



NSW NATIONAL PARKS & WILDLIFE SERVICE

# Regulatory impact statement

National Parks and Wildlife Regulation 2019



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# 1. Executive Summary

The National Parks and Wildlife Service (NPWS) is responsible for the day-to-day operational management of national parks and reserves in New South Wales.

There are two key statutory instruments enabling NPWS to do this – the *National Parks and Wildlife Act 1974* (NPW Act) and the National Parks and Wildlife Regulation.

The *National Parks and Wildlife Regulation 2009* (the 2009 Regulation) has been the principal statutory rule made under the NPW Act.

The role of the 2009 Regulation has been to assist in achieving the objectives of the NPW Act, which are focused on the conservation of biodiversity and cultural heritage values in national parks and reserves, promoting public understanding and enjoyment of these values, and ensuring appropriate management of land reserved under the NPW Act.

The 2009 Regulation contains detailed provisions to support the NPW Act, specifically the protection of native plants and animals in NSW, cultural heritage, and providing a safe environment in which park visitors can sustainably undertake recreational, educational, scientific, commercial and cultural activities. The 2009 Regulation contains powers that enable NPWS to manage national parks and other areas reserved under the NPW Act, including visitor activities, littering, offensive conduct and the lighting of fires.

This regulatory impact statement (RIS) has been prepared to support the 2019 remake of the National Parks and Wildlife Regulation. The issues canvassed in this RIS do not represent the final Government position on the amendments but provide an opportunity for interested parties to review it and provide comments and suggestions.

This RIS sets out the objectives and rationale of the proposed *National Parks and Wildlife Regulation 2019* (the 2019 Regulation). It considers three options for achieving those objectives as well as an assessment of the costs and benefits of each option.

Based on the matters addressed in this RIS, it is considered that the making of the 2019 Regulation is the best option available to support implementation of the NPW Act. The 2019 Regulation should have minimal impact on individuals and the community. Any impacts are proportional to achieving the necessary objectives of the Regulation. The 2019 Regulation will impose little, if any, additional impact upon businesses or economic activity compared to the 2009 Regulation.

## 1.1 Why did the Regulation need to be remade?

The 2009 Regulation was remade as part of the staged repeal of statutory rules required under the *Subordinate Legislation Act 1989*. The repeal of the 2009 Regulation was due on 1 September 2019.

The review of the 2009 Regulation was intended to ensure the Regulation is up to date, meets the Government's better regulation principles, is in plain English, and reduces red tape wherever possible.

The changes in the 2019 Regulation are minor or machinery in nature and do not represent a major new regulatory initiative. The 2019 Regulation provides clarity on certain aspects of park management and removed duplication of provisions now covered by the *Biodiversity Conservation Act 2016*.

## 2. Public consultation on the proposed 2019 Regulation

### 2.1 Consultation process

The procedures for the remaking and exhibition of regulations are specified in the *Subordinate Legislation Act 1989* and involve the public exhibition of the proposed Regulation and the RIS.

The 2019 Regulation and the RIS were publicly exhibited between 19 June and 19 July 2019.

Notifications included:

- a public notice advertised in the Sydney Morning Herald, the Daily Telegraph, the Koori Mail, and The Land
- a public notice in the NSW Government Gazette
- a notification via the former Office of Environment and Heritage's website
- notification of NPWS staff via internal communication channels
- direct notification to key stakeholders via email.

### 2.2 What happened with the submissions?

NPWS received 53 submissions (including two submissions from the same author) and considered all submissions to determine if a change to the 2019 Regulation was needed before it was finalised for commencement on 1 September 2019.

NPWS considered that most of the issues raised in submissions did not warrant any changes to the consultation draft of the 2019 Regulation. However, minor changes were made to draft clauses 54 and 55 in response to a submission.

The final 2019 Regulation also contains minor editorial and style updates in line with legal drafting requirements and machinery of government changes.

All submissions received will be publicly available.

### 2.3 Commencement of the Regulation

After the 2019 Regulation was finalised, it was submitted to the Governor for approval, and then published on the [NSW Government legislation website](#) and in the NSW Government Gazette.

The 2019 Regulation commenced on 1 September 2019.

