a permit for a person to undertake certain activities or actions in a particular park. However, once again this would limit the power to enforce or penalise a person if they did not gain the required permit or if they did not follow conditions imposed upon a permit.

Lastly, relying on PoMs to be proscriptive in the absence of the Regulation would require more staff time and effort in their development. Such effort would generally be duplicative as each park requires a PoM, and hence each PoM would be seeking to fill the park management regulatory gaps in a similar fashion. With a single Regulation dealing with many park management issues, this duplication would not be necessary.

### **3.2.5 Costs and benefits**

Field staff in DECC are the front line for administering Part 2 of the Regulation. While they are responsible for a wide range of tasks beyond the Regulation, tasks associated with the Regulation can take a significant portion of their time.<sup>2</sup> The estimated cost to DECC of administering Part 2 of the Regulation was of the order of \$8.3 million in 2006–07 (see Appendix 4). This cost of administration would be the same under both option 1, the existing Regulation, and option 2, the proposed Regulation.

Estimating the costs that would apply under the base case scenario – no Regulation – is more difficult. DECC would still be required to achieve the objectives of the NPW Act (discussed in section 2.1), so it is reasonable to assume that at least a similar level of resources would be required. However, some of DECC's costs would be likely to increase due to the added complexity of management in the absence of the Regulation. As discussed in section 3.2.4, alternatives to the Regulation would also likely lead to increased costs to DECC. The proposed Regulation therefore provides the most cost effective form of park management.

DECC's ability to fund park management would be affected by the repeal of the Regulation. DECC currently collects park use fees, which include day entry, annual pass and camping fees. In 2006–07, DECC raised approximately \$14 million from park use fees. The power to levy these fees derives directly from the Regulation. However, other forms of revenue derived from commercial property and leasing arrangements (for example in Kosciuszko National Park) would not be affected by any repeal of the Regulation. Thus, in the absence of the Regulation DECC would require at least \$14 million in additional funding from the State's general revenue, that is, mainly from *non-park* users.

As described in section 2, a multitude of benefits is derived from the parks system that is managed by DECC. Some of these benefits would still be derived in the absence of the Regulation but in many instances these benefits would be diminished. For example the benefits that visitors derive from the use of parks could be diminished in the absence of frameworks to manage behaviour and interactions with the environment. In the absence of the current or proposed Regulation DECC would have limited powers to manage visitor behaviour.

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<sup>2</sup> This portion is highly dependent on the location of the staff member.

Preservation of sensitive areas, like cave and karst environments, and Aboriginal sites, would be more difficult in the absence of the current or proposed Regulation. Without the ability to control access or use, these areas could be irreparably damaged, and would lead to a significant reduction in any benefits derived. The current and proposed regulation enables DECC to allow controlled use of these sites and to satisfy the often conflicting demands of visitation and conservation. In the absence of the current or proposed Regulation a range of benefits would therefore be reduced.

Part 2 of the proposed Regulation provides important means to manage park use, behaviour and traffic. In its absence DECC would face increased costs of management and reduced revenue to fund park management, and there would also be diminution of a range of benefits that derive from the parks system

### **3.3 Public health in Kosciuszko National Park**

Kosciuszko National Park has a high level of visitation each year, which is particularly concentrated around the ski resort areas. The estimated number of visitors in the winter ski season alone is 3.1 million people. The resort areas in the park currently provide 10,915 beds for visitors and a small permanent population resides at Thredbo.

Part 3 of the Regulation concerns public health in Kosciuszko National Park, the key objective of which is to enable the appropriate management of the resort areas and to ensure healthy and safe conditions for the public utilising these areas. It also provides for enforcement of the obligations of the Snowy Hydro Company which operates within Kosciuszko National Park (Part 3A of the existing Regulation, Part 4 of the proposed Regulation).

#### **3.3.1 Base case – no Regulation**

In accordance with section 155A of the NPW Act, specific powers conferred upon the Director General of DECC under Part 3 of the Regulation include the provision of services relating to the health of the public, powers to issue orders requiring the preservation of healthy conditions in the park, entry and inspection powers, and exercising functions of an environmental health officer under the *Public Health Act 1991* and the Public Health (Swimming Pools and Spa Pools) Regulation 2000.

The repeal of the Regulation would remove the powers of the Director General of DECC to issue orders for the preservation of healthy conditions in Kosciuszko National Park, for example premises used for the preparation, storage and sale of food, premises used for share accommodation or relating to the safe and healthy condition of premises in general. Similarly, the powers of the Director General to provide health services and facilities and to carry out activities relating to public health which are appropriate to the needs of the public would be removed. Powers of entry and inspection would be compromised as would the exercise of functions under the *Public Health Act 1991* and the Public Health (Swimming Pools and Spa Pools) Regulation 2000.

The risk of not being able to undertake the regulation of public health issues within Kosciuszko National Park could be negative impacts on public health for visitors and staff of the resort areas, potentially resulting, for example, in polluted pools and spas, unsafe buildings and structures and contaminated drinking water. There could also be impacts on the health of the local environment, for example from the pollution of local waterways.

The *Snowy Hydro Corporatisation Act 1997* requires the preparation of a management plan for Snowy Hydro activities within Kosciuszko National Park (Snowy Management Plan). The plan has equal standing with the Kosciuszko National Park PoM and was prepared in 2002. The Snowy Management Plan requires the preparation of an environmental management plan outlining best management practices for Snowy Hydro operations within the park.

In the absence of the Regulation and should Snowy Hydro not abide by the Snowy River National Park Management Plan and the environmental management plan then DECC would have no mechanism to enforce compliance.

### **3.3.2 Option 1 – existing Regulation**

The inclusion of the public health provisions in the Regulation specifically for the management of Kosciuszko National Park is unique, as this is the only park managed by DECC that has a small permanent population as well as major tourist infrastructure, overnight accommodation providing for high numbers of visitors, and various supporting services (for example multiple food and other retail premises, transport services, waste management services). Hence DECC needs to be able to provide or regulate environmental health services and Part 3 of the Regulation gives the Director General of DECC such power to undertake certain functions much like a local council for the resort areas of Kosciuszko National Park.

The provisions dealing with Snowy Hydro are essential for the enforceability of the Snowy Management Plan and the environmental management plan.

### **3.3.3 Option 2 – proposed Regulation**

Amendments are proposed to clause 43 (refer to clause 44 of the proposed Regulation) in order to clarify the powers of DECC to undertake the activities of environmental health officers in parks. The reason for this is not due to a change in DECC policy or procedures, but because the way that clause 43 is currently drafted is not consistent with the concepts and operation of Part 4 of the *Public Health Act 1991*, the *Public Health (Microbial Control) Regulation 2000* and the *Public Health (Swimming Pools and Spa Pools) Regulation 2000*.

There are no amendments proposed to the existing provisions for Snowy Hydro.

### **3.3.4 Alternative to Regulation**

There are few existing alternative mechanisms to the Regulation that could be utilised to manage public health in the resort areas of Kosciuszko National Park. DECC would still have the ability to regulate food premises as DECC is authorised as the food enforcement agency for Kosciuszko National Park under the *Food Act 2003*. Other conditions and requirements for public health could be detailed in the PoM for Kosciuszko National Park which could, for example, require certification by qualified consultants for the range of services currently inspected by DECC staff. However, if these requirements were not complied with, there would be no option to issue fines, notices or orders as currently prescribed by the Regulation. Hence enforcement would be difficult and the objectives of this part of the Regulation may not be achieved.

### **3.3.5 Costs and benefits**

There is currently one staff member responsible for the management of public health matters in Kosciuszko National Park, representing a total cost of approximately \$108,000 in 2006–07.<sup>3</sup> In the absence of the Regulation these resources could potentially be reassigned to other environmental management tasks in Kosciuszko National Park, at the cost of diminished management of public health facilities in the resorts area. The proposed Regulation is not expected to have any impact on the costs of administering the Regulation.

The public benefits that derive from adequate public health management considerably outweigh the small cost to DECC of providing environmental health services.

There are currently three DECC staff who manage the monitoring and liaison with Snowy Hydro, representing a total cost of approximately \$295,000 in 2006–07.<sup>4</sup> In the absence of the regulation these resources would still be required to manage the interaction with and monitoring of Snowy Hydro.

The benefits that derive from having an adequate compliance and enforcement regime for Snowy Hydro operations within Kosciuszko National Park considerably outweigh the cost to DECC.

## **3.4 Licences and certificates**

Part 4 of the existing Regulation relates to the process of applying for a licence or registration certificate under the NPW Act, the objective of which is to provide for the consistent administration of applications and ensure that approvals of applications are based on accurate information. It provides that applications must be made in a form approved by the Director General of DECC, that applicable fees must be lodged with the application, and that a person must not provide false or misleading information in connection with an application for a licence or registration certificate. Part 4 also provides that the term of a licence or registration certificate issued under the NPW Act is in force until midnight on 31 December following the date of issue or until an alternative expiry date if specified.

### **3.4.1 Base case – no Regulation**

Without the Regulation, DECC could not prescribe the form of application, which must be approved by the Director General of DECC, or that fees are to be lodged with an application for a licence or registration certificate. It would also not be possible to issue penalty notices to a person who supplies false or misleading information or material in connection with an application for a licence or registration certificate under the NPW Act. This is an important provision given the potential for persons to deliberately mislead DECC, for example when applying for fauna keepers licences where the fauna may have been obtained illegally. The current penalty notice offence amount for this offence is \$500, or a maximum of \$3,300.

DECC would also not have a legal basis to state that a licence or registration certificate has expired, which could have consequences for the management and renewal of licences and enforcement of licence conditions.

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<sup>3</sup> Departmental Professional Officer 4, including 25% for on-costs.

<sup>4</sup> Two staff at Departmental Professional Officer 2 and one Departmental Professional Officer 7, including 25% for on-costs.

### **3.4.2 Option 1 – existing Regulation**

The existing Regulation will enable licences and registration certificates to continue to be administered as they are currently, which bases in legislation the form of application, requirement for fees to accompany the application, penalties for providing false and misleading information and terms for licences or registration certificates.

### **3.4.3 Option 2 – proposed Regulation**

There are no amendments proposed to the current regulatory approach as prescribed by Part 4 of the current Regulation.

### **3.4.4 Alternative to the Regulation**

An alternative to the Regulation would be to deal with applications and terms of licences and registration certificates administratively. In other words, it would be a matter of DECC policy that an application must be in a particular form and be accompanied by a fee. This, however, would have less force than if backed by a Regulation.

There is no similar provision in the NPW Act that could be used to prosecute a person for providing false or misleading information with the application for the issue of a licence. While it is possible under the Act to take action for breach of licence conditions, this information is supplied with the actual application and hence is not a breach of conditions per se.

Terms of licences could be dealt with administratively. Currently, many of the fauna keepers licences expire on the common date of midnight on 31 October. Although arguably not as effective, DECC could rely on the expiry date as being a condition of the licence, which would give some legal backing to enforce the expiry of licences.

### **3.4.5 Costs and benefits**

The costs to DECC associated with this section of the Regulation are considered to be minimal. However it would be more onerous, and therefore more expensive, to manage these objectives without the Regulation. The provisions provide consistent legal means for the efficient operation of DECC policy. While the power to levy a licence fee derives from the NPW Act (for example fauna licence fees), the Regulation allows for fees to be linked with the submission of the application form. Fees from fauna licensing totalled approximately \$1.7 million in 2006–07 and played an important role in funding fauna protection.

While there may be costs to applicants in the time taken to complete forms, these costs are not considered to be onerous.

## **3.5 Fauna protection**

Part 5 of the existing Regulation provides a range of tools to achieve the objective of protecting native fauna species across the whole of NSW. The Regulation supports the issue of licences and certificates under Part 9 of the NPW Act, including support for record keeping and tagging systems relating to licences to trade in protected fauna, and provides for the care and protection of protected fauna held for commercial sale. The Regulation also contains specific provisions concerning the protection of marine mammals, including minimum approach distances, however this part of the Regulation will be discussed separately below.

### 3.5.1 Base case – no Regulation

The power exists under Part 9 of the NPW Act for the Director General of DECC to issue a range of licences to harm, keep or trade in protected fauna. The Regulation establishes certain DECC staff as authorised officers for the purposes of section 119 of the NPW Act. The Regulation contains provisions relating to the commercial sale of protected fauna both live and dead, and the management of fauna in confinement. The provisions relating to trade in protected fauna provide regulatory support for the use of record keeping and tagging systems which help ensure the legal acquisition and sale of fauna and fauna products.

If the Regulation were repealed, a number of negative impacts may be likely, including:

- a reduced capacity to monitor off-park harvest levels and take activities for species such as kangaroos, which may lead to unsustainable harvest levels and potential losses to biodiversity
- potential threats to the protection of fauna and agricultural and horticultural interests in NSW through illegal trade and importation of inappropriate fauna into the State; this also poses the risk of disease and genetic contamination of populations of species
- removal of legislative grounds for cancelling an import or export licence
- potential for illegal sourcing and trade of protected fauna
- reduced visitor enjoyment in parks
- reduced animal welfare standards
- no inherent level of value or protection for native fauna
- reduced confidence in the market place that fauna and fauna products have been derived legally and from sustainable sources.

### 3.5.2 Option 1 – existing Regulation

In relation to trade in protected fauna, the Regulation currently sets out requirements for issuing tags for attachment to the skin or carcass of any fauna in compliance with a condition of a licence issued under Part 9 of the NPW Act.<sup>5</sup> Combined with the requirement of the Regulation to keep and furnish the Director General of DECC with correct records, this enables the monitoring of off-park harvest levels and take activities for species such as kangaroos. This helps guide decision making, for example, on where licences for harming protected fauna should be issued by giving some indication as to whether harvest levels are sustainable, and assists in monitoring licence compliance, enforcement of breaches and reduction of illegal trade. Another benefit is that all relevant parties involved in wildlife trade are able to identify whether fauna and fauna products have been legally obtained.

In relation to an import or export licence issued under section 126 of the NPW Act, the Regulation prescribes the grounds on which an application may be refused. This is required as a protective mechanism intended to ensure that actions under the licence will not:

- be detrimental to the protection and conservation of fauna in NSW
- lead to the introduction of protected fauna that do not normally occur in NSW that may pose a threat to agriculture or horticulture
- introduce a species of protected fauna that cannot readily be kept in captivity or confinement

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<sup>5</sup> Clause 48 of the existing Regulation.

- introduce a species of protected fauna that may constitute a threat to human health or safety.

The Regulation makes it an offence to issue false receipts for fauna, keep false records or provide false or misleading records or information to the Director General of DECC. Each offence carries a penalty notice offence amount of \$500 or a maximum penalty of \$3,300. This is important as a deterrent where there is a risk that holders of fauna licences may attempt to acquire fauna from illegal sources, trade in illegal fauna or trap or harvest fauna in excess of their licensed quotas.

The welfare of protected fauna kept in captivity is also an important requirement and the Regulation prescribes a number of standards and conditions that must be met to ensure that fauna kept in cages or confinement are treated appropriately and humanely.

### **3.5.3 Option 2 – proposed Regulation**

The proposed Regulation will strengthen the grounds for refusing the issue of an import or export licence for protected fauna. DECC does not want to grant an import or export licence for the import of an animal into a fauna park, or by a mobile exhibitor, if that park or exhibitor does not first have the necessary approval under the *Exhibited Animals Protected Act 1986* to acquire and exhibit that animal. This will ensure that all other necessary licences and approvals are obtained prior to the Director General considering an application and giving approval to import or export protected fauna where the animal is to be exhibited.

The proposed Regulation will also modernise the provisions relating to the care and protection of fauna. Clause 55 currently outlines offences regarding the consignment or sale of young birds; however this provision is outdated and no longer relevant to current practices in the bird trade. It is also inconsistent with the *NSW Animal Welfare Code of Practice No 4 – Keeping and Trading of Birds*, which provides accurate and current guidance on the consignment and sale of young birds (NSW Agriculture 1996). The amended Regulation will remove this clause and also make amendments to Schedule 1, which outlines the conditions for the caging and confinement of protected fauna. The conditions expressed in Schedule 1 are also out of date and require updating consistent with the code of practice referred to above. These conditions also need to be extended to all protected fauna held in confinement, rather than addressing birds only. The benefit is that DECC will have the ability to impose minimum and enforceable standards for the welfare of animals in trade and commercial use. This in turn provides a deterrent factor while improving DECC's ability to monitor and enforce appropriate conditions and hence improve the welfare of all caged protected fauna. The penalty notice offence amount for an offence against subclause (1) and (2) of clause 57 in the proposed Regulation will remain at \$500 with a maximum penalty of \$3,300.

In relation to animal welfare, it is also proposed to amend the requirement that prescribes the maximum length of time a person may hold or possess sick or injured fauna. Currently a person must notify the Director General of DECC in writing within seven days after the animal comes into the person's possession. For animal welfare reasons, DECC wants to ensure that sick, injured or orphaned wildlife receive the proper care of a licensed and appropriately trained wildlife carer as soon as possible. Hence it is now considered that the notification period of seven days is too long and this should be shortened to three days.



### 3.5.4 Alternative to Regulation

As an alternative to the Regulation, the powers of Part 9 of the NPW Act could be solely relied upon for the power to issue licences and certificates for harming, keeping and trading in protected fauna. Some of the provisions in the Regulation could be dealt with administratively and at a policy level. The grounds for refusing import or export licences, for example, could be dealt with by policy. However, without the legal backing of legislation the risks described under the base case scenario in section 3.5.1 are more likely to occur.

Provisions relating to conditions on licences such as supply and use of tags, provision of receipts and records and the humane conditions for keeping fauna in cages or confinement could be dealt with administratively by imposing specific conditions upon a licence when issued, as provided for by section 120(3) of the NPW Act. However, this would not be as effective as providing a minimum level of conditions and requirements in the Regulation under the power of the NPW Act.

### 3.5.5 Costs and benefits

A large number of staff are involved in the implementation of Part 5 of the Regulation (note that this is Part 6 in the proposed Regulation). Staff in field offices deal with the non-commercial aspects of fauna protection both on and off park; staff based in western NSW administer the Kangaroo Management Program while staff in the Wildlife Management and Licensing Unit also use the Regulation for effective management of wildlife issues relating to the NPW Act. It is estimated that the cost to DECC of administering Part 5 was approximately \$2.7 million in 2006–07.

Fauna protection represents a case where the NPW Act and the Regulation are used in concert and it is difficult to separate the two. The Regulation provides the administrative consistency, efficiency and transparency for the fauna protection objectives that are enabled by the Act. In addition, the revenue collected from fees and licences related to fauna protection (approximately \$1.7 million in 2006–07) provides part of the funding to support the activities mentioned above.

The NPW Act and Regulation both affect industry and native fauna breeders and owners through the levying of licence fees and the cost of any reporting requirements. Only a small part of these costs can be attributed to the Regulation. Thus the Regulation in and of itself does not have a major cost impact on industry.

Part 5 of the Regulation plays an important role in underpinning the effectiveness of the NPW Act and the management and protection of native fauna. Significant risks to native fauna both on and off park would result from the repeal of the regulation. While the costs to DECC of managing part 5 are not insignificant (\$2.7 million in 2006–07), these costs are substantially covered by fees and licences related to fauna protection collected under powers enabled by the Act.

## 3.6 Marine mammals

The NPW Act allows for Regulations to be made to prescribe approach distances for marine mammals. In 2006, Part 5 of the Regulation was amended to include new provisions to protect marine mammals, the objective of which is provide protection, care and preservation of marine mammals in NSW. The amendment gave legal application in NSW to the *Australian National Guidelines for Whale and Dolphin Watching 2005* (the national guidelines) (DEH 2006).

In 2006, the Commonwealth Government also amended the Environment Protection and Biodiversity Conservation Regulations 2000 to reflect the national guidelines. Other governments in Australia propose to make these guidelines apply within their jurisdiction, which will result in a consistent approach to the protection of marine mammals throughout Australia.

The main changes with the 2006 amendments were the application of the Regulation to the common and bottlenose dolphins, the introduction of provisions to regulate behaviour around these animals (for example manoeuvring vessels, no feeding or touching), and new provisions to protect special interest animals (rarely sighted species, colour-variant animals, sick or injured animals).

There is a range of commercial opportunities for observing marine mammals. In 2002, it was estimated that there were 101 active marine mammal tour operators within NSW, although some of these operators only conduct tours on a part-time or seasonal basis.

### **3.6.1 Base case – no Regulation**

In the absence of the Regulation, limited enforcement for the protection of marine mammals could occur under section 112G(1) of the NPW Act. However, without the Regulation, the enforcement of minimum approach distances and restrictions on the operation of vessels close to cetaceans (whales and dolphins) through the issue of penalty infringement notices would not be possible.

Without the regulated protection of marine mammals through the application of the national guidelines, the aim for consistent requirements for approach distances and vessel operation throughout Australia would be compromised. The importance of consistent requirements in all jurisdictions across Australia is that it reduces complexity for tour operators which operate in more than one jurisdiction.

### **3.6.2 Option 1 – existing Regulation**

The primary benefit of the Regulation is that it applies the requirements of the 2005 national guidelines in NSW. In accordance with section 112G of the NPW Act, the Regulation prescribes approach distances to marine mammals, which includes cetaceans and seals or sea lions. It further prescribes how a vessel is to be operated within a caution zone, including approach distances within the zone – 50 metres for a dolphin (150 metres for a calf) and 100 metres for a whale (300 metres for a calf) – to reduce the disturbance to marine mammals by vessels, as well as making it an offence to feed marine mammals.

Penalty notice offence amounts are prescribed for offences committed in relation to marine mammals. Although the Regulation prescribes minimum approach distances to marine mammals, the maximum penalty for the offence of breaching the approach distances is prescribed under section 112G of the NPW Act, which is \$110,000 or imprisonment for two years or both. Other restricted actions under the Regulation involve a maximum penalty of \$5,500 and penalty infringement notices of \$300 can be issued on the spot.

The penalties prescribed are intended to provide a deterrent factor which increases compliance with the Regulation and hence the 2005 national guidelines. The primary benefit is that the Regulation affords greater protection for marine mammals from human activities than an alternative non-regulatory approach. It also assists in providing consistent requirements for approach distances and vessel operation

throughout Australia and simplifies enforcement of restricted actions through the introduction of penalty notice offences.

### **3.6.3 Option 2 – proposed Regulation**

There are no amendments proposed to the regulatory approach as prescribed by Part 5 of the existing Regulation (note that this becomes Part 6 in the proposed Regulation).

### **3.6.4 Alternative to Regulation**

An alternative to Regulation would be to apply the national guidelines to those marine mammal tour operators in NSW who take up voluntary certification. This would involve voluntary accreditation by the commercial tour operator, through membership of organisations such as Greenglobe or the Outdoor Tour Operators Association. Membership would require compliance with relevant guidelines including the national guidelines. Such a system would involve costs for operators, such as upfront and ongoing cost for membership and annual audit fees. The limitation of certification, however, is that compliance with the national guidelines cannot be enforced and, unlike the Regulation, they would not apply to the general public.

Section 112G of the NPW Act affords some protection to marine mammals as an alternative to the operation of the Regulation. However, this would only apply to the offence of interfering with a marine mammal (for example chasing, herding, harassing, marking, tagging or branding). This section of the Act otherwise requires that a person must not approach a marine mammal any closer than the distance prescribed by the Regulation.

The risk in applying alternatives to the application of the Regulation would be that marine mammals within NSW would be afforded less protection from human activities than they currently are, which would diminish the value provided by these marine mammals to NSW.

### **3.6.5 Costs and benefits**

The costs to DECC of administering Part 5 (Division 4) of the existing Regulation (which becomes Part 6 (Division 3) in the proposed Regulation) with respect to marine mammals are minimal, and the costs to industry are very low. The cost of the alternative to voluntary industry certification was estimated at \$112,000 per year (at the time of the introduction of the amendments in 2006). The key benefit of the Regulation is that it applies to all persons, both to tour operators and the general public, and hence it provides a higher level of protection to marine animals, a greater probability that the value provided by them would be maintained and increases the safety of the general public.

## **3.7 Exemptions in favour of Aboriginal people**

The objective of Part 6 of the existing Regulation is to provide exemptions to Aboriginal people under certain sections of the fauna and flora protection provisions of the NPW Act. These exemptions recognise a cultural right to practise wild resource use by enabling Aboriginal people to hunt protected fauna and harvest protected plants for domestic purposes because of their Aboriginality. This right does not extend to harming any animal or plant listed under the TSC Act. However, Aboriginal people are still required to obtain a licence under the NPW Act if they want to use a prohibited weapon, net, trap or hunting device to hunt protected fauna.

Consent is also required to be obtained under clauses 11(1)(f), (h) and (j) and 12(1) and 19 of the current Regulation.

### **3.7.1 Base case – no Regulation**

Without the Regulation, wild resource use by an Aboriginal person for domestic purposes would be prohibited under the NPW Act without a licence. If found to be harming fauna or picking native plants, Aboriginal people could be subject to a \$300–500 penalty infringement notice or a maximum penalty of \$11,000 and/or six months imprisonment.

