

National Parks and Wildlife Regulation 2009

As at 10 August 2018

Part 1 – Preliminary

1 Name of Regulation

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

2 Commencement

This Regulation commences on 1 September 2009 and is required to be published on the NSW legislation website.

This Regulation replaces the *National Parks and Wildlife Regulation 2002* which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

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*. "**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). "**fossil**" means any naturally preserved remains or evidence of past life (whether wholly or partially petrified) including bones, shells, impressions and trails. "**hoofed animal**" includes a camel. "**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
- (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 a person employed in the Office of Environment and Heritage who is principally involved in the administration of the following Acts:

- (a) the Act,
- (b) *Threatened Species Conservation Act 1995*,
- (c) *Wilderness Act 1987*,
- (d) *Marine Estate Management Act 2014*.

"**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 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 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*. **"smoke"** means smoke, hold or otherwise have control over, an ignited or heated smoking substance. **"smoking substance"** means any tobacco or other substance that is intended to be smoked. **"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 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) For the purposes of this Regulation, a lease or licence granted under any of the following provisions of the Act that authorises a person to carry out an activity 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:

(a) Part 11 of the Act,

(b) Part 12 of the Act, except in relation to the following:

(i) any state conservation area for which a trust is the park authority,

(ii) any regional park for which a trust or local council is the park authority,

(iii) the Jenolan Caves Visitor Use and Services Zone for the relevant period within the meaning of Part 6 of Schedule 3 to the Act (being the period during which the administrator appointed by the Minister under clause 58 of that Schedule is the trust authority),

(iv) any area of land reserved under Part 4A of the Act for which a board of management is established in accordance with Division 6 of Part 4A.

(4) However, if before the grant of a lease or licence under Part 12 of the Act in relation to a place referred to in subclause (3) (b) (i)-(iv), the relevant park authority, administrator or board of management has concurred in the grant, the lease or licence 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.

(5) Notes in this Regulation do not form part of this Regulation.

3A Exclusion from meaning of "harm" objects and places

An act carried out in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* as published by the Department in the Gazette on 24 September 2010 is excluded from the definition of "harm" an object or place in section 5 (1) of the Act.

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 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,

(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) if a fee or charge is required to be paid to drive or park a vehicle in the park (or part of the park), drive or park a vehicle in the park (or that part of the park) that does not clearly display a valid receipt, ticket or pass to show that the fee or charge has been paid,
- (d) drive or park a vehicle (being a vehicle that is required by law to be registered) if that vehicle:
 - (i) is not registered, or
 - (ii) is required to display a valid registration label but does not display that label, or
 - (iii) has any one or more of the following:
 - (A) no number-plate or registration plate,
 - (B) its number-plate or registration plate covered or obscured,
 - (C) a false or incorrect number-plate or registration plate,
 - (D) a number-plate or registration plate that has been changed or altered,
- (e) 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,
- (f) drive a vehicle or a hoofed animal in a dangerous or reckless manner,
- (g) park a vehicle otherwise than in an area set aside for parking vehicles,
- (h) 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,
- (i) operate or use a vessel on any waters on which the operation or use of such a vessel is prohibited,
- (j) operate or use a vessel in such a manner as to endanger the safety of other users of the park,
- (k) operate or use a vessel in a commercial operation,
- (l) tie a vessel by any means to any vegetation,
- (m) moor a vessel otherwise than in an area set aside for the mooring of vessels,
- (n) operate or use any heavy or noisy machinery,
- (o) 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.

(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) (c) if the vehicle concerned displays an exemption card issued by the Director-General and produces, on request by any designated officer, proof of the person's identity.

(8) A person does not commit an offence under subclause (1) (g) if:

- (a) no area has been set aside for parking or the area set aside for parking is full, and
- (b) 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.

(9) 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 (General) Regulation 2013*. "**number-plate**" means a number-plate issued:

- (a) under the *Road Transport Act 2013*, or
- (b) by a competent authority of another jurisdiction.

"**registered**" means:

- (a) registered in Australia within the meaning of the *Road Transport Act 2013*, or
- (b) registered in New South Wales under the *Interstate Road Transport Act 1985* of the Commonwealth.

