

# Department of Sustainability and Environment

## **Model By-Law: Recreational Areas**

### Regulatory Impact Statement

This Regulatory Impact Statement has been prepared in accordance with the requirements of the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*

August 2012

## **MODEL BY-LAW: RECREATIONAL AREAS**

### **REGULATORY IMPACT STATEMENT**

The Minister for Water, the Hon. Peter Walsh MLC is proposing to issue a model by-law for the management of lands deemed under the *Water Act 1989* (the Water Act) to be recreational areas under the management and control of Victoria's water corporations. Section 287Y of the Water Act sets out the necessary process the Minister must apply prior to issuing a model by-law

This Regulatory Impact Statement (RIS) has been prepared to fulfil the requirements of the Water Act in facilitating public consultation on the proposed Model By-law: Recreational Areas (the proposed By-law) and to address the requirements under the *Subordinate Legislation Act 1994* where a water corporation decides to adopt the proposed By-law to make a recreational by-law. In accordance with the *Victorian Guide to Regulation*, the Victorian Government seeks to ensure that proposed regulations (including by-laws) are well-targeted, effective and appropriate, and impose the lowest possible burden on Victorian business and the community.

The prime function of the RIS process is to help members of the public comment on proposed regulatory instruments before they have been finalised. Such public input can provide valuable information and perspectives, and thus improve the overall quality of the regulations (including by-laws).

The proposed By-law makes a model by-law which can be drawn upon by water corporations. To address the need for a separate RIS consultation process each time a water corporation adopts the proposed By-law DSE is undertaking an upfront consultation process for the proposed By-law. This RIS is being circulated to key stakeholders and feedback is sought. A copy of the proposed By-law is provided as an attachment to this RIS.

Public comments and submissions are now invited on the proposed By-law. All submissions will be treated as public documents and will be made available to other parties upon request. Written comments and submissions should be forwarded by no later than **5:00pm, 29 September 2012** to:

Project Officer – Recreational By-law  
Rural Water and Governance Division  
Department of Sustainability and Environment  
PO Box 500  
EAST MELBOURNE VIC 3002  
or email:  
[water.regulations@dse.vic.gov.au](mailto:water.regulations@dse.vic.gov.au)

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## **ABBREVIATIONS**

**Cl.** - clause

**DSE** – Department of Sustainability and Environment

**MCA** – Multi-Criteria Analysis

**NCC** – National Competition Council

**NCP** – National Competition Policy

**NPV** – Net Present Value

**Premier’s Guidelines** – *Subordinate Legislation Act 1994* Guidelines

**PV** – Present Value

**RIS** – Regulatory Impact Statement

**recreational areas** – means any area of land:

- (a) determined by the Minister for Water to be a recreational area under section 122ZA under the *Water Act 1989*; or
- (b) declared by the Minister for Water to be a recreational area by Order under section 107 of the *Water Act 1989* prior to the repeal of that section by section 54 of the *Water (Governance) Act 2006*

**the proposed By-law** – Model By-law: Recreational Areas

**the Water Act** – the *Water Act 1989*

**water corporations** – the providers of water supply and sewerage services in Victoria, established under Part 6 of the *Water Act 1989*

## EXECUTIVE SUMMARY

### KEY POINTS:

- Across Victoria, a number of water corporations manage or operate areas of land and water storage areas which are made available to the public for recreational purposes. Often, a water corporation will provide facilities such as playgrounds, barbeques and toilet blocks to the public at these areas.
- These recreational areas provide a wide range of benefits to the community.
- The Department of Environment and Sustainability (DSE) is responsible for water policy in Victoria. Together with the water corporations, DSE has developed the proposed By-laws to sustainably manage the multiple (and often competing) uses that these recreational areas provide for all Victorians.
- The proposed By-law seeks to prohibit certain actions or activities in recreational areas that could harm the environment, or interfere with the management of these areas or the safety and enjoyment of these areas by other persons. In addition, the proposed By-law requires that a permit be obtained from the water corporation to undertake certain activities at recreational areas.
- Uptake of the proposed By-law by an individual water corporation is at the discretion of the water corporation and will be based on identified need. However, it is anticipated that two to three water corporations may adopt the proposed By-law in the coming years (with an additional five water corporations potentially adopting this in the longer term).
- Visitors to recreational areas face a range of regulations. It is, therefore, important that the proposed By-law imposes the lowest possible burden on visitors, while achieving other Government objectives.
- DSE intends to monitor the effectiveness of the By-laws from obtaining feedback from, and regular contact with, the water corporations; through enforcement of the offence provisions; and from any issues arising, if any, from correspondence from the public to the Minister. The responsibility for establishing a framework to achieve this and for monitoring will lie with the water corporations with assistance by provided by DSE.
- All of the Victorian water corporations have been consulted during the development of the proposed By-law and targeted local consultation has been conducted by individual water corporations.

This Regulatory Impact Statement concludes that:

- the benefits to society of the proposed By-law exceed the costs;
- the net benefits of the proposed By-law are greater than those associated with any practical alternative; and
- the proposed By-law does not impose restrictions on competition.

### *Purpose of a Regulatory Impact Statement*

In Victoria, the *Subordinate Legislation Act 1994* requires that those new or remade regulatory proposals (including by-laws<sup>1</sup>) that impose an ‘significant economic or social burden on a sector of the public’ be formally assessed in a Regulatory Impact Statement (RIS) to ensure that the costs of a regulatory proposal are outweighed by the benefits, and that the proposal is superior to alternative approaches. It has been assessed that the potential burden that would be imposed should a water corporation make a recreational area by-law may require assessment in a RIS.

Uptake of the proposed By-law by a water corporation will be at the discretion of individual water corporations and will be based on identified need. However, to address the need for a separate RIS each time a water corporation adopts the proposed By-law, it has been decided that DSE will undertake an upfront consultation process, equivalent to a RIS consultation process, for the proposed By-law.<sup>2</sup>

A RIS formally assesses regulatory proposals against the requirements in the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*.<sup>3</sup> The assessment framework of this RIS examines the problem to be addressed, specifies the desired objectives, identifies viable options that will achieve the objectives, and assesses the costs and benefits of the options, as well as identifying the preferred option and describing its effect. The RIS also assesses the proposed By-law’s impact on small business and undertakes a competition assessment. Finally, it considers implementation and enforcement issues, details the evaluation strategy, and documents the consultation undertaken.

### *Context*

In addition to their core functions of providing water and sewerage services to customers, Victoria’s water corporations also manage and control substantial areas of land, including waterways across Victoria. Some of these areas are actively managed for recreational purposes, with the water corporation providing facilities such as barbeques, playgrounds, toilet blocks and boat ramps which encourage recreational use.

These recreational areas provide a wide range of benefits to the community from recreation experiences to the conservation of biological diversity, soil productivity, water quality and other market and non-market goods and services.

While data on current usage of these recreational areas is limited, Attachment A describes these areas and how they are currently used for recreational purposes.

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<sup>1</sup> A model by-law issued under s.287ZB of the Water Act is not subject to the requirement to prepare a RIS. However, a by-law made under section 160 of the Act is a legislative instrument for the purposes of schedule 2 of the Subordinate Legislation Regulations 2011 and will be subject to a RIS process. The preparation of a RIS equivalent analysis has been prepared to remove a regulatory burden from individual water corporations should they adopt the model by-law to make a recreational area by-law.

<sup>2</sup> An exemption from preparing separate RISs in the future may only apply to the extent that water corporations adopt the proposed model By-law in a substantially unchanged form.

<sup>3</sup> Government of Victoria 2011, *Victorian Guide to Regulation*, Department of Treasury and Finance, Melbourne



### *Nature of the problem*

Recreational activities can have a negative impact on the recreational areas, including damage to facilities, damage to plants and rock features, erosion, and impacts on animals. Importantly, such recreational use could also have a detrimental impact on water storages and water quality. Activities in recreational areas can also affect the visitors themselves, who may face safety risks or experience anti-social behaviour.

In economic terms, the rationale for managing these areas is based on the concept of negative externalities and public goods. That is, the costs associated with certain activities by individuals or groups in these areas are not fully borne by them, but by the broader community. The environmental costs that arise from environmental damage and degradation in such areas are well established in the scientific literature, and have resulted in regulatory controls in Victoria and other jurisdictions.

In addition, vandalism of the facilities water corporations provide at recreational areas can be extensive; some water corporations regularly replace defaced signage and repair damaged playground equipment. Southern Rural Water estimates that the annual cost of rectifying vandalism damage at its recreational areas is in the order of \$55,000. The majority of this cost relates to the reservoirs it manages in the west of Melbourne (\$40,000) with the remainder falling to those reservoirs it manages to the east of Melbourne (\$15,000). The risk of vandalism is highest in the summer months.

Certain recreational activities, such as high speed water sports, may also pose inherent dangers to public health and safety. Other activities, such as fishing and boating, may pose risks to public safety if undertaken when water storage levels are low.

Managing the risk of adverse incidents at the recreational areas, such as vandalism, accidents and environmental damage, imposes costs on water corporations which, if not managed adequately, may make it unviable for the water corporations to open these areas up for public recreational use at all.

Visitors to recreational area already face a range of regulations. However, there are many gaps in the current regulatory regime where identified problems are not currently being addressed. Attachment C outlines the current regulatory framework that applies to recreational areas and identifies where the regulatory gaps arise.

### *Objectives*

The Victorian Government's broad objective is to sustainably manage the multiple (and often competing) uses that these recreational areas provide for all Victorians. Specific objectives of government intervention are to maintain, conserve and protect the ecosystem and water catchments, maintain and improve the capacity of the recreational areas to support recreation and tourism and to enhance the socio-economic benefits to Victorian communities of these areas.

The proposed model By-law would be issued by the Minister under section 122ZB of the *Water Act 1989* (the Water Act). Water corporations may then make the by-law in accordance with sections 287ZC and 160 of the Water Act.

### *Options for achieving the objectives*

The *Subordinate Legislation Act 1994* (section 10(1)(c)) requires that non-regulatory options must be considered as part of a RIS. The scope of consideration of regulatory and non-regulatory options is limited because of the existing powers of the Water Act and the limited focus of the proposed By-law.

The issues to be addressed in this RIS can be grouped into the following categories:

- *Issue 1 – General control of a recreational area*

This includes access to areas, protection of water corporation assets, minimising public safety risks, protection of flora and fauna and improving public amenity by managing dangerous or inappropriate behaviour. Feasible options identified in this RIS to deal with issue 1 include:

- the proposed By-law (cl. 8-25; 26-30);
- a performance-based approach; and
- an education program combined with use of existing (legislative and common law) powers.

- *Issue 2 – Specific activities undertaken by well-defined groups*

This covers accommodation and camping; pets, livestock and other animals; use of vehicles, aircraft and vessels; and boating. Feasible options identified in this RIS to deal with issue 2 include:

- the proposed By-law (cl. 31-33; 34-36; 37-40;44-47);
- codes of conduct for specific user groups, i.e. campers, pet and animal owners, boat owners, and motor vehicle owners; and
- legislative prohibition of high risk activity.

- *Issue 3 – Managing commercial activity (including issue of permits)*

Permits were assessed as the only feasible option for managing commercial and other high impact activities at recreational areas. This RIS considers a flexible permit regime which can accommodate a variety of options surrounding permit fee levels, time and/or activity based permits and standardised permit application forms.

While an alternative to the proposed model By-law would be for the water corporations to continue to make individual by-laws, this alternative has higher administration costs (particularly now each by-law would potentially need to undergo a RIS consultation process), and may not result in a consistent regulatory regime across all recreational areas.

### *Costs and benefits of the options*

The ‘base case’ describes the regulatory position that would exist in the absence of the proposed By-law. The base case of ‘doing nothing’ is not, strictly speaking, an alternative, given that the government has identified a problem that needs to be addressed. It is necessary to establish this position in order to make a considered assessment of the incremental costs and benefits of the viable options.

In terms of establishing the base case, in the event the proposed By-law, or any individual water corporation by-law, is not made:

- the Water Act would continue to apply and the water corporations would continue to have obligations regarding the recreational areas. However, there would be no legal basis for imposing a penalty for the breach of any of the numerous restrictions currently in place governing the use of these areas and particular offences within the recreational areas would not be prescribed; and
- other legislation, and the common law, may apply in particular circumstances. Attachment C contains a detailed table that summarises the other laws and regulations (including the common law) that may apply in the absence of the proposed By-law.

For the purposes of analysis in this RIS, recreational activities would be permitted in areas that are declared ‘recreational areas’, but no activities would be prohibited and no permits would apply.

To the extent that the proposed By-law contributes to sustainable ecosystem management, the benefits include direct use benefits (e.g. recreation), indirect use benefits (e.g. carbon storage, water filtration and soil protection) and non-use benefits (e.g. biodiversity).

Given the difficulty in measuring the costs and benefits associated with the recreational use of the recreational areas, this RIS uses the Multi-criteria Analysis (MCA) assessment tool to assess the costs and benefits of the viable options. The option with the highest score represents the preferred approach.

### *Permits*

DSE and the water corporations have a responsibility to cater for the recreational needs of the public as a whole and certain higher impact events need to be managed so that adverse environmental and other impacts are minimised. To this end, there are a number of activities that a person may wish to carry out in a recreational area that are prohibited by the proposed By-law unless authorised by a permit issued by the relevant water corporation.

The proposed By-law gives the water corporations significant flexibility in how they will apply the permit system to their local circumstances.

Fees for services will be set by water corporations under s. 264 of the Water Act rather than the proposed By-law, which will permit water corporations to set fees to reflect internal costs and take into account services required directly as a result of the permitted activity (e.g. increased cleaning of toilets, reseeded, temporary fencing for revegetation, repairs to water

corporation property, additional signage for the activity or event in question, etc). Water corporations should set permit fees in accordance with the *Cost Recovery Guidelines*.<sup>4</sup>

Cl. 42 of the proposed By-law deals with applications for permits. These are considered to represent administrative costs. This RIS assumes that a water corporation receives 5 permit applications per annum, that three water corporations adopt the By-law immediately and an additional five water corporations adopt this following Year 5 (i.e. a total of eight water corporations adopt the By-law). This would result in annual administrative costs for applicants of around \$1,500 (PV) in the first year and total costs over a 10-year period of around \$22,650 (PV).

This RIS estimates that, over a 10 year period, the cost of processing permit applications is in the order of \$40,000. This is based on an estimate that 5 permits will be processed annually by a VPS3 equivalent staff member. Each permit is estimated to take 3 hours to process, although complex permits may take much longer. Therefore, the calculations take an ‘average’ in assessing permits. This results in the total costs of the permit system being in the order of \$63,000 (PV) over a 10 year period.

Enforcement and transitional costs include retraining staff, new signage, etc. and some minor additional ongoing costs (e.g. training new staff, maintaining signage). Stakeholder consultation suggests that this could be in the order of \$260,000 (PV) over a 10 year period, or around \$26,000 (PV per annum) for all recreational areas. The vast majority of these costs are incurred in the first year of adoption of the By-law.

Calculations in this RIS are largely based on costs and discussions with Southern Rural Water (SRW) Corporation. SRW represents a water corporation with considerable public amenities, infrastructure and recreational activities conducted on the land it manages. Therefore, the cost estimates in this RIS are likely to be extremely conservative (and may even overstate the actual costs for other corporations by several orders of magnitude). Detailed calculations and assumptions are contained in Attachment D.

### *Preferred option*

The analysis in this RIS supports the proposed By-law, as the costs of the proposed By-law are out-weighed by likely benefits. The alternative options to the proposed By-law generally impose fewer costs on recreational area users and business, but are assessed as delivering fewer net benefits in relation to the government’s objectives because of compliance and enforcement issues.

The total quantifiable costs of the proposed By-law that were able to be identified in this RIS are in the order of around \$32,000 per annum (or \$323,000 (PV) over a 10 year period)<sup>5</sup> for the entire Crown land estate covered by the By-laws.

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<sup>4</sup> Department of Treasury and Finance, 2010 Cost Recovery Guidelines, Melbourne

<sup>5</sup> This represents the sum of compliance costs, the administrative costs relating to permit applications and the water corporation costs of processing permit applications. Detailed calculations and assumptions are contained in Attachment D.

The proposed By-law is broadly consistent with the objectives and actions in other jurisdictions.

### *Groups affected*

Groups affected by the options identified above include visitors to the recreational areas (including special interest groups such as anglers, bird clubs, dog walkers, naturalist clubs, speed boat clubs, and walking clubs), commercial providers, owners of surrounding property, organisers of events, competitions and social functions, surrounding local governments, the water corporations and water corporation officers.

### *Small business impacts*

The proposed By-law predominantly relates to conduct, behaviours and restrictions placed on individuals – only to a very small degree are businesses affected. Given the relatively straightforward nature of the proposed By-law, it is unlikely that small business will be disadvantaged in terms of their complexity (i.e. they will not need to engage third parties to assist in understanding and compliance). In fact, the proposed By-law will place any such businesses on a similar footing to businesses that operate on other type of public land that require a permit (e.g. commercial activities that require a tour operators licence or activities in that require a permit in a state forests).

It is not expected that the proposed By-law will raise any implementation issues or cause unintended consequences for small business.

### *Competition impacts*

There is a public interest rationale for government intervention in recreational areas. The activities covered by the proposed By-law mostly relate to managing actions and behaviours of individuals and as such, these do not restrict competition in the market for goods and services.

The proposed By-law is considered to meet the ‘competition test’ as set out in the *Victorian Guide to Regulation*.

### *Compliance and enforcement*

Overall compliance with the proposed By-law is expected to be high (particularly in areas where actions are observable). However, the large spatial area occupied by the recreational areas, and remoteness of some locations, makes aberrant or non-compliant behaviour difficult to manage in all situations.

Water corporation enforcement officers will be responsible for monitoring and enforcing the proposed By-law if adopted by the water corporations. Water corporations will enforce the By-law with assistance from Victorian police officers.

Given that the proposed By-law is broadly similar to current arrangements, where these are in place, no significant implementation or transitional issues are expected to arise.

*Conclusion*

This Regulatory Impact Statement concludes that:

- the benefits to society of the proposed By-law exceed the costs;
- the net benefits of the proposed By-law are greater than those associated with any practical alternative; and
- the proposed By-law does not impose restrictions on competition.

### *Public consultation*

The prime objective of the RIS process is to enable members of the public to comment on proposed By-law before it is finalised. Public input, which draws on practical experience and expertise, can provide valuable information and perspectives, and thus improve the overall quality of regulations (including by-laws). Therefore, the proposed By-law is being circulated to key stakeholders and members of the community for consideration.

DSE has prepared this RIS to provide stakeholders the opportunity to comment on the proposals. While comments on any aspect of the proposed By-law are welcome, stakeholders may wish to comment on whether:

- this RIS has omitted any social and environmental impacts that should be addressed in the proposed By-law.
- other regulatory or non-regulatory options could/should be considered.
- there are any other feasible alternatives to the proposed permit system.
- there are any practical difficulties associated with the proposed By-law; and
- there are any unintended consequences associated with the proposed By-law.

The *Subordinate Legislation Act 1994* requires that the public be given at least 28 days to provide comments or submissions regarding the proposed By-law. However, s.287ZA(3) of the Water Act requires the Minister to provide one month from the publication of the notice of a model by-law proposal to receive submissions. As such, the consultation period is 1 month commencing on **date**, with written submissions to be received no later than **5.00pm, 29 September 2012**.

Unless otherwise indicated, all submissions will be treated as public documents and made available to other parties on request.

## 1. WHAT IS THE ISSUE TO BE ADDRESSED?

### Key points:

- Across Victoria, a number of water corporations manage or operate areas of land (including waterways) which are made available to the public for recreational purposes. Often, a water corporation will provide public facilities in these areas, such as playgrounds, barbeques and toilet blocks.
- These areas provide a wide range of benefits to the community, from recreation experiences to the conservation of biological diversity, soil productivity, amenity issues, water quality and other market and non-market goods and services. The focus of this RIS is on recreational activities in these areas.
- The aim of government intervention in activities in these areas is to address environmental and social issues (including risk management) because the market alone would not deliver socially optimal and sustainable outcomes.
- In economic terms, the rationale for managing these areas is based on the concept of negative externalities and public goods. That is, the costs associated with certain activities by individuals or groups in these areas are not fully borne by them, but by the broader community.
- The environmental costs that arise from environmental damage and degradation in such areas are well established in the scientific literature, and have resulted in regulatory controls in Victoria and other jurisdictions.
- A sound land management regulatory regime should impose minimum restrictions to effectively protect ecosystem values in water catchments and mitigate or remedy any clearly identified harms.
- If the proposed By-laws are not made, there is a high probability that the ability of the water corporations to manage recreational activities in the recreational areas would be adversely affected, thus potentially leading to environmental harms. Particularly pertinent to this RIS is the effect this could have on water quality.
- Vandalism of the facilities water corporations provide at recreational areas can be extensive, and water corporations regularly replace defaced signage and repair damaged playground equipment. If the proposed By-laws are not made, there is a high probability that the ability of the water corporations to manage such vandalism would be adversely affected.
- Certain recreational activities, such as high speed water sports, may inherently pose dangers to public health and safety. Certain other activities, such as fishing and boating, may pose risks to public safety if undertaken when water storage levels are low. If the proposed By-laws are not made, there is a high probability that the ability of the water corporations to manage potentially hazardous recreational activities in the recreational areas would be adversely affected, thus potentially leading to public health and safety harms.
- Managing the risk of adverse incidents at the recreational areas imposes costs on water corporations, and if these risks are unable to be managed adequately, the water corporations may decide it is unviable to open these areas up for public recreational use at all.



## 1.1 Background

### 1.1.1 *Water corporations as land managers*

There are nineteen water corporations operating in Victoria.<sup>6</sup> In addition to their core functions providing water and sewerage services to customers, Victoria's water corporations often also manage and control substantial areas of land, including waterways, across Victoria. This function may arise due to a water corporation owning areas of land or through the water corporation having been given the management and control of areas of land owned by a third party, which can be established through a variety of legal arrangements.<sup>7</sup> It is common for adjacent parcels of land to be held by a water corporation under a variety of such arrangements that have accumulated over time.

A number of Victorian water corporations own, or manage and control, land which is open to the public and used for recreational purposes. These areas consist both of land formally designated as a 'recreational area' by the Minister for Water pursuant to s.122ZB of the Water Act and other storage areas managed and controlled by water corporations that were deemed to be 'recreational areas' under former legislation.

Some of these areas are actively managed for recreational purposes, with the water corporation providing facilities such as barbeques, playgrounds, toilet blocks and boat ramps which encourage recreational use.

### 1.1.2 *Community benefits of recreational areas*

Victoria's recreational areas provide many social and economic benefits to the Victorian community. They provide recreational opportunities and other market and non-market goods and services. They perform important environmental functions, such as protecting water catchments and providing habitats for plant and animal species. These areas also make a contribution to Victoria's economy by providing employment for local communities in recreation and tourism.

These recreational areas provide a broad range of opportunities for recreation and tourism ranging from high visitation sites with significant infrastructure to remote sites which may be limited to a walking track and access to a foreshore for fishing. Victoria manages such areas through legislation, regulations and by-laws that establish rules and requirements for a range of private and business activities.

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<sup>6</sup> Melbourne Water, Southern Rural Water, Goulburn Murray Rural Water, Grampians Wimmera Mallee Water, Barwon Water, Central Highlands Water, Coliban Water, East Gippsland Water, Gippsland Water, Goulburn Valley Water, North East Water, South Gippsland Water, Western Water, Westernport Water, Wannon Water, City West Water, Yarra Valley Water and South East Water

<sup>7</sup> The most common of these arrangements are where the water corporation has been appointed the Committee of Management of Crown land reserved for a public purpose under the *Crown Land Reserves Act 1978*, where the water corporation has been appointed the Trustee of Crown land reserved for a public purpose under the *Crown Land Reserves Act 1978*, where Crown land is vested in a water corporation under s.131 of the *Crown Land Reserves Act 1978* or where Crown land is leased to a water corporation. A further method is the designation of land as a 'recreational area' by the Minister for Water pursuant to s.122ZB of the Water Act. In addition, a water corporation may hold freehold title of the land and manage it in its own right.

## **1.2 Rationale for government intervention**

Public policy generally begins from the premise that any economic activity should be free of regulation unless it can be shown that it is subject to ‘market failure’, which, if left unregulated, will not generate socially efficient levels of output or outcomes. The socially efficient level of output is usually taken to be that which maximises the sum of the net benefits of the activity to producers and consumers, and more broadly, society.

### *12.1 Market failure rationale*

External costs and benefits, referred to by economists as ‘externalities’, occur when an activity imposes costs (which are not compensated) or generates benefits (which are not paid for) on parties not directly involved in the activity (i.e. on third parties). Without regulation, the existence of externalities results in too much of an activity (where external costs or negative externalities occur) or too little of an activity (where external benefits or positive externalities arise) taking place from society’s point of view.

The concept of the ‘tragedy of the commons’ illustrates externalities (see Box 1). The ‘tragedy of the commons’ argument states that free access to and unrestricted demand for a finite resource ultimately dooms the resource through over-use. This occurs because the benefits of use accrue to individuals or groups, each of whom is motivated to maximise use of the resource to the point at which they become reliant on it. At the same time, the costs of the exploitation are borne by all those to whom the resource is available (which may be a wider class of individuals than those who are exploiting it). This, in turn, causes demand for the resource to increase, which causes the problem to escalate and exhaust the resource.

