

Draft Orders submitted to the Governor in Council by the Honourable the Minister for Environment

National Parks Act 1975

Recommending to the Governor in Council, under sections 32AA, 37 and 48 of the **National Parks Act 1975**, that the National Parks Regulations 2024, be made.



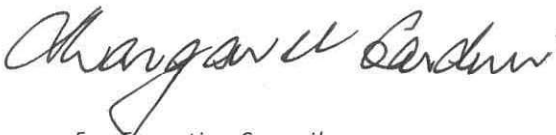
(Signature of Secretary or Authorised Delegate)

John Bradley, Secretary, Department of Energy, Environment and Climate Action



(Signature of Minister).....

Steve Dimopoulos MP, Minister for Environment



For Executive Council

20 AUG 2024



APPROVED BY THE
GOVERNOR IN COUNCIL

.....
Clerk of the Executive Council

National Parks Act 1975
National Parks Regulations 2024



EXPLANATORY MEMORANDUM

Summary

- The National Parks Regulations 2013 are due to sunset on 31 August 2024.
- It is proposed that the National Parks Regulations 2024 be made in order to allow for the continued regulation of Victoria's national parks.

Recommendation

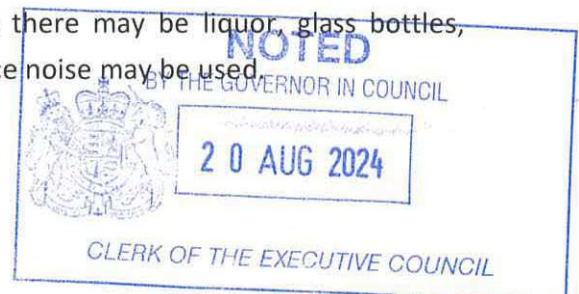
1. It is recommended to the Governor in Council that the National Parks Regulations 2024 (proposed Regulations) be made.

Background to proposed Regulations and their effect

2. The National Parks Regulations 2013 (current Regulations) provide for the management and control of national parks and the regulation or prohibition of certain conduct in relation to those parks. The current Regulations also make provision in relation to requirements and processes for providing occupation sites and the penalties for contravention of the requirements, matters affecting the use of commercial and recreational fishery equipment in national parks and other matters for the purposes of the **National Parks Act 1975** and provide for exceptions from certain provisions of the proposed Regulations.
3. The current Regulations are made under sections 32AA, 37 and 48 of the **National Parks Act 1975**.
4. The current Regulations are due to sunset on 31 August 2024.
5. The proposed Regulations will replace the current Regulations without significant amendments. Minor amendments have been made to align the proposed Regulations with modern drafting practices and public land management practices. Some regulations in the current Regulations have also been removed as they are no longer relevant (e.g. restrictions relating to munitions in Point Nepean National Park) or have been combined in general powers (e.g. road closures included in management set aside powers).
6. Regulations 1 to 3 contain the preliminary matters for the proposed Regulations, including

the objectives of the Regulations, the regulation making head of power and the commencement date for the proposed Regulations.

7. Regulation 4 provides for the revocation of the current Regulations and other subsequently redundant regulations.
8. Regulation 5 contains the definitions for the proposed Regulations.
9. Regulation 6 provides for the meaning of references to park in the proposed Regulations.
10. Regulations 7 to 10 provide an exception to the proposed Regulations to those with various authorisations granted under the **National Parks Act 1975**, the persons to whom offences under the proposed Regulations do not apply unless otherwise specified and how the proposed Regulations apply to traditional owner groups.
11. Regulations 11 to 17 provide common provisions for determinations to set aside areas of national parks, associated signs and notices, offences associated with non-compliance with set aside determinations, the issuing of permits under the proposed Regulations and other related permit provisions.
12. Regulations 18 to 24 contain provisions for the making of determinations to temporarily close parks, areas where access may be prohibited or restricted, directions to leave a park and associated offences.
13. Regulations 25 to 31 contain various provisions for the protection of animals and fish, including restrictions on interfering with animals, where hunting and bait collection is permitted, restrictions on the feeding of animals and the setting aside of indigenous fish preservation areas.
14. Regulations 32 and 33 contain prohibitions on the use or possession of poisons and traps in parks.
15. Regulations 34 to 40 contain restrictions and regulations related to bringing animals into parks, including the use of dogs, the collection of animal waste, the setting aside of specific areas for animals and the seizure and destruction of animals found at large.
16. Regulations 41 to 53 provide for the protection of natural features by regulating interference with vegetation, the introduction of vegetation, the interference with rocks and archaeological remains, the removal and introduction of soil and other materials and interferences with cave structures and facilities.
17. Regulations 54 to 68 contain provisions relating to recreation, safety and amenity in parks, including the setting aside of areas in which sport, recreational activities and events can take place, specific provisions for recreation in Lysterfield Park, prohibitions on advertising, and the setting aside of areas where there may be liquor, glass bottles, containers or utensils or certain devices that produce noise may be used.



