

National Competition Policy Review

Regulation of commercial activities in Victoria's national parks and Melbourne's waterways

Government response

February 2006

Published by the Victorian Government
Department of Sustainability and Environment
Melbourne, January 2007

© The State of Victoria
Department of Sustainability and Environment 2006

This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the *Copyright Act 1968*.

Authorised by the Victorian Government, 8 Nicholson Street, East Melbourne

Printed on 100% Recycled paper

For more information contact the DSE Customer Service Centre 136 186.

Disclaimer

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

CONTENTS

1. SUMMARY OF REVIEW RECOMMENDATIONS AND PROPOSED GOVERNMENT RESPONSE	2
2. BACKGROUND	7
3. DETAILED GOVERNMENT RESPONSE TO THE REVIEW FINDINGS	7
3.1 Objectives of the Legislation (recommendation 1)	7
3.2 Allowing commercial activities otherwise prohibited (recommendation 2)	9
3.3 Requirement for consents (recommendation 3)	11
3.4 Consent allocation (recommendation 4)	12
3.5 Alpine grazing licences (recommendation 5)	13
3.6 Consent periods (recommendation 6)	14
3.7 Fees (recommendations 7 and 8)	15
3.8 Advisory bodies (recommendations 9 and 10)	16
3.9 Waterways – hire and charter vessels (recommendation 11)	17
4. CONCLUSION	18
 ATTACHMENT	
A RECOMMENDATION 10 – AMENDMENTS TO MEMBERSHIP CRITERIA FOR ADVISORY BODIES (NATIONAL PARKS ADVISORY COUNCIL AND ALPINE ADVISORY COMMITTEE)	20

1. SUMMARY OF REVIEW RECOMMENDATIONS AND GOVERNMENT RESPONSE

The National Competition Policy (NCP) review of the regulation of commercial activities in Victoria's national parks and Melbourne's waterways under the *National Parks Act 1975* and sections of Part 4 of the *Water Industry Act 1994* was completed in 2002. The review also examined the metropolitan rate (also known as the 'parks charge') and related subordinate legislation, but made no recommendations on these matters.

The review found that the legislation is generally consistent with NCP principles. Six key review issues were identified and 11 recommendations were made in relation to these issues. (Recommendations 1-10 relate to the National Parks Act and recommendation 11 relates to the Water Industry Act.) The issues, the review recommendations and the Government's response to each of these recommendations are summarised in Table 1 below.

Table 1: Review recommendations and Government response

Issue	Review recommendation	Government response
Objective of the Act	<p>1. The objective of the National Parks Act can be broadly summarised as preserving the parks’ natural environment, and facilitating park usage by the public in a manner consistent with the preservation of the parks’ indigenous flora and fauna, cultural or other features. The legislative objective is specified in some detail in s.4 and should be retained.</p>	<p>The Government accepts the recommendation.</p> <p>No further action is required.</p>
Allowing commercial activities otherwise prohibited	<p>2. Further consideration should be given to putting in place more flexible arrangements that will facilitate commercial activities that, while prohibited in the first instance, can be demonstrated to be able to be undertaken in a manner consistent with the regulatory objectives associated with the relevant park type.</p>	<p>The Government does not accept the recommendation.</p> <p>The Government considers that the public costs of allowing a process to enable consideration of otherwise prohibited activities on a case-by-case basis would exceed the public benefits.</p> <p>The aim of the Act is to preserve the parks’ natural environment and to facilitate park usage by the public for enjoyment, recreation or education in a manner consistent with that aim and the preservation of the parks’ indigenous flora and fauna, cultural and other features. Introducing a process whereby otherwise prohibited activities could be considered on a case-by-case basis could undermine the intent of the Act that parks are permanently protected.</p> <p>Furthermore, there are likely to be:</p> <ul style="list-style-type: none"> • Difficulties in determining whether particular proposals will or will not harm a park. • Additional costs to Government and industry, and considerable uncertainty to the community and industry. <p>No further action is proposed.</p>

Issue	Review recommendation	Government response
Consents	<p>3. Consents should remain the key measure to control and monitor commercial operations in parks. However, consents may be unnecessary when those activities do not threaten the natural values of the park. If required, when consents are considered unnecessary there should be an obligation for commercial operators to provide details on the commercial activity undertaken in the park.</p>	<p>The Government accepts the recommendation in part – that is consents remain the key measure to control and monitor commercial operations in parks.</p> <p>The Government does not consider that consents may be unnecessary for some commercial activities as this may threaten the ability of the Government to effectively manage a park. The Government considers that there are few activities that do not potentially threaten the natural values of parks.</p> <p>No further action is proposed.</p>
	<p>4. An allocation based upon the principle of 'first come first served' should not be relied upon to allocate consents except where there is clear excess capacity of an equivalent standard.</p>	<p>The Government accepts the recommendation.</p> <p>Consents will be allocated through a competitive process except where there are circumstances where competitive allocation is not appropriate. For example, when the capacity exceeds the number of operators seeking consents, the costs of competitive allocation may exceed the public benefits. If there is a need to depart from competitive allocation for particular circumstances, the reasons will be transparent and made public.</p> <p>The Review Report notes that the allocation process stipulated in Parks Victoria's <i>Lease and Licence Process Manual</i> are consistent with the preference to use competitive allocation processes when allocating consents.</p> <p>No further action is proposed.</p>
	<p>5. If alpine grazing is to continue then section 32AD should be amended to specify that licences should be offered through a competitive process to those parties who can demonstrate the requisite skills. Where the number of applicants is limited a reserve price should be established that equates to the estimated market value of the licence.</p>	<p>This recommendation is now redundant.</p> <p>In May 2005, the Government announced that cattle grazing would no longer be allowed in the Alpine National Park and legislation has been passed to implement this decision.</p>