## 3. Background

### 3.1 Park management in New South Wales

The functions of the National Parks and Wildlife Service (NPWS) in relation to conservation and park management are to:

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

### 3.2 Park legislation

#### 3.2.1 The National Parks and Wildlife Act 1974

The principal legislative instrument for the administration of national park management in NSW is the *National Parks and Wildlife Act 1974* (NPW Act). The objects of the NPW Act are:

- the conservation of nature including, but not limited to, the conservation of:
  - habitat, ecosystems and ecosystem processes
  - biological diversity at the ecological community, species and genetic levels
  - landforms of significance, including geological features and processes
  - landscapes and natural features of significance including wilderness and wild rivers.
- the conservation of objects, places or features (including biological diversity) of cultural value within the landscape including, but not limited to:
  - places, objects and features of significance to Aboriginal people
  - places of social value to the people of NSW
  - places of historic, architectural or scientific significance.
- fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation
- providing for the management of land reserved under the NPW Act in accordance with the management principles applicable for each type of reservation.

### **3.2.2 The National Parks and Wildlife Regulation 2009**

The 2009 Regulation commenced on 1 September 2009 to support the operation of the NPW Act. It replaced the National Parks and Wildlife Regulation 2002.

Broadly, the 2009 Regulation dealt with:

- the use of parks (Part 2)
- preservation of public health in Kosciuszko National Park (Part 3)
- the obligations of the Snowy Hydro Company (Part 4)
- licences and certificates (Part 5)
- the protection of fauna (Part 6)
- the exemption of Aboriginal people from the restrictions imposed by various sections of the NPW Act on the hunting of certain animals and the gathering of certain plants (Part 7)
- plans of management in relation to Aboriginal land (Part 8)
- Aboriginal objects and Aboriginal places (Part 8A)
- advisory committees constituted under section 24 of the NPW Act (Part 9)
- trustees appointed to trust boards for state conservation areas and regional parks under the NPW Act (Part 10)
- penalty notices (Part 11)
- miscellaneous matters (Part 12).

### **3.2.3 Objectives of the National Parks and Wildlife Regulation 2019**

Broadly, the purpose of the 2019 Regulation is to assist NPWS to implement and achieve the objectives of the NPW Act. These include the protection of natural and cultural values in parks, the protection of plants and animals, and the provision of a safe environment in which park users can sustainably undertake recreational, educational, scientific, commercial and cultural activities.

This review of the Regulation ensured that it remains the best approach to meeting these objectives. Several factors were considered in the review, including how the 2019 Regulation will assist in achieving the NSW Government's commitment to the reduction of Government red tape (the Better Regulation principles).



## 4. Assessment of options to achieve objectives

This part of the RIS assesses the relative merits of options for achieving the objectives of the NPW Act. The options considered were:

**Option 1:** Remaking the 2009 Regulation with minor amendments (the 2019 Regulation)

**Option 2:** Remaking the 2009 Regulation without amendments

**Option 3:** Allowing the 2009 Regulation to lapse.

The costs and benefits of each option were assessed in terms of operational and administrative efficiency.

After careful appraisal, it was considered that **Option 1: Remaking the Regulation with minor amendments (the 2019 Regulation)** was the best option for providing the administrative and operational underpinnings to achieve the objectives of the NPW Act and continue to provide overall benefits to the community.

### 4.1 Option 1 – Remaking the Regulation with minor amendments (the 2019 Regulation)

The process of remaking the Regulation provided an opportunity to examine each provision for clarity, currency and efficiency, and to remove duplication. The 2009 Regulation provided the necessary administrative and procedural detail to enable the NPW Act to operate effectively. As such, most provisions in the 2009 Regulation were carried over unchanged to the 2019 Regulation. However, some clauses were proposed for deletion or amendment. These are discussed in detail in Section 5 of this RIS. In addition, Appendix 2 contains a summary table of the proposed amendments and deletions.

#### 4.1.1 Benefits

The proposed minor amendments will improve the efficient operation of the Regulation.

The 2019 Regulation will provide clarity on park management issues including the regulation of animals on park and the exemption for assistance animals in nature reserves, vehicles requiring consent on park, and the definitions of *aircraft* and *unmanned aircraft* (drones). This clarification will benefit local government, individuals, businesses and customers who wish to partake in these activities, advise on these activities, or who require an assistance animal.