18. Regulations 69 to 71 contain provisions relating to buildings and structures in parks, including restrictions on the erection of structures, entry to structures and interference with structures.
19. Regulations 72 to 76 contain provisions relating to camping and camp fires in parks, including the setting aside of areas for camping or for the lighting of fires, and the use of occupation sites.
20. Regulations 77 to 84 contain provisions relating to the protection of water supply catchments and water bodies, including the setting aside of water supply catchment areas, access to water supply catchment areas and offences related to interfering with water supply catchment areas or other water bodies.
21. Regulations 85 to 90 contain provisions relating to vehicles, vessels and aircraft, including the setting aside of areas in which wheel chains must be carried during the snow season, related wheel chain requirements, and the setting aside of areas for activities involving vessels or aircraft.
22. Regulations 91 to 93 contain provisions relating to Point Hicks Marine National Park and prescribed conditions for the purposes of section 45B(3) of the **National Parks Act 1975**.
23. Regulations 94 and 95 provide for access to prescribed areas in Cape Howe Marine National Park.

24. Authorising Legislation

25. Section 32AA of the **National Parks Act 1975**, provides that the Governor in Council may make regulations in respect to parts of Crown allotments 5 and 6 Parish of Latrobe that have been leased by the Crown.
26. Section 37 of the **National Parks Act 1975**, provides that the Governor in Council may make such regulations as are necessary or convenient to regulate hunting in the parks described in Parts 7 and 8 and the specified areas of Parts 27 and 37 of Schedule Two and Part 2 of Schedule Two A and Part 10 of Schedule Two B and Parts 2A, 3, 6 and 8 of Schedule Three and Parts 4 and 5 of Schedule Four of the **National Parks Act 1975**.
27. Section 48 of the **National Parks Act 1975**, provides that the Governor in Council may make regulations with respect to preserving and protecting parks or any matter or thing in any park or a feature of any park, as well as numerous other provisions which include but are not limited to the control and management of parks, protection of amenities in parks, regulation of entry, setting aside areas in which certain activities are restricted and prohibited and the prescription of rules related to the bringing of animals into a park.

Certificates provided in accordance with the Subordinate Legislation Act 1994

28. The following certificates are attached for the proposed Regulations in accordance with



the **Subordinate Legislation Act 1994**:

- a consultation certificate under section 6;
- an exemption certificate under section 8 certifying that the proposed Regulations do not impose a significant economic or social burden on a sector of the public and are therefore exempt from the requirement under section 7 to prepare a regulatory impact statement (RIS);
- A human rights certificate under section 12A of the **Subordinate Legislation Act 1994** advising that the proposed Regulations may engage with and limit the human rights of freedom of movement, freedom of expression, the right to peaceful assembly and cultural rights in the **Charter of Human Rights and Responsibilities Act 2006**. However, the limitations imposed by the proposed Regulations are considered reasonable and proportionate.

National Competition Policy

29. In accordance with the guidelines contained in the *Victorian Guide to Regulation* (published by the Office of the Commissioner for Better Regulation), the proposed Regulations are not required to be tested under competition policy assessment requirements as they are exempt from the RIS process.