Issue	Review recommendation	Government response
Consents (continued)	6. The National Parks Act should, if possible, be amended to provide standardised (or at least simplified) maximum terms for permits, licences, tenancies and leases.	<p>The Government accepts the recommendation.</p> <p>The <i>National Parks (Additions and Other Amendments) Act 2004</i> repealed sections 30(2), 32C, 32FA and several spent provisions. As a result, redundant consent provisions in the Act have been removed and this has reduced the number of different consent terms.</p> <p>No further action is proposed</p>
Fees	7. As a default position, fees should reflect market values, either as a result of a competitive allocation process or on the basis of a calculation/formula which approximates the market value when a competitive allocation process is not employed.	<p>The Government accepts the recommendation.</p> <p>Fees for consents are set to reflect market values through a tender process, except in cases where an alternative approach can be justified. If there is a need to depart from this tender process for particular circumstances, the reasons will be determined in a transparent manner and made public. This will be implemented according to Government procedures for fees and charges.</p> <p>No further action is proposed.</p>
	<p>8. Where there is any discount from a market-set fee the discount should reflect only:</p> <ul style="list-style-type: none"> ▪ The extra costs associated with any licence restrictions/ requirements which would not be applied to licensees of comparable freehold/Crown land. ▪ Reduced productive capacity because of any special characteristics of the park. <p>The discount should not reflect the particular circumstances of the licensee (e.g. distance from the home property).</p> <p>Any discount should be determined in a transparent manner and made public.</p>	<p>The Government accepts the recommendation.</p> <p>Fees for consents are set to reflect market values through a tender process, except in cases where an alternative approach can be justified. If there is a need to depart from this tender process for particular circumstances, the reasons will be determined in a transparent manner and made public. This will be implemented according to Government procedures for fees and charges.</p> <p>No further action is proposed.</p>

Issue	Review recommendation	Government response
Advisory bodies	9. Advisory bodies should be removed from the Act. This does not stop the Minister from consulting with the community through advisory bodies and other fora.	<p>The Government does not accept the recommendation.</p> <p>The Government believes that there are public benefits of retaining advisory bodies in the Act as they are a cost effective way of consultation. This, combined with a new selection process (see recommendation 10 below), will ensure wider participation on advisory bodies.</p> <p>No further action is proposed</p>
	10.If advisory bodies are still constituted under the Act then membership nominations should be widely invited and the selection criteria should be specified in terms of relevant skills and experiences.	<p>The Government accepts the recommendation.</p> <p>This recommendation has been implemented in relation to the National Parks Advisory Council and the Alpine Advisory Committee through the <i>National Parks (Additions and Other Amendments) Act 2004</i>.</p>
Waterways – hire and charter vessels	11.Licensing of hire and charter vessels and jetties and moorings should be retained by Parks Victoria, but in a manner consistent with the recommendations of the former Office of Regulation Reform in its review of the Yarra River.	<p>The Government accepts the recommendation.</p> <p>Parks Victoria and the Yarra River Waterways Committee are undertaking a Yarra River traffic study and Trading Vessel operating environment as part of the 'Two Rivers Project'.</p> <p>The current commercial vessel operating environment will remain pending the recommendations from the 'Two Rivers Project'. The draft recommendations from the review of the Trading Vessel operating environment will be reviewed against National Competition Policy prior to finalisation.</p>

2. BACKGROUND

Under the Inter-governmental Competition Principles Agreement, signed by the Council of Australian Governments (COAG) in April 1995, Victoria agreed to review and, where appropriate, reform all legislation containing restrictions on competition under the following guiding principle:

Legislation should not restrict competition unless it can be demonstrated that:

- *the benefits of the restriction to the community as a whole outweigh the costs; and*
- *the objectives of the legislation can only be achieved by restricting competition.*

The key requirement of a NCP legislative review is to assess both the net public benefit of restrictions on competition and the viability of less restrictive alternative means of achieving the objective(s) of the legislation. More specifically, NCP legislation reviews are required to consider the following:

- The objectives of the legislation.
- The nature of any restrictions on competition.
- The likely effect of each restriction on competition and on the economy generally.
- The net cost or benefit to the community of each restriction on competition.
- Alternative means for achieving the same result including non-legislative approaches.