The 2019 Regulation will also remove duplicate provisions now addressed by the *Biodiversity Conservation Act 2016* and update references to relevant decision-maker position titles.

A further benefit of remaking the 2009 Regulation was that it enabled the content to be reorganised to improve overall readability.

### 4.1.2 Costs

There are no costs created by the 2019 Regulation beyond normal park management obligations currently required under the NPW Act. Further, there is not likely to be any significant difference in the costs between administering the 2009 or the 2019 Regulation. Similarly, there will be no discernible change in regulatory burden for the community.

### 4.1.3 Conclusions

The 2019 Regulation provides the greatest net benefit and least cost to the community compared with the alternatives. Remaking the 2009 Regulation with minor amendments (the 2019 Regulation) is the **preferred and recommended option**.

## 4.2 Option 2 – Remaking the 2009 Regulation without amendments

To remake the 2009 Regulation without amendments would continue the operation of all current provisions in the 2009 Regulation as they currently exist.

### 4.2.1 Benefits

The 2009 Regulation successfully operated since it was made in 2009, providing the necessary administrative and procedural support for the operation of the NPW Act in New South Wales. This would continue with no change under this option.

### 4.2.2 Costs

The 2009 Regulation provided the administrative and operational underpinnings to achieve the objectives of the NPW Act and overall benefits to business and the community.

However, there was opportunity to clarify certain aspects of park management. Failing to do so may have resulted in confusion for local government, individuals, businesses, and consumers on issues including the regulation of animals on park and the exemption for assistance animals in nature reserves, vehicles requiring consent on park, and the definitions of *aircraft* and *unmanned aircraft* (drones).

Furthermore, with the commencement of the *Biodiversity Conservation Act 2016*, several provisions of the 2009 Regulation were no longer required.

### 4.2.3 Conclusion

The 'no-change' option was **not recommended**. There was an opportunity to update the 2009 Regulation to provide clarity to local government, individuals, business, and consumers on park management issues and to remove duplicate provisions now addressed by the *Biodiversity Conservation Act 2016*.

## 4.3 Option 3 – Allowing the 2009 Regulation to lapse

If the Regulation was not remade, the 2009 Regulation would have lapsed on 1 September 2019.

### 4.3.1 Benefits

There did not appear to be any benefit in allowing the Regulation to lapse.

### 4.3.2 Costs

Allowing the Regulation to lapse would have likely resulted in a diverse range of negative impacts, including:

- significantly limiting powers to manage visitor use of parks in a safe and sustainable manner
- removing powers to charge fees for the use of parks and park facilities, which would lead to a significant loss in revenue that directly contributes to park management activities and the provision of visitor facilities
- removing the power to enforce the protection of specific park values, such as karst caves
- limiting powers to provide public health services and facilities in the resort areas of Kosciuszko National Park, including the preservation of healthy conditions through use of entry and inspection powers
- reduction in the effective management, renewal and enforcement of licence conditions
- compromising the management of Aboriginal lands and the protection of Aboriginal objects and Aboriginal places.

See Appendix 3 for further details on the range of impacts that may have arisen as a result of letting the Regulation lapse.

### 4.3.3 Conclusion

This option was **not recommended**.

## 5. Discussion of the 2019 Regulation and amendments

The 2019 Regulation carries over most of the provisions found in the 2009 Regulation. It also provides clarity on park management issues including the regulation of animals on park and the exemption for assistance animals in nature reserves, vehicles requiring consent on park, the definitions of *aircraft* and *unmanned aircraft* (drones), and removes duplicate provisions now addressed by the *Biodiversity Conservation Act 2016*. In addition, all references throughout to 'Director-General' have been updated to relevant current decision-maker position titles.

There are also two offences which are no longer subject to penalty infringement notices and, as such have been removed from the penalty notice offences schedule.

In addition, some of the content has been reorganised to improve flow and readability.