DECC would have to rely on the powers of the NPW Act to undertake potentially resource intensive enforcement operations to ensure that Aboriginal people are not illegally harming protected fauna and flora.

### **3.7.2 Option 1 – existing Regulation**

Part 6 of the existing Regulation gives Aboriginal people the right to harm fauna and pick protected native plants by granting exemptions under sections 70, 71, 98 and 117 of the NPW Act if the activity is for domestic purposes only. This is the most efficient means of meeting the objectives of the Regulation by continuing the current right for an Aboriginal person to use wild resources for domestic purposes and to maintain their culture and links with the land (while noting that a licence under the NPW Act to use a prohibited weapon and consent under clauses 11(1)(f), (h) and (j) and 12(1) and 19 of the current Regulation may still be required). At the same time, however, it ensures that these provisions of the NPW Act apply to others for the protection of fauna and protected native plants in NSW.

### **3.7.3 Option 2 – proposed Regulation**

There are no amendments proposed to the regulatory approach as prescribed by Part 6 of the existing Regulation (note that this becomes Part 7 in the proposed Regulation).

### **3.7.4 Alternative to Regulation**

The alternative to regulated exemptions from these provisions of the NPW Act would be to rely on the need for an Aboriginal person to obtain a general licence under the NPW Act to harm fauna or pick protected native plants. However, this is unlikely to succeed in achieving the objectives of the Regulation. Given that many Aboriginal people believe that they have the cultural right to access these resources as they have had for thousands of years, few would accept the requirement to obtain and pay for a licence to do so.

### **3.7.5 Costs and benefits**

There are small costs to DECC in the administration of this part of the Regulation. The benefits are derived from allowing Aboriginal people to continue to practice traditional links to culture and the land. The impacts on fauna are considered to be small, due to the non-commercial nature of the harvest. Thus the net effect of these provisions is likely to be positive.

## **3.8 Aboriginal land**

Part 7 of the existing Regulation deals with the management of Aboriginal lands, which are parks that have been returned to Aboriginal ownership and leased back to the Minister for Climate Change and the Environment to be jointly managed by a Board of Management and DECC under Part 4A of the NPW Act.

The Board of Management has a majority of Aboriginal owners and acts as the park authority. In other words, the Board has the care, control and management of the lands, is responsible for preparing a PoM for the lands, and supervises expenditure on the lands.

One objective of Part 7 is to facilitate the efficient operation of the Boards of Management. Another objective is to fulfil the requirements of section 72AA of the NPW Act by prescribing the community development purposes for which Aboriginal lands may be used as provided for in the PoM for the park.

### **3.8.1 Base case – no Regulation**

In the absence of the Regulation there would be no formal or legislated process for the appointment of deputy members of Boards of Management or the chairing of meetings, which may compromise the effective operation of the Boards.

The NPW Act requires the development of a PoM to provide for the use of Aboriginal land for community development purposes. The Act also provides that the meaning of community development may be prescribed by the Regulations. In the absence of the Regulation, no community development purposes could be identified in the PoM which would restrict the use of Aboriginal lands for the benefit of Aboriginal communities.

### **3.8.2 Option 1 – existing Regulation**

The process for the Minister to appoint Board members and for the Board to appoint a Chair is set out in the NPW Act. However, it is appropriate that further administrative detail relating to the appointment of deputies or a deputy Chair or the process for decision making if the chair or deputy chair is absent, is prescribed in the Regulation. These procedures are prescribed in Part 7 of the existing Regulation, which effectively contributes to meeting the objectives of the NPW Act by enabling efficient and effective decision making by the Board for the care, control and management of Aboriginal owned and leased-back parks.

The leases for each of the Aboriginal lands state that the Minister will endeavour to prescribe the community development purposes as defined in the lease. However, Part 7 currently prescribes community development purposes only for Mutawintji National Park, Mutawintji Historic Site and Mutawintji Nature Reserve.

### **3.8.3 Option 2 – proposed Regulation**

Since the gazettal of the Regulation in 2002, other parks have been reserved under Part 4A of the NPW Act in addition to the Mutawintji parks. Given that the definition of community development prescribed in the Regulation is specific to the Mutawintji parks, an amendment is required that will provide a definition for community development that will apply more broadly and will encompass the newer Part 4A parks (Biamanga National Park, Gulaga National Park, Mount Grenfell Historic Site and the Worimi Conservation Lands) and future Part 4A parks.

The current definition of community development purposes was developed specifically for the Mutawintji parks, which have some very specific community development needs owing to their remote western NSW location. It is therefore proposed that the current definition in clause 69 of the existing Regulation will remain and will continue to apply only to the Mutawintji parks. A new definition of community development purposes for any other land reserved under Part 4A of the NPW Act will

be inserted into the Regulation. The proposed definition provided in clause 80 is consistent with the definition of community development contained in the current Part 4A leases (excepting the Mutawintji parks), and is to include:

- (a) recreation activities and facilities
- (b) cultural activities and facilities
- (c) general park activities and facilities
- (d) activities that will improve the capacity of traditional and Aboriginal owners of the Part 4A lands or Land Council members to participate in the management of the lands.

This proposed amendment to the Regulation will further contribute to achieving the objectives of Part 4A of the NPW Act by ensuring that Aboriginal community development is considered as part of the management of these Aboriginal owned lands and by giving effect to the community development clauses of the leases for parks reserved under Part 4A. The prescription of the community development purposes in the Regulation recognises that these lands are Aboriginal lands and hence should allow for a certain level of community development, but at the same time provides some regulation of what those community development purposes will be.

There are no amendments proposed to the current Regulatory approach to the operation of the Boards of Management.

Note that Part 7 of the existing Regulation becomes Part 8 in the proposed Regulation.

### **3.8.4 Alternative to Regulation**

With regards to the functions of the Board, an alternative to the Regulation could be the reliance upon section 47(1) of the *Interpretation Act 1987* to fulfil certain Board functions, such as to appoint deputies for Board members, as there is no clear requirement under the NPW Act. However, the utilisation of the Interpretation Act would not be effective in achieving the objectives of the Regulation as it does not clearly provide for:

- the Board to appoint a Deputy Chair to act in the place of the Chair if the Chair is absent
- the process for Board members to follow if no Chair or Deputy Chair is present and how the role of the Chair would be performed in these circumstances.

These functions could also be managed administratively but common practice is to prescribe such functions in Regulation to ensure compliance and hence effective operation of committees.

There is no feasible alternative approach to that of prescribing community development purposes for Part 4A parks in the Regulation. Community development could not simply be based upon the terms of a Part 4A lease as it has no statutory basis unlike a PoM or the Regulation.

### **3.8.5 Costs and benefits**

There are small administrative costs associated with this part of the Regulation. The benefits derive from improving administrative consistency with the NPW Act and facilitating community development in Aboriginal communities. As noted above there is no feasible alternative to the Regulation as it pertains to prescribing community development.

## **3.9 Advisory committees**

In addition to the National Parks and Wildlife Advisory Council, there are currently 19 regional advisory committees constituted under the NPW Act. The objective of Part 8 of the existing Regulation is the consistent and effective administration of these committees.

### **3.9.1 Base case – no Regulation**

If the Regulation were repealed, the effective, efficient and consistent operation of the regional advisory committees would be at risk. Without the Regulation, each committee could be free to set its own administrative standards, which may prevent it from satisfactorily and consistently meeting its statutory functions under the NPW Act.

### **3.9.2 Option 1 – existing Regulation**

Regional advisory committees are constituted and their functions prescribed under sections 24 and 25 of the NPW Act. It is common practice to prescribe further administrative detail relating to the appointment of officers, when meetings are to be held and other administrative matters in Regulations.

Part 8 of the existing Regulation focuses on four main areas of the administrative processes and protocols of the regional advisory committees:

- when meetings are to be held, including annual general meetings
- the process for the appointment of officers
- the process to appoint a presiding member if the Chair and Deputy Chair are absent from a meeting
- various administrative matters.

The existing Regulation guarantees that committees are not able to set their own administrative standards. Therefore, Part 8 achieves the overall objective of the Regulation by ensuring that regional advisory committees are structured and operate consistently and uniformly on all administrative functions across NSW.

### **3.9.3 Option 2 – proposed Regulation**

Minor improvements are proposed to the existing Regulation (refer to Part 9 of the proposed Regulation) in relation to the timing specified for when meetings are to be held to reflect the fact that committees are appointed for a financial year rather than for a calendar year. Therefore, the annual general meeting will be required to be held before the end of June rather than before the end of February.

For consistency, it is further proposed that the month be changed from the end of December to the end of June for Secretaries to forward details of the meetings held during the financial year (rather than the calendar year) to the Director General of DECC.

Lastly, the current requirement for a committee to hold its first annual general meeting within three months of constitution is too onerous and not practical. It is proposed that this be amended to state that the committee will hold its first meeting within three months, rather than its first annual general meeting.

### **3.9.4 Alternative to Regulation**

An alternative to regulating the above matters would be to deal with them administratively, for example through a memorandum of understanding (MoU) between the committees and the Director General of DECC. However, the risk of this approach is the lack of consistency in operation of the committees. Although a MoU would support and reflect the requirements of the NPW Act, it is not a statutory document and therefore does not carry the weight of prescribing these matters in Regulations.

The consequences could be the failure of some committees to satisfactorily meet their statutory functions under the NPW Act. If the MoU is not consistently adhered to, and without the benefit of the Regulation, there is potential for an increase in administrative costs associated with a lack of standardised procedures, such as increased duplication of effort across a number of regions and additional staff time required to coordinate and monitor committees across NSW.

There is also a compliance cost if regional advisory committees choose not to comply fully with a MoU by setting their own administrative standards. As a consequence, increased costs in employee related expenses could ensue, based upon the expected increased proportion of staff time that would be required in an attempt to implement a standardised compliance of administrative functions directly and indirectly across the State. Hence the key DECC contact officer for all 19 advisory committees, regional managers and other office contact staff would find it exceedingly difficult to monitor and ensure regional advisory committees are meeting their legislative obligations, as well as providing consistent advice to the National Parks and Wildlife Advisory Council, the Director General of DECC and the Minister.

### **3.9.5 Costs and benefits**

The proposed Regulation provides the most efficient means to administer a large number of advisory committees. Any costs associated with the Regulation are outweighed by the standardisation and ease of compliance it provides.

## **3.10 Penalty notices**

A comprehensive review of the penalty notice offence amounts listed under Schedule 2 of the Regulation was undertaken as part of the overall review to ensure that the current penalties are appropriate and consistent with other legislation where necessary. Other NSW legislative instruments which were examined for consistency included the NPW Act, the *Threatened Species Conservation Act 1995* and the *Threatened Species Conservation Regulation 2002*, the *Protection of the Environment Operations Act 1997* and Regulations made under that Act, and similar offences within local government and other land management legislation, such as administered by Forests NSW, the Rural Fire Service and the Roads and Traffic Authority. Penalty amounts in the Regulation were also compared to legislation from other jurisdictions.

The level of a penalty notice offence amount is set to provide a deterrent. In the case of the Regulation, for example, penalties are principally set as a means to ensure the protection of park values (both natural and cultural), fauna (on- and off-park) and visitor safety.

In addition to consistency with other regulations, the severity of the offence was considered when reviewing the appropriateness of the current penalties, in particular



relating to potential damage to park values and risks to visitor safety. The following principles were considered:

- whether the offence may cause irreversible or long-term damage to park values or infrastructure (cannot repair)
- whether the offence may cause significant damage to park values or infrastructure (costly to repair – the lower end of the scale would be minimal harm)
- endangering human life (the lower end of scale would be inconvenience to others)
- the significance of the damage or anything affected (for example whether a threatened or common species)
- scale of impact upon wildlife (for example whether killed, damaged or harassed)
- potential commercial profit from an offence (scale of exploitation)
- consistency with similar legislation.

The penalty review has resulted in recommendations that some penalties should be increased while some should be reduced. Most of the penalties, however, were considered appropriate. See Table 2 in Appendix 2 for a list of the proposed changes to penalty notice amounts in the Regulation.

### **3.10.1 Costs and benefits**

The amendments proposed above would either increase or decrease the cost to those individuals committing an offence. However, these costs can easily be avoided by individuals making small changes to their behaviour, (that is, not committing the offence). It is expected that higher penalty levels would act as a greater deterrent and hence reduce the incidence of offences committed. Any impact of additional penalty revenue is expected to be outweighed by the increased value that the public derives from the improvements in the environmental quality and amenity of parks.

If current enforcement and infringement levels continue then revenue from penalties under Schedule 2 of the proposed Regulation would increase by approximately \$80,000 per year.<sup>6</sup>

## **3.11 Miscellaneous**

There is a range of miscellaneous matters handled under Part 11 of the existing Regulation, such as ex-officio rangers, notice of preparation of plans of management, transfer of Aboriginal objects, appeals, terms of interim protection orders, and disposal of property seized. One minor amendment of a mechanical nature has been proposed under this section (to existing clause 92(2)(c) of the Regulation, see Appendix 2, Table 1 for details). Note that Part 11 of the existing Regulation becomes Part 12 in the proposed Regulation.

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<sup>6</sup> Enforcement data from 2002–07 was supplied by the Office of State Revenue.

## 4 Conclusion

Alternative approaches to achieving the objectives of the Regulation are discussed in this RIS, including consideration of allowing the Regulation to lapse without being remade (the base case scenario), remaking the Regulation as it currently is, or amending the Regulation as proposed. Costs and benefits as well as alternatives to the Regulation have also been discussed.

The repeal of the Regulation could result in a diverse range of negative impacts, including:

- limiting DECC's powers to manage visitor use of parks in a safe and sustainable manner
- removing the power to charge fees for the use of parks and park facilities, which would lead to a significant loss in revenue which directly contributes to park management activities and the provision of visitor facilities
- removing the power to enforce the protection of specific park values, such as karst caves
- limiting DECC's powers to provide public health services and facilities in the resort areas of Kosciuszko National Park, including the preservation of healthy conditions through use of entry and inspection powers
- reduction in the effective management, renewal and enforcement of licence conditions
- potential reduction in animal welfare standards currently prescribed for the keeping and trade in protected fauna
- potential for illegal sourcing and trade of protected fauna
- limiting powers to enforce the protection of marine mammals in NSW waters in a manner consistent with other jurisdictions
- compromising the management of Aboriginal lands (parks that have been returned to Aboriginal ownership and leased back to the Minister for Climate Change and the Environment to be jointly managed by a Board of Management and DECC).

Consideration of alternative approaches to the Regulation was problematic given that the Regulation covers such a broad range of matters. Some of the objectives of Part 2 of the Regulation may be achieved by alternative means such as park PoMs and similar powers in other legislation (where these exist). However such alternatives would add to the complexity of management through duplication and lack of flexibility, and DECC would have limited or no power to enforce the 'regulatory' requirements of a PoM. Similarly, the operation and efficiency of park management under a system of cobbled together legislation would be unwieldy and inefficient to manage, and would create uncertainty for park users.

Alternatives for other parts of the Regulation generally involved dealing with matters by administration or policy, where possible, such as licensing, fauna protection and the administration of Aboriginal Boards of Management and regional advisory committees. The major limitation of such an approach is that DECC would lack legal backing to enforce conditions upon licences, including minimum and enforceable standards for the welfare of animals in trade and commercial use. Similarly, DECC would not be able to ensure the implementation of the *Australian National Guidelines for Whale and Dolphin Watching 2005* in NSW nor enforce protective measures for marine mammals, excepting via the limited powers afforded by the NPW Act. The efficient and consistent administration of committees could also be compromised.

Generally, the Regulation is considered to be the most cost effective means of achieving its objectives compared to having no regulation or to using non-regulatory alternative means where available.

The proposed Regulation, however, will further refine and improve the operation of the Regulation and hence achievement of its objectives through a series of mostly minor amendments. There is not likely to be any significant difference in the costs between administering the current or proposed Regulation, particularly with regard to Parts 2 and 5 (which become Parts 2 and 6 in the proposed Regulation). The proposed Regulation also has been shown to provide the greatest net benefit by:

- reducing complexity
- increasing protection of natural and cultural values of parks, fauna and visitor safety
- increasing protection of marine mammals
- increasing protection of specific and sensitive park values such as karst caves
- increasing DECC's ability to utilise revenue to fund visitor facilities and park management activities
- increasing visitor enjoyment of parks
- improving public health in Kosciuszko National Park
- increasing efficiency in the management of parks, fauna licensing, Aboriginal Boards of Management and regional advisory committees, adding certainty for the public
- improving the management of Aboriginal lands under Part 4A of the NPW Act and the cultural connection of Aboriginal people with these lands by enabling a certain level of community development in these parks.

Costs of the existing Regulation to DECC are principally encompassed in the administration of Part 2 and Part 5, which were estimated at approximately \$11.4 million for 2006–07. These costs are offset by the \$14 million in camping and entry fees that are generated through the Regulation. Cost impacts of the regulations through application requirements are considered to be minor. Benefits, although not costed, derive from the Regulation being the most cost effective form of management which achieves the objectives of the NPW Act.

It can therefore be concluded that the proposed Regulation provides the greatest net benefit and least cost to the community compared with its alternatives. The proposed Regulation is hence the preferred and recommended option.

## Appendix 1: Types of parks in the parks system

DECC manages a parks system covering over six million hectares which represents approximately eight per cent of the land area of NSW.

The key difference between lands which are part of the parks system and other public lands, such as state forests, Crown reserves and parks which are managed by local councils, is that all activities in parks managed by DECC must be consistent with conservation objectives. That is why some activities can no longer be permitted after lands are transferred to DECC for reservation under the NPW Act, depending upon the category under which the park is reserved (for example nature reserve, national park).

All parks are valuable and important, but they are not the same. They are managed for different purposes and different activities are allowed in them, depending upon the values that need to be protected. The park categories in the NPW Act reflect these differences.

The NPW Act contains seven types, or categories, of park:

- **nature reserve:** these are areas which are predominantly in a natural condition. Low levels of past disturbance means that the ecosystems are in better condition and support more wildlife than can be sustained by undisturbed ecosystems. The primary purpose of nature reserves is to conserve nature. This includes both biodiversity and geodiversity, such as caves. Scientific research is an important objective in nature reserves, because it increases our understanding of their values and provides the information needed to conserve these values.
- **national park:** the primary purpose of a national park is to conserve nature and cultural heritage. In doing so, opportunities are provided for sustainable recreation and scientific research. It is important to ensure that these activities are well managed so that they do not compromise the primary purpose.
- **state conservation area:** the only difference in the NPW Act between the management purpose, objectives and principles of national parks and state conservation areas is that exploration and mining may be permitted in state conservation areas, if it is compatible with the natural and cultural values for which the park was established. Lands are only reserved as state conservation areas where the presence of minerals does not allow for reservation under another category.
- **karst conservation reserve:** the primary management purpose of karst conservation reserves is the conservation of karst environments and the biodiversity that they support. Karst environments are areas which contain landforms such as limestone caves. Karst environments are protected in many parks, but reservation of land as a karst conservation reserve places additional management emphasis on the conservation of subterranean ecosystems and the water catchment upon which the karst environment is dependent.
- **Aboriginal area:** these are places which have been identified as having special significance to Aboriginal people. Aboriginal areas are the only category in which the conservation of Aboriginal heritage is the primary management purpose. They are also the only type of park in which the management principles

specifically require the area to be managed to allow for the use of the park by Aboriginal people for cultural purposes.

- **historic site:** all parks have cultural heritage values, but historic sites are those parks which are established for the primary purpose of protecting and promoting cultural values. Cultural heritage values in historic sites include both Aboriginal and non-Aboriginal values.
- **regional park:** these are established generally for the protection of urban bushland and to provide recreational opportunities for major urban areas (although they are no longer restricted to urban areas). The regional park category is the only one which has the provision of recreational opportunities as a stated management purpose. Regional parks may provide opportunities for activities (such as dog walking) which are not permitted in national parks, state conservation reserves or nature reserves.

#### Parks reserved as at 30 June 2007

Category	Number	Total area (ha)
National parks	178	4,975,869
Nature reserves	397	388,745
Historic sites	15	3,066
Aboriginal areas	14	11,717
Karst conservation reserves	4	4,409
State conservation areas	104	421,852
Regional parks	13	7,226
Community conservation areas <sup>1</sup>	55	332,781
<b>Total</b>	<b>776</b>	<b>6,641,256</b> <sup>2</sup>

<sup>1</sup> Community conservation areas are administered by the Regulation but were created under the *Brigalow and Nandewar Community Conservation Area Act 2005*.

<sup>2</sup> Represents 8.29% of the land area of NSW.

## Appendix 2: Summary of proposed amendments

Table 1: Summary of amendments to clauses in the proposed National Parks and Wildlife Regulation 2009

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
3	3	Definition of park authority	<p>Amend the definition of park authority in relation to state conservation areas:</p> <p>(a)(ii) when used in connection with the imposition or waiver of fees and charges – the Minister if a trust has the care, control and management of the area (or if there is no such trust, the Director General)</p> <p>Amend the definition of park authority in relation to regional parks:</p> <p>(b)(ii) when used in connection with the imposition or waiver of fees and charges – the Minister if a trust or locals council has the care, control and management of the park (or if there is no such trust or local council, the Director General)</p>	<p>It is illogical that the Director General has the power to impose or waive fees for other reserve categories but not for state conservation areas or regional parks where there is no trust or local council with responsibility for the care, control and management of the area.</p>
3	3	Definition of park authority	Delete references to the Jenolan Caves Reserve Trust from subclauses (c) and (d) of the definition of park authority. References to the Jenolan Caves Visitor Use and Services Zone will only apply to the administrator appointed by the Minister (or the Trust).	<p>The National Parks and Wildlife (Jenolan Caves Reserves) Act 2005 dissolved the Jenolan Caves Reserve Trust, deleted all reference to it from the NPW Act and vested care, control and management of the Jenolan Caves Karst Conservation Area in the Director General of DECC. The Jenolan Caves Reserve Trust will remain the administrator of certain areas known as the Jenolan Caves Visitor Use and Services Zone for a period of time prescribed by the aforementioned Act.</p>

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
N/A	3(2)(a)	Consents for leases and licences	Amend the definitions clause of the Regulation such that for the purposes of this Regulation, a lease or licence granted under ss.47GC and 47U and Parts 11 and 12 of the NPW Act that authorises a person to carry out an activity in a park is taken to constitute consent to the carrying out of that activity in accordance with the conditions of the lease or licence.	The amendment will create greater certainty and reduce duplication for major lease and licence holders (especially those issued by the Minister who, unlike the Director General, is not the park authority for the purposes of the Regulation) who currently need to seek separate consents for various activities associated with the purpose of their lease or licence.
5(3)	N/A	Regulation by direction	Remove clause 5(3).	The subclause as currently written is illogical. Clause 32 of the Regulation might still be used as a defence for this offence.
4(1)(d), (e), (g) and (f) 5(1)(d) and (f) 7(1)(g)-(h)	4(1)(d), (e), (g) and (f) 5(1)(d) and (f) 7(1)(g)-(h)	Use of vehicles, camels, horses, in parks	Replace references to horses and camels with the term hoofed animal.	An amendment is recommended to make these clauses more comprehensive and give the power to regulate a broader range of animals.
7(1)(f)	7(1)(f)(iii)-(iv)	Driving a vehicle with no number plate or an obscured number plate	Amend so that the clause captures altered or changed number plates or registration plates (false or incorrect plates).	It is not uncommon for vehicles that have been used to transport off-road motorcycles into a park (to be ridden illegally) to have false number plates (which can be identified by checking the registration label) in order to evade detection.

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
7	7(1)(j)	Park vehicle otherwise than in an area set aside for the parking of vehicles	Create a new subclause of 'parking in a space set aside as a disabled parking space', with a penalty notice offence amount consistent with the penalty under the Road Transport (General) Regulation 2005 (\$405).	There is no differentiation in the Regulation for more serious parking offences, such as parking in spaces set aside for disabled people.
7(1)(k)	7(1)(l)	Unauthorised use of a vessel to cause nuisance or endanger park users	Remove reference to 'nuisance'.	Clause 13(1)(c) deals with operating vessels in such a way that causes nuisance. For clarity it is better to remove nuisance from endangerment, which also represents a more serious offence.
7(4)(a)	7(5)(a)	Open, damage, destroy gate or barrier	Remove reference to 'damage or destroy' – i.e. the offence is only to open a gate, barrier or similar device, and insert into clause 7(5)(b).	Opening of a gate is a lesser offence than damaging or destroying a gate, yet they are grouped together. The inclusion of this offence under clause 7(5)(b) is more logical as it represents a higher offence.
7(4)(b)	7(5)(b)	Remove, shift, damage or destroy obstruction	Amend to include any 'obstruction, gate, barrier or similar device'.	Need to clearly identify that gates, barriers or similar devices fall under this offence.