The NCP review of the regulation of commercial activities in Victoria's national parks and Melbourne's waterways under the *National Parks Act 1975* and sections of Part 4 of the *Water Industry Act 1994* was conducted by the Allen Consulting Group (the Review Team) and completed in 2002. The review also examined the metropolitan rate (often referred to as the 'parks charge') and related subordinate legislation but made no recommendations on these matters.

This paper sets out the Government's response to the findings and recommendations contained in the Review Team's report *The Regulation of Commercial Activities in Victoria's National Parks and Melbourne's Waterways* (the Review Report). The Department of Sustainability and Environment assessed the Review recommendations with a view to developing necessary legislative amendments to the *National Parks Act 1975*. Three of the Review report's recommendations were addressed in the course of developing the *National Parks (Additions and Other Amendments) Act 2004*:

- Recommendation 6 (simplification of consent terms).
- Recommendations 9 and 10 (advisory bodies – National Parks Advisory Council (NPAC) and Alpine Advisory Committee (AAC)).

3. DETAILED GOVERNMENT RESPONSE TO THE REVIEW FINDINGS

3.1 Objectives of the Legislation (recommendation 1)

Potential restriction

According to NCP, legislation that restricts competition should only be retained if it can be demonstrated that there are net benefits to the community from restriction and the objectives of the legislation can only be achieved by restricting competition. Consequently, the Review Report examines the objectives of the Act to "identify the rationale for government regulation to provide a basis for assessing whether the legislation should be refined to achieve these objectives in the least restrictive manner".¹ The report identifies that "... the protection of the

¹ The Allen Consulting Group, *The Regulation of Commercial Activities in Victoria's National Parks and Melbourne's Waterways*, 2001, p.16.

natural environment, indigenous flora and fauna, and cultural or other features of each park is the primary objective for all parks under the *Act*.²

The Review Team found that the Act clearly addresses potential market failures such as those arising from public goods, negative and positive social and environmental externalities and information asymmetries. It considered land, and its associated natural resources, may provide environmental amenities and other benefits including biodiversity and ecological services to current and future generations. As the market system is not able to reflect, or poorly reflects, the values that the community places on these benefits, they will not be adequately incorporated into land management decisions without specific regulation.

The Review Team also found that there may be a role for government to regulate to overcome the problems caused by negative externalities (or impacts on third parties) resulting from some commercial activities in parks. There may also be a role for government to facilitate and promote positive externalities, such as fostering the preservation of land with special features, and overcoming information asymmetries because the public may not be aware of the true environmental value of land.

With respect to Part 4 of the *Water Industry Act 1994*, the Review Team found that there is most likely to be a case for regulation of vessel charter, jetty and mooring licences as a number of market failures may exist on Melbourne's waterways. The Review Team considered that the construction of jetties or the operation of charter vessels might have environmental consequences. Although unlikely, natural monopolies for charter services may exist on a number of isolated routes, and are most likely to arise with the construction and operation of jetties in narrow waterways. Further, information asymmetries may arise with respect to preservation of waterways and consumer protection of charter vessel passengers.

The Review Team explored whether there may be some benefit in simplifying the objectives to have a single over-arching objective for all park categories. It concluded that there are ongoing benefits in retaining the current objectives which clearly specify those features that justify particular regulation for specific park categories.

Review recommendation 1

The objective of the National Parks Act can be broadly summarised as preserving the parks' natural environment, and facilitating park usage by the public in a manner consistent with the preservation of the parks' indigenous flora and fauna, cultural or other features. The legislative objective is specified in some detail in s.4 and should be retained.

Discussion

The Act is the primary legislation for the permanent protection and management of:

- 40 national parks (including 19 wilderness zones, 22 remote and natural areas and 4 designated water supply catchment areas in Great Otway, Kinglake and Yarra Ranges National Parks)
- 3 wilderness parks
- 27 State parks
- 13 marine national parks
- 11 marine sanctuaries
- 22 other parks and reserves on the schedules to the Act.

² Ibid, p.17.

In total these areas cover approximately 3.3 million hectares of Crown land (or approximately 14 per cent of the State).

These areas form the core of the State's system of protected areas and are largely representative of the diverse natural environments occurring on public land and waters. They are protected permanently for the benefit of the public for the purposes of enjoyment, recreation or education. Other indirect benefits that flow to the community from parks include biodiversity and ecological services such as water catchment and filtration, and air purification.

The Government agrees with the Review Team that the Act addresses market failures associated with public goods, negative and positive externalities and variable access to information. The Government also agrees that intervention is needed to protect these crucial parts of our heritage for current and future generations, and that the objective of the Act should be retained in its current form.

Government response to recommendation 1

The Government accepts the recommendation.

Proposed action

No further action is required.