### 5.1 Preliminary (Part 1)

The following changes have been made in this part:

- **2009 clause 3(1) Definitions:** The 2019 Regulation no longer has a definition for *hoofed animal*. There is no need for a specific definition as references to 'animal' in relevant clauses are sufficient to allow regulation of animals on park.
- **2009 clause 3(1) Definitions:** The 2019 Regulation added a definition of *aircraft* and added 'unmanned aircraft' to the definition of *aircraft*. The 2019 Regulation also added a definition of *unmanned aircraft*. This aligns definitions with the Biodiversity Conservation Regulation 2017 and ensures a definition for aircraft remains now that the definition formerly in Part 6 Division 3 has been deleted from the Regulation (see 5.4 below).
- **2009 clause 3(1) Definitions:** In relation to the definition of *national parks officer*, reference to the *Threatened Species Conservation Act 1995* has been changed to the *Biodiversity Conservation Act 2016*.
- **2009 clauses 3(2), 3(3), and 3(4) Definitions:** This content has been moved into a new and separate clause within Part 1 of the 2019 Regulation, entitled **Clause 4 Examples of consent to activities on land**. This logical reorganisation improves readability.

### 5.2 Regulation of use of parks (Part 2)

The following changes have been made in this part:

- **Hoofed animal:** As a result of removing the definition of *hoofed animal* (see 5.1 above), the 2019 Regulation uses the term 'animal' rather than 'hoofed animal' wherever occurring.
- **2009 clause 7(1)(a) Use of vehicles, hoofed animals, vessels and machines in park:** The 2019 Regulation removed 'quadbike' from the list of exempt vehicles in Clause 7(1)(a) of the 2009 Regulation. In the 2009 Regulation, quadbikes were one of a range of vehicles exempted from needing consent to be operated, driven or used in park. The intention of the change is to require that the public use of quadbikes in parks is permitted with consent only.

This is consistent with statewide arrangements for quadbike regulation. These apply a conditional registration system for the limited use of quadbikes on public roads taking account of specified safety standards and certain acceptable vehicle uses (such as

primary producers for farming purposes or use by public land managers)<sup>1</sup>. This amendment supports park visitor safety objectives and avoids any misconception that the existing statewide rules do not apply in national parks or reserves. Note that this change will not affect arrangements for:

- the use of quadbikes for park management purposes by NPWS or its contractors
  - access to the Stockton Beach Recreation Vehicle Area in the Worimi Conservation Lands, which is managed under a long-standing permit system<sup>2</sup>.
- **2009 clause 7(1)(a) Use of vehicles, hoofed animals, vessels and machines in park:** The 2019 Regulation removed 'horse drawn carriage' from the list of exempt vehicles in existing Clause 7(1)(a). The intention is to require that the use of horse drawn carriages in parks is permitted with consent only. This removes any confusion regarding the entry of animals to a park and supports public safety objectives.
  - **2009 clause 9(2)(a) Taking and keeping of animals in park:** The 2019 Regulation clarifies the exemption for assistance animals in nature reserves. In the 2009 Regulation, Clause 9(2)(a) stated that a person does not commit an offence under the clause if the animal is an assistance animal. However, section 56(1)(e) of the NPW Act states that a person shall not be accompanied by a dog in a nature reserve. This had the potential to create confusion. Section 56(6) of the NPW Act notes the Regulation may prescribe exemptions to the offence under section 56(1)(e) of the NPW Act. The amendment (clause 80 in the 2019 Regulation) provides an exemption to the offence under section 56(1)(e) of the NPW Act. This makes it clear that a person does not commit an offence if they enter a nature reserve with an assistance animal. This also supports NPWS in complying with requirements of the *Commonwealth Disability Discrimination Act 1992*.

### 5.3 Licences and certificates (Part 5)

The following changes have been made in this part:

- The entirety of Part 5 (**clauses 50 and 51**) of the 2009 Regulation has been moved into the part of the 2019 Regulation that addresses Miscellaneous matters (Part 8).

### 5.4 Fauna protection (Part 6)

The following changes have been made in this part:

- The entirety of Part 6 (**Divisions 1, 2, 3 and 4 comprising clauses 52 through 70**) of the 2009 Regulation has been removed from the 2019 Regulation, as these provisions are now covered by the *Biodiversity Conservation Act 2016*.