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

- (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 a nuisance or 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
 - (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

(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 (or a part of a park) if a notice erected in the park or given to the person prohibits camping in the park (or the 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

(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 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
 - (iv) State significant infrastructure approved under Part 5.1 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) (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) or (k) 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,
 - (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.

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 trapping if that 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.

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, or
- (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 subclause (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 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*.

15A Smoking

(1) A person must not smoke in a park. Maximum penalty: 5 penalty units.

(2) This clause does not apply to a cave in a park. Clause 24 (2) (e) creates an offence of smoking in a cave.

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

(a) if a person smokes in an accommodation area, where smoking is not otherwise prohibited, or

(b) 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) In this clause: "**accommodation area**" means an area used for residential accommodation or accommodation for visitors and tourists (other than accommodation for visitors and tourists that is managed by, or on behalf of, the National Parks and Wildlife Service) on land the subject of a lease or licence granted under the Act.

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, pitchfork, 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

(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.

(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

(iv) State significant infrastructure approved under Part 5.1 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
- (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
 - (iv) State significant infrastructure approved under Part 5.1 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.

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, or imitation 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 possession of service firearms by off-duty 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,
 - (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.

(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, parachuting, canyoning, white water boating, paragliding, parasailing and hang gliding. However, the activities and recreational pursuits to which subclause (1) (d) applies do not include caving and cave diving.

(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.

(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.

Maximum penalty: 30 penalty units.

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 in a cave or remove from a cave:

(i) any rocks, soil, sand, stone or other similar substances, or

(ii) any flora or fauna, or

(iii) any equipment (other than equipment carried into the cave by the person), or

(iv) any guano, bones or fossil, or

(e) smoke 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) leave the person's urine or faeces in a cave, or

(i) damage any speleothems in a cave, or

(j) vandalise any cave, or

(k) interfere with, dig in or disturb 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

(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, candle or welding equipment.

Maximum penalty: 30 penalty units.

(3) (Repealed)

(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) 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.

(5) Despite subclause (4) (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.

(6) A person does not commit an offence under subclause (2) (c) if the person lays a track as a temporary safety or conservation measure and either:

(a) removes the track when the person leaves the cave, or

(b) within 7 days of leaving the cave, orally or in writing notifies the park authority of the laying of the track.

(7) A park authority notified by a person under subclause (6) (b) of the laying of a track may orally or in writing direct the person to remove the track within a period specified in the direction.

(8) A person must comply with a direction given under subclause (7) within the period specified in the direction. Maximum penalty: 30 penalty units.

(9) In this clause: "**cave**" means any naturally occurring void, cavity, recess or system of interconnected passages, that is:

(a) beneath the surface of the earth or within a cliff or ledge, and

(b) large enough to permit a person to enter, whether or not the entrance is naturally formed or human made, and

(c) wholly or substantially roofed.

"**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 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.
 - (4) The Director-General may direct a person who has set up or used an unlicensed marina or mooring to remove the marina or 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.
- (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) a national parks officer, 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.

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.

(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.

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 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.

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.

44 Functions relating to Public Health Act 2010

The Director-General may exercise the following functions in relation to the park:

(a) the functions of a local government authority under Part 9 of the *Public Health Act 2010* to appoint a member of staff of the Office of Environment and Heritage to exercise the functions of an authorised officer under:

(i) Divisions 2, 3, 4 and 5 of Part 3 of that Act, and

(ii) Part 8 of that Act, and

(iii) Parts 2, 3, 4 and 9 and Schedules 1 and 4 to the *Public Health Regulation 2012*,

(b) the functions of a local government authority under Part 3 of the *Public Health Act 2010*.

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
 - (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.

Part 5 – Licences and certificates

50 Applications for permits, licences or registration certificates

- (1) An application for the issue of an Aboriginal heritage impact permit, 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 an Aboriginal heritage impact permit, 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.

Part 6 – Fauna protection

Division 1 – Licences and certificates

52 Issue of tags

- (1) 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 wildlife 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
 - (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,
- (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 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.

(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.