Gazettal

30. Notice of the making of the proposed Regulations will be published in a Special Gazette on the day of their making.

Contact Name: Ashley Goldberg, Policy and Legislation Officer, DEECA

Contact number: 03 8508 0073





Steve Dimopoulos MP

Minister for Environment
Minister for Tourism, Sport and Major Events
Minister for Outdoor Recreation

PO Box 500
East Melbourne VIC 8002

National Parks Act 1975

National Parks Regulations 2024

RECOMMENDATION

It is recommended to the Governor in Council that, under sections 32AA, 37 and 48 of the **National Parks Act 1975**, the National Parks Regulations 2024 be made.

Advice from the Chief Parliamentary Counsel is submitted as required by section 13 of the **Subordinate Legislation Act 1994**.

A Regulatory Impact Statement for these regulations has not been prepared. As the Minister responsible for the administration of the **National Parks Act 1975**, I have issued an exemption certificate under section 8 of the **Subordinate Legislation Act 1994**, and it is attached.

Under my hand, the following, additional, certificates are also attached:

- a consultation certificate under section 6 of the **Subordinate Legislation Act 1994**; and
- a human rights certificate under section 12A of the **Subordinate Legislation Act 1994**.

Dated:

11/8/24

Steve Dimopoulos MP
Minister for Environment





Steve Dimopoulos MP

Minister for Environment
Minister for Tourism, Sport and Major Events
Minister for Outdoor Recreation

PO Box 500
East Melbourne VIC 8002

Subordinate Legislation Act 1994

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CONSULTATION CERTIFICATE

(Section 6)

National Parks Regulations 2024

I, Steve Dimopoulos, Minister for Environment, and the Minister responsible for administering the **National Parks Act 1975**, certify that in accordance with the Guidelines made under the **Subordinate Legislation Act 1994** there has been consultation with:

- (a) every other Minister whose area of responsibility may be affected by the proposed National Parks Regulations 2024 and confirm that there is no overlap or conflict with any other existing or proposed statutory rule, legislation or stated government policy; and
- (b) Outdoors Victoria, the Victorian National Parks Association, Climbing Victoria Advisory Council, Australian Trail Horse Riders Association, Gunditj Mirring Traditional Owners Aboriginal Corporation, Bunurong Land Council Aboriginal Corporation, Eastern Maar Aboriginal Corporation and Taungurung Land & Waters Council have been consulted, being sectors of the public on which a significant economic or social burden may be imposed by the proposed National Parks Regulations 2024, so that the need for and the scope of the proposed National Parks Regulations 2024 have been considered.

Dated:

11/8/24

Steve Dimopoulos MP
Minister for Environment





Steve Dimopoulos MP

Minister for Environment
Minister for Tourism, Sport and Major Events
Minister for Outdoor Recreation

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East Melbourne VIC 8002

Subordinate Legislation Act 1994

EXEMPTION CERTIFICATE

(Section 8)

National Parks Regulations 2024

I, Steve Dimopoulos, Minister for Environment, and Minister responsible for administering the **National Parks Act 1975**, certify under section 8(1)(a) of the **Subordinate Legislation Act 1994** that in my opinion, the proposed statutory rule does not impose a significant economic or social burden on a sector of the public.

The reasons for forming this opinion are that the proposed statutory rule will not impose a measurable cost impact on the public greater than \$2,000,000 per year which is the indicative figure for a significant burden specified in the Guidelines issued under the **Subordinate Legislation Act 1994**. While the \$2,000,000 threshold is not determinative, it is otherwise the case that the proposed National Parks Regulations 2024 will not require businesses, community groups or individuals to expend funds, devote time to compliance activities, change practices or seek external advice.

Accordingly, a Regulatory Impact Statement is not required for these Regulations.

Dated:

11/7/24

Steve Dimopoulos MP
Minister for Environment





Steve Dimopoulos MP

Minister for Environment
Minister for Tourism, Sport and Major Events
Minister for Outdoor Recreation

PO Box 500
East Melbourne VIC 8002

Subordinate Legislation Act 1994

HUMAN RIGHTS CERTIFICATE
(Section 12A)

National Parks Regulations 2024



I, Steve Dimopoulos, Minister for Environment, as Minister responsible for administering the **National Parks Act 1975**, certify that, in my opinion, the proposed National Parks Regulations 2024 (proposed Regulations) engage and may limit a human right set out in the **Charter of Human Rights and Responsibilities Act 2006**.