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<sup>1</sup> <https://www.rms.nsw.gov.au/roads/registration/get-nsw-registration/vehicle-sheets/all-terrain-vehicle.html>

<sup>2</sup> <https://worimiconservationlands.com/beach-driving/>

## 5.5 Exemptions in favour of Aboriginal people (Part 7)

The following changes have been made in this part:

- **2009 clause 72(3) Exemption: section 70:** The reference to the *Threatened Species Conservation Act 1995* has been replaced by reference to the *Biodiversity Conservation Act 2016* and the associated meaning therein.
- **2009 clause 74 Exemption: section 98 and 2009 clause 75 Exemption: section 117:** The 2019 Regulation has removed clauses 74 and 75. These provisions are now covered under the *Biodiversity Conservation Act 2016*.

## 5.6 Aboriginal objects and Aboriginal places (Part 8A)

The following changes have been made in this part:

- **2009 clause 80A(c) Defence of compliance with codes of practice or other prescribed documents: section 87(3):** The 2019 Regulation has amended subpart (c) only, to reference private native forestry codes of practice made under Division 2 of Part 5B of the *Local Land Services Act 2013*.

## 5.7 Miscellaneous (Part 12)

The following changes have been made in this part:

- **2009 clause 100 Appeal period and Clause 101 Appeals:** The 2019 Regulation has removed clauses 100 and 101. These provisions are now covered under the *Biodiversity Conservation Act 2016*.
- **2009 clause 103(2)(f) Terms of interim protection orders:** The reference to the *Threatened Species Conservation Act 1995* has been replaced by reference to the *Biodiversity Conservation Act 2016*.
- **2009 clause 107 Limitations on routine farming practice activities:** The 2019 Regulation has removed clause 107. These provisions are now covered under the *Biodiversity Conservation Act 2016*.

## 5.8 Schedules

The following changes have been made in this part:

- **2009 Schedule 1:** The 2019 Regulation has removed Schedule 1. This is now covered by licencing arrangements under the *Biodiversity Conservation Act 2016*.
- **2009 Schedule 2:** Two offences will no longer incur penalty infringement notices in the 2019 Regulation, and as such have been removed from the penalty notice offences schedule in the 2019 Regulation. These offences relate to clauses 25(d) and 50(3) of the 2009 Regulation and have been determined as more appropriately dealt with via the Court system. In addition, fines for three offences listed under Schedule 2 of the 2009 Regulation were reduced in January 2019 as part of the NSW Treasury's Review of Fines. This will be reflected in the 2019 Regulation.

# Appendix 1 – List of stakeholders to be notified of public consultation

The following key stakeholders were notified that the consultation draft of the National Parks and Wildlife Regulation 2019 and this RIS were available for public consultation:

## Aboriginal joint management stakeholders

- Arakwal National Park Joint Management Committee - Arakwal ILUA
- Arakwal National Park Joint Management Committee - Byron Bay ILUA
- Biamanga National Park Board of Management
- Boonalla Aboriginal Area Co-management Committee
- Bundjalung Womens Committee - Ti Tree Lake ILUA
- Culgoa National Park and Ledknapper Nature Reserve Joint Management Committee
- Deriah Aboriginal Area Co-Management Committee
- Gaagal Wanggaan (South Beach) National Park Board of Management
- Gawambaraay Pilliga Co-management Committee
- Githabul Management Committee (Githabul ILUA)
- Goobang National Park and Snake Rock Aboriginal Area Aboriginal Advisory Group
- Gulaga National Park Board of Management
- Gumbayngirr Boney (Gumbaygnirr ILUA)
- Gundabooka Joint Management Committee
- Gundungurra Consultative Committee (Gundungurra ILUA)
- Hay Area - Mawambul Co-management Group
- Menindee Aboriginal Elders Council - Kincheha National Park
- Mount Yarrowyck Interim Joint Management Advisory Committee
- Mt Grenfell Historic Site Board of Management
- Mutawintji Board of Management
- Narran Lakes Reserve Co-management Committee
- Paroo Darling National Park Joint Management Advisory Committee
- Terry Hie Aboriginal Area Co-Management Committee
- Toorale Joint Management Advisory Committee
- Saltwater Management Advisory Committee
- Southern Snowy Mountains Aboriginal Community Committee
- Tubba-gah (ILUA)
- Western Bundjalung, Ngullingah Jugun (Our Country) Aboriginal Corporation RNTBC
- Worimi Conservation Lands Board of Management
- Yala Ngurbang Yundyamarra (Tumut Brungle Gundagai Area Aboriginal Advisory Committee)
- Yarriabini National Park Aboriginal Consultative Group