"**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 Industry, Skills and Regional Development who had been appointed as a fisheries officer under the *Fisheries Management Act 1994* that was reasonably necessary 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 Office of Environment and Heritage 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) Roads and Maritime Services,
- (g) the Australian Quarantine and Inspection Service,
- (h) the Department of Industry, Skills and Regional Development,
- (i) the Office of Environment and Heritage.

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,
- (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.

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,
- (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,
- (c) the person is approaching in the course of taking an action in the person's capacity as an officer of the Department of Industry, Skills and Regional Development 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,
- (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,

(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 Office of Environment and Heritage 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 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.

(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.

(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:

(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 oral or written 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 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.

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 (Repealed)

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.

(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.

Part 8 – Aboriginal land

Division 1 – (Repealed)

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.

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,
- (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.

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.

Part 8A – Aboriginal objects and Aboriginal places

80A Defence of compliance with codes of practice or other prescribed documents: section 87 (3)

For the purposes of section 87 (3) of the Act, compliance with any of the following codes of practice and documents (when undertaking an activity to which the code or document applies) is taken for the purposes of section 87 (2) of the Act to constitute due diligence in determining whether the act or omission constituting the alleged offence would harm an Aboriginal object:

- (a) the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* published by the Department of Environment, Climate Change and Water and dated 13 September 2010,
- (b) the *Plantations and Reafforestation Code* (being the Appendix to the *Plantations and Reafforestation (Code) Regulation 2001*) as in force on 15 June 2010,
- (c) the *Private Native Forestry Code of Practice* approved by the Minister for Climate Change, Environment and Water and published in the Gazette on 8 February 2008,
- (d) the *NSW Minerals Industry Due Diligence Code of Practice for the Protection of Aboriginal Objects* published by NSW Minerals Council Ltd and dated 13 September 2010,
- (e) the *Aboriginal Objects Due Diligence Code for Plantation Officers Administering the Plantations and Reafforestation (Code) Regulation 2001* published by the Department of Industry and Investment and dated 13 September 2010,

(f) the *Operational Guidelines for Aboriginal Cultural Heritage Management* published by Forests NSW and dated 13 September 2010.

The *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* can be accessed at www.environment.nsw.gov.au/legislation/DueDiligence.htm.

The *Private Native Forestry Code of Practice* can be accessed at www.environment.nsw.gov.au/pnf/index.htm.

80B Defence of carrying out certain low impact activities: section 87 (4)

This clause creates a defence to the strict liability offence in section 86 (2) of the Act (being the offence of harming an Aboriginal object whether or not the person knows it is an Aboriginal object). The defence does not apply to the separate offence under section 86 (1) of the Act of harming or desecrating an object that a person knows is an Aboriginal object. If a person discovers an Aboriginal object in the course of undertaking any of the activities listed below, the person should not harm the object--as the person may be committing an offence under section 86 (1) of the Act (the offence of knowingly harming an Aboriginal object)--and should obtain an Aboriginal heritage impact permit, if needed.

(1) It is a defence to a prosecution for an offence under section 86 (2) of the Act, if the defendant establishes that the act or omission concerned:

(a) was maintenance work of the following kind on land that has been disturbed:

- (i) maintenance of existing roads, fire and other trails and tracks,
- (ii) maintenance of existing utilities and other similar services (such as above or below ground electrical infrastructure, water or sewerage pipelines), or

(b) was farming and land management work of the following kind on land that has been disturbed:

- (i) cropping and leaving paddocks fallow,
- (ii) the construction of water storage works (such as farm dams or water tanks),
- (iii) the construction of fences,
- (iv) the construction of irrigation infrastructure, ground water bores or flood mitigation works,
- (v) the construction of erosion control or soil conservation works (such as contour banks), or

(c) was farming and land management work that involved the maintenance of the following existing infrastructure:

- (i) grain, fibre or fertiliser storage areas,
- (ii) water storage works (such as farm dams or water tanks),
- (iii) irrigation infrastructure, ground water bores or flood mitigation works,
- (iv) fences,
- (v) erosion control or soil conservation works (such as contour banks), or

(d) was the grazing of animals, or

(e) was an activity on land that has been disturbed that comprises exempt development or was the subject of a complying development certificate issued under the *Environmental Planning and Assessment Act 1979*, or