3.2 Allowing commercial activities otherwise prohibited (recommendation 2)

Potential restriction

The Act restricts the types of commercial activities that can be undertaken in various types of parks. The Review Team considered that restrictions on certain commercial activities can be justified on the basis that they could sufficiently threaten a park's environmental status. However, the Review Report suggested the adoption of an approach whereby "certain commercial activities would be prohibited in certain parks, with limited exceptions, but there would also be a mechanism for the review of prohibitions on a case-by-case basis".³

Review recommendation 2

Further consideration should be given to putting in place more flexible arrangements that will facilitate commercial activities that, while prohibited in the first instance, can be demonstrated to be able to be undertaken in a manner consistent with the regulatory objectives associated with the relevant park type.

Discussion

The overall primary objective for land managed under the Act is its permanent preservation and protection. As the Review Team notes, "the aim of the Act is to protect parks, not make them available for exploitation".⁴

The Act provides for two main types of commercial activity in parks:

- Those activities that assist the public's use of the parks for enjoyment, recreation or education (e.g. commercial tour operations such as guided walks and adventure tours; services which provide accommodation, provision of food or other supplies) and that are related directly to one of the objects of the Act.

³ Ibid, p.26.

⁴ Ibid, p.27.

- Those activities that would otherwise be prohibited because they conflict with the objects of the Act but which Parliament has expressly provided for (e.g. apiculture in some parks).

It is considered that the public costs associated with the Review Team's proposal to establish a specific process to enable consideration of prohibited activities on a case-by-case basis would exceed the public benefits. There are several reasons for not supporting the proposal:

- The Government agrees with the Review Team's observation that "the aim of the Act is to protect parks, not make them available for exploitation".⁵ Introducing a process whereby otherwise prohibited activities could be considered on an ongoing basis could undermine the Act and Parliament's intent that they be protected and threaten the integrity of the parks. It would be contrary to the public's expectation that national parks are not to be subjected to exploitative use for private gain. History shows a strong public interest and concern over such matters.
- The Government agrees with several of the Review Team's observations in relation to the proposal:
 - There are likely to be difficulties in determining that a particular proposal will not harm a park. Very few activities will have no impact on a park or its visitors, and activities, which in the first instance could fall into the category of activity envisaged by the Review Team, may indeed turn out to have impacts.
 - There are likely to be significant additional costs for government and industry, and considerable uncertainty for the community and industry, resulting from assessing applications on a case-by-case basis.
 - To implement the proposal could result in some legal uncertainty about what constitutes a "frivolous application" (in which case assessment costs would be borne by the applicant) and the degree of proof required to demonstrate that a prohibited activity would not harm a park.
- There are extensive areas of land outside parks where the benefits of the commercial activities prohibited under the Act can be obtained.
- Decisions on any particular uses of a national park are usually made in the course of determining whether an area should be a national park or not. The Government has in place a mechanism through the Victorian Environmental Assessment Council (VEAC) to consider existing or proposed uses of public land. VEAC undertakes comprehensive public consultation before developing its recommendations to government. This provides opportunities for input on specific matters.
- In practice, there are few prohibited activities that could be undertaken in a manner consistent with the object of the Act.

In summary, the Government believes that the public benefits of providing certainty to the community that parks are protected and about what is, or is not, permitted in parks under the Act exceeds the public costs. The Government does not consider that there are net benefits in establishing a process which, by its very existence, acts to encourage ongoing consideration of additional exploitative activities in parks and to undermine Parliament's intention that they be protected. Specific matters are best addressed at the time an area of land is considered for declaration as a park under the *National Parks Act 1975*.

⁵ Ibid, p.27.

Government response to recommendation 2

The Government does not accept the recommendation.

The Government considers that the public costs of allowing a process to enable consideration of otherwise prohibited activities on a case-by-case basis would exceed the public benefits. The aim of the Act is to preserve the parks' natural environment and to facilitate park usage by the public for enjoyment, recreation or education in a manner consistent with that aim and the preservation of the parks' indigenous flora and fauna, cultural and other features. Introducing a process whereby otherwise prohibited activities could be considered on a case-by-case basis could undermine the intent of the Act that parks are permanently protected. In addition, there are likely to be:

- Difficulties in determining whether particular proposals will or will not harm a park.
- Additional costs to Government and industry and considerable uncertainty to the community and industry.
- In practice, there are few prohibited activities that could be undertaken in a manner consistent with the object of the Act.

Proposed action

No further action is proposed.

3.3 Requirement for consents (recommendation 3)

Potential restriction

The Act contains provisions for a range of consents (including licences, permits, leases, tenancies and occupations) to allow for various activities or uses in parks. The Review Team focused on consents for commercial tour operations. It considered that, while there is agreement that there is a role for government to use consents, there may be no need for formal licensing on environmental grounds for certain commercial tour activities in certain parks.

