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How does this amendment to the National Parks Regulations serve the public good?

National Parks Amendment (Safety) Regulations 2020 S.R. No. 137/2020

Recommended for adoption by the Minister, Lily D'Ambrosio - 30th Nov 2020.

Approved by Governor in Council - 15th Dec 2020.

Regulatory Impact Statement not prepared due to exemption certificate being issued by the Minister.

Section 13 Certificate issued by Parliamentary Counsel – 11th Nov 2020

There are two independent issues that have been conflated within this amendment. Both are predicated on the notion that the land manager needs to be legislatively enabled should a COVID-19 epidemic breakout within a National Park. Hence the bracketed word “safety” in the title of the amendment.

1. Temporary closure of park:

Prior to the amendment passing into law, r15 of the NPR enabled the land manager, by determination, to close a park to public access should life threatening events such as fire or flood arise. The use of park closure as a lazy management tool is guarded against by several sub-regulations.

Notwithstanding the obvious differences in the nature and quanta of risks presented by COVID-19 and a wild fire, the amendment adds a new r15A that permits the land manager, once again by determination, to close public access to a park should they consider the risk of transmitting COVID-19 or other infectious disease to persons in the park to be excessive. There are sub-regulations to prevent this regulation serving as a lazy management tool.

2. Set-asides:

Prior to the amendment passing into law, r20 of the NPR enabled the land manager to set-aside areas of the park where access was restricted in some way. This could be for reasons of public safety, but most often was to enable the land manager to strike an appropriate balance between the presentation and the preservation of the values of the park. This principle is 101 public land management.

However, with no reference to infectious disease control, we now have a subsection (3) added to r20 that vastly expands the scope of the land managers powers to set-aside. The scope is such that the set-aside can be extended to the whole-of-park, for any arbitrary duration and can proscribe any activity. It is hard to see how a regulation that confers such draconian power could be made under the National Parks Act.

What does the exemption certificate tell us?

It is hard to envisage the harm this amendment was designed to fix. Where is the body of scientific research to support the idea that COVID-19 is running rampant in our National Parks? On the other hand, it is too easy to visualise the harm done by restricting public access. The cost to the recreational communities is easily quantified as being over the \$2M threshold, something that should have demanded a RIS. Instead, we have an exemption certificate, so let's see what the Minister had to say in justifying these new regulations.

In her Human Rights Certificate, as noted by the Governor in Council 15th Dec 2020, the Minister addresses the limitations imposed by these regulations on freedom of movement, expression and assembly. With particular reference to the new set-aside powers, she says -

A set aside determination applying the new conditions may also limit each of the above Charter rights for the purposes of maintaining public safety, specifically in relation to public health. However, the scope of the new conditions that may be imposed are designed address the risk to public health by including the ability to limit the maximum number of persons in an area of a park and to regulate the activities that those persons may undertake. Such conditions are expected to enable the limitations on a right to be minimised and be proportional to the risk identified.

Any such limitation imposed by either determination are transparent because each must be published on Parks Victoria's website and be accompanied by appropriate signage at the relevant park or parks.

Notice the tenuous link between public safety and public health. This provides justification for a set-aside under the pre-existing r20(2)(b). So, the argument goes that the land manager is to use set-asides to restrict visitor numbers at say, a particular climbing crag, and by so doing reduce the rate of communal COVID transmission. The inevitable loss of freedom for the climbing community is to be considered a cost proportionate to the ensuing public health gain.

At the very least, the Minister should be challenged to show how she arrived at this conclusion. Why is the freedom of movement of the relatively small number of people enjoying the space of our National Parks being restricted in the name of reduced COVID transmission while hordes of city folks freely tread the city streets.