Ludwig von Mises articulated this problem in 1940 in the following way:

If land is not owned by anybody, although legal formalism may call it public property, it is used without any regard to the disadvantages resulting. Those who are in a position to appropriate to themselves the returns — lumber and game of the forests, fish of the water areas, and mineral deposits of the subsoil — do not bother about the later effects of their mode of exploitation. For them, erosion of the soil, depletion of the exhaustible resources and other impairments of the future utilization are external costs not entering into their calculation of input and output.<sup>8</sup>

### **Box 1: Externalities – The Tragedy of the Commons**

‘Tragedy of the commons’ refers to a dilemma in which multiple individuals acting independently in their own self-interest can ultimately destroy a shared limited resource even where it is clear that it is not in anyone’s long term interest for this to happen.

The concept uses a metaphor of herders sharing a common parcel of land (the commons), on which they are all entitled to let their cows graze. It is in each herder’s interest to put as many cows as possible onto the land, even if the commons is damaged as a result. The herder receives all of the benefits from the additional cows, while the damage to the commons is shared by the entire group. If all herders make this individually rational decision, however, the commons is destroyed and all herders suffer.

The herders are assumed to wish to maximize their yield, and so will increase their herd size whenever possible. The utility of each additional animal has both a positive and negative component: *positive*: the herder receives all of the proceeds from each additional animal; and *negative*: the pasture is slightly degraded by each additional animal.

Crucially, the division of these costs and benefits is unequal: the individual herder gains all of the advantage, but the disadvantage is shared among all herders using the pasture. Consequently, for an individual herder, the rational course of action is to continue to add additional animals to their herd. However, since all herders reach the same rational conclusion, overgrazing and degradation of the pasture is its long-term outcome. Nonetheless, the rational response for an individual remains the same at every stage, since the gain is always greater to each herder than the individual share of the distributed cost. The overgrazing cost here is an example of an externality.

The Tragedy of the Commons concept was developed by Garrett Hardin and first appeared in the journal *Science* in 1968.

*Source: Science, 13 December 1968, Vol. 162. No. 3859, pp. 1243 – 1248*

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<sup>8</sup> Mises L, Part IV, Chapter 10, Sec. VI, Nationalökonomie: Theorie des Handelns und Wirtschaftens, Geneva: Editions Union, 1940. The quote provided is that of Mises’s expanded English translation, Chapter XXIII: The Data of the Market, Sec. 6: The Limits of Property

A common regulatory solution to correct the externalities identified with tragedy of the commons is to establish rules and requirements governing the use of and access to certain areas, and where relevant, to establish systems of permits and/or licences.

Another rationale for government intervention in the recreational areas is their status as a public good. Public goods are characterised by the fact that no one can be effectively excluded from consuming them, and that increased consumption of the good by one individual does not reduce availability to others. For example, any boat owner operating in the vicinity of a lighthouse cannot be excluded from its safety benefits. Nor does the boat owner's use of the lighthouse service detract from its usefulness to other boat owners. Aesthetic values are among many public goods provided by Victoria's recreational areas, along with biodiversity conservation and watershed protection. Economic theory explains why the free markets will systematically under-provide such goods, and why collective action, typically by the government, is usually required to ensure their adequate provision.

### *1.2.2 Environmental and social rationales*

The National Competition Council (NCC) assessed the market characteristics of public land (in this case state forests) and argued that government intervention is justified on public interest grounds.<sup>9</sup> The NCC noted that such public land provides a wide range of benefits to the community, from the conservation of biological diversity, soil productivity and water quality to recreational experiences, timber production and stock grazing. Recreational areas managed and controlled by water corporations share many features with state forests; also being areas that also provide a wide range of benefits to the community, from recreational experiences to the conservation of biological diversity, soil productivity and water quality. From a social point of view, there is a public expectation that government take a leading role in protecting these recreational areas. Arguably, community expectations have increased regarding the government's role in protecting Victoria's natural assets because of a heightened awareness of environmental issues in recent years.

From a social point of view, it could be argued that there is a public expectation that government take a leading role in protecting the public from harm in these recreational areas. Arguably, community expectations have also increased regarding government's role in protecting Victorian's from health and safety harms.

Finally, water corporations often provide facilities to the public, such as playgrounds, barbecues and toilet blocks, in the recreational areas. If these facilities become damaged due to vandalism, there is a public expectation that the water corporation takes action to prevent this from occurring again.

### *1.2.3 Rationale for co-ordinated government intervention*

The rationales presented above address the question of why government intervention is appropriate but not whether intervention should be at the individual water corporation level or involve a coordinated approach, lead by DSE, on behalf of all water corporations. The

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<sup>9</sup> National Competition Council 2003, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: Volume two – Legislation review and reform*, AusInfo, Canberra, p.1.94

advantages of a coordinated approach are that this allows for consistency in the administration of recreational areas across all water corporations in Victoria. This also enables the regulatory regime to be as consistent as possible with the similar regimes which apply to forests and parks across Victoria, thus minimising uncertainty for users when alternating between different types of recreational areas. While intervention by individual water corporations may enable regulatory solutions to be better tailored to local conditions, provided appropriate consultation is conducted during the development of a coordinated intervention, significant local issues should be able to be identified and dealt with appropriately.

### **1.3 Risks of non-intervention**

The risks of non-intervention are that ecosystem values (e.g. ecology, biodiversity, recreational value) would be over-used and/or diminished. There is also a significant risk that uninformed or aberrant behaviour could damage the environment or public infrastructure (e.g. vandalism damaging playground equipment, fires caused by lighting fires in undesignated areas, etc). There is a high probability that this would occur – centuries of human activity and the resultant environmental regulatory controls in practically all international jurisdictions provide testament to this. Importantly, there is a risk to water storages and water quality.

Specifically, the risks associated with not making the proposed By-law are that the regulatory framework established by the Water Act for managing these recreational areas would not be framed in an optimal way. Enforcement mechanisms would be adversely affected because there would be no basis for restrictions on activities such as fishing, camping, vehicle access, horse riding, damage to flora, interference with fauna and commercial activities. A range of offences would not be prescribed and there would be a high probability that the ability of the water corporations to manage the recreational areas effectively would be adversely affected, given the magnitude of the potential risks. Importantly, managing the risk of adverse incidents at the recreational areas imposes costs on water corporations, and if these risks are unable to be managed adequately the water corporations may decide it is unviable to open these areas up for public recreational use at all.

Weak or poorly enforced regulations are associated with poor management of ecosystem values, which results in their degradation. A major study on forests, which are broadly comparable to recreational areas, found that while the causes of forest degradation are complex and multi-factored, ineffective regulation played a role.<sup>10</sup> Unrestricted access to recreational areas would put habitat at risk and could also threaten visitor safety. Past experience has shown that some recreational users light fires and fail to responsibly manage them, which can pose a safety risk, as unattended campfires can start larger bushfires. Uncontrolled fires in catchment areas could cause significant environmental and economic losses to Victoria.

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<sup>10</sup> Verolme HJH and Moussa J 1999, 'Addressing the Underlying Causes of Deforestation and Forest Degradation - Case Studies, Analysis and Policy Recommendations', Biodiversity Action Network, Washington, DC

## 1.4 Type and incidence of costs

The *Victorian Guide to Regulation* identifies three categories of regulatory costs: compliance costs, financial costs, and market costs.

Compliance costs can be divided into ‘substantive compliance costs’ and ‘administrative costs’. Substantive compliance costs are those costs that directly lead to the regulated outcomes being sought and are often capital and production costs. These costs are often associated with content-specific regulation (including by-laws) and include buying new equipment, maintaining the equipment and undertaking specified training in order to meet government regulatory requirements. The proposed By-law predominantly relates to substantive compliance costs. Administrative costs, often referred to as red tape, are those costs incurred by business to demonstrate compliance with the regulation or to allow government to administer the regulation. Administrative costs can include those costs associated with familiarisation with administrative requirements, record keeping and reporting, including inspection and enforcement of regulation. In the case of the proposed By-law, administrative costs mostly relate to applying for permits.

Financial costs are the result of a concrete and direct obligation to transfer a sum of money to the government or relevant authority. For example, the fees for applying for a permit from a water corporation would be a financial cost (although these are imposed by the Water Act, not the proposed By-laws).

Indirect or market costs are those costs that arise from the impact that regulation has on market structure or consumption patterns. These costs are often associated with licensing of certain activities, prescribing qualifications or limiting access to a certain profession or industry in some other way. When barriers to entry are created, this can allow incumbents to charge higher prices and can result in reduced service levels and stifle innovation.

In a broader sense, in the absence of regulation (including by-laws) it is likely that economic, social, and environmental costs/impacts would be incurred. The negative externalities associated with the ‘tragedy of the commons’ suggest that, while individual levels of use/exploitation of recreational areas may seem rational, the collective impact may result in damage to ecosystem values. For example, activities could reduce the sustainability and amenity of the recreational areas by damaging the environment. Moreover, inappropriate use of recreational areas could adversely affect wildlife habitats and the ecology of the ecosystem.

## 1.5 Nature and Extent of the Problem

Victoria’s water corporation-managed and -controlled recreational areas are used for a wide range of recreational activities including camping, fishing, bird watching and water sports. Due to the complexity of landholdings represented in these areas and their varied histories, a complete set of records concerning where the recreational areas are situated and what parcels of land they cover does not exist.

Similarly, data on current usage of these recreational areas is limited. That said, Attachment A describes these areas and how they are currently used for recreational purposes.

Recreational activities can have a negative impact on the recreational areas, including damage to facilities, damage to plants and rock features, erosion, impacts on animals and impacts on water quality in the water storages. Activities in recreational areas can also affect the visitors themselves, who may face safety risks or experience anti-social behaviour. A key theme of this RIS is that such behavioural and unrestricted recreational activity can have detrimental impacts on water quality.

These areas are managed to provide a broad range of opportunities for recreation. Opportunities range from high visitation sites with significant infrastructure, to remote sites, largely limited to fishing and picnicking activities. Visitor numbers, conflicts between uses, and demand for particular sites must be managed to ensure that the range and extent of these activities can continue for future generations.

The recreational areas provide a broad range of recreational opportunities that may be excluded or are not catered for elsewhere, because public access to private land for recreation and tourism is generally limited. Visiting these areas can generate a variety of social and economic benefits. Recreational activities involving individuals, families and clubs can improve health and increase social capital, and these areas are an important resource for recreation and physical activity, the health and wellbeing benefits of which contribute to the quality of life. These areas also have an educational value, providing opportunities for visitors to understand and experience the natural environment.

The areas available for recreation, and the types of activities permitted, are regulated to ensure the protection of environmental and water corporation assets, biodiversity, cultural sites, and for public safety. In some cases, areas that are generally available for public recreation and tourism may be closed temporarily due to low storage levels, extreme fire danger, the control of feral animals or weeds, special events or bad weather. Road access, a lack of facilities or other practical considerations may also restrict or prevent public use of these areas.

In addition, these areas provide aesthetic values, conservation values, flora and fauna viewing opportunities and an escape from busy urban environments.

Facilities such as picnic sites and camp grounds are provided solely for recreation or tourism, while roads and vehicular tracks are primarily managed for site management purposes, but can also enable recreation and tourism activities.

It is important that the level of recreation and tourism in the recreational areas is sustainable and does not impact on ecosystem health. A balance needs to be achieved so that recreation does not threaten the natural values, as these values are often the very reason for visiting these areas.

#### *1.5.1 Estimated recreational demand*

Future visitor numbers at the recreational areas are hard to estimate, given the uncertainties surrounding the total number of these areas and the lack of data available about current usage. However, it is reasonable to expect that future demand would at least reflect current usage figures. Current demand data was available from Southern Rural Water and Central Highlands Water, and is set out in tables 1 and 2 below.

Visitor numbers are likely to vary significantly between water corporations. While Barwon Water did not have any visitor data available, it estimated that the total number of visitors to its reserves was currently low. The visitor figures vary significantly over the course of the year and are highest during the summer months.

Currently, Southern Rural Water does not have counters at any of their reservoirs, but are investigating installing these to secure better data in the future.

**Table 1: Estimated Annual visitor figures Southern Rural Water sites**

Site	On-water visitors	Land visitors	Total visitors
Melton	1,100	400	1,500
Glenmaggie	10,000	15,000	25,000
Pykes Creek	5,000	10,000	15,000
Blue Rock	800	7,000	7,800
Cowwarr	2,000	7,000	9,000

Data provided by Southern Rural Water

**Table 2: Annual visitor figures Central Highlands Water parks**

Park	Annual visitor numbers
Kirks Reservoir Park	100,000
Moorabool Reservoir Park	50,000
Gong Gong Reservoir Park	5,000

Data provided by Central Highlands Water

Other water corporations were contacted, but currently do not collect annual visitation data. This RIS recommends that such data be collected in the future (see Section 8, Evaluation).

### 1.5.2 Impacts from recreational activities in recreational areas

Negative impacts on the environment are an inevitable consequence of recreation.<sup>11</sup> Recreation activities can cause impacts to all resource elements in an ecosystem. Soil, vegetation, wildlife and water are four primary components that are affected and, because various ecological components are interrelated, recreational impact on a single ecological

<sup>11</sup> Leung YF and Marion JL 2000, *Recreation Impacts and Management in Wilderness: A State-of-Knowledge Review*, USDA Forest Service Proceedings RMRS-P-15-VOL-5. 2000, p. 23 at <http://www.wilderness.net/toolboxes/documents/vum/Rec%20Impacts-Mgmt.pdf>



element can eventually result in effects on multiple components. In fact, the impact of recreation on the environment is so well established that it has spawned its own branch of scientific study referred to as ‘recreation ecology’.<sup>12</sup>

A review of the literature on the impacts of recreation in Australia, with an emphasis on forests, was undertaken by Sun and Walsh.<sup>13</sup> This is pertinent to recreational areas around water storages, as they share many features with Victoria’s forests. This review examined the available information on the impact of recreation and tourism on environments, particularly on vegetation and soil. It found that the most common recreational and tourist activities (such as bush walking, camping and horse-riding<sup>14</sup>) can, if not well managed, adversely affect the values of Australian natural and semi-natural resources. Overall, they can affect the vegetation and other recreational sites physically and biologically. Physical effects include track formation, soil loss and/or compaction, and an increase in fire frequency. Littering and water pollution are also seen as impacts associated with bush walking and camping.<sup>15</sup> Biological effects include causing damage to vegetation, increasing risk of myrtle wilt disease and the spread of the soil pathogen, *Phytophthora cinnamomi*, as well as assisting weed dispersal.

Another study, *Environmental Impacts of Tourism and Recreation in National Parks and Conservation Reserves*<sup>16</sup>, drew similar conclusions finding that recreation and tourism had impacts on soil erosion and compaction, vegetation damage, wildlife disturbance and habitat destruction, impacts of firewood collection and campfires, solid wastes and water pollution. This study concluded that “to minimise environmental impacts of tourism and recreation requires a combination of planning and regulation ...”.<sup>17</sup>

Southern Rural Water has identified several risks to water quality in its water storages which may arise if certain activities that might be conducted by visitors to recreational areas are not adequately managed.<sup>18</sup> These risks include pollution of the water due to fires started by visitors in a catchment area (a particular risk is the use of fire fighting chemicals), dead stock

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<sup>12</sup> *ibid.*

<sup>13</sup> Sun D and Walsh D 1998, ‘Review of studies on environmental impacts of recreation and tourism in Australia’, *Journal of Environmental Management*, Vol. 53, Number 4, August 1998, pp. 323-338

<sup>14</sup> The majority of research has shown that horse riding has a high potential to cause environmental degradation at relatively low-use intensities. This is particularly so in the Australian context, where a lack of co-evolution with large herbivores, nutrient-poor soils and introduced soil-borne diseases may magnify these impacts. Source: Newsome D, Milewski A, Phillips N and Annear N 2002, ‘Effects of horse riding on national parks and other natural ecosystems in Australia: implications for management’, *Journal of Ecotourism*, Vol.1 (1), pp. 52-74

<sup>15</sup> Increasing numbers of visitors to parks and forests are causing serious damage to the natural environment. Escapes from bushwalkers’ campfires, expansion of campsites, trampling and cutting of vegetation, outbreaks of gastroenteritis and the rapid deterioration of walking tracks have all become more commonplace. Source: Department of Sustainability and Environment, 2003, *Forest Notes: Bush Camping Code*, FS0016, ISSN 1440-2262, August 2003

<sup>16</sup> Buckley R and Pannell J 1990, ‘Environmental Impacts of Tourism and Recreation in National Parks and Conservation Reserves’, *The Journal of Tourism Studies*, Vol. 1, May 1990, pp. 24-32

<sup>17</sup> *ibid.*, p. 29

<sup>18</sup> Southern Rural Water 2012, *Western storages sustainability plan*

falling into the water after grazing in these areas, dumping of waste by visitors from septic tanks and 4WD off road driving.

Potential recreational visitor impacts include the direct impact on flora and fauna, soil erosion and rock damage, soil compaction, water pollution, fire, weed infestation, and uninformed or careless behaviour. Obviously, degradation of watershed protection is also a prime impact. These impacts are outlined below:

- *direct impact on flora*: damage to trees and plants may arise from the trampling of vegetation, vandalism of trees, and removal of trees and wood for firewood. These factors lead to the loss of vegetation cover and affect animal habitats and the natural growth and decomposition cycles of logs and other organic matter;
- *direct impact on fauna*: e.g. wildlife disturbance, habitat destruction, and in extreme cases cruelty to animals;
- *erosion*: foot traffic and vehicle traffic affect erosion, particularly around paths and tracks. Some activities on higher slopes, if not managed or adequately controlled, have the potential to greatly increase erosion beyond natural processes;
- *damage to natural rock features*: e.g. from foot traffic and vehicle traffic, and careless and deliberate damage;
- *soil compaction and root system compaction*: e.g. from foot traffic and vehicle traffic, or from horses and cattle;
- *water pollution*: visitors, pets and vehicles affect natural waterways and the quality of water that flows into drinking water reservoirs. Potential sources of pollution include human and animal (pets) waste, soaps and detergents, and fuel (leakage) from boats;
- *fire*: fire has a major impact on the natural forest environment as well as public safety and adjacent properties. Central Highland Water has suffered a fire at a recreational area in the past but minimal damage was caused on that occasion;
- *weeds*: weed infestation presents a threat to vegetation. The introduction of non-indigenous plants threatens the integrity of natural ecosystems and the conservation of native species; and
- *uninformed or careless behaviour*: It is important to ensure that natural and built assets are not damaged and that other users are not subject to excessive noise, risk from uncontrolled animals or other behaviours that could put them at risk. Aberrant behaviour can affect visitor experience directly through the size of a group or the noise they make, or indirectly, through environmental impacts such as littering and vandalism. There has been a history of vandalism to built assets at several recreation areas and certain water corporations are regularly required to repair and replace damaged or defaced signage and playground equipment. Southern Rural Water estimate that the annual cost of rectifying vandalism damage at its recreational areas is \$55,000. The majority of this cost relates to the reservoirs it manages in the west of Melbourne (\$40,000) with the remainder falling to those reservoirs it manages to the east of Melbourne (\$15,000). The risk of vandalism is highest in the summer months. No other water corporation vandalism damage data was available.

There was felt to be a significant risk of these environmental impacts occurring at the recreational areas. This is reflected in the way the proposed By-laws address these risks by prohibiting outright certain conducts, such as harassing wildlife or letting animals into waterways, and imposing the top level of maximum penalty to these offences. While certain other environmental impacts, such as the impact of grazing animals in recreational areas or of large groups of people using the recreational areas for events, are managed by the issue of permits.

Turning to the management of health and safety risks, a number of clauses of the proposed By-law are aimed at improving visitor safety (although there is some overlap with environmental objectives). For example, the proposed By-law prohibits a person from undertaking activities or operating a vessel in a recreational area likely to cause danger to any person. Similar clauses are proposed with respect to nuisance behaviour and the setting aside of appropriate areas for swimming. In addition, the proposed By-law controls the lighting and maintaining of fires and prevents the use of firearms in recreational areas.

The risks associated with these activities are well established. For example the common accident types which occur on public land for which DSE is responsible are slips and trips (especially on steps, pathways and wet surfaces) (about 70 per cent of all claims), tree limb falls, bike riding, and diving (on average, DSE receives a serious diving accident claim every two to three years). The common accident locations are foreshores and beaches, bike tracks, **recreation areas, playgrounds**, swimming pools and **camping areas**.

Southern Rural Water does not keep a record of accidents that occur in its recreational areas, and believes that many of these would not be reported to it. However, it believes that accident rates are low in the context of the number of visitors to its sites, occur mainly in the summer months and tend to involve motor boats. Southern Rural Water estimate that there is, on average, one motor boat accident a year at these sites. No other water corporation accident data was available.

It is imperative, therefore, that DSE work with the water corporations to maintain a high level of risk management to ensure that the water corporations fulfil their duty of care to the Victorian community.

Overall there was felt to be a moderate risk of health and safety problems occurring at the recreational areas and the proposed By-laws address these risks in a variety of ways that reflect this. For example, the proposed By-law prohibits the misuse of facilities and nuisance behaviour but applies a spectrum of maximum penalties to these offences to reflect their lower significance. Certain other of these moderate risk impacts, such as the use of nuisance making equipment in a recreational area or advertising in a recreational area, are managed by the issue of permits.

### *1.5.3 Managing the impacts*

Melbourne's water catchment areas consist of a combination of 'open' and 'closed' catchments. To protect water quality, public access and movement is restricted to particular areas within the catchments. Access to 'closed' catchments is generally not permitted except on designated walking tracks and roads. Many of these catchments have been closed to the public for 100 years. Access to 'open' catchments is carefully managed, with restrictions on

certain activities and prohibitions on entering certain areas. Effective management of water catchments by periodic road closures and appropriate land use within recreational areas aims to minimise the impact from recreational activities to ensure the highest quality water sources.

Maintenance of protective vegetation is essential for erosion control. Protection of recreational areas from human induced soil erosion and associated soil instability requires restriction of activities in vulnerable areas, revegetation and measures to stabilise facilities, tracks and paths in affected areas.

Restrictions on the areas and periods in which fires may be lit and maintained, as well as the provision of fireplaces, will control the use of fires by visitors and minimise any fire risk. Measures to restrict the lighting of fires and the ability to close recreational areas to manage fire threats are enabled by the proposed By-laws. The devastating Black Saturday Victorian bushfires underscore the need to manage fire risks.

Flora management involves active management of recreational areas such as by setting aside areas for recovery and conservation, and removing non-indigenous plants and revegetation of degraded areas. Spraying, hand-pulling and controlled burning are the usual methods for managing weeds. The ability to restrict entry can assist in the success of such operations and ensure public safety as well as placing controls on the removal or damage of flora and the bringing any seeds, trees or other vegetation into such areas.

High-traffic events, such as boat regattas, are only permitted by the proposed By-law under permit from the relevant water corporation. Such a permit may impose a number of restrictions on the event regarding event size (area), timing and number of permitted participants. It also enables the water corporation to check that appropriate insurance and event management protocols are in place. In addition, activities and events need to be managed to ensure that environmental impacts are minimised and that the amenity of other users is not impinged. Other activities, such as removal of gravel, stone, seeds, leaves, and ferns, need to be controlled to prevent damage to recreational areas.

Strategies to manage safety risks in recreational areas include; information and education about the area so that visitors understand key safety messages; restriction of activities to certain areas; provision of specific facilities such as fire places and toilet facilities; emergency planning, including the power to close or restrict entry to the whole or part of the recreational area because of low water storage levels, a fire, or other emergency.

#### *1.5.4 Offences in recreational areas*

Limited data was available from the water corporations about current levels of offending in the recreational areas.

Central Highlands Water has maintained a catchment hazard reporting spreadsheet since April 2009 and in the three year period to date has recorded 254 reports of hazards. It is not clear if these hazards are limited geographically to those occurring in recreational areas or whether these include all hazards identified in a catchment area. These hazards are broadly comparable to breaches of the proposed By-law and include vandalism events, illegal camp fires and wandering livestock.

Southern Rural Water does keep an incident directory; table 3 below sets out an extract from this. Southern Rural Water estimates that they would investigate up to 15 potential breaches of its existing by-law annually.

**Table 3: Incidents at Southern Rural Water recreational areas March 2010 – June 2012**

<b>Date of incident</b>	<b>Location</b>	<b>Incident</b>	<b>Action taken</b>
<b>April 2012</b>	Blue Rock	Boat operating at a speed in excess of 5 knots	Warning letter
<b>January 2012</b>	Glenmaggie	Two jet skis exceeding 5 knot limit	Enquiry to VicRoads for owner identification (inconclusive)
<b>June 2011</b>	Glenmaggie	Three trees cut down	Warning letter; no action to be taken against offender provided stumps cut off below ground level
<b>November 2010</b>	Glenmaggie	Graffiti	Attempt to identify suspect via VicRoads enquiry
<b>February 2011</b>	Melton	Jet ski in prohibited area	Prosecuted and fined
<b>April 2011</b>	Glenmaggie	Four speedboats exceeding 5 knot speed limit; excessive noise (88db)	None disclosed
<b>June 2012</b>	Glenmaggie	Taking wood	None disclosed
<b>January 2012</b>	Pykes Creek	Jet Ski exceeding 5 knot limit	None disclosed
<b>January 2011</b>	Glenmaggie	Removal of trees	None disclosed
<b>March 2010</b>	Cowwarr Weir	Powered boat where only non-powered boating permitted	None disclosed
<b>October 2011</b>	Melton	Boat in restricted (unsafe area) near dam head gauge	None disclosed

## 2. OBJECTIVES OF GOVERNMENT INTERVENTION

### Key points:

- The Victorian Government’s broad objective is to sustainably manage the multiple (and often competing) uses that recreational areas managed and controlled by water corporations provide for all Victorians.
- The specific objectives of government intervention are to maintain, conserve and protect the ecosystem and water catchments, maintain and improve the capacity of the recreational areas to support recreation and tourism and to enhance the socio-economic benefits to Victorian communities of these areas.
- The proposed By-law assists this by providing water corporations with a model by-law which proscribes certain actions or activities in recreational areas that could harm the environment, interfere with the management of these areas or the safety and enjoyment by other persons of these areas. By proscribing certain actions or activities the proposed By-law ensures that the impact on the environment, provided facilities, the water corporations’ businesses and other people arising from recreational use is minimised.
- The proposed By-law is made under sections 160 and 287(ZC) of the Water Act.

