

1994—No. 115

**NATIONAL PARKS AND WILDLIFE ACT 1974—
REGULATION**

(Relating to the health of the public in Kosciusko National Park, and to
matters of general law revision)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council,
and in pursuance of the National Parks and Wildlife Act 1974, has been
pleased to make the Regulation set forth hereunder.

CHRIS HARTCHER
Minister for the Environment.

Commencement

1. This Regulation commences on 1 April 1994.

Amendments

2 The National Parks and Wildlife (Land Management) Regulation 1987 is amended:

- (a) by omitting from the definition of “authority” in clause 4 (1) and from clauses 11 (1) (q), 13, 14, 16, 30 (2) (b), 37, 41, 52, 54, 55, 59, 60(2) (c), 61(1)(b) and 62 (a) the word “Director” wherever occurring and by inserting instead the word “Director-General”;
- (b) by omitting from clause 13 (1) (a) the word “Director’s” and by inserting instead the word “Director-General’s”;
- (c) by omitting Part 3 and by inserting instead the following Part:

**PART 3—PUBLIC HEALTH IN KOSCIUSKO
NATIONAL PARK**

Definitions

18. In this Part:

“premises” means premises in the park;
“the park” means the Kosciusko National Park.

Object of Part

19. (1) The object of this Part is, under section 155A of the Act, to confer or impose on the Director-General 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.

Orders requiring the preservation of healthy conditions in the park (cf. orders Nos. 20–25 of Table to section 124 of the Local Government Act 1993)

20. (1) The Director-General may, if any premises, or any 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 such things as 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 Disposal Act 1970) 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.

Orders requiring the doing of things to or on premises (cf. orders Nos. 3 and 7 of the Table to section 124 of the Local Government Act 1993)

21. The Director-General may, if it is necessary or expedient to do so in the interests of public health or safety, 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.

Orders relating to premises used for shared accommodation (cf. order No. 5 (d) of the Table to section 124 of the Local Government Act 1993)

22. The Director-General may, if premises used for shared accommodation do not comply with the standards set out in Schedule 1 to the Local Government (Orders) Regulation 1993, order the occupier of the premises to take such action as is necessary to bring the premises into compliance with those standards.

Orders requiring that premises not be used in specified ways (cf. order No. 15 of the Table to section 124 of the Local Government Act 1993)

23. (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) 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.

Procedures to be observed before giving orders and provisions relating to orders generally

24. (1) Sections 129–137, 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 20–23 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.

Functions relating to microbial control in the park (cf. Part 4 of Public Health Act 1991)

25. (1) The Director-General may serve on the occupier of premises in which a regulated system (within the meaning of section 44 of the Public Health Act 1991) is installed a notice:

- (a) directing that a specified prescribed maintenance requirement or prescribed operating requirement (within the meaning of that section) for the system be complied with before a date stated in the notice; and
- (b) if appropriate, directing that the system not be operated until the Director-General is satisfied that the requirement has been complied with.

(2) The Director-General may, in exercising the Director-General's functions under subclause (1), exercise the same functions and powers that an environmental health officer employed by a council may exercise under section 47 (1) of the Public Health Act 1991.

(3) Sections 193–201 of the Local Government Act 1993 apply in relation to the exercise of the functions and powers conferred on the Director-General under subclause (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, and the reference in section 199 (2) (f) to the general manager is to be read as a reference to the Director-General.

(4) A notice under this clause may be served only if the Director-General is satisfied that the requirement to which the notice relates is not being, or has not been, complied with.

(5) If the directions given in a notice are not complied with, the Director-General may make arrangements for the doing of such work as may be necessary in order to comply with the requirements of the notice.

(6) Any person assigned or engaged to do any work on premises in accordance with subclause (5) may, at any reasonable time, enter the premises to do the work or have it done. An amount equal to the cost of carrying out work in accordance with those arrangements may be recovered from the occupier of the premises as a debt due to the Director-General.