The following regulations may limit the right to freedom of movement under section 12 of the **Charter of Human Rights and Responsibility Act 2006**:

- 18—Determination to temporarily close park
- 20—Areas where access is prohibited or restricted
- 23—Power to give directions
- 47—Areas for the protection of cultural heritage, Aboriginal cultural heritage and shipwrecks
- 52—Interference with cave structures and facilities
- 70—Entry, occupation and use of buildings or structures restricted
- 79—Access to specified water supply catchment area prohibited.

The majority of the set aside determination powers and closure powers in the proposed Regulations do not themselves limit any Charter rights, but they do provide the power for land managers and authorised officers to make determinations or give directions. When making determinations or giving directions, land managers and authorised officers must consider the human rights set out in the Charter in accordance with their obligations.

It is also noted that freedom of movement is not an absolute right under the Charter and may be subject to such reasonable limitations as are demonstrably justified. Under the proposed Regulations the power to make a determination to temporarily close a park (regulation 18), set aside an area where access is prohibited or restricted (regulation 20), direct an individual to leave a park (regulation 23), set aside an area for the protection of cultural heritage and shipwrecks (regulation 47), prohibit entry into a cave (regulation 52), prohibit entry into structures not available for public use (regulation 70) and prohibit access to specified water supply catchment areas (regulation 79) may limit the right to freedom of movement. However, these limitations are reasonable and justified as temporary closures may only be made where there is risk to public safety or health, and areas may only be set aside as

prohibited or restricted if necessary for the preservation of a park or public safety or for the undertaking of a cultural activities by a traditional owner group. Areas set aside for the protection of Aboriginal cultural heritage and shipwrecks have implicit justifications regarding the protection of heritage, and the public safety concerns related to prohibited entry into a cave, structures not available for public use and water supply catchment areas are similarly implicit. Subsequently, any limitations on the freedom of movement are considered to be reasonable and proportionate to the proposed limitation.

There are not considered to be any less restrictive means reasonably available to achieve the purposes that the limitations seek to achieve.

The following regulations may limit the rights to freedom of expression or assembly under sections 15 and 16 of the **Charter of Human Rights and Responsibility Act 2006**:

- 54—Areas where sport or recreational activities prohibited or restricted
- 56—Organised events restricted
- 64—Use or operation of certain devices or equipment that produce noise
- 66—Advertising, soliciting, public speaking etc. restricted.

As with the other set aside determination powers, the regulations for sport, events and use of noise producing devices do not themselves limit any Charter rights but do provide the power for land managers to use their discretion to make determinations and consider the Charter when doing so. The same applies to the discretion of the land manager when providing a permit for a person to engage in an activity under regulation 66.

Any limitations on the rights to freedom of expression or assembly that may result from the inability of members of the public to perform the abovementioned activities in national parks will only occur at the discretion of land managers in order to ensure the maintenance of public safety and enjoyment as well as the fair and equitable use of public places. Subsequently, any such limitation is considered to be reasonable and proportionate.

There are not considered to be any less restrictive means reasonably available to achieve the purposes that the limitations seek to achieve.

The following Parts or regulations may limit the cultural rights of Aboriginal persons under section 19(2) of the **Charter of Human Rights and Responsibility Act 2006**:

- Part 3—Protection of animals and fish
- Part 4—Hunting and fishing equipment
- Part 6—Protection of natural features
- Regulation 54—Areas where sport or recreational activities prohibited or restricted
- Regulation 56—Organised events restricted
- Regulations 60 and 61—Prohibitions on fishing and swimming in Lysterfield Park
- Part 9—Camping and camp fires
- Regulation 79—Access to specified water supply catchment area prohibited.