## Advisory bodies

- Aboriginal Cultural Heritage Advisory Committee (ACHAC)
- Australian Convict Sites Steering Committee
- Gondwana Rainforest World Heritage Area Community Advisory Committee
- Greater Blue Mountains World Heritage Area Advisory Committee
- Hartley Historic Site Advisory Committee
- Horse Riding Consultative Group
- Karst Management Advisory Committee
- National Parks and Wildlife Advisory Council
- NPWS Regional Advisory Committees
- Willandra Lakes World Heritage Area Advisory Committee

## Conservation

- Colong Foundation for Wilderness
- Foundation for National Parks and Wildlife
- National Parks Association of NSW
- Nature Conservation Council of NSW

## Recreation and other interest groups

- Australian Horse Alliance
- Bushwalking NSW Inc.
- Four Wheel Drive NSW & ACT Inc
- Mountain Bike Australia
- Outdoors NSW
- Recreational Fishing NSW Advisory Council

## NSW agencies

- Biodiversity Conservation Trust
- Department of Premier and Cabinet
- Fire and Rescue NSW
- Heritage Council of NSW
- Hunter Water Corporation
- Local Land Services:
  - Chief Executive LLS
  - Central Tablelands
  - Central West
  - Greater Sydney
  - Hunter
  - Murray
  - North Coast
  - North West



- Northern Tablelands
- Riverina
- South East
- Western
- NSW Department of Planning, Industry and Environment – Crown Land
- NSW Department of Primary Industries – Fisheries
- NSW Police
- NSW Rural Fire Service
- Office of Local Government NSW
- Revenue NSW
- Roads and Maritime Services
- Sydney Water
- Water NSW

## **Other**

- Local Government NSW
- New South Wales Aboriginal Land Council
- NSW Minerals Council
- NTSCorp
- Native title corporations

## Appendix 2 – Table of proposed amendments for the National Parks and Wildlife Regulation 2019

Clause in the 2009 Regulation	Proposed amendment in the 2019 Regulation	Comments
Various	All references throughout to 'Director-General' will be updated to relevant current decision-maker position titles.	This will ensure current position titles are accurate.
Part 1 – Preliminary Clause 3(1) Definitions	The proposed Regulation will no longer have a definition for <i>hoofed animal</i> . As such, the proposed Regulation will replace the term 'hoofed animal' with 'animal' wherever occurring.	There is no need for a specific definition as references to 'animal' in relevant clauses are sufficient to allow regulation of animals on park.
Part 1- Preliminary Clause 3(1) Definitions	The proposed Regulation will add a definition of <i>aircraft</i> and will add 'unmanned aircraft' to the definition of <i>aircraft</i> . The proposed Regulation will also add a definition of <i>unmanned aircraft</i> .	This will align definitions with the Biodiversity Conservation Regulation 2017, and ensure a definition remains once the existing definition of <i>aircraft</i> in Part 6 Division 3 of the existing Regulation is deleted in the proposed Regulation.
Part 1 – Preliminary Clauses 3(2), 3(3), and 3(4) Definitions	This content will be moved into a new and separate clause within Part 1, entitled <b>Examples of consent to activities on land</b> .	This logical reorganisation will improve flow and readability.
Part 2 – Regulation of use of parks Various	As a result of removing the definition of <i>hoofed animal</i> , the proposed Regulation will replace the term 'hoofed animal' with 'animal' wherever occurring.	References to 'animal' in relevant clauses are sufficient to allow regulation of animals on park.
Part 2 – Regulation of use of parks Clause 7(1)(a) Use of vehicles, hoofed animals, vessels and machines in park	The proposed Regulation will remove 'quadbike' from the list of exempt vehicles in existing Clause 7(1)(a). Refer clause 10 in the proposed Regulation.	The intention of this removal is to require the use of quadbikes in parks to be permitted with consent only. This is consistent with state-wide management approaches to the use of quadbikes.
Part 2 – Regulation of use of parks Clause 7(1)(a) Use of vehicles, hoofed animals, vessels and machines in park	The proposed Regulation will remove 'horse drawn carriage' from the list of exempt vehicles in Clause 7(1)(a). Refer clause 10 in the proposed Regulation.	The intention of this removal is to require the use of horse drawn carriage in parks to be permitted with consent only. This will remove any confusion regarding the entry of animals to a park.
Part 2 – Regulation of use of parks	The proposed Regulation will provide an exemption to the offence	The proposed amendment will clarify that it is not an offence