2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
8, 25, 28	8, 26, 29	Provisions with reference to 'authorised officers'	Amend to replace reference to 'authorised officer' with 'designated officer'.	These clauses refer to authorised officers and provide a definition of that term for the purposes of each respective clause. The term 'authorised officer' is also used in the NPW Act but it has a different meaning to its use in the Regulation. This could cause confusion.
8(1)(b)	8(1)(b)	Removal of certain persons	Delete 'annoyance' from subclause 8(1)(b).	During the recent Federal Court Case of <i>Evans v State of New South Wales</i> [2008] FCAFC 130 (15 July 2008), which related to the validity of regulation making power under the <i>World Youth Day Act 2006</i> , the Court found that the power to direct a person within a World Youth Day declared area to cease engaging in conduct that causes annoyance to participants in a World Youth Day event was invalid. This brings into question the validity of the power under clause 8(1)(b) to direct a person to leave a park for causing an annoyance to any other person in a park.
8	7(3)	Towing a vehicle from a park	Amend to give the power to tow vehicles in certain circumstances (for example where a vehicle is parked in a dangerous manner or location and it is not possible to issue a direction to a person to move the vehicle).	There are some powers to tow a vehicle under clause 8 but this power can only be used where a direction is first given to a person to move or remove the vehicle. Powers are required in emergency situations to move a car when it is not possible to locate and issue the owner or driver with an oral direction. This is recommended as an alternative to seeking power under the <i>Road Transport (Safety and Management) Act 1999</i> .

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
10(5)	N/A	Camping and residing	Delete subclause.	The defence refers to where a lease or licence has been granted by the Minister to allow a person to reside in a park. This defence is now provided by the amendment to clause 3(2)(a) (refer to explanation of the insertion of new subclause 3(2)(a) for further detail).
10(7)	10(6)	Camping and residing	Amend the definition of 'camp' to replace the reference to 'reside temporarily' with 'dwell temporarily' and to make the definition non-exhaustive.	For enforcement purposes, it is difficult to prove that someone is residing permanently or temporarily in a park. The term 'dwell' is legally clearer and hence preferable.
11(1)(h) and 11(7)	11(1)(h) and 11(7)	Interfere with, carry or possess rock, mineral, natural substances	Include fossil in the subclauses and insert a definition of fossil.	There is a need to include fossil as problems have been experienced with people removing fossils from some parks, such as Kincheqa National Park, Mungo National Park and karst caves.
11(1)(h) and 11(1)(j)	11(1)(h)	Interfere with, carry or possess rock, mineral, natural substances	Amend to incorporate clause 11(1)(j) into 11(1)(h), which will extend the carry or possess offence to activities on water as well as land. Penalty notice offence amount to be \$500.	The two clauses 11(1)(h) and 11(1)(j) are similar and deal with interfering with, carrying or possessing natural materials. Clause 11(1)(h) carries a penalty of \$300 and clause 11(1)(j) carries a penalty of \$500. Clause 11(1)(h) applies to activities on water as well as land; however, clause 11(1)(h) does not. It is proposed to merge them to ensure consistent enforcement of interfere, carry and possess offences.

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
11(1)(k)	11(1)(j)	Possession of cutting equipment	Amend to include 'chainsaw' in the list of cutting devices.	It is an offence to carry, possess or use cutting equipment in a park. The amendment will clarify that such cutting equipment includes chainsaws.
11(2)	11(2)	Littering and damage	Include a defence for development under Part 3A of the EP&A Act (Major Infrastructure Projects) in relation to the ski resort area of Kosciuszko National Park.	Clauses 11, 16 and 17 provide a defence under Parts 4 and 5 of the EP&A Act (for development in accordance with a development consent or an activity if the determining authority has complied with Part 5). It would be reasonable and consistent to include a similar defence under Part 3A to be consistent with the existing defences under Parts 4 and 5.
16(2)	18(2)	Erection of structures		
17(2)	19(2)	Protection of vegetation		
11(5)	11(6)	Littering and damage	Amend definition of waste to include 'containers'.	Clause 11 makes it an offence to deposit or leave any litter or waste in a park. The amendment will clarify that waste includes objects such as containers (for example those which may be left in a park as part of the virtual treasure hunt game of geocaching, which is an activity that DECC does not allow as a matter of policy).
12(1A)	12(2)	Prohibits the possession or use of hunting equipment for dogs	Amend to use the single term 'hunting collar' and define a hunting collar to include, but not be limited to, a spiked collar or any collar which protects a dog from injury. Remove reference to 'radio' so that use of tracking equipment is not restricted to radio tracking equipment only.	The amendment will clarify that any sort of protective collar for a dog will fall under the definition of hunting collar and that any type of tracking equipment is prohibited.

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
12(1)(d)	N/A	Protection of animals	Delete subclause.	This provision is inconsistent with the NPW Act, so far as it purports to regulate the use of fish traps and nets for fish in a park. This is a matter covered by fisheries legislation.
13(1)(a)–(c)	13(1)(a)–(f)	Offensive conduct	Amend clause 13(1) to separate different offences.	DECC does not want the power to give consent (or for a person to use a park authority's consent as a defence) for certain forms of offensive conduct in parks. This is consistent with similar provisions in other regulations. Additionally, subclause 13(1)(c) as it is currently drafted is in part illogical. For example, a person cannot 'drive' or 'ride' a radio or television, hence this subclause should be split into two separate offences.
13(1)(a)	N/A	Offensive conduct	Delete the offence of committing a nuisance or cause annoyance or inconvenience to other persons in a park.	During the recent Federal Court Case of <i>Evans v State of New South Wales</i> [2008] FCAFC 130 (15 July 2008), which related to the validity of regulation making power under the <i>World Youth Day Act 2006</i> , the Court found that the power to direct a person within a World Youth Day declared area to cease engaging in conduct that causes annoyance to participants in a World Youth Day event was invalid. This brings into question the validity of the offence under clause 13(1)(a) to commit a nuisance or cause an annoyance or inconvenience to other persons in a park.

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
N/A	14	Alcohol free areas	Insert a new provision into the Regulation giving the park authority the power to erect signs to declare a park or any part of a park to be an alcohol free area. This is a low level offence and the penalty notice amount and maximum penalty for the offence will be consistent with that under the <i>Local Government Act 1993</i> , which is \$22.	There have been problems with disorderly behaviour and damage in some parks (particularly urban parks) as a result of the congregation of groups of people who irresponsibly consume large amounts of alcohol. DECC is seeking similar powers to those of the <i>Local Government Act 1993</i> to be able to declare problem areas in parks as alcohol free by erecting a notice. This is intended to enable problem areas to be targeted and for DECC officers to be able to move people on and discourage disorderly behaviour.
14(1)(b)	15(1)(b)(i)–(ii)	Leave fire unattended	Amend to split the subclause to make it an offence to leave a fire unattended, temporarily or otherwise: <ul style="list-style-type: none"> <li>i. a fire in a fireplace designated for that purpose (penalty notice amount of \$100); and</li> <li>ii. a fire in any other place (i.e. not designated for that purpose) (penalty notice amount of \$500).</li> </ul>	The current penalty for leaving a fire unattended is \$500. However, leaving a fire unattended anywhere other than in a designated fireplace is a more serious offence than leaving a fire unattended in a designated fireplace. Hence splitting the subclause into two more accurately reflects the seriousness of each offence.
14(1)(d)	15(1)(d)	Handle inflammable substance	Amend to delete 'inflammable' and replace with 'flammable'.	This clause refers to handling of 'inflammable' substances. However, common practice is now to refer to such substances as 'flammable'.
17(1)(c)	18(1)(c)	Protection of vegetation	Amend to delete the reference to 'exotic'. It will therefore be an offence to introduce any vegetation into a park.	Introduction of any vegetation into parks, whether exotic or not, can pose an environmental risk. This would bring the vegetation offence in line with the animals offence in clause 9, which does not distinguish between native and non-native species with regards to releasing them in parks.

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
19(1)(a)	20(3)	Prohibition of weapons	Amend to clarify that a person does not commit an offence under clause 20(1) if he or she is acting in the course of their duties, or if off-duty has acted in accordance with any guidelines issued by the Commissioner of Police with respect to the off-duty possession of service firearms by police officers.	The clause as currently written could enable an off-duty police officer to lawfully discharge firearms in a park without appropriate restrictions.
19(7)	20(8)	Definition of unloaded speargun	Amend definition so that an unloaded speargun includes 'disassembled spearguns'.	The interpretation of the meaning of the current definition is unclear and is unlikely to include a disassembled speargun. This has been a problem for law enforcement.
21(1)(c)	22(1)(b)-(c)	Regulates group activities and military or training manoeuvres	Incorporate reference to group activities involving more than 40 persons into subclause (b) (and hence delete reference from current subclause 21(1)(c)).	There is a need to clarify that the maximum group size specified in this clause does not relate to military or training manoeuvres and that approval of military or training manoeuvres is required no matter what the size of the group.
21(2)	22(2)	Regulates risky recreational activities	Amend to include cave diving as one of the risky activities to which clause 21(1)(d) of the Regulation applies.	Cave diving is an extremely risky activity that should be carried out by very experienced cave divers only. The amendment gives the power to prohibit the activity without consent.
23	24(7)	Caves	Include a definition of 'cave' and 'karst cave'.	There is a need to ensure that the Regulation better protects karst caves as well as other caves.

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
23(1)	24(1)	Prohibits entering or remaining in a cave without consent	Amend such that a person must not enter or remain in a karst cave in a park without consent. A person will not commit an offence if they enter or remain in a cave in accordance with a plan of management or a notice erected in a park.	There is a need to ensure greater protection for the sensitive environment of karst caves. Consent will be required to enter karst caves only, not other types of caves in parks. Other caves will still remain protected by the provisions of clause 23(2).
N/A	24(2)(l)	Activities that cannot be carried out in or near a cave	Add a new subclause that says a person must not in a park obstruct, erect a fence or gate, fill or alter the entrance or passage of a cave. The penalty for this offence will be \$500, consistent with the similar penalty under clause 17(1)(c) for the offence of constructing any structure, installation, engineering work or fixture in a park.	There is a need to be able to prohibit the act of obstructing, gating or filling an entrance or passage of a cave, which can have detrimental impacts to cave biota and environments.
N/A	24(2)(m)	Activities that cannot be carried out in or near a cave	Add a new subclause that makes it an offence for a person to have in their possession in a cave a sieve, spade, shovel, fork, mattock, pick, bar, axe, chisel, hammer or similar implement. The penalty for this offence will be \$300.	These items should not be required during routine caving activities and their possession in a cave is linked to illegal activities such as removing crystals or rocks from the cave environment.
N/A	24(2)(n)	Prohibits lighting a fire in a cave	Add a new subclause to specify that the use of a range of combustible sources is prohibited, such as carbide lanterns, flares, engines and fuel stoves. The penalty for this offence will be \$300, consistent with the penalty under clause 24(2)(f) for the offence of lighting a fire in a cave.	The Regulation does not expressly prohibit the use of naked flame light sources, which when used in a cave pose safety and environmental risks.

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
N/A	24(3)	Activities that cannot be carried out in or near a cave	Add a new subclause that a person must not have in their possession in a karst conservation reserve or a karst environment in a park caving or cave diving equipment without the consent of the park authority. The penalty for this offence will be \$300, consistent with the penalty for the proposed offence of possessing certain equipment under clause 24(2)(m).	Illegal access to karst caves that are not open for public access is an enforcement problem whereby it is difficult to actually catch a person in the act of caving unless the law enforcement officer is themselves also caving. Possession of equipment required for caving and cave diving, particularly equipment that has obviously just been used in the vicinity of such caves will assist enforcement of unlawful entry to caves.
23(2)(c) 23(4)	24(2)(c) 24(6)	Laying of a track in a cave	Amend so that a person does not commit an offence under subclause 2(c) if the person is authorised to access a cave and lay a track as a temporary safety or conservation measure and if the person removes the track when the person leaves the cave.	There may be occasions where the use of strings and other markers for the purposes of cave exploration and research is required (other than just as a temporary safety measure).
23(2)(d)(i)	24(2)(d)(i) 24(2)(d)(iv)	Prohibiting removal of items from a cave	Amend to specify that a person must not interfere with or remove from a cave any crystal, guano, bones, fossil, subfossil or palaeoecological objects.	The most common features to be vandalised or pilfered from caves are calcium carbonate crystal (as souvenirs) and guano (for fertiliser).
32(b)	33(b)	Defences	Amend to ensure that a person does not commit an offence under Part 2 of the Regulation for anything done or omitted under the <i>oral or written</i> direction of the park authority.	There is a need to ensure that if a park user follows a direction given under clause 5 then that person is not liable for committing an offence under any other clause of Part 2 of the Regulation. It is unclear whether the existing provision provides this defence.



2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
43	44	Functions relating to the <i>Public Health Act 1991</i>	An amendment is proposed which would make the Director General of DECC the local authority who can appoint environmental health officers. Also ensure that the Public Health (Microbial Control) Regulation 2000 applies as well as Part 4 of the <i>Public Health Act 1991</i> .	The Director General of DECC currently exercises the function of an environmental health officer under the <i>Public Health Act 1991</i> by delegating the powers to DECC officers. However, in accordance with the <i>Public Health Act 1991</i> , environmental health officers are employees of a local authority; employees of DECC are not employees of the Director General, hence the delegation needs to be clarified.
46	N/A	Meaning of 'authorised officer'	Delete this clause.	The <i>Statute Law (Miscellaneous Provisions) Act 2008</i> removed reference to an 'authorised officer' in s.119 of the NPW Act, hence clause 46 is now redundant.
47	N/A	Authorisation for issue of licences	Delete this clause.	The <i>Statute Law (Miscellaneous Provisions) Act 2008</i> removed reference to an 'authorised officer' in s.119 of the NPW Act, hence clause 47 is now redundant.
49	53	Supply of tags to trappers	Amend to replace the term 'trappers' with 'commercial fauna harvesters'	The <i>Statute Law (Miscellaneous Provisions) Act 2008</i> removed reference to 'trappers licences' and replaced them with 'commercial fauna harvesters' licences'.

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
50(b)	54(b)	Grounds for refusing an import or export licence	Amend to include licences, approvals and permits held under the <i>Exhibited Animals Protection Act 1986</i> (EAP Act).	An import or export licence may not be issued if the import or export could result in the licensee contravening another law of the State. Native animals can in some cases be held under a licence under the EAP Act instead of NPW Act. This proposal will clarify that DECC must not issue a licence to import an animal to a fauna park, or to a mobile exhibitor, if that park or exhibitor does not have approval under the EAP Act to acquire and exhibit that animal.
50(c)(i)	54(c)(i)	Grounds for refusing import or export licence	Amend to replace reference to 'authorised officer' with 'Director General'.	The Director General is named as the delegated officer throughout this clause and use of authorised officer in this subclause is inconsistent.
52	N/A	Payment of royalty	Delete this clause.	This provision is outdated and no longer required.
55	N/A	Consignment or sale of young birds	Delete this clause.	This provision is outdated and no longer relevant to current practices in bird trade. Guidance is offered by the <i>NSW Animal Welfare Code of Practice No 4 – Keeping and Trading of Birds</i> published by NSW Agriculture (1996).

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
57A(3)(i)	60(1)(f) 60(3)	Protection of marine mammals	Delete the reference to the Department of Environment and Conservation and replace with the Department of Environment and Climate Change.  Replace Waterways Authority with Maritime Authority NSW as the name of this body corporate has changed.	Refers to the former name of the department and agency.
58	68	Notification of possession of certain animals	Amend to reduce the prescribed period from seven days to 72 hours.	To assist in the health and welfare of injured or orphaned fauna, it is desirable to reduce the number of days that an unlicensed individual must either report or pass over possession of sick, injured or orphaned native fauna.
61(1)(a) and (e)	71(1)(a) and (e)	Prescribed officers	Delete position titles under: <ul style="list-style-type: none"> <li>• clause 61(1)(a) and replace with Deputy Director General, Parks and Wildlife Group</li> <li>• clause 61(1)(e) and replace with Deputy Director General, Environment Protection and Regulation Group.</li> </ul>	Amend position titles to reflect restructure.
62(1)	72(1)	Exemption of Aboriginal people from s.70 of the NPW Act	Delete reference from clause 62(1) to wildlife district and wildlife management area.	Section 70(1) of the NPW Act no longer refers to a wildlife district or wildlife management area.

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
63(1)	73(1)	Exemption of Aboriginal people from s.71 of the NPW Act	Delete reference from clause 63(1) to wildlife management area.	Section 71(1) of the NPW Act no longer refers to a wildlife management area.
69	80	Plans of management for Aboriginal land	<p>Insert a new clause such that development for the following purposes is prescribed under s.72AA(6)(c) of the NPW Act in respect of Part 4A lands, where appropriate to the park category:</p> <ul style="list-style-type: none"> <li>a) recreation activities and facilities</li> <li>b) cultural activities and facilities</li> <li>c) general park activities and facilities</li> <li>d) other activities or facilities that will improve the capacity of Aboriginal owners, traditional owners and members of the Local Aboriginal Land Council to participate in the management of the lands.</li> </ul> <p>Retain the existing clause 69 of the Regulation as the Mutawintji Part 4A parks have very specific community development needs owing to the remote western NSW location of these parks.</p>	<p>The Part 4A leases for Biamanga and Gulaga national parks, Stockton Bight and Mt Grenfell Historic Site include similar definitions of community development. Currently the Regulation only has a definition for community development relating to Mutawintji, which is very specific to the circumstances of this park and does not cover Part 4A leases made since the Mutawintji lease. Inserting a general definition will enable plans of management for these parks to include provisions relating to community development. It will also cover definitions for community development for future Part 4A leases. This is consistent with the requirements of the current leases. Note that the definition only needs to be consistent with, not the same as, the lease, and as such will not affect the validity of the current leases.</p>

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
71(1)-(2)	82(1)-(2)	Advisory committee meetings	<p>Amend subclause 1 to require an advisory committee to hold an annual general meeting before the end of June each year (given that committees are appointed on a financial year basis).</p> <p>Amend subclause 2 to require the first meeting of an advisory committee to be held within three months of the constitution of the committee.</p>	The current requirement to hold all meetings by the end of February is outdated and burdensome and the requirement to hold an AGM within three months of the constitution of a committee is not practical.
74(4)	85(4)	Advisory committees – forwarding details to Director General of DECC	Amend to require the secretary to forward to the Director General of DECC via the National Parks and Wildlife Advisory Council, not later than 30 June each year, an annual report providing particulars of the dates of, and members attending, each meeting during the financial year.	The secretary of an advisory committee must forward particulars of dates of meetings and attendees by 31 December each year. This is inconsistent with committees being appointed on a financial year basis.
92(2)(c)	103(2)(c)	Interim protection orders for conservation areas	Amend so that the provision refers to development within the meaning of Division 12 Part 4 of the NPW Act.	Reference to the NPW Act in this clause is outdated as a result of the <i>National Parks and Wildlife Amendment Act 2001</i> Schedule 1 [47], which commenced on 1 July 2002. The relevant section of the NPW Act is now contained in Division 12 of Part 4. It appears to be an oversight that the Regulation was not amended previously.
85(1)(c) and (3)	N/A	Penalty notice offences	Delete subclauses 85(1)(c) and 85(3).	These subclauses are no longer required as the prescribed persons referred to are already referred to in s.160 of the NPW Act.

2002 clause reference	2009 draft clause reference	Description	Proposed amendment	Issue, rationale
Schedule 1	Schedule 1	Caging of protected fauna	<p>Schedule 1 should require compliance with the conditions set out in the <i>NSW Animal Welfare Code of Practice No 4 – Keeping and Trading of Birds</i> published by NSW Agriculture (1996).</p> <p>Delete conditions 1(1), 1(2), 1(3), 1(4), 1(6), 1(7) and 1(9) as these practices are out of date and no longer acceptable.</p> <p>Insert:</p> <p>'Cages and enclosures used in housing protected fauna must be maintained in an adequate sanitary state to the satisfaction of the Director General or an officer authorised by the Director General.</p> <p>'Sufficient space must be provided in each cage and enclosure to enable the protected fauna in it to helter or roost comfortably without overcrowding.</p> <p>'Drinking vessels and food receptacles containing sufficient clean water and food to sustain fauna in the cage and enclosure must be placed in each cage and enclosure as appropriate to the species and maintained in a sanitary state.'</p>	<p>Conditions expressed in the Schedule are out of date and an amendment is required to reflect the <i>NSW Animal Welfare Code of Practice No 4 – Keeping and Trading of Birds</i> published by NSW Agriculture (1996).</p> <p>Broadening of the Schedule to cover all protected fauna in confinement will improve the ability of DECC officers to monitor licensed keepers and provide some guidance as to the conditions that are considered acceptable for the care and keeping of native fauna.</p>

**Table 2: Summary of amendments to Schedule 2 (penalty notice amounts) in proposed National Parks and Wildlife Regulation 2009**

2002 clause reference	2009 draft clause reference	Short description	Current PIN (\$)	New PIN (\$)	Comments, reason for change
4(2)(b)	4(2)(b)	Remain in park/leave vehicle in park after park closed	300	100	Reduce penalty as this offence is not rated as significant as others in clause 4, such as unauthorised use of a park.
4(2)(c)	4(2)(c)	Unauthorised entry into reserved park/part of park	300	200	Reduce penalty as this offence is not rated as high as unauthorised use of a park, which is also currently set at \$300.
7(1)(c)	7(1)(c)	Drive vehicle without valid pass displayed	68	100	This is one of the most commonly issued penalties and the current penalty is not a sufficiently strong deterrent, particularly in parks such as Kosciuszko National Park, where the day use entry fee is higher than other parks (winter fee = \$27).
7(1)(d)	7(1)(d)	Drive or park unregistered vehicle	300	486	Proposed increase is consistent with the penalty notice amount for an offence under section 18(1)(a) of the <i>Road Transport (Vehicle Registration) Act 1997</i> as set out in Schedule 1 to the <i>Road Transport (General) Regulation 2005</i> .
7(1)(e)	7(1)(e)	Drive or park vehicles without valid registration label	200	81	Proposed change to make the penalty consistent with the penalty notice amount for an offence under clause 85(1) of the <i>Road Transport (Vehicle Registration) Regulations 1998</i> as set out in Schedule 1 to the <i>Road Transport (General) Regulation 2005</i> .
7(1)(h)	7(1)(h)	Drive vehicle/camel/horse in dangerous or reckless manner	300	400	Increase of penalty linked to the high risk factor to visitor safety/endangering human life. The proposed increase is also consistent with similar offences under road regulations.

<b>2002 clause reference</b>	<b>2009 draft clause reference</b>	<b>Short description</b>	<b>Current PIN (\$)</b>	<b>New PIN (\$)</b>	<b>Comments, reason for change</b>
7(1)(i)	7(1)(i)	Park vehicle otherwise than in an area set aside for the parking of vehicles	152	81	Proposed change to make the penalty consistent with local government penalty for this parking offence. Other clauses of the Regulation can be used for more serious parking penalties, such as clause 7(1)(p). A new offence is also proposed for parking in a disabled space with a penalty of \$405.
9(1)(a)	9(1)(a)	Take into or release an animal in a park or onto any public or other road traversing a park	200	300	This is a common offence – the penalty should be increased to strengthen the deterrent factor and because of the potential impact on biodiversity and park values. The proposed increase is also consistent with similar offences under the <i>Companion Animals Act</i> .
9(1)(b)	9(1)(b)	Place/keep an animal in park or onto any public or other road traversing a park	200	300	This is a common offence – the penalty should be increased to strengthen the deterrent factor and because of the potential impact on biodiversity and park values. The proposed increase is also consistent with similar offences under the <i>Companion Animals Act</i> .
9(1)(c)	9(1)(c)	Have charge, possession or control of an animal in a park or on any public road or other road traversing a park	200	300	This is a common offence – the penalty should be increased to strengthen the deterrent factor and because of the potential impact on biodiversity and park values. The proposed increase is also consistent with similar offences under the <i>Companion Animals Act</i> .
9(1)(d)	9(1)(d)	Fail to prevent an animal of which the person has charge, possession or control from entering a park or entering onto any public or other road traversing a park	200	300	This is a common offence – the penalty should be increased to strengthen the deterrent factor and because of the potential impact on biodiversity and park values. The proposed increase is also consistent with similar offences under the <i>Companion Animals Act</i> .



2002 clause reference	2009 draft clause reference	Short description	Current PIN (\$)	New PIN (\$)	Comments, reason for change
15(3)(d)	16(3)(d)	Interfere with/remove object more than 25 years old	300	500	Propose to increase penalty as this could result in the irreparable damage to cultural heritage objects so the offence should be higher than the offence for depositing or leaving objects in a park, consistent with clause 16(3)(b).
23(2)(d)(i)	24(2)(d)(i)	Remove rock/soil/sand/stone from cave in park	300	500	Propose to increase this penalty to be consistent with clause 11(1)(h) (dig up, collect or remove soil, sand gravel, fossil, rock etc from a park), which has a penalty of \$500.
23(2)(h)	24(2)(g)	Leave equipment in cave in park	200	300	Propose to increase this penalty as the offence of leaving equipment in a cave should be consistent with the offence of littering under clause 11(1)(a).
23(2)(i)	24(2)(h)	Urinate/defecate in cave in park	300	500	Propose to increase this penalty as it should be consistent with clause 11(1)(c) and 11(1)(d) which both deal with deliberate deposition of waste/offensive waste which has the potential to be a health and/or environmental risk. The natural processes which render this sort of offence lower risk on the surface do not occur in karst caves and there are many cases of pollution remaining in situ for many years.
23(2)(l)	24(2)(k)	Interfere with/remove Aboriginal object from cave	300	500	Propose to increase this penalty to be consistent with clause 16(3)(b) (touch or interfere or do anything that may cause or assist the mutilation or destruction of any Aboriginal object in a park).