Review recommendation 3

Consents should remain the key measure to control and monitor commercial operations in parks. However, consents may be unnecessary when those activities do not threaten the natural values of the park. If required, when consents are considered unnecessary there should be an obligation for commercial operators to provide details on the commercial activity undertaken in the park.

Discussion

Consents are granted to operators to run commercial tours in parks. These tours provide an important opportunity for visitors to experience the park when, because of lack of time, experience or knowledge, they might not otherwise be able to do so.

The Government partly supports the recommendation in that it agrees that consents should remain the key measure to control and monitor commercial tour operations in national parks. However, the Government does not agree that consents may be unnecessary when activities do not threaten the natural values of the park. The Government considers that there are very few activities that do not potentially threaten the natural values of parks.

In any case, consents play an important role beyond regulating for environmental impacts. Consents, as an important management tool, provide, for example, a means of ensuring that the activities of businesses within a park are consistent with the objectives of the park. Furthermore, licensing enables the Government to require businesses operating in parks to

have adequate risk management and public liability insurance cover and properly indemnify the manager and the Crown. This is increasingly important given the 1998 High Court ruling which required that park owners owe a duty of care to all park users and commercial and not-for-profit tour operators owe a duty of care to their clients. Tour operators were required to have \$10 million of public liability insurance, consistent with virtually all Australian national parks agencies⁶.

As the Review Report states:

... licensing through consents is justified on the basis that:

- *otherwise the extent and type of commercial activities in parks is decided by the commercial operators and the economic imperatives that are driving them, not the park managers;*
- *there is no significantly less burdensome means of obtaining visitor numbers and details than through the consent system;*
- *they ensure that commercial operators have appropriate public liability insurance...; and*
- *they have conditions relating to standards of behaviour so that potential for harm to individuals or impacts on the environment are minimised.*⁷

The Government agrees with this assessment and contends that, even if situations arose where licensing was not considered necessary to minimise threats to the natural values of a park, the granting of consents is still justified on park management, public liability and safety grounds.

Government response to recommendation 3

The Government accepts the recommendation in part – that is consents remain the key measure to control and monitor commercial operations in parks.

The Government does not consider that consents may be unnecessary for some commercial activities as this may threaten the ability of the Government to effectively manage a park. The Government considers that there are very few activities that do not potentially threaten the natural values of parks.

Proposed action

No further action is proposed.

3.4 Consent allocation (recommendation 4)

Potential restriction

NCP principles suggest that consents should be allocated through competitive processes. The Review Team considered that the allocation processes stipulated in the *Parks Victoria Lease and Licence Allocation Manual* are consistent with NCP. However, it identified that some allocation processes currently employed have the potential to be implemented in a less than open competitive manner.

Review recommendation 4

An allocation based upon the principle of 'first come first served' should not be relied upon to allocate consents except where there is clear excess capacity of an equivalent standard.

Discussion

⁶ Ibid, p.18, footnote 23.

⁷ Ibid, pp. 33-34.

The Government, in its response to the NCP review of the *Forests Act 1958*⁸, indicated that it acknowledged the importance of developing transparent approaches for the allocation of licences and permits for minor forest produce. It also indicated that, where appropriate, the principles of competitive allocation will underpin administrative processes for the allocation of consents in the utilisation of forest produce. These comments are also relevant to consents under the *National Parks Act 1975*.

The Review Report notes that the allocation processes stipulated in Parks Victoria's *Lease & Licence Process Manual* are consistent with the view that the preference is to use competitive allocation processes when allocating consents. However, the Report also recognises that there may be exceptional circumstances where this is neither practicable nor appropriate.

The Government agrees with this view. Most major allocations already utilise a competitive process that includes advertisement. For example, consents for the Mount Buffalo Chalet and Tidal River kiosk were advertised and allocated as part of a competitive process.

However, there are circumstances where competitive allocation is not appropriate. For example, in cases where there is limited demand (compared to the opportunities available) for consents to undertake some specialised commercial tour operations in parks, the costs of competitive allocation will exceed the public benefits. If there is a need to depart from competitive allocation for particular circumstances, the reasons will be transparent and made public.

Government response to recommendation 4

The Government accepts the recommendation.

Consents will be allocated through a competitive process unless there are circumstances where competitive allocation is not appropriate. For example, when the capacity exceeds the number of operators seeking consents, the costs of competitive allocation may exceed the public benefits. If there is a need to depart from competitive allocation for particular circumstances, the reasons will be transparent and made public.

The Review Report notes that the allocation processes stipulated in Parks Victoria's *Lease & Licence Process Manual* are consistent with the preference to use competitive allocation processes when allocating consents.

Proposed action

No further action is proposed.

3.5 Alpine grazing licences (recommendation 5)

Potential restriction

The Review Team raised concerns over the allocation of licences to graze cattle in the Alpine National Park. The arrangements, which restricted the ability to competitively allocate licences, essentially gave ongoing rights not only to the licence holders but also to their families (licences may also be transferred to other approved persons, with the consent of the Minister). The Review Report noted that this excluded the potential for new entrants who are not family members or approved persons.