While the above provisions may appear to engage a right, many will not limit specific cultural rights of Aboriginal persons recognised under the **Traditional Owner Settlement Act 2010**, or for Aboriginal persons conducting their traditional cultural practices, due to the exemptions in regulations 9 and 10. However, Aboriginal persons carrying out agreed activities in accordance with an agreement under Part 6 of the **Traditional Owner Settlement Act 2010**

or traditional cultural practices will be subject to the specified provisions of the regulations identified in regulation 9(2) or 10(2).

Many of the above provisions may also enhance the ability of aboriginal persons to exercise their cultural rights by protecting the land and water on which, or the resources used by, aboriginal persons may exercise their rights.

Where any limitation may exist they are necessary to:

- Protect, conserve and enhance the land and the plants and animals that dependent upon it;
- Provide for the effective management of parks and provide discretions to land managers to use powers made available to them;
- Protect the heritage and cultural places and objects for the future;
- Ensure the matters of public safety and enjoyment are addressed and enable localised approaches to be implemented to support them;
- Ensure fair and equitable use of public places for the enjoyment of visitors;
- Protect the water quality of water supply catchments and waterways generally.

The instances in which regulations may restrict rights are only imposed insofar as is reasonable and proportionate to manage the risks addressed by the limitations, including the matters listed above.

There are not considered to be any less restrictive means reasonably available to achieve the purposes that the limitations seek to achieve.

A general exemption for Aboriginal persons from the Regulations, while a less restrictive option, would not adequately achieve the objectives of the proposed Regulations. Restricting, prohibiting or regulating activities in parks and giving powers to land managers to do so, will assist in the effective management and conservation of parks and ensure they are safe and useable by all.

Any limitation on the cultural rights of Aboriginal persons through the use of set asides determinations to restrict entry to parks or to access specified areas in parks is an indirect consequence of purposes of the Regulations. These issues can be mitigated by the powers under the Regulations being exercise by the land managers in a way that recognises and accounts for cultural rights.

Dated: 11/8/24



Steve Dimopoulos MP
Minister for Environment





PARLIAMENTARY COUNSEL VICTORIA

Your Reference: LEX-24918
Our Reference: 24-025/RB/JM

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SUBORDINATE LEGISLATION ACT 1994 SECTION 13 CERTIFICATE

Proposed statutory rule : **National Parks Regulations 2024**

Authorising Act : **National Parks Act 1975**

Date of print of proposed statutory rule : **02 August 2024**

A proposed statutory rule that is to be made by, or with the consent or approval of, the Governor in Council must be submitted to the Chief Parliamentary Counsel for the issue of a certificate by the Chief Parliamentary Counsel specifying whether the proposed statutory rule —



- | | |
|---|--|
| (a) <i>appears to be within the powers conferred by the authorising Act;</i> | (a) so appears; |
| (b) <i>appears without clear and express authority being conferred by the authorising Act —</i> | (b) |
| (i) <i>to have a retrospective effect; or</i> | (i) if made on or before 30 August 2024, does not so appear; |
| (ii) <i>to impose a tax, fee, fine, imprisonment or other penalty; or</i> | (ii) does not so appear; |
| (iii) <i>to shift the legal burden of proof to a person accused of an offence; or</i> | (iii) does not so appear; |
| (iv) <i>to sub-delegate powers delegated by the authorising Act;</i> | (iv) does not so appear; |
| (c) <i>appears to be consistent with the general objectives of the authorising Act;</i> | (c) so appears; |

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| <p>(d) <i>appears to be consistent with and to achieve the objectives set out in the proposed statutory rule and, if the proposed statutory rule is to amend an existing statutory rule, appears to be consistent with the objectives set out in the existing statutory rule;</i></p> <p>(e) <i>appears to be inconsistent with principles of justice and fairness;</i></p> <p>(f) <i>appears significantly or substantially to overlap or conflict with any other statutory rule or legislation;</i></p> <p>(g) <i>is expressed as clearly and unambiguously as is reasonably possible.</i></p> | <p>(d) so appears;</p> <p>(e) does not so appear;</p> <p>(f) does not so appear;</p> <p>(g) is so expressed.</p> |
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JAYNE ATKINS

Chief Parliamentary Counsel

Date : 2 August 2024

This certificate relates to the circumstances as at the date of the certificate.