

National Parks Act 1975

National Parks Amendment (Safety) Regulations 2020

EXPLANATORY MEMORANDUM

Summary

- The proposed Regulations will amend the National Parks Regulations 2013 in order to enable Parks Victoria to close parks or sections of parks in order to manage risks to public safety related to Coronavirus (COVID-19).

Recommendation

1. It is recommended to the Governor in Council that the National Parks Amendment (Safety) Regulations 2020 be made.

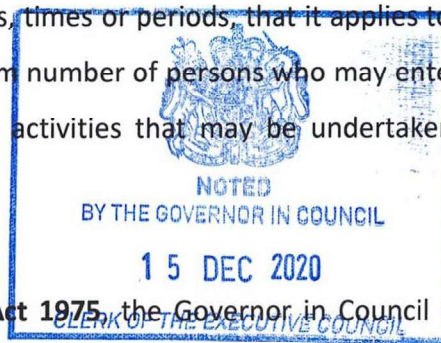
Background to proposed Regulations and their effect

2. The National Parks Regulations 2013 (the principal Regulations) provide for the care and management of Victoria's national parks.
3. The Department of Environment, Land Water and Planning (DELWP) is leading the preparation of a *Public Safety on Public Land and Waterways Summer Plan*, to facilitate COVID-safe community use of all public land and waterways during the 2020-21 summer.
4. National Parks Amendment (Safety) Regulations 2020 (the proposed Regulations) will complement the recently made Crown Land (Reserves) (Safety) Regulations 2020 and support other actions being taken by DELWP to ensure appropriate tools are available to land managers manage COVID risks such as overcrowding on Crown land.
5. The proposed Regulations are intended to come into operation on the day they are made and will amend the principal Regulations to:
 - provide for the temporary closure of a park by determination to prevent or mitigate the risk of transmission of COVID-19 or any other infectious disease;
 - provide for conditions to be imposed on activities in set aside areas in parks;
 - provide for enforcement of a temporary closure of a park to prevent or mitigate the risk of transmission of COVID-19 or any other infectious disease.
6. The proposed Regulations amend the principal Regulations as follows:
 - Regulation 5 inserts a new regulation 15A for the temporary closure of a park,



providing for Parks Victoria to close a park, by determination, for the purpose of preventing or mitigating the risk of transmission of COVID-19 or any other infectious disease to persons in a park.

- Regulation 6 extends the powers of authorised officers to direct a person to leave a park to which a determination under new regulation 15A applies.
- Regulation 7 extends the offence for a person to enter or remain in a park to which a determination under new regulation 15A applies.
- Regulation 8 amends current regulation 20 to insert a new subregulation (3) to provide that a determination that sets aside an area of a park to which access is prohibited or restricted may specify that it applies to the whole or a specified area of a park, that it applies on specified days, times or periods, that it applies to a class of vehicle, vessel or aircraft, the maximum number of persons who may enter the area subject to the determination, or the activities that may be undertaken in those areas.



Authorising Legislation

7. Under section 48 of the **National Parks Act 1975**, the Governor in Council may make regulations with respect to the care and management of Victoria's national parks.

Certificates provided in accordance with the Subordinate Legislation Act 1994

8. The following certificates are attached for the proposed National Parks Amendment (Safety) Regulations 2020 in accordance with the **Subordinate Legislation Act 1994**:
 - a consultation certificate under section 6;
 - an exemption certificate under section 8 certifying that in 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 to prepare a regulatory impact statement;
 - a human rights certificate under section 12A advising that the proposed Regulations engage and may limit any human rights in the **Charter of Human Rights and Responsibilities Act 2006** (the Charter Act) but any such limitations are demonstrably justified. The proposed Regulations engage the rights to freedom of movement, expression or assembly and cultural rights. The proposed Regulations provide for Parks Victoria to close or limit access for the purpose of maintaining

public safety in the prevention or mitigation of the risk of spreading COVID-19 in public spaces. As a public authority, Parks Victoria are required to consider any possible limitation of the above-mentioned rights under the Charter Act when making a determination.

National Competition Policy

9. In accordance with the Guidelines made under the **Subordinate Legislation Act 1994**, the proposed Regulations are not required to be tested under the national competition policy assessment requirements as they are exempted from the regulatory impact statement process.

Gazettal

10. Notice that the proposed Regulations have been made, will be published in a Special edition of the Victoria Gazette on the day of their making.

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Hon Lily D'Ambrosio MP

Minister for Energy, Environment and Climate Change
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National Parks Act 1975

National Parks Amendment (Safety) Regulations 2020

RECOMMENDATION

It is recommended to the Governor in Council that, under section 48 of the **National Parks Act 1975**, the National Parks Amendment (Safety) Regulations 2020 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 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: 30 / 11 / 2020

The Hon Lily D'Ambrosio MP
Minister for Energy, Environment and Climate Change





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Subordinate Legislation Act 1994

CONSULTATION CERTIFICATE

(Section 6)

National Parks Amendment (Safety) Regulations 2020

I, Lily D'Ambrosio, Minister for Energy, Environment and Climate Change, and 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 Amendment (Safety) Regulations 2020 and there is no overlap or conflict with any other existing or proposed statutory rule, legislation or stated government policy; and
- (b) the need for and scope of the proposed National Parks Amendment (Safety) Regulations 2020 has been considered in accordance with the guidelines made under section 26 of the **Subordinate Legislation Act 1994** and no further consultation is required to form a view on whether the proposed Regulations will have a significant economic or social burden on a sector of the public.