⁸ NCP Review of the *Forests Act 1958*, KPMG 1998.

Review recommendation 5

If alpine grazing is to continue then section 32AD should be amended to specify that licences should be offered through a competitive process to those parties who can demonstrate the requisite skills. Where the number of applicants is limited, a reserve price should be established that equates to the estimated market value of the licence.

Discussion

This recommendation is now redundant. In 2004, the Minister established an Alpine Grazing Taskforce to investigate and report on options relating to the future of cattle grazing in the Alpine National Park. In May 2005, the Government announced that cattle grazing would no longer be allowed in the Alpine National Park and legislation has been passed to implement this decision.

Government response to recommendation 5

In May 2005, the Government announced that cattle grazing would no longer be allowed in the Alpine National Park and legislation has been passed to implement this decision.

Proposed action

No further action is required.

3.6 Consent periods (recommendation 6)

Potential restriction

The Act sets out a range of maximum terms for consents depending on the type of activity involved. The Review Team considers there is scope to rationalise the existing consent terms, with a single maximum term for each consent type. However, the Review Team also acknowledges that there may be a need to have more than one term for a particular type of consent.

Review recommendation 6

The National Parks Act should, if possible, be amended to provide standardised (or at least simplified) maximum terms for permits, licences, tenancies and leases.

Discussion

Several types of consents, with different maximum terms, may be granted under the Act. A summary is set out in the Review Report.⁹ The maximum terms range from 6 weeks (permits to occupy a building, camping place or other facility) to 20 or 21 years (leases for substantial buildings or other developments – e.g. Mount Buffalo Chalet and skifields). There are also unspecified maximum terms for agreements with electricity companies or public authorities undertaking public works.

The different maximum terms reflect the wide range of purposes for which consents may be granted under the Act. Overall, there is minimal scope to simplify and standardise the consent periods. However, the consent provisions in the Act have recently been simplified by removing several provisions that are no longer required. The *National Parks (Additions and Other Amendments) Act 2004* repealed sections 30(2), 32C and 32FA and several spent provisions. In particular, the repeal of section 30(2), which enabled an agreement with a public authority

⁹ The Allen Consulting Group, *The Regulation of Commercial Activities in Victoria's National Parks and Melbourne's Waterways*, 2001, pp. 39-40. The Act has since been amended to provide for licences for dams and water distribution works in various box-ironbark parks, and to remove several redundant consent provisions.

to graze cattle in part of Mornington Peninsula National Park, removes the only provision that provided for a ten-year consent period.

Government response to recommendation 6

The Government accepts the recommendation.

The *National Parks (Additions and Other Amendments) Act 2004* repealed sections 30(2), 32C, 32FA and several spent provisions. As a result, redundant consent provisions in the Act have been removed and this has reduced the number of different consent terms.

Proposed action

No further action is proposed.

3.7 Fees (recommendations 7 and 8)

Potential restriction

A range of mechanisms can set fees for the various consents under the Act. Fees are usually set on the basis of market valuation but for some consents (e.g. for commercial tour operators) they are set by a formula (a flat fee based on the number of clients). The Review Team expressed concern that the establishment of fees may be done in a way that distorts competition in various markets.

Review recommendation 7

As a default position, fees should reflect market values, either as a result of a competitive allocation process or on the basis of a calculation/formula that approximates the market value when a competitive allocation process is not employed.

Review recommendation 8

"Where there is any discount from a market-set fee the discount should reflect only:

- The extra costs associated with any licence restrictions/requirements which would not be applied to licensees of comparable freehold/Crown land.
- Reduced productive capacity because of any special characteristics of the park.

The discount should not reflect the particular circumstances of the licensee (e.g. distance from the home property). Any discount should be determined in a transparent manner and made public."

Discussion

The Government's policy for rentals on Crown land is that they should reflect market values except in particular cases. The Review Report provides a number reasons where governments may provide consents below market value.¹⁰ The Government accepts that, where there is a departure from market values, those reasons should be determined in a transparent manner and made public.

Government response to recommendations 7 and 8

The Government accepts the recommendations.

Fees for consents are set to reflect market values through a tender process except in cases where an alternative approach can be justified. If there is a need to depart from this tender process for particular circumstances, the reasons will be determined in a transparent manner

¹⁰ Ibid, p. 43.

and made public. This will be implemented according to the Government's fees and charges guidelines.

Proposed action

No further action is proposed.

3.8 Advisory bodies (recommendations 9 and 10)

Potential restriction

The Act establishes several specific advisory bodies. The Review Team considers there is no reason to incorporate advisory bodies within the Act and expressed concern that the specification of advisory council membership in terms of organisational representation may give a privileged position to members of distinct organisations.

Review recommendation 9

Advisory bodies should be removed from the Act. This does not stop the Minister from consulting with the community through advisory bodies and other fora.