Clause in the 2009 Regulation	Proposed amendment in the 2019 Regulation	Comments
Clause 9(2)(a) Taking and keeping of animals in park	<p>of taking a dog into a nature reserve under section 56(1)(e) of the NPW Act.</p> <p>This will reflect existing exemptions under clause 9(2)(a) relating to assistance animals in parks.</p> <p>Refer clause 80 in the proposed Regulation.</p>	<p>to take an assistance animal into a nature reserve.</p> <p>Clause 9(2)(a) currently states that a person does not commit an offence under the clause if the animal is an assistance animal.</p> <p>However, Section 56(1)(e) of the NPW Act states that a person shall not be accompanied by a dog in a nature reserve. Section 56(6) of the NPW Act states that the Regulation may prescribe exemptions to the offence under section 56(1)(e) of the NPW Act.</p>
<p>Part 5 – Licences and certificates</p> <p>Clause 50 Applications for permits, licences or registration certificates and</p> <p>Clause 51 Terms of licences or registration certificates</p>	<p>The entirety of Part 5 (clauses 50 and 51) have been moved into the part of the proposed Regulation that addressed Miscellaneous matters.</p> <p>Refer Part 8 in the proposed Regulation.</p>	<p>This logical reorganisation will improve readability.</p>
<p>Part 6 – Fauna protection</p> <p>Divisions 1,2,3, and 4 comprising clauses 52 through 70</p>	<p>The entirety of Part 6 (Divisions 1, 2, 3 and 4 comprising clauses 52 through 70) will be removed from the proposed Regulation.</p>	<p>These fauna protection provisions are now covered by the <i>Biodiversity Conservation Act 2016</i>.</p>
<p>Part 7 – Exemptions in favour of Aboriginal people</p> <p>Clause 72(3) Exemption: section 70</p>	<p>The reference to the <i>Threatened Species Conservation Act 1995</i> will be replaced by reference to the <i>Biodiversity Conservation Act 2016</i> and the associated meaning therein.</p>	<p>This is correct with the commencement of the <i>Biodiversity Conservation Act 2016</i>.</p>
<p>Part 7 – Exemptions in favour of Aboriginal people</p> <p>Clause 74 Exemption: section 98</p>	<p>The proposed Regulation will remove clauses 74.</p>	<p>These provisions are now covered under the <i>Biodiversity Conservation Act 2016</i>.</p>
<p>Part 7 – Exemptions in favour of Aboriginal people</p> <p>Clause 75 Exemption: section 117</p>	<p>The proposed Regulation will remove clause 75.</p>	<p>These provisions are now covered under the <i>Biodiversity Conservation Act 2016</i>.</p>
<p>Part 8(A) – Aboriginal objects and Aboriginal places</p> <p>Clause 80A</p>	<p>The proposed Regulation will amend subpart (c) only, to reference private native forestry codes of practice made under Division 2 of Part 5B of the <i>Local Land Services Act 2013</i>.</p>	<p>Other subclauses to remain unchanged.</p>