Dated: 30 / 11 / 2020

The Hon Lily D'Ambrosio MP
Minister for Energy, Environment and Climate Change





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Subordinate Legislation Act 1994

EXEMPTION CERTIFICATE

(Section 8)

National Parks Amendment (Safety) Regulations 2020

I, Lily D'Ambrosio, Minister for Energy, Environment and Climate Change, 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 any section of the public greater than \$2,000,000 per year in accordance with the Guidelines issued under the **Subordinate Legislation Act 1994**. Businesses, community groups or individuals are not required by the proposed regulations 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: 30 / 11 / 2020

The Hon Lily D'Ambrosio MP
Minister for Energy, Environment and Climate Change





Hon Lily D'Ambrosio MP

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Subordinate Legislation Act 1994

HUMAN RIGHTS CERTIFICATE

(Section 12A)

National Parks Amendment (Safety) Regulations 2020



I, Lily D'Ambrosio, Minister for Energy, Environment and Climate Change, and Minister responsible for administering the **National Parks Act 1975**, certify that, in my opinion the proposed National Parks Amendment (Safety) Regulations 2020 (the proposed regulations) may limit human rights set out in the **Charter of Human Rights and Responsibilities Act 2006**.

The proposed regulations will provide Parks Victoria with the ability to temporarily close a park by determination (closure determination) to prevent or mitigate the risk of transmission of COVID-19 or any other infectious disease under proposed new regulation 15A. This power broadly aligns with and is intended to be complementary with existing regulation 15 of the National Parks Regulations 2013 in respect of other emergencies. The proposed regulations also provide for additional conditions to be imposed in respect of the existing power to set aside by determination (set aside determination) areas of a park that are closed or where access is restricted under existing regulation 20.

Each determination power, may limit relevant human rights under the Charter such the rights to freedom of movement (section 12), expression or assembly (sections 15 and 16) and cultural rights (section 19) including of Aboriginal persons' rights to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

A closure determination may limit each of the above Charter rights for the purposes of maintaining public safety, specifically in relation to public health. The closure determination provision establishes discretionary powers to be exercised by Parks Victoria that are expected to be a reasonable and proportionate limitation on the above rights for the purpose of mitigating or preventing the risk of the spread of COVID-19 in public spaces. Such a determination would be reasonable and proportional to the risk as a determination must be made on a case-by case basis according to the criteria set out in the new regulation 15A including having regard to relevant health risks and other safety risks (such as overcrowding). Any decision is a temporary measure as a determination may not exceed a period of 14 days from the day it is made and must be revoked if the risk it intends to address no longer exists. A determination must have regard to a number of criteria including a direction made under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or

any current advice from the Chief Health Officer or the Department of Health and Human Services relating to COVID-19 or any other infectious disease.

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.

The National Parks Regulations 2013 provide that a traditional owner is exempt from the regulations when undertaking an activity that is a tradition, observance or custom (collectively Aboriginal tradition) of Aboriginal people generally or of a particular community or group of Aboriginal people, other than for specific provisions. Traditional owners are not presently exempt from the operation of current regulation 20 and will not be exempt from the operation of proposed new regulation 15A in respect to Aboriginal tradition for reasons of public safety, particularly public health risks of COVID-19 or other infectious diseases. However, any limitation on cultural rights would be reasonable and proportional to the risk and, in relation to current regulation 20, it is expected any conditions imposed will enable the limitations on the right to be minimised based on the risk identified.

The proposed National Parks Amendment (Safety) Regulations 2020 themselves that do not limit any Charter rights or do not temporarily close parks or close or restrict access to areas of parks. Rather, it provides the power for Parks Victoria to make determinations doing so on a case by case basis. When making determinations, Parks Victoria, as a public authority, must consider the human rights set out in the Charter in accordance with their obligations.

Dated: 30 / 11 / 2020



The Hon Lily D'Ambrosio MP
Minister for Energy, Environment and Climate Change





PARLIAMENTARY COUNSEL VICTORIA

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SUBORDINATE LEGISLATION ACT 1994 SECTION 13 CERTIFICATE

Proposed statutory rule : **National Parks Amendment (Safety) Regulations
2020**

Authorising Act : **National Parks Act 1975**

Date of print of proposed statutory rule : **10 November 2020**

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 —



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|---|---------------------------|
| (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) 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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Marina Farnan

MARINA FARNAN

Chief Parliamentary Counsel

Date : 11 November 2020

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