Review Recommendation 10

If advisory bodies are still constituted under the Act then membership nominations should be widely invited and the selection criteria should be specified in terms of relevant skills and experiences.

Discussion – recommendation 9

There are three advisory bodies specifically provided for under the Act:

- National Parks Advisory Council (NPAC) (section 10)
- Alpine Advisory Committee (AAC) (section 32AE)
- Barmah Forest Grazing Advisory Committee (BFGAC) (section 32F).

The role of these bodies is to provide advice on a range of matters as set out in the Act and associated agreements, as follows:

- NPAC – to advise the Minister generally in relation to the administration of the Act, on proposed excisions from parks and on various consents relating to earth resources and some leases
- AAC – to assist in the development of a management plan for the Alpine National Park and to advise the Minister on the transfer of seven-year grazing licences and the replacement of huts used by grazing licensees in that park
- BFGAC – to advise on who is a fit and proper person to be granted a grazing licence in Barmah State Park, to be consulted on fees and conditions applying to a grazing licence and to advise on any grazing matters in the park that it considers appropriate.

The Government believes that there are public benefits of retaining advisory bodies in the Act as they are a cost effective way of consultation. This, combined with a new selection process (see recommendation 10), will ensure wider participation on advisory bodies.

Government response to recommendation 9

The Government does not accept this recommendation.

The Government believes that there are public benefits of retaining advisory bodies in the Act as they are a cost effective way of consultation. This, combined with a new selection process (see recommendation 10), will ensure wider participation on advisory bodies.

Proposed action

No further action is proposed.

Discussion – recommendation 10

The Government acknowledges the valuable contributions made by the various organisations that have nominated persons to the advisory bodies under the Act. However, it supports the move to skills-based advisory bodies and accepts the recommendation to specify membership in terms of skills and experience, rather than nominees of particular organisations.

The *National Parks (Additions and Other Amendments) Act 2004* amended the criteria for membership of the NPAC and AAC so that, where applicable, it is now specified in terms of skills and experience, rather than members being nominees of particular organisations. The amendments are included in Attachment A. Organisations that had previously nominated members to the NPAC and AAC were informed of the intention to continue the advisory bodies under the Act but to change the membership criteria so that they are based on skills or experience.

Existing members will remain on the advisory bodies until the end of their current terms. The opportunity for suitable persons to apply will be widely advertised and peak groups will be notified accordingly.

Government response to recommendation 10

The Government accepts the recommendation.

Proposed action

No further action is required in relation to the NPAC or the AAC as recommendation 10 has already been implemented in relation to these advisory bodies through the *National Parks (Additions and Other Amendments) Act 2004*. The Government agrees in principle to skills-based criteria for members of the BFGAC but will further consider this recommendation after the proposed Murray River Red Gum investigation by the VEAC is completed.

3.9 Waterways – hire and charter vessels (recommendation 11)

Potential Restriction/Issue

The Water Industry Act establishes a framework for issuing licences for moorings, jetties, hire and charter vessels. The Review Team accepted the current arrangements and noted the former proposals by the Office of Regulation Reform (ORR) to overhaul vessel licensing on the Yarra and associated berthing arrangements.

Review Recommendation 11

Licensing of hire and charter vessels and jetties and moorings should be retained by Parks Victoria, but in a manner consistent with the recommendations of the former Office of Regulation Reform in its review of the Yarra River.

Discussion

The former ORR report, *Yarra River Traffic: managing access*.¹¹, aims to create a regulatory framework for activity on the lower reaches of the Yarra River. It includes recommendations for the licensing of commercial vessels operations and providing access to secure berthing.

During the course of the NCP review, the Water Industry Act was amended to remove the provisions in section 135A relating to licensing of commercial vessel operators and to provide for such licensing through regulations. The ORR report's recommendations relating to the licensing system have been implemented, mainly through the making of the Water Industry (Waterways Land) Regulations 2002. These regulations provide for permits to be issued for the operation of trading vessels or the hire of hire and drive vessels, for fees to be set on a more equitable basis than previously, and for more effective enforcement to reduce the potential for disputes between operators. Most of the ORR report's recommendations on berthing have been implemented by Parks Victoria. In particular, all commercial vessel operators now have access to exclusive, scheduled or shared berths. The remaining recommendations will be dealt with through the 'Two Rivers Project' discussed below.

A key recommendation in the ORR report was the need to undertake a Yarra River Traffic Study to determine a sustainable level of traffic for the river (ORR recommendation 1.1). This work is being undertaken by Parks Victoria and the Yarra River Waterways Committee as part of the 'Two Rivers Project'. The results from this study will not be available until early 2006. Another part of the 'Two Rivers Project' is a review of the current Trading Vessel operating environment both in terms of the legal framework and its economic implications. The outcomes of this project are dependant in part on the findings from the River Traffic Study. This may have an impact on the licensing and permitting of commercial vessels on Waterways Land and indeed the manner in which the ORR recommendation 2.1 on licencing and user charges is applied by Parks Victoria. The draft recommendations from the review of the Trading Vessel operating environment will be reviewed against National Competition Policy to ensure consistency prior to finalisation.