Clause in the 2009 Regulation	Proposed amendment in the 2019 Regulation	Comments
Part 12 – Miscellaneous Clause 100 Appeal period	The proposed Regulation will remove clause 100.	These provisions are now covered under the <i>Biodiversity Conservation Act 2016</i> .
Part 12 – Miscellaneous Clause 101 Appeals	The proposed Regulation will remove clause 101.	These provisions are now covered under the <i>Biodiversity Conservation Act 2016</i> .
Part 12 – Miscellaneous Clause 103(2)(f) Terms of interim protection orders	The reference to the Threatened Species Conservation Act 1995 will be replaced by reference to the Biodiversity Conservation Act 2016.	This is correct with the commencement of the <i>Biodiversity Conservation Act 2016</i> .
Part 12 – Miscellaneous Clause 107 Limitations on routine farming practice activities	The proposed Regulation will remove clause 107.	These provisions are now covered under the <i>Biodiversity Conservation Act 2016</i> .
Schedule 1 – Caging of protected fauna	The proposed Regulation will remove Schedule 1.	This is now covered by licencing arrangements under the <i>Biodiversity Conservation Act 2016</i> .
Schedule 2 – Penalty notice offences	<p>Two offences will no longer incur penalty infringement notices and as such have been removed from the penalty notice offences schedule in the proposed Regulation. These offences relate to clauses 25(d) and 50(3) of the existing Regulation.</p> <p>25(d) Interference with park management A person must not: (d) interfere with or obstruct any action taken by a park authority for the purpose of the care, control and management of the park,</p> <p>50(3) Applications for permits, licences or registration certificates (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.</p>	<p>These offences have been removed as it has been determined that these specific offences are more appropriately dealt with via the Court system.</p> <p>In addition, fines for three offences listed under Schedule 2 of the existing Regulation were reduced in January 2019 as part of the NSW Treasury's Review of Fines. This will be reflected in the proposed Regulation.</p>

# Appendix 3 – Potential adverse impacts if the existing Regulation was allowed to lapse

## Regulation of use of parks (Part 2)

If the existing Regulation was allowed to lapse without replacement there would have been no legislative basis for regulating the use of parks, including traffic management, regulating conduct, taking or keeping animals in parks, camping, littering and damage, protection of animals, cultural heritage, protection of vegetation, regulating possession or use of weapons, commercial activities, managing sporting and recreational activities, research activities, protection and use of caves and the mooring of vessels.

The inability to enforce park closures, for example due to bushfire, hazard reduction burn activities, high fire danger, flood or to protect sensitive park values, could have severely compromised the safety of visitors and staff as well as park management operations. This would have had a significant impact upon park values and biodiversity conservation. Park entry fees could not have been charged, nor could the park authority have charged for the use of certain park facilities (such as the hire of a building for a function) or for activities such as camping. This would have led to a significant loss in revenue which directly contributes to park management activities and the provision of visitor facilities.

## Public health in Kosciuszko National Park (Part 3)

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

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

## Licences and certifications (Part 5)

Without the Regulation, the form of application could not have been prescribed, nor the lodging of fees with an application for a licence or registration certificate.

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

## **Exemptions in favour of Aboriginal people (Part 7)**

Without the Regulation, some aspects of wild resource use by an Aboriginal person for domestic purposes would have been prohibited under the NPW Act without a licence. That may have led to circumstances where Aboriginal people could have been subject to offence proceedings, and increased compliance and enforcement costs.

## **Aboriginal land (Part 8)**

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

## **Aboriginal objects and Aboriginal places (Part 8A)**

Without the Regulation, there would not have been legal grounds for constituting due diligence by acting in compliance with any of the listed codes of practice or documents. There would not have been a low impact activities defence to the strict liability offence in section 86(2) of the NPW Act (being the offence of harming an Aboriginal object whether or not the person knows it is an Aboriginal object).

Letting the Regulation lapse would have removed the requirement to carry out an Aboriginal community consultation process before making an application for the issue of an Aboriginal heritage impact permit and to notify native title bodies in certain circumstances. It would also have removed requirements for cultural heritage assessment reports to accompany a permit application and removed consultation requirements for permit variations that would authorise a significant increase in harm to the Aboriginal objects or Aboriginal places concerned.

## **Advisory committees (Part 9) and Trustees (Part 10)**

Without the Regulation, the effective, efficient and consistent operation of the regional advisory committees and trusts would have been at risk. Each committee and trust would have needed to establish its own administrative standards, which may have prevented it from satisfactorily and consistently meeting its statutory functions under the NPW Act.

## **Penalty notices (Part 11)**

Without the Regulation, NPWS would have lacked this administrative guidance on the application of penalty notices.

## **Miscellaneous (Part 12)**

There is a range of miscellaneous matters handled under Part 12 of the existing Regulation, such as ex-officio rangers, notice of preparation of plans of management, transfer of Aboriginal objects, terms of interim protection orders, and disposal of property seized. If the Regulation lapsed, these matters would not have been able to be regulated.