### 2.1 Government policy

The *Sustainable Recreation and Tourism on Victoria’s Public Land* policy<sup>19</sup> provides direction to Government agencies on how to manage recreation and tourism on public land and waters within an Ecologically Sustainable Development framework. The policy identifies fundamental principles for the management of recreation and tourism on public land in Victoria.

Policy Statement 1.2 provides that ‘*General public access or specific activities may be restricted at certain sites for reasons such as protection of natural and cultural values, visitor safety and user conflicts*’.

Policy Statement 1.3 provides that ‘*Commercial recreation and tourism trade or business purposes will continue to require the express written consent (licence) of the relevant land management authority*’.

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<sup>19</sup> Department of Natural Resources and Environment 2002, *Sustainable Recreation and Tourism on Victoria’s Public Land*, Melbourne

Policy Statement 1.4 provides that ‘*Recreation and tourism activities ... will be actively managed to avoid compromising the experiences of other public land users*’.

Policy Statement 2.1 provides that ‘*Recreation and tourism use across public land will be managed sustainably*’.

Policy Statement 4.4 provides that ‘*All promotion of appropriate recreation and tourism opportunities on public land will give consideration to the protection of environmental, social and cultural values*’.

This policy is currently undergoing review and a revised policy is being developed.

While some of the recreational areas may not fall strictly within the definition of ‘public land’ used in the *Sustainable Recreation and Tourism on Victoria’s Public Land* policy (i.e. if they are not Crown land) all these areas share features with such public land.

It is good policy that, where possible, public land used for recreation and tourism be managed under a consistent policy framework and that water corporations are supported to ensure that such a consistent approach can be taken.

## **2.2 Regulatory framework**

### *2.2.1 Legislative framework*

DSE is responsible for the natural resource management policies, planning, monitoring, reporting and investment which sustainably manage Victoria’s land, water and biodiversity.

DSE is also responsible for Victoria’s water management framework and administers the *Water Act 1989* (the Water Act) and a range of regulations authorised under that legislation. The framework established and regulated by the Water Act takes a whole-of-system approach and considers all water resources (surface water and groundwater) for both consumptive and environmental purposes at all phases of the water cycle. The Water Act provides formal means for the protection and enhancement of the environmental qualities of waterways, and their in-stream uses, and for the protection of catchment conditions. In addition, the Water Act provides for the objectives and governance arrangements for the water corporations. Relevant extracts of the Water Act are contained in [Attachment F](#).

Under s.122ZA of the Water Act the Minister may determine certain land to be a recreational area under the management or control of a water corporation. A determination may be in respect of land owned and controlled by a water corporation, land within its district, or land which is either Crown land or land owned and controlled by another statutory body which is significant to the exercise of a function by the water corporation. A water corporation that has been determined to have responsibility for a recreational area has certain functions in respect to that area as set out in the deeming Order. These functions are set out in s.122ZB of the Water Act and include controlling land use in the area, providing and arranging services and facilities in the area and improving the area.

In addition, all storage areas owned and managed by the former rural water corporations before the Water Act came into effect were deemed to be recreational areas under schedule

14 of the Water Act. Section 160(1)(b) of the Water Act provides water corporations with wide powers to make by-laws to regulate activities in statutory recreational areas.

Visitors to recreational area already face a range of regulations. However, there are many gaps in the current regulatory regime where identified problems are not currently being addressed. Attachment C outlines the current regulatory framework that applies to recreational areas, and identifies where these regulatory gaps arise.

### 2.2.2 Water corporation by-laws

Part 13B of the Water Act provides two alternative procedures for the making of water corporation by-laws. The water corporation can either make an individual by-law, or the Minister for Water may issue a model by-law which can then be adopted by a water corporation. These by-laws are automatically revoked ten years after they are made by the operation of s. 287ZL of the Water Act.

Several water corporations had in place individual by-laws which regulated activity in their recreational areas and some have been regulated by a form of by-law for a significant period of time. For example, Central Highland Water has had a policy of regulating its recreational areas as far back as the 1920s.

The only individual by-law still in effect is Southern Rural Water's current by-law<sup>20</sup> which was due to expire in October 2011. The Minister for Water extended the validity of this by-law for a further twelve months, and this will now expire in October 2012. DSE is seeking to develop a model by-law for recreational areas which Southern Rural Water may adopt and make when this existing by-law expires.

Other water corporations will also be able to adopt and make the proposed By-law if they decide regulation of their recreational areas is required. Barwon Water and Grampians Wimmera Mallee Water have confirmed they are likely to adopt the proposed By-law and it is possible it will also be adopted by Central Highlands Water, Melbourne Water, Goulburn Murray Water, Wannon Water and Gippsland Water.

In Victoria, the *Subordinate Legislation Act 1994* now requires that new or remade regulatory proposals (including certain by-laws) that impose an 'significant economic or social burden on a sector of the public' be formally assessed in a RIS to ensure that the costs of a regulatory proposal are outweighed by the benefits, and that the proposal is superior to alternative approaches.

Should each water corporation continue with the practice of making individual by-laws each such by-law would potentially need to be assessed in a RIS. However, if the Minister issues a model by-law and assesses this in a RIS equivalent process, the burden on the water corporations would be reduced, as the Minister for Water could potentially exempt<sup>21</sup> any water corporation that chose to adopt the model by-law from the requirement to develop an additional RIS. Provided the findings in the associated RIS remained valid, such exemption

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<sup>20</sup> By-Law No.5. Recreational Areas

<sup>21</sup> Under s.12F of *Subordinate Legislation Act 1994*



would be on the grounds that an analytical and consultation process equivalent to a RIS had already been conducted.

While uptake of the proposed By-law will be at the discretion of individual water corporations based on identified need, to address the need for a separate RIS each time a water corporation adopts the proposed By-law, DSE has decided to undertake an upfront consultation process, equivalent to a RIS consultation process, for the proposed By-law.

### 2.2.3 *Codes of Practice and educational material*

Visitor behaviour at certain recreational areas is regulated by codes of practice and educational materials produced by water corporations. Practice varies between the water corporations.

Southern Rural Water has individual visitor guides for its recreational areas and issues regular media releases which highlight issues or problem areas at its recreational areas. Southern Rural Water also runs an education activity over the summer, in conjunction with Transport Safety Victoria, to educate boat users about safety.

Central Highlands Water has a Code of Practice for Amenity Trees that applies in its recreational areas.

In addition, several of Goulburn Murray Water's recreational areas have in place, or are developing, Land and On-Water Management Plans<sup>22</sup> to provide a strategic approach to the management of specific water and foreshore areas for reasons (such as recreational use, public access and environmental and land management issues) that do not relate to their primary function of water storage and supply.<sup>23</sup> However, these plans are not legal documents and if a need for the better regulation of activities on the water or foreshore is identified, further action will be required to implement this.

### 2.2.4 *Leases, licences and permits*

Certain recreational areas or parts of a recreational area are regulated by the terms of leases, licences or permits granted to individuals or to businesses by water corporations. Again, practice varies between the water corporations, and there is no one standardised and up to date approach to this issue taken across the water corporations.

Central Highlands Water has a lease with a community group, the Friends of Moorabool, in respect to the Moorabool Reservoir Lodge. The holding of events at recreational areas requires authorisation from Central Highlands Water, but no fee is charged for this authorisation and there is no record of a permit ever being refused.

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<sup>22</sup> For example, Waranga Basin, Lake Nillahcootie, Lake Eildon, Lake Hume, Lake Mulwala, Lake Boga and Goulburn Weir

<sup>23</sup> Goulburn Murray Water Authority 2011, *Lake Nillahcootie Land and On-Water Management Plan*, p.1

Barwon Water requires that events held on its recreational areas are authorised by letter of consent. While no fee is charged for such a letter, it may impose conditions regarding safety, event management and insurance.

Southern Rural Water also regulates the use of its recreational areas through the issue of a licence to occupy a particular area or through a letter of approval to undertake an event or activity. These are issued free of charge. Groups who have a licence include the Melbourne Runabout and Speed Boat Club at Melton Reservoir and a school camp who use an area at Glenmaggie. There are a total of 30 licences in place, many of these are to graziers. A further area at Glenmaggie is leased to a caravan park. Some users have been denied permits in the past.

### **2.3 Objectives**

The broad objectives of the proposed By-law reflect the Government’s overarching policy and legislative objectives to sustainably manage the multiple (and often competing) uses that recreational areas managed and controlled by water corporations provide for all Victorians. The specific objective is to establish appropriate arrangements to control, manage and use such areas by regulating the activities that may be conducted in these areas to:

- protect the land, services and facilities of the water corporation and water supply catchment areas;
- promote safe visitor use and enjoyment of the recreational areas by protecting people in the area from injury or nuisance; and
- conserve and preserve flora, fauna and habitat, and control the introduction of new flora in these areas.

### **2.4 Authorising Provision**

The proposed By-law is made under s.160(1)(b) of the Water Act which provides water corporations and catchment management authorities with the powers to make by-laws with respect to the management, protection and use of recreational areas and/or environmental areas. This RIS is only concerned with recreational areas.

The procedures for making model by-laws are set out in Part 13B of the Water Act, in particular s. 287(ZC). Such by-laws may prescribe a fee<sup>24</sup>, and may impose a penalty not to exceed 20 penalty units.<sup>25</sup>

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<sup>24</sup> S. 160(4) of the Water Act

<sup>25</sup> S. 160(3)(g) of the Water Act

### 3. OPTIONS TO ACHIEVE THE OBJECTIVES

#### Key points

- Feasible non-regulatory and regulatory options for achieving the objectives are identified to address the issues identified in the previous section.

- *Issue 1 – General control of a recreational area*

Feasible options to deal with issue 1 identified in this RIS include:

- the proposed By-law (cl. 8-25; 26-30);
- a performance-based approach; and
- an education program combined with use of existing (legislative and common law) powers.

- *Issue 2 – Specific activities undertaken by well-defined groups*

Feasible options to deal with issue 2 identified in this RIS include:

- the proposed By-law (cl. 31-33; 34-36; 37-40; 44-47)
- codes of conduct for specific user groups, i.e. campers, pet and animal owners, boat owners, and motor vehicle owners.; and
- legislative prohibition of high risk activity.

- *Issue 3 – Managing commercial activity (including issue of permits)*

Permits are dealt with in Section 4A of this RIS.

#### 3.1 Regulatory and non-regulatory options

This section describes the viable non-regulatory and regulatory options for achieving the objectives set out in section 2.3 of this RIS. The *Subordinate Legislation Act 1994* (section 10(1)(c)) requires that non-regulatory options must be considered as part of a RIS. The scope of consideration of regulatory and non-regulatory options is limited because of the existing powers of the Water Act and the limited focus of the proposed By-law.

Impacts on the environment or water quality could be all but eliminated by prohibiting access to the areas covered by the proposed By-law; however, this would severely impact on the enjoyment or ‘utility’ of thousands of Victorian who enjoy recreational activities in these areas. Given that a blanket prohibition of access to these areas is not considered a feasible option, the choice of regulatory or non-regulatory options becomes one of considering those alternatives that provide the greatest benefits for the least cost in attaining the Government’s objectives.

The issues to be addressed can be grouped into the following categories:

- *Issue 1 – General control of a recreational area*

This includes access to areas, protection of water corporation assets, minimising public safety risks, protection of flora and fauna, and improving public amenity by managing dangerous or inappropriate behaviour. Feasible options identified in this RIS to deal with issue 1 include:

- the proposed By-law (cl. 8-25; 26-30);
- a performance-based approach; or
- an education program combined with use of existing (legislative and common law) powers.

- *Issue 2 – Specific activities undertaken by well-defined groups*

This covers accommodation and camping; pets, livestock and other animals; use of vehicles, aircraft and vessels; and boating. Feasible options identified in this RIS to deal with issue 2 include:

- the proposed By-law (cl. 31-33, 34-36; 37-40, 44-47);
- codes of conduct for specific user groups, i.e. campers, pet and animal owners, boat owners, and motor vehicle owners; or
- legislative prohibition of high risk activity.

- *Issue 3 – managing commercial activity (including issue of permits)*

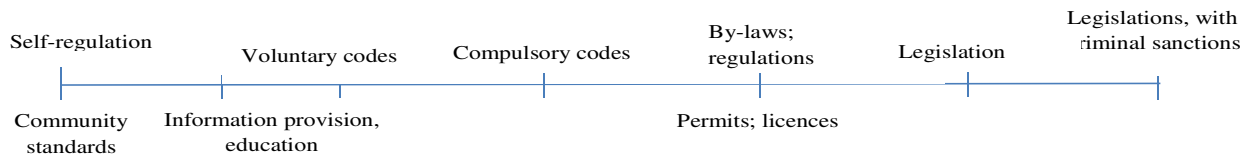
Permits are dealt with in Section 4A of this RIS.

### **3.2 Description of regulatory and non-regulatory options**

Regulatory tools are often described by reference to a spectrum. At one end of the spectrum is ‘no regulation’ while at the other end is ‘black letter law’ backed with coercive sanctions. Figure 1 below illustrates this spectrum.

Moving up the spectrum involves moving from ‘softer’ forms of regulation (e.g. self-regulation, voluntary codes) to harder forms of regulation (e.g. compulsory codes, by-laws, legislation). Generally, harder forms of can be effective in encouraging compliance (as they may contain coercive sanctions) but often impose costs on regulatees.

Modern regulatory theory suggests that using a range of regulatory tools and responses to address particular issues may be more effective than simply choosing a single regulatory tool.

**Figure 1: Spectrum of regulations**

### 3.2.1 Public information and education campaign

This option could involve a multifaceted campaign to inform users of recreational areas about the conservation and environmental value of these areas and the potential for negative impacts associated with inappropriate or excessive levels of human activity.

Research on regulatory compliance and the practical experience of regulators indicates that non-compliance with the requirements of regulations (including by-laws) can be the result of ignorance rather than any intentional desire to flout the law and where the problem to be addressed results from a lack of knowledge amongst consumers or participants in an industry, then an education program should be considered.

An education campaign is likely to be successful where the target can be easily identified and reached economically. A recreational area visitor education campaign could include advertising in specialist, suburban, regional and stakeholder media, using approaches including booked advertising, radio, online communications via websites, soliciting community groups or associations to disseminate information, or targeted mail-outs to stakeholder groups.

Education campaigns represent a quick method of disseminating information about compliance requirements, may reduce costs to the government and the community because of a higher level of awareness about issues of concern, and may reduce resources expended on implementing regulatory programs and ongoing enforcement. Generally, an education campaign can inform the community about the virtues of a particular policy and therefore increase compliance.

Information campaigns are suitable for use when the problem or non-compliance results from misinformation or a lack of information, and when a light-handed approach would be more appropriate. They can also be useful when target audiences can be easily and economically reached and in situations where the rationale of a particular policy is not well understood.

Given that the issues proposed to be regulated in relation to recreational areas are serious (i.e. protection of water quality, eco-systems and habitat etc.) information campaigns may be less effective than other regulatory approaches, as they rely on voluntary compliance rather than being supplemented by coercion. Therefore, the public interest may warrant action in addition to education. In the case of recreational areas visitors, groups may not be readily identified or reached. Finally, the community can become de-sensitised or weary of messages, thereby reducing the effectiveness of education campaigns, particularly if the problem is long-term. The cost of education campaigns vary considerably and can reach many millions of dollars (e.g. safe driving campaigns).

### 3.2.2 *User group voluntary codes of practice*

Self-regulation (or voluntary codes of practice or standards) refers to the benchmark actions or procedures, as determined by a particular target group, which are generally acceptable within the peer group and within wider society. The relevant group is responsible for enforcement. Self-regulation usually implies that members of a group have accepted mutual obligations. These obligations are often described in a code or industry standards.

Self-regulation has some benefits. As major participants or groups often set the standards, there may be greater awareness of obligations, and compliance may be high. In addition, self-regulation utilises the expertise and experience of those in the group and may encourage innovative behaviour of participants. Self-regulation also lowers administrative costs for governments.

Voluntary codes of practice, or codes of conduct, may influence the behaviour of some groups of visitors if they are developed and promoted by the various user groups of the recreational areas.

However, the major disadvantage associated with voluntary codes is the absence of a mechanism to ensure compliance and enforcement. Disciplinary processes, where they exist, may not be transparent. Self-regulation is typically suitable for cases where the problem to be addressed is a low-risk event, or event of low impact. The impact of recreational activities in recreational areas varies according to the type of activity and by the number of visitors. For example, some activities have an inherently high impact. These might include shooting (in terms of safety), horse riding (in terms of environmental impacts) or public events (in terms of soil compaction and damage to infrastructure). Other activities, for example, visiting a picnic area or fishing site, may have a lower impact in itself, but because of the large number of visitors the aggregate impact may be large.

In addition, self-regulation is more effective where non-compliance can be observed and negative impacts are imposed on a person's or business's reputation (i.e. breaking an industry code for sustainability may reflect badly on a firm if made public). Overall, many recreational activities do not have a low-risk, low impact profile and need to be appropriately managed. This makes self-regulation unsuitable where many actions are unobservable, such as in those in recreational areas.

### 3.2.3 *By-laws – regulatory instrument (permissive)*

A legislative instrument is a regulatory vehicle used extensively by governments to give operational effect to primary legislation. Legislative instruments can be an effective policy tool to achieve a range of policy objectives including: to prevent or reduce activity which is harmful to business, the environment or to other people, to ensure that people engaged in some occupations possess a requisite level of knowledge and competence and to define rights, entitlements or obligations.

The *Subordinate Legislation Act 1994* Guidelines (the Premier's Guidelines) provides guidance regarding the matters suitable for inclusion in legislative instruments. These include matters relating to detailed implementation of policy, general principles and standards (rather than the policy, principle or standard itself); prescribing forms (if it is necessary that they be

prescribed) for use in connection with legislation; and prescribing processes for the enforcement of legal rights and obligations.

The proposed By-law will support a consistent approach to the management of recreational areas between water corporations and will enable the land management of such areas to be more consistent with the land management of other areas, such as state parks and forest reserves, where public land is used for recreation and tourism purposes. The proposed By-law may also reduce regulatory burdens by potentially removing the need for each water corporation that adopts the proposed By-law to undertake a RIS process.

A full summary of the proposed By-law is included as Attachment B to this RIS. The major elements of the proposed By-law are summarised below.

The proposed By-law will:

- enable areas within the recreational area to be set aside to ensure adequate care, protection and management of these areas;
- restrict entry and enable temporary closure of recreational areas, or part of a recreational area (including for reasons of ensuring public safety);
- prohibit certain activities;
- require permits to be issued for certain activities;
- establish offences and associated penalties for certain behaviours; and
- enable authorised water officers to enforce the proposed By-law.

Broadly, the proposed By-law will restrict access and prohibit certain activities unless water corporations have designated areas within recreational areas for those purposes. For example, fishing or swimming are only permitted in areas that have been permitted for swimming or fishing. The proposed By-law also includes prohibitions on damaging flora, fauna, lighting or maintaining fires, camping, introducing animals to a recreational area and a range of other activities that may damage a recreational area or threaten the safety of users. Other restrictions take the form of conditions such as dogs being under effective control. Commercial activities are restricted by the requirement that they only be conducted subject to a permit.

Some of the problems associated with the regulatory gaps identified in Attachment C have greater potential for environmental or social harm than others. In general the most significant gaps surround protection of the environment (in particular water quality) and the protection of provided facilities from vandalism. The clauses of the proposed By-laws relating to the disposal of human waste, the use of soap and detergent and the restriction of animals' access to the water are very prescriptive about acceptable behaviours to reflect the priority given to protecting water quality. Similarly, there are several provisions aimed at regulating when and where a person may access a recreational area which are, in part, aimed at reducing the risk of facilities being vandalised. In contrast, while the social harms caused by visitor conflicts are important, they are a lower order priority to water corporations, and the lower penalties in the proposed By-laws for nuisances resulting from public speaking, advertising and operating non-sound producing equipment reflect this.

To a degree, the proposed By-law replicates some existing statutory and common law offences. However, it provides a convenient and efficient regulatory mechanism and helps to clarify the jurisdiction and powers of authorised water officers. In operational terms, legislative instruments may be preferable to formal criminal or summary prosecutions and also provide administrative certainty and consistency by bringing together a range of offences into one instrument.

While an alternative to the proposed model By-law would be for the water corporations to continue to make individual by-laws, this alternative has higher administration costs (particularly now each by-law would potentially need to undergo a RIS consultation process) and may not result in a consistent regulatory regime across all recreational areas.

### *3.3.4 Prescriptive vs. performance-based approaches*

By-laws may take the form of prescriptive rules, which focus on the inputs, processes and procedures of a particular activity. One of the main advantages of prescriptive regulation is that it provides certainty and clarity. By setting out requirements in detail, it provides standardised solutions and facilitates straight-forward enforcement.

However, because of its inflexibility, prescriptive regulation may be unsuitable in certain situations, e.g. where circumstances are subject to change. Performance-based standards specify desired outcomes or objectives, but not the means by which these outcomes/objectives have to be met. The main advantages that performance-based standards have over prescriptive regulation are the greater flexibility afforded to regulated parties in achieving the desired outcomes, and their ability to be used in situations where circumstances may change over time. Nevertheless, they do have some disadvantages. For example, the greater flexibility and freedom offered by performance-based regulations is often cited as a problem for those being regulated as it can lead to uncertainty as to whether the actions they undertake are sufficient to satisfy the standards set by the regulations.

In the case of the proposed By-law, performance-based standards could be formulated. A standard or principle could be developed that requires a person to undertake recreational activities that “minimises impacts on the environment”. It would then be up to that person to act in accordance with the standard. Such standards or principles could be supported by a code of practice to improve clarity.

It is feasible that codes of practice could be used to set down criteria that may reduce the subjective element of performance-based standards by establishing benchmarks by which performance can be measured.

Performance-based standards may generate uncertainty because circumstances giving rise to prosecutions may be determined subjectively. This in turn may increase government enforcement costs because the interpretation of such standards may be challenged or determined in the court/tribunal system.

For example, the risk of human waste or detergents generated by visitors camping in the recreational areas contaminating water storages is currently dealt with by highly prescriptive by-laws which restrict certain behaviours of campers. Clause 32 totally prohibits the leaving or depositing of faeces other than in a dedicated toilet facility, or in areas where there are no



such facilities, by burying these at a specified depth in a location a specified number of meters from a waterway. Clause 33 bans the use of soaps or detergents within 50 meters of a waterway except in a dedicated washing facility.

An alternative ‘performance standard’ approach would be to rephrase these by-laws so that they focus on the desired outcome (uncontaminated water storages) but leave the method for achieving this to the visitor’s discretion. For example, by requiring that a person not contaminate a waterway in a recreational area with human waste, soap or detergent without specifying how this should be achieved. Camping codes of conduct could then advise campers on common ways of disposing of faeces and washing at campsites which would avoid such environmental contamination. While non-compliance with such suggestions may be influential to a judge if enforcement action was taken, a visitor could avoid a penalty if able to show their behaviour was not leading to water contamination. These performance based standards would be much harder for authorised water officers to enforce on the ground, as there would be significant scope for disagreement between the authorised water officer and a visitor about whether any specific behaviour was potentially polluting.

### *3.2.5 Legislation – legislative instrument (prohibitive)*

The Victorian Government could consider totally prohibiting certain activities in the recreational areas, for example, lighting fires, water sports, or events or functions. The proposed By-law starts from the premise that many of these activities are prohibited but may be carried out in a regulated manner by providing the water corporations with a mechanism for the issue of permits for the conducting of the activity by specified person. It could be argued that totally proscribing certain higher impact activities would reduce the human impact on Victoria’s ecosystem.

It should be stressed that totally prohibiting these activities in the recreational areas does not represent current Victorian Government policy, but is included in this RIS for completeness in identifying options.

### *3.2.6 Non-feasible or practicable options*

A number of options were considered as not being feasible or practicable. Specifically, negative licensing was considered with respect to commercial activities (cl. 19), soliciting money (cl. 20(1)) and public speaking (cl. 20(3)).

Negative licensing is designed to ensure that individuals or businesses that have demonstrated, by their prior action, that they are incompetent or irresponsible, are precluded from operating or undertaking certain activities. For example, a person soliciting money or public speaking (with a public address system, for example) in an annoying or disruptive manner could be prohibited from undertaking these activities in recreational areas. This approach would ensure that the most serious offenders are removed from the area without, at the same time, placing an undue burden on other individuals or those in the industry.

The advantage of this alternative is that those with a poor track record of breaching the proposed By-law could be either barred from the area or closely monitored.