Government response to recommendation 11

The Government accepts the recommendation.

Proposed action

The current commercial vessel operating environment will remain pending the recommendations from the 'Two Rivers Project'. The draft recommendations from the review of the Trading Vessel operating environment will be reviewed against National Competition Policy prior to finalisation.

4. CONCLUSION

The Review Team found the legislation under review to be generally consistent with NCP and does not recommend amending the objective of the legislation (recommendation 1). The Government agrees with this finding.

The Government accepts, with some qualifications, the Review Team's recommendations in relation to:

- Removing the requirement for consents to undertake certain commercial activities in parks (recommendation 3).
- The allocation process for consents (recommendation 4).

¹¹ The Office of Regulation Reform, *Yarra River Traffic: managing access*, Final Report, September 2001.

- The standardisation or simplification of maximum terms for consents (recommendation 6).
- Fees for consents (recommendations 7 and 8).
- The membership of advisory bodies (recommendation 10).
- Licensing of hire and charter vessels, jetties and moorings (recommendation 11).

The Government does not accept the following recommendations on the basis that it is considered that the public costs would exceed the public benefits to the community:

- Reviewing prohibited commercial activities on a case-by-case basis (recommendation 2);
and
- Removing advisory bodies from the Act (recommendation 9).

Recommendation 5 (relating to alpine grazing licences) is now redundant.

**GOVERNMENT RESPONSE TO REVIEW RECOMMENDATION 10
AMENDMENTS TO MEMBERSHIP CRITERIA FOR ADVISORY BODIES**

NATIONAL PARKS ADVISORY COUNCIL (10 members)

PREVIOUS ARRANGEMENTS			NEW MEMBERSHIP CRITERIA
CATEGORY OF MEMBER	SECTION OF NP ACT	MEMBERSHIP CRITERIA	
Nominated by non-government bodies (3)*	10(1)(a)	Nominee of Environment Victoria (1)	Persons with skills or experience relating to the preservation and the protection of parks (2)
	10(1)(b)	Nominee of Victorian National Parks Association (1)	
	10(1)(d)	Nominee of Municipal Association of Victoria (1)	Person with experience in local government who resides in a municipality in which there is a park (1)
Nominated by Minister (4)	10(1)(e)	Persons with experience in matters affecting the interests of the community (at least 2 of whom reside outside the metropolitan area) (4)	No change
Specific persons or skills (3)	10(1)	Director of National Parks (Chief Executive Officer of Parks Victoria)	No change
	10(1)(aa)	Secretary or his or her nominee	No change
	10(1)(c)	A professor or teacher of ecology, biology or earth science at a University in Victoria	No change

*The numbers within brackets relating to 'category of member', 'membership criteria' and 'new membership criteria' refer to the number of members or nominees.

ALPINE ADVISORY COMMITTEE (16 members)

PREVIOUS ARRANGEMENTS			NEW MEMBERSHIP CRITERIA
CATEGORY OF MEMBER	SECTION OF NP ACT	MEMBERSHIP CRITERIA	
Nominated by Minister (5)*	32AE(3)(a)	5 persons (including chairperson)	Chairperson [other 4 positions distributed to the next 2 categories]
Nominated by non-government bodies (8) [each body nominates 3 persons of whom the Minister appoints 1]	32(3)(b)(i)	Victoria National Parks Association (1)	Persons who have skills or experience relating to the preservation and protection of the park (5)
	32AE(3)(b)(ii)	Conservation Council of Victoria [Environment Victoria] (1)	
	32AE(3)(b)(vi)	Victorian Field Naturalists Club (1)	
	32AE(3)(b)(iii)	Victorian Federation of Bush Walkers [Federation of Victorian Walking Clubs] (1)	Persons who have skills or experience relating to the recreational use of the park (5)
	32AE(3)(b)(vii)	Australian Deer Association (1)	
	32AE(3)(b)(viii)	Victoria Association of Four Wheel Drive Clubs [Four Wheel Drive Victoria] (1)	
	32AE(3)(b)(iv)	Victorian Farmers' Federation (1)	Persons with skills or experience relating to the grazing of cattle in the park (2)
	32AE(3)(b)(v)	Mountain Cattlemen's Association of Victoria (1)	
Other nominees (3)	32AE(3)(c)	1 person who is engaged in commercial tourism activities in the area nominated by the CEO of Tourism Victoria	Person who has skills or experience relating to commercial tourism activities in the park (1)
	32AE(3)(d)	2 persons from a panel of 6 nominated by the municipal councils whose municipalities adjoin the Alpine National Park	Persons with skills or experience in local government residing in municipalities in which any part of the park is situated (2)

*The numbers within brackets relating to 'category of member' and 'membership criteria' and 'new membership criteria' refer to the number of members or nominees.