(f) was mining exploration work of the following kind on land that has been disturbed:

- (i) costeaning,
- (ii) bulk sampling,
- (iii) drilling, or

(g) was work of the following kind:

- (i) geological mapping,
- (ii) surface geophysical surveys (including gravity surveys, radiometric surveys, magnetic surveys and electrical surveys), but not including

seismic surveys,

(iii) sub-surface geophysical surveys that involve downhole logging,

(iv) sampling and coring using hand-held equipment, except where carried out as part of an archaeological investigation, or

Clause 3A of this Regulation provides that an act carried out in accordance with the *Code of Practice for Archaeological Investigation in NSW* is excluded from the meaning of "harm" an object or place for the purposes of the Act.

(h) was the removal of isolated, dead or dying vegetation, but only if there is minimal disturbance to the surrounding ground surface, or

(i) was work of the following kind on land that has been disturbed:

(i) seismic surveying,

(ii) the construction and maintenance of groundwater monitoring bores, or

(j) was environmental rehabilitation work, including temporary silt fencing, tree planting, bush regeneration and weed removal, but not including erosion control or soil conservation works (such as contour banks).

(2) Subclause (1) does not apply in relation to harm to an Aboriginal culturally modified tree.

(3) In this clause, "**Aboriginal culturally modified tree**" means a tree that, before or concurrent with (or both) the occupation of the area in which the tree is located by persons of non-Aboriginal extraction, has been scarred, carved or modified by an Aboriginal person by:

(a) the deliberate removal, by traditional methods, of bark or wood from the tree, or

(b) the deliberate modification, by traditional methods, of the wood of the tree.

(4) For the purposes of this clause, land is "**disturbed**" if it has been the subject of a human activity that has changed the land's surface, being changes that remain clear and observable. Examples of activities that may have disturbed land include the following:

(a) soil ploughing,

(b) construction of rural infrastructure (such as dams and fences),

(c) construction of roads, trails and tracks (including fire trails and tracks and walking tracks),

(d) clearing of vegetation,

(e) construction of buildings and the erection of other structures,

(f) construction or installation of utilities and other similar services (such as above or below ground electrical infrastructure, water or sewerage pipelines, stormwater drainage and other similar infrastructure),

(g) substantial grazing involving the construction of rural infrastructure,

(h) construction of earthworks associated with any thing referred to in paragraphs (a)-(g).

80C Consultation process to be undertaken before applying for Aboriginal heritage impact permit

(1) General obligation to consult Before making an application for the issue of an Aboriginal heritage impact permit, the proposed applicant must carry out an Aboriginal community consultation process in accordance with this clause.

(2) Notification of Aboriginal persons--where no relevant determination of native title The proposed applicant must (except in circumstances referred to in subclause (3)):

(a) ascertain from the following bodies or persons the names of any Aboriginal persons who may hold knowledge relevant to any relevant Aboriginal objects or Aboriginal places:

(i) the Department,

(ii) the relevant Local Aboriginal Land Council,

(iii) the Registrar appointed under the *Aboriginal Land Rights Act 1983*,

(iv) the relevant local council,

(v) the National Native Title Tribunal,

(vi) NTSCORP Limited,

(vii) Local Land Services, and

- (b) give the Aboriginal persons whose names were ascertained under paragraph (a) notice of the proposed activity that may be the subject of the application, and (c) cause notice of the proposed activity to be published in a local newspaper circulating generally in the area of the land on or in which the proposed activity is to be carried out.
- (3) Notification of Aboriginal persons--where relevant native title determined to exist If an approved determination of native title that native title exists in relation to the land on or in which the proposed activity that may be the subject of such an application is to be carried out, the proposed applicant must give notice of that proposed activity to:
 - (a) the registered native title body corporate for that land,
 - (b) if no such body corporate exists, the native title holders of that land.
- (4) Contents of notice A notice referred to in subclause (2) (b) and (c) and (3) must contain the following:
 - (a) the name and contact details of the proposed applicant,
 - (b) a brief overview of the proposed activity that may be the subject of an application for an Aboriginal heritage impact permit, including the location of the proposed activity,
 - (c) an invitation to Aboriginal people who hold knowledge relevant to determining the cultural heritage significance of Aboriginal objects and Aboriginal places in the area in which the proposed activity is to occur to register an interest in a process of community consultation with the proposed applicant regarding the proposed activity,
 - (d) a statement that the purpose of community consultation with Aboriginal people is to assist the proposed applicant in the preparation of an application for an Aboriginal heritage impact permit and to assist the Director-General in his or her consideration and determination of the application,
 - (e) a closing date for the registration of such interests (being a date that is at least 14 days after the date the notice was given or published).
- (5) Registering interested Aboriginal parties and providing them with information The proposed applicant must, within 28 days after the closing date for the registration of interests:
 - (a) make a record of the names of each Aboriginal person who registered such an interest ("**registered Aboriginal party**"), and
 - (b) forward a copy of that record to the Office of Environment and Heritage and the relevant Local Aboriginal Land Council, and
 - (c) provide each registered Aboriginal party with detailed information regarding the activity that may be the subject of the proposed application.
- (6) Consultation on proposed methodology of cultural heritage assessment report The proposed applicant must:
 - (a) provide the registered Aboriginal parties with a proposed methodology to be used in the preparation of the cultural heritage assessment report to be submitted with the application (as referred to in clause 80D), and
 - (b) give those parties a reasonable opportunity (being at least 28 days after the date of providing the proposed methodology) to make submissions (whether written or oral) on the proposed methodology.
- (7) Proposed applicant to seek certain information The proposed applicant must, during the consultation on the proposed methodology of the cultural heritage assessment report referred to in subclause (6), seek the following information from the registered Aboriginal parties in relation to the area of land to which the proposed application relates:
 - (a) whether there are any Aboriginal objects of cultural value to Aboriginal people in the area,
 - (b) whether there are any places of cultural value to Aboriginal people in the area

(whether they are Aboriginal places declared under section 84 of the Act or not).
(8) Consultation on draft cultural heritage assessment report After giving each registered Aboriginal party the opportunity to make submissions to be used in the preparation of the proposed methodology of the cultural heritage assessment report (as referred to in subclause (6) (b)), the proposed applicant must:

- (a) provide a copy of a draft of the cultural heritage assessment report to the registered Aboriginal parties, and
- (b) give those parties a reasonable opportunity (being at least 28 days after the date of providing the draft report) to make submissions (whether written or oral) on the draft report.

(9) An application for an Aboriginal heritage impact permit is not invalid merely because the applicant for the permit failed to comply with any one or more of the requirements set out in this clause. Under section 90K (1) (g) of the Act, the Director-General, in making a decision in relation to an Aboriginal heritage impact permit, must consider whether any consultation by the applicant with Aboriginal people regarding the Aboriginal objects or Aboriginal place that are the subject of the permit substantially complied with any requirements for consultation set out in the regulations.

(10) Modified or alternative Aboriginal community consultation process Despite subclause (1), if an agreement of the following kind specifies or identifies a modified or alternative Aboriginal community consultation process for the purposes of Part 6 of the Act, the proposed applicant is to carry out an Aboriginal community consultation process in accordance with that modified or alternative consultation process:

- (a) a registered Indigenous Land Use Agreement under the *Native Title Act 1993* of the Commonwealth entered into between an Aboriginal community and the State,
- (b) a lease entered into under Part 4A of the Act,
- (c) an agreement entered into by the Director-General and a board of management for land reserved under Part 4A of the Act that has the consent of the Aboriginal owner board members for the land concerned,
- (d) an agreement entered into between an Aboriginal community and the Department.

(11) In this clause: "**approved determination of native title**" has the same meaning as in the *Native Title Act 1993* of the Commonwealth. "**native title holder**" has the same meaning as in the *Native Title Act 1993* of the Commonwealth. "**registered native title body corporate**" has the same meaning as in the *Native Title Act 1993* of the Commonwealth.

80D Application for Aboriginal heritage impact permit to be accompanied by cultural heritage assessment report

(1) For the purposes of section 90A (2) (b) of the Act, an application for the issue of an Aboriginal heritage impact permit must be accompanied by a cultural heritage assessment report.