There are many disadvantages with this alternative:

- some participants may be able to operate undetected or act inappropriately before they are detected. In this regard, the system is essentially *reactive* and the enjoyment of others could be diminished while sanctions are being imposed upon offenders.
- further, using a by-law to support a practice of blacklisting certain persons on the ground of past behaviour could contravene the right to be presumed innocent under the *Charter of Human Rights and Responsibilities 2006* without express legal authorisation in the principal legislation, the Water Act. This could lead to each by-law made by a water corporation, by adopting the model by-law, being disallowed by Parliament; and
- For less serious offences, negative licensing would not represent a proportionate response.

For these reasons, in practice, negative licensing regimes are rarely used and this is not an option for the model by-law. This RIS assesses that negative licensing would not be practical given the wide range of activities covered and enforcement problems.

### **3.2 Groups affected**

Groups affected by the options identified above include visitors to the recreational areas (including special interest groups such as anglers, bird clubs, dog walkers, naturalist clubs, speed boat clubs and walking clubs), some commercial operators, owners of surrounding property, organisers of events, competitions and social functions, surrounding local governments, the water corporations and water corporation officers.

### **3.3 Regulatory arrangements in other jurisdictions**

Given the limited and specific nature of the land type (i.e. land managed by water corporations), comparing regulatory regimes with other jurisdictions proved difficult. Broadly, all jurisdictions regulate activities on their public land estate in some form, to minimise environmental and social impacts. However, no jurisdiction appears to possess regulations or by-laws in relation to land managed by water corporations that are as comprehensive as the Victorian proposal. A detailed description of the arrangements in other jurisdictions is contained in Attachment G. Consultation confirmed that these arrangements are unlikely to be backed by penalty sanctions.

## 4. COSTS AND BENEFITS OF THE OPTIONS

### Key points:

- The ‘base case’ describes the regulatory position that would exist in the absence of the proposed By-law.
- To the extent that the proposed By-law contributes to sustainable ecosystem management, the benefits include direct use benefits (e.g. recreation), indirect use benefits (e.g. carbon storage, water filtration and soil protection) and non-use benefits (e.g. biodiversity), this RIS concludes that the costs are out-weighed by likely benefits.
- The alternative options to the proposed By-laws generally impose fewer costs on recreational area users and business, but are assessed as delivering fewer net benefits in relation to the government’s objectives because of compliance and enforcement issues.

### 4.1 Base case

The ‘base case’ describes the regulatory position that would exist in the absence of the proposed By-law. The base case of ‘doing nothing’ is not, strictly speaking, an alternative, given that the Government has identified a problem that needs to be addressed. It is necessary to establish this position in order to make a considered assessment of the incremental costs and benefits of the viable options. In terms of establishing the base case, in the event the proposed By-law, or any individual water corporation by-law, is not made:

- the Water Act would continue to apply and the water corporations would continue to have functions in respect of the recreational areas. However, there would be no legal basis for imposing a penalty for the breach of any of the numerous restrictions currently in place governing the use of these areas, and particular offences within the recreational areas would not be prescribed;
- Land and On-Water Management Plans would continue to be in place for certain areas. As discussed above, these documents are for guidance only and are not legally enforceable;
- user codes of practice would continue to be in place. As discussed above, these instruments provide useful guidance and are widely used by recreational groups; however, typically, persons undertaking aberrant or unsocial behaviour are either unaware of such codes or do not pay attention to them; and
- other legislation, and the common law, may apply in particular circumstances. Attachment C contains a detailed table that summarises the other laws and regulations (including the common law) that may apply in the absence of the proposed By-law. The

table is indicative only and is not intended to provide legal opinion, nor is it intended to cover all applicable laws.

For the purposes of analysis in this RIS, recreational activities would be permitted in areas that are declared ‘recreational areas’; however, no activities would be prohibited and no permits would apply.

Currently, only Southern Rural Water Corporation has by-laws in place. These will expire in October 2012.

A number of other water corporations had by-laws in the past, but these have all now expired although the water corporations have tended to manage and regulate use of their recreational areas along the same regulatory principles that had been set out in their by-laws. In the absence of any by-laws, these water corporations can only enforce compliance with their current management strategies to the extent that the aberrant behaviour breaches other legislation or the common law. This approach is unsatisfactory.

The water corporations have advised DSE that their preference is to manage and regulate use of their recreational areas with the certainty provided by a by-law and many of them intend to adopt the model by-law issued by the Minister

## **4.2 Methodology**

### *4.2.1 Assessment of costs*

The *Subordinate Legislation Act 1994* requires, *inter alia*, a RIS to assess the costs and benefits of the proposed By-law. This legislation also requires that a RIS identify practicable alternatives to the proposed By-law and assess their costs and benefits as compared to the proposed By-law. Conversely, the RIS is not required to identify alternatives which are not feasible or practicable.

By their nature, by-laws are designed to modify behaviour in order to achieve certain outcomes. This can impose costs on individuals or businesses known as ‘compliance costs’. In simple terms, compliance costs are the costs of complying with the by-law. These can be divided into ‘administrative costs’ and ‘substantive compliance costs’. Another category of regulatory costs are known as ‘financial costs’.

As outlined in section 1.4, administrative costs, often referred to as red tape or administrative burden, are those costs incurred by businesses to demonstrate compliance with the by-law or to allow government to administer the by-law. These costs can include costs associated with administrative requirements such as record keeping, reporting or submitting applications. In relation to the proposed By-law, the costs associated with applications for permits are administrative costs. However, the actual dollar amount of the fee represents a financial cost (these are covered by the Water Act not the proposed By-laws).

Substantive compliance costs are those costs that lead directly to the regulated outcomes being sought. These costs are often associated with content-specific by-law and include, for example, buying new equipment, undertaking specified training or specifying behaviours in

order to meet government regulatory requirements. The vast majority of requirements in the proposed By-law are substantive compliance costs aimed at modifying behaviours (e.g. a person ‘must not’ engage in specific activities or actions).

The water corporations are state owned enterprises and for the purposes of this RIS, the costs of the water corporations are government costs.

#### 4.2.2 Weighted decision criteria analysis

In many cases, the costs and benefits specific to the proposed By-law proved difficult to quantify in monetary terms. Multi-Criteria Analysis (MCA) is presented in this RIS as an alternative assessment tool to complement the quantitative analysis. The MCA approach is described in pages 85-86 of the *Victorian Guide to Regulation*. This approach is useful where it is not possible to quantify and assign monetary values to the impacts of a proposed measure (e.g. measures that have social and environmental impacts). Furthermore, it represents a convenient way of comparing a range of alternative approaches.

This technique requires judgements about how proposals will contribute to a series of criteria that are chosen to reflect the benefits and costs associated with the proposals. A qualitative score is assigned, depending on the impact of the proposal on each of the criterion weightings, and an overall score can be derived by multiplying the score assigned to each measure by its weighting and summing the result. If a number of options are being compared, then the option with the highest score would represent the preferred approach.

Three criteria were chosen and weightings selected. The first criterion reflects the government’s overarching objective to manage Victorian ecosystems sustainably. The second criterion reflects the government’s objective to help ensure that activities in the recreational areas are conducted in a safe and responsible way, and that impacts on the environment are minimised. The third criterion relates to the costs of various regulatory proposals (both user costs and government enforcement costs). The criteria are described in Table 4 below.

**Table 4: Multi-Criteria Analysis Criteria**

Criterion	Description of criterion	Weighting
Sustainable use of Victoria’s ecosystems (land management)	This criterion reflects the main purpose of the overarching government objective in relation to the management of recreational areas. That is, to maintain, conserve and protect the ecosystem (including water quality), while balancing the competing uses of these areas and their resources (e.g. balancing conservation against the human impacts associated with recreational activities). Given that this criterion reflects an important objective of the proposal, it is assigned a weighting of 25.	25

Protecting the health and safety/amenity of users and water corporation assets	Parallel with the land management objective, the government seeks to ensure the persons visiting recreational areas conduct themselves in a manner that minimises health and safety risks to themselves and others. Accordingly, a weighting of 25 is assigned to this criterion.	25
Cost	This criterion relates to ensuring that the costs of any regulatory measure imposed on the public and business are kept to a minimum. In addition, it is important that any options consider minimising costs to the water corporations, and ultimately to the government and the Victorian taxpayer/community. Given the importance the Victorian Government is placing on reducing the regulatory burden, this criterion is assigned a weighting of 50.	50

For the purposes of an MCA assessment, an assigned score of zero (0) represents the base case, while a score of plus one hundred (+100) means that the alternative fully achieves the objectives. A score of minus one hundred (–100) means that the proposal does not achieve any of the objectives.

In terms of assessment using the MCA, under the base case each criterion is awarded a score of zero reflecting the default position (i.e. the regulatory position in the absence of the proposed By-law). Accordingly, the base case scenario overall receives a net score of zero.

#### 4.2.4 Decision criteria

The benefits associated with the Government’s objectives of protecting and conserving the Victorian ecosystem are extremely difficult to quantify in monetary terms, and many benefits may be intangible (e.g. positive feelings towards a healthy natural ecosystem).

Given the difficulty in measuring the intangible and tangible costs and benefits associated with the recreational areas, this primarily relies upon the MCA assessment tool in an attempt to assess the costs and benefits of the viable options. As noted above, the option with the highest score represents the preferred approach.

### 4.3 Costs and benefits of options

In this section, the nature and incidence of the costs and benefits associated with the viable options are analysed. The costs and benefits are analysed in comparison with the base case. The relative costs and benefits of each option are assessed against the objectives identified in Part 2.3.

#### 4.3.1 Issue 1 – General control of a recreational area

As noted above, general controls include controls over access to areas, protection of water corporation assets, minimising public safety risks, protection of flora and fauna and improving public amenity by managing dangerous or inappropriate behaviour. These may cover a wide range of activities. These controls are of a general nature and aim to manage behaviour or actions. They are relatively easy to comply with.

##### *Issue 1, Option A – Legislative instrument: the proposed By-law*

The general activities this option seeks to regulate includes cl. 8 - 25 (control of recreational area) and cl. 26 - 30 (protection of flora and fauna).<sup>26</sup> The cost of complying with most of the clauses is extremely low and, in general, accords with community standards. For example, a person must not enter a recreational area when it is closed or where access is prohibited. The ‘cost’ of this regulation is possible loss of ‘enjoyment’ of recreation during certain hours of the day. In addition, a person must not interfere with any works, signs, buildings or other structure, nor must they cause a disturbance in a recreational area. Users must light fires in designated fireplaces and use toilet and shower facilities designated for use of a specified gender (where that person identifies with that gender). Other restrictions are aimed at health and safety, protection of water corporation assets and ensuring user amenity and equitable usage (e.g. unrestricted use by sporting groups or other users may see those group dominate the recreational area and consequently impinge upon the use and enjoyment of these areas by the broader public).

There are also non-quantifiable costs in the proposal, many of which related to conduct or behaviour. The costs associated with ensuring appropriate behaviour in recreational areas and other areas are considered minimal because the vast majority of businesses and individuals do not engage in aberrant or illegal behaviour. That is, activities undertaken by individuals such as harming animals and damaging or destroying trees are not ‘normal’ activities and would therefore not impinge upon the conduct or behaviour of the vast majority of individuals.). Attachment E describes and makes a qualitative assessment of the substantive compliance costs associated with the proposed By-law.

In terms of benefits, it is important to stress that most of the benefits relate to the Victorian ecosystem regulatory regime overall (i.e. the Water Act, other land management legislation, other regulations, codes of conduct, etc.) and that the benefits attributable to the proposed By-law are limited to the extent that they contribute to the regulatory controls for managing a healthy, well-functioning ecosystem, along with managing health and safety risks.

At a higher level, the direct and indirect use benefits from ensuring that ecosystems are sustainably managed are likely to be substantial. These benefits are summarised in Table 5

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<sup>26</sup> Each clause of the proposed By-law was examined for the likely costs it would impose on parties affected by the proposal. It is assessed that there are no costs associated with the machinery clauses (cl. 1-7, cl. 43 and cl. 48), while cl. 8-41 and cl. 44 -47 concern offences and penalties, which strictly speaking, do not impose administrative or compliance costs on normal businesses or individuals (although it could be argued that if these regulations change behaviour, costs may be incurred). Cl. 13, 15, 17-21, 35, 40, 42 and 45 deal with administrative costs associated with applications for permits and government costs

below. Again, it should be stressed that the proposed By-law contributes to only a small proportion of these higher level benefits. Nevertheless, given that the overall benefits derived from a well-managed ecosystem are likely to be substantial, even a proportionally small contribution to the overall benefits is likely to be considerable.

**Table 5: Values/benefits associated with ecosystems**

1. Direct Use Benefits	2. Indirect Benefits	3. Non-use Benefits
1.1 Education, recreational and cultural uses	2.1 Watershed protection	3.1 Biodiversity (wildlife)
1.2 Amenities (landscape)	2.2 Soil protection/fertility improvements	3.2 Culture, heritage
	2.3 Air pollution reduction (gas exchange)	3.3 Intrinsic worth
	2.4 Carbon Storage	3.4 Bequest value
	2.5 Habitat and protection of biodiversity and species	3.5.Option for future direct or indirect use

Source: Adapted from Bishop (1999)

In addition, it has been estimated that the use of public land contributes at least \$3.5 billion annually to the Victorian economy.<sup>27</sup> If the benefits were only a small fraction of this value, even a fraction of one per cent, then such benefits could be in the order of millions of dollars.<sup>28</sup>

Many of the benefits specifically associated with the proposed By-law relate to minimising risks to public safety and ensuring that recreation activities of groups or actions of individuals do not impinge upon the amenity of the broader public. These benefits are difficult to value, and data is generally not available to provide an accurate estimate in monetary terms.

Given the difficulties in providing a monetary estimate for many of the benefits associated with the proposed By-law, an MCA analysis was undertaken. The weightings are discussed above in Table 4.

The proposed By-law provides a well-defined framework, establishing rights and responsibilities for various groups of recreational area users, and a score of 75 is assigned. Importantly, this framework is supported by an enforcement mechanism and sanctions may be applied. However, a full score of 100 is not awarded because there will still be some level of non-compliance with the proposed By-law due to the difficulty of enforcing it, and there will also be some level of adverse environmental impact due to recreational activities.

<sup>27</sup> Department of Sustainability and the Environment 2005, *Our Environment Our Future*

<sup>28</sup> While estimates do not exist for the recreational areas covered by the proposed By-law, a further illustration of the magnitude of the recreation and tourism benefits associated with public areas set aside for recreational purposes is that Port Campbell National Park, Grampians National Park and Wilson's Promontory National Park alone are estimated to contribute \$487 million per annum to Victoria's economy. Source: Department for Sustainability and Environment 2008, *Victoria's State of the Forests Report*, p. 16



The proposed By-law is also relatively effective in minimising health and safety risks, so a score of 75 is assigned. Again, direction is provided as to appropriate behaviour and actions, and these are enforceable. This criterion does not receive a full score because a more stringent regime would arguably further reduce these risks (the extreme case being that persons are prohibited from certain recreational areas or from undertaking particular activities).

Although costs imposed on recreational area users are relatively modest, they are nevertheless greater than under the base case and are also the largest compared to other options; hence a score of -30 is assigned to this criterion. The total quantifiable costs of the proposed By-law that were able to be identified in this RIS are in the order of \$260,000 (PV) over a 10 year period.<sup>29</sup>

Taken together, these result in a net overall score of **+22.50**.

**Table 6: Multi-Criteria Analysis assessment of proposed By-law**

Criteria	Weighting	Assigned Score	Weighted Score
Sustainable land management	25	75	18.75
Minimising health & safety risks/amenity	25	75	18.75
Cost	50	-30	-15.00
<b>Total</b>	<b>100%</b>		<b>+22.50</b>

*Issue 1, Option B – A performance-based approach*

As noted above, the proposed By-law is relatively prescriptive. An alternative approach could be to rely on a more ‘performance-based’ approach. One such example is in the proposed by-law is cl. 15(1), which provides that a person must not operate any sound producing device (e.g. a radio system or gramophone) at a volume likely to cause unreasonable inconvenience or nuisance to any person. This provides flexibility and context. A more prescriptive approach would be to prescribe the maximum decibel limit for such devices.

General behavioural, safety and environmental standards or principles could be developed that require a person to undertake recreational activities that “minimises impacts on the recreational area”. It would then be up to that person to act in accordance with the standard. Such standards or principles could be supported by a code of practice to improve clarity.

For example, clauses 32 and 33 could be restated so that they require a person not to act so as to contaminate a waterway in a recreational area with human waste, soap or detergent.

<sup>29</sup> This represents the sum of compliance costs, the administrative costs relating to permit applications and the water corporation costs of processing permit applications. Detailed calculations and assumptions are contained in [Attachment D](#).

Camping codes of conduct could then advise campers on common ways of disposing of faeces, and of washing at campsites, which would avoid such environmental contamination.

To compare this alternative with the more prescriptive approach contained in the proposed By-law, an MCA was undertaken.

In terms of the sustainable land management criterion, performance-based standards (particularly if supported by guidance material) could be reasonably effective. However, there would be a subjective element of standards of behavioural and/or usage. The lack of clarity may result in some damage or diminution in environmental values. Consequently, a score of 65 is assigned to this criterion.

With respect to the health and safety and amenity criterion, subjective standards of behaviour are likely to be more pronounced. Moreover, performance-based standards would not be suitable for a number of management issues such as access hours, occupation of structures or for commercial activities. Therefore, a score of 55 is assigned to this criterion.

Finally, the cost criterion is assigned a score of -20. While recreational users would be free to tailor their behaviour to the standard, enforcement costs could be more costly. This is because the lack of clarity in performance based standards could result in differences in interpretation between authorised water officers and recreational users, resulting in court or tribunal challenges to penalty notices.

Overall, the MCA score for this option is **+20**. This is a reasonably high score, but the element of subjectiveness and possibly higher enforcement costs result in Option A being preferred.

**Table 7: Multi-Criteria Analysis assessment of performance-based standards**

Criteria	Weighting	Assigned Score	Weighted Score
Sustainable land management	25	65	16.25
Minimising health & safety risks/amenity	25	55	13.75
Cost	50	-20	-10.00
<b>Total</b>	<b>100%</b>		<b>+20.00</b>

Issue 1, Option C – An education program

As an alternative and non-regulatory means to meet the government's objectives, the Victorian Government and/or the water corporations could undertake an education campaign aimed at general users of recreational areas together with targeted campaigns focusing on, for example, dog owners, horse riders, boating clubs, anglers and walkers.

Education and social marketing can be an important complementary policy tool in achieving compliance (e.g. *Get on board with lifejackets* compliance with boating safety requirements) or behavioural change (e.g. *Only a Little Bit Over?* drink driving campaign, *Quit* tobacco campaign).

The cost of education campaigns vary considerably, ranging from campaigns costing many millions of dollars to low-cost campaigns comprising targeted mail-outs. The *Get on board with lifejackets* campaign may be relevant in estimating an indicative cost for an information campaign, given that it targets a specific set of recreational users. These target groups would not only need to be informed about ecosystem values and recommended practices but also be regularly advised of changes to specific land management strategies. For example, if an area were to be set aside for revegetation or for a habitat link, all prospective users would need to be advised so that previous activity patterns could be voluntarily changed. This would be required as compliance would be dependent on the knowledge of recreational area users and more importantly on their acceptance of the need for such a strategy.

The initial *Get on board with lifejackets* campaign cost in the order of \$750,000 over three years. However, education and social marketing campaigns developed by water corporations or the Victorian Government could be done for a relatively modest amount, given their straight-forward content. It is assumed that such campaigns could be developed and promoted for a total cost of \$20,000 in year 1 and \$5,000 per annum thereafter (or equivalent to around \$56,000 (PV) over a 10-year period).

The main advantage of this alternative is that it could address information shortfalls. For example, it would clarify requirements under land management regulation and provide persons with guidance as how to minimise their impacts on recreational areas.

The main, and most significant, disadvantage of this alternative is ensuring compliance and providing an enforcement mechanism. In terms of enforcement, this alternative may be less effective than other approaches as it relies on voluntary compliance rather than being supplemented by coercion. It would be feasible to target this campaign at specific recreational groups; however, conveying the information to other recreational area users would be more difficult. An information campaign also raises practical difficulties, given that most of the proposed By-law clauses prescribe certain activities and do not relate to information problems. Finally, the risks associated with non-compliance are relatively high; serial non-compliance could result in serious damage to the environment.

Given the practical difficulties associated with an education campaign, it is unlikely that this alternative alone would be as effective as other options, as compliance and enforceability would prove difficult under this alternative. That said, DSE and the water corporations currently conduct targeted information campaigns, which are effective in addressing information gaps in problem areas. Therefore, an information campaign is considered a valuable complementary non-regulatory tool to improve compliance. However, by itself, it is unlikely to achieve the government's objectives to a sufficient degree.

An MCA assessment was undertaken of an education campaign. A score of 50 is assigned to both the sustainable management of the ecosystem and the minimising safety and amenity risks criteria. This score represents an improvement over the base case because a well-resourced targeted campaign could encourage compliance by effecting some behavioural change; however, this alternative raises considerable compliance and enforcement issues, and in practical terms, penalty notices and other matters would not be prescribed. In terms of cost, an information campaign would be feasible and reasonably cost-effective for government and recreational users. Therefore, this criterion is assigned a score of -15. Together, these result in an MCA score of **+17.50** for this alternative.



**Table 8: Multi-Criteria Analysis assessment of an education campaign**

Criteria	Weighting	Assigned Score	Weighted Score
Sustainable land management	25	50	12.50
Minimising health & safety risks/amenity	25	50	12.50
Cost	50	-15	-7.50
<b>Total</b>	<b>100%</b>		<b>+17.50</b>

*Issue 2 – Specific activities undertaken by well-defined groups*

Issue 1 dealt with management issues common to all user groups. However, some impacts are specific to relatively well-defined groups. This may include camping; pets, livestock and other animals; use of vehicles, aircraft and vessels; hunting, fishing; and boating.

*Issue 2, Option A – Legislative instrument: the proposed By-law*

This option assesses cl. 31 - 33 (accommodation and camping), cl. 34 - 36 (pets, livestock and other animals), cl. 37 - 40 (use of vehicles, aircraft and vessels) and cl. 44 - 47 (boating).

An MCA assessment was undertaken to assess the merits of this option. The proposed By-law provides a well-defined framework, establishing rights and responsibilities for various groups of recreational area users, and a score of 75 is assigned. Importantly, this framework is supported by an enforcement mechanism and sanctions may be applied. However, a full score of 100 is not awarded because there will still be some level of non-compliance with the proposed By-law due to the difficulty enforcing the proposed By-law, and there will also be some level of adverse environmental impact due to recreational activities.

The proposed By-law is also relatively effective in minimising health and safety risks, and a score of 75 is assigned. Again, direction is provided as to appropriate behaviour and actions, and these are enforceable. This criterion does not receive a full score because a more stringent regime would arguably further reduce these risks (the extreme case being that persons are prohibited from certain recreational areas or from undertaking particular activities).

Although costs imposed on recreational area users are relatively modest, they are nevertheless greater than under the base case and are also the largest compared to other options; hence a score of -30 is assigned to this criterion. The total quantifiable costs of the proposed By-law that were able to be identified in this RIS are in the order of \$260,000 (PV) over a 10 year period.<sup>30</sup>

Taken together, this results in a net overall score of **+22.50**

<sup>30</sup> This represents the sum of compliance costs, the administrative costs relating to permit applications and the water corporation costs of processing permit applications. Detailed calculations and assumptions are contained in [Attachment D](#).

**Table 9: Multi-Criteria Analysis assessment of Proposed by-law**

Criteria	Weighting	Assigned Score	Weighted Score
Sustainable land management	25	75	18.75
Minimising health & safety risks/amenity	25	75	18.75
Cost	50	-30	-15.00
<b>Total</b>	<b>100%</b>		<b>+22.50</b>

*Issue 2, Option B – User-group voluntary codes of practice*

The Victorian Government and/or the water corporations could establish a number of codes of conduct for recreational area users, or codes could be developed by recreational groups. For example, the government and/or the water corporations in partnership with user groups or peak bodies could develop codes of conduct for higher impact recreation activities: for example, a Speed Boating Code or a Bush Camping Code.

A voluntary code of practice, or a number of codes, could be developed to set out recreational area land management provisions. There are a number of options that could be considered:

- a code covering all recreational areas, or a code of practice for each area. The code would set out what activities could be undertaken in what areas and set guidelines on appropriate use levels;
- a specific code dealing with nature conservation and fauna and flora protection. Such a code would focus on the natural resources and strategies to protect them; or
- a code dealing with specific recreational uses (similar to existing Parks Victoria codes on activities such as camping) and how to manage conflicts between recreational uses.

The development of any of these options would require significant consultation and the establishment of mechanisms to monitor and amend codes as required.

The main benefit of codes is that they can utilise user expertise and are usually associated with acceptance or buy-in, which may encourage compliance. In addition, codes can be tailored to the needs of particular groups and may be more flexible than by-laws. The main disadvantage of this alternative — as with an education campaign — is the possibility of non-compliance and difficulties associated with enforceability, as well as whether or not the actions of members are observable.

Industry codes are generally cost effective methods of regulation; however major codes could each cost in the order of \$5,000 to 10,000 to develop, implement and communicate (by way of illustration the cost of developing the Code of Practice for Commercial Firewood Suppliers was \$25,000). This RIS identified at least four user groups (i.e. boating users, fishers, bushwalkers and campers, and sporting/fitness groups). Obviously, some of the groups could establish codes at a much lower cost, but given these numbers the development, updating, monitoring and communication of such codes the total cost could be in the order of \$20,000 to \$50,000 over a 10 year period (costs would predominantly be incurred in year 1).