## Appendix 3: Alternative legislation

The following tables detail where other legislation might be used in the absence of the Regulation.

### Traffic offences

The Regulation creates some similar offences to legislation in NSW governing roads (for example the *Road Transport (General) Act 2005*). The chief difference is that the offences in the Regulation only apply in relation to roads in parks. Other legislation relating to roads does apply to most roads in parks; however, only a police officer or an authorised officer appointed by the Roads and Traffic Authority is able to issue a penalty notice for an offence under that legislation. Currently DECC has no authorisation to enforce this legislation. Offences include those outlined in the table below.

Legislation	Offence	Related clause in Regulation
<i>Road Transport (Vehicle Registration) Act 1997</i>	Use an unregistered vehicle on a road.	11(1)(d)
Road Transport (Vehicle Registration) Regulation 1998	Drive a vehicle on a road with registration label obscured, defaced or not displayed or drive on a road without bearing number plates.	7(1)(e)–(f)
Roads (General) Regulation 2000	Drive a vehicle in a manner that causes damage to the road.	7(3)
Road Transport (General) Regulation 2005	Park a vehicle in a space not set aside for parking.	7(1)(i)

In addition, some traffic and parking offences under the Regulation are specific to park management needs only (such as parking in a way that obstructs a road, track or trail, endangers the safety of other park users, or damages or destroys vegetation).

### Vessels

Legislation	Offence	Related clause in Regulation
Water Traffic Regulations–NSW	Drive personal watercraft in area where prohibited.	7(1)(j)
<i>Marine Safety Act 1998</i>	Operate vessel contrary to notice prohibiting operation of vessel.	7(1)(j)
Water Traffic Regulations–NSW	Person using vessel causing annoyance, nuisance or danger to any person.	7(1)(k)
<i>Marine Safety Act 1998</i>	Moor vessel contrary to notice restricting mooring.	7(1)(n)

## Regulation of conduct in parks

The following are offences under other legislation that could be utilised as an alternative to some of the clauses within the Regulation that deal with appropriate conduct in parks.

### Taking and keeping animals in parks

Legislation	Offence	Related clause in Regulation
NPW Act	Accompanied by a dog in a nature reserve or a karst conservation reserve.	9(1)(a)(c)
NPW Act	Unlawful liberation of animals.	9(1)(a)

### Littering and damage

Legislation	Offence	Related clause in Regulation
POEO Act	Depositing litter in or on a public place (note that the definition of litter includes abandoned vehicles)	11(1)(a)–(d) and 11(1)(f)–(g)
POEO Act	Aggravated littering (i.e. that causes or is likely to cause danger to any person, animal, property, premises, such as a lit cigarette)	11(1)(a)
<i>Water Management Act 2000</i>	Unlawful taking of water and unlawful construction of water management work	11(1)(i)
POEO Act	Pollution of any waters	11(1)(i)(m)
NPW Act	Removal of water from a park	11(1)(i)
NPW Act	Damage or remove vegetation, rock, soil, sand, stone or similar substance from a park	11(1)(h)(j)
NPW Act	Damage any object or place of cultural value in a park	11(1)(f), 15(3)(b)(d), and 17(1)(a)(b)
<i>Summary Offences Act 1998</i>	Possess spray paint with intention to deface property/wilfully damage or deface any premises or property by means of spray paint	11(1)(k)

### Protection of animals

Many fauna species are listed as threatened in NSW and hence in the absence of the Regulation they would still be protected by various provisions of the TSC Act. Despite this, however, there are many more species that are not threatened and which would be protected by the following offences under the NPW Act.

Legislation	Offence	Related clause in Regulation
NPW Act	To harm any animal within a national park, historic site or nature reserve or harm any protected fauna	12(1)(b)
NPW Act	Use firearms, explosives, nets, traps or hunting devices for harming an animal in a nature reserve or karst conservation reserve or protected fauna	12(1)(a)
NPW Act	Harm protected fauna, other than threatened species, endangered populations or ecological communities	12(1)(b)(c)(g)
NPW Act	Fail to comply with a direction to stop feeding protected fauna or to stop any activity that is causing or likely to cause distress to protected fauna	12(1)

### Lighting of fires

Legislation	Offence	Related clause in Regulation
<i>Rural Fires Act 1997</i>	Leave unattended any fire the person has lit before fire is thoroughly extinguished	14(1)(b)

### Cultural heritage

Legislation	Offence	Related clause in Regulation
NPW Act	Disturb or move Aboriginal object	15(3)(b)
NPW Act	Take possession of or remove Aboriginal object from park	15(3)(b)
NPW Act	Damage any object or place of cultural value in a park	15(3)(d)

### Protection of vegetation

Legislation	Offence	Related clause in Regulation
NPW Act	Cut, fell, destroy, injure, pick, remove or set fire to any tree, timber, plant, flower or vegetation in nature reserve or karst conservation area	17(1)(a)
NPW Act	Pick or possess protected native plant	17(1)(a)
NPW Act	Damage or remove any vegetation on land reserved under the Act	17(1)(a)
NPW Act	Possess native plant in nature reserve or karst conservation area	17(1)(b)

### Weapons

Legislation	Offence	Related clause in Regulation
NPW Act	Discharge prohibited weapon in a national park, nature reserve or karst conservation area	19(1)(a)
<i>Firearms Act 1996</i>	Possess or use prohibited firearm or pistol when not authorised	19(1)(a)
NPW Act	Carry, possess explosive in nature reserve or karst conservation reserve	19(1)(c)
<i>Explosives Act 2003</i>	Must not handle explosive if licence is required to do so	19(1)(c)

## Appendix 4: Calculating costs

A major question examined in the economic analysis of this RIS was the cost to DECC of administering the Regulation. Unlike other areas of DECC which may have a small, well defined group of staff who administer a Regulation, the complexity and geographical dispersion of the Parks and Wildlife Group (PWG) made this a difficult task. To estimate this cost, the following techniques were used.

### 1 Estimating time spent on tasks related to the Regulation

To estimate the time spent on Regulation-related tasks area managers were surveyed from across PWG branches to derive data on the cost of administering the Regulation, principally in examining the time spent on matters related to Part 2 (regulation of use of parks) and Part 5 (fauna protection). This information was matched with staff salaries for the relevant area, to estimate the percentage share of salary expenditure related to Part 2 or Part 5 tasks.

The questionnaires were completed by all PWG Branches and were representative of the wide range of parks that DECC manages, thereby ensuring that high and low visitation parks were included. The parks were then categorised based on their visitation using data from step 2.

### 2 Categorising parks by visitor numbers

Data was extracted from DECC's State of the Parks database which listed every park and the number of visitors. This data was recategorised using the following table in order to simplifying analysis.

Number of visitors	11–100	101–1000	1001–10,000	10,001–100000	100,001–1 million	1 million+
Categorisation	Low1	Low2	Medium 1	Medium 2	High	Very high

### 3 Salary expenditure data

Salary expenditure data was extracted from DECC's SAP system for each field branch in PWG, and the individual units in each branch were then categorised by visitor numbers based on the parks they were responsible for. Where a unit's expenditure could be identified as only related to the administration of Part 2 of the Regulation (for example, collection of camping fees), 100% of the expenditure was attributed.

### 4 Applying survey data

The salary expenditure shares within each branch developed in step 1 which had been categorised as low, medium or high were matched with the categorisation determined in step 3.

Branch	Central	Northern	Southern	Western
Very high	35%			
High	14%	10%	10%	18%
Medium	8%	5%	5%	10%
Low	3%	2%	2%	5%
Average across branch	19%	9%	12%	8%

## References

DECC 2007, *Annual Report 2006–07*, Department of Environment and Climate Change, Sydney, [www.environment.nsw.gov.au/whoweare/deccar07.htm](http://www.environment.nsw.gov.au/whoweare/deccar07.htm)

DEH 2006, *Australian National Guidelines for Whale and Dolphin Watching 2005*, Department of Environment and Heritage, Canberra, [www.environment.gov.au/coasts/publications/whale-watching-guidelines-2005.html](http://www.environment.gov.au/coasts/publications/whale-watching-guidelines-2005.html)

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NSW Agriculture 1996, *NSW Animal Welfare Code of Practice No 4 – Keeping and Trading of Birds*, NSW Department of Primary Industries, [www.dpi.nsw.gov.au/agriculture/livestock/animal-welfare/codes/general/aw-code-4](http://www.dpi.nsw.gov.au/agriculture/livestock/animal-welfare/codes/general/aw-code-4)



New South Wales

# National Parks and Wildlife Regulation 2009

under the

National Parks and Wildlife Act 1974

*[The following enacting formula will be included if the Regulation is made:]*  
Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *National Parks and Wildlife Act 1974*.

Minister for Climate Change and the Environment

## Explanatory note

The object of this Regulation is to repeal and remake, without any major changes in substance, the *National Parks and Wildlife Regulation 2002*.

This Regulation makes provision for or with respect to the following:

- (a) the regulation of the use of national parks and other areas (Part 2),
- (b) the preservation of public health in Kosciuszko National Park (Part 3),
- (c) the enforcement of obligations of the Snowy Hydro Company (Part 4),
- (d) licences and certificates (Part 5),
- (e) the protection of fauna (Part 6),
- (f) the exemption of Aboriginal people from the restrictions imposed by various sections of the *National Parks and Wildlife Act 1974* (**the Act**) on the hunting of certain animals and the gathering of certain plants (Part 7),
- (g) boards of management and plans of management in relation to Aboriginal land (Part 8),
- (h) advisory committees constituted under section 24 of the Act (Part 9),
- (i) trustees of state conservation areas and regional parks (Part 10),
- (j) the issue of penalty notices (Part 11),
- (k) other matters of a minor, consequential or ancillary nature (Parts 1 and 12).

The Regulation also repeals the *National Parks and Wildlife (Savings and Transitional) Regulation 1997* which is now spent.

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National Parks and Wildlife Regulation 2009

Explanatory note

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This Regulation is made under the *National Parks and Wildlife Act 1974*, including sections 154 (the general regulation-making power), 155 (the general power to make regulations in relation to parks), 155A (the power to make certain regulations relating to the Kosciuszko National Park) and 156 (the general regulation provisions).



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# public consultation draft

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National Parks and Wildlife Regulation 2009

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## Contents

	Page
<b>Part 1 Preliminary</b>	
1 Name of Regulation	8
2 Commencement	8
3 Definitions	8
<b>Part 2 Regulation of use of parks</b>	
<b>Division 1 Regulation by notices or direction</b>	
4 Regulation by public or other notice	12
5 Regulation by oral direction	13
<b>Division 2 Regulation of traffic</b>	
6 Entry of vehicles to parks	14
7 Use of vehicles, hoofed animals, vessels and machines in parks	14
<b>Division 3 Regulation of conduct generally</b>	
8 Removal of certain persons	17
9 Taking and keeping of animals in parks	17
10 Camping and residing	18
11 Littering and damage	19
12 Protection of animals	22
13 Offensive conduct	23
14 Consuming alcohol in alcohol free areas	23
15 Lighting of fires	23
16 Cultural heritage	24
17 Erection and occupation of structures	25
18 Protection of vegetation	26
19 Beehives	28
20 Weapons	28
21 Commercial activities	29
22 Sporting, recreational and other activities	30
23 Research activities	31
24 Caves	31
25 Interference with park management	33
26 Use of snow chains in Kosciuszko National Park	33
<b>Division 4 Mooring vessels within Ku-ring-gai Chase National Park</b>	
27 Definitions	34

---

# public consultation draft

---

National Parks and Wildlife Regulation 2009

Contents

---

	Page	
28	Setting up of moorings	34
29	Mooring of vessels	35
30	Misrepresentation of authority to moor vessel	36
<b>Division 5      Miscellaneous</b>		
31	Consents	37
32	Exercise of park authority's functions	37
33	Defences	37
34	Second and subsequent offences	37
<b>Part 3</b>	<b>Public health in Kosciuszko National Park</b>	
35	Definitions	39
36	Object of Part	39
37	Orders requiring the preservation of healthy conditions in the park	39
38	Orders requiring the doing of things to or on premises	40
39	Orders relating to premises used for shared accommodation	40
40	Orders requiring that premises not be used in specified ways	40
41	Procedures to be observed before giving orders and provisions relating to orders generally	41
42	Provision of services relating to the health of the public in the park	41
43	Power of entry and inspection	41
44	Functions relating to Public Health Act 1991	42
<b>Part 4</b>	<b>Enforcement of obligations of Snowy Hydro Company</b>	
45	Definitions	43
46	Company to comply with Snowy Management Plan	43
47	Notice to comply with Snowy Management Plan	43
48	Offence—Company failing to comply with notice	44
49	Carrying out of works—Company failing to comply with notice	44
<b>Part 5</b>	<b>Licences and certificates</b>	
50	Applications for licences or registration certificates	45
51	Terms of licences or registration certificates	45
<b>Part 6</b>	<b>Fauna protection</b>	
<b>Division 1      Licences and certificates</b>		
52	Issue of tags	46

---

# public consultation draft

---

National Parks and Wildlife Regulation 2009

Contents

---

	Page
53 Supply of tags to commercial fauna harvesters	46
54 Grounds for refusing import or export licence	46
55 Grounds for cancelling import or export licence	47
56 False receipts and records	48
<b>Division 2 Care and protection of fauna</b>	
57 Caging and confinement of protected fauna	48
58 Native waterfowl not to be interbred with non-native waterfowl	49
<b>Division 3 Protection of certain marine mammals</b>	
59 Definitions	49
60 Application of Division	50
61 Prescribed approach distances to marine mammals	51
62 Operation of prohibited vessels	53
63 Operation of vessels that are not prohibited vessels	53
64 Operation of aircraft in vicinity of marine mammals	54
65 Feeding marine mammals	54
66 Swimming with cetaceans	55
67 Approaching special interest marine mammals	55
<b>Division 4 Miscellaneous</b>	
68 Notification of possession of certain animals	56
69 Prescribed substances	56
70 Notice of preparation of plan of management for marine mammals	57
71 Proceedings for offences—prescribed officers who may issue evidentiary certificates	57
<b>Part 7 Exemptions in favour of Aboriginal people</b>	
72 Exemption: section 70	58
73 Exemption: section 71	58
74 Exemption: section 98	58
75 Exemption: section 117	59
<b>Part 8 Aboriginal land</b>	
<b>Division 1 Boards of management</b>	
76 Definitions	60
77 Appointment of deputies of members of boards of management	60
78 Chairing of meetings	60

---

# public consultation draft

---

National Parks and Wildlife Regulation 2009

Contents

---

	Page
<b>Division 2</b>	<b>Plans of management</b>
79	Land for community development purposes—Mutawintji 61
80	Land for community development purposes—other Part 4A land 61
<b>Part 9</b>	<b>Advisory committees</b>
81	Application of Part 63
82	Meetings to be held 63
83	Appointment of officers 63
84	Presiding member 63
85	Administrative matters 64
<b>Part 10</b>	<b>Trustees</b>
86	Application of Part 65
87	Meetings to be held 65
88	Special meetings 65
89	Appointment of officers 65
90	Presiding member 66
91	Conduct of meetings 66
92	Committees 66
93	Common seal 66
94	Administrative matters 66
95	Financial matters 67
<b>Part 11</b>	<b>Penalty notices</b>
96	Penalty notice offences 68
<b>Part 12</b>	<b>Miscellaneous</b>
97	Ex-officio rangers 69
98	Notice of preparation of plans of management 69
99	Transfer of Aboriginal objects 69
100	Appeal period 70
101	Appeals 70
102	Notification of sites of Aboriginal objects 70
103	Terms of interim protection orders 71
104	Interest on overdue money 71
105	Evidence of authority 71
106	Disposal of property seized or delivered up 72
107	Limitations on routine farming practice activities 72
108	Repeal 73
109	Savings 73

---

# public consultation draft

---

National Parks and Wildlife Regulation 2009

Contents

---

	Page
<b>Schedule 1</b>	
<b>Schedule 2</b>	
<b>Schedule 3</b>	
<b>Caging of protected fauna</b>	74
<b>Penalty notice offences</b>	75
<b>Form</b>	83

---

# public consultation draft

---

Clause 1 National Parks and Wildlife Regulation 2009

Part 1 Preliminary

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## National Parks and Wildlife Regulation 2009

under the

National Parks and Wildlife Act 1974

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *National Parks and Wildlife Regulation 2009*.

#### 2 Commencement

This Regulation commences on 1 July 2009.

#### 3 Definitions

(1) In this Regulation:

**Aboriginal person** means a person:

- (a) who is a member of the Aboriginal race of Australia, and
- (b) who identifies as an Aboriginal person, and
- (c) who is accepted by the Aboriginal community as an Aboriginal person.

**determining authority** has the same meaning as it has in Part 5 of the *Environmental Planning and Assessment Act 1979*.

**Director-General** means the Director-General of the Department of Environment and Climate Change.

**disability assistance aid** means a vehicle other than a motor car designed for use by a disabled person and includes a motorised wheelchair.

**drive** includes ride or draw (in relation to a vehicle) and ride or lead (in relation to an animal).

**litter** includes:

- (a) any solid or liquid domestic or commercial refuse, debris or rubbish deposited in or on a place, and includes any glass, metal, cigarette butts, paper, fabric, wood, food, construction or demolition material, garden remnants and clippings, soil, sand or rocks, and

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 3

Preliminary

Part 1

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- (b) any other material, substance or thing deposited in or on a place if its size, shape, nature or volume makes the place where it is deposited disorderly or detrimentally affects the proper use of that place,

whether or not it has any value when or after being deposited in or on the place.

**moor** a vessel includes attach a vessel to a mooring by any means.

**mooring** means any post, stake, pile, float, pontoon or any other object (other than the anchor of a vessel) secured by any direct or indirect means to the waters' bed or placed on the waters' bed for the purpose of attaching a vessel to the bed.

**national parks officer** means those members of staff of the Department of Environment and Climate Change who are principally involved in the administration of the following Acts:

- (a) the Act,
- (b) *Threatened Species Conservation Act 1995*,
- (c) *Wilderness Act 1987*,
- (d) *Marine Parks Act 1997*.

**park:**

- (a) when used as a noun, means a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, or any land acquired by the Minister under Part 11 of the Act, and includes all roads and waters within the boundaries of any such park, site, area, reserve or land, and
- (b) when used as a verb, means to park a vehicle or to cause or allow a vehicle to park, stand or wait.

**park authority** means the following:

- (a) in relation to a state conservation area:
  - (i) except when used in connection with the imposition or waiver of fees and charges—the trust having the care, control and management of the area (or, if there is no such trust, the Director-General), or
  - (ii) when used in connection with the imposition or waiver of fees and charges—the Minister if a trust has the care, control and management of the area (or, if there is no such trust, the Director-General),
- (b) in relation to a regional park:
  - (i) except when used in connection with the imposition or waiver of fees and charges—the trust or local council having the care, control and management of the park (or, if

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## public consultation draft

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Clause 3 National Parks and Wildlife Regulation 2009

Part 1 Preliminary

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there is no such trust or local council, the Director-General), or

- (ii) when used in connection with the imposition or waiver of fees and charges—the Minister if a trust or local council has the care, control and management of the park (or, if there is no such trust or local council, the Director-General),
- (c) in relation to the Jenolan Caves Visitor Use and Services Zone for the relevant period (within the meaning of Part 6 of Schedule 3 to the Act)—the administrator appointed by the Minister under clause 58 of that Schedule,
- (d) in relation to a national park, historic site, nature reserve, karst conservation reserve (other than a karst conservation reserve to which paragraph (c) applies), Aboriginal area or any land acquired by the Minister under Part 11 of the Act—the Director-General,
- (e) in relation to each area of land reserved or dedicated under Part 4A of the Act:
  - (i) until such time as a board of management is established, in accordance with Division 6 of Part 4A, for the area—the Director-General, and
  - (ii) on and from the establishment of the board of management—the board of management.

**park user** means a person in a park or intending to enter a park.

**ski resort area** has the same meaning as in Part 8A of Schedule 6 to the *Environmental Planning and Assessment Act 1979*.

**tag** includes a label, slip or other object for affixing or attaching to the skins or carcasses of fauna.

**the Act** means the *National Parks and Wildlife Act 1974*.

**trustees**, in relation to a state conservation area or regional park, means:

- (a) the trustees of the area or regional park appointed under the Act, or
- (b) a person appointed as administrator of the area or regional park under the Act, or
- (c) if there are no trustees and no administrator of the area or regional park, the Director-General.

**waters** includes a stream, creek, river, estuary, dam, lake or reservoir.

(2) For the purposes of this Regulation:

- (a) a lease or licence granted under sections 47GC or 47U or Part 11 or 12 of the Act that authorises a person to carry out an activity



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## public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 3

Preliminary

Part 1

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in a park (whether granted by the park authority concerned or some other person) is taken to constitute consent to the carrying out of that activity on the land by the park authority for the park in accordance with the conditions of the lease or licence, and

- (b) a filming approval granted under the *Filming Approval Act 2004* to carry out a filming activity within the meaning of that Act on land reserved or dedicated under the Act is taken to constitute consent to the carrying out of that activity on the land by the park authority for the land in accordance with the conditions of the approval.
- (3) Notes in this Regulation do not form part of this Regulation.

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# public consultation draft

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Clause 4 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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## **Part 2 Regulation of use of parks**

### **Division 1 Regulation by notices or direction**

#### **4 Regulation by public or other notice**

- (1) A park authority may do any of the following by means of notices displayed in, or at the boundary of, the park or part of the park to which the notices relate or by means of written notices given to park users:
  - (a) designate points of entry to the park,
  - (b) close the park, or any part of the park, to the public,
  - (c) reserve the park, or any part of the park, for a particular use or for the use of particular persons or bodies or a particular sector of the public,
  - (d) impose fees and charges on persons (whether on foot or driving vehicles or hoofed animals) entering or using the park, any part of the park or any facilities in the park and on persons driving vehicles or hoofed animals who enter or use any public or other road traversing the park,
  - (e) regulate or prohibit the use of any facilities in the park or the carrying out of activities (including driving vehicles or hoofed animals or operating or mooring vessels) in the park,
  - (f) grant any consent that is required by this Regulation in relation to the use of the park,
  - (g) impose conditions, including conditions relating to the payment of fees or charges, on persons (whether on foot or driving vehicles or hoofed animals) entering or using the park, any part of the park or any facilities in the park,
  - (h) impose conditions relating to the payment of fees or charges by persons driving vehicles or hoofed animals who enter or use any public or other road traversing the park,
  - (i) prohibit the collection of deadfalls of timber in the park.
- (2) A person must not:
  - (a) enter any park or part of a park that is closed to the public in accordance with this clause, or
  - (b) remain, or leave a vehicle parked, in any park or part of a park after the time that it is closed to the public in accordance with this clause, or
  - (c) enter any park or part of a park that is reserved for the use of particular persons or bodies or for a particular sector of the public in accordance with this clause unless the person is a person, or

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 5

Regulation of use of parks

Part 2

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belongs to a body or sector of the public, for whose use it is reserved, or

- (d) use any park or part of a park for a use other than that for which it is reserved, or
- (e) enter or use any park or part of a park or any public or other road traversing a park without paying any fee or charge that is imposed in that regard in accordance with this clause, or
- (f) use any facilities in a park or carry out any activity (including driving a vehicle or hoofed animal) in a park in contravention of the terms of a notice under this clause, or
- (g) enter or use any park, any part of a park, any facilities in a park or any public or other road traversing a park otherwise than in accordance with any conditions imposed in accordance with this clause, or
- (h) collect deadfalls of timber in the park in contravention of the terms of a notice under this clause.

Maximum penalty: 30 penalty units.

- (3) A person does not commit an offence under this clause for anything done or omitted to be done with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (4) A park authority may waive payment by any person or class of persons of any fee or charge imposed under this clause.

## **5 Regulation by oral direction**

- (1) A park authority may issue an oral direction to a park user in relation to any of the following:
  - (a) points of entry to the park to be used by the park user,
  - (b) the closing of the park, or any part of the park, to the park user,
  - (c) reserving the park, or any part of the park, for a particular use or for the use of particular persons or bodies or a particular sector of the public,
  - (d) the regulation or prohibition of the use of any facilities in the park or the carrying out of activities (including driving vehicles or hoofed animals) in the park,
  - (e) the granting of any consent that is required by this Regulation in relation to the use of the park,
  - (f) the imposition of conditions, including conditions relating to the payment of fees or charges, on the park user (whether on foot or driving vehicles or hoofed animals) entering or using the park, any part of the park or any facilities in the park,

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# public consultation draft

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Clause 6 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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- (g) the regulation or prohibition of the collection of deadfalls of timber in the park.
- (2) A park user to whom such a direction is given must comply with the direction.  
Maximum penalty: 30 penalty units.