(2) A cultural heritage assessment report is to deal with the following matters:

- (a) the significance of the Aboriginal objects or Aboriginal places that are the subject of the application,
- (b) the actual or likely harm to those Aboriginal objects or Aboriginal places from the proposed activity that is the subject of the application,
- (c) any practical measures that may be taken to protect and conserve those Aboriginal objects or Aboriginal places,
- (d) any practical measures that may be taken to avoid or mitigate any actual or likely harm to those Aboriginal objects or Aboriginal places.

(3) A cultural heritage assessment report must include:

- (a) if any submission has been received from a registered Aboriginal party under clause 80C (including any submission on the proposed methodology to be used in

the preparation of the report and any submission on the draft report), a copy of the submission, and

(b) the applicant's response to each such submission.

(4) An applicant for the issue of an Aboriginal heritage impact permit must, within 14 days of making the application, send a copy of the application (including any cultural heritage assessment report submitted with the application) to the following:

(a) each registered Aboriginal party (within the meaning of clause 80C) in relation to the application (if any),

(b) the relevant Local Aboriginal Land Council.

80E Consultation process to be undertaken before applying for a variation of Aboriginal heritage impact permit

If an application to vary an Aboriginal heritage impact permit is made and the proposed variation will authorise a significant increase in harm to the Aboriginal objects or Aboriginal places concerned, the Director-General is to require the applicant to carry out:

(a) if a modified or alternative consultation process (as referred to in clause 80C (10)) applies in relation to the Aboriginal objects or Aboriginal places concerned--an Aboriginal community consultation process in accordance with that modified or alternative consultation process, or

(b) a community consultation process that the Director-General considers appropriate in the circumstances.

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 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, each meeting during that year.

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.

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,

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.

Part 11 – Penalty notices

96 Penalty notice offences

(1) For the purposes of section 192 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.

Part 12 – Miscellaneous

97 Ex-officio rangers

(1) (Repealed)

(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 authorised officer within the meaning of the *Forestry Act 2012*) 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.

Section 85A of the *National Parks and Wildlife Act 1974* enables the Director-General of the Department of Environment, Climate Change and Water 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

For the purposes of section 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 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 89A 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.

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, and

(b) the damaging or despoiling of the land or any part of it, and

(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, and

(d) the exhibition of any notice or advertisement on the land, and

(e) the damaging or destruction of any tree or other vegetation on, or the removal of any tree or other vegetation from, the land, and

(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 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,

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 a threatened species or is part of an endangered population or an endangered ecological community.

108 Repeal

The *National Parks and Wildlife (Savings and Transitional) Regulation 1997* is repealed.

109 Savings

(1) 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.

(2) For the avoidance of doubt:

(a) a requirement of an officer duly authorised by the Director-General under clause 54 (3) of the *National Parks and Wildlife Regulation 2002* is taken to be a requirement of the Director-General under clause 57 (3) of this Regulation, and

(b) an authorisation by an officer of the National Parks and Wildlife Service authorised by the Director-General under clause 59 (2) of the *National Parks and Wildlife Regulation 2002* is taken to be an authorisation by the Director-General under clause 69 (2) of this Regulation.

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 mandatory 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 Industry and Investment (as in

force at the commencement of this Regulation).

(2) Cages and enclosures used in the housing of protected fauna must be maintained in an adequate sanitary state to the satisfaction of 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.

Schedule 2 Penalty notice offences

(Clause 96)

Column 1 Provision	Column 2 Penalty for individuals (and corporations where no penalty in Column 3) \$ s \$	Column 3 Penalty for corporation
	Offences under	
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) (i)	486	
Clause 7 (1) (d) (ii)	81	
Clause 7 (1) (d) (iii)	300	
Clause 7 (1) (e)	300	
Clause 7 (1) (f)	400	
Clause 7 (1) (g)	81	
Clause 7 (1) (h)	405	
Clause 7 (1) (i)	300	
Clause 7 (1) (j)	200	
Clause 7 (1) (k)	300	
Clause 7 (1) (l)	300	
Clause 7 (1) (m)	300	
Clause 7 (1) (n)	300	
Clause 7 (1) (o)	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	
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 15A (1)	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	
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	
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 (8)	200	
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	
Clause 58 (1)	500	
Clause 62 (2)	300	
Clause 63	300	
Clause 64	300	
Clause 65	300	
Clause 66	300	
Clause 67 (5)	300	
	Offences under	
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	
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 (2)	1500	
Section 86 (4)	3300	
Section 89A	300	
Section 90J	1500	
Section 91Q (1) (a)	1650	3300
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	
Section 112G (1)	300	
Section 115A (9)	300	
Section 117 (1)	300	
Section 118	300	
Section 118A (1), in respect of any species presumed extinct, any critically endangered species or 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 species presumed extinct, any critically endangered species or 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 species presumed extinct, any critically endangered species or 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	