While voluntary codes would be an improvement over the base case, this RIS finds that there is justification for further intervention to meet government objectives. Moreover, the government may lose discretion concerning areas it considers necessary to regulate. These problems would be less pronounced under a compulsory code; however, compliance and enforcement would remain significant issues. Again, industry or user codes may be relatively effective in addressing simple information gaps, but may have little effect on reducing aberrant or illegal behaviour. In addition, the many boating or fishing enthusiasts, for example, are not likely to be members of boating or angling clubs and therefore may not be aware of the contents of these codes, nor feel obliged to comply with them. As a number of these user associations are Australia-wide rather than Victorian, it is also possible that local issues may not be adequately addressed in these codes. For similar reasons outlined relating to an education campaign, this alternative is not considered a superior option to the proposed By-law.

As noted above, voluntary codes of conducts are best suited to situations in which the risks associated with non-compliance are low. This RIS argues that the risks are not low in the case of ecosystem management. Non-compliance could lead to environmental damage, for instance, loss of habitat, destruction of vegetation, bushfire, or pollution of waterways. It could also lead to harm or injury to recreational area users or nuisance caused by unsociable behaviour.

To make an assessment of this option compared to the alternatives, an MCA analysis was undertaken.

A score of 40 was assigned to the sustainable management of the ecosystem criterion. Targeted codes can be effective regulatory options in cases where a group of stakeholders are relatively homogeneous. Higher impact groups, such as speed boaters, horse riders and campers, could be specifically targeted. However, a large proportion of visitors do not belong to groups or associations, and this would impinge upon the efficacy of such codes.

Given that higher risk groups could be targeted, the minimising health and safety risks criterion received a score of 35.

As with an education campaign, codes of practice are relatively cost effective and impose low or no direct costs on stakeholders given that behavioural change associated with codes is essentially voluntary; hence a score of -10 is assigned to this criterion, reflecting that some private costs would be incurred, along with government costs in developing and maintaining such codes.

Together, these result in an MCA score of **+13.75** for this alternative.

**Table 10: Multi-Criteria Analysis assessment of a voluntary codes**

Criteria	Weighting	Assigned Score	Weighted Score
Sustainable land management	25	40	10.00
Minimising health & safety risks/amenity	25	35	8.75
Cost	50	-10	-5.00
<b>Total</b>	<b>100%</b>		<b>+13.75</b>

Issue 2, Option C – Prohibition of high impact/high risk activities

While the Victorian Government's current policy is committed to providing Victorians with regulated access to recreational areas for recreation, an alternative to the proposed By-law could be to totally prohibit certain higher impact/risk activities from these areas. For example, camping, public events or lighting fires could be totally prohibited from these areas. In fact, this situation has arisen in the past when the government considered that the negative environmental costs outweighed other benefits.

In considering this alternative two views can be put forward for illustrative purposes. The first is that total prohibition of these activities may contribute broadly to the Victorian Government's environmental objectives (no doubt human impacts would be reduced). The second view is that, given that the Victorian Government currently provides a strict regulatory framework for land management, any such ban is unwarranted because the current controls minimise environmental risks to an acceptable level. Moreover, other policy objectives such as communities' social and cultural links and the provision of jobs in regional areas may be diminished.

The costs associated with totally prohibiting certain recreation activities would result in direct loss of amenity for those participants and, in some cases, direct economic loss for those businesses which operate in these recreational areas. A ban would also disproportionately affect rural and regional Victoria. Further, any such ban may also run the risk that these activities, particularly those with a strong cultural and heritage foundation, could be conducted illicitly without any form of control.

Given the difficulty in calculating the cost and benefits of this option, an MCA assessment was undertaken.

The sustainable management of Victoria's ecosystem received a score of 95. This relatively high score is assigned because environmental impacts would be reduced. However, while environmental considerations are a key focus of the government's intervention in ecosystem management, there are other government objectives including promoting the social (including recreation) and economic development of these areas for all Victorians. Thus, achieving environmental objectives would come at a cost to other objectives.

The prohibition of any such activities would result in a significant lower benefit for those directly affected; however health and safety risks may be reduced compared to the proposed By-law. Consequently, a relatively high score of 80 is awarded to this criterion.

The cost of this option on user groups and businesses whose activities were prohibited would be considerable. This also raises equity of access issues as not all users may be able to afford to use or have access to private land for conducting their activities. A large negative score of -90 is awarded because under the base case these activities could be conducted.

Together, this assessment results in a net score of **-1.25**.



**Table 11: Multi-Criteria Analysis assessment of prohibiting activities**

<b>Criteria</b>	<b>Weighting</b>	<b>Assigned Score</b>	<b>Weighted Score</b>
Sustainable land management	25	95	23.75
Minimising health & safety risks/amenity	25	80	20.00
Cost	50	-90	-45.00
<b>Total</b>	<b>100%</b>		<b>-1.25</b>

This option is discussed for illustrative purposes only. It does not represent Victorian Government policy. While it is possible to totally prohibit these activities, any such changes would require a significant shift of government policy, which would no doubt be subject to extensive consultation and other processes.

## 4A. PERMITS

### Key points:

- Certain higher impact events need to be managed in such a way that adverse environmental and other impacts are minimised.
- To this end, there are a number of activities that a person may wish to carry out in a recreational area that are prohibited by the proposed By-law unless authorised by a permit issued by the relevant water corporation.
- Fees will be set by water corporations under the Water Act, rather than the By-law. This will permit water corporations to set fees to take into account local demand and to reflect internal costs.

### 4A.1 Permits in the proposed By-law

Although recreational areas are generally open to the public, DSE and the water corporations have responsibility of catering for the recreational needs of the public as a whole. As underscored throughout this RIS, protection of the environment is a major part of DSE's charter; and certain higher impact events need to be managed in such a way that adverse environmental and other impacts are minimised.

To this end, there are a number of activities that a person may wish to carry out in a recreational area that are prohibited by the proposed By-law unless authorised by a permit issued by the relevant water corporation. These are listed in table 12 below.

**Table 12: Activities which require a permit in the proposed By-law**

Clause	Description of clause
15(1)	Issue of permit to operate a sound producing device
15(3)	Issue of permit to operate another device
18(1)	Issue of permit to undertake an organised event
19(3)	Issue of permit to undertake a commercial activity
20(1), (2) and (3)	Issue of permit to undertake an advertising, soliciting or public speaking activity
21	Issue of a permit to construct a thing or object
27(3)	Issue of a permit to cut, fell, pick, etc. any vegetation
40(2)(b)	Issue of permit to launch or land aircraft, or deliver anything to an aircraft
45(2)	Issue of a permit to sink/scuttle or carry out salvage of a boat or pontoon

The proposed By-law is drafted widely so as to give the water corporations significant flexibility in how they will apply the permit system to their local circumstances. In cases of competition between user groups, permits are issued on a first-come, first-serve basis. While water corporations are not aware of clashes (in terms of usage or timing) between permit applicants, water corporations could consider a system of balloting under such circumstances.

The proposed By-law does not state that a permit must be sought each time an activity requiring a permit is undertaken only that the activity is prohibited without an appropriate permit. This could enable a water corporation to issue a time based permit, an activity based permit, or some combination of the two, in appropriate circumstances. For example, a permit for a commercial provider may be for a specified period (a year) and permit usage of the recreational area for specified purposes during this time, additional usage could be subject to an additional permit. This would provide some certainty for the commercial provider, but would enable the water corporation to retain a degree of control over how its facilities and land are used. During consultation, the water corporations have emphasised their requirement that the permit system provide them with timely information, for planning purposes, about how their recreational areas will be used.

An alternative to the proposed permit system, which would also provide timely information to a water corporation about how their recreational areas will be used, would be a notification system. This would involve those activities that are currently prohibited without a permit being generally permitted provided prior notification, in the required format, had been given to the water corporation. Therefore, a person wishing to hold an organised event at a recreational area, such as a boating regatta, would be required to notify the relevant water corporation about the upcoming event. The water corporation might seek information on the organisers, the event's date and time and the type and size of the event.

This would be a lower cost option for applicants, as no permit fee would be payable and the process would be quicker than that involved in applying for a permit. The costs of administering such a scheme are also likely to be lower for water corporations.

However, a notification scheme would have some significant drawbacks when compared to a permit scheme. Most significantly while, it would provide information to the water corporation, it does not provide the water corporation with other important management tools, e.g. being able to say no to specific activity and being able to impose conditions on a grant of permission to undertake the activity. This allows for more sophisticated management of the potential impacts. For example, a water corporation may be happy for a boating regatta to take place on a specified date if appropriate insurance is in place, a management plan for the regatta is agreed upon with the water corporation, adequate numbers of stewards are available and portable toilets are provided. A notification system is also best suited to one-off events and specific commercial activities. It would seem less suited to the management of ongoing activities such as the management of livestock grazing. For these reasons, this was not felt to be a feasible option.

Clause 42 also provides water corporations with significant flexibility about the form a permit application may take. Standardised application forms may develop over time as more water corporations adopt the proposed By-law and there would be significant benefits for both water corporations and applicants in having such a standardised process. Applicants would be aware of what information they would need to provide and there may be less need to provide further information both of which would reduce the time taken to submit and assess a permit application. This would reduce administrative costs to applicants and to the water corporations.

It is important to note that fees for services will be set by water corporations under s. 264 of the Water Act rather than the proposed By-law. Section 264(1) of the Water Act states that ‘An Authority may, by by-law<sup>31</sup> *or otherwise*, set charges for anything it does in the performance of its functions, including any function delegated to it’ (emphasis added). Therefore, while the fee making power is in the Act, fees will be set by water corporations. This will permit water corporations to set fees to reflect internal costs and take into account services required directly as a result of the permitted activity (e.g. increased cleaning of toilets, reseeding, temporary fencing for revegetation, repairs to water corporation property, additional signage for the activity or event in question, etc.).

In practice, water corporations will advertise standard fees on their websites, while more complex fees (i.e. for a large concert or festival) will be discussed with the applicant and tailored to the event. Section 4A.2 highlights that, when setting permit fees, water corporations should do so in accordance with the *Cost Recovery Guidelines*.<sup>32</sup>

Southern Rural Water provided concerning the number of permits envisaged by the proposed By-law. It does not currently use an application form. Its usual procedure would be that a person wishing to hold an event or operate a business at recreational area would first make a telephone enquiry to the water corporation. The applicant would then be asked to put their request in writing, explaining in detail their plan. This is often an iterative process, with the water corporation writing back to them for more information. In general, Southern Rural Water estimate the process may take one and a half person hours but this will depend on the type of application being made and the complexity of the request. A person applying to put up a marquee at a reservoir would be dealt with relatively quickly, while one wishing to hold a music and wine festival near a reservoir could take up to five times as long, due to referrals and other interested parties.

While financial costs associated with fees are attributable to the Water Act, cl. 42 of the proposed By-law deals with applications for permits. As noted above, such requirements are considered to represent administrative costs. Based on an assumption that a water corporation receives 5 permit applications per annum, this would result in annual administrative costs for applications of around \$1,500 (PV) in the first year and total costs over a 10-year period of around \$22,650 (PV). This figure assumes that three water corporations adopt the By-law immediately and an additional five water corporations adopt the By-law following Year 5 (i.e. a total of eight water corporations adopt the By-law). Attachment D contains calculations and assumptions underpinning these estimates.

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<sup>31</sup> Section 160 (4) only relates to fees set under by-laws. This section states that “By-laws made under this Act may prescribe a fee by reference to a number (whether whole or fractional) of charge units and that fee may be determined by multiplying the number of charge units by a number of dollars fixed by resolution of the Authority.” As noted fees in relation to recreational areas will be set under the Act itself.

<sup>32</sup> Department of Treasury and Finance, 2010 Cost Recovery Guidelines, Melbourne

## 4A.2 Principles of fee setting

In 2010 the Victorian Government released its *Cost Recovery Guidelines* to clarify its policy principles underpinning cost-recovery arrangements. The Guidelines establish a whole-of-government framework to fee setting, thereby ensuring that cost-recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and government policy. These Guidelines are guided by the principle that properly designed cost-recovery arrangements can deliver both equity and efficiency benefits to the community.

Cost-recovery may be defined as the recuperation of the costs of government-provided or -funded products, services or activities that, at least in part, provide private benefits to individuals, entities or groups, or reflect the costs imposed by their actions. The Guidelines apply to cost-recovery arrangements of government departments and general government agencies, and include the recovery of the costs incurred by government in administering regulation (e.g. registration, licensing, issuing of permits, monitoring compliance, investigations, enforcement activity, etc.).

As stated in the Guidelines, **general government policy is that regulatory fees and user charges should generally be set on a full cost-recovery basis**, however if it is determined that full cost-recovery is not consistent with other policy objectives of the Government, then it may not be appropriate to introduce a full cost-recovery regime.

Therefore, in cases in which an applicant receives a private benefit (e.g. from staging a commercial event) fees should be set on a full cost-recovery basis. On the other hand, if an educational institution wishes to conduct an activity as part of its curriculum then a case could be made for partial cost recovery on public good and/or equity grounds.

This RIS estimates that, over a 10 year period, the cost of processing permit applications is in the order of \$40,000. This is based on an estimate that 5 permits will be processed annually by a VPS3 equivalent staff member. Each permit is estimated to take 3 hours to process. Detailed calculations and assumptions are contained in Attachment D.

This results in the total costs of the permit system being in the order of \$63,000 (PV) over a 10 year period.

## 4B. IMPACT ON SMALL BUSINESS

**Key points:**

- The proposed By-law predominantly relates to conduct, behaviours and restrictions placed on individuals – only to a very small degree are businesses affected.
- Given the relatively straightforward nature of the proposed By-law, it is unlikely that small business will be disadvantaged in terms of their complexity (i.e. they will not need to engage third parties to assist in understanding and compliance).
- It is not expected that the proposed By-law will raise any implementation issues or cause unintended consequences.

It is important to examine the impact on small business because the compliance burden often falls disproportionately on that sector of the economy.<sup>33</sup> This is because where the costs of compliance with regulations (including by-laws) comprise a significant proportion of business costs, small businesses may be affected disproportionately by such costs compared to large businesses.

The proposed By-law predominantly relates to conduct, behaviours and restrictions on individuals. Only to a very small degree are businesses affected by the proposed By-law, and amongst businesses, the proposed By-law does not impose a disproportionate and undue burden on small businesses.

In the case of the proposed By-law, businesses affected would include any organisation (large or small) wishing to undertake a commercial activity in the recreational area. No information is available on the proportion of users of the recreational areas that are likely to be small businesses, but in the context of total visitor numbers, this is likely to be extremely small. The costs imposed by the proposed By-law are unlikely to comprise a significant proportion of business costs.

The relatively straightforward nature of the proposed By-law makes it unlikely that small business would be disadvantaged in terms of their complexity (i.e. they will not need to engage third parties to assist in understanding and compliance). Similarly, it is unlikely that any requirements would cause small business to withdraw from the industry or fail to comply with the proposed By-law. Nor is it expected that the proposed By-law will raise any implementation issues or cause unintended consequences.

Overall, this RIS concludes that it is unlikely that there would be a disproportionate impact of the proposed By-law on small businesses as compared to large businesses.

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<sup>33</sup> The Australian Bureau of Statistics (ABS) definition of a small business is one that has less than 20 full-time employees

## 5. ASSESSMENT OF COMPETITION IMPACTS

### Key points:

- There is a public interest rationale for government intervention in recreational areas.
- The activities covered by the proposed By-law mostly relate to managing actions and behaviours of individuals and as such, these do not restrict competition in the market for goods and services.
- The proposed By-law is considered to meet the ‘competition test’ as set out in the *Victorian Guide to Regulation*.

### 5.1 Broader competition impacts

In 2003, the National Competition Council (NCC) reported on its assessment of state and territory regulation of their forests. The NCC noted that all governments have legislation providing for the management of publicly owned forests for the production of timber and other commodities, and that this legislation generally provides for designating public land as state forest, vesting management and control of state forests in a government agency, and prohibiting certain unauthorised activities in state forests and issuing various rights to access state forests and/or to extract resources from them. The NCC determined that legislation of this nature was a **low priority** for the National Competition Policy (NCP), thus implying that any restriction on competition was minimal and appropriate.<sup>34</sup>

Recreational areas managed and controlled by water corporations share many features with state forests, as they are also areas which provide a wide range of benefits to the community, from recreation experiences to the conservation of biological diversity, soil productivity and water quality. Like the legislation which regulates for the competing uses of state forests, the proposed By-law regulates for the competing uses of recreational areas by prohibiting certain unauthorised activities in these areas and issuing various rights to conduct activities in these areas. By analogy, any restriction on competition of the proposed By-law is likely to be minimal and appropriate as there is a similar public interest rationale for government intervention in these areas.

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<sup>34</sup> National Competition Council 2003, *Assessment of governments’ progress in implementing the National Competition Policy and related reforms: Volume two – Legislation review and reform*, AusInfo, Canberra, p. 1.93

## 5.2 The competition test

The guiding principle in assessing competition impacts is that the proposed By-law 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 that the objectives of the proposed By-law can only be achieved by restricting competition.

The NCP ‘competition test’ was used to assess the proposed By-law against any possible restrictions on competition. The test asks whether the proposed By-law:

- allows only one participant to supply a product or service;
- requires producers to sell to a single participant;
- limits the number of producers of goods and services to less than four;
- limits the output of an industry or individual producers;
- discourages entry by new persons into an occupation or prompt exit by existing providers;
- imposes restrictions on firms entering or exiting a market;
- introduces controls that reduce the number of participants in a market;
- affects the ability of businesses to innovate, adopt new technology, or respond to the changing demands of consumers;
- imposes higher costs on a particular class or type of products or services;
- locks consumers into particular service providers, or makes it more difficult for them to move between service providers; and/or
- imposes restrictions that reduce range or price or service quality options that are available in the marketplace.

Broadly defined (i.e. the market for recreational services, for example, going to a cinema, playing golf, or fishing), the proposed By-law does not impose any restrictions on competition. In a more narrow sense, the following observations are made.

The relevant markets affected by the proposed By-law include livestock graziers and providers of organised sporting and recreational services. It should be stressed that these activities are extremely minor in the overall context of the Victorian economy.

Of the other activities which require a permit, such as undertaking organised sporting and recreational activities, and flora/fauna related activities, the requirements and costs imposed by the proposed By-law – which are minor – are unlikely to restrict competition. In arriving at this assessment, it is important to recognise that the private sector does not compete in this market to any large degree (i.e. recreation activities on private land are limited) and therefore, the proposed By-law is unlikely to impinge upon competition generally.

Assessed against the competition test, the proposed By-law does not impose restrictions on competition, as it predominantly regulates actions or behaviour of individuals, and where it affects commercial operators, any competition impacts are minor or negligible. Therefore, the proposed By-law is considered to meet the competition test as set out in the *Victorian Guide to Regulation*.



## 6. THE PREFERRED OPTION

### Key points:

- The proposed By-law is assessed as the preferred option compared to the viable options identified in this RIS because it is the most effective and efficient way to achieve the Victorian Government’s policy objectives.
- The main reasons why the alternatives are not preferred to the proposed By-law relate to likely inferior compliance and enforcement.
- The proposed By-law is relatively narrow in focus, and compliance with the proposed By-law is not difficult or costly.
- The direct costs associated with the proposed By-law will be mostly borne by visitors to the recreational areas, while the indirect benefits associated with the proposal will mostly accrue to users and future users of these areas, as well as the broad community, from the non-use value of these areas. Visitors will, of course, receive private direct benefits (e.g. utility or amenity benefits) arising from their decision to visit these areas.
- The proposed By-law predominantly relates to the conduct, behaviours and restrictions on individuals – only to a very small degree are businesses affected. It is unlikely that small business will be disadvantaged in terms of lacking economies of scale and/or resources in order to comply with the requirements.
- The proposed By-law supports, and accords, Victorian Government land management policy and the *Water Act 1989*.
- The proposed By-law is considered to meet the ‘competition test’ as set out in the *Victorian Guide to Regulation*.

The analysis in the preceding sections supports the proposed By-law as the preferred option compared to the viable options identified in this RIS. This finding was concluded against the decision criteria described in section 4.2.4; that is, the option with the highest score represents the preferred approach.

It should also be noted that other compliance costs would be incurred by recreational area users as a result of the proposed By-law seeking to set a framework for appropriate and environmentally conscious behaviour. These costs are not quantified, but are likely to be low because the framework is set to change aberrant or inappropriate behaviour, and the cost of complying with the proposed By-law is low. Having said that, given that it is assessed that compliance will be highest for the proposed By-law, it also follows that these costs will also be highest for the proposal (i.e. those not complying with certain behaviours will not incur costs).

The benefits of the proposed By-law relate to the recreation benefits recreational area users enjoy. The water corporations could, of course, totally prohibit certain activities or close

parks to public access. This may contribute to conservation and environmental objectives; however, it would run counter to the legitimate use of public land for recreation – a benefit all Victorians may enjoy.

This benefit is only one element (1.1 of Direct Use Benefits in Table 5) of the overall benefits, and is not supposed to convey a precise value, but illustrates the magnitude of benefits associated with the recreational areas (compared to the costs imposed by the proposed By-law).

The other options would also have a recreational value of this order; however, because compliance is not as universal as under the proposed By-law, the environment may be adversely affected (e.g. polluted streams, habitat destruction, soil compaction) or safety or amenity maybe compromised (e.g. shooting in areas with large numbers of visitors, inappropriate behaviour, persons entering areas during extreme fire risk).

Overall, this RIS concludes that the proposed By-law represents an effective, low cost way of managing behaviour. For example, the proposed By-law may set down where someone may not camp (e.g. because it is too close to a natural feature such as a stream that is environmentally sensitive and pose a health risk to others if contaminated with faeces or refuse). If someone camps there, in the first instance, an authorised officer with usually ask them to camp in a designated area. This is usually the end of the matter. However, if a person refuses to move they may be issued with a penalty. It is this enforcement mechanism that primarily distinguishes the proposed By-law from the provision of information and codes of conduct.

Assessment of the options using the MCA framework also suggests that the proposed By-law is superior to the alternatives as shown in Table 13 below. Most importantly, the proposed By-law is assessed as the most effective and efficient in achieving the Government’s policy objectives.

**Table 13: Summary of weighted decision criteria analysis**

<b>Regulatory Proposal</b>	<b>MCA Assessment</b>
<i>Issue 1</i>	
Proposed By-law	<b>+22.50</b>
Performance-based standards	<b>+20.00</b>
An education campaign	<b>+17.50</b>
<i>Issue 2</i>	
Proposed By-law	<b>+22.50</b>
Voluntary codes	<b>+13.75</b>
Prohibiting activities	<b>-1.25</b>

The main reasons why the alternatives are not preferred to the proposed By-law relate to inferior compliance and enforcement, and because they do not strike an appropriate balance between managing the multiple roles of the recreational areas.

The proposed By-law is relatively narrow in focus and in a number of instances there are no feasible alternatives. In terms of the incidence of costs and benefits, the direct costs associated with the proposed By-law will be borne by recreational area visitors. Visitors will,

of course, receive private benefits (e.g. utility or amenity benefits) arising from their decision to visit the area (given that such decisions are voluntary, it may be assumed that all visitors implicitly consider that any such costs are outweighed by the benefits associated with visitation). The indirect benefits associated with the proposal will mostly accrue to users and future users of these areas, as well as the broad community from the non-use value of these areas.

The proposed By-law predominantly relates to the conduct, behaviours and restrictions on individuals – only to a very small degree are businesses affected. Given the relatively straightforward nature of the proposed By-law, it is unlikely that small business will be disadvantaged in terms of lacking the means to comply with the requirements. It is not expected that the proposed By-law will raise any implementation issues or cause unintended consequences.

The proposed By-law supports Victorian Government land management policy and the Water Act.

Attachment G summarises the findings of a desktop study into the extent of permitted public access for recreational purposes, at water storages and surrounding land, which was owned and operated by the main publicly owned water corporations in other Australian jurisdictions. The study also examined how any public access is regulated. While water corporations in all jurisdictions allow, and often encourage, public recreational use of their storages, no other jurisdiction had formal by-laws that regulated this use. However, it is common for there to be rules about the appropriate use of such sites made available on a water corporations' website (often, these prohibit certain activities) and several water corporations require permits for the holding of events. The proposed By-laws are consistent with the approach taken in other jurisdictions, but represent a more evolved regulatory structure.

The NCC has pointed out that there is a sound public interest rationale for government intervention in public forests. Recreational areas managed and controlled by water corporations share many features with public forests and, by analogy, there is a sound public interest rationale for government intervention in these areas. None of the viable options identified in this RIS restricts competition. The proposed by-law is considered to meet the 'competition test' as set out in the *Victorian Guide to Regulation*.

## 7. IMPLEMENTATION AND ENFORCEMENT ISSUES

### Key points:

- Overall compliance with the proposed By-law is expected to be high (particularly in areas where actions are observable). However, the large spatial area occupied by the recreational areas, and remoteness of some locations, makes aberrant or non-compliant behaviour difficult to manage in all situations.
- Water corporation enforcement officers will be responsible for monitoring and enforcing the proposed By-law if adopted by the water corporations. Water corporations will enforce with assistance from Victorian police officers.
- Given that the proposed By-law is broadly similar to the current arrangements, where these are in place, no significant implementation or transitional issues are expected to arise.

### 7.1 Monitoring and Enforcement

Authorised water officers may be appointed by water corporations under s. 291A of the Water Act to undertake the powers, functions and duties imposed on water corporations by the Water Act. This includes some enforcement of offences under the Water Act and its associated regulations and by-laws.