## **Division 2 Regulation of traffic**

### **6 Entry of vehicles to parks**

- (1) A person must not drive a vehicle into a park otherwise than on a road leading into or traversing the park.  
Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted to be done with the consent of a park authority and in accordance with any conditions to which the consent is subject.

### **7 Use of vehicles, hoofed animals, vessels and machines in parks**

- (1) A person must not do any of the following in a park:
  - (a) operate, drive or use any vehicle (other than a motor car, motor omnibus, motor truck, motor cycle, motor scooter, bicycle or other human powered wheeled vehicle, quadbike, disability assistance aid or horse drawn carriage),
  - (b) operate, drive, use or have within the person's possession an oversnow vehicle,
  - (c) drive or park a vehicle that does not clearly display a valid pass for entry into the park,
  - (d) drive or park a vehicle that is not registered,
  - (e) drive or park a vehicle that does not display a valid registration label,
  - (f) drive or park a vehicle that has any one or more of the following:
    - (i) no number-plate or registration plate,
    - (ii) its number-plate or registration plate covered or obscured,
    - (iii) a false or incorrect number-plate or registration plate,
    - (iv) a number-plate or registration plate that has been changed or altered,
  - (g) drive a vehicle or hoofed animal, or tether a hoofed animal, otherwise than on a road, track, trail or way, or in an area, set aside for that purpose,

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## public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 7

Regulation of use of parks

Part 2

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- (h) drive a vehicle or a hoofed animal in a dangerous or reckless manner,
  - (i) park a vehicle otherwise than in an area set aside for parking vehicles,
  - (j) park a vehicle in a parking area set aside for persons with disabilities unless:
    - (i) the person's vehicle displays a valid mobility parking scheme authority, and
    - (ii) the person complies with the conditions of that authority,
  - (k) operate or use a vessel on any waters on which the operation or use of such a vessel is prohibited,
  - (l) operate or use a vessel in such a manner as to endanger the safety of other users of the park,
  - (m) operate or use a vessel in a commercial operation,
  - (n) tie a vessel by any means to any vegetation,
  - (o) moor a vessel otherwise than in an area set aside for the mooring of vessels,
  - (p) operate or use any heavy or noisy machinery,
  - (q) park a vehicle in a way so as to obstruct the use of a road, track or trail by any other vehicle, or endanger the safety of other park users, or damage or destroy any vegetation.
- Maximum penalty: 30 penalty units.
- (2) A person must not drive or park a vehicle on a road, track, trail or way or in an area in a park if:
- (a) a gate, barrier or similar device is positioned, or an obstruction has been created by any means, in such a way as to restrict or obstruct vehicular access to the road, track, trail, way or area, or
  - (b) vehicular access to a road, track, trail, way or area is restricted or obstructed in any other way.
- Maximum penalty: 30 penalty units.
- (3) A designated officer may cause a vehicle to be towed or otherwise removed from a park or any part of a park if, in the opinion of the designated officer:
- (a) the vehicle is parked in a dangerous manner or in a dangerous location, and
  - (b) it is not practicable to locate and issue the owner or driver of the vehicle with an oral direction under clause 5.

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## public consultation draft

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Clause 7 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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- (4) A person must not drive a vehicle so as to cause damage to any road, track, trail, way or area in a park if vehicular access to the road, track, trail, way or area has been prohibited or restricted by the park authority in any way.

Maximum penalty: 30 penalty units.

- (5) A person must not:
- (a) open any gate, barrier or similar device in a park, or
  - (b) remove, shift, damage or destroy:
    - (i) any gate or barrier or similar device in a park, or
    - (ii) any obstruction that has been positioned or created, by any means, so as to restrict or obstruct vehicular access to any road, track, trail, way or area in a park.

Maximum penalty: 30 penalty units.

- (6) A person does not commit an offence under this clause for anything done or omitted to be done with the consent of a park authority and in accordance with any conditions to which the consent is subject.

- (7) A person does not commit an offence under subclause (1) (i) if no area has been set aside for parking, and the person parks a vehicle on a road, track or trail in such a way as not to obstruct the use of the road, track or trail by other vehicles, or endanger the safety of other park users, or damage or destroy any vegetation.

- (8) In this clause:

**designated officer**, in relation to a park, means:

- (a) a national parks officer, or
- (b) a person who is authorised by the park authority to exercise the powers conferred by this clause, or
- (c) a police officer.

**mobility parking scheme authority** has the same meaning as in the *Road Transport (Safety and Traffic Management) Regulation 1999*.

**number-plate** means a number-plate issued:

- (a) under the *Road Transport (Vehicle Registration) Act 1997*, or
- (b) by a competent authority of another jurisdiction.

**registered** means registered:

- (a) under the *Road Transport (Vehicle Registration) Act 1997*, or
- (b) by a competent authority of another jurisdiction, or
- (c) in New South Wales under the *Interstate Road Transport Act 1985* of the Commonwealth.

**registration plate** means a registration plate issued:

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 8

Regulation of use of parks

Part 2

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(a) under the *Recreation Vehicles Act 1983*, or

(b) by a competent authority of another jurisdiction.

*vessel* includes a boat, surf board, boogie board, wind surfer, wave jumper, sail board, raft, kayak, canoe, dinghy, jet ski and the like.

## Division 3 Regulation of conduct generally

### 8 Removal of certain persons

(1) A designated officer may direct a person to leave a park or any part of a park if, in the opinion of the designated officer, the person:

(a) is trespassing, or

(b) is causing inconvenience to any other person in the park, or

(c) has committed an offence under the Act or this Regulation.

(2) A person to whom such a direction is given must comply with the direction.

Maximum penalty: 30 penalty units.

(3) A designated officer may remove from a park, or any part of a park, any person who fails to comply with a direction under this clause and any vehicle, vessel, animal or other property in the possession of the person.

(4) A person who has been given a direction under subclause (1), or who has been removed from a park under subclause (3), must not re-enter the park for a period of 24 hours after the direction was given or after he or she was removed from the park, whichever is later.

Maximum penalty: 30 penalty units.

(5) A person does not commit an offence under subclause (4) by doing or omitting anything with the consent of a designated officer and in accordance with any conditions to which that consent is subject.

(6) In this clause:

*designated officer*, in relation to a park, means:

(a) a national parks officer, or

(b) a person who is authorised by the park authority to exercise the powers conferred by this clause, or

(c) a police officer.

### 9 Taking and keeping of animals in parks

(1) A person must not:

(a) take into or release an animal in a park or onto any public or other road traversing a park, or

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# public consultation draft

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Clause 10 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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- (b) place or keep an animal in a park or on any public or other road traversing a park, or
- (c) have charge, possession or control of an animal in a park or on any public or other road traversing a park, or
- (d) fail to prevent an animal of which the person has charge, possession or control from entering a park or entering onto any public or other road traversing a park.

Maximum penalty: 30 penalty units.

- (2) A person does not commit an offence under this clause:
  - (a) if the animal is an assistance animal, or
  - (b) if a person takes an animal into a park or onto any public or other road traversing a park, in accordance with and subject to any conditions stated in a plan of management for a park, unless a notice erected in the park or given to the person prohibits the taking of animals into the park or any part of the park to which the plan of management relates, or
  - (c) for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (3) Nothing in this clause prevents a park authority for a regional park from prohibiting the things referred to in subclause (1) by means of notices displayed in accordance with this Regulation.

- (4) In this clause:

***assistance animal*** means an animal referred to in section 9 (Disability discrimination—guide dogs, hearing assistance dogs and trained animals) of the *Disability Discrimination Act 1992* of the Commonwealth.

***park*** does not include a regional park.

## 10 Camping and residing

- (1) A person must not camp in a park except in an area set aside for camping.  
Maximum penalty: 30 penalty units.
- (2) A person must not camp in a park:
  - (a) for a continuous period of more than 21 days, or
  - (b) if a different maximum number of days is set out in a plan of management for the park but not in any notice erected in the park or given to the person—for more than the maximum number of days for camping in the park set out in the plan of management, or



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## public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 11

Regulation of use of parks

Part 2

---

- (c) if a different maximum number of days is set out in a notice erected in the park or given to the person—for more than the maximum number of days set out in the notice.

Maximum penalty: 30 penalty units.

- (3) A person must not permanently reside in a park.

Maximum penalty: 30 penalty units.

- (4) A person does not commit an offence under this clause:

- (a) for anything done or omitted to be done with the consent of a park authority and in accordance with any conditions to which the consent is subject, or

- (b) where a plan of management for a park makes provision for camping otherwise than by setting aside an area for camping—if the person camps in the park in accordance with the plan of management, or

- (c) where there is no plan of management for the park—if the person camps in a non-designated camping area if that area is more than 1 kilometre from any designated camping area, car parking area or picnic area or from a road, track or trail designated for vehicular use by the public.

- (5) Despite subclause (4) (b) and (c), a person must not camp in a park if a notice erected in the park or given to the person prohibits camping in the park or any part of the park.

Maximum penalty: 30 penalty units.

- (6) In this clause:

*camp* includes dwell or lodge temporarily (whether or not in a tent, caravan, cabin, vehicle, trailer or other structure) or use any part of a park for the purpose of camping.

### 11 Littering and damage

- (1) A person must not:

- (a) deposit or leave any litter in a park except in an area or receptacle provided by the park authority for that purpose, or

- (b) if no area or receptacle for litter is provided by the park authority—fail to remove from the park all litter taken into or created by the person in the park, or

- (c) deposit or leave any waste in a park, or

- (d) deposit, discharge or leave in a park any offal, filth, dung or dead animal or any noisome, noxious, offensive or polluting substance, matter or thing, or

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## public consultation draft

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Clause 11 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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- (e) wilfully break any article of glass, china, pottery or plastic in a park, or
  - (f) write or paint or otherwise mark or affix any bill, notice or advertisement on or to, or deface by painting, carving, scratching or any other means, or damage, destroy, remove or interfere with, any fixture, improvement, rock, tree, equipment, water supply or Aboriginal object in a park, or
  - (g) deposit, leave or abandon a vehicle or part of a vehicle in a park, or
  - (h) carry or possess, interfere with, dig up, cut up, collect or remove for any purpose any soil, sand, gravel, fossil, clay, rock, ochre, mineral, timber (whether or not consisting of or including dead timber), gum resin, humus or other natural substance or object in a park, whether on land or on or under water, or
  - (i) dam, divert or pollute the water in any waters or water tank in a park, or
  - (j) carry, possess or use any spray cans of paint, or any boltcutters, oxy-acetylene equipment, angle grinder, chainsaw or other cutting equipment in a park, or
  - (k) possess or have custody of any key or other similar device that is capable of opening any lock or other device securing a gate or barricade located in a park, or
  - (l) discharge stormwater into a park.
- Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted:
- (a) with the consent of a park authority and in accordance with any conditions to which the consent is subject, or
  - (b) if the act or omission occurred in or in relation to a ski resort area in Kosciuszko National Park and was necessary for the carrying out of:
    - (i) development in accordance with a development consent (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
    - (ii) an activity, whether by or pursuant to an approval of a determining authority, if the determining authority has complied with Part 5 of the *Environmental Planning and Assessment Act 1979*, or
    - (iii) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or

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## public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 11

Regulation of use of parks

Part 2

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- (c) if the act or omission occurred in or in relation to a place in Kosciuszko National Park (other than a ski resort area) and was necessary for the carrying out of development in accordance with a development consent that is taken to have been granted to Snowy Hydro Limited under section 41 (4) of the *Snowy Hydro Corporatisation Act 1997*, or
  - (d) if the act or omission was authorised by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property.
- (3) A person does not commit an offence under subclause (1) (h) if the substance or object referred to in that paragraph:
  - (a) was obtained by the person from a person authorised to sell such substances or objects or from an area outside a park, or
  - (b) is firewood:
    - (i) that has been provided at established visitor use areas in the park where the burning of fires is permitted, or
    - (ii) that comes from deadfalls of timber, if timber is not provided at established visitor use areas in the park.
- (4) However, for the avoidance of doubt, subclause (3) (b) (ii) does not permit a person to collect deadfalls of timber for firewood in contravention of a notice (as referred to in clause 4) or an oral direction (as referred to in clause 5).
- (5) A person does not commit an offence under subclause (1) (j) merely because the person carries or possesses any object referred to in that subclause on a road traversing a park if the person does not stop in the park.
- (6) For the purposes of subclause (1) (c), **waste** includes the following:
  - (a) rubbish and refuse,
  - (b) marine craft, aircraft and parts of them,
  - (c) household effects, appliances and materials,
  - (d) clothing,
  - (e) containers,
  - (f) agricultural, building, commercial and industrial materials,
  - (g) machinery, plant and equipment and parts of them,
  - (h) chemicals, minerals and metals,
  - (i) vegetable matter,

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## public consultation draft

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Clause 12 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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- (j) stone, sand, shells, clay, earth and ash,
- (k) radioactive material.

(7) In this clause:

**divert** includes extract water (whether by means of a pump or not) otherwise than pursuant to, and in accordance with the conditions of, a water licence issued under Division 3 of Part 2 of the *Water Act 1912* by a competent authority.

**fossil** means any naturally preserved remains or evidence of past life including bones, shells, impressions and trails.

### 12 Protection of animals

- (1) A person must not in a park:
- (a) carry, lay or set any trap, snare or poison, or drop from an aircraft or otherwise deposit any poison bait or poisonous chemical substance, or
  - (b) hunt, shoot, poison, net, spear, pursue, interfere with, injure, hurt, capture, destroy, trap or snare, or have in the person's possession, an animal, or
  - (c) take any animal's nest or egg, or interfere with any animal's nest or egg or habitation or resting place or any beehive, or
  - (d) feed any animal.
- Maximum penalty: 30 penalty units.
- (2) A person must not in a park or on any public or other road traversing a park:
- (a) carry, possess or use a hunting collar (such as a spiked collar), a breast plate or tracking equipment for use on any dog, or
  - (b) have under the person's control any dog on which a hunting collar (such as a spiked collar), a breast plate or tracking equipment is carried.
- Maximum penalty: 30 penalty units.
- (3) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (4) A person does not commit an offence under this clause in relation to netting or trapping if that netting or trapping is authorised under or by the *Fisheries Management Act 1994*.
- (5) In this clause, **interfere with** includes brand, chase, harass, herd, mark and tag.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 13

Regulation of use of parks

Part 2

---

## 13 Offensive conduct

- (1) A person must not in a park:
  - (a) behave in a disorderly manner, or
  - (b) use insulting or offensive language, or
  - (c) commit an act of indecency, or
  - (d) use, or be affected by, any prohibited drug (within the meaning of the *Drug Misuse and Trafficking Act 1985*), or
  - (e) drive, ride, operate or use any machinery, plant, vehicle, vessel or aircraft (including any model vehicle, vessel or aircraft) in a manner likely to interfere with or cause a nuisance to any person or animal,
  - (f) operate or use any radio, television, cassette player, compact disc player or other sound-generating device in a manner likely to interfere with or cause a nuisance to any person or animal.

Maximum penalty: 30 penalty units.

- (2) A person must not ride or use a skate board, roller skates, bicycle, scooter or other means of conveyance (other than a disability assistance aid) on a track, trail or way, or in an area, set aside in a park for pedestrian traffic only.

Maximum penalty: 30 penalty units.

- (3) A person does not commit an offence under subclauses (1) (e) or (f) or (2) for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.

## 14 Consuming alcohol in alcohol free areas

- (1) A person must not consume alcohol in a park, or in part of a park, in contravention of the terms of a notice erected in the park.

Maximum penalty: 0.2 penalty units.

- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.

## 15 Lighting of fires

- (1) A person must not in a park:
  - (a) light, maintain or use a fire:
    - (i) if there are fireplaces designated for that purpose by a park authority—elsewhere than in such a fireplace, or
    - (ii) if there are no fireplaces designated for that purpose—elsewhere than in a temporary fireplace situated at least 4.5

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## public consultation draft

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Clause 16 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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metres from any log or stump and at least 1.5 metres from any other flammable material, or

- (iii) in any case—in contravention of a notice erected or displayed or given to a park user by a park authority regulating the use of fire in the park, or
  - (iv) when a total fire ban has been imposed under the *Rural Fires Act 1997*, or
- (b) leave unattended, whether temporarily or otherwise:
- (i) any fire in a fireplace designated for that purpose by a park authority, or
  - (ii) any fire in any other place, or
- (c) fail to call for help to control or extinguish a fire that the person has lit, maintained or used and that is beyond the person's power to control or extinguish, or
- (d) handle any flammable substance (such as petrol, matches or cigarettes) in a manner that is likely to cause a fire in the park.

Maximum penalty: 30 penalty units.

- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (3) A person does not commit an offence under subclause (1) (a) (iv) by doing anything authorised by or under the *Rural Fires Act 1997*.

### **16 Cultural heritage**

- (1) A person must not deposit or leave any bone, shell, charcoal, stone or wood within an Aboriginal area or Aboriginal place.

Maximum penalty: 30 penalty units.

- (2) A person must not within any Aboriginal area or Aboriginal place have in the person's possession:

- (a) any chalk, paint or other colouring substance, matter or thing, or
- (b) any sieve, spade, shovel, fork, mattock, pick, bar, axe, chisel, hammer or similar implement.

Maximum penalty: 30 penalty units.

- (3) A person must not in a park:
  - (a) use any metal detector or other apparatus for detecting any metal or metal object, or
  - (b) touch or interfere with or do anything that may cause or assist the mutilation or destruction of any Aboriginal object, or

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 17

Regulation of use of parks

Part 2

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- (c) take any rubbing, latex peel or impression by whatever means of any Aboriginal object, or
- (d) interfere with or remove or assist in the removal of any deposit, object or material evidence relating to the settlement or occupation of New South Wales or a part of New South Wales (not being Aboriginal settlement or occupation) if the deposit, object or material evidence is more than 25 years old at the date of the interference or removal, or
- (e) deposit or leave any Aboriginal object in a park.

Maximum penalty: 30 penalty units.

- (4) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (5) A person does not commit an offence under subclause (3) (d) if the interference or removal occurred in a ski resort area in Kosciuszko National Park and was necessary for the carrying out of:
  - (a) development in accordance with a development consent (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
  - (b) an activity, whether by or pursuant to an approval of a determining authority, if the determining authority has complied with Part 5 of the *Environmental Planning and Assessment Act 1979*.
- (6) A person does not commit an offence under subclause (3) (d) if the interference or removal occurred in a place in Kosciuszko National Park (other than a ski resort area) and was necessary for the carrying out of development in accordance with a development consent that is taken to have been granted to Snowy Hydro Limited under section 41 (4) of the *Snowy Hydro Corporatisation Act 1997*.

## **17 Erection and occupation of structures**

- (1) A person must not:
  - (a) erect, alter, extend or occupy any building in a park, or
  - (b) install, use or occupy a moveable dwelling in a park, or
  - (c) construct, operate or use any structure, installation, engineering work, plant, equipment, amusement device, fixture or improvement in a park, or
  - (d) erect a hoarding or notice, or exhibit any commercial or political advertising matter, sign, bill or poster, in a park.

Maximum penalty: 30 penalty units.

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## public consultation draft

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Clause 18 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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- (2) A person does not commit an offence under this clause for anything done or omitted:
- (a) with the consent of a park authority and in accordance with any conditions to which the consent is subject, or
  - (b) if the act or omission occurred in or in relation to a ski resort area in Kosciuszko National Park and was necessary for the carrying out of:
    - (i) development in accordance with a development consent (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
    - (ii) an activity, whether by or pursuant to an approval of a determining authority, if the determining authority has complied with Part 5 of the *Environmental Planning and Assessment Act 1979*, or
    - (iii) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or
  - (c) if the act or omission occurred in or in relation to a place in Kosciuszko National Park (other than a ski resort area) and was necessary for the carrying out of development in accordance with a development consent that is taken to have been granted to Snowy Hydro Limited under section 41 (4) of the *Snowy Hydro Corporatisation Act 1997*.
- (3) A person does not commit an offence under subclause (1) (b) if the person camps in a manner that is not prohibited by clause 10.
- (4) In this clause, **moveable dwelling** means any tent or any caravan or other van or other portable device (whether on wheels or not), used for human habitation.

### 18 Protection of vegetation

- (1) A person must not:
- (a) gather, pluck, pull up, poison, take, dig up, cut, fell, remove, damage or destroy any vegetation in a park, or
  - (b) have any vegetation in the person's possession in a park, whether for removal or otherwise, or
  - (c) introduce any vegetation into a park.
- Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted:
- (a) with the consent of a park authority and in accordance with any conditions to which the consent is subject, or



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## public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 18

Regulation of use of parks

Part 2

---

- (b) if the act or omission occurred in or in relation to a ski resort area in Kosciuszko National Park and was necessary for the carrying out of:
    - (i) development in accordance with a development consent (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
    - (ii) an activity, whether by or pursuant to an approval of a determining authority, if the determining authority has complied with Part 5 of the *Environmental Planning and Assessment Act 1979*, or
    - (iii) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or
  - (c) if the act or omission occurred in or in relation to a place in Kosciuszko National Park (other than a ski resort area) and was necessary for the carrying out of development in accordance with a development consent that is taken to have been granted to Snowy Hydro Limited under section 41 (4) of the *Snowy Hydro Corporatisation Act 1997*, or
  - (d) if the act or omission was authorised by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property.
- (3) A person does not commit an offence under subclause (1) (b) if the person has in his or her possession vegetation (including firewood) that was lawfully obtained from outside the park.
- (4) A person does not commit an offence under this clause by using firewood:
- (a) that has been provided at established visitor use areas in the park where the burning of fires is permitted, or
  - (b) that comes from deadfalls of timber, if timber is not provided at established visitor use areas in the park.
- (5) However, for the avoidance of doubt, subclause (4) (b) does not permit a person to collect or use deadfalls of timber for firewood in contravention of a notice (as referred to in clause 4) or an oral direction (as referred to in clause 5).
- (6) In this clause:
- vegetation** means the whole or part of any tree, shrub, fern, creeper, vine, palm, plant or seed, whether alive or dead.

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# public consultation draft

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Clause 19 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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## 19 Beehives

- (1) A person must not remove any beehive from, or place any beehive in, a park.  
Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.

## 20 Weapons

- (1) A person must not in a park:
  - (a) carry or discharge or have in the person's possession any firearm within the meaning of the *Firearms Act 1996* or prohibited weapon within the meaning of the *Weapons Prohibition Act 1998*, or
  - (b) carry or discharge or have in the person's possession any airgun, speargun or other lethal weapon, or
  - (c) carry or use or have in the person's possession any explosive, flare or firework, or
  - (d) carry or use or have in the person's possession any ammunition, or
  - (e) throw or propel by any means any object likely to cause damage or injury to any person, animal or thing, or
  - (f) without reasonable excuse, carry, use, possess or have custody of a knife.Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (3) For the purposes of subclause (1) (a) and (d), a person does not commit an offence if he or she is a police officer acting:
  - (a) in the course of his or her duties or in accordance with any guidelines issued by the Commissioner of Police with respect to the off-duty possession of service firearms by police officers, and
  - (b) in accordance with the New South Wales Police Handbook.
- (4) For the purposes of subclause (1) (f), a person has a reasonable excuse to carry, use, possess or have custody of a knife if:
  - (a) the possession or custody is reasonably necessary in all the circumstances for any of the following:
    - (i) the preparation or consumption of food or drink,

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 21

Regulation of use of parks

Part 2

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- (ii) participation in a lawful entertainment, recreation or sport,
  - (iii) the wearing of an official uniform, or
- (b) the possession or custody is reasonably necessary in the circumstances during travel to or from or incidental to an activity referred to in paragraph (a).
- (5) For the purposes of subclause (1) (f), it is not a reasonable excuse for a person to carry, use, possess or have custody of a knife solely for the purpose of self defence or the defence of another person.
- (6) A person does not commit an offence under subclause (1) (b) if the person carries or possesses an unloaded speargun in a park, unless a plan of management for a park or a notice erected in the park or given to the person prohibits the carrying or possession of a speargun (whether loaded or unloaded) in a park or any part of the park.
- (7) A person does not commit an offence under subclause (1) (c) if the flare is carried in a boat as a part of the boat's safety equipment as required by or under any other Act or when used as a distress signal.
- (8) In this clause, *unloaded speargun* means:
  - (a) an assembled rubber powered speargun that does not have the shaft engaged in the trigger mechanism and the rubbers stretched and engaged in the shaft, or
  - (b) in the case of a pneumatic, spring or gas powered speargun—one that does not have the spear shaft located within the barrel of the speargun, or
  - (c) a disassembled speargun.

## 21 Commercial activities

- (1) A person must not in a park:
  - (a) sell or hire, attempt to sell or hire, expose for sale or hire or solicit for sale or hire any article, thing or service to any person, or
  - (b) conduct, or assist in the conduct of, any amusement, entertainment, instruction, performance or activity for money or other consideration of any kind, or
  - (c) compete with or hinder the commercial operations of any person, business or corporate body possessing a lease, licence, occupancy or franchise from the Minister or the Director-General for a specific purpose or purposes, or
  - (d) take any photograph, video, movie or television film for sale, hire or profit.