Schedule 3 Form

(Clause 105 (2))

Form 1 – Seizure Receipt

Seizure Receipt

(National Parks and Wildlife Act 1974)

No (receipt number)

I, (name of authorised officer) acknowledge receipt of the following:

(list numbers and descriptions of items seized)

seized by me from (name of owner/person) of (address)

at (location and time and date items seized)

under the *National Parks and Wildlife Act 1974*.

(signature)

Owner/Person present

(signature)

Authorised officer

Schedule 4 Savings, transitional and other provisions

Part 1 – Provision consequent on enactment of National Parks and Wildlife Amendment Act 2010

1 Aboriginal objects and Aboriginal places: applications for permits under section 87 and consents under section 90

(1) An application for a permit under section 87 of the Act or a consent under section 90 of the Act (as those sections were in force immediately before their repeal by the amending Act) that was not finally determined before that repeal is taken to be an application for an Aboriginal heritage impact permit under section 90 of the Act (as inserted by the amending Act).

(2) In this clause, "**amending Act**" means the *National Parks and Wildlife Amendment Act 2010*.

Section 90F of the Act enables the Director-General to require an applicant for an Aboriginal heritage impact permit to supply the Director-General with such further information as the Director-General considers necessary and relevant to the application.

Part 2 – Provisions consequent on enactment of National Parks and Wildlife Amendment (Visitors and Tourists) Act 2010

2 Definitions

In this Part:

"amending Act" means the *National Parks and Wildlife Amendment (Visitors and Tourists) Act 2010*.

"transition period" means the period commencing on the commencement of this Part and ending on 1 October 2012.

3 Grant of certain leases and licences during transition period

During the transition period, the following leases and licences may be granted as if the amendments to Part 12 of the Act by the amending Act had not been made:

- (a) any lease or licence identified or specified in an agreement to lease (however described) entered into before the commencement of those amendments by the Minister or the Director-General and the proposed lessee or licensee,
- (b) any licence in relation to a cabin in the Royal National Park,
- (c) any lease or licence to a person or body specified in Column 1 of the following Table in relation to the corresponding land or place specified in Column 2 of the Table.

Proposed lessee or licensee	Land or place
Susan Thomson	Hosies Store, Hill End Historic Site
Jan Poona and Jeff Turner	Faradays Cottage, Hill End Historic Site
Edward Woolard	Woolards Cottage, Hill End Historic Site
Glenn Woodley	Heaps Cottage, Hill End Historic Site
Garie Surf Life Saving Club Inc	Garie Beach Surf Club, Royal National Park
Skyville Events Pty Ltd	Scheyville Camp Precinct, Scheyville National Park

4 Reference of certain proposed leases and licences for advice

A referral of a proposed lease or licence to the Council for advice under section 151AA of the Act before the repeal of that section by the amending Act is taken to be a referral of the proposed lease or licence to the Council for advice under section 151G of the Act.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *National Parks and Wildlife Regulation 2009 (427)*. LW 28.8.2009. Date of commencement, 1.9.2009, cl 2 (partially disallowed, Legislative Council, 26.11.2009). This Regulation has been amended as follows:

2010	No 40	<i>Weapons and Firearms Legislation Amendment Act 2010</i> . Assented to 15.6.2010. Date of commencement, 9.7.2010, sec 2 and 2010 (351) LW 9.7.2010.
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	No 59	<i>Statute Law (Miscellaneous Provisions) Act 2010</i> . Assented to 28.6.2010. Date of commencement of Sch 2.65, 9.7.2010, sec 2 (2).
	(346)	<i>National Parks and Wildlife Amendment Regulation 2010</i> . LW 2.7.2010. Date of commencement, 2.7.2010, cl 2.
	(548)	<i>National Parks and Wildlife Amendment (Aboriginal Objects and Aboriginal Places) Regulation 2010</i> . LW 24.9.2010. Date of commencement, 1.10.2010, cl 2.
	No 119	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2010</i> . Assented to 29.11.2010. Date of commencement of Sch 2, 7.1.2011, sec 2 (2).
2011	No 22	<i>Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011</i> . Assented to 27.6.2011. Date of commencement of Sch 2.19, 1.10.2011, sec 2 and 2011 (509) LW 28.9.2011.
2012	No 96	<i>Forestry Act 2012</i> . Assented to 21.11.2012. Date of commencement of Sch 4.25, 1.1.2013, sec 2 and 2012 (680) LW 21.12.2012.
	(586)	<i>National Parks and Wildlife Amendment (Registration Labels) Regulation 2012</i> . LW 30.11.2012. Date of commencement, on publication on LW, cl 2.
2013	No 19	<i>Road Transport Legislation (Repeal and Amendment) Act 2013</i> . Assented to 3.4.2013. Date of commencement, 1.7.2013, sec 2 and 2013 (329) LW 28.6.2013.
	No 51	<i>Local Land Services Act 2013</i> . Assented to 1.7.2013. Date of commencement of Sch 7, 1.1.2014, sec 2 (1).
	(732)	<i>National Parks and Wildlife Amendment (Public Health) Regulation 2013</i> . LW 20.12.2013. Date of commencement, on publication on LW, cl 2.
2016	(182)	<i>National Parks and Wildlife Amendment (Prohibited Conduct) Regulation 2016</i> . LW 8.4.2016. Date of commencement, 1.5.2016, cl 2.

Table of amendments

CI 3	Am 2010 (548), Sch 1 [1]; 2016 (182), Sch 1 [1] [2].
CI 3A	Ins 2010 (548), Sch 1 [2].
CI 7	Am 2012 (586), cl 3; 2013 No 19, Sch 4.55.
CI 11	Am 2011 No 22, Sch 1.19 [1].
CI 15A	Ins 2016 (182), Sch 1 [3].
CI 17	Am 2011 No 22, Sch 1.19 [2].
CI 18	Am 2011 No 22, Sch 1.19 [3].
CI 20	Am 2010 No 40, Sch 3.18.
CI 24	Partially disallowed (cl 24 (3) omitted), Legislative Council, 26.11.2009. Am 2016 (182), Sch 1 [4].
CI 44	Subst 2013 (732), cl 3.
CI 50	Am 2010 (548), Sch 1 [3].
CI 60	Am 2016 (182), Sch 1 [5]-[7].
CI 61	Am 2016 (182), Sch 1 [5] [6].
CI 71	Rep 2010 (346), Sch 1 [1].
Part 8, Div 1 (cll 76-78)	Rep 2010 (346), Sch 1 [2].
Part 8A	Ins 2010 (548), Sch 1 [4].
CII 80A, 80B	Ins 2010 (548), Sch 1 [4].
CI 80C	Ins 2010 (548), Sch 1 [4]. Am 2013 No 51, Sch 7.32; 2016 (182), Sch 1 [6].
CII 80D, 80E	Ins 2010 (548), Sch 1 [4].
CI 96	Am 2010 (346), Sch 1 [3].
CI 97	Am 2012 No 96, Sch 4.25 [1] [2].
CI 100	Subst 2010 (548), Sch 1 [5].
CI 101	Am 2010 (548), Sch 1 [6].

Cl 102	Am 2010 (548), Sch 1 [7].
Sch 2	Am 2010 (346), Sch 1 [4] [5]; 2010 No 59, Sch 2.65; 2010 (548), Sch 1 [8] [9]; 2016 (182), Sch 1 [8].
Sch 4 (previously Sch 3)	Ins 2010 (548), Sch 1 [10]. Renumbered 2010 No 119, Sch 2.32.