In general, water corporation staff will monitor the recreational areas year round for a variety of reasons, although practice varies across the water corporations. Southern Rural Water has a greater presence at its sites during the summer months due to increased usage at these times. Central Highlands Water has nine staff that undertake rostered after-hours patrols of its parks and, on weekends, of its major reservoirs. In contrast, Barwon Water does not use its staff to patrol recreational areas at all.

Enforcement involves detecting possible breaches, gathering necessary evidence, taking personal details, and, depending on the significance of the breach, initiating prosecution. Victoria Police officers also may assist in enforcing compliance, although some water corporations (in particular Southern Rural Water) prefer to manage compliance in-house.

DSE intends to monitor the effectiveness of the By-laws from obtaining feedback from, and regular contact with, the water corporations; through enforcement of the offence provisions; and from any issues arising, if any, from correspondence from the public to the Minister. The responsibility for establishing a framework to achieve this and for monitoring will lie with the water corporations with assistance by provided by DSE.

## 7.2 Penalties

Authorised water officers have the power to take names and addresses of those committing a possible breach of the proposed By-law. Following this, the water corporation decides whether to issue a penalty. This would involve an appearance before the Magistrates Court, where a penalty may be handed down to a maximum of the prescribed penalty. For example, a person may receive a fine of 2 penalty units for an offence that carries a maximum of 20 penalty units<sup>35</sup>. It is hoped that the headline figure of the maximum penalty may serve as a deterrent for would-be offenders. Broadly, DSE (with some advice from the Department of Justice) has set the penalties at the maximum amount for offences that may damage the environment/water quality and has imposed lesser maximum penalties for other offences.

A prime anticipated benefit of the proposed By-law is improved enforcement. Under the current arrangements, compliance officers often have difficulty escalating warnings to penalties. By having a consolidated, easy to understand regulatory instrument at hand for easy reference, authorised officers (as well as recreational users via notice boards and signage) should have a better understanding of requirements and obligations. Thus, improved clarity and understanding of the requirements supported by the threat of sanctions, should lead to better enforcement.

## 7.3 Implementation

Given that the proposed By-law is broadly similar to the current arrangements in place for Southern Rural Water, no implementation or transitional issues are expected to arise if Southern Rural Water adopts and makes the proposed By-law. If other water corporations choose to adopt and make the proposed By-law there may be a need for signage to be produced which refers to the by-law, and notification of the by-law will be required on their respective websites. This will be implemented over time as necessary and no specific implementation or transitional issues are expected to arise.

Nevertheless, water corporations are likely to incur some additional costs in implementing the proposed By-law. These costs may include new signage, revised web-sites, and updated brochures and published material, as well as communication with stakeholder groups. These costs proved difficult to estimate, but, based on assumed take-up rates and an assumption of one-off transitional costs of \$30,000 per water corporations and some ongoing costs, this would result in total transitional costs of around \$260,000 (PV) over a 10-year period. Detailed costings and assumptions are contained in Attachment D.

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<sup>35</sup> Under the *Monetary Units Amendment Act 2012* the Treasurer has set a penalty unit rate from 1 July 2012 to 30 June 2013 at \$140.84; 20 penalty units would currently be \$2,816.80

## 8. EVALUATION STRATEGY

Section 287ZL of the Water Act revokes a By-law made under the Water Act following 10 years of operation. This allows the Government and the water corporations to examine whether there is still a problem that requires government intervention, and to take account of any changes or developments since the by-laws were implemented. When regulations (including by-laws) are remade, the Government assesses whether the objectives of the regulation are being met, whether practical experience suggests ways in which they can be improved, or whether a different regulatory approach is warranted.

Recent amendments to the *Subordinate Legislation Act 1994* have broadened its coverage. From 1 July 2011, ‘legislative instruments’, including some by-laws, are now subject to the RIS process. This will ensure that the by-law is adequately evaluated at least every 10 years.

Given that any recreational by-law made by a water corporation is likely to be made by adopting the proposed model by-law it is appropriate that DSE, in consultation, with the water corporations review the content and form of the proposed model By-law with a view of reissuing a model By-law if deemed necessary. It may also be appropriate to prepare a RIS equivalent process at that time similar to that being undertaken with the preparation of this analysis paper.

To enable such future evaluation, this RIS recommends that water corporations establish a framework to monitor the effectiveness of the By-law. This may include:

- annual samples to establish visitation numbers, including possible surveys (from time to time);
- collection of data on the number and type of permits issued;
- collections of compliance and enforcement data in a uniform and systematic manner; and
- arrangements for ongoing consultation with groups affected by the proposed By-law (where relevant).

The proposed By-law (with a minor exception in relation to former rural water corporation storage areas) only applies to recreational areas that have been determined under s.122ZA of the Water Act. Therefore, the Minister may need to formally declare certain areas that are currently being used for recreational purposes ‘recreational areas’ if a water corporation decides to make a recreational area By-law. This should result in a modernised portfolio of land holdings, which should assist in any future evaluation of the proposed By-law.

## 9. CONSULTATION

The following water corporations were consulted in the development of this proposal:

- Barwon Water
- Central Highlands Water
- Coliban Water
- East Gippsland Water,
- Gippsland Water
- Goulburn Valley Water
- Goulburn Murray Rural Water
- Grampians Wimmera Mallee Water
- Melbourne Water
- North East Water
- South Gippsland Water
- Southern Rural Water
- Wannon Region Water Authority
- Western Water
- Westernport Water

The water corporations were asked to contact and consult with key user and stakeholder groups. Southern Rural Water contacted boating and fishing groups to discuss the proposal. These groups raised no objections to the proposals. Similarly, other water corporations reported no objections to the broad architecture and thrust of the proposed By-law from user groups

This RIS represents another step in the consultation process, and DSE welcomes comments or suggestions with respect to the nature, extent, and likely impacts of the proposed By-law and any variations that may improve the overall quality of the proposal.

The *Subordinate Legislation Act 1994* requires that the public be given at least 28 days to provide comments or submissions regarding the proposed By-law. To provide adequate time to comment on the regulatory proposals in this RIS, the consultation period will be 28 days, with written comments required by no later than **5.00pm, 29 September 2012**.

## **10. CONCLUSION**

This Regulatory Impact Statement concludes that:

- the benefits to society of the proposed By-law exceed the costs;
- the net benefits of the proposed By-law are greater than those associated with any practicable alternatives; and
- the proposed By-law does not impose restrictions on competition.



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## **12. ATTACHMENTS**

Attachment A – Description of the affected areas and current usage

**DESCRIPTION OF AFFECTED AREAS AND CURRENT USAGE**

A desktop study was conducted on the websites of the 19 Victorian water corporations into the recreational areas these bodies currently make available for public use and the nature and extent of this recreational use. This was supplemented by information provided via e-mail by Southern Rural Water, Grampians Wimmera Mallee Water, Barwon Water, Wannon Water and Central Highlands Water.

*Overview*

The primary managers and controllers of recreational areas are the rural water corporations (in particular Southern Rural Water, Goulburn Murray Rural Water and Grampians Wimmera Mallee Water), who each manage and control a significant number of water storage areas. Some of these storage areas and their surrounding land, such as Lake Eildon, are extremely significant for tourism and recreation in Victoria. In addition, Melbourne Water manages a significant number of waterways in the Port Phillip and Westernport region which provide many recreational opportunities.<sup>36</sup>

A few of the regional water corporations, principally Barwon Water and Central Highlands Water, also actively manage and control smaller storage areas and parcels of surrounding land, which are also used for recreational purposes.

*Southern Rural Water*

Southern Rural Water has seven storage areas with recreational access<sup>37</sup>, all of which offer parking, toilet and picnic facilities. Some of these recreational areas are available for other recreational pursuits such as fishing, swimming, boating and dog walking. Some have barbecues, shelters and/or playgrounds. Cowwarr Weir has an area set aside for recreational vehicle camping. Melton Reservoir is home to the Melbourne Runabout and Speed Boat Club who have exclusive use of part of the reservoir. An area at Glenmaggie is used under license by a school camp and another area is leased to a caravan park. There are individual visitor guides for these storage areas.

Blue Rock Lake regularly hosts public markets, and the recreational areas are also used for public events such as festivals and fun runs. Commercial users of the recreational areas have to obtain a permit from Southern Rural Water to operate (either in the form of a letter of approval or licence to operate) and some users have been denied permits in the past. These are issued free of charge.

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<sup>36</sup> The website of Melbourne Water Authority promotes recreational activities, such as fishing, picnicking and walking/cycling, alongside waterways in the Port Phillip and Westernport region (through the 84 hundred program). However, not all these promoted activities take place on recreational areas managed and controlled by Melbourne Water Authority itself; all the barbecue sites identified are situated in parkland managed by Parks Victoria

<sup>37</sup> Glenmaggie - Weir Wall, Glenmaggie - Sandy Point, Blue Rock Lake, Cowwarr Weir, Melton Reservoir, Merrimu Reservoir and Pykes Creek Reservoir

### *Grampians Wimmera Mallee Water*

Grampians Wimmera Mallee Water has a certain number of headworks lakes open to the public, which are available for fishing, boating and camping. These include an area at Lake Lonsdale, which has a campsite for which a \$12 per night per site fee is payable<sup>38</sup>. However, a full list of these sites was not currently available from the water corporation website.

### *Goulburn Murray Rural Water*

Goulburn Murray Rural Water has twenty two storage areas open to the public<sup>39</sup>. The majority of these are available for boating, and some also permit camping. Most have parking and toilet facilities, and many have additional facilities such as boat ramps, playgrounds and barbeques. Houseboats are permitted in the Lake Eildon storage, and a multitude of water sports, swimming, bushwalking and trail bike riding is also possible in this location. Lake Boga has a flying boat museum and Lake Charm holds speedboat events. Some of the Murray storages are jointly managed with authorities in NSW<sup>40</sup>.

### *Barwon Water*

Barwon Water has five reserves<sup>41</sup> that are open to the public. The public is not allowed on the water in any of these reserves. They are used primarily for fishing from the shore, sightseeing and picnicking, although there are opportunities for bushwalking in the West Barwon Reservoir in the Otway Ranges National Park. Facilities provided include car parking, toilets, picnic tables and barbeques. A couple of times a year, one of Barwon Water's reserves will be used for a community event such as a fun run or bike ride. The holding of such events requires authorisation from Barwon Water in the form of a letter of consent, and while no fee is charged for such a letter, it may impose conditions regarding safety, event management and insurance. Barwon Water has had requests in the past to harvest eels in these areas; these requests have been denied.

### *Central Highlands Water*

Central Highlands Water has three parks<sup>42</sup> which cover a total of 31 hectares, two of which are close to the Ballarat CBD. It provides a significantly higher level of facilities in these parks, such as maintained gardens with structures suitable for events such as weddings in addition to parking, toilet, barbeque and picnic facilities. At Kirks Reservoir there is a waterwise garden and an outdoor education centre, while at Gong Gong Reservoir Park, there is a self guided catchment habitat and water trail which provides opportunities for both recreation and education. Guided tours are also available at these two parks. The holding of

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<sup>38</sup> Grampians Wimmera Mallee Water Authority, *Lake Lonsdale Brochure*, accessed on 9 July 2012 <http://www.gwmwater.org.au/information/dont-be-dam-stupid/public-access-to-gwmwater-facilities>

<sup>39</sup> Dartmouth Dam, Hume Dam, Yarrawonga Dam, Torrumbarry Weir, Mildura Weir, Kangaroo Lake, Kow Swamp, Lake Boga, Lake Charm, Lake Buffalo, Lake William Hovell, Lake Nillahcootie, Lake Eildon, Goulburn Weir, Waranga Basin, Greens Lake, Lake Eppalock, Cairn Curran Reservoir, Tullaroop Reservoir, Laanecoorie Reservoir, Newlyn Reservoir and Hepburns Lagoon

<sup>40</sup> Hume Dam and Yarrawonga Dam

<sup>41</sup> West Barwon Reservoir, Wurdee Boluc Reservoir, Bostock Reservoir, Bolwarra Weir and Stony Creek Reservoir

<sup>42</sup> Kirks Reservoir Park, Moorabool Reservoir Park and Gong Gong Reservoir Park

events requires authorisation from Central Highlands Water, but no fee is charged for this and there is no record of a permit ever being refused.

Central Highlands Water also has 14 reservoirs which are open to the public. Less information was available about these areas.

*Wannon Water*

Wannon Water has one area used for public recreational purposes at Konongwootong Reservoir. This is not currently a statutory 'recreational area'.

Attachment B – Description of Proposed Legislative Instrument

**DESCRIPTION OF PROPOSED LEGISLATIVE INSTRUMENT<sup>43</sup>**

**Part 1 – Preliminary**

Proposed clause 1 sets out the objectives of the proposed By-law. Proposed clause 2 sets out the provisions of the *Water Act 1989* which authorise the making of the proposed By-law. Proposed clause 3 states that the proposed By-law will commence on a future date, which will be notified in the Victorian Government Gazette. Proposed clause 4 sets out the land to which the proposed By-law will apply and proposed clause 5 sets out the definitions used in the proposed By-law.

Proposed clause 6 prevents the proposed By-law from inadvertently overriding the provisions of any subordinate legislation, authorisation or agreement deriving from the *Water Act 1989*. In the event of any such inconsistency, the provisions of the subordinate legislation to the *Water Act 1989* and any authorisations and agreements deriving from the *Water Act 1989* will prevail.

Proposed clause 7 provides that an offence under the proposed By-law does not apply to:

- a member of the police force;
- an authorised water officer;
- an officer of the water corporation or any person authorised by the water corporation to exercise its powers or perform its functions; or
- any person authorised to deal with an emergency

when exercising any duties, powers or functions authorised by law. This enables these persons to undertake land and water management duties at times and in areas that would otherwise be restricted.

**Part 2 – General control of a recreational area**

Part 2 of the proposed By-law sets out various offences created under the proposed By-law. These offences aim to protect the environmental values of the recreational areas, minimise conflicts between visitor uses and minimise unreasonable disturbance to other users, as well as protecting public safety.

Proposed clause 8 allows the water corporation to designate hours during which a recreational area is open to the public, and a person must not enter such an area outside of these hours. The proposed penalty is 20 penalty units<sup>44</sup>. This regulatory control represents a management

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<sup>43</sup> Model By-law: Recreational Areas version No.001 dated 27 July 2012

<sup>44</sup> The value of a penalty unit for a financial year is fixed by the Treasurer under section 5(3) of the *Monetary Units Act 2004*. Under the *Monetary Units Amendment Act 2012* the Treasurer has set a penalty unit rate from 1 July 2012 to 30 June 2013 at \$140.84

tool for balancing visitor needs against the need to minimise the impact of recreational activities on the environmental and recreational values of these areas.

Proposed clause 9 allows the water corporation to temporarily close all or part of a recreational area to public access. A person must not enter such a closed area (proposed penalty of 20 penalty units). This regulatory control enables the water corporation to close areas for reasons of public safety, for example to deal with emergencies, such as a fire or flood, or to protect the area's flora and fauna.

Proposed clause 10 allows the water corporation to permanently close part of a recreational area to public access by designating it a prohibited access area. A person must not enter a prohibited access area (proposed penalty of 20 penalty units). This regulatory control enables the water corporation to permanently close areas for reasons of public safety or to protect the environmental values of the area.

If a person is present in a recreational area outside of any designated opening hours or during a temporary closure or if a person is present in a prohibited access area they must immediately leave if directed to do so by an authorised water officer (proposed clause 11). The proposed penalty is 20 penalty units. This enables a water corporation to enforce compliance with proposed clauses 8, 9 and 10.

It is proposed that the possession, carrying or use by a person of any poison, firearm, bow, crossbow, catapult, spear, spear gun, trap, snare, net or similar be prohibited (proposed clause 12). The maximum penalty proposed is 20 penalty units. Exemptions apply for items unloaded and concealed in a vehicle, items in lawful transit through the area and for the lawful hunting of animals with an appropriate licence in areas designated for that purpose.

The proposed By-law prohibits a person from damaging, destroying or interfering with any works, buildings or other structure which has been lawfully constructed in a recreational area with the consent of the water corporation (proposed clause 13). The maximum penalty proposed is 20 penalty units. This seeks to protect works lawfully constructed in recreational areas and under control of third parties from interference. An example would be a boat ramp built and maintained by a sporting club.

A person must not engage in any activity that is likely to cause damage, danger, unreasonable disturbance or inconvenience to any person, animal, plant or property in any recreational area (proposed clause 14). The proposed penalty is 20 penalty units.

A person must not play or operate a sound producing device in a recreational area at a volume likely to cause inconvenience or nuisance to a person or that is likely to disturb any animal (proposed clause 15(1)). The proposed penalty is 15 penalty units. A person must not operate any other equipment in a recreational area that is likely to cause inconvenience or nuisance to a person or that is likely to disturb to any animal (proposed clause 15(2)). The proposed penalty is 10 penalty units. Exemptions are provided for the operation of medically necessary equipment and equipment operated in accordance with a permit provided by the water corporation.



It would also be an offence for a person to light, kindle or maintain a fire in a recreational area (proposed clause 16(1)), except in a public fireplace, in an area designated by the water corporation for fire lighting or on an appliance in or on a vessel. The penalty proposed is 20 penalty units. Further provisions (proposed clause 16(3) and (4)) regulate how a permitted fire is to be lit, maintained and extinguished. Failure to comply with these requirements incurs a proposed penalty of 20 penalty units. There are also additional offences proposed for acting or failing to act in a way which results in damage by fire to anything (proposed clause 16(5)) or leaving a fire unattended (proposed clause 16(6)). Both these additional offences have a proposed penalty of 20 penalty units attaching to them. These provisions would ensure both public safety and the protection of native vegetation, and would minimise the wildlife disturbance, soil erosion and water quality impacts caused by the escape of fires.

A person must not fish, yabby or eel harvest (proposed clause 17) unless this is done in an area designated for fishing, yabbing or eel harvesting by the water corporation and the person holds an appropriate fishing/yabbing licence or the person has a permit from the water corporation to harvest eels. The proposed penalty is 20 penalty units.

The proposed By-law also regulates the holding of events and functions within recreational areas. Such events or functions include an organised entertainment, sporting or recreational event, show, rally, boating event or regatta, festival, tour, fete, public meeting, demonstration, training class, wedding or similar event or a private function for thirty or more people. It is an offence for a person to hold such an event or function within a recreational area without a permit from the water corporation (proposed clause 18(1)). The proposed maximum penalty is 20 penalty units.

The proposed By-law specifies that commercial activities are prohibited in a recreational area. A commercial activity includes the sale or hire of things or services for profit, the display of goods or services for sale and hire, conducting instructions for reward, filming, taking an audio or video recording, making a radio broadcast or taking photographs for profit or commercial purposes (proposed clause 19). The proposed clause does not apply to a person who has a permit to conduct the commercial activities. The proposed maximum penalty is 20 penalty units.

The proposed By-law specifies that advertising, soliciting money and public speaking be prohibited in recreational areas (proposed clause 20). The prohibition does not apply to a person who has a permit issued by the water corporation to undertake the activity. The maximum penalty proposed is 10 penalty units. Control of advertising, the soliciting of money and public speaking prevents these activities from becoming a nuisance to other users of the recreational areas.

The proposed By-law prohibits the construction of unauthorised temporary and permanent buildings and structures in recreational areas (proposed clause 21). Authorised structures are those which are constructed in accordance with a permit issued by the water corporation. The maximum penalty proposed is 20 penalty units.

The proposed By-law restricts how buildings and structures on the recreational areas may be used. A person may only enter or use buildings or structures in a recreational area in an

emergency or if they are provided for public use in accordance with their particular use (proposed clause 22). The maximum penalty proposed for this offence is 15 penalty units.

A person must not enter toilets or showers provided for the opposite sex (proposed clause 23), although certain exemptions apply for persons under seven, and disabled persons and their carers. The maximum penalty proposed for this offence is 15 penalty units. Similarly, a person must not use any playground equipment provided in a recreational area in a manner which would cause damage to the equipment or injury to any person (proposed clause 24). The maximum penalty proposed for this offence is 20 penalty units.

A person must not swim in a recreational area except in a designated swimming area (proposed clause 25). The penalty proposed is 20 penalty units.

These regulatory controls aim to ensure public safety and minimise unreasonable disturbance to other recreational area users and any recreational facilities supplied by the water corporations. They represent a management tool for balancing visitor needs against the need to protect the environmental and recreational values of these areas.

### **Part 3 – Protection of flora and fauna**

Part 3 of the proposed By-law sets out various offences created under the proposed By-law specifically aimed at the protection of flora and fauna in recreational areas.

It is an offence to intentionally or recklessly destroy or interfere with any animal, to knowingly interfere with any animal's nest, bower, mound, lair or burrow, or to feed any animal in a recreational area (proposed clause 26). There is an exemption for activities which are authorised by a permit issued under the *Fisheries Act 1995*, the *Firearms Act 1996*, the *Wildlife Act 1975* and *Flora and Fauna Guarantee Act*. The maximum penalty proposed for these offences is 20 penalty units.

The proposed By-law states that it is an offence to intentionally or recklessly destroy or damage any flora (proposed clause 27). There is an exemption for the collection of firewood for the purposes of making a permitted fire, activities which are subject to a permit issued by the water corporation, authorised timber harvesting or activities which are authorised by a permit issued under the *Flora and Fauna Guarantee Act 1988*. The proposed penalty is 20 penalty units.

Proposed clause 28 prohibits a person from knowingly introducing any seed, tree, shrub, fern, algae or other vegetation into a recreational area (proposed penalty 20 penalty units). There is an exemption for the bringing in of firewood for the purposes of making a permitted fire or the bringing in of manufactured objects made of dead wood, such as walking sticks and fishing rods.

It is an offence to intentionally interfere with rocks or natural objects in a recreational area, to intentionally or recklessly excavate or remove soil and rocks in a recreational area or to knowingly introduce any soil and rocks into the recreational area (proposed clauses 29 and 30). The penalty that would apply to all these offences is 20 penalty units.

These regulatory controls represent a management tool for balancing visitor needs against the need to protect the environmental values of these areas.

#### **Part 4 – Accommodation and camping**

Part 4 of the proposed By-law sets out the framework for the regulation of camping in recreational areas and represents a management tool for balancing visitor needs against the need to protect the environmental values of these areas.

Camping is limited to those areas specifically designated for camping (proposed clause 31) and it is an offence to camp outside of these areas. If camping in a designated area, a person must situate their campsite more than 20 metres away from a waterway and ensure any portable toilet facilities are not within 100 metres of any waterway. Campsites must be kept clean and tidy, and all litter must be cleared from the site. If the water corporation has not provided for a maximum stay, a person must not camp in a recreational area for more than 7 consecutive days. Additionally, if a person does not comply, then that person must dismantle and remove the tent or structure or remove any moveable accommodation from the site if directed to do so by an authorised water officer. The proposed maximum penalty is 20 penalty units.

The proposed regulations also create offences if a person leaves or deposits faeces in a recreational area, except in toilet facilities provided or by burying those faeces more than 100 metres from any water course, (proposed clause 32) or if a person disposes of soap, detergent or similar substances in a recreational area within 50 metres from a water course (proposed clause 33). The penalty that would apply is 20 penalty units. These offences are to ensure that water quality is protected.

#### **Part 5 – Pets, livestock and other animals**

Part 5 of the proposed By-law sets out various offences related to the presence of dogs, horses, livestock and other animals in recreational areas. These represent a management tool for balancing visitor needs against the need to protect the environmental values of these areas.

A person must not bring a dog or horse into, or allow it to remain in, a recreational area (proposed clause 34), unless the area is designated for dog walking or horse riding, the animal is being used or trained to assist a disabled person, the animal is being used by a police officer, authorised water officer or similar, the animal is confined to a vehicle in transit through the area, or the person has a commercial activity or event permit from the water corporation or another water corporation by-law relating to dogs allow this. It is also an offence for a person to fail to remove any faeces deposited by a dog or to allow a dog or horse to enter any body of water. An authorised water officer may request that the person remove the dog or horse from the recreational area if there appears to be a contravention of these provisions. The proposed maximum penalty is 20 penalty units.

A person must not bring livestock into a recreational area (proposed clause 35) unless the area is designated for livestock, the livestock are confined to a vehicle in transit through the area, the person has a commercial activity or event permit from the water corporation, or the livestock has been brought into the area for grazing purposes under permit from the water corporation. It is also an offence for a person to allow livestock to enter any body of water. An authorised water officer may request that the person with the care and control of the livestock removes the livestock from the recreational area if there appears to be a contravention of these provisions. The proposed maximum penalty is 20 penalty units.

A person must not bring any animal (other than a dog, horse or livestock) into a recreational area (proposed clause 36) unless the animal is being used or trained to assist a disabled person, the animal is being used as bait for fishing, the animal is confined to a vehicle in transit through the area or the person has a commercial activity or event permit from the water corporation. It is also an offence for a person to allow such an animal to enter any body of water. An authorised water officer may request that the person who appears to have control of the animal remove the animal from the recreational area if there appears to be a contravention of these provisions. The proposed maximum penalty is 20 penalty units.

### **Part 6 – Use of vehicles, aircraft and vessels**

Part 6 of the proposed By-law sets out various offences created under the proposed By-law which relate to the use of vehicles, aircraft and vessels in recreational areas. These offences aim to protect the environmental values of recreational areas, minimise conflicts between visitor uses, minimise the unreasonable disturbance to other users and protect public safety.

Proposed clause 37 allows the water corporation to designate an area within a recreational area for the driving of vehicles. A person must only drive vehicles in such designated areas. A person must drive in accordance with any notices and signs erected by the water corporation and any direction of an authorised water officer. The penalty for these offences is 20 penalty units.