Maximum penalty: 30 penalty units.

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# public consultation draft

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Clause 22 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.

## **22 Sporting, recreational and other activities**

- (1) A person must not in a park:
- (a) conduct or take part in any sporting activity that forms part of an organised competition or tournament, or
  - (b) organise, attend or participate in any concert, public meeting, function, demonstration, group activity or gathering involving more than 40 persons or such other number of persons as is stated in a plan of management for the park, or stated in a notice erected in the park or given to a park user, whichever is the lesser, or
  - (c) organise, attend or engage in any manoeuvre (whether of a military, naval, aerial nature or otherwise), any course of training or any similar activity, or
  - (d) engage in any activity or recreational pursuit that involves risking the safety of the person or the safety of other persons or damaging the environment.

Maximum penalty: 30 penalty units.

- (2) Without limiting the generality of subclause (1) (d), the activities and recreational pursuits to which that paragraph applies include abseiling, base jumping, bungee jumping, rock climbing, caving, cave diving, parachuting, white water boating, paragliding, parasailing and hang gliding.
- (3) A person does not commit an offence under this clause:
- (a) for anything done or omitted to be done with the consent of a park authority and in accordance with any conditions to which the consent is subject, or
  - (b) if a plan of management for a park makes provision for the undertaking of an activity in the park, the person undertakes the activity in the park in accordance with the plan of management, or
  - (c) if there is no plan of management for a park, the person undertakes an activity in a park in accordance with a notice erected in the park or given to the person which permits the undertaking of the activity in the park.
- (4) Despite subclause (3) (b), a person must not undertake an activity in a park if a notice erected in the park or given to the person prohibits the undertaking of the activity in the park or any part of the park.

Maximum penalty: 30 penalty units.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 23

Regulation of use of parks

Part 2

---

## **23 Research activities**

- (1) A person must not carry out any kind of research in a park.  
Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.

## **24 Caves**

- (1) A person must not enter or remain in a karst cave in a park.  
Maximum penalty: 30 penalty units.
- (2) A person must not in a park:
  - (a) exhibit a number or other identifying mark in or near a cave in a manner that suggests that the number or mark has been allocated to identify the cave, or
  - (b) carry out any excavation, or use any explosive, in or in the vicinity of a cave, or
  - (c) use any string or other thing for the purpose of laying a track in a cave, or
  - (d) interfere with or remove from a cave:
    - (i) any crystal, rocks, soil, sand, stone or other similar substances, or
    - (ii) any flora or fauna, or
    - (iii) any equipment, or
    - (iv) any guano, bones, fossil, subfossil, or palaeoecological objects, or
  - (e) smoke any substance or any cigar, cigarette, pipe or other device in a cave, or
  - (f) light a fire in a cave, or
  - (g) leave any equipment in a cave whether or not the person intends to return to the cave, or
  - (h) urinate or defecate in a cave, or
  - (i) damage any speleothems in a cave, or
  - (j) vandalise any cave, or
  - (k) interfere with, dig or disturb in a cave or remove from a cave any Aboriginal objects, or
  - (l) obstruct, erect a fence or gate in, fill or alter the entrance or passage of a cave, or

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Clause 24 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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- (m) have in his or her possession in a cave any sieve, spade, shovel, fork, mattock, pick, bar, axe, chisel, hammer or similar implement, or
- (n) in a cave, use any fuel stove, combustion engine, flare, carbide lamp, magnesium flame, or other combustible fuel equipment.

Maximum penalty: 30 penalty units.

- (3) A person must not have in his or her possession in a karst conservation reserve or in, or on, a karst environment in a park any of the following:
  - (a) caving equipment, including (but not limited to) the following:
    - (i) safety helmets or headlamps mounted on safety helmets,
    - (ii) static safety rope, nylon rope or webbing,
    - (iii) wire caving ladders,
    - (iv) prusik or abseiling devices,
  - (b) cave diving equipment, including (but not limited to) the following:
    - (i) scuba equipment,
    - (ii) face masks, wetsuits, fins, water proof torches, helmets,
    - (iii) safety reels,
    - (iv) line cutting devices,
    - (v) depth gauge, underwater timing device or dive computer.

Maximum penalty: 30 penalty units.

- (4) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (5) A person does not commit an offence under subclause (1) if the person enters or remains in a cave:
  - (a) in accordance with the plan of management of the park concerned, or
  - (b) in the case where no plan of management exists for the park concerned, in accordance with a notice (either erected in the park or given to the person by the park authority) which permits the person to enter and remain in the cave.
- (6) A person does not commit an offence under subclause (2) (c) if the person:
  - (a) lays a track as a temporary safety or conservation measure and removes the track when he or she leaves the cave, and
  - (b) in the case of a karst cave—has written consent of a park authority to access or enter the karst cave.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 25

Regulation of use of parks

Part 2

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(7) In this clause:

*cave*:

- (a) means any naturally occurring void, cavity, recess or system of interconnected passages beneath the surface of the earth or within a cliff or ledge and which is large enough to permit a person to enter, whether or not the entrance is naturally formed or human made, and
- (b) includes any naturally made pit, arch, sinkhole, spring or other opening which is an extension of a cave entrance or which is an integral part of the cave.

*karst cave* means a cave that has developed in soluble rock (typically limestone dolomite, marble and gypsum) through the processes of solution, abrasion or collapse.

## 25 Interference with park management

A person must not:

- (a) destroy, damage or remove any thing that is being used or intended to be used by the park authority for the suppression or destruction of any animals in a park, or
- (b) interfere with any thing that is being used or intended to be used by the park authority for the suppression or destruction of any animals in a park in a manner that is likely to impair its effectiveness, or
- (c) remove, relocate, damage, destroy or obscure by any means any sign or notice that has been erected or displayed in a park by a park authority or that has been erected or displayed in a park with the consent of the park authority, or
- (d) interfere with or obstruct any action taken by a park authority for the purpose of the care, control and management of the park, or
- (e) attempt to do any of the things referred to in paragraphs (a)–(d).

Maximum penalty: 30 penalty units.

## 26 Use of snow chains in Kosciuszko National Park

- (1) A person travelling by motor vehicle on any designated snow/ice risk road within Kosciuszko National Park at any time on or after 1 June and before 11 October in any year must carry snow chains suitable for use on the tyres of the motor vehicle.

Maximum penalty: 30 penalty units.

- (2) A person travelling by motor vehicle within Kosciuszko National Park on or after 1 June and before 11 October in any year must use snow chains on the tyres of the motor vehicle when directed to do so by a

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## public consultation draft

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Clause 27 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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designated officer or by a notice erected in the park or given to the park user.

Maximum penalty: 30 penalty units.

(3) In this clause:

**designated officer**, in relation to a park, means:

- (a) a national parks officer, or
- (b) a person who is authorised by the park authority to exercise the powers conferred by this clause, or
- (c) a police officer.

**designated snow/ice risk road** means a road on which there is a sign, erected by or on behalf of the Director-General, requiring snow chains to be carried on the road.

**motor vehicle** does not include a four-wheel drive vehicle.

### Division 4 Mooring vessels within Ku-ring-gai Chase National Park

#### 27 Definitions

In this Division:

**Cowan Water** includes all tributaries of Cowan Water within the boundaries of the Ku-ring-gai Chase National Park.

**licence** means a licence issued by the Minister or Director-General to permit occupation for the purpose of placing a mooring.

**public mooring** means a mooring set up by the Director-General.

**set up** a mooring includes erect, construct or lay down a mooring.

**vessel** means any boat, yacht, cruiser, houseboat, barge or other floating craft used for the conveyance of persons or things that has been, or is required to be, registered by the relevant authority, but does not include a raft, kayak, canoe, dinghy or other small floatation device.

#### 28 Setting up of moorings

- (1) The Director-General may grant licences for marinas and moorings in Cowan Water, subject to any terms and conditions that may be imposed by the Director-General.
- (2) The Director-General may revoke, or vary the terms of, any such licence.
- (3) Except as authorised by a licence, a person must not set up a marina or mooring in Cowan Water.  
Maximum penalty: 30 penalty units.



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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 29

Regulation of use of parks

Part 2

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- (4) The Director-General may direct a person who has set up or used an unlicensed marina or mooring to remove the mooring.
- (5) Such a direction may be given to the person to whom it is addressed personally or by leaving it on, or attaching it to, the marina or mooring.
- (6) A person to whom such a direction is given must not fail to comply with the direction.  
Maximum penalty: 30 penalty units.
- (7) The Director-General may remove from Cowan Water:
  - (a) any unlicensed mooring or marina, or
  - (b) any mooring or marina that has been abandoned or has become submerged, come adrift or fallen into a state of disrepair, or
  - (c) any part of a mooring or marina that has become separated from the mooring or marina or that constitutes, in the opinion of the Director-General, a danger, hazard, impediment or menace to the use of Cowan Water.
- (8) The Director-General may, in any court of competent jurisdiction, recover the cost and expenses:
  - (a) incurred as a result of a removal authorised by subclause (7) (a)—from the person who set up the unlicensed mooring or marina, or
  - (b) incurred as a result of a removal authorised by subclause (7) (b) or (c)—from the current licensee or (if the licence is no longer in force) the previous licensee.
- (9) This clause does not apply to a public mooring.
- (10) For the purposes of this clause, a marina or mooring is unlicensed if:
  - (a) no licence has been issued in relation to it, or
  - (b) a licence has been issued in relation to it subject to terms and conditions that have not been met.

## **29 Mooring of vessels**

- (1) A person must not moor a vessel on any part of Cowan Water otherwise than:
  - (a) at a public mooring, or
  - (b) at a mooring in respect of which the person:
    - (i) is the licensee, or
    - (ii) is the hirer from the licensee of the mooring to which the licence relates, or
    - (iii) has the consent of the licensee or hirer to use the mooring.  
Maximum penalty: 30 penalty units.

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Clause 30 National Parks and Wildlife Regulation 2009

Part 2 Regulation of use of parks

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- (2) A person must not moor a vessel at a public mooring in Cowan Water for more than 24 hours at any one time.  
Maximum penalty: 30 penalty units.
- (3) A person must not moor at any mooring (not being a mooring forming part of a marina) in Cowan Water:
- (a) more than one vessel (whether or not secured directly to the mooring or to another vessel secured to the mooring), or
  - (b) any vessel in contravention of the terms and conditions of the licence in respect of the mooring.
- Maximum penalty: 30 penalty units.
- (4) The holder of a licence in respect of a marina must not moor at a mooring forming part of the marina in Cowan Water:
- (a) more than one vessel (whether or not secured directly to the mooring or to another vessel secured to the mooring), or
  - (b) any vessel in contravention of the terms and conditions of the licence in respect of the marina.
- Maximum penalty: 30 penalty units.
- (5) A designated officer may direct a person to remove a vessel from a mooring if the vessel is moored in contravention of this clause.
- (6) A person must not, without reasonable excuse, fail to comply with a direction given under subclause (5).  
Maximum penalty: 30 penalty units.
- (7) In this clause:  
***designated officer*** means:
- (a) an officer or employee of the National Parks and Wildlife Service, or
  - (b) a person who is authorised by the park authority for Ku-ring-gai Chase National Park to exercise the powers conferred by this clause, or
  - (c) a police officer.

### **30 Misrepresentation of authority to moor vessel**

A person must not falsely represent (by the display of numbers or names, the production of documents or otherwise) that the person is authorised to moor a vessel, or to permit other persons to moor vessels, in Cowan Water.

Maximum penalty: 30 penalty units.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 31

Regulation of use of parks

Part 2

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## **Division 5      Miscellaneous**

### **31    Consents**

- (1) The consent of a park authority under this Part may be given:
  - (a) by means of a written statement, or
  - (b) by means of a notice referred to in clause 4, or
  - (c) in the form of a permit, licence, approval or other form of authorisation.
- (2) Such a consent may be given:
  - (a) either generally or in a particular case, and
  - (b) either unconditionally or subject to conditions.

### **32    Exercise of park authority's functions**

Any function that is conferred on a park authority by this Part may be exercised by the authority or by any person authorised by the authority to exercise that function.

### **33    Defences**

A person does not commit an offence under this Part for anything done or omitted:

- (a) by a member of staff of a park authority in the exercise of his or her employment as such, or
- (b) under the oral or written direction of a park authority.

### **34    Second and subsequent offences**

- (1) A person who commits (or is, by virtue of section 159 of the Act, guilty of) a second or subsequent offence against this Part is liable to be excluded from a park by the park authority for any period of time determined by the park authority.
- (2) For the purpose of this clause, a person is taken to have committed (or to be guilty of) an offence against this Part if:
  - (a) a court convicts the person of the offence, or
  - (b) a court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* or section 33 (1) (a) of the *Children (Criminal Proceedings) Act 1987* in respect of the person in relation to the offence, or
  - (c) a penalty notice has been issued in respect of an offence and the penalty notice amount has been paid.

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## public consultation draft

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Clause 34      National Parks and Wildlife Regulation 2009

Part 2          Regulation of use of parks

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- (3) A person who has been excluded from a park under this clause must not re-enter the park before the period of exclusion ends.  
Maximum penalty: 30 penalty units.
- (4) This clause does not apply to an offence against clause 48.

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National Parks and Wildlife Regulation 2009

Clause 35

Public health in Kosciuszko National Park

Part 3

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## **Part 3 Public health in Kosciuszko National Park**

### **35 Definitions**

In this Part:

*premises* means premises in the park.

*the park* means the Kosciuszko National Park.

### **36 Object of Part**

- (1) The object of this Part is to confer or impose on the Director-General, under section 155A of the Act, certain functions relating to the health of the public in the park.
- (2) The functions concerned are, in accordance with section 155A of the Act, the same (but for being modified by this Part) as certain functions conferred or imposed on a council constituted by the *Local Government Act 1993* in relation to the health of the public in its area.

### **37 Orders requiring the preservation of healthy conditions in the park**

- (1) The Director-General may, if any premises, vehicle or article in the park, used for the manufacture, preparation, storage, sale or transportation of food to the public are not in a clean or sanitary condition, order the occupier of the premises, or the owner or operator of the vehicle or article, to put the premises, vehicle or article into a clean or sanitary condition.
- (2) The Director-General may, if premises are not in a safe or healthy condition, order the occupier of the premises to do or refrain from doing all things that are specified in the order to ensure that the premises are placed or kept in a safe or healthy condition.
- (3) The Director-General may, if waste (other than waste that is dealt with under the *Waste Avoidance and Resource Recovery Act 2001*) is present or generated on premises and it is not being satisfactorily dealt with, order the occupier of the premises, or the person responsible for the waste or for any receptacle or container in which the waste is contained, to store, treat, process, collect, remove, dispose of or destroy the waste in the manner specified in the order.
- (4) The Director-General may, if premises are not connected to any available water supply or sewerage system, order the occupier of the premises to connect the premises to an available water supply and sewerage system by a date specified in the order.
- (5) The Director-General may, if in the opinion of the Director-General it is necessary for the purpose of protecting the health of the public in the park, order the occupier of premises not to use or permit the use of a

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# public consultation draft

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Clause 38 National Parks and Wildlife Regulation 2009

Part 3 Public health in Kosciuszko National Park

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human waste storage facility on the premises after a date specified in the order.

- (6) A person to whom an order under this clause is given must not fail to comply with the order.

Maximum penalty: 30 penalty units.

### **38 Orders requiring the doing of things to or on premises**

- (1) The Director-General may, if it is necessary or expedient to do so in the interests of public health, order the occupier of premises to repair or make structural alterations to the premises (including the renewal or repair of a roof) or to erect a fence between the land on which the premises are located and an adjoining place that is open to the public.

- (2) A person to whom an order under this clause is given must not fail to comply with the order.

Maximum penalty: 30 penalty units.

### **39 Orders relating to premises used for shared accommodation**

- (1) The Director-General may, if premises used for shared accommodation do not comply with the standards set out in Part 1 of Schedule 2 to the *Local Government (General) Regulation 2005*, order the occupier of the premises to take the action that is necessary to bring the premises into compliance with those standards.

- (2) A person to whom an order under this clause is given must not fail to comply with the order.

Maximum penalty: 30 penalty units.

### **40 Orders requiring that premises not be used in specified ways**

- (1) The Director-General may, if an activity conducted on premises constitutes or is likely to constitute a threat to the health of the public in the park, order the person apparently engaged in promoting, conducting or carrying out the activity not to conduct, or to cease conducting, the activity.

- (2) A person to whom an order under this clause is given must not fail to comply with the order.

Maximum penalty: 30 penalty units.

- (3) If the person fails to comply with the order, the Director-General may:

- (a) order the person to cease the use of the premises or to evacuate the premises, and
- (b) order any other person or persons to leave the premises or not to enter the premises.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 41

Public health in Kosciuszko National Park

Part 3

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**41 Procedures to be observed before giving orders and provisions relating to orders generally**

- (1) Sections 129, 130, 132–137, 139–141, 143–148, 152 and 153 (1) of the *Local Government Act 1993* apply in relation to orders given by the Director-General under clauses 37–40 of this Part in the same way as they apply to orders given by a council constituted under that Act.
- (2) Accordingly, references in those sections to a council are, for the purposes of this clause, to be read as references to the Director-General.

**42 Provision of services relating to the health of the public in the park**

- (1) The Director-General may provide public health services and facilities, and carry out activities relating to public health, appropriate to the needs of the public in the park.
- (2) In particular, the Director-General may provide for, or enter into arrangements for, the collection, removal and treatment of garbage, rubbish, refuse or other forms of waste from premises in the park.
- (3) The Director-General may, in the interests of the health of the public in the park and in whatever manner the Director-General thinks fit:
  - (a) maintain and regulate depots in the park for the disposal and destruction of garbage, rubbish, refuse or other forms of waste, and
  - (b) control and regulate the depositing on land in the park of any material likely to give rise to a condition that will endanger public health.
- (4) The Director-General may give directions to ensure that any requirement imposed by the Director-General in connection with the Director-General's functions under this clause is complied with.

**43 Power of entry and inspection**

- (1) The Director-General may, in exercising the Director-General's functions under this Part, exercise the same functions as a council may exercise under Part 2 of Chapter 8 of the *Local Government Act 1993* for the purpose of enabling the council to exercise its functions relating to public health under that Act.
- (2) Accordingly, references in that Part to a council are, for the purposes of this clause, to be read as references to the Director-General, and the reference in section 199 (2) (f) of that Act to the general manager is to be read as a reference to the Director-General.

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## public consultation draft

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Clause 44          National Parks and Wildlife Regulation 2009

Part 3              Public health in Kosciuszko National Park

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#### **44    Functions relating to Public Health Act 1991**

- (1) A person designated by the Director-General for the purposes of this clause may exercise the following functions in relation to the park:
  - (a) the functions of an authorised officer under Part 4 of the *Public Health Act 1991* (Microbial control) and the *Public Health (Microbial Control) Regulation 2000*,
  - (b) the functions of an environmental health officer under the *Public Health (Swimming Pools and Spa Pools) Regulation 2000*.
- (2) For the purposes of Part 4 of the *Public Health Act 1991* (Microbial control) and the *Public Health (Microbial Control) Regulation 2000*, the Director-General is taken to be a local authority for the park.



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National Parks and Wildlife Regulation 2009

Clause 45

Enforcement of obligations of Snowy Hydro Company

Part 4

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## Part 4 Enforcement of obligations of Snowy Hydro Company

### 45 Definitions

In this Part:

***Snowy Management Plan*** means a plan of management under the Act for Kosciuszko National Park that deals, in accordance with section 38 of the *Snowy Hydro Corporatisation Act 1997*, with the activities of the Company within that Park.

***Snowy park lease*** means the Snowy park lease referred to in Part 6 of the *Snowy Hydro Corporatisation Act 1997*.

***the Company*** means:

- (a) subject to paragraph (b), Snowy Hydro Limited (ACN 090 574 431), or
- (b) if the Snowy park lease is transferred to another body—that other body.

### 46 Company to comply with Snowy Management Plan

- (1) The Company is required to comply with the obligations imposed on the Company under the Snowy Management Plan.
- (2) For the purposes of this Part, the obligations of the Company under the Snowy Management Plan include the obligations imposed on the Company by any environment management plan prepared under the Snowy Management Plan and approved by the Director-General.

### 47 Notice to comply with Snowy Management Plan

- (1) If the Company fails to comply with any of its obligations under the Snowy Management Plan, the Director-General may, by written notice served on the Company, direct the Company to comply with its obligations.
- (2) A notice under this clause:
  - (a) must set out the obligations of the Company that have not been complied with, and
  - (b) may specify a time within which the obligations are to be complied with, and
  - (c) may require the Company to take the action specified in the notice in order to comply with the obligations, and
  - (d) may require the Company to cease the action specified in the notice that has resulted in the Company not complying with its obligations, and

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Clause 48          National Parks and Wildlife Regulation 2009

Part 4              Enforcement of obligations of Snowy Hydro Company

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- (e) if the failure of the Company to comply with its obligations has caused damage to the Kosciuszko National Park—may require the Company to take the actions specified in the notice to remedy the damage.
- (3) The Director-General is required to consult the Environment Protection Authority before serving a notice under this clause in respect of a scheduled activity within the meaning of the *Protection of the Environment Operations Act 1997*, unless the Director-General is of the opinion that the notice is required to be served as a matter of urgency.
- (4) A notice under this clause may be amended or revoked by a subsequent notice served on the Company.

**48 Offence—Company failing to comply with notice**

The Company is guilty of an offence if it fails, without reasonable excuse, to comply with a notice under clause 47.

Maximum penalty: 50 penalty units and 2 penalty units for each day the offence continues.

**49 Carrying out of works—Company failing to comply with notice**

- (1) If the Company fails to comply with a requirement of a notice under clause 47 to carry out works, the Director-General may carry out those works.
- (2) The Director-General may recover from the Company as a debt in a court of competent jurisdiction the reasonable costs of carrying out those works if the Company failed, without reasonable excuse, to carry out those works in accordance with the notice.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 50

Licences and certificates

Part 5

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## **Part 5 Licences and certificates**

### **50 Applications for licences or registration certificates**

- (1) An application for the issue of a licence or a registration certificate under the Act must be made in a form approved by the Director-General.
- (2) If an application form requires a fee or charge to accompany it, that fee or charge must be lodged with the application.
- (3) A person must not, in connection with an application for the issue of a licence or a registration certificate under the Act, make any statement or provide any information or other material that the person knows, or ought reasonably to know, is false or misleading.

Maximum penalty: 30 penalty units.

### **51 Terms of licences or registration certificates**

A licence or registration certificate issued under the Act is in force (unless cancelled):

- (a) until midnight on 31 December following the date of issue, or
- (b) if an expiry date is specified in the licence or certificate—until midnight on that date.

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# public consultation draft

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Clause 52 National Parks and Wildlife Regulation 2009

Part 6 Fauna protection

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## **Part 6 Fauna protection**

### **Division 1 Licences and certificates**

#### **52 Issue of tags**

- (1) The Director-General or an officer authorised by the Director-General may (on payment of any fees or charges fixed by the Director-General) issue tags for affixing or attaching to the skin or carcase of any fauna in compliance with a condition of a licence under Part 9 of the Act.
- (2) Commercial tags may be issued for affixing or attaching to the skins or carcasses of kangaroos, wallaroos or wallabies harmed for sale.
- (3) Non-commercial tags may be issued for affixing or attaching to the skins or carcasses of kangaroos, wallaroos or wallabies harmed otherwise than for sale.
- (4) A separate series of commercial tags is to be issued for each year. Commercial tags may be used only during the year for which they are issued.

#### **53 Supply of tags to commercial fauna harvesters**

An occupier's licence authorising the licensee to permit a person to harm kangaroos, wallaroos or wallabies is subject to the condition that the licensee must make available to any person permitted to harm kangaroos, wallaroos or wallabies under the licence a quantity of commercial tags or non-commercial tags equal in number to the number of kangaroos, wallaroos or wallabies that the person is permitted to harm.

#### **54 Grounds for refusing import or export licence**

For the purposes of section 126 (3) of the Act, the grounds on which an application for an import or export licence may be refused are as follows:

- (a) that, in the opinion of the Director-General, the proposed import or export of protected fauna, if effected:
  - (i) could be detrimental to the protection and conservation of fauna in the State, or
  - (ii) could result in a person contravening a law of the State, or
  - (iii) could result in a person contravening a law of the place from which it is intended to import, or to which it is intended to export, the protected fauna, or

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## public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 55

Fauna protection

Part 6

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- (iv) could introduce species of protected fauna that do not normally occur in the State and that may constitute a threat to agricultural or horticultural activities in the State, or
  - (v) could introduce species of protected fauna that cannot readily be kept in captivity or confinement, or
  - (vi) could introduce a species of protected fauna that may constitute a threat to human health or safety,
- (b) that the applicant is not the holder of a licence under the Act (other than an import or export licence), or a licence, approval or permit under the *Exhibited Animals Protection Act 1986*, that authorises dealings with the protected fauna proposed to be imported or exported,
- (c) that the applicant has not given a written undertaking to the Director-General:
- (i) in the case of an application for an import licence—to notify the Director-General of details of the protected fauna imported, and of the time of import, within the 48 hours immediately following that time, or
  - (ii) in the case of an application for an export licence—to notify the authority (if any) responsible for the protection of fauna at the place to which the protected fauna is proposed to be exported of details of the protected fauna, and of the time of intended export, within the 48 hours immediately preceding that time,
- (d) that the applicant has, within the period of 2 years immediately preceding the making of the application, been convicted of:
- (i) an offence under a provision of Part 7 of the Act or an offence under a similar provision of the fauna protection legislation of another State or Territory, or
  - (ii) an offence under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, or
  - (iii) an offence under the *Prevention of Cruelty to Animals Act 1979* or the *Exhibited Animals Protection Act 1986*.

### **55 Grounds for cancelling import or export licence**

For the purposes of section 134 (2) of the Act, the grounds on which an import or export licence may be cancelled are as follows:

- (a) that the licensee has made a statement that the licensee knows, or ought reasonably to know, is false or misleading in, or in connection with, the application for the licence,

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## public consultation draft

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Clause 56 National Parks and Wildlife Regulation 2009

Part 6 Fauna protection

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- (b) that the licensee has been convicted of an offence under a provision of Part 7 of the Act or an offence under a similar provision of the fauna protection legislation of another State or Territory,
- (c) that the licensee has been convicted of an offence under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
- (d) that the licensee has been convicted of an offence under the *Prevention of Cruelty to Animals Act 1979* or the *Exhibited Animals Protection Act 1986*.

### **56 False receipts and records**

- (1) A person who is required as a condition of a licence to issue receipts must not issue any false receipt.  
Maximum penalty: 30 penalty units.
- (2) A person who is required as a condition of a licence to keep records must not make a false entry in any record, or otherwise keep a false record.  
Maximum penalty: 30 penalty units.
- (3) A person who is required as a condition of a licence to provide records or information to the Director-General must not provide false or misleading records or information.  
Maximum penalty: 30 penalty units.

## **Division 2 Care and protection of fauna**

### **57 Caging and confinement of protected fauna**

- (1) A person who consigns or offers for sale any protected fauna must comply with the conditions set out in Schedule 1.  
Maximum penalty: 30 penalty units.
- (2) A person who keeps any protected fauna must comply with the conditions specified in clause 1 (2)–(4) of Schedule 1.  
Maximum penalty: 30 penalty units.
- (3) A person must comply with any requirement of the Director-General or an officer duly authorised by the Director-General to ring, band, microchip, obtain or permit the collection of tissue or blood samples for the purpose of analysis, or otherwise mark or identify protected fauna kept in captivity by the person.  
Maximum penalty: 30 penalty units.

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## public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 58

Fauna protection

Part 6

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- (4) A person must not remove or interfere with any such ring, band, microchip, mark or identification unless authorised to do so by the Director-General.

Maximum penalty: 30 penalty units.

- (5) This clause does not apply:

- (a) to birds or reptiles being transported or consigned to, or exhibited at, a show conducted or sponsored by a recognised avicultural or herpetological association, society or other organisation that adopts internationally accepted standards for display and showing, or
- (b) to sick or injured protected fauna held temporarily in strict confinement for the purpose of treatment, or
- (c) to protected fauna being transported or consigned to, or held for treatment by, a veterinary practitioner (within the meaning of the *Veterinary Practice Act 2003*), or
- (d) to protected fauna being transported, consigned or kept under a licence issued under the Act for the purpose of scientific research.

### 58 Native waterfowl not to be interbred with non-native waterfowl

- (1) A person must not interbreed, or allow the interbreeding of, native ducks, geese or swans that are under the person's control with ducks, geese or swans that are not native.

Maximum penalty: 30 penalty units.

- (2) In this clause:

**native** means native to Australia.

## Division 3 Protection of certain marine mammals

### 59 Definitions

In this Division:

**aircraft** means any airborne craft, including a fixed wing craft, helicopter, gyrocopter, glider, hang glider, hot air balloon or airship.

**calf** means a whale or dolphin that is not more than half the length of an adult of the same species.

**caution zone** for a marine mammal means an area around the mammal of a radius of the following:

- (a) for a dolphin (including a calf)—150 metres,
- (b) for a whale (including a calf)—300 metres.

**cetacean** means an animal of the order Cetacea.

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# public consultation draft

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Clause 60 National Parks and Wildlife Regulation 2009

Part 6 Fauna protection

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**constant slow speed**, in relation to a marine mammal or group of marine mammals that is being approached, means a speed of approach to the marine mammal or group that is constant, slow and leaves negligible wake.

**dolphin** means an animal of the family Delphinidae or the family Phocoenidae.

**operate** a vessel includes:

- (a) to determine or exercise control over the course or direction of the vessel or over the means of propulsion of the vessel (whether or not the vessel is underway), and
- (b) to pilot the vessel.

**prohibited vessel** means a vessel that is a personal motorised water craft (for example, a jet ski), parasail, hovercraft, wing-in-ground effect craft or a motorised diving aid (for example, a motorised underwater scooter) and includes a remotely operated craft (for example, a remote controlled speed boat).

**pup** means a seal or sea lion that is not more than half the length of an adult of the same species.

**swimming** includes snorkelling or diving.

**vehicle** means a motor car, motor carriage, motor cycle, or other apparatus propelled on land wholly or partly by volatile spirit, steam, gas, oil or electricity or a bicycle.

**vessel** includes a water craft of any description that is used or capable of being used as a means of transportation on water but does not include an aircraft that is capable of landing on water.

**whale** means a cetacean other than a dolphin.

## 60 Application of Division

- (1) A person must not be convicted of an offence under this Division if the person proves that the act constituting the offence was:
  - (a) caused solely by a marine mammal approaching the person, or
  - (b) an action taken by the person that was reasonably necessary to prevent a risk to human health or to deal with a serious threat to human life or property, or
  - (c) an action taken by the person as an officer of, or person acting on behalf of, a law enforcement agency that was reasonably necessary for the purposes of law enforcement, or
  - (d) an action taken by an officer of the Department of Primary Industries who had been appointed as a fisheries officer under the *Fisheries Management Act 1994* that was reasonably necessary



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## public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 61

Fauna protection

Part 6

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for the purposes of exercising a law enforcement function conferred on the officer under that Act, or

- (e) an action taken by the person that occurred as a result of an unavoidable accident, other than an accident caused by the person's negligent or reckless behaviour, or
  - (f) an action taken by a person that occurred as a result of the person being given a direction by an officer of the Department of Environment and Climate Change and that was taken in accordance with that direction.
- (2) A person must not be convicted of an offence under this Division if the person proves that the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by:
- (a) a general licence under section 120 of the Act, or
  - (b) a scientific licence under section 132C of the Act, or
  - (c) a licence under Part 6 of the *Threatened Species Conservation Act 1995*, or
  - (d) a licence, permit or approval under the *Exhibited Animals Protection Act 1986*.
- (3) In this clause:
- law enforcement agency** means each of the following:
- (a) the NSW Police Force,
  - (b) the police force of another State or a Territory,
  - (c) the New South Wales Crime Commission,
  - (d) the Australian Federal Police,
  - (e) the Australian Crime Commission,
  - (f) the Maritime Authority of NSW,
  - (g) the Australian Quarantine and Inspection Service,
  - (h) the Marine Parks Authority,
  - (i) the Department of Environment and Climate Change.

### **61 Prescribed approach distances to marine mammals**

- (1) For the purposes of section 112G of the Act, the following distances are prescribed:
- (a) 300 metres, if the person is approaching a cetacean and is on, or using, a prohibited vessel,
  - (b) 100 metres, if the person is approaching a whale and is on, or using, a vessel other than a prohibited vessel,

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## public consultation draft

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Clause 61 National Parks and Wildlife Regulation 2009

Part 6 Fauna protection

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- (c) 50 metres, if the person is approaching a dolphin and is on, or using, a vessel other than a prohibited vessel,
- (d) 30 metres, if the person is approaching a cetacean and is swimming,
- (e) a height lower than 300 metres within a horizontal radius of 300 metres, if the person is operating an aircraft (other than a helicopter or gyrocopter),
- (f) a height lower than 500 metres within a horizontal radius of 500 metres, if the person is operating a helicopter or gyrocopter,
- (g) 10 metres, if the person is approaching a seal or sea lion (other than a pup) that is in the water and the person is in, or on, a vessel,
- (h) 10 metres, if the person is approaching a seal or sea lion (other than a pup) that is in the water and the person is swimming or is a pedestrian,
- (i) 40 metres, if the person is approaching a seal or sea lion (other than a pup) that is hauled out on land and the person is swimming, operating a vessel or vehicle or is a pedestrian,
- (j) 80 metres, if the person is approaching a pup.

**Note.** A person who approaches a marine mammal any closer than the distances prescribed above is guilty of an offence under section 112G of the Act that is punishable by a maximum penalty of 1,000 penalty units or imprisonment for 2 years, or both.

- (2) The prescription of a distance under this clause does not apply to a person approaching a marine mammal in the following circumstances:
  - (a) the person is approaching in the course of taking action that is reasonably necessary to prevent a risk to human health or to deal with a serious threat to human life or property, or
  - (b) the person is approaching in the course of taking action in the person's capacity as an officer of or person acting on behalf of a law enforcement agency and the action is reasonably necessary for the purposes of law enforcement, or
  - (c) the person is approaching in the course of taking an action in the person's capacity as an officer of the Department of Primary Industries who has been appointed as a fisheries officer under the *Fisheries Management Act 1994* and the action is reasonably necessary for the purposes of exercising a law enforcement function conferred on the officer under that Act, or
  - (d) the person is approaching in the course of taking action that is a result of an unavoidable accident, other than an accident caused by the person's negligent or reckless behaviour, or

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 62

Fauna protection

Part 6

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- (e) the person is approaching in the course of taking any action as a result of the person being given a direction by an officer of the Department of Environment and Climate Change and that is being taken in accordance with that direction.

## 62 Operation of prohibited vessels

- (1) A prohibited vessel that is being approached by a cetacean must be moved away from the cetacean at a constant slow speed so that the vessel remains at least 300 metres away from the cetacean.
- (2) A person who operates a prohibited vessel in a way that contravenes subclause (1) is guilty of an offence.  
Maximum penalty: 50 penalty units.

## 63 Operation of vessels that are not prohibited vessels

- (1) Within the caution zone for a cetacean (other than a calf), a person operating a vessel that is not a prohibited vessel:
  - (a) must operate the vessel at a constant slow speed and in a manner that consistently minimises noise, and
  - (b) must make sure that the vessel does not drift closer to the cetacean than:
    - (i) for a dolphin—50 metres, or
    - (ii) for a whale—100 metres, and
  - (c) if the cetacean shows signs of being disturbed—must immediately withdraw the vessel from the caution zone at a constant slow speed, and  
**Note.** Signs of being disturbed include regular changes in direction or speed of swimming, hasty dives, changes in breathing patterns, changes in acoustic behaviour or aggressive behaviour such as tail slashing and trumpet blows.
  - (d) if there is more than one person on the vessel—must post a lookout for cetaceans, and
  - (e) without limiting paragraph (b), must approach a cetacean only:
    - (i) from the rear, at an angle of no closer than 30 degrees to its observed direction of travel, or
    - (ii) by positioning the vessel ahead of the cetacean at more than 30 degrees from its observed direction of travel, and
  - (f) must make sure the vessel does not restrict the path of the cetacean, and
  - (g) must make sure the vessel is not used to pursue the cetacean.
- (2) A person operating a vessel that is not a prohibited vessel must not allow the vessel to enter the caution zone of a calf.

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## public consultation draft

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Clause 64 National Parks and Wildlife Regulation 2009

Part 6 Fauna protection

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- (3) If a calf approaches a vessel that is not a prohibited vessel so that the vessel comes within the caution zone of the calf, the person operating the vessel:
- (a) must immediately stop the vessel, and
  - (b) must:
    - (i) turn off the vessel's engines, or
    - (ii) disengage the vessel's gears, or
    - (iii) withdraw the vessel from the caution zone at a constant slow speed.
- (4) A person operating a vessel that is not a prohibited vessel must not enter the caution zone of a cetacean if there are more than 2 vessels in the caution zone.
- (5) If a whale (other than a calf) approaches a vessel that is not a prohibited vessel or comes within the limits mentioned in subclause (1) (b), the person operating the vessel must:
- (a) disengage the vessel's gears and let the whale approach, or
  - (b) reduce the speed of the vessel and continue on a course away from the whale.
- (6) If a dolphin (other than a calf) approaches a vessel that is not a prohibited vessel or comes within the limits mentioned in subclause (1) (b), the person operating the vessel must not change the course or speed of the vessel suddenly.
- Maximum penalty: 50 penalty units.

### **64 Operation of aircraft in vicinity of marine mammals**

- (1) A person must not operate any aircraft so as to approach a marine mammal from head on for the purpose of observing a marine mammal.
- (2) A person must not land an aircraft on water for the purpose of observing a marine mammal.
- Maximum penalty: 50 penalty units.

### **65 Feeding marine mammals**

- (1) A person must not intentionally feed or attempt to feed a marine mammal that is in its natural environment.
- Maximum penalty: 50 penalty units.
- (2) Subclause (1) does not apply to the routine discarding of bycatch by a commercial fisher within the meaning of the *Fisheries Management Act 1994* if he or she makes reasonable efforts to avoid discarding bycatch near a marine mammal.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 66

Fauna protection

Part 6

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- (3) In this clause:  
*feed* a marine mammal includes throwing food or rubbish in the water near a marine mammal.

## 66 Swimming with cetaceans

- (1) A person must not enter water within 100 metres of a whale or within 50 metres of a dolphin.
- (2) If any cetacean comes within 30 metres of a person who is in the water, the person:
- (a) must move slowly to avoid startling it, and
  - (b) must not touch the cetacean or move towards it.
- Maximum penalty: 50 penalty units.

## 67 Approaching special interest marine mammals

- (1) The Minister may by order:
- (a) declare a marine mammal or group of marine mammals described in the order to be a marine mammal or group of marine mammals to which this clause applies, and
  - (b) specify the approach distance for that marine mammal or group of marine mammals for the purposes of this clause (the *special protection approach distance*), and
  - (c) describe the area of the State to which this clause applies.
- (2) The Minister may make an order under this clause only if:
- (a) the marine mammal is, or the group is a group that is or includes, any of the following:
    - (i) a dugong or other rarely sighted species of marine mammal,
    - (ii) a morphological or colour-variant marine mammal,
    - (iii) a female marine mammal that has recently given, or is about to give, birth,
    - (iv) a calf separated from a mother or group of marine mammals,
    - (v) a sick or injured marine mammal, or
  - (b) the Minister is satisfied that the marine mammal or group of marine mammals is at risk of harassment, injury or death.
- (3) As soon as practicable after making an order under this clause, the Minister is:

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## public consultation draft

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Clause 68 National Parks and Wildlife Regulation 2009

Part 6 Fauna protection

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- (a) to cause notice of the order to be broadcast by a television or radio station transmitting to the area of the State concerned and to be published in a newspaper circulating in that area, and
  - (b) to cause a copy of the order to be published in the Gazette.
- (4) An order under this clause has effect for a period of 6 months on and from the day on which notice of it is first published as referred to in subclause (3) (a).
- (5) A person must not, without reasonable excuse or the Minister's written permission or the permission of an authorised officer, approach a marine mammal or group of marine mammals to which this clause applies in an area to which this clause applies at any distance that is closer than the special protection approach distance for the marine mammal or group of marine mammals.
- Maximum penalty: 50 penalty units.

### **Division 4 Miscellaneous**

#### **68 Notification of possession of certain animals**

For the purposes of sections 101 (5) (c) (ii) and 118B (5) (b) (ii) of the Act:

- (a) the prescribed manner of notification is by a notice in writing to the Director-General, and
- (b) the prescribed time is the period ending 3 days after the animal comes into the person's possession.

#### **69 Prescribed substances**

- (1) For the purposes of section 110 of the Act (Use of certain substances for harming fauna), the following substances are prescribed:
  - (a) the substances stated in the Poisons List (proclaimed under section 8 of the *Poisons and Therapeutic Goods Act 1966*) as in force for the time being,
  - (b) glue, gel and other adhesive substances and viscid substances.
- (2) A person authorised to use a prescribed substance by the Director-General (or a national parks officer authorised by the Director-General) is exempt from the provisions of section 110 (1) and (2) of the Act if the person uses the prescribed substance in accordance with the authorisation.
- (3) A person using taste aversion substances to deter birds is exempt from the provisions of section 110 (1) and (2) of the Act.

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National Parks and Wildlife Regulation 2009

Clause 70

Fauna protection

Part 6

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### **70 Notice of preparation of plan of management for marine mammals**

For the purposes of section 112D (1) of the Act, the prescribed notice is a notification published in the Gazette.

### **71 Proceedings for offences—prescribed officers who may issue evidentiary certificates**

- (1) For the purposes of section 181 (5) of the Act, the following are prescribed officers:
  - (a) Deputy Director-General, Parks and Wildlife Group,
  - (b) Director, Reserve and Wildlife Conservation,
  - (c) Manager, Conservation Operations,
  - (d) Manager, Wildlife Licensing and Management Unit,
  - (e) Coordinator, Wildlife Licensing,
  - (f) Deputy Director-General, Environment Protection and Regulation Group,
  - (g) Director, North West Branch,
  - (h) Manager, Kangaroo Management Program,
  - (i) Chief Investigator,
  - (j) Manager, Litigation,
  - (k) Principal Legal Officer.
- (2) This clause applies to and in respect of matters arising under the fauna provisions of the Act only.
- (3) In this clause:

*fauna provisions of the Act* means Parts 7, 7A and 9 of the Act and, to the extent to which any other provisions of the Act relate to fauna, those other provisions.

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# public consultation draft

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Clause 72 National Parks and Wildlife Regulation 2009

Part 7 Exemptions in favour of Aboriginal people

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## Part 7 Exemptions in favour of Aboriginal people

### 72 Exemption: section 70

- (1) The object of this clause is to exempt Aboriginal people from the provisions of section 70 (1) of the Act that prohibit a person from harming fauna within a wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement.
- (2) Aboriginal people are exempted from the provisions of section 70 (1) of the Act to the extent to which those provisions would, but for this subclause, prohibit Aboriginal people from hunting fauna for their own domestic purposes.
- (3) The exemption does not apply to raptors, parrots or threatened species, populations and ecological communities within the meaning of the *Threatened Species Conservation Act 1995*.
- (4) This clause applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

### 73 Exemption: section 71

- (1) The object of this clause is to exempt Aboriginal people from the provisions of section 71 (1) of the Act that prohibit a person from picking native plants, or having native plants in the person's possession, within a wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement.
- (2) Aboriginal people are exempted from the provisions of section 71 (1) of the Act to the extent to which those provisions would, but for this subclause, prohibit Aboriginal people from gathering or harvesting the fruit, flowers or other parts of a native plant for their own domestic purposes.
- (3) This clause applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

### 74 Exemption: section 98

- (1) In this clause:  
*relevant provisions* means:
  - (a) section 98 (2) (a), which prohibits a person from harming any protected fauna, and
  - (b) so much of section 98 (2) (b) as prohibits the use of any animal, firearm, net, trap or hunting device for the purpose of harming any protected fauna.



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## public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 75

Exemptions in favour of Aboriginal people

Part 7

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- (2) Aboriginal people are exempted from the relevant provisions to the extent to which the relevant provisions would, but for this subclause, prohibit Aboriginal people from harming fauna for their own domestic purposes.
- (3) This clause does not apply in respect of raptors or parrots.
- (4) This clause applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

### **75 Exemption: section 117**

- (1) The object of this clause is to exempt Aboriginal people from the provisions of section 117 (1) of the Act that prohibit a person from picking protected native plants, or having protected native plants in the person's possession.
- (2) Aboriginal people are exempted from the provisions of section 117 (1) of the Act to the extent to which those provisions would, but for this subclause, prohibit Aboriginal people from gathering or harvesting the fruit, flowers or other parts of a protected native plant for their own domestic purposes.
- (3) The exemption applies in respect of:
  - (a) woody species of protected native plants only if the gathering or harvesting is done in a way that does not significantly harm the plant or interfere unreasonably with its means of propagation, and
  - (b) herbaceous species of protected native plants only if the gathering or harvesting is done in a way that does not significantly deplete the local population or interfere unreasonably with its means of propagation.
- (4) This clause applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

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# public consultation draft

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Clause 76 National Parks and Wildlife Regulation 2009

Part 8 Aboriginal land

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## Part 8 Aboriginal land

### Division 1 Boards of management

#### 76 Definitions

In this Division:

*board of management* means a board of management established under Part 4A (Aboriginal land) of the Act.

*member* means a member of a board of management.

#### 77 Appointment of deputies of members of boards of management

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) The person appointed must be selected from the same category of persons specified in section 71AN (3) of the Act, and in accordance with the terms of any relevant lease, as the member for whom the person is to deputize.
- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (4) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

#### 78 Chairing of meetings

- (1) At the first meeting of a board of management after the commencement of this clause, the members of the board are to elect as deputy chairperson of the board a person referred to in section 71AN (3) (a) of the Act.
- (2) In the absence of the chairperson, the deputy chairperson may, if available, act in the place of the chairperson.
- (3) If both the chairperson and the deputy chairperson are absent from a meeting of a board of management, the members present are to elect another person referred to in section 71AN (3) (a) of the Act to chair the meeting.
- (4) While acting in the place of the chairperson, the deputy chairperson or person elected under subclause (3) has all the functions of the chairperson and is taken to be the chairperson.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 79

Aboriginal land

Part 8

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## Division 2 Plans of management

### 79 Land for community development purposes—Mutawintji

Development (by the Aboriginal Land Council, the Local Aboriginal Land Council, the Aboriginal owners or the board of management for the area concerned) for the purpose of the following facilities is prescribed under section 72AA (6) (c) of the Act in respect of Mutawintji Historic Site, Mutawintji National Park and Mutawintji Nature Reserve if the facilities are for the use (but not necessarily the exclusive use) of Aboriginal owners:

- (a) residential housing facilities (whether for permanent or temporary accommodation),
- (b) camping facilities,
- (c) meeting facilities,
- (d) administration facilities,
- (e) tourism facilities,
- (f) recreation facilities,
- (g) cultural facilities,
- (h) cemeteries,
- (i) facilities for the following services:
  - (i) utilities (energy, water and waste management),
  - (ii) health services,
  - (iii) telecommunications,
  - (iv) roads, tracks and airstrips,
- (j) ancillary facilities.

**Note.** Section 72AA (6) (c) of the Act provides that a plan of management for lands reserved under Part 4A of the Act may provide for the use of lands for any community development purpose prescribed by the regulations.

### 80 Land for community development purposes—other Part 4A land

- (1) Development (by the Aboriginal Land Council, the Local Aboriginal Land Council, the Aboriginal owners or the board of management for the land concerned) for the purpose of the following activities or facilities is prescribed under section 72AA (6) (c) of the Act in respect of any land reserved under Part 4A of the Act (other than land referred to in clause 79):
  - (a) recreation activities or facilities,
  - (b) cultural activities or facilities,
  - (c) general park activities or facilities,

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## public consultation draft

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Clause 80      National Parks and Wildlife Regulation 2009

Part 8          Aboriginal land

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- (d) other activities or facilities that will improve the capacity of the following persons to participate in the management of the land concerned (but only if the activity or facility is consistent with any relevant lease under Part 4A of the Act):
  - (i) the Aboriginal owners of the land,
  - (ii) traditional owners of the land (whether or not those persons are Aboriginal owners of the land),
  - (iii) members of the Local Aboriginal Land Council for the land.

(2) In this clause:

**traditional owners**, in relation to land, means those persons who have an association with the cultural area within which the land is situated that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the cultural area.

**Note.** The terms “Aboriginal Land Council”, “Local Aboriginal Land Council”, “Aboriginal owners” and “board of management” are defined in sections 5 and 71B of the Act.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 81

Advisory committees

Part 9

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## **Part 9 Advisory committees**

### **81 Application of Part**

This Part applies to and in respect of an advisory committee constituted under section 24 of the Act.

### **82 Meetings to be held**

- (1) An advisory committee must hold an annual general meeting before the end of June each year.
- (2) The first meeting of an advisory committee must be held within 3 months of the constitution of the committee.
- (3) An advisory committee must hold ordinary meetings at least once every 3 months.
- (4) A meeting (including an annual general meeting) must be held when and where convened by the chairperson or, in the chairperson's absence, by the deputy chairperson.