Functions relating to public swimming pools and spas in the park (cf. Part 4 of Public Health Regulation 1991)

26. (1) In this clause:

“**public spa pool**” means a watercontaining structure:

- (a) which is used or intended to be used for human bathing; and
- (b) to which the public is admitted; and
- (c) which has facilities for heating the water and for injecting jets of water or air into the water;

“**public swimming pool**” means a water-containing structure:

- (a) which is used or intended to be used for human bathing, swimming or diving; and
- (b) to which the public is admitted,

and includes a water slide or similar aquatic recreational structure.

(2) The Director-General may enter without paying any admission fee, and inspect, any premises containing a public swimming pool or public spa pool at any time during which the pool is open to the public and may:

- (a) inspect the pool surrounds, including toilets, change rooms and plant rooms; and
- (b) carry out field tests on pool water; and
- (c) take and remove samples of pool water.

(3) The Director-General may by order in writing, if satisfied on reasonable grounds that a public swimming pool, or a public spa pool, in the park is a risk to public health, direct the occupier of the premises containing the pool to close the pool for use by the public until the order is revoked.

(4) Any such order may include provisions ancillary to, or consequential on, the making of the order.

(5) When satisfied on reasonable grounds that the pool is no longer a risk to public health, the Director-General is to revoke the order.

Provision of services relating to the health of the public in the park (cf. section 24 of the Local Government Act 1993)

27. (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 such manner as 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 which 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.

Power of entry and inspection

28. (1) The Director-General may, in exercising the Director-General's functions under this Part (except those under clause 25 or 26), exercise the same functions and powers 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, a reference in those sections to a council is, for the purposes of this clause, to be read as a reference to the Director-General, and the reference in section 199 (2) (f) to the general manager is to be read as a reference to the Director-General.

- (d) by omitting from clause 61 (1) (b) the words "the park," and by inserting instead the words "the park; or";
- (e) by inserting after clause 61 (1) (b) the following paragraph:
 - (c) fails to comply with an order or direction given to the person under Part 3,
- (f) by omitting Forms 2–6 from Schedule 1;
- (g) by omitting from Schedule 2 the matter relating to clause 25.

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EXPLANATORY NOTE

Section 155A of the National Parks and Wildlife Act 1974 enables the regulations under that Act to confer or impose on the Director-General of National Parks and Wildlife any function relating to the health of the public in the Kosciusko National Park that is the same as a function conferred or imposed on a council constituted by the Local Government Act 1993 in relation to the health of the public in its area. Any such function may be conferred or imposed on the Director-General with any necessary modifications.

The object of this Regulation is confer or impose on the Director-General certain regulatory and service functions relating to public health that are currently conferred or imposed on a council under the Local Government Act 1993. The regulatory functions generally relate to the giving of orders requiring the preservation of healthy conditions (e.g. orders relating to the preservation of clean conditions in premises and the control of premises where food is prepared and served to the public). Other orders will require compliance with standards set under the Local Government Act 1993 which relate to places of shared accommodation. The service functions generally relate to the collection and removal of garbage in the park.

In carrying out such functions, the Director-General will also be able to enter and inspect premises. Powers of entry and inspection are examples of the ancillary functions that can be exercised by a council under Part 2 of Chapter 8 of the Local Government Act 1993 for the purposes of its public health functions under that Act.

This Regulation also confers on the Director-General certain functions relating to microbial control and public swimming pools and spas that are currently conferred on councils (or council employees) under the Public Health Act 1991. These functions generally relate to the regulation of certain kinds of systems (e.g. air-handling systems, evaporative cooling systems, hot-water systems) so as to prevent or inhibit the growth in the systems of micro-organisms that are liable to cause Legionnaires' disease and other diseases, and also to the inspection of public swimming pools and spas and their closure if they constitute a risk to public health.

Under section 21 of the National Parks and Wildlife Act 1974, the Director-General can delegate to officers of the National Parks and Wildlife Service any of the functions conferred or imposed on the Director-General by this Regulation. The Land and Environment Court has jurisdiction to review the exercise of such functions.

This Regulation also amends the National Parks and Wildlife (Land Management) Regulation 1987 to update references to the Director-General (formerly the Director) of National Parks and Wildlife and to delete provisions relating to impounding which are now obsolete as a consequence of the commencement of the Impounding Act 1993 on 1 July 1993.