Proposed clause 38 allows the water corporation to designate an area within a recreational area for the parking of vehicles or a class of vehicle. An offence is committed if a vehicle is parked outside of any designated parking zone (proposed penalty 20 penalty units) unless parked on or at the side of the road so as not to obstruct persons or other vehicles, not in contravention of any signs and is not damaging any flora, fauna, or natural or cultural feature.

It is an offence under proposed clause 39 to discharge any flammable liquid from a vehicle or vessel in a recreational area. The proposed maximum penalty is 20 penalty units.

A person must not launch, land or deliver anything to an aircraft in a recreational area unless it is an emergency, the area is designated for such a purpose by the water corporation or the person is under a permit issued by the water corporation (proposed clause 40). The proposed maximum penalty is 20 penalty units.

### **Part 7 – Authorised water officers to give directions**

Proposed clause 41 enables an authorised water officer to direct a person to leave a recreational area, or part of a recreational area, if satisfied on reasonable grounds that this is necessary due to an emergency, a person's safety being at risk or because the person has breached the proposed By-law. The maximum penalty proposed is 20 penalty units

### **Part 8 – Issue of permit**

Part 8 of the proposed By-law sets out the procedure for issuing permits under the proposed By-law. Water corporations are given the power to prescribe the form and manner of any permit application and specify any information that must accompany the application

(proposed clause 42). A permit holder must comply with the permit conditions (proposed penalty for breach is 20 penalty units.)

## **Part 9 – Boating**

Part 9 of the proposed By-law sets out various offences created under the proposed By-law relating to boating activities. These offences set out a framework for the management of recreational marine activities on the waterways forming part of the recreational areas. These offences aim to protect the environmental values of the recreational areas, minimise conflicts between visitor uses, minimise unreasonable disturbances to other users and ensure public safety.

Proposed clause 43 provides against any unintended conflict between the provisions of the proposed By-law and those of the marine safety laws by giving the marine safety laws precedence in the event of such conflict.

It is an offence to launch, operate or leave a houseboat in a recreational area without a licence. A person also commits an offence by operating or leaving any boat in a recreational area in a manner likely to cause danger to other people or property, recklessly or carelessly, so as to interfere with the operations or works of the water corporation, contrary to any directions given by an authorised water officer or if the boat is derelict or unseaworthy (proposed clause 44). There is a further offence of mooring a boat in an exclusion zone or in a manner likely to cause obstruction to any other boat. The proposed maximum penalty for each offence is 20 penalty units.

A person must not deliberately sink or salvage any boat or pontoon in the water without a permit from the water corporation (proposed clause 45). The proposed penalty is 20 penalty units.

Proposed clause 46 prohibits a person from obstructing the launch or retrieval of boats from a launching ramp (proposed penalty 20 penalty units).

Proposed clause 47 enables an authorised water officer to direct the owner or operator of a vessel to remove the vessel from the water, or from the recreational area, if it reasonably believes that the person has breached the proposed By-law. The maximum penalty proposed is 20 penalty units

## **Part 10 – Revocation**

Proposed clause 48 would revoke any current by-law.

Attachment C – Base case regulatory framework**OTHER LEGISLATION RELEVANT TO RECREATIONAL AREAS AND OTHER AREAS**

Table C1 below outlines the base case regulatory framework that applies to the recreational areas in the absence of the proposed By-laws.

**Table C1: The base case regulatory framework**

Nature of the problem	Base case regulatory regime
Management of water corporation land and waterways	<p>The <i>Water Act 1989</i> governs the protection of underground and surface water resources, including water catchments, establishes water corporations and provides them with the power to hold land and to manage Crown land. The Act also provides water corporations with certain functions (including the control of land use) in relation to recreational areas and the powers necessary to perform these functions.</p> <p>The common law provides an owner of land with the ability to exclude persons from that land and to allow entry to the land on certain terms. This is supported by the tort of trespass.</p>
Game hunting	<p>The hunting of game in Victoria is regulated by the <i>Wildlife Act 1975</i> and the Wildlife (Game) Regulations 2001.</p> <p>The provisions of the <i>Firearms Act 1996</i>, <i>Control of Weapons Act 1990</i> and the <i>Dangerous Goods Act 1985</i> control the use of weapons in Victoria.</p>
Injury to people and property	<p>The common law tort of negligence provides certain remedies in respect to the negligent damage to people or property.</p> <p>In addition, the <i>Summary Offences Act 1966</i></p>

	sets out a variety of offences relating to damage to persons and property.
Public order	The <i>Summary Offences Act 1966</i> sets out a variety of offences relating to public order.
Nuisance	<p>The common law of public nuisance may provide a person suffering damage from certain nuisance behaviours with a remedy.</p> <p>In addition, the <i>Summary Offences Act 1966</i>, <i>Environment Protection Act 1970</i> and the <i>Public Health and Wellbeing Act 2008</i> set out a variety of statutory nuisance offences.</p>
Bush fire prevention	The <i>Summary Offences Act 1966</i> makes it an offence to light a fire in an open area. The <i>Country Fire Authority Act 1958</i> provides for certain other offences relating to fires in country areas.
Recreational fishing management	The <i>Fisheries Act 1995</i> and the <i>Fisheries Regulations 2009</i> establishes the framework for the protection, conservation and promotion of access to Victoria’s fisheries and aquatic resources and promotes quality recreational fishing opportunities. Anglers are required to hold a valid recreational fishing licence and are subject to rules concerning catch limits and permitted equipment for use in fishing. There are also restrictions on catch size and the taking of protected species.
Wildlife management	The <i>Flora and Fauna Guarantee Act 1988</i> establishes a legal and administrative structure for the conservation of native flora and fauna, and provides for the management of threatened species and potentially threatening processes that may affect native

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species.

The *Wildlife Act 1975* protects Victoria's wildlife and makes it an offence to keep/trade in native species without a permit/licence.

Environmental management and protection

The *Conservation, Forests and Lands Act 1987* makes provision for the productive, educational and recreational use of Victoria's lands, waters, flora and fauna in ways which are environmentally sound, socially just and economically efficient, while the *Environment Protection Act 1970* establishes offences relating to activities that damage the environment.

Catchment protection

The *Catchment and Land Protection Act 1994* establishes a framework for the integrated management and protection of catchments and sets up a system of controls on noxious weeds and pest animals. This Act creates certain offences relating to deliberate and reckless moving of noxious weeds and the release of pest animals.

Control of animals

The *Catchment and Land Protection Act 1994* sets up a system of controls on pest animals and s.8 of the *Summary Offences Act 1966* makes it an offence to urge or permit a dog to attack or worry any person or animal.

Use of vehicles

The *Road Safety Act 1986* regulates for road safety in Victoria and creates a variety of offences relating to the unsafe operation of a vehicle.

Use of aircraft

The operation of aircraft in Australia is regulated at the federal level by the *Civil Aviation Act 1988 (Cth)*, the *Civil Aviation Safety Regulations 1998 (Cth)* and associated

legislative instruments.	
House boating at Lake Eildon	The licensing of house boats for operation on Lake Eildon is regulated by the Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2003.
Boating and marine safety	Boating and marine safety in Victoria's waterways is regulated by the <i>Marine Safety Act 2010</i> , the Marine Safety Regulations 2012 and Vessel Operating and Zoning Rules.

However, there are many places where the base case regulatory framework is not adequate to address the problems that may occur in recreational areas. Table C2 identifies these gaps in the base case regulatory framework. Those gaps relating to permits are addressed elsewhere in this RIS.

**Table C2 Gaps in the base case regulatory framework**

Nature of the problem	Existing laws	Why these are inadequate
Need to close recreational areas at times when these cannot be adequately supervised	Common law right of landowner to exclude persons from land or impose conditions on permitted access to land	<p>Authorised water officers require an express legislative power to direct a person to leave outside of opening times.</p> <p>The tort of trespass to land only provides for damages to the water corporation, this may be an ineffective remedy and lack deterrence value. Enforcement of tort of trespass harder than enforcement of penalty.</p>
Need to close all or part of recreational area in the event	Common law right of landowner to exclude persons	Authorised water officers require an express legislative

<p>of a natural disaster (e.g. bush fire), to protect environment or to undertake maintenance</p>	<p>from land or impose conditions on permitted access to land.</p>	<p>power to direct a person to leave temporarily closed areas.</p> <p>The tort of trespass to land only provides for damages to the water corporation which may be an ineffective remedy and lack deterrence value. Enforcement is harder than for penalties.</p>
<p>Need to close part of recreational area to protect water corporation works or storages</p>	<p>Common law right of landowner to exclude persons from land</p>	<p>Authorised water officers require an express legislative power to direct a person to leave fenced off areas which are protecting works or storages.</p> <p>The tort of trespass to land only provides for damages this would not be an appropriate sanction. Enforcement harder than for penalties.</p>
<p>Use of weapons</p>	<p><i>Firearms Act 1996, Control of Weapons Act 1990, Wildlife Act 1975 or the Dangerous Goods Act 1985</i></p>	<p>Use of weapons not prohibited provided these Acts are complied with. Water corporations require the ability to prohibit this.</p>
<p>Vandalism and other property damage</p>	<p><i>Summary Offences Act 1966</i></p>	<p>This Act can only be enforced by members of the police, who are not present in most recreational areas.</p> <p>Enforcement is more costly than for penalties.</p> <p>To protect provided facilities restrictions are required as to who may enter and use these</p>

		facilities.
Offensive behaviour	<i>Summary Offences Act 1966</i>	This Act can only be enforced by members of the police, who are not present in most recreational areas.  Enforcement is more costly than for penalties.
Nuisance behaviour	<i>Summary Offences Act 1966</i>	This Act can only be enforced by members of the police, who are not present in most recreational areas. Enforcement is more costly than for penalties.
	<i>Environment Protection Act 1970</i>	Only applies to objectionable noise.
	<i>Public Health and Wellbeing Act 2008</i>	Only applies to those nuisances which are dangerous to health or offensive.
	Tort of public nuisance	Difficult to enforce.

Area use conflicts	Common law right of landowner to impose conditions on permitted access to land	To properly manage competing users of recreational areas the water corporation requires specific powers to designate areas for particular recreational users and to regulate the number and type of users (e.g. events, sports and commercial activity providers).
Dangerous activities	Common law right of landowner to impose conditions on permitted access to land	To properly manage health and safety risks to users of recreational areas the water corporation requires specific powers to regulate dangerous activities.
Bushfires starting in a recreational area	<i>Country Fire Authority Act 1958 and Summary Offences Act 1966</i>	Need for water corporations to have the power to specify where and when fires may be safety lit, and for authorised water officers to have the power to request fires be extinguished.
Protection of fish, yabbies and eels	<i>Fisheries Act 1995, Fisheries Regulations 2009</i>	This Act does not specify where a person can fish; this must be controlled by the manager of the waterway to protect from overfishing and other environmental problems.
Biodiversity loss	<i>Planning and Environment Act 1987, Flora and Fauna Guarantee Act 1987, Wildlife Act 1975</i>	Does not sufficiently regulate habitat disturbance or vegetation removal.
Soil erosion and land	<i>Catchment and Land</i>	Does not sufficiently regulate vegetation removal or soil

slippage	<i>Protection Act 1994</i>	erosion.
Introduction of weeds	<i>Catchment and Land Protection Act 1994</i>	Does not sufficiently regulate control of weeds in recreational areas.
Litter at campsites	<i>Environment Protection Act 1970</i>	Does not specifically require <u>removal</u> of litter from campsites.
Pollution of water supplies by faeces and detergent	<i>Environment Protection Act 1970</i>	Does not expressly prohibit the deposit of faeces or use of detergent near waterways.
Pollution of water supplies by animals	None	Water corporations require the power to require that animals brought into recreational areas are kept out of the water.
Uncontrolled large animals	<i>Catchment and Land Protection Act 1994</i>	Only applies to pest animals.
Uncontrolled small animals	<i>Domestic (Feral And Nuisance) Animals Act 1994</i>	Only applies to municipalities, not to water corporation land.
	<i>Catchment and Land Protection Act 1994</i>	Only applies to pest animals.
Vehicles driven or parked in wrong places	<i>Road Safety Act 1986</i>	This Act does not give the water corporation the power to give directions to drivers and can only be enforced by members of the police, who are not present in most recreational areas.

Pollution of water supplies by discharges from vehicles	<i>Environment Protection Act 1970</i>	Does not expressly prohibit the discharge of flammable liquids from vehicles.
Aircraft used in wrong places	<i>Civil Aviation Act 1988 (Cth)</i> , the Civil Aviation Safety Regulations 1998 (Cth) and associated legislative instruments.	This aviation safety regime does not specify where an aircraft may launch, land or deliver an item; water corporations require the ability to specify where such activities may occur.
Vessels operated or moored in wrong places or in dangerous manner	<i>Marine Safety Act 2010</i> , Marine Safety Regulations 2012 and Vessel Operating and Zoning Rules	Extends marine safety laws by providing authorised water officers with the power to apply penalties and to direct an owner/operator to remove a contravening vessel. Also specifically regulates for interference with water corporation works.
Deliberate sinking of objects in waterways and salvage	None	Water corporations require the ability to prohibit deliberate sinking and salvage operations.

Attachment D – Administration cost calculations and assumptions

<b>Costs Imposed by the Model By-law: Recreational Areas</b>					
<b>Administrative Costs</b>	<b>Price</b>		<b>Quantity</b>		<b>Cost (\$)</b>
<i>Description</i>	<i>Tariff</i> <sup>1</sup>	<i>Time</i> <sup>2</sup>	<i>Population</i> <sup>3</sup>	<i>Frequency</i>	
Clause 41 – Application for permit	\$68.68	1.50	5	1	515
				<b>Total</b>	<b>\$515</b>

	<b>Discounted (10-Years)</b>	<b>Cost (\$)</b>	<b>Assumes take-up</b>		<b>Discounted Cost (\$)</b>
	<b>Year</b>				
	1	\$515	\$1,545		\$1,493
	2	\$515	\$1,545		\$1,443
	3	\$515	\$1,545		\$1,394
	4	\$515	\$1,545		\$1,347
	5	\$515	\$1,545		\$1,301
	6	\$515	\$4,121		\$3,352
	7	\$515	\$4,121		\$3,239
	8	\$515	\$4,121		\$3,129
	9	\$515	\$4,121		\$3,024
	10	\$515	\$4,121		\$2,921
				<b>Total</b>	<b>\$22,643</b>

Notes:

1. A proxy for applicants' time is assumed at the hourly rate calculated from the Victorian Guide to Regulations. □
2. Times are approximate and have been informed by input from DSE and confirmed by desktop exercises.
3. Populations estimated from consultation - 5 permits per annum
4. Annual costs are discounted by 3.5 per cent as suggested in the *Victorian Guide to Regulation* (Appendix C, *Choice of discount rate*, p. 19).
5. It is assumed that from year 1 to Year 5 three corporations adopt the By-laws, and from Year 6 to Year 10 an additional five water corporations adopt the By-law (i.e. a total of 8)



<b>Costs Imposed by the Model By-law: Recreational Areas</b>					
<b>Government costs - cost of assessing permit applications</b>	<b>Price</b>		<b>Quantity</b>		<b>Cost (\$)</b>
<i>Description</i>	<i>Tariff</i> <sup>1</sup>	<i>Time</i> <sup>2</sup>	<i>Population</i> <sup>3</sup>	<i>Frequency</i>	
Annual water corporation cost of assessing permit applications	\$60.95	3.00	5	1	914
				<b>Total</b>	<b>\$914</b>

	<b>Discounted (10-Years)</b>		<b>Assumes take-up</b> <sup>5</sup>		
	<b>Year</b>	<b>Cost (\$)</b>			<b>Discounted Cost (\$)</b>
	1	\$914	\$2,743		\$2,650
	2	\$914	\$2,743		\$2,560
	3	\$914	\$2,743		\$2,474
	4	\$914	\$2,743		\$2,390
	5	\$914	\$2,743		\$2,309
	6	\$914	\$7,314		\$5,950
	7	\$914	\$7,314		\$5,749
	8	\$914	\$7,314		\$5,555
	9	\$914	\$7,314		\$5,367
	10	\$914	\$7,314		\$5,185
				<b>Total</b>	<b>\$40,190</b>

Notes:

1. A proxy for applicants' time is assumed at the hourly rate calculated from the Victorian Guide to Regulations. VPS3 equivalent hourly rate multiplied by a 1.75 on-cost factor.□
2. Times are approximate and have been informed by input from Southern Rural Water corporation (indicative only).
3. Populations estimated from consultation - 5 permits per annum
4. Annual costs are discounted by 3.5 per cent as suggested in the *Victorian Guide to Regulation* (Appendix C, *Choice of discount rate*, p. 19).
5. It is assumed that from year 1 to Year 5 three corporations adopt the By-laws, and from Year 6 to Year 10 an additional five water corporations adopt the By-law (i.e. a total of 8)

<b>Costs Imposed by the Model By-law: Recreational Areas</b>					
<b>Government costs - cost of assessing permit applications</b>	<b>Price</b>		<b>Quantity</b>		<b>Cost (\$)</b>
<i>Description</i>	<i>Tariff</i> <sup>1</sup>		<i>Population</i>		
Enforcement costs (including signage etc.)	\$30,000		1		30,000
				<b>Total</b>	<b>\$30,000</b>

	<b>Discounted (10-Years)</b>		<b>Assumes take-up</b> <sup>3</sup>		
	<b>Year</b>	<b>Cost (\$)</b>			<b>Discounted Cost (\$)</b>
	1	\$30,000	\$90,000		\$86,957
	2	\$2,000	\$6,000		\$5,601
	3	\$2,000	\$6,000		\$5,412
	4	\$2,000	\$6,000		\$5,229
	5	\$2,000	\$6,000		\$5,052
	6	\$30,000	\$150,000		\$122,025
	7	\$2,000	\$10,000		\$7,860
	8	\$2,000	\$10,000		\$7,594
	9	\$2,000	\$10,000		\$7,337
	10	\$2,000	\$10,000		\$7,089
				<b>Total</b>	<b>\$260,155</b>

Notes:

1. Consultation with water corporations suggests incremental costs could be in to order of \$30,000 in year 1 to allow training, signage, etc and \$2000 p.a. thereafter for maintenance, etc. □
2. Annual costs are discounted by 3.5 per cent as suggested in the *Victorian Guide to Regulation* (Appendix C, *Choice of discount rate*, p. 19).
3. It is assumed that from year 1 to Year 5 three corporations adopt the By-laws, and from Year 6 to Year 10 an additional five water corporations adopt the By-law (i.e. a total of 8)

## ASSUMPTIONS

### *Cost calculations*

1. Annual costs are discounted by 3.5 per cent as suggested in the *Victorian Guide to Regulation*, Appendix C, ‘Choice of discount rate’, p. 19.
2. As a proxy for valuing an hour of a permit applicant’s time, the following formula is given:

$HR_x = (AE_x/AW_x \times AH_x) \times 1.75$ , where:

$AE_x$  = average weekly earnings multiplied by 52;

$AW_x$  = number of weeks worked per annum (44 weeks);

$AH_x$  = average weekly hours for full time workers (41 hours)

1.75 = VCEC uplifted factor to allow for labour and corporate on-costs

See *Victorian Guide to Regulation* (Appendix C, ‘Valuing staff time’, p. 15). Labour on-costs and overhead costs are excluded from the calculation of recreational area visitor’s valuation of time. This provides an hourly value of a person’s time of **\$68.68** (i.e. \$1,361.60 divided by (44 x 41) x a factor of 1.75 to allow for overheads).

ABS Cat 6302.0 – Average Weekly Earnings, Australia, February 2012, Canberra, Full-time adult ordinary time earnings (private and public sectors) is \$1,361.60 per week.

3. While water corporations used different salary schedules, as a proxy for valuing an hour of water corporations time, **\$60.95** is adopted. This rate is based on a VPS3 hourly rate of \$34.83 multiplied by 1.75. Source: *Victorian Public Service Workplace Determination 2012*, effective from 1 July 2012.
4. For the purposes of costing in this RIS, it is assumed that 3 water corporations adopt the By-law in year 1, and an additional 5 water corporation do so in year 6.
5. Calculations in this RIS are largely based on costs and discussions with Southern Rural Water (SRW) Corporation. SRW represents a water corporation with considerable public amenities, infrastructure and recreational activities conducted on the land it manages. Therefore, the cost estimates in this RIS are likely to be extremely conservative (and may even overstate the actual costs for other corporations by several orders of magnitude).

Attachment E – Summary of substantive compliance costs**SUMMARY OF SUBSTANTIVE COMPLIANCE COSTS**

The table below describes and makes a qualitative assessment of the substantive compliance costs associated with the proposed By-law. The costs of applying for and providing those permits to which clause 42 applies have not been included in this table, as these are separately discussed in this RIS.

**Qualitative assessment of the substantive compliance of the proposed By-law**

<b>Proposed clause</b>	<b>Description of proposed clause</b>	<b>Nature of cost</b>
<b>Clause 8</b>	The water corporation may designate hours during which a recreational area is to be closed to the public.	Minor costs to visitors who travel to a recreational area unaware that it is closed. As the extent of such opening hours is unknown, this cost remains unquantifiable.
<b>Clauses 9 and 10</b>	The water corporation may temporarily close to public access all or part of a recreational area or designate part of a recreational area as a prohibited access area.	Minor costs to visitors who travel to a recreational area unaware that it is closed. Where only part of a recreational area is closed, visitors can enjoy other parts of the recreational area or other area and costs would be mitigated. As the extent and frequency of such closures or the extent of such designated areas is unpredictable, this cost remains unquantifiable.
<b>Clause 12</b>	It is prohibited to possess, carry or use any poison, firearm, bow, crossbow, catapult, spear, spear gun, trap, snare, net or similar within a recreational area. Exemptions apply for items kept unloaded in a vehicle, items in lawful transit and for the lawful hunting of animals with an appropriate licence in areas designated by the water corporation for that purpose.	Minor cost to some visitors in inconvenience in not being able to hunt or carry hunting equipment outside of designated hunting areas. Given that the extent of inconvenience is unpredictable, this cost remains unknown.
<b>Clause 13</b>	It is prohibited to damage, destroy or interfere with	Minor cost to some visitors in complying with these restrictions.

Proposed clause	Description of proposed clause	Nature of cost
	any works, buildings or other structure which has been lawfully constructed in a recreational area with the consent of the water corporation. An exemption applies if a person is acting with the consent of the water corporation or under other lawful authority.	This cost can be mitigated where the water corporation provides a permit. Given that the extent of inconvenience is unpredictable, this cost remains unknown.
<b>Clause 14</b>	A person must not engage in any behaviour or activity that is likely to cause danger, unreasonable disturbance or inconvenience to any person or to any animal, plant or property in any recreational area.	Minor cost to some visitors in complying with these nuisance and behavioural restrictions. Given that the extent of inconvenience is unpredictable, this cost remains unknown.
<b>Clause 15</b>	A person must not play or operate a sound producing device in a recreational area at a volume likely to cause inconvenience or nuisance to a person or that is likely to disturb any animal. A person must not in a recreational area operate any other equipment that is likely to cause inconvenience or nuisance to a person or that is likely to disturb any animal. Exemptions are provided for the operation of medically necessary equipment and equipment which is operated in accordance with a permit provided by the water corporation.	Minor cost to some visitors in complying with these nuisance and behavioural restrictions. This cost can be mitigated where the water corporation provides a permit. Given that the extent of inconvenience is unpredictable, this cost remains unknown.
<b>Clause 16</b>	The lighting of fires in a recreational area is limited to public fireplaces, appliances on vessels and to areas designated by the water corporation for fire lighting. Additional restrictions apply to how a fire is to be lit and maintained.	Minor cost to some visitors (likely to be campers) of inconvenience caused by fire lighting/maintaining restrictions. Given that the extent of inconvenience is unpredictable, this cost remains unknown.
<b>Clause 17</b>	The water corporation may designate an area in a	Minor cost to some visitors of inconvenience caused by restrictions

Proposed clause	Description of proposed clause	Nature of cost
	recreational area for fishing, yabbing and/or eel harvesting. Outside of such a designated area, such activities are prohibited. An exemption is granted for eel harvesting under a permit issued by the water corporation.	on fishing, yabbing or eel harvesting. This cost could be mitigated to the extent that an eel harvesting permit is issued by the water corporation.
<b>Clause 18</b>	Organised events are not to be conducted in a recreational area unless a permit has been obtained from the water corporation.	Minor cost to some visitors of not being able to conduct not-for-profit activities. This cost would be mitigated to the extent that permits are issued by the water corporation. Given that the incidence of organised events being held (and the nature of such activities) in the future is unknown, this cost remains unquantifiable.
<b>Clause 19</b>	Commercial activities for profit are not to be conducted in a recreational area unless a permit has been obtained from the water corporation.	Minor cost to some visitors of not being able to conduct commercial activities for profit. This cost would be mitigated to the extent that permits are issued by the water corporation. Given that the incidence of commercial activities for profit otherwise being held (and the nature of such activities) in the future is unknown, this cost remains unquantifiable.
<b>Clause 20</b>	Advertising, soliciting money and public speaking are not to be conducted in a recreational area unless a permit has been obtained from the water corporation.	Minor cost to some visitors of not being able to advertise, solicit money or publicly speak. This cost would be mitigated to the extent that permits are issued by the water corporation. Given that the incidence of these activities otherwise being held (and the nature of such activities) in the future is unknown, this cost remains unquantifiable.
<b>Clause 21</b>	Construction activities not to be conducted in a recreational area unless a permit has been obtained from the water corporation.	Minor cost to some visitors in not being able to engage in construction activities. This cost would be mitigated to the extent that a permit is issued by the water corporation. Given that both the incidence of when such activities would otherwise occur is unknown

Proposed clause	Description of proposed clause	Nature of cost
		these costs remain unquantifiable.
<b>Clauses 22, 23 and 24</b>	A person is restricted from entering or using buildings and structures on a recreational area other than for their specified use, entering toilets or showers provided for the opposite sex and using any playground equipment in a manner which damage the equipment or injure any person. Certain exemptions apply for the use of toilets or showers by persons under seven, disabled persons and their caregivers, and the entry into or use of a building/structure in an emergency.	Minor cost to some visitors of inconvenience in complying with these restrictions.
<b>Clause 25</b>	The water corporation may designate an area in a recreational area where swimming is prohibited.	Minor cost to some visitors of inconvenience caused by swimming prohibitions.
<b>Clauses 26 and 27</b>	Restrictions on interaction with flora and fauna within a recreational area without a permit from the water corporation, unless the interaction is in accordance with certain other specified types of permit or licence.	Minor cost to some visitors in being restricted in their interaction with flora and fauna. This cost would be mitigated to the extent that a permit is obtained from the water corporation or a permit or licence is obtained under the <i>Fisheries Act 1995</i> , <i>Firearms Act 1996</i> , <i>Wildlife Act 1975</i> , <i>Flora and Fauna Guarantee Act 1988</i> and the <i>Sustainable Forest (Timber) Act 2004</i> . Given that the incidence of when such interactions would otherwise occur is unknown, this cost remains unquantifiable.