### **83 Appointment of officers**

- (1) At each annual general meeting, the members must appoint a chairperson, deputy chairperson and secretary.
- (2) The chairperson is to be elected from among the members.
- (3) The deputy chairperson is to be elected from among the members.
- (4) The secretary may be elected from among the members or, with the concurrence of the Director-General, may be a person who is not a member appointed by the members.
- (5) Except as otherwise provided by the Act or this Part, a person elected or appointed as a chairperson, deputy chairperson or secretary:
  - (a) holds office until a successor is elected or appointed, and
  - (b) is eligible for re-election or re-appointment at the next annual general meeting.
- (6) An elected chairperson, deputy chairperson or secretary ceases to hold office as such if he or she ceases to be a member.
- (7) A vacancy in any office must be filled at the next meeting after the vacancy occurs.

### **84 Presiding member**

- (1) The chairperson, or in the chairperson's absence the deputy chairperson, is to preside at the meetings of an advisory committee, but

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## public consultation draft

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Clause 85      National Parks and Wildlife Regulation 2009

Part 9          Advisory committees

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if both are absent, the members are to elect a person from among the members to preside as chairperson.

- (2) The presiding member has a deliberative vote on any matter before the meeting and, in the case of an equality of votes, a casting vote.

**85 Administrative matters**

- (1) The secretary must circulate to each member an agenda and associated business papers at least 7 days before any meeting of the advisory committee.
- (2) The secretary (or a member on the secretary's behalf) must keep minutes of each meeting and must supply the members with a copy of the minutes of the meeting not later than one calendar month after the date of the meeting.
- (3) The secretary of an advisory committee is responsible for the care of all business papers and correspondence.
- (4) The secretary must forward to the Director-General not later than 30 June of each financial year, the particulars of the dates of, and of members attending at, each meeting during that year.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 86

Trustees

Part 10

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## **Part 10 Trustees**

### **86 Application of Part**

This Part applies to and in respect of trustees appointed to trust boards for state conservation areas and regional parks under the Act.

### **87 Meetings to be held**

- (1) The trustees must hold an annual general meeting before the end of May each year.
- (2) The trustees must also meet at least 10 times a year at intervals not exceeding 2 months or such number of times and at such intervals as the Minister determines.
- (3) A meeting must be held when and where convened by the chairperson or, in the chairperson's absence, by the deputy chairperson.

### **88 Special meetings**

- (1) Any 2 trustees may, by notice in writing, request the chairperson to call a special meeting for a purpose specified in the notice.
- (2) On receiving such a request, the chairperson must call a special meeting to be held within 28 days after the chairperson receives the request.

### **89 Appointment of officers**

- (1) At each annual general meeting, the trustees must appoint a chairperson, deputy chairperson, secretary, treasurer and auditor.
- (2) The chairperson and deputy chairperson are to be elected from among the trustees.
- (3) The secretary, treasurer and auditor may be elected from among the trustees or may be persons who are not trustees appointed by the trustees.
- (4) Except as otherwise provided by the Act or this Part, a person elected or appointed as chairperson, deputy chairperson, secretary, treasurer or auditor:
  - (a) holds office until a successor is elected or appointed, and
  - (b) is eligible for re-election or re-appointment at the next annual general meeting.
- (5) A vacancy in any office must be filled at the next meeting after the vacancy occurs.

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## public consultation draft

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Clause 90 National Parks and Wildlife Regulation 2009

Part 10 Trustees

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### **90 Presiding member**

- (1) The chairperson, or in the chairperson's absence the deputy chairperson, is to preside at meetings of the trustees, but if both are absent, the trustees are to elect a person from among their number to preside.
- (2) The person presiding at a meeting of the trustees has a deliberative vote and, in the case of an equality of votes, a casting vote.

### **91 Conduct of meetings**

- (1) Meetings of the trustees must be conducted, as far as is practicable, in accordance with the procedures set out in Part 10 of the *Local Government (General) Regulation 2005*.
- (2) A resolution that has been passed by the trustees must not be altered or rescinded except by a motion to that effect of which at least 7 days' written notice has been given to each trustee.

### **92 Committees**

- (1) The trustees may appoint one or more committees to carry out any work or perform any duties that the trustees may determine.
- (2) A committee may consist of trustees, of persons who are not trustees or of both trustees and persons who are not trustees.

### **93 Common seal**

The common seal of the trustees:

- (a) may be affixed to an instrument or a document only following a resolution to do so passed at a meeting of the trustees, and
- (b) must be affixed in the presence of a trustee and either the secretary or treasurer, each of whom must attest the fact of the affixing of the common seal by signing the instrument or document.

### **94 Administrative matters**

- (1) The chairperson must circulate to each trustee an agenda and associated business papers at least 10 days before any meeting of the trustees.
- (2) Subclause (1) does not apply to a special meeting if:
  - (a) the chairperson believes that the meeting should be held as soon as possible, and
  - (b) it is impracticable to circulate an agenda and associated business papers before the start of the meeting,



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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 95

Trustees

Part 10

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in which case the chairperson may give notice of the meeting and of the agenda for the meeting in the manner that the chairperson considers appropriate.

- (3) The secretary must keep minutes of each meeting and is responsible to the trustees for the keeping of proper financial records in collaboration with the treasurer.
- (4) If no chairperson has been appointed or there is a vacancy in the office of chairperson, the Director-General may perform the functions of the chairperson under this Part.

## **95 Financial matters**

- (1) All money received by the trustees must be paid into the National Parks and Wildlife Fund referred to in section 137 of the Act except money allocated to the trustees by the Minister for wages, for associated ancillary costs or for other specific purposes.
- (2) Money allocated to the trustees by the Minister under this clause must be paid into an authorised deposit-taking institution in New South Wales to the credit of an account in the name of the state conservation area or regional park for which the trustees are appointed.
- (3) Interest earned on money standing to the credit of such an account must be expended only for the purposes for which the money was allocated by the Minister under this clause.
- (4) No reallocation of money or variation of staff establishments on which an allocation under this clause is based may be made without the approval of the Minister.
- (5) Each item of expenditure must be authorised, or the payment of such an item of expenditure must be confirmed, at a duly constituted meeting of the trustees through tabling and approval of a treasurer's report relating to that item of expenditure.
- (6) Cheques drawn on a trustees' account kept under this clause must be signed by:
  - (a) two trustees, or
  - (b) one trustee, and the secretary or treasurer to the trustees, or
  - (c) one trustee, and the manager, assistant manager or deputy manager of the state conservation area or regional park for which the trustees are appointed.
- (7) The trustees' financial year ends on 30 June each year.

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## public consultation draft

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Clause 96          National Parks and Wildlife Regulation 2009

Part 11            Penalty notices

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### **Part 11   Penalty notices**

#### **96   Penalty notice offences**

- (1) For the purposes of section 160 of the Act:
  - (a) each offence created by a provision specified in Column 1 of Schedule 2 is a prescribed offence, and
  - (b) the prescribed penalty for such an offence is the amount specified in Column 2 of Schedule 2 or, if the person alleged to have committed the offence is a corporation and a penalty is specified in Column 3 of Schedule 2, the amount specified in Column 3 of Schedule 2.
- (2) If the reference to a provision in Column 1 of Schedule 2 is qualified by words that restrict its operation to specified kinds of offences or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 97

Miscellaneous

Part 12

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## Part 12 Miscellaneous

### 97 Ex-officio rangers

- (1) For the purposes of section 16 (2) of the Act, the following classes and descriptions of officers and employees of State Forests (the Forestry Commission) are prescribed:
  - (a) General Managers,
  - (b) Deputy General Managers,
  - (c) Sales and Harvesting Managers,
  - (d) Operations Managers,
  - (e) Planning Managers,
  - (f) Foresters,
  - (g) Forest Assistants,
  - (h) Foremen under the *Forestry Employees (Forestry Commission of New South Wales) Award*,
  - (i) Forest Rangers under the *Forestry Employees (Forestry Commission of New South Wales) Award*,
  - (j) Regional Ecologists,
  - (k) Scientific Officers (Research Officers, Research Scientists),
  - (l) Project Officers,
  - (m) Technical Officers.
- (2) For the purposes of section 19 (1) of the Act, an ex-officio ranger (whether a police officer, a fisheries officer within the meaning of the *Fisheries Management Act 1994* or an ex-officio ranger prescribed by subclause (1)) has the powers, authorities, duties and functions conferred or imposed on officers of the National Parks and Wildlife Service by or under sections 157 (1) and (2) and 158 of the Act.

### 98 Notice of preparation of plans of management

For the purposes of section 73A of the Act, notice of the preparation of a plan of management is to be given in the form of an advertisement published in the Gazette.

### 99 Transfer of Aboriginal objects

For the purposes of section 85A (1) (c) of the Act, the following are prescribed:

- (a) an Aboriginal person,
- (b) an organisation representing Aboriginal people.

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# public consultation draft

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Clause 100 National Parks and Wildlife Regulation 2009

Part 12 Miscellaneous

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**Note.** Section 85A of the *National Parks and Wildlife Act 1974* enables the Director-General of the Department of Environment and Climate Change to dispose of Aboriginal objects (within the meaning of that Act) that are the property of the Crown:

- (a) by returning the Aboriginal objects to an Aboriginal owner or Aboriginal owners entitled to, and willing to accept possession, custody or control of the Aboriginal objects in accordance with Aboriginal tradition, or
- (b) by otherwise dealing with the Aboriginal objects in accordance with any reasonable directions of an Aboriginal owner or Aboriginal owners referred to in paragraph (a), or
- (c) if there is or are no such Aboriginal owner or Aboriginal owners—by transferring the Aboriginal objects to a person, or a person of a class, prescribed by the regulations for safekeeping.

## 100 Appeal period

- (1) For the purposes of section 90 (7) (b) of the Act, an application for consent under section 90 (1) is taken to be refused (unless the consent is earlier granted or refused) on the expiration of the period of 60 days after the date on which the application was received by the Director-General.
- (2) For the purposes of section 90 or 135 of the Act, the period within which an appeal is to be made is 28 days after the date of the refusal, cancellation or attaching of the condition or restriction against which the appeal is brought.

## 101 Appeals

- (1) An appeal under section 90 or 135 of the Act is to be made by delivering a written statement to the Director-General, containing:
  - (a) the appellant's name and address, and
  - (b) particulars of any application, consent, licence, certificate, condition or restriction relevant to the appeal, and
  - (c) the grounds of the appeal.
- (2) If a statement is delivered to the Director-General under this clause, the Director-General must as soon as practicable deliver the statement to the Minister.

## 102 Notification of sites of Aboriginal objects

For the purposes of section 91 of the Act, the prescribed manner of notifying the Director-General of the location of an Aboriginal object is by means of a written notice in a form approved by the Director-General.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 103

Miscellaneous

Part 12

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## **103 Terms of interim protection orders**

- (1) For the purposes of section 91B (3) of the Act, an interim protection order may contain terms of either or both of the following kinds:
  - (a) terms that prohibit the owner or occupier of land subject to the order from doing any one or more of the things listed in subclause (2) or from causing or permitting them to be done,
  - (b) terms that allow the owner or occupier to do any one or more of those things (or to cause or permit them to be done) only with the consent of the Minister or only subject to other conditions.
- (2) The things that may be prohibited or regulated by an interim protection order are:
  - (a) the total or partial demolition, damaging, defacing, destruction, pulling down or removal of any building, structure or work on the land,
  - (b) the damaging or despoiling of the land or any part of it,
  - (c) the carrying on of any activity on the land that would constitute the carrying out of development (within the meaning of Division 12 of Part 4 of the Act) if the land were within a conservation area, whether or not it is within such an area,
  - (d) the exhibition of any notice or advertisement on the land,
  - (e) the damaging or destruction of any tree or other vegetation on, or the removal of any tree or other vegetation from, the land,
  - (f) the carrying on (whether or not within a park) of any activity that may affect the preservation, protection or maintenance of the land or any threatened species, population or ecological community, or its habitat (within the meaning of the *Threatened Species Conservation Act 1995*), or any fauna, plant, Aboriginal object or place on or within the land.

## **104 Interest on overdue money**

The rate of interest prescribed for the purposes of section 144A (2) (a) of the Act is the rate for the time being prescribed under section 101 of the *Civil Procedure Act 2005* for payment of interest on a judgment debt.

## **105 Evidence of authority**

- (1) For the purposes of sections 164 and 165 of the Act, the prescribed evidence of a person's authority is:
  - (a) a written instrument of authority signed by the Director-General that identifies the person so authorised (unless the person has

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## public consultation draft

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Clause 106 National Parks and Wildlife Regulation 2009

Part 12 Miscellaneous

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been provided with an identification card as referred to in paragraph (b)), or

(b) the identification card provided to the person in respect of the person's appointment as an authorised officer under section 189 of the *Protection of the Environment Operations Act 1997* (as applying under section 156B of the Act).

(2) For the purposes of section 164 (1) (a) (iii) of the Act, the prescribed form of receipt is a receipt in Form 1 of Schedule 3 or in any other form that may be approved by the Director-General.

### **106 Disposal of property seized or delivered up**

(1) For the purposes of section 168 (1) (c) of the Act, the court making the conviction is the prescribed court.

(2) For the purposes of section 168 (2) of the Act, if the proceedings referred to in section 168 (2) (b):

(a) have not been commenced within 2 years after the seizure or delivering up of the property—the Local Court is the prescribed court, or

(b) have been dismissed—the court dismissing the proceedings is the prescribed court,

**Note.** Section 168 of the Act provides for the making of applications to a "court prescribed" for an order that property seized under section 164 of the Act or delivered up under section 165 of the Act be delivered to a specified person.

### **107 Limitations on routine farming practice activities**

(1) A routine farming practice activity referred to in section 118G (1) (b) of the Act is limited by excluding the activities of buying, selling, possessing or controlling any animal or plant that is, or is part of, a threatened species or endangered population.

(2) A routine farming practice activity referred to in section 118G (1) (b) of the Act is limited by excluding any activity carried out for the purpose of preventing, reducing, minimising or eliminating:

(a) damage to or loss of crops, livestock or farming infrastructure (such as dams, fences, buildings, sheds, windmills, bores, air strips, stockyards and farm roads), or

(b) injury to the health of livestock,

if the activity results in or is likely to result in the harming of:

(c) any protected fauna within the meaning of section 98 of the Act, or

(d) any animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community.

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## public consultation draft

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National Parks and Wildlife Regulation 2009

Clause 108

Miscellaneous

Part 12

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### **108 Repeal**

*The National Parks and Wildlife Regulation 2002 and the National Parks and Wildlife (Savings and Transitional) Regulation 1997 are repealed.*

### **109 Savings**

Any act, matter or thing that, immediately before the repeal of the *National Parks and Wildlife Regulation 2002*, had effect under that Regulation, is taken to have effect under this Regulation.

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# public consultation draft

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National Parks and Wildlife Regulation 2009

Schedule 1 Caging of protected fauna

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## Schedule 1 Caging of protected fauna

(Clause 57)

### 1 Conditions for caging of protected fauna

- (1) Cages used for the housing of birds must comply with the requirements and conditions set out in the following:
  - (a) the *NSW Animal Welfare Code of Practice No 4 - Keeping and Trading of Birds* originally published by NSW Agriculture (as in force at the commencement of this Regulation),
  - (b) any other code of conduct or practice or guidelines relating to the keeping or trading of birds published by the Department of Primary Industries (as in force at the commencement of this Regulation).
- (2) Cages and enclosures used in the housing of birds must be maintained in an adequate sanitary state to the satisfaction of the Director-General or an officer authorised by the Director-General.
- (3) Sufficient space must be provided in each cage and enclosure to enable the protected fauna in it to shelter or roost comfortably without overcrowding.
- (4) Drinking vessels and food receptacles containing sufficient clean water and food to sustain the fauna in the cage or enclosure must be placed in each cage and enclosure as appropriate to the species and must be maintained in a sanitary state.



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# public consultation draft

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National Parks and Wildlife Regulation 2009

Penalty notice offences

Schedule 2

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## Schedule 2 Penalty notice offences

(Clause 96)

<b>Column 1 Provision</b>	<b>Column 2 Penalty for individuals (and corporations where no penalty in Column 3) \$</b>	<b>Column 3 Penalty for corporations \$</b>
<b>Offences under National Parks and Wildlife Regulation 2008</b>		
Clause 4 (2) (a)	300	
Clause 4 (2) (b)	100	
Clause 4 (2) (c)	200	
Clause 4 (2) (d)	300	
Clause 4 (2) (e)	300	
Clause 4 (2) (f)	300	
Clause 4 (2) (g)	300	
Clause 4 (2) (h)	300	
Clause 5 (2)	300	
Clause 6 (1)	300	
Clause 7 (1) (a)	300	
Clause 7 (1) (b)	300	
Clause 7 (1) (c)	100	
Clause 7 (1) (d)	486	
Clause 7 (1) (e)	81	
Clause 7 (1) (f)	300	
Clause 7 (1) (g)	300	
Clause 7 (1) (h)	400	
Clause 7 (1) (i)	81	

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# public consultation draft

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## National Parks and Wildlife Regulation 2009

### Schedule 2 Penalty notice offences

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<b>Column 1 Provision</b>	<b>Column 2 Penalty for individuals (and corporations where no penalty in Column 3) \$</b>	<b>Column 3 Penalty for corporations \$</b>
Clause 7 (1) (j)	405	
Clause 7 (1) (k)	300	
Clause 7 (1) (l)	200	
Clause 7 (1) (m)	300	
Clause 7 (1) (n)	300	
Clause 7 (1) (o)	300	
Clause 7 (1) (p)	300	
Clause 7 (1) (q)	152	
Clause 7 (2)	300	
Clause 7 (4)	300	
Clause 7 (5) (a)	300	
Clause 7 (5) (b)	500	
Clause 8 (2)	500	
Clause 8 (4)	300	
Clause 9 (1)	300	
Clause 10 (1)	300	
Clause 10 (2)	300	
Clause 10 (3)	500	
Clause 10 (5)	300	
Clause 11 (1) (a)	300	
Clause 11 (1) (b)	300	
Clause 11 (1) (c)	300	
Clause 11 (1) (d)	500	
Clause 11 (1) (e)	500	

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## public consultation draft

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National Parks and Wildlife Regulation 2009

Penalty notice offences

Schedule 2

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<b>Column 1</b> <b>Provision</b>	<b>Column 2</b> <b>Penalty for</b> <b>individuals (and</b> <b>corporations</b> <b>where no penalty</b> <b>in Column 3) \$</b>	<b>Column 3</b> <b>Penalty for</b> <b>corporations \$</b>
Clause 11 (1) (f)	300	
Clause 11 (1) (g)	300	
Clause 11 (1) (h)	500	
Clause 11 (1) (i)	500	
Clause 11 (1) (j)	500	
Clause 11 (1) (k)	500	
Clause 11 (1) (l)	500	
Clause 12	500	
Clause 13	300	
Clause 14 (1)	22	
Clause 15 (1) (a)	300	
Clause 15 (1) (b) (i)	100	
Clause 15 (1) (b) (ii)	500	
Clause 15 (1) (c)	500	
Clause 15 (1) (d)	300	
Clause 16 (1)	300	
Clause 16 (2)	500	
Clause 16 (3) (a)	500	
Clause 16 (3) (b)	500	
Clause 16 (3) (c)	300	
Clause 16 (3) (d)	500	
Clause 16 (3) (e)	300	
Clause 17 (1) (a)	500	
Clause 17 (1) (b)	500	

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## public consultation draft

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### National Parks and Wildlife Regulation 2009

#### Schedule 2 Penalty notice offences

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<b>Column 1 Provision</b>	<b>Column 2 Penalty for individuals (and corporations where no penalty in Column 3) \$</b>	<b>Column 3 Penalty for corporations \$</b>
Clause 17 (1) (c)	500	
Clause 17 (1) (d)	300	
Clause 18 (1) (a)	300	
Clause 18 (1) (b)	300	
Clause 18 (1) (c)	300	
Clause 19 (1)	300	
Clause 20	500	
Clause 21	500	
Clause 22 (1) (a)	300	
Clause 22 (1) (b)	300	
Clause 22 (1) (c)	300	
Clause 22 (1) (d)	500	
Clause 22 (4)	300	
Clause 23 (1)	300	
Clause 24 (1)	300	
Clause 24 (2) (a)	300	
Clause 24 (2) (b)	500	
Clause 24 (2) (c)	200	
Clause 24 (2) (d) (i)	500	
Clause 24 (2) (d) (ii)	300	
Clause 24 (2) (d) (iii)	200	
Clause 24 (2) (d) (iv)	500	
Clause 24 (2) (e)	200	
Clause 24 (2) (f)	300	

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## public consultation draft

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National Parks and Wildlife Regulation 2009

Penalty notice offences

Schedule 2

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<b>Column 1</b> <b>Provision</b>	<b>Column 2</b> <b>Penalty for</b> <b>individuals (and</b> <b>corporations</b> <b>where no penalty</b> <b>in Column 3) \$</b>	<b>Column 3</b> <b>Penalty for</b> <b>corporations \$</b>
Clause 24 (2) (g)	300	
Clause 24 (2) (h)	500	
Clause 24 (2) (i)	300	
Clause 24 (2) (j)	300	
Clause 24 (2) (k)	500	
Clause 24 (2) (l)	500	
Clause 24 (2) (m)	300	
Clause 24 (2) (n)	300	
Clause 24 (3)	300	
Clause 25	500	
Clause 26	300	
Clause 28 (3)	300	
Clause 28 (6)	500	
Clause 29	300	
Clause 30	200	
Clause 34 (3)	500	
Clause 37 (6)	500	
Clause 38 (2)	500	
Clause 39 (2)	500	
Clause 40 (2)	500	
Clause 48	500	
Clause 50 (3)	500	
Clause 56	500	
Clause 57	500	

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# public consultation draft

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## National Parks and Wildlife Regulation 2009

### Schedule 2 Penalty notice offences

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<b>Column 1 Provision</b>	<b>Column 2 Penalty for individuals (and corporations where no penalty in Column 3) \$</b>	<b>Column 3 Penalty for corporations \$</b>
Clause 58 (1)	500	
Clause 62 (2)	300	
Clause 63	300	
Clause 64	300	
Clause 65	300	
Clause 66	300	
Clause 67 (5)	300	
<b>Offences under National Parks and Wildlife Act 1974</b>		
Section 45	500	
Section 56 (1) (a)	500	
Section 56 (1) (b)	500	
Section 56 (1) (c)	500	
Section 56 (1) (d)	500	
Section 56 (1) (e)	300	
Section 57 (1)	300	
Section 57 (2)	500	
Section 58Q (1) (a)	500	
Section 58Q (1) (b)	500	
Section 58Q (1) (c)	500	
Section 58Q (1) (d)	500	
Section 58Q (1) (e)	200	
Section 58R (1)	300	
Section 58R (2)	300	

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## public consultation draft

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National Parks and Wildlife Regulation 2009

Penalty notice offences

Schedule 2

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<b>Column 1</b> <b>Provision</b>	<b>Column 2</b> <b>Penalty for</b> <b>individuals (and</b> <b>corporations</b> <b>where no penalty</b> <b>in Column 3) \$</b>	<b>Column 3</b> <b>Penalty for</b> <b>corporations \$</b>
Section 70 (1)	500	
Section 70 (2) (a)	500	
Section 70 (2) (b)	500	
Section 70 (2) (c)	300	
Section 71 (1)	300	
Section 86 (a)	500	
Section 86 (b)	300	
Section 86 (c)	300	
Section 86 (d)	300	
Section 86 (e)	300	
Section 91	300	
Section 98	300	
Section 99A (3)	500	
Section 101	300	
Section 102 (2)	300	
Section 103 (1)	300	
Section 104	500	
Section 105	500	
Section 105A	500	
Section 106 (1)	300	
Section 107	300	
Section 109	300	
Section 110	300	
Section 111	200	

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## public consultation draft

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### National Parks and Wildlife Regulation 2009

#### Schedule 2 Penalty notice offences

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<b>Column 1 Provision</b>	<b>Column 2 Penalty for individuals (and corporations where no penalty in Column 3) \$</b>	<b>Column 3 Penalty for corporations \$</b>
Section 112G (1)	300	
Section 117 (1)	300	
Section 118	300	
Section 118A (1), in respect of any endangered species, population or ecological community	1500	3000
Section 118A (1), in respect of any vulnerable species	500	1000
Section 118A (2), in respect of any endangered species, population or ecological community	1500	3000
Section 118A (2), in respect of any vulnerable species	500	1000
Section 118B (1), in respect of any endangered species or endangered population	1500	3000
Section 118B (1), in respect of any vulnerable species	500	1000
Section 118C (1)	1500	3000
Section 118D (1)	1500	3000
Section 133 (4)	300	
Section 157 (3)	500	
Section 158 (2)	500	



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# public consultation draft

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National Parks and Wildlife Regulation 2009

Form

Schedule 3

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## Schedule 3 Form

(Clause 105 (2))

### Form 1 Seizure Receipt

(National Parks and Wildlife Act 1974)

No. ....

I, .....  
acknowledge receipt of the following .....  
.....

Number	Description	Number	Description
--------	-------------	--------	-------------

---

seized by me from .....  
of ..... at .....  
time/date .....  
under the *National Parks and Wildlife Act 1974*.

.....  
Owner/Person present

.....  
Authorised officer