Proposed clause	Description of proposed clause	Nature of cost
<b>Clause 28</b>	A person must not knowingly bring in or introduce certain flora to a recreational area.	Minor cost to some visitors of inconvenience caused by these restrictions.
<b>Clauses 29 and 30</b>	Restrictions on interference with rocks and natural objects and on excavation activities in a recreational area.	Minor cost to some visitors in not being able to engage in these activities. Given that the incidence of when such activities would otherwise occur is unknown, this cost remains unquantifiable.
<b>Clause 31</b>	Camping in a recreational area or other area is limited to areas designated by the water corporation for camping. Additional restrictions apply on where a campsite and portable toilet can be situated in relation to a waterway, littering and on the maximum amount of time a person may camp.	Minor cost to some visitors of inconvenience caused by restrictions on camping area, camping duration, littering, situation of campsite and use of portable toilets.
<b>Clauses 32 and 33</b>	Restrictions on the depositing of faeces and the use of soap or detergent near a waterway, in a recreational area.	Minor cost to some visitors of inconvenience caused by these restrictions.
<b>Clauses 34, 35 and 36</b>	The water corporation may set aside part of a recreational area for dog walking, horse riding or livestock grazing. Outside of such designated areas, and in any waterway, animals are prohibited. Exemptions apply to animals for the disabled, those confined to a vehicle/vessel in transit, those being used by authorised water officers, those permitted under an organised event or commercial activity permit, those which are fishing bait or those	Minor cost of inconvenience caused by prohibitions on dogs, horses, livestock and other animals. This cost would be mitigated to the extent that a permit (for an organised event, commercial activity or livestock grazing) is issued by the water corporation.



Proposed clause	Description of proposed clause	Nature of cost
	permitted by a permit issued by the water authority to graze livestock.	
<b>Clauses 37 and 38</b>	The water corporation may designate part of a recreational area for the driving or parking of vehicles. Driving or parking outside of such a designated area is prohibited, subject to an exemption for parking on or at the side of the road. Restrictions apply to how vehicles may be driven.	Very minor cost to some visitors of inconvenience caused by driving and parking restrictions. Given that the frequency and event of restrictions is unknown, this cost remains unquantifiable.
<b>Clause 39</b>	Restrictions on the discharge of flammable liquid from a vehicle or vessel in a recreational area.	Minor cost to some visitors of inconvenience caused by these restrictions.
<b>Clause 40</b>	The water corporation may designate part of a recreational area for the launching or landing of aircraft or the delivery of anything by aircraft. Conducting such activities outside of a designated area is prohibited. Exemptions apply in an emergency or if a person has a permit for the activity from the water corporation.	Minor cost to some visitors of inconvenience caused by these restrictions. This cost would be mitigated to the extent that a permit is issued by the water corporation.
<b>Clauses 11 and 41</b>	A person must comply with any direction given by an authorised water officer to leave a recreational area. Such directions may be given in an emergency, to ensure the safety of any person or when a contravention of the by-law has occurred.	Minor cost to some visitors of inconvenience caused by leaving a recreational area. Given that the frequency and event of any directions is unknown, this cost remains unquantifiable.

Proposed clause	Description of proposed clause	Nature of cost
<b>Clauses 42</b>	The holder of a permit must comply with the conditions of the permit.	Very minor costs to some visitors having to comply with the conditions of permits. Given that the extent and amount of resource expenditure by visitors to comply with conditions of permits remains unknown, this cost remains unquantifiable.
<b>Clause 44</b>	Restrictions on the launching, operating and mooring of boats in a recreational area.	Minor cost to some visitors of inconvenience caused by complying with the restrictions. For those wishing houseboat at Lake Eildon this can be mitigated by obtaining a licence from Goulburn Murray Water under the Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2003.
<b>Clauses 45 and 46</b>	A person must not deliberately sink or salvage any boat or pontoon in the water or obstruct the launch or retrieval of boats from a launching ramp. Exemption for the sinking or salvaging any boat or pontoon in accordance with a permit issued by the water corporation.	Minor cost to some visitors of inconvenience caused by complying with the restrictions. This cost would be mitigated to the extent that a permit is issued by the water corporation. Given that the incidence of when such activities would otherwise is unknown this cost remains unquantifiable.
<b>Clause 47</b>	A person must comply with any direction given by an authorised water officer to remove a vessel from a recreational area when a contravention of the by-law has occurred.	Minor cost to some visitors of inconvenience caused by complying with such a direction. Given that the frequency and event of any directions is unknown, this cost remains unquantifiable.

Attachment F – Provisions of the *Water Act 1989*

**Water Act 1989**

**122ZA Environmental and recreational areas**

- (1) The Minister may determine land—
  - (a) which is owned or controlled by an Authority; or
  - (b) which is within the water district, sewerage district, waterway management district or irrigation district of an Authority, or which is significant to the exercise of a function of an Authority and which is owned or controlled by another public statutory body or which is Crown land—

to be an environmental area or a recreational area under the management and control of the Authority specified by the Minister and for the period specified by the Minister in the determination.
- (2) The Minister must not make a determination under subsection (1)(b) unless the Minister has first obtained the consent of the public statutory body or the Minister responsible for the management of the land (as the case requires) to the making of that determination.

**122ZB Functions of Authority in area**

- (1) An Authority that has the management and control of any environmental or recreational area has the following functions—
  - (a) in accordance with the directions of the Minister, to prepare a management strategy as to recreational uses for the area;
  - (b) to improve the area;
  - (c) to provide and arrange services and facilities in the area;
  - (d) to control land use in the area.
- (2) Subject to any determination under section 122ZA establishing an area, an Authority is under no duty to exercise its functions under subsection (1).

## **160 By-laws**

- (1) An Authority may make by-laws for or with respect to—
  - (a) the management, protection and use of all lands, waterways and works under the Authority's management and control; and
  - (b) the management, protection and use of environmental and recreational areas under the Authority's management and control including, but not limited to—
    - (i) the control, management and use of the land, services and facilities in the area, including fees for the provision or use of any such services or facilities or for entry to land on which such services or facilities are situated;
    - (ii) the protection of the land, services and facilities;
    - (iii) the protection of people in the area from injury or nuisance;
    - (iv) the conservation and preservation of flora, fauna and habitat in the area;
    - (v) the control of the introduction of any new flora or fauna to the area;
    - (vi) the control of the numbers of any flora or fauna in the area; ...
- (3) By-laws made under this Act may be made—....
  - (c) so as to adopt any model by-law issued by the Minister;

### **287X Requirements for Minister when issuing model by-laws**

In issuing a model by-law to be used by Authorities in an exercise of a by-law making power under this Act, the Minister must comply with the procedure set out in this Division.

### **287Y Minister to give notice of proposed model by-law**

- (1) Before issuing a model by-law, the Minister must give notice of the proposal to issue the by-law—
  - (a) in the Government Gazette; and
  - (b) in a newspaper circulating generally in the area to which the proposed model by-law will apply.
- (2) A notice under subsection (1) must state—
  - (a) the title of the proposed model by-law; and
  - (b) the purpose and general purport of the proposed model by-law; and
  - (c) that a copy of the proposed model by-law may be inspected, free of charge, and the places at which and the means by which any such copy may be inspected under section 287Z; and

- (d) that submissions are invited on the proposed model by-law; and
- (e) the time within which any such submissions must be received by the Minister under section 287ZA(3); and
- (f) the means by which any such submissions may be made to the Minister under section 287ZA(2).

### **287Z Inspection of proposed model by-law**

The Minister must ensure that the proposed model by-law—

- (a) is available for inspection, free of charge, at the offices of the Department during ordinary business hours; and
  - (b) is able to be inspected, free of charge, by means of electronic communication at the electronic address of the Department.
- (3) A submission under subsection (2) must be received by the Minister within one month of the publication of the notice under section 287Y(1).

### **287ZB Issuing of model by-laws**

After considering all submissions made on the proposed model by-laws, the Minister may issue, as model by-laws, the proposed model by-laws, either with or without amendment.

### **287ZC Making and giving of notice of making of by-law using model by-law**

- (1) An Authority may make a by-law by using a model by-law.
- (2) In making a by-law by using a model by-law, the Authority may make any necessary minor or technical changes to the by-law.
- (3) An Authority that is making a by-law using a model by-law must give notice of the making of the by-law—
  - (a) in the Government Gazette; and
  - (b) in a newspaper circulating generally in the area in which the by-law will apply.
- (4) A notice under subsection (3) must set out—
  - (a) the title of the by-law; and
  - (b) the purpose and general purport of the by-law; and
  - (c) that the by-law is being made by using a model by-law issued by the Minister; and
  - (d) that a copy of the by-law may be inspected, free of charge, and the places and times at which and the means by which a copy of the by-law may be inspected under section 287ZK; and

- (e) the address of the Authority (including any electronic address) and the site of any electronic publication of information by the Authority about its operations.

**287ZL Automatic revocation of by-laws**

- (1) Unless sooner revoked, a by-law is by virtue of this section, revoked on the day which is 10 years after the making of the by-law.

Attachment G – Other jurisdictions

**EXTENT AND REGULATION OF RECREATIONAL AREAS IN OTHER JURISDICTIONS**

Findings of a desktop study conducted into the extent of permitted public access for recreational purposes at water storage areas and surrounding land, owned and operated by the main publicly owned water corporations in the other Australian jurisdictions. The study also investigated how public access in such areas is regulated.

**AUSTRALIAN CAPITAL TERRITORY (ACT)**

The ACT's principal piece of water legislation is the *Water Resources Act 2007 (ACT)*, which is administered by the Environment and Sustainable Development Directorate (Environment Protection and Water Regulation and Energy, Water and Waste Policy).

*ACT Electricity and Water*

ACT Electricity and Water (ACTEW) supplies water and manages water infrastructure across the territory. Around the Cotter Dam (the ACT's most important storage) are several areas ordinarily open to the public for recreation<sup>45</sup> providing picnic facilities, playgrounds, swimming and camping. However, current expansion of the Cotter Dam means some of these are not currently available. It is not clear which of these recreational sites are owned and managed by ACTEW and which by ACT Territory and Municipal Services. ***There is no indication that any by-laws or equivalent apply to any sites managed by ACTEW.***

**QUEENSLAND**

The Department of Environment and Resource Management (DERM) administers the *Water Act 2000 (QLD)*. There are several rural water utilities in Queensland that manage public reservoirs.

*SunWater*

SunWater is owned by the Queensland Government and operates across many locations in the state. It owns and operates a large number of dams and weirs, of which 15 are made available to the public for recreational use<sup>46</sup>. Some recreational facilities at these sites are provided by local councils who would be responsible for the regulation of their sites.

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<sup>45</sup> See

<http://www.actew.com.au/Our%20Projects/Enlarged%20Cotter%20Dam/Recreation%20at%20the%20Cotter.aspx> accessed on 18 July 2012

<sup>46</sup> See <http://www.sunwater.com.au/sustainability/community/recreational-facilities> accessed 19 July 2012

However, there are 15 sites at which SunWater itself provides facilities<sup>47</sup>. These include boat ramps, lookouts, picnic tables, barbecues, toilets and drinking water. A few of the sites have camping facilities. Some of these are managed by third parties. However, Burdikin Falls Dam and Wurruma Dam campsites are administered by SunWater. There is a fee charged for camping at Burdikin Falls Dam. ***There is no indication that any by-laws or equivalent apply to these sites.***

#### *Seqwater*

Seqwater is also owned by the Queensland Government, and supplies bulk water and manages storages in the South East Queensland region. Seqwater makes 25 dams available for public recreation<sup>48</sup> for a variety of purposes, such as boating, skiing, camping, fishing, swimming, picnics and bushwalking. These areas are extremely popular, receiving between 2 and 2.5 million visitors annually<sup>49</sup>.

**Seqwater has published detailed rules on its website that contractually govern the terms on which it grants members of the public access to, and use of, its land and waters.**<sup>50</sup> These rules govern access to the sites, prohibit a number of anti-social behaviours and prohibit certain activities on the land (relating to camping, fire lighting, parking etc) and on the water (relating to how and where a vessel may be operated). The rules also prohibit certain activities unless a permit has been obtained from Seqwater. These include all camping, commercial activities and holding of events.

Further information about how to behave at the sites so as to protect the environment and be safe is provided on the website. Additionally, public notices restrict when particular sites are open to the public and the activities allowed at these sites.

#### *Gladstone Area Water Board*

The Gladstone Area Water Board makes available its Lake Awoonga storage for recreational uses<sup>51</sup> such as boating, fishing, swimming, bird watching and camping. Permission is required to hold an event at Lake Awoonga. ***There is no indication that any by-laws or equivalent apply to this site.***

#### *Mount Isa Water Board*

The Mount Isa Water Board allows recreational use of its Lake Moondarra storage by local clubs for archery, astronomy, bird watching, boating, canoeing, dirt biking, fishing, skiing and triathlons.<sup>52</sup> ***There is no indication that any by-laws or equivalent apply to this site.***

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<sup>47</sup> Beardmore Dam, Bjelke-Peterson Dam, Burdikin Falls Dam, Callide Dam, Chinchilla Weir, Coolmunda Dam, Eungella Dam, Fairbain Dam, Glenlyon Dam, Julius Dam, Kinchant Dam, Leslie Dam, Peter Faust Dam, Teemburra Dam and Wuruma Dam

<sup>48</sup> See <http://www.seqwater.com.au/public/recreation/activities-by-location> accessed 19 July 2012

<sup>49</sup> See <http://www.seqwater.com.au/public/recreation/recreation-master-planning> accessed 19 July 2012

<sup>50</sup> Queensland Bulk Water Supply Authority (QBWSA), *Rules – General Access and Use of Land and Waters*, accessed 19 July 2012 <http://www.seqwater.com.au/public/sites/default/files/userfiles/file/pdfs/QBWSA%20-%20Seqwater%20Rules.pdf>

<sup>51</sup> See <http://gawb.qld.gov.au/recreation.html> accessed on 19 July 2012

<sup>52</sup> See <http://www.mountisawater.qld.gov.au/index.php> accessed 19 July 2012



## NEW SOUTH WALES

There are two key pieces of water legislation in New South Wales, the *Water Act 1912 (NSW)* and the *Water Management Act 2000 (NSW)*. These are administered by the NSW Office for Water.

### *State Water Corporation*

State Water Corporation (State Water) is New South Wales' rural bulk water delivery business and owns, maintains, manages and operates major infrastructure across the state.

Some of its storages have recreational areas that appear to be managed by State Water. These areas are at Blowering Dam<sup>53</sup>, Glennies Creek Dam<sup>54</sup>, Pindari Dam,<sup>55</sup> Split Rock Dam<sup>56</sup>, Windamere Dam<sup>57</sup>, Chaffey Dam<sup>58</sup>, Carcoar Dam<sup>59</sup> and Brogo Dam.<sup>60</sup> These storages are commonly used for boating, sailing, waterskiing and fishing and the scenic foreshores around these storages are commonly used for bushwalking and picnics. Some sites also offer swimming and camping. ***There is no indication that any by-laws or equivalent apply to these sites.***

There are also a number of storages that are open for recreational use but which appear to be managed by NSW State Parks or by other bodies.<sup>61</sup>

## NORTHERN TERRITORY

The Northern Territory's Department of Natural Resources, Environment, Art and Sports (NRETAS) (Controller of Water Resources) administers the *Water Act 1992 (NT)*.

### *Power and Water Corporation*

Power and Water Corporation (Power and Water) supplies water and manages water infrastructure across the territory.

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<sup>53</sup> See <http://www.statewater.com.au/ Documents/Dam%20brochures/Blowering%20Dam.pdf> accessed 19 July 2012

<sup>54</sup> See <http://www.statewater.com.au/ Documents/Dam%20brochures/Glennies%20Creek%20Dam%20Brochure.pdf> accessed 19 July 2012

<sup>55</sup> See <http://www.statewater.com.au/ Documents/Dam%20brochures/Pindari%20Dam%20Brochure.pdf> accessed 19 July 2012

<sup>56</sup> See <http://www.statewater.com.au/ Documents/Dam%20brochures/Split%20Rock%20Dam.pdf> accessed 19 July 2012

<sup>57</sup> See <http://www.statewater.com.au/ Documents/Dam%20brochures/Windamere%20Dam%20Brochure.pdf> accessed 19 July 2012

<sup>58</sup> See <http://www.statewater.com.au/ Documents/Dam%20brochures/Chaffey%20Dam%20Brochure.pdf> accessed 19 July 2012

<sup>59</sup> See <http://www.statewater.com.au/ Documents/Dam%20brochures/Carcoar%20Dam%20Brochure.pdf> accessed 19 July 2012

<sup>60</sup> See <http://www.statewater.com.au/ Documents/Dam%20brochures/Brogo%20Dam%20brochure.pdf> accessed 19 July 2012

<sup>61</sup> Burrinjuck Dam, Copeton Dam, Wyangala Waters Dam, Menindee Lakes Storages, Lostock Dam, Keepit Dam, Hume Dam, Glenbawn Dam and Burrendong Dam

Power and Water has a treatment plant adjacent to the Leanyer Swamp in Darwin, and sewerage ponds adjacent to the Ilparpa swamp. Both of these swamps attract significant populations of birds, and are noted by ornithologists. Public access is granted to these sites to view the unique bird life on specified terms. These terms are set out on the Power and Water's website.<sup>62</sup> ***The access terms aim to educate the public about appropriate behaviour at the sites before arrival and require that a person completes an online safety induction and online indemnity form before visiting a site***; completed induction certificates and photo identification must be kept on a person during their visit. Access to these sites requires the payment of a fully refundable \$50 fee and the completion of appropriate paperwork; this entitles a visitor to either a remote control device which activates an electronic gate (Leanyer) or a key which opens a standard gate (Ilparpa).

Public access is also allowed at Manton Dam near Darwin, which has a picnic area and barbeque.<sup>63</sup> There is no indication that any by-laws or equivalent apply to this site.

## SOUTH AUSTRALIA

South Australia's principal piece of water legislation is the *Natural Resources Management Act 2000 (SA)*, which is administered by the Department for Water (DFW).

### *SA Water*

SA Water is owned by the South Australian Government, and provides water, wastewater and sewerage services across the state. SA Water makes a number of its storage areas,<sup>64</sup> which have appropriate facilities for visitors, available for people to visit and enjoy. There is information on its website as to the opening times of these reservoirs. Barossa reservoir is a tourist attraction in its own right on account of its whispering wall and has toilet facilities and picnic tables. Myponga has toilet facilities and gas barbeques. ***There is no indication that any by-laws or equivalent apply to such areas.***

## TASMANIA

The principal piece of legislation relating to water in Tasmania is the *Water Management Act 1999 (TAS)* which is administered by the Department of Primary Industries, Parks, Water and Environment (DPIPWE).

There are currently three water corporations in Tasmanian each of which operates in a specific region of the state. These are owned by local councils.

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<sup>62</sup> See [http://www.powerwater.com.au/sustainability\\_and\\_environment/birdwatching\\_ilparpa\\_swamp](http://www.powerwater.com.au/sustainability_and_environment/birdwatching_ilparpa_swamp) accessed on 18 July 2012.

<sup>63</sup> See [http://www.powerwater.com.au/data/assets/pdf\\_file/0007/39940/manton\\_history.pdf](http://www.powerwater.com.au/data/assets/pdf_file/0007/39940/manton_history.pdf) accessed on 18 July 2012.

<sup>64</sup> Barossa, Kangaroo Creek, Mount Bold, Myponga and South Parra.

*Ben Lomond Water*

***It was not apparent that Ben Lomond Water has any reservoirs which are open to the public for recreational use.***

*Cradle Mountain Water*

***It was not apparent that cradle Mountain Water has any reservoirs which are open to the public for recreational use.***

*Southern Water*<sup>65</sup>

Southern Water makes the areas around a number of its large reservoirs available to the public as recreational sites. These offer facilities such as walking tracks, barbeques, picnic huts, playgrounds and fishing. ***There is no indication that any by-laws or equivalent apply to such areas.***

The Southern Water website makes available a large amount of visitor information about Risdon Brook Park, one of the sites that it owns and manages. The park has a walking track, barbecue facilities (with free wood provided), disabled fishing bays, a children's playground and toilet facilities. There is also a gas barbecue and adjoining hut available for a \$15 booking fee. Large groups and schools visiting the park are required to book their visit to ensure safety and convenience measures can be put in place. Only members of the Risdon Brook Radio Yacht Club are permitted to sail model yachts on the reservoir. Information is available about its opening hours, and general information is provided to visitors about appropriate conduct in the park.

## WESTERN AUSTRALIA

The Department of Water (DoW) administers the *Rights in Water and Administration Act 1914 (WA)*.

*Water Corporation*

Water Corporation supplies water for rural uses and maintains rural supply infrastructure. Several of the dams it manages in the Perth area<sup>66</sup> are popular spots for recreation.<sup>67</sup> For example, Wudong Dam has picnic areas, barbeques and a recreational lake for model boat

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<sup>65</sup> See <http://www.southernwatertas.com.au/Community---Environment/Recreational-sites/Recreational-Sites> accessed 17 July 2012

<sup>66</sup> Mundaring Weir, Wudong Dam, Victoria Dam, Churchman's Brook Dam, Canning Dam, Serpentine Dam, North Dandalup Dam and South Dandalup Dam

<sup>67</sup> See [http://www.watercorporation.com.au/D/dams\\_locations.cfm](http://www.watercorporation.com.au/D/dams_locations.cfm) accessed 19 July 2012

sailing<sup>68</sup>. There is a pumping station open to the public at Mundaring Weir, and fees are charged for entry to this site.<sup>69</sup>

Basic rules about appropriate behaviour at these sites and safety information is provided on Water Corporation's website. ***There is no indication that any by-laws or equivalent apply to such areas.***

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<sup>68</sup> See [http://www.watercorporation.com.au/D/dams\\_wungong.cfm](http://www.watercorporation.com.au/D/dams_wungong.cfm) accessed 19 July 2012

<sup>69</sup> See [www.watercorporation.com.au/D/dams\\_mundaring.cfm](http://www.watercorporation.com.au/D/dams_mundaring.cfm) accessed 19 July 2012



21 August 2012

Carmela Luisetto  
Manager  
Rural Water Corporations  
Rural Water and Governance  
Department of Sustainability and Environment  
Level 11, 8 Nicholson St  
EAST MELBOURNE VIC 3002

Level 14, 55 Collins Street  
Melbourne Victoria 3000  
GPO Box 4379  
Melbourne Victoria 3001  
telephone (03) 9092 5800  
facsimile (03) 9092 5845  
email [contact@vcec.vic.gov.au](mailto:contact@vcec.vic.gov.au)  
web [www.vcec.vic.gov.au](http://www.vcec.vic.gov.au)

Dear Ms Luisetto

**ADVICE ON THE ADEQUACY OF REGULATORY IMPACT STATEMENT**

Thank you for seeking advice on the Regulatory Impact Statement (RIS) on the proposed Model By-laws (Recreational Areas).

The Victorian Competition and Efficiency Commission (VCEC) advises on the adequacy of RISs as required under section 12H(3) of the *Subordinate Legislation Act 1994* (the Act). I advise that the final version of the RIS received by the VCEC on 19 August 2012 meets the requirements of section 12H of the Act.

The VCEC's advice is based on the adequacy of the evidence presented in the RIS and is focused on the quality of the analysis rather than the merits of the proposal itself. **Therefore, the VCEC's advice that the RIS is adequate does not represent an endorsement of the proposal.**

The VCEC notes the Department of Sustainability and Environment's intention to monitor the By-laws' effectiveness by obtaining feedback from and regular contact with the water corporations, through enforcement of the offence provisions and from any correspondence from the public to the Minister.

In the interests of transparency, it is government policy VCEC's advice be published with the RIS when it is released for consultation.

If you have any questions, please contact [RegulationReview@vcec.vic.gov.au](mailto:RegulationReview@vcec.vic.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read "Andrew Walker".

Andrew Walker

**Assistant Director**

**Victorian Competition and Efficiency